

Memorandum

TAB 25

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 18, 2016

From:

Susan Bransen
SUSAN BRANSEN
Executive Director



Subject: TOLL FACILITY APPROVAL REQUEST – INTERSTATE 405 IMPROVEMENT PROJECT IN ORANGE COUNTY

ISSUE:

The Orange County Transportation Authority (OCTA) requested the Commission's approval to develop and operate a high-occupancy toll facility on Interstate (I) 405 between State Route (SR) 73 and I-605 in Orange County. Should the Commission, pursuant to Assembly Bill 194 (Frazier, 2015), approve OCTA's request?

RECOMMENDATION:

Staff recommends that the Commission approve OCTA's request to develop and operate a high occupancy toll facility on I-405 between SR 73 and I-605 in conjunction with its proposed I-405 Improvement Project as specified in the application received on April 1, 2016. This recommendation is based on information provided by OCTA and, after considering testimony provided at the public hearing held on April 28, 2016, staff finds that the application meets the eligibility criteria required by AB 194.

The proposed project will improve the corridor's performance by increasing passenger throughput and reducing delays. In addition, the proposed project capital cost expense estimate is \$1.9 billion, and will be funded with local sales tax M2 funding, state and federal funding, and the proceeds of non-recourse toll revenue-backed obligations using a direct TIFIA loan and/or toll revenue bonds. Should the project suffer financial setbacks, the application states that OCTA will use additional toll revenue bonds or local sales tax funding.

BACKGROUND:

On October 9, 2015, Governor Brown signed into law Chapter 687, statutes of 2015 (AB 194), delegating to the Commission the legislative responsibility to approve the tolling of transportation facilities in California. Section 149.7 of the California Streets and Highways Code, as amended by AB 194, authorizes regional transportation agencies or the California Department of Transportation (Caltrans) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight.

Applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission. At its March 2016 meeting, the Commission adopted Toll Facility Guidelines (guidelines) giving direction to applicants for the development and operation of toll facilities.

The Commission's adopted guidelines state that, after the Commission has approved a project, it will have no further role in reviewing or approving changes to the project except at the request of the sponsor agency. If OCTA finds it necessary or appropriate to make changes to the toll facility project after approval, the Commission expects that the agency will request approval of the change by submitting a supplement to the project application setting forth a description of the change and the reasons for it.

OCTA Toll Facility Application – I-405 Improvement Project

On April 1, 2016, OCTA submitted an application pursuant to AB 194 to develop and operate a high-occupancy toll facility between SR 73 and I-605 in conjunction with its proposed I-405 Improvement Project (project). The \$1.9 billion¹ project will add one general purpose lane in each direction on the I-405 from Euclid Street to the I-605 interchange. The proposed project will also add a lane in each direction of I-405 from SR-73 to SR-22 to be managed jointly with the existing high occupancy vehicle (HOV) lanes as the 405 Express Lanes with two lanes in each direction between SR-73 and I-605. The project also includes replacement of 18 bridges over the freeway, as well as interchange and arterial improvements in the vicinity of the freeway.

According to OCTA, a design-build procurement approach will be utilized to deliver the proposed project. Procurement of a design-build contractor is currently underway with contract award anticipated in November 2016 and construction completion in 2022. The \$1.9 billion project is planned to be funded as follows:

Source	Funding Amount (In Thousands)
Orange County M2 Sales Tax	\$1,011,352
Various Federal Funds	\$45,648
TIFIA Loan/Toll Revenue Bonds	\$561,000
SHOPP*	\$82,000
M2 Sales Tax/TIFIA funding (<i>see footnote</i>)	\$200,000
Total	\$1,900,000

* Caltrans has committed \$82 million from the State Highway Operation and Protection Program (SHOPP).

OCTA states that it anticipates receiving up to \$561 million from a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, to be repaid with toll revenues. For any

¹ At the time OCTA submitted its application, the project cost estimate was \$1.7 billion. On May 12th, 2016, OCTA sent a letter to the Commission indicating that, after a federally-required second cost estimate review for the project, the final cost estimate for the project is \$1.9 billion. OCTA plans to fully cover the updated cost estimate through a combination of Measure M2 local sales tax funds and federal TIFIA financing authority. This staff report is updated to reflect the new information provided by OCTA.

amount less than \$561 million the project receives from the TIFIA loan, OCTA will seek toll revenue bonds secured by the net revenues from the Express Lanes.

COMMISSION APPROVAL CONSIDERATIONS

Minimum Criteria

For the Commission to approve a proposed toll facility, AB 194 requires the Commission to find, at a minimum, that the application meets the following criteria:

(1) A demonstration that the proposed toll facility will improve the corridor's performance by, for example, increasing passenger throughput or reducing delays for freight shipments and travelers, especially those traveling by carpool, vanpool, and transit.

The application includes a copy of the project's Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) which provides substantial information regarding increases in throughput and reduction in delay for freight, travelers, and those ride sharing. The application summarizes many of the benefits included in the Final EIR/EIS that demonstrate the proposed project will improve the corridor's performance, including:

- Reducing general purpose lane travel times from 133 minutes to 29 minutes (2040 No-Build vs Project scenario);
- Reducing Express Lane travel time from 121 minutes to 13 minutes (2040 No-Build vs Project scenario);
- Increasing throughput in the corridor by 23 to 50 percent;
- Reducing annual vehicle hours of delay in the corridor by 2 million hours in the opening year and 78 million hours in 2040;
- Improving safety by addressing operational and geometric deficiencies, reducing congestion and reducing emergency vehicle access time to freeway incidents;
- Generating excess toll revenues that will be reinvested in the corridor.

(2) A requirement that the proposed toll facility is contained in the constrained portion of a conforming regional transportation plan prepared pursuant to Section 65080 of the Government Code.

The application states that the I-405 Improvement Project is included in the 2012 Regional Transportation Plan adopted by the Southern California Association of Governments.

(3) For projects involving the state highway system, evidence of cooperation between the applicable regional transportation agency and Caltrans.

The application states that OCTA and Caltrans are developing and implementing in partnership the I-405 Improvement Project. The Caltrans District 12 Director approved the Final EIR/EIS (dated March 26, 2015) and the Final Project Report (dated June 15, 2015). Further, Caltrans has approved, signed, and published the Record of Decision (signed May 15, 2015) and signed the Notice of Determination (June 17, 2015). OCTA and Caltrans jointly developed and agreed to the

“I-405 Project Implementation Preliminary Agreement in Terms and Conditions as of April 16, 2015.” This agreement specifies roles in project delivery, identifies project funding and financing, provides conditions for Express Lane operations, and presents a framework for use of net excess revenues. Finally, OCTA and Caltrans executed a Cooperative Agreement establishing roles and responsibilities for implementation of the project.

(4) A discussion of how the proposed toll facility meets the requirements of Streets and Highways Code Section 149.7.

According to OCTA, the I-405 Improvement Project meets the minimum and additional requirements of Section 149.7 of the Streets and Highways Code. For example, the application describes the following actions to ensure compliance:

- OCTA and the California Highway Patrol (CHP) have met on several occasions to discuss an agreement for enforcement services related to the toll facility and reimbursement to CHP for its costs. The application states that an agreement will be reached before the proposed Express Lanes are open to traffic;
- OCTA and Caltrans have an initial agreement addressing “all matters related to design, construction, maintenance, and operation of the toll facility, including, but not limited to, liability, financing, repair, rehabilitation, and reconstruction” and reimbursement of Caltrans expenses;
- OCTA is committed to managing the revenue generated by the tolls to cover debt obligations of the toll facility and “development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility” with all remaining funds used in the corridor pursuant to an expenditure plan for net excess revenues;
- OCTA will include required language in the necessary documents when it issues bonds to finance construction and construction-related expenditures that the bond must not pledge the full faith and credit of the State of California;
- OCTA has met and coordinated on numerous occasions with all jurisdictions through which the proposed Express Lanes will pass and will continue to do so, as needed, for the life of the Project.

(5) A complete project initiation document for the proposed toll facility.

The application includes a copy of the complete project initiation document.

(6) A complete funding plan for development and operation of the toll facility.

The Commission interprets this minimum criterion to mean that all funding sources are identified and the applicant has a plan for securing these funds. A complete funding plan does not mean that all financing has been secured, as it is possible some financing sources may not be available until the project sponsor has authority to develop and operate the toll facility, which is granted only

upon approval by the Commission. The application contains a significant discussion of the funding plan for the project, including cost estimates, identified funding sources, and alternative options if either the costs increase or the funding sources are less than anticipated.

Additional Considerations

The Commission's guidelines specify that the Commission will consider all provided information to determine whether to approve the proposed toll facility. Accordingly, in conjunction with responding to the statutorily-defined minimum criteria, the guidelines encourage applicants to provide more information than that necessary to meet the minimum criteria. The guidelines request that, whenever applicable and possible, applicants provide supplemental information for the Commission to consider. The OCTA Toll Facility Application includes a significant amount of supplemental information in support of the I-405 Express Lanes.

Compliance with State Law: The application states that the proposed project is consistent with established standards, requirements, and limitations that apply to toll facilities in state law, such as eminent domain law, state highway design standards, and statutory design-build procurement requirements.

System Compatibility: The application states that the proposed project is consistent and compatible with the present and planned transportation system and specifies the regional planning documents within which the project is included.

Corridor Improvement: AB 194 specified the Legislature's intent that highway tolling should be employed for the purpose of optimizing the performance of the transportation system on a transportation corridor and should not be employed strictly as a revenue generating facility. With that in mind, the application includes a discussion that demonstrates that the proposed toll facility will significantly improve the corridor's performance.

OCTA cites a 2013 report prepared by FHWA which notes that the I-405 had the highest average annual daily traffic of any freeway in the nation. The purpose of the proposed project is to address the current deficiencies on the I-405 corridor, such as:

- The general purpose and HOV lanes peak-period traffic demand exceeds available capacity;
- The general purpose traffic lanes and interchanges have geometric, storage, and operational capacity deficiencies;
- The freeway has limitations in detecting traffic incidents and providing rapid response and clearance due to lack of capacity and technological infrastructure.

The application states that, once complete, the proposed project will reduce commute time, encourage shared rides and public transit, increase safety and economic productivity, and enhance the quality of life for Southern California residents and visitors.

Technical Feasibility: The application describes the type, size, and location of the proposed project, all proposed interconnections with other transportation facilities, and the communities that may be affected. In addition, as noted above, the application outlines the time frame for

project completion and presents a reasonable discussion on operation plans for the proposed facility, given the point at which the project is in its development. Finally, the application states that there is a process in place to develop a maintenance plan with Caltrans and define assumptions and responsibilities during the operation of the project.

Financial Feasibility: As noted above, the application describes the funding sources OCTA expects to use for the proposed project. According to OCTA, they will control cost increases through utilization of design-build procurement. Against the event of cost increases during construction, higher than anticipated interest rates, or lower proceeds from the TIFIA loan/toll revenue bonds, OCTA states that an additional \$243 million in M2 county sales tax funding is available. Should there be a revenue shortfall during operations of the Express Lanes, OCTA intends to fund a debt service reserve fund, operations and maintenance reserve fund, and major maintenance reserve fund. These reserve funds will also enhance the credit for the toll revenue obligations.

Community Support: The application states that there is widespread support for the proposed project as evidenced by the OCTA board approval of the project. There is some opposition to tolling and increasing the HOV occupancy requirement for free use of the Express Lanes, as well as some localized opposition to specific aspects of the project. The Cities of Long Beach and Seal Beach have filed suit against Caltrans over the adequacy of the Final EIR. The application states that OCTA and Caltrans are working to resolve this litigation. According to OCTA, a stay or injunction prohibiting the project from moving forward has not been issued.

PUBLIC HEARING

AB 194 requires that, prior to approving an application, the Commission conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment. The Commission held a public hearing to receive public comment on the proposed Express Lanes related to this application on April 28, 2016. The hearing was held in the Neighborhood Community Center located at 1845 Park Avenue, Costa Mesa, California. Commissioners Dunn and Inman were present for the hearing.

Following a presentation by Caltrans and OCTA on the project, the Commission received public comment from three individuals. One presenter spoke in support of the project. One presenter raised concerns that the preliminary traffic and revenue study did not include an analysis of diverted trips and impacts to local streets adjacent to the proposed project. The final presenter described the risk of moving forward with a project that is still involved in CEQA litigation, suggesting that OCTA and Caltrans are headed down an expensive and risky path because they may have to perform additional work, delaying the start of the project and increasing costs should the City of Long Beach prevail.

OCTA's Toll Facility Application can be found at:

http://www.catc.ca.gov/Hearings/AB_194_Hot_Lanes/OCTA_Toll_Facility_Application.pdf

Attachment A – CTC Resolution G-16-16

Attachment B – Comments from April 28, 2016 Public Hearing

Attachment C – Assembly Bill 194 (Frazier, 2015)



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May 12, 2016

**Mr. Bob Alvarado
Chairman
California Transportation Commission
1120 N Street, MS-52
Sacramento, California 95814**

**Subject: Interstate 405 Improvement Project in Orange County Toll Facility
Project Request – Cost Estimate Information**

Dear Chair Alvarado,

The Orange County Transportation Authority (OCTA) Board of Directors appreciates the California Transportation Commission's (CTC) consideration of the toll facility project request for the Interstate 405 Improvement Project in Orange County, which was developed consistent with AB 194 (Chapter 687, Statutes of 2016) and the toll facility guidelines adopted by the CTC on March 16, 2016. As one of the largest, most complex transportation projects in the state, OCTA is working closely with the Federal Highway Administration (FHWA) and the California Department of Transportation (Caltrans) to proceed with project implementation later in 2016, with completion scheduled in 2022. CTC approval of the toll facility is critical to this project delivery timeline.

The Interstate 405 Improvement Project will add one general purpose (GP) lane in each direction, and one express lane in each direction which will be combined with the existing high-occupancy vehicle (HOV) lane to form a dual express lanes facility. This project also allows for numerous bridge and arterial improvements. When finished, the project will provide multiple corridor improvements and facilitate improved travel times and increased mobility options. The GP lanes are primarily funded by Orange County's local sales tax measure, Measure M2, and the express lanes with toll revenue.

Since OCTA's submittal of the Interstate 405 Improvement Project toll facility project request application, OCTA worked with Caltrans and FHWA on a second cost estimate review (CER) for the project, as FHWA requires on all major projects with an estimated total program cost greater than \$500 million. This construction-level CER is to occur as close as possible to the start of construction. In completing the CER, OCTA, FHWA and Caltrans sought to produce the most up-to-date realistic estimated costs of the project, providing a more stable cost estimate through its construction. Through this process, OCTA included the most updated project information, local and regional construction market experience, and consideration of federal requirements. The project team, which consisted of

Mr. Bob Alvarado
May 12, 2016
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OCTA, FHWA and Caltrans, also engaged OCTA's program management consultant in this process. The CER team reviewed all aspects of scope related to structures, roadway elements, right-of-way, utilities, mitigations, engineering, construction engineering, contract administration, contingencies, and inflation rates.

On May 11, 2016, the findings from the CER were presented and approved by the OCTA Finance and Administrative Committee. Within the CER, project costs for the design-build contract were escalated to the mid-point of the construction period. In addition, a quantitative analysis of the identified risks and the probabilities of these risks occurring were modeled. Through the CER analysis, the 90 percent probability cost estimate was determined to be \$1.82 billion. OCTA also is including an additional \$80 million for right-of-way and utility cost contingency. This addition is based on more recent right-of-way settlements and utility costs performed on other major projects OCTA is delivering. Therefore, the final cost estimate for the Interstate 405 Improvement project is now estimated at \$1.9 billion.

OCTA plans to fully cover the updated cost estimate through a combination of Measure M2 and federal financing authority through the Transportation Infrastructure Finance and Innovation Act. If you need any additional information or have any questions about the updated CER, please feel free to contact Jeff Mills, Program Manager, Highway Programs, at (714) 560-5925.

Sincerely,



Darrell Johnson
Chief Executive Officer

DJ:ke

c: Members, California Transportation Commission
Vincent Mammano, Federal Highway Administration – California Division
Ryan Chamberlain, Director, Caltrans District 12
Susan Bransen, Executive Director, California Transportation Commission

**CALIFORNIA TRANSPORTATION COMMISSION
Application Approval**

Orange County Proposed Toll Facility

May 18, 2016

RESOLUTION G-16-16

- 1.1 WHEREAS Assembly Bill 194 (Frazier, 2015) amended Section 149.7 of the Streets and Highways Code authorizing regional transportation agencies or the California Department of Transportation (Caltrans) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight, and
- 1.2 WHEREAS Assembly Bill 194 specifies that applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission, and
- 1.3 WHEREAS Assembly Bill 194 requires that for each eligible application the Commission shall conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment, and
- 1.4 WHEREAS the Commission adopted guidelines at its March 16, 2016, meeting to set forth the Commission's policy for carrying out its role in implementing Assembly Bill 194 and to assist the regional transportation agencies and Caltrans when contemplating an application to the Commission for approval to develop and operate high-occupancy toll lanes or other toll facilities, and
- 1.5 WHEREAS the Orange County Transportation Authority (OCTA) submitted on April 1, 2016, an *Application for Toll Facility: Interstate 405 Improvement Project* to the Commission for review and approval in accordance with Assembly Bill 194 and the Commission's Toll Facility Guidelines, and
- 1.6 WHEREAS the Commission held a hearing to receive public comment on the proposed toll facility related to this application on April 28, 2016, in Costa Mesa, California, and
- 1.7 WHEREAS Commission staff reviewed OCTA's application for compliance with Assembly Bill 194 and the Commission's Toll Facility Guidelines, and
- 1.8 WHEREAS this review found that the application meets the minimum criteria identified in Assembly Bill 194, and
- 1.9 WHEREAS, in addition, the application states OCTA and the California Highway Patrol (CHP) have met on several occasions to discuss an agreement for enforcement services related to the

toll facility and reimbursement to CHP for its costs, and an agreement will be reached before the proposed Express Lanes are open to traffic, and

- 1.10 WHEREAS, the application states OCTA and Caltrans have an initial agreement addressing all matters related to design, construction, maintenance, and operation of the toll facility, including, but not limited to, liability, financing, repair, rehabilitation, and reconstruction as well as reimbursement of Caltrans expenses, and
 - 1.11 WHEREAS, the application states OCTA is committed to managing the revenue generated by the tolls to cover debt obligations of the toll facility and development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility, with all remaining funds used in the corridor pursuant to an expenditure plan for net excess revenues, and
 - 1.12 WHEREAS, the application states that OCTA and Caltrans will develop the expenditure plan for net excess revenues in partnership, and
 - 1.13 WHEREAS, the application states OCTA will include required language in the necessary documents when it issues bonds to finance construction and construction-related expenditures that the bond must not pledge the full faith and credit of the State of California, and
 - 1.14 WHEREAS, the application states OCTA has met and coordinated on numerous occasions with all of the jurisdictions through which the proposed Express Lanes will pass and will continue to do so, as needed, for the life of the Project, and
 - 1.15 WHEREAS, based on its review of the application, and considering the testimony provided at the public hearing, Commission staff recommended that the Commission approve the proposed toll facility in accordance with Assembly Bill 194 and the Commission's adopted guidelines,
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission finds OCTA's *Application for Toll Facility: Interstate 405 Improvement Project* consistent with Assembly Bill 194 and the Commission's Toll Facility Guidelines, and
 - 2.2 BE IT FURTHER RESOLVED that the Commission approves OCTA's application to develop and operate high-occupancy toll lanes in conjunction with its I-405 Improvement Project as described, and
 - 2.3 BE IT FURTHER RESOLVED that if OCTA finds it necessary or appropriate to make changes to the toll facility project after approval, the Commission expects that the agency will request approval of the change by submitting a supplement to the project application setting forth a description of the change and the reasons for it.

Diana Carey
I-405 Corridor Cities
4-28-16

Thank you Commissioners,

Stantec completed the 'Toll Revenue Study' and recently presented at various OCTA meetings. A great deal of attention was paid to the travel demand forecasts of the I-405 mainline and the HOT lanes. Several tolling scenarios were presented and each was modelled and the result was vetted to ensure consistency.

However, the corridor cities are extremely disappointed that the analyses failed to extract available data related to potential impacts on adjacent local streets due to diverted freeway trips. This is a regional freeway project; therefore, the same level of attention needs to be given to adjacent local traffic in the region.

We seem to be ready to make major decisions related to funding the project based on revenue potential of the project, however, the lack of the local circulation effect of each alternative will affect the financial revenue projections.

You do not have all the information to be able to make a sound decision on this project. An operational summary of impacts must be presented for each of these modelling alternatives that identifies the effect on local circulations.

Thank you.

Brian Starr
Orange County Business Council
4-28-16

Thank you Commissioners,

OCBC has been involved with the development of the project for years, and are in support of the proposal because of the economic benefits it will provide.

The mobility of the region is critical; this will be the second public highway in the county with tolls, and the county has benefited from the first.

We want to encourage OCTA to think about the connectivity of the entire region including other counties.

We encourage the commission to move forward with the approval of the project.

Thank you.

April 28, 2016

VIA PERSONAL DELIVERY

Commissioner Lucy Dunn
Executive Director Susan Bransen
California Transportation Commission
Neighborhood Community Center
1845 Park Avenue
Costa Mesa, CA 92627-2711

Re: Comments on Proposed OCTA I-405 Improvement Project

Dear Commissioner Dunn and Ms. Bransen:

This letter is submitted on behalf of the City of Long Beach ("Long Beach"). Long Beach wishes to reiterate its objection to the I-405 Improvement Project ("Project") due to the failure of both the State of California Department of Transportation ("Caltrans") and the Orange County Transportation Authority ("OCTA") to comply with the California Environmental Quality Act ("CEQA"). As a reminder, both Long Beach and the City of Seal Beach ("Seal Beach") have filed legal challenges to the actions of Caltrans and OCTA with regard to the approval of the Project and the preparation of a fatally defective Environmental Impact Report ("EIR"). Those lawsuits are entitled *City of Long Beach v. State of California Department of Transportation, etc. et al*, Orange County Superior Court Case Number 30-2016-00835402-CU-WM-CXC and *City of Seal Beach v. State of California Department of Transportation, etc. et al*, Orange County Superior Court Case Number 30-2015-00799223-CU-WM-CXC. These cases are collectively referred to as the "CEQA Litigation." The CEQA Litigation identifies countless fundamental flaws in the CEQA proceedings conducted by Caltrans and OCTA. They are too numerous to outline here. For ease of reference, the Petition for Writ of Mandate filed in the Long Beach action is attached as Exhibit "A," and is incorporated herein by this reference.

Long Beach takes issue with OCTA's Application for Toll Facility and the representations made therein.

In Section 6.D. Environmental Considerations, OCTA represents that the Project is consistent with CEQA. That is flatly wrong. The EIR is fatally flawed and the processing of the Project violated numerous of CEQA's procedural requirements.

In Section 6.E. Community/Stakeholder Support, OCTA references the CEQA Litigation and then states: "OCTA and Caltrans are working to resolve this litigation." Long Beach does not feel this is an accurate representation. OCTA and Caltrans have caused the litigation to be needlessly prolonged by filing motions to transfer the cases to different courts. The litigation has

Commissioner Lucy Dunn
April 28, 2016
Page 2

been pending for nine months and should have already been decided by the trial court. The Long Beach case does not even have a judge assigned to it yet as a direct result of motions filed by OCTA and Caltrans to prevent the case from being heard in Los Angeles County, where it was properly commenced. After charging Long Beach over \$50,000 for the preparation of the Administrative Record, Caltrans and OCTA have failed to provide Long Beach with any Administrative Record. Neither Caltrans nor OCTA has shown any genuine interest in trying to settle the case.

The remedy provided by CEQA when violations are found is to go back to square one. Project approvals are set aside and not reconsidered until the violations are corrected. OCTA and Caltrans are proceeding with the Project in advance of the court decision at their own risk. *Kribel v. City Council* (1980) 112 Cal.App.3d 693; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

In short, Long Beach submits that OCTA and Caltrans are headed down an expensive and risky path. Long Beach respectfully requests that Commission not condone these actions.

Very truly yours,

RUTAN & TUCKER, LLP



M. Katherine Jenson
Special Counsel to the City of Long Beach

MKJ:lr

Exhibit "A" - Long Beach Petition for Writ of Mandate

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12 Attorneys for Petitioner
CITY OF LONG BEACH

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF LOS ANGELES

16 CITY OF LONG BEACH, a municipal
corporation,

17 Petitioner,

18 v.

19 STATE OF CALIFORNIA DEPARTMENT
20 OF TRANSPORTATION; ORANGE
COUNTY TRANSPORTATION
21 AUTHORITY; and DOES 1-10, inclusive

22 Respondents.

23 ORANGE COUNTY TRANSPORTATION
24 AUTHORITY; and ROES 11-20, inclusive

25 Real Parties In Interest

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Superior Court of California
County of Los Angeles

JUL 16 2015

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

Case No.

BS156931

PETITION FOR WRIT OF MANDATE

[California Environmental Quality Act
("CEQA"), Pub. Res. Code §§ 21168,
21168.5]; Code of Civ. Proc., §§ 1085, 1094.5]

JS
Chalfant

1 Petitioner City of Long Beach ("Long Beach") respectfully petitions this Court for issuance
2 of a writ of mandate pursuant to Code of Civil Procedure ("CCP") section 1085 and Public
3 Resources Code ("PRC") § 21168.5, or in the alternative pursuant to CCP section 1094.5 and PRC
4 section 21168, directed at the State of California Department of Transportation ("Caltrans"), to
5 require Caltrans to rescind its approval of the I-405 Improvement Project ("Project"), and to take no
6 further action with regard to the Project until such time as it complies with the California
7 Environmental Quality Act ("CEQA") (Pub. Res. Code §§ 21000 *et seq.*). Long Beach further
8 petitions this Court for the issuance of a writ of mandate pursuant to CCP section 1085 and PRC
9 section 21168.5, or in the alternative pursuant to CCP section 1094.5 and PRC section 21168,
10 directed at Orange County Transportation Authority ("OCTA"), to require OCTA to rescind its
11 approval of its actions implementing the Project, and to take no further action with regard to the
12 Project until such time as it complies with CEQA.

13 INTRODUCTION

14 1. This action challenges Caltrans' decision to approve a \$1.7 billion dollar project to
15 widen an approximately 16-mile stretch of the I-405 between State Route 73 ("SR-73") and
16 Interstate 605 ("I-605") (the "Project"), and OCTA's actions in implementing the Project. The
17 Project would consist of the construction and operation of a total of four (4) new lanes (consisting
18 of a tolled express lane in each direction and a new general purpose lane in each direction), as well
19 as various on-ramp, off-ramp and other ancillary improvements.

20 2. While Long Beach does not oppose improvements to the I-405 *per se*, it is essential
21 that the potential environmental impacts of any such project be fully and properly evaluated, and
22 that appropriate and enforceable mitigation measures be imposed to mitigate such impacts to the
23 extent feasible, as required by CEQA.

24 3. In approving the Project, Caltrans failed to comply with CEQA's procedural and
25 substantive requirements in numerous respects. In fact, Caltrans apparently formally approved the
26 Project - behind closed doors and in secret - before it even released the Final Environmental
27 Impact Report/Environmental Impact Statement ("EIR") for the Project, and months before it
28 adopted the Findings, Statement of Overriding Considerations, and Mitigation and Monitoring

1 Reporting Plan required by CEQA.

2 4. Caltrans' repeated disregard of CEQA's requirements resulted in an incomplete and
3 inaccurate EIR that fails as an informational document. The EIR fails to identify and disclose the
4 Project's true environmental impacts, and, as a result, fails to identify mitigation measures and/or
5 project alternatives that could avoid those impacts.

6 5. Long Beach, as well as numerous other public agencies and other community
7 groups and individuals, made numerous attempts (both informally and through formal comment
8 letters) to bring the CEQA deficiencies raised in this Petition to Caltrans' attention and to
9 convince Caltrans to correct such deficiencies. Caltrans, however, rejected or ignored the
10 concerns expressed by Long Beach and others, and approved the Project without compliance with
11 CEQA.

12 6. Caltrans prejudicially abused its discretion in certifying the EIR and approving the
13 Project. Accordingly, Caltrans' approval of the Project and certification of the Final EIR must be
14 set aside.

15 7. Likewise, Respondent and Real Party in Interest OCTA, a co-sponsor and/or
16 proponent of the Project and a responsible agency under CEQA, has prejudicially abused its
17 discretion in approving and beginning to implement the Project without complying with CEQA.

18 PARTIES

19 8. Long Beach is a charter city organized and existing under the laws of the State of
20 California and the Long Beach City Charter. Long Beach and its residents have a beneficial
21 interest in Caltrans' and OCTA's lawful performance of their duties, particularly with respect to
22 certification of an EIR for a project that is directly located, in part, within Long Beach's
23 boundaries, and which has environmental effects within Long Beach. Among other adverse
24 impacts of the Project, residents of Long Beach will experience a dramatic increase in traffic on
25 Long Beach streets due to bottlenecks that will be created when the additional Project general
26 purpose lanes and toll lanes terminate at the I-405 and I-605 Freeways near the Long Beach border
27 and drivers either sit and idle in traffic on the freeway or attempt to use Long Beach streets as a
28 shortcut around the new traffic the bottlenecks will create. This massive increase in local street

1 traffic will cause higher repair and resurfacing costs in the future for damage to Long Beach
2 streets, and will increase adverse air quality, traffic, noise and health impacts on Long Beach
3 residents due to increased traffic. In addition, Long Beach and its residents will be adversely
4 affected by the environmental impacts of the construction, operation, and maintenance of the
5 Project. Thus, Long Beach is beneficially interested in Caltrans' and OCTA's lawful performance
6 of their duties.

7 9. Caltrans is a state agency and was the lead agency responsible for approving the
8 Project under CEQA.

9 10. OCTA is a governmental entity that serves as Orange County's primary
10 transportation agency. OCTA is referred to in some of the Project documents as the "Project
11 Proponent," and will apparently take the lead in the construction and implementation of the
12 Project. As such, OCTA is a "responsible agency" under CEQA and is also a real party in interest.

13 11. Long Beach is ignorant of the true names of Respondents DOES 1-10 ("Doe
14 Respondents"), inclusive, and therefore sues said Doe Respondents by such fictitious names.
15 Long Beach is informed and believes and thereon alleges that each of the fictitiously named Doe
16 Respondents has or may have an interest in the subject matter of this action. Long Beach will
17 amend this Petition to set forth the true names and capacities of such Doe Respondents if and
18 when the same have been ascertained.

19 12. Long Beach is ignorant of the true names of Real Parties in Interest ROES 11-20
20 ("Roe Real Parties In Interest"), inclusive, and therefore sues said Roe Real Parties in Interest by
21 such fictitious names. Long Beach is informed and believes and thereon alleges that each of the
22 fictitiously named Roe Real Parties in Interest has or may have an interest or stake in the subject
23 matter of this action. Long Beach will amend this Petition to set forth the true names and
24 capacities of such Roe Real Parties in Interest if and when the same have been ascertained.

25 JURISDICTION AND VENUE

26 13. This Court has jurisdiction over this proceeding pursuant to CCP section 1085 and
27 PRC section 21168.5, or alternatively, CCP section 1094.5 and PRC sections 21168.

28 14. Venue in this Court is proper pursuant to CCP section 393 and/or section 395, in

1 that the Project will involve construction in Los Angeles County and will create significant
2 environmental impacts in Los Angeles County.

3 EXHAUSTION OF ADMINISTRATIVE REMEDIES

4 15. All facts and issues raised in this Petition were presented to Caltrans and OCTA
5 prior to the approval of the Project. Long Beach has exhausted all available administrative
6 remedies, and submitted timely objections to Caltrans' approval of the Project. In addition, on
7 July 15, 2015, Long Beach sent written notice to Caltrans and OCTA pursuant to PRC section
8 21167.5 of its intent to file this Petition. The notice was sent to Respondents electronically, and
9 was also sent by mail. A true and correct copy of the notice is attached hereto as Exhibit A.

10 BACKGROUND AND GENERAL ALLEGATIONS

11 16. The Project contemplates widening the I-405 between SR-73 and I-605. This
12 approximately 16-mile-long Project corridor is primarily located in Orange County on the I-405
13 and traverses the cities of Costa Mesa, Fountain Valley, Huntington Beach, Westminster, Garden
14 Grove, Seal Beach, Los Alamitos, Long Beach, and the community of Rossmoor. Estimated to
15 cost \$1.7 billion dollars, per Caltrans' own calculations, the daily vehicle miles travelled ("VMT")
16 for the improved segment of freeway will increase by 39% (over 1.5 million VMT) over the
17 baseline condition, and by 22% (over 1 million VMT) compared to the "future without project"
18 condition.

19 17. In fall of 2009, Caltrans issued a Notice of Preparation ("NOP") for an EIR for the
20 Project and invited input on the scope of the EIR. In response, on October 22, 2009, Long Beach
21 submitted comments requesting that the EIR evaluate various potential traffic impacts, including
22 impacts to specific traffic facilities within and around Long Beach.

23 18. Caltrans released the Draft EIR ("DEIR") in May of 2012. The DEIR presented
24 four (4) alternative projects, including a No Build Alternative. Alternative 1 involved adding a
25 new general purpose lane in each direction. Alternative 2 would have added two general purpose
26 lanes in each direction. Alternative 3 (the "Project") included adding one general purpose lane
27 and one tolled express lane in each direction.

28 19. In June and July 2012, Long Beach submitted comments on the DEIR, and

1 expressed its disappointment that the issues raised in its comments on the NOP had not been
2 addressed. For example, the DEIR failed to evaluate potential traffic impacts within Long Beach.

3 20. Thereafter, Caltrans prepared a Supplemental Traffic Study to analyze traffic
4 impacts in portions of Los Angeles County, including Long Beach, and a Supplemental DEIR
5 (“SDEIR”) was circulated for public review beginning June 2013.

6 21. On August 12, 2013, Long Beach submitted comments on the SDEIR, including a
7 traffic analysis prepared by Iteris. Long Beach again expressed disappointment that Caltrans had
8 failed to adequately respond to Long Beach’s concerns and comments. In particular, Long Beach
9 noted serious deficiencies in the impact analysis and the mitigation measures proposed to address
10 traffic impacts within Los Angeles County. To remedy those deficiencies, Long Beach proposed
11 alternative mitigation measures developed by its traffic engineers.

12 22. Many other agencies and other parties also submitted extensive comments on the
13 DEIR and SEIR, pointing out numerous flaws in Caltrans’ analysis, as well as its failure to follow
14 CEQA’s procedural mandates.

15 23. Despite the extensive comments submitted on the Project, Caltrans and OCTA
16 moved full speed ahead, repeatedly demonstrating a pre-commitment to proceed with the Project -
17 and specifically, Alternative 3 - before completing the environmental review process required by
18 CEQA. For example:

19 a. OCTA began pursuing revisions to the Southern California Association of
20 Governments (“SCAG”) Regional Transportation Plan (“RTP”)/Sustainable
21 Communities Strategy (“SCS”) to incorporate the Project (Alternative 3) even
22 before the DEIR/EIS was circulated.

23 b. On July 25, 2014, Caltrans issued a press release indicating it had already
24 determined and informed OCTA that Alternative 3 was the “Preferred Alternative.”

25 c. As far back as July 2010, Caltrans began the process of seeking approval
26 from the Federal Highway Administration of the toll lanes contemplated by
27 Alternative 3.

28 d. OCTA co-sponsored a bill allowing it to use design-build procurement for

1 the "I-405 Improvement Project," which was introduced to the State Legislature on
2 February 15, 2003.

3 e. On or about October 22, 2014, OCTA initiated solicitations for design-build
4 construction services for the Project on its website. The description of the
5 proposed Project included "dual tolled express lanes in each direction on the I-405
6 from SR-73 to I-605."

7 f. At its April 28, 2015 meeting, OCTA made clear that Alternative 3 was
8 preordained, by approving a term sheet with Caltrans for the construction and
9 operation of Alternative 3. OCTA's Chair also confirmed that the decision was
10 already made, remarking to the press: "at this point, it is not a discussion about tolls
11 or no tolls. ... If we don't do it, Caltrans is going to do it."

12 g. On May 4, 2015, OCTA's Regional Planning and Highway Committee
13 authorized the CEO of OCTA to initiate discussions with property owners for the
14 acquisition of property necessary for the Project and approved the selection of a
15 construction management firm for the Project.

16 24. In the meantime, Caltrans rotely continued the environmental review process to
17 justify the decision it had already made. It completed the Final EIR ("FEIR") for the Project on
18 or about March 26, 2015, and thereafter, on April 3, 2015 issued a notice of availability indicating
19 it was available for public review until May 4, 2015.

20 25. On May 4, 2015, Long Beach submitted comments on the FEIR, expressing dismay
21 that Caltrans had already effectively approved the Project and begun implementing it, without
22 completing the CEQA process. Long Beach pointed out a number of specific CEQA violations,
23 including, but not limited to: (1) Caltrans' and OCTA's approval of the Project in advance of the
24 certification of the FEIR and adoption of CEQA Findings and/or a Statement of Overriding
25 Considerations; (2) the FEIR's use of an improper baseline in analyzing the Project's
26 environmental impacts; (3) the FEIR's failure to identify the "thresholds of significance" by which
27 environmental impacts were measured; (4) the FEIR's improper compression of "the analysis of
28 impacts and mitigation measures into a single issue;" (5) the FEIR's failure to adequately analyze

1 air quality impacts; (6) the FEIR's failure to adequately analyze or disclose impacts related to
2 GHG emissions; (7) the FEIR's failure to adequately analyze traffic impacts, or to respond to
3 Long Beach's prior traffic concerns; (8) the FEIR's failure to adequately analyze noise impacts;
4 (9) the FEIR's failure to require clear and enforceable measures to mitigate impacts to Long
5 Beach; (10) the FEIR's failure to acknowledge the Project's growth inducing effects; (11) the
6 FEIR's failure to address water quality impacts to Long Beach; and (12) Caltrans' failure to
7 adequately respond to comments on the DEIR. Long Beach also warned Caltrans that, because of
8 the significant new information added to the FEIR after the circulation of the DEIR, recirculation
9 of the EIR was required. Long Beach also expressed its concern that Caltrans was deleting
10 e-mails related to the Project, thus jeopardizing the ability to produce a complete administrative
11 record relating to its decision to approve the Project. Numerous other parties also submitted
12 comments on the FEIR. Long Beach also submitted a supplemental comment letter regarding a
13 recent court ruling.

14 26. Unbeknownst to Long Beach, at the time the above-described comments were
15 submitted, Caltrans had apparently not only effectively approved the Project, but had already
16 formally done so. According to the Notice of Determination ("NOD") filed for the Project, the
17 Project was approved on March 26, 2015.

18 27. Caltrans' secret approval of the Project was not disclosed until months later,
19 however, because Caltrans failed to comply with the CEQA Guidelines' requirement that a NOD
20 is required to be filed within five (5) working days after a decision to approve a project.
21 (Guidelines, § 15094.) Instead, the NOD was not filed until June 17, 2015, 83 days after the
22 Project was approved.

23 28. Caltrans' approval of the Project further violated CEQA because it preceded - by
24 more than a month - its adoption of CEQA Findings, a Statement of Overriding Considerations,
25 and/or a Mitigation Monitoring and Reporting Program, all of which are required to be adopted by
26 CEQA before a Project is approved. (Guidelines, §§ 15091 [specifying findings required before
27 approval of project], 15093 [statement of overriding considerations], 15097 [mitigation
28 monitoring and reporting].) Although due to the lack of transparency in Caltrans' process, it is not

1 clear exactly when those documents were approved, as all are dated "June 2015."

2 FIRST CAUSE OF ACTION

3 (Petition for Writ of Mandate for Violations of CEQA Against All Respondents and Real
4 Parties in Interest)

5 29. Long Beach hereby incorporates the allegations of the foregoing paragraphs as
6 though set forth in full herein by this reference.

7 30. Pursuant to CEQA, before a public agency approves any discretionary project, it
8 must first assess and publicly disclose the project's potential environmental effects. An agency
9 may not approve a project that has the potential to have significant environmental impacts if there
10 are feasible alternatives or mitigation measures that would avoid or substantially lessen the
11 adverse environmental impacts.

12 31. In doing the things herein alleged, Respondents failed to comply with their
13 mandatory duties under CEQA in several substantial and prejudicial respects, including without
14 limitation, the violations outlined in the following paragraphs.

15 32. Caltrans and OCTA pre-committed to and approved the Project, and specifically
16 "Alternative 3," long before they completed the environmental review process, certified the FEIR,
17 and made all required findings.

18 33. Caltrans approved the Project before adopting the required CEQA Findings,
19 Statement of Overriding Considerations, and Mitigation and Monitoring Reporting Program.
20 OCTA also took actions to implement the Project prior to the certification of the EIR and also
21 without making the findings required of a responsible agency under CEQA.

22 34. The EIR's entire analysis is based upon the wrong baseline comparison. Instead of
23 evaluating the Project against existing physical conditions, as required by CEQA (*see* Guidelines §
24 15125), Caltrans improperly used a speculative "future" baseline. As a result, the EIR failed to
25 disclose the Project's true impacts, and failed to require adequate mitigation to address those true
26 impacts.

27 35. The EIR failed to identify the "thresholds of significance" by which environmental
28 impacts were measured to determine their significance. In fact, Caltrans' response to comments

1 reveals that it intentionally avoided identifying clear standards for determining the significance of
2 potential impacts, as required by CEQA (*see* Guidelines § 15064.7), and instead left conclusions
3 regarding significance to the subjective determination of an unidentified “Project Development
4 Team,” which apparently included OCTA and Caltrans staff, as well as their consultants.

5 36. The EIR improperly compressed its assessment of the Project’s potential
6 environmental impacts by blurring the distinction between Project impacts and the effect of
7 mitigation measures on those impacts. (*See Lotus v. Department of Transportation* (2014) 223
8 Cal. App. 4th 645, 656 [Caltrans violated CEQA by “compressing the analysis of impacts and
9 mitigation measures into a single issue”].)

10 37. The EIR failed to adequately analyze or disclose the Project’s significant air quality
11 impacts. Among other problems, the air quality analysis failed to utilize thresholds of significance
12 developed by the Southern California Air Quality Management District (“SCAQMD”), or any
13 other objective and meaningful threshold of significance. Instead, despite the fact that the Project
14 will dramatically increase the amount of vehicle trips on the I-405, the single page of the EIR
15 devoted to CEQA analysis of air quality impacts arbitrarily concluded that all of the Project’s air
16 quality impacts are less than significant, and that no mitigation is necessary. Further, Caltrans
17 ignored the SCAQMD’s request for a Health Risk Assessment, despite the fact that the Project
18 will cause large numbers of persons living in close proximity to this segment of the freeway to be
19 subjected to significant increases in traffic and the related air quality impacts.

20 38. The EIR’s greenhouse gas (“GHG”) analysis is flawed in that it failed to determine
21 and disclose whether GHG emissions are significant. The analysis completely ignored CEQA
22 Guidelines section 15064.4 - which was adopted in 2010 and provides specific direction regarding
23 the process to be followed in assessing the significance of impacts from GHG emissions - and did
24 not even attempt to identify any threshold of significance by which to evaluate the Project’s GHG
25 impacts. Instead, Caltrans shirked its duty by insisting that it was “too speculative” to make a
26 determination regarding the significance of the Project’s GHG impacts. This refusal to make a
27 determination is particularly egregious, because it is clear that no reasonable analysis could
28 conclude the Project’s GHG emissions will be insignificant. The EIR discloses that GHG

1 emissions will substantially increase with the Project, thus impeding the achievement of state
2 goals requiring a dramatic reduction in GHG emissions. Moreover, the GHG calculations
3 included in the EIR are not supported by substantial evidence, and understate the Project's true
4 GHG emissions.

5 39. The EIR's traffic analysis contains numerous serious flaws in methodology that
6 result in a failure to identify, disclose, and/or mitigate the Project's traffic impacts. For example,
7 but without limitation, the traffic analysis: (1) made unsupported and illogical assumptions
8 regarding traffic flow at the Orange County/Los Angeles County line; (2) improperly relied upon a
9 "single demand forecast" to evaluate different alternatives, without accounting for how those
10 alternatives would influence demand; (3) failed to evaluate all affected routes, or to present an
11 accurate representation of Project impacts along affected routes; (4) failed to adequately address
12 how and to what extent the Project would shift traffic between the I-405 and arterial streets;
13 (5) relied upon unfounded assumptions regarding the extent to which traffic would increase
14 without the Project, while improperly discounting the Project's contribution to future traffic
15 increases; (6) utilized an incorrect "fair share" funding formula; (7) failed to use the correct model
16 (i.e., the Gateway Cities Travel Demand Model) in evaluating traffic impacts in Long Beach and
17 Los Angeles County; (8) failed to use appropriate thresholds of significance; and (9) failed to
18 require adequate mitigation of traffic impacts.

19 40. The EIR's noise analysis is flawed in that it: (1) failed to analyze impacts north of
20 the County border, despite the fact that the Project will significantly increase traffic north of the
21 border; (2) failed to use an appropriate baseline; improperly compressed the analysis of impacts
22 and mitigation measures into a single issue; and (3) relied on an arbitrary decibel level to screen
23 out locations for its analysis.

24 41. The EIR failed to require clear and enforceable measures to mitigate impacts.
25 Among other problems, the EIR relied on agreements that have yet to be negotiated to mitigate
26 traffic impacts within Los Angeles County, and failed to make any provision for the event that an
27 agreement could not be reached. This is particularly troubling because one of the contemplated
28 agreements is between Long Beach and Caltrans/OCTA, and is very unlikely to materialize given

1 the significant dispute between Long Beach and Caltrans regarding the scope of the improvements
2 necessary to mitigate the Project's impacts within Long Beach, as well as what the Project's fair
3 share contribution to those improvements is. The EIR also takes the untenable position that the
4 implementation of T-11, which relates to "improvements at intersections owned by the State of
5 California" that are to "be implemented by Caltrans" (FEIR, p. 4-107) cannot be guaranteed,
6 because those improvements are "outside the control of the project proponent" (OCTA). Caltrans
7 thus improperly disavows responsibility for ensuring that traffic improvements to its own facilities
8 are implemented.

9 42. The EIR fails to acknowledge the growth inducing effects of the \$1.7 billion
10 Project and instead relied on a flawed - and internally inconsistent - idea that because the Project
11 area is built out, the Project will not induce growth. Increasing the capacity of a public facility
12 such as the I-405 falls squarely within the definition of growth-inducing in CEQA Guideline
13 15126.2(d). Further, the premise that the area served by the Project is already "built-out" to the
14 extent that the Project cannot induce growth is contradicted by the EIR's own projection that daily
15 trips in the vicinity of Long Beach will increase by 37% because of new development.

16 43. The EIR completely failed to address potential water quality impacts in Long
17 Beach. The water quality discussion in the EIR was limited to the Orange County portion of the
18 Project, and failed even to mention the Los Angeles Basin Plan, Los Angeles NPDES MS4
19 Permit, and/or Long Beach NPDES MS4 Permit, let alone consider whether the Project would
20 impact compliance with their requirements.

21 44. The EIR failed to disclose that the Project is part of a plan to develop a regional
22 express toll lane network, and/or to describe or analyze the extent to which the Project is related to
23 other toll lane projects. In so doing, Caltrans violated CEQA by engaging in unlawful
24 "piecemealing," i.e. the process of "chopping a large project into many little ones - each with a
25 minimal potential impact on the environment - which cumulatively may have disastrous
26 consequences," in order to avoid meaningful environmental review. (*Bozung v. Local Agency
27 Formation Commission* (1975) 13 Cal.3d 263, 283-284.)

28 45. The EIR fails to provide a complete, accurate, finite, and stable description of the

1 Project. For example, the EIR fails to include complete information regarding the demolition and
2 construction activities the Project will require. The FEIR contradicts statements in the SDEIR
3 regarding how the express lanes will be operated, and includes inconsistent information regarding
4 the Project's GHG emissions and traffic.

5 46. Caltrans failed to adequately respond to public comments on the DEIR and SDEIR,
6 in violation of Public Resources Code section 21091(d)(2)(A). Caltrans repeatedly dismissed,
7 ignored, and otherwise disregarded valuable public comments from Long Beach, other affected
8 cities, and prominent state regulatory agencies commenting within their respective fields of
9 specialty.

10 47. Caltrans also failed to provide public agencies that commented on the Project with
11 "a written proposed response" at least 10 days prior to certifying the Final EIR, as expressly
12 required by CEQA. (*See* PRC § 21092.5(a); Guidelines, § 15088(b).)

13 48. Caltrans failed to recirculate the Final EIR for public review and comment, despite
14 the fact that the Final EIR included "significant new information" that was not included in the
15 DEIR and/or SDEIR. Among that significant new information was the disclosure that traffic
16 impacts within Los Angeles County (i.e., Long Beach) may be significant and unavoidable. The
17 FEIR also included dramatically different data regarding GHG emissions and traffic than was
18 provided in the DEIR and SDEIR.

19 49. Caltrans improperly failed to evaluate the cumulative impacts of the Project and
20 other reasonably anticipated and interrelated projects.

21 50. Caltrans failed to consider feasible alternatives to the Project, or to consider
22 feasible mitigation measures for the Project's environmental impacts.

23 51. Caltrans destroyed e-mails relating to the Project, precluding the preparation of an
24 adequate administrative record for the Project, particularly in light of the fact that the approval
25 process occurred behind closed doors, without a public hearing.

26 52. Caltrans and OCTA failed to make required findings when approving the Project.
27 The purported findings made by Caltrans were not supported by substantial evidence in light of
28 the whole record.

1 53. As a result of the foregoing defects, Caltrans' actions in approving the Project were
2 not in compliance with procedures required by law, were not supported by substantial evidence in
3 the public record, were not reflected in legally adequate findings, and were arbitrary, capricious,
4 and reflected a prejudicial abuse of discretion.

5 54. OCTA approved and began implementing the Project without considering the EIR
6 and/or making the findings required to be made by a responsible agency. (*See Guidelines, §*
7 *15096.*)

8 55. Long Beach has no plain, adequate and speedy remedy at law to redress the wrongs
9 described in this Petition.

10 56. Long Beach has performed any and all conditions precedent to filing this action and
11 has exhausted any and all available administrative remedies to the extent required by law by, *inter*
12 *alia*, submitting written and oral comments objecting to the Project and Respondents' failure to
13 comply with CEQA at each stage of the administrative process. All matters raised in this Petition
14 were raised in Long Beach's comments and/or comments submitted by other persons or entities
15 who objected to the Project.

16 57. Pursuant to Public Resources Code section 21167.5, Long Beach has provided
17 written notice of the commencement of this action to Caltrans and OCTA.

18 58. Pursuant to Public Resources Code section 21167.7, and CCP section 388, Long
19 Beach has or will provide written notice of this action, including a copy of this Petition and
20 Complaint, to the State Attorney General.

21 59. Long Beach brings this action pursuant to Public Resources Code sections 21168
22 and 21168.5 and CCP sections 1085, 1088.5 and 1094.5, which require that an agency's approval
23 of a project be set aside if the agency has prejudicially abused its discretion. Prejudicial abuse of
24 discretion occurred where Caltrans has failed to proceed in the manner required by law, its
25 decision is not supported by the findings, or the findings are not supported by the evidence.

26 60. Pursuant to CCP sections 1085 and/or 1094.5, a writ of mandate should issue
27 directing Respondents to rescind their approvals of the Project and prohibiting Respondents from
28 taking any subsequent action to approve the Project until they have complied with CEQA.

1 PRAYER FOR RELIEF

2 WHEREFORE, Petitioner City of Long Beach prays for relief as follows:

3 1. For a writ of mandate:

4 a. Directing Respondents to rescind, vacate and set aside Respondents'
5 certification of the EIR and approval of the Project and any actions implementing the Project;

6 b. Commanding Respondents to immediately suspend all activities in
7 furtherance or implementation of the Project;

8 c. Commanding Respondents to prepare a revised draft environmental impact
9 report and circulate it for public review and comment, consistent with the requirements of CEQA,
10 and to comply with all other requirements of CEQA, prior to taking any subsequent action to
11 approve the Project; and

12 d. Commanding Respondents to make all required CEQA findings prior to
13 taking any subsequent action to approve the Project.

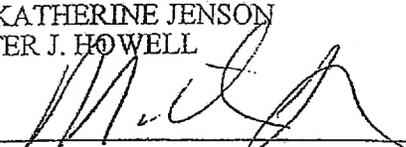
14 2. For an interim order granting a stay of the Project's implementation, a temporary
15 restraining order, and/or a preliminary injunction pending the entry of judgment.

16 3. For an award of attorneys' fees, litigation expenses and costs as permitted or
17 required by law, including but not limited to CCP section 1021.5 and other statutory and common
18 law provisions.

19 4. For such other and further relief as the Court deems just and proper.

20 Dated: July 16, 2015

RUTAN & TUCKER, LLP
M. KATHERINE JENSON
PETER J. HOWELL

21
22 By: 

23 M. Katherine Jenson
24 Attorneys for Petitioner CITY OF LONG
25 BEACH

26 Deemed verified pursuant to Code of Civil Procedure § 446(a), par. 2.
27
28

Exhibit A

1 RUTAN & TUCKER, LLP
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12 Attorneys for Petitioner
CITY OF LONG BEACH
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

15

16 CITY OF LONG BEACH, a municipal
corporation,

17 Petitioner,

18 v.

19 STATE OF CALIFORNIA DEPARTMENT
20 OF TRANSPORTATION; ORANGE
COUNTY TRANSPORTATION
21 AUTHORITY; and DOES 1-10, inclusive

22 Respondents.

23 ORANGE COUNTY TRANSPORTATION
AUTHORITY; and DOES 11-20, inclusive

24 Real Parties In Interest

25

Case No.

NOTICE OF INTENT TO COMMENCE
CEQA ACTION

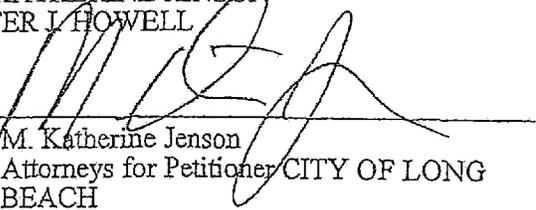
EXHIBIT A, PAGE 15

1 TO THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION AND TO
2 THE ORANGE COUNTY TRANSPORTATION AUTHORITY:

3 Please take notice that the City of Long Beach plans to commence an action under the
4 California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, against the
5 State of California Department of Transportation ("Caltrans") and the Orange County
6 Transportation Authority challenging the approval of the San Diego Freeway (I-405) Improvement
7 Project and the Environmental Impact Report and findings relating thereto. Caltrans provided the
8 Notice of Determination for the project to the undersigned on June 22, 2015.

9 Dated: July 15, 2015

RUTAN & TUCKER, LLP
M. KATHERINE JENSON
PETER J. HOWELL

10
11 By: 
12 M. Katherine Jenson
13 Attorneys for Petitioner CITY OF LONG
14 BEACH

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EXHIBIT A, PAGE 16

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PROOF OF SERVICE

(City of Long Beach v. State of California Department of Transportation; Orange County Transportation Authority)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

On July 15, 2015, I served on the interested parties in said action the within:

NOTICE OF INTENT TO COMMENCE CEQA ACTION

as stated below:

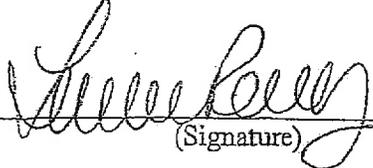
(BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed as shown on the attached mailing list.

In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, I deposited such envelope(s) in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelope(s) were posted and placed in the United States mail at Costa Mesa, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 15, 2015, at Costa Mesa, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Lauren Ramey
(Type or print name)


(Signature)

SERVICE LIST

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Ramey, Lauren

From: Ramey, Lauren
Sent: Wednesday, July 15, 2015 3:58 PM
To: david.richardson@dot.ca.gov; Caltrans.Director@dot.ca.gov; djohnson@octa.net; boardofdirectors@octa.net
Cc: Jenson, Kathy; jdonich@wss-law.com; glenn.b.mueller@dot.ca.gov
Subject: Notice of Intent to Commence CEQA Action (405 Project)
Attachments: Notice of Intent to Commence CEQA Action.PDF

Please see the attached courtesy copy of the City of Long Beach's Notice of Intent to Commence CEQA Action. A hard copy will follow by mail. Please direct any questions to Kathy Jenson (kjenson@rutan.com; 714-641-3413) or Peter Howell (phowell@rutan.com; (714) 662-4661).

Thank you,

Lauren Ramey

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EXHIBIT A, PAGE 19

AB 194 of 2015

SECTION 1.

The Legislature finds and declares all of the following:

- (a) The development, improvement, expansion, and maintenance of an efficient, safe, and well-maintained system of roads, highways, and other transportation facilities is essential to the economic well-being and high quality of life of the people of this state.
- (b) High-occupancy toll lanes, express lanes, and toll roads provide an opportunity to more effectively manage state highways in order to increase passenger throughput and to reduce delays for freight shipments and travelers, especially those traveling by carpool, vanpool, or bus.
- (c) Highway tolling should be employed for the purpose of optimizing the performance of the transportation system on a transportation corridor and should not be employed strictly as a revenue generating facility.

SEC. 2.

Section 149.7 of the Streets and Highways Code is amended to read:

149.7.

- (a) Notwithstanding Sections 149 and 30800, a regional transportation agency, as defined in subdivision (k), or the department may apply to the commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight.
- (b) Each application for the development and operation of the toll facilities described in subdivision (a) shall be subject to review and approval by the commission pursuant to eligibility criteria set forth in guidelines established by the commission. Prior to approving an application, the commission shall conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment. Upon approval of an application, the regional transportation agency or the department may develop and operate the toll facility proposed in the application.
- (c) The eligibility criteria set forth in the guidelines established by the commission pursuant to subdivision (b) shall include, at a minimum, all of the following:
 - (1) A demonstration that the proposed toll facility will improve the corridor's performance by, for example, increasing passenger throughput or reducing delays for freight shipments and travelers, especially those traveling by carpool, vanpool, and transit.
 - (2) A requirement that the proposed toll facility is contained in the constrained portion of a conforming regional transportation plan prepared pursuant to Section 65080 of the Government Code.
 - (3) Evidence of cooperation between the applicable regional transportation agency and the department.
 - (4) A discussion of how the proposed toll facility meets the requirements of this section.
 - (5) A requirement that a project initiation document has been completed for the proposed toll facility.
 - (6) A demonstration that a complete funding plan has been prepared.

(d) A regional transportation agency that applies to the commission to develop and operate toll facilities pursuant to this section shall reimburse the commission for all of the commission's costs and expenses incurred in processing the application.

(e) Toll facilities approved by the commission on or after January 1, 2016, pursuant to this section, shall be subject to the following minimum requirements:

(1) A regional transportation agency sponsoring a toll facility shall enter into an agreement with the Department of the California Highway Patrol that addresses all law enforcement matters related to the toll facility and an agreement with the department that addresses all matters related to design, construction, maintenance, and operation of the toll facility, including, but not limited to, liability, financing, repair, rehabilitation, and reconstruction.

(2) A regional transportation agency sponsoring a toll facility shall be responsible for reimbursing the department and the Department of the California Highway Patrol for their costs related to the toll facility pursuant to an agreement between the agency and the department and an agreement between the agency and the Department of the California Highway Patrol.

(3) The sponsoring agency shall be responsible for establishing, collecting, and administering tolls, and may include discounts and premiums for the use of the toll facility.

(4) The revenue generated from the operation of the toll facility shall be available to the sponsoring agency for the direct expenses related to the following:

(A) Debt issued to construct, repair, rehabilitate, or reconstruct any portion of the toll facility, payment of debt service, and satisfaction of other covenants and obligations related to indebtedness of the toll facility.

(B) The development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility, including toll collection and enforcement.

(C) Reserves for the purposes specified in subparagraphs (A) and (B).

(5) All remaining revenue generated by the toll facility shall be used in the corridor from which the revenue was generated pursuant to an expenditure plan developed by the sponsoring agency, as follows:

(A) (i) For a toll facility sponsored by a regional transportation agency, the regional transportation agency shall develop the expenditure plan in consultation with the department.

(ii) For a toll facility sponsored by the department, the department shall develop the expenditure plan in consultation with the applicable regional transportation agency.

(B) (i) For a toll facility sponsored by a regional transportation agency, the governing board of the regional transportation agency shall review and approve the expenditure plan and any updates.

(ii) For a toll facility sponsored by the department, the commission shall review and approve the expenditure plan and any updates.

(6) The sponsoring agency's administrative expenses related to operation of a toll facility shall not exceed 3 percent of the toll revenues.

(f) For any project under this section involving the conversion of an existing high-occupancy vehicle lane to a high-occupancy toll lane, the sponsoring agency shall demonstrate that the project will, at a minimum, result in expanded efficiency of the corridor in terms of travel time reliability, passenger throughput, or other efficiency benefit.

(g) This section shall not prevent the construction of facilities that compete with a toll facility approved by the commission pursuant to this section, and the sponsoring agency shall not be entitled to compensation for the adverse effects on toll revenue due to those competing facilities.

(h) A sponsoring agency that develops or operates a toll facility pursuant to this section shall provide any information or data requested by the commission or the Legislative Analyst. The commission, in cooperation with the Legislative Analyst, shall annually prepare a summary report on the progress of the development and operation of any toll facilities authorized pursuant to this section. The commission may submit this report as a section in its annual report to the Legislature required pursuant to Section 14535 of the Government Code.

(i) (1) A regional transportation agency may issue bonds, refunding bonds, or bond anticipation notes, at any time, to finance construction of, and construction-related expenditures for, a toll facility approved pursuant to this section, and construction and construction-related expenditures that are included in the expenditure plan adopted pursuant to paragraph (5) of subdivision (e), payable from the revenues generated from the toll facility. The bonds, refunding bonds, and bond anticipation notes shall bear such interest rates and other features and terms as the regional transportation agency shall approve and may be sold by the regional transportation agency at public or private sale.

(2) A bond, refunding bond, or bond anticipation note issued pursuant to this subdivision shall contain on its face a statement to the following effect:

“Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of principal of, or the interest on, this instrument.”

(3) Bonds, refunding bonds, and bond anticipation notes issued pursuant to this subdivision are legal investments for all trust funds, the funds of all insurance companies, banks, trust companies, executors, administrators, trustees, and other fiduciaries.

(4) Interest earned on any bonds, refunding bonds, and bond anticipation notes issued pursuant to this subdivision shall at all times be free from state personal income tax and corporate income tax.

(5) (A) For a toll facility operated by the department, the California Infrastructure and Economic Development Bank or the Treasurer may issue bonds, refunding bonds, or bond anticipation notes, at any time, to finance development, construction, or reconstruction of, and construction-related expenditures for, a toll facility approved pursuant to this section and construction and construction-related expenditures that are included in the expenditure plan adopted pursuant to paragraph (5) of subdivision (e), payable solely from the toll revenue and ancillary revenues generated from the toll facility.

(B) This subdivision shall be deemed to provide all necessary state law authority for purposes of Section 63024.5 of the Government Code.

(j) (1) Before submitting an application pursuant to subdivision (a), a regional transportation agency shall consult with every local transportation authority designated pursuant to Division 12.5 (commencing with Section 131000) or Division 19 (commencing with Section 180000) of the Public Utilities Code and every congestion management agency whose jurisdiction includes the toll facility that the regional transportation agency proposes to develop and operate.

(2) A regional transportation agency shall give a local transportation authority or congestion management agency described in paragraph (1) the option to enter into agreements, as needed, for project development, engineering, financial studies, and environmental documentation for each construction project or segment