

**ORTEGA HIGHWAY:
UNNECESSARY DELAYS HAVE COST US MILLIONS**



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SUMMARY

Continued development in Orange County and, in particular, South Orange County has resulted in increased traffic congestion during peak commuting periods on multiple arterial roadways, including California State Route 74. A roughly 29 mile section of State Route 74 from the City of San Juan Capistrano to Lake Elsinore is also known as Ortega Highway. To date, government agencies have expended tens of millions of dollars to partially widen and restructure portions of Ortega Highway. Additionally, they have budgeted and proposed millions more to complete the widening of the roughly one mile stretch of Ortega Highway from Calle Entradero to the City of San Juan Capistrano/Orange County Line, officially known as the SR 74-Lower Ortega Highway Widening Project.

After years of state, regional, and local agencies wrestling over the SR 74-Lower Ortega Highway Widening Project, a 2011 Settlement Agreement was reached between the California Department of Transportation, the City of San Juan Capistrano, and the Hunt Club Community Association that addressed the Project's aesthetics and the design and construction processes.

In January 2016, the San Juan Capistrano City Council relinquished the City of San Juan Capistrano's role as lead agency in the SR 74-Lower Ortega Highway Widening Project by reversing its December 2015 approval of an engineering consultant contract to finalize the design effort. Ongoing Project delays have resulted in the financial impact of millions of dollars to Orange County taxpayers due to increased Project costs and continue to jeopardize the safety of Orange County residents.

The Board of Supervisors recently authorized the Orange County Public Works Department to take on the role of lead agency on the Project. Accordingly, Public Works has obtained a grant from the Orange County Transportation Authority to proceed with the design engineering for the Project.

REASON FOR THE STUDY

One of the roles of county and city government is to ensure the safety of its residents. The increased development in South County, and the accompanying traffic, necessitates the timely completion of arterial roads to ensure continued safety for all residents. State Route 74 (SR 74), locally referred to as Ortega Highway, is part of the California Freeway and Expressway System and is a main traffic corridor for South County serving 43,500 vehicles daily (Caltrans, 2015).

The Master Plan of Arterial Highways (MPAH), Orange County's long-range roadway master plan, has called for a widening of Ortega Highway for more than 50 years to provide a traffic corridor for increased population (Orange County Transportation Authority, 2017). The delay of SR 74-Lower Ortega Highway Widening Project (Lower Ortega Project or Project) incurred by the actions of the San Juan Capistrano City Council (City Council) in January 2016 has the potential to cost Orange County taxpayers millions of dollars and jeopardizes the safety of those who routinely travel Ortega Highway. These concerns were brought to the 2016-2017 Orange County Grand Jury (OCGJ) in the form of a petition advocating the completion of the Lower Ortega Project. In its role as a citizen watchdog of local government, the OCGJ elected to investigate the causes for the delay, safety

implications, and financial impact this delay will have on Orange County.

METHOD OF STUDY

The OCGJ reviewed dozens of pertinent agency websites and press releases to establish an initial general understanding of the chronology of the Lower Ortega Project. Once a basic understanding of the Project was formed, members of the OCGJ conducted nineteen interviews with impacted stakeholders involved in the Lower Ortega Project, including: elected and appointed City of San Juan Capistrano (City) officials; representatives of the Hunt Club Community Association (Hunt Club), California Department of Transportation (Caltrans), the Orange County Transportation Authority (OCTA); and development representatives from Rancho Mission Viejo (RMV). The OCGJ also conducted interviews with members of the Orange County Board of Supervisors (Board of Supervisors) and representatives of elected State officials of the 73rd State Assembly District and 36th State Senate District representing the City and South Orange County. The OCGJ conducted an extensive examination of City Council records covering council agendas, resolutions, and meeting minutes pertaining to Ortega Highway for the period beginning January 2011 and through March 2017, including a review of the transportation component of the City's General Plan. The OCGJ also reviewed the 2011 Settlement Agreement between the City, Hunt Club, and Caltrans (Stipulated Judgement, 2011); Caltrans and OCTA transportation plans and control documents, including the MPAH (Orange County Transportation Authority, 2017); OCTA grants to the City; and area developer funding agreements.

BACKGROUND AND FACTS

The Lower Ortega Project

Caltrans oversees all state highways and freeways. Ortega Highway is a state highway, thus repairs and projects on Ortega Highway fall under the jurisdiction of Caltrans. Orange County has developed a Master Plan of Arterial Highways (MPAH), a countywide streets and highways plan that focuses on arterial highways consistent with existing and planned land uses. The MPAH map shows the existing and proposed circulation elements and defines their characteristics. Last updated in January 2017, the MPAH has designated Ortega Highway as a four lane arterial highway with a center two-way left turn lane and paved shoulders (Orange County Transportation Authority, 2017).

In Orange County, the MPAH is administered by OCTA. OCTA was formed through a consolidation of seven separate transportation agencies to develop and implement unified transportation programs and services throughout Orange County. As administrator of Orange County's MPAH, OCTA is responsible for maintaining the integrity of the MPAH map through its coordination with the County of Orange and its 34 cities. Local city planning documents must be consistent with the MPAH in order for cities to receive county funding for roadway improvement projects.

With approved plans to construct 14,000 homes, and nearly 5 million square feet of non-residential uses in the area east of the City over the next two decades, additional access from numerous roadways including Ortega Highway will be needed.

Data collected by Caltrans (Caltrans, 2015) on Ortega Highway showed the following five-year traffic volume increase:

	2010	2015
Peak Hour (i.e. busiest hour of the day); vehicles per hour	2,500	4,500
Peak Month (i.e. busiest month of the year); vehicles per day	28,750	45,250
Average Annual Daily Traffic (total annual count divided by 365); vehicles per day	27,500	43,500

The primary goals and benefits cited with regard to the Lower Ortega Project include the following (Orange County Public Works, 2016):

1. Enhance the safety of the road by providing a four lane divided highway with street lighting and bike lanes on both sides of the roadway.
2. Provide a four lane roadway that is consistent with the adopted City's General Plan and the MPAH.
3. Eliminate the current roadway bottle-neck and decrease the existing traffic congestion.
4. Provide drainage improvements to relieve existing flooding that occurs during heavy rains that have resulted in the closure of Ortega Highway.
5. Provide a safe crossing for pedestrians and equestrians via the traffic signal at Ortega Highway and Via Cordova/Hunt Club Drive.
6. Eliminate the current sidewalk gap on the south side of the roadway.
7. Reduce existing noise levels for residential developments by constructing sound walls and utilizing rubberized asphalt for the roadway.

Safety Concerns

The 0.9 mile segment of Ortega Highway between Calle Entradero and the eastern City limit is the last remaining section of two-lane highway between I-5 and Antonio Parkway/La Pata Avenue that remains unimproved. While this narrowing significantly reduces overall throughput (vehicles per hour) traversing Ortega Highway, it also results in several safety-related consequences. Left turning vehicles must cross traffic approaching from one direction and then merge with traffic going the opposite direction, a problematic maneuver especially when there are few, if any, breaks in the oncoming traffic (Maze, 2007).

The completion of this section of Ortega Highway would provide a center median/two way left turn lane, which serves two purposes: it provides a dedicated left turn lane for traffic on Ortega Highway, and it provides a “safe haven” for side street traffic turning left onto Ortega Highway. Additionally, a new traffic signal will provide breaks in the traffic on Ortega Highway, further enabling safer left turns onto and off of Ortega Highway from the residential areas. In order to complete this construction and meet the MPAH design, certain construction elements are necessary.

Delays to the Project

The City prides itself on effectively maintaining its open space character and nearly 40% of the City is open space and park land (City of San Juan Capistrano, 2017). The Hunt Club is a gate-guarded, private residential development that borders on the segment of Ortega Highway that will be affected by completion of the Lower Ortega Project. In 2011, residents of the City, Caltrans, and the Hunt Club differed on what they believed should be the proposed construction elements of the final project and legal objections to the expansion were filed. This delayed work on the widening project.

In 2011, a settlement agreement between all the parties was reached that explicitly detailed the aesthetics, the need for proper traffic control, and the physical scope of the road widening. This agreement was in compliance with the MPAH, the City's General Plan, and the required Environmental Impact Report and was binding on all the parties and their successors. However, the Settlement Agreement left undecided which entity would assume the role of the lead agency on the Project.

Caltrans is legally responsible for Ortega Highway. In keeping with Caltrans' preference to work with local governments when feasible, the Lower Ortega Project was first administered in 2008 by Public Works (Appendix A). After the Settlement Agreement, Caltrans allowed the City to take the role of lead agency. In this role, the City would have an opportunity to reflect San Juan Capistrano's singular nature and culture and address ongoing issues such as drainage and aesthetics.

The City, as the new lead agency, applied for and received grants for the Project from OCTA in the amount of \$1,050,000 for design engineering and \$3,679,800 for right-of-way (Appendix B). The City also received an additional commitment of \$450,000 from developers (City of San Juan Capistrano & Rancho Mission Viejo, LLC, 2013) and then spent funds in accordance with the Settlement Agreement. However, in 2014 a new City Council was elected and sought to oppose the widening project despite the language in the Settlement Agreement specifying that the signing parties and their successors would not oppose efforts to complete the Lower Ortega Project. This further delayed the project.

During interviews with the Grand Jury, some City Council members claimed they had not heard of the Settlement Agreement and some members commented they had heard of it, but had not read it and were not convinced it was relevant to their decision to halt the Project. Further, the City Council refused to waive privilege and allow the Grand Jury to discuss the City Council's understanding of the Settlement Agreement with City staff. As a result, the Grand Jury was unable to determine if the City Council fully understood the consequences of their choice to delay the project.

Financial Impact of Delay

In December 2015, the City Council voted to award a contract for the engineering design of the Lower Ortega Project (City of San Juan Capistrano, 2015). However, in January 2016, the City Council reversed its December 2015 decision and declined to execute the design engineering contract (City of San Juan Capistrano, 2016). The City Council then negated the agreement with

developers that would have contributed \$450,000 towards completion of the Lower Ortega Project.

As a result of this action OCTA informed the City that it required the return of previously advanced funding in the amount of \$705,095, which included repayment of \$185,170. This amount included \$10,000 for lost interest on these funds and non-reimbursable spent funds in the amount of \$175,170 (Appendix C).

The obligation of \$3,679,800 in OCTA Measure M2 right-of-way funding was deferred by the City from June 2015 to June 2017. This one time deferral cannot be further extended. As the right-of-way phase cannot be initiated until the design phase is sufficiently completed, the design phase needed to be completed within 1-1/2 years of the start. Delays to the design phase, caused by the City Council actions in January 2016, resulted in the de facto forfeiture of the OCTA grant funding previously secured for the right-of-way phase, as the design work could not be completed in time.

Funding for the right-of-way phase that the City previously secured through a competitive Measure M2 grant from OCTA will need to be reapplied for by Public Works as they take on the role of lead agency.

The postponement of the Lower Ortega Project had or will have the following financial impact to San Juan Capistrano residents and ultimately on the taxpayers of Orange County:

1. Due to the January 5, 2016, reversal of the City Council position on the Lower Ortega Project, the City authorized the City Manager to reimburse OCTA for grant funds advanced to the City for the Lower Ortega Project in the amount of \$705,095 (Swegles, 2017).
2. The above total included \$175,170 that the City had already spent on the Lower Ortega Project, but that OCTA determined to be ineligible, and \$10,000 interest on the grant funds advanced to the City by OCTA. The City Manager was directed to appropriate the \$185,170 from the Capistrano Circulation Fee Program for Fiscal Year 2016/2017 to reimburse OCTA (May, 2017).
3. From 2013 to 2016 Lower Ortega Project construction costs increased from \$19,305,000 to \$30,533,305 (Orange County Transportation Authority, 2013) (Orange County Public Works, 2016).
4. From 2013 to 2016 Lower Ortega Project right-of-way costs increased from \$6,133,000 to \$12,118,000 (Orange County Transportation Authority, 2013) (Orange County Public Works, 2016).

Interested readers are referred to Appendices A, B, and C for a detailed Lower Ortega Project chronology and list of funding and expenditures.

Future of the Project

In October 2016, Public Works was authorized to take on the role of lead agency via a Resolution of the Board of Supervisors (Orange County Board of Supervisors, 2016). Public Works subsequently submitted an application to OCTA for Measure M2 grant funding of \$1,950,000 for initial engineering costs. Ultimately, Public Works expects the Project to cost

over \$52 million, including engineering, right-of-way, and construction (Orange County Public Works, 2016). Upon the notification of actual award of the initial OCTA funding, Public Works plans to enter into cooperative agreements with developers for matching funds, and with Caltrans to begin the Project approval and environmental documentation phase. In addition, this cooperative agreement would obligate Caltrans to provide matching funds and future funding for Project cost escalation. Public Works also intends to “federalize” the project by updating the environmental documentation for the Project to meet federal National Environmental Policy Act (NEPA) standards, enabling Caltrans to apply to the U.S. Department of Transportation, Federal Highway Administration, so that the Lower Ortega Project would be eligible for future federal funds as they become available.

CONCLUSION

Traffic congestion in South Orange County will continue to be impacted by population growth as well as residential and commercial development. Ortega Highway is one of the main east-west traffic corridors in the area. Caltrans is ultimately responsible for managing the operations of state highways. Public Works, in accordance with Caltrans and OCTA, is responsible for resolving Orange County traffic corridor issues. Both agencies prefer, but are not required, to work through local city governments on such projects.

The City Council’s January 2016 reversal on executing the design engineering contract for the Lower Ortega Project took the City out of the role of lead agency and cost San Juan Capistrano residents \$185,170 in ineligible expenditures and interest. In rejecting the role as lead agency, the City also lost an advantage of having some influence over potential design aspects that could be tailored to the particular aesthetics and culture of San Juan Capistrano.

Continued delays and an inability to move forward with the Lower Ortega Project is a detriment to the mobility of the citizens of South Orange County. Regardless of the agency that takes the lead role in the Project, the following fact is inescapable: Since 1997, when Caltrans initiated the planning for the Lower Ortega Project, roadway construction costs have increased significantly.

While Project cost estimates prepared subsequent to the 2011 Settlement Agreement totaled approximately \$25 to \$30 million for design, right-of-way, and construction, the current Project estimate by Public Works for these same project components totals more than \$52 million. This increase is directly attributable to the over five year delay of the Project by the City.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on the investigation of, “Ortega Highway: Unnecessary Delays Have Cost Us Millions” in Orange County, the OCGJ has arrived at three principal findings, as follows:

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

F.2. Traffic will continue to increase in South Orange County and Ortega Highway is one of the main arterial roads on which this traffic will travel. Until the Lower Ortega Project is complete congestion and safety concerns will remain.

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

Penal Code §933 and §933.05 require governing bodies and elected officials to which a report is directed to respond to findings and recommendations. Responses are requested, from departments of local agencies and their non-elected department heads.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2016-2017 Grand Jury requires (or, as noted, requests) responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.”

Based on the investigation titled, “*Ortega Highway: Unnecessary Delays Have Cost Us Millions*” in Orange County, the OCGJ makes the following three recommendations:

R.1. OCTA should continue to actively work to resolve future traffic concerns on Ortega Highway.

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

R.3. The County should continue to work towards timely completion of the Lower Ortega Project.

REQUIRED RESPONSES

The *California Penal Code* §933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

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

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

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

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

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

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

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

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

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

1. Orange County Transportation Authority Board of Directors (F.2., F.3., R.1.)
2. Orange County Board of Supervisors (R.3.)
3. San Juan Capistrano City Council (F.1., F.3., R.2.)

Responses are requested from the following non-elected agency or department heads within 90 days of the date of the publication of this report:

1. Orange County Public Works (F.2., F.3., R.3.)

REFERENCES

- Caltrans. (2015). *2015 Traffic Volumes on California State Highways*. Sacramento: Caltrans, Division of Traffic Operations.
- City of San Juan Capistrano & Rancho Mission Viejo, LLC. (2013, October 15). Funding Assistance Agreement. San Juan Capistrano, CA.
- City of San Juan Capistrano. (2015, December 15). *Minutes - San Juan Capistrano City Council Regular Meeting, Item E2a*. San Juan Capistrano, CA: City of San Juan Capistrano.
- City of San Juan Capistrano. (2016). *Minutes - San Juan Capistrano City Council Regular Meeting, Action Item 2*. San Juan Capistrano, CA: City of San Juan Capistrano.
- City of San Juan Capistrano. (2017). <http://www.sanjuancapistrano.org/index.aspx?page=3>. Retrieved March 23, 2017, from City of San Juan Capistrano: <http://www.sanjuancapistrano.org/index.aspx?page=3>
- May, S. P. (2017, February 7). *San Juan Capistrano City Council Agenda Report*. Retrieved May 1, 2017, from <http://sjc.granicus.com>: http://sjc.granicus.com/MetaViewer.php?view_id=3&clip_id=1426&meta_id=80602
- Maze, T. (2007, May 17). *Access Management Handbook*. Iowa State University. Ames: Center for Transportation Research and Education.
- Orange County Board of Supervisors. (2016, October 11). Resolution No. 16-097, Item 20. *Resolution of the Board of Supervisors of Orange County, California*. Santa Ana, CA: County of Orange.
- Orange County Public Works. (2016, October 21). Ortega Highway Widening Improvement - PA & ED Phase. *OCTA - M2 Regional Capacity Program, Arterial Capacity Enhancement*. Santa Ana: Orange County Public Works.
- Orange County Transportation Authority. (2013). *2013 Measure M2 Regional Capacity Program Call for Projects - Programming Recommendations*. Retrieved May 1, 2017, from <http://www.octa.net>: <http://www.octa.net/pdf/2013RCPAAllocationSummary.pdf>
- Orange County Transportation Authority. (2017). *OCTA*. Retrieved March 22, 2017, from <http://www.octa.net>: <http://www.octa.net/News-and-Resources/Open-Data/MPAH-Overview/>
- Stipulated Judgement, 30-2009-00328947, (Superior Court of California, Orange County, Case No. August 11, 2011).

Swegles, F. (2017, February 14). *San Juan Capistrano to Repay OCTA \$705,095 from Canceled Road Project*. Retrieved May 1, 2017, from <http://www.ocregister.com>:
<http://www.ocregister.com/2017/02/14/san-juan-capistrano-to-repay-octa-705095-from-canceled-road-project/>

APPENDICES

APPENDIX A

LOWER ORTEGA PROJECT CHRONOLOGY

- 1997
Caltrans initiates planning for the State Route 74- Lower Ortega Highway Project.
- 2004
The RMV Plan is approved by the Board of Supervisors. The approval includes a condition requiring South County Road Improvement Program (SCRIP) fees to support the Lower Ortega Project.
- January 18, 2005
The City Council adopts a Resolution supporting Orange County's request to the OCTA Combined Transportation Funding Program for funding of the Lower Ortega Project from Calle Entradero to the eastern City limits. Additionally, RMV and Orange County agencies enter into funding agreements; RMV begins design of various new local roadways.
- 2006
California Environmental Quality Act (CEQA), a mandated environmental document required to address potential environmental impacts, is certified for the widening for Orange County portion of the Lower Ortega Project (east of the City limit).
- May 30, 2006
The City Council and Planning Commission, in a joint meeting with Caltrans and Lower Ortega Project consultants, discussed design alternatives related to Caltrans' proposed widening of the Lower Ortega Highway and established a general consensus for project elements.
- March 6, 2007
The City Council approved the proposal to retain an environmental consultant to review the proposed Mitigated Negative Declaration (MND) or other related environmental documentation for the Lower Ortega Project and directed staff to request a full Environmental Impact Report (EIR) from Caltrans.
- May 1, 2007
The City Council (as part of a City Council Action item) shared a letter from the Orange County Fire Authority Division Chief, Dave Pierce, supporting the Ortega Highway widening to four (4) lanes to increase safety for firefighters and citizens.
- 2008
Design for the Orange County portion of the Lower Ortega Project is approved by Caltrans and Public Works and construction begins.

- January 6, 2009
The City Council provides comments on Caltrans' draft of the Lower Ortega Project Environmental Impact Report (EIR).
- March 17, 2009
City Mayor, Mark Neilson, authorizes Caltrans to proceed with the Lower Ortega Project.
- November 30, 2009
Caltrans issues Final Environmental Impact Report (FEIR).
- December 17, 2009
The Hunt Club files a Writ of Mandate and an Administrative Writ of Mandate seeking to invalidate the Lower Ortega Project claiming inadequacies in the FEIR.
- December 29, 2009
The City files a Writ of Mandate seeking to invalidate the Lower Ortega Project claiming inadequacies in the FEIR.
- November 16, 2010
Caltrans issues an addendum to the FEIR that incorporates certain features, improvements, and mitigating measures negotiated through a 2011 Settlement Agreement.
- July 14, 2011
Caltrans, the City, and the Hunt Club reach a settlement of their disputes regarding the FEIR and the Lower Ortega Project and execute the 2011 Settlement Agreement.
- August 11, 2011
The 2011 Settlement Agreement was incorporated in a Judgement entered and stipulated by the Superior Court that decreed:

“Neither the Hunt Club’s filing of its Verified Petition for a Writ of Mandate and an Administrative Writ of Mandate in this proceeding nor the filing of the City CEQA action shall prevent or restrain Caltrans from implementing the "State Route 74-Lower Ortega Highway Widening Project" as described in the FEIR and Addendum, so long as: (a) Caltrans' implementation of that Project is in all respects consistent with the FEIR and Addendum, (b) the Project implements all of the mitigation measures described in the FEIR and reflected in the Addendum, and (c) Caltrans complies with an (d) implements each and all of the terms, conditions, requirements and restrictions imposed upon Caltrans in connection with the implementation and construction of the Project by the 2011 Settlement Agreement incorporated by reference into this Judgment.”

Additionally Section 5.5 of the Executory Agreements Agreement stipulates:

“The City, for itself, its officers, councilmembers, employees, successors and assigns, agrees not to challenge or oppose the implementation of the Project, or seek judicial relief against the Project under the lawsuit, so long as the Project is constructed in accordance with the Project CEQA clearance and this Agreement.”

- November 4, 2011
OCTA and the City execute a Measure M2 Master Funding Agreement in which the City is identified as the lead agency for the design phase of the Lower Ortega Project.
- 2011/12
Construction of Orange County portion of the Lower Ortega Project improvements completed.
- February 5, 2013
The City Council resolves to amend their seven year Capital Improvement Program and submits a Measure M2 Grant Request to OCTA.
- April 8, 2013
OCTA agrees to provide \$1,050,000 in Measure M2 grant funds to the City for the engineering design of the Lower Ortega Project.
- October 15, 2013
The City Council approves a Funding Assistance Agreement with RMV, LLC to secure developer matching funds in the amount of \$450,000 for the engineering design of the Lower Ortega Project.
- November 5, 2013
The City Council approved a Personal Services Agreement with HDR Engineering, Inc. for \$911,013 to prepare plans, specifications, and cost estimates for the Lower Ortega Project; and adopted a Resolution authorizing submission of an application for grant funds through the OCTA "Call for Projects" to fund the Lower Ortega Project's right-of-way phase.
- 2014
The City resumes design on Lower Ortega Project.
- 2015
Caltrans completes construction of Ortega Highway interchange with 1-5.
- March 3, 2015
The City Council approved the request for the OCTA M2 Arterial Capacity Enhancement Program funding deferral for the right-of-way phase.
- April 7, 2015
Approval of closed session minutes from March 17, 25, and 30, 2015. No apparent public notice of the subject matter of the closed session.

- May 26, 2015
The Planning Commission forwarded a resolution for the proposed Fiscal Year 2015/16-2020/21 Capital Improvement Program to the City Council with a recommendation for adoption, based on a finding that the Capital Improvement Program is consistent with the General Plan.
- December 15, 2015
The City Council approves the Professional Services Agreement with Anderson-Penna Partners in the amount of \$1,545,000 million to prepare plans, specifications, and cost estimates for the Lower Ortega Project. Additionally, the Council approves the 1st amendment to the Funding Assist Agreement with RMV.
- January 5, 2016
The City Council approved new Rules of Order and Procedure that will allow discussion and possible actions to reconsider the December 15, 2015 motion regarding the Lower Ortega Project. The City Council cancels design contracts and funding from OCTA and RMV for the Lower Ortega Project.
- June 13, 2016
OCTA, based on the March 2016 Semi-Annual Review of their comprehensive Transportation Funding Programs, cancels grants 13-SJCP-ACE-3657 (\$1,050,000) for engineering design and 14-SJCO-ACE-3723 (\$3,679,800) for right-of-way based in the final action taken by the City Council at the January 5, 2016 meeting that directed staff not to proceed with the Lower Ortega Project.
- August 16, 2016
The City Council directs staff to communicate with OCTA to see if they can delay repayment of grant funds while the City reconsiders being lead agency for the Lower Ortega Project.
- October 11, 2016
Board of Supervisors Resolution authorizing Public Works to apply for OCTA Measure M2 grant monies for initial engineering costs essentially makes Public Works the new lead agency for the Lower Ortega Project.
- October 21, 2016
Public Works submits an *Arterial Capacity Enhancement Application for Ortega Highway Widening Improvements - Project Approval and Environmental Document Phase* to OCTA for initial Lower Ortega Project funding of \$1,950,000.
- February 7, 2017
Due to the January 5, 2016 relinquishment by the City Council as lead agency of the Lower Ortega Project, the City Council authorized the City Manager to reimburse OCTA for grant funds advanced to the City (plus interest earned on the funds) for the Lower Ortega Project, in the amount of \$703,812. Additionally, because the City spent \$175,170 on the Lower Ortega Project that OCTA determined to be ineligible, and the

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City earned \$10,000 on the grant funds advanced to the City by OCTA, the City Manager was directed to appropriate \$185,170 from the Capistrano Circulation Fee Program for Fiscal Year 2016/2017 for reimbursement to OCTA.

APPENDIX B

LOWER ORTEGA PROJECT - Funding History				
Source	Amount	Date	Purpose	Action(s)
OCTA	\$1,050,000	April 8, 2013	M2 Grant 13-SJCP-ACE-3657 provides funds for engineering design of the Lower Ortega Project.	The City of San Juan Capistrano applied for M2 grant funds.
RMV	\$450,000	October 15, 2013	South County Road Improvement Program funds for engineering design of the Lower Ortega Project.	The City of San Juan Capistrano approves Funding Assistance Agreement with RMV.
OCTA	\$1,050,000 \$3,679,800	June 13, 2016	13-SJCP-ACE-3657 (\$1,050,000) engineering design and 14-SJCO-ACE-3723 (\$3,679,800) right-of-way.	Based on the City of San Juan Capistrano's failure to perform, OCTA cancels OCTA grants totaling \$4,729,800.
OCTA	\$1,950,000	October 21, 2016	CP-3455 engineering design of the Lower Ortega Project.	Public Works applies for engineering design funding.

APPENDIX C

LOWER ORTEGA PROJECT - Expenditures (Planned & Actual)				
Source	Amount	Date	Purpose	Action(s)
OCTA	\$1,050,000	April 8, 2013	M2 Grant 13-SJCP-ACE-3657 provides funds for engineering design of the Lower Ortega Project.	City of San Juan Capistrano applied for M2 Grant funds.
City of San Juan Capistrano Capital Improvement Program (CIP-14107)	\$911,013	November 5, 2013	To prepare plans, specifications, and cost estimates for the Lower Ortega Project.	Approved Personal Services Agreement with HDR Engineering, Inc in conjunction with Resolution 13-11-05-02.
City of San Juan Capistrano Capital Improvement Program (CIP-14107)	\$1,545,000	December 15, 2015	To prepare plans, specifications, and cost estimates for the Lower Ortega Project.	Approved Personal Services Agreement with Anderson-Penna Partners, Inc. This approval was later cancelled by the City Council with Resolution 16-01-05 adopted on January 5, 2016.
Capistrano Circulation Fee Program	\$185,170	February 7, 2017	OCTA grant reimbursement.	The San Juan Capistrano City Council directed the City Manager to appropriate \$185,170 from the City's Circulation Fee Program to reimburse OCTA for funds advanced for project administration that were determined to be ineligible. This amount included \$10,000.00 earned interest.