

2024-2025 ORANGE COUNTY GRAND JURY REPORT



Photos credit: OCTA

OCTA: It Takes a Lot to Keep Us Moving



TABLE OF CONTENTS

ACRONYMS AND TERMS	4
SUMMARY	6
BACKGROUND	6
M1 and M2.....	7
REASON FOR THE STUDY	8
METHOD OF STUDY	8
INVESTIGATION.....	9
San Clemente Railroad Corridor.....	9
<i>Overview.....</i>	<i>9</i>
<i>Rail Line Environmental Disruptions.....</i>	<i>9</i>
<i>Permitting.....</i>	<i>11</i>
<i>Recent Progress.....</i>	<i>13</i>
OC Streetcar Project.....	13
<i>Background.....</i>	<i>13</i>
<i>Challenges</i>	<i>14</i>
<i>Impact On Business</i>	<i>15</i>
Other OCTA topics	17
<i>Freeways.....</i>	<i>17</i>
<i>Environmental Mitigation.....</i>	<i>18</i>
<i>Zero Emission Buses.....</i>	<i>18</i>
<i>Liability Insurance.....</i>	<i>19</i>
FINDINGS	21
RECOMMENDATIONS.....	22
RESPONSES	23
Required Responses	25
<i>Findings.....</i>	<i>25</i>
<i>Recommendations.....</i>	<i>25</i>
Requested Responses.....	25

<i>Findings</i>	25
<i>Recommendations</i>	25
BIBLIOGRAPHY	26
REFERENCES	27
 TABLES	
Table 1: Bus Types and Purchase Cost	19

ACRONYMS AND TERMS

ACOE	U.S. Army Corps of Engineers
Amtrak	National Railroad Passenger Corporation
BEB	Battery Electric Bus
BIF	Business Interruption Fund
BNSF	Burlington Northern Santa Fe Railway
BOS	Board of Supervisors
CALSTA	California State Transportation Agency
Caltrans	California Department of Transportation
CARB	California Air Resources Board
CCC	California Coastal Commission
CDP	Coastal Development Permit
CNG	Compressed Natural Gas
CRRS	Coastal Rail Resiliency Study
CTC	California Transportation Commission
DOD	Department of Defense
FCEB	Fuel Cell Electric Bus
FRA	Federal Railroad Administration
HOV	High Occupancy Vehicle
I	Interstate
JPA	Joint Powers Authority
LACMTA (MTA)	Los Angeles County Metropolitan Transportation Authority
LOSSAN	Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency
LTA	Local Transportation Authority

OCTA: It Takes a Lot to Keep Us Moving

MOU	Memorandum of Understanding
OC Go	Orange County M2 moniker
OCTA	Orange County Transportation Authority
SANDAG	San Diego Association of Governments
SB	Senate Bill (California)
SIR	Self-Insured Retention Fund
SR	State Route
TCA	Transportation Corridor Authority
TOC	Taxpayer Oversight Committee
ZEB	Zero Emission Bus

SUMMARY

The Orange County Transportation Authority (OCTA), a massive component of Orange County government, is responsible for trains, buses, roads, highway and freeway improvements, and the unfinished OC Streetcar. With its greater than \$1.8 billion budget, the work of OCTA affects all those living in, working in, and visiting Orange County. A major source of OCTA funding is Measure M2, now called OC Go, which is a ½-cent sales tax currently running from 2011-2041.

The Grand Jury performed an overview of OCTA, with particular emphasis on two controversial and expensive projects: the OC Streetcar Project and the on-going San Clemente railroad disruption issues. Other topics addressed in this report include OCTA's liability insurance exposure, the introduction of zero-emission buses, and freeways.

Transportation projects can cost in the billions of dollars and take decades from design to completion. In addition, the predicted potential benefits of major transportation projects can take years to evaluate. The Grand Jury found that OCTA has generally delivered its transportation projects successfully. However, it still faces tremendous challenges in keeping Orange County moving.

The Grand Jury investigated these issues and has made six recommendations.

BACKGROUND

Orange County Transportation Authority's (OCTA) mission, as stated on their website, is to "develop and deliver transportation solutions to enhance quality of life and keep Orange County moving."

Orange County Transportation Authority began serving the residents and visitors to Orange County in 1991. With a budget in excess of \$1.8 billion of combined federal, State and County funds for fiscal 2024-2025, OCTA is working to support a sustainable transportation system with bus and ADA paratransit service, Metrolink commuter rail service, freeway upgrades, street and road improvements, motorist aid service, and environmental programs. Orange County Transportation Authority is also the managing agency for the Los Angeles—San Diego—San Luis Obispo (LOSSAN) Rail Corridor Agency.

Orange County Transportation Authority is overseen by a governing board made up of all five County Supervisors, other elected city officials, and public members. The board has several advisory committees. Agendas and audio recordings of the board and committee meetings are available on the OCTA website.

M1 and M2

In 1990, Measure M1, a ½-cent sales tax to be used for transportation projects, was approved by Orange County voters and took effect in 1991. This measure raised more than \$4 billion in the twenty years it existed.

In 2006, Orange County voters approved Measure M2 transportation investment plan, a continuation of the ½ cent tax. The Measure M2 sales tax commenced in 2011 and is scheduled to last for thirty years.

This breakdown of project funding is detailed in the progress report given by OCTA staff to the OCTA Taxpayer Oversight Committee (TOC) every quarter. The Grand Jury was unable to determine why these percentages add up to 104.5%:

- 43% Freeway congestion (includes environmental protection and preservation in exchange for streamlined freeway project approvals)
- 32% Repair and improve roads
- 25% Improve and expand public transit
- 2% Protect beaches from transportation pollution
- 1% Audits and the Taxpayer Oversight Committee
- 1.5% Payment to California State Board of Equalization to collect the sales tax

The original M2 revenue projection for thirty years was \$24.3 billion. As of September 2024, the projection has been reduced to \$14 billion due to economic changes. The money is kept in a special trust fund.

On June 10, 2024, the TOC determined for the thirty-third consecutive year that Measure M1 and M2 had delivered as promised to Orange County voters. The Orange County Auditor-Controller, as chair of the TOC, must certify annually that the money is spent in compliance with the M2 ordinance, which specifies project eligibility and spending requirements. Every three years, external consultants provide a status report on project delivery and fiscal compliance. Every ten years, all projects are reviewed by the Taxpayer Oversight Committee for level of public support, program performance, and progress of plan implementation.

Proposed changes in allocations between the four major project funding categories—freeways, streets and roads, transit, and environmental—requires a two-thirds vote of the TOC, a two-thirds vote of the OCTA Board, and approval by a majority of Orange County voters.

The M2 name was changed to OC Go in 2017 to raise awareness of the County sales tax and to avoid confusion with Measure M in Los Angeles County.

REASON FOR THE STUDY

Orange County Transportation Authority's \$1.8 billion-plus taxpayer-funded budget for the 2024-25 fiscal year represents approximately 19% of the total County budget. Orange County Transportation Authority has delivered major on-time projects and continues to work to do so. Their goal of "Promises Made, Promises Kept" is mostly accurate, with some exceptions.

As a result of complaints to the Grand Jury, this report focuses on two major projects undertaken by OCTA: the OC Streetcar Project and the on-going San Clemente railroad disruption issues. Other issues addressed in this report include OCTA's liability insurance expense, zero-emission buses, and freeways.

METHOD OF STUDY

The Grand Jury interviewed numerous government administrators and professionals directly involved in transportation planning pertinent to the OC Streetcar Project in Santa Ana, the ongoing railroad closure emergencies in San Clemente, and other transportation issues.

In undertaking this study, the Grand Jury:

- Interviewed OCTA employees and board members
- Reviewed published articles related to the subject
- Received and reviewed documents relevant to the investigation
- Went on site tours, including riding the Metrolink train from Irvine to Oceanside and walking through the environmental and railroad track disruptions in San Clemente. Members of the Grand Jury drove through the section of the OC Streetcar Project that was publicly accessible.
- Interviewed members of non-profit environmental advocacy groups
- Reviewed relevant websites and publicly available documents
- Listened to recordings of
 - OCTA board and subcommittee meetings
 - Santa Ana City Council meetings
 - California Coastal Commission Committee meetings

INVESTIGATION

San Clemente Railroad Corridor

Overview

The 351-mile rail corridor, extending from San Luis Obispo to San Diego, is managed by the LOSSAN (Los Angeles-San Diego-San Luis Obispo) Agency, a Joint Powers Authority (JPA) staffed by the OCTA. According to OCTA officials, this is the second-busiest passenger rail line in the United States.

The railroad tracks in Orange County were built in the late 1880s by the Atchison Topeka and Santa Fe Railroad, which later became Burlington Northern Santa Fe (BNSF) Railway, currently owned by the Berkshire Hathaway conglomerate holding company. The tracks through the San Clemente corridor were built on the beach, as this was the flattest land in the area. Orange County Transportation Authority purchased the forty-two miles of tracks from Fullerton to the Orange County–San Diego County line along with fifty feet of land on either side, in the 1990s. As part of the purchase, OCTA agreed to a Federal Common Carrier Obligation not to cut off freight carrier access.

Rail services using the tracks:

- Department of Defense
- Burlington Northern Santa Fe Railway
- Amtrak
- Metrolink

The Department of Defense (DOD) designates this rail corridor as critical infrastructure for the military. Burlington Northern Santa Fe carries more than \$1 billion in freight each year. Amtrak is managed by the state of California. Metrolink is a JPA representing Orange, Los Angeles, Riverside, San Bernadino and Ventura counties. Through the LOSSAN corridor, Amtrak ridership for fiscal year 2023-2024 was approximately 1.9 million passengers, and Metrolink ridership for 2024 was approximately 5.6 million passengers.

Rail Line Environmental Disruptions

From the 1880s through 2020, there were *only three track closures* due to environmental issues involving the seven miles of track adjacent to the San Clemente coastline. Since fall 2021—a *span of just four years*—bluff failures and landslides have caused *five track closures*. In aggregate, the five recent shutdowns amount to approximately one year of closure.

Orange County Transportation Authority has spent an estimated \$40 million in emergency repairs, including clearing debris off the tracks, construction of catchment walls (barriers to catch debris at the bottom of the bluffs), re-grading the landslide debris, and placing rip rap (large boulders) adjacent to the ocean side of the tracks.

There is no agreement on the causes of the environmental disruption affecting the San Clemente rail corridor. Factors that have been blamed for bluff slides include natural ground water seeping out of the hillsides, too much irrigation of land above the bluffs by homeowners, heavy rainstorms, and vibrations caused by passing freight trains.

Another environmental issue that may be affecting the rail line is beach erosion. Factors that have been blamed for the erosion include the rip rap and revetment (smaller rocks strategically placed to fit together) already in place, sea-level rise due to climate change, and natural movement of sand from ocean currents. During the initial repair plans in 2021, OCTA favored rip rap deployment over sand replacement, while the City of San Clemente and environmental groups wanted only sand replenishment to widen the beaches. After multiple public meetings, OCTA has agreed to make beach nourishment with sand a much larger component of their strategy.



The City of San Clemente and environmental and academic experts claim that there is abundant sand from inland sources for widening the beach. These sources include sand from behind Prado Dam, built in 1941 by the U.S. Army Corps of Engineers (ACOE), near Corona, California, and from the Santa Ana River channels. The OCTA argues that transporting the sand from inland sites via trucks or trains would be extremely difficult and costly and would cause lengthy track closures when the sand is offloaded. There are enormous difficulties in accessing and dredging offshore sand including the following:

- Ensuring sand quality
- Protecting the ecosystems living in the donor and recipient sand sites
- Only one dredging company serving the entire west coast

Offshore sand was successfully dredged by the ACOE from the Seal Beach area and placed in the San Clemente pier area. However, this was a relatively small project compared to what would be needed to protect the tracks.

Orange County Transportation Authority is currently working on the Orange County Coastal Resiliency Study to ensure uninterrupted rail service for the next thirty years between Dana Point and the Orange County–San Diego County line. From January to June 2024, OCTA held nearly three dozen meetings with various stakeholders, including regulatory agencies, local cities, and environmental groups. Orange County Transportation Authority identified four “hot spots” in San Clemente needing immediate action to prevent future track closures. In addition to the above-mentioned repair methods, OCTA added some limited sand placement on the beach.

Permitting

California Coastal Commission

Permitting is a major issue for OCTA in keeping the railroad tracks open, mainly dealing with the California Coastal Commission (CCC) at the State level and the ACOE at the federal level.

The most challenging agency for OCTA to deal with is the California Coastal Commission. The CCC’s main priority is lateral beach access. This is the public’s right to walk uninterrupted on the beach, parallel to the shoreline. Over the past few years, the CCC has considered the bluff slides in San Clemente as an emergency situation only when there is track closure, at which point the clearing of the tracks and bluff stabilization could begin immediately. It is the permitting agencies who make the final determination of what constitutes an emergency. If the CCC determines that there is no emergency and repair work has already begun, then the CCC can issue fines.

After an emergency is resolved, OCTA must apply for the standard Coastal Development Permit (CDP), which would include mandatory mitigation, such as beach sand nourishment and possible financial payments to the CCC. Unfortunately, the CDP does not differentiate between private

development (hotels and homes) and critical public infrastructure (railroad). There is no intermediate permit classification between the Emergency permit and the standard CDP.

The Emergency permit is only *two* pages long. The standard Coastal Development Permit application is *twenty-two* pages and requires information such as a parcel map, vicinity map, two sets of project plans, environmental documents, technical reports, and verification of permits applied for or granted by other public agencies. The CCC's staff is supposed to review the CDP application within thirty days. At times, the CCC requests additional information before it will perform a full review. Once the entire CDP is completed, the California Coastal Commission staff is required to analyze it and present it to its Board within 180 days for formal approval or rejection. This entire process can take up to two years.

The Governor does have the power to override the decisions of the California Coastal Commission, but has never exercised this power with regard to the San Clemente railroad issues.

To help the OCTA mitigate the difficulties in obtaining an Emergency permit from the CCC, California State Senator Catherine Blakespear introduced Senate Bill (SB) 741 in February 2025, which, if passed, would allow a municipality, county or special district to declare an environmental emergency, thus bypassing the CCC's emergency declaration power.

Army Corps of Engineers

In addition to obtaining permits from California Coastal Commission, OCTA must obtain permits from the Army Corps of Engineers, which is most concerned with protection and navigation of coastal waterways. Orange County Transportation Authority attempted to be proactive to prevent further environmental disasters from causing track closures along the San Clemente railroad corridor, but they ran into obstacles at every turn. In August 2024, OCTA applied for an Army Corps of Engineers Nationwide Permit 13 to expedite their preventive efforts. However, OCTA was forced to withdraw its request because the ACOE believed the proposed projects would cause too many adverse environmental effects. In September 2024, OCTA applied for an Emergency permit from the ACOE, which again had to be withdrawn.

The Grand Jury's *multiple requests* to interview an Army Corps of Engineers representative were refused.

The California State Transportation Agency (CALSTA) has instituted a long-term study on the efficacy of relocating inland an eleven-mile span of tracks between San Juan Capistrano and San Onofre State Beach. Current concerns about moving the tracks include the need to use eminent domain against homeowners, environmental effects, the uphill grade the trains would have to traverse, and the estimated \$10 billion cost. Most OCTA officials interviewed by the Grand Jury believe track relocation is not currently viable. On the other hand, most environmental groups

argue that track relocation is the *only* solution to keep the rail line operating and to preventing further beach erosion.

Recent Progress

On March 31, 2025, OCTA submitted an emergency permit application to the California Coastal Commission to expedite work stabilizing the four San Clemente hot spots threatened by the bluffs and ocean, which could result in imminent track closures. Until this time, the CCC had only considered the situation to be an emergency if the railroad tracks were actually closed. On April 10, 2025, for the first time, the California Coastal Commission issued a “partial” Emergency permit, which allowed work to begin immediately in three areas that had not yet experienced closures—two completely and one partially. The CCC is requiring more information before ruling on the fourth area.

Orange County Transportation Authority plans to add up to 540,000 cubic yards of sand to the beach, 6,500 cubic yards of rip rap (large boulders), and 22,000 cubic yards of new revetment adjacent to the tracks. In addition, they will install a 1,400-foot length catchment wall on the bluff side. These figures represent significantly more sand than rock. The rocks can be placed in a matter of weeks, but the sand placement may take up to two years, due to the challenges mentioned above. Orange County Transportation Authority has secured \$313 million in State and federal funding for these projects, and the County has allocated an additional \$135 million from County funds.

As stated in the OCTA news release dated April 14, 2025, “the public will be informed of construction timelines, beach access changes, and rail service updates throughout the process.”

OC Streetcar Project

Background

In 2006, the early ideas for the OC Streetcar Project developed out of OCTA’s Go Local; this transit program provided individual grants of \$100,000 to all interested cities to develop possible projects for rail extensions or connections from Metrolink Transportation Centers to their cities.

Orange County Transportation Authority accepted the plan submitted by the City of Santa Ana for a 4.15-mile route streetcar from the Santa Ana Regional Transportation Center through downtown Santa Ana to Harbor Boulevard in Garden Grove. The City of Santa Ana saw the project as benefiting business development as well as satisfying transportation needs.

In a press release dated May 11, 2015, OCTA announced they would be taking over as lead agency of the design, build, and operation of the OC Streetcar Project. This decision would increase their chances of obtaining federal funding. In this same press release, they advised the public that the streetcar plans were approved, that they expected *6,000 riders per day by 2035*,

the cost of the project would be *\$250 million*, and that the streetcar would be *operational by 2019*. As of the writing of this report, these unmet figures and projections continue to change.

The ridership report for the streetcar project was based on information from 2015. While no one could foresee the COVID-19 pandemic, the original date for the streetcar to be operational was pre-COVID. With no new ridership studies completed since 2015, it remains to be seen if the more recent OCTA projections of 6,000 to 7,500 riders per day for the 4.15-mile route will be met.

As of April 2025, the price tag for the OC Streetcar Project:

- Federal funds \$280.10 million
- State funds \$175.43 million
- County funds \$193.63 million (all future costs will be O.C. taxpayer funds)

Current total: \$649.16 million

This cost to taxpayers is over two and half times the initial stated cost and equates to a staggering *\$156.42 million per mile*.

Orange County Transportation Authority projects a reduction of 12,500 vehicle miles of travel per day as a result of people riding the streetcar. Considering that the total vehicle miles of travel per day in the entire county is almost 81,000,000¹, the Grand Jury finds it hard to justify a *0.015% vehicle mile reduction* as a project benefit.

Even at the highest projections of 7,500 riders per day, with no current or future plans to extend beyond the 4.15 miles, this is an extraordinary amount of money for a project that will serve a tiny fraction (less than ¼ of 1%) of the 3.2 million Orange County residents.

Challenges

The OC Streetcar Project continues to face many challenges. Groundbreaking was November 30, 2018. Sixteen months later (March 2020), Governor Gavin Newsom announced the COVID-19 pandemic stay-at-home order.

The pandemic lockdown created significant barriers to creating and maintaining a high-performing streetcar project team. The focus was no longer just on construction but on how teams stayed connected, engaged, and supported, both in-person and remotely. Virtual meetings and conference calls replaced one-on-one, boots on the ground, impromptu problem-solving meetings. These communication challenges contributed to construction delays.

¹ California Air Resources Board. *Appendix C: Large Entity One-Time Reporting Fact Sheet*. January 2021

Orange County Transportation Authority hired Walsh Construction as the streetcar contractor. Walsh Construction has an extensive rapid transit portfolio for major metropolitan public agencies. Alternatively, Orange County Transportation Authority and the city of Santa Ana faced significant challenges, since neither had previous streetcar construction experience.

Construction delays resulted from:

- Inaccurate historical Santa Ana utility survey maps
- Discovery of an unmarked Native American burial ground in the project area
- Discovery and remediation of additional contaminated soil
- Unexpected rail ties already in place
- Project design package disagreements among contracted companies
- Improper specifications of streetcar tracks, necessitating removal and replacement of work already done
- Completion of Maintenance and Storage Facility and issues with information technology, heating, ventilation, and air conditioning
- Customer information kiosk design changes
- Civil complaint filed by Walsh Construction against OCTA during construction
- Cross complaint filed by OCTA against Walsh Construction

Several OCTA officials indicated to the Grand Jury that it is highly unusual for a construction company to file a legal action while construction is still ongoing.

According to OCTA (as of May 2025), the streetcar construction is 90–95% complete, with a projected in-operation date sometime in 2026—approximately seven years after the original planned 2019 in-operation date.

Impact On Business

The Grand Jury was unable to determine how strongly the residents of Santa Ana wanted a streetcar in their city. The 2012 Santa Ana City Council, led by Mayor Miguel Pulido, envisioned the OC Streetcar Project becoming the hub of a light rail system that could connect the County's core. They saw the planned route as the beginning of a larger project, anticipating

where else it *could* go.² Dissenters stated that “streetcars don’t make sense from both a safety and financial perspective.”³

The Grand Jury learned that, given the fact that the project is now limited to its 4.1-mile route with no plans to lengthen it, enhanced bus routes could have been a viable alternative to the OC Streetcar Project.

Affected Santa Ana businesses began protesting the project as far back as 2014, citing anticipated issues of loss of business revenue, dust, parking problems, and inadequate and sporadic signage. The Grand Jury learned that by 2018, rather than following a linear pattern, the hopscotch method of construction significantly contributed to confusing street closures, resulting in customers being unable to reach city businesses.

The impact of the OC Streetcar Project construction has been devastating to downtown Santa Ana businesses. One business, NOVA Academy Early College High School, had the financial ability to pursue a lawsuit against OCTA. Orange County Transportation Authority generally denied the allegations asserted by NOVA and responded with a cross-complaint against OCTA’s contractor, Walsh Construction. A settlement was reached between NOVA and OCTA. The Grand Jury learned that other Santa Ana businesses may not have been able to afford to pursue legal action, but were nonetheless impacted by the construction.

Newspaper reports and other sources indicated that while there are justifiable reasons for the construction delays, which OCTA claims were partially the fault of Walsh Construction, OCTA failed to mitigate the significant interruptions and the loss of income to the businesses.

A forward-thinking “Business Interruption Fund” (BIF) would have been helpful to Santa Ana business owners. Orange County Transportation Authority does not have a BIF and claims it is illegal to use public funds for this type of program.

The Board of Directors for Los Angeles Metro Transit Authority *did* find a way to offer a BIF, utilizing a Capital and Advisory Services company. Their Business Interruption Fund provides \$10 million annually for businesses, who can be paid the lesser of \$60,000 or 60% of their annual business revenue losses resulting from transportation construction.⁴

² Kwong, Jessica. "Santa Ana Streetcar Could Spark New Era of Mass Transit in O.C." *Orange County Register*, February 7, 2016.

³ Elmahrek, Adam. “OCTA Takes Lead in Santa Ana Streetcar Project.” *Voice of OC*, May 27, 2014

⁴ Los Angeles County Metropolitan Transportation Authority, *Business Interruption Fund*, <https://www.metro.net/about/business-interruption-fund/>.

The City of Santa Ana did provide a nominal payment of \$10,000 to some businesses who applied for compensation.

In May 2025, *at a reported 90-95% completion*, the OC Streetcar Project must still undergo the testing phase, which in other states has revealed problems. The testing phase is scheduled to last up to one year, and per OCTA's news release dated May 7, 2025, is set to begin this summer.

While OCTA is providing updates to the public, there is no guarantee as to when this project will be completed nor how it ultimately will impact Santa Ana's downtown business traffic.

Despite OCTA's oft-repeated statement that "this is what Santa Ana wanted," the Grand Jury is uncertain that Santa Ana would have been as eager to proceed with this project had the city known there would be this level of construction delays, continuing cost overruns, monetary damages to local businesses, and an unknown completion date.

Other OCTA topics

Freeways

Thirty freeway projects are included in Measure M2. As of February 2025:

- 15 are completed
- 4 are in construction
- 8 are in design
- 3 are in development

Orange County Transportation Authority's twenty-year project plan is expected to be completed by 2031. No new freeway widening projects are planned to begin after 2030. The completed Interstate 405 improvement project, which included the 405 Express Lanes, cost \$2.16 billion.

In past years, OCTA has spent the 43% of its M2 revenue on freeway improvement projects on the following: Interstates (I) 405, 5, 605, State Routes (SR) 22, 55, 57, 91, and other projects, such as Environmental Mitigation.

Orange County Transportation Authority completed their work on the toll lanes on both the I-405 and the SR-91 freeways in 2024. While OCTA considers the introduction of toll lanes as successfully mitigating traffic congestion, the toll revenues have not been equally successful. The original ridership and revenue estimates on the SR-91 freeway have been exceeded; however, the I-405 estimates for ridership and revenue have not.

Toll lanes are designed to *theoretically* lighten the traffic flow in the free lanes. Many commuters would argue that within a few months of those lanes opening, traffic quickly flowed in to fill gaps.

The revenue from the toll lanes is collected by the Transportation Corridor Agency (TCA) and managed and coordinated by OCTA.

Environmental Mitigation

Orange County Transportation Authority spent \$55 million to purchase approximately 1,300 acres of land for environmental preservation. Per the M2 mandate, OCTA must spend a portion of the money allocated to freeway improvements on environmental mitigation programs. This is in exchange for streamlining State and federal freeway project approval. The public may enjoy this open space by participating in docent-led hikes and horseback rides.

Some of the revenue was also used to restore a habitat on 350 acres of open space, which is not open to the public. Orange County Transportation Authority has established an endowment to manage these lands, to which it contributes \$2.9 million annually.

As of March 2024, this endowment consisted of \$28 million, with a projected target of \$46 million by fiscal year 2027-2028.

Zero Emission Buses

The Innovative Clean Transit Rule was issued by the California Air Resources Board (CARB) in 2018, stating that all public transit agencies' bus fleets must be zero emission by 2040. The interim steps are:

- 25% of new bus purchases by 2023
- 50% of new bus purchases by 2026
- 100% of new bus purchases by 2029

According to the US Environmental Protection Agency (EPA), in 2022, vehicles caused 24.2% of greenhouse gas emissions in the United States. The Congressional Budget Office (CBO) reports that in 2021, the United States created almost 17% of greenhouse gas emissions for the entire planet.

As part of the nationwide effort to reduce carbon emissions, many areas, including New York, Chicago and several California school districts, are transitioning to zero emission buses (ZEB). In California, ZEBs must meet certain standards, including that 70% of the parts must be made in the United States. Currently, the only manufacturer meeting these standards is a company named New Flyer, which limits competition and keeps prices high. Zero emission buses include battery electric buses (BEB) and fuel cell electric buses (FCEB), which use hydrogen as the fuel source.

The OCTA Board approved the purchase of zero emission buses starting in 2020 to replace older compressed natural gas (CNG) buses, which are not zero emission. They also mandated the purchasing of charging infrastructure to support the ZEBs.

Orange County Transportation Authority has over 500 buses. As of December 2024, ten FCEBs have been in service for five years and ten BEBs for two years. On November 14, 2024, the OCTA Board approved the purchase of an additional forty fuel cell electric buses and ten battery electric buses. (see Table 1) These two types of ZEBs have advantages and disadvantages in their operating range, infrastructure cost, bus availability, and operation cost per mile.

The “jury is still out” on which type of bus is most efficient. For the above-stated reasons, the cost of the ZEBs has not decreased as expected—in fact it has *increased*—when compared to electric vehicles for personal use.

Table 1: Bus Types and Purchase Cost

	Compressed Natural Gas	Battery Electric	Fuel Cell Electric
In service as of Dec 2024	~500	10	10
Approved to Purchase	0	10	40
• Total Zero Emission Buses	N/A	20	50
• Purchase Cost per Bus	<\$1.0 M	\$1.3 M+	\$1.5 M+

From the November 25, 2024 OCTA Board meeting

As of early 2025, the cost of the ZEBs has been grant funded from the federal and State governments. There is concern at the OCTA that the federal grants may dissolve under the current federal administration, but the State mandate to purchase these buses will remain. Orange County Transportation Authority has taken a leading role with other California transit agencies in establishing a task force to address the challenges of ZEB deployment with government officials.

Liability Insurance

From 1991 to the end of 2020, OCTA carried an excess liability insurance policy (coverage for claims exceeding their self-insured limit). Due to significantly increased policy costs, the OCTA Board decided not to renew OCTA’s excess liability insurance policy at the end of 2020. It has been self-insured since 2021, with only \$5 million in its Self-Insured Retention (SIR) fund as of the writing of this report.

The Grand Jury has learned that there is no consensus within the OCTA Board on the best way to move forward on the liability insurance issue. A major argument for staying fully self-insured is the high cost of returning to the insurance market after five years and the fact that OCTA has not

paid out a claim in excess of \$4.5 million in the last ten years. Per OCTA, the average claim paid has been \$280,000.

At a November 25, 2024, OCTA Board meeting, staff recommended that the Board increase its Self-Insured Retention to \$10 million and purchase a \$5 million excess liability insurance policy. This has been an ongoing recommendation, but the OCTA Board has voted it down and instead voted to “continue to monitor” insurance costs and revisit this issue in late 2025.

The fact that OCTA has been fortunate enough to have avoided catastrophic losses to date does not mean there couldn’t be one in the future. Given the changes in the transportation environment post pandemic and the new modes of transportation introduced to the County, including the OC Streetcar, its liability risk is likely to increase substantially.

As of February 12, 2025, OCTA reserves were \$2.8 billion, and debt was \$1.2 billion. As stated on the record in an OCTA Board meeting in 2024, OCTA has been “extremely lucky” in their liability claims history over the past ten years.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2024-2025 Grand Jury requires (or as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled “OCTA: It Takes a Lot to Keep Us Moving,” the 2024-2025 Orange County Grand Jury has arrived at fourteen findings, as follows:

San Clemente Railroad Corridor

F1. There is no consensus on the causes of environmental disruptions resulting in track closures on the San Clemente Railroad corridor, which significantly hinders Orange County Transportation Authority (OCTA) from finding an agreed-upon solution.

F2. Orange County Transportation Authority has made good faith efforts to listen to input from all interested parties in San Clemente on the railroad and beach environmental issues and has made substantial adjustments in its proposed solutions based on these discussions.

F3. Experts agree that there is abundant sand available for replenishment from inland sources, as well as offshore sources; both could help with track stabilization.

F4. The California Coastal Commission (CCC) and US Army Corps of Engineers (USACOE) determine what is classified as an “emergency.” OCTA must abide by their decisions. As a result, it is very challenging for OCTA to proactively address future environmental disruptions, which are almost certain to occur.

F5. There are only two types of permits for projects within the coastal zone: Emergency and Standard Coastal Development. Limited to these categories, it is extremely difficult for OCTA to be proactive in addressing impending environmental disruption to rail service.

F6. The Standard Coastal Development permit does not differentiate between public infrastructure and private development. Therefore, projects that impact public transport and safety are not afforded an expedited process over hotels or other private development.

OC Streetcar Project

F7. The Grand Jury cannot determine Santa Ana residents’ and merchants’ level of support and enthusiasm for the OC Streetcar when it was first proposed, or even currently.

F8. Orange County Transportation Authority is relying on outdated OC Streetcar Project ridership analyses from 2015, resulting in unrealistic expectations.

F9. Despite significant cost overruns and delays in the construction of the OC Streetcar Project, OCTA has failed to mitigate significant interruptions and lost revenue experienced by Santa Ana businesses.

F10. The estimated reduction of 12,500 daily vehicle miles of travel projected to be a benefit of the OC Streetcar Project is a tiny fraction of the daily miles traveled in the entire County. This calls into question the efficacy of the OC Streetcar Project.

Other OCTA Topics

F11. Orange County Transportation Authority is making a responsible effort to comply with the State-mandated zero emission bus pilot program. It has purchased fuel cell and battery electric buses and related infrastructure to determine which type will be the bus of the future.

F12. Orange County Transportation Authority's decision to fully self-insure for liability runs the risk that a catastrophic loss could severely deplete its financial reserves.

F13. As mitigation for expedited freeway project approvals, OCTA has purchased approximately 1,300 acres of open space, restored 350 acres of habitat, and established an endowment to manage these properties. This benefits the health of wildlife and residents of Orange County.

F14. Measure M2 sales tax (now referred to as OC Go) benefits Orange County by providing significant funding for transportation projects.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2024-2025 Grand Jury requires (or as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation titled "OCTA: It Takes a Lot to Keep Us Moving," the 2024-2025 Orange County Grand Jury makes six recommendations, as follows:

San Clemente Railroad Corridor

R1. Despite significant obstacles to sand replenishment, OCTA should dedicate sufficient assets to investigating solutions whereby sand can be sourced and transported more quickly so that it can be a larger component of railroad track fortification. This investigation should begin by September 30, 2025. **(F3)**

R2. Orange County Transportation Authority should prioritize its lobbying of State and federal agencies to create an intermediate-level environmental permit designed specifically for public infrastructure that is between “Standard Coastal Development” and “Emergency.” (F4, F5, F6)

OC Streetcar Project

R3. Projects of the financial magnitude of the OC Streetcar (*now over \$600,000,000.00 and counting*) should be planned and executed to benefit a significantly larger portion of Orange County. This should begin with all projects currently underway. (F7, F10)

R4. For major transportation projects such as the OC Streetcar, OCTA should improve public outreach, including education about each project’s origin, need, expected benefit, timeline, cost, and funding sources. This should begin with all projects currently underway. (F7, F8)

R5. Orange County Transportation Authority should establish a Business Interruption Fund (BIF), through a third party, like that of Los Angeles Metro Transit Authority, to assist business owners whose livelihoods are disrupted by major transportation projects such as the OC Streetcar Project. BIF to be established by December 31, 2025. (F9)

R6. Orange County Transportation Authority should consider reentering the liability insurance market to reduce the potential cost of a catastrophic loss. Staff report to OCTA Board about reentering the market by December 31, 2025. (F12)

RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

§933

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain

on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

933.05.

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

(Amended by Stats. 1997, Ch. 443, Sec. 5. Effective January 1, 1998.)

Required Responses

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

Findings

OCTA Board of Directors

F1, F2, F3, F4, F5,
F6, F7, F8, F9, F10,
F11, F12, F13, F14

Recommendations

OCTA Board of Directors

R1, R2, R3, R4, R5,
R6

Requested Responses

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05, are requested from:

Findings

California Coastal Commission

F2, F4, F5, F6

Recommendations

California Coastal Commission

R2

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