

# ORANGE COUNTY GRAND JURY



2020  
—  
2021

FINAL REPORT



## ORANGE COUNTY GRAND JURY

700 CIVIC CENTER DRIVE WEST • SANTA ANA, CALIFORNIA 92701 • 714/834-3320  
www.ocgrandjury.org • FAX 714/834-5555

July 1, 2021

Honorable Erick L. Larsh  
Presiding Judge, Superior Court of California, County of Orange  
700 Civic Center Drive West  
Santa Ana, California 92701

Dear Judge Larsh:

On behalf of the 2020-2021 Orange County Grand Jury, I am pleased to present the Final Report.

The Grand Jury conducted its investigations, including research, interviews of numerous relevant witnesses and review of voluminous documents with the highest level of professionalism and integrity. The reports were fact-based and free from bias supporting clear recommendations for improvement to the respective investigated agencies.

The five Final Reports address a wide range of local government issues including: the Transportation Corridor Agencies, Pandemic Preparedness, Licensed Sale of Recreational Adult-Use Cannabis in Santa Ana, Orange County Sheriff's Department's Evidence Booking, and A Look Behind the Bars of the Orange County Jails.

In addition to the civil investigations, the Grand Jury conducted 44 days of criminal indictments and investigative hearings presented by the Orange County District Attorney. Further, the Grand Jury received and reviewed 17 citizen complaints regarding various issues. Lastly, the Grand Jury attended four Coroner Case Reviews and two Orange County Criminal Justice Coordinating Council meetings.

We thank the following individuals who dedicated their time and counsel:

- Honorable Kirk H. Nakamura, Judge, Superior Court of California, County of Orange
- Honorable Maria D. Hernandez, Assistant Presiding Judge, Superior Court of California, County of Orange
- Honorable Cheri Pham, Supervising Judge Central Felony Panel, Superior Court of California, County of Orange
- David Yamasaki, CEO, Superior Court of California, County of Orange
- James Steinmann, Deputy County Counsel
- Israel Claustro, Senior Deputy District Attorney
- Joyce Mwangi, Grand Jury Coordinator

Finally, the 2020-2021 Orange County Grand Jury thanks the people of Orange County for the opportunity to represent and serve them.

Respectfully submitted,  
Scott Kelly, Foreperson  
2020-2021 Orange County Grand Jury

**Members of the 2020-2021 Grand Jury**

Foreperson  
Foreperson Pro Tem  
Secretary  
Members

Scott Kelly  
Douglas Gillen  
Frederick Barker  
Giridhar Athreya  
Vicki Connely  
Pat English  
Michael Ernandes  
Jennifer Gates  
Paul Gerst  
John Hendrix  
Karen Kindschi  
Younger Klippert  
Patricia LaVoie  
Gene Siegel

Former

Russell Chatham  
David Bass  
Colleen Zenger  
Michael Elliott  
Carole Smith  
Charlene Jurak  
Peter Thompson



# Orange County Grand Jury 2020-2021

## INDEX

### Reports in Order of Issuance

#### 1. **Orange County Pandemic Preparedness**

The 2020-2021 Grand Jury's investigation into Orange County's pandemic preparedness focused primarily on the review of the County's Emergency Operations Plan (EOP) and the Orange County Health Care Agency's (OCHCA) Disease Outbreak and Response Annex (DORA). The Grand Jury also gathered information on stockpiles of personal protection equipment (PPE) and County budget to support the preparedness effort. The Grand Jury's investigation revealed that while Orange County had emergency plans specific to a pandemic, these plans had known gaps that were not addressed in accordance with the state, national and international guidelines. The emergency plan classified the probability of a pandemic as "unlikely". The Grand Jury also observed that the agency did not establish comprehensive community-based task forces that included official threshold language communities in Orange County. In addition, the County did not have enough resources (facilities, materials, and personnel) to enact key parts of the emergency plan such as handling urgent communications.

As a result of the investigation, the Orange County Grand Jury identified several findings and has made recommendations.

#### 2. **Orange County Sheriff's Department Evidence Booking Issue - Has it Been Resolved?**

If one were to ask for a definition of evidence, a simplified response might be that it is the "smoking gun" that connects the accused to a crime. A comprehensive definition is more complex than physical items collected at the scene. Evidence includes written crime reports, oral testimony of witnesses, documents, public records, photographs, depositions, audio and video recordings, items processed by the Crime Lab or Coroner, and dispatch communications. Evidence is proof presented to a judge and/or jury of alleged facts material to the case and may be added throughout the duration of the case.

Our system of justice relies upon the proper collection and preservation of physical evidence, as well as the honesty and integrity of those who are sworn to "tell the truth." Therefore, it is imperative that those responsible for collecting and booking evidence do so in a way that does not compromise the justice system.

In January 2018, the Orange County Sheriff became aware of several incidents involving deputies failing to book evidence and falsifying associated reports. The Sheriff's Department took immediate action by conducting two audits going back two years to determine the extent of the problem. New policies and procedures were rolled out beginning March 2018, holding supervisors accountable for reviewing and approving reports and verifying that evidence was booked by the end of each shift. Deputies were disciplined, and in some cases terminated and referred to the District Attorney for criminal prosecution. There was a joint review by the Orange County District Attorney and Orange County Sheriff's Department to examine active and closed criminal cases which may have been compromised by evidence booked late or not booked at all. The joint review resulted in some cases being dismissed by the District Attorney.

The Orange County Grand Jury acknowledges the positive steps taken by the Orange County Sheriff's Department and its willingness to address the problem. After a six-month review of current policies and procedures related to evidence booking and reporting, the Grand Jury believes there are still some areas that need improvement.

3. **“Pot Luck” Santa Ana’s Monopoly on Licensed Retail Adult-Use Cannabis in Orange County**

Santa Ana was the first city in Orange County, California to approve the retail sale of Adult-Use Cannabis. This action has added significant revenue to the city with no reported increase in criminal activity. Through interviews and investigation, the Orange County Grand Jury has discovered that the revenue generated by the Retail Adult-Use Cannabis business has provided much needed funds to the City of Santa Ana. These funds have not only increased the city’s general fund account but have also been used for enhanced police services and code enforcement efforts as well as funding for additional youth programs through the Parks, Recreation, and Community Services Agency.

*The Orange County Grand Jury does not express an opinion on the use of Cannabis.*

4. **A Look Behind the Bars of the Orange County Jails**

During one of the most unprecedented times in recent history, the 2020-21 Orange County Grand Jury (OCGJ) conducted an investigation and wrote a report on the Orange County Jail Facilities. Despite the COVID pandemic, the OCGJ performed their required duties under *California Penal Code Section 919(b)*. The code requires that Grand Juries annually inquire into the condition and management of the various prison facilities within their respective county jurisdictions. Since there are no state prisons in Orange County, the Grand Jury inquired into the condition and management of the various adult jail facilities in Orange County.

There are four adult jails in Orange County and one adult Court holding facility. These facilities along with the Transportation Division were visited for the purpose of inquiry except for the James A. Musick Facility which is under construction. The Grand Jury has found the jails and facilities to be acceptable and in overall compliance with state and federal standards.

5. **\$28 Billion for a \$2.8 Billion Road**

The Transportation Corridor Agencies (TCA) are on track to collect \$28 billion for toll roads that cost \$2.8 billion to construct.

The TCA’s success was built upon a high level of debt that will encumber the roads and its users for decades to come. By 2053, when the debt is scheduled to be retired, the roads will have consumed \$28 billion – an amount that burdens the drivers, limits the TCA’s pricing options, and exceeds any reasonable cost per mile of road. Elimination of debt should be the TCA’s top priority.

The TCA collects Development Impact Fees (DIFs) from cities adjacent to its roads. Considering that road construction was completed more than 20 years ago, the justification for these charges should be reviewed. The Grand Jury questions whether it is reasonable to continue these ever-increasing tax-like charges until 2053 or beyond.

The TCA was launched with an understanding that the agencies would not last forever. After building the roads and collecting enough tolls to pay off the debt, the agency was supposed to cease operations, at which time the roads would become Caltrans freeways. Probably none of those things will happen. The public deserves clarification of the TCA’s future plans regarding construction projects, debt retirement, toll collection, and sunseting of the agency as an entity.





# Orange County Pandemic Preparedness







## CONTENTS

**SUMMARY** ..... 1

**BACKGROUND** ..... 1

**Orange County Emergency Planning - Pandemic Preparedness** ..... 1

**Orange County Pandemic** ..... 2

**REASON FOR STUDY** ..... 2

**METHOD OF STUDY** ..... 2

**INVESTIGATION AND ANALYSIS** ..... 3

**Resources**..... 3

**Communications**..... 6

**County Emergency Operations Plans for a Pandemic** ..... 6

**Vaccination Dissemination Plans**..... 7

**Consequences**..... 7

**FINDINGS** ..... 7

**RECOMMENDATIONS**..... 8

**RESPONSES** ..... 9

**RESPONSES REQUIRED** ..... 11

**RESPONSES REQUESTED** ..... 11

**BIBLIOGRAPHY** ..... 12

**APPENDIX 1 – CDC Planning Guidelines**..... 13

**APPENDIX 2 – Community Exchange Contracts**..... 15

**GLOSSARY**..... 16

## Figures

Figure 1 - Three-Year Budget Increase ..... 4

Figure 2 - Three-Year Actual Increase ..... 5

Figure 3 - Unspent Department Budgets ..... 6

## SUMMARY

The 2020-2021 Grand Jury's investigation into Orange County's pandemic preparedness focused primarily on the review of the County's Emergency Operations Plan (EOP) and the Orange County Health Care Agency's (OCHCA) Disease Outbreak and Response Annex (DORA). The Grand Jury also gathered information on stockpiles of personal protection equipment (PPE) and County budget to support the preparedness effort. The Grand Jury's investigation revealed that while Orange County had emergency plans specific to a pandemic, these plans had known gaps that were not addressed in accordance with the state, national and international guidelines. The emergency plan classified the probability of a pandemic as "unlikely". The Grand Jury also observed that the agency did not establish comprehensive community-based task forces that included official threshold language communities in Orange County. In addition, the County did not have enough resources (facilities, materials, and personnel) to enact key parts of the emergency plan such as handling urgent communications.

As a result of the investigation, the Orange County Grand Jury identified several findings and has made recommendations.

## BACKGROUND

The world was unprepared for a pandemic outbreak and Orange County was no exception. A well-defined pandemic preparedness plan and its effective execution by the various County departments was imperative to keep its residents safe.

### Orange County Emergency Planning - Pandemic Preparedness

One function of Orange County government is to support its residents during a variety of disasters and emergencies through the Emergency Management Council (EMC). The council is comprised of County and city organizations that need to respond during a state of emergency. The EMC has delegated coordination of emergency planning to the Orange County Sheriff's Emergency Operations Group. The Orange County Sheriff's Department is responsible for preparing an "Emergency Operation Plan" (EOP). The EOP includes a pandemic influenza document also known as the Disease Outbreak and Response Annex (DORA). The EOP is reviewed biannually or as needed. The DORA component of EOP is developed and updated by the OCHCA. The OCHCA uses international World Health Organization (WHO), national Centers for Disease Control and Prevention (CDC), and California Department of Public Health (CDPH) guidelines to prepare the DORA. The CDC's state and local Pandemic Planning Checklist clearly documents the various aspects of the local agency's Influenza Pandemic Preparedness Plan. The plan includes community preparedness leadership, healthcare and public health partners, public health communications, and vaccine distribution plans. The local health care agency is expected to incorporate the applicable guidelines in the development of its plan.

Once a pandemic emergency is declared, the health care agency is expected to implement the plan to reduce illness and death and return to a safe and healthy environment for residents.

## Orange County Pandemic

Orange County is one of the largest counties in the country with a population of 3.2 million and a 2020 GDP forecast of \$260.8 billion. Orange County is also very diverse, having many residents with limited English language proficiency.

Orange County, along with the rest of the world, has experienced multiple influenza pandemics from the 1918 Spanish Flu Pandemic to the 2010-2011 H1N1 Pandemic, including the current COVID-19 pandemic. Orange County is also subject to other disease outbreaks including Measles, Chicken Pox, and Tuberculosis. These disease outbreaks necessitate the County government to generate contingency plans and implement them appropriately through the OCHCA. The current COVID-19 pandemic has strained County resources and existing emergency preparations.

## REASON FOR STUDY

The 2020-2021 Grand Jury was empaneled five months into the COVID-19 pandemic. After viewing multiple news reports about PPE shortages and issues surrounding the response to the pandemic by the OCHCA, the Grand Jury decided to investigate the County's preparedness plan and its adherence to established guidelines. The Grand Jury was interested in the implementation of the checklist recommended by the CDC, the execution of the preparedness plan, and communication based on that plan to the residents of Orange County.

## METHOD OF STUDY

The Grand Jury reviewed documents from the OCHCA and its partner organizations including:

- County Emergency Operations Plan
- Disease Outbreak Response Annex
- State and County Pandemic Matrices
- Pandemic Preparedness Plan for Orange County
- PPE and Durable Medical Equipment (DME) stockpiles in Orange County
- Annual Budgets
- Partnership Contracts with Community Engagement Services

To further understand the existence and status of the pandemic preparedness plan, the Grand Jury interviewed individuals from various OCHCA departments, epidemiologists from research institutions, and community leaders. Discussion topics included plan execution, simulation

exercises conducted prior to pandemic outbreak, and overall support from Orange County management.

The Grand Jury requested and received extensive documentation from the OCHCA, including workplans and organizational charts.

## INVESTIGATION AND ANALYSIS

This investigation was primarily focused on the resources and communication components of the OCHCA's pandemic plan.

### Resources

The Grand Jury reviewed Influenza Pandemic Planning and Preparation documentation provided by the OCHCA and compared it to state and national standards published by the CDC and the CDPH. The Grand Jury found that many elements of the plans were incomplete or not addressed. It noted that in the OCHCA's planning documents, many areas were tagged as "in process or overdue" with comments indicating insufficient time or personnel to complete the planning tasks. The CDC State Local Influenza Planning Checklist was updated in 2017/2018.

The Grand Jury interviewed several OCHCA staff members who confirmed that the OCHCA's planning resources were re-prioritized on a recurring basis to address its responsibilities. The Grand Jury learned that the OCHCA had been "hollowed out" with several budgeted positions being vacant for extended periods of time. The Grand Jury also learned that the OCHCA utilized a "scaling up" strategy for pandemic emergencies. This involved borrowing personnel from other divisions of the OCHCA, providing supplemental training, and recruiting of temporary and contract personnel as well as outsourcing. Although this strategy was cost effective initially, the OCHCA discovered that training and supervisory resources were quickly depleted, leading to execution problems and errors.

The Grand Jury also noted that the OCHCA did not maintain PPE effectively. It allowed some PPE to be held past the manufacturer's recommended product life and DME was not maintained and needed substantial repair and servicing prior to use.

Recently, the OCHCA has partnered with selected county hospital systems to manage and rotate stockpiles of PPE and DME at no cost to the County. These partnerships will improve the County's future pandemic response and benefit Orange County residents by lowering costs to hospital systems. The Grand Jury reviewed the OCHCA's overall budget and actual expenditures for the period 2016 to 2020 and found two important trends. The first trend is that the OCHCA's overall budgeted funds and actual expenditures have increased over the four-year period reviewed. The second trend is that until 2020, the OCHCA's budget for Emergency Medical Services (EMS) and the CDC Bioterrorism Fund have been reduced. In addition, the OCHCA

underspent the reduced budget by between 5% and 15%. Of note is that once the current pandemic was declared, the County received substantial funding through the CARES Act. This funding was transferred to multiple Orange County government departments and agencies and spent. The essential OCHCA EMS budget (used for planning and preparation) was cut substantially by 8%.

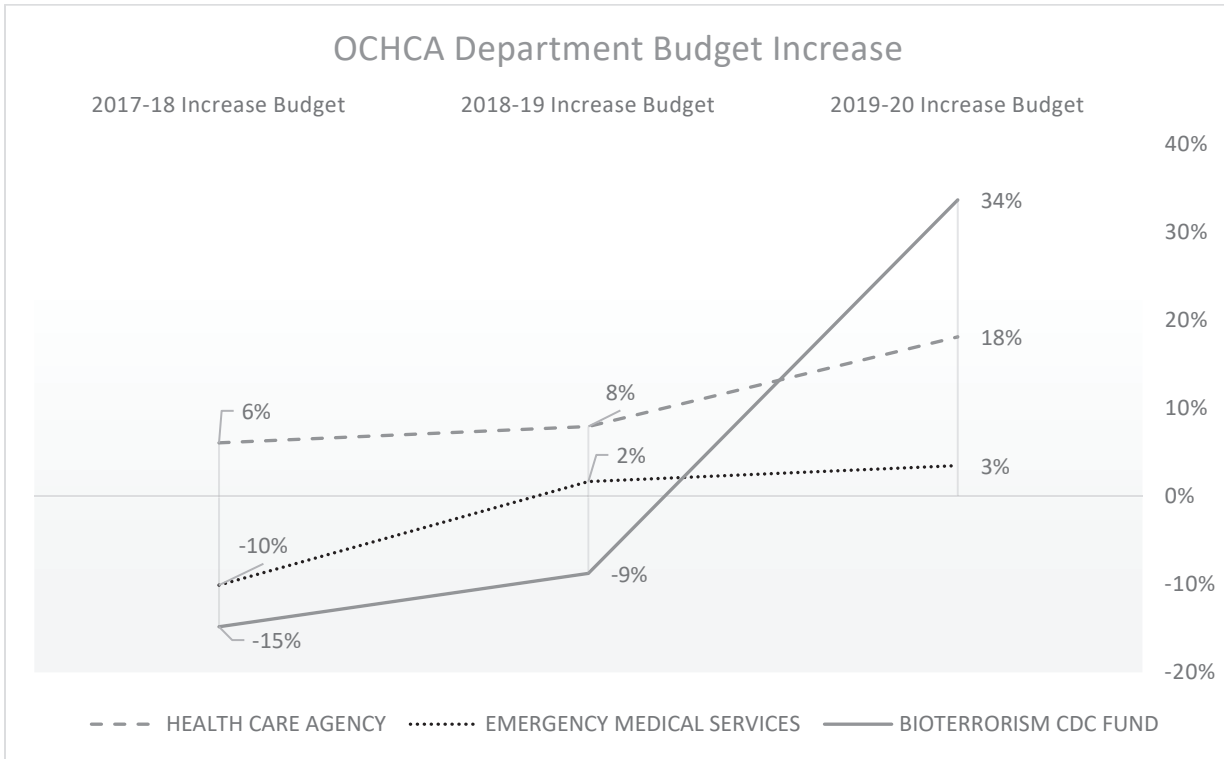


Figure 1 - Three-Year Budget Increase

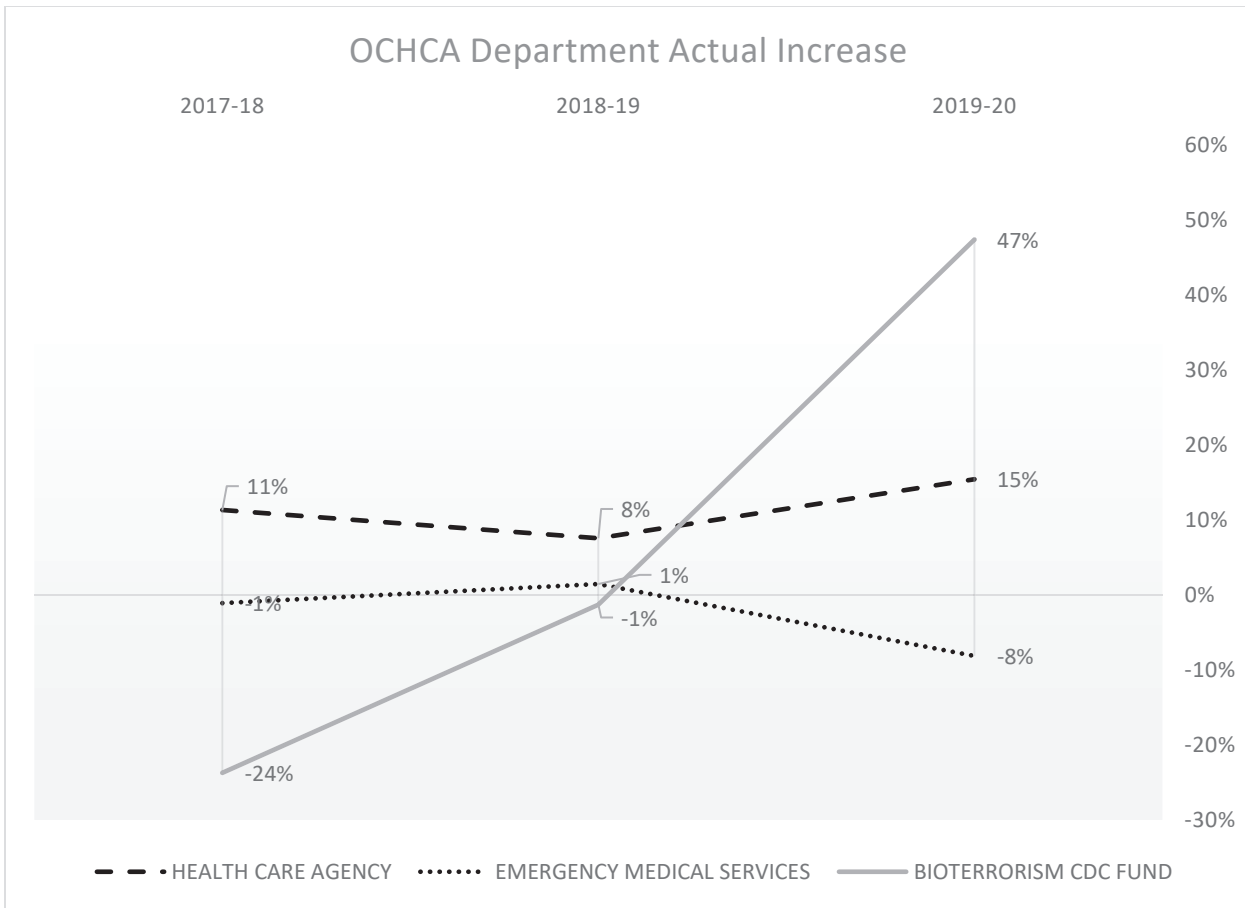


Figure 2 - Three-Year Actual Expenditure Increase

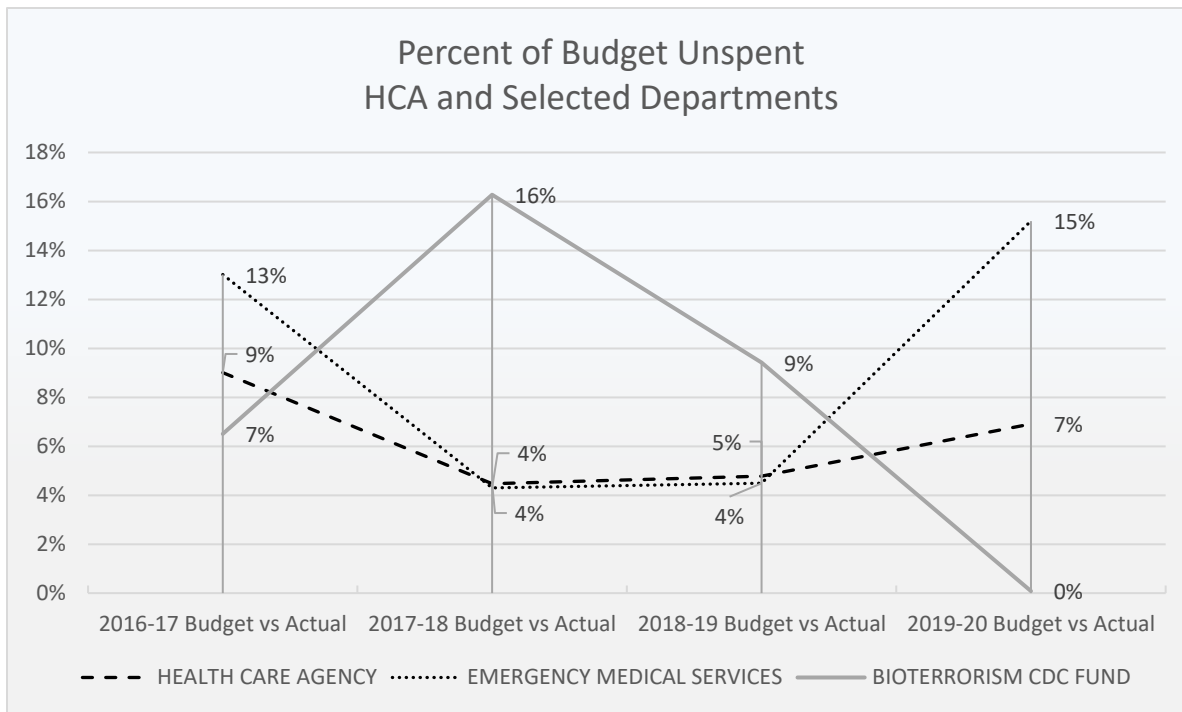


Figure 3 - Unspent Department Budgets

## Communications

The Grand Jury reviewed OCHCA infrastructure and found that it was not equipped with a centrally located media room appropriate for press conferences, limiting its communication methods to social media platforms such as Facebook, Twitter, and YouTube. Furthermore, it did not reach all residents with limited English language proficiency. As of September 2020, the information at the testing sites was only in English even though 45% of Orange County residents are limited in English language proficiency. This limited OCHCA’s capability to effectively communicate with all residents, especially in the “Hot Spots” of Orange County, contributing to the spread of COVID-19.

The Grand Jury noted that the OCHCA recently began updating and expanding the planning and communication infrastructure to respond more effectively to future pandemics.

## County Emergency Operations Plans for a Pandemic

The Grand Jury reviewed the County’s EOP and the DORA and found that it had classified the probability of a pandemic as “Unlikely.” The “Unlikely” probability classification is shared with a San Onofre Nuclear disaster, an Act of War, a Flood/Reservoir/Dam emergency, and an Act of Terrorism. The “Unlikely” probability designation contributed to de-prioritization of the pandemic planning and preparation efforts for many years.



The nature of a pandemic has a time scale that is unlike other emergencies documented in the County's plan because this emergency is potentially long lasting. It requires isolation and social distancing which are incompatible with the design of the EOC that the County operates and is addressed in the DORA.

## Partnership Development

Nearly half of Orange County is made up of residents with limited English language proficiency. The Grand Jury reviewed the partnership and stakeholder contracts that OCHCA had in place during the pandemic and found them lacking. The OCHCA and County management had not developed strong community partnerships per the CDC guidelines. Although the CARES Act funds were available in March 2020, the health care agency did not enter into a contract with the respective community engagement services organizations until much later in 2020. This restricted the flow of CARES Act funds that would have otherwise provided the needed PPE and testing services to these communities. In addition, the scope of these contracts was limited, and only specific aspects of the pandemic were addressed. The Grand Jury also learned that the recommendations provided by the local health initiatives, such as the Latino Health Access amongst others, were not followed by either the health care agency or by county management.

## Vaccination Dissemination Plans

The Grand Jury noted that the OCHCA, despite CDC guidelines, did not have a vaccination task force or a well-structured and coordinated mass vaccination plan until September 2020. The Grand Jury reviewed the OCHCA's contract amendments with the community engagement services and found that they did not specifically address the vaccination efforts. This contributed to residents with limited English language proficiency receiving only 18% of available vaccines by March 1, 2021.

## Consequences

Although the Orange County Board of Supervisors declared a "pandemic" in March 2020, the OCHCA has been unable to effectively implement and execute plans to respond to the current pandemic. This will continue to be an issue for future pandemics until planning efforts are aligned with published CDC guidelines and all components are implemented. Otherwise, future pandemics will pose significant challenges for the residents of Orange County.

## FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2020-2021 Grand Jury requires 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 described here, the 2020-2021 Orange County Grand Jury has arrived at the following principal findings:

- F1. State, national, and international guidelines are not adequately addressed in the County's Pandemic Influenza Preparedness Plan (see Appendix 1).
- F2. Orange County Emergency Operations Plan's classification of a pandemic as being "Unlikely" has caused the OCHCA to be underprepared for the current pandemic.
- F3. The OCHCA has not effectively used its resources to close the gaps in a) Pandemic Influenza Planning Program Work Plan and b) Public Health Emergency Preparedness Work Plan and c) Hospital Preparedness Work Plan.
- F4. The OCHCA's budget was not allocated relative to the likelihood of pandemic planning and preparation.
- F5. The OCHCA has not established comprehensive community-based task forces that facilitate and support health care institutions in Orange County.
- F6. The OCHCA does not have the capability to provide translations in all "Threshold" languages within Orange County in a timely manner.
- F7. The OCHCA has underestimated the media requirements necessary to effectively communicate during a pandemic.
- F8. The OCHCA has not implemented or maintained appropriate community resources and back-up communication systems/channels to allow for an expedited transmission and receipt of information. This limits the ability to communicate and respond to local questions from the public and professional groups.
- F9. The OCHCA has not effectively addressed the pandemic related needs of the residents of Orange County with limited English language proficiency in accordance with the pandemic preparedness plan.

## RECOMMENDATIONS

In accordance with California Penal Code Sections §933 and §933.05, the 2020-2021 Grand Jury requires 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 described herein, the 2020-2021 Orange County Grand Jury makes the following recommendations:

- R1. EMC and OCHCA to update the EOP and DORA Pandemic Influenza Plans respectively, to match international, state and CDC plans within one year from the date of this report. (F1)
- R2. EMC to review the Orange County EOP Classification of a pandemic within one year from the date of this report to appropriately prioritize resources and to be prepared for future pandemics. (F2)

- R3. OCHCA to apply staff and effectively utilize the allocated budget to enable the county to close known gaps in a) Pandemic Influenza Planning Program Work Plan and b) Public Health Emergency Preparedness Work Plan and c) Hospital Preparedness Work Plan within one year from the date of this report. (F3, F4)
- R4. OCHCA to establish a pandemic preparedness coordinating committee that represents all relevant stakeholders in Orange County (including governmental, public health, emergency response, education, business, communication, community-based and faith-based sectors as well as private citizens) and that is accountable for articulating strategic priorities and overseeing the development and execution of Orange County's operational pandemic plan within 90 days from the date of this report. (F5, F9)
- R5. OCHCA to pre-stage, translate, and exercise County's health media components (website and other social media) for easy activation within one year from the date of this report. (F6, F8)
- R6. OCHCA to establish a process to ensure all communication plan elements include diverse language groups and website and media components are updated and current within one year from the date of this report. (F6, F7, F8, F9)

## 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 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.

## RESPONSES REQUIRED

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required within 90 days of the date of the publication of this report from:

90 Day Required Responses	F1	F2	F3	F4	F5	F6	F7	F8	F9
Orange County Board of Supervisors	x	x	x	x	x	x	x	x	x

90 Day Required Responses	R1	R2	R3	R4	R5	R6
Orange County Board of Supervisors	x	x	x	x	x	x

## RESPONSES REQUESTED

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are requested within 60 days of the date of the publication of this report from:

60 Day Requested Responses	F1	F2	F3	F4	F5	F6	F7	F8	F9
Orange County Health Care Agency	x	x	x	x	x	x	x	x	x

60 Day Requested Responses	R1	R2	R3	R4	R5	R6
Orange County Health Care Agency	x	x	x	x	x	x

60 Day Requested Responses	F1	F2	F3	F4	F5	F6	F7	F8	F9
Emergency Management Council		x							

60 Day Requested Responses	R1	R2	R3	R4	R5	R6
Emergency Management Council		x				

## BIBLIOGRAPHY

- Assistant Secretary for Preparedness and Response. (2012). *Healthcare Preparedness Capabilities*. Washington D.C.: Department of Health and Human Services.
- County of Orange, Board of Supervisors. (2020, March 18). County of Orange Emergency Coronavirus Action Plan. *County of Orange Emergency Coronavirus Action Plan*. Santa Ana, California, USA: County of Orange Board of Supervisors.
- County of Orange, Emergency Management Council. (2017). *Operational Area Disease Outbreak Response Annex (DORA)*. Santa Ana: County of Orange.
- County of Orange, Emergency Management Council. (2019). *Unified County of Orange and Orange County Operational Area Emergency Operations Plan*. County of Orange, Emergency Management Division. Santa Ana: County of Orange.
- County of Orange, H. C. (2020, May 31). Local Public Health Emergency Work Plan. *California Department of Public Health; Emergency Preparedness Office; Public Health Emergency Preparedness*. Santa Ana, California, USA: County of Orange.
- County of Orange, Health Care Agency. (2019, June 19). Local Hospital Preparedness Plan Work Plan. *California Department of Public Health; Emergency Preparedness Office; Hospital Preparedness Program*. Santa Ana, California, USA: Health Care Agency.
- County of Orange, Health Care Agency. (2019, May 31). Local Pan Flu Work Plan. *California Department of Public Health; Emergency Preparedness Office; State General Fund Pandemic Influenza Planning Program (Pan Flu)*. Santa Ana, California, USA: County of Orange.
- County of Orange, Health Care Agency. (2020, September 30). 9.30.20 HCA EMS Inventory. *HCA EMS Inventory*. Santa Ana, California, USA: Orange County Health Care Agency.
- Orange County, Auditor-Controller's Office; Frank Davies CPA Auditor-Controller. (2017). *County of Orange State of California Comprehensive Annual Financial Report For the Year Ended June 30, 2017*. Santa Ana: County of Orange.
- Orange County, Auditor-Controller's Office; Frank Davies, CPA Auditor-Controller. (2018). *County of Orange State of California Comprehensive Annual Financial Report For the Year Ended June 30, 2018*. County of Orange, Auditor-Controller's Office. Santa Ana: County of Orange.
- Orange County, Auditor-Controller's Office; Frank Davies, CPA; Auditor-Controller. (2019). *County of Orange State of California Comprehensive Annual Financial Report For the Year Ended June 30, 2019*. Santa Ana: County of Orange.
- World Health Organization. (2018). *Essential steps for developing or updating a national pandemic influenza preparedness plan*. Geneva: World Health Organization.

## APPENDIX 1 – CDC PLANNING GUIDELINES

<b>Center for Disease Control Local Agency Pandemic Planning Guidelines At A Glance for Orange County Health Care Agency</b>	<b>HCA Identified at Least 1 Activity as a Known Gap in Planning</b>	<b>Grand Jury Addressed In Report</b>
<b>Capability 1: Community Preparedness</b>		
Function 1: Determine risks to the health of the jurisdiction		
Function 2: Strengthen community partnerships to support public health preparedness	x	x
Function 3: Coordinate with partners and share information through community social networks	x	x
Function 4: Coordinate training and provide guidance to support community involvement with preparedness efforts	x	x
<b>Capability 2: Community Recovery</b>		
Function 1: Identify and monitor community recovery needs	x	x
Function 2: Support recovery operations for public health and related systems for the community	x	x
Function 3: Implement corrective actions to mitigate damage from future incidents	x	x
<b>Capability 3: Emergency Operations Coordination</b>		
Function 1: Conduct preliminary assessment to determine the need for activation of public health emergency operations		
Function 2: Activate public health emergency operations		
Function 3: Develop and maintain an incident response strategy		
Function 4: Manage and sustain the public health response		
Function 5: Demobilize and evaluate public health emergency operations	x	
<b>Capability 4: Emergency Public Information and Warning</b>		
Function 1: Activate the emergency public information system		
Function 2: Determine the need for a Joint Information System		
Function 3: Establish and participate in information system operations		
Function 4: Establish avenues for public interaction and information exchange		x
Function 5: Issue public information, alerts, warnings, and notifications	x	
<b>Capability 5: Fatality Management</b>		
Function 1: Determine the public health agency role in fatality management	x	
Function 2: Identify and facilitate access to public health resources to support fatality management operations	x	
Function 3: Assist in the collection and dissemination of antemortem data		
Function 4: Support the provision of survivor mental/behavioral health services		
Function 5: Support fatality processing and storage operations		
<b>Capability 6: Information Sharing</b>		
Function 1: Identify stakeholders that should be incorporated into information flow and define information sharing needs		
Function 2: Identify and develop guidance, standards, and systems for information exchange		
Function 3: Exchange information to determine a common operating picture		x
<b>Capability 7: Mass Care</b>		
Function 1: Determine public health role in mass care operations		
Function 2: Determine mass care health needs of the impacted population		
Function 3: Coordinate public health, health care, and mental/behavioral health services		
Function 4: Monitor mass care population health	x	x
<b>Capability 8: Medical Countermeasure Dispensing and Administration</b>		
Function 1: Determine medical countermeasure dispensing/administration strategies		
Function 2: Receive medical countermeasures to be dispensed/administered		
Function 3: Activate medical countermeasure dispensing/administration operations		
Function 4: Dispense/administer medical countermeasures to targeted population(s)	x	x
Function 5: Report adverse events		

<b>Center for Disease Control Local Agency Pandemic Planning Guidelines At A Glance for Orange County Health Care Agency</b>	<b>HCA Identified at Least 1 Activity as a Known Gap in Planning</b>	<b>Grand Jury Addressed In Report</b>
<b>Capability 9: Medical Materiel Management and Distribution</b>		
Function 1: Direct and activate medical materiel management and distribution		
Function 2: Acquire medical materiel from national stockpiles or other supply sources		
Function 3: Distribute medical materiel		
Function 4: Monitor medical materiel inventories and medical materiel distribution operations		<b>X</b>
Function 5: Recover medical materiel and demobilize distribution operations		
<b>Capability 10: Medical Surge</b>		
Function 1: Assess the nature and scope of the incident	<b>X</b>	
Function 2: Support activation of medical surge	<b>X</b>	
Function 3: Support jurisdictional medical surge operations	<b>X</b>	
Function 4: Support demobilization of medical surge operations	<b>X</b>	
<b>Capability 11: Nonpharmaceutical Interventions</b>		
Function 1: Engage partners and identify factors that impact nonpharmaceutical interventions		<b>X</b>
Function 2: Determine nonpharmaceutical interventions		
Function 3: Implement nonpharmaceutical interventions		
Function 4: Monitor nonpharmaceutical interventions	<b>X</b>	
<b>Capability 12: Public Health Laboratory Testing</b>		
Function 1: Conduct laboratory testing and report results		
Function 2: Enhance laboratory communications and coordination		
Function 3: Support training and outreach		
<b>Capability 13: Public Health Surveillance and Epidemiological Investigation</b>		
Function 1: Conduct or support public health surveillance		
Function 2: Conduct public health and epidemiological investigations		
Function 3: Recommend, monitor, and analyze mitigation actions		
Function 4: Improve public health surveillance and epidemiological investigation systems	<b>X</b>	
<b>Capability 14: Responder Safety and Health</b>		
Function 1: Identify responder safety and health risks		
Function 2: Identify and support risk-specific responder safety and health training		
Function 3: Monitor responder safety and health during and after incident response		
<b>Capability 15: Volunteer Management</b>		
Function 1: Recruit, coordinate, and train volunteers	<b>X</b>	
Function 2: Notify, organize, assemble, and deploy volunteers	<b>X</b>	
Function 3: Conduct or support volunteer safety and health monitoring and surveillance	<b>X</b>	
Function 4: Demobilize volunteers	<b>X</b>	



## APPENDIX 2 – COMMUNITY EXCHANGE CONTRACTS

Community Exchange	Contract Number	Dates
Latino Health Access	MA-042-20012159	06/25/2020 to 06/30/2021
Korean Health	MA-042-21010341	08/20/2020 to 06/30/2021
Pacific Islander Health	MA-042-21010206	08/04/2020 to 12/20/2020

## GLOSSARY

**California State Blueprint for A Safer Economy** - California's tier plan designed for reducing COVID-19 in the state with revised criteria for loosening and tightening restrictions on activities. Every county in California was assigned to a tier based on its test positivity and adjusted case rate.

**CARES Act - The Coronavirus Aid, Relief, and Economic Security Act** provides fast and direct economic assistance for American workers, families, and small businesses, and preserve jobs for American industries.

**CDC – The Centers for Disease Control and Prevention** works 24/7 to protect America from health, safety, and security threats, both foreign and in the U.S. Whether diseases start at home or abroad, are chronic or acute, curable, or preventable, human error or deliberate attack, CDC fights disease and supports communities and citizens to do the same.

**CDPH - The California Department of Public Health** works to protect the public's health in the Golden State and helps shape positive health outcomes for individuals, families, and communities.

**DME - Durable Medical Equipment** is equipment and supplies ordered by a health care provider for everyday or extended use. DME may include oxygen equipment, ventilators, or testing supplies.

**DORA – Disease Outbreak and Response Annex**, also known as **the Pandemic Planning Annex**, is part of the Emergency Operations Plan.

**EMC - Emergency Management Council** is the county disaster council mandated by the State of California to develop the local emergency plans for any type of natural or manmade disaster.

**EOC – Emergency Operations Center** functions as the communication and coordination center for both the County and Operational Area emergency response organization and disaster preparedness, providing a central point for coordinating operational, administrative, and support needs of the county and Operational Area Members.

**EOP - Emergency Operations Plan** – A reference and guidance document for disaster response.

**Hot Spots** - In infectious disease epidemiology areas of elevated incidence or prevalence, higher transmission efficiency or risk, or higher probability of disease emergence.

**OCHCA – Orange County Health Care Agency** works in partnership with the community and protects and promotes the health and safety of individuals and families in Orange County through assessment and planning, prevention and education, and treatment and care.

**Pandemic** – An outbreak of a disease over an entire country or the world.

**Pandemic Influenza Preparedness Plan** - The plan to help the County prepare and respond to a pandemic influenza outbreak.

**PPE - Personal Protection Equipment** is equipment worn to minimize exposure to hazards that cause serious injuries and illnesses. These items may include face masks, face shields, gloves, and protective gowns.

**Threshold Language** – are those which are spoken at a high proportional rate within a geographic region of the state and as such may contribute to obstacles of understanding and access for those seeking mental health services. In Orange County, threshold languages are English, Spanish, Vietnamese, Farsi, Korean and Chinese.

**WHO – World Health Organization** works worldwide to promote health, keep the world safe, and serve the vulnerable. Their goal is to ensure that a billion more people have universal health coverage, to protect a billion more people from health emergencies, and provide a further billion people with better health and well-being.



# Orange County Sheriff's Department Evidence Booking Issue - Has it Been Resolved?





Report  
2



## Contents

<b>SUMMARY</b> .....	1
<b>BACKGROUND</b> .....	1
<b>REASON FOR STUDY</b> .....	3
<b>METHOD OF STUDY</b> .....	3
<b>INVESTIGATION AND ANALYSIS</b> .....	4
<b>Orange County Sheriff's Department</b> .....	4
<i>Evidence Booking Training</i> .....	4
<i>Obtaining a Report Number</i> .....	5
<i>Booking Evidence</i> .....	5
<i>Completing the Report</i> .....	7
<i>Approving the Report</i> .....	8
<i>Delinquent Reports</i> .....	9
<i>Sergeant's Logs</i> .....	10
<i>Lieutenant Spot Checks</i> .....	11
<i>Commander Oversight</i> .....	11
<i>Cultural Shift</i> .....	12
<b>Orange County District Attorney's Office</b> .....	13
<i>Case Review</i> .....	13
<i>OCDA's Concerns</i> .....	13
<b>Orange County Public Defender's Office</b> .....	14
<i>Getting Assigned to a Case</i> .....	14
<i>Reviewing the Evidence List and Crime Report</i> .....	14
<i>OCPD's Confidence</i> .....	15
<b>COMMENDATIONS</b> .....	15
<b>FINDINGS</b> .....	16
<b>RECOMMENDATIONS</b> .....	16
<b>RESPONSES</b> .....	17
<b>RESPONSES REQUIRED</b> .....	18
<b>RESPONSES REQUESTED</b> .....	19
<b>APPENDIX A: Secondary Audit Summary</b> .....	20

Report  
2



Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

**APPENDIX B: Process Flow..... 21**  
**GLOSSARY..... 22**  
**BIBLIOGRAPHY..... 24**

**Tables**

Table 1 - Sergeant Log Metrics ..... 10

**Figures**

Figure 1 - Foundation of Trust ..... 2  
Figure 2 - Evidence Booking Station ..... 5  
Figure 3 - Evidence Lockers ..... 5  
Figure 4 - Process Flow - Book Evidence ..... 6  
Figure 5 - Evidence Tag & Case Items Report ..... 6  
Figure 6 - Process Flow - Complete and Approve the Report ..... 9

Report  
2



## SUMMARY

If one were to ask for a definition of evidence, a simplified response might be that it is the “smoking gun” that connects the accused to a crime. A comprehensive definition is more complex than physical items collected at the scene. Evidence includes written crime reports, oral testimony of witnesses, documents, public records, photographs, depositions, audio and video recordings, items processed by the Crime Lab or Coroner, and dispatch communications. Evidence is proof presented to a judge and/or jury of alleged facts material to the case and may be added throughout the duration of the case.

Our system of justice relies upon the proper collection and preservation of physical evidence, as well as the honesty and integrity of those who are sworn to “tell the truth.” Therefore, it is imperative that those responsible for collecting and booking evidence do so in a way that does not compromise the justice system.

In January 2018, the Orange County Sheriff became aware of several incidents involving deputies failing to book evidence and falsifying associated reports. The Sheriff's Department took immediate action by conducting two audits going back two years to determine the extent of the problem. New policies and procedures were rolled out beginning March 2018, holding supervisors accountable for reviewing and approving reports and verifying that evidence was booked by the end of each shift. Deputies were disciplined, and in some cases terminated and referred to the District Attorney for criminal prosecution. There was a joint review by the Orange County District Attorney and Orange County Sheriff's Department to examine active and closed criminal cases which may have been compromised by evidence booked late or not booked at all. The joint review resulted in some cases being dismissed by the District Attorney.

The Orange County Grand Jury acknowledges the positive steps taken by the Orange County Sheriff's Department and its willingness to address the problem. After a six-month review of current policies and procedures related to evidence booking and reporting, the Grand Jury believes there are still some areas that need improvement.

## BACKGROUND

In the criminal justice system, there are three key stakeholders: law enforcement investigates criminal activity, district attorneys prosecute the accused, and defense counsel represent the interests of the accused and hold the prosecution to its burden of proving guilt beyond a reasonable doubt.





Figure 1 - Foundation of Trust

Justice is a moral principle and legal concept that promotes fairness and balance.

The Orange County Sheriff's Department (OCSD), Orange County District Attorney (OCDA), and Orange County Public Defender (OCPD) rely on each other to perform their duties with honesty and integrity. In January 2018, events began to unfold that would fracture the foundation of trust and have serious consequences throughout the Orange County justice system.

In January 2018, the Orange County Sheriff's Department became aware that some deputies, in two different patrol areas, were not booking evidence according to department policy. Items collected by those deputies during investigations were either not booked or booked days after the initial arrest or citation. During a two-year investigation period, the Sheriff's department sent 17 cases regarding these failures to the DA's Special Prosecutions Unit for further processing.

On January 24, 2018, to determine the extent of the booking issue, the OCSD began an initial internal audit, covering a two-year period from February 2016 through February 2018. The audit included 98,676 department records. Of those records, 71,585 reports were determined to not involve evidence. The remaining 27,091 reports were reviewed specifically looking for lapses in evidence booking. The conclusion of the initial audit was that in 30% of the reports, evidence was not booked according to policy.

The OCSD launched a secondary internal audit August 8, 2018 to further review the 71,585 reports from the first audit. A random sample of 450 reports revealed 121 cases where the deputy had in fact collected at least one item of evidence. In 57 of the 121 cases (13% of the total reviewed), deputies documented evidence in the report but failed to book it into the Property/Evidence system. Evidence was located and accounted for in 47 of the 57 cases. The remaining 329 reports were confirmed to not contain any physical evidence. See Appendix A: Secondary Audit Summary.

In November 2019, the District Attorney (DA) became aware of the extent of evidence booking issues within the OCSD, and the existence of two department-wide audits. The District Attorney worked with the Sheriff's Department to identify cases where a defendant's due process may have been compromised. A joint team of OCSD and DA investigators reviewed a total of 22,289 cases covering the three-year period from March 2015 through March 2018. This process (sometimes referred to as "third audit") involved a case-by-case review of all reports, and physical inspection of evidence, when appropriate. The outcome of this audit resulted in 67 cases having some or all charges dismissed by the DA in the interest of justice.

When evidence booking issues in the OCSD were brought to the attention of the Public Defender in January 2020, there was a deeper concern. The OCPD began reviewing past cases where questions about the validity of Deputies' reports and any evidence collected as part of the investigation could taint the result of a jury's ruling of guilt or innocence. The 17 cases that the OCSD had sent to the DA's Special Prosecutions Unit resurfaced in the Public Defender's office. The DA had forwarded these cases to individual Public Defender attorneys rather than the Office of the Public Defender. There had been no response to these cases due to defense lawyers moving to other assignments or leaving. As a result, these suspect cases fell through cracks in the system.

## REASON FOR STUDY

Based upon numerous reports and articles in the media, the 2020-2021 Orange County Grand Jury determined an investigation was warranted to validate that current procedures and administrative safeguards are in place to ensure evidence is booked and department reports are written in compliance with California law and OCSD policy.

News media reported that the issue of booking physical evidence late, or not at all, as well as deputies making false statements in reports was a "*systemic problem*" within the OCSD. Although the Sheriff responded to these issues, the Grand Jury decided an independent study was required to assure residents of Orange County that current policy and procedures are delivering the expected result.

## METHOD OF STUDY

The Grand Jury began its investigation by reviewing various news sources and documents. A review of OCSD documents included department policies, audit reports, sergeant logs, administrative orders, and training directives. Documents and reports from OCDA were also reviewed.

Interviews included OCSD commanders, lieutenants, sergeants, and deputies from three patrol areas across three different operational divisions, as well as support personnel from the Records and Technology Divisions. In addition, attorneys from the OCDA and OCPD were interviewed.

The Grand Jury toured the Property Evidence Booking Holding Center, which is the main facility for all OCSD property and physical evidence, and the OCSD Training Academy. The Grand Jury also received training on the Automated Evidence and Property System and the Field Based Reporting System.

## INVESTIGATION AND ANALYSIS

### Orange County Sheriff's Department

#### Evidence Booking Training

Training specific to OCSD evidence booking and report writing begins after the six-month Basic Training Academy. Prior to starting their assignments in the custody system (jails) or court duty, trainees attend a three-week Custodial Training Academy. Specific courses covering evidence booking and report writing include:

- Six-hour course on general procedures for booking evidence and maintaining chain of custody,
- Eight-hour hands-on training course on report writing in the Field Based Reporting System, and
- Thirty-minute hands-on training course on booking evidence in the Automated Property System.

The six-hour course outline includes:

- Drug identification, handling and packaging of evidence obtained and how to write a drug related report,
- Rules of evidence, chain of custody, types of evidence,
- Handling firearms seized, securing firearms, packaging, and report writing.

A tour of the Property Evidence Central Booking Facility was previously part of the academy training curriculum, but it has since been discontinued. The Grand Jury toured this facility and is of the opinion that the knowledge gained from such a tour would be beneficial to new trainees in emphasizing the importance of proper collection and processing of physical evidence.

After a deputy has completed custodial training and rotated out of the jails or courts to begin patrol duties, they are assigned to their first Field Training Officer (FTO). For one month, the deputy accompanies the FTO during patrol to decide if they want to continue with patrol duty or return to custodial or courts assignment. During this time, the trainee takes reports, conducts interviews, and books evidence under the supervision of the FTO. If the trainee decides to remain in patrol operations, they enter a four-phase training process that covers the OCSD Field Based Training and OCSD Policy Manuals. Policies and procedures on evidence booking and reporting are covered in depth during this training period.

On-going training on evidence booking and report writing is provided through Training Bulletins, Memos, and Briefings. Trainees receive an additional eight-hour refresher course on

report writing. Instructional videos on proper packaging for distinct types of evidence are provided in kiosks located at each evidence booking station.

### Obtaining a Report Number

When a deputy responds to a radio dispatched call, or in the event of an officer-initiated call, the Computer Assisted Dispatch (CAD) system assigns an incident number, and records other pertinent information such as time, location of the call, and details about the incident. In all cases where a crime is committed or evidence is collected, a Department Report Number (DR#) is generated, and a Department Report (DR) must be submitted.

Every call gets an incident number, but only those that require a written report get a DR#. For example, a routine traffic stop might generate a citation and only requires a DR# if there are criminal charges or collection of property. All booked evidence is associated with a DR#.

### Booking Evidence

Evidence is typically booked at the substation nearest the incident. Each substation has lockers for storing evidence and one or more computers for booking evidence using the Property Evidence Automated Booking System (also known as Remedy). In some patrol areas, the officer may drive ten or more miles to book evidence, which can take them out of service for an hour. If a call involves a custodial arrest, where a suspect is transported to the Intake Release Center (IRC), evidence can be booked at the Property Evidence Central Booking facility located in Santa Ana, near the IRC.

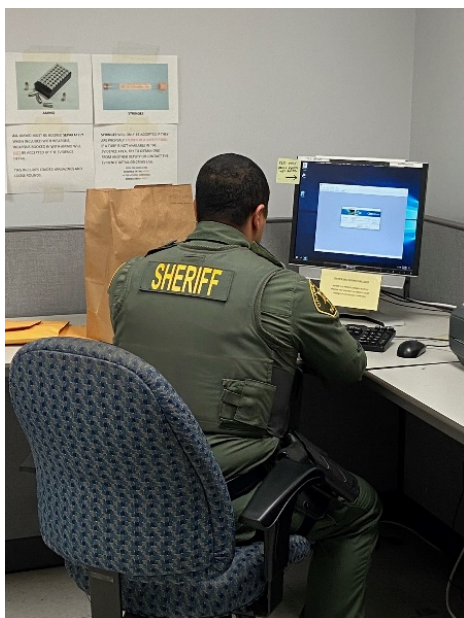


Figure 2 - Evidence Booking Station



Figure 3 - Evidence Lockers

Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

Some types of evidence, such as Fentanyl or DNA, must be booked at the Central Booking Facility. The location where evidence is booked becomes part of the report. Evidence booked at any of the fourteen substations is regularly collected. The pick-up schedule for these items varies to avoid broadcasting a set time for transfer to the Property Evidence Central location. Items are scanned during these transfers to maintain chain of custody.

Report  
2

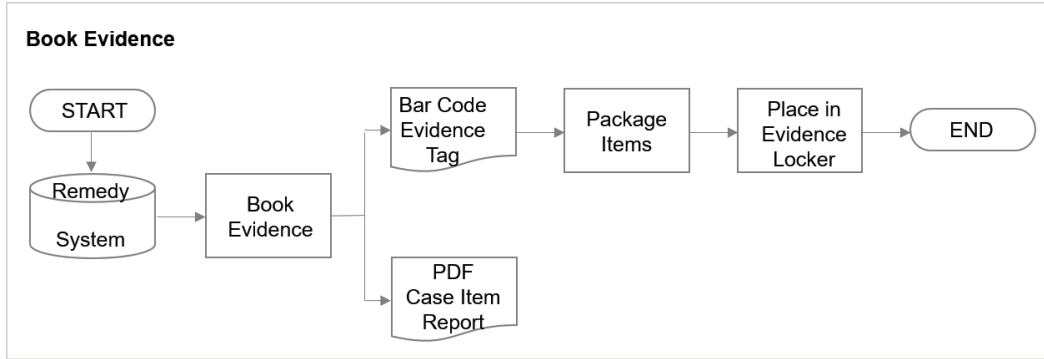


Figure 4 - Process Flow - Book Evidence

The OCSD Policy Manual, Policy 802.2.1 states “*all evidence must be booked before going off duty, unless otherwise approved by a supervisor.*” All items are booked separately into the Remedy system. Each item is packaged with a securely attached evidence tag and bar code label identifying the item. The Evidence Case Items Report (Evidence List) is generated as a PDF file, and later attached to the department report. Items are packaged and placed in evidence lockers.

<b>OS21-099999.7</b>			
<b>EVIDENCE</b>			
Description: 2 PLASTIC BAGS FILLED WITH FENTANYL, FOUND ON LIVING ROOM COFFEE TABLE			
<b>Narcotics</b>		DR#: 21-099999	
		Code: CPC	
		Crime: 11351(a)	
ORANGE COUNTY SHERIFF'S DEPARTMENT Where Obtained From:			
Owner Information:			
Victim Information: STATE OF CALIFORNIA			
Suspect Information: Multiple Suspects? No			
Make:	Model:	Serial #:	Caliber:
Assigned:	Laguna Niguel		
Collector:	9057, MCAULIFFE, JOSHUA M		
Time/Date Collected:	1/21/21 10:00 pm		
Date Booked:	1/22/2021 2:43:21 AM		
Booked By:	mcauliffejm		
Terminal Booked:	9999999		
Initials:			
PIN:	FR	Item	

CASE NUMBER: 21-9999		FILE IN DR		ORANGE COUNTY SHERIFF'S DEPARTMENT Property Tracking System - Case Item Report					
CASE AGENT: DETAIL:									
SW	Consolidated DR #	Location	Descriptions	Status	Type	Crime #	Special Handling Dt	Collected/Booked	Booked By
	OS21-099999.5	LAB022021	2 PLASTIC BAGS OF METHAMPHETAMINE, APPROXIMATELY 24.8 GRAMS WITH PACKAGING	Released	Evidence	11351(a) Narcotics		1/21/2021 10:00:00PM 1/22/2021 2:38:07 AM	9057, MCAULIFFE, JOSHUA M
	OS21-099999.5	AG42C0	ORANGE CONTAINER WITH METHAMPHETAMINE RESIDUE, FOUND IN GERMAN'S BEDROOM ON FLOOR NEXT TO NIGHT STAND	Filed	Evidence	11351(a) Narcotics		1/21/2021 10:00:00PM 1/22/2021 2:40:25 AM	9057, MCAULIFFE, JOSHUA M
	OS21-099999.7	NYL	SVLTFENTA 2 PLASTIC BAGS FILLED WITH FENTANYL, FOUND ON LIVING ROOM COFFEE TABLE	Filed	Evidence	11351(a) Narcotics		1/21/2021 10:00:00PM 1/22/2021 2:43:21 AM	9057, MCAULIFFE, JOSHUA M
	OS21-099999.8	AG42C0	10 PLASTIC BAGS WITH WHITE RESIDUE	Filed	Evidence	11351(a) Narcotics		1/21/2021 10:00:00PM 1/22/2021 2:46:11 AM	9057, MCAULIFFE, JOSHUA M
Suspect Name/DOB: STATE OF CALIFORNIA 10/02/1986									
Victim Name/DOB: STATE OF CALIFORNIA 10/02/1986									
Suspect Name/DOB: STATE OF CALIFORNIA 10/02/1986									
Victim Name/DOB: STATE OF CALIFORNIA 10/02/1986									
Suspect Name/DOB: STATE OF CALIFORNIA 10/02/1986									
Victim Name/DOB: STATE OF CALIFORNIA 10/02/1986									
PRINT DATE: 4/5/2021									
Page 2 of 5									

Figure 5 - Evidence Tag & Case Items Report

In the rare case where evidence must be booked late, the supervisor gives verbal approval and directs the deputy to document this approval in the report. Submission of the report is deferred until the evidence is booked. The supervisor makes a notation in the Sergeant's Log, indicating the deputy and DR# associated with the deferral. It is the supervisor's responsibility to follow up on all deferred reports and verify that the evidence has been booked. For example, verbal approval would be given for an incident where there was video surveillance footage that was not available at the time of the incident but would be made available in a day or two. Evidence that is collected later and not part of the initial crime report is included in a supplemental report.

The Remedy system was implemented in 1999. The platform was originally designed as an asset management application, which has been modified over time to enable evidence booking. The OCSD is on Version 7, which is no longer supported by the developer, BMC Software. Full support for the Remedy Asset Management system ended November 30, 2012. The system does not integrate with the CAD system, or the Field Based Reporting (FBR) System. Because of this limitation, manual duplicate data entry is required, which may introduce data integrity issues. For example, the DR# must be re-entered into Remedy and numbers may be transposed, resulting in evidence not being associated with the correct incident or report. A review process is in place to identify and correct a DR# which may have been entered incorrectly, but a DR# can only be corrected by the Property Evidence Bureau.

The deputy must manually enter evidence into the Remedy system, and again into the FBR system. In this case, the item descriptions and/or number of items being entered into the two separate systems may not agree. Review processes are in place but require additional time and effort on the part of the deputy and the supervisor to identify and correct any errors.

Since the booking issue came to light, several enhancements have been made to the Remedy system to increase data integrity. The system now locks out users after a period of inactivity to reduce the chances that a different user enters evidence under the wrong username. The Remedy User Guide and OCSD directives instruct the user to log out once they have completed booking evidence. Some open text fields have been converted to drop down selections, to increase consistency and data integrity.

### **Completing the Report**

All criminal offenses and other reportable activities must be documented using the FBR system. OCSD Policy 338.1.1 states that a report must be documented for all DR#s entered in the Remedy system by end of shift.

The FBR system was implemented in December 2018. The new process consists of three electronic templates, replacing 135 forms. The old paper-based method was a lengthy process requiring days from the creation of the initial report until all reviews and final approvals were completed. It also involved shuffling reports back and forth between the deputy, supervisor, and

Records Division. Now a quick electronic search is used to locate the DR#. Although the CAD system and FBR are not fully integrated, certain information relating to the incident can be copied from the CAD system into the FBR system, reducing the need for duplicate data entry.

There are three primary tabs in FBR containing report templates for 1-Criminal, 2-Non-Criminal, and 3-Supplemental. Drop-down field selections and mandatory fields have simplified report preparation and increased data integrity.

OCSD Training Bulletin 20-18, issued May 11, 2020, streamlines the department's internal process for all cases involving evidence. The Remedy Case Items Report is now electronically attached to the department report to increase efficiency of supervisory review of reports, electronic filing of cases, and the discovery process.

### Approving the Report

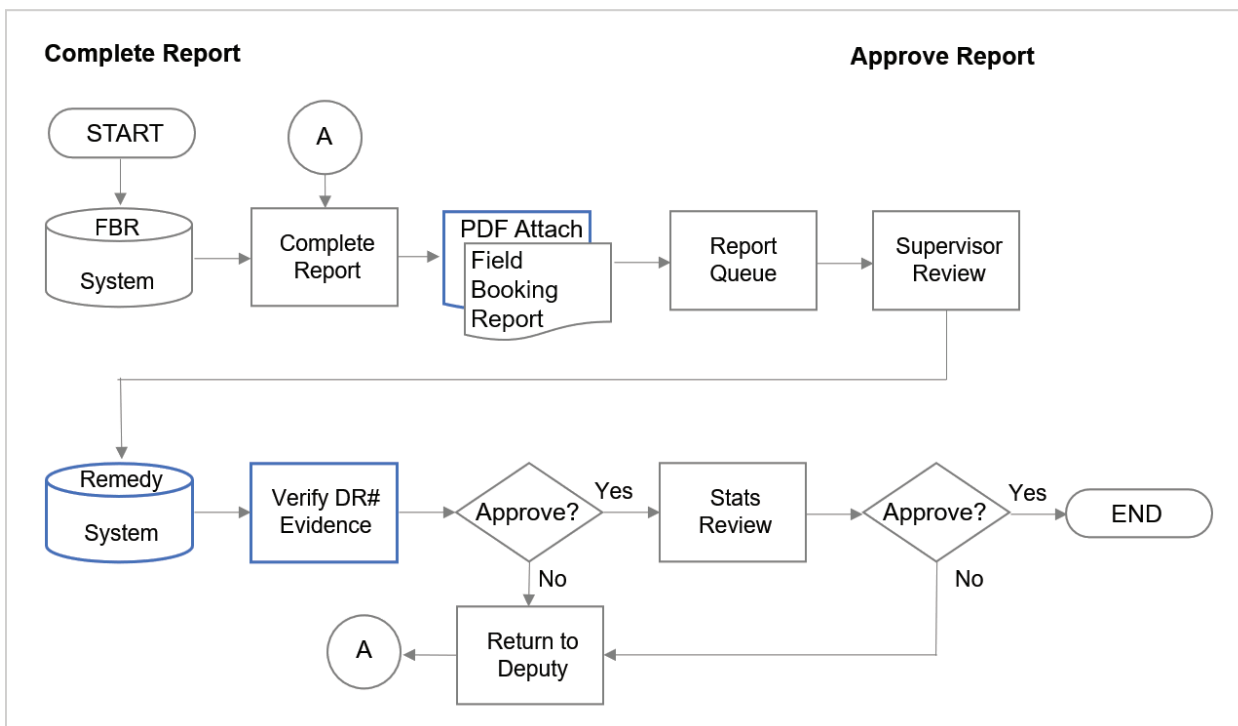
Once the deputy completes the report, it is submitted to an electronic report queue, where a supervisor reviews it. OCSD Policy 338.2.1 states that the supervisor is responsible for ensuring all reports are submitted by end of shift or obtain the necessary approval to defer. It is the responsibility of the supervisor to follow-up on all deferred reports and ensure their completion. Prior to approval, the supervisor reviews all submitted reports for completeness and accuracy, requesting additional information or correction when necessary.

OCSD Policy 802 was adopted in 2018 to address the evidence booking issue. Section 802.2.1.6 states: *"Supervisors shall check that all property or evidence has been booked prior to approving any related reports."* The supervisor logs into Remedy to verify the DR# and check that all evidence noted in the report narrative is also accounted for in Remedy. Reports not approved are sent back to the deputy for correction. Once the report is approved by the supervisor it is submitted to the Records Division (Stats) for final approval. Stats may reject the report, in which case it is sent back to the deputy for correction and routed through the approval process again.

The role of Stats is to review the report for errors in the Universal Crime Reporting section. The records division compiles reports that are submitted to the State of California at the end of each month and ensures that the report is filed in the correct (criminal or non-criminal) template.

The Grand Jury believes that an independent audit of Department Reports submitted after March 2018 is necessary to determine if OCSD personnel are following current policies and procedures related to evidence booking and reporting. Although procedures are in place to review and correct any data discrepancies between computer systems (CAD, Remedy, and FBR), manual processes tend to break down over time. The Grand Jury is of the opinion that the current process may not hold up over the long term. The current reporting process (Figure 6) shows the additional steps (highlighted in blue) that are required due to the lack of system integration. Body

worn cameras generate a huge amount of video evidence that must be indexed by deputy, location, and time. When implemented, they will create a greater challenge in reconciling the evidence maintained in the separate systems.



Report  
2

Figure 6 - Process Flow - Complete and Approve the Report

The OCSD is in the process of exploring options to move from three disparate systems (CAD, Remedy, and FBR) to a fully integrated solution. To date, the department has not found a solution designed for law enforcement that can accommodate OCSD requirements and scale to the size of Orange County. The OCSD requires a solution that is scalable and customizable. As a result, a Software as a Service (SaaS) solution is being evaluated, which would provide a platform for system integration and result in significant savings compared to on-premises (on-prem) software for one-off solutions. The software contractor being evaluated has developed a CAD solution that has been tailored to OCSD specifications. A SaaS solution would provide additional benefits including real time software updates, unlimited data storage, enhanced security, and increased flexibility.

### Delinquent Reports

Stats maintains a delinquent report list which is updated from the FBR system daily. The clock starts as soon as a DR# is created, and after 30 days the supervisor is notified if a report is not completed. All DR#s must be accounted for. If a DR# is missing a report, the supervisor can refer to the CAD system to determine the disposition of the call. If a DR# was issued in error, it is written off. The delinquent report list is intranet accessible via an interactive dashboard. The



dashboard also includes calls for service, response times, citations, and other summary data that can be used by middle and upper management.

### Sergeant's Logs

Sergeants maintain log entries during their shift. The "Sergeant's Log" notes all arrests/citations, notable incidents, briefings, and any training conducted by the sergeant during the shift. At the completion of their shift, the midnight sergeant compiles the log from the last 24 hours. A PDF version is e-mailed to the Administrative Sergeant, City Lieutenant, and Operations Commander.

Departmental directives are used to make immediate changes to policy and procedure (Policy 204.1), and may be communicated to all personnel via memo, e-mail, fax, briefing item, and/or training bulletin. A department directive issued February 2, 2019 informed all sergeants to make the following entry in their daily logs:

*"Deputy patrol logs for shifts XXX and XXX were reviewed. All assigned reports were accounted for. Reports indicating 'evidence as booked' were confirmed in the Remedy Evidence System."*

When verbal approval is given to allow evidence to be booked late and defer the report, the deputies and DR#s are appended to the entry:

*"The following reports were deferred: Deputy A DR# \_\_, Deputy B DR# \_\_/\_\_/\_\_."*

Periodically, directives are issued to Re-Brief Evidence Booking Procedures, and noted in the Sergeant's Log.

The Grand Jury selected one patrol area from each of three operational areas: North, Southeast, and Southwest. The review included logs from all three shifts within each of the patrol areas covering the three-month period from July 1 through September 30, 2020. The results are shown in Table 1.

Sergeant Logs (Jul – Sept 2020)			
Metric Reviewed	SW Operations	SE Operations	N Operations
# Sergeant Logs Reviewed	6	5	4
# Log Entries	1,193	1,315	841
# Evidence Booking Briefings Noted	8	8	5
# Deferred Reports	1	17	0
"Evidence Booked & Verified" Noted	All Shifts	All Shifts	All Shifts

Table 1 - Sergeant Log Metrics

Report  
2

## Lieutenant Spot Checks

Orange County Sheriff's Department Secondary Evidence Audit Follow-Up Report, dated December 2019, included a recommendation that Field Operations Lieutenants “conduct additional monthly random spot checks on cases with recovered evidence and review the inventory records for accuracy.” Through the interview process, the Grand Jury noted that:

- A lieutenant from Southwest Operations was not aware of a department directive, nor did the lieutenant perform monthly spot checks.
- A lieutenant from Southeast Operations considered an e-mail dated October 23, 2020, sent by the commander, to be a department directive. The lieutenant conducts spot checks several times each month and after hearing a radio call where evidence was collected. The lieutenant verifies that the evidence was booked by going into Remedy. However, there is no documentation of the spot checks.
- A lieutenant from North Operations received a verbal directive from the commander. When performing spot checks, the lieutenant reviews the department report in the FBR System to see if evidence was collected and then verifies that it was in fact collected and booked. Again, there is no documentation of the spot checks.

Report  
2

It appears the OCSD lacks a formal process or department-wide directive for performing lieutenant spot checks. In the instances where spot checks are being done, there is no documentation.

In compliance with California Commission on Peace Officer Standards and Training (POST) recommended guidelines, quarterly audits are conducted by the OCSD Property Evidence Bureau. OCSD recently completed the first quarter audit for 2021. The audit revealed two procedural issues where sergeants had signed off on the report, but the Remedy Case Items PDF attachment was not included in the report. This did not impact the evidence, as the evidence was in fact booked.

## Commander Oversight

The Grand Jury interviewed field operation commanders to determine what oversight they provide to ensure compliance with evidence booking and reporting policies and procedures. Equally important, the Grand Jury's purpose was to determine if the management level of accountability for evidence booking and reporting extends above the sergeant's level.

Commanders receive a daily PDF version of Sergeant Logs for the previous 24 hours. The commanders interviewed indicated they review the compiled Sergeant Logs daily. The review process includes briefing topics, narratives regarding incidents, deferred reports and why they were deferred, crimes committed in patrol areas, etc. If the narrative refers to evidence, the commander will check to see if collected evidence was booked.



## Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

The Grand Jury's findings from interviews with commanders were consistent with information learned from lieutenants regarding monthly random spot checks. There is no department-wide directive or policy regarding lieutenant spot checks. There was a verbal directive in two of the operational divisions, which were operational directives, and no directive was given in the third. There is no standardized process for conducting spot checks, as it varies from one lieutenant to the next. Commanders believe spot checks are being conducted, but because there is no documentation, it cannot be verified.

Sergeants are held accountable and oversight is established at every level to ensure evidence is booked; however, there does not appear to be a policy holding management above the sergeant level accountable for evidence booking and reporting.

### **Cultural Shift**

Findings from the OCSD initial evidence audit report dated June 28, 2018 stated, "*there appeared to be a culture of idleness vs. criminal intent*" and there were "*inadequate internal controls and system of accountability.*" In patrol areas where the incidences of booking evidence late or not at all were more prevalent, it appeared to be a matter of priority or failure of leadership. Deputies were busy making arrests and placed a higher value on arrests than booking evidence. A lower priority placed on booking evidence led to false statements being made in reports, stating that evidence had been booked, when in fact it had not. There was a clear cultural shift that was in direct conflict with department policy to book all evidence before going off duty. There was no policy in place to provide management oversight, therefore supervisors were not held accountable. In some cases, there was a lax atmosphere which allowed for sloppy work habits and bad attitudes, which was reflected through some FTOs.

Lieutenants and commanders who have been with the Orange County Sheriff's Department for several decades were shocked that this could happen. The practice during their tenure as deputies was that you booked evidence right away; this type of behavior would never have been acceptable.

In our society, there is a general belief that law enforcement culture is strong and universal, and all deputies have the same work-related attitudes and beliefs. However, views vary individually, and there may be an overall organizational culture and sub-cultures across groups that can sometimes be in conflict. Shared attitudes, values, beliefs, and assumptions that shape behaviors may differ from lower-level command structure to upper-level command.

The OCSD has taken steps to change the culture and restore trust and confidence in the system. Based on current trends, the time a deputy works in custody has been reduced from six-to-nine years to two-to-three years, resulting in new deputies contributing to behavioral change at a faster pace. There has been a major cultural shift at the sergeant level as well. Policy and



procedures have been put in place holding sergeants accountable for ensuring all evidence is booked and reports submitted by end of shift. The supervisor (sergeant) reviews all reports for completeness and accuracy, verifying that all evidence has been booked before approving the report.

To promote behaviors that support its mission, the Grand Jury believes OCSD must recruit, select, and retain people who share its core values. Equally important, OCSD must re-educate those officers that hold to values that led to evidence booking issues. Policy changes, disciplinary actions, terminations, and attrition have helped to align attitudes and behaviors with the department's stated core values: *"Integrity without compromise, Service above self, Professionalism in the performance of duty, Vigilance in safeguarding our community."*

## Orange County District Attorney's Office

### Case Review

The District Attorney is notified of cases via the Electronic Direction for Complaint (EDC) system. OCDA created the system and provides on-going support to law enforcement officers. OCSD uploads completed investigations directly into the EDC system. Uploaded items include evidence PDFs, interviews, and reports. If the case involves an arrest referred to as "in custody," the case must be submitted to the DA's office prior to the suspect's arraignment (typically within 72 hours). If there is no arrest, the case is "out of custody" and submitted when the OCSD case agent completes the investigation.

There are a few exceptions where cases must be hand delivered: any document too large to upload, DVDs/CDs, homicide cases, and prior to the pandemic, all Sexual Assault Unit (SAU) cases.

The case packet is the starting point for the prosecution. Prosecutors rely on the honesty and integrity of law enforcement officers when reviewing the case packet. The assumption is that all physical evidence has been booked, and reports are accurate and truthful. The DA must determine if enough evidence exists to show probable cause that a crime may have been committed, in which case a formal complaint is filed.

### OCDA's Concerns

The case packet OCDA receives from OCSD now includes the Remedy Case Items Report, and a policy is in place holding supervisors accountable for ensuring evidence is booked and reports are accurate. In the OCDA Report on Sheriff's Department Evidence Booking Issues dated January 13, 2021, the DA expressed confidence that due to the *"remedial action OCSD has taken to address evidence booking deficiencies, there should be few, if any, negatively impacted cases in the future."*

But in its interviews with various OCDA staff, the Grand Jury found that there remain some concerns, including whether random audits are taking place. Ultimately, the only way to know if the evidence booking issue has been resolved is through an impartial third-party verification. An independent audit of department reports submitted after March 2018 would confirm that the new policies and procedures are being followed.

## Orange County Public Defender's Office

### Getting Assigned to a Case

Typically, the Public Defender (PD) may not go directly to the arresting law enforcement agency for evidence, but requests discovery through the prosecuting attorney. See Cal. Penal Code § 1054.5. Reports from law enforcement are sent to the DA who makes the determination whether to file a complaint or release the suspect. If the DA files a misdemeanor or felony complaint, the accused is given a court date for arraignment. The judge reads the charges and advises the accused of their rights to a trial. If the accused is unable to afford legal counsel, the court may appoint the PD to provide defense counsel.

The earliest the accused can make a plea is at the arraignment. In the case of misdemeanors, the majority of those accused make their pleas at that time, often without the advice of counsel. In most other cases, including felony cases, a PD is appointed as defense counsel if the accused cannot afford a private attorney.

When the PD is appointed as counsel, there is an opportunity at the arraignment to review the case and determine if there is any conflict of interest necessitating the appointment of an alternate defender. If there is none, the PD reviews the crime report and determines if there is a need to plea bargain or conduct further investigation. The PD supervisor may then assign the case to an attorney from their office.

### Reviewing the Evidence List and Crime Report

In the case of an arrest made by OCSD, the case packet is submitted to the DA who subsequently provides a copy to the PD. This includes the OCSD department report and evidence list. The PD might not have the initial crime report and list of evidence in hand at the time of the arraignment.

The review of evidence is driven by the nature of the crime. For serious crimes such as homicide, the PD may want to directly view the physical evidence. The period from when evidence (e.g., a DNA sample) is collected, packaged, and booked becomes critical to defending a case.

The PD reviews police and other discovery in every case assigned to them, relying on the honesty of the officer writing the report and the officer's thoroughness in properly collecting and

processing evidence. The Grand Jury did not find an OCPD policy regarding the review of the evidence list and crime report.

The District Attorney's office is currently piloting an electronic portal to expedite forwarding the report package from the DA's office into the Public Defender's own case management system (eDefender). It is currently in use at the West Justice Center. Other locations must pick up the folder at arraignment.

### **OCPD's Confidence**

How confident is the Orange County Public Defender's Office that evidence booking issues have been resolved?

Orange County Superior Court Administrative Order No. 20/24, dated October 15, 2020, provides procedures for disclosure of evidence audit records. It streamlines the process for the District Attorney and Public Defender to obtain evidence audit records from the Sheriff's Department. The Order is an agreement between the Sheriff's Department, the District Attorney, the Public Defender, and others serving as defense counsel. The Order expedites access to Evidence Audit Records, Remedy system printouts, and Department Reports, through the DA. Defense counsel can address credibility issues with law enforcement officers who may become potential witnesses in a pending trial, but who in the past were cited for failure to follow department policy as it applies to the booking of evidence.

OCPD is aware of the oversight requiring sergeant's review and approval of the evidence list and department report, but some OCPD attorneys are not confident this is occurring. Along with more accountability, they would like to see a change in culture.

Through interviews with prosecutors and defense attorneys, the Grand Jury was left with the impression that some continue to have concerns regarding deputy credibility and compliance with Sheriff's Department policy.

## **COMMENDATIONS**

The Grand Jury recognizes the Orange County Sheriff's Department for the actions taken to:

- Respond to the evidence booking issue as soon as it surfaced, take immediate action to discover the extent of the problem, and initiate policy changes to correct it.
- Discipline and terminate deputies based on an internal investigation.
- Refer deputies to the Orange County District Attorney for criminal prosecution.

## FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2020-2021 Grand Jury requires 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 described here, the 2020-2021 Orange County Grand Jury has arrived at the following principal findings:

- F1.** The OCDA and OCPD question whether current OCSD policies and procedures related to evidence booking and reporting are being followed.
- F2.** An audit of OCSD department reports submitted from March 2018 forward has not been conducted to confirm that current OCSD policies and procedures regarding evidence booking and reporting are being followed.
- F3.** There is no documentation confirming that OCSD lieutenants perform evidence booking spot audits consistently across all divisions, resulting in limited management accountability and weak internal controls.
- F4.** Lack of system integration between Remedy and FBR necessitates duplicate data entry and reliance on manual oversight to reconcile the DR# and evidence list between the two systems.
- F5.** A tour of the Property/Evidence Central Booking Facility is no longer included during deputy training. This limits their understanding of the overall chain of custody process.

## RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2020-2021 Grand Jury requires 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 described herein, the 2020-2021 Orange County Grand Jury recommends that OCSD implement the following in cooperation with the Orange County Board of Supervisors as necessary:

- R1.** Conduct an independent third-party audit of OCSD department reports submitted from March 2018 forward, to be performed by either the Orange County Office on Independent Review or the Orange County Internal Auditor within 180 days from the date of publication of this report. (F1, F2)

- R2.** Issue a department-wide directive within 90 days from the date of publication of this report, outlining a formal process for OCSA lieutenants to conduct and document evidence booking spot checks. (F3)
- R3.** Move to a platform that will support the integration of data maintained in the CAD, Remedy, and FBR system within two years from the date of publication of this report. (F4)
- R4.** Reintroduce a tour of the OCSA Property/Evidence Central Booking facility within 90 days from the date of publication of this report. (F5)

## 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 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 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.

## RESPONSES REQUIRED

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

Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

Responses are required from the following governing body within 90 days of the date of publication of this report:

90 Day Required Responses:	F1	F2	F3	F4	F5	R1	R2	R3	R4
Orange County Board of Supervisors		x		x		x		x	

Responses are required from the following elected agency or department head within 60 days of the date of publication of this report:

60 Day Required Responses:	F1	F2	F3	F4	F5	R1	R2	R3	R4
Orange County Sheriff/Coroner		x	x	x	x	x	x	x	x
Orange County District Attorney's Office	x								

Report  
2

**RESPONSES REQUESTED**

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

Responses are requested from the following elected agency or department heads within 60 days of the date of publication of this report:

60 Day Requested Responses:	F1	F2	F3	F4	F5	R1	R2	R3	R4
Orange County Public Defender's Office	x								

## APPENDIX A: Secondary Audit Summary

Two-Year Period Feb 2016 – Feb 2018				
Department Records	Evidence Collected	Confirmed No Evidence Involved	Total Cases	% Total
Random Sample <sup>1</sup>	121	329	450	
Deputies collected evidence and documented in report but failed to book in Remedy.	57			13%

Analysis 57 Cases - Evidence Collected but Not Booked in Remedy	
Case Analysis	Total Cases
Evidence securely held in the possession of the OC Crime Lab <sup>2</sup>	38
Photo evidence embedded within the report	4
Determined to be properly booked	2
Booked under the wrong DR#	2
Criminal case impacted by failure to book evidence	1
Unable to locate evidence (2% of total)	10

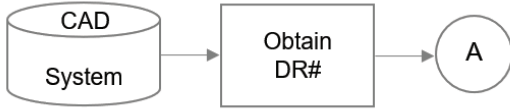
Secondary Audit Recommendations & Subsequent Investigations		
	Recommendation	Status
#1	Review the current booking process for photos taken by patrol deputies. Confirm and streamline the process for more straightforward booking of these items, while taking into consideration the Office of the District Attorney's filing decision needs.	Has been met
#2	Assign the appropriate division to conduct spot checks on the sergeant's review process currently in place, to ensure compliance.	Has been met and exceeded
#3	Although briefing items have been distributed explaining the booking process and the sergeant's review process, additional briefings are recommended.	Has been met
#4	Complete pending investigations through internal affairs or internal criminal investigations of any previously identified policy violations related to the booking of evidence. Over 15 personnel were criminally investigated, and related internal affairs investigations are complete.	Has been met
#5	Investigate the additional cases located with delayed bookings over thirty days, using the initial audit protocol including potential Internal Affairs or Internal Criminal Investigations.	Has been met
#6	Consider further investigations of 57 identified cases with recovered evidence and no Remedy inventory record.	Has been met and exceeded

<sup>1</sup> A sample size of n=382 would provide a 95% confidence level with a confidence interval of ±5%. This audit included n=450, resulting in a review of 450 department reports and a confidence level of 95% with a confidence interval of ±4.6%.

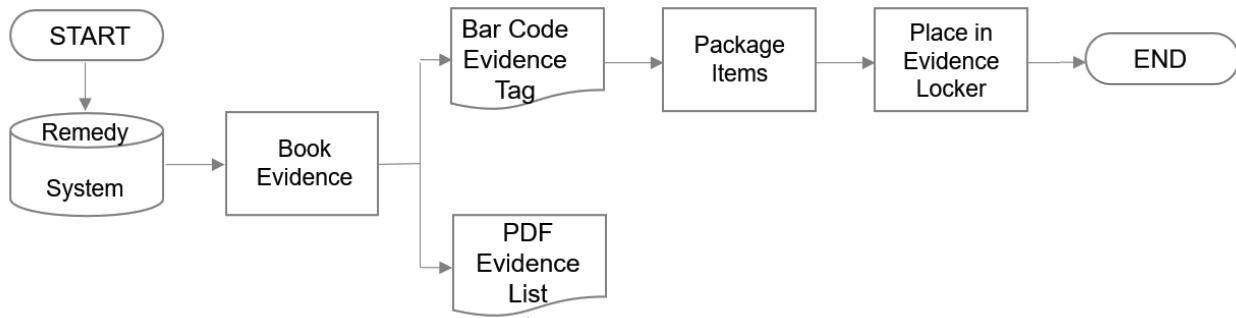
<sup>2</sup> Long standing protocols were utilized to expedite the processing of photographs to the OC Crime Laboratory. OCSD has multiple systems to inventory evidence such as Remedy (Property Evidence Bureau), LIMS (Crime Lab), and Lynx (Coroner Division). The systems are not integrated or compatible. Under Policy 802, all items of evidence, including photographs, videos or any digital media are now inventoried with the Property/Evidence Bureau.

## APPENDIX B: Process Flow

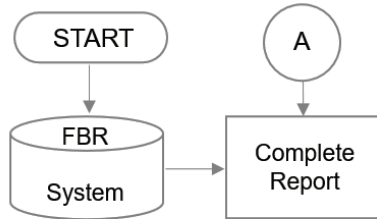
### Obtain DR#



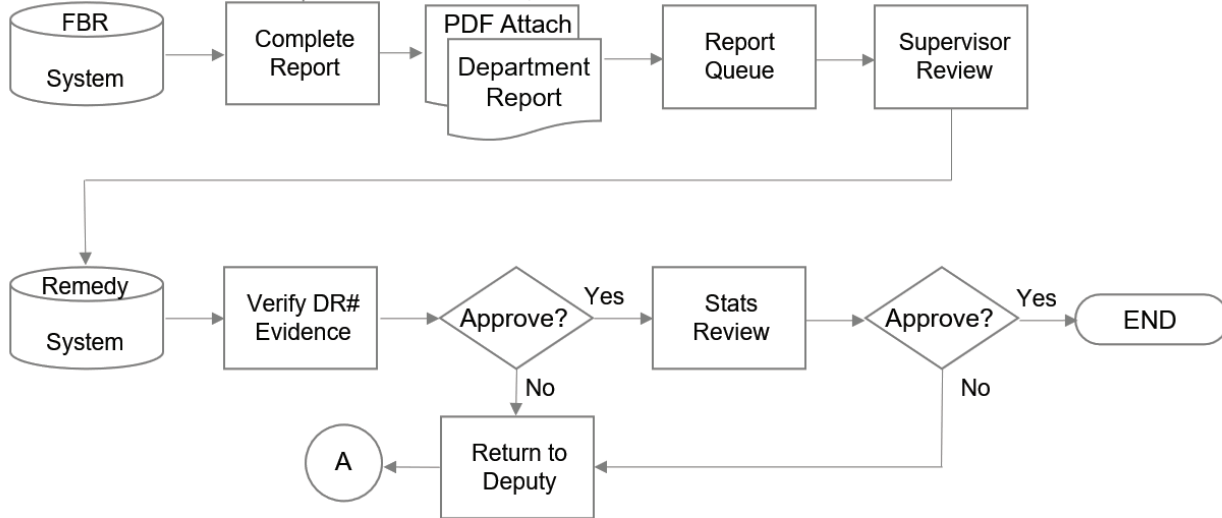
### Book Evidence



### Complete Report



### Approve Report



Report  
2

## GLOSSARY

CAD	<b>Computer Aided Dispatch</b> - highly specialized application that allows for the coordinated communication, assignment and tracking of law enforcement resources in response to calls-for-service.
Case Packet	Orange County Sheriff's Department case documents, including the initial crime report created in the Field Based Reporting System and the PDF Evidence List created in the Remedy system.
DA	<b>District Attorney</b> - work with law enforcement officers to investigate potentially criminal behavior, review police reports, and determine whether to file a formal complaint.
DNA	<b>Deoxyribonucleic Acid</b> is used for the various purposes in forensics. For example, if the suspect's DNA does not match with the evidence found at the crime scene, the suspect is released.
DR	<b>Department Report</b> - documents a criminal offense or incident and is associated with a DR#. Department reports are created in the Field Based Reporting System.
DR#	<b>Department Report Number</b> – sequential number assigned to a department report. The first two digits in the DR# designate the year followed by a six-digit sequential number that identifies the call.
EDC	<b>Electronic Directions for Complaint</b> - web-based system that allows law enforcement partners to upload PDFs, interviews, reports, etc. directly to the Orange County District Attorney's Office.
Evidence List	A list of items booked in the Remedy system under a DR# (a.k.a. Case Items Report).
FBR	<b>Field Based Reporting</b> System - incident-based reporting system used by Orange County Sheriff's Department.
FTO	<b>Field Training Officer</b> - duties include being a role model, teaching the trainee the policies of the department, evaluating the trainee on his or her progress in the program. Ultimately, an FTO is responsible for making sure shift duties are performed properly and completely.
IRC	<b>Intake Release Center</b> - responsible for all processes that involve arrestees being booked and released.
MDC	<b>Mobile Data Computer</b> - computerized device used in emergency vehicles, such as police cars, to communicate with a central dispatch office.
OCDA	<b>Orange County District Attorney</b>

OCPD	<b>Orange County Public Defender</b>
OCSA	<b>Orange County Sheriff's Department</b>
On-Prem	<b>On-Premises Software</b> is installed and runs on computers on the premises of the organization using the software, rather than at a remote facility such as a server farm or cloud.
PD	<b>Public Defender</b> - attorney employed at public expense in a criminal trial to represent a defendant who is unable to afford legal assistance.
Plea Bargain	An arrangement between prosecutor and defendant whereby the defendant pleads guilty to a lesser charge in exchange for a more lenient sentence or an agreement to drop other charges.
POST	California Commission on <b>Peace Officer Standards &amp; Training</b> . The purpose of the POST Law Enforcement Evidence & Property Management Guide is to provide standardized recommended guidelines for the management of the evidence and property function.
Remedy	Property/Evidence Automated Booking Information Tracking System (a.k.a. P.E.A.B.I.T.S.) is a software program that allows staff to enter physical evidence, and easily scan, track, and locate items as they are moved from different storage locations.
SaaS	<b>Software as a Service</b> is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. SaaS has become a common delivery model for many business applications, including CAD software, field service management and development software.
SAU	<b>Sexual Assault Unit</b>
Stats	Statistical Unit within the Records Division. Ensures the Department submits mandatory Uniform Crime Reporting (UCR) statistics to the state Department of Justice, as noted in Penal Code section 13020(b). Staff review every crime report written to capture and report crimes (homicides, robbery, rape, aggravated assault, etc.) occurring within the Orange County Sheriff's jurisdiction.

## BIBLIOGRAPHY

- BMC Software, Inc. 2014. "Remedy Asset Management Application (Version 7.0.03)." *BMC Support Central A-Z Supported Product List*. Apr. Accessed 2021.  
<https://webapps.bmc.com/support/faces/az/prodversion.jsp?prodverseqid=153711>.
- California Commission on Peace Officer Standards and Training. 2013. *Law Enforcement Evidence & Property Management Guide Third Edition*. Prod. POST Management Counseling Services Bureau.
- Find Law Staff. 2019. "California Code, Penal Code - PEN 1054.2." *Find Law For Legal Professionals*. Jan 1. Accessed Nov 2020. <https://codes.findlaw.com/ca/penal-code/pen-sect-1054-2.html>.
- Gerda, Nick. 2020. "OC Sheriff Evidence Booking Scandal Expands with 15 More Investigations of Deputies Disclosed." *Voice of OC*.
- . 2021. "Charges Dropped in 67 Criminal Cases Due to Sheriff Evidence Mishandling, DA Reveals." *Voice of OC*, Jan 14.
- Izadi, Mary. 2019. *Secondary Evidence Audit*. Constitutional Policing Advisor, Santa Ana: Orange County Sheriff's Department.
- Izadi, Mary. 2019. *Secondary Evidence Audit Follow-Up Report*. Constitutional Policing Advisor, Santa Ana: Orange County Sheriff's Department.
- Orange County District Attorney. 2020. "Policy 328 Report Preparation." *Bureau of Investigation Policy Manual*. Santa Ana: Lexipol, LLC, Nov 24.
- . 2020. "Policy 801 Property and Evidence." *Bureau of Investigation Policy Manual*. Santa Ana: Lexipol, LLC, Nov 24.
- Orange County District Attorney's Office. 2021. *Report on Sheriff's Department Evidence Booking Issues*. Santa Ana: OCDA.
- Orange County Sheriff-Coroner Department. 2019. "Policy 200 Organizational Structure and Responsibility." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2019. "Policy 204 Departmental Directive." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2019. "Policy 208 Training Policy." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2019. "Policy 338 Report Preparation." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Dec 6.
- . 2020. "Policy 802 Property and Evidence." *OCSD Policy Manual*. Santa Ana: Lexipol, LLC, Sept 1.

Orange County Sheriff's Department Evidence Booking Issue – Has it Been Resolved?

- Orange County Sheriff's Department. 2020. "Computer Forensics Detail - Evidentiary Mobile Device Booking Procedures." *Training Bulletin 20-32*. Santa Ana: Orange County Sheriff's Department, Oct 29.
- . 2020. "Evidentiary Digital Media and Investigative Copy of Digital Media." *Training Bulletin No. 20-21*. Santa Ana: Orange County Sheriff's Department, June 22.
- . 2020. "Field Based Reporting Outage Action Plan." *Training Bulletin No. 20-17*. Santa Ana: Orange County Sheriff's Department, May 8.
- . 2019. "Photographic or Digital Media Evidence Booking Procedures." *Training Bulletin No. 19-20*. Santa Ana: Orange County Sheriff's Department, Nov 27.
- . 2019. "Re-Brief Evidence Booking Procedures." *Training Bulletin No. 19-08*. Santa Ana: Orange County Sheriff's Department, July 3.
- . 2020. "Remedy Case Items Report Attachment for Field Based Reporting." *Training Bulletin No. 20-18*. Santa Ana: Orange County Sheriff's Department, May 11.
- Saavedra, Tony. 2020. "15 More Orange County Sheriff Deputies Considered for Criminal Charges in Evidence Scandal." *Orange County Register*, Aug 7.
- . 2019. "4 Orange County Deputies Fired After Audit Finds Systemic Abuses in Booking Evidence." *Orange County Register*, Nov 18.
- Santana, Nerberto, Jr. 2019. "Can DA Todd Spitzer and Sheriff Don Barnes Survive the Evidence Booking Scandal." *Voice of OC*, Dec 2.
- Smith, Darrell. 2020. "Orange County public defenders take aim at Sheriff's Department and DA's office in filing." *Sacramento BEE*, Jan 10.
- Superior Court of California County of Orange. 2020. "Procedure for Disclosure of Evidence Audit Records." *Administrative Order No 20/24*. Santa Ana: Chambers of Kirk H. Nakamura Presiding Judge, Oct 15.

Report  
2





Report  
2





# “Pot Luck” Santa Ana’s Monopoly on Licensed Retail Adult-Use Cannabis in Orange County





Report  
3



## TABLE OF CONTENTS

<b>SUMMARY</b> .....	1
<b>BACKGROUND</b> .....	1
<b>Federal Cannabis Laws</b> .....	1
<b>Legislation in California</b> .....	1
<b>REASON FOR STUDY</b> .....	2
<b>METHOD OF STUDY</b> .....	3
<b>INVESTIGATION AND ANALYSIS</b> .....	3
<b>Santa Ana City Council Says “Yes”</b> .....	3
<b>Dispensary Application and Licensing Process</b> .....	3
<i>Cannabis Community Benefits Program</i> .....	4
<b>Community Safety</b> .....	4
<i>Site Visits</i> .....	5
<b>Financial Impact</b> .....	6
<b>Communication</b> .....	7
<b>COMMENDATIONS</b> .....	7
<b>FINDINGS</b> .....	7
<b>RECOMMENDATIONS</b> .....	8
<b>RESPONSES</b> .....	9
<b>RESPONSES REQUIRED</b> .....	10
<b>APPENDIX</b> .....	11
<b>APPENDIX 1 – Approved and Operating Adult-Use Cannabis Dispensaries</b> .....	11
<b>APPENDIX 2 – Commercial Cannabis Application Process</b> .....	12
<b>APPENDIX 3 – Phase 1 and Phase 2 Application and Permit Process</b> .....	13
<b>APPENDIX 4 – Commerical Cannabis Application Information</b> .....	14
<b>APPENDIX 5 – Santa Ana Ordinance No. NS-2959</b> .....	16
<b>GLOSSARY</b> .....	20
<b>BIBLIOGRAPHY</b> .....	21

## SUMMARY

Santa Ana was the first city in Orange County, California to approve the retail sale of Adult-Use Cannabis. This action has added significant revenue to the city with no reported increase in criminal activity. Through interviews and investigation, the Orange County Grand Jury has discovered that the revenue generated by the Retail Adult-Use Cannabis business has provided much needed funds to the City of Santa Ana. These funds have not only increased the city’s general fund account but have also been used for enhanced police services and code enforcement efforts as well as funding for additional youth programs through the Parks, Recreation, and Community Services Agency.

*The Orange County Grand Jury does not express an opinion on the use of Cannabis.*

## BACKGROUND

Cannabis use has long been a subject of controversy in the United States. Once commonly grown for hemp, made from fibers from the plant and used in a variety of products such as rope and paper, cannabis was later discovered to have medicinal purposes and subsequently became a criminalized product. Over the last six decades there has been much debate and many propositions introduced to decriminalize and/or regulate cannabis and allow it to be legally sold and used for medicinal as well as recreational purposes.

### Federal Cannabis Laws

Despite a cannabis legalization trend sweeping the country, the federal government still classifies cannabis as a Schedule 1 drug. The federal government considers drugs in this class to be some of the most dangerous.

A Schedule 1 classification puts cannabis in the same class as heroin, which means the federal government considers cannabis more dangerous than Schedule 2 drugs like cocaine and methamphetamine.

At the present time, the United States Department of Justice (“DOJ”) is not prosecuting most cannabis users and businesses that follow state and local cannabis laws, as long as those laws do not conflict with certain federal requirements. These requirements include preventing minors from using cannabis and preventing cannabis from being transported across state lines.

### Legislation in California

**Proposition 19 (1972)** also known as “The California Marijuana Initiative” was a ballot initiative on the November 7, 1972 California Statewide Ballot. California became the first state to vote on a ballot measure seeking to legalize cannabis. If it had passed, the measure would have removed penalties in the State of California for persons 18 years of age or older for using,

possessing, growing, processing, or transporting marijuana for personal use. The initiative was defeated by the voters with 66.5% No votes to 33.5% Yes votes.

**Proposition 215 (1996)** also known as “The Compassionate Use Act of 1996” made it legal under California law for individuals of any age to use cannabis for medicinal purposes. Individuals must have a recommendation from a doctor to use medical cannabis. The act passed by a vote of 55.58% Yes votes to 44.42% No votes.

**Proposition 19 (2010)** also known as “The Regulate, Control, and Tax Cannabis Act of 2010” was defeated by the voters with 53.5% No votes to 46.5% Yes votes. If it had passed, Proposition 19 would have legalized various cannabis-related activities in California and authorized local governments to control these activities. In addition, the Proposition would have granted local governments the right to impose and collect cannabis-related fees & taxes, and authorized various criminal and civil penalties.

**Proposition 64 (2016)** also known as “The Adult-Use of Marijuana Act” passed by a vote of 57.13% to 42.87%. The measure:

- Legalized adult use of cannabis for recreational, non-medical purposes
- Created a system for regulating Retail Adult-Use Cannabis businesses
- Imposed taxes on Retail Adult-Use Cannabis sales
- Changed penalties for cannabis-related crimes

Once Proposition 64 was passed, cities in California were granted the opportunity to approve Retail Adult-Use Cannabis and begin the process of granting licenses to shops within their city limits.

## REASON FOR STUDY

The selling of cannabis for “Adult-Use” or “recreational” purposes has been legal in the State of California since January 1, 2018 and yet, until July 2020, Santa Ana was the only city in Orange County that had approved licensing for this type of business. The Orange County Grand Jury (OCGJ) was interested in investigating how the decision to move forward with this licensing impacted Santa Ana and if there were any significant issues.

The Grand Jury felt it was important to investigate this matter in order to make the public aware of the potential gains or pitfalls other cities in the county might encounter should they move forward with Retail Adult-Use Cannabis licensing.

This report focuses only on the licensing and selling of Retail Adult-Use Cannabis in the City of Santa Ana and does not address medicinal sales, cultivation, distribution, or any issues related to the use of cannabis products.

## METHOD OF STUDY

The OCGJ conducted extensive internet research on the legal status of Retail Adult-Use Cannabis, both nationwide and in California, by reviewing and analyzing relevant legislation as well as the numerous California propositions that culminated in the passage of Proposition 64. In addition, the OCGJ reviewed City of Santa Ana documents including staff reports, commission reports, Requests for City Council Actions, and ordinances that authorized and established conditions for the sale of cannabis products for Adult-Use.

The OCGJ also interviewed current and former Santa Ana City Council members and City employees who work in agencies directly involved with or impacted by the licensing and sale of Retail Adult-Use Cannabis products in Santa Ana. In addition, OCGJ interviewed professional experts not employed by the City, including licensed Retail Adult-Use Cannabis dispensary proprietors and employees. The OCGJ visited several licensed Retail Adult-Use Cannabis dispensaries in Santa Ana to observe the facilities, amenities, staff, clientele, and operations.

## INVESTIGATION AND ANALYSIS

### Santa Ana City Council Says “Yes”

In response to the November 2016 passage of Proposition 64 in California, the Santa Ana City Council began to consider licensing and regulating the retail sale of cannabis for adults. After multiple meetings and discussions and after thorough staff analysis, on October 17, 2017, the City Council introduced ordinance number NS-2929 for a first reading. The ordinance was identified as “An Ordinance of the City Council of the City of Santa Ana creating Chapter 40 of the Santa Ana Municipal Code, ‘Regulation of Commercial Cannabis’, to Regulate Commercial Cannabis Activities, excepting Medicinal Retail.”

On November 9, 2017, the ordinance was introduced for a second reading and approved with amendments by a vote of 5-0 (two City Council members were absent). Santa Ana has remained the only city in Orange County issuing business licenses and regulating the retail sale of Adult-Use Cannabis for the years 2018, 2019, and 2020.

### Dispensary Application and Licensing Process

Santa Ana Ordinance number NS-2929 allows up to 30 Retail Adult-Use Cannabis stores within the City. As of April 15, 2021, there were 23 dispensaries open and operating in the City of Santa Ana (see Appendix 1). The ordinance sets forth operational standards, permit procedures, and an operating agreement to address collection of operating fees.

To ensure fairness and impartiality in the selection process, the City devised a system of “Retail Adult-Use Cannabis merit-based criteria and possible points” (see Appendix 2) to evaluate applicants who sought to operate a dispensary offering Adult-Use Cannabis products. This led to the Commercial Cannabis Application (Phase I and Phase II) and Permit Process (see Appendix 3), a comprehensive evaluation process that each Retail Adult-Use Cannabis dispensary applicant had to follow and pass before being allowed to open for business.

After completion of the application process, each applicant was required to obtain a Regulatory Safety Permit (RSP) which is a permit issued by the City of Santa Ana pursuant to Chapter 40 of its municipal code. The RSPs issued for Phase I and Phase II had fees associated with each phase of the process. The fees charged were based on city processing costs as follows: Phase I, initially \$1,690, was subsequently raised to \$1,752; Phase II, initially \$12,086, was later raised to \$12,530.

The City’s Planning and Building Agency drafted a two-page Phase I and Phase II applicants’ information form advising interested parties of the steps in the application process (see Appendix 4).

### **Cannabis Community Benefits Program**

All parties seeking a license to operate a cannabis dispensary in Santa Ana must submit a written operating agreement titled “Operating Agreement for Adult use (Non-Medicinal) Cannabis Retail Business.” One section of the agreement is entitled “Public Benefit.” In this section, the applicant for the proposed dispensary is encouraged to submit a “Community Benefit and Sustainable Business Practices Plan” (PLAN). The plan serves as a goodwill program sponsored by the dispensary for the benefit of the Santa Ana community.

A review of the PLANs submitted by the applicants revealed a wide variety of current community service projects such as sponsoring a local debate team, supporting a community garden, organizing and/or funding toy/clothing/food drives, diversion or prevention educational programs, and neighborhood clean-up efforts.

While these programs are a step towards goodwill in the community, there is no oversight or confirmation by the City that the dispensary operator is participating in the plan. It is up to each dispensary owner to decide how and to whom they will provide a “benefit.” There are no specific requirements in terms of money or volunteer hours that a dispensary must donate, and there is no obligation to provide proof of participation in the plan to the City.

The OCGJ has concluded that there should be some process in place to set standards for and document participation in the Community Benefits Program. In addition, the benefits provided by the Retail Adult-Use Cannabis dispensaries should be reported to the City Council and made available to the general public.

### **Community Safety**

The OCGJ learned through interviews with City officials and staff that there had been more than 120 unlicensed dispensaries operating illegally in Santa Ana before ordinance NS-2929 went into effect. That number has since been reduced to “less than a handful,” due to enforcement efforts by the City, especially the Planning and Building Agency, including Code Enforcement, and the Santa Ana Police Department.

One third of the taxes and fees that the City receives from Retail Adult-Use Cannabis dispensaries is dedicated to Police and Code Enforcement. This money provides funding for a vice unit, including a sergeant and four officers. Other City agencies, such as Planning and



Building and the City Attorney’s Office, also receive funding because of their role in ensuring Retail Adult-Use Cannabis compliance with regulations.

The reality is that shutting down the unlicensed, illegally operating dispensaries will increase business for the licensed facilities, thereby increasing the City’s tax revenues. Closing unlicensed facilities is a win-win for both the licensed dispensaries and the City of Santa Ana.

It should be noted that the licensed Retail Adult-Use Cannabis dispensaries must meet the quality standards for their merchandise that comply with requirements set forth by the State of California’s Bureau of Cannabis Control (BCC). Consumers have no such protections when products are purchased from unlicensed shops.

Ordinance number NS-2929, Section 1, subparagraph K, states: “The City of Santa Ana has a compelling interest in ensuring that cannabis is not sold in an illicit manner, in protecting the public health, safety, and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which these businesses may operate, and in providing access of cannabis to residents.”

The OCGJ further learned through interviews with both Police Department and Code Enforcement staff that there has been no apparent increase in criminal activity in the areas surrounding the Retail Adult-Use Cannabis dispensaries. It should be noted that all licensed dispensaries are required to have security guards in place during hours of operations, and 24/7 video surveillance protecting their facilities, employees, and customers. Additionally, all dispensaries are required to secure all inventory in a locked safe, unless open for business.

### Site Visits

During its investigation, the OCGJ interviewed cannabis dispensary owners and visited Retail Adult-Use dispensary sites. The OCGJ would like to note that it received full cooperation from the dispensary owners and staff while touring their locations.

The dispensary sites the OCGJ visited appeared to be well managed, with clean public areas that were adequately illuminated and well-appointed. The shelves were fully stocked with products. All products were marked with California approval code stamps, indicating that the products conformed to quality control standards approved by the BCC.

Sites visited had the required security guards; the OCGJ noted that there were two security guards at each site visited. Each store had 24-hour video surveillance cameras covering the interior and exterior. One of the store owners mentioned that their external video surveillance is so extensive and of such high quality that they were able to assist law enforcement with investigations into criminal activities at nearby properties. Inside, stores were well furnished, had appropriate security doors, and all products were locked up at night in secured structures, vaults, or safes.

## Financial Impact

In November 2018, residents of the City of Santa Ana approved Measure Y by a vote of 71% Yes to 29% No. Measure Y is a tax on Retail Adult-Use Cannabis businesses operating in the City that provides for a tax of 25 cents to 35 dollars based on the gross square footage of the business and a sales tax of up to 10% for retail sales. The City estimates that Measure Y will generate \$11-14 million a year to fund city services.

On December 4, 2018, the Santa Ana City Council adopted Ordinance NS-2959 (see Appendix 5), establishing a “Cannabis Public Benefit Fund”. The fund derives almost all of its money from Measure Y and requires that the city allocate all money received from the sale of Retail Adult-Use Cannabis as follows: one third to the General Fund, one third to Enforcement Services, and the final third to Youth Services.

Some of the City of Santa Ana Council members and staff interviewed by OCGJ informed the OCGJ that there is no true, viable oversight regarding disbursement and use of cannabis money received. The OCGJ learned that there is no clearly identifiable accounting for residents to see how this money is spent. Furthermore, the COVID pandemic has caused a shifting of money from previously planned programs to others.

Money received by the Retail Adult-Use Cannabis businesses for the last two years from the Measure Y tax has been in excess of \$20 million. The General Fund money can be allocated to projects or programs in any City department, and expenditures from this fund cannot be specifically attributed to the Cannabis Public Benefit Fund. It has also been difficult to secure specific information about how the money for Enforcement Services has been used. Interviews with City staff indicated that various departments rely on Measure Y funds for their enforcement efforts. For example, the Police Department has funded the Vice Unit with Measure Y proceeds and the Planning and Building Agency, especially the Code Enforcement Division, also relies on Cannabis Public Benefit Fund money to staff some positions. However, the OCGJ has not received a clear breakdown of how the Enforcement Services money has been used by the various city agencies.

Expenditures related to Youth Services are much more transparent. The following programs and projects are anticipated to be funded from the Cannabis Public Benefit Fund and undertaken in the following year for the benefit of Santa Ana youth:

- Library Services
  - Book/Techmobile
  - Digital Collection for Teens
  - Laptop Dispenser Kiosks
  - Wireless Hotspots
- Library Improvements at the Newhope Branch Library
- Library Playground at the Main Branch

“Pot Luck”: Santa Ana’s Monopoly on Licensed Retail Adult-Use Cannabis in Orange County

- Parks and Recreation
  - Anti-Drug Education Program
  - Fitness Courts
  - Goat Encounter at Santa Ana Zoo
  - Santa Anita Park Soccer Field Renovation
  - Splash pads for six City parks
  - Third Party youth programs
  - Traveling Zoo Exhibit
  - Year-Round Aquatics
  - Youth and Teen Excursion
  - Youth Programs and Services
  - Zoo and You Program
- Community Development Agency youth paid internships
- Contribution to the Deferred Action for Childhood Arrival Defense Fund

The OCGJ, through its investigation of the use of Cannabis Public Benefit funds, concluded that the youth of Santa Ana have benefited greatly and will continue to benefit as a result of the decision to license Retail Adult-Use Cannabis dispensaries in the City.

## Communication

During the investigation of the Retail Adult-Use sale of cannabis in Santa Ana, the OCGJ noted that there are several independent City departments involved in the licensing and regulation process. While the expertise of each department may be required to ensure compliance with all City ordinances and to process all necessary documents and fees, multiple points of contact can make it difficult to obtain information when needed.

## COMMENDATIONS

The City of Santa Ana received more than \$20 million in revenue during the first three years of licensed Retail Adult-Use Cannabis sales. Santa Ana was the first city in Orange County to begin licensing for these dispensaries and has remained the only city for several years, giving it a “monopoly” on Retail Adult-Use Cannabis business in Orange County.

The City of Santa Ana saw a significant drop in the number of illegal/unlicensed cannabis shops as the number of licensed dispensaries increased. This reduction in illegal/unlicensed shops has improved community safety for both consumers and residents.

## FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2020-21 Grand Jury requires 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 described here, the 2020-21 Orange County Grand Jury has arrived at the following principal findings:

- F1. There is no clearly identifiable accounting of where all the Enforcement Services money received from Retail Adult-Use Cannabis licensing in accordance with Santa Ana Municipal Ordinance number NS-2959, section 13-203 was spent.
- F2. The legalization of Retail Adult-Use Cannabis by the City of Santa Ana and the resulting increase in city revenue have allowed the city to significantly expand its youth services programs.
- F3. There are multiple departments within the City of Santa Ana responsible for various aspects of Retail Adult-Use Cannabis oversight. The decentralized nature of the oversight within the City makes information difficult to obtain.
- F4. The number of unlicensed cannabis dispensaries in Santa Ana has significantly declined since the business licensing of Retail Adult-Use Cannabis dispensaries.
- F5. The Orange County Grand Jury did not receive evidence of an increase in crime as a result of the licensing of Retail Adult-Use Cannabis dispensaries.
- F6. The *Cannabis Community Benefits Program* motivates local dispensaries to contribute funds and/or staff volunteer hours for the benefit of the City of Santa Ana.

## RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2020-21 Grand Jury requires 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 described herein, the 2020-21 Orange County Grand Jury makes the following recommendations:

- R1. The Orange County Grand Jury recommends that the Santa Ana City Council require an annual report specifically detailing all Retail Adult-Use Cannabis money spent each fiscal year. This report should be presented to the Santa Ana City Council and made public. This should be completed by December 31, 2021, for fiscal year 2020-21, and by September 30 following each fiscal year thereafter. (F1)
- R2. The Orange County Grand Jury recommends that the City of Santa Ana designate an individual to oversee and provide centralized coordination of Retail Adult-Use Cannabis activity commencing January 1, 2022. (F3)
- R3. The Orange County Grand Jury recommends that the City of Santa Ana create a process to report to the Santa Ana City Council and the residents of Santa Ana detailed information about the participation of Retail Adult-Use Cannabis dispensaries in the Community Benefits Program by December 31, 2021 and yearly thereafter. (F6)

## 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 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.

Report  
3

## RESPONSES REQUIRED

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

Responses are required from the following governing body within 90 days of the date of the publication of this report:

90 Day Required Responses	F1	F2	F3	F4	F5	F6
Santa Ana City Council	x	x	x	x	x	x

90 Day Required Responses	R1	R2	R3
Santa Ana City Council	x	x	x

# APPENDIX

## APPENDIX 1 – Approved and Operating Adult-Use Cannabis Dispensaries

Report  
3

Approved and Operating Adult-Use Cannabis Dispensaries  
4-15-2021 Update

Count	Applicant Name	DBA Name	Business Activity	Business Address
1	Vertical, Inc.	420 Central	Retail (Adult-Use)	420 W. Central Ave.
2	The Garry Five, LLC	ASHE Society	Retail (Adult-Use)	3601 W. Garry Ave.
3	AAA Health Center	Kannadise	Retail (Adult-Use)	1525 E St Gertrude
4	Bud & Bloom	Farmacy Santa Ana	Retail (Adult-Use)	1327 E. St. Gertrude Pl.
5	Hand & Hand Patient Care	Catalyst - Santa Ana	Retail (Adult-Use)	2400 S. Pullman St.
6	STPC Enterprise, Inc	Evergreen	Retail (Adult-Use)	1320 E. Edinger Ave.
7	DBO Investments SA LLC	From The Earth	Retail (Adult-Use)	3023 S. Orange Ave.
8	Fairfax Enterprises, Inc.	Herban Kulture	Retail (Adult-Use)	3210 S. Standard Ave.
9	55 OC Collective, Inc	Jungle Boys	Retail (Adult-Use)	2911 Tech Center Dr.
10	Jason Lily, LLC.	Kannabis Works	Retail (Adult-Use)	2106 S. Susan St.
11	The Source - Santa Ana	MedMen OC	Retail (Adult-Use)	2141 S. Wright St.
12	Monex Place Wellness, Inc	Mr. Nice Guy	Retail (Adult-Use)	730 E. Dyer Rd.
13	OCG SYSTEMS	New Generation	Retail (Adult-Use)	3700 W. Segerstrom Ave. #A
14	SOAR Collective	OC3	Retail (Adult-Use)	3122 S. Halladay St. #A
15	People's First Choice LLC	Peoples OC	Retail (Adult-Use)	2721 S. Grand Ave.
16	SCSA Group, Inc	Super Clinic	Retail (Adult-Use)	1900 E. Warner Ave., #A-1
17	Halladay Healing Group	Speedy Weedy	Retail (Adult-Use)	2525 S. Birch St.
18	Green Rose Green Leaf Care Inc.	The Spot	Retail (Adult-Use)	1325 E. St. Andrew Pl. #B
19	3242 Enterprises Inc.	The Spot Shannon	Retail (Adult-Use)	3242 S. Halladay St. #101
20	The 10 Spot, Inc	Tropicanna	Retail (Adult-Use)	2700 S. Shannon St.
21	WCW Organization	Weden	Retail (Adult-Use)	1628 S. Grand Ave
22	Healthy Healing Holistic Options, Inc	West Clinic	Retail (Adult-Use)	1625 E. St. Gertrude Pl.
23	2015 Halladay Wellness Inc.		Retail (Adult-Use)	2110 S. Yale St., #A

## APPENDIX 2 – Commercial Cannabis Application Process

Adult-Use Retail Cannabis Merit-Based Criteria and Possible Points		
All applications for a Regulatory Safety Permit (RSP) will be evaluated using the merit criteria outlined below. Applicants must submit supplemental documentation or references with the RSP application that support the statements below for review by the City.		
No.	Merit Criteria	Points
1	Applicant demonstrates control of a site that is in full compliance with the requirements of Chapter 18 and/or Chapter 40 of the Santa Ana Municipal Code (base requirement <sup>1</sup> ).	Up to 20
2	Applicant demonstrates experience in operating a permitted or licensed commercial cannabis activity within the United States (base requirement <sup>1</sup> ).	Up to 20
3	Applicant demonstrates past experience in and commits to any of the following <sup>2</sup> : <i>This criteria evaluates the items listed below.</i> <ul style="list-style-type: none"> <li>• Local hiring and sourcing practices<sup>3</sup></li> <li>• Sustainable business or building practices</li> <li>• Community benefit and/or youth programs in Santa Ana</li> </ul>	Up to 30
4	Applicant is currently on the Measure BB lottery waitlist.	Up to 10
5	Applicant's principal officer's, director's, or owner's primary residence is in the City of Santa Ana and the person has been residing at the primary residence for at least 12 consecutive months immediately preceding the date of the application; OR have been operating a business in the City of Santa Ana for at least 12 consecutive months immediately preceding the date of the application.	Up to 10
6	Applicant, entity, or premises: <i>This criteria evaluates the items listed below.</i> <ul style="list-style-type: none"> <li>• Has no previous record of failing to make timely reporting or remitting of their Santa Ana medical marijuana and/or commercial cannabis business license taxes or any other payments required by their entitlements if operating in another jurisdiction</li> <li>• Is not the subject of any outstanding code enforcement activity</li> </ul>	Up to 10
<b>Maximum Possible Points</b>		<b>100</b>

Report  
3

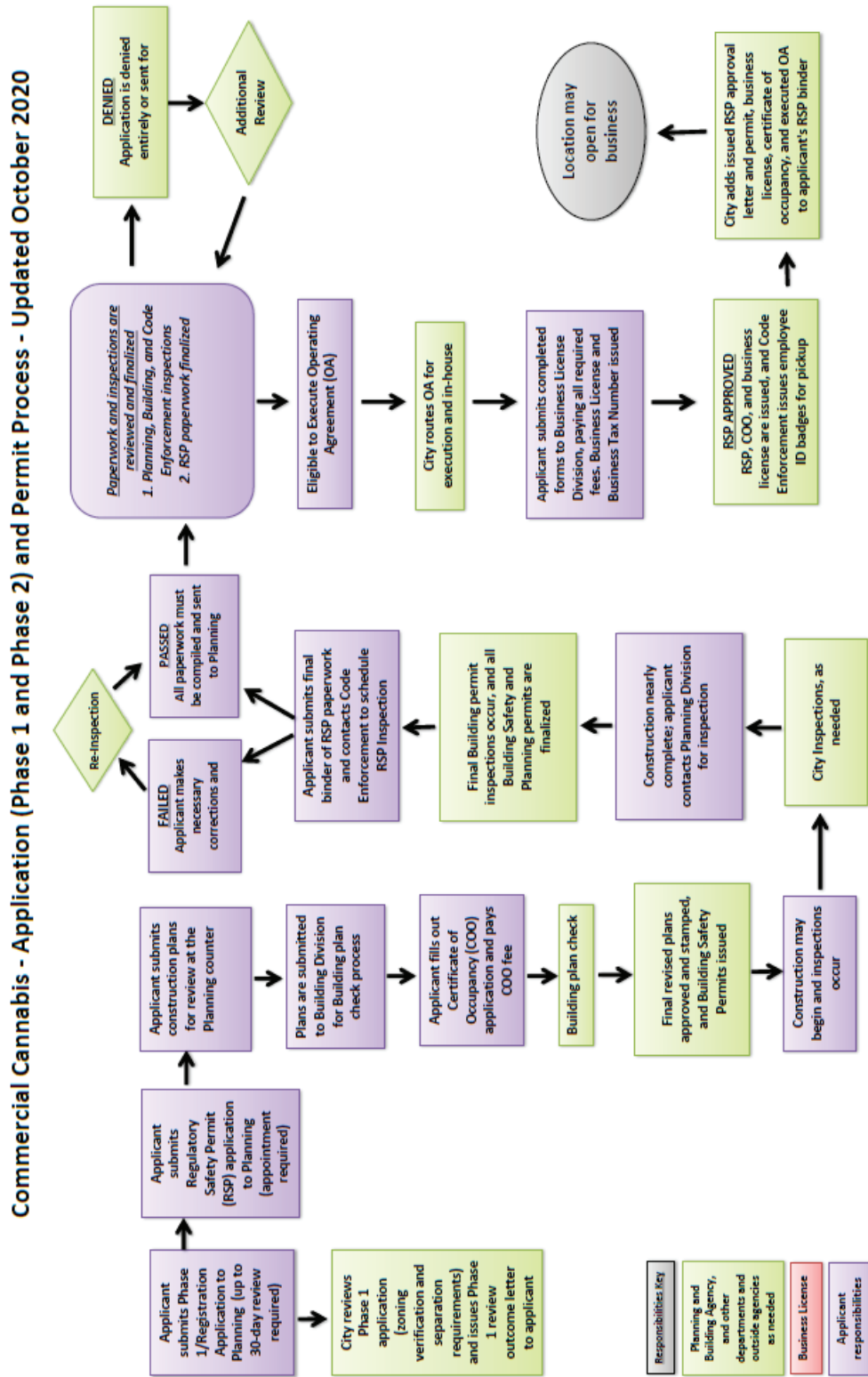
<sup>1</sup> Base requirement indicates that the applicant must satisfy a portion of each criteria (nos. 1 and 2) in order to qualify for consideration and scoring

<sup>2</sup> A community benefits plan will be reviewed and incorporated into the required operational agreement for any selected commercial cannabis business operating in Santa Ana.

<sup>3</sup> Note: Pursuant to Chapter 40, any facility employing two or more individuals is required to enter into a labor peace agreement.



APPENDIX 3 – Phase 1 and Phase 2 Application and Permit Process



Report  
3

## APPENDIX 4 – Commercial Cannabis Application Information



Planning and Building Agency  
Planning Division  
20 Civic Center Plaza  
P.O. Box 1988 (M-20)  
Santa Ana, CA 92702  
(714) 647-5804  
www.santa-ana.org



### Commercial Cannabis **Non-Retail** Business Phase 1 & Phase 2 Application Information

Thank you for your interest in submitting an application to operate a non-retail commercial cannabis in Santa Ana.

#### What applications do I need to submit?

All commercial cannabis businesses are required to submit a Phase 1/Registration Application and a Phase 2/Regulatory Safety Permit (RSP) Application.

#### How much are the application processing fees?

The Phase 1 processing fee is \$1,752.02. The Phase 2/RSP processing fee is \$12,529.56. Please note that the Phase 2 permit and fee must be renewed annually.

#### Are there any other fees?

All commercial cannabis businesses are required to execute an operating agreement. The operating agreement preparation fee is \$2,500.00, payable within 30 days if the Phase 2/RSP is approved.

Commercial cannabis businesses in Santa Ana are also subject to following taxes following the passage of Measure Y, approved by Santa Ana voters in November 2018.

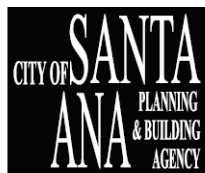
Commercial Cannabis Business Type	Tax
Adult-Use Retail	8% of gross receipts or \$25 per square foot (annually), whichever is higher.
Testing Laboratory	1% of gross receipts or \$1.50 per square foot (annually), whichever is higher.
Cultivation and Manufacturing	6% of gross receipts or \$10 per square foot (annually), whichever is higher.
Distribution	6% of gross receipts or \$4 per square foot (annually), whichever is higher.
Medicinal Retail (subject to separate tax approved in 2014)	6% of gross receipts

#### Is there a cap or limit on the number of permits?

There is limit of 30 adult-use retailer RSPs and 20 medicinal retailer RSPs. The application period for adult-use retailers ended March 1, 2018, and no new applications are being accepted. There is no limit on the number of RSPs for “non-retail” commercial cannabis businesses (testing laboratory, cultivation, manufacturing, and distribution).

#### When and how can I submit an application?

Applications for “non-retail” commercial cannabis businesses (testing laboratory, cultivation, manufacturing, and distribution) are accepted year-round. Applications are only accepted in digital format. Additional information is provided in each application.



Planning and Building Agency  
Planning Division  
20 Civic Center Plaza  
P.O. Box 1988 (M-20)  
Santa Ana, CA 92702  
(714) 647-5804  
www.santa-ana.org



## Commercial Cannabis **Non-Retail** Business Phase 1 & Phase 2 Application Information

### **Can I submit Phase 1 and Phase 2 applications together?**

Yes. Applicants are encouraged to submit Phase 1 and Phase 2 applications concurrently, which can save up to 30 days of processing time.

### **Do I need a submittal appointment?**

Phase 1 submittals do not require an appointment. Phase 1 applications can be submitted during regular Planning Division counter hours. If submitting both Phase 1 and Phase 2 applications together, please contact [cannabis@santa-ana.org](mailto:cannabis@santa-ana.org) for a submittal appointment. Phase 2 submittals require an appointment.

### **How long is the review period?**

Phase 1 applications require up to 30 days to process, after which the applicant is informed of the outcome. Phase 2 includes the full background checks of all business owners, managers, employees, and volunteers, as well as plan-check, construction, buildout, and inspections. Because each site will have different plan-check and buildout requirements, the Phase 2 timeframe is more difficult to estimate. The City offers expedited plan-check and overtime inspections if requested by an applicant.

### **Is there a reason my applications would be denied?**

There is no limit for non-retail commercial cannabis businesses and there no selection process (evaluation, lottery, etc.). Non-retail applications must meet all zoning and buffer requirements, and all owners, managers, employees, and volunteers must meet the Santa Ana Municipal Code (SAMC) requirements for background checks listed in Chapters 18 and 40 [SAMC Sec. 18-613 (n) and 40-8 (3) (x)], as well as any other applicable sections of the SAMC.

### **Is there a flowchart explaining Santa Ana’s permit process?**

Yes. A flowchart explaining the entire application review and permitting process is available online at: <http://santa-ana.org/commercialcannabis/default.asp> .

### **Is Santa Ana’s RSP the same as a State license?**

No. The City of Santa Ana issues RSPs, which are local permits. The State issues licenses to conduct commercial cannabis business activity. For information on State licenses and the application process, please visit <http://bcc.ca.gov/> .

### **Where can I find additional details or information?**

Additional information on application requirements are contained in the Phase 1 and Phase 2 applications, as well as in the commercial cannabis ordinances available online at <https://www.santa-ana.org/cannabis>. For additional information, please contact [cannabis@santa-ana.org](mailto:cannabis@santa-ana.org).

## APPENDIX 5 – Santa Ana Ordinance No. NS-2959

SRC 11/20/18

### ORDINANCE NO. NS-2959

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA, CALIFORNIA, ADDING ARTICLE XX TO CHAPTER 13 OF THE SANTA ANA MUNICIPAL CODE TO ESTABLISH A CANNABIS PUBLIC BENEFIT FUND

#### THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** Section XX is hereby added to Chapter 13 of the Santa Ana Municipal Code and shall read as follows:

#### **ARTICLE XX.- CANNABIS PUBLIC BENEFIT FUND.**

##### **Sec. 13-200. - Establishment of the Fund.**

There is hereby established within the City of Santa Ana the "Cannabis Public Benefit Fund", which shall be two sub-funds, one for Enforcement Services and one for Youth Services, within the City's General Fund (the "Cannabis Fund").

##### **Sec. 13-201.- Purpose.**

The Cannabis Fund shall be used to fund new or additional Youth Services, as of the date of the fund creation, for City of Santa Ana residents. The Cannabis Fund shall not be used to supplement existing Youth Services. The Cannabis Fund shall also be used to fund community enforcement and code enforcement.

##### **Sec. 13-202.- Definitions.**

For the purposes of this Article, the following words and phrases shall be construed as having the following definitions:

*Adult Use-* shall have the same meaning as that set forth in Santa Ana Municipal Code ("SAMC") section 40-2(2) as may be periodically amended. At the time of adoption of this Article, meaning cannabis or cannabis products that are intended to be used for non-medicinal purposes by a person twenty-one (21) years of age or older.

*Commercial Cannabis Activity* – shall have the same meaning as that set forth in SAMC section 40-2(9) as may be periodically amended. At the time of adoption of this Article, meaning the cultivation, possession, manufacture, distribution, processing, storing, laboratory, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as provided for in this Chapter

Ordinance No. NS-2959  
Page 1 of 4

Report  
3

[Chapter 40]. Permitted commercial cannabis activities are listed in Land Use Table 40-5 of this Chapter [Chapter 40].

*Enforcement Services* – any and all services provided by City staff for the prevention, detection, investigation and violations of the City's codes and ordinances intended to prevent public nuisances or activities that are detrimental to the health, safety and welfare of the community.

*Medicinal/Medical Cannabis*- shall have the same meaning as that set forth in SAMC section 40-2(27) as may be periodically amended. At the time of adoption of this Article, meaning cannabis or a product containing cannabis, including, but not limited to, concentrates, and extractions, intended to be sold for use by medicinal cannabis patients in California pursuant to the Compassionate Use Act of 1996, found at Section 11362.5 of the California Health and Safety Code. Medical cannabis retail is regulated by Chapter 18 and Chapter 21 of the Santa Ana Municipal Code.

*Operating Agreement*- shall have the same meaning as that set forth in SAMC section 40-1C as may be periodically amended. At the time of adoption of this Article, meaning a legally binding written agreement between each commercial cannabis business operator and the City, executed by the City Manager, or his or her designee, and in a form or substance satisfactory to the Executive Director of Planning and Building and the City Attorney, and containing those provisions necessary to ensure that the requirements of this article are satisfied. A distinct Commercial Cannabis Operating Agreement shall be required for each location and type of commercial cannabis business activity taking place at an approved Commercial Cannabis Business.

*Youth Services*- any and all services provided to residents of the City under the age of 24 for athletic, recreational, health, educational, or human services, directly by City staff or through partnerships with third parties. This may include City facility improvements, maintenance and equipment needs related to youth services.

### **Sec. 13-203. - Cannabis Revenue Funding.**

A. Automatic Deposit of Cannabis Tax Revenues into the Cannabis Fund. The Cannabis Fund shall be funded by an automatic deposit of one-third (1/3) of all cannabis tax revenues generated each year for Enforcement Services and one-third (1/3) of all cannabis tax revenues generated each year for Youth Services, commencing with the Fiscal Year Budget for 2018-20 and continuing thereafter in the budget for each Fiscal Year, from all of the following: 1) Operating Agreements for Commercial Cannabis businesses and 2) Any newly adopted Cannabis Business License Tax. For purposes of this subsection, in addition to the descriptions provided directly above in this paragraph, the phrase "cannabis tax revenues" means all revenues generated from any new or increased cannabis tax which has been approved by the voters of the City on or after the effective date of this Chapter and any increase of the cannabis tax

authorized by the Santa Ana Municipal Code and approved by the City Council. Tax revenue from Medicinal/Medical Cannabis shall not go into the Cannabis Fund. Funds in these sub-funds shall be carried over from year-to-year.

B. Discretionary Deposits into Cannabis Fund Not Prohibited. Nothing in this Chapter shall prohibit the City Council, as part of the budgeting process, from contributing additional revenues to the Cannabis Fund, as determined in the City Council's sound legislative discretion.

C. Expenditures from the Cannabis Fund. Funds in the Cannabis Fund shall be restricted to 1) Youth Services: expenditures for new, additional or enhanced, as of the date the Cannabis Fund is created, Youth Services for City of Santa Ana residents and 2) Enforcement Services: expenditures for Enforcement Services.

**Sec. 13-204.- Presentation to City Council.**


At least two times per year the City Manager shall make a presentation to the City Council and report on the revenue that has been deposited in the Cannabis Fund and expenditures from the Cannabis Fund.

**Sec. 13-205. - Procedure for Amending, Suspending or Rescinding Ordinance.**

This ordinance may only be amended, suspended or rescinded by an affirmative vote of at least two-thirds of the City Council after making findings that a structural deficit exists in the same manner as required to access the Economic Uncertainty Account as set forth in the City's Budget and Financial Policy.

**Section 2.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this 4<sup>th</sup> day of December, 2018.

  
Miguel A. Pulido  
Mayor

Ordinance No. NS-2959  
Page 3 of 4

Report  
3

"Pot Luck": Santa Ana's Monopoly on Licensed Retail Adult-Use Cannabis in Orange County

APPROVED AS TO FORM:

By: *Sonia R. Carvalho*  
Sonia R. Carvalho  
City Attorney

AYES: Councilmembers: Benavides, Pulido, Martinez, Solorio, Tinajero, Villegas (6)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: Sarmiento (1)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2959 to be the original ordinance adopted by the City Council of the City of Santa Ana on December 4, 2018, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 12/11/2018

*Maria D. Huizar*  
Maria D. Huizar  
Clerk of the Council  
City of Santa Ana

Report  
3

## GLOSSARY

<b>Adult-Use</b>	Terminology used for “recreational” use to distinguish from “medicinal” use.
<b>BCC</b>	California Bureau of Cannabis Control
<b>Cannabis</b>	Cannabis refers to a group of three plants with psychoactive properties, known as <i>cannabis sativa</i> , <i>cannabis indica</i> , and <i>cannabis ruderalis</i> . When the flowers of these plants are harvested and dried, it becomes one of the most common drugs in the world. It is also referred to as weed, pot, or marijuana.
<b>Cannabis Public Benefit Fund</b>	The fund created by ordinance NS-2959 for revenue received in accordance with Measure Y.
<b>Community Benefits Program</b>	A voluntary, good-will program for dispensary owners and employees to provide donations or volunteer hours to the City of Santa Ana.
<b>DOJ</b>	United States Department of Justice
<b>Dispensary</b>	A retail store or business that sells Cannabis products.
<b>Medicinal</b>	Use specifically for medical purposes such as treating PTSD or for relieving nausea caused by chemotherapy.
<b>OCGJ</b>	Orange County Grand Jury
<b>PLAN</b>	Community Benefit and Sustainable Business Practices Plan
<b>Regulatory Safety Permit (RSP)</b>	A permit used by the City of Santa Ana pursuant to Chapter 40 of its Municipal Code.
<b>Unlicensed</b>	Also known as “illegal” or “black market.” Dispensaries not licensed or legally authorized to sell Cannabis products to the public.



## BIBLIOGRAPHY

- California Marijuana Legalization, Proposition 19 (1972)*. (1972, Nov 7). Retrieved 2021, from BALLOTPEdia:  
[https://ballotpedia.org/California\\_Marijuana\\_Legalization,\\_Proposition\\_19\\_\(1972\)](https://ballotpedia.org/California_Marijuana_Legalization,_Proposition_19_(1972))
- California Proposition 215, the Medical Marijuana Initiative (1996)*. (1996, Nov 5). Retrieved 2021, from BALLOTPEdia:  
[https://ballotpedia.org/California\\_Proposition\\_215,\\_the\\_Medical\\_Marijuana\\_Initiative\\_\(1996\)](https://ballotpedia.org/California_Proposition_215,_the_Medical_Marijuana_Initiative_(1996))
- ORDINANCE NO. NS -2929*. (2017, Oct 17). Retrieved 2021, from SantaAna Granicus:  
[http://santaana.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=1414&meta\\_id=54509](http://santaana.granicus.com/MetaViewer.php?view_id=2&clip_id=1414&meta_id=54509)
- Ordinance NS- 2959, Establishing a Cannabis Public Benefit Fund*. (2018, Dec). Retrieved 2021, from SantaAna Granicus:  
[https://santaana.granicus.com/MetaViewer.php?view\\_id=2&event\\_id=8261&meta\\_id=122354](https://santaana.granicus.com/MetaViewer.php?view_id=2&event_id=8261&meta_id=122354)
- Proposition 64: The Adult Use of Marijuana Act*. (2016, Nov). Retrieved 2012, from California Courts The Judicial Branch of California: <https://www.courts.ca.gov/prop64.htm>
- Santa Ana, California, Measure Y, Recreational Marijuana Business Tax (November 2018)*. (2018, Nov 6). Retrieved 2021, from BALLOTPEdia:  
[https://ballotpedia.org/Santa\\_Ana,\\_California,\\_Measure\\_Y,\\_Recreational\\_Marijuana\\_Business\\_Tax\\_\(November\\_2018\)](https://ballotpedia.org/Santa_Ana,_California,_Measure_Y,_Recreational_Marijuana_Business_Tax_(November_2018))
- Text of Proposition 19, the "Regulate, Control and Tax Cannabis Act of 2010" (California)*. (2010). Retrieved 2021, from BALLOTPEdia:  
[https://ballotpedia.org/Text\\_of\\_Proposition\\_19,\\_the\\_%22Regulate,\\_Control\\_and\\_Tax\\_Cannabis\\_Act\\_of\\_2010%22\\_\(California\)](https://ballotpedia.org/Text_of_Proposition_19,_the_%22Regulate,_Control_and_Tax_Cannabis_Act_of_2010%22_(California))



# A Look Behind the Bars of the Orange County Jails





Report  
4



## TABLE OF CONTENTS

<b>SUMMARY</b> .....	<b>1</b>
<b>BACKGROUND</b> .....	<b>1</b>
<b>Orange County Custodial Facilities</b> .....	<b>1</b>
<i>Central Men’s Jail</i> .....	2
<i>Central Women’s Jail</i> .....	2
<i>Intake &amp; Release Center</i> .....	2
<i>Transportation Division</i> .....	4
<i>Theo Lacy Facility</i> .....	5
<i>James A. Musick Facility</i> .....	6
<i>Court Holding Facility</i> .....	6
<b>REASON FOR STUDY</b> .....	<b>7</b>
<b>METHOD OF STUDY</b> .....	<b>7</b>
<b>INVESTIGATION AND ANALYSIS</b> .....	<b>7</b>
<b>Orange County Sheriff’s Department</b> .....	<b>7</b>
<i>COVID In OC Jails</i> .....	7
<i>Inmate Services</i> .....	8
<i>Commissary Operations</i> .....	9
<i>Food Services</i> .....	9
<i>In-custody Programs</i> .....	9
<i>Work Crews</i> .....	10
<i>Community Work Program &amp; Electronic Monitoring Program</i> .....	11
<i>Telephone &amp; Mail Privileges</i> .....	11
<i>Library Services</i> .....	12
<i>Inmate Visitation</i> .....	12
<b>Maintenance/Repairs/Expansion Plans</b> .....	<b>12</b>
<i>Red Book Dashboard</i> .....	12
<i>James A. Musick Expansion</i> .....	13
<b>Safety &amp; Security</b> .....	<b>15</b>
<i>Training</i> .....	15
<i>Security</i> .....	16
<b>Health Care Agency/Correctional Health Services</b> .....	<b>16</b>

*Behavioral Health Services*..... 16  
*Health Screenings & IRC Triage*..... 17  
*Special Medical Populations*..... 17  
*CHS Staffing & Outsourcing* ..... 18  
*Integrated Services Plan*..... 18  
**State & Federal Impacts** ..... **19**  
*Assembly Bill 109* ..... 19  
*No Bail* ..... 20  
*Early Release Program*..... 20  
*Lanterman-Petris Short Act* ..... 21  
*Title 15*..... 21  
**COMMENDATIONS**..... **21**  
**FINDINGS** ..... **24**  
**RECOMMENDATIONS**..... **25**  
**RESPONSES** ..... **26**  
    **RESPONSES REQUIRED** ..... **27**  
    **RESPONSES REQUESTED**..... **27**  
**GLOSSARY** ..... **28**  
**BIBLIOGRAPHY** ..... **31**

**Figures**

Figure 1 - Overhead view of OCSD Intake & Release Center.....4  
Figure 2 - OCSD Inmate Transportation Bus .....5  
Figure 3 - OCSD Architectural rendering of future James A. Musick Facility ..... 13  
Figure 4 - Typical inmate module at James A. Musick Facility ..... 14  
Figure 5 - Main entrance of James A. Musick Facility ..... 15  
Figure 6 - Housing Unit for Military Veteran Inmates at Theo Lacy Facility ..... 22  
Figure 7 - Deputy Joe Devela ..... 23

**Tables**

Table 1 - Inmate Medical Services .....8

## SUMMARY

During one of the most unprecedented times in recent history, the 2020-21 Orange County Grand Jury (OCGJ) conducted an investigation and wrote a report on the Orange County Jail Facilities. Despite the COVID pandemic, the OCGJ performed their required duties under *California Penal Code Section 919(b)*. The code requires that Grand Juries annually inquire into the condition and management of the various prison facilities within their respective county jurisdictions. Since there are no state prisons in Orange County, the Grand Jury inquired into the condition and management of the various adult jail facilities in Orange County.

There are four adult jails in Orange County and one adult Court holding facility. These facilities along with the Transportation Division were visited for the purpose of inquiry except for the James A. Musick Facility which is under construction. The Grand Jury has found the jails and facilities to be acceptable and in overall compliance with state and federal standards.

## BACKGROUND

### Orange County Custodial Facilities

The following sections provide background information for the various facilities that the 2020-21 OCGJ visited. The Central Jail Complex (CJX) consists of the Central Men's Jail, the Intake-Release Center, and the Transportation Division. The facilities are interconnected by a series of corridors and tunnels that provide secure movement throughout the various structures. The Theo Lacy Facility and the James A. Musick Facility are separately located and are not part of the CJX. In Santa Ana, the Orange County Court Holding Facility at the Central Justice Center was also visited.

The following paragraphs identify two levels of jail capacities. *Rated capacity* is a term used by the Board of State and Community Corrections for recommended inmate occupancy using state standards. The *maximum capacity* is the highest occupancy level before the Orange County Sheriff's Department (OCSD) would be required to release inmates.

Four adult jails, one holding facility, and an extensive overview of the expansion plans for the James A. Musick Facility were subject to an inquiry by the OCGJ. The OCSD operates the following five adult custody facilities which are the subjects of this report:

- Intake & Release Center (IRC)
- Central Men's Jail (CMJ)
- Theo Lacy Facility (includes women moved from Central Women's Jail (CWJ))
- James A. Musick Facility – Inoperative and under construction
- Court Holding Facility

Within the jails, pre-COVID, there were seven program categories with 54 different classes. During the COVID-19 pandemic, the maximum number of classes available was reduced to 22. Inmate programs offered include Educational, Vocational, General Services, Behavior Modification, Substance Abuse, Life Skills, and Re-Entry. Classes include 12 Step, religious

services, general education, and pre-release rehabilitation. On March 7, 2020, the inmate population was 3,078. On February 17, 2021, under COVID protocols, the population was 1,802.

### Central Men's Jail

The CMJ is part of the CJX and opened in 1968. It was designed as a linear style facility used for housing both sentenced and un-sentenced inmates in a maximum-security setting. The CMJ has a rated capacity of 1,219 inmates. The maximum capacity of CMJ is 1,428 inmates. On March 7, 2020, the inmate population was 1,302. On February 17, 2021, the population was 643.

The CMJ serves as a primary housing facility for the male population. There are several housing options, including one, four, six, and eight-man cells. In addition, there are disciplinary isolation cells and dormitory style housing options. Before the COVID pandemic, public visiting hours were available on Friday, Saturday, and Sunday, but visitation was suspended during COVID.

The first floor includes a court that conducts arraignments to help streamline the court system within the CMJ and to allow inmates to attend their court hearings. This operation began in October 2009, and provided for 28,627 arraignments in 2019. In 2020, 4,729 arraignments were processed in person prior to COVID. For the remainder of 2020 (after implementation of COVID restrictions) 14,004 arraignments were held virtually, for a total of 18,733 arraignments in 2020. The second floor includes regular housing, dental, medical, and mental health clinics.

### Central Women's Jail

The CWJ served as the primary housing facility for the female inmate population until December 2020, when the female inmates were relocated to Theo Lacy. The only females remaining at the CJX are those with severe mental health issues who are housed in a separate mental health unit known as Module K which is within the IRC.

### Intake & Release Center

The IRC opened in January 1988 and is part of the CJX. The IRC has a rated capacity of 407 and a maximum capacity of 905. It has a multi-storied, five-module configuration, in contrast to older linear designs found in CMJ. It supplies a safe environment where arrestees are booked, processed, classified, housed, transferred, and released.

A primary function of the IRC is to classify each arrestee to determine the initial housing location to which he or she will be assigned. The IRC serves as the heart of the Orange County Jail's Court Transfer System, coordinating the movement of some 600 inmates per week. Every inmate who enters the county jail system is booked through the IRC. Approximately 58,950 new bookings occur each year (only 35,010 in 2020), resulting in a daily population for all adult jails that ranges from 6,500 to 6,700 inmates pre-COVID and an estimated 3,100 during COVID.

The IRC has approximately 500 sworn and non-sworn personnel. Sworn consists of Deputies and non-sworn consists of Sheriff's Special Officers (SSO), Correctional Service Assistants (CSA), Correctional Service Technicians (CST), and support staff.

## A Look Behind the Bars of the Orange County Jail

The IRC handles the following functions:

- Booking and Release
- Triage (Medical and Mental Evaluation)
- Tuberculosis and Blood Pressure Screening
- Weapons and Contraband Pat-Down (Inmate Search and Scan)
- Property/Clothing Inventory
- Booking Photo
- Identification
- Fingerprinting/Classification
- Housing (IRC, CMJ, Theo Lacy)
- Release (Cite & Release, Bail)

Inmate Records:

- Open 24/7 to book inmates
- Maintains inmate records
- Reviews all court paperwork, updates and calculates inmate sentences, and ensures inmates are scheduled for court dates within guidelines set by law
- Prepares and submits monthly statistics to the State of California
- Processes, reviews, and updates more than 400 inmate files on an average court day

Module L:

- Designated as a medical/mental health housing unit for men
- Acute sectors require safety gowns and psychiatric observation
- Chronic sectors are not able to participate with other inmates in programs
- Medical and Mental Health professionals are assigned 24/7
- Includes a Crisis Stabilization Unit (CSU)
- Average of 18 men in each of the six sectors (single and double bunks)
- Currently has five beds assigned to the CSU

Report  
4



Module K:

- Designated as the Female Observation Unit for housing female mental health inmates
- Acute sectors require safety gowns and psychiatric observation
- Chronic sectors are not able to participate with other inmates in programs
- Medical and Mental Health professionals are assigned 24/7
- Includes a Crisis Stabilization Unit (CSU)
- 62 beds (single and double bunks)
- Currently has 15 beds assigned to the CSU (once construction is completed, there will be 30 CSU beds)



Figure 1 - Overhead view of OCSD Intake & Release Center

### Transportation Division

The Transportation Division is within the IRC command and handles transporting inmates to and from courts, work sites, hospitals, state prisons, and county jails throughout the state. Transportation personnel complete an average of 2,400 trips per month, transporting an estimated 437,000 inmates per year and logging 600,000 miles annually. This division has a staff of 59 sworn and two professional employees.

There are a variety of vehicles used by the transportation division. They include: 12 inmate transport buses (each holds 53 inmates), 17 vans (each holds 6-10 inmates), two secure custody vehicles (each holds two inmates), one black-and-white sedan (holds two inmates), one non security transport bus (Grand Jury), two command posts with one support vehicle, eight caged

vehicles (each holds two inmates in each vehicle), 28 support vehicles, and two Americans with Disabilities Act (ADA) vans that transport wheelchairs holding a total of three wheelchairs and eight inmates.



Figure 2 - OCSD Inmate Transportation Bus

### Theo Lacy Facility

The Theo Lacy Facility is a maximum-security jail containing inmates of all security levels with a rated capacity of 2,476 and a maximum capacity of 3,468. On March 7, 2020, the inmate population was 3,078. On February 17, 2021 (during COVID), the population was 1,802. The facility is in the City of Orange, in an urban center that includes a retail mall, hospital, and other government facilities. Inmates incarcerated at Theo Lacy are classified by their past confinement history, current charges, criminal sophistication, and a host of other significant indicators. Inmates are housed in units ranging from multiple-bunk dorms to one or two-man cells. Inmates have access to television, outdoor recreation, local newspapers, mail, and commissary purchases. Public visiting is available on Friday, Saturday, and Sunday.

Theo Lacy contains its own Booking and Intake/Release area as well as Classification, Inmate Records and Inmate Law Library. In addition, Theo Lacy has an Emergency Response Team (ERT) that is used at the discretion of a Sergeant, with notification to the Watch Commander, in situations that pose a threat to staff or other inmates. The deputies assigned to ERT are trained to use specialized equipment while responding safely and efficiently.

### James A. Musick Facility

The James A. Musick Facility is a one-hundred-acre, minimum security facility near the cities of Irvine and Lake Forest. It opened in 1963 and was often referred to as “The Farm.” In July 2019, the facility suspended inmate services to accommodate an expansion project. Inmates previously housed at Musick were moved to one of the other Orange County jails.

The expansion project has an estimated completion date of fall 2022 with operations scheduled to resume in January 2023.

Currently, Musick is home to 24 employees but no inmates. These employees, including Sheriff’s Deputies, are planting and harvesting food for the Orange County food bank. In October 2020, Deputies harvested pumpkins for Children’s Hospital of Orange County and local school children.

The facility is providing laundry services to Theo Lacy, IRC, and CMJ. Early release inmates participating in a work program maintain the laundry services during the day and return to their home residences at night.

### Court Holding Facility

The Orange County Sheriff’s Court Holding Facility is under the command of the Custody/Courts Division at the Central Justice Center in Santa Ana. It is responsible for efficiently shuttling prisoners in and out of the courts. The statistical information is as follows:

#### Inmates:

- Pre-COVID daily average = 155
- COVID pandemic daily average ≈ 30

#### Personnel:

- Total Staff = 132
  - Deputies = 77 (39 bailiff/38 detention)
  - Sheriff Special Officers (SSO) = 55 (31 bailiff/24 security)

#### Courtroom Totals:

- Total Courtrooms = 65
  - Criminal = 31
  - Civil = 26
  - Family = 3
  - Probate = 5

## REASON FOR STUDY

*California Penal Code Section 919(b)* requires the following: “The grand jury shall inquire into the condition and management of public prisons within the county.” However, because there are no prison facilities in Orange County, the 2020-21 Orange County Grand Jury has provided a general overview of the current status of the OCSD adult custodial jail facilities in Orange County.

## METHOD OF STUDY

The 2020-21 OCGJ complied with the jail inspection mandate by performing research, conducting interviews, and performing visual inspections of adult custodial facilities in the County. Research involved review of documents associated with the various agencies working in conjunction with OCSD to provide services and general jail operations. Interviews with the OCSD and Correctional Health Services (CHS) personnel were primary sources of information with supporting and confirming data provided by several outside agencies. The OCGJ performed on-site inspections of five County custodial facilities.

## INVESTIGATION AND ANALYSIS

### Orange County Sheriff’s Department

The Orange County Sheriff’s Department is one of the largest law enforcement agencies in the nation, providing a variety of enforcement services focused on a collaborative, dedicated, and innovative approach to public safety.

The more than 3,800 sworn and professional staff, along with more than 800 reserve personnel, are committed to serving the needs of Orange County by embodying the Sheriff’s Department stated core values: “*integrity, service before self, professionalism in the performance of duty, and vigilance in safeguarding our community.*”

The Corrections and Court Operations Command is responsible for providing safe and secure facilities for those entrusted to its care and is also responsible for security of the county’s courthouses. The following information is a comprehensive investigative look at the systems, operations, and services associated with the correctional facilities environments in Orange County.

### COVID In OC Jails

On several occasions, the OCGJ visited all the operational custody facilities and was able to observe first-hand the significant impact COVID has had on the OCSD jail systems and their ability to provide safety and security. Due to the COVID Pandemic, CHS and OCSD have worked together to create and implement strategies, protocols, guidelines, and procedures to provide a safe custody environment to protect inmates, Sheriff’s Deputies and CHS staff. OCSD has been proactive in implementing containment strategies and has activated communicable disease protocols to safeguard the inmates and staff at the Orange County Jails.

CHS conducts enhanced medical screening for all inmates, law enforcement, and staff entering the Orange County Jail, including temperature screening prior to entering any jail facility. All incoming inmates are quarantined for up to 14 days to limit exposure to the current inmate population. Every inmate is provided with a mask, and common areas are disinfected on a regular schedule. COVID testing is provided to inmates daily and Deputies and CHS also have the option to be tested but are not mandated to take a COVID test. Vaccinations have been made available for all CHS and OCSD personnel but are not mandatory.

Several additional temporary changes have been implemented in the Orange County jail facilities to further protect the public, staff, and those in the custody of the Sheriff’s Department. Congregate meals are no longer provided in the jail mess hall areas and inmates receive delivery of meals to their cells or modular areas. Inmate work crews in the laundry, kitchen, and janitorial areas have been suspended. Visiting, excluding attorney-client visitation, and all volunteer programming were temporarily suspended. OCSD has implemented systems for virtual preliminary court appearances and is working with the courts to reduce transportation of inmates to the court while utilizing other remote resources.

The Sheriff’s Department has demonstrated its understanding of the impact and importance of maintaining contact with family and having access to programs. To that end, during COVID, the OCSD has directed the following:

- Each inmate will receive access to two five-minute calls per week free of charge
- Inmates will have access to free stationery and stamps to maintain written communication with family and friends
- Inmates will have access to electronic religious services, if available

Jail facilities must attend to the medical needs of the inmates (see table below):

Service	Pre-COVID	COVID
Daily Medications	16,439	13,575
Daily Medical Treatments	1,140	735
Daily Diabetic Treatments	317	138

Table 1 - Inmate Medical Services

### Inmate Services

The Inmate Services Division includes Commissary Operations, Food Services, and Correctional Programs. The division provides products, professional services, and nutritious meals for the County’s inmate population. It is also responsible for offering rehabilitative opportunities and re-entry programs aiding in successful community reintegration. This Division consists of more than 200 personnel and 900 volunteers working with the Orange County Re-Entry Partnership (OCREP), a formalized group of county/community stakeholders. The staff, volunteers, and stakeholders ensure that the Sheriff’s Department meets or exceeds Title 15 of the Minimum Jails Standards by providing support services, including meals, commissary, educational, vocational,

religious, recreational, and re-entry transition programs to foster rehabilitation and reduce recidivism of inmates once they leave the Sheriff's custody.

### Commissary Operations

Commissary Operations is an automated, profit-based unit with fiduciary responsibilities over inmate funds. Commissary Operations provide products and services to inmates in the Sheriff's jail facilities and provides funding to the Sheriff's Inmate Welfare Fund to support vocational and educational training programs. There are approximately 175 items available through Commissary Operations. Categories include personal care (hygiene for hand and body), hair care, snacks, nuts, chips, beverages, candy, food items, stationery supplies, and greeting cards. Inmates are continually introduced to new items. Commissary Operations deliver these products to approximately 3,000 inmates confined in the jail facilities. Inmates may order and receive commissary items up to three times per week. Commissary Operations staff are civilian employees responsible for processing approximately 466,000 orders with annual sales in excess of \$7.4 million.

Unfortunately, during the pandemic the commissary was temporarily closed but inmates were provided hygiene kits at no charge and limited free use of telephone services. In January 2021, the commissary reopened, providing inmates access to products.

### Food Services

The Food Services Unit operates a total of three kitchens, three inmate dining halls, two warehouses, and prepares over 5.5 million meals annually. Utilizing approximately 90 professional staff members along with inmate kitchen crews, Food Services provides three nutritionally balanced meals per day to each inmate housed in the County's four jail facilities. In addition, Food Services prepares special medical diets ordered by Correctional Medical Services staff for inmates with special dietary needs as well as religious diets, court ordered meals, cold bag meals for inmates attending court, County inmate work crews, and emergent operational situations. These meals must meet or exceed the requirements set forth by the California Board of Corrections (BOC), Title 15, the National Academy of Sciences Recommended Daily Allowances, and the California Retail Food Code. The Food Services' Public Health Nutritionist analyzes all menus to ensure the Sheriff stays in compliance with the above-mentioned guidelines.

During the pandemic, no hot meals were provided, all mess halls and congregate eating areas were closed, and meals were delivered to individual cells, module units, and general population housing.

### In-custody Programs

Correctional Programs provide inmates the opportunity for an effective, rehabilitative experience while in custody. Inmate programs and services related to rehabilitation opportunities are mandated by Title 15 Minimum Jail Standards and related case law. The Sheriff's Department provides additional programs that are designed towards successfully transitioning inmates back

into the community and to help reduce recidivism in Orange County. These activities are planned, coordinated, and conducted at each of the Sheriff's facilities by the Correctional Programs staff. Programs include, but are not limited to educational classes, vocational education training, and "life skills" classes such as Parenting and Job Development. Specialized programming is also offered to incarcerated veterans who are motivated toward changing their lives. Correctional Programs provide opportunities for personal change, including programs focusing on substance abuse recovery, domestic violence, anger management, fitness and exercise, general and law library services, religious and inspirational programs, and pre-release preparation and assistance, all designed to maximize the chances of an inmate's successful transition into the community upon release.

CHS, in cooperation with OCSD, has contracted with vendors to provide inmate services both in-custody and upon re-entry into society. The Project Kinship's Safe Haven program provides case management, behavioral health counseling, drug and alcohol counseling, peer support services, basic needs assistance, and support groups for recently released community members. The Safe Haven program provides services to clients who are 18 and older, have mild to moderate mental health issues, and are non-violent offenders. The Safe Haven Engagement Team is stationed at the IRC. They provide connections to basic needs and referrals upon release. The Safe Haven program provides client support to improve lives and reduce the potential for future imprisonment.

The Phoenix House program provides services including intensive cognitive behavioral treatment for substance abuse and addiction, criminal thinking patterns, anger management, as well as teaching life skills and instilling positive, pro-social values. They also provide in-custody substance abuse and mental health services.

OCSD Correctional Programs has partnered with 10 agencies to provide programming for the Housing Unit for Military Veterans (HUMV), including the Department of Veterans Affairs, the Tierney Center for Veteran Services, Working Wardrobes, and the Orange County Probation Department, among other agencies.

Unfortunately, due to the pandemic social distance protocols, all in-custody programs were stopped except for the Project Kinship's re-entry program. Commencing January 2021, minimal and limited services were reengaged.

### Work Crews

With Deputy recommendation, an inmate serving limited time, non-violent, and considered on "good behavior" can volunteer to work on jail crews. These crews can work in the jail kitchen, janitorial, paint crew, bus washing, landscaping, warehouse, barber shop, and laundry. The work crews are vital to rehabilitation and to the operations within the jail system. Inmates volunteering on these crews receive privileges such as time off their sentences, extra outdoor time, extra meal portions, and daily clothing exchange. While serving on a crew, inmates learn skills such as how to work as a team and get experience in a structured work environment.

Unfortunately, due to COVID restrictions the work crews were suspended. As of January 2021, limited work crews resumed in the laundry and kitchen areas with limited participation.

### Community Work Program & Electronic Monitoring Program

The Community Work Program (CWP) was designed to save the County money, free up needed jail beds, and help maintain County facilities, beaches, and parks. Under *California Penal Code Section 4024.2*, the Sheriff is authorized to release inmates who meet a certain standard established by the Sheriff to perform work for the county in lieu of their jail sentence. An eight to ten-hour workday is equivalent to twenty-four hours in custody. CWP opens bed space needed to alleviate overcrowding in the county jail system. Furthermore, it saves on the cost of medical services, feeding, and clothing of all inmates who participate in CWP.

Participation in the CWP program is voluntary and considered a privilege. CWP allows the inmate to go home at night and be a productive member of the community. Assigned inmates are subject to Jail Rules and Regulations while they participate in the CWP and are subject to being returned to custody for violations of such rules, regulations, and laws.

CWP benefits everyone involved. This program is very important to the Sheriff, the County of Orange, tax-paying residents, inmates, and their families. The monthly average of inmates participating in the CWP in 2019 was 135. The average in 2020 was 76. In 2021, the program has been mainly on hold due to the COVID-related mandated release of inmates to comply with social distancing, having only 50 inmates in the program year-to-date.

In addition, there is an Electronic Monitoring Program (EMP). The EMP was implemented in March 2013 and allows qualified sentenced individuals with misdemeanors to be monitored electronically instead of requiring incarceration. The average daily EMP population for fiscal year 2019-20 was 102.

### Telephone & Mail Privileges

The Inmate Telephone System is not owned or operated by the OCSD. Global Tel\*Link Corp. (GTL), an outside vendor, is currently contracted to provide inmate telephone services. Inmates, family members, and friends can purchase call cards or deposit funds in the inmate's account to cover the costs of telephone services.

Recently, the contract has gone to bid for proposals that will not only provide telephone services but will also incorporate the use of video technology, tablets, and the ability for inmates to purchase movies for viewing. The current contract with GTL is on a month-to-month basis until the new contract is approved.

Inmates are permitted to send and receive unlimited correspondence. The only exception is when there is reasonable cause to justify limitations for reasons of public safety or facility order, or to prevent violation of state or federal law. All incoming/outgoing mail is subject to search when it enters or leaves the facility.



Special use telephones are available for inmates with hearing impairments and non-ambulatory disabilities. In addition, there are interpreting services and cordless phones for those unable to leave their cells. Due to COVID and the elimination of programs and visitors, the OCSD has provided free telephone privileges to all inmates housed in modular units or barracks.

### Library Services

Inmates also have the opportunity to utilize library services. Each of the four jail facilities has its own library. Inmates have access to books, magazines, and newspapers. Each inmate can check out up to five publications each week. Also available are games such as checkers, chess, dominos, and cards.

### Inmate Visitation

Visitation at all jail facilities is restricted to Friday, Saturday, and Sunday between 8:00 AM and 6:00 PM, subject to the following:

- Visitors must be present 15 minutes before their scheduled visiting time
- Sign-ups for general population visits are not accepted after 5:00 PM

As part of OCSD's ongoing COVID prevention efforts to protect the health and safety of the inmates, visitors, and employees, the Sheriff's Department has suspended inmate visitation at all Orange County jail facilities, except for attorney visitation. The OCSD is committed to resuming visitation when it is safe to do so and within CDC guidelines for social distancing.

### Maintenance/Repairs/Expansion Plans

#### Red Book Dashboard

OCSD started a construction project report titled, "*The Red Book*". The report prioritizes construction projects for jail facilities with estimated costs, timelines, and short and long-term goals for achieving the projects. A Red Team Dashboard is prepared monthly showing the progress of each project, funding issues, and project completion status. The Red Book projects have funding approved based upon current budgetary standards. Approximately 150 projects have been slated for completion in the Red Book. Currently, based upon the February 2021 Dashboard Report, 80 projects are pending.

One unfunded high priority project of major concern to the OCGJ is the security block wall between the Theo Lacy Facility and the vacant animal shelter. The lack of a block wall at this site presents a major security risk.

Equally important to note, OCSD has established a report of unfunded projects that they believe are necessary. This is a "wish list" of 57 construction projects to strengthen the jails' safety and security.

Due to COVID, construction has halted, and timelines have been suspended. The County has had to reprioritize projects, and many have been delayed or deferred due to lack of funding.

## James A. Musick Expansion



Figure 3 - OCSD Architectural rendering of future James A. Musick Facility

The original project plans for James A. Musick called for a buildout to house 7,584 maximum security beds (James A. Musick Facility Grand Jury Overview, October 27, 2020). The cities of Lake Forest and Irvine sued the Sheriff's department and the County due to the perceived dangers of having that many high-level inmates in their communities.

Each city lost its lawsuit. Lake Forest leaders later negotiated with the County and the Sheriff on the project. The settlement they reached limits the population to a combined 3,100 Level 1 (minimum) and Level 2 (moderate) inmates. The agreement prohibits access from Bake Parkway.

Construction will consist of six phases. Currently, only the initial two phases have been budgeted. The cost of these two phases is estimated to be \$261 million. Phase One will supply 512 beds (men, women, and ADA compliant). One hundred million dollars will be funded by AB-900. Phase Two will supply an additional 384 beds (men, women, and ADA compliant). Eighty million dollars will be funded by SB-1022. The remaining \$81 million will be funded by the County.

## A Look Behind the Bars of the Orange County Jail



Figure 4 - Typical inmate module at James A. Musick Facility

Each module at the jail will house forty-eight to sixty-four inmates in eight-person cells. There are no bars, just non-breakable glass walls. The purpose of this “new Musick” is for low level offenders to not mix with inmates convicted of higher level, more serious, crimes and to lower recidivism (reoffending and returning to the jail system). The color scheme will be calming and there will be murals (painted by talented inmates) on the walls with the goal being to lower the anxiety level for both deputies and inmates.

During the day, deputies will interact with inmates (direct supervision) and inmates will go back into their modules at night. Cameras, as well as “crow’s nests” (deputies perched up high, overlooking the open areas where deputies and inmates are interacting), provide emergency services and backup as needed.

The new construction brings new jail management, enhanced security, and technology to the previously outdated “Farm.” The modern design reduces the amount of time inmates spend being moved among the different services such as the cafeteria and recreation area. Because these functions are now within each housing unit, inmates need to leave only for medical treatment and court appearances. The goal is to have the services come to inmates, not inmates going to the services.



Figure 5 - Main entrance of James A. Musick Facility

## Safety & Security

### Training

Training is essential to ensure the safety of deputies, inmates, and staff who work in the jails. In October 2020, the OCGJ toured the Orange County Sheriff's Training Academy and observed firsthand the intensive training new recruits receive before entering service with the OCSD.

The department utilizes two training sites, ensuring the best learning environment possible depending on the specific needs of the course being taught. Advanced officer training is primarily conducted at the Sandra Hutchens Regional Law Enforcement Training Center in Orange. Academy and entry level training is primarily conducted at the Sheriff's Regional Training Academy in Tustin. The OCSD as well as multiple local, state, and federal public safety agencies train at and utilize both sites. Extensive input from law enforcement and other leaders throughout the county helps to mold the curriculum and training that is offered. Both facilities are often utilized seven days per week and include daytime and evening instruction.

The Sheriff's Regional Training Academy, located on the former Marine Corps Lighter Than Air Base property in Tustin, was officially opened in September 2007. It facilitates a minimum of six basic academies and two sheriff's special officer academies per year, as well as reserve officer academies and a future modular training academy program. The site is jointly occupied by training division staff as well as training partners from the Santa Ana College Criminal Justice office. This new, 52,000 square foot state-of-the-art facility, boasts four classrooms, indoor and outdoor recruit dining areas, an arrest and control techniques training area, a weight room, a special events room with a stage and seating for approximately 1,300 guests, dual obstacle

courses, an outdoor running trail, formal inspection grounds, and video production offices with a fully equipped production studio. The facility houses the Sheriff's Community Services office, and hosts sheriff's explorer and reserve officer meetings and training, Citizens Emergency Response Team (CERT) training, pre-employment (PEP) and mentoring training. Multiple agencies utilize the facility for recruiting and testing of law enforcement candidates. The Orange County Sheriff's Regional Training Academy is also home to the Orange County Peace Officer's Memorial, which finished construction in May 2013.

The Standards and Training for Corrections Unit (STC) provides entry level and annual training for staff assigned to jail facilities, subject to state mandated training requirements per the BOC. The STC also assists staff assigned to regional based courts and temporary holding facilities in meeting training requirements. Ongoing training is a major priority for deputies and courses are offered in Crisis Intervention Training (CIT), substance abuse and mental health disorders for deputies assigned to the behavioral health units.

## Security

Security is the highest priority in maintaining a safe and secure custodial environment. Security protects not only the public but also inmates and all who work at or visit the jail facilities. During a tour of the Theo Lacy facility in October 2020, the OCGJ observed a potential security risk at the main front desk entrance. The main entrance is a hub for the public to enter the facility. OCGJ personnel are behind a desk with a two-foot-tall plexiglass wall atop the desk that could be easily breached.

An OCGJ tour of the CMJ in September 2020 revealed the Attorney Bonds Entrance area had significant security issues. There were no video surveillance cameras in the area, and no separation between attorney and inmate, creating an opportunity for contraband to enter the facility.

## Health Care Agency/Correctional Health Services

CHS is a division of the Orange County Health Care Agency (OCHCA) and provides medical, dental, nursing, infections control, health education, and pharmaceutical services. The CHS provides a community standard of care to all inmates in the County's correctional facilities. Additionally, CHS contracts with hospitals for inpatient and specialty care and provides mental health services. These include 24-hour emergency triage and crisis intervention, suicide prevention, treatment beds, individual and group therapy, substance abuse counseling, medication assessment, and discharge planning to all adult inmates in the County's correctional facilities.

## Behavioral Health Services

The current inmate population that have a diagnosed mental health condition at the time of this report is estimated at 40 percent. The need for mental health services is crucial to maintain safety and security. CHS has created a special Behavioral Health Services (BHS) unit to provide mental health services to inmates in the County's correctional facilities. BHS places emphasis on the stabilization of severe mental disorders, suicide prevention, and crisis intervention. Inmates are

viewed in a holistic fashion with careful attention to the possible influence of physical problems on the inmate's psychiatric condition. The BHS Team recognizes the importance of linking inmates to treatment resources after release from jail.

BHS provides a wide range of psychiatric and crisis intervention services, when needed, to the inmates in the Orange County Jail System:

- Evaluation/assessment of all inmates referred during the triage process
- Crisis intervention
- Medication evaluation and prescription of psychotropic medication
- Collateral contacts with Sheriff's Department, Criminal Justice System, Mental Health professionals, families, and friends for the purpose of effective continuing care during incarceration
- Group therapy
- Care coordination services for linkage, referral to community mental health services and discharge planning for post custody treatment service
- Coordination with psychiatric hospitals for long term care

### Health Screenings & IRC Triage

Upon intake into the jail system, every inmate receives a health screening consisting of a general medical and mental assessment. A multi-page questionnaire is completed which creates a medical database for each person incarcerated. Determinations are then made to assign the inmate to housing, prescribe medications, and identify dietary restrictions or special need issues based upon his/her medical/mental conditions.

Recently, a secure and confidential triage center was constructed at the IRC allowing a more private assessment of the inmates' medical and mental screenings. A newly constructed intake medical triage center opened at the end of January 2021. It was built based on goals established in the Integrated Services Plan (ISP). The OCGJ conducted a site visit on February 16, 2021, to verify the opening of the new medical triage center and observe intake operations.

Requests for health care services for inmates are accepted verbally or in writing from all sources including, but not limited to, inmates, security staff, legal representatives, family, and outside agencies. Daily processing and scheduling of appointments are conducted by CHS clerical staff.

### Special Medical Populations

At the time of intake and assessment, CHS staff identify any special medical needs of the inmate. Special medical populations include pregnant females, inmates with mental health disorders, substance abuse inmates requiring detox, the frail, elderly, and those with medical conditions that require special diets, medications, and/or medical devices such as wheelchairs, walkers, and crutches. The assessment may also include a more restrictive housing environment to observe inmates suffering from extreme medical or mental conditions. The Medical Observation Unit is within the medical treatment area and medical staff are available 24/7 to administer assistance as needed.

## CHS Staffing & Outsourcing

CHS outsources their psychiatric services with Telehealth which provides on-site psychiatric services as well as telepsychiatry. Currently, CHS has been unable to hire a psychiatrist on staff, due in part to the low salary offered that is below the industry standard, forcing psychiatric services to be outsourced.

All inmates have access to a continuum of health care services seven days per week, 24 hours per day by qualified and trained health professionals. Registered Nurses (RNs) are on-site seven days per week, 24 hours per day at each facility. Mental health clinicians are on-site seven days per week, 24 hours per day at the central jail facilities and are available Monday-Saturday at outlying facilities. Inmates who need to be seen after hours or weekends may be transferred to the IRC at any time for an evaluation. Telepsychiatry, an extension of psychiatric services, is also available to increase access to mental health care.

Routine dental services are available five days per week. Emergency dental services occurring after hours are covered by a RN or CHS contracted provider.

Sick calls are conducted by CHS seven days a week at the central jail facilities and at least two days a week at outlying facilities. An on-call physician is available 24 hours per day to all facilities, when a provider is not available on-site. Pharmacy Services are available seven days a week. Pharmacy services are provided by one on-site pharmacy licensed by the California Board of Pharmacy and staffed during hours of operation by California licensed pharmacists and pharmacy technicians. Pharmacy staff are responsible for the procuring, dispensing, distributing, and storing of inmate medications.

Additional health care services available on-site include radiology, laboratory tests, diagnostic tests, and specialty clinic consultations. Communication of health care treatment occurs between CHS clinical staff in order to coordinate care and preserve the health of the inmate, other inmates, and/or staff. Inmates are provided information regarding access to medical, mental health, and dental care as part of the admission health screening process.

CHS staff coordinates with OCSD staff to ensure that any inmate with a disability or language barrier will receive assistance in requesting or accessing health care. Inmates are able to initiate requests for health care services and receive timely follow up to their health requests.

## Integrated Services Plan

The Integrated Services Plan (ISP) is a collaborative strategy focused on implementing enhanced care coordination for utilizers of the Orange County Correctional system. The ISP is comprised of five pillars: Prevention, Courts, In-Custody, Re-Entry, and Juveniles. Each pillar has specific goals and objectives with timelines. The ISP is to be completed by 2025 and has an extensive behavioral health services component.

The ISP is monitored and implemented by the Orange County Criminal Justice Coordinating Council (OCCJCC). Those on the coordinating council include the heads of agencies responsible

for implementing the plan such as but not limited to: Don Barnes (OCSD), Todd Spitzer (OCDA), Dr. Clayton Chau (OCHCA), Erick Larsh (OC Superior Court), Frank Kim (County CEO), Martin Swartz (OC Public Defender), Andrew Do (Chairman, OC Board of Supervisors), and several other judges and support staff in various departments. The OCCJCC is required to meet quarterly and provide updates to the ISP and summarize progress to date.

## State & Federal Impacts

### Assembly Bill 109

In 2011, Assembly Bill 109 (AB-109) known as the Public Safety Realignment Act passed. It was enacted because of a severely overcrowded state prison system which put a strain on health care and social services available to inmates. It should also be noted that the statute says it was enacted to combat recidivism and to reduce overcrowding in prisons at the state level.

*(California Penal Code Section 17.5)*

The consequence of the passage of AB-109 was to divert people convicted of certain classes of less serious felonies from the state prison system to local county jails. The basic premise behind AB-109 is to punish low-level felons with local jail or out-of-custody supervision instead of prison incarceration. The felons sent from the state prison to County of Orange jails are those defined as committing “*non-serious, non-violent and non-sex related crimes*”.

According to budget information from the Orange County Chief Executive Officer’s office, the individual daily bed rate in OC jails is \$152.71 per AB-109 inmate. That amounts to a payment from the State to Orange County of \$55,739.15 for housing one AB-109 inmate for a year.

The OCGJ interviewed numerous employees of the OCSD and CHS. The unanimous response of senior staff was that the total amount of dollars received from the State for AB-109 inmates creates a financial loss for the OCSD. According to the AB-109 Orange County Strategic Financial Plan Forecast, dated 10/12/20, Orange County projects an annual loss in 2021 of \$2.8 million for serving AB-109 inmates. Last fiscal year (2019/20) the County had a loss of \$2,702,148 for serving AB-109 inmates.

Passage and implementation of AB-109 has adversely influenced criminal activity within the OC jails, according to OCSD personnel. Since AB-109 went into effect in 2011, inmate assaults on staff have nearly tripled. As a result of the danger of assaults, the use of non-sworn staff has been reduced.

Because of AB-109, the OC jail staff will continue to face more sophisticated and potentially dangerous inmates. AB-109 inmates will present dangers to other inmates, jail personnel, CHS staff and/or the OCSD deputies. Therefore, the longer sentences for these AB-109 inmates increase the need for more educational and rehabilitative programs, exercise opportunities, and the jail facilities to enable such efforts. County jails were designed to house inmates for sentences of less than one year.

Receiving AB-109 inmates without any limitations on the length of possible jail sentences creates a situation where the OC jails will face an aging inmate population. These state prison



inmates may initially enter the OC jails with compromised health. As a result, long-term jail sentences will increase healthcare services costs to the OCSD, and the need for facilities to provide such care.

The OCGJ recommends that the OCSD exercise and exhaust all efforts to seek a significant increase in the daily bed rate for AB-109 inmates in OC jails to cover current and projected future increases in costs associated with the care and supervision of AB-109 inmates.

## No Bail

The Cash Bail System charges defendants in criminal cases a certain amount of money, based on the crime committed, to be released pending the hearing of their trial. A suspect would pay a case cash bond to be released from jail and receive the money back when returning to court to attend the trial. Bail was deemed necessary to ensure the suspect would attend all hearings and court dates.

The Superior Courts are responsible for setting bail but must comply with the Eighth Amendment of the U.S. Constitution. This amendment states “*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment be inflicted.*”

In 2018, California passed SB-10, which abolished the cash bail system for defendants waiting for trial.

In the November 2020 election, Proposition 25, known as the “*Zero Bail Policy*,” was placed on the ballot for voters to repeal or uphold legislation, specifically SB-10. A yes vote would have the cash bail system replaced with no cash bail. A no vote would keep the cash bail system in place. Proposition 25, “*Zero Bail Policy*,” was rejected.

The primary purpose of the Zero Bail Policy was to reduce the jail population of people awaiting trial who could not afford to post bail. The Zero Bail legislation aimed to make the system of bail fair for those of low economic incomes and to avoid incurring debt from bail bonds.

## Early Release Program

In March 2020, during the pandemic, California Chief Justice Tani Cantil-Sakauye issued emergency orders to local jurisdictions that they, “*identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.*” Based on this, non-violent and less serious offenders with less than 60 days left on their sentence would be eligible for early release.

The OCSD has also been given leeway to move quickly on the early release of inmates if the health situation in local jails continues to deteriorate due to the COVID pandemic.

A county benefit for reduced sentences or early release of inmates is the decrease in jail costs by not having to provide housing, food, and medical care. A major effort made this past year during the pandemic, was to reduce the jail population to avoid spreading of COVID.

## Lanterman-Petris Short Act

The Lanterman-Petris Short Act (LPS) refers in part to *California Welfare and Institutions Code Sections 5150, 5151 and 5152*. It is a California law governing the involuntary civil commitment of individuals who, due to mental illness, pose a danger to self or others, or who are gravely disabled and require inpatient psychiatric care.

Being “*gravely disabled*” means that someone is no longer able to provide for their own food, clothing, or shelter because of a mental health disorder. (*Welfare and Institutions Code Section 5008(h)(A).*)

The LPS designated beds for the Orange County Central Jail Complex are expected to total 45 beds. Allocation of designated LPS beds will be 30 for men and 15 for women as stated in the Integrated Services Plan (ISP) Pillar #3. Currently, CJX has 5 men and 5 women LPS designated beds. Delays in reaching the IPS goal of 45 total beds is due to the COVID impact on construction and funding.

## Title 15

Title 15 is the minimum standard for local Orange County detention facilities. Inmate programs and services related to rehabilitation opportunities are required by Title 15. The OCSD provides supplemental programs that are designed to successfully move inmates back into the community with the goal to help reduce recidivism.

Programs required by Title 15 include the following:

- Educational classes
- Vocational training
- Substance abuse recovery
- Fitness and exercise
- Pre-release preparations
- Post-release assistance
- Domestic violence and anger management training
- Life skills training (parenting & job development)

## COMMENDATIONS

The Orange County Grand Jury of 2020-21 received full cooperation from all OCSD personnel at every facility visited. The OCSD allowed the OCGJ complete access to every area requested and provided extensive documents, pictures, and policies. Equally important, the OCGJ received cooperation from the CHS staff who also provided valuable information, documents, and access to all medical facilities within the jails.

The OCGJ commends the OCSD for creating the Housing Unit for Military Veterans (HUMV). This unique modular unit allows veterans to receive special services and programs that assist the inmate in regaining positive skills for community re-entry.

A Look Behind the Bars of the Orange County Jail

The OCGJ commends the OCSD for establishing the Behavioral Health Bureau to address the mental health issues in the jail system and establishing Module K for women with mental health issues.

The OCGJ commends the OCSD for being an instrumental partner in the Integrated Services Plan and for relocating the female inmate population from the Central Women's Jail to a new unit at Theo Lacy which is more conducive to rehabilitation.



Figure 6 - Housing Unit for Military Veteran Inmates at Theo Lacy Facility

A Look Behind the Bars of the Orange County Jail

A special thanks to Deputy Joe Devela for his dedication and respect to our incarcerated veterans by painting the murals in the HUMV.



Figure 7 - Deputy Joe Devela

## FINDINGS

In accordance with *California Penal Code Sections 933 and 933.05*, the 2020-21 Grand Jury requires 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 described here, the 2020-21 Orange County Grand Jury has arrived at the following principal findings:

### Adult Jail Facilities

- F1. There is a security risk at the Theo Lacy Facility where it is separated from the vacant Orange County Animal Shelter facility by a chain link fence.
- F2. Security at the Attorney Bonds Entrance area at the Central Men's Jail is inadequate to prevent trafficking of contraband through contact visits.
- F3. The front desk at the main entrance of the Theo Lacy Facility does not provide enough separation between OCSD personnel and the general public.
- F4. Lack of mandatory COVID testing for jail personnel creates a high risk of infection to inmates and others.
- F5. Due to the lack of trained OCSD personnel, the Intake and Release Center's scanning device is not used consistently to prevent contraband from entering the facility.
- F6. Orange County jail and detainee transportation systems lack computer integration with the Court holding facilities, creating a need for a hard copy trail of documents.
- F7. AB-109 reimbursements do not cover actual costs for Orange County inmates.
- F8. The Grand Jury has found the jails and facilities to be acceptable and in overall compliance with state and federal standards.

### Health Care Agency/Correctional Health Services

- F9. CHS direct service staff have not received enough Crisis Intervention Training
- F10. Lack of mandatory COVID testing for CHS staff creates a high risk of infection to inmates and others.
- F11. CHS and BHS have not integrated their electronic records, thus delaying and limiting their ability to share inmate information.

## RECOMMENDATIONS

In accordance with *California Penal Code Sections 933 and 933.05*, the 2020-21 Grand Jury requires 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 described herein, the 2020-21 Orange County Grand Jury makes the following recommendations:

### Adult Jail Facilities

- R1. Construct a wall consistent with the existing wall, securing the area of the Theo Lacy Facility adjacent to the vacant Orange County Animal Shelter by June 30, 2022. (F1)
- R2. Install security booths and video surveillance cameras in the Attorney Bonds entrance at the Central Men's Jail by June 30, 2022. (F2)
- R3. Construct an eight-foot-tall plexiglass shield to maintain security at the front desk entrance of the Theo Lacy Facility by December 31, 2021. (F3)
- R4. Require mandatory COVID testing for all OCSD Jail personnel, effective immediately. (F4)
- R5. During the intake process at the Intake and Release Center all inmates should be subject to a full body scan to enhance security and reduce contraband coming into the jail, effective immediately. (F5)
- R6. Implement integrated software that allows the Court's holding facility to communicate electronically with Orange County jails and detainee transportation by June 30, 2022. (F6)
- R7. Make all reasonable efforts to seek an increase in the daily bed rate for AB 109 inmates to cover OCSD actual costs by December 31, 2021. (F7)

### Orange County Health Care Agency/Correctional Health Services

- R8. Train all direct service CHS staff in level 1 Crisis Intervention Training, effective immediately. (F9)
- R9. Require mandatory COVID testing for all CHS jail personnel, effective immediately. (F10)
- R10. Implement integrated software that allows communication and file sharing between CHS and BHS by June 30, 2022. (F11)

## 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.

## RESPONSES REQUIRED

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

Responses are required from the Orange County Sheriff-Coroner for Adult Jail Findings F1, F2, F3, F4, F5, F6, F7 and F8 and Recommendations R1, R2, R3, R4, R5, R6 and R7.

## RESPONSES REQUESTED

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

Responses are requested from the Orange County Health Care Agency and Correctional Health Services for Findings F9, F10 and F11 and Recommendations R8, R9 and R10.



## GLOSSARY

- AB**      **Assembly Bill** - Proposed legislation that does not become law until it is passed by the legislature.
- ADA**      **Americans with Disabilities Act** - Implemented in 1990, to combat discrimination against individuals with physical, and/or mental disabilities.
- BOC**      **Board of Corrections** – California department responsible for managing the treatment of convicted offenders.
- BHB**      **Behavioral Health Bureau** – New unit of the Orange County Sheriff’s Department includes Homeless Outreach deputies, and 50 Homeless Liaison deputies assigned to the 13 covered cities of the Sheriff’s Department.
- BHS**      **Behavioral Health Services** - Whole person, client centered care approach for mental health, substance abuse, and crisis management. Inpatient and outpatient services for all eligible Orange County residents.
- CERT**      **Citizen Emergency Response Team** - Citizens trained to assist the Orange County Sheriff’s Department in the case of large-scale incidents such as crowd control, civil unrests, and any other emergencies.
- CHS**      **Correctional Health Services** – Provides, medical, dental, and pharmaceutical services to all adults within the county correctional facilities (jails).
- CIT**      **Crisis Intervention Training** – Courses that train Orange County Sheriff’s deputies how to safely handle mental health individuals in crisis along with de-escalation tactics.
- CJX**      **Central Jails Complex** – Men’s Central Jail, Intake and Release Center, and Transportation division all located within one complex.
- CMJ**      **Central Men’s Jail** – Jail housing only male inmates located at 550 N. Flower St., Santa Ana, CA.
- COVID**      **Coronavirus/COVID-19** – Extremely contagious virus transmitted by respiratory droplets that has the potential to develop into severe acute respiratory illness.
- CSA**      **Correctional Service Assistant** – Non-sworn classification with the Orange County Sheriff’s Department to assist the jail facilities with monitoring inmate movement in and out of the jail, and other duties as assigned.
- CST**      **Correctional Services Technician** – Non-sworn classification with the Orange County Sheriff’s Department overseeing inmate property, stocking issues, supplies ordering, and other job duties as assigned.
- CSU**      **Crisis Stabilization Unit** – Short term supportive care and treatment for inmates who appear to be in crisis due to a mental illness.

A Look Behind the Bars of the Orange County Jail

- CWP**      **Community Work Program** – Program where select groups of inmates may perform work outside of the jail in lieu of incarceration. They receive 24 hours towards their jail sentence for every 8-10-hour workday. They return home at night.
- CWJ**      **Central Women’s Jail** - Previously located within the Central Jail Complex but no longer exists as the women were moved to Theo Lacy Jail.
- EMP**      **Electronic Monitoring Program** – A program that allows select inmates (with misdemeanor charges), to remain at home full time with electronic monitoring (ankle bracelets).
- ERT**      **Emergency Response Team** – Specially trained Sheriff’s Deputies and medics who assist when large scales emergency situations occur.
- GTL**      **Global Tel\*Link Corp.** – Current phone service provider used for inmate communications in the county jail facilities.
- HIPAA**    **Health Insurance Portability Accountability Act** – Privacy safeguards put in place to keep all medical records and information private, and not available to anyone other than the individual without prior authorization.
- HUMV**    **Housing Unit for Military Veterans** – Located in the Central Jail Complex.
- ICE**      **Immigration and Customs Enforcement** – Federal law enforcement agency within the US Department of Homeland Security to protect the US from border crime, and illegal immigration.
- IRC**      **Intake and Release Center** – Part of the Central Jail Complex. Initial booking station where inmates are evaluated and assigned housing.
- ISP**      **Integrated Services Plan** – Reorganization of the jail plan to include integration with medical professionals to coordinate care.
- LPS**      **Lanterman-Petris Short Act** – California law that permits involuntary civil commitment to a mental health institution.
- MHOU**    **Mental Health Observations Unit** – Special unit within the Intake and Release Center to observe inmates with potential mental illness.
- MOD K**    **Module K** – A unit within the Intake and Release Center to house mentally ill female inmates.
- MOD L**    **Module L** – A unit within the Intake and Release Center to house mentally ill male patients.
- OCCJCC**   **Orange County Criminal Justice Coordinating Council** – Council consisting of employees of the Orange County Sheriff’s Department and the County to address cost effective regional public services.

- OCGJ      **Orange County Grand Jury** – A jury selected from applicants from each county district through an interview process and serving a one-year term from July 1 through June 30.
- OCHCA    **Orange County Health Care Agency** - Umbrella agency that includes BHS, CHS, and other financial and medical agencies that work together to coordinate services for all.
- OCREP    **Orange County Re-Entry Partnership** – Fiscally sponsored project of nonprofit groups, public community, and faith-based agencies to assist inmates prior to and after release enter back into society.
- OCSD      **Orange County Sheriff’s Department**
- OCSDTA   **Orange County Sheriff’s Department Training Academy** – Facility located in Tustin, California where cadets train, and test to be sworn deputies.
- PEP       **Pre-Employment Program at OCSD training facility** – Voluntary program available prior to cadets entering the Sheriff’s Academy to prepare them for the program ahead. Includes physical agility, testing, and oral interviews.
- POST      **Peace Officers Standards and Training** –Minimum training standards established by the State of California for law enforcement.
- RN         **Registered Nurse** – A person licensed by the State of California to provide select medical services.
- SB         **Senate Bill** – Proposed legislation that does not become law until it is passed by the legislature.
- SSO       **Sheriff’s Special Officer** – Public officer classification related to public safety and security.
- STC       **Standard of Training** – Entry level and annual training for staff assigned to the jail subject to state mandated training requirement per the Board of Corrections.

## BIBLIOGRAPHY

- California Secretary of State. (2020). *PROP 25 REFERENDUM ON LAW THAT REPLACED MONEY BAIL WITH SYSTEM BASED ON PUBLIC SAFETY AND FLIGHT RISK*. Retrieved from Official Voter Information Guide: <https://voterguide.sos.ca.gov/propositions/25/index.htm>
- California State Assembly. (2011). *AB-109 Criminal justice alignment (2011-2012)*. Retrieved from California Legislative Information: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201120120AB109&search\\_keywords=public+safety+realignment+act](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120AB109&search_keywords=public+safety+realignment+act)
- California State Assembly. (2021, Apr 13). *SB-10 Planning and zoning: housing development: density.(2021-2022)*. Retrieved from California Legislative Information: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB10](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB10)
- California State Senate. (2012). *SB-1022 Correctional facilities (2011-2012)*. Retrieved from California Legislative Information: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB1022](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1022)
- Find Law Staff. (2019, Jan 1). *California Code, Penal Code - PEN § 17.5*. Retrieved from Find Law for Legal Professionals: <https://codes.findlaw.com/ca/penal-code/pen-sect-17-5.html>
- Find Law Staff. (2019, Jan 1). *California Code, Welfare and Institutions Code - WIC § 5008*. Retrieved from Find Law for Legal Professionals: <https://codes.findlaw.com/ca/welfare-and-institutions-code/wic-sect-5008.html>
- Find Law Staff. (2019, Jan 1). *California Code, Welfare and Institutions Code - WIC § 5150*. Retrieved from Find Law for Legal Professionals: <https://codes.findlaw.com/ca/welfare-and-institutions-code/wic-sect-5150.html>
- Find Law Staff. (2019, Jan 1). *California Code, Welfare and Institutions Code - WIC § 5151*. Retrieved from Findlaw for Legal Professionals: <https://codes.findlaw.com/ca/welfare-and-institutions-code/wic-sect-5151.html>
- Find Law Staff. (2019, Jan 1). *California Code, Welfare and Institutions Code - WIC §5152*. Retrieved from Find Law for Legal Professionals: <https://codes.findlaw.com/ca/welfare-and-institutions-code/wic-sect-5152.html>
- Orange County Board of Supervisors. (2020). *Orange County 2020 Strategic Financial Plan*.



Report  
4





# \$28 Billion for a \$2.8 Billion Road





Report  
5



# CONTENTS

<b>SUMMARY</b> .....	<b>1</b>
<b>BACKGROUND</b> .....	<b>1</b>
<b>REASON FOR STUDY</b> .....	<b>3</b>
<b>METHOD OF STUDY</b> .....	<b>3</b>
<b>INVESTIGATION AND ANALYSIS</b> .....	<b>4</b>
<b>History</b> .....	<b>4</b>
<i>1980s – Formation</i> .....	<i>4</i>
<i>1990s – Construction</i> .....	<i>5</i>
<i>2000-2007 – Toll Operations</i> .....	<i>6</i>
<i>2008-2013 – Survival</i> .....	<i>6</i>
<i>2014-2019 – Political Battles</i> .....	<i>6</i>
<i>2020-2021 – Pandemic</i> .....	<i>7</i>
<i>The Future</i> .....	<i>7</i>
<b>What is the Cost of the Toll Roads?</b> .....	<b>8</b>
<i>Construction Cost</i> .....	<i>8</i>
<i>Current Value</i> .....	<i>9</i>
<i>Total Cost</i> .....	<i>10</i>
<i>Financed Cost</i> .....	<i>11</i>
<b>When Will the Toll Roads Become Freeways?</b> .....	<b>11</b>
<i>1. Elimination of Debt</i> .....	<i>12</i>
<i>2. Elimination of the TCA</i> .....	<i>14</i>
<i>3. Elimination of Tolls</i> .....	<i>15</i>
<b>What About the Extra Ten Billion Dollars?</b> .....	<b>17</b>
<i>Future Revenue</i> .....	<i>17</i>
<i>Future Construction</i> .....	<i>19</i>
<b>How is Toll Money Actually Used?</b> .....	<b>21</b>
<i>Retiring the Construction Debt</i> .....	<i>21</i>
<i>Funding Additional Improvements</i> .....	<i>21</i>
<i>Covering Costs of Operating the Toll Roads</i> .....	<i>22</i>
<i>Advocacy</i> .....	<i>22</i>
<b>What are DIFs?</b> .....	<b>24</b>



*Total DIFs Paid by the Jurisdictions*..... 26

*Automatic Rate Increases* ..... 26

*Are DIFs Necessary?*..... 27

*Can DIFs be Eliminated?* ..... 28

**Has the SR-241 South Extension Been Abandoned? ..... 29**

*History* ..... 29

*Current Status*..... 30

**Why Two Agencies? ..... 33**

*Common Operations and Management*..... 34

*Should They Separate?* ..... 34

*Should They Merge?* ..... 36

**What is the Best Use of the TCA?..... 37**

*Core Competency* ..... 37

*Transportation Financier* ..... 37

**What About Caltrans?..... 39**

*Position on OC Toll Roads*..... 39

*Revenue Sharing*..... 39

**Who’s in Charge Here? ..... 41**

*The Board of Directors*..... 42

**COMMENDATIONS ..... 42**

**FINDINGS ..... 43**

**RECOMMENDATIONS..... 43**

**RESPONSES ..... 44**

**Responses Required ..... 45**

**GLOSSARY..... 45**

**APPENDICES ..... 49**

**Appendix A – Public-Private Partnership ..... 50**

**Appendix B – The Toll Roads FAQ Web Page..... 51**

**Appendix C – Debt Payoff Analysis ..... 52**

**Appendix D – Who Pays the DIFs? ..... 56**

**Appendix E – Transportation Corridors ..... 60**

**Appendix F – The Toll Roads Customer Technology..... 63**

**BIBLIOGRAPHY..... 66**

## FIGURES

Figure 1 - Map of the Toll Roads.....	2
Figure 2 - Elevated segment of SR-241.....	5
Figure 3 - SR-73 northbound approaching Newport Coast Drive.....	8
Figure 4 - SR-241 northbound, north of SR-261 interchange.....	14
Figure 5 - San Diego - Coronado Bridge.....	16
Figure 6 - SR-241 northbound approaching SR-91.....	19
Figure 7 - Planned SR-241 Express Connector to SR-91 toll lanes.....	19
Figure 8 - SR-241 southbound approaching first toll plaza.....	22
Figure 9 - Development Impact Fee inflation indexes.....	26
Figure 10 - TCA historical revenue.....	28
Figure 11 - Proposed SR-241 South Extension to Interstate 5.....	29
Figure 12 - SR-241 southbound termination at new Oso Parkway Bridge.....	32
Figure 13 - Headquarters building of the two Transportation Corridor Agencies.....	35
Figure 14 - Caltrans districts.....	40
Figure 15 - SR-73 northbound.....	42

## TABLES

Table 1 - Toll Road construction costs.....	9
Table 2 - Toll Road cumulative revenue.....	10
Table 3 - Toll Road cumulative debt service.....	11
Table 4 - Projected Toll Road revenues and expenses.....	18
Table 5 - Cumulative Development Impact Fees by jurisdiction.....	25
Table 6 - Sample Development Impact Fees in 2021 and 2050.....	27
Table 7 - Member jurisdictions of The Transportation Corridor Agencies.....	33

## SUMMARY

The Transportation Corridor Agencies (TCA) are on track to collect \$28 billion for toll roads that cost \$2.8 billion to construct.

The TCA's success was built upon a high level of debt that will encumber the roads and its users for decades to come. By 2053, when the debt is scheduled to be retired, the roads will have consumed \$28 billion – an amount that burdens the drivers, limits the TCA's pricing options, and exceeds any reasonable cost per mile of road. Elimination of debt should be the TCA's top priority.

The TCA collects Development Impact Fees (DIFs) from cities adjacent to its roads. Considering that road construction was completed more than 20 years ago, the justification for these charges should be reviewed. The Grand Jury questions whether it is reasonable to continue these ever-increasing tax-like charges until 2053 or beyond.

The TCA was launched with an understanding that the agencies would not last forever. After building the roads and collecting enough tolls to pay off the debt, the agency was supposed to cease operations, at which time the roads would become Caltrans freeways. Probably none of those things will happen. The public deserves clarification of the TCA's future plans regarding construction projects, debt retirement, toll collection, and sunseting of the agency as an entity.

## BACKGROUND

The Transportation Corridor Agencies (TCA) are two organizations that built and operate the Orange County Toll Road systems, comprised of State Routes 73, 241, 261, and 133. Governance is performed collaboratively by the County of Orange and by road-adjacent cities, while daily operations are managed by a shared TCA staff. For a detailed description of the TCA organization, see the section entitled, "Why Two Agencies?"

In this report, the terms "Transportation Corridor Agency," "TCA," "Toll Roads," and "The Agency" are employed interchangeably to refer to the overall system, including both roads, their governing boards, and the joint operating subsidiary.

Actual financial data quoted herein was derived from the TCA's Comprehensive Annual Financial Reports and other public information. Future project costs were found in the Capital Improvement Plan. Also, the TCA provided the Grand Jury with additional detail on past expenditures as well as projected future revenues, debt service, and operating costs. Unless otherwise noted, all financial analysis is based on the TCA's own data.

\$28 Billion for a \$2.8 Billion Road

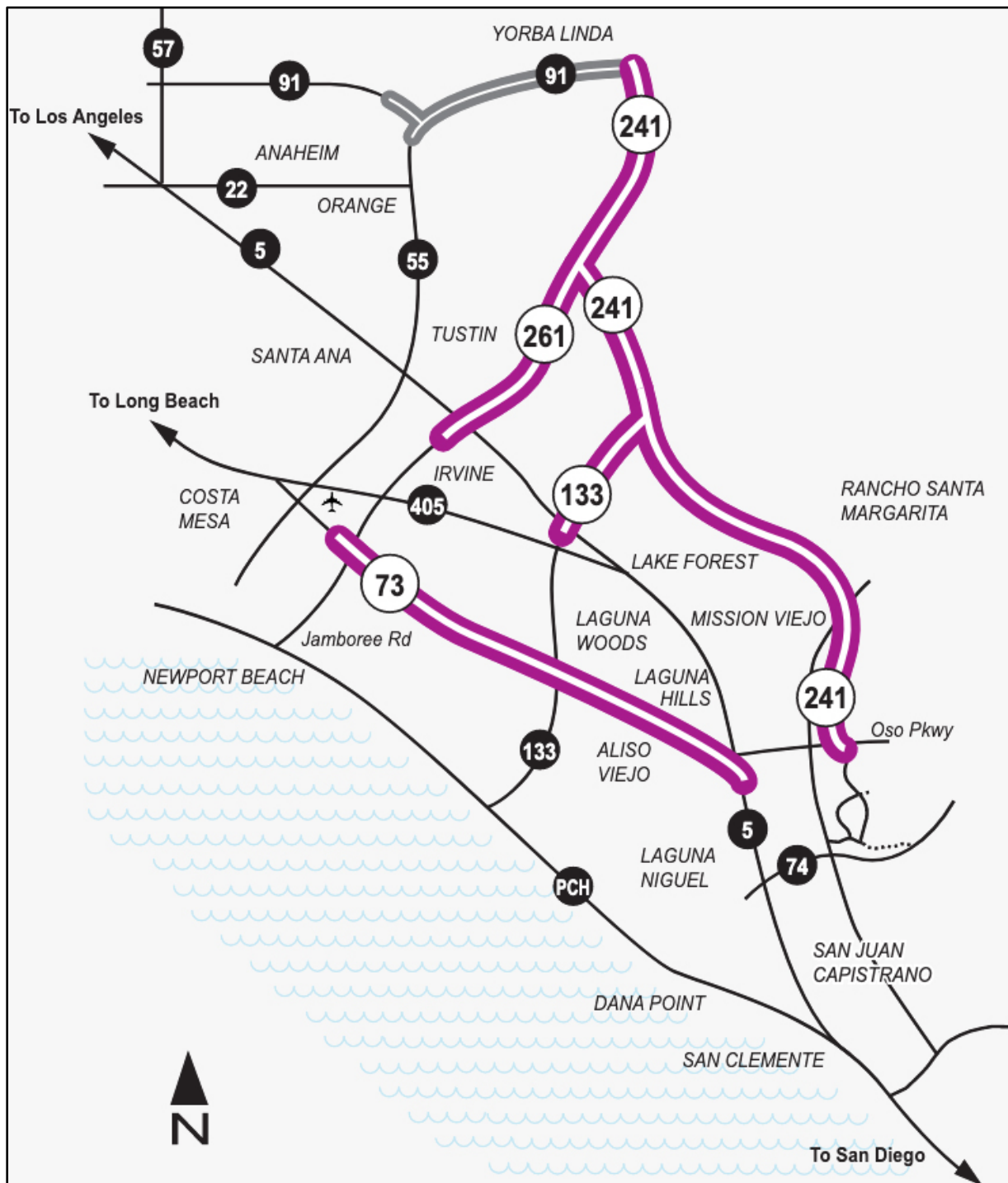


Figure 1 - Map of the Toll Roads.  
(Used with permission of the Transportation Corridor Agencies.)

## REASON FOR STUDY

Although its roads are familiar to area drivers, the Transportation Corridor Agencies are mostly unknown to the general public. The Grand Jury intends to provide Orange County residents with an orientation on the TCA's history, accomplishments, and current challenges.

The TCA has arrived at a strategic juncture regarding its future priorities. The agency has achieved most of its original goals, including construction of highways, growth in ridership, financial stability, and robust toll-collection. It survived a recession, a pandemic, a debt crisis, and some political battles. It is finally in a position to execute a proactive financial strategy.

The TCA's operations and future direction should be of great interest to Orange County leaders and residents. The Toll Roads provide an essential service, but they also impose substantial costs. In addition, the county has three other transportation agencies, and this is an opportune moment to consider the TCA's role.

## METHOD OF STUDY

- Researched the TCA organization, including founding legislation and subsequent charter modifications.
- Researched Cooperative Agreements and Memorandums of Understanding between the TCA, Orange County Transportation Authority, Orange County Department of Public Works, and Caltrans.
- Interviewed selected TCA managers and elected officials with past or present TCA oversight responsibility.
- Interviewed selected staff from Orange County Department of Public Works, and Caltrans.
- Attended online TCA Board of Director meetings and reviewed agendas, minutes, and presentation materials from prior meetings.
- Researched online meeting minutes and agendas from the County of Orange and TCA member cities.
- Researched online news reports about the TCA.
- Researched past TCA public statements and past versions of the TCA website.
- Researched transportation industry studies of public-private partnerships.
- Researched transportation industry studies of construction costs.
- Established personal Toll Road accounts and drove the roads under various traffic conditions.
- Requested information from the TCA regarding budgets, bond debt, organization, operations, transaction data, toll data, etc.
- Reviewed Orange County 2019-20 Grand Jury Report: *"The Transportation Corridor Agencies – Are They Taking Their Toll on Orange County?"*

## INVESTIGATION AND ANALYSIS

### History

Like any business that wants to survive, the TCA has evolved in response to its changing environment. But unlike most businesses, the TCA's original mission was to undergo dramatic evolution followed by a deliberate demise. The following brief history of the TCA describes accomplishments and milestones over the past thirty-five years.

#### 1980s – Formation

In 1956, California published a *Master Plan of Arterial Highways*. By the 1970s Orange County's portion of the plan had been largely implemented, except for the current TCA Toll Road corridors. New construction of major freeways had stalled locally as well as nationwide. In the 1980s, population and commercial activity began to grow in the southern part of Orange County. Despite the increased demand for mobility, state funding was not available for new highways.

California has a legal framework enabling local governments to collaborate via Joint Power Agreements (JPAs). These partnerships are formed to address common issues affecting a group of cities, counties, or other combination of governments. In 1986, Orange County, along with a group of its cities, formed two Toll Road Agencies. Depending on their location, some cities had governing representation on one or the other agency, or both. In addition, the County itself was represented on both agencies by members of the Board of Supervisors. The two agencies are:

- Foothill/Eastern Transportation Corridor Agency (**F/ETCA**)  
Includes toll roads SR-241, SR-261, and SR-133.
- San Joaquin Hills Transportation Corridor Agency (**SJHTCA**)  
Includes toll road SR-73.

The State of California provided permission to build the roads, but not the funding. The TCA turned to a method called *Public-Private Partnership* whereby revenue bonds were sold to private investors. Tolls would be collected and applied to bond repayment. These are non-recourse bonds, meaning that, in the event of default, the bondholders are not entitled to repossess the roads or seek redress from the government or taxpayers.

The TCA also established a second source of revenue called Development Impact Fees (DIFs), which are collected from developers and passed on to property buyers. The fees helped defray the cost of additional publicly maintained infrastructure.

The Toll Road Agency spent its first few years organizing its governing boards and its operations team. It purchased rights-of-way and made plans to build new roads on open land. This "greenfield" approach to major highway construction had been common across the U.S. in the 1950s and 60s, but by the 1980s it was rare.

## \$28 Billion for a \$2.8 Billion Road



Figure 2 - Elevated segment of SR-241.  
(Used with permission of the Transportation Corridor Agencies.)

### 1990s – Construction

In 1991, the TCA spent about \$70 million on capital outlays for construction. That figure grew to \$490 million per year in 1995, then tapered down to \$55 million by 2000. During that decade, the TCA spent about \$2.5 billion and successfully executed its construction plan, delivering 51 linear miles and 420 lane miles of highway.

During the construction phase, the TCA received \$197 million in State and federal construction grants. This represents less than seven percent (7%) of total construction cost and the only tax-based revenue in the TCA's history. The Public-Private Partnership came close to building the roads with no taxpayer dollars.

Although the TCA purchased the rights-of-way and owned the in-progress construction, any completed sections were transferred to Caltrans for State ownership. The TCA, by design, accumulated construction debt but no matching assets. Its only asset was the legal right to set and collect tolls, until such time as the debt was retired.

The TCA began toll collection on completed sections of highway in 1994, but toll revenue was not yet sufficient to ensure the success of the project. Cumulative tolls collected through 1999 were less than \$100 million.

The last construction bonds, issued in 1999, were scheduled to be retired in 2040. The TCA would have more than 40 years to collect tolls and pay off the debt. After that, the roads would become freeways and the TCA would “sunset”; i.e., go out of business.

## 2000-2007 – Toll Operations

In 2000, with completed roadways in place, annual toll revenue jumped to \$109 million. For the next seven years, traffic (transactions) continued to climb, even while toll rates were gradually raised. In 2007, toll-related revenue was a healthy \$209 million and growing. General operating expenses held steady at approximately \$30 million per year. After its successful construction phase, the TCA was on track with a successful operations phase.

## 2008-2013 – Survival

By outward appearances, the TCA was sailing ahead smoothly, but there was a financial iceberg beneath the surface. The bond debt had been structured to minimize loan payments in the early years and then compensate with much higher payments later. The \$2.5 billion construction debt was actually increasing rather than decreasing because 47% of the debt was in the form of Capital Appreciation Bonds, which defer both principal and interest in the early years. Home mortgage borrowers might recognize this arrangement as a balloon payment plan. Committing to such a plan requires great optimism about one's future income. The TCA's early revenue projections were too optimistic.

The 1980s Orange County population growth rate did not continue for decades as hoped. Housing prices rose sharply to include the true cost of infrastructure, congestion, environmental impact, and scarce land. In response, population growth shifted to the lower-cost Inland Empire. Commuter traffic was robust at the north end of the 241, while traffic on the 73 languished.

In 2007, the housing bubble burst and the Great Recession began. For the first time in its history, the Toll Roads experienced declining ridership. Fewer people were driving to jobs, and those who did were more likely to use the freeway option. Annual toll revenue dropped by \$14 million. Revenue recovered by 2011, but the damage to TCA's finances had been done. A business plan that assumed consistently strong growth was exposed as too fragile to support its debt. The TCA was making its payments on time, but its projected income would not cover the future "balloon" payments.

With no other viable options, the TCA re-structured its debt in 2013. Payments were lowered and stretched out as far as the year 2053. Once again, home mortgage borrowers might recognize the downside of this strategy. Payments are more affordable but adding 40 years of interest will result in a total cost far exceeding the value of the underlying asset – in this case, a road.

The new financial strategy bought the TCA some breathing room, so it amended the forecasted revenues to lower, more realistic numbers. This financial maneuver also extended its life as an agency. As long as the TCA has outstanding debt, it can stay in business, collect tolls from drivers, and collect DIFs from builders.

## 2014-2019 – Political Battles

The TCA emerged from 2013 with positive prospects. Financial restructuring had averted the threat of debt default and regional economic recovery enabled the TCA to raise toll rates while still enjoying a growth in traffic. From 2013 through 2019, the TCA exceeded its target revenue



every year. With less money flowing out to bond payments, cash on hand began to accumulate. The TCA was newly empowered to assert its influence outward. Although the Toll Road construction was substantially completed, there were still two projects unfinished. They occurred at the two ends of SR-241. The north end needed an SR-91 Express Lane Connector to alleviate a bottleneck.

The south end of SR-241 stopped at Oso Parkway. The California Master Plan had always included a segment from there to some point on the Interstate 5 Freeway, completing a new highway route all the way from SR-91. This proposed fifteen-mile segment, called the “241 South Extension,” is discussed later in this report. It was met with strong resistance, especially in San Clemente. By the time the project was suspended in March 2020, the TCA had been embroiled in years of contentious community battles. Lingering effects include lawsuits, a State legislative effort to block any new southern extension, suspicious communities, enmity within the governing boards, and a damaged public image. The conflict has invited scrutiny upon the TCA’s finances, mission, and methods.

On the positive side, the TCA emerged from this period with an accumulated balance of \$1.5 billion in cash, investments, and reserves to retire debt.

### 2020-2021 – Pandemic

Just as the TCA was emerging from SR-241 South Extension battles, the COVID-19 pandemic began. Like the Great Recession, it caused a decline in commuter traffic and a proportional drop in TCA revenues. Fiscal discipline and healthy reserves, engendered by the prior recession, helped to avoid a crisis. Recovery from the pandemic is expected to occur more quickly than the recession’s slow, five-year climb, but the volume of commuter traffic might be permanently altered.

For the 2013 and 2021 bond issues, a professional risk assessment was performed, and telecommuting was specifically excluded as a threat to the TCA’s toll revenue. Today’s projections reflect a different attitude, with a potential subtraction of telecommuting workers from all future years. It’s too soon to predict the Work-From-Home population, but the TCA’s traffic consultants projected as much as 14%. Currently, the TCA is planning for a full recovery of their financial health.

The COVID crisis has enabled the TCA to accelerate some positive financial moves. Low interest rates have spurred a new round of debt re-funding, replacing higher interest bonds with lower interest bonds. This will reduce the TCA’s debt payments and free up even more cash. Also, the COVID-induced revenue dip forced the TCA to defer non-essential spending, at least temporarily.

### The Future

In the 1980s, transportation planning was not influenced by electric cars, telecommuting, automatic internet payments, or an economy based on convenience. Today we have all of those plus a trending exodus of California residents. To meet this new world, the Toll Roads must be well integrated with County and State transportation strategies. In 2020, a new CEO was

## \$28 Billion for a \$2.8 Billion Road

appointed to lead the TCA, and the election cycle led to turnover among TCA Board members. The Grand Jury hopes that current leadership will take a fresh look at the TCA's mission. This report poses **ten fundamental questions** that explore the agency's major issues.



Figure 3 - SR-73 northbound approaching Newport Coast Drive.  
(Used with permission of the Transportation Corridor Agencies.)

## What is the Cost of the Toll Roads?

### Construction Cost

There are several ways to calculate the cost and the value of a major asset. The cost of construction is a good starting point. The TCA's 2021 Capital Improvement Plan includes the following historical statement, indicating about \$2.8 billion in capital construction costs.

*Construction of the initial roadway segments and subsequent completed capital projects constitute over \$1.6 billion in capital investment for F/ETCA and over \$1.2 billion for SJHTCA.*

The Grand Jury examined all TCA Consolidated Annual Financial Reports (CAFRs) from inception through the present (Fiscal Years 1987 through 2020). All capital expenses were identified and aggregated to ensure that base assumptions are correct. Consistent with standard accounting practices, capital expenses include construction and material costs as well as

## \$28 Billion for a \$2.8 Billion Road

engineering and other direct overheads to support the road-building project. This bottom-up validation yielded results that closely matched the TCA’s numbers.

PROJECT	CAPITAL COST
Foothill/Eastern	\$1.638 billion
San Joaquin Hills	\$1.127 billion
<b>TOTAL</b>	<b>\$2.765 billion</b>

Table 1 - Toll Road construction costs.  
Calculated from Consolidated Annual Financial Reports.

The TCA’s \$2.8 billion figure is therefore an accurate statement of construction costs. Major construction was completed more than twenty years ago. Since then, the TCA has invested in miscellaneous improvements, but none that significantly alter the “base price” of the roads.

The Grand Jury compared the Toll Road construction costs to benchmarks that are provided by the Federal Highway Administration. Using the TCA’s stated figures of 51 linear miles and 420 lane miles, the construction cost was \$6.67 million per lane mile. In 1993 dollars, this cost per lane mile of highway was in the high range – typically associated with urban or mountainous terrain. But, considering that the TCA was a new agency working in a high-cost region, the construction costs were within reason.

### Current Value

Normally, public agencies don’t announce the “value” of their buildings, roads, water mains, police stations, etc. These public infrastructure assets are not for sale and their value is derived entirely from the service that they provide. They can’t be moved or re-purposed. Financial discussions typically focus on the cost of building and maintaining an asset so that it can perform its public function.

Recently the TCA has been making statements which attempt to place a replacement cost value on the Toll Roads. The website currently states that the roads are:

*“...infrastructure that would cost more than \$12 billion if built today.”*

Twelve billion dollars is a substantial jump from the \$2.8 billion that the roads actually cost. Also, the roads were not built today, they were built 20-30 years ago. So, it is a curious statement to make near the top of the TCA’s main web page about “*Background & History*.” Not long ago, as shown in Appendix B, the TCA’s website displayed the more reasonable claim that the roads represented \$3 billion worth of infrastructure.

The Grand Jury asked the TCA to explain the \$12 billion evaluation, which is \$235 million per linear mile or \$28 million per lane mile. The TCA provided an analysis equating the Toll Roads to the current I-405 lane widenings in Orange County. That project is a retrofit of a heavily

\$28 Billion for a \$2.8 Billion Road

trafficked commuter highway through extremely dense neighborhoods, so it was not a convincing analysis.

In any case, the current value of the toll roads is not relevant to this analysis because Caltrans owns the roads and does not intend to sell them. The more interesting question is why the TCA is promoting this new narrative. It only makes sense when considering the “Total Cost” of the roads.

**Total Cost**

The Grand Jury took a simple approach in assessing the cost of the Toll Roads. If the TCA adheres to its current plan, construction debt will be fully paid off in 2053. At that time, when the TCA hands over debt-free roads to Caltrans, those roads will be the only useful deliverable that the TCA has ever produced. Therefore, the actual cost of those roads will be the total of all revenues collected by the TCA since inception.

To the payers of tolls and development fees, it matters not that some of their money went to construction firms, some went to bond interest, and some went to the TCA’s cost of operating. In exchange for these costs, Orange County will receive the benefit of 51 miles of roadway. Table 2 summarizes the TCA’s total revenues, including future toll projections as provided to the Grand Jury. By 2053, the two roads will have consumed more than \$28 billion – ten times the construction cost.

<b>Toll Road Cumulative Revenue (Millions)</b>			
	<b>San Joaquin Hills</b>	<b>Foothill/Eastern</b>	<b>Combined Roads</b>
<b>Inception to FY2020 (actual)</b>			
Tolls, Fines, Fees	2,345	2,650	4,995
Dev Impact Fees	210	547	757
Investment and Other	273	66	339
<b>Total Past Revenue</b>	<b>2,828</b>	<b>3,263</b>	<b>6,091</b>
<b>FY 2021 to End Year (projected)</b>			
Tolls, Fines, Fees	7,835	13,438	21,273
Dev Impact Fees	278	583	861
<b>Total Future Revenue</b>	<b>8,113</b>	<b>14,021</b>	<b>22,134</b>
<b>Total Revenue</b>	<b>10,941</b>	<b>17,284</b>	<b>28,225</b>

Table 2 - Toll Road cumulative revenue.

Notes regarding Table 2 :

1. The debt retirement “End Year” is 2050 for SJHTCA and 2053 for F/ETCA.
2. Projection of future revenue from investments was not provided to the Grand Jury, so it has been excluded.
3. Projection of future Development Impact Fee revenue was not provided to the Grand Jury. The estimates were derived from the FY 20-21 budget projection, TCA DIF growth indexes, and conservative extrapolation.

\$28 Billion for a \$2.8 Billion Road

Financed Cost

TCA leadership will disagree with a Total Cost assessment of \$28.2 billion for the existing roads because they hope to build additional roads with some of that money before 2053. The additional roads and enhancements to existing roads are not yet defined.

Because construction was financed with debt, another costing method is to sum up the “Financed Cost,” which includes only the borrowed principal plus the interest on debt service. As shown in Table 3, the TCA has already paid \$5.4 billion to bondholders and is scheduled to pay an additional \$10.3 billion in future years, for a total of \$15.7 billion – more than five times the construction cost.

Toll Road Cumulative Debt Service (Millions)			
	San Joaquin Hills	Foothill/Eastern	Combined Roads
<b>Inception to FY2020 (actual)</b>			
Debt Service (P&I)	2,608	2,785	5,393
Total Past Debt Service	2,608	2,785	5,393
<b>FY 2021 to End Year (scheduled)</b>			
Principal	2,297	2,502	4,799
Interest	2,468	3,079	5,547
Total Future Debt Service	4,765	5,581	10,346
<b>Total Debt Service</b>	<b>7,373</b>	<b>8,366</b>	<b>15,739</b>

Table 3 - Toll Road cumulative debt service.

Notes regarding Table 3:

1. The debt retirement “End Year” is 2050 for SJHTCA and 2053 for F/ETCA.
2. The Grand Jury was able to determine past debt service costs from CAFRs, but not the breakdown of Principal and Interest.
3. Future debt service data was provided by the TCA and validated by the Grand Jury.
4. At this time, total Principal owed is \$4.8 billion, which comes to \$10.3 billion when Interest is included.

**When Will the Toll Roads Become Freeways?**

*“When the bonds are paid off, the roads will become freeways.”*

That statement appeared on the TCA’s website as recently as 2017 (Appendix B). Since the TCA’s inception and for many years afterwards, its directors, managers, spokespersons, and promoters went on record to reiterate the simple assumptions underlying the toll roads:

## \$28 Billion for a \$2.8 Billion Road

- The Transportation Corridor Agencies were created to build two specific roadways.
- The agency would fund construction by issuing bonds.
- The bonds would be paid off by revenue from:
  - Tolls and fines paid by drivers.
  - DIFs paid by developers.
- After the bonds were repaid, the TCA would have no reason to exist. It would go out of business and the collection of tolls would cease. The roads would become freeways.

This narrative was consistent with the State legislation that enabled the TCA's formation and its right to collect tolls. It was also consistent with Orange County's vision when it established the JPAs' in the 1980s, specifically to build the roads. But "consistent with vision" is not a legal concept upon which an agency can be forced to go out of business. There is no legally defined end-of-life for the TCA. Also, circumstances have changed, making it unlikely that the roads will ever become freeways.

The construction debt is scheduled to be retired by the year 2053, by which time the TCA expects to be collecting about \$700 million in annual tolls. It would be a radical step to shut down the agency and cease toll collection, and to base that decision on a vision from the 1980s. To understand why that is unlikely to happen, it is helpful to unbundle and examine the three closely related events:

1. Elimination of Debt
2. Elimination of the TCA
3. Elimination of Tolls

### 1. Elimination of Debt

Financial experts and public watchdogs are appalled at the huge debt that underlies the roads. During the 2013 re-financing effort, the TCA encountered widespread negative press when it was revealed that ridership was well below expectations and the debt would be extended to 2053. Since then, ridership has improved, the threat of default has receded, and the media has lost interest – but the debt is still there.

The Grand Jury analyzed accelerated debt payoff options by performing financial simulations, as described in Appendix C. The results were not encouraging. If the TCA took extreme measures and focused entirely on debt elimination, it would still take at least sixteen years to pay off the bonds, completing that process by 2037. There is no quick way for a local agency to raise \$10 billion.

The debt level is an important element of the TCA's business plan. *California Government Code Section 66484.3* is the legal basis for collecting tolls and DIFs to pay for the costs of construction and to:

*"...defray all direct and indirect financing costs related to the construction ..."*

## \$28 Billion for a \$2.8 Billion Road

If the TCA had no construction work and no outstanding construction debt, its continued existence would rest on shaky legal ground. A huge debt obligation ensures that the TCA will exist for the long term. Any politician or transportation agency that wishes to extricate the county from this situation will have to pay off those bonds.

When assessing the “health” of an organization’s debt, it is normally a simple matter of surveying the market sentiments regarding that debt. If bondholders are demanding a high return and ratings agencies are downgrading the bonds, it means that the borrower is at risk of defaulting. Because TCA bonds are non-recourse, they will never be top-rated, but Wall Street does not view the debt as risky:

- The credit qualities of both TCAs are considered “Stable” by all credit rating agencies.
- TCA bond ratings range from A-/A3 to BBB-/Baa3, which is the lower range of Investment Grade.
- For recent refunding of bonds, coupon rates have ranged from 1.160% for a 5-year maturity to 2.962% for a 25-year maturity.

It seems counterintuitive that lenders are content to wait up to thirty more years for over \$10 billion in debt payments for an aging road which cost \$3 billion to build. But the debt is not collateralized by the physical road; it is backed by the TCA’s legal right to set prices and enforce collection. Investor confidence is based on the ability of residents to pay those tolls.

In December 2020, Fitch Ratings gave the F/ETCA’s most recent bond issue an Investment Grade rating of ‘BBB’ and included the following comments in their rationale:

- *Although toll rates per mile are somewhat high compared to other Fitch-rated toll roads, this weakness is mitigated by high wealth levels in Orange County.*
- *Legal rate-setting flexibility is high, as the agency can raise rates to any level without voter or regulatory approval.*
- *The facility is in good condition and the agency's scope of O&M [Operations & Maintenance] is limited since Caltrans is responsible for maintaining the roadway at its cost.*

Setting aside the financial details, the most important aspect of TCA debt is how it’s viewed by the TCA Board of Directors. Any strategic shift toward debt elimination will have to come from that group of elected officials.

Through interviews, the Grand Jury determined that many Board members are unfamiliar with the long-term debt obligations because financial details are managed by the TCA staff and then summarized for the Board, with a focus on short-term performance. When viewed quarter-to-quarter, the TCA is financially sound. It easily meets its debt payments while investing surplus

## \$28 Billion for a \$2.8 Billion Road

revenue to maintain a healthy reserve. Board members with no expertise in infrastructure bonds might not appreciate the larger picture.

The in-house TCA staff did not create this massive financial structure on their own. Some Board members are fully aware of the debt situation as well as the guarantee of TCA longevity and autonomy that the debt implies. At least one high-ranking Board member has stated in private that the TCA debt “will never be eliminated.”

### 2. Elimination of the TCA

Disbanding the Transportation Corridor Agencies is theoretically possible if the debt were eliminated, a process that would take decades at best. Historically, some of California’s obsolete Joint Power Authorities and Special Districts have been shut down and their functions eliminated or assigned to other agencies. In Sacramento’s early envisioning of Public-Private Partnerships, a life of 35 years was often proposed. That duration would accommodate a five-year startup followed by 30 years of bond payments. However, founding legislation did not impose strict deadlines.



Figure 4 - SR-241 northbound, north of SR-261 interchange.  
(Photo by 2020-21 Orange County Grand Jury)

Although a debt-free TCA would be allowed to go out of business, there is no law requiring that it does. In fact, when asked by the Grand Jury about eventual shutdown of the agency, some in TCA management claimed to be surprised by the supposition. This new attitude is a complete reversal of the TCA’s public statements over the past three decades. Currently, no TCA employees are assigned to implement a debt payoff followed by an agency sunset. The professional staff are predominantly consistent in defending the TCA’s financial status and looking for ways to expand the scope and extend the life of the organization.



## \$28 Billion for a \$2.8 Billion Road

The TCA operating staff, numbering about 65 full-time people, are government workers with CalPERS benefits and a degree of implied job security. In the opinion of the Grand Jury, toll operations are performed with a high degree of efficiency and attention to customer service. Assuming that the agency should focus on toll collection only, other functions pertaining to promotion and expansion of the TCA appear to be unnecessary.

Will Orange County's Transportation Corridor Agency eventually be eliminated? The Directors have an obligation to consider that question and explain the plan to county residents.

### Who Might Benefit from TCA Elimination?

There are some powerful business groups in South Orange County whose interests overlap with the TCA's ability to fund and build roads. To some extent, that region owes its success to the toll roads that were built in the absence of government funding. Seven cities in South Orange County were incorporated after the JPA formation.

On the other hand, if the roads are fully built-out as they appear to be, then the TCA provides no new value to the major developers. In fact, the Development Impact Fees impose significant costs on the construction of homes and businesses. Currently, the TCA is either investing that revenue or applying it to the debt – not building new roads to service the area. The Grand Jury believes that the sentiments of major builders will affect the TCA's future prospects.

Development Impact Fees are paid by builders and then passed on to buyers and renters of both residential and commercial properties. Because the TCA has not delivered any new roadway in more than 20 years, some cities are starting to question the value of these ever-increasing fees. DIFs are not readily justifiable as a source of future Toll Road funding. The TCA might find that eliminating DIFs removes some of the calls to eliminate the TCA. See the section of this report entitled, "What are DIFs?".

### 3. Elimination of Tolls

Traditionally, there has been a standard philosophy to use revenue bonds when governments build roads, bridges, and tunnels. Tolls would be collected until the bonds were paid off, and then the roads would become free. That was the case with the San Diego - Coronado Bridge, except that the tolls continued for 16 years past its bond payoff date. In fact, government agencies usually continue tolls indefinitely. From the Holland Tunnel to the Golden Gate, perpetuation of vehicle tolls is the norm, regardless of initial expectations and promises.

## \$28 Billion for a \$2.8 Billion Road



Figure 5 - San Diego - Coronado Bridge.  
(Not part of The Toll Roads.) Toll collection on the bridge ceased after payoff of construction bonds. (Used with permission ©2021 Art Wagner – Getty Images.)

Although it was not strictly codified into legislation, the Orange County Toll Roads were conceived under the same “free someday” assumption. The final bonds are not scheduled to be paid off until 2053, so it’s a moot issue for the next 30 years. However, regardless of when the debt is retired, the Grand Jury believes that the roads will never become free.

The reasons are:

1. The roads are owned by Caltrans, not the TCA. If the TCA pays off its debt and leaves the scene, Caltrans will decide the future of tolls, based on its own financial imperatives.
2. The transition to fuel-efficient and electric cars will cause a steady decline in road funding from state gas taxes. Some form of usage-based charge will have to replace it.
3. With annual revenue of \$400 million and rising, the TCA is viewed as a “cash cow,” as one local official described it to the Grand Jury. The TCA can raise toll prices without approval from voters, legislators, or drivers. TCA revenue is already being applied to area projects that are not strictly part of the toll roads.
4. Toll roads, or roads with some dedicated toll lanes, are an established strategy for traffic mitigation and highway optimization. They can be used to manage peak traffic, average speed, and air quality – factors

which impact the State’s eligibility for federal funds. The I-405 Corridor, now under major renovation, will include toll lanes.

5. There is no public outcry for turning the roads into freeways. The TCA’s ridership data indicates favorable price elasticity, allowing steady increases with no decrease in net revenue. Bond rating services point to Orange County’s level of wealth as evidence that drivers can afford the tolls.
6. In Grand Jury interviews, knowledgeable officials, both elected and appointed, have expressed their opinion that the toll roads will never become freeways.

It’s possible that Caltrans will someday split the toll roads into toll lanes and free lanes. However, that will require very large projects to widen the roadways and construct the necessary safety features. As for the complete elimination of tolls, that vision no longer applies.

## What About the Extra Ten Billion Dollars?

### Future Revenue

The Grand Jury interviewed TCA officials as well as leaders of other local transportation agencies and heard a consistently cheerful theme – the TCA’s finances are “very healthy.” That perspective discounts the debt burden, and it also assumes robust future revenues. As described earlier, the TCA started out as a financial underachiever, but the combination of stretched out debt and strong regional growth has reversed that situation. Except for the pandemic period, revenues have exceeded projections since 2014. The TCA is currently experiencing an embarrassment of riches, with an investment portfolio that continues to grow while road projects are on hold or undefined.

Employing various TCA data sources, the Grand Jury calculated the TCA’s net revenue after expenses and debt service. The results, shown in Table 4, indicate why TCA officials are so optimistic about finances. Between now and 2053, there will be an “extra” \$10 billion available to spend on any projects the TCA decides to pursue. Notwithstanding the past problems with TCA revenue forecasts, the Grand Jury finds this projection to be reasonable. Even if there are unexpected setbacks, it will still be in the billions.

With so much revenue projected, why can’t debt be paid off quickly? It’s a matter of scale and timing. The debt is so large and so “back-loaded” far into the future that current revenues will take a couple of decades to catch up. In any case, the TCA has other plans for these funds.

\$28 Billion for a \$2.8 Billion Road

The Toll Roads - Projected Revenues and Operating Expenses (\$Millions)									
	San Joaquin Hills				Foothill/Eastern				Combined
FY	Revenue	Operating	Debt Svc	Net	Revenue	Operating	Debt Svc	Net	Net
2021	103.5	(20.6)	(111.8)	(28.9)	141.8	(26.1)	(99.1)	16.6	(12.3)
2022	177.3	(13.0)	(114.7)	49.6	234.6	(25.5)	(95.7)	113.4	163.0
2023	174.0	(13.4)	(117.6)	43.0	246.7	(26.3)	(100.1)	120.3	163.3
2024	179.8	(13.8)	(120.7)	45.3	257.7	(27.0)	(104.6)	126.1	171.4
2025	186.4	(14.2)	(123.8)	48.4	268.3	(27.9)	(109.3)	131.1	179.5
2026	193.6	(14.6)	(127.0)	52.0	276.4	(28.7)	(117.7)	130.0	182.0
2027	201.0	(15.0)	(130.7)	55.3	286.3	(29.5)	(123.2)	133.6	188.9
2028	215.9	(15.5)	(138.4)	62.0	298.1	(30.4)	(128.8)	138.9	200.9
2029	223.4	(16.0)	(141.9)	65.5	308.7	(31.3)	(134.7)	142.7	208.2
2030	230.7	(16.4)	(145.5)	68.8	319.6	(32.3)	(140.8)	146.5	215.3
2031	238.3	(16.9)	(149.2)	72.2	330.6	(33.3)	(147.1)	150.2	222.4
2032	246.1	(17.4)	(153.0)	75.7	342.7	(34.3)	(156.5)	151.9	227.6
2033	254.1	(18.0)	(156.9)	79.2	356.0	(35.3)	(163.8)	156.9	236.1
2034	262.1	(18.5)	(160.9)	82.7	367.6	(36.3)	(171.8)	159.5	242.2
2035	268.1	(19.0)	(165.1)	84.0	381.9	(37.4)	(179.2)	165.3	249.3
2036	275.6	(19.6)	(167.3)	88.7	395.2	(38.6)	(186.8)	169.8	258.5
2037	283.5	(20.2)	(171.0)	92.3	410.4	(39.7)	(194.7)	176.0	268.3
2038	291.5	(20.8)	(175.9)	94.8	425.6	(40.9)	(202.8)	181.9	276.7
2039	299.7	(21.4)	(180.9)	97.4	439.2	(42.1)	(203.8)	193.3	290.7
2040	308.2	(22.1)	(186.0)	100.1	455.1	(43.4)	(203.7)	208.0	308.1
2041	317.0	(22.7)	(186.1)	108.2	471.7	(58.8)	(203.7)	209.2	317.4
2042	326.0	(23.4)	(186.1)	116.5	488.7	(60.4)	(203.7)	224.6	341.1
2043	335.2	(24.1)	(186.1)	125.0	506.8	(62.2)	(206.0)	238.6	363.6
2044	344.7	(24.9)	(186.1)	133.7	526.5	(64.0)	(197.4)	265.1	398.8
2045	354.5	(25.6)	(186.1)	142.8	545.7	(65.8)	(195.8)	284.1	426.9
2046	364.6	(26.4)	(186.1)	152.1	564.7	(67.7)	(194.2)	302.8	454.9
2047	375.0	(27.2)	(186.1)	161.7	586.4	(69.7)	(201.5)	315.2	476.9
2048	385.7	(28.0)	(186.1)	171.6	606.2	(71.7)	(201.5)	333.0	504.6
2049	396.7	(28.8)	(186.1)	181.8	629.4	(73.8)	(201.5)	354.1	535.9
2050	408.1	(29.7)	(151.9)	226.5	652.9	(75.9)	(201.8)	375.2	601.7
2051	0.0	0.0	0.0	0.0	677.2	(78.1)	(202.6)	396.5	396.5
2052	0.0	0.0	0.0	0.0	702.8	(80.3)	(203.4)	419.1	419.1
2053	0.0	0.0	0.0	0.0	729.1	(82.6)	(204.2)	442.3	442.3
<b>Total</b>	<b>8,220.3</b>	<b>(607.2)</b>	<b>(4,765.1)</b>	<b>2,848.0</b>	<b>14,230.6</b>	<b>(1,577.3)</b>	<b>(5,581.5)</b>	<b>7,071.8</b>	<b>9,919.8</b>

Table 4 - Projected Toll Road revenues and expenses.

Notes regarding Table 4:

1. Fiscal Year 2021 Adopted Budget accounts for COVID Pandemic reductions.
2. Revenue and debt service provided by the TCA.
3. Operating expenses carried forward from 2014 official projections and validated against recent years.
4. Assumes SJHTCA operation until 2050 debt retirement.
5. Between now and 2053, there will be an extra \$9,919,900,000 available to spend on any projects the TCA decides to pursue.

### Future Construction

The only major defined project in the TCA's capital plan is the SR-91 Express Connector. Several transportation agencies from Orange County and Riverside County will collaborate on the project, but the TCA will provide the \$250 million cost. The connection directly from one toll road to another will solve a traffic bottleneck, generate revenue, and further institutionalize tollway commuting in the region. Schedule conflicts at the other agencies have delayed the start of the project, but it will be accomplished in the next few years.



Figure 6 - SR-241 northbound approaching SR-91. Evening commuter traffic from Orange County to Riverside County. (Used with permission of the Transportation Corridor Agencies.)

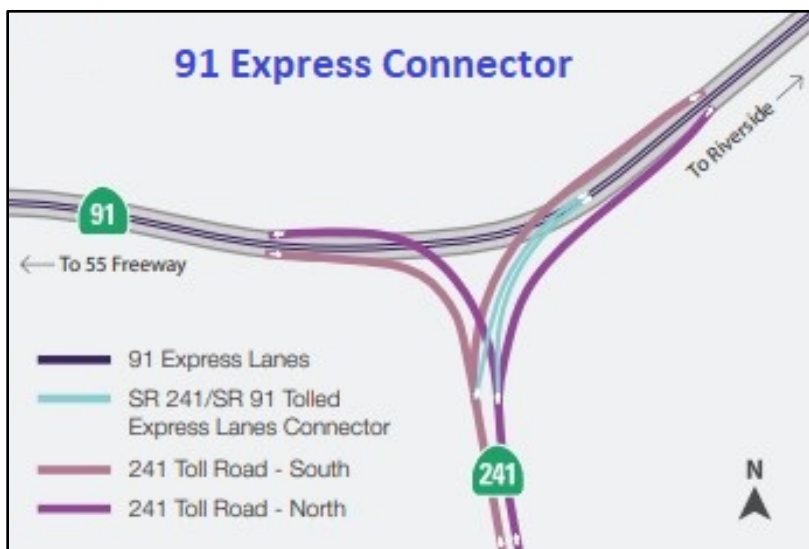


Figure 7 - Planned SR-241 Express Connector to SR-91 toll lanes. (Used with permission of the Transportation Corridor Agencies.)

## \$28 Billion for a \$2.8 Billion Road

The SR-241 South Extension is discussed later in this report. At present it is not an active project and it might never become one. If it goes forward, the TCA has indicated that it intends to issue new debt to fund the projected cost of at least \$1.7 billion. Instead of spending down the surplus, that would increase the TCA's debt obligation.

Ten billion dollars could build a lot of roadway, but the TCA is constrained by factors beyond its control. The agency was founded on the specific need to fill in a few missing pieces on California's *Master Plan of Arterial Highways*. Those pieces have been built, except for the aforementioned SR-241 South Extension. Furthermore, a look at the county map reveals that the TCA's road system is bounded by mountains, ocean, county lines, and Caltrans freeways – it has no room to grow.

For that reason, the TCA is now focused on *regional projects* that are not physically part of the toll roads. Using a loose interpretation of the JPA formation agreements, it is possible to justify almost any project that enhances mobility in the agency's *corridor*. These transportation initiatives intrude on the thoroughfares and functions normally supported by three other agencies:

- OCTA                      Orange County Transportation Authority
- OCPW                     Orange County Public Works
- Caltrans                 California Department of Transportation (District 12)

Why would another transportation agency tolerate TCA incursion into its territory? Partnering with the TCA provides access to its pool of toll revenue. For example, the recently completed overpass at the southern terminus of SR-241 improved flow and safety at the intersection with a County road – Oso Parkway. Major construction included a new bridge conveying Oso Parkway over the SR-241. Orange County Public Works was the “lead agency” and managed the project, but the TCA provided all of the \$40 million budget. Although both roads benefitted, it is unlikely that the opposite scenario could have been approved. If the County had been required to pay, there would be no new bridge today.

The Oso Parkway bridge intersected a toll road, which is more than can be said for some projects now under consideration. Since the cancellation of the SR-241 South Extension, TCA Board meetings have been increasingly devoted to discussions about “regional mobility opportunities” on non-tolled roads. For example, the TCA is currently contributing to a project involving bike lanes and traffic light synchronization. Road construction south of Oso Parkway is of special interest, even though the TCA has no official business in that area. Both the Los Patrones Parkway Extension and Ortega Highway Widening projects have been seriously discussed in TCA committee meetings and Board meetings.

This is no way to manage the County's transportation planning. The TCA's propensity to re-define its own scope and ingratiate itself onto area roadways is going to keep growing in proportion to its surplus funds. The situation calls for some clear decisions and transparent public communication. The County might decide that using toll road money to fund unrelated projects is an excellent strategy, but that decision should be openly debated.

## How is Toll Money Actually Used?

Toll road drivers are primarily concerned with getting to their destination. If they can justify the toll on that basis, they might not care where the money goes. Toll rates have risen continuously since the roads opened, and they will continue to rise at a planned two percent (2%) per year.

The TCA website states that tolls go toward:

- *Retiring the construction debt*
- *Funding additional improvements*
- *Covering costs of operating The Toll Roads*

The following is a discussion of these three functions as well as other usage of funds.

### Retiring the Construction Debt

Tolls pay for construction debt only under a liberal interpretation of the concept. The initial three-billion-dollar debt was converted into more debt and then more debt, resulting in a \$15 billion financial hole. A toll dollar dropped into that hole has a one in five chance of landing on the original construction debt. The correlation between construction debt and toll revenues is effectively broken.

Compounding the ambiguity, the TCA can't claim that it is focused on "*retiring the construction debt*." Maintaining a large debt obligation is one of TCA's strategies for perpetuation of the agency. Since the debt retirement date was moved to 2053, there have been actions taken to reduce payments, but no efforts to hasten the end date. A small number of TCA Board members have gone on record to promote early payoff, but their suggestions have not been heeded.

### Funding Additional Improvements

Before considering the application of toll revenue to road *improvements*, it is important to know that the TCA has a limited ability to perform construction activity:

- Under its agreement with Caltrans, the TCA is not responsible for road maintenance. That work is done by Caltrans under its own budget. (The TCA recently paid for and completed a major upgrade to road signage, which is not a Caltrans maintenance item.)
- The TCA has a tiny Engineering department and no ability to plan, design, or construct roadways. It does have the ability to outsource and pay for those functions.
- The SR-241 South Extension would be the TCA's showcase construction project – if it were to happen. At present, it is suspended and inactive.

## \$28 Billion for a \$2.8 Billion Road

The TCA maintains a Capital Improvement Plan (CIP) to prioritize and communicate future enhancements to the roads. The Grand Jury has observed that, other than the SR-91 Express Connector, CIP projects are vaguely defined and often deferred. The reason is that the TCA's official road-building scope is completed, leaving only peripheral non-tolled roads to consider. Several transportation officials, both inside and outside the TCA, have admitted that there is no justification for lane widenings or other infrastructure enhancements in the foreseeable future. This is an existential problem for the agency.



Figure 8 - SR-241 southbound approaching first toll plaza.  
(Photo by 2020-21 Orange County Grand Jury)

### Covering Costs of Operating the Toll Roads

The Grand Jury was impressed with the TCA's toll collecting systems and process management. The customer supporting technology, as described in Appendix F, conforms to today's highest standards. The majority of TCA staff are assigned to the agency's core tasks including customer support, toll operations, and cash management. Actual toll operations, systems, and phone support are largely outsourced, but appear to be well managed by the agency.

### Advocacy

*Public Relations and Advocacy* is a broad category which includes activities ranging from small charity donations to large lobbying campaigns. The TCA wants to maintain positive relations with its neighbors in the immediate *Areas of Benefit* and beyond. It also wants the full support of its Board of Directors – elected officials who govern the TCA on a part-time basis. This creates a demand for certain spending that would not be allowed if the TCA were a typical public entity such as a municipality.



## \$28 Billion for a \$2.8 Billion Road

An elected Board Member who holds charitable fundraising events told the Grand Jury that the TCA was always good for a donation. In its most innocuous form, toll money goes through the TCA to the favorite charities of city council members who sit on the Board. At the other extreme, millions have gone to *advocacy* groups that are free to politically support certain TCA Board members and undermine others.

With the wide array of spending avenues, it's a challenge to differentiate essential TCA purchases from strategic spreading of the wealth. Some examples of cumulative spending over the past ten years:

- The TCA wanted to inform its customers about new cashless tolling, the mobile app, and so forth. But drivers are a captive audience. Was it necessary to spend \$14 million on *marketing* with dozens of different vendors? Other toll roads have approached this by posting signs and ramping up enforcement.
- For the stated purpose of engaging with their public, the TCA gave donations and membership fees to 195 organizations at a cost of \$10.6 million. This *outreach* included political consultants, a theatre company, a rodeo, and all regional chambers of commerce. However, the TCA does not have enough staff to engage in dialog with that many organizations, so it is purely a cash relationship.
- State and federal legislation can have a large impact on transportation agencies, so the TCA pays for political lobbying. Over the past ten years, \$8.3 million has gone to *lobbying and advocacy*, especially during the SR-241 South Extension controversy. An additional \$850 thousand was recently allocated to fight Senate Bill 760, which would block that project. But the roads are owned by Caltrans. Should TCA toll money be used to advocate for Caltrans in the State Legislature?

The agency has a history of spending on activities that sustain its relationships with supportive entities. The TCA's large pool of unrestricted cash has been used to polish the agency's image, perpetuate its life, bolster the positions of board members, and engender goodwill across a wide range of business and political leaders. One agency insider stated to the Grand Jury that the TCA's only real supporters are people and groups that directly receive TCA money. The Grand Jury believes that the county would be better served if the agency devoted its funds to paying off debt.

## What are DIFs?

The following scenario is a hypothetical situation for a future homebuyer. If the TCA stays on its current path, this will happen in Orange County in the year 2050.

A residential home developer applies for a permit to build a house in Irvine. The developer pays an additional fee of \$12,642 to be applied to the cost of the SR-73 toll road. When the house is built and sold, the price includes the DIF plus an estimated 30% markup, making the cost to the home buyer an additional \$16,434. The home buyer pays that cost by rolling it into their mortgage for 30 years at four percent (4%) interest. That adds \$78 per month to their mortgage payment, which is \$28,080 over thirty years. In the year 2080, they make the last payment for a road on which construction had been completed 80 years in the past.

The homeowner might feel entitled to drive freely on the SR-73 but would be disappointed. All drivers on the toll roads pay the same charges, even if they also pay Development Impact Fees.

Although they resemble taxes, DIFs are not taxes. Since the enactment of Proposition 13, municipalities have supported growth by assessing incremental fees directly on the beneficiaries of incremental services. If a new housing community will need a public park, a fee may be added to the cost of each house. The developer pays the fee to the city when procuring building permits. The developer adds the fee (and markup) to the price of the house and the city uses the fee to construct and maintain a public park. Some homebuyers are unaware that the price of their house includes such fees.

The Transportation Corridor Agencies are legally empowered to collect Development Impact Fees from Orange County cities and unincorporated areas adjacent to the toll roads, officially called *Areas of Benefit*. Anyone who actually drives on the road has to pay a toll, and most drivers are not from the *Areas of Benefit*. So, the DIF is not an access fee for the road's *usage*, it's a local community cost for the road's *existence*. The benefit derives from the presence of the road, no matter who is using it.

A thorough description of the program is provided on the TCA's website. The main points of the program are:

- If a city contains Areas of Benefit, it collects and contributes DIFs, and it is represented by a city council member on the associated TCA Board of Directors.
- Fee levels are determined by proximity to the roads. Zone A areas are charged a higher fee than Zone B areas.

\$28 Billion for a \$2.8 Billion Road

- Areas of Benefit do not match city boundaries. Within a particular city, some neighborhoods contribute to SR-73, some contribute to SR-241, and some contribute to neither.
- Single-family homes are assessed a fixed fee, regardless of the size of the house. Multi-family homes are assessed a lower fixed fee, regardless of the size of each unit. Low-income housing is not subject to the fee.
- Commercial properties within Areas of Benefit are assessed a fixed fee per square foot.
- Fees increase annually at constant index rates.
- There is no scheduled end to the fees while the TCA continues to exist and make debt payments.

Jurisdictions	Cumulative DIFs Paid (\$Millions)
Irvine	308
Orange County	121
Lake Forest	63
San Clemente	55
Tustin	29
Anaheim	25
Yorba Linda	24
San Juan Capistrano	21
Mission Viejo	21
Laguna Niguel	20
Santa Ana	19
Costa Mesa	14
Orange (City)	12
Newport Beach	12
Dana Point	7
Aliso Viejo	4
Laguna Hills	2
Laguna Woods	2
Rancho Santa Margarita	1
<b>Total</b>	<b>760</b>

Table 5 - Cumulative Development Impact Fees by jurisdiction.

### Total DIFs Paid by the Jurisdictions

Some communities started paying DIFs in 1987, while others joined the TCA and the DIF Program in later years. The annual amounts paid depend on the level of construction activity as well as proximity to the road (Zone A or B). Table 5 lists the cumulative Development Impact Fees paid by each member city as well as the County proper, which represents unincorporated areas. See Appendix D for a more detailed analysis of DIF contributions by county residents.

Jurisdictions have the option to contribute Rights-of-Way in lieu of DIFs. That process was more prevalent during early years of road construction, but it is emerging again in the Rancho Mission Viejo unincorporated area. Those contributions are not listed in the table.

### Automatic Rate Increases

As with toll rates, the TCA Board of Directors has authority to set DIF rates as it sees fit. In 1997, they established an annual growth rate, with fixed rate increases rather than an actual inflation index. The F/ETCA (SR-241) rate is 2.206% per year, which has closely matched average U.S. inflation. The SJHTCA (SR-73) rate is 2.667%, which exceeds inflation by a substantial margin.

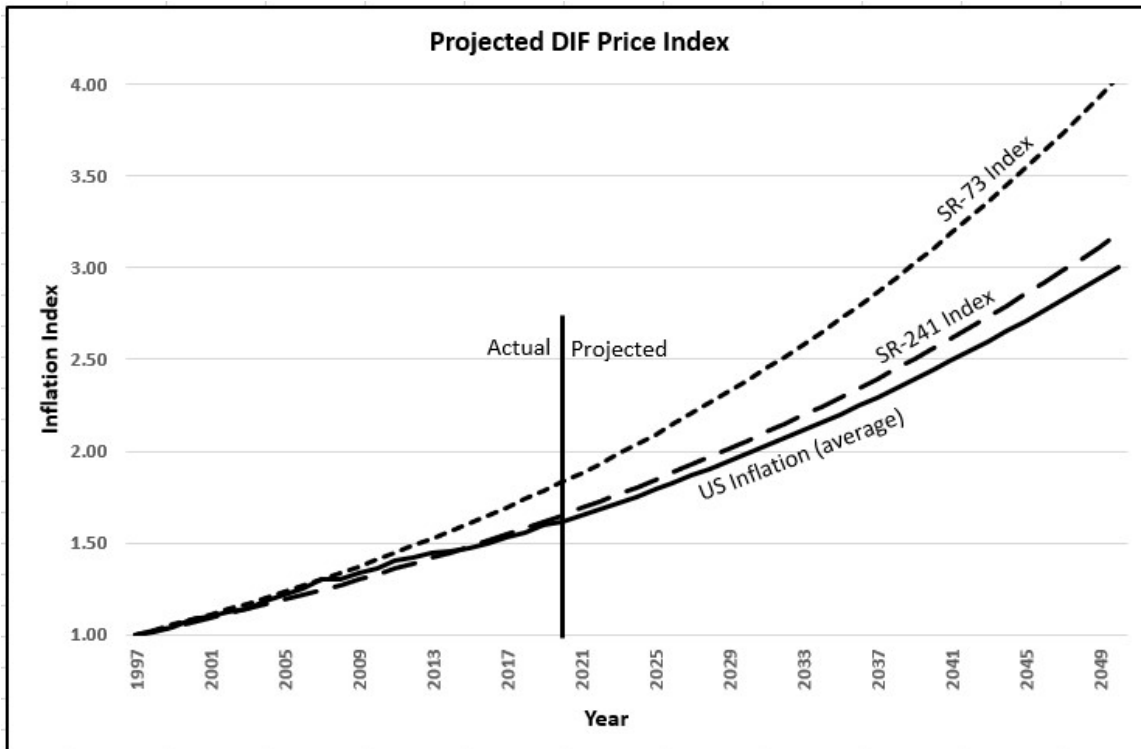


Figure 9 - Development Impact Fee inflation indexes.

## \$28 Billion for a \$2.8 Billion Road

Based on the planned inflation indexes, some sample cases are listed in Table 6. The TCA's website provides excellent tools for estimating the DIF charge on a potential building project.

Road	Zone	City	Type	2021 Fee	2050 Fee
SR-73	A	Aliso Viejo	Single Family	\$5,893	\$12,642
SR-73	B	Irvine	Commercial	\$5.83 / sq ft	\$12.51 / sq ft
SR-241	A	Foothill Ranch	Single Family	\$6,056	\$11,403
SR-241	B	Lake Forest	Multi-Family	\$2,513 / unit	\$4,732 / unit

Table 6 - Sample Development Impact Fees in 2021 and 2050.

### Are DIFs Necessary?

During road construction, DIFs were the TCA's only revenue, other than temporary State and federal grants. DIFs might have been necessary to *prime the pump* and ensure bond investors that Orange County residents were supporting the project. But the collected DIF amounts were dwarfed by construction spending. In 1995, DIF revenue was \$7 million while capital outlay was \$490 million. Construction was funded by borrowing, not by DIFs.

Development Impact Fees, based on the construction of new homes and businesses, have never been a reliable source of TCA revenue. At first, the TCA anticipated that 48% of its annual income would derive from DIFs. Once the roads were built, toll revenue far outpaced DIF revenue. Construction is a cyclical industry. In 2006, at the peak of a construction boom, DIFs comprised 17% of TCA revenue. In 2009, during a construction downturn, DIFs comprised just 1.5% of TCA revenue. Figure 10 demonstrates the historical decline in DIFs as a proportion of total TCA revenue.

For the past ten years, DIFs have averaged \$23.4 million per year, or seven percent (7%) of the TCA's total revenue. The TCA is currently holding \$1.5 billion in cash and investments, which is equivalent to 64 years of DIF revenue. In recent financial reporting periods, the TCA's investments have returned more cash than the DIF program. Individual homeowners are paying many thousands of dollars to an agency that is banking its money for a rainy day.

People understand tolls, but Development Impact Fees that follow a circuitous path from homeowner to road agency are not understood by the public. Furthermore, the fees were established so long ago that they are not even understood by some officials who are supposed to manage them. The Grand Jury was surprised to meet a TCA Board Member who was unfamiliar with the program and appeared concerned when told about it. That person is an elected official in a city that pays DIFs.

## \$28 Billion for a \$2.8 Billion Road

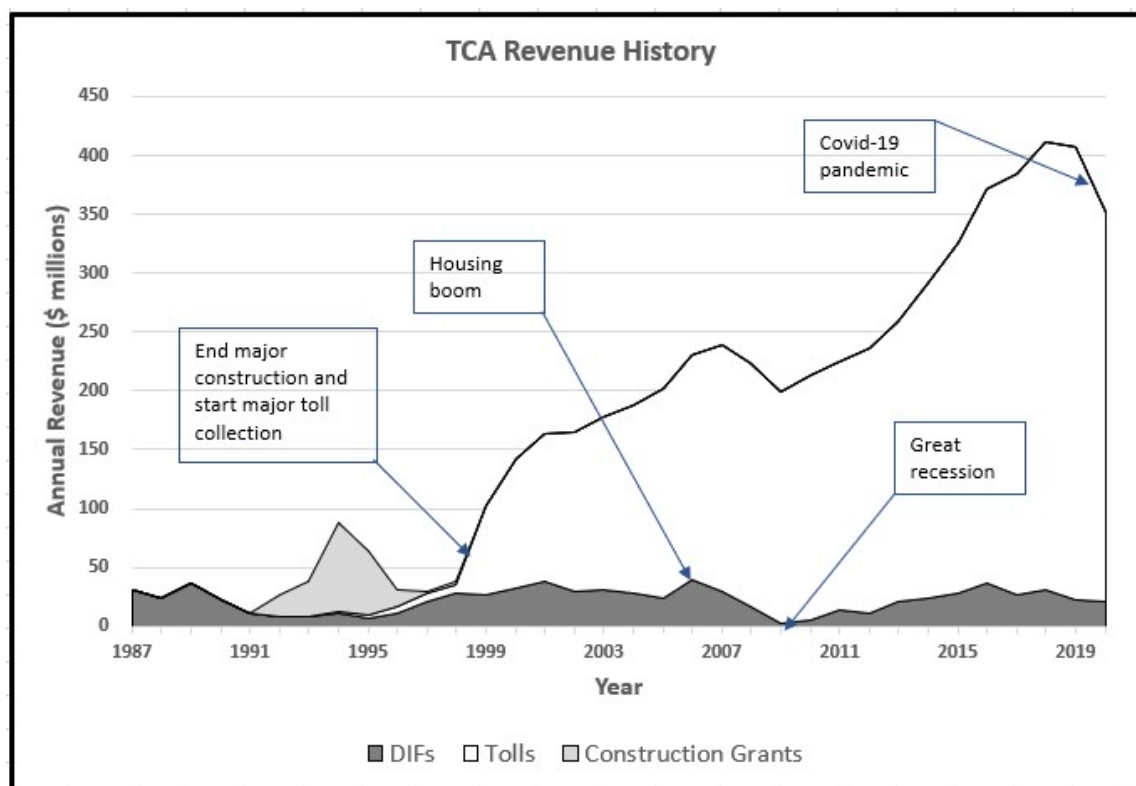


Figure 10 - TCA historical revenue.  
DIFs are determined by construction volume in Areas of Benefit.  
Tolls are determined by traffic volume and toll prices.

### Can DIFs be Eliminated?

Numerous documents explaining the DIF program say that it will continue until the bonds are paid off.

The toll roads have matured to the point that tolls can and should be the sole source of revenue. The roads cost less than \$3 billion to build. Jurisdictions have already contributed over \$750 million in Development Impact Fees and, at the current pace, their contribution will total \$1 billion by 2030. If the TCA needs endless revenue to cover its debts, that money should come from drivers, not from the next generation of targeted homeowners.

There are a few impediments that could prevent the straightforward elimination of DIFs.

- DIFs are the price that jurisdictions pay to participate in TCA governance. Elected city council members sit on the TCA Board because those cities are members of the JPA, and those cities contribute DIFs. Elimination of DIFs could weaken the role of cities and alter the de facto governance structure of the TCA. On the other hand, there is no evidence that cities currently leverage

their DIF contributions to effectively influence the direction of TCA strategy.

- There are areas in South County where very large developments are planned. If those plans proceed, DIFs could become a substantial source of TCA revenue, enabling faster elimination of the debt. However, at present, the TCA is not interested in accelerating the elimination of the debt.
- TCA public statements claim that the revenue bonds are backed by tolls and DIFs, implying that bondholders can enforce DIF collection. But the bond covenants treat DIFs as a secondary source compared to toll revenue. The bond covenants allow the TCA board to set DIF rates as low as they choose.

## Has the SR-241 South Extension Been Abandoned?

### History

The south end of SR-241 ends at Oso Parkway. California's master plan from the 1950s includes a segment from there to some point on the Interstate 5 Freeway, completing a highway route all the way from SR-91. Caltrans, which must sign off on any TCA construction, is in favor of completing the link.

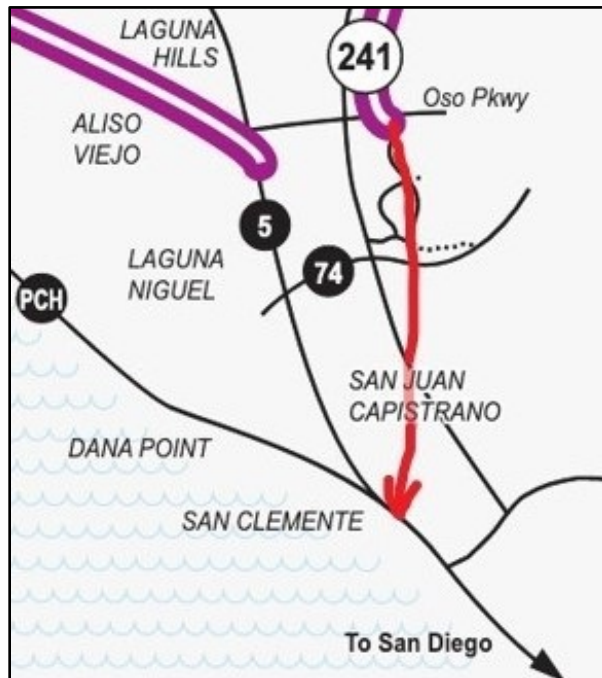


Figure 11 - Proposed SR-241 South Extension to Interstate 5.  
Image modified by OCGJ.  
(Used with permission of the Transportation Corridor Agencies.)

## \$28 Billion for a \$2.8 Billion Road

Sixty years ago, this segment would have been easier to build, but by the 2010s, when the TCA was ready to proceed, the proposed route faced many obstacles. In its path are mountains, watersheds, a state park, a land conservancy, a national forest, a famous surfing beach, a military base, a coastal zone, a high school football field, a commuter railway, a nuclear power plant, and a landfill. Along the route, there are both densely populated cities and open areas for future housing developments. There are existing roads that could be incorporated into the SR-241 South Extension, or not. Twenty-three routing options were considered. As the likely route shifted from one location to another, the road's opponents shifted accordingly.

Eventually, only one feasible route remained, and it led right into San Clemente. That city became the road's primary opponent because of the expected impact on its neighborhoods. Unable to negotiate an alternative, the City of San Clemente sued the TCA to protect the interests of its residents.

From the perspective of San Clemente, the project was not conducted in good faith by the TCA or Caltrans. They claimed that: negative impacts on people and neighborhoods were ignored; the plan was presented as a *fait accompli*; and opponents were subjected to severe public criticism. The TCA became a major force in local politics for the sole purpose of promoting the road. The Grand Jury learned that some San Clemente residents sold their homes and moved away rather than risk a more negative outcome.

The TCA fought hard to win approval for the SR-241 South Extension. Historically the agency had focused on finances, road building, and operations, but during this period, it became a political force. The budget for professional services, marketing, and other had been \$3.4 million in 2012. From 2017 to 2019, it averaged \$10.2 million per year, with money spent on several fronts to sustain the project. An environmental coalition received a \$28 million commitment for mitigation initiatives. City and County officials sympathetic to TCA's position received campaign support, while opposing politicians found themselves facing a new, well-funded adversary.

Ultimately, a traffic study predicted that traffic on the extension would not justify its cost. In March 2020, the TCA wrote off more than \$200 million in capital investment and stopped the project. Instead, other county agencies would pursue a more modest expansion of existing toll-free roads.

### Current Status

Fearful that the TCA will resurrect the project someday, San Clemente and regional activists are pursuing mechanisms to permanently preclude the construction of the SR-241 South Extension. State Senator Pat Bates visited the contested site and concluded that San Clemente's position is correct. She has two current bills in Sacramento that would block future consideration of the road. These proposals emulate Pasadena's recent successful stoppage of the 710 Freeway extension to Route 110, a battle that lasted 60 years:

- **SB 760.** Deletes the SR-241 South Extension from *California's Streets and Highways Code, Section 541.*



## \$28 Billion for a \$2.8 Billion Road

- **SB 761.** Prohibits certain governmental entities from constructing, funding, operating, or taking property to construct, fund or operate a new major thoroughfare in the City of San Clemente.

Opponents of the Extension have good reason to be concerned that the project will rise again. The Toll Road Agency strongly opposes the Senate Bills and will spend considerable resources to defeat them. The Grand Jury appreciates some of the arguments that the TCA has put forth, including:

- Any new project would have to be justified by a traffic study which supports the need for a road.
- Future mobility requirements are unknown. It is short-sighted to preclude infrastructure that future generations might need.
- The abrupt termination of the SR-241, far from any other highway, is a questionable transportation design that is inconsistent with the State's original vision.
- Major new housing development is expected in Rancho Mission Viejo, which lies along the path of the SR-241 South Extension.

The Transportation Corridor Agencies have additional motivations to promote the project. The TCA's very existence might someday depend on it. Therefore, the F/ETCA is expected to fight very hard for a SR-241 South Extension to I-5. The motivations include:

- The TCA needs a construction project that is unquestionably within its purview. The agency has been devising ever more elaborate rationales to justify its participation in peripheral road projects that were never included in its founding charter.
- A new connector will bring new traffic and revenue to the toll roads. It does not have to be enough traffic to *pay back* the construction cost in a normal timeframe. It must be enough to support another long-term debt plan.
- For years, communities in that area have been paying Development Impact Fees in anticipation of a road. Unless it delivers a road, the TCA will eventually face a reckoning on that issue.
- The fifteen-mile segment was budgeted at \$1.7 billion, a figure that will be higher when the project is re-started. To fund that amount, the TCA will likely issue new bonds. This may provide an opportunity for the TCA to justify debt extension beyond 2053.

The controversial SR-241 South Extension to Interstate 5 has disrupted TCA governance to a surprising degree. One concerned official described the situation as the TCA's number one problem, something that "we need to put behind us." The dissension between San Clemente and

the TCA permeates the atmosphere of Board meetings and committee meetings. Members are cautious about picking sides or making comments that will be quoted in litigation. The environment is not conducive to good governance, and collegiality has been described to the Grand Jury as *de minimis*.



Figure 12 - SR-241 southbound termination at new Oso Parkway Bridge.  
Los Patrones Parkway surface road begins after the bridge.  
(Used with permission of the Transportation Corridor Agencies.)

In May 2021, the San Clemente City Council voted to terminate its memberships on both TCA boards, the first city to abandon its position on the toll roads. The repercussions of that decision are still evolving, with DIFs as a major point of consideration. Other cities are watching the situation.

The City of San Clemente was well-positioned to influence the governance of the toll roads. It was a founding member of both local agencies and occupied two board seats with voting power; it is squeezed into a north/south *corridor* between mountains and ocean at the southern edge of the county; and the SR-241 South Extension controversy engendered in its residents a deep interest in the charter and activities of the TCA. Nevertheless, San Clemente could make no impact on the culture and direction of the agencies, so it decided to quit. This action does not bode well for future governance. Member cities that are experienced, engaged, and motivated should be listened to, not forced out.

## Why Two Agencies?

For the purpose of addressing major themes, this report refers to the Transportation Corridor Agencies or “TCA” as a single entity. However, they are two separate legal entities with some commonality in governance and operations. They were founded at the same time, under the same *California Government Code Section 6500 et seq.*, which enables the formation of Joint Powers Authorities. As described previously in this report, the two agencies are:

**Foothill/Eastern Transportation Corridor Agency (F/ETCA)**

Includes Toll Roads SR-241, SR-133, SR-261

**San Joaquin Hills Transportation Corridor Agency (SJHTCA)**

Includes Toll Road SR-73

TCA Agency Board Membership		
	F/E (SR-241)	SJH (SR-73)
County of Orange	✓	✓
Aliso Viejo		✓
Anaheim	✓	
Costa Mesa		✓
Dana Point	✓	✓
Irvine	✓	✓
Laguna Hills		✓
Laguna Niguel		✓
Laguna Woods		✓
Lake Forest	✓	
Mission Viejo	✓	✓
Newport Beach		✓
Orange (City)	✓	
Rancho Santa Margarita	✓	
San Clemente *	✓	✓
San Juan Capistrano	✓	✓
Santa Ana	✓	✓
Tustin	✓	
Yorba Linda	✓	

Table 7 - Member jurisdictions of The Transportation Corridor Agencies.

\* San Clemente’s withdrawal from both Boards is effective July 1, 2021.

Each agency has a Board of Directors comprised of elected representatives from the County Board of Supervisors and the city councils. Depending on geography and decisions made at the time of founding, Orange County cities may be represented on one agency or the other, or both. Representation is listed in Table 7. Of the nineteen member governments, seven belong to both agencies. Each board appoints a chairperson from among the membership.

## Common Operations and Management

The two agencies have separate governance, but all operations are managed in common by a shared TCA operation which employs approximately 65 full-time staff in one location. The TCA owns its office building. This approach avoids duplication and provides economies of scale for both internal and contracted activities. Staff work closely with the Directors, managing the agenda for board meetings and committee work.

Common internal functions include management, planning, accounting, human resources, and office facilities. Outsourced functions include information technology, toll systems, collections, and agreements with numerous vendors as well as other government organizations. When deciding on shared vendor contracts, the two boards follow a cumbersome process of separately voting and allocating portions to each of the two legal entities.

Board meetings are held concurrently in the same room; two simultaneous meetings where Board Members are participating in one of the meetings and staff are participating in both. This arrangement is unusual because each board is supposed to independently consider the interests of its own constituents. That can be difficult when participating in centrally managed dual meetings with overlapping agendas. Committee meetings follow the same pattern.

Other than their geographic separation, the primary divider between the two agencies is that they are legally and financially separate. Any revenues must accrue specifically to one or the other, a requirement which is easily handled through the distinct locations of highway toll points and Development Impact areas. On the expense side, the separation is not always so clear. There are many vendor contracts where the allocation formula is subjective at best. The F/ETCA normally bears the larger share of common cost because it has more traffic, more cashflow, and healthier financials.

### Should They Separate?

The Grand Jury observed online meetings and concluded that the co-mingled format does not allow each local agency to effectively develop its own culture and strategy. The vast majority of meetings that Directors attend are *Joint* meetings of both agencies. When it comes to major decisions, Chairpersons, aided by TCA staff, run the meetings as essentially one single organization. Proposals are developed as *common* actions to be adopted by both agencies. The two local agencies have no opportunity to develop their own directions.

For example, if a San Joaquin member voices an argument which is unique to the SR-73, that argument is made to the common operating staff and the entire combined board, not to just the other San Joaquin members. If San Joaquin had its own separate board meetings, its policies and direction would probably be different from Foothill's.

Since major decisions are handled as though the two agencies were combined, cities that serve on just one of the boards are at a disadvantage. Cities that serve on both boards get two votes on the *common* issue, but other cities get one vote. If the boards truly operated as separate entities, each city would get one independent vote within its own local agency, and the two agency strategies would be allowed to diverge.

## \$28 Billion for a \$2.8 Billion Road

The two boards used to meet separately, but the Grand Jury learned that separate meetings made it too difficult to manage common issues such as vendor contracts. That is certainly true. Also, it would be difficult for the shared TCA operating company to function efficiently under two divergent boards. So, as a practical matter, the TCA functions as one agency. The problem is that tactical operating issues are dictating the structure and preventing strategic independence of the two local agencies. When survival was the priority, this was not an issue. Now that the agencies are mature, stable, and looking to the future, conflicting visions are more apparent.

If Board Members feel that the Foothill/Eastern strategy should be different from the San Joaquin Hills strategy, then steps should be taken to enable those strategies to diverge. The financial, legal, and board structures of the two local agencies are already separate. However, operating issues and board meeting logistics are preventing true separation of governance.

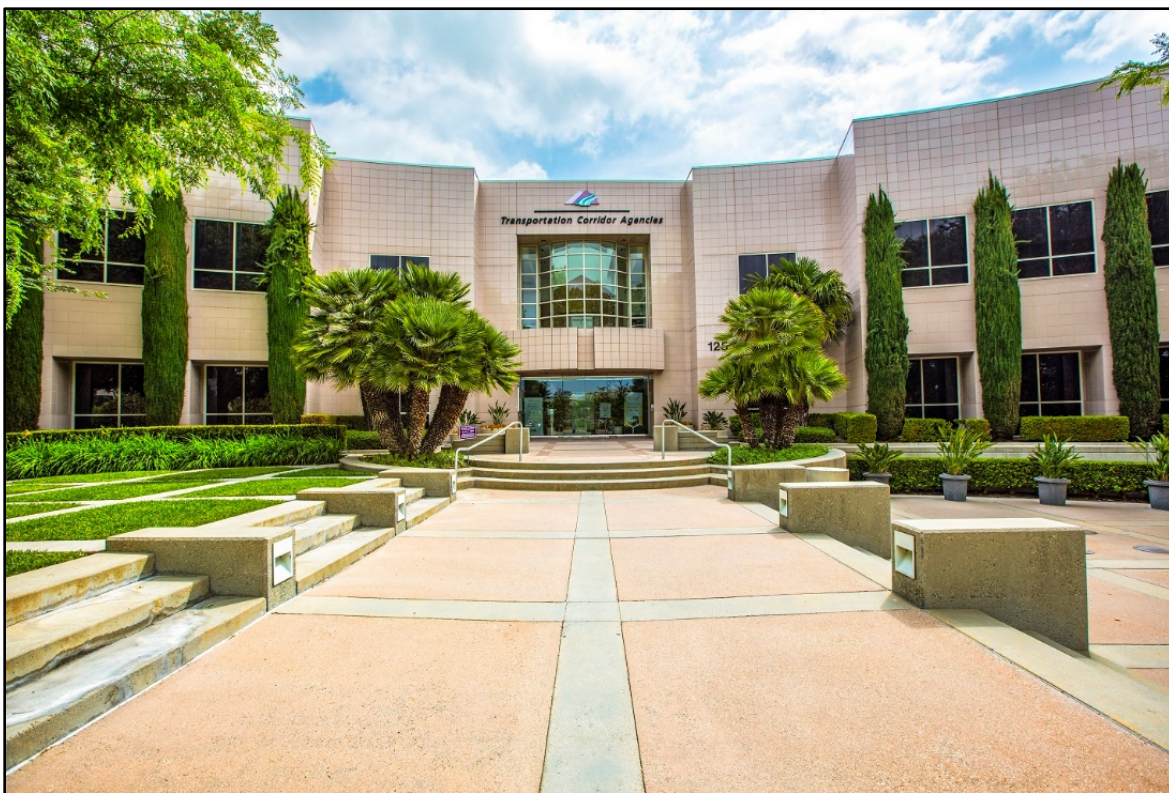


Figure 13 - Headquarters building of the two Transportation Corridor Agencies.  
Location: Irvine, California.  
(Used with permission of the Transportation Corridor Agencies.)

## Should They Merge?

Merging the two agencies would reduce overhead and greatly simplify the job of the operations staff. However, for several reasons, such a merger has not happened:

- The TCA’s debt, in the form of revenue bonds, is complicated. In theory, each local agency has its own separate investors with specific expectations of payment streams and risk levels. Merging the two could be complex and could lead to accusations that one side is benefitting at the expense of the other.
- The following opinions were expressed in Grand Jury interviews:
  - Elected officials, and the cities they represent, enjoy participating in Joint Powers Authorities. More boards enable more participation.
  - Individual members gain experience, exposure, and financial stipends. With two agencies, there are more such opportunities.
- Recently, some San Joaquin Board Members have espoused a debt-payoff philosophy while Foothill’s dominant philosophy is TCA expansion. On that major issue, the trend is toward divergence.

Notwithstanding those objections, merging the two Transportation Corridor Agencies would improve their operational efficiency. TCA staff currently maintain two sets of parallel books, with all the associated financial reports, audits, archives, and presentations. Vendor contracts are complicated to execute and administer. Joint board meetings are an exercise in cognitive compartmentalization. The Grand Jury heard from a Board Member who admits getting confused about voting as the discussion toggles between common and local topics.

A major benefit of merging would be financial flexibility. Whether paying down current bonds or refinancing with new debt, the process of negotiating with Wall Street is complex and expensive. The two local agencies are currently tracking fifteen historical bond issues while looking for opportunities to refund some of them with new issues. These transactions cost millions in fees in exchange for lower future payments. Also, as described in Appendix C, paying debt from a joint pool of funds enables more flexibility and a faster payoff.

A merger could easily maintain the current proportions of representation. Most cities would have one vote. Cities such as Irvine and Dana Point, which now have one vote on each local agency, would have two votes on a merged agency. The County would have five votes.

Bondholder agreements state that the TCA can amend its organizational structure with a three-fourths vote of the members as long as it does not “... *adversely affect the interests of the owners of the ... bonds...*”. Would Foothill bond investors object to a merger with the less prosperous San Joaquin Agency? Using the revenue projections provided to the Grand Jury, the TCA can

easily demonstrate that the toll road agencies are a safe bet, whether separate or merged. Investors have always done well, regardless of the TCA's ups and downs.

The JPAs have full authority to organize as they wish, with no further approval needed from the State. If the TCA were planning to go out of business in the next several years, the current structure might be acceptable. If the agencies plan to operate through 2053 or beyond, they should consider addressing the organizational complexity.

## What is the Best Use of the TCA?

### Core Competency

The TCA plays a *funding* role in targeted areas of Orange County's transportation infrastructure. By charter and experience, the TCA's core competency is collecting tolls and managing transportation infrastructure debt. The Grand Jury found no significant shortcomings in the TCA's toll operations. One could question the agency's *management* of debt, but it has certainly demonstrated an ability to leverage toll fees into massive financial participation by private lenders.

In the past, TCA operations were a balance between toll collection and outsourced construction management. The agency had to demonstrate competence in both areas in order to satisfy creditors and government overseers. Now, long after completion of the roads, the TCA has no construction competencies that would augment either Caltrans or OC Public Works. Furthermore, the TCA's aggressive forays into regional mobility planning are an infringement upon both of those organizations, and especially upon the OCTA. This situation stems from the TCA's surplus of revenue and shortage of toll road projects.

### Transportation Financier

The TCA's presentation of a "Strategic Vision" in the February 11, 2021 Board Meeting leaves no doubt about the agency's intentions. It proposes to create an "Infrastructure Bank" that would loan or *contribute* funds to area projects. The stated justification is that the projects would somehow benefit the toll roads. The TCA anticipates so much excess cash from toll collections that it needs a mechanism for funding other agencies that manage surrounding roads. Nowhere in this decision process is the toll-paying driver represented.

For a fully evolved vision of how the TCA and Caltrans might co-exist indefinitely, the Grand Jury found an instructive parallel in the San Francisco Bay Area. The following excerpts are from a story in the San Francisco Public Press:

BATA [Bay Area Toll Authority] is the financial lynchpin of what amounts to a multimillion-dollar business charging motorists to cross bridges.

[...]

## \$28 Billion for a \$2.8 Billion Road

Since 2005, lawmakers have greatly expanded the agency's role as the **rich uncle to Caltrans** [emphasis added], which owns and operates seven of the Bay Area's eight toll bridges.... BATA also provides substantial funding for the Metropolitan Transportation Commission, the lead planning agency that has its fingers in almost every mode of transportation within the nine counties that make up the Bay Area. Previously, tolls could only be increased with approval of the Legislature; now, the agency can raise them at will.

[...]

This steady stream of toll collections is also used by BATA as collateral for billions of dollars in revenue bonds issued to finance construction ... .

[...]

It is BATA's ability to unilaterally raise tolls in support of its continued borrowing that makes the agency particularly attractive to Wall Street – BATA is anything but a subprime borrower. In November, Standard & Poor's, one of the nation's three largest rating agencies, gave BATA's bond issue its second-highest investment-grade rating, justifying its decision by pointing out that BATA had "no limits" when it came to raising tolls to repay debt – and "no requirement of legislative approval."

*"How Wall Street Profits from Bridge Building"; Robert Porterfield; San Francisco Public Press; Dec 8, 2009.*

BATA's business plan has the benefit of San Francisco's geography, which leaves drivers highly dependent on bridges and narrow corridors. By comparison, the TCA controls only a few roads in a region that is dense with roads. Still, the TCA's emerging strategy, with the implied agreement of Caltrans, seems to emulate BATA's.

Two important elements of the "Financier" role:

1. Toll collection is unrelated to original construction of the tolled road, which in most cases was paid for long ago. Bay Area bridge revenue is diverted from the bridges to other projects.
2. Toll revenue is leveraged into long-term private debt, greatly increasing the pool of available construction funds. The tolling agency's expertise includes dealing with Wall Street.

Earlier in this report, the Grand Jury expressed skepticism that the Orange County toll roads are worth \$12 billion. In fact, when viewed as a cash-generating business that can borrow prodigiously, the toll roads are worth much more than \$12 billion. If toll collection continues indefinitely and rates continue to rise at the current pace, the roads will generate tens of billions of dollars for the TCA and its bondholders.



## What About Caltrans?

### Position on OC Toll Roads

While the TCA is uniquely positioned to generate revenue, Caltrans is uniquely positioned to endorse the TCA's activities. As California's official transportation agency, Caltrans has the ultimate authority over road construction. Its approval is required before any agency can build a road. It also represents the federal government in matters affecting transportation and environmental policy.

Caltrans is a pivotal player in the TCA story. It not only owns and maintains the toll roads, but it also occupies an *ex officio*, non-voting seat on each of the two TCA Boards. It has been a powerful, but quiet ally in the TCA's emergence as a *regional* player in county transportation.

The local Caltrans District 12 organization has some interesting characteristics:

- It is by far the smallest of the twelve Caltrans districts in the state.
- It is the only district that covers just one county, Orange County. All other districts have a multi-county purview.
- It is the newest district, approved in 1987, one year after the TCA JPA formations.

### Revenue Sharing

Despite California's image as a highly taxed state, all public agencies must compete for revenue. Traditional mechanisms, such as taxing and borrowing, are subject to voter approval or other restrictions. Pension obligations are consuming a growing share of total spending. State agencies have been directed by recent governors to optimize the productivity of existing infrastructure rather than building more infrastructure. As one of those agencies, Caltrans works hard to secure funding for its mission. Fuel taxes, a declining revenue source, provide exactly half of the Caltrans budget. As described earlier in this report, the TCA is an attractive partner for an agency in search of funds.

As the owner of the roads, Caltrans should encourage the TCA to pay off its debt and vacate its operations. But that has not been the case. When the TCA restructured its debt in 2013, it needed the approval of Caltrans to extend toll collection from 2040 to 2053. In exchange for that approval, Caltrans added a road maintenance charge into the TCA operating agreement. Rather than the free maintenance that it receives today, the TCA will pay a cumulative \$213 million from 2041 to 2053. This arrangement might please those critics who believe that the TCA benefits from free taxpayer-supported maintenance, but it also points to the mixed incentives at Caltrans. It approved an extension of toll collection (and therefore DIF collection), and required a portion of the revenue.

\$28 Billion for a \$2.8 Billion Road

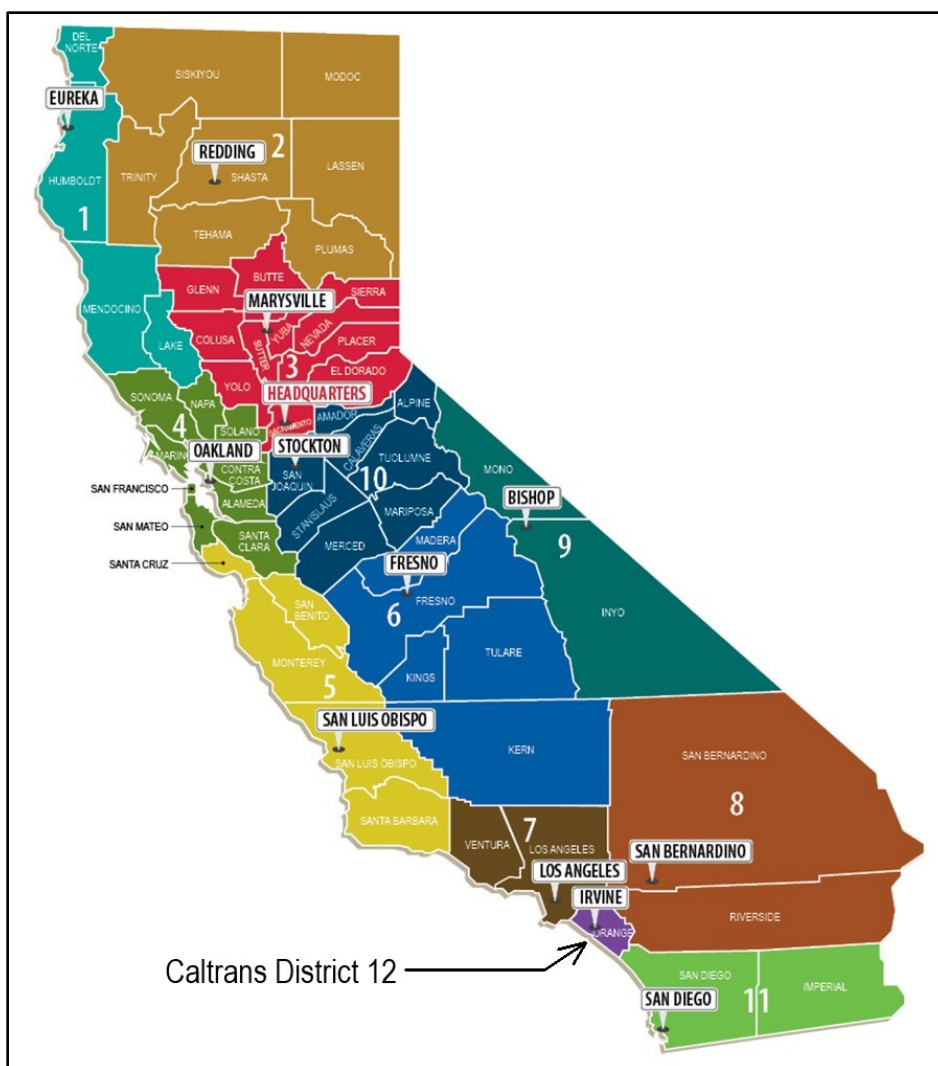


Figure 14 - Caltrans districts.  
Source: California State Auditor. (<http://auditor.ca.gov/reports/2015-120/introduction.html>)

Caltrans was a proponent of the SR-241 South Extension project, which could not legally proceed without its approval. Although toll sharing on the SR-241 South Extension from 2041 to 2053 was specifically excluded from the above arrangement, that is very likely because it did not yet exist. The Grand Jury expects that toll sharing after 2040 will be a subject of future negotiation should that project ever be completed. If that project is resurrected, it will be with the full backing of Caltrans, which will likely require maintenance support after 2040 just as with the existing SR-241.

When Caltrans collects tolls on one of its roadways, its policy is to spend that revenue in the same transportation corridor. Appendix E explains the *corridor* concept.

## Who's in Charge Here?

It can be challenging to get a clear understanding of the TCA's mission and governance: What is its charter? Who runs it? To whom is it accountable? Is it doing a good job? Has it finished its work, or is it just starting? County residents who are interested in the TCA should first understand the circumstances that have led to its high degree of autonomy.

1. As Joint Powers Authorities (JPAs), the TCAs are self-governing, autonomous bodies. When the State of California passed legislation enabling the formation of the JPAs, it delegated governance to Orange County. The State does not oversee the agencies or monitor their effectiveness. It is assumed that the voters of Orange County perform that oversight.
2. The founding State legislation and subsequent County agreements failed to codify firm boundaries on the activities of the TCA. Nor did they set enforceable limits on the size and duration of the agency's debt obligations.
3. Joint Powers Authorities have an inherent governance weakness because the board members are one step removed from their constituents. A city's voters pay attention to the performance of a mayor or city council member as it pertains to the governance of that city. When those same elected officials go off to sit on a part-time regional board, voters are less able and less motivated to monitor their actions.
4. Federal and State authorities have been slow to update the transportation funding model, which is highly reliant on gas taxes. In the absence of an agreed, top-down funding strategy, cash-generating toll roads are emerging as an ad hoc solution, fortuitous position for the TCA.
5. Transportation is a complicated policy area. Along with OCTA, OCPW, and Caltrans District 12, the TCA is one of four county-based transportation agencies. In addition, cities and developers have a role at the local level. Rather than allow gaps between these entities, it is customary to overlap their functions and collaborate as needed. Roles are not clearly defined.
6. Toll roads that collect a surplus of revenue are examples of concentrated benefits and distributed costs. Agencies that depend on the revenue have a high incentive to maintain that system. Individual drivers, paying modest tolls, have little incentive to organize an opposition. The same is true of Development Impact Fees that are rolled into thousands of individual home mortgages.
7. The consumer economy is increasingly based on paying a premium for convenience and time saving. Toll roads were once derided as *Lexus lanes*; they are now embraced by middle-class families because of the driving time that they save. Toll roads are no longer a controversial target for activists and consumer advocates.

## The Board of Directors

Who's in charge here? The short answer is that each of the two Toll Corridor Agencies has a Board of Directors comprised of elected County Supervisors and city council members.

The 2020-21 Orange County Grand Jury congratulates the Transportation Corridor Agencies on their delivery and operation of excellent roads and hopes that the Board of Directors will consider this report in the totality of its findings and observations.

## COMMENDATIONS

The Transportation Corridor Agencies built excellent roads with minimal tax dollars.

The Transportation Corridor Agencies run a state-of-the-art toll collection operation.

The Transportation Corridor Agencies are reducing future interest payments by taking advantage of low interest rates.

The Transportation Corridor Agencies were responsive to the Grand Jury investigation and provided copious data, extending many years into the past and the future.

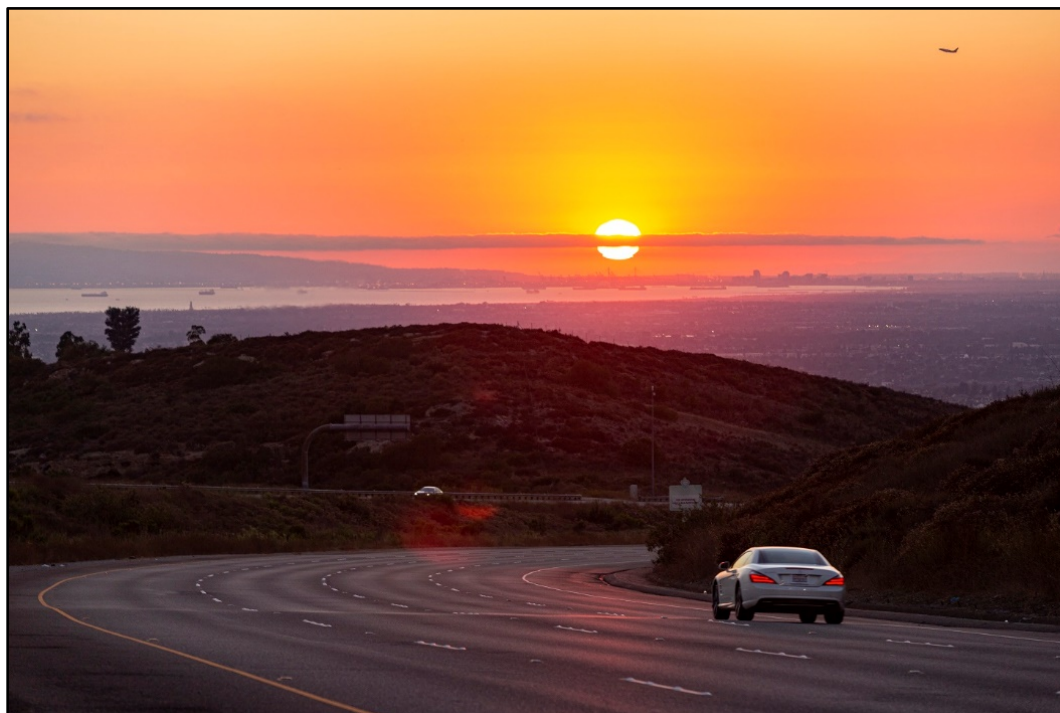


Figure 15 - SR-73 northbound.  
Visible in the distance: cargo ships and a flight from John Wayne Airport.  
(Used with permission of the Transportation Corridor Agencies.)

## FINDINGS

In accordance with *California Penal Code Sections 933 and 933.05*, the 2020-21 Grand Jury requires 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 described here, the 2020-21 Orange County Grand Jury has arrived at the following principal findings:

- F1. When the TCA completes the 91 Express Connector, its major necessary construction work will be finished.
- F2. By focusing on bond payoff, the TCA could retire its debt by 2037.
- F3. Based on the TCA's current debt repayment plan, the total cost of the toll roads will amount to \$28 billion by 2053.
- F4. The TCA can cover its debt obligations without the use of Development Impact Fees.
- F5. Even when the TCA's debt is retired, the roads will likely not become toll-free.
- F6. Maintaining two agencies creates cost inefficiencies and extends the amount of time required by SJHTCA to pay off its debt.

## RECOMMENDATIONS

In accordance with *California Penal Code Sections 933 and 933.05*, the 2020-21 Grand Jury requires 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 described herein, the 2020-21 Orange County Grand Jury makes the following recommendations:

- R1. The Grand Jury recommends the TCA develop and implement a written plan to pay off all debt by 2040, the original maturity date of the initial debt offering. The written plan should be completed by December 31, 2021 with annual written updates on December 31 of each successive year. This allows for completion of the 91 Express Connector and other projects currently in planning. This will result in debt service savings of approximately \$1 billion. (F1, F2)
- R2. The Grand Jury recommends the TCA eliminate DIFs once the debt is paid off. Until that time, the DIFs should be used exclusively for the payoff of debt. (F4)
- R3. The Grand Jury recommends the TCA research the possibility of merging the two agencies and develop a written plan of action by December 31, 2021. Merging allows for the elimination of any cost redundancies present in the two agencies. It also allows SJHTCA to pay off its debt at the same time as F/ETCA. (F6)

## 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:

### *Section 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.*

### *Section 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*

\$28 Billion for a \$2.8 Billion Road

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.

## Responses Required

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

### Findings

90 Day Required Responses	F1	F2	F3	F4	F5	F6
San Joaquin Hills Transportation Corridor Agency	x	x	x	x	x	x
Foothill/Eastern Transportation Corridor Agency	x	x	x	x	x	x
Orange County Board of Supervisors	x	x	x	x	x	x

### Recommendations

90 Day Required Responses	R1	R2	R3
San Joaquin Hills Transportation Corridor Agency	x	x	x
Foothill/Eastern Transportation Corridor Agency	x	x	x
Orange County Board of Supervisors	x	x	x

## GLOSSARY

<b>Areas of Benefit</b>	Properties in the corridor served by a toll road.
<b>CAB</b>	Capital Appreciation Bond. Early interest is deferred and converted into principal. This is also referred to as accreted interest.
<b>CAFR</b>	Comprehensive Annual Financial Report.
<b>CalPERS</b>	California Public Employees Retirement System.
<b>Caltrans</b>	California Department of Transportation.
<b>CHP</b>	California Highway Patrol.
<b>CIP</b>	Capital Improvement Plan. A projection of future investments in infrastructure or other capital items.
<b>Corridor</b>	A generally linear system of surface transportation systems between two points. See Appendix E.
<b>Debt Service</b>	A series of principal and interest payments to pay off a bonded debt.
<b>DIF</b>	Development Impact Fee. A fee paid by residential and commercial developers to defray the cost of necessary infrastructure.
<b>EMMA</b>	Electronic Municipal Market Access. A website created to provide information about municipal bonds, bond prices, and market trends to the public, operated by the Municipal Securities Rulemaking Board.
<b>FAQ</b>	Frequently asked questions.
<b>F/ETCA</b>	Foothill/Eastern Transportation Corridor Agency. SR-241/261/133.
<b>Foothill</b>	See F/ETCA.
<b>Freeway</b>	A toll-free express highway.
<b>FY</b>	Fiscal Year. July 1 through June 30.
<b>Greenfield Project</b>	New construction on previously undeveloped land.
<b>Inland Empire</b>	The region containing Western Riverside County and Southwestern San Bernardino County.
<b>JPA</b>	Joint Powers Agreement. A combination of local governments for the purpose of handling a common function. Also called Joint Powers Authority or Joint Powers Agency.
<b>Lane Mile</b>	One lane of road, one mile long. A one-mile length of four-lane road equals four lane miles.



<b>MPAH</b>	Master Plan of Arterial Highways. California’s planning tool for all highway projects. Established in 1956 and updated continuously.
<b>Non-Recourse Debt</b>	A loan where the lender cannot pursue the borrower’s assets to recover defaulted payments.
<b>OC</b>	Orange County, California.
<b>OCPW</b>	Orange County Public Works.
<b>OCGJ</b>	Orange County Grand Jury.
<b>OCTA</b>	Orange County Transportation Authority.
<b>Proposition 13</b>	An article of the California State Constitution, passed in 1976, restricting property tax increases.
<b>Public-Private Partnership</b>	Also called PPP, P3, or 3P. A cooperative agreement between private and public entities, usually for the purpose of infrastructure funding.
<b>Refunding Debt</b>	Covering old debt by issuing new debt at more favorable terms such as lower interest rates.
<b>Regressive Tax</b>	A tax rate that does not increase in proportion to the value of the taxed asset. The opposite of a progressive tax.
<b>Revenue Bond</b>	A debt instrument where collateral consists of a lien on a stream of revenue.
<b>Right-of-Way</b>	A legal right to establish a route on property owned by another. Also called ROW.
<b>San Joaquin</b>	See SJHTCA.
<b>SB</b>	Senate Bill.
<b>SJHTCA</b>	San Joaquin Hills Transportation Corridor Agency. SR-73.
<b>Special District</b>	Same as a JPA.
<b>SR</b>	State Route.
<b>Sunset</b>	The phasing out and shutting down of an organization at the end of its useful life.
<b>TCA</b>	Transportation Corridor Agencies. The Toll Roads.
<b>Unincorporated Areas</b>	Areas of the county that have not been incorporated into cities.



\$28 Billion for a \$2.8 Billion Road

**Zones A&B**

Sub-areas in Areas of Benefit. Zone A is closer to the toll road and pays a higher DIF amount.





\$28 Billion for a \$2.8 Billion Road

## APPENDICES



## Appendix A – Public-Private Partnership

The Transportation Corridor Agencies followed an established funding model called the Public-Private Partnership (PPP). There are several variations, but they all involve private investment in public assets. TCA construction funds were raised by issuing revenue bonds to private investors with no guarantee of repayment. The TCA is solely responsible for repaying all of the debt that it incurs.

A *partnership* might suggest that private investors are involved in operating the toll roads as a method of assuring best practice management of the public infrastructure. That is not the case. The *private* portion of the arrangement is strictly financial. Investors have an arm's length relationship with the TCA and are concerned only with timely repayment of the debt. Separately, the TCA can and does contract with private companies to support its operations.

As a Public-Private Partnership under a Joint Powers Authority, the TCA bears characteristics of both:

### TCA public characteristics:

- Its roads are valuable public infrastructure.
- It can raise funds through tax-exempt bonds.
- It can levy fines on drivers without going through the courts.
- It pays no taxes on income or assets.
- It is governed by a board of elected politicians.
- Its employees are government workers with CalPERS benefits and retirement plans.
- It enjoyed non-compete agreements with adjacent freeways, which limited the ability of those public roads to expand. (The agreements expired in 2020.)
- Its roads are maintained by Caltrans and patrolled by the CHP at public cost.
- Caltrans, which owns the roads, has applied no pressure to accelerate debt payoff.

### TCA private characteristics:

- Its private investors have been willing and patient buyers of the debt.
- Unlike public debt, TCA bonds can be issued with no voter approval.
- Unlike taxes, toll prices can be raised with no voter approval.
- Spending is not restricted to a specific infrastructure project.
- It can outsource its primary functions to non-union private firms, an option that is not available in most California government workplaces.
- It can give funds to organizations that promote the TCA and its Board Members.

## Appendix B – The Toll Roads FAQ Web Page

Figure B1 is a web page screenshot from a PDF that was available on The Toll Roads website on June 25, 2017. It is archived at:

[https://thetollroads.com/sites/default/files/pdf/newsroom/003\\_15\\_About\\_TCA\\_Factsheet.pdf](https://thetollroads.com/sites/default/files/pdf/newsroom/003_15_About_TCA_Factsheet.pdf)

The PDF is also available on the Internet Archive at:

[https://web.archive.org/web/20170625155656/https://thetollroads.com/sites/default/files/pdf/newsroom/003\\_15\\_About\\_TCA\\_Factsheet.pdf](https://web.archive.org/web/20170625155656/https://thetollroads.com/sites/default/files/pdf/newsroom/003_15_About_TCA_Factsheet.pdf)

In the encapsulated section, there are two statements that the TCA no longer makes publicly:

- *“When the bonds are paid off, the roads will become freeways.”*
- *The roads have a value of \$3 billion.* (The current claim is \$12 billion.)

**TCA FACTSHEET**

**ABOUT THE TRANSPORTATION CORRIDOR AGENCIES**

**The Transportation Corridor Agencies (TCA)** is a not-for-profit government agency created by the state legislature in 1986 to plan, finance, design, construct and operate The Toll Roads. The Toll Roads are made up of State Routes 73, 133, 241 and 261 which form the largest network of toll roads in the state.

These roads were originally planned as freeways; however, the state did not have the funds to construct them. The tolls collected are used to pay back the bonds sold to finance the roads. **The roads have been deeded to Caltrans and are part of the state highway system. When the bonds are paid off, the roads will become freeways.**

Under this successful model, Orange County has provided the state of California with \$3 billion in new infrastructure during the past 20 years. To date, 51 miles of the system are open to the public and comprise 20 percent of the county's freeways.

**ABOUT THE TOLL ROADS**

**The State Route 73 Toll Road** spans 15 miles in South Orange County from Newport Beach to San Juan Capistrano. Since opening to motorists in 1996, it has served as an alternative route to the notoriously clogged Interstates 5 and 405.

**The State Route 133, 241 and 261 Toll Roads** span 36 miles in inland South Orange County from the 91 Freeway near the Riverside border to Tustin via the 261 Toll Road; Irvine via the 133 Toll Road; and Rancho Santa Margarita via the 241 Toll Road. The roads serve as critical alternative routes to the congested Interstate 5 and 55 Freeway. The Toll Roads are owned by the state of California and maintained by Caltrans.

Figure B1 - TCA Website FAQ page from 2017.  
(Used with permission of the Transportation Corridor Agencies.)

## Appendix C – Debt Payoff Analysis

The Grand Jury believes that the TCA’s large debt presents an impediment to strategic flexibility and an inefficient use of infrastructure dollars. To understand the financial options, debt payoff scenarios were modeled and are summarized here.

### Source Data

- All data was associated separately and individually with the two agencies: San Joaquin Hills and Foothill/Eastern. Analysis was also performed separately.
- The TCA’s debt obligation information is publicly available at Electronic Municipal Market Access (EMMA). In addition, the TCA provided a detailed schedule of debt service payments from the present year through the 2053 final bond retirement. Principal, interest, CAB accreted interest, and call dates were all taken into consideration.
- The TCA provided its projected revenue from toll-related activities (tolls, fees, fines) as well as a 2014 projection of operating costs through 2053.
- Capital projects were taken from the TCA’s 2021 Capital Improvement Plan (CIP), which includes a \$250 million Express Connector to the SR-91 Toll Lanes. This is the only large defined project in the CIP. Other capital projects through FY2025 were also included. However, any projects after 2025 were excluded on the basis that they are not yet defined and would have a lower priority than debt retirement.
- At the time of the analysis, Foothill’s investment portfolio had a book value of \$720.4 million and San Joaquin’s was \$772.2 million. About half of that total amount is restricted to debt service.
- No attempt was made to reduce headcount or slash operating costs (approx. \$50 million combined per year). Except for the truncated capital construction plan, it was an *as-is* projection of TCA revenue and expenses.

### Assumptions

- DIF revenues for FY2021 were derived from the TCA budget projection, which includes a deep pandemic reduction. Based on conservative extrapolation, FY2022 DIF revenues were assumed as \$12.6 million for Foothill and \$6.4 million for San Joaquin. Subsequent annual growth is based on the official indexes of 2.206% and 2.667% respectively.
- Investments were assumed to earn a short-term return of 0.20%
- The price to buy back bonds was calculated by the future date present value of the debt service cash stream. A market discount rate of 2.0% was employed.

\$28 Billion for a \$2.8 Billion Road

- Bonds were retired from oldest to newest because the older debt was generally more expensive and included principal deferring Capital Appreciation Bonds.

**Scenarios**

- Scenario 1 – The current plan as-is.
- Scenario 2 – Focus on debt payoff as early as possible, per the Assumptions.
- Scenario 3 – Same as Scenario 2, but merge the two agencies in order to apply some Foothill revenue to San Joaquin’s debt. (Merging is discussed in the report section, “Why Two Agencies?”)

TCA Debt Payoff Simulation (\$Millions)			
	Scenario 1	Scenario 2	Scenario 3
Scenario->	Current Plan	Focus on Debt Payoff	Merge then Payoff
<b>Foothill</b>			
End Year	2053	2037	2037
Future Revenue	14,022	5,196	5,196
Future Debt Payments	5,582	4,801	5,025
<b>San Joaquin</b>			
End Year	2050	2039	2037
Future Revenue	8,113	4,291	3,704
Future Debt Payments	4,765	4,398	4,155
<b>Total Future</b>			
Future Revenue	22,135	9,486	8,900
Future Debt Payments	10,346	9,198	9,180
<b>Total Revenue</b>			
Total Past Revenue	6,091	6,091	6,091
Grand Total Revenue	28,226	15,578	14,991

Table C1 – TCA debt payoff simulation results.

**Results**

1. Compared to the Current Plan (Scenario 1), focusing on debt payoff (Scenario 2) will accelerate Foothill’s retirement by 16 years and San Joaquin’s by only 11 years. This is because San Joaquin has less revenue to work with.
2. If the two agencies are merged (Scenario 3), some Foothill revenue is applied to San Joaquin’s debt, accelerating the San Joaquin retirement by an additional two years.

## \$28 Billion for a \$2.8 Billion Road

3. In payoff scenarios (2&3), future debt payments exceed future revenue. This is because the TCA is starting with \$1.5 billion in hand. Those funds eventually go toward the debt, leaving zero in hand.
4. Focusing on debt payoff saves about \$1 billion in debt service payments.
5. The Grand Total Revenue indicates the TCA's total lifetime revenue from 1987 until the debt retirement date. Assuming cessation of toll and DIF collection after 2037, an accelerated retirement eliminates \$13 billion in future revenues and expenditures (\$28 billion minus \$15 billion).

### Level of Reserves

The analysis assumed that neither agency's reserve portfolio could drop below \$200 million. For the scheduled debt service over the next 20 years, that amount would allow each agency to survive for about one year with zero revenue. Operating costs and the currently scheduled debt service would be covered.

If the reserves are maintained at today's level (\$750 million per agency), it will add about three years to the retirement schedule. Instead of 2037, it would be 2040.

### Benefits of Paying Off the Debt

1. Assuming a cessation of fee collection in 2038, it saves the public \$12.8 billion in future tolls and about \$500 million in future DIFs.
2. It saves about \$1 billion in interest payments.
3. It gives Caltrans full control of the roads at a much earlier date.
4. It avoids \$213 million in scheduled Caltrans maintenance fees starting in the year 2041.
5. It removes the large debt obligation as a factor in toll price setting.
6. It reduces the exposure to risk from future financial crises.
7. It creates the option to eliminate tolls and DIFs.
8. It gives Orange County more flexibility in deciding the TCA's future role.

### Opportunity Cost

It is cheaper to pay for projects with current funds rather than with long-term debt. For many of the TCA's bonds, the total debt service payments are approximately double today's face value of the debt. Debt payments can be viewed as an investment option; invest in projects now, or invest in paying down the debt? The TCA is holding onto \$1.5 billion while looking around for new projects. Eliminating debt would be a cost-effective project.





## \$28 Billion for a \$2.8 Billion Road

For example, the F/ETCA recently provided \$40 million to fund the County’s bridge and interchange at Oso Parkway. That same \$40 million, applied to a 2040 bond, would save more than \$40 million in future interest payments. It’s not an either/or choice; the TCA could still build a required bridge. But paying off debt should rank high when deciding on the use of funds.



## Appendix D – Who Pays the DIFs?

DIFs are Development Impact Fees charged to construction of homes and businesses in the TCA member jurisdictions' Areas of Benefit.

When the toll roads were first proposed and South Orange County was an undeveloped area, potential usage patterns could only be estimated. But now, more than 30 years after that plan was approved, road utilization has become robust and somewhat predictable. Using transaction data provided by the TCA, the Grand Jury studied the traffic volume on both road systems over a two-year period, based on the home zip code of each vehicle.

Note: *The Transportation Corridor Agencies did not share any personal identifying information with the Grand Jury.*

### Inter-County Road Usage

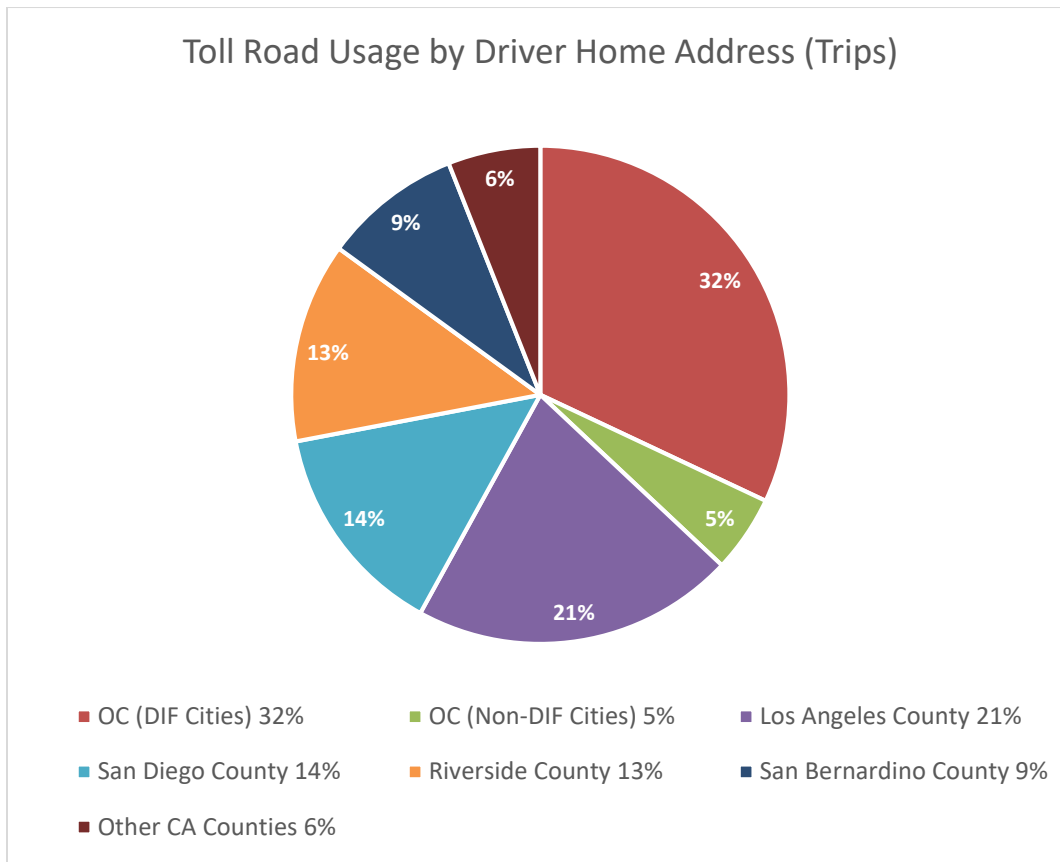


Figure D1 - Distribution of Toll Road usage (trips) by driver home address. July 2018 through June 2020. Excludes approximately 10% of transactions, because driver zip code was outside of California or indeterminate.

Figure D1 demonstrates two things:

1. The roads are a *regional* success, serving drivers equally from OC and several surrounding counties.
2. Development Impact Fees are paid by *Areas of Benefit* that account for less than one third of the road traffic.

### Intra-County Road Usage and DIFs

When the DIF program was instituted, there was no road and no traffic data to support an accurate assessment of DIFs. The TCA now has detailed data on millions of transactions. Also, automatic payment technology enables the analysis of road usage by driver account data. Using aggregated toll transactions and vehicle registration zip codes, the Grand Jury studied the correlation between road users and DIF payers. The purpose of this comparison was to investigate the link between assessed *benefit* and actual utilization.

The analysis includes the TCA member cities along with other Orange County cities that make significant use of the toll roads. Comparing population and road usage to Development Impact Fees, some jurisdictions are net contributors to the roads, while other cities are net beneficiaries.

Some caveats regarding the approach:

1. To focus on city-by-city comparisons, any vehicles from outside of Orange County were ignored.
2. The analysis uses only the zip code of the vehicle's home because the vehicle's destination is unknown. For example:
  - a. If a resident of Aliso Viejo visits a friend in Los Angeles, their road usage appears on SR-73. But if the friend from LA visits Aliso Viejo, that trip is excluded.
  - b. If an employee from Corona travels to a job in Irvine, that trip is excluded. It's possible to derive approximate city-to-city travel data from transaction details, but that was not the purpose of the study.
3. There is no standard year for DIF collections because it depends on the amount of construction activity. Amounts were averaged from the year that a city started collecting DIFs, up until the present.
4. The County of Orange, rather than any city in the county, is typically the largest payer of DIFs. To focus on city-by-city comparisons and assignable vehicle zip codes, the county proper and unincorporated areas were omitted.

\$28 Billion for a \$2.8 Billion Road

5. Road utilization is only a rough proxy for *benefit*. The Grand Jury recognizes that transporting resident drivers is not the roads' only advantage. Even residents without cars derive benefit from the roads.

City *	% of Traffic **	% of Population (2019)	% of DIFs ***
Irvine	14.1%	10.6%	46.1%
Mission Viejo	7.6%	3.5%	3.4%
Santa Ana	6.7%	12.3%	2.9%
Huntington Beach	6.6%	7.4%	0.0%
Newport Beach	6.0%	3.1%	1.7%
Laguna Beach	5.7%	0.9%	0.0%
Anaheim	5.7%	13.0%	3.7%
Lake Forest	5.6%	3.2%	11.8%
Costa Mesa	4.7%	4.2%	2.1%
San Clemente	4.5%	2.4%	8.2%
Orange	4.3%	5.1%	1.8%
Rancho Santa Margarita	3.9%	1.8%	0.4%
Laguna Niguel	3.4%	2.5%	3.4%
Laguna Hills	2.9%	1.2%	0.3%
Tustin	2.9%	2.9%	4.4%
Yorba Linda	2.6%	2.5%	3.7%
Dana Point	2.5%	1.2%	1.1%
San Juan Capistrano	2.1%	1.3%	3.2%
Garden Grove	2.0%	6.4%	0.0%
Fullerton	2.0%	5.2%	0.0%
Westminster	1.2%	3.4%	0.0%
Placentia	1.0%	1.9%	0.0%
Brea	0.9%	1.6%	0.0%
Aliso Viejo	0.7%	1.9%	1.5%
Laguna Woods	0.2%	0.6%	0.4%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Table D1 - Orange County cities' relative contribution to Toll Road traffic and DIFs.

- \* Includes all TCA member cities. Excludes unincorporated areas and non-member OC cities with minimal traffic contribution.
- \*\* Toll Road trips. Based on home zip code of car registration.
- \*\*\* Excludes DIFs paid by Orange County proper and unincorporated areas. Excludes years prior to when a city started paying DIFs.

The following observations were derived from Table D1:

Irvine

The road utilization by Irvine residents is proportional to its population, but due to continuous development of residential and commercial properties, Irvine's DIF contribution is always much higher than that of any other city. Presumably, some DIF benefit is derived from a large daily influx of workers and students into Irvine – external drivers who are not reflected in the table.

Lake Forest

This city is a net contributor to the toll roads. Lake Forest's DIFs are double its traffic contribution and almost four times its population base.

San Clemente and San Juan Capistrano

Both cities contribute more in DIFs than they consume in road usage. This might be because the planned SR-241 South Extension to Interstate 5 has not been built. Those cities have been paying benefit fees for a road that has yet to arrive.

Santa Ana

Only a small section of Santa Ana falls within the SR-241 Zone B Area of Benefit, which is why its DIF contribution is disproportionately smaller than its population and traffic. Anaheim, Costa Mesa, and Orange are similarly situated on the boundary of a DIF zone.

Laguna Niguel

This city's traffic contribution matches its DIF contribution is 3.4% of the county's total. Its population base is on a similar scale. Tustin, Yorba Linda, Aliso Viejo, and Laguna Woods also enjoy balanced ratios.

Rancho Santa Margarita

Rancho Santa Margarita's road usage is ten times higher than its DIF payments and more than double its population ratio. Other net beneficiary cities include Newport Beach and Laguna Hills.

Huntington Beach

This is a large city that contributes traffic to all area highways. It is not in any toll road Area of Benefit, so it pays no DIFs. When Huntington Beach is combined with Garden Grove, Fullerton, Westminster, Placentia, and Brea, they comprise almost 14% of county-resident traffic on the toll roads, but none of them pay any DIFs.

Laguna Beach

This city is the top net recipient of toll road benefits. Its residents are disproportionately high users of the roads but pay no DIFs.

Note: *The Grand Jury did not analyze the "regressive" aspect of DIFs that could contribute to intra-county disparities. A \$10 million home in Newport Beach pays the same DIF amount as a \$1 million home in Irvine. If fees were proportional to real estate value, the city contribution rankings would change.*

## Appendix E – Transportation Corridors

The two Orange County Toll Road Agencies have the term *Transportation Corridor* in their official names:

- Foothill/Eastern Transportation Corridor Agency (F/ETCA)
- San Joaquin Hills Transportation Corridor Agency (SJHTCA)

### Corridors

The word *corridor* has been around for about four centuries, but the term *transportation corridor* emerged in 1919, with the rise of mass automotive traffic. Its definition varies by context. The New York City Transit Authority designates dozens of corridors by which people move in and around the boroughs. On a broader scale, national transportation planners refer to the entire eastern seaboard from Boston to Washington, DC as a corridor.

In recent years, the term has acquired more specific meanings as it appears in legislation and in agency agreements. Essentially, it includes every mode of surface transportation, with a view toward optimal results regardless of pathway or vehicle type. Although agencies sometimes speculate about drones and flying cars, none have so far included air transport in their definitions.

As defined by the Federal Department of Transportation (DOT):

A corridor is a combination of discrete, adjacent surface transportation networks (e.g., freeway, arterial, transit networks) that link the same major origins and destinations. It is defined operationally rather than geographically or organizationally.

As defined by the Federal Highway Administration (FHWA):

A corridor is a largely linear geographic band defined by existing and forecasted travel patterns involving both people and goods. The corridor serves a specific market or markets that are affected by similar transportation needs and mobility issues. The corridor includes various networks (e.g., limited access facility, surface arterial(s), transit, bicycle, pedestrian pathway, waterway) that provide similar or complementary transportation functions.

As defined by the California Department of Transportation (Caltrans):

Corridor Planning is a multimodal transportation planning approach that recognizes that transportation needs are based on the complex geographic, demographic, economic, and social characteristics of communities. These locations are tied together by a complex system of streets, roads, highways, trails, paths, rail lines, bus corridors, and other elements that affect the convenience, safety, and accessibility of transportation choices.

A corridor can be defined as a linear geographic area with one or more modes of transportation that facilitates the movement of people and goods, supports the economy, and connects communities. Origins and destinations, land use, place types, and existing and future development that surround the transportation infrastructure influences how the corridor and its limits are defined.

### Corridor Toll Spending

The Grand Jury was told that it is Caltrans' policy to spend toll revenue in the same corridor in which it was collected. That is not a federally mandated policy. Since the 1991 passage of the Intermodal Surface Transportation Efficiency Act, and subsequent updates to that law, the states and their regional agencies have broad leeway to collect tolls and then spend those funds far from the tollway. Two unsuccessful lawsuits, filed by the trucking industry, demonstrated this reality:

1. The Pennsylvania Turnpike was sued because highway tolls were supporting city transit systems in Philadelphia and Pittsburg. Those cities are connected by the 360-mile-long turnpike but are never entered by some drivers.
2. The New York State Thruway Authority was sued because highway tolls were supporting the historic canal system. The canals are used mainly by tourists and are not really a transportation mechanism.

The trend is toward local control over toll revenue spending. There are no legislative *guardrails* that would keep the toll money on the tolled road, or even in its corridor.

### The Texas Solution

Texas has always charged low gas taxes, so it is accustomed to funding transportation by other means. Texans have been receptive to tolled roads as a mechanism for allocating transportation



## \$28 Billion for a \$2.8 Billion Road

costs to the individual driver. As electric vehicles weaken gas tax revenues, California will be faced with similar options.

Geographically, Texas does not lend itself to linear corridors. With major cities dispersed over vast landscapes, there are urban transportation *islands* connected by a thin web of highways. Ten self-contained systems are organized as *Regional Mobility Authorities*. Comprised of neighboring counties under JPA-like agreements, each organization has broad authority to collect tolls and apply the revenue to any transportation resource in its region.





## Appendix F – The Toll Roads Customer Technology



Figure F1 - Overhead gantry with vehicle sensors on SR-241.  
Source: Google Maps.

Grand Jury members created personal accounts and verified the convenience of the toll road system. Now that toll booths have been removed, use of the roads is a seamless experience. If all drivers would make full use of the TCA's available technology, the cost of operating the toll roads would plummet further and the savings could be applied to debt retirement.

The driver creates an account online and receives a free sticker-transponder that mounts to the car's windshield. There are no gates at the on-ramps and no attended booths. The car passes at full speed under electronic gantries that read the transponder and license plate. Transactions are aggregated and charged to the driver's electronic payment account. Notifications are sent by email or text. It costs the TCA almost nothing to support one new *electronic* customer.



Figure F2 – Windshield sticker-transponder.  
Size: 2.5" x 1". (Used with permission of the Transportation Corridor Agencies.)

Despite the use of technology, the toll roads still exist in the physical world where exceptions and human error occur. Exception handling is always more expensive than the idealized electronic process. Customer support and toll violation management are the TCA's most labor-intensive activities. Account applications can still be submitted by paper mail. Customers can seek support by phone or (pre-COVID) in-person. Toll charges may be questioned, requiring staff to manually research and produce evidence.

## \$28 Billion for a \$2.8 Billion Road

There are about two hundred thousand toll transactions per day, including deliberate and accidental evaders. Cars without transponders are identified by license plate and handled separately through DMV records. Those can include tourists who are unfamiliar with the system. Chronic evaders who ignore toll fees or drive without license plates are a major problem for any toll road, especially since the removal of toll gates. California is one of the few states that authorize toll agencies to levy and collect penalty fines, without the need for a court proceeding.



Figure F3 – Signage on SR-241.

Drivers who access the roads without a transponder can pay online by license plate number. Penalty is waived for first-time offenders and for payments made within five days.

(Photo by 2020-21 Orange County Grand Jury)

While the California Highway Patrol (CHP) provides safety enforcement on the toll roads at no charge to the TCA, that does not include toll charge enforcement. CHP activities related to toll enforcement are a separate service for which the TCA pays approximately \$400 thousand per year. Cars without front and rear license plates (in violation of *California Vehicle Code Section 5200*) are subject to the tolls as well as civil fines and fees, and possible insurance surcharges.

Caltrans supports the United States MAP-21 initiative which promotes interoperability among all toll-point technologies. Although there is a federal mandate and a common vision in principle, tolling technology is currently localized by region or state. The California-wide system is called FasTrak®.

\$28 Billion for a \$2.8 Billion Road

The TCA website provides general information as well as a customer account login.



Figure F4 – The Toll Roads Website home page. (https://thetollroads.com)

The TCA smartphone app provides the same user account functionality as the website.

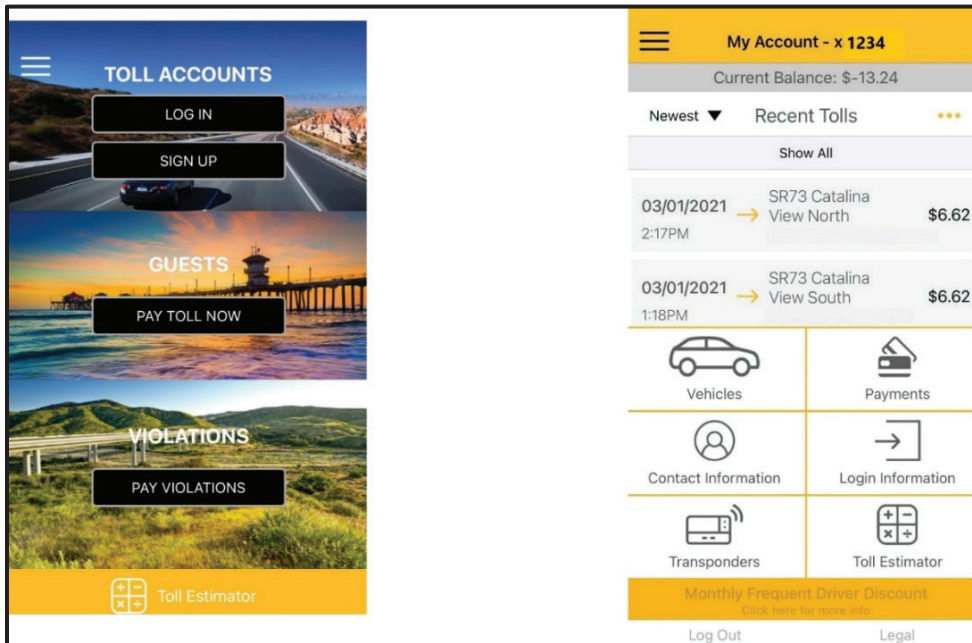


Figure F5 – The Toll Roads Smartphone Application. ("The Toll Roads")

## BIBLIOGRAPHY

ABC.com Staff. (2019, May 19). *Thousands of drivers suspected of dodging toll road fees in Orange County*. Retrieved from ABC7: <https://abc7.com/orange-county-toll-roads-transportation/5308513/>

American Transportation Research Institute. (2020, January). *A Financial Analysis of Toll System Revenue: Who Pays & Who Benefits*. Retrieved from TruckingResearch.org: <https://truckingresearch.org/2020/01/29/a-financial-analysis-of-toll-system-revenue-who-pays-who-benefits/>

Arduin, Donna & Winegarden, Ph.D., Wayne. (2013). *Orange County Toll Roads: Serious Concerns Should Lead to Significant Review by State and Local Officials*. San Francisco: Pacific Research Institute.

Assembly Member Bill Brough. (2019, April 11). *Restoring the Toll Roads to its core mission*. Retrieved from San Clemente Times: <https://www.sanclementetimes.com/guest-opinion-restoring-toll-roads-core-mission/>

Blazina, E. (2020, January 28). *Top court won't hear truckers' lawsuit challenging Pa. Turnpike Tolls*. Retrieved from Pittsburgh Post-Gazette: <https://www.post-gazette.com/news/transportation/2020/01/28/Pennsylvania-Turnpike-truckers-lawsuit-lose-appeal-U-S-supreme-Court-illegal-tolls/stories/202001280158>

California Department of Transportation. (2020, February 1). *Caltrans Corridor Planning Process Guide*. Retrieved from CA Department of Transportation/Caltrans: <https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/system-planning/systemplanning/corridor-planning-process-guide-12-24-2019-a11y.pdf>

California State Assembly. (2007). *Assembly Bill 680 Brief*. Retrieved from California State Assembly: <https://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/013106%20PublicPrivate.pdf>

California State Auditor. (2016, March 17). *California Department of Transportation Audit Report*. Retrieved from California State Auditor: <http://auditor.ca.gov/reports/2015-120/introduction.html>

California State Senator Bates & Assembly Member Brough. (2020, February 21). *Senate Bill No. 1373*. Retrieved from California Legislative Information: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB1373](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1373)

California State Senator Bates. (2021, February 19). *Senate Bill No. 760*. Retrieved from California Legislative Information: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB760](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB760)

\$28 Billion for a \$2.8 Billion Road

California State Senator Bates. (2021, Feb 19). *Senate Bill No. 761*. Retrieved from California Legislative Information:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB761](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB761)

Caltrans. (2020). *Transportation Funding in California 2020*. Retrieved from California

Department of Transportation: <https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/transportation-economics/transportation-funding-booklet/2020-final-transportation-funding-a11y.pdf>

Caltrans. (n.d.). *Public-Private Partnerships*. Retrieved from California Department of

Transportation: <https://dot.ca.gov/programs/budgets/public-private-partnerships#:~:text=On%20July%2010%2C%201989%2C%20Governor%20Wilson%20approved%20AB,in%20northern%20California%20and%20one%20in%20southern%20California.>

Carrier, Richard K. & Greenbaum, Esq., Martin B. (2007, Spring). *Tackling Enforcement and Collection in Today's Tolling Environment*. Retrieved from International Bridge, Tunnel and Turnpike Association:

<https://www.ibtta.org/sites/default/files/unrestricted/Carrier.pdf>

Center for Demographic Research. (2021, March). *Orange County Facts & Figures*. Retrieved from California State University at Fullerton: <http://www.fullerton.edu/cdr/ocff.pdf>

City of Newport Beach. (2021, March 23). *Chapter 15.42 - Major Thoroughfare and Bridge Fee Program*. Retrieved from City of Newport Beach:

<https://www.codepublishing.com/CA/NewportBeach/html/NewportBeach15/NewportBeach1542.html#:~:text=15.42.010%20Major%20Thoroughfare%20and%20Bridge%20Fee%20Program.%20A,railways%2C%20freeways%20and%20canyons%2C%20or%20constructing%20major%20thoroughfares.>

Dana Point Times Staff. (2020, March 3). *Toll Road Extensions off the Table, Los Patrones Route Recommended*. Retrieved from Dana Point Times:

<https://www.danapointtimes.com/toll-road-extensions-off-table-los-patrones-route-recommended/>

Department of Transportation. (2021, January 1). *Division of Budgets*. Retrieved from California

Department of Transportation: <https://dot.ca.gov/-/media/dot-media/programs/budgets/documents/2021-22-chart-c-a11y.pdf>

Englander, A. (2018, June 25). *New Study Shows Transportation Corridor Agency (TCA) Increased Its Debt by \$3.5 Billion Despite Not Building New Roads*. Retrieved from

Globe Newswire: <http://www.globenewswire.com/news-release/2018/06/25/1529283/0/en/New-Study-Shows-Transportation-Corridor-Agency-TCA-Increased-Its-Debt-by-3-5-Billion-Despite-Not-Building-New-Roads.html>

Environmental Management Agency and Transportation / Flood Control Program Office.

(Revisions 1988, 1991, 1997). *Major Thoroughfare and Bridge Fee Program and San Joaquin Hills Transportation Corridor and Foothill/Eastern Transportation Corridors*.

\$28 Billion for a \$2.8 Billion Road

- Federal Highway Administration. (2016, December 20). *Appendix A: Highway Investment Analysis Methodology*. Retrieved from U.S. Department of Transportation Federal Highway Administration: <https://www.fhwa.dot.gov/policy/2015cpr/appendixa.cfm>
- Federal Highway Administration. (2021, May 17). *Integrated Corridor Management, Transit, and Mobility on Demand*. Retrieved from U.S. Department of Transportation Federal Highway Administration: [https://ops.fhwa.dot.gov/publications/fhwahop16036/ch1.htm#:~:text=The%20Federal%20Highway%20Administration%20\(FHWA,corridor%20is%20defined%20as%20%22a](https://ops.fhwa.dot.gov/publications/fhwahop16036/ch1.htm#:~:text=The%20Federal%20Highway%20Administration%20(FHWA,corridor%20is%20defined%20as%20%22a)
- Federal Highway Administration. (2021, May 17). *Project Profile: Foothill/Eastern and San Joaquin Hills Toll Roads*. Retrieved from U.S. Department of Transportation Federal Highway Administration: [https://www.fhwa.dot.gov/ipd/project\\_profiles/ca\\_foothill\\_eastern\\_tollroad.aspx](https://www.fhwa.dot.gov/ipd/project_profiles/ca_foothill_eastern_tollroad.aspx)
- Feigenbaum, B. (2019, March 6). *The Orange County Transportation Authority's Long-Range Plan Is Better Than Most*. Retrieved from Reason Foundation: <https://reason.org/commentary/the-orange-county-transportation-authoritys-long-range-plan-is-better-than-most/>
- FindLaw Staff. (2019, January 1). *California Code GOV Section § 66483*. Retrieved from FindLaw for Legal Professionals: <https://codes.findlaw.com/ca/government-code/gov-sect-66483.html>
- Fitch Ratings, Inc. (2018, June). *Toll Roads - 10 Years in Infrastructure*. Retrieved from International Bridge, Tunnel and Turnpike Association: [https://www.ibtta.org/sites/default/files/documents/10%20Years%20in%20Toll%20Roads\\_Fitch.pdf](https://www.ibtta.org/sites/default/files/documents/10%20Years%20in%20Toll%20Roads_Fitch.pdf)
- Fitch Ratings, Inc. (2020, December 4). *Foothill/Eastern 2021 Refunding Bonds Rating*. Retrieved from Fitch Ratings: <https://www.fitchratings.com/research/infrastructure-project-finance/fitch-assigns-bbb-to-foothill-eastern-transp-corridor-agency-ca-series-2021-refunding-bonds-04-12-2020>
- Fitch Ratings, Inc. (2021, February 12). *San Joaquin Hills Bond Ratings*. Retrieved from Fitch Ratings: <https://www.fitchratings.com/research/infrastructure-project-finance/fitch-affirms-san-joaquin-hills-transp-corridor-agency-ca-bonds-outlook-stable-12-02-2021>
- Foothill/Eastern Transportation Corridor Agency. (1987 - 2020). *Annual Financial Statements*. Irvine: Transportation Corridor Agencies.
- Foothill/Eastern Transportation Corridor Agency. (2019). *June 30, 2019 and 2018 Financial Statements & Auditor's Report*. Irvine: Foothill/Eastern TCA.
- Frank, G. (1988, August 31). *Legislature Passes Bills for Toll Road Upkeep by State*. Retrieved from Los Angeles Times: <https://www.latimes.com/archives/la-xpm-1988-08-31-mn-1145-story.html>

- Fudge, M. K. (2013, October 18). *A Poor Decision Made Worse? The Use of Capital Appreciation Bonds by School Districts*. Retrieved from PA Times - American Society for Public Administration: <https://patimes.org/poor-decision-worse-capital-appreciation-bonds-school-districts/>
- Horvath, B. (2020, September 25). *Assembly Bill No. 1426*. Retrieved from California Legislative Information: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB1426](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1426)
- King, S. S. (2013). *\$2.3 Billion in Bonds Refinanced by Foothill/Eastern Transportation Corridor Agency*. Irvine: The Toll Roads Media Relations.
- Kunkle, F. (2016, July 20). *A new study shows drivers would actually prefer more tolls than gas tax to improve roads*. Retrieved from The Washington Post: <https://www.washingtonpost.com/news/tripping/wp/2016/07/20/drivers-prefer-tolls-to-taxes-thats-too-bad/>
- Legal Agreement. (2016, November 1). *State route 241 foothill south and tesoro extensions settlement agreement*. Retrieved from Natural Resources Defense Council: <https://www.nrdc.org/sites/default/files/toll-road-settlement-agreement-20161028.pdf>
- Legal Information Institute. (2013, December 4). *23 U.S. Code § 129 - Toll roads, bridges, tunnels, and ferries*. Retrieved from Cornell Law School: <https://www.law.cornell.edu/uscode/text/23/129>
- Muir, J. (2009, November 18). *Don't Use the Toll Roads? You pay for them anyway*. Retrieved from The Orange County Register: <https://www.ocregister.com/2009/11/18/dont-use-the-toll-roads-you-pay-for-them-anyway/>
- Municipal Securities Rulemaking Board. (2021). *The official source for municipal securities data and documents*. Retrieved from EMMA - Electronic Municipal Market Access: <https://emma.msrb.org/IssuerHomePage/State?state=CA>
- Natural Resources Defense Council. (2013, May 22). *Rejected Toll Road Again Threatens Popular Southern California State Park*. Retrieved from Natural Resources Defense Council: <https://www.nrdc.org/media/2013/130522>
- New York City Transit. (2021). *NYCT Fares Page*. Retrieved from MTA (Metropolitan Transportation Authority): <https://new.mta.info/agency/new-york-city-transit>
- Newport Beach Municipal Code. (2021, March 23). *Major Thoroughfare and Bridge Fee Program Chapter 15.42*. Retrieved from City of Newport Beach: <https://ecms.newportbeachca.gov/Web/DocView.aspx?dbid=0&id=35715&page=1&cr=1>
- Nossaman LLP - Boyajian, Shant & Kessler, Fredric. (2016, September 8). *Constitutional Use of Toll Revenue the Subject of Recent Federal Court Decision*. Retrieved from Infra Insight Blog: <https://www.infrainsightblog.com/constitutional-use-of-toll-revenue-the-subject-of-recent-federal-court-decision>

\$28 Billion for a \$2.8 Billion Road

- Orange County Board of Supervisors. (2011, February 2). *Fee Program*. Retrieved from County of Orange: [http://bos.ocgov.com/legacy3/newsletters/pdf/02\\_02\\_11\\_Fee\\_Program.pdf](http://bos.ocgov.com/legacy3/newsletters/pdf/02_02_11_Fee_Program.pdf)
- Orange County Transportation Agency. (2017, August 14). *Guidance for Administration of the Orange County Master Plan of Arterial Highways*. Retrieved from Orange County transportation Authority: [http://www.octa.net/pdf/mpah\\_guidlines.pdf](http://www.octa.net/pdf/mpah_guidlines.pdf)
- Park, J. (2019, May 17). *20,000 drivers dodge toll road fees each week, despite new law*. Retrieved from The Orange County Register: <https://www.ocregister.com/2019/05/17/despite-new-state-law-20000-cars-a-week-on-toll-roads-dont-have-proper-license-plates-and-arent-paying-tolls/>
- Park, J. (2020, August 27). *Orange County toll road well-positioned to pay debt*. Retrieved from The Orange County Register: <https://www.ocregister.com/2020/08/27/orange-countys-toll-road-agency-well-positioned-to-recover-maintain-debt-payments-officials-say-in-response-to-concerns-raised/>
- Poole, R. (2020, February 5). *Surface Transportation News: Managed Lanes Are Booming, a War on Tolling, and P3 Benefits*. Retrieved from Reason Foundation: <https://reason.org/transportation-news/surface-transportation-news-managed-lanes-are-booming-a-war-on-tolling-and-p3-benefits/>
- Porterfield, R. (2009, December 8). *How Wall Street Profits from Bridge Building*. Retrieved from San Francisco Public Press: <https://www.sfpublicpress.org/how-wall-street-profits-from-bridge-building/>
- Radcliffe, J. (2020, November 13). *Patience, these toll roads won't become freeways for years*. *The Orange County Register*.
- Reuters Staff. (2013, October 3). *California law on capital appreciation bonds mostly positive-Fitch*. Retrieved from Reuters: <https://www.reuters.com/article/california-bonds-fitch/california-law-on-capital-appreciation-bonds-mostly-positive-fitch-idUSL1N0HT1FN20131003>
- Ritchie, E. I. (2021, April 12). *Council Wants to Leave Board*. *The Orange County Register*, pp. A3, A10.
- Robinson, A. (2020, March 3). *OC toll road agency to nix extension through San Clemente*. *The Orange County Register*.
- Robinson, A. (2021, January 5). *Busy Year Ahead in Orange County Transportation Construction*. *The Orange County Register*.
- Robinson, A. (2021, April 22). *OC toll roads agency will seek more input on policy to guide its future*. Retrieved from The Orange County Register: <https://www.ocregister.com/2021/04/22/oc-toll-roads-agency-will-seek-more-input-on-policy-to-guide-its-future/>



\$28 Billion for a \$2.8 Billion Road

- Robinson, A. (2021, April 21). *OCTA, San Clemente worry toll roads agency wants to revive 241 extension*. Retrieved from The Orange County Register: <https://www.ocregister.com/2021/04/21/octa-san-clemente-worry-toll-roads-agency-wants-to-revive-241-extension/>
- San Clemente Times Staff. (2021, April 12). *Council Initiates Steps to Exit TCA*. Retrieved from San Clemente Times: <https://www.sanclementetimes.com/council-initiates-steps-to-exit-tca/>
- San Joaquin Hills Transportation Corridor Agency. (1987 - 2020). *Annual Financial Statements*. Irvine: Transportation Corridor Agencies.
- San Joaquin Hills Transportation Corridor Agency. (2019). *June 30, 2019 and 2018 Financial Statements & Auditor's Report*. Irvine: San Joaquin Hills TCA.
- Sears, T. (2017, August 1). Reserve Maint Corp has filed a lawsuit against Foothill/Eastern TCA. *Voice of OC*.
- Shilander, J. (2013, October 25). End of the (Toll) Road? *The Capistrano Dispatch*.
- Southern California Association of Governments Regional Transportation. (2012). *2012-2035 Regional Transportation Plan/ So Cal Section*. Los Angeles: SCAG.
- Stantec Consulting Services, Inc. (2013). *19 November, 2013 Potter/TCA Letter*. Stantec.
- Stantec Consulting Services, Inc. (2013). *Foothill Eastern Transportation Corridor Traffic & Revenue Study*. Stantec.
- Stantec Consulting Services, Inc. (2020). *30 November, 2020 Potter/TCA Letter*. Stantec.
- State of California. (2010, January 10). *Government Code Sections 40250-40273*. Retrieved from California Legislative Information: [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=1.&article=4](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=VEH&division=17.&title=&part=&chapter=1.&article=4)
- State of California. (2012, January 1). *Government Code Section 66484.3*. Retrieved from California Legislative Information: [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=66484.3](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=66484.3)
- State of California. (2018). *2018 California Code Street and Highways Code - Division 17, Chapter 3*. Retrieved from Justia: <https://law.justia.com/codes/california/2018/code-shc/division-17/chapter-3/>
- THETOLLROADSBLOG. (2020, August 11). *About the Toll Roads*. Retrieved from The Toll Roads Blog: <https://thetollroadsblog.com/about/>
- Transportation Corridor Agencies. (2011, February 2). Major Thoroughfare and Bridge Fee Program Powerpoint. *The Toll Roads*. Irvine, California, Orange County: Transportation Corridor Agencies.

\$28 Billion for a \$2.8 Billion Road

Transportation Corridor Agencies. (2013, December 13). *FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY REFINANCES \$2.3 BILLION IN BONDS*. Retrieved from The Toll Roads Blog: <https://thetollroadsblog.com/2013/12/13/foothilleastern-transportation-corridor-agency-refinances-2-3-billion-in-bonds/>

Transportation Corridor Agencies. (2018, July 1). *Major Thoroughfare and Bridge Fee Program*. Retrieved from The Toll Roads: <https://thetollroads.com/sites/default/files/pdf/TCA%20DIF%20Rate%20FY19.pdf>

Transportation Corridor Agencies. (2020, June 11). *2021 Capital Improvement Plan*. Retrieved from The Toll Roads: [https://thetollroads.com/sites/default/files/FY2021\\_Capital-Improvement-Plan\\_Adopted\\_2020-06-11.pdf](https://thetollroads.com/sites/default/files/FY2021_Capital-Improvement-Plan_Adopted_2020-06-11.pdf)

Transportation Corridor Agencies. (2020, July 1). *Major Thoroughfare and Bridge Fee Program*. Retrieved from City of Yorba Linda: <https://www.yorbalindaca.gov/DocumentCenter/View/324/Eastern-Transportation-Corridor-Fees-PDF>

Transportation Corridor Agencies. (2020, December 10). *TCA Board Agenda - Quarterly Legislative Updates*. Retrieved from The Toll Roads: <https://civicclerk.blob.core.windows.net/stream/TCA/01d40d4f7b.pdf?sv=2015-12-11&sr=b&sig=ObmSltdmRkJQzD%2F3xKHR4yYd%2FXJR3HSuJSQsD8IxmOw%3D&st=2021-05-18T20%3A05%3A50Z&se=2022-05-18T20%3A10%3A50Z&sp=r&rsc=cache&rsct=application%2Fpdf>

Transportation Corridor Agencies. (2021, May 5). *Joint Operations and Finance Committee Agenda*. Retrieved from The Toll Roads: <https://tca.civicclerk.com/Web/Player.aspx?id=439&key=-1&mod=-1&mk=-1&nov=0>

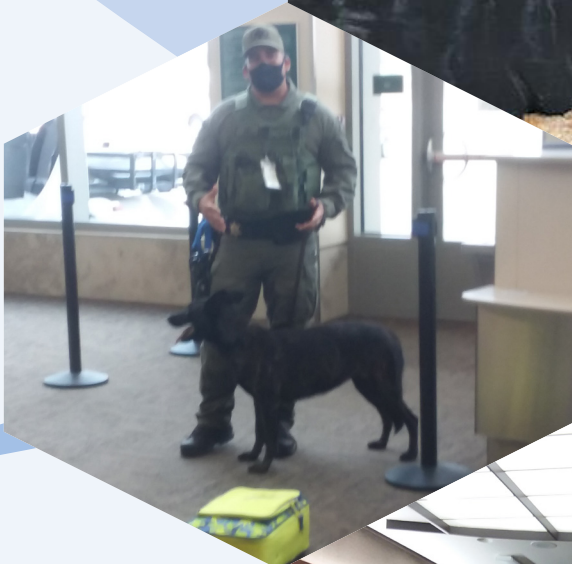
Transportation Corridor Agencies. (2021, January 20). San Clemente Proposed General Plan and Specific Plan Amendments. *TCA Response Letter*. Irvine, California, Orange County: Transportation Corridor Agencies.

Transportation Corridor Agencies. (2021, April 22). *Special F/ETCA Board Meeting Agenda*. Retrieved from The Toll Roads: <https://tca.civicclerk.com/Web/Player.aspx?id=438&key=-1&mod=-1&mk=-1&nov=0>

Transportation Corridor Agencies. (2021). *TCA Home Page*. Retrieved from The Toll Roads: <https://thetollroads.com/>

U. S. Department of Transportation. (n.d.). *Public-Private Partnerships*. Retrieved from Federal Highway Administration: <https://www.fhwa.dot.gov/ipd/p3/default.aspx>

Wolinsky, L. C. (1987, June 12). *Toll Road Concept in Orange County Wins Senate Vote*. Retrieved from Los Angeles Times: <https://www.latimes.com/archives/la-xpm-1987-06-12-mn-3948-story.html>



700 Civic Center Drive West | Santa Ana, California 92701  
[www.ocgrandjury.org](http://www.ocgrandjury.org)