AGENDA

Executive Committee Meeting

Committee Members
Tim Shaw, Chairman
Steve Jones, Vice Chairman
Lisa A. Bartlett
Laurie Davies
Andrew Do
Michael Hennessey
Mark A. Murphy

Orange County Transportation Authority
Headquarters
550 South Main Street
Board Room - Conf. Room 07
Orange, California
Monday, October 7, 2019 at 9:00 a.m.

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the OCTA Clerk of the Board, telephone (714) 560-5676, no less than two (2) business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

Agenda descriptions are intended to give members of the public a general summary of items of business to be transacted or discussed. The posting of the recommended actions does not indicate what action will be taken. The Committee may take any action which it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action.

All documents relative to the items referenced in this agenda are available for public inspection at www.octa.net or through the Clerk of the Board's office at the OCTA Headquarters, 600 South Main Street, Orange, California.

Call to Order

Pledge of Allegiance

Director Davies

1. Public Comments

Special Calendar

There are no Special Calendar matters.

Consent Calendar (Item 2)

All items on the Consent Calendar are to be approved in one motion unless a Committee Member or a member of the public requests separate action or discussion on a specific item.

2. Approval of Minutes

Approval of the minutes of the Executive Committee meeting of September 5, 2019.

Regular Calendar

3. Measure M2 Next 10 Plan: Market Conditions Key Indicators Analysis and Forecast
Tamara Warren/Kia Mortazavi

Overview

On September 10, 2018, a Market Conditions Key Indicators Analysis and Forecast was presented to the Board of Directors providing insight into delivery of the Measure M2 Next 10 Plan. At the request of the Board of Directors, continued monitoring of market conditions and potential risks of project delivery has taken place and an updated forecast has been prepared. A presentation on the results of this effort is provided.

Recommendation

Continue to monitor market conditions and their effects on the advancement of the Next 10 Delivery Plan and provide updates to the Board of Directors as appropriate.

4. Public Transportation Agency Safety Plan
Matthew DesRosier/Maggie McJilton

Overview

The Federal Transit Administration published the Public Transportation Agency Safety Plan regulation, 49 CFR Part 673, on July 19, 2018 which took effect the following year, on July 19, 2019. Within this regulation, it is required that every agency receiving funds under the Urbanized Area Formula Program (49 USC Section 5307) must develop, and have adopted by the Board of Directors, a Public Transportation Agency Safety Plan for its transit system no later than July 20, 2020. As part of the regulation, agencies are to implement a Safety Management System risk-based approach.

4. (Continued)

Recommendation

Receive and file as an informational item.

5. Framework for Implementation of the State Route 241/91 Express Lanes Connector
Kurt Brotcke/Kia Mortazavi

Overview

The Orange County Transportation Authority, Riverside County Transportation Commission, Transportation Corridor Agencies, and California Department of Transportation have been working to resolve outstanding issues related to the implementation of a future direct, tolled connector linking the State Route 241 toll road to the 91 Express Lanes. The agencies have reached consensus on terms for future implementation of the connector project. Recommendations are presented to move the project forward, contingent on all parties agreeing to terms that will be incorporated into future agreements.

Recommendations

A. Approve the State Route 241/91 Express Lanes Connector term sheet as a framework for future agreements, contingent on all parties agreeing to the term sheet.

B. Direct staff to work with agencies to prepare associated agreements for Board of Directors' consideration, consistent with the terms included in this report.

Discussion Items

6. Chief Executive Officer's Report

7. Committee Members' Reports

8. Closed Session

There are no Closed Session items scheduled.

9. Adjournment

The next regularly scheduled meeting of this Committee will be held at **9:00 a.m. on Monday, November 4, 2019**, at the Orange County Transportation Authority Headquarters, 550 South Main Street, Board Room - Conference Room 07, Orange, California.

MINUTES

Executive Committee Meeting

Committee Members Present	**Staff Present**
Tim Shaw, Chairman	Darrell E. Johnson, Chief Executive Officer
Steve Jones, Vice Chairman	Ken Phipps, Deputy Chief Executive Officer
Laurie Davies	Laurena Weinert, Clerk of the Board
Andrew Do	Olga Prado, Assistant Clerk of the Board
Michael Hennessey	David DeBerry, Acting General Counsel
Mark A. Murphy	OCTA Staff and Members of the General Public

Committee Members Absent
Lisa A. Bartlett

Call to Order

The September 5, 2019 regular meeting of the Executive Committee was called to order by Chairman Shaw at 9:01 a.m.

Pledge of Allegiance

Director Do led in the Pledge of Allegiance.

1. Public Comments

There were no public comments.

Special Calendar

There were no Special Calendar matters.

Consent Calendar (Items 2 through 3)

2. Approval of Minutes

A motion was made by Director Davies, seconded by Director M. Murphy, and declared passed by those present, to approve the minutes of the Executive Committee meeting of June 3, 2019.

Vice Chairman Jones was not present to vote on this item.

3. Guidance for the Orange County Transportation Authority Decision-Making When Requested to Lead a Locally-Sponsored Capital Project

Chairman Shaw pulled this item and asked for an update and discussion.

Darrell E. Johnson, Chief Executive Officer (CEO), reported that the Orange County Transportation Authority (OCTA) has been asked in the last five to eight years to deliver a local agency's capital project, as well as provided other comments. Mr. Johnson stated that the Board of Directors (Board) asked OCTA to develop a guidance document for leading a locally-sponsored capital project.

Kia Mortazavi, Executive Director of Planning, reported on the concepts and discussions OCTA had with Orange County's local jurisdictions in regards to the proposed guidance document.

A lengthy discussion ensued, and the Committee Members provided amendments to the proposed guidance document. Staff will incorporate the amendments in the draft guidance document that will go forward to the Board for consideration and action.

A motion was made by Director Davies, seconded by Director Do, and declared passed by those present, to adopt the amended guidance document to assist the Orange County Transportation Authority in responding to future requests to deliver a locally-sponsored capital project, and direct staff to share the guidance with Orange County local jurisdictions for their information.

Regular Calendar

4. Measure M2 Quarterly Progress Report for the Period of April 2019 Through June 2019

Tami Warren, Manager of the Measure M Program Office, provided a PowerPoint presentation for this item as follows:

- Overview;
- Program Highlights – Freeways;
- 4th Quarter Freeway Highlights;
- Program Highlights – Streets and Roads;
- Program Highlights – Transit;
- 4th Quarter Transit Highlights;
- Program Highlights – Environmental;

4. (Continued)

- 4th Quarter Environmental Highlights;
- Program Outlook;
- Program Management Office Activities; and
- Summary.

Chairman Shaw inquired about the sales tax revenues status, and Andrew Oftelie, Chief Financial Officer, stated that the following:

- OCTA's sales tax revenues are expected to grow for fiscal year 2019.
- OCTA received all the advances.
- In September 2019, a "cleanup" payment will be received.
- OCTA expects 3.7 percent in sales tax revenues and is cautiously optimistic.
- Concerned about the California Department of Tax and Fee Administration's ongoing issue regarding timely remittance of the sales tax.

No action was taken on this receive and file information item.

Discussion Items

5. Chief Executive Officer's Report

Darrell E. Johnson, CEO, reported the following:

Bike Skills Class:
- On Saturday, September 7th, OCTA will host its last bike skills class in San Clemente.
- The skills class is part of the "Be Safe Be Seen" safety campaign that is a county-wide outreach program.
- The class starts at 9:00 a.m. at Vista Hermosa Sports Park in San Clemente.

Student Bus Pass Program (Program):
- On Thursday, September 12th at 11:30 a.m., OCTA will host an event at Fullerton College to celebrate the launch of the Program.
- Last week, OCTA launched the Program at Golden West College.
- OCTA continues to see positive interests from the colleges about the Program.
- Mr. Johnson recently met with the President of California State University, Fullerton (CSUF) and discussed exploring the Program for CSUF along with other topics.

5. (Continued)

OCTA Roadeo:

- On Saturday, September 28th at 7:30 a.m., OCTA will host its annual Roadeo at the Santa Ana Base.
- OCTA's coach operators and mechanics compete for a chance to represent OCTA at the regional and national levels.
- Director Hernandez will be driving and competing at the Roadeo.
- The Committee Members were encouraged to participate in the driving competition.
- Practice dates for driving the bus are currently scheduled for Wednesday, September 18th and Thursday, September 19th.

Chairman Shaw asked about the ridership numbers for Golden West and Santa Ana colleges Program. Mr. Johnson responded that it is too early for those colleges' ridership numbers; yet, since the start of the Program there have been 2.2 million boardings.

6. Committee Members' Reports

Chairman Shaw complimented staff on last week's Golden West College Program event.

7. Closed Session

There were no Closed Session items scheduled.

8. Adjournment

The Executive Committee meeting adjourned at 9:52 a.m. The next regularly scheduled meeting of this Committee will be held at **9:00 a.m. on Monday, October 7, 2019**, at the OCTA Headquarters, 550 South Main Street, Board Room – Conference Room 07, Orange, California.

ATTEST

Laurena Weinert
Clerk of the Board

Tim Shaw
Chairman

October 7, 2019

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Measure M2 Next 10 Plan: Market Conditions Key Indicators Analysis and Forecast

Overview

On September 10, 2018, a Market Conditions Key Indicators Analysis and Forecast was presented to the Board of Directors providing insight into delivery of the Measure M2 Next 10 Plan. At the request of the Board of Directors, continued monitoring of market conditions and potential risks of project delivery has taken place and an updated forecast has been prepared. A presentation on the results of this effort is provided.

Recommendation

Continue to monitor market conditions and their effects on the advancement of the Next 10 Delivery Plan and provide updates to the Board of Directors as appropriate.

Background

On November 7, 2006, Orange County voters approved the renewal of Measure M (M2), the one-half cent sales tax for transportation improvements. Since approval, the Orange County Transportation Authority (OCTA) Board of Directors (Board) has continued to advance implementation of M2 commitments through the adoption of a series of early delivery plans. These delivery plans are designed to streamline implementation of all projects and programs through 2041 as promised to the voters, bring transportation improvements earlier to residents and commuters of Orange County and, as appropriate, address slower growth in sales tax revenue projections through strategic financing, and successfully capturing and augmenting the program with external revenue.

To date there have been three early delivery plans, with the most recent being the Next 10 Plan (Next 10). The Next 10 provides a framework to accelerate the delivery of M2 freeway, streets and roads, transit, and environmental projects through the year 2026.

Following Board adoption of the Next 10 in November 2016, the Board directed staff to conduct a market analysis to provide an outlook on M2 project costs as influenced by demands on construction resources. The overall objective was to provide insight on construction market conditions in unison with the revenue outlook to assist with prudent project delivery decisions. The analysis was prepared by the Orange County Business Council (OCBC), led by Dr. Wallace Walrod, Chief Economic Advisor to OCBC, and Dr. Marlon Boarnet, Professor and Chair of the Department of Urban Planning and Spatial Analysis at the University of Southern California.

The results of the analysis were presented to the Board in September 2017 and identified four near-term cost risks that were expected to be particularly impactful to M2 project delivery. These included: neighboring county transportation construction programs (resulting in strained supply of materials and workers), construction wage pressures, sustained low statewide unemployment, and residential construction demand and the effect on the public works construction market. Overall, the consultant's analysis identified a strong potential that during the Next 10 delivery years, OCTA would experience an increasing cost environment.

Following the presentation, the Board directed staff to continue to work with the consultant to monitor and track early warning indicators and provide the Board with updates to cost risk factors on project delivery. In response, the consultant team spent early 2018 analyzing trends and creating an Infrastructure Construction Cost Index (ICCI) model. On September 10, 2018, the consultant team presented their ICCI model and their prediction for the 2018, 2019, and 2020 cost fluctuation range to the Board.

This data tracking, collecting, and analytics effort continued with planned annual fall forecasts, timed to occur with the sales tax revenue forecast, and a mid-year update to staff in the spring. The forecast presented in fall 2018 (forecasting 2018, 2019, and 2020), and the spring 2019 update (forecasting 2019, 2020, and 2021), is included in Attachment A.

Discussion

With staff direction, the consultant team continues to analyze trends in material costs, labor costs, and general economic conditions and perform data analytics on this information to determine a range of potential cost impacts.

Consultant Findings

Using a series of regression analyses and forward-looking projections, the consultant team updated the ICCI to see how the information provided in fall 2018 and spring 2019 held up; and prepared a fall 2019 three-year forecast through 2022. This fall 2019 forecast is also included in Attachment A for easy reference and comparison.

The projections forecast a range of cost fluctuation for OCTA to consider when reviewing the M2 cash flow in support of successful delivery of M2 capital projects. Attachment B, prepared by the consultant, shares the basis for the forecast and the methodology supporting their findings.

According to the consultant, the ranges developed are built to be forecasting tools, with scores indicating public construction forecast cost increase fluctuationsp. Index scores of two and three indicate somewhat normal inflationary environments. A value of four is a high inflation environment. A value of one is a low inflation/deflationary environment. Values of zero and five correspond to the most extreme conditions observed in Orange County immediately prior to and during the Great Recession, and the high cost inflation environment that occurred in the building boom years of the early 2000s.

Using the ICCI described above, combined with a detailed trend analysis of building permits, unemployment rates, localized labor costs, material costs, and general economic conditions, the consultant estimates an ICCI ranking of “three” in 2020, and in each subsequent year 2021 and 2022.

An ICCI ranking of three represents potential cost increases in the range of two percent to six percent in all three years.

OCBC Orange County Transportation ICCI Score, 2020-2022		
Year	Index Score	Range of Cost Fluctuation
2020	3	2%-6%
2021	3	2%-6%
2022	3	2%-6%

This suggests a tempering compared with the previous forecast from spring 2019, and that cost pressures have slowed in the most recent data available. As in prior forecasts, the consultant indicates that OCTA will also need to be aware and ready to respond to cost pressures that are not able to be modeled.

The consultant explains that there are two different cost pressure groupings which are described as systematic and idiosyncratic. Systematic risks have characteristics that are observable and more predictable. Systematic risks are captured in the ICCI through the cost pressure model. Cost pressures in this group are reflections of the construction/building environment, the state's economy (which influences both the demand for construction services and the cost of construction labor and materials), and direct measures of material and labor costs.

Idiosyncratic risks are cost pressures which cannot be statistically modeled. These cost pressures are not related to historic or observable economic factors, but are still real risks that may be important and warrant careful tracking. The consultant pointed to cost pressures in the idiosyncratic group as:

- Tariffs and associated effects on cost of materials from the nation's changing trade policy,
- Regulatory requirements and changes that create additional hurdles during the bidding process.

Overall, the consultant's analysis identifies a potential that during the next few years of delivering Next 10, OCTA will experience a moderate cost environment. The consultant's analysis also indicates that measurable cost pressures may be flattening and are not as pronounced as in the previous time period. The Market Conditions Key Indicators Analysis and Forecast concludes that OCTA may experience a cost increase of between two percent and six percent during the next three years of construction activity, which is the timeframe for the ICCI model. OCTA's current assumptions, developed by OCTA's Capital Programs Project Controls Department (Project Controls), assumes a 3.5 percent escalation, which is a decrease from last year's short-term project escalation assumptions of 4.0 percent. Project cost estimates also include a prudent contingency specifically developed for the project based on the individual project risks.

Project Controls' cost estimating process uses historical information, as well as current trends in the market, and follows a consistent and defined process. Looking back at the last 20 years, OCTA's cost estimates have included a 3.0 percent escalation, which, on average during this timeframe, provided the appropriate escalation to deliver projects successfully. Using 3.5 percent for construction escalation, as well as incorporating contingency based on the project type and complexity, is staff's best estimate using industry standards on cost estimating.

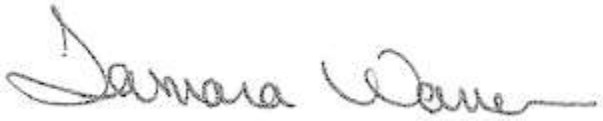
Summary

The Market Conditions Key Indicators Analysis and Forecast concludes that the Orange County Transportation Authority may experience a cost increase of between two percent and six percent during the 2020 through 2022 time period of construction activity. To reduce the potential risk of cost pressure and project delivery slowdowns due to unanticipated cost increases, staff will incorporate information from this analysis into the Measure M2 cash flow for the 2019 updated Next 10 Delivery Plan, which will be presented to the Executive Committee and Board of Directors in November 2019.

Attachments

A. Orange County Business Council, Orange County Transportation Infrastructure Construction Cost Index Score, Fall 2018, Spring 2019, and Fall 2019 Forecasts
B. Orange County Business Council, Orange County Transportation Infrastructure Construction Cost Index, Fall 2019

Prepared by:



Tamara Warren
Manager, Program Management Office
(714) 560-5590

Approved by:

Kia Mortazavi
Executive Director, Planning
(714) 560-5741

ATTACHMENT A

Orange County Business Council
Orange County Transportation Infrastructure Construction Cost Index Score
Fall 2018, Spring 2019, and Fall 2019 Forecasts

Fall 2018

OCBC Orange County Transportation ICCI Score, 2018-2020		
Year	Index	Cost Increase Range (annual)
2018	4	6% - 11%
2019	3	2% - 6%
2020	3	2% - 6%

Spring 2019

OCBC Orange County Transportation ICCI Score, 2019-2021		
Year	Index	Cost Increase Range (annual)
2019	4	6% - 11%
2020	3	2% - 6%
2021	3	2% - 6%

Fall 2019

OCBC Orange County Transportation ICCI Score, 2020-2022		
Year	Index	Cost Increase Range (annual)
2020	3	2% - 6%
2021	3	2% - 6%
2022	3	2% - 6%

ICCI - Infrastructure Construction Cost Index
OCBC – Orange County Business Council

Orange County Business Council
Orange County Transportation Infrastructure Construction Cost Index
Fall 2019

Orange County Business Council Research Team

Dr. Wallace Walrod - Chief Economic Advisor, Orange County Business Council
Dr. Marlon Boarnet - Professor and Chair, Department of Urban Planning and Spatial Analysis, University of Southern California
Benjamin Palmer - Research Associate, Orange County Business Council

Background and Purpose

As a supplementary examination to the Next 10: Market Conditions Forecast and Risk Analysis study delivered by Orange County Business Council (OCBC) in September 2017, the Orange County Transportation Authority (OCTA) Board of Directors (Board) requested further study and exploration of potential cost fluctuations beyond existing cost analysis from the California Department of Transportation's (Caltrans) Construction Cost Index (CCI) and internal OCTA analysis. Recent increases in construction costs combined with concerns over sales tax revenue growth trends have necessitated forward looking projections to determine the ability for OCTA to adequately fund a number of transportation and infrastructure projects aimed at alleviating traffic congestion and increasing the quality of life for Orange County residents.

In order to do so, the OCBC team has analyzed annual trends in material costs, labor costs and general economic conditions to determine a range of potential cost increases with a time horizon out until 2022 by collecting and tracking relevant market data and indicators and performing data analytics on these datasets. In doing so, and providing these findings to OCTA's Board, more accurate budgets can be determined reducing the potential risk of cost pressure and project delivery slowdowns due to financial constraints. The result of this analysis has been the creation of an Infrastructure CCI which provides a range of potential cost fluctuations for 2020, 2021, and 2022.

Findings and Discussion

OCBC has updated the Orange County Transportation Infrastructure CCI score, forecast to 2020, 2021, and 2022. The index value is "3" in each year.

Year	Index	Cost Increase Range (annual)
2020	3	2% - 6%
2021	3	2% - 6%
2022	3	2% - 6%

The cost pressure model shows cooling compared with the previous forecast from March 2019. Cost pressures have, on net, slowed in the most recently available data.

Existing cost pressures are at cross-purposes, netting out to the mid-range index value of "3." The cost pressure model has four primary inputs: California building permit activity, California unemployment rate, materials costs for transportation projects as tracked by Caltrans, and wages in Orange County's construction workforce. Building permitting has slowed considerably in the state, and the unemployment rate, while still low, has leveled off. Materials costs are showing mixed signals, and Orange County construction wages continue to rise. The fundamentals are at cross-purposes. The slowdown in building permits is often associated with low infrastructure cost pressure, while rising wages are associated with rising cost pressure. At the current time, these factors are netting out to moderate annual cost increases forecast in the 2-6% range each year through 2022. We advise that OCTA continue to monitor conditions, as factors that influence unemployment rates, including the macro-economy, could tip the balance in either direction going forward. At this point we do not see sustained high cost pressures in the forecast.

Recent Data Trends

The cross-cutting economic trends can be seen in recent trends in key factors associated with infrastructure costs. Table 1 shows the values for 2016 through 2018 and the 2019 values based on projections from quarterly data. Building permitting in California is clearly slowing, the unemployment rate is dropping but at a less rapid pace, and construction labor costs (wages) in the county are rising. Building materials costs are multi-faceted and not shown, but on net building materials costs are rising at rates similar to but slightly less than in the 2016 to 2018 time-period.

Table 1: Infrastructure Cost Correlates, Annual Percentage Changes, 2016-2019

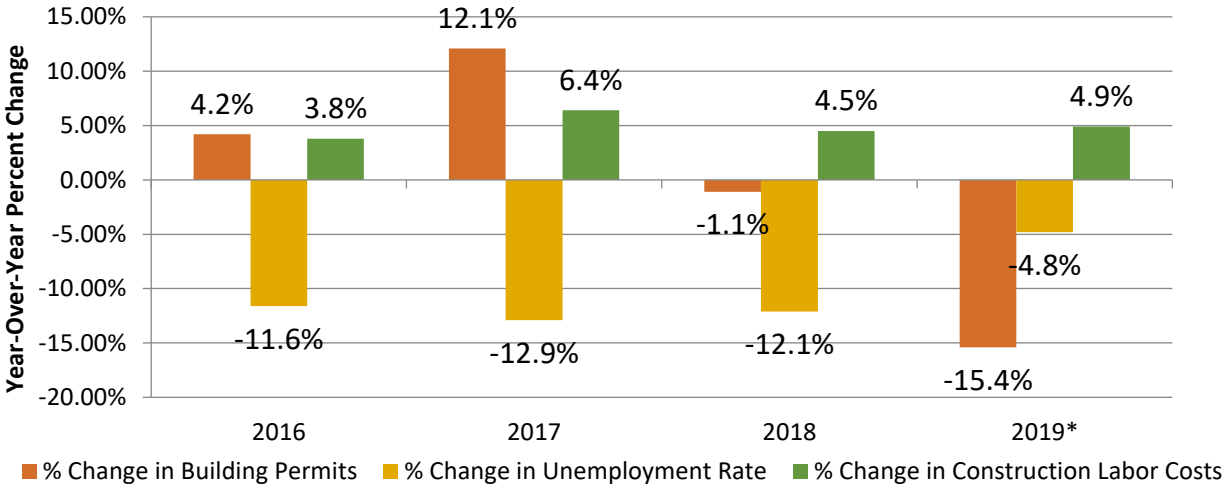
Year	California Building Permits	% change year-on-year	California Unemployment Rate	% change year-on-year	Orange County Construction Labor Costs (average. annual wage)	% change year-on-year
2016	102,350	4.2%	5.5%	-11.6%	$67,179	3.8%
2017	114,780	12.1%	4.8%	-12.9%	$71,474	6.4%
2018	113,502	-1.1%	4.2%	-12.1%	$74,669	4.5%
2019*	96,067	-15.4%	4.0%	-4.8%	$78,313	4.9%

* 2019 values projected from year-on-year changes in quarterly data, 2018 to 2019.

Orange County Business Council
Orange County Transportation Infrastructure Construction Cost Index
Fall 2019

Building permitting activity has slowed notably in the most recent California data. While the statewide unemployment rate remains near record lows, the pace of decrease has started to decline, suggesting potential economic uncertainty in the future. Finally, percentage changes in Orange County construction labor costs remain steady at 4.9% in 2019, slightly above the increase seen in 2018, likely a result of low overall unemployment and the undersupply of Orange County construction workers. Meanwhile, the Caltrans CCI while anticipated to increase, is slowing after increasing by an annual average of nearly 13% between 2013 and 2018.

Figure 1: Year-over-Year Percent Change in California Building Permits, California Unemployment Rate, and Orange County Construction Labor Costs, 2016-2019



* 2019 values projected from year-on-year changes in quarterly data, 2018 to 2019.

Forecasting Method

OCBC used a series of regression analyses, and forward-looking projections to create the Infrastructure CCI. This index provides a ranking from 0-5, with each rank corresponding to range of percent changes in overall construction costs. Table 2 below highlights each Index ranking and the proposed range of cost fluctuations which have been provided on a low, midpoint, and high scale.

Table 2: OCBC Orange County Transportation Infrastructure CCI Score Ranking - Implied Range of Construction Cost Change

Index Score	Low	Midpoint	High
0	-17%	-9.5%	-2%
1	-2%	-0.5%	1%
2	1%	1.5%	2%
3	2%	4%	6%
4	6%	8.5%	11%
5	11%	25.5%	40%

These ranges are built to be forecasting tools, with scores indicating public construction forecast cost increase. Values of 2 and 3 indicate somewhat normal inflationary environments. A value of 4 is a high inflation environment. A value of 1 is a low inflation/deflationary environment. Values of 0 and 5 correspond to the most extreme conditions observed in Orange County over the past two decades, and hence the ranges for those values are wide due to the unusual nature of the highly deflationary environment that occurred immediately prior to and during the Great Recession and the high cost inflation environment that occurred in the building boom years of the early 2000s.

Methodology

To determine the Transportation Infrastructure CCI, the OCBC team started by aggregating several datasets, measures, and indicators on an annual basis as far back as 1972. Among others, these measures included the Caltrans CCI, state-level building permits and unemployment rates, material costs, and construction labor costs.

The OCBC team examined how the various measures and indicators of construction costs varied with changes in (1) building permitting activity, (2) unemployment rates, (3) materials costs, (4) labor costs, and recent past trends in construction inflation. Using statistical analyses, the research team has built a forecasting model that projects forward cost increases.

Appendix: Changes in Infrastructure Materials Costs 2016-2019 (all values are percent year-on-year changes)

Year	Aggregate	PCC Pavement	PCC Structure	Steel Structure	Steel Bar
2016	9.4%	8.5%	7.6%	26.3%	35%
2017	24.2%	107.8%	26.9%	-51.0%	-21%
2018	18.9%	26.9%	17.2%	-58.8%	9.4%
2019 *	5.6%	-17.03%	13.4%	-34.9%	16.2%

Portland Concrete Cement

* 2019 values projected from year-on-year changes in quarterly data, 2018 to 2019.

Measure M2 Next 10 Plan: Market Conditions Key Indicators Analysis and Forecast

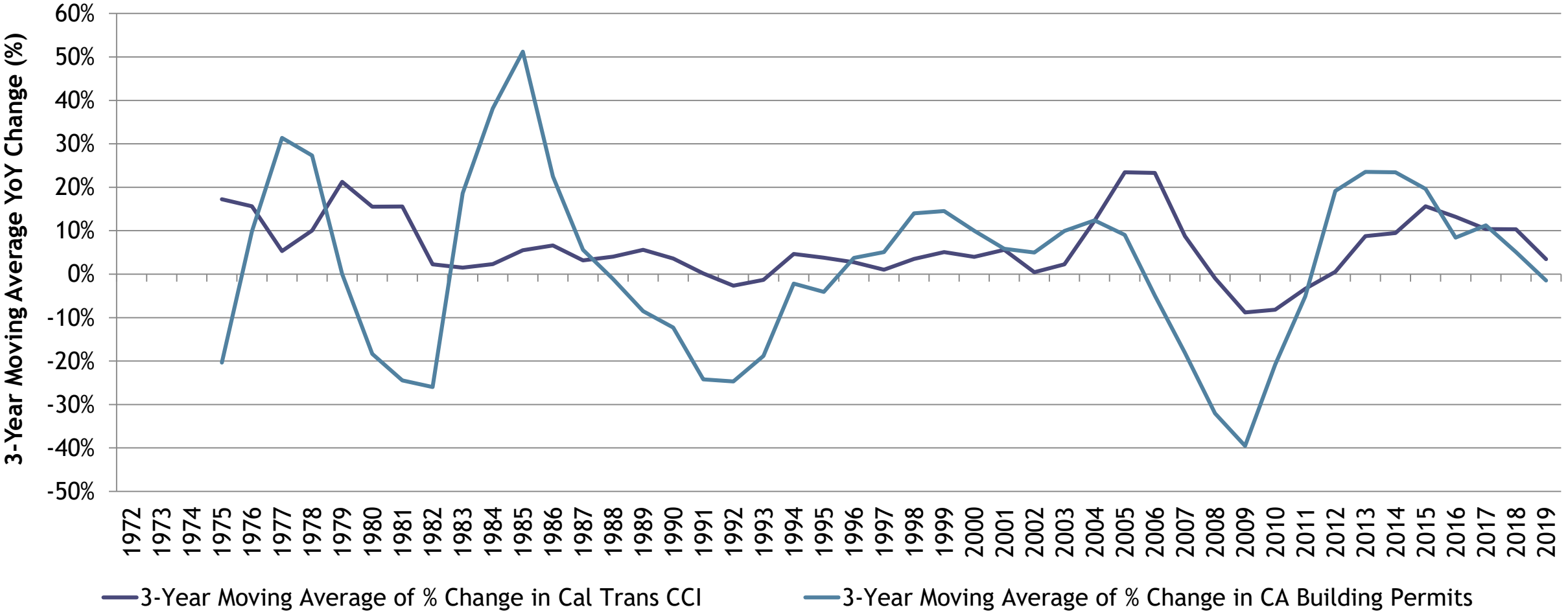
Orange County Transportation Infrastructure
Construction Cost Index, Fall Update 2019
Orange County Business Council

Orange County Transportation Infrastructure CCI Model Components

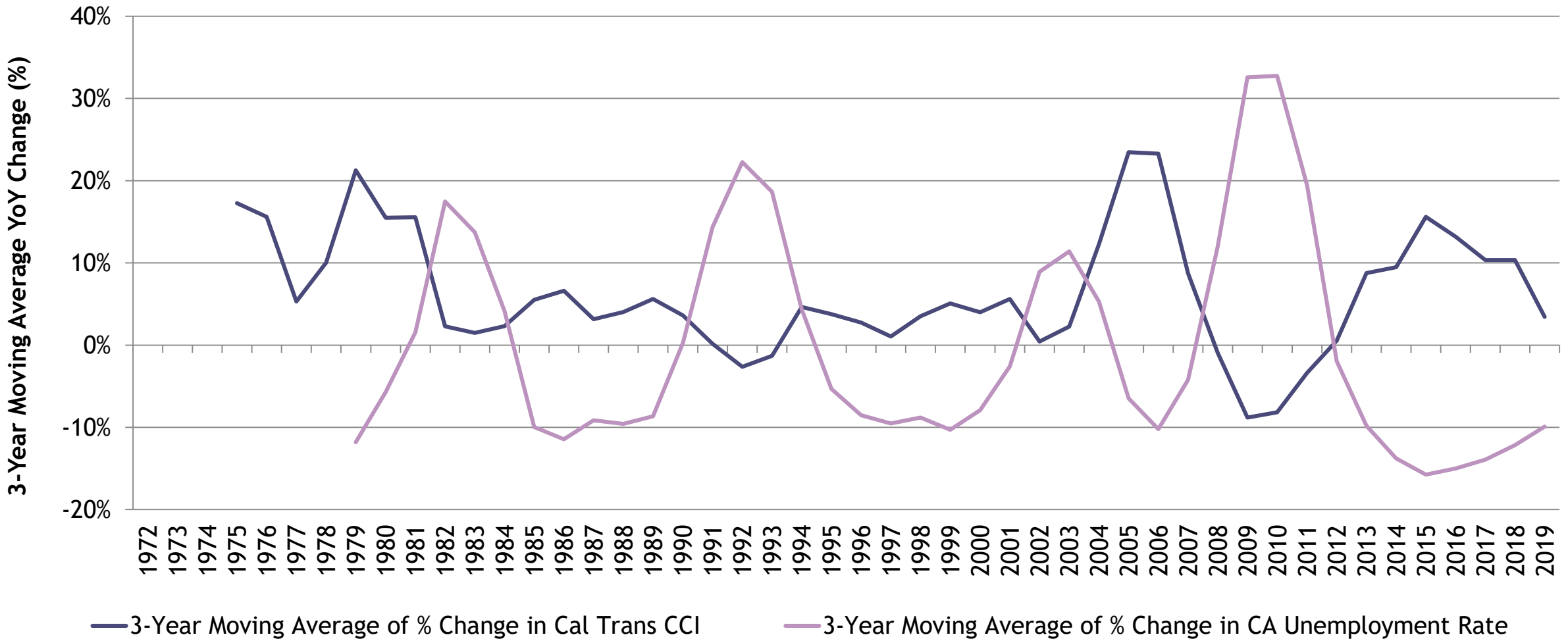
- Economic Trends – State-level building permits and unemployment rate (Census and California Employment Development Department)
- Material Costs – Construction Aggregate, PCC Pavement, PCC Structural Concrete, Structural Steel and Bar Steel (Caltrans)
- Labor Costs – Localized construction wages of NAICS defined sectors provided by Bureau of Labor Statistics
- Economic Conditions – Tight economy in 2002-2005 and slack economy in 2007-2011

CCI – Construction Cost Index
PCC – Portland Concrete Cement
Caltrans – California Department of Transportation
NACIS - North American Industry Classification System

3-Year Moving Average of Year-Over-Year Percent Change in Caltrans CCI and Building Permits



3-Year Moving Average of Year-Over-Year Percent Change in Caltrans CCI and CA Unemployment Rates



Forecast and Range of Orange County Transportation Infrastructure Cost Increases by Index Value

- 2020 – Forecasted Index Value: 3
- 2021 – Forecasted Index Value: 3
- 2022 – Forecasted Index Value: 3

Range of Cost Fluctuations by Index Score			
Index	Low	Medium	High
0	-17%	-9.5%	-2%
1	-2%	-0.5%	1%
2	1%	1.5%	2%
3	2%	4%	6%
4	6%	8.5%	11%
5	11%	25.5%	40%

Cost Pressures Are Mixed

- Statewide building permit issuance has slowed
- Slowing decrease in California unemployment rates
- Increasing Orange County construction labor costs
- Material cost shifts mixed, rising slightly less than 2016-2018

Year-over-Year Changes in California Building Permits, California Unemployment Rate, and Orange County Construction Labor Costs, 2016-2019

Year	California Building Permits	% change year-on-year	California Unemployment Rate	% change year-on-year	OC Construction Labor Costs (average annual wage)	% change year-on-year
2016	102,350	4.2%	5.5%	-11.6%	$67,179	3.8%
2017	114,780	12.1%	4.8%	-12.9%	$71,474	6.4%
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2019*	96,067	-15.4%	4.0%	-4.8%	$78,313	4.9%

* 2019 values projected from year-on-year changes in quarterly data, 2018 to 2019.

OCBC Infrastructure Construction Cost Forecast

- Systematic Risks – more predictable and therefore in model
  - Construction/building environment
  - State's economy influencing demand and cost
  - Direct measures of labor and materials cost

OCBC Orange County Transportation ICCI Score, 2020-2022		
Year	Index Score	Range of Cost Fluctuation
2020	3	2%-6%
2021	3	2%-6%
2022	3	2%-6%

- Idiosyncratic Risks – not predictable and therefore not in model
  - Tariffs and associated effects on cost of materials, from changing trade policy
  - Regulatory requirements/changes creating additional hurdles to the bidding process

Orange County's Construction Workforce: Labor Market Flows

Occupation (SOC Code)	Over/Under Supply in Orange County 2017*	Over/Under Supply in Orange County 2018*	Over/Under Supply in Orange County 2019*
Engineers (17-2000)	**102**	**150**	**116**
Civil Engineers (17-2051)	**-130**	**-178**	**-181**
Construction and Extraction Occupations (47-0000)	**-10,799**	**-11,413**	**-11,572**
First-Line Supervisors of Construction Trades and Extraction Workers (47-1011)	**-443**	**-688**	**-647**
Construction Trades Workers (47-2000)	**-9,136**	**-9,310**	**-10,012**
Construction Laborers (47-2060)	**-1,944**	**-2,093**	**-2,172**
Construction Equipment Operators (47-2070)	**-392**	**-380**	**-408**
Other Construction and Related Workers (47-4000)	**-421**	**-397**	**-419**

*Undersupply is indicated by negative number, over supply is indicated by positive number
SOC – Standard Occupational Classification

Questions

OCTA

October 7, 2019

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Public Transportation Agency Safety Plan

Overview

The Federal Transit Administration published the Public Transportation Agency Safety Plan regulation, 49 CFR Part 673, on July 19, 2018 which took effect the following year, on July 19, 2019. Within this regulation, it is required that every agency receiving funds under the Urbanized Area Formula Program (49 USC Section 5307) must develop, and have adopted by the Board of Directors, a Public Transportation Agency Safety Plan for its transit system no later than July 20, 2020. As part of the regulation, agencies are to implement a Safety Management System risk-based approach.

Recommendations

Receive and file as an informational item.

Background

The Health, Safety, and Environmental Compliance Department oversees safety compliance programs and has assessed the new Public Transportation Agency Safety Plan (PTASP) regulation for adoption into the Orange County Transportation Authority's (OCTA) compliance activities. Many efforts have been made to date to prepare for the compliance deadline and ensure a Safety Management System (SMS) approach is outlined and implemented under OCTA's future PTASP.

On February 5, 2016, the Federal Transit Administration (FTA) released a Notice of Proposed Rulemaking that outlined the future requirements for a written PTASP for transit systems and the incorporation of a SMS approach. The rule was finalized on July 19, 2018, with an effective date of July 19, 2019. The final rule outlined the requirements of the PTASP and included details on what the FTA would expect as part of an agency's written program and risk-based SMS approach. Understanding the complexity of the new rule and the timeline of events that an agency would need to adhere to, the FTA gave each agency one

year to develop and incorporate their safety oversight strategy. The PTASP is required to be adopted by the Board of Directors (Board) by July 20, 2020.

During the drafting and release of the new rule, oversight responsibilities were also established to clarify the duties of the FTA and local regulatory bodies classified as State Safety Oversight (SSO) agencies (49 CFR Part 674). The SSO for California is the California Public Utilities Commission. The FTA is responsible for the written rule, oversight and certification of the SSO, technical assistance, and auditing an agency's PTASP through the Triennial Audit process. The SSOs are responsible for local enforcement of the rule and the review and approval of the PTASP document. Because of this, OCTA's PTASP will be submitted for acceptance by the SSO prior to adoption by the Board to ensure SSO concurrence.

Discussion

The final PTASP rule provides an outline of the expected SMS requirements that includes four primary components and sixteen subcomponents. The four primary components include Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion.

Component 1: Safety Management Policy

Subcomponents:

- Written Statement of Policy
- Process for reporting unsafe conditions/near-miss incidents
- Safety management policy communication
- Authorities, accountabilities, and responsibilities

The Safety Management Policy components consist of, and require, a written statement of policy committing the agency to the plan and the value of safety, a process of reporting unsafe condition, acts, and near misses, a description of the Safety Management Policy communication plan that addresses the means by which the plan and the program will be communicated throughout all levels of the organization, and a section that clearly documents staff's roles, responsibilities, authorities, and accountabilities.

Component 2: Safety Risk Management

Subcomponents:

- Safety risk management process
- Safety hazard / near-miss incident identification and reporting
- Safety risk assessment
- Safety risk mitigation

The second component identified under the rule is Safety Risk Management. This component focuses on an agency's process of identifying and reporting hazards, and formally assessing each individual hazard through a formal risk assessment process. The risk assessment process must be uniformly applied to all known hazards and assess risk towards the agency, employees, the public, and the communities served. Once a hazard is assessed and risk is determined, it is required that the agency then identifies appropriate mitigation strategies to eliminate or lower each risk to an acceptable level as determined by the risk assessment process. Mitigation strategies can include the elimination of the hazard, engineering controls and administrative controls to lower the overall risk, and personal protective equipment, if such risk cannot be lowered enough to control the employee/personal exposure.

Component 3: Safety Assurance

Subcomponents:

- Safety performance monitoring and measurement
- Hazard mitigation monitoring process
- Accident notification, investigation, and reporting
- Internal safety reporting program monitoring
- Management of change
- Continuous improvement

The third component identified as part of the PTASP requirements is Safety Assurance. The purpose of this component is to monitor an agency's safety performance and establish measurable data to track safety performance goals and objectives. The data captured to ensure compliance should include leading and lagging indicators to ensure resource allocation and mitigation strategies are effective in risk and incident reduction. Through actions such as risk mitigation, safety incident reporting, and incident investigation, an agency's safety trends should reduce as a result. In addition to the performance measurement, this component also requires the agency to establish methods of change control. Overall, Safety Assurance requires OCTA to establish safety performance goals, measure data against those goals, and strive for continuous improvement.

Component 4: Safety Promotion

Subcomponents:

- Safety training program
- Safety communication

The final component of the PTASP is Safety Promotion. This establishes the requirement to have a robust safety training program, including means and methods to communicate safety-related information throughout all levels of the organization. Safety communication should include, but is not limited to, roles

and responsibilities, agency expectations, hazard/risk communication, and safety metric performance updates.

OCTA has taken several steps to initiate its efforts to comply with the new PTASP and SMS requirements. In September 2018, OCTA, in contract with Boyd Caton Group, Inc., completed a PTASP/SMS Gap Analysis to review existing practices and procedures against the new rule. These efforts included a document review of existing policies and procedures, and organizational review of its current safety management practices, and in-person interviews of staff. The product of this effort was a comprehensive report that includes action items and process improvements necessary for compliance.

Additionally, in June 2019, the Board approved the fiscal year 2019-20 budget that included an additional full-time employee responsible for the implementation and ongoing management of the PTASP/SMS efforts. This SMS Program Manager will drive compliance efforts through ongoing hazard/risk tracking, data analysis, internal communication, PTASP assessment/reviews, and the goal of continuous improvement.

Currently OCTA is drafting its PTASP with the help of STV Incorporated (STV). A contract with STV was initiated in April 2019 with the end deliverable being an OCTA PTASP that will be submitted to the SSO for review and brought through the Executive Committee and to the Board for approval.

Summary

Staff is presenting this as an information item to inform the Executive Committee of the new FTA rule and the requirements for the Authority to establish a written PTASP for its transit system that incorporates an SMS risk-based approach. Staff has been preparing for this rule for several years and is currently drafting a PTASP that will address all required components and subcomponents. The PTASP will come before the Committee for review and discussion and is planned on being brought to the full Board of Directors for approval by May 2020.

Prepared by:

Matthew DesRosier
Department Manager, Health, Safety,
and Environmental Compliance
714-560-5854

Approved by:

Maggie McJilton
Executive Director, Human Resources
and Organizational Development
714-560-5824

Public Transportation Agency Safety Plan

Discussion Points

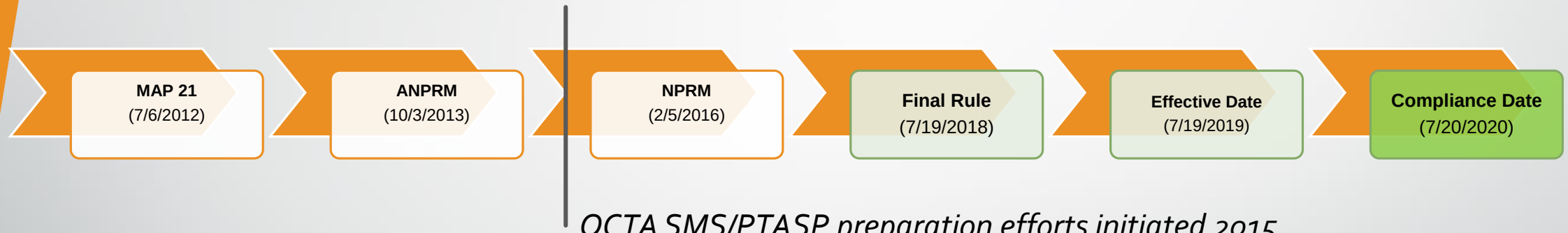
- 49 Code of Federal Regulations (CFR) Part 673 Timeline of Events
- Safety Management System Approach
- PTASP Requirements
- Public Transportation Agency Safety Plan (PTASP) Oversight
- Compliance Activities to Date
- Board of Directors Involvement

U.S. Department of Transportation

Federal Transit Administration

Timeline of Events

49 CFR Part 673



OCTA SMS/PTASP preparation efforts initiated 2015

CFR: Code of Federal Regulations
MAP 21: Moving Ahead For Progress in the 21st Century
ANPRM: Advanced Notice of Proposed Rulemaking
NPRM: Notice of Proposed Rulemaking
OCTA: Orange County Transportation Authority
SMS: Safety Management System
PTASP: Public Transportation Agency Safety Plan

Safety Management System Approach

- **Management system concepts have been around for over 50 years.**
  - ISO 9000 – Quality control / quality assurance
  - ISO 14000 – Environmental management
  - OHSAS 18000 – Safety management

- **Used in the private industry more so than public, as industrial and commercial standards.**

- **Use of the standards aids in the creation of products and services that are safe, reliable, and of good quality.**

- **Framework is intended to establish a sustainable/repeatable process for continuous improvement.**

ISO: International Standards Organization
OHSAS: Occupational Health and Safety Assessment Specialist

PTASP Requirements

- **What is a Public Transportation Agency Safety Plan (PTASP)?**
  - Written document describing the means and methods a transit system follows to ensure safety throughout their organization and systems
  - Must address the 4 required components outlined in the rule
  - Must be signed into effect and adopted by the Board of Directors
- **Applicability**
  - Required for operators of transit systems that receive FTA 5307 funds
  - All rail transit operators

A Safety Management System (SMS) is a comprehensive, collaborative approach to managing safety. It brings management and labor together to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more precisely.

FTA: Federal Transportation Administration

PTASP Requirements

Safety Management Policy	• Identification of Accountable Executive, Chief Safety Office, and Agency Key Leadership roles and responsibilities • Agency safety objectives • Employee reporting program
Safety Risk Management	• Process of identifying and analyzing safety hazards and risk • Prioritization of safety hazards based on level of risk • Identification and implementation of hazard/risk mitigation
Safety Assurance	• Safety performance monitoring and measuring • Management of change • Focus on continuous improvement
Safety Promotion	• Comprehensive safety training program • Communication of safety performance throughout the organization

PTASP: Public Transportation Agency Safety Plan

PTASP Oversight

FTA

- Certification of the State Safety Oversight (SSO) Agency
- Guidance to the SSO and transit agency
- Technical Assistance
- Triennial Review (to include PTASP compliance)

SSO Agency

- Review and approve the transportation agency PTASP
- Oversee and enforce Part 673 compliance

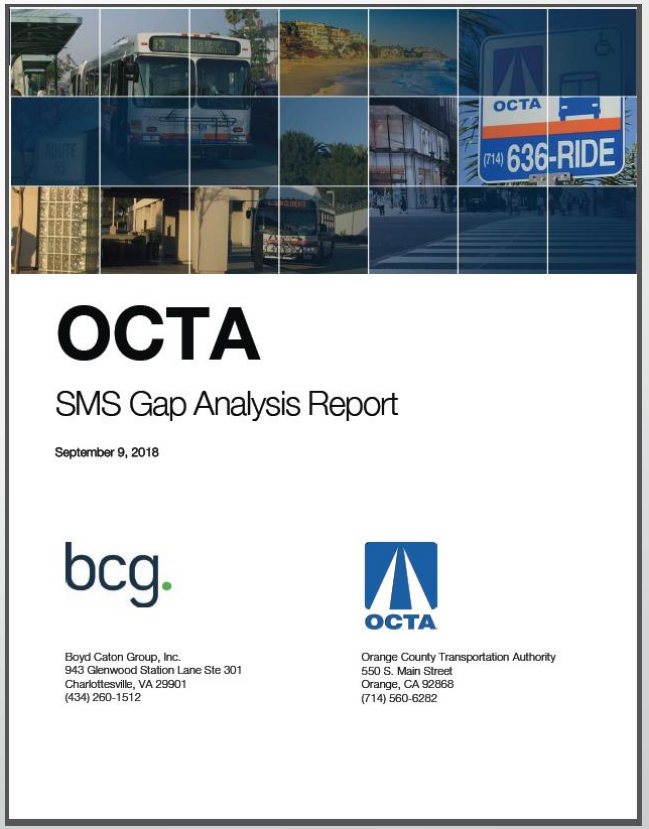
Transit Agency

- Develop and implement PTASP
- Annual self-certification of PTASP and Part 673 Compliance

PTASP: Public Transportation Agency Safety Plan

Compliance Activities to Date

- **SMS/PTASP gap analysis**
  - September 9, 2018 - Boyd Caton Group, Inc.
- **Initiation of the PTASP development and implementation plan**
  - April 4, 2019 - STV Incorporated
- **Fiscal Year 19/20 Budget Approval**
  - Additional position – SMS Program Manager



SMS: Safety Management System
PTASP: Public Transportation Agency Safety Plan

Compliance Activities Cont.

Deliverables	Timeframe
• **Management Workshop 1** (PTASP background, and OCTA objectives) • **In-person staff interviews** (Understand current practices, roles, and responsibilities)	**July 2019**
• **Technical Memorandum - Documentation of current practices**	**August 2019**
• **Management Workshop 2** (PTASP roles and responsibilities, and development of safety performance targets)	**October 2019**
• **Draft PTASP**	**February 2020**
• **Implementation Strategy Document** (Key annual activities / 5-10 year plan)	**February 2020**
• **Management Workshop 3** (Review draft PTASP, key annual activities, and resources)	**February 2020**
• **Board presentation and PTASP adoption**	**May 2020**

PTASP: Public Transportation Agency Safety Plan
OCTA: Orange County Transportation Authority

Board of Directors Involvement

- Approve OCTA's PTASP prior to July 20, 2020
  - Currently scheduled for May 2020
- Support the efforts of the plan and ensure adequate resources are provided for its success
- Ensure the agency focuses on the "Value of Safety" and strives for continuous improvement

Compliance Date
(7/20/2020)

OCTA: Orange County Transportation Authority
PTASP: Public Transportation Agency Safety Plan

Questions / Discussion

October 7, 2019

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Framework for Implementation of the State Route 241/91 Express Lanes Connector

Overview

The Orange County Transportation Authority, Riverside County Transportation Commission, Transportation Corridor Agencies, and California Department of Transportation have been working to resolve outstanding issues related to the implementation of a future direct, tolled connector linking the State Route 241 toll road to the 91 Express Lanes. The agencies have reached consensus on terms for future implementation of the connector project. Recommendations are presented to move the project forward, contingent on all parties agreeing to terms that will be incorporated into future agreements.

Recommendations

A. Approve the State Route 241/91 Express Lanes Connector term sheet as a framework for future agreements, contingent on all parties agreeing to the term sheet.

B. Direct staff to work with agencies to prepare associated agreements for Board of Directors' consideration, consistent with the terms included in this report.

Background

The Transportation Corridor Agencies (TCA) and the California Department of Transportation (Caltrans) are working toward finalizing the environmental phase of a proposed project to construct a tolled connector between the State Route 241 (SR-241) toll road and the 91 Express Lanes (SR-241/ 91 Express Lanes Connector). The proposed project would connect directly with the 91 Express Lanes, approximately two miles west of the Orange County/ Riverside County line. This location overlays the transition zone between State Route 91 (SR-91) and the 91 Express Lanes, where commuters can change facilities and lanes (mixing bowl).

The Orange County Transportation Authority (OCTA) and the Riverside County Transportation Commission (RCTC) expressed concerns with the tolled connector as part of the project development process, including the review of the draft environmental document (Attachment A). These concerns related to the new connector impacting SR-91 general-purpose lanes (275,000 vehicles per day) and the 91 Express Lanes (50,000 vehicles per day), relative to the proposed benefits of the project (less than 10,000 vehicles per day). Because the proposed project is located just before the mixing bowl area, eastbound traffic entering the 91 Express Lanes from the proposed connector could occupy most of the capacity in the 91 Express Lanes. This means fewer vehicles from the general-purpose lanes could enter the 91 Express Lanes, eliminating an option for SR-91 commuters and an opportunity to relieve SR-91 general-purpose lanes congestion. Further, 91 Express Lanes toll changes may be necessary to address increased demand from the new connector.

Based on the above, and other concerns related to planned/adjacent SR-91 corridor projects, as well as operational issues, the OCTA Board of Directors (Board) acted in December 2017 to request TCA to defer all work on the connector given the regional mobility impacts and work with RCTC and Caltrans to evaluate opportunities to advance higher priority SR-91 corridor congestion-relief projects.

The Board action set in motion a series of efforts intended to resolve, to the fullest extent possible, all of the issues raised by OCTA and RCTC, with the goal of ensuring the connector could move forward in a coordinated fashion that considers the complexity of the corridor, planned projects, and operational issues.

Discussion

Since December 2017, the agencies have worked together to review additional traffic analysis, engineering plans, and coordination with planned/adjacent SR-91 projects. This analysis also considered the risks if the new connector delivers too much traffic to the 91 Express Lanes that cannot be realistically managed by OCTA and RCTC. For example, delivering too much eastbound afternoon traffic from the new connector into the 91 Express Lanes could cause a rise in tolls so that users divert out of the 91 Express Lanes into the mixing bowl area. This would cause impacts to the general-purpose lanes, further slowing afternoon traffic. Given these risks to OCTA, RCTC, and the SR-91 corridor users, these discussions needed to include decisions on operational and policy control of the new connector.

In mid-2019, and to facilitate these on-going deliberations, Caltrans retained a professional mediator with expertise in engineering, traffic analysis, and consensus-building (Attachment B). Throughout the negotiations, the chief executive officers of OCTA, RCTC, TCA, and Caltrans, districts 8 and 12, as well as Caltrans Headquarters directors, worked through five major issue areas that included:

1. Setting priorities for SR-91 corridor projects to reduce construction-related impacts;
2. Allowing completion of the environmental approval process and updating related programming documents;
3. Clarifying lead agencies for final design, construction, and maintenance;
4. Identifying the principal funding agency for final design, construction, and maintenance; and
5. Designating lead agencies for retaining toll revenue and toll setting/operational control.

In September 2019, the negotiations reached a consensus point in the form of the SR-241/91 Express Lanes Connector term sheet (Attachment C). The major points in the term sheet allow TCA and Caltrans to finalize the environmental document and move forward with final design. OCTA will update programming documents related to future right-of-way and construction phases. TCA will complete the final design, subject to Caltrans approval, with OCTA and RCTC reviews. OCTA, RCTC, and Caltrans will move forward with critical SR-91 construction projects that will open before the connector. Caltrans, District 12, will build the connector after most of the other construction projects are open to traffic. OCTA and RCTC will establish the toll rates and manage operations of the connector paid for with connector revenues. Connector toll revenues will be retained by TCA for specific responsibilities and approved projects, subject to change if non-TCA funds are secured for construction of the connector.

To ensure consensus, each Board (OCTA, RCTC, and TCA) will need to formally approve the term sheet. As a partner in this arrangement, Caltrans has provided a letter of support on the terms (Attachment D). The remaining actions are expected to be completed by the end of November 2019, which will allow development of more detailed agreements related to funding, construction, operations, maintenance, and use of toll revenue. These agreements will be subject to Board approval, consistent with OCTA policies.

Summary

The agencies have reached initial consensus on moving forward with the SR-241/91 Express Lanes Connector. With approvals of the term sheet by the end of November 2019, the agencies will develop the associated agreements for future Board consideration and potential approval.

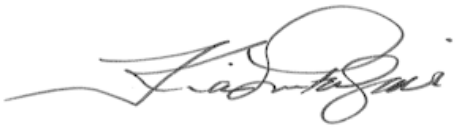
Attachments

A. Letters from the Orange County Transportation Authority and the Riverside County Transportation Commission Regarding the SR-241/ 91 Express Lanes Connector
B. Letter to Darrell Johnson, Chief Executive Officer, Orange County Transportation Authority, Anne Mayer, Executive Director, Riverside County Transportation Commission, Michael Kraman, Chief Executive Officer, Transportation Corridor Agencies, from Laurie Berman, Director, Department of Transportation, dated June 19, 2019
C. SR-241/91 Express Lanes Connector Term Sheet, September 12, 2019
D. Letter to Darrell Johnson, Chief Executive Officer, Orange County Transportation Authority, Michael Kraman, Chief Executive Officer, Transportation Corridor Agencies, Anne Mayer, Executive Director, Riverside County Transportation Commission, from Ryan Chamberlain, District 12 Director, Michael Beauchamp, District 8 Director, dated September 26, 2019

Prepared by:

Kurt Brotcke
Director, Strategic Planning
(714) 560-5742

Approved by:



Kia Mortazavi
Executive Director, Planning
(714) 560-5741

ATTACHMENT A

Letters from the Orange County Transportation Authority and the Riverside County Transportation Commission Regarding the SR-241/91 Express Lanes Connector

OCTA

AFFILIATED AGENCIES

Orange County Transit District

Local Transportation Authority

Service Authority for Freeway Emergencies

Consolidated Transporation Service Agency

Congestion Management Agency

Service Authority for Abandoned Vehicles

January 9, 2017

Ms. Smita Deshpande
Generalist Branch Chief
Caltrans-District 12, "Attn: 241-91 DSEIR/EIS Comment Period"
1750 East Fourth Street, Suite 100
Santa Ana, CA 92705

Subject: Draft Supplemental Environmental Impact Report/Environmental Impact Statement (SCH. 1989010410) for the State Route 241/State Route 91 Tolled Express Lanes Connector Project (Project No. 1200020097)

Dear Ms. Deshpande: Smita

Thank you for providing the Orange County Transportation Authority (OCTA) with the Draft Supplemental Environmental Impact Report/Environmental Impact Statement (DSEIR/S) for the State Route 241/State Route 91 Tolled Express Lanes Connector Project (Project). The following comments are provided for your consideration:

- On page 2-23, Section 2.2.1.2 'Permanent Project Features,' subsection 'TSM/TDM' the proposed Project is stated "to have dynamic traffic technology (toll pricing based on express lanes demand)." The analysis in the DSEIR/S did not address tolling and potential economic implications. OCTA recommends further analysis on tolling under applicable environmental factors analysis.

- On Page 5-3, Table 5.1 'Comments Received During Scoping,' states "Toll operations are being coordinated between F/ETCA, OCTA, and RCTC and are evaluated in a separate Concept of Operations report." OCTA recommends including this throughout the DSEIR/S, as applicable.

- The opening year analysis should be redone to reflect the actual opening year of 2020 rather than 2017. While Section 3.5.3.2 provides an explanation that the differences in traffic operations are nominal between 2017 and 2020, given the SR-91 Corridor Improvement Project (CIP) is scheduled to open in 2017, a thorough 2020 analysis would be appropriate.

- Given the complex nature of having multiple tolled facilities operated by different agencies, OCTA suggests that the analysis in the environmental document be updated to include traffic volume data anticipated to be available in Spring 2017 with the opening of the CIP. This would help refine the existing, opening year, and 2040 conditions analysis (throughput, speeds, and travel time).

- It appears that the environmental document had not analyzed weaving impacts along the SR-91 at the confluence of the SR-241 Express Connector merge/diverge, the OCTA 91 Express Lanes, and the RCTC 91 Express Lanes. Therefore, a more detailed weaving analysis would be appropriate.

- It appears that the complex nature of the multiple tolling options (including dynamic pricing) for the SR-241, the SR-241 Express Connector, the OCTA 91 Express Lanes, and the RCTC 91 Express Lanes are not adequately discussed with respect to the traffic impacts. These should be explored in detail.

- OCTA understands that there are complementary concept of operations studies (con-ops) underway. Some of the appropriate results from the con-ops studies should be integrated into this environmental document.

- It appears there needs to be a more thorough analysis of the construction impacts on the OCTA 91 Express Lanes, including traffic impacts, toll and revenue implications.

Thank you for providing OCTA the opportunity to review this item. Throughout the development of this proposed project, we encourage continued communication with OCTA on the matters discussed herein. If you have any questions or comments, please contact me by phone at (714) 560-5907 or by email at dphu@octa.net.

Sincerely,

Dan Phu
Environmental Programs Manager

c: Valarie McFall, TCA

OCTA

September 27, 2017

Mr. Mike Kraman
Chief Executive Officer
Transportation Corridor Agencies
P.O. Box 57011
Irvine, California 92619-7011

Dear Mr. Kraman,

As a follow-up to our meeting of September 13, 2017, regarding the Proposed State Route 241 (SR-241)/91 Express Lanes Direct Connector (Project), below is my understanding of the discussion and follow-up actions to ensure our upcoming meeting is responsive to the expectations of our respective Board representatives.

During the meeting the Transportation Corridor Agencies (TCA) provided an overview of the Project background, benefits, and status of project development activities. The Orange County Transportation Authority (OCTA) shared its assessments of regional benefits, State Route 91 (SR-91) corridor impacts, and operational implications.

TCA believes the Project would improve system connectivity, reduce weaving movements on the SR-91 general-purpose (GP) lanes that could enhance safety, address congestion on the northbound SR-241 to eastbound SR-91 connector, and deliver a federal air quality conformity Transportation Control Measure.

OCTA shared the fact that we have considerable reservations on the merits of the Project in meeting the Project's stated Purpose and Need. The Project Traffic Analysis Report indicates the Project provides very minimal regional benefits, and those benefits diminish over time. In addition, the Project exacerbates eastbound SR-91 GP lane congestion. The Project also consumes capacity that may otherwise be available to eastbound SR-91 GP lane commuters wanting to enter the 91 Express Lanes at the Orange County/Riverside County access point. The Project also will not resolve congestion on the northbound SR-241 to eastbound SR-91 and there is more than adequate distance to allow merging traffic to safely enter the 91 Express Lanes at the Orange County/Riverside County access point. The principal issue causing the congestion is insufficient capacity on the SR-91 and the Project does little to address the core problem.

While OCTA understands that TCA proposes using congestion pricing to balance the impacts to SR-91, the operation is far more complex and the parties need to understand the extent of demands associated with the various movements based on observed rather than modeled data. In addition, to address concerns over potential

adverse impacts to the SR-91 corridor, it was agreed that a joint agency toll governance arrangement was necessary to ensure no harm to the SR-91 corridor, including the 91 Express Lanes operated by both OCTA and the Riverside County Transportation Commission.

Based on the meeting, it was agreed that the parties would work on the following assignments for the next meeting:

- TCA will update the Project's Traffic Analysis Report and Traffic Revenue Study to reflect recent socioeconomic forecasts, update timing of assumed improvements in the corridor, and use more current traffic data for operational analysis.
- TCA and OCTA will jointly evaluate observed traffic data post-opening of the 91 Express Lanes into Riverside County, and evaluate the routing of traffic that is merging in or out of the 91 Express Lanes at the Orange County/Riverside County access point.
- TCA will provide OCTA with a draft agreement that can serve as the basis for protective bond covenants to ensure the Project will not negatively impact the 91 Express Lanes toll policies.
- TCA will evaluate the use of congestion pricing as a means to ameliorate congestion on the northbound SR-241 at Windy Ridge as an alternative to the Project.

In the interest of a timely resolution of the issues identified, the group agreed to meet again in November, prior to a final meeting in February of 2018. The November meeting has since been set for Thursday, November 16. As always, my staff stands ready to work with your team on the responses and other relevant analysis.

Sincerely,

Darrell Johnson
Chief Executive Officer

c: OCTA Board of Directors
Ed Sachs, F/ETCA Chair
Melody Carruth, SJHTCA Acting Chair
Todd Spitzer, 241/91 Ad Hoc Chair

OCTA

December 12, 2017

The Honorable Ed Sachs
Chairman
Transportation Corridor Agencies
125 Pacifica
Irvine, CA 92618

Dear Chairman Sachs:

At the December 11, 2017 Orange County Transportation Authority (OCTA) Board of Directors (Board) meeting, the proposed State Route 241 (SR-241)/ 91 Express Lanes Tolled Connector Project was discussed at length. The Transportation Corridor Agencies (TCA), OCTA, and the California Department of Transportation (Caltrans) have been reviewing issues and opportunities with the project for quite some time. Recent studies have identified significant traffic issues with the proposed project, and OCTA is particularly concerned about the project merits given the increased congestion it would cause for commuters on the State Route 91 (SR-91) corridor and 91 Express Lanes during the evening rush hours.

Two actions were taken by the Board on December 11, 2017:

- Direct staff to request TCA to defer all work on the State Route 241/ 91 Express Lanes connector given the regional mobility impacts.
- Direct staff to work with the Riverside County Transportation Commission and Caltrans to evaluate opportunities to advance SR-91 corridor congestion relief projects.

This letter serves as OCTA's request to TCA to defer all work, including certification of the supplement environmental impact report/statement, until such time the proposed project can become a complementary component to the SR-91 corridor. I encourage the TCA to work with OCTA staff and all parties through the annual update of the SR-91 Implementation Plan to consider these issues and identify next steps.

OCTA will continue to work with all stakeholders, including TCA, to develop mobility solutions along the SR-91 corridor. If you have any questions, please contact Chief Executive Officer, Darrell Johnson at (714) 560-5343.

Sincerely,

Michael Hennessey
Chairman

MH:dp
Attachment

c: Michael Kraman, TCA
Anne Mayer, RCTC
Ryan Chamberlain, Caltrans, District 12
John Bulinski, Caltrans, District 8
Board of Directors
Darrell Johnson, OCTA

January 9, 2018

Mr. Ryan Chamberlain
District Director
California Department of Transportation, District 12
1750 East 4th Street, Suite 100
Santa Ana, CA 92705

Dear Mr. Chamberlain:

As you know, the Orange County Transportation Authority (OCTA) Board of Directors (OCTA Board) made a decision at the December 11, 2017 meeting to request the Transportation Corridor Agencies (TCA) to defer all work on the State Route 241/91 Express Lanes connector project, given the regional mobility impacts. The OCTA Board has directed staff to work with the Riverside County Transportation Commission (RCTC) and the California Department of Transportation (Caltrans) to evaluate opportunities to advance the State Route 91 (SR-91) corridor congestion relief projects.

Subsequently, a letter from OCTA Board Chairman Hennessey was sent to the TCA Board Chairman Sachs regarding this decision. Accordingly, OCTA is requesting Caltrans to defer all work, including certification of the supplemental environmental impact report/statement, until such time the proposed project can be better understood and coordinated with other complementary SR-91 corridor improvements. The parties can work together through annual updates of the SR-91 Implementation Plan to consider these issues and identify next steps.

OCTA and RCTC look forward to working with Caltrans and the TCA to develop mobility solutions along the SR-91 corridor. If you have any questions, please do not hesitate to contact us.

Sincerely,

Darrell Johnson
Chief Executive Officer
Orange County Transportation Authority

Anne E. Mayer
Executive Director
Riverside County Transportation Commission

DJ:dp
Attachment

c: Michael Kraman, TCA
John Bulinski, Caltrans, District 8
OCTA Board of Directors

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

4080 Lemon Street, 3rd Floor • Riverside, CA
Mailing Address: P.O. Box 12008 • Riverside, CA 92502-2208
951.787.7141 • 951.787.7920 • www.rctc.org

April 2, 2019

VIA U.S. MAIL & EMAIL

Smita Deshpande, Generalist Branch Chief
Caltrans-District 12, "Attn: 241-91 DSEIR/EIS Comment"
1750 East Fourth Street, Suite 100
Santa Ana, CA 92705
D12.SR241-91ELC@dot.ca.gov
241-91expressconnector@thetollroads.com

Re: RCTC's Objection to SR-241/SR-91 Tolled Express Lanes Connector Project and the Draft SEIR/EIS for the Project

Dear Ms. Deshpande:

As the California Department of Transportation ("Caltrans") knows, the Riverside County Transportation Commission ("RCTC") is the regional planning authority for traffic and transportation infrastructure throughout Riverside County. RCTC has been pleased to partner with Caltrans over the years on numerous projects that have improved regional mobility for the benefit of the public. RCTC and Caltrans worked tirelessly to bring forward the $1.4 billion State Route 91 Corridor Improvement Project ("91 CIP"), which provided long overdue congestion relief along the State Route 91 ("SR-91") corridor and expands carpooling and ride-sharing options for commuters between Riverside and Orange Counties. RCTC considers Caltrans' collaborative efforts on this project, and many others, to be a true success story of how state and regional agencies can work together to bring forward crucial infrastructure.

Given this past positive working relationship, it is with regret that RCTC must object to the SR-241/SR-91 Tolled Express Lanes Connector Project ("Project"), which Caltrans has proposed in cooperation with the Foothill/Eastern Transportation Corridor Agency ("TCA"). Specifically, Caltrans has not complied with the procedural and substantive requirements of the California Environmental Quality Act (Pub. Res. Code, § 21000, et seq.; hereinafter, "CEQA"). Notably, the Draft Supplemental Environmental Impact Report/Environmental Impact Statement ("DSEIR/EIS") for the Project suffers from numerous defects, including an inadequate analysis of the Project's impacts on the very same transportation resources that the Project is allegedly designed to improve.

INTRODUCTION

RCTC and the Orange County Transportation Commission ("OCTA") have repeatedly requested that Caltrans not approve or commence construction of the Project—which entails the construction of a median-to-median connector between SR-241 and the tolled lanes in the median of SR-91 ("91 Express Lanes")—until steps are taken to ensure that the Project's impacts to the SR-91 corridor are fully analyzed and mitigated to the fullest extent feasible. In particular, RCTC and OCTA have requested that Caltrans delay construction of the Project until other necessary improvements can be built to facilitate movement along the SR-91 corridor. Caltrans has improperly ignored these requests.

While Caltrans' DSEIR/EIS claims that the Project will improve traffic and transportation from SR-241 to SR-91, Caltrans fails to properly analyze the Project's potential impacts along the entirety of the SR-91 corridor, from SR-55 to I-15. The Project may benefit SR-241 Toll Road users, but it appears this will be done at the expense of (i) general commuters who do not utilize the toll roads (and may be financially unable to do so), and (ii) current and future 91 Express Lanes users. Indeed, the whole purpose of the Project is to drop one more lane of traffic onto the SR-91 in an area that is already beyond capacity, creating additional congestion and back-up. These impacts could likely be mitigated—and the full benefits of the Project could be realized—if improvements adding capacity in this area and downstream of this area were completed before implementation of the Project. It is thus premature for Caltrans to move forward with the Project at this time because, absent additional improvements, the Project would create additional congestion on the eastbound SR-91's general purpose lanes and would impact the operation of the 91 Express Lanes in Riverside County.

RCTC understands the potential merit of the Project, which seeks to solve the back-up issues faced by Toll Road users at Windy Ridge as the SR-241 merges with the SR-91. The Project, however, will result in significant (and as-yet unanalyzed and unmitigated) environmental impacts should Caltrans proceed with the Project now—before additional necessary SR-91 improvements are completed.

Ultimately, RCTC urges Caltrans not to issue any project approvals until Caltrans fully complies with CEQA and properly analyzes all of the Project's potential environmental impacts. RCTC further urges Caltrans to work more closely and collaboratively with RCTC and OCTA to ensure that RCTC's concerns about the Project's scope, sequencing, and operations are satisfactorily addressed before the Project's approval. Ultimately, RCTC will do what it must to protect drivers on the SR-91 corridor—and the taxpayers and residents of Riverside County—from the impacts of this Project. For these reasons and the reasons set forth below, RCTC objects to the Project.

THE DSEIR/EIS FAILS TO COMPLY WITH CEQA

1. Caltrans' environmental analysis is fundamentally flawed because it is based upon an improper environmental baseline and inaccurate "opening year" assumptions.

"An EIR must include a description of the physical environmental conditions in the vicinity of the project," and "[t]his environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (State CEQA Guidelines, § 15125.) A lead agency should "generally describe physical environmental conditions as they exist at the time the notice of preparation is published." (*Ibid.*) Because analysis of environmental impacts relies on an environmental baseline, an improper baseline is a CEQA violation that permeates the entirety of an EIR.

Here, Caltrans published its Notice of Preparation ("NOP") on March 13, 2015, but Caltrans did not use this date as its environmental baseline. (DSEIR/EIS, p. 4-73.) Instead, Caltrans based its environmental baseline on data collected in 2013—two years before the NOP was published and nearly a decade before the Project will actually open. (DSEIR/EIS, p. 4-2 ["for most of the technical evaluations, the baseline conditions for comparative purposes under CEQA were the existing conditions in 2013, when the information was collected"].) Caltrans must explain why this data nonetheless constitutes a proper baseline under CEQA.

While Caltrans relies on a baseline from 2013 (two years before the NOP) as to many impacts, it relies on a "future" baseline as to other impacts. Specifically, Caltrans notes that "for the topics of transportation/traffic, air quality, noise, and energy, the evaluation compared the Build Alternative to the future No Build conditions (2017 Opening Year and/or 2040 Build Out) rather than to existing conditions in 2013." (DSEIR/EIS, p. 4-3.) Caltrans attempts to justify use of this "future" baseline because "the initial phase of the SR-91 CIP would be completed by 2017" and thus a "comparison between the 2017 Build and the 2013 Existing conditions would not be logical." (DSEIR/EIS, p. 4-4.) Even if one were to accept the need to use a future environmental baseline, Caltrans' use of 2017 as the environmental baseline is flawed for several reasons.

First, Caltrans itself recognizes that 2017 is not actually the opening year for the Project. Indeed the DSEIR/EIS provides a "revised opening year" of 2020. Second, even the use of 2020 as the baseline is flawed because Caltrans admits that it has not adjusted its analysis to reflect a revised opening year of 2020. (DSEIR/EIS, p. 1-23 ["Although the revised opening year is 2020, all of the tables and analysis still refer to 2017 as this is the year for which modeling was completed"].) Third, the DSEIR/EIS fails to support with substantial evidence its assumption that analysis of projected 2017 conditions accurately captures existing conditions in 2020.

Moreover, Caltrans' projections for the Project's "revised opening year" of 2020 is outdated. The 2020 opening year is premised on the assumption that "the Proposed Project is anticipated to take approximately 18 months to construct beginning in 2018." (DSEIR/EIS, p. 3.12-22.) Based on this assumption, and the fact that Caltrans has not yet completed the environmental review process for the Project, it is likely that the Project's opening year would not actually be until 2024 or later. Indeed, TCA indicated in a March 25, 2019 letter to OCTA

that it anticipates the Project to open on December 31, 2023—nearly seven years after Caltrans' initial projected opening date of 2017.

Finally, substantial evidence does not support Caltrans' conclusion that projected 2017 conditions based on 2013 data are comparable to conditions in 2024, when the Project is likely to open. The DSEIR/EIS justifies its use of a "future" 2017 baseline to measure the now-outdated 2020 opening year conditions by asserting that "[t]he Traffic Engineer has stated that the changes from 2017-2020 would be nominal." (DSEIR/EIS, pp. 1-23, 3.12-24.) The DSEIR/EIS, however, does not base this assertion on any substantial evidence. For example, the DSEIR/EIS asserts that the change in traffic volume between 2013 and 2017 "is projected to be 22 to 27 percent," but that the change in traffic volume between 2017 and 2020 would be negligible. (DSEIR/EIS, p. 4-3.) Moreover, the DSEIR/EIS includes no analysis of the change in traffic volume between 2017 and 2024. In other words, the DSEIR/EIS uses data from 2013 (two years before the NOP was published) to project "opening year" baseline conditions in 2017 (at least seven years before the Project will actually open), recognizes that 2017 is the wrong opening year (DSEIR/EIS, p. 3.12-24 [asserting 2020 is "revised planned opening year"), and concedes that no analysis has been done for 2020, much less 2024 (DSEIR/EIS, p. 3.12-24 ["although the revised opening year is 2020, all of the tables and analysis still refer to 2017, as this is the year for which the modeling was completed"]).

Ultimately, Caltrans' DSEIR/EIS uses a shifting baseline without sufficiently explaining why substantial evidence supports that approach. Without an accurate baseline supported by substantial evidence, Caltrans' environmental analysis is necessarily flawed. To comply with CEQA, Caltrans must update its environmental baseline, revise its environmental analysis, and recirculate the DSEIR/EIS for another round of public review. Otherwise, certification of this SEIR/EIS would violate CEQA and constitute an abuse of discretion.

2. Caltrans failed to properly analyze the Project's traffic and transportation impacts.

- Caltrans' analysis shows that the Project will significantly impact traffic. For example, Caltrans admits that "[i]n the PM peak period in 2017, the travel time for the SR-91 eastbound general purpose lanes would slightly increase in the Build Conditions (between 1 to 2.5 minutes)." (DSEIR/EIS, pp. 1-23, 3.5-19.) Caltrans further admits that "the Build Alternative would have a slightly higher combined demand east of the SR-241/SR-91 interchange (approximately 1,800 more vehicles). This is due to an increase in demand at the SR-241 northbound-to-SR-91 eastbound movement for the Build Alternative caused by the addition of the direct-connector ramp." (DSEIR/EIS, p. 3.5-9.) Moreover, Caltrans admits that the Project will result in "increased demand on the general purpose lanes downstream of the 91 Express Lanes" and that this increased demand will result in a decrease of speeds of up to 6 miles per hour on the eastbound general purpose lanes. (DSEIR/EIS, p. 3.5-14.)

- However, rather than concede that the foregoing constitutes significant environmental impacts, Caltrans asserts without basis that "[t]he increases in travel times for the SR-91 eastbound general purpose lanes are considered nominal given the increase in

combined throughput that would be experienced in the same area." (DSEIR/EIS, pp. 1-23, 3.5-14.) Caltrans fails to support this flat conclusion with substantial evidence and fails to explain what relevance the purported increase in combined throughput in the area would have on the undisputed fact that the Project will adversely affect traffic in the SR-91 eastbound general purpose lanes during the PM peak period. This is a violation of CEQA. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 ["ultimate inquiry … is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project"]; State CEQA Guidelines, § 15151 ["An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences."].) Further, and based on its unsupported conclusion, Caltrans offers no mitigation to reduce these significant impacts.

- The Project benefits drivers in Express Lanes at the expense of drivers in general purpose lanes, yet proper analysis of those impacts is not provided. The DSEIR/EIS minimizes the Project's impacts on drivers in eastbound general purpose lanes, stating the Project will "slightly increase" the travel time for the SR-91 eastbound general purpose lanes by up to 2.5 minutes. (DSEIR/EIS, p. 3.5-19.) At the same time, the DSEIR/EIS extolls the virtue of the Project by noting that "the travel time for the SR-241 northbound to the SR-91 eastbound via the new Express Lane ramp would decrease by 2.5 minutes." (*Ibid.*) In other words, the Project seeks to benefit toll-paying drivers by directly impacting a far greater number of non-toll-paying drivers in general purpose lanes. Caltrans must take measures to analyze and disclose the comparative magnitude of these benefits and impacts, and to mitigate the Project's impacts on drivers traversing SR-91's eastbound general purpose lanes.

- Caltrans finds that the Project would not have permanent adverse impacts on traffic if RCTC's Ultimate SR-91 CIP Improvements are completed before construction of the Project. The DSEIR/EIS provides that "[t]he improvements associated with the Ultimate SR-91 CIP improvements were found to provide enough capacity in 2040 to accommodate the friction between the 91 Express Lanes and the general purpose lanes in the eastbound ingress/egress area." (DSEIR/EIS, p. 3.5-15.) Given that Caltrans believes that the Project's impacts on the general purpose lanes in the eastbound ingress/egress area would be alleviated after construction of the Ultimate SR-91 CIP improvements, Caltrans should revise or condition the Project such that construction of the Project would not commence until after the full completion of the Ultimate SR-91 CIP improvements. Moreover, Caltrans should further revise or condition the Project such that construction of the Project would not commence until after the full completion of other downstream eastbound improvements that would benefit the SR-91 corridor, including (1) the I-15/SR-91 Express Lanes Connector Project, which will (among other things) link the eastbound 91 Express Lanes to the northbound I-15 Express Lanes; and (2) the SR-71/SR-91 Interchange Project, which entails (among other things) (i) the construction of a two-lane direct flyover connector from eastbound SR-91 to northbound SR-71, (ii) improvement of the connection

between the eastbound SR-91 Green River Road on-ramp and the SR-71/SR-91 Interchange, and (iii) construction of an eastbound road south and parallel to SR-91 between Green River Road and the SR-71/SR-91 Interchange. Indeed, Caltrans cannot simply ignore the Project's impacts on the eastbound general purpose lanes on SR-91. CEQA requires Caltrans not only to analyze these impacts, but to mitigate them. (State CEQA Guidelines, § 15126.4.)

- Caltrans fails to properly analyze the impacts on traffic and transportation during Project construction. Caltrans concedes that "[t]raffic delays are expected during construction of the Build Alternative." (DSEIR/EIS, p. 3.5-5.) Caltrans contends that implementation of Measure TR-1 would mitigate the Project's temporary transportation-related construction impacts to a level of less than significant. (*Ibid.*) Caltrans fails to explain, however, how or why Measure TR-1 would mitigate the Project's undisputed adverse impact on traffic and transportation during Project construction. Measure TR-1 provides:

> Transportation Management Plan. Ensure that a Transportation Management Plan (TMP) is completed in consultation with the California Department of Transportation and included in the Plans, Specifications, and Estimates for implementation by the contractor prior to and during construction of any project improvements. The TMP will be prepared by a qualified traffic engineer and will address traffic impacts from temporary detours and weekend or nighttime closures to reduce traveler delays and enhance traveler safety during project construction. The TMP may include the following elements:
>
> - Public awareness campaign
> - Highway advisory radio
> - Portable changeable message signs
> - Temporary loop sensor/signals
> - Bus or shuttle service
> - Construction Zone Enhanced Enforcement Program

Measure TR-1 seems inadequate in specificity and efficacy given the magnitude of the Project, the volume of the SR-91 Corridor, and the paucity of alternatives. Moreover, Caltrans provides no evidence explaining why and how this Measure will actually mitigate the Project's adverse impacts on traffic during construction of the Project. The Measure provides that the TMP must "address" – but not mitigate to a level of less than significant – traffic impacts from temporary detours and weekend or nighttime closures to reduce traveler delays. The Measure further provides that the TMP "may," but need not, include certain elements. In sum, Caltrans fails to provide substantial evidence that the Project's construction-related impacts on transportation will be mitigated to a level of less than significant.

- Caltrans fails to explain how its mitigation measures will actually mitigate any impact. In addition to Measure TR-1, discussed above, the DSEIR/EIS references two other mitigation measures: Measure T-13 and Measure C-15. (DSEIR/EIS, p. 3.5-39.) It is unclear, however, (1) to what impacts these measures purportedly relate; and (2) how these measures purportedly mitigate the unspecified impacts to a level of less than significant. Again, this is prejudicial error. (See *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658.)

- Caltrans' failure to analyze the Project's impacts on local streets obfuscates the Project's temporary construction impacts. The DSEIR/EIS concedes that "temporary detours and weekend or night time closures would be required at the Gypsum Canyon Road on- and off-ramps and at the northbound SR-241 to the eastbound SR-91 connector." (DSEIR/EIS, p. 3.5-5.) Presumably, these detours would be through local streets. The DSEIR/EIS, however, does not analyze the temporary impacts these detours would have on such local streets.

- Caltrans fails to analyze the Project's impacts on the 91 Express Lanes. The DSEIR/EIS' three-paragraph discussion of the Project's temporary impacts does not consider impacts to the 91 Express Lanes during construction of the Project. For example, the DSEIR/EIS does not address whether construction of the Project would require temporary closure of the 91 Express Lanes or the opening of the 91 Express Lanes to the public as an "emergency relief valve." Moreover, the DSEIR/EIS does not discuss potential loss of revenue that would result if the 91 Express Lanes were either temporarily closed or opened to the public. RCTC relies on these revenues to make necessary transportation improvements, but Caltrans does not address these impacts at all in the DSEIR/EIS. The public and the 91 Express Lanes customers who rely on the 91 Express Lanes are entitled to this information.

- Caltrans fails to properly analyze whether the Project will substantially increase hazards due to a design feature or incompatible uses. The State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses." (State CEQA Guidelines, Appendix G, Section XVI [Transportation/Traffic], subd. (d).) Caltrans' analysis regarding this issue, however, consists almost entirely of conclusions without any explanation or factual support. (DSEIR/EIS, p. 4-15.) In particular, Caltrans' full analysis on this issue provides:

> The Build Alternative would not increase hazards due to a design feature or incompatible uses because the Proposed Project would be designed and constructed in compliance with the Caltrans Design Standard Construction Specifications. The proposed improvements do not include any hazard design features or incompatible uses. No impacts would occur, and no mitigation is required.

(DSEIR/EIS, p. 4-15.) This discussion fails to comply with CEQA. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516 ["ultimate inquiry … is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project"].) For example, Caltrans does not explain how compliance with the Caltrans Design Standard Construction Specifications ensures that the Project would not increase hazards due to a design feature or incompatible use. Similarly, the discussion concludes that the Project does "not include any hazardous design features or incompatible uses," but provides no evidence or discussion to support this conclusion. This constitutes a violation of CEQA. (*Ibid.*)

- Caltrans fails to analyze whether the Project will result in inadequate emergency access during the Project's construction. The Initial Study Checklist of the State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "result in inadequate emergency access." (State CEQA Guidelines, Appendix G, Section XVI [Transportation/Traffic], subd. (e).) Caltrans fails to include substantive analysis of whether the Project could result in inadequate emergency access. This failure is especially pronounced given Caltrans' admission that the Project will result in "detours and closures" that "are expected to result in some delay to the traveling public." (SDEIR/EIS, p. 3.5-5.) Caltrans, however, fails to analyze the extent of this delay. How often will there be detours and closures? How much delay will these detours and closures cause? Will these detours and closures render some areas inaccessible from the freeway? How will these detours and closures impact emergency access? These questions are all the more pertinent given that the canyon topography of the project area and the existing 91 Express Lanes' geometry will present unique challenges regarding emergency access that must be addressed. Despite these facts, Caltrans has failed to consider—much less analyze—any of these questions. Again, this constitutes a violation of CEQA. The public has a right to this information.

- Caltrans does not analyze the Project's potential impacts along the entirety of SR-91, from SR-55 to I-15. "The Study Area for traffic includes SR-91 from west of the Weir Canyon Road interchange in Anaheim Hills to east of the Serfas Club Drive/Auto Center Drive interchange in the City of Corona. The Study Area also includes SR-241 from north of the Santiago Canyon Road interchange to SR-91 and State Route 71 (SR-71) south of the Butterfield Ranch Road interchange to SR-91." (DSEIR/EIS, p. 3.5-1.) Caltrans fails to explain with any substantial evidence, however, why it selected this particular study area—a violation of CEQA. RCTC requests that Caltrans study the Project's potential impacts along the entirety of SR-91, from SR-55 to I-15.

- Caltrans' project description is inadequate. The DSEIR/EIS does not adequately analyze or disclose TCA's proposed restriction to limit use of the Project to only commuters using the 91 Express Lanes. The proposed restriction would prohibit eastbound egress from the Project at the County Line to SR-71 and Corona

destinations, and the proposed restriction would further require combined toll rate signing between the Project and the 91 Express Lanes. As a result, the proposed restriction could have significant impacts that are not analyzed in the DSEIR/EIS.

3. Caltrans has failed to properly analyze the Project's noise impacts.

- Caltrans fails to properly analyze the Project's construction-related noise impacts. The DSEIR/EIS concedes that "temporary detours and weekend or night time closures would be required at the Gypsum Canyon Road on- and off-ramps and at the northbound SR-241 to the eastbound SR-91 connector" during construction of the Project." (DSEIR/EIS, p. 3.5-5.) Caltrans, however, fails to consider or analyze the noise resulting from freeway traffic being directed through local streets during nighttime and weekend hours, and Caltrans further fails to explain why it believes those impacts will be less than significant. The impacts could be potentially significant, yet Caltrans failed to consider the impacts at all. This should be addressed in a recirculated DSEIR/EIS.

- Caltrans recognizes that its Project will result in a significant noise impact, but fails to explain how mitigation will reduce the impact to a level of less than significant. According to the DSEIR/EIS, "a noise impact occurs when the predicted future noise level with the project substantially exceeds the existing noise level (defined as a 12 dBA or more increase) or when the future noise level with the project approaches or exceeds the NAC [Noise Abatement Criteria]." (DSEIR/EIS, p. 3.13-1.) Caltrans admits that the Project will result in a significant noise impact. In particular, the DSEIR/EIS provides that "2040 noise levels for the Build Alternative are expected to approach or exceed the NAC at 19 of the 22 modeled receptor locations at the Canyon RV Park." (DSEIR/EIS, pp. 3.13-24.) Yet, Caltrans fails to provide any mitigation for that specific impact. Rather, Caltrans seeks to mitigate noise with a completely inapplicable mitigation measure, Measure N-1. Measure N-1 provides:

> **Measure N-1 Control of Construction Noise Levels.** The control of noise from construction activities will conform to the California Department of Transportation (Caltrans) Standard Specifications, Section 14-18.02, "Noise Control." The nighttime noise level from the contractor's operations, between the hours of 9:00 p.m. and 6:00 a.m., will not exceed 86 A-weighted decibels (dBA) one-hour A weighted equivalent continuous sound level (Leq(h)) at a distance of 50 feet. In addition, the contractor would equip all internal combustion engines with a manufacturer-recommended muffler and will not operate any internal combustion engine on the job site without the appropriate muffler.

(DSEIR/EIS, p. 3.13-25.) Caltrans fails to explain how this mitigation measure (concerning construction impacts) serves to mitigate the Project's significant operational noise impacts in any way.

Caltrans additionally asserts that "the existing barriers along SR-91 are effective at reducing traffic noise," but Caltrans does not provide any mitigation measure other than Measure N-1 to actually mitigate the Project's significant impact. (See Pub. Res. Code, § 21081.6 [requiring mitigation measures to be "fully enforceable through permit conditions, agreements, or other measures"].) The DSEIR/EIS is thus defective and fails to comply with CEQA. (See *Lotus*, *supra*, 223 Cal.App.4th at pp. 654-658.)

- Caltrans fails to properly analyze whether the Project would result in excessive groundborne vibration or groundborne noise levels. The Initial Study Checklist of the State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels." (State CEQA Guidelines, Appendix G, Section XII [Noise], subd. (b).) Caltrans, however, fails to analyze the issue. Rather, it fully relies on the "Caltrans Standard Specifications for Construction" and trusts that compliance with these specifications will ensure there will be no significant impact. In particular, the DSEIR/EIS' "analysis" of the issue provides:

> During construction, groundborne vibration and groundborne noise could be generated in conjunction with pile driving. If pile driving takes place, potential groundborne noise and vibration impacts would be minimized through compliance with Caltrans Standard Specifications for Construction, which is stipulated in Measure N-1 in Section 3.13.4. Therefore, with implementation of Measure N-1, impacts related to groundborne noise and vibration would be less than significant, and no mitigation is required.

(DSEIR/EIS, p. 4-42.) Caltrans does not make any attempt to actually analyze whether the Project could result in groundborne vibration or noise, before imposing this measure. It simply assumes that even if the Project did result in vibration or noise (no matter how intense), compliance with Measure N-1 and the Caltrans Standard Specifications for Construction would reduce the impact to a level of less than significant. In so doing, Caltrans does not analyze the impact or inform the public as required by CEQA.

4. Caltrans has failed to properly analyze the Project's impacts on air quality.

- Caltrans fails to properly analyze the impact of Project-related construction activities on air quality. The DSEIR/EIS provides that "construction-related emissions do not need to be included in regional and project-level conformity analyses" under the National Environmental Policy Act ("NEPA"). (DSEIR/EIS, p. 3.12-15.) This does not, however, excuse Caltrans from its obligation to analyze construction-related emissions under CEQA. Thus, Caltrans has failed to fulfill this obligation as the DSEIR/EIS contains inadequate analysis of Project-related construction activities.

Notably, while Caltrans sets forth the "maximum build alternative construction emissions," it does not set forth the applicable threshold of significance that would allow the public to determine whether these emissions are significant. (See (DSEIR/EIS, p. 3.12-23.) The DSEIR/EIS thus fails as an informational document under CEQA.

- Caltrans fails to properly analyze the Project's long-term impacts on air quality. Caltrans' analysis of "permanent" air quality impacts suffers from the same defects as its analysis of construction-related air quality impacts. Notably, the DSEIR/EIS fails as an informational document because it simply sets forth the Project's emissions, without providing the thresholds of significance necessary for the public to determine whether these emissions constitute a significant environmental impact and without explaining what correlation (if any) there is between those emissions and potential health impacts. (DSEIR/EIS, p. 3.12-25; *Sierra Club*, *supra*, 6 Cal.5th at p. 516 ["ultimate inquiry … is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project;" accordingly, a lead agency must connect raw numbers measuring an environmental impact with specific adverse effects on human health or explain why such a connection is not possible]; State CEQA Guidelines, § 15151 ["An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences."].)

- The Project would have a significant air quality impact based on the threshold set forth in the DSEIR/EIS. The DSEIR/EIS sets forth the following threshold of significance: "The project increases traffic volumes. Increases in traffic volumes in excess of 5 percent should be considered potentially significant. Increasing the traffic volume by less than 5 percent may still be potentially significant if there is also a reduction in average speeds." (DSEIR/EIS, p. 3.12-18.)

  Here, Caltrans concedes that the Project will increase traffic volumes and thus reduce average speed on the SR-91. Indeed, Caltrans asserts there will be a *14.9 percent increase* in traffic on SR-241 as a result of the Project. (DSEIR/EIS, p. 3.12-19.) Despite this fact, and the correlating reduction in average speed that obviously would occur on the SR-91 as a result, Caltrans concludes that the Project will not result in air quality impacts because the Project would purportedly decrease the average delay per vehicle. (*Ibid.*) Caltrans' conclusion is baseless. Caltrans fails to actually measure (1) the increase in emissions and impacts on air quality resulting from the increase in traffic resulting from the Project; and (2) the purported decrease in emissions and air quality impacts resulting from the decrease in average delay per vehicle attributable to the Project. Without analyzing or assessing these impacts, Caltrans' conclusion about air quality impacts is speculative and improper.

- Caltrans' mitigation measures are not enforceable. This is an issue that permeates throughout the DSEIR/EIS and applies to many of Caltrans' "measures." Caltrans

does not call its measures "mitigation measures;" instead, Caltrans refers to its measures as "avoidance and minimization measures." (See, e.g., 3.12-33.) These measures, however, do not appear to be enforceable. (See *Lotus*, *supra*, 223 Cal.App.4th at p. 656 [Caltrans' "'avoidance, minimization and/or mitigation measures'… are not 'part of the project'"].) Indeed, if these measures are not mitigation measures implemented by a mitigation monitoring and reporting program ("MMRP"), it is unclear how Caltrans intends to implement these measures. At a minimum, Caltrans must include those avoidance/minimization measures in its MMRP to ensure that they are enforceable and actually implemented. (*Ibid.*)

In the Air Quality section of the DSEIR/EIS, this is especially problematic as Caltrans appears to rely on the measures to mitigate impacts, without disclosing the extent of certain impacts without this mitigation. (See, e.g., DSEIR/EIS, p. 4-20.) For example, Caltrans bases its analysis of the Project's PM_{10} and PM_{25} emissions on the assumption that there will be "50 percent control of fugitive dust as a result of watering and associated dust-control measures." (DSEIR/EIS, p. 3.12-22.) The DSEIR/EIS, however, fails to provide any evidence supporting this assumption, fails to provide the extent of these impacts without the referenced measures, and fails to explain how Caltrans intends to implement these measures. (See Pub. Res. Code, § 21081.6 [requiring mitigation measures to be "fully enforceable through permit conditions, agreements, or other measures"]; *Lotus*, *supra*, 223 Cal.App.4th at p. 656-658.)

Caltrans' discussion of its mitigation measures is further flawed as its discussion is paradoxical. Throughout the DSEIR/EIS, Caltrans simultaneously contends (1) the Project will have significant effects; (2) these significant effects will be mitigated to a level of less than significant with the implementation of certain measures; and (3) no mitigation is therefore required. (See, e.g., DSEIR/EIS, pp. 4-19, 4-20 ["with implementation of Measures AQ-1 through AQ-5, the Proposed Project would not result in a cumulatively considerable net increase in criteria pollutants, and no mitigation is required"].) Caltrans should not contend that mitigation is not required because the Project's significant impacts will be mitigated. This serves only to confuse the public, and further explanation of Caltrans' conclusions is needed.

- Caltrans does not properly analyze whether the Project would conflict with or obstruct implementation of the applicable air quality plan. The Initial Study Checklist of the State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "conflict with or obstruct implementation of the applicable air quality plan." (State CEQA Guidelines, Appendix G, Section III, [Air Quality], subd. (a).) Caltrans, however, does not explicitly identify an applicable air quality plan, much less analyze whether the Project would conflict with or obstruct implementation of such a plan. Indeed, the phrase "air quality plan" does not even appear in the DSEIR/EIS' discussion of air quality, except for a bare conclusion that the "Build Alternative would not conflict with or obstruct implementation of an applicable air quality plan." (DSEIR/EIS, p. 4-

7.) Moreover, it is unclear what Caltrans bases this conclusion upon. (*Sierra Club*, *supra*, 6 Cal.5th at p. 522 ["To facilitate CEQA's information role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions"].) Furthermore, the DSEIR/EIS asserts that air quality regulation in the South Coast Air Basin (where the Project is located) is administrated by the South Coast Air Quality Management District (SCAQMD), but the DSEIR/EIS does not reference any applicable air quality plan approved by SCAQMD, such as SCAQMD's Air Quality Management Plan. (DSEIR/EIS, p. 3.12-3.) Similarly, the DSEIR/EIS fails to consider or analyze the Project's consistency with the Climate Action Plan for Orange and Riverside Counties. For all of these reasons, the DSEIR/EIS fundamentally fails as an informational document.

- Caltrans does not properly analyze whether the Project would result in a cumulatively considerable net increase of criteria pollutants. The Initial Study Checklist of the State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in non-attainment under an applicable federal or state ambient air quality standard." (State CEQA Guidelines, Appendix G, Section III [Air Quality], subd. (b).) Caltrans asserts that the Project would result in emissions of criteria pollutants for which the project region is in non-attainment, but Caltrans fails to analyze the cumulative impact of these emissions. (DSEIR/EIS, p. 4-20.) Instead, Caltrans again simultaneously asserts that these impacts will be mitigated by certain measures, and that no mitigation is required to mitigate these impacts. (*Ibid.*) The DSEIR/EIS' unsupported assertions do not comply with CEQA.

- Caltrans does not properly analyze whether the Project would expose sensitive receptors to substantial pollution concentrations. The Initial Study Checklist of the State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "expose sensitive receptors to substantial pollutant concentrations." (State CEQA Guidelines, Appendix G, Section III [Air Quality], subd. (c).) Caltrans' discussion of whether the Project could result in such an impact violates CEQA for the same reasons discussed immediately above—i.e., Caltrans admits the Project could have an impact, asserts that the impact will be mitigated to less than significant levels, and asserts that no mitigation is required. (DSEIR/EIS, p. 4-20.)

  Moreover, and this applies to every instance in which Caltrans discusses its mitigation measures, the DSEIR/EIS fails to include any discussion of the substantial evidence showing how the referenced mitigation measures (e.g., Measures AQ-1 through AQ-5) will actually mitigate the referenced impacts to a level of less than significant. This constitutes a violation of CEQA. (*Lotus*, *supra*, 223 Cal.App.4th at pp. 656-658.)

- Caltrans fails to rely on a Health Risk Assessment to ascertain the Project's air quality impacts on human health. An EIR's analysis of air quality impacts is inadequate where it does not connect the raw particulate numbers and their effect on air quality with specific adverse effects on human health. (*Sierra Club*, *supra*, 6 Cal.5th at p. 516.) Here, Caltrans does not prepare a Health Risk Assessment to ascertain the Project's air quality impacts on human health, as many EIRs do. Instead, Caltrans contends that it cannot study air quality impacts on human health due to technological limitations. (SEIR/EIS, p. 4.12-26.) Further discussion of those technological limitations would be helpful in clarifying this issue to the public.

- Caltrans does not properly analyze whether the Project would result in odors affecting people. The Initial Study Checklist of the State CEQA Guidelines provides that a project could result in a potential significant environmental impact if it would "result in other emissions (such as those leading to odors) adversely affecting a substantial number of people." (State CEQA Guidelines, Appendix G, Section III [Air Quality], subd. (c).) Here, Caltrans' discussion of whether the Project would result in odors consists entirely of conclusions. (*Sierra Club*, *supra*, 6 Cal.5th at p. 522 ["To facilitate CEQA's information role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions"].) Caltrans fails to reference any facts to support its conclusion that "impacts related to odors would be less than significant." For example, Caltrans concedes that the Project could result in certain odors, but concludes that "[s]uch odors would be quickly dispersed below detectable thresholds as distance for the site(s) increases." Caltrans, however, offers no analysis or facts to support this conclusion.

5. Caltrans has failed to properly analyze the Project's impacts on greenhouse gas emissions.

- Caltrans makes no effort to analyze the Project's greenhouse gas emissions. CEQA requires Caltrans to analyze whether the Project would (1) generate greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment, and/or (2) conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases. (State CEQA Guidelines, Appendix G, Section VIII [Greenhouse Gas Emissions].) The DSEIR/EIS, however, fails to answer these questions. Indeed, Caltrans makes no attempt to analyze the Project's greenhouse gas emissions. Instead, the DSEIR/EIS provides that "it is Caltrans' determination that in the absence of further regulatory or scientific information related to GHG emissions and CEQA significance, it is too speculative to make a significance determination regarding the Proposed Project's direct and indirect impact with respect to climate change." (DSEIR/EIS, p. 4-67.) The DSEIR/EIS should be revised to include an analysis of the Project's GHG emissions.

- Caltrans does not explain why it believes analysis of GHG emissions is not possible. A lead agency must connect raw numbers measuring an environmental impact with

specific adverse effects or explain why such a connection is not possible. (*Sierra Club*, *supra*, 6 Cal.5th at p. 516.) Here, Caltrans not only abdicates its duty to provide the raw numbers measuring the Project's GHG emissions, it also fails to explain why it contends the analysis is not possible. It is surprising that Caltrans would stand behind such a statement without analysis, given several recently-enacted state laws and regulations that declare a heightened state of urgency on climate change.

- Caltrans' own guidance documents suggest the Project will have a significant environmental impact relating to GHGs. Caltrans' *Interim Guidance: Determining CEQA Significance for Greenhouse Gas Emissions for Projects on the State Highway System* ("Interim Guidance") from March 2019 provides that Caltrans must analyze a Project's impacts on GHGs. Moreover, the Interim Guidance provides that capacity-increasing projects—such as the Project here—are generally considered to have significant GHG impacts if future build emissions are greater than existing conditions. (Interim Guidance, p. 14.) Here, Caltrans contends that the Project's future build emissions are greater than existing and future no-build conditions. (DSEIR/EIS, p. 4-66.) Per Caltrans' own guidance document, the Project thus has a significant environmental impact on GHG emissions. The DSEIR/EIS' failure to disclose this significant impact on the environment constitutes a violation of CEQA.

- Caltrans' use of unenforceable quasi-mitigation measures is improper and does not excuse Caltrans' failure to analyze the Project's GHG emissions. Caltrans contends that certain measures "will also be included in the Proposed Project to reduce the GHG emissions and potential climate change impact from the Proposed Project." (DSEIR/EIS, p. 4-69.) These include measures to provide for an undefined amount of landscaping and to recommend—not require—more energy-efficient lighting. (DSEIR/EIS, p. 4-69 through 4-71.) While RCTC lauds the inclusion of these measures, it also believes that Caltrans must further explain how these vague features operate as specific and enforceable mandates under CEQA. Otherwise, the public will be deprived of knowing how much these mitigation measures will actually reduce the Project's GHG emissions, and whether the mitigation measures will reduce the emissions to a level of less than significant.

6. Caltrans has failed to properly analyze the Project's aesthetic impacts.

- Caltrans improperly concludes the Project's construction-related aesthetic impacts are not significant simply because they are temporary. A significant environmental impact resulting from Project-related construction is not less than significant simply because the impact is temporary. (See, e.g., *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392 [CEQA documentation inadequate where lead agency "ignore[d] the temporary impacts of the construction"].) Caltrans concedes that Project-related construction activities could have aesthetic impacts. (SDEIR/EIS, p. 3.6-8.) Nevertheless, Caltrans concludes: "Construction activities would be temporary, and the visual impacts related to views of the construction

activities would cease after completion of construction; therefore, no substantial impacts would occur." (See SDEIR/EIS, p. 3.6-8, 3.6-9, & 4-17.) Accordingly, Caltrans must provide an explanation supported by substantial evidence as to why temporary impacts are less than significant.

- Caltrans fails to properly analyze the Project's impact on scenic resources. CEQA requires Caltrans to analyze whether the Project would substantially damage scenic resources, regardless of whether the resources are within a state scenic highway. In particular, CEQA provides that a lead agency must analyze whether a project will substantially damage scenic resources, including, but not limited to, (i) trees, (ii) rock outcroppings, and (iii) historic buildings within a state scenic highway. (State CEQA Guidelines, Appendix G, Section I [Aesthetics], subd. (b).) Caltrans, however, improperly limits its analysis to whether the Project would "degrade scenic resources along a State-designated scenic highway." (DSEIR/EIS, p. 4-17.) In doing so, Caltrans ignores impacts to scenic resources that it acknowledges elsewhere in the DSEIR/EIS—e.g., temporary impacts to 8 coast live oak trees, 15 sycamore trees, and 3 California Black Walnut trees, and permanent impacts to 6 oak trees. (DSEIR/EIS, p. 3.6-10.)

- Caltrans fails to properly analyze whether the Project would create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. Caltrans' analysis of this issue is effectively limited to pointing towards certain "measures"—not mitigation measures—that would purportedly mitigate the Project's impacts relating to this issue, but there is no explanation as to why this is the case. (DSEIR/EIS, p. 4-17 through 4.7-18.) As discussed throughout this letter, this is improper and violates CEQA. (*Lotus*, *supra*, 223 Cal.App.4th at pp. 656-658.)

7. **Caltrans has failed to properly analyze the Project's impacts on biological resources.**

- Caltrans fails to provide mitigation measures for the Project's potentially significant adverse impacts on candidate, special status, and sensitive plant species. CEQA requires mitigation measures to reduce a Project's *potentially* significant impacts on the environment. (See, e.g., *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.) Here, Caltrans determines the Project "may affect, not likely to adversely affect" various candidate, special status, or sensitive species and their critical habitats, including, among others: (1) Braunton's Milk-vetch, (2) Thread-leaved Brodiaea, (3) Santa Ana sucker, (4) coastal California gnatcatcher, (5) Least Bell's Vireo, and (6) Southwestern Willow Flycatcher. Caltrans' determination that the Project "may affect" these species constitutes a finding that the Project will have potentially significant impacts on these species; mitigation is thus required. Yet, Caltrans does not propose mitigation measures to minimize these impacts. Rather, Caltrans sets forth unenforceable "measures" to minimize the Project's impacts, but Caltrans fails to explain how these measures will be implemented and fails to explain how these measures will actually mitigate the

Project's identified potentially significant impacts. (DSEIR/EIS, pp. 3.19-10 through 3.19-21, 4-49 through 4-56; Pub. Res. Code, § 21081.6; State CEQA Guidelines, § 15126.4; *Lotus*, *supra*, 223 Cal.App.4th at pp. 656-658.)

- Caltrans fails to mitigate impacts to coastal sage scrub outside of the NCCP/HCP Plan Area. Caltrans recognizes that the Project will adversely impact coastal sage scrub outside the Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan/Habitat Conservation Plan ("NCCP/HCP") Plan Areas, but concludes that "[w]ith the implementation of Measures NC-1 through NC-6…, which address construction activities in and adjacent to coastal sage scrub, the Build Alternative would not result in substantial temporary impacts to coastal sage scrub habitat during construction." (SDEIR/EIS, pp. 3.15-55, 4-51.) Measures NC-1 through NC-6, however, suffer from the same defects that plague Caltrans' other measures, discussed above. The measures are not enforceable mitigation measures, and Caltrans fails to explain how implementation of the measures would mitigate the Project's impacts on coastal sage scrub outside the NCCP/HCP Plan Areas to a level of less than significant. (Pub. Res. Code, § 21081.6; see also *Lotus*, *supra*, 223 Cal.App.4th at p. 656.)

  Moreover, Caltrans' contention that "[i]mpacts to non-NCCP/HCP areas within Caltrans right-of-way will be covered through mitigation measures in the new Biological Opinion for the Proposed Project" fails to comply with CEQA's informational requirements. In particular, Caltrans does not disclose the contents of "the new Biological Opinion" and does not explain what actual mitigation measures will be implemented to mitigate impacts to the coastal sage scrub and the species—like the California gnatcatcher—that depend on the coastal sage scrub. This constitutes an improper deferral of mitigation.

- Caltrans fails to mitigate impacts to coast live oak woodland. The DSEIR/EIS asserts that the Project "would temporarily impact 8 coast live oak and 15 sycamores and permanently impact 6 coast live oak trees." (DSEIR/EIS, p. 4-56, 3.15-57.) Again, Caltrans seeks to mitigate these impacts with unenforceable measures; at the very least, Caltrans fails to explain how the measures will be enforced. (Pub. Res. Code, § 21081.6; see also *Lotus*, *supra*, 223 Cal.App.4th at pp. 656-658.)

- Caltrans fails to properly analyze whether the Project will interfere with the movement of wildlife species. CEQA requires Caltrans to determine whether the Project would "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." (State CEQA Guidelines, Appendix G, Section IV [Biological Resources], subd. (d).) The DSEIR/EIS provides that the Project's construction activity around the Windy Ridge Wildlife Crossing "may cause animals to avoid this wildlife corridor." Despite this, the DSEIR/EIS concludes that "no substantial temporary impacts to wildlife corridors would occur during construction in that area" with the implementation of Measures

NC-9, NC-11, NC-13, and NC-14. The discussion is insufficient because Caltrans does not explain how these mitigation measures—or any of its mitigation measures—are enforceable. (Pub. Res. Code, § 21081.6; *Lotus*, *supra*, 223 Cal.App.4th at pp. 656-658.)

- Caltrans does not properly mitigate impacts to jurisdictional waters. The DSEIR/EIS provides that the Project would result in temporary and permanent impacts to certain waters. (DSEIR/EIS, pp. 3.16-10 through 3.16-15, 4-21.) Caltrans contends that these impacts would be less than significant with the implementation of Measures WET-1 through WET-3, which require a nationwide permit from the US Army Corps of Engineers, a Streambed Alteration Agreement from CDFW, and Section 401 Water Quality Certification from the Regional Water Quality Control Board ("RWQCB"). Caltrans fails to explain, however, what nexus exists between obtaining these permits and mitigating the identified impacts. Indeed, it is entirely unclear, based on the DSEIR/EIS, how obtaining these permits would reduce the identified impacts to a level of less than significant.

8. Caltrans has failed to properly mitigate the Project's impacts on paleontological resources.

- Caltrans recognizes that the Project may have a significant environmental impact on paleontological resources, but Caltrans defers mitigation of this impact Deferral of mitigation is not permissible under CEQA. State CEQA Guidelines section 15126.4 provides:

> Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.

(State CEQA Guidelines, § 15126.4.) Here, Caltrans improperly defers mitigation with Measure PAL-1, which provides that a Paleontological Mitigation Plan will be prepared in the future during "final design." (DSEIR/EIS, p. 3.10-14.) Deferral of mitigation is impermissible. (State CEQA Guidelines, § 15126.4.) Thus, RCTC requests that Caltrans set forth the enforceable performance standards that will be included in such a plan.

9. Caltrans has failed to properly analyze the Project's impacts on cultural resources.

- Caltrans does not explain how Measures CR-1 and CR-2, if implemented, would reduce the Project's potential significant impacts on cultural resources. (See DSEIR/EIS, pp. 3.7-7 through 3.7-8, 4-24 through 4-25.) For example, Measure CR-1 provides: "If cultural materials are discovered during construction, all earthmoving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find. At that time, the Caltrans District 12 Environmental Branch Chief will be contacted to ensure that Section 106 compliance is maintained." (DSEIR/EIS, p. 3.7-8.) It is unclear how this would mitigate any impacts. What happens after the archaeologist assesses the nature and significance of the find? Does earthmoving activity commence after the archaeologist makes his or her assessment, regardless of what that assessment is? How does contacting the Environmental Branch Chief mitigate any potential impacts? How would compliance with Section 106 mitigate any potential impacts? Again, enforceable performance standards should be specified.

- Measures CR-1 and CR-2 do not address "preservation in place." (See DSEIR/EIS, pp. 3.7-7 through 3.7-8.) "Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed for a project involving such an archaeological site: (A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. ..." (See State CEQA Guidelines, § 15126.4(b)(3).) Caltrans, however, does not explain whether this is the preferred manner of mitigating, or how feasibility of preserving in place would be assessed.

10. Caltrans has failed to properly analyze the Project's impacts on geology and soils.

- Caltrans offers incomplete analysis regarding whether the Project could have a potentially significant impact due to its location on a geologic unit or soil that is unstable. CEQA requires Caltrans to analyze whether the Project would be "located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse." (State CEQA Guidelines, Appendix G, Section VI [Geology and Soils], subd. (c).) As an initial matter, Caltrans fails to properly analyze the Project's potential to result in any of these impacts, except for liquefaction. (DSEIR/EIS, p. 4-28.) Moreover, Caltrans notes that the Project is mapped as being within a "Liquefaction Zone of Required Investigation" by the California Division of Mines and Geology, that "potentially liquefiable layers are present within Santa Ana Canyon," and that "liquefaction potential in the Project Area is considered low-to-medium." (DEIS/EIR, p. 4-28.) Caltrans, however, stops it analysis here. It does not conclude that the Project will result in a significant environmental impact as a result, and it does not reach a contrary conclusion. Such an omission must be remedied.

- Caltrans fails to support its conclusions with facts and analysis. The DSEIR/EIS' discussion of geology and soils largely consists of conclusions unsupported by facts. For example, as to expansive soils, the DSEIR/EIS provides: "The soils within the Project Area can be somewhat expansive and compressible; however, hazards associated with compressible and expansive soils are considered low." (DSEIR, p. 3.9-11, 4-28.) Caltrans fails to explain the basis for this conclusion and conclusions like it throughout its discussion of geology and soils. (*Sierra Club*, *supra*, 6 Cal.5th at p. 522 ["To facilitate CEQA's information role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions"].)

11. Caltrans has failed to properly analyze the Project's hydrology and water quality impacts.

- Caltrans fails to properly analyze whether the Project will violate any water quality standards or waste discharge requirements. The DSEIR/EIS does not identify any water quality standards or waste discharge requirements and thus does not analyze whether the Project will violate any such standards or requirements. (See DSEIR/EIS, p. 4-32.)

- Caltrans fails to explain how its "measures" will mitigate potential impacts. Caltrans concludes (without analysis) that "[w]ith the implementation of Measures WQ-1 through WQ-5, impacts related to violation of water quality standards of waste discharge requirements would be less than significant, and no mitigation is required." (DSEIR/EIS, p. 4-33.) Caltrans, however, fails to explain how it will implement these measures. Moreover, these measures generally relate to compliance with various permits, but Caltrans does not explain how compliance with these permits will mitigate any of the Project's hydrology-related impacts. (DSEIR/EIS, p. 3.8-18 through 3.8-19.)

- Caltrans' reliance on unenforceable measures to mitigate impacts is improper. This comment applies to every instance throughout the DSEIR/EIS in which Caltrans relies on measures to mitigate impacts while simultaneously explaining that mitigation measures are not necessary. Caltrans routinely does this, and it is improper. (*Lotus*, *supra*, 223 Cal.App.4th at pp. 656-658.) The practice makes it difficult to understand whether a Project will have a significant impact or not. Moreover, Caltrans does not explain (i) how it will enforce the mitigation measures, (ii) what precise impacts a given measure seeks to mitigate, or (iii) how the mitigation measures actually address the impact at issue. More must be done.

12. Caltrans does not sufficiently analyze the Project's growth-inducing impacts.

- Caltrans does not support its conclusion that the Project would not result in growth-inducing impacts. The DSEIR/EIS concludes: "The improved travel times expected to be achieved as a result of the [Project] could have a slight influence on demand for residential and nonresidential uses in the Project Area or nearby cities; however, it

would not be expected to be sufficient to result in the need to modify adopted General Plans to allow for greater levels of development (residential and nonresidential)." There are at least four defects in this analysis. First, the DSEIR/EIS does not support its conclusion with any facts or any analysis. For example, the DSEIR/EIS does not attempt to actually determine the Project's potential to result in an estimated increase in demand for residential and nonresidential uses in the Project Area or nearby cities; without such analysis, it is unclear on what basis Caltrans concludes that the Project would not result in growth-inducing impacts. Second, the DSEIR/EIS does not consider the Project's potential to induce population growth in areas beyond the Project Area or nearby cities, but further along the SR-241. Third, the DSEIR/EIS uses an improper threshold of significance to determine whether the Project's growth-inducing impacts would be significant—i.e., whether the Project's growth-inducing impacts would result in the need to modify adopted General Plans to allow for greater levels of development. Fourth, Caltrans merely speculates that the Project would not result in such impacts. For all of these reasons, Caltrans' speculative analysis of growth-inducing impacts fails to comply with CEQA.

13. Caltrans does not sufficiently analyze the Project's impacts on tribal cultural resources.

- The DSEIR/EIS does not address tribal cultural resources as required by the State CEQA Guidelines. (See State CEQA Guidelines, Appendix G, Section XVII [Tribal Cultural Resources].) Caltrans omits this discussion entirely. To remedy this CEQA violation, Caltrans must analyze and discuss this issue in a revised DSEIR/EIS. After making the revision, Caltrans must recirculate the DSEIR/EIS.

14. Caltrans does not sufficiently analyze the Project's impacts on utilities and service systems.

- Caltrans' conclusion that there are sufficient water supplies to serve the Project is not supported by facts or analysis. The DSEIR/EIS concludes that the Project would have sufficient water supplies available to serve the project from existing entitlements or resources because "the demand for water during construction and operation of the Build Alternative would represent only a very small percentage of total demand for water in the area and would not exceed existing entitlements." (SDEIR/EIS, 4-48.) Caltrans, however, does not specify (1) how much water the Project would require during construction; (2) how much water the Project would require during operation; (3) the amount of total water demand in the area; (4) the amount of total water available in the area; or (5) the extent of the existing entitlements. Rather, Caltrans concludes—without supporting facts and analysis—that sufficient water supplies are available to serve the project from existing entitlements. (See *Sierra Club*, *supra*, 6 Cal.5th at p. 522.)

- Caltrans' conclusion that the Project will be served by a landfill with sufficient capacity is not supported by facts or analysis. Caltrans concludes that "[t]he amount

of waste materials generated during construction and operation of the [Project] that would be disposed of in landfills would represent only a very small percentage of the total amount of waste generated in the region and disposed of at the landfills." Again, this is a conclusion unsupported by facts or analysis. (See *Sierra Club*, *supra*, 6 Cal.5th at p. 522.) Notably, Caltrans fails to specify (1) the amount of waste materials that would be generated during construction and operation of the Project, and (2) the capacity of nearby landfills to handle that amount of waste. Absent this information, Caltrans' conclusion is based on speculation, not substantial evidence.

15. Caltrans fails to properly analyze the Project's cumulative impacts.

- The DSEIR/EIS improperly dismisses less than significant impacts as incapable of being cumulatively considerable. Caltrans concludes that the Project "does not have impacts that are individually limited but cumulatively considerable because the only project impacts that require mitigation are related to biological and paleontological resources." (DSEIR/EIS, p. 4-58.) Putting aside the fact that many of the Project's impacts appear to require mitigation as discussed above, Caltrans appears to fundamentally misunderstand the purpose of a cumulative impacts analysis. The purpose is not to determine whether *significant* impacts cumulatively would have a significant cumulative impact, but rather to determine whether *less than significant* impacts, when analyzed with impacts from other projects, could result in a significant impact. Caltrans apparently fails to engage in any such analysis because it dismisses all less than significant impacts from its cumulative impacts analysis. This is a patent violation of CEQA; revision and recirculation of the DSEIR/EIS are required.

- Caltrans' cumulative impacts analysis is fundamentally flawed because it does not discuss other projects. "The following elements are *necessary* to an adequate discussion of significant cumulative impacts: (1) either (A) a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, (B) a summary of projects contained in an adopted local, regional, or statewide plan, or related document, that describes or evaluates conditions contributing to the cumulative effect." Here, Caltrans' cumulative impacts discussions lacks both of these elements, and further lacks all of the other necessary elements enumerated in State CEQA Guidelines section 15130. (DSEIR/EIS, p. 4-58.)

For all of the foregoing reasons, the DSEIR/EIS must be revised and recirculated so the public can understand the Project's true impacts.

REQUEST FOR NOTICES

RCTC also requests to be added to the notification and distribution lists for all CEQA-related notices for the Project, public meeting notices, and public meeting/hearing notices issued pursuant to state and local law, including CEQA, the Ralph M. Brown Act, and the Bagley-Keene Act. The satisfaction of this written request is required by CEQA (Public Resources Code,

precluded." (State CEQA Guidelines, § 15088.5.) Accordingly, RCTC requests that the DSEIR/EIS be recirculated for public review after Caltrans revises the DSEIR/EIS consistent with CEQA.

RCTC appreciates Caltrans' thoughtful consideration of these comments and concerns.

Sincerely,

Anne Mayer, Executive Director
Riverside County Transportation Commission

cc: Mike Beauchamp, CT District 8 Director
Ryan Chamberlain, CT District 12 Director
Darrell Johnson, OCTA CEO
Mike Kraman, TCA CEO
Michele Nissen, Interim Corona City Manager
George Johnson, Riv Co CEO

April 23, 2019

Ms. Smita Deshpande
Generalist Branch Chief
Caltrans-District 12, "Attn: 241-91 DSEIR/EIS Comment Period"
1750 East Fourth Street, Suite 100
Santa Ana, CA 92705

Subject: **Follow-up to Draft Supplemental Environmental Impact Report/Environmental Impact Statement (SCH. 1989010410) Comments for the State Route 241/91 Tolled Express Lanes Connector Project (Project No. 1200020097)**

Dear Ms. Deshpande:

This letter is a follow-up to the Orange County Transportation Authority (OCTA) January 2017 comments on the Draft Supplemental Environmental Impact Report/Environmental Impact Statement (DSEIR/S) for the State Route 241/91 Tolled Express Lanes Connector Project (Project). While the California Department of Transportation (Caltrans) is the lead agency in accordance to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA [through NEPA assignment]), the Transportation Corridor Agencies (TCA) is the sponsoring agency for the Project. OCTA applauds Caltrans' intent to adhere to the CEQA/NEPA processes to afford the public an opportunity to provide input on the Project. As a public agency, OCTA believes in the importance of disclosing the benefits/impacts of projects to facilitate meaningful public input.

TCA has been working extensively with OCTA to provide additional traffic information for a better understanding of the potential impacts to the 91 Express Lanes and the general-purpose lanes. TCA conducted additional analyses related to traffic operations on the Project and included information that was not previously available or known at the time of the public review of the DSEIR/S. This included multiple iterations of the traffic analysis and a traffic operations model, rather than a traffic demand model that was originally used to support the Project. In addition, the Riverside County Transportation Commission began operations on its 91 Express Lanes in spring 2017 that changed the landscape of traffic patterns on the State Route 91 (SR-91) corridor. Finally, the Project's base year has been updated to 2018, from 2013[DP1] in the DSEIR/S. The opening year and no-build year were updated to 2025,[DP2] from 2020 in the DSEIR/S. In December 2018, TCA provided OCTA with the *SR-241/SR-91 Tolled Express Lanes Connector DRAFT Traffic Analysis for Response to Comments on the SR-241/SR-91 Express Lanes Connector Draft Supplemental EIR/EIS* (dated December 20, 2018).

Orange County Transportation Authority
550 South Main Street / P.O. Box 14184 / Orange / California 92863-1584 / (714) 560-OCTA (6282)

OCTA believes the updated traffic analysis could materially change the outcome of the analysis in the DSEIR/S. Therefore, for the reasons stated, we believe it is in the best interest of Caltrans to recirculate the DSEIR/S to allow the public an opportunity to review the updated information. Given the SR-91 freeway is a major east-west corridor that traverses through several counties, OCTA believes Caltrans has the responsibility to update the traffic information in the DSEIR/S accordingly, which will allow the public to fully vet the Project. Caltrans, as the lead agency, has the discretion to certify the final SEIR/S. However, that decision should not be taken lightly, or without careful consideration, to afford the public to review the new information.

In addition, Caltrans has yet to provide responses to numerous comments/concerns raised in the January 2017 comment letter on the DSEIR/S (Attachment). CEQA technically allows the lead agency to provide written responses to public agencies who had commented on a draft document no less than ten days prior to certifying an environmental impact report. However, given the magnitude of the potential impacts to the traveling public in the general-purpose lanes and 91 Express Lanes alike, we believe Caltrans needs to engage OCTA in resolving its concerns prior to recirculating the DEIR/S and ultimately certifying the final environmental impact report.

In summary, Caltrans should work closely with OCTA to address input from the January 2017 comment letter on the DSEIR/S. Caltrans must recirculate the DSEIR/S in light of significant new information that has been presented since the 2016 public circulation of the DSEIR/S. As the agency which acquired the 91 Express Lanes from the California Private Transportation Company to eliminate the non-compete clause on the SR-91 corridor, OCTA has the responsibility to protect the users of the 91 Express Lanes and general-purpose lanes from being negatively impacted by the Project. Furthermore, OCTA is considered a responsible agency under CEQA for the Project since any connection to the 91 Express Lanes would require approval from OCTA.

If you wish to discuss the concerns discussed herein, feel free to contact me at (714) 560-5907 or at dphu@octa.net.

Sincerely,

Dan Phu
Environmental Programs Manager

Attachment

c: Valarie McFall, TCA

OCTA

AFFILIATED AGENCIES

Orange County Transit District

Local Transportation Authority

Service Authority for Freeway Emergencies

Consolidated Transportation Service Agency

Congestion Management Agency

Service Authority for Abandoned Vehicles

January 9, 2017

Ms. Smita Deshpande
Generalist Branch Chief
Caltrans-District 12, "Attn: 241-91 DSEIR/EIS Comment Period"
1750 East Fourth Street, Suite 100
Santa Ana, CA 92705

Subject: Draft Supplemental Environmental Impact Report/Environmental Impact Statement (SCH. 1989010410) for the State Route 241/State Route 91 Tolled Express Lanes Connector Project (Project No. 1200020097)

Dear Ms. Deshpande: Smita

Thank you for providing the Orange County Transportation Authority (OCTA) with the Draft Supplemental Environmental Impact Report/Environmental Impact Statement (DSEIR/S) for the State Route 241/State Route 91 Tolled Express Lanes Connector Project (Project). The following comments are provided for your consideration:

- On page 2-23, Section 2.2.1.2 'Permanent Project Features,' subsection 'TSM/TDM' the proposed Project is stated "to have dynamic traffic technology (toll pricing based on express lanes demand)." The analysis in the DSEIR/S did not address tolling and potential economic implications. OCTA recommends further analysis on tolling under applicable environmental factors analysis.

OCTA has not been provided any information related to economic implications resulting from the Project.

- On Page 5-3, Table 5.1 'Comments Received During Scoping,' states "Toll operations are being coordinated between F/ETCA, OCTA, and RCTC and are evaluated in a separate Concept of Operations report." OCTA recommends including this throughout the DSEIR/S, as applicable.

OCTA has not received a response to this comment.

- The opening year analysis should be redone to reflect the actual opening year of 2020 rather than 2017. While Section 3.5.3.2 provides an explanation that the differences in traffic operations are nominal between 2017 and 2020, given the SR-91 Corridor Improvement Project (CIP) is scheduled to open in 2017, a thorough 2020 analysis would be appropriate.

Opening year has been updated to reflect 2025 per the latest traffic analysis provide by TCA.

Orange County Transportation Authority
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- Given the complex nature of having multiple tolled facilities operated by different agencies, OCTA suggests that the analysis in the environmental document be updated to include traffic volume data anticipated to be available in Spring 2017 with the opening of the CIP. This would help refine the existing, opening year, and 2040 conditions analysis (throughput, speeds, and travel time).

Requested information has been updated. However, it was done through multiple iterations and in a traffic operations model, rather than a traffic demand model. OCTA requests an updated traffic demand model.

- It appears that the environmental document had not analyzed weaving impacts along the SR-91 at the confluence of the SR-241 Express Connector merge/diverge, the OCTA 91 Express Lanes, and the RCTC 91 Express Lanes. Therefore, a more detailed weaving analysis would be appropriate.

Current and future weave movements were provided. However, a separate, standard Highway Capacity Manual weaving analysis is requested. Future weave movements should be further updated to show a more intuitive analysis.

- It appears that the complex nature of the multiple tolling options (including dynamic pricing) for the SR-241, the SR-241 Express Connector, the OCTA 91 Express Lanes, and the RCTC 91 Express Lanes are not adequately discussed with respect to the traffic impacts. These should be explored in detail.

OCTA has not received a response to this comment.

- OCTA understands that there are complementary concept of operations studies (con-ops) underway. Some of the appropriate results from the con-ops studies should be integrated into this environmental document.

OCTA has not received a response to this comment.

- It appears there needs to be a more thorough analysis of the construction impacts on the OCTA 91 Express Lanes, including traffic impacts, toll and revenue implications.

OCTA has not received a response to this comment.

Thank you for providing OCTA the opportunity to review this item. Throughout the development of this proposed project, we encourage continued communication with OCTA on the matters discussed herein. If you have any questions or comments, please contact me by phone at (714) 560-5907 or by email at dphu@octa.net.

Sincerely,

Dan Phu
Environmental Programs Manager

c: Valarie McFall, TCA

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE DIRECTOR
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Making Conservation a California Way of Life.

June 19, 2019

Mr. Darrell Johnson
Chief Executive Officer
Orange County Transportation Authority
550 South Main Street
Orange, CA 92868

Ms. Anne Mayer
Executive Director
Riverside County Transportation Commission
P.O. Box 12008
Riverside, CA 92502

Mr. Michael Kraman
Chief Executive Officer
Transportation Corridor Agencies
125 Pacifica
Irvine, CA 92618

Dear Mr. Johnson, Ms. Mayer and Mr. Kraman:

The Orange County Transportation Authority, Riverside County Transportation Commission, Transportation Corridor Agencies, and California Department of Transportation (Caltrans) met on May 28, 2019, to discuss projects on the State Route (SR) 91 Corridor and how we can work together to resolve concerns between our respective agencies.

At the end of our meeting, we all agreed to hire a neutral outside party to facilitate further discussions and issue-resolution related to projects and their sequencing on the SR 91 Corridor. This meeting has been scheduled for June 25, 2019. Depending on how much progress we achieve on June 25th, additional facilitated meetings may be necessary over next few months.

It is our hope that consensus on project sequencing will be one of the many outcomes of our meetings. As such, Caltrans will postpone commenting on the recently released Draft SR 91 Implementation Plan.

We look forward to engagement and resolution of concerns within the corridor that achieve the maximum benefit to the traveling public we all serve.

Sincerely,

LAURIE BERMAN
Director

c: Ryan Chamberlain, Caltrans District 12 Director
Michael Beauchamp, Caltrans District 8 Director

SR-241 / 91 Express Connector Term Sheet

SEPTEMBER 12, 2019

Program of Projects

- 91 Corridor program of projects and sequencing[1]
  - 15/91 EB/NB Express Lanes Connector (ELC)
  - SR-91 WB Corridor Operations Project (COP)
  - SR-91/SR-71 EB/NB Connector[2]
  - SR-241/91 Express Connector (EC)

- All parties agree to work together to resolve geometric and operations issues between 91 COP, SR-241 / 91 EC, and future 6th Lane with the mutual goal of minimizing cost, scope, schedule and construction impacts to all projects.
  - The SR-91 COP schedule will not be delayed.

Project Approval / Environmental Documentation (PA/ED)

- TCA to deliver the SR-241/91 EC PA/ED. TCA and Caltrans will update the environmental document with consideration of the comments received.

- Caltrans shall not finalize / approve PA/ED until RCTC and OCTA have had a 30-day opportunity to review response to comments. Caltrans shall not sign the Notice of Determination or Record of Decision any sooner than January 2, 2020.

- OCTA to process the Federal Transportation Improvement Program (FTIP) amendment for SR-241/91 EC for Right-of-Way (ROW) and Construction phases immediately following RCTC and OCTA having had a 30-day opportunity to review response to comments.

Project Delivery

- TCA to complete final design of SR-241/91 EC with Caltrans oversight.
- Caltrans has final design approval of SR-241/91 EC.

[1] See Appendix A for SR-91 Projects Sequencing Priorities dated September 12, 2019.
[2] SR-241/91 EC is not dependent upon completion of SR-71/SR-91 Interchange Improvements.

- TCA will provide OCTA and RCTC ample opportunity to review and concur with all aspects of the final design. OCTA and RCTC shall focus on the interface of the SR-241/91 EC with the existing 91 Express Lanes facility and agreed upon projects in the attached SR-91 Projects Sequencing Priorities.
- Caltrans and TCA shall consider all reasonable comments and requests from OCTA and RCTC, and OCTA and RCTC comments and requests to Caltrans and TCA shall be fair and reasonable.
- Caltrans District 12 to Advertise, Award, Administer (AAA) construction phase.

SR-241/91 EC Capital and Support Funding

- TCA to fund 100% of Plan, Specification and Estimate (PS&E), ROW, and Construction including tolling infrastructure.
- Project will not be financed.
- OCTA, RCTC, TCA and Caltrans to seek eligible funds from external discretionary and/or competitive non-TCA funds (i.e. SB1).
    - TCA funds to be reduced by receipt of any external discretionary and/or competitive non-TCA funds.
    - Attempts to seek external discretionary and/or competitive non-TCA funds would not delay the project.

Roadway Maintenance Responsibility

- Caltrans to be responsible for performing maintenance of all improvements constructed as part of SR-241/91 EC (roadway, structures, etc.).
- Maintenance requirements to be funded from SR-241/91 EC toll revenues.

Toll Revenues

- Parties to receive toll revenue from SR-241/91 EC equal to percentage of capital and support funding provided (e.g., 100% of capital and support funding = 100% EC toll revenue, 80% of capital and support funding = 80% EC toll revenue).

- Term of tolling shall be consistent with latest sunset date for existing 91 Express Lanes, TCA agreements or any subsequent amendments in the future.

- 91 Express Lanes to be paid/reimbursed for any 91 Express Lanes operating cost or maintenance cost incurred, if any.

- Use of toll revenues shall be consistent with AB 194, modified as follows:

    A. Repayment of funds with interest, excluding external discretionary funds, used to construct the SR-241/91 EC. Interest rate will be based upon the Surplus

Money Investment Fund rate as defined in the California Streets and Highway Code.

B. The development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of improvements constructed as part of SR-241/91 EC, including toll collection and enforcement.

C. Reserves for the purposes specified in subparagraph (B).

D. All remaining revenue generated by the toll facility shall be used in the corridors from which the revenue was generated pursuant to an expenditure plan developed by the sponsoring agency.

E. The expenditure plan shall be incorporated as part of the TCA Capital Improvement Plan (CIP) and be adopted annually by the TCA Board of Directors. TCA shall submit the CIP to OCTA for consistency review with the Regional Transportation Plan and related programs.

F. The administrative expenses related to operation of SR-241/91 EC facility shall not exceed 3 percent of the toll revenues.

241 / 91 EC Operations

- OCTA/RCTC to operate the SR-241/91 EC including calculating and posting dynamic pricing, traffic/incident monitoring via CCTV in the Traffic Operations Center, management of SR-241/91 EC closures, dispatch of CHP and tow trucks for incidents, creation and processing of toll transactions, revenue collection, violation processing, etc.

- Additional operations terms will be included in an operations term sheet and will also be memorialized in a future operating agreement between TCA, OCTA, and RCTC.

APPENDIX A

SR 91 PROJECTS SEQUENCING PRIORITIES

1. **15/91 Express Lanes Connector**
   - Design-Build Request for Proposals (RFP) Due – November 2019
   - Design-Build Contract – March 2020
   - Design-Build Notice to Proceed – Spring 2020
   - Open to Traffic – End of 2022

2. **SR-91 Corridor Operations Project**
   - PA/ED – October 2019
   - Construction Advertisement – March 2020
   - Open to Traffic – End of 2021

3. **SR-71/SR-91 Interchange Improvements**
   - Environmental Document and Re-evaluation – Completed
   - Ready to List Target – 2021 Design update needed due to new structures standards
   - Open to Traffic – Early 2023

3. **SR-241 / SR-91 Express Connector**
   - PA/ED – November 2019
   - Construction – Notice to Proceed for construction in early 2023, or sooner if mutually agreed to based on a technical review of construction staging, traffic handling / lane closure for SR-241/91 EC and 15/91 ELC. This effort will not impact the delivery of the 15/91 ELC which is the priority.

Related Project Responsibilities

- Caltrans District 8 to be the lead Caltrans district for all RCTC-led projects.
  - District 12 coordinates through District 8 on all issues related to Geometric Approval Drawings (GAD), operations, etc.
- Caltrans District 12 to be lead Caltrans district for all OCTA-led and TCA-led projects.
  - District 8 coordinates through District 12 on all issues related to GAD, operations, etc.

Other Items

- Team will continue to work together to evaluate the Westbound Third Express Lane and if determined to be necessary, implementation will be jointly developed.
- SR-71/SR-91 Interchange Improvements and SR-241/91 EC are not contingent upon each other. Specifically, completion of the SR-71/SR-91 Interchange Improvements are not required prior to the SR-241/ 91 EC going to construction.
- 6th General Purpose Lane Addition (SR-241 to SR-71)
  - Team would work together to investigate the feasibility of the addition, including the potential of an interim option.

ATTACHMENT D

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, Governor

DEPARTMENT OF TRANSPORTATION
District 8 and 12
PHONE (657) 328-6000
FAX (657) 328-6522
TTY 711

Making Conservation
a California Way of Life.

September 26, 2019

Mr. Darrell Johnson, Chief Executive Officer
Orange County Transportation Authority
550 South Main Street
Orange, CA 92863

Mr. Michael A. Kraman, Chief Executive Officer
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, CA 92618

Ms. Anne Mayer, Executive Director
Riverside County Transportation Commission
P.O. Box 12008
Riverside, CA 92502

Dear Mr. Johnson, Mr. Kraman, and Ms. Mayer:

The California Department of Transportation (Caltrans), Orange County Transportation Authority (OCTA), Riverside County Transportation Commission (RCTC) and Transportation Corridor Agencies (TCA), have collaborated on drafting a term sheet for the SR-241/91 Express Connector project and other State Route 91 project sequencing of near-term projects, with the mutual goal of minimizing cost, scope, schedule and construction impacts to all projects.

Caltrans Districts 8 and 12 agree with and support the items included in the term sheet, dated September 12, 2019.

Caltrans looks forward to continuing to partner and collaborate with OCTA, RCTC, and TCA in efficiently implementing these crucial projects on State Route 241 and 91.

If you have any questions or concerns, please contact me at (657) 328-6000, Director Beauchamp at (909)-383-6914, or Adnan Maiah, Deputy District Director, District 12 Capital Outlay Program, at (657) 328-6307 or by e-mail sent to <adnan_maiah@dot.ca.gov>

Sincerely,

RYAN CHAMBERLAIN
District 12 Director

Sincerely,

MICHAEL BEAUCHAMP
District 8 Director

Enclosures

c: Jim Beil, OCTA
David Thomas, RCTC
Adnan Maiah, Caltrans
Syed Raza, Caltrans
Roger Yoh, Caltrans