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August 17, 2017

Honorable Judge Charles Margines
Presiding Judge of the Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

SUBJECT: CITY OF SAN JUAN CAPISTRANO RESPONSE TO 2016-2017 ORANGE
COUNTY GRAND JURY REPORT: "ORTEGA HIGHWAY: UNNECESSARY
DELAYS HAVE COST US MILLIONS," 5 June 2017 (F1, F3, R2)

Dear Judge Margines:

This letter is in response to the 2016-2017 Grand Jury report entitled "Ortega Highway: Unnecessary Delays Have Cost Us Millions," published June 5, 2017. This response was approved by the San Juan Capistrano City Council at its regular meeting on August 15, 2017. The Grand Jury report required responses from the City of San Juan Capistrano to Findings F.1 and F.3, and Recommendation R.2. The City's responses are as follows:

Finding F.1: As lead agency, the City Council's minimal action from 2011 to 2015 and their January 2016 vote to rescind approval of the engineering design contract unnecessarily delayed the Lower Ortega Project and cost the county millions of dollars.

City Response: The City disagrees partially with the finding. However, the City's actions on the Ortega Highway Project did delay the project. The City does not agree that the delay was unnecessary or that it cost the county millions of dollars. Major highway projects that affect motorists and nearby residents inherently have impacts that require extensive public review and thoughtful consideration. It is not uncommon for major highway projects to undergo multiple reviews and consideration of options before final implementation. The costs of those "delays" are inherent in the process.

Finding F.3: The costs for completion of the Lower Ortega Project have escalated and are probably still understated. Further delay will result in additional costs for the taxpayers of Orange County.

City Response: The City disagrees partially with the finding. The costs for an infrastructure project will generally escalate over time based on the escalation of construction costs. With that said, the Grand Jury report cites escalated costs based on comparing cost estimates by different parties at different times for different projects. This project must still undergo public review and the environmental (CEQA/NEPA) process, both of which will greatly influence the ultimate cost.

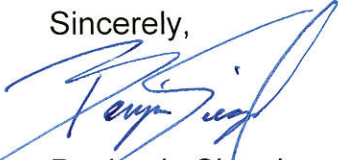
San Juan Capistrano: Preserving the Past to Enhance the Future

Recommendation R.2: City staff should prepare a report for presentation to the City Council and the citizens of San Juan Capistrano by September 1, 2017, assessing any fiscal consequences to the City incurred by their withdrawal from the active participation on the Lower Ortega Project so that citizens are advised of the full impact of actions taken with respect to the Project. This includes fiscal damages, claims, and penalties.

City Response: This recommendation has been implemented. A report responding to Recommendation R.2 was presented to the City Council at a regularly scheduled City Council meeting on August 15, 2017, and was posted on the City's website on August 10, 2017. A copy of that report is attached.

Questions or comments regarding this matter may be directed to the City's Public Works and Utilities Director, Steve May, at 949-443-6363 or at SMay@SanJuanCapistrano.org.

Sincerely,



Benjamin Siegel
City Manager


Attachment: Report to City Council per Grand Jury Report Recommendation R.2, August 15, 2017


Cc: City of San Juan Capistrano City Council
City of San Juan Capistrano City Attorney
Darrell Johnson, Chief Executive Officer, Orange County Transportation Authority
Shane Silsby, Director of Public Works, County of Orange
Ryan Chamberlain, Deputy Director, Caltrans District 12



City of San Juan Capistrano Agenda Report

TO: Honorable Mayor and Members of the City Council

FROM:  Ben Siegel, City Manager

SUBMITTED BY: Steve May, Public Works and Utilities Director 

DATE: August 15, 2017

SUBJECT: Consideration of Response to 2016-2017 Grand Jury Report on Ortega Highway Project

RECOMMENDATION:

Approve and direct the City Manager to submit to the Presiding Judge of the Orange County Superior Court the City's letter response to the 2016-2017 Grand Jury report on the Ortega Highway Project titled "Ortega Highway: Unnecessary Delays Have Cost Us Millions."

EXECUTIVE SUMMARY:

The 2016-2017 Orange County Grand Jury published a report on the Ortega Highway Widening Project on June 5, 2017, titled "Ortega Highway: Unnecessary Delays Have Cost Us Millions" (Report). The Report requires a response from the City within 90 days of the date of publication of the Report. The Report also requires responses from the Orange County Transportation Authority and the Orange County Board of Supervisors. The City's draft letter response to the Report is submitted for City Council review and approval (Attachment 1). This agenda report will be an attachment to the letter response to the Grand Jury Report.

DISCUSSION/ANALYSIS:

The Grand Jury Report (Attachment 2) makes three findings (F.1, F.2, and F.3) and three recommendations (R.1, R.2, and R.3), and requires responses from the City to F.1, F.3, and R.2. The City's draft letter response addresses these two findings and the one recommendation. Recommendation R.2 is that: "City staff should prepare a report for presentation to the City Council and the citizens of San Juan Capistrano by September 1, 2017, assessing any fiscal consequences to the City incurred by their withdrawal from the active participation on the Lower Ortega Project so that citizens are

advised of the full impact of actions taken with respect to the Project. This includes fiscal damages, claims, and penalties.” This agenda report is in response to that recommendation.

The cost to the City for the Ortega Highway Widening Project were outlined in a report to the City Council dated August 16, 2016, and amounted to \$175,170 for design and staff costs, plus \$11,283 in interest charges by the Orange County Transportation Authority (OCTA) for interest on the \$714,532 grant funds that OCTA had advanced to the City, for a total cost of \$186,453. The Rancho Mission Viejo LLC had contributed \$55,985 to the project and is seeking reimbursement for those funds. The City Council has not authorized reimbursement to Rancho Mission Viejo LLC, although that could become an additional expense to the City should the City Council authorize that reimbursement in the future.

FISCAL IMPACT:

The recommended action of approving a letter response to the 2016-2017 Grand Jury Report on Ortega Highway would have no fiscal impact.

ENVIRONMENTAL IMPACT:

The recommended action of approving the draft letter response to the 2016-2017 Grand Jury Report on Ortega Highway, or any modified version thereof, is not subject to CEQA pursuant to Section 15060(c)(3) of CEQA Guidelines because the action is not a project as defined in Section 15378 of the CEQA Guidelines, and the action has no potential for resulting in physical change to the environment, directly or indirectly.

CITY COUNCIL REVIEW:

- On January 18, 2005, the City Council adopted a Resolution supporting the County of Orange’s request to the Orange County Transportation Authority Combined Transportation funding Program for funding of the Ortega Highway Widening project from Calle Entradero to the east City limits.
- On May 30, 2006, the City Council and the Planning Commission, in a joint meeting with Caltrans and project consultants, discussed design alternatives related to Caltrans’ proposed widening of Ortega Highway (SR-74) and established a general consensus for project elements.
- On March 6, 2007, the City Council approved with revisions the proposal to retain an environmental consultant to review the proposed Mitigated Negative Declaration (MND) or other related environmental documentation for Caltrans Ortega Highway Widening Project and directed staff to request a full Environmental Impact Report (EIR) from Caltrans.

- On May 1, 2007, the City Council (as part of a Council Action item) shared a letter from the Orange County Fire Authority Division Chief Dave Pierce supporting the Ortega Highway widening to four lanes to increase safety.
- On January 6, 2009, the City Council received a report from Caltrans on the Draft Environmental Impact Report (DEIR) for the widening of Ortega Highway and provided comments.
- On March 17, 2009, the City Council (as part of a Council Action item) approved a letter to Caltrans from former Mayor Nielsen with revisions, clarifying the City's position on the widening of Ortega Highway.
- On February 5, 2013, the City Council adopted a Resolution authorizing submission of an application for grant funds (for engineering design) to the Orange County Transportation Authority "Call for Projects" for the Ortega Highway (SR 74) "City-Segment" Widening Project from Calle Entradero to East City Limits.
- On October 15, 2013, the City Council approved a Funding Assistance Agreement with Rancho Mission Viejo, LLC to secure developer matching funds in the amount of \$450,000 for engineering design for the Ortega Highway (SR 74) "City-Segment" Widening Project.
- On November 5, 2013, the City Council approved a Personal Services Agreement with HDR Engineering, Inc. for \$911,013 to prepare Plans, Specifications, and Cost Estimates for the Ortega Highway (SR-74) "City-Segment" Widening Project, and adopted a Resolution authorizing submission of an application for grant funds in the Orange County Transportation Authority "Call for Projects" to fund the project's right-of-way phase of work.
- On March 3, 2015, the City Council approved the request for the Orange County Transportation Authority M2 Arterial Capacity Enhancement Program funding deferral for the right-of-way phase.
- On December 15, 2015, the City Council received and filed a project update presentation by staff, approved a Personal Services Agreement with AndersonPenna Partners, Inc. for Engineering Design Services in the amount of \$1,545,646 and approved the First Amendment to the Funding Assistance Agreement with Rancho Mission Viejo, LLC, subject to staff providing briefing of the project to Mayor pro tem Ferguson and Council Member Perry.
- On January 5, 2016, the City Council rescinded its December 15, 2015, approvals of a Personal Services Agreement with AndersonPenna Partners, Inc. for Engineering Design Services, and the First Amendment to the Funding Assistance Agreement with Rancho Mission Viejo, LLC.
- On August 16, 2016, the City Council directed City staff to communicate with Orange County Transportation Authority (OCTA) staff to explain the concerns regarding the repayment request amount (*funding expended for the design of the Ortega Highway (SR-74) "City-Segment" Widening Project due to project cancellation by the City*), including that if OCTA could wait a short period of time, the City Council may consider being the lead agency on the Ortega Highway Widening Project.

- On February 7, 2017, due to cancellation by the City of the Ortega Highway (SR-74) "City-Segment" Widening Project, the City Council appropriated \$185,170 from the Capistrano Circulation Fee Program for Fiscal Year 2016/2017 for reimbursement to the Orange County Transportation Authority (OCTA) for Measure M2 grant funds advanced to, and expended by, the City for design of the project, and authorized the City Manager to reimburse OCTA for grant funds advanced to the City for the project, plus interest earned on the funds.

COMMISSION/COMMITTEE/BOARD REVIEW AND RECOMMENDATIONS:

None.

NOTIFICATIONS:

Darrell Johnson, Chief Executive Officer, Orange County Transportation Authority
Shane Silsby, Director of Public Works, County of Orange
Ryan Chamberlain, District Director, Caltrans District 12
Jeff Thompson, Rancho Mission Viejo Company
Don Kelly, Rancho Mission Viejo Company
Matt Stepien, AndersonPenna Partners Inc.
Carl Taylor, Huitt-Zollars Inc.
Lennie De Caro
Cameron Von

ATTACHMENTS:

- Attachment 1: Draft Letter Response to 2016-2017 Grand Jury Report on Ortega Highway
Attachment 2: 2016-2017 Grand Jury Report on Ortega Highway