

\$28 Billion for a \$2.8 Billion Road



CONTENTS

| | |
|--|-----------|
| SUMMARY | 1 |
| BACKGROUND | 1 |
| REASON FOR STUDY | 3 |
| METHOD OF STUDY | 3 |
| INVESTIGATION AND ANALYSIS..... | 4 |
| History | 4 |
| <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> |
| What is the Cost of the Toll Roads? | 8 |
| <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> |
| When Will the Toll Roads Become Freeways? | 11 |
| <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> |
| What About the Extra Ten Billion Dollars? | 17 |
| <i>Future Revenue.....</i> | <i>17</i> |
| <i>Future Construction</i> | <i>19</i> |
| How is Toll Money Actually Used?..... | 21 |
| <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> |
| What are DIFs? | 24 |

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.

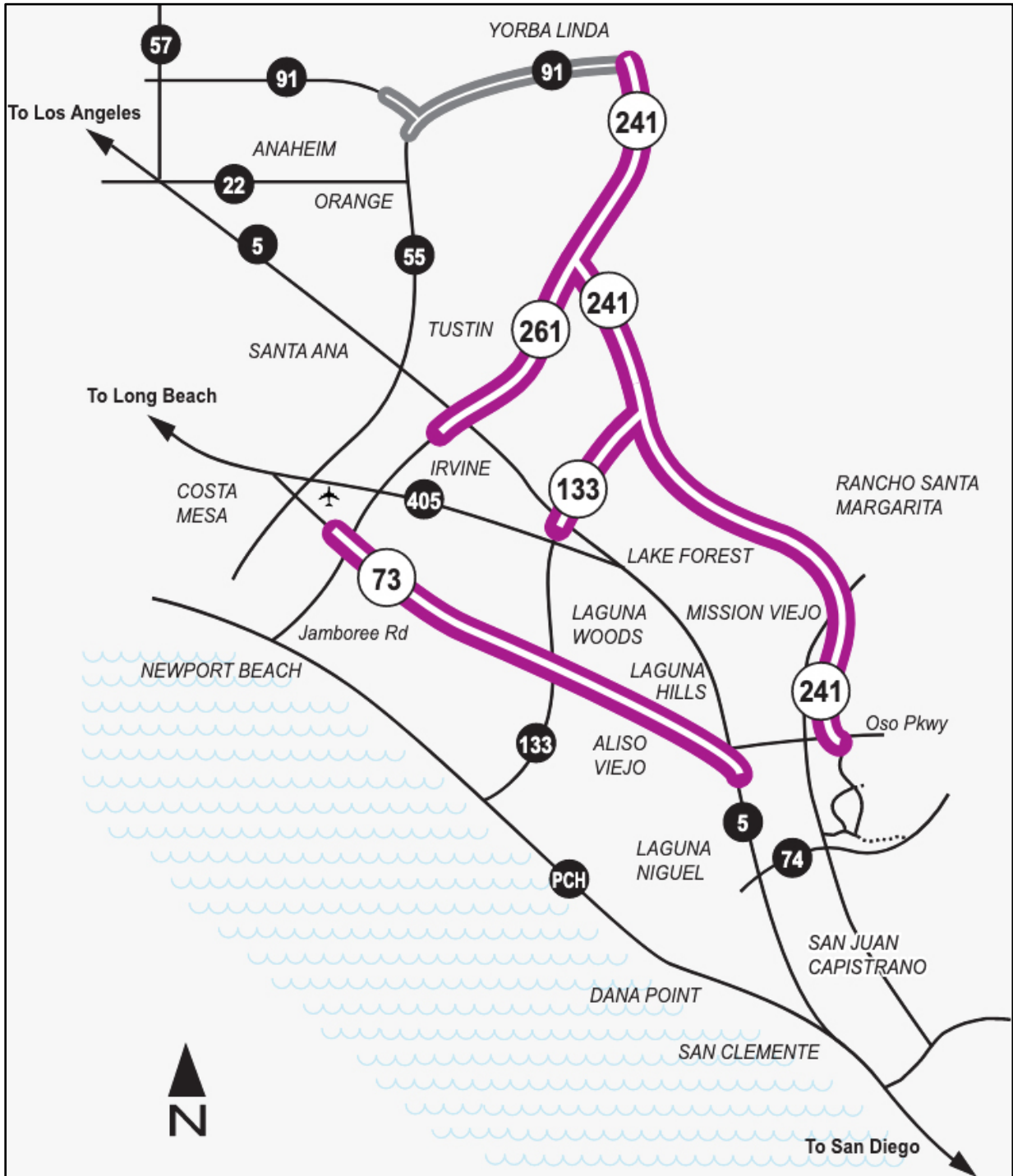


Figure 1 - Map of the Toll Roads.
(Used with permission of the Transportation Corridor Agencies.)

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.



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

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

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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 |
| TOTAL | \$2.765 billion |

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

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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.

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

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.

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 |
| Inception to FY2020 (actual) | | | |
| Debt Service (P&I) | 2,608 | 2,785 | 5,393 |
| Total Past Debt Service | 2,608 | 2,785 | 5,393 |
| FY 2021 to End Year (scheduled) | | | |
| Principal | 2,297 | 2,502 | 4,799 |
| Interest | 2,468 | 3,079 | 5,547 |
| Total Future Debt Service | 4,765 | 5,581 | 10,346 |
| Total Debt Service | 7,373 | 8,366 | 15,739 |

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:

- 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 ...”

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

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.

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.



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 |
| Total | 8,220.3 | (607.2) | (4,765.1) | 2,848.0 | 14,230.6 | (1,577.3) | (5,581.5) | 7,071.8 | 9,919.8 |

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.)

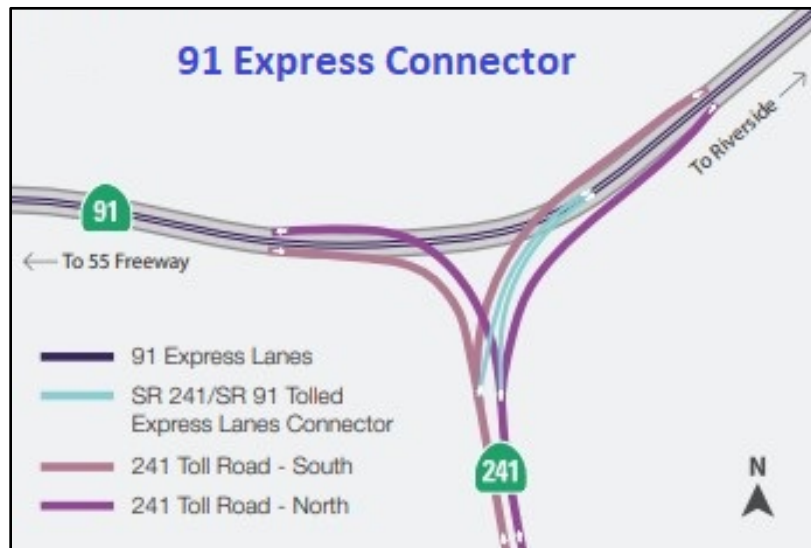


Figure 7 - Planned SR-241 Express Connector to SR-91 toll lanes. (Used with permission of the Transportation Corridor Agencies.)

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.

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.

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.

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- 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 |
| Total | 760 |

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.

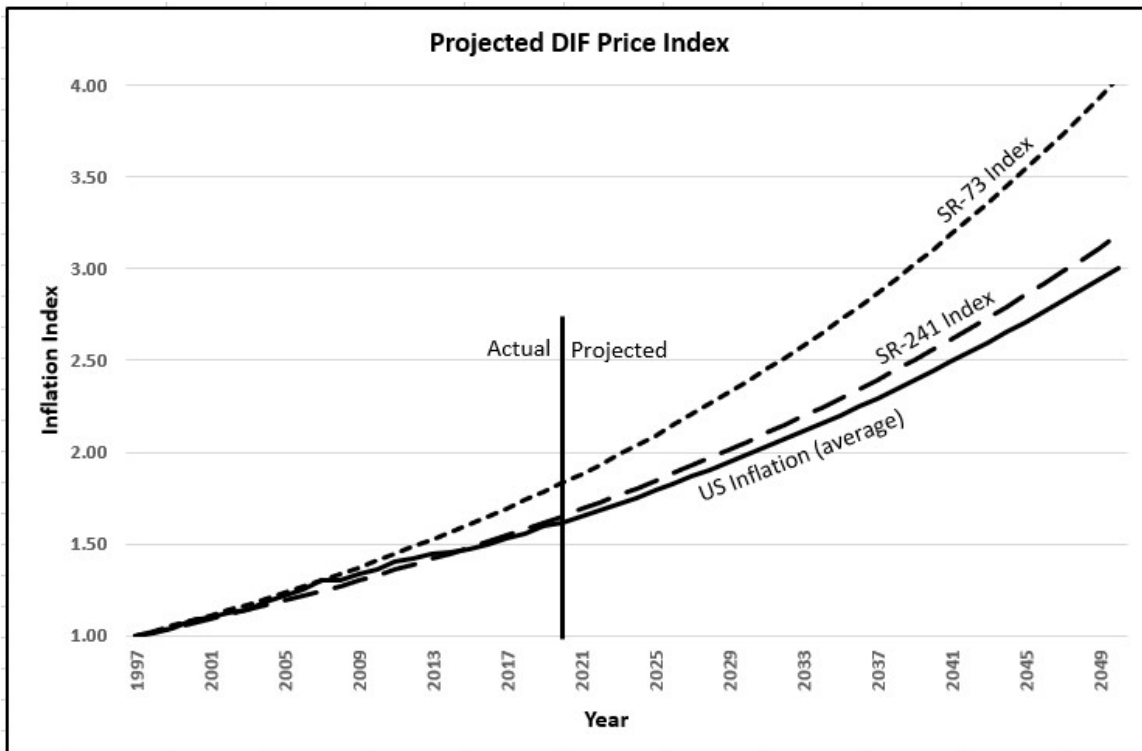


Figure 9 - Development Impact Fee inflation indexes.

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.

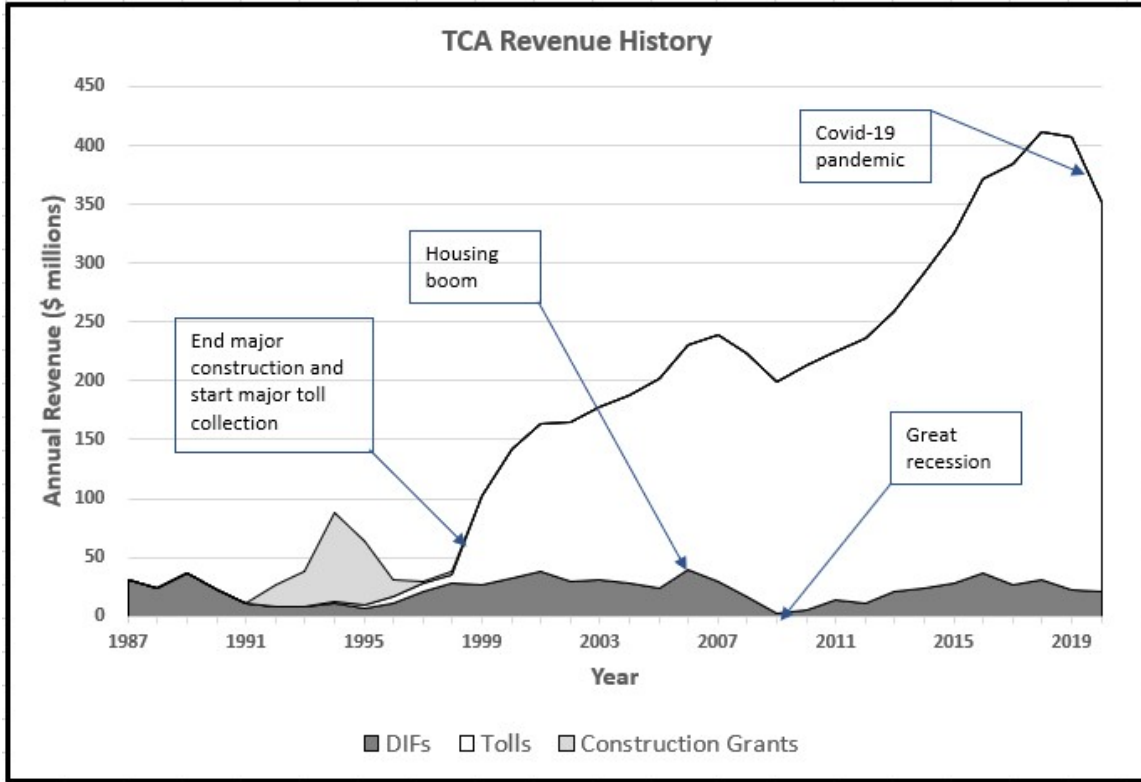


Figure 10 - TCA historical revenue.
DIFs are determined by construction volume in Areas of Benefit.
Tolls are determined by traffic volume and toll prices.

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.

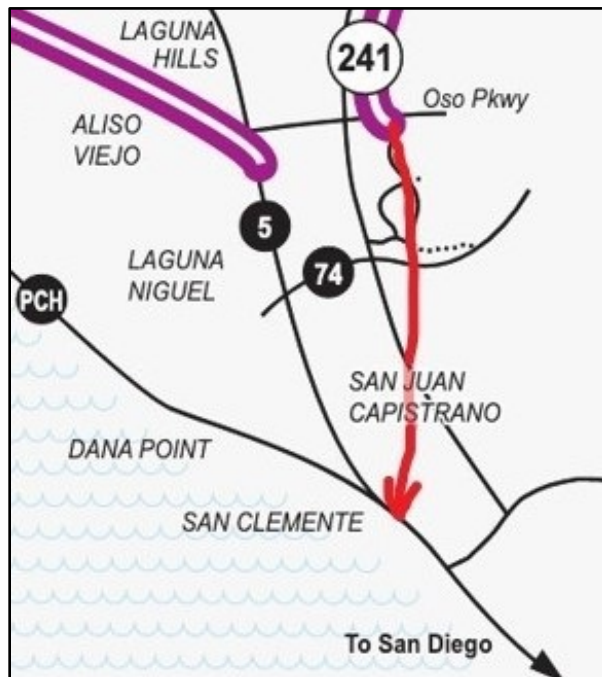


Figure 11 - Proposed SR-241 South Extension to Interstate 5.
Image modified by OCGJ.

(Used with permission of the Transportation Corridor Agencies.)

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.*

- **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.

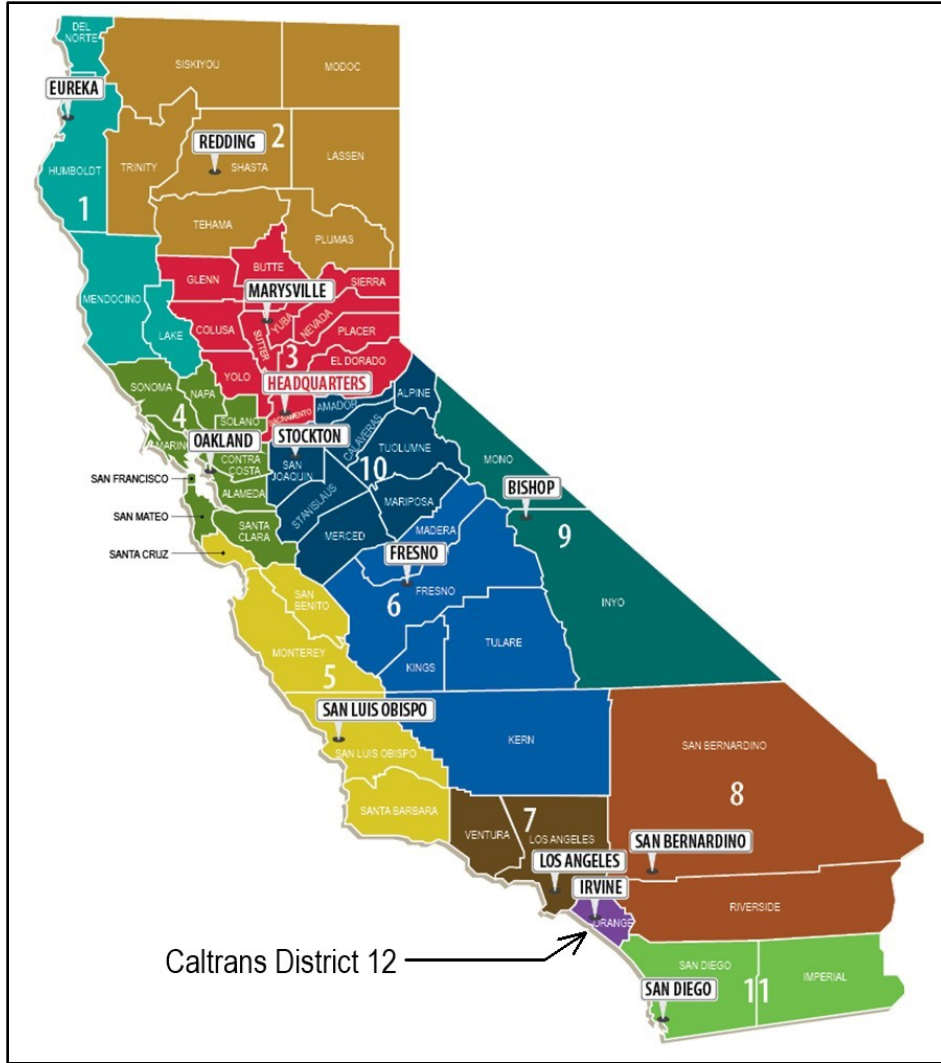


Figure 14 - Caltrans districts.
Source: California State Auditor. (<http://auditor.ca.gov/reports/2015-120/introduction.html>)

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.

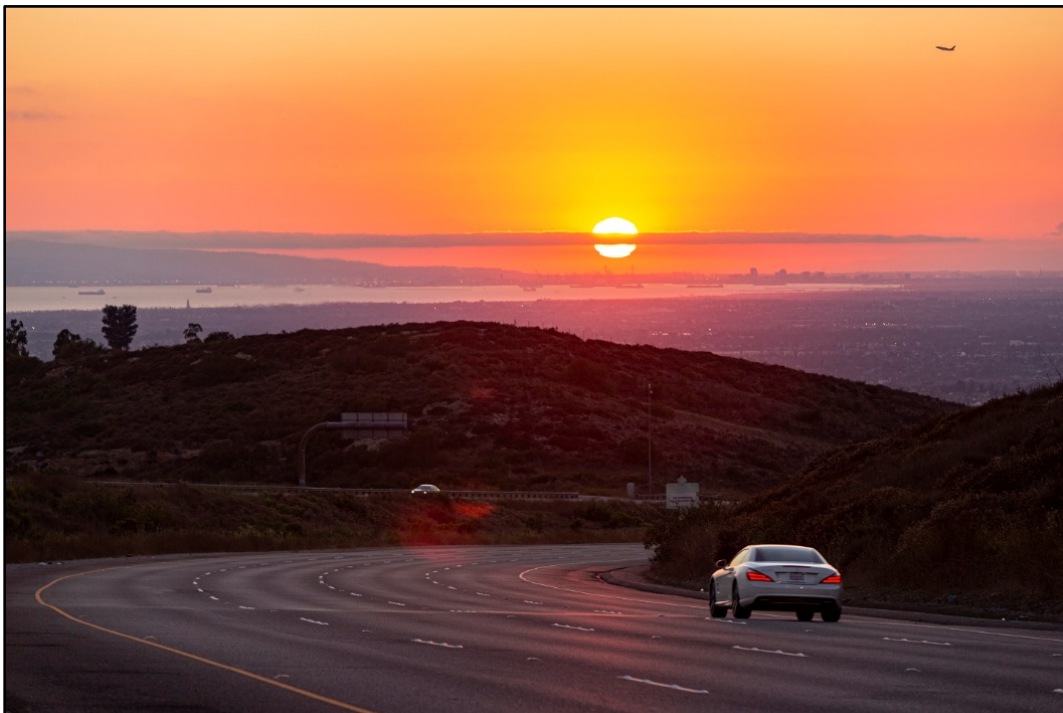


Figure 15 - SR-73 northbound.
Visible in the distance: cargo ships and a flight from John Wayne Airport.
(Used with permission of the Transportation Corridor Agencies.)

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

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

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

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

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Zones A&B

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

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

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

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.

- 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 |
| Foothill | | | |
| End Year | 2053 | 2037 | 2037 |
| Future Revenue | 14,022 | 5,196 | 5,196 |
| Future Debt Payments | 5,582 | 4,801 | 5,025 |
| San Joaquin | | | |
| End Year | 2050 | 2039 | 2037 |
| Future Revenue | 8,113 | 4,291 | 3,704 |
| Future Debt Payments | 4,765 | 4,398 | 4,155 |
| Total Future | | | |
| Future Revenue | 22,135 | 9,486 | 8,900 |
| Future Debt Payments | 10,346 | 9,198 | 9,180 |
| Total Revenue | | | |
| 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.

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.

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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

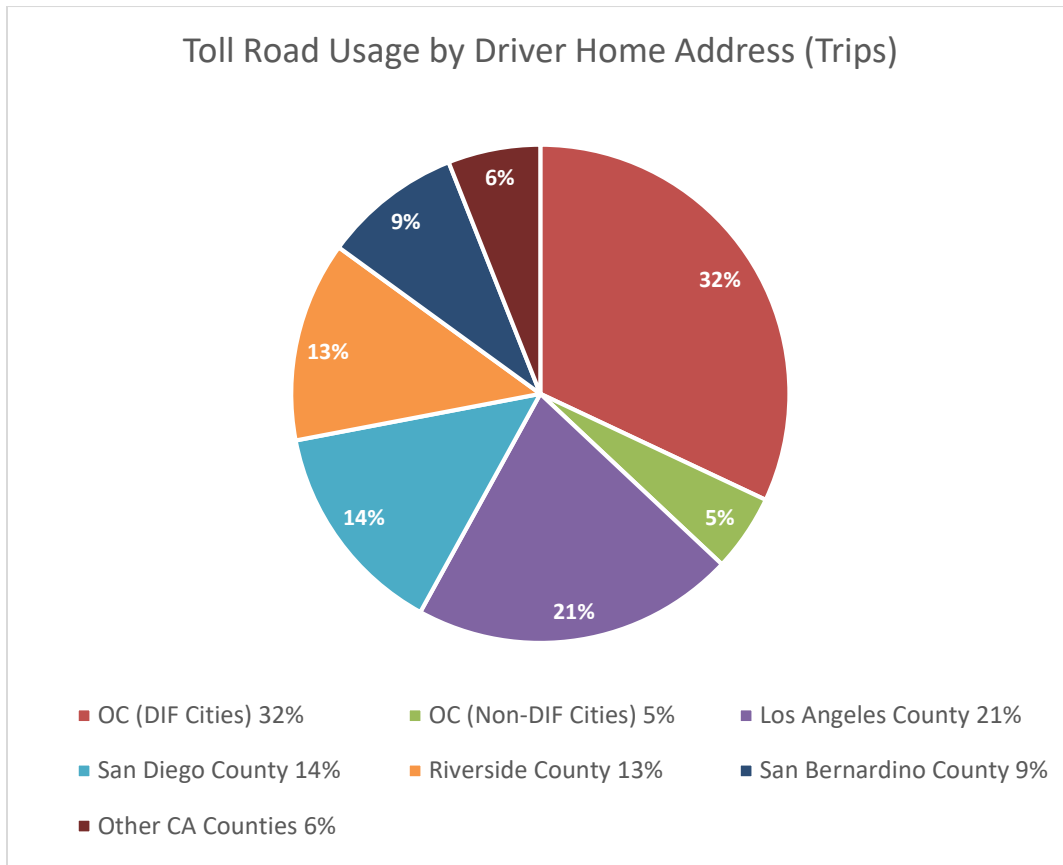


Figure D1 - Distribution of Toll Road usage (trips) by driver home address. July 2018 through June 2020. Excludes approximately 10% of transactions, because driver zip code was outside of California or indeterminate.

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.

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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% |
| TOTAL | 100.0% | 100.0% | 100.0% |

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

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.

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®.

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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.

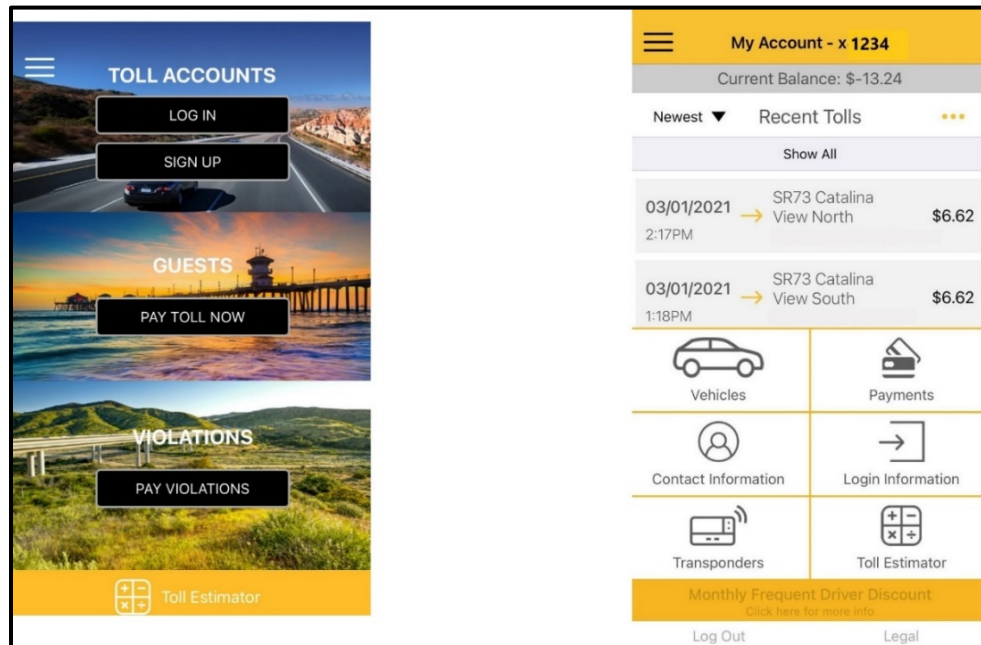


Figure F5 – The Toll Roads Smartphone Application. (“The Toll Roads”)

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