

PRIVILEGED AND CONFIDENTIAL  
ATTORNEY-CLIENT COMMUNICATION

**TO:** F/ETCA Board of Directors  
cc: Michael A. Kraman, Chief Executive Officer

**FROM:** George Joseph, Nossaman LLP  
Robert D. Thornton, Nossaman LLP  
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**DATE:** August 10, 2017

**RE:** Summary of Lawsuits Filed by the City of San Clemente and The Reserve Maintenance Corporation

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On July 28, 2017, two lawsuits were filed against the Foothill/Eastern TCA by The Reserve Maintenance Corporation and the City of San Clemente. While the allegations and claims in the two lawsuits are not identical, they share a number of similarities. In summary, the claims asserted against the TCA are as follows:

1. It is alleged that the TCA did not have the authority to enter into the November 10, 2016 Settlement Agreement by and between the TCA, environmental groups, the California Attorney General, and the Native American Heritage Commission, and the approval of the March 10, 2017 "Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources. *This claim is without merit as the TCA Board authorized the CEO to execute the agreements to settle the litigation, and the TCA has the statutory authority to settle lawsuits against it.*
2. It is alleged that the approval and execution of the Settlement Agreement and the Agreement to Address Traffic Congestion violated the requirements of the Ralph M. Brown Act. *This claim is without merit as the Brown Act authorizes a public agency to approve a settlement agreement during closed session, and a public agency may approve as part of a settlement any action that is not required by substantive law to be taken in open session. Notably, the complaint does not cite any substantive law that required either agreement to be approved in open session or at a public hearing. And, the TCA took an action to rescind the approvals for the green alignment in open session pursuant to a publicly noticed agenda for the December 2016 Board meeting.*
3. It is alleged that the Agreement to Address Traffic Congestion violated the California Environmental Quality Act, or "CEQA." *This claim is without merit because the Agreement is not subject to CEQA, as it does not approve a*

*project or result in a change in the environment.*

4. It is alleged that the March 2017 Cooperative Agreement between the TCA and the County of Orange for the Oso Bridge Project violated CEQA. *This claim fails because the environmental impacts of the Oso Bridge Project were analyzed in compliance with CEQA.*
5. It is alleged that the conversion of "F" Street into a toll road is inconsistent with the existing 401 Certification and streambed alteration agreement for "F" Street. *These claims are premature because the F/ETCA has not taken an action to convert "F" Street into a toll road.*

RDT/BZR