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7 Attorneys for Petitioner and Plaintiff
THE RESERVE MAINTENANCE
8 CORPORATION

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUDICIAL DISTRICT
11 CIVIL COMPLEX CENTER

12 THE RESERVE MAINTENANCE
CORPORATION,

13 Petitioner and Plaintiff,

14 v.

15 Foothill/Eastern
16 Transportation Corridor
Agency, a Joint Powers Agency;
17 Board of Directors of the
Foothill/Eastern
18 Transportation Corridor
Agency; State of California
19 Department of
Transportation; and DOES 1
20 through 10, Inclusive;

21 Respondents and Defendants.

22 NATIONAL AUDUBON SOCIETY;
CALIFORNIA COASTAL PROTECTION
23 NETWORK; CALIFORNIA STATE
PARKS FOUNDATION; DEFENDERS
24 OF WILDLIFE; ENDANGERED
HABITATS LEAGUE; LAGUNA
25 GREENBELT, INC.; NATURAL
RESOURCES DEFENSE COUNCIL,
26 INC.; ORANGE COUNTY
COASTKEEPER; SEA AND SAGE
27 AUDUBON SOCIETY; SIERRA CLUB;
SURFRIDER FOUNDATION;
28 WILD Coast-COSTASALVAJE;

Case No. 30-2017-00934717-CU-WM-CXC

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[California Environmental Quality Act;
Cal. Code of Civ. Proc. § 1085; Cal. Govt.
Code §§ 54950 *et seq.*; Cal. Pub. Res. Code
21168.5]

Judge Kim Dunning
Dept CX104

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PEOPLE OF THE STATE OF
CALIFORNIA ex rel. KAMALA D.
HARRIS, ATTORNEY GENERAL;
NATIVE AMERICAN HERITAGE
COMMISSION; CALIFORNIA STATE
PARK AND RECREATION
COMMISSION; AND CALIFORNIA
NATURAL RESOURCES AGENCY;

Real-Parties-In-Interest.

1 Petitioner and Plaintiff The Reserve Maintenance Corporation (the
2 "Association") brings this Verified Petition for Peremptory Writ of Mandate and
3 Complaint for Injunctive and Declaratory Relief ("Petition") against Respondents and
4 Defendants Foothill/Eastern Transportation Corridor Agency ("TCA"), Board of Directors
5 for the Foothill/Eastern Transportation Corridor Agency ("TCA Board") and the California
6 Department of Transportation ("CalTrans"), and alleges as follows:

7
8 **INTRODUCTION**

9
10 1. Since the 1980s, the Foothill Transportation Corridor (presently
11 known as State Route 241) has been depicted in various state, county and local planning
12 documents as a major thoroughfare which went *around* the Cities of San Clemente and San
13 Juan Capistrano and connected to Interstate Route 5 south of San Clemente. Then, from
14 approximately April 2014 to November 2016, the TCA *secretly* negotiated and ultimately
15 approved a settlement with various longstanding adversaries, abandoning the legislatively-
16 designated route that in 1991 – following extensive environmental review and input – the
17 TCA itself approved as the "locally-preferred alignment." In short, the TCA unilaterally
18 rescinded over 30 years of planning and public process in favor of a "back room" deal; a
19 deal which was both outside the scope of the TCA's authority and in blatant violation of
20 California's open-meeting laws.

21
22 2. The TCA and its adversaries hailed the settlement as a triumph
23 ensuring "sensitive lands" are preserved forever. But upon reviewing TCA's self-
24 proclaimed "landmark" deal, residents of South Orange County began to comprehend the
25 insidious consequence of the TCA's secret agreement. Specifically, the settlement
26 agreement declared a several square-mile area forever "off-limits" to the TCA for the
27 construction of the State Route 241 toll road. However, this contractual "Avoidance Area"
28 virtually guarantees that the TCA will now seek to cram the toll road *directly through* the

1 only places remaining available; *i.e.*, the preserved open space, mitigation lands, and trails
2 located in the established communities of San Clemente, San Juan Capistrano and/or
3 Rancho Mission Viejo. Worse still, all remaining alignment options under consideration
4 would put a toll road within close proximity of community parks, schools, trails, and
5 homes with devastating, unmitigable environmental, socioeconomic, and human impacts.
6 Notably, these communities were planned and built in reliance on the promise, and with
7 the expectation, that any proposed toll road alignment would bypass them and connect to
8 Route 5 in San Diego County as the California Legislature intended.

9
10 3. Through this action and on behalf of itself and the general public, the
11 Association seeks to set aside the settlement agreement between the TCA, the Save San
12 Onofre Coalition ("SSOC")¹, the People of the State of California ex rel. Kamala D.
13 Harris, Attorney General ("People"), the Native American Heritage Commission
14 ("NAHC"), and the California State Park and Recreation Commission ("CSPRC"). The
15 settlement agreement illegally *prohibits* the TCA and TCA Board from ever constructing
16 or funding the construction of "any road alignment that is located within, or that would
17 have Direct Impacts to, the Avoidance Area." In other words, the settlement agreement
18 purports to restrict the TCA's and TCA Board's discretionary governmental powers, both
19 presently and in the future.

20
21 4. The Association further seeks to set aside a so-called "protective
22 agreement," as mandated by the settlement agreement, between the TCA, the SSOC,
23 CalTrans, and the California Natural Resources Agency ("CNRA"). Under the protective
24 agreement, the TCA again promised that "[c]onsistent with the terms of the Settlement
25

26 ¹ The SSOC is comprised of the following entities: (1) National Audubon Society dba Audubon
27 California; (2) California Coastal Protection Network; (3) California State Parks Foundation; (4)
28 Defenders of Wildlife; (5) Endangered Habitats League; (6) Laguna Greenbelt, Inc.; (7) Natural
Resources Defense Council, Inc.; (8) Orange County Coastkeeper; (8) Sea and Sage Audubon
Society; (9) Sierra Club; (10) Surfrider Foundation; and (11) WILD Coast-COSTASALVAJE.

1 Agreement, TCA agrees not to fund or construct a road in the Avoidance Area." Like the
2 settlement agreement, the protective agreement purports to *forever restrict* the TCA's and
3 TCA Board's governmental authority regarding the funding or construction of any roadway
4 in the Avoidance Area.

5
6 5. Under controlling California law, it is clear that the TCA, TCA Board,
7 and CalTrans do not have the authority to enter into contracts which expressly restrict or
8 surrender the exercise of governmental authority, either presently or in the future. Any
9 such agreement is invalid, void, and unenforceable as a matter of law. The TCA Board's
10 entry into a settlement agreement mandating that the TCA shall never, under any
11 circumstances, fund or construct a road in an "avoidance area" restricted the TCA's
12 exercise of its governmental authority concerning the funding and construction of
13 roadways and thus, constituted a void, invalid and *ultra vires* act. Similarly, the
14 "protective agreement," both standing alone and as a component of the prohibited
15 settlement agreement, is an unlawful and invalid attempt to restrict through contract the
16 exercise of governmental authority regarding the funding, construction, and maintenance
17 of roadways, both presently and in the future. Therefore, the TCA's and CalTrans'
18 execution of the Protective Agreement constituted an invalid, illegal and *ultra vires* act.

19
20 6. Furthermore, the settlement agreement was considered and adopted by
21 the TCA Board during a closed session and without any noticed public hearing, public
22 comment, or public deliberation in violation of the Ralph M. Brown Act (Govt. Code §§
23 54950 *et seq.*) (the "Brown Act"). While the TCA Board is authorized pursuant to
24 Government Code section 54956.9 to discuss, in closed session, settlement of a lawsuit to
25 which the TCA is a party, the TCA Board is not authorized to execute any agreement
26 during closed session intrinsically required by law to be made only after a noticed public
27 hearing with public comment. The settlement agreement approved and executed by the
28 TCA Board is replete with broad land use and other policy dictates which can only be

1 adopted by the TCA Board following a noticed public hearing and a full, fair opportunity
2 for public comment.

3
4 7. The protective agreement was further executed and purportedly
5 approved by the TCA in secret without any noticed public hearing, opportunity for public
6 comment, or public deliberation in violation of the Brown Act. Like the settlement
7 agreement, the protective agreement contains broad land use and other policy directives
8 which may only be adopted following a noticed public hearing and a full, fair opportunity
9 for public comment.

10
11 8. Furthermore, neither the TCA (acting by and through its Chief
12 Executive Officer Michael Kraman) nor CalTrans (acting by and through District 12
13 Director Ryan Chamberlain) was authorized to execute the protective agreement, which
14 established an "avoidance area" for the State Route 241 toll road and effectively rescinded
15 or materially modified the legislatively-approved route/alignment around the City of San
16 Clemente without proper process. Only the California Legislature and/or California
17 Transportation Commission is authorized to take such action concerning routes and/or
18 specific alignments for state highways and freeways.

19
20 9. Finally, the TCA and CalTrans approved the Protective Agreement,
21 including the broad land use policy edicts contained therein, without any environmental
22 review or process in violation of the California Environmental Quality Act (Public
23 Resources Code §§ 21000 *et seq.*, "CEQA").

24
25 10. The Association thus asks this Court to direct the TCA, TCA Board,
26 and CalTrans, by way of writ of mandate and/or injunction, to fulfill their mandatory duty
27 to act in accordance with the law by setting aside the settlement agreement and protective
28 agreement, as well as any and all agreements entered, and actions taken, pursuant thereto.

1 **THE PARTIES AND STANDING**

2

3 11. Petitioner and Plaintiff Association is a California nonprofit, mutual

4 benefit corporation authorized to do and doing business in San Clemente, California. The

5 Association acts as a homeowners association for the residential planned development

6 project known as "The Reserve" located in the City of San Clemente, County of Orange,

7 State of California. The Reserve contains approximately 419 homes with over 1200

8 residents. The Association and each of its individual member residential property owners

9 have a direct and beneficial interest in the TCA's, TCA Board's, and CalTrans'

10 (collectively "Respondents") compliance with California law requiring open, fair public

11 hearings with a meaningful opportunity for public participation regarding decisions

12 impacting public policy and mobility solutions in Orange County. The Association and

13 each of its individual member property owners further have a direct and beneficial interest

14 in Respondents' compliance with provisions of California law prohibiting governmental

15 entities from executing agreements which purport to restrict or surrender governmental

16 authority in perpetuity; such agreements are invalid, void, and *ultra vires*. These interests

17 would be directly and adversely affected by the alleged violations of law set forth in this

18 Petition. The maintenance and prosecution of this action will further confer a substantial

19 benefit on the public at large by compelling Respondents to comply with California law in

20 executing their public, governmental functions. The Association's pursuit of this action

21 permits its individual members and the members of the general public throughout Orange

22 County to enforce important public rights and further enforce the public duty of

23 Respondents to comply with California law. Without the Association's pursuit of this

24 action, these rights and duties might otherwise go unenforced because other persons

25 directly interested in enforcement of the public rights and duties do not have the resources,

26 ability, or motivation to bring an enforcement action.

27

28

1 12. Upon information and belief, Respondent and Defendant TCA is a
2 joint powers authority operating exclusively in Orange County, California with its
3 principal office located in the City of Irvine. TCA is formed under the authority of the
4 Joint Exercise of Powers Act, Government Code sections 6500 *et seq.*, and exists pursuant
5 to a Joint Exercise of Powers Agreement (as amended) by and among its members.
6 Members of the TCA include the County of Orange, and the Cities of Anaheim, Dana
7 Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente,
8 San Juan Capistrano, Santa Ana, Tustin, and Yorba Linda. The TCA is a party to the
9 Settlement Agreement and Protective Agreement (as defined below), both of which are the
10 subject of this action.

11
12 13. Upon information and belief, Respondent and Defendant TCA Board
13 is the governing body of the TCA and is responsible, through the proper public hearing
14 process under the Brown Act, for planning, approving, and implementing toll road projects
15 within TCA's authority. The TCA Board is obligated to comply with all state and federal
16 laws in governing the TCA and in conducting fair and open public hearings concerning
17 projects and contracts within the TCA's authority. The Board of Directors is comprised of
18 representatives of the County of Orange and of twelve cities within the County of Orange.
19 The TCA Board, with the exception of certain Directors, approved and executed the
20 Settlement Agreement which is the subject of this action. The TCA Board and its
21 members are sued in their official capacities only.

22
23 14. Upon information of belief, Respondent and Defendant CalTrans is an
24 agency of the State of California responsible for maintaining and operating California's
25 state highway system. To accomplish this objective, Caltrans is subdivided into twelve
26 (12) different business units called "Districts" that together form the geographic whole of
27 California. Each District has jurisdictional responsibilities related to a county or group of
28 counties and is led by a District Director. District 12 encompasses the entirety of Orange

1 County. CalTrans purported to execute the Protective Agreement, which is the subject of
2 this action, by and through its District 12 Director Ryan Chamberlain. Mr. Chamberlain
3 also serves as an *ex officio* member of the TCA Board. CalTrans' District 12 offices are
4 located in Santa Ana, California.

5
6 15. Upon information and belief, Real Party in Interest National Audubon
7 Society ("NAS") is a New York corporation and doing business in California under the
8 name "Audubon California." NAS is a member of the SSOC and a party to the Settlement
9 Agreement and Protective Agreement which are the subject of this action.

10
11 16. Upon information and belief, Real Party in Interest California Coastal
12 Protection Network ("CCPN") is a California public benefit corporation with its principal
13 place of business located in Santa Barbara, California. CCPN is a member of the SSOC
14 and a party to the Settlement Agreement and Protective Agreement which are the subject
15 of this action.

16
17 17. Upon information and belief, Real Party in Interest California State
18 Parks Foundation ("CSPF") is a California non-profit organization with its principal place
19 of business located in San Francisco, California. CSPF is a member of the SSOC and a
20 party to the Settlement Agreement and Protective Agreement which are the subject of this
21 action.

22
23 18. Upon information and belief, Real Party in Interest Defenders of
24 Wildlife is a non-profit organization with its principal place of business located in
25 Washington, D.C. Defenders of Wildlife is a member of the SSOC and a party to the
26 Settlement Agreement and Protective Agreement which are the subject of this action.

27
28

1 19. Upon information and belief, Real Party in Interest Endangered
2 Habitats League ("EHL") is a California non-profit organization with its principal place of
3 business located in Los Angeles, California. EHL is a member of the SSOC and a party to
4 the Settlement Agreement and Protective Agreement which are the subject of this action.
5

6 20. Upon information and belief, Real Party in Interest Laguna Greenbelt,
7 Inc. is a California non-profit organization located in Laguna Beach, California. Laguna
8 Greenbelt is a member of the SSOC and a party to the Settlement Agreement and
9 Protective Agreement which are the subject of this action.
10

11 21. Upon information and belief, Real Party in Interest Natural Resources
12 Defense Council, Inc. ("NRDC") is a New York non-profit organization with an office
13 located in Santa Monica, California. NRDC is a member of the SSOC and a party to the
14 Settlement Agreement and Protective Agreement which are the subject of this action.
15

16 22. Upon information and belief, Real Party in Interest Orange County
17 Coastkeeper is a California non-profit organization located in Costa Mesa, California.
18 Orange County Coastkeeper is a member of the SSOC and a party to the Settlement
19 Agreement and Protective Agreement which are the subject of this action.
20

21 23. Upon information and belief, Real Party in Interest Sea and Sage
22 Audubon Society is a California non-profit located in Irvine, California. Sea and Sage
23 Audubon Society is a member of the SSOC and a party to the Settlement Agreement and
24 Protective Agreement which are the subject of this action.
25

26 24. Upon information and belief, Real Party in Interest Sierra Club is a
27 California non-profit corporation with its headquarters located in Oakland, California. The
28

1 Sierra Club is a member of the SSOC and a party to the Settlement Agreement and
2 Protective Agreement which are the subject of this action.

3
4 25. Upon information and belief, Real Party in Interest Surfrider
5 Foundation is a California non-profit organization with an office located in San Clemente,
6 California. Surfrider is a member of the SSOC and a party to the Settlement Agreement
7 and Protective Agreement which are the subject of this action.

8
9 26. Upon information and belief, Real Party in Interest WILDCOAST-
10 COSTASALVAJE is a California non-profit organization with an office located in
11 Imperial Beach, California. WILDCOAST is a member of the SSOC and a party to the
12 Settlement Agreement and Protective Agreement which are the subject of this action.

13
14 27. Upon information and belief, Real Party in Interest the People of the
15 State of California, ex rel. Attorney General Kamala D. Harris is a representative of the
16 people of the State of California and a party to the Settlement Agreement which is the
17 subject of this action.

18
19 28. Upon information and belief, Real Party in Interest Native American
20 Heritage Commission ("NAHC") is a public agency of the State of California (constituted
21 pursuant to California Public Resources Code section 5097.91 and 5097.92) and a party to
22 the Settlement Agreement which is the subject of this action.

23
24 29. Upon information and belief, Real Party in Interest CSPRC is a public
25 agency of the State of California and a party to the Settlement Agreement which is the
26 subject of this action. No public hearing was held by the CSPRC concerning the execution
27 of the Settlement Agreement or the contents thereof. The CSPRC executed and approved
28 the Settlement Agreement during closed session only.

1 Property affected by those acts is located, in Orange County. Additionally, the Settlement
2 Agreement and Protective Agreement were executed and performed, in whole or in part, in
3 Orange County. Venue is further proper in this Court under California Code of Civil
4 Procedure section 394(a) because the TCA and TCA Board are located within the County
5 of Orange.

6
7 **STATEMENT OF FACTS**

8
9 **THE FOOTHILL TRANSPORTATION CORRIDOR AND SR 241 SOUTHERN**
10 **EXTENSION**

11
12 35. The Foothill Transportation Corridor ("FTC") was added to the Orange
13 County Master Plan of Arterial Highways ("MPAH") by the Orange County Board of
14 Supervisors in August 1981, following the certification of Environmental Impact Report
15 123. Environmental Impact Report 423 was subsequently certified regarding the FTC in
16 May 1983. The FTC was originally intended to be constructed using state and federal
17 transportation and designated a free highway (*i.e.*, non-tolled).

18
19 36. Subsequently, the TCA was formed in 1986 pursuant to the Joint
20 Exercise of Powers Act (Government Code sections 6500 *et. seq.*) as a Joint Powers
21 Authority to fund and construct *toll roads* in Orange County in part due to substantial
22 decreases in the availability of state and federal transportation funding. It was decided at
23 that time that the FTC would be constructed as a toll road and added to the State Highway
24 System. The Association is informed and believes and thereon alleges the TCA and
25 CalTrans thereafter executed various cooperation and non-compete agreements toward that
26 end.

1 37. The California Legislature, not the TCA or CalTrans, establishes the
2 framework for the State Highway System by describing each route by statute, specifically,
3 in the California Streets and Highways Code. In 1988, and following environmental review
4 by the TCA and County of Orange of four possible routes for the FTC, Chapter 1363 (now
5 codified at California Streets and Highways Code section 541) was enacted which defined
6 State Route 241 as "Route 231 near the Cities of Tustin and Irvine to **Route 5 south of San**
7 **Clemente.**" (Emphasis added) The legislative history of this bill reveals that the California
8 Legislature intended for Route 241 to *bypass* San Clemente and connect to Route 5 in San
9 Diego County. This intention for the 241 route is confirmed by the route map consistently
10 employed and relied upon by legislators throughout the legislative history for Streets and
11 Highways Code section 541, attached hereto as Exhibit A.

12
13 38. The Association is informed and believes that several environmental
14 groups reported their concerns over the proposed route for Route 241 to the legislature when
15 codified in 1988. Taking into consideration all environmental impacts and practical
16 considerations, the legislature ostensibly determined, despite the expressed concerns, that
17 the appropriate route for Route 241 would avoid established communities completely and
18 connect to Route 5 south of San Clemente.

19
20 39. In March 1990, the TCA certified final Supplemental EIR 423, which
21 evaluated the northern portion of the FTC as a toll facility. The northern portion of the FTC
22 ("Foothill-North"), was constructed in segments from 1995 to 1998 and begins at Oso
23 Parkway near Rancho Santa Margarita and proceeds north where it terminates at SR-91 near
24 the Santa Ana River in the City of Anaheim.

25
26 40. The southern portion of the FTC ("Foothill-South") has been the subject
27 of planning efforts for over thirty-five years. From 1989 to 1991, the TCA prepared TCA
28 EIR No. 3, for the selection of a locally-preferred alignment for the Foothill-South. TCA

1 EIR No. 3 was circulated for a 60-day review period which included public hearings. A
2 Supplemental EIR ("SEIR") was then circulated containing changes to the "C" Alignment
3 through San Onofre State Beach and San Clemente resident to address concerns regarding
4 noise and visual impacts. The modified alignment around San Clemente and connecting to
5 Route 5 south of San Clemente was dubbed the "Modified C Alignment," which was selected
6 as the locally-preferred alternative by the TCA and is consistent with the codified route for
7 the SR 241. The Modified C Alignment was further modified following input from the
8 United States Fish and Wildlife Services, and the new alignment was called the "CP
9 Alignment." The CP Alignment went around San Clemente and connected to Route 5 south
10 of the San Clemente city limits.

11
12 41. In December 1993, the TCA initiated the preparation of a Subsequent
13 SEIR to evaluate the CP Alignment, the BX Alignment (which connected to Route 5 at
14 Avenida Pico in San Clemente), and a no build alternative. Between 1993 and 1996,
15 technical analysis of the CP and BX alignment alternatives and the No Build Alternative
16 was conducted.

17
18 42. In 1996, the California Legislature enacted Chapter 1154 (A.B. 3020),
19 which extended the SR 241 route by transfer from former Route 231: "Route 5 south of
20 San Clemente to Route 91 in the City of Anaheim."

21
22 43. In the early 2000s, the alignment for the southern portion of the FTC
23 (a 16-mile segment from Oso Parkway to the Route 5 south of San Clemente) ("Foothill-
24 South") was studied by the TCA as six possible alignments, including three which went
25 around the east side of the City of San Clemente and connected to Route 5 south of San
26 Clemente as set forth in Streets and Highways Code section 541. In December 2005, the
27 TCA released the final environmental impact report regarding the various alignments
28 considered.

1 44. On February 23, 2006, and after a several year process involving
2 numerous public hearings, the TCA Board adopted Resolution F2006-1 certifying Final
3 Subsequent Environmental Impact Report TCA SEIR 4 ("2006 SEIR") for the SR-241
4 Foothill South Extension. That same day, the TCA Board also adopted Resolution F2006-
5 2 selecting the locally preferred alignment (the A7C-FEC-M-Initial Alternative, commonly
6 called the "Green Alignment") in the DEIS/SEIR for the South Orange County
7 Transportation Infrastructure Improvement Project ("SOCTIIP") (the "2006 Approvals").
8 Consistent with legislative enactments and state and regional transportation plans
9 concerning SR 241, the Green Alignment connected to Route 5 south of San Clemente
10 near Basilone Road in San Diego County.

11
12 45. SR 241 has been adopted as a state highway by Resolution of the
13 California Transportation Commission on July 9, 1993 and August 19, 1998, and has been
14 declared to be a freeway.

15
16 **THE 2006 AND 2013 LAWSUITS**
17

18 46. After the 2006 SEIR was certified and the Green Alignment selected,
19 those decisions were challenged under CEQA by certain members of the SSOC (*California*
20 *State Parks Foundation et al. v. Foothill Eastern/Transportation Corridor Agency et al.*,
21 San Diego County Superior Court Case No. GIN051194), and by the People and the
22 CSPRC (*People of the State of California et al. v. Foothill/Eastern Transportation*
23 *Corridor Agency et al.*, San Diego County Superior Court, Case No. GIN051371). These
24 CEQA lawsuits challenged the 2006 SEIR on that grounds that it purportedly failed to
25 analyze certain significant environmental impacts and further failed to consider certain
26 project alternatives. The NAHC also filed suit seeking to enjoin construction,
27 development, and permitting of the Green Alignment under Public Resources Code §§
28 5097.94 and 5097.97 (*Native American Heritage Commission v. Foothill/Eastern*

1 *Transportation Corridor Agency*, San Diego Superior Court, Case No. GIN051370) (the
2 actions alleged in this paragraph and collectively referred to as the "2006 Lawsuits").

3
4 47. On or around April 18, 2013, the TCA certified an Addendum to the
5 2006 SEIR ("2013 Addendum") and approved an extension of the SR 241 from Oso
6 Parkway to Cow Camp Road (the "Tesoro Extension") ("2013 Approvals").

7
8 48. The 2013 Addendum and 2013 Approvals were also challenged under
9 CEQA by certain SSOC Members (*California State Parks Foundation et al. v. Foothill*
10 *Eastern/Transportation Corridor Agency et al.*, San Diego Superior Court Case No. 37-
11 2013-00049797-CU-WM-CTL) and by the People (*People of the State of California, ex*
12 *rel. Attorney General Kamala D. Harris v. Foothill/Eastern Transportation Corridor*
13 *Agency et al.*, Case No. 37-2013-00050001-CU-WM-NC) (the "2013 Lawsuits"). The
14 2013 Lawsuits alleged that the 2013 Approvals violated CEQA because a new
15 environmental impact report was purportedly required to analyze new information and
16 substantial changes since the 2006 SEIR was certified. The 2013 Lawsuits also alleged
17 that the TCA was improperly "piecemealing" approvals of the Green Alignment.

18
19 49. Ultimately, the San Diego Superior Court never made any
20 determination regarding the merits of any of the claims made in the 2006 and 2013
21 Lawsuits. Instead, a stipulated judgment was entered pursuant to a voluntary settlement by
22 and between the TCA, the SSOC, the People, NAHC, and CSPRC as discussed below.

23
24 **THE NOVEMBER 2016 SETTLEMENT AGREEMENT**

25
26 50. On or about November 10, 2016, the TCA, the SSOC, the People, the
27 NAHC, and the CSPRC entered into a settlement agreement to resolve the 2006 and 2013
28

1 Lawsuits (the "Settlement Agreement"). A true and correct copy of the Settlement
2 Agreement is attached hereto as Exhibit B.

3
4 51. The TCA Board discussed, approved and executed the Settlement
5 Agreement during closed session on November 10, 2016. Despite the various broad policy
6 actions agreed to therein, no noticed public meeting was conducted concerning the
7 approval and execution of the Settlement Agreement (or the provisions contained therein)
8 and no opportunity was afforded for public comment or public deliberation in violation of
9 the Brown Act.

10
11 52. The Settlement Agreement provides, among various other substantive
12 mandates, that the TCA (1) "Shall rescind the certification of the 2006 SEIR, the 2006
13 Approvals, the approval of the 2013 Addendum, and the 2013 Approvals" (§ 2.1);² (2)
14 Shall reimburse the SSOC for the costs incurred in connection with the underlying lawsuits
15 in the total amount of \$7.1 million; and (3) "Shall not construct or provide funding for the
16 construction of any road alignment that is located within, or that would have Direct
17 Impacts to, the Avoidance Area" (§ 3.1.2). The Avoidance Area is defined in the map
18 included as Exhibit C to the Settlement Agreement; it covers a several square mile area
19 and effectively forecloses, in perpetuity, *any* potential SR 241 alignment to the east of San
20 Clemente and/or connecting to Route 5 south of San Clemente. A true and correct copy of
21 the map depicting the "Avoidance Area" is attached hereto as Exhibit C.

22
23
24
25
26 _____
27 ² On or around December 8, 2016, the TCA rescinded the certification of the 2006 SEIR,
28 the 2006 Approvals, the approval of the 2013 Addendum, and the 2013 Approvals during a
noticed public hearing.

1 53. Remarkably, by designating an Avoidance Area in the Settlement
2 Agreement and agreeing to only pursue "Post Settlement Alignments",³ the TCA Board
3 agreed to restrict its present authority, and the authority of future TCA Boards, concerning
4 the construction and/or funding of any SR 241 alignments located in the several square mile
5 Avoidance Area. This improper abnegation and surrender of the TCA's discretionary
6 authority in perpetuity was made irrespective of any future public process or environmental
7 review regarding proposed SR 241 alignments. In effect, the TCA Board abandoned and
8 forever barred longstanding SR 241 alignments behind closed doors, without any public
9 hearing, process, or deliberation.

10
11 54. The Settlement Agreement further provides that construction of any
12 structure that would "permit a direct connection between SR 241 and Los Patrones
13 Parkway, including but not limited to construction of any...bridge over SR 241 or over
14 Oso Parkway" shall not commence unless one of four different "triggering events" occurs.
15 Ex. B, p. 11, § 4.1. One of these triggering events is the execution of a "protective
16 agreement" by and between the SSOC, the California Transportation Agency, and the
17 CNRA whereby the parties would agree that "no new major thoroughfare shall be
18 constructed in the Avoidance Area." Ex. B, p. 11, § 4.1.1.

19
20 55. Another proposed triggering event was the adoption of so-called
21 "Protective Legislation", whereby the "California Legislature has passed and the Governor
22 has signed into law legislation preventing TCA from constructing a road in the Avoidance
23 Area" Ex. B, p. 11, § 4.1.2.

24
25
26 _____
27 ³ A "Post Settlement Alignment" is defined as "any alignment for the extension of the SR
28 241 that is consistent with the project goals, objectives and transportation needs identified
and established by TCA, connects to Interstate 5, and **is not sited in and will not have
Direct Impacts to the Avoidance Area.**" (§ 1.9 [emphasis added])

1 56. The TCA and SSOC agreed to pursue the Protective Agreement
2 initially. However, it was agreed that if the Protective Agreement was not entered by
3 January 15, 2017, the TCA and SSOC agreed to use "good faith efforts to cause, through a
4 mutually-agreed upon process, the Protective Legislation to be introduced in the 2017
5 legislative session and to support its passage by the Legislature and signature by the
6 Governor." Ex. B, p. 12, § 4.2.4. The Association is informed and believes and thereon
7 alleges that because the Protective Agreement was not entered by January 15, 2017, the
8 TCA and SSOC attempted to introduce the Protective Legislation but were unable to
9 garner sufficient support from the California Legislature.

10
11 57. On December 14, 2016, the parties to the Settlement Agreement filed
12 a "Stipulation for Entry of Judgment Confirming And Implementing Settlement" in San
13 Diego Superior Court.

14
15 58. On January 19, 2017, the San Diego Superior Court entered a
16 stipulated final judgment regarding the 2006 and 2013 Lawsuits pursuant to the terms of
17 the Settlement Agreement. Notably, no judicial determination was made regarding the
18 validity of the Settlement Agreement or the terms included therein. Instead, the final
19 judgment incorporating the Settlement Agreement's terms was *solely* the product of a
20 stipulation among the parties to which the San Diego Superior Court acquiesced. The
21 Association was neither a party to the Settlement Agreement nor a party to the 2006 and
22 2013 Lawsuits. Additionally, the Association was not aware of the Settlement Agreement
23 or the specific provisions included therein at the time final judgment was entered by the
24 San Diego Superior Court.

25
26 59. Following the execution of the Settlement Agreement, the TCA and
27 SSOC members made numerous public statements and published several articles
28 concerning the content and effect of the settlement. Many of these statements emphasized

1 the permanent and absolute surrender of governmental authority concerning the funding
2 and construction of a roadway in the contractually-mandated Avoidance Area:

- 3
- 4 a. The NRDC released an article describing the settlement as "a
5 definitive determination that the state park at San Onofre - and its
6 natural, historical and cultural resources - will be *permanently*
7 *preserved*." (Emphasis added). A true and correct copy of the quoted
8 NRDC article is attached hereto as Exhibit H.
- 9
- 10 b. NAS commented that, the Settlement Agreement "will not allow *any*
11 proposed Foothill-South Toll Road alignment in southern Orange
12 County and northern San Diego County in [the Avoidance Area]."
13 (Emphasis added). A true and correct copy of the quoted NAS article
14 is attached hereto as Exhibit I.
- 15
- 16 c. The Surfrider Foundation commented that "[t]he most significant and
17 most hard-fought aspect of the settlement carves out 'avoidance areas'
18 that *requires TCA to refrain from building or funding* a road project
19 within an area that includes San Onofre State Beach, the Richard and
20 Donna O'Neill Conservancy and other critical open space, wildlife
21 habitat and cultural resources in the San Mateo Creek watershed."
22 (Emphasis added). A true and correct copy of the quoted Surfrider
23 article is attached hereto as Exhibit J.
- 24
- 25 d. Moreover, the Surfrider Foundation has stated that "[t]he lawsuit
26 settlement *permanently* protects San Onofre State Beach by
27 establishing avoidance areas where *the TCA is not allowed to build a*
28 *road*" and has explained that "[t]he Settlement Agreement...states

1 where a road *cannot go*." (Emphasis added). A true and correct copy
2 of the quoted Surfrider article is attached hereto as Exhibit K.

3
4 e. In a March 2017 presentation by Michael Chesney, the Chief Strategy
5 Officer for the TollRoads, Mr. Chesney stated that the Settlement
6 Agreement "[e]nsures *permanent protection* of San Mateo
7 Watershed, Donna O'Neill Land Conservancy, and other critical open
8 space." A true and correct copy of the quoted March 2017
9 presentation, excerpted for length, is attached hereto as Exhibit L.
10 Curiously, he went on to claim that the agreement, "does not establish
11 any specific alignment or route," for the expansion of the SR 241,
12 despite the fact that the Settlement Agreement clearly delineates a
13 massive area where the route *cannot* be located.

14
15 60. Any remaining doubt concerning the TCA Board's surrender of its
16 discretionary authority to construct a roadway in the Avoidance Area was erased during a
17 June 5, 2017 TCA community forum at Saddleback College. Richard Katz, a TCA
18 representative and participant in the settlement negotiations, further stated the following
19 regarding the Settlement Agreement:

20 **I have never seen an agreement like this where there is land**
21 **actually designated as an avoidance area where you cannot**
22 **build and an agency agrees not to build in the future not**
23 **knowing what 10 or 20 years from now may bring. And, in**
24 **this agreement the TCA has said the avoidance areas, which**
25 **are clearly marked out on the map, no TCA authority at any**
26 **point will ever build a road in those areas.**

27 In other words, Mr. Katz stressed that the Settlement Agreement was
28 intended to (and did) prohibit the TCA and TCA Board in perpetuity from constructing or
funding a roadway in the Avoidance Area. Incredibly, Mr. Katz further admitted this
binding, perpetual agreement was executed by the TCA Board **without knowing what the**

1 **future may hold; i.e.**, irrespective of the results of any public process or environmental
2 review concerning proposed future SR 241 alignments.

3
4 **THE MARCH 2017 "PROTECTIVE AGREEMENT"**

5
6 61. On or about March 10, 2017, pursuant to § 4.1.1 of the Settlement
7 Agreement, the TCA, the SSOC, Caltrans, and the CNRA entered into a protective
8 agreement (the "Protective Agreement"), a true and correct copy of which is attached
9 hereto as Exhibit D (without original exhibits).

10
11 62. TCA's Chief Executive Officer, Mike Kraman, executed the
12 Protective Agreement on behalf of the TCA. CalTrans' District 12 Director, Ryan
13 Chamberlain, executed the Protective Agreement on behalf of CalTrans. The Protective
14 Agreement was executed and purportedly approved by Mr. Kraman and Mr. Chamberlain
15 in private, without any noticed public hearing or opportunity for public comment. The
16 Association is informed and believes and thereon alleges the TCA Board was not notified
17 of the Protective Agreement, or its terms, until after it was executed by Kraman.

18
19 63. In the Protective Agreement Caltrans agreed "that in exercising its
20 authority under state law, it will not approve, permit, take possession of or otherwise
21 authorize the construction of a major thoroughfare in the Avoidance Area; provided,
22 however, that this prohibition shall not apply to any proposed widening of the existing
23 Interstate 5 facility." (Protective Agreement ¶ 1)

24
25 64. The Protective Agreement is illegal, void, and *ultra vires* because:

- 26 a. The Association is informed and believes and thereon alleges
27 that Mr. Chamberlain was not authorized to agree, on behalf of
28 CalTrans (or on behalf of the California State Transportation

1 Agency), that CalTrans will not approve, permit, take
2 possession of or otherwise authorize the construction of a
3 major thoroughfare in the Avoidance area;

- 4 b. CalTrans does not have the authority to agree, on behalf of
5 itself or on behalf of the California State Transportation
6 Agency, that it will not approve, permit, take possession of or
7 otherwise authorize the construction of a major thoroughfare in
8 the Avoidance area;
- 9 c. CalTrans does not have the authority to effectively rescind
10 freeway routes and/or alignments duly adopted by the
11 California Legislature and/or CTC; and
- 12 d. Even if it did have such authority, CalTrans cannot
13 contractually restrict the discretionary governmental authority
14 of CalTrans and/or the CTC to designate the appropriate
15 alignment for the SR 241 following a noticed public hearing
16 and an opportunity for public comment.

17

18 65. The TCA also agreed, as part of the Protective Agreement, that
19 "[c]onsistent with the terms of the Settlement Agreement, TCA agrees not to fund or
20 construct a road in the Avoidance Area." (Protective Agreement ¶ 2)

21

22 66. The Protective Agreement is further illegal, void, and *ultra vires*
23 because:

- 24 a. The Association is informed and believes that Mr. Kraman is not
25 authorized to execute the Protective Agreement on behalf of either the
26 TCA or TCA Board or to otherwise agree that the TCA would not
27 "fund or construct a road in the Avoidance Area";

- 1 b. The TCA and TCA Board may not surrender or restrict through
- 2 contract the discretionary authority to fund or construct a road in the
- 3 Avoidance Area; and
- 4 c. The TCA cannot agree, through contract, that it will not fund or
- 5 construct a road in the Avoidance Area without a noticed public
- 6 hearing with a meaningful opportunity for public comment.

7 67. Upon execution of the Protective Agreement, the TCA was permitted

8 under the terms of the Settlement Agreement to, among other things, commence

9 construction of the Oso Parkway Bridge Project without any environmental challenge by

10 the SSOC or its individual members. The TCA was further permitted to proceed with the

11 environmental review process concerning certain Post Settlement Alignments for the SR

12 241, all of which are necessarily forced to plow through the existing communities of San

13 Clemente, San Juan Capistrano, and/or Rancho Mission Viejo because of the

14 contractually-mandated Avoidance Area. A true and correct copy of the map showing the

15 proposed Post Settlement Alignments is attached hereto as Exhibit E. Ideas 8 and 15 are

16 currently *prohibited* by the Settlement Agreement because they are located within the

17 Avoidance Area. The Association is informed and believes and thereon alleges that the

18 TCA intends to pursue "Idea 14" as its preferred Post Settlement Alignment. In fact, a

19 cross-section of the preliminary lane configuration and other features for the terminus of

20 "Idea 14" at or near Basilone Road is depicted as Sheet 2 of Exhibit C to the Settlement

21 Agreement.

22

23 68. The Association is informed and believes and thereon alleges that

24 prior to approving the Protective Agreement, the TCA, TCA Board, and CalTrans failed to

25 make any determinations regarding the potential impacts of that agreement on the

26 environment as required by CEQA.

27

28

1 **PROCEDURAL ALLEGATIONS SUPPORTING ISSUANCE OF WRIT**
2

3 69. The Association has exhausted all available and non-futile
4 administrative remedies required to be pursued by it under the law and the factual
5 circumstances underlying this action.
6

7 70. The TCA, TCA Board, and CalTrans have, and at all relevant times
8 had, a mandatory duty to exercise their powers in accordance with the law. By entering
9 into the illegal and invalid Settlement Agreement and Protective Agreement, the TCA and
10 TCA Board breached this mandatory duty. Similarly, and by entering into the illegal and
11 invalid Protective Agreement, CalTrans has breached its mandatory duty to comply with
12 California law. The Association is informed and believes and thereon alleges that
13 Respondents will not fulfill their mandatory duties without a court order.
14

15 71. The Association has no plain, speedy and adequate remedy in the
16 ordinary course of law, other than the relief sought in this Petition, that will prevent the
17 Respondents from acting outside their legal authority.
18

19 72. The Association and the public at large will suffer irreparable harm if
20 the relief requested herein is not granted.
21

22 73. The Association has a direct and beneficial interest in the outcome of
23 this action and has performed all conditions precedent to the filing of this Petition. The
24 maintenance and prosecution of this action will further confer a substantial benefit on the
25 public at large by compelling Respondents to comply with California law in executing
26 their public, governmental functions. The Association's pursuit of this action permits its
27 individual members and the members of the general public throughout Orange County to
28 enforce important public rights and further enforce the public duty of Respondents to

1 comply with California law. Without the Association's pursuit of this action, these rights
2 and duties might otherwise go unenforced because other persons directly interested in
3 enforcement of the public rights and duties do not have the resources, ability, or motivation
4 to bring an enforcement action.

5
6 74. The Association seeks through this action to enforce important rights
7 affecting the public interest and which confer a significant benefit on the public as a whole
8 by ensuring that Respondents comply with California law by, among other things,
9 engaging in an open process without restricting governmental powers through private
10 contracts. The Association has incurred, and will continue to incur, substantial expense in
11 attorneys' fees and costs in pursuing this matter of are within the jurisdictional limits of
12 this court. There is no monetary recovery sought or allowed in this action that would be
13 available to offset the expense incurred by the Association in pursuing this action for
14 public benefit. As such, the Association is entitled to recover an award of attorneys' fees
15 from Respondents, individually or collectively, pursuant to California Code of Civil
16 Procedure section 1021.5 and/or Government Code section 800.

17
18 **FIRST CAUSE OF ACTION**

19 **Writ of Mandate – To Set Aside TCA's Approval of the Settlement Agreement**
20 **(Against the TCA, TCA Board, and Does 1-10)**

21
22 75. The Association realleges Paragraphs 1 through 74, which are
23 incorporated herein by this reference.

24
25 76. The TCA's decision to approve and enter the Settlement Agreement
26 constitutes a prejudicial abuse of discretion inasmuch as the TCA failed to proceed in the
27 manner required by law as set forth herein below.

28

1 77. A public agency, including the TCA, cannot delegate, surrender or
2 impair the present or future exercise of its governmental powers or authority. The effect of
3 this rule is to void any contract that amounts to the restraint, surrender, or abnegation of a
4 public agency's proper governmental authority and functions.

5
6 78. The Settlement Agreement was intended to, and does, surrender and
7 impair the TCA's and TCA Board's proper governmental authority and functions. For
8 example, by designating an Avoidance Area in the Settlement Agreement and agreeing to
9 only pursue "Post Settlement Alignments", the TCA Board (and TCA) illegally agreed to
10 restrict, impair and/or surrender its present authority, and the authority of future TCA
11 Boards, concerning the construction and/or funding of any SR 241 alignments located in
12 the several square mile Avoidance Area. This improper abnegation and surrender of the
13 TCA's discretionary authority in perpetuity was made irrespective of any future public
14 process or environmental review regarding proposed SR 241 alignments. In effect, the
15 TCA Board abandoned and forever barred longstanding SR 241 alignments behind closed
16 doors, without any public hearing, process, or deliberation.

17
18 79. The Settlement Agreement further provides that construction of any
19 structure that would "permit a direct connection between SR 241 and Los Patrones
20 Parkway, including but not limited to construction of any...bridge over SR 241 or over
21 Oso Parkway" shall not commence unless one of four different "triggering events" occurs.
22 Ex. B, p. 11, § 4.1. One of these triggering events is the execution of a "protective
23 agreement" by and between the SSOC, the California Transportation Agency, and the
24 CNRA whereby the parties would agree that "no new major thoroughfare shall be
25 constructed in the Avoidance Area." Ex. B, p. 11, § 4.1.1. This agreement to enter into a
26 "protective agreement" was a further effort by the TCA and TCA Board to surrender it
27 governmental authority and functions in perpetuity in violation of California law.

28

1 80. The TCA Board's entry into a settlement agreement mandating that
2 the TCA shall never, under any circumstances, fund or construct a road in an "avoidance
3 area" restricted the TCA's exercise of its governmental authority and thus, constituted a
4 void, invalid and *ultra vires* act. The Association requests that this Court issue a
5 peremptory writ of mandate and/or injunction setting aside the TCA's unlawful action.
6

7 81. The Association has no plain, speedy, and adequate remedy in the
8 ordinary course of the law, other than the relief sought in this Petition/Complaint, in that
9 the Association has, and had, no right to appeal the stipulated judgment based on the
10 Settlement Agreement (*i.e.*, the Association was not a party to any of the actions covered
11 by the Settlement Agreement or stipulated judgment), and no administrative avenue by
12 which to challenge the Settlement Agreement.
13

14 WHEREFORE, the Association prays for relief as set forth below.
15

16 **SECOND CAUSE OF ACTION**

17 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**
18 **(Against the TCA and Does 1-10)**
19

20 82. The Association realleges Paragraphs 1 through 74, which are
21 incorporated herein by this reference.
22

23 83. The TCA's decision to approve and enter the Protective Agreement
24 constitutes a prejudicial abuse of discretion inasmuch as the TCA failed to proceed in the
25 manner required by law as set forth herein below.
26

27 84. A public agency, including the TCA, cannot delegate, surrender or
28 impair the present or future exercise of its governmental powers or authority. The effect of

1 this rule is to void any contract that amounts to the restraint, surrender, or abnegation of a
2 public agency's proper governmental authority and functions.

3
4 85. The TCA agreed, as part of the Protective Agreement, that
5 "[c]onsistent with the terms of the Settlement Agreement, TCA agrees not to fund or
6 construct a road in the Avoidance Area." (Protective Agreement ¶ 2) By so agreeing, the
7 TCA illegally agreed to restrict, impair and/or surrender its present authority, and the
8 authority of future TCA Boards, concerning the construction and/or funding of any SR 241
9 alignments located in the several square mile Avoidance Area. This improper abnegation,
10 impairment, and surrender of the TCA Board's discretionary authority in perpetuity was
11 made irrespective of any future public process or environmental review regarding
12 proposed SR 241 alignments. In effect, the TCA abandoned and forever barred
13 longstanding SR 241 alignments behind closed doors, without any public hearing, process,
14 or deliberation in violation of California law.

15
16 86. The Protective Agreement, both standing alone and as a component of
17 the illegal Settlement Agreement, is an unlawful and invalid attempt to restrict through
18 contract the exercise of governmental authority, both presently and in the future.
19 Therefore, the TCA's purported execution of the Protective Agreement constituted an
20 invalid, illegal and *ultra vires* act. The Association requests that this Court issue a
21 peremptory writ of mandate and/or injunction setting aside the TCA's unlawful action.

22
23 87. The Protective Agreement is further illegal, void, and *ultra vires*
24 because the Association is informed and believes and thereon alleges that Mr. Kraman is
25 not, and was not, authorized to execute the Protective Agreement on behalf of either the
26 TCA or TCA Board or to otherwise agree that the TCA would not "fund or construct a
27 road in the Avoidance Area."

28

1 88. The Association has no plain, speedy, and adequate remedy in the
2 ordinary course of the law, other than the relief sought in this Petition/Complaint, in that
3 the Association has, and had, no administrative avenue by which to challenge the
4 Protective Agreement. Regardless, any attempts to administratively challenge the
5 Protective Agreement would have been futile because that agreement was not considered
6 and approved during a noticed public hearing and the Association had no knowledge of the
7 Protective Agreement until after it had already been approved and executed by the TCA
8 and CalTrans.

9
10 WHEREFORE, the Association prays for relief as set forth below.

11
12 **THIRD CAUSE OF ACTION**

13 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**
14 **(Against CalTrans and Does 1-10)**

15 89. The Association realleges Paragraphs 1 through 74, which are
16 incorporated herein by this reference.

17
18 90. CalTrans' purported decision to approve and execute the Protective
19 Agreement constitutes a prejudicial abuse of discretion inasmuch as CalTrans failed to
20 proceed in the manner required by law as set forth herein below.

21 91. The California State Legislature establishes the framework for the
22 State Highway System ("SHS") by specifically describing each route in the California
23 Streets and Highways Code. This description establishes the route corridor and the termini
24 of the route. The California Streets and Highways Code section 541 currently describes
25 the SR 241 route as follows: "Route 241 is from Route 5 **south of San Clemente** to Route
26 91 in the City of Anaheim." (Emphasis added) Selection of the exact location of each of
27 the routes has been delegated to the CTC, but the specific alignment, however, **must**
28 **conform to the route description in the Statutes.** See Cal. Str. & High. Code § 75

1 (empowering the CTC to "[s]elect, adopt, and determine the location of State highways on
2 **routes authorized by law**" [emphasis added]); *see also* CalTrans Project Development
3 Procedures Manual Ch. 23, Art. 1.

4
5 92. SR 241 was adopted as a state highway by Resolution of the CTC on
6 July 9, 1993 and August 19, 1998, and was declared to be a freeway.

7 93. Neither CalTrans, nor its individual District Directors (*i.e.* Ryan
8 Chamberlain), have been delegated any authority under California law concerning the
9 selection of a specific location or alignment for any route described in the California
10 Streets and Highways Code. Nor has CalTrans, or any of its individual District Directors,
11 been delegated any authority to rescind state highway or freeway routes, or the
12 location/alignment of state highways or freeways, for any route described in the California
13 Streets and Highways Code. In short, CalTrans has no authority under California law to
14 take any action designating where a route described in the California Streets and Highways
15 Code may be located or not located.

16 94. Nevertheless, in the Protective Agreement Caltrans agreed, "that in
17 exercising its authority under state law, it will not approve, permit, take possession of or
18 otherwise authorize the construction of a major thoroughfare in the Avoidance Area;
19 provided, however, that this prohibition shall not apply to any proposed widening of the
20 existing Interstate 5 facility." (Protective Agreement ¶ 1)

21
22 95. The Protective Agreement is illegal, void, and *ultra vires* because:

- 23
24 a. The Association is informed and believes that Mr. Chamberlain was
25 not authorized to agree, on behalf of CalTrans (or on behalf of the
26 California State Transportation Agency), that CalTrans will not
27 approve, permit, take possession of or otherwise authorize the
28 construction of a major thoroughfare in the Avoidance area;

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- b. CalTrans does not have the authority to agree, on behalf of itself or on behalf of the California State Transportation Agency, that it will not approve, permit, take possession of or otherwise authorize the construction of a major thoroughfare in the Avoidance area; and
- c. CalTrans does not have the authority to effectively rescind and/or preclude state highway and/or freeway routes and/or alignments duly adopted by the California Legislature and/or CTC.

96. Even if it did have such authority, a public agency, including CalTrans, cannot delegate, surrender or impair the present or future exercise of its governmental powers or authority. The effect of this rule is to void any contract that amounts to the restraint, surrender, or abnegation of a public agency's proper governmental authority and functions.

97. The Protective Agreement illegally restricts the governmental authority of CalTrans and/or the CTC to designate the appropriate route/alignment for the SR 241 following appropriate environmental review, a noticed public hearing, and an opportunity for public comment and deliberation.

98. The Association has no plain, speedy, and adequate remedy in the ordinary course of the law, other than the relief sought in this Petition/Complaint, in that the Association has, and had, no administrative avenue by which to challenge the Protective Agreement. Regardless, any attempts to administratively challenge the Protective Agreement would have been futile because that agreement was not considered and approved during a noticed public hearing and the Association had no knowledge of the Protective Agreement until after it had already been approved and executed by the TCA and CalTrans.

1 WHEREFORE, the Association prays for relief as set forth below.
2

3 **FOURTH CAUSE OF ACTION**

4 **Writ of Mandate – Approval of Protective Agreement in Violation of CEQA**
5 **(Against the TCA, CalTrans, and Does 1-10)**
6

7 99. The Association realleges Paragraphs 1 through 74, which are
8 incorporated herein by this reference.
9

10 100. CEQA requires public agencies to consider and document the
11 environmental implications of their actions in order to "[e]nsure that long term protection
12 of the environment . . . shall be the guiding criterion in public decisions." (Pub. Res. Code
13 § 21001(b)) The environmental review process created by CEQA carries out this mandate
14 by bringing citizens' environmental concerns about a proposed project to the attention of
15 public agencies. Accordingly, CEQA requires public agencies to determine whether a
16 project may have a significant impact on the environment. (Pub. Res. Code § 21151) Any
17 environmental review must be completed prior to the approval of a project so that the
18 approving agency, and general public, is fully apprised regarding the environmental
19 consequences of any action.
20

21 101. The foundational principle of CEQA is that it must be "interpreted in
22 such a manner as to afford the fullest possible protection to the environment within the
23 reasonable scope of the statutory language." (*Citizens of Goleta Valley v. Board of*
24 *Supervisors* (1990) 52 Cal.3d 553, 563-64) An agency's action violates CEQA if it
25 "thwarts the statutory goals" of "informed decisionmaking" and "informed public
26 participation." (*Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d692,
27 712)
28

1 102. Since the approval and execution of the Protective Agreement has the
2 potential to cause either a direct, or reasonably foreseeable indirect, physical change in the
3 environment, such action constitutes "approval" of a "discretionary project" as defined by
4 CEQA and the State CEQA Guidelines ("Guidelines"), 14 Cal. Code of Regs., §§ 15000 *et*
5 *seq.*, and is therefore subject to CEQA. The approval violated CEQA and the Guidelines
6 in each of the following respects:

7
8 a. The TCA and CalTrans failed to evaluate the potential impacts
9 of the Protective Agreement on the environment or make any of the findings or
10 determinations required by CEQA and the Guidelines; and

11
12 b. The TCA and CalTrans failed to prepare an environmental
13 impact report ("EIR") concerning the Protective Agreement, including the promises made
14 therein concerning the abandonment of any and all future SR 241 routes/alignment through
15 the Avoidance Area or otherwise having any "Direct Impacts" on the Avoidance Area.
16 The TCA and CalTrans failed to prepare an EIR notwithstanding the fact that there is
17 ample substantial evidence to support fair argument that the Protective Agreement, and the
18 promises included therein, may have a significant effect on the environment concerning:
19 (1) aesthetics, (2) air quality, (3) biological resources, (4) cultural resources, (5) geology
20 and soils, (6) greenhouse gas emissions, (7) hazards and hazardous materials, (8)
21 hydrology and water quality, (9) land use and planning, (10) noise, (11) population and
22 housing, (12) public services, (13) recreation, and/or (14) transportation/traffic. Despite
23 the reasonable probability of these impacts, the TCA and CalTrans approved the Protective
24 Agreement without any public notification, comment period, process, or environmental
25 review under CEQA.

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103. Respondents' failure to conduct any CEQA review prior to approving and executing the Protective Agreement constituted a prejudicial abuse of discretion for failure to proceed in a manner required by law. (Cal. Pub. Res. Code, § 21168.5)

104. The Association timely provided written notice of its intention to file this Petition to Respondents pursuant to Cal. Pub. Res. Code § 21167.5.

105. The Association further timely served the Attorney General with a copy of its Petition along with notice of its filing, in compliance with Cal. Pub. Res. Code § 21167.7.

106. The Association has no plain, speedy, and adequate remedy in the ordinary course of the law, other than the relief sought in this Petition/Complaint, in that the Association has, and had, no administrative avenue by which to challenge the Protective Agreement. Regardless, any attempts to administratively challenge the Protective Agreement would have been futile because that agreement was not considered and approved during a noticed public hearing and the Association had no knowledge of the Protective Agreement until after it had already been approved and executed by the TCA and CalTrans. In short, there was no opportunity for the Association to raise objections to or otherwise comment on the Protective Agreement before it was executed.

WHEREFORE, the Association prays for relief as set forth below.

1 **FIFTH CAUSE OF ACTION**

2 **Writ of Mandate – Violation of Ralph M. Brown Act**
3 **(Against the TCA, TCA Board, and Does 1-10)**
4

5 107. The Association realleges Paragraphs 1 through 74, which are
6 incorporated herein by this reference.

7
8 108. The Brown Act requires that virtually all decisions made by public
9 bodies must be made in public after providing the public with proper notice of the
10 proposed actions and with an opportunity to be heard on such actions. The Brown Act is
11 intended to facilitate public participation in government decision-making by ensuring that
12 the deliberative process by which decisions related to the public's business is conducted in
13 full public view. All exceptions to the Brown Act's general provisions requiring public
14 meetings and action must be strictly and narrowly construed.

15
16 109. The TCA Board improperly executed and approved the Settlement
17 Agreement during closed session on November 10, 2016, without any public hearing or
18 opportunity for the public to be heard regarding the various broad land use and other
19 policy edicts included in that agreement. True and correct copies of the TCA Board's
20 November 10, 2016 meeting agenda and minutes are attached hereto as Exhibit F.

21
22 110. While the TCA Board is permitted under Government Code section
23 54956.9 to discuss with its counsel, in closed session, settlement of a lawsuit to which the
24 TCA is a party, the TCA Board was not (and is not) authorized to execute the Settlement
25 Agreement during closed session because that agreement includes provisions for actions
26 which are subject to the Brown Act's opening meeting requirements and which are
27 intrinsically required by law to be made only after a noticed public hearing with a
28 meaningful opportunity for public comment. (*See, e.g., Trancas Property Owners Assn. v.*

1 *City of Malibu* (2006) 138 Cal.App.4th 172, 183-187) As the California Attorney General
2 has explained, "the purpose of [Section 54956.9] is to permit the body to receive legal
3 advice and make litigation decisions only; it is not to be used as a subterfuge to real
4 nonlitigation oriented policy decisions." (Cal. Atty. Gen. Office, *The Brown Act* (2003),
5 p. 40)

6
7 111. The Settlement Agreement contains several broad policy edicts, such
8 as the TCA's promise to never "construct or provide funding for the construction of any
9 road alignment that is located within, or that would have Direct Impacts to, the Avoidance
10 Area." The TCA Board's decision to enact this several square mile "no go" zone for the
11 SR 241 was a broad land use policy action which plainly required a public hearing and an
12 opportunity for public comment. Indeed, the TCA Board's enactment, through the
13 Settlement Agreement, of the Avoidance Agreement took the longstanding "Green
14 Alignment" out of consideration for the SR 241 alignment and virtually guaranteed that
15 any SR 241 alignment would bisect established communities located in either or both the
16 Cities of San Clemente and San Juan Capistrano. Assuming the TCA and TCA Board
17 even had authority to take such actions (and they did not), each of the broad policy actions
18 mandated by the Settlement Agreement should have been considered and deliberated
19 during a properly noticed public meeting following an opportunity for meaningful public
20 comment.

21
22 112. Rather than conduct a noticed public meeting concerning the
23 provisions of the Settlement Agreement and the policy decisions included therein, the TCA
24 simply referenced the following lawsuits on its November 10, 2016 Agenda for
25 consideration and discussion during closed session:

1 **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
2 (Subdivisions (a) and (d)(1) of Government Code Section 54956.9)

- 3 • California State Parks Foundation, et al. v. Foothill/Eastern Transportation
Corridor Agency San Diego Superior Court, Case No. GIN051194
- 4 • The People of the State of California v. Foothill/Eastern Transportation
Corridor Agency San Diego Superior Court, Case No. GIN051371
- 5 • Native American Heritage Commission v. Foothill/Eastern Transportation
6 Corridor Agency San Diego Superior Court, Case No. GIN051370
- 7 • Jeffrey A Turner v. Native American Heritage Commission San Diego
Superior Court, Case No. 37-2008-00060583-CU-WM-NC
- 8 • California State Parks Foundation, et al. v. Foothill/Eastern Transportation
9 Corridor Agency San Diego Superior Court, Case No. 37-2013-00049797
- 10 • The People of the State of California v. Foothill/Eastern Transportation
11 Corridor Agency San Diego Superior Court, Case No. 37-2013-00050001
CU-WM-NC
- 12 • California Regional Water Quality Control Board, San Diego Region,
13 Waste Discharge Requirements Tentative Order No. R-09-2103-0007

14 113. Even had the TCA notified the public of what it intended to approve
15 in closed session, it gave the public no opportunity to comment on the TCA Board's
16 approval of the Settlement Agreement or the provisions contained therein. The TCA
17 Board further failed to consider and deliberate on the significant policy and land use
18 decisions contained in the Settlement Agreement in a noticed public meeting. The
19 Settlement Agreement was plainly used as subterfuge by the TCA to approve various
20 policy pronouncements behind closed doors without public deliberation or input. Such
21 ploys are illegal as a matter of law under the Brown Act.

22
23 114. The execution and approval of the Protective Agreement also violated
24 the Brown Act. Like the Settlement Agreement, the Protective Agreement provides for
25 broad policy directives (*i.e.*, the TCA's promise to never "fund or construct a road in the
26 Avoidance Area") which could only be adopted by the TCA Board following a noticed
27 public hearing and a full, fair opportunity for meaningful public comment. But no noticed
28 public hearing was held by the TCA Board regarding the approval of the Protective

1 Agreement. Instead, the Protective Agreement was executed on March 7, 2017 by the
2 TCA's Chief Executed Officer, Michael Kraman, in private and without any noticed public
3 hearing, public deliberation, or opportunity for public comment in violation of the Brown
4 Act.

5
6 115. On July 6, 2017, the Association sent the TCA Board a "Demand to
7 Immediately Cease and Desist from Violations of the Ralph M. Brown Act" pursuant to
8 Government Code section 54960.2. A true and correct copy of the Association's cease and
9 desist letter is attached hereto as Exhibit G. The Association is informed and believes and
10 thereon alleges the TCA Board failed, or will fail, to timely remedy the Brown Act
11 violations alleged herein. Accordingly, the Association is authorized to bring the instant
12 action.

13
14 116. The TCA's violations of the Brown Act were not technical or trivial in
15 nature, but instead go to the heart of the notice, public meeting and deliberation mandates.
16 The Association, on behalf of its members and the public generally, requests that the Court
17 issue a peremptory writ of mandate setting aside the TCA's approval of the Settlement
18 Agreement and/or Protective Agreement and further declaring those agreements null and
19 void.

20
21 117. The Association has no plain, speedy and adequate remedy in the
22 ordinary course of law, other than the relief sought in this Petition, that will prevent the
23 Respondents from acting outside their legal authority.

24
25 118. Because of the Brown Act violations alleged herein and the TCA
26 Board's failure to timely remedy those violations, the Association is entitled to recover its
27 reasonable attorneys' fees and costs incurred pursuant to Government Code section
28 54960.5.

1 WHEREFORE, the Association prays for relief as set forth below.

2
3 **SIXTH CAUSE OF ACTION**

4 **Declaratory Relief**

5 **(Against TCA, TCA Board, and Does 1-10)**

6 119. The Association realleges Paragraphs 1 through 118, which are
7 incorporated herein by this reference.

8
9 120. An actual controversy has arisen and now exists between the
10 Association, on the one hand, and the Respondents on the other hand, in that the
11 Association contends, and Respondents dispute, that:

12 a. The TCA's and TCA's Board's approval and execution of the
13 Settlement Agreement was an illegal, void, and *ultra vires* act because that agreement
14 improperly surrendered, impaired and restricted the TCA's and TCA Board's present and
15 future exercise of their governmental authority and functions.

16
17 b. The TCA's approval of the Protective Agreement, both
18 standing alone and as a component of the Settlement Agreement, was an illegal, void and
19 *ultra vires* act because that agreement improperly surrendered, impaired and restricted the
20 TCA's and TCA Board's present and future exercise of their governmental authority and
21 functions.

22 c. The Protective Agreement is further illegal, void, and *ultra*
23 *vires* because the Association is informed and believes and thereon alleges that Mr.
24 Kraman is not, and was not, authorized to execute the Protective Agreement on behalf of
25 either the TCA or TCA Board or to otherwise agree that the TCA will not "fund or
26 construct a road in the Avoidance Area."
27
28

1 d. CalTrans' approval of the Protective Agreement was an illegal,
2 void and *ultra vires* act because: (1) the Association is informed and believes that Mr.
3 Chamberlain was not authorized to agree, on behalf of CalTrans or anyone else, that
4 CalTrans will not approve, permit, take possession of or otherwise authorize the
5 construction of a major thoroughfare in the Avoidance Area; (2) Caltrans does not have the
6 authority to agree, on behalf of itself or anyone else, that it will not approve, permit, take
7 possession of or otherwise authorize the construction of a major thoroughfare in the
8 Avoidance Area; (3) CalTrans does not have the authority to take any action concerning
9 routes or alignments of state highways and freeways, let alone effectively rescind and/or
10 preclude state highway and/or freeway routes and/or alignments duly adopted by the
11 California Legislature and/or CTC; and (4) even if CalTrans did have such authority, the
12 Protective Agreement improperly restricts the authority of CalTrans and/or the CTC to
13 designate the appropriate route/alignment for the SR 241 following appropriate
14 environmental review, a noticed public hearing, and an opportunity for public comment
15 and deliberation.

16 e. The TCA and CalTrans failed to conduct necessary
17 environmental review, including the preparation of an EIR, concerning the approval of the
18 Protective Agreement and the broad policy edicts included therein.

19 f. The TCA and TCA Board's approval of the Settlement
20 Agreement during closed session and without a noticed public hearing and an opportunity
21 for public comment and deliberation violated the Brown Act.

22 g. The TCA's approval of the Protective Agreement without a
23 noticed public hearing and an opportunity for public comment and deliberation violated the
24 Brown Act.
25

26
27 121. The California Legislature establishes the framework for the SHS by
28 specifically describing each route in the California Streets and Highways Code. This

1 description establishes the route corridor and the termini of the route. The California
2 Streets and Highways Code section 541 describes the SR 241 route as follows: "Route 241
3 is from **Route 5 south of San Clemente** to Route 91 in the City of Anaheim." (Emphasis
4 added) Selection of the exact location of each of the routes has been delegated to the CTC,
5 but the specific alignment, however, **must conform to the route description in the**
6 **Statutes.** See Cal. Str. & High. Code § 75 (empowering the CTC to "[s]elect, adopt, and
7 determine the location of State highways on routes **authorized by law**" [emphasis added]);
8 *see also* CalTrans Project Development Procedures Manual Ch. 23, Art. 1.

9
10 122. The legislative history regarding the SR 241 reveals that the
11 California Legislature intended for Route 241 to **bypass** San Clemente and **connect** to
12 Route 5 South of San Clemente in San Diego County, near Basilone Rd in San Diego
13 County. This intention for the 241 route is confirmed by the SR 241 route map
14 consistently employed and relied upon by legislators throughout the legislative history for
15 Streets and Highways Code section 541, attached hereto as Exhibit A.

16 123. Accordingly, a further actual controversy has arisen and now exists
17 between the Association, on the one hand, and Respondents on the other hand, in that the
18 Association contends, and Respondents dispute, that any alignment approved concerning
19 the Foothill-South segment of the SR 241 must **connect** to Route 5 south of San Clemente
20 near Basilone Rd. in San Diego County. The Association contends, and Respondents
21 dispute, that any alignment for the Foothill-South segment of the SR 241 connecting to
22 Route 5 in the City of San Clemente does not, and cannot, conform to the route description
23 for the SR 241 as set forth in Streets and Highways Code section 541.

24 124. The Association seeks a declaration of the rights and duties of the
25 respective parties regarding the actual and existing controversies described in paragraphs
26 120 and 123 above.
27
28

1 125. A judicial determination of the rights and obligations of the parties
2 hereto is necessary and appropriate so that the parties may ascertain those rights and act
3 accordingly.

4 WHEREFORE, the Association prays for relief as set forth below.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Association prays for judgment as follows:

8
9 1. As to the First Cause of Action, for a peremptory writ of mandate
10 declaring the Settlement agreement void and commanding the TCA and TCA Board to set
11 aside the approval of the Settlement Agreement, as well as any and all agreements entered,
12 and actions taken, pursuant thereto;

13 2. As to the Second Cause of Action, for a peremptory writ of mandate
14 declaring the Protective Agreement void and commanding the TCA and TCA Board to set
15 aside the approval of the Protective Agreement, as well as any and all agreements entered,
16 and actions taken, pursuant thereto;

17 3. As to the Third Cause of Action, for a peremptory writ of mandate
18 declaring the Protective Agreement void and commanding CalTrans to set aside the
19 approval of the Protective Agreement, as well as any and all agreements entered, and
20 actions taken, pursuant thereto;

21 4. As to the Fourth Cause of Action, for a peremptory writ of mandate
22 commanding that the TCA, TCA Board, and CalTrans set aside the approval of the
23 Protective Agreement, as well as any and all agreements entered, and actions taken,
24 pursuant thereto, until Respondents have complied with the requirements of CEQA;

25 5. As to the Fifth Cause of Action, for a peremptory writ of mandate
26 commanding that the TCA and TCA Board set aside the approvals of the Settlement
27
28

1 Agreement and Protective Agreement, as well as any and all agreements entered, and
2 actions taken, pursuant thereto, until the TCA and TCA Board have complied with the
3 requirements of the Brown Act;

4 6. As to the Sixth Cause of Action, for a declaration of the rights and
5 duties of the respective parties as requested herein above;

6 7. As to all causes of action, for costs of suit incurred by the Association
7 in the pursuit of this action;

8 8. As to all causes of action, for reasonable attorneys' fees and costs
9 (including expert witness costs), as authorized by CCP § 1021.5, Govt. Code § 54960.5,
10 and/or any other applicable provisions of law; and
11

12 9. As to all causes of action, all such other relief as the Court may deem
13 just and proper.
14

15 Dated: July 28, 2017

16 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17
18
19 By



20 DANIEL P. BANE
21 ASHTON M. BRACKEN
22 Attorneys for Petitioner and Plaintiff
23 THE RESERVE MAINTENANCE
24 CORPORATION
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VERIFICATION

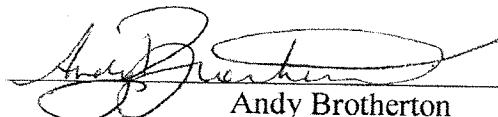
I have read the foregoing "Petition for Peremptory Writ of Mandate: Complaint for Declaratory and Injunctive Relief" ("Petition") and know its contents.

I am a Member of the Board of Directors of Petitioner and Plaintiff The Reserve Maintenance Corporation ("Petitioner") and am authorized to make this verification for and on its behalf. I have read the Petition and know of its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the allegations of the Petition are true and correct.

Executed on July 25, 2017 at San Clemente, California.

By



Andy Brotherton

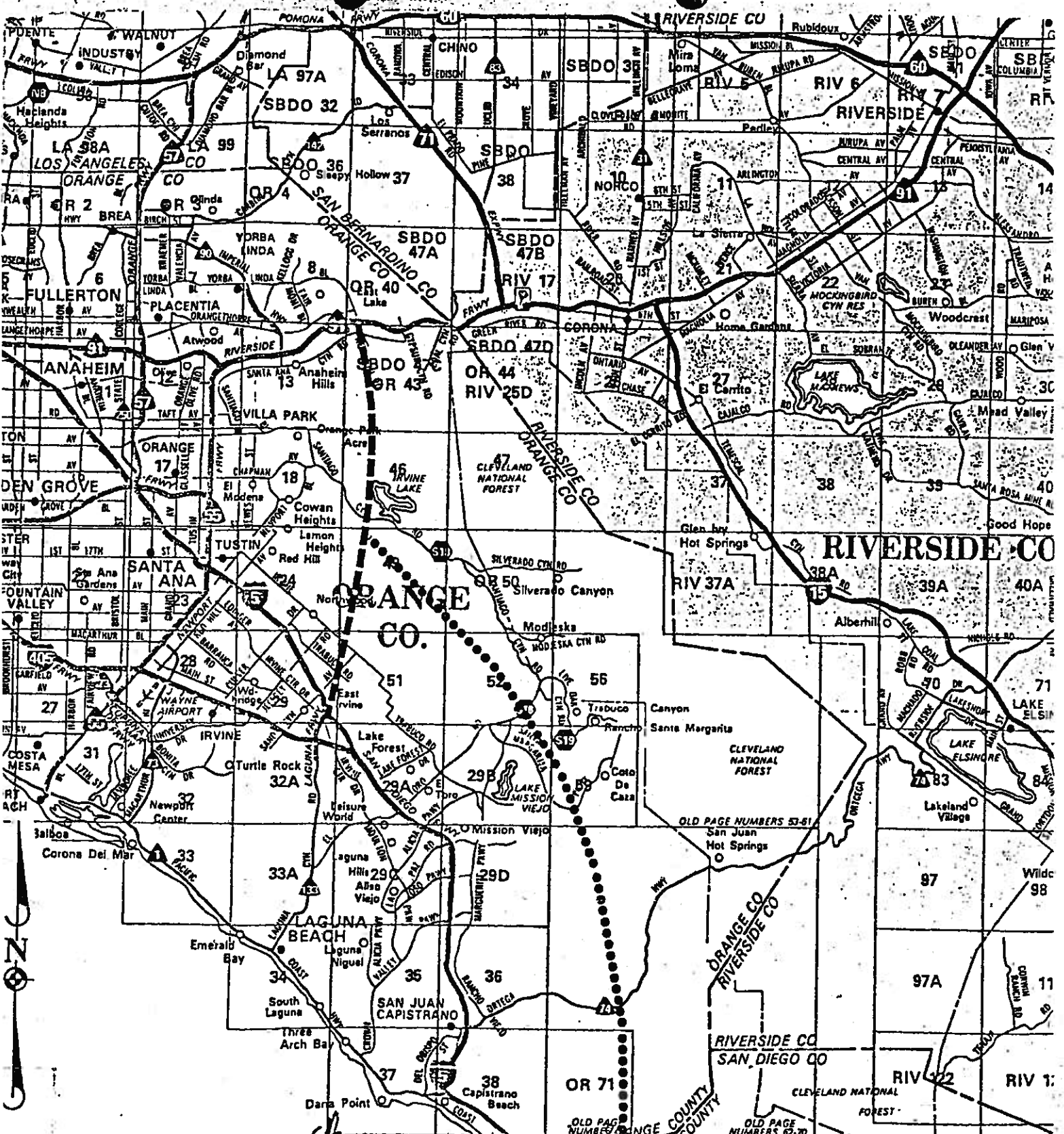
Authorized Board Member Signatory of the Reserve Maintenance Corporation

INDEX OF EXHIBITS

1		
2		
3	Exhibit A	Map from the legislative history of California Streets and Highways Code
4		§ 541
5	Exhibit B	Settlement Agreement
6	Exhibit C	Map Depicting Avoidance Area
7	Exhibit D	Protective Agreement
8	Exhibit E	Map Depicting Proposed Post Settlement Alignments
9	Exhibit F	The TCA Board's 11-10-2016 Meeting Agenda And Minutes
10	Exhibit G	Reserve Maintenance Corporation's Cease And Desist Letter to the TCA
11		Board
12	Exhibit H	11-9-2016 NRDC Article, "San Onofre Saved: Nov 2016 Agreement
13		Ends Toll Road Dispute"
14	Exhibit I	11-16-2016 NAS Article, "Agreement Ends 15-Year OC Toll Road
15		Battle"
16	Exhibit J	11-10-2017 Surfrider Article, "Trestles Saved Forever!"
17	Exhibit K	Surfrider's Trestles Toll Road FAQ
18	Exhibit L	Presentation by Michael Chesney, Chief Strategy Officer for the
19		TollRoads
20		
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EXHIBIT "A"

EXHIBIT "A"



**PROPOSED ROUTE 7-AB2049
(EASTERN CORRIDOR)**

**PROPOSED ROUTE 11-AB2048
(FOOTHILL CORRIDOR)**

Provided by LRI History LLC

CAMP JOSEPH
H. PENDLETON

EXHIBIT "B"

EXHIBIT "B"

STATE ROUTE 241 FOOTHILL SOUTH AND TESORO EXTENSIONS SETTLEMENT AGREEMENT

This State Route 241 Foothill South and Tesoro Extensions Settlement Agreement (“Agreement”), dated for reference purposes only as of November 10, 2016, is made by and among, the following Parties: (i) Foothill/Eastern Transportation Corridor Agency (“TCA”), a Joint Powers Authority comprised of the County of Orange and the cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Tustin and Yorba Linda; (ii) National Audubon Society, a New York nonprofit corporation dba Audubon California, California Coastal Protection Network, a California nonprofit public benefit corporation, California State Parks Foundation, a California nonprofit public benefit corporation, Defenders of Wildlife, a District of Columbia nonprofit corporation, Endangered Habitats League, a California nonprofit public benefit corporation, Laguna Greenbelt, Inc., a California nonprofit public benefit corporation, Natural Resources Defense Council, Inc., a New York nonprofit corporation, Orange County Coastkeeper, a California nonprofit public benefit corporation, Sea and Sage Audubon Society, a California nonprofit public benefit corporation, Sierra Club, a California nonprofit public benefit corporation, Surfrider Foundation, a California nonprofit public benefit corporation, and WILD Coast-COSTASALVAJE, a California nonprofit benefit corporation (each an “SSOC Member” and collectively the “Save San Onofre Coalition” or “SSOC”); and (iii) the People of the State of California ex rel. Kamala D. Harris, Attorney General (“People”), the Native American Heritage Commission (“NAHC”), and the California State Park and Recreation Commission (“CSPRC”) (each a “Party” and collectively, the “Parties”). As used in this Agreement, the terms “Parties” and “SSOC Members” include the officers, governing boards, agents, and employees of each Party or SSOC Member. “Party” does not include the members of any membership organization that is a Party who are not also officers, members of the governing board, agents or employees of the Party.

The parties to each of the following actions, which this Agreement seeks to resolve, shall file stipulations in substantially the same form as Exhibit A (“Stipulation for Consolidation and Joinder”) to consolidate for purposes of judgment those matters and permit the permissive joinder of Defenders of Wildlife and WILD Coast-COSTASALVAJE, which are SSOC Members: *California State Parks Foundation et al. v. Foothill Eastern/Transportation Corridor Agency et al.*, San Diego County Superior Court Case No. GIN051194 and *People of the State of California et al. v. Foothill/Eastern Transportation Corridor Agency et al.*, San Diego County Superior Court, Case No. GIN051371 (consolidated with Case No. GI51194) (hereafter the “2006 CEQA Lawsuits”); *California State Parks Foundation et al. v. Foothill Eastern/Transportation Corridor Agency et al.*, San Diego County Superior Court Case No. 37-2013-00049797-CU-WM-CTL and *People of the State of California, ex rel. Attorney General Kamala D. Harris v. Foothill/Eastern Transportation Corridor Agency et al.*, Case No. 37-2013-00050001-CU-WM-NC (consolidated with Case No. 37-2013-00049797-CU-WM-CTL) (hereafter the “2013 CEQA Lawsuits”); and *Native American Heritage Commission v. Foothill/Eastern Transportation Corridor Agency*, San Diego Superior Court, Case No. GIN051370 (“NAHC Lawsuit”). Thereafter, the Parties shall file a stipulation for entry of judgment and (“Stipulation for Judgment”) in the lowest numbered case stipulating to the entry

of final judgment and attaching a proposed final judgment incorporating the terms set forth in this Agreement (“**Final Judgment**”). The Stipulation for Judgment shall be substantially in the form of Exhibit B. Upon entry of the proposed Final Judgment, this Agreement shall be enforceable as an order of the court. This Agreement shall, however, be binding and enforceable as a contractual settlement agreement on and after the Effective Date, regardless of whether the court enters the Final Judgment.

RECITALS

A. This Agreement arises from TCA’s prior proposal to extend State Route 241 (“**SR 241**”) beyond its current terminus at Oso Parkway (“**SR 241 Extension Project**”). Actions taken by TCA related to this proposal have been subject to a number of pending lawsuits by SSOC Members, and by the People, NAHC, and CSPRC (collectively, “**State Parties**”). SSOC and TCA have also threatened litigation over actions taken by other public entities related to the extension of SR 241. By this Agreement, the Parties seek to finally resolve the pending lawsuits and potential lawsuits, avoid certain future claims, provide certainty as to the protection of certain natural and cultural resources, and establish a framework by which an alignment for the SR 241 Extension Project, as defined herein, can be identified, evaluated, and potentially advanced in a manner that is consistent with applicable laws and meets the transportation needs of TCA.

B. On February 23, 2006, TCA certified a Final Subsequent Environmental Impact Report (“**2006 SEIR**”) for the SR 241 Foothill South Extension and approved an alignment (the A7C-FEC-M-Initial Alternative, also known as the Green Alignment) in the DEIS/SEIR for the South Orange County Transportation Infrastructure Improvement Project (“**2006 Approvals**”).

C. Thereafter, the 2006 SEIR and 2006 Approvals were challenged under the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* (“**CEQA**”) by certain SSOC Members, and by the People and the CSPRC, in the 2006 CEQA Lawsuits. The NAHC also filed the NAHC Lawsuit, seeking to enjoin construction, development, and permitting of the alignment approved by the 2006 Approvals under Public Resources Code §§ 5097.94 and 5097.97.

D. In 2008, the California Coastal Commission determined that the alignment approved by TCA in 2006 was inconsistent with the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*) (“**CZMA**”) due to its significant impacts on coastal resources and the availability of feasible alternatives to the alignment, and therefore objected to TCA’s CZMA consistency determination. On appeal, the U.S. Secretary of Commerce upheld the Coastal Commission’s objection.

E. On April 18, 2013, TCA approved an Addendum to the 2006 SEIR (“**2013 Addendum**”) and approved an extension of SR 241 to Cow Camp Road (“**2013 Approvals**”), also known as the Tesoro Extension. The 2013 Approvals and 2013 Addendum were challenged under CEQA in the 2013 CEQA Lawsuits, filed by certain SSOC Members and by the People.

F. Through a series of decisions made between June 2013 and March 2015, the San Diego Regional Water Quality Control Board (“**RWQCB**”) denied TCA’s application for waste discharge requirements under the Porter-Cologne Water Quality Control Act (Water Code §§ 13000 *et seq.*) for the Tesoro Extension (“**WDR Denial**”). On February 16, 2016, TCA and RWQCB entered into a tolling agreement by which the parties agreed to extend the time for TCA to file a legal challenge to the WDR Denial (as amended, “**RWQCB Tolling Agreement**”).

G. In 2016, construction commenced on Los Patrones Parkway (formerly known as F Street), a county arterial road between Oso Parkway and Cow Camp Road occupying the same general footprint as the proposed Tesoro Extension. Construction of Los Patrones is expected to be complete in 2018.

H. Between February and June, 2016 the County of Orange took certain actions resulting in the approval of the Oso Parkway Bridge project (“**Bridge Project**”) proposed by TCA, which would allow for a direct connection between SR 241 and Los Patrones Parkway under Oso Parkway. On May 2, 2016, SSOC, County of Orange, and TCA entered into an agreement by which the parties agreed to extend the time for SSOC to challenge the Bridge Project (as amended, “**Bridge Tolling Agreement**”).

I. TCA is considering a mobility improvement project to address concerns regarding congestion on the Interstate 5 freeway in South Orange County. Mobility improvements would be conducted in a manner that would extend SR 241 utilizing an alignment that minimizes environmental and cultural resource impacts, is economically feasible and practicable, and is consistent with applicable state and federal environmental and cultural resources laws. To achieve these objectives, TCA will only build or fund an alignment that is located outside of the Avoidance Area, as defined in this Agreement. In addition, TCA desires to collect tolls on Los Patrones Parkway upon its completion, and to proceed with the Bridge Project to create a direct connection between SR 241 and Los Patrones Parkway at the earliest possible date.

J. A primary concern of SSOC, the CSPRC, and the People, and a reason for their filing of the 2006 and 2013 CEQA Lawsuits, is the protection of San Onofre State Beach (“**SOSB**”) from the impacts of a new major thoroughfare. The NAHC, as well as SSOC, is concerned with the protection of the historic Acjachemen/Juaneno village of Panhe from the impacts of a new major thoroughfare, and the NAHC filed the NAHC Lawsuit to protect Panhe. SSOC is also concerned with the protection of the Richard and Donna O’Neill Conservancy, formerly known as the Donna O’Neill Land Conservancy (“**DOLC**”). Collectively, the State Parties, and SSOC are opposed to and desire to prevent any extension of SR 241 or other construction of a major thoroughfare in any portion of the Avoidance Area that directly impacts the SOSB or Panhe, and SSOC is opposed to and desires to prevent any extension of SR 241 or other construction of a major thoroughfare that would have a Direct Impact, as defined herein, to the Avoidance Area.

K. The State Parties and SSOC desire prompt rescission of the 2006 SEIR, the 2006 Approvals, the 2013 Addendum, and the 2013 Approvals. The State Parties and SSOC are opposed to the construction of any project that has not yet been through the Environmental Review Process, as defined herein.

L. In light of the foregoing, the Parties wish to resolve the 2006 CEQA Lawsuits, the NAHC Lawsuit, the 2013 CEQA Lawsuits, and the potential lawsuits tolled by the RWQCB Tolling Agreement and the Bridge Tolling Agreement in accordance with the terms and conditions of this Agreement.

TERMS

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, promises, and benefits contained herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1 “Avoidance Area” means the areas identified as the Avoidance Area on the map included as Exhibit C to this Agreement.

1.2 “Breach” means the failure of any Party to comply with any term of the Agreement applicable to such Party, including any requirement or obligation to act or refrain from acting that the Agreement imposes on such Party.

1.3 “Cure Period” means the fifteen (15) day period following receipt of a Notice of Breach.

1.4 “Direct Impact” means (a) the conduct of any of the following activities within any portion of the Avoidance Area: construction activities (including staging, equipment use, and storage), grading, vegetation removal, dewatering, material deposition, or ground disturbance, and (b) any direct and observable physical disturbance to the Avoidance Area caused by activities within or immediately adjacent to the Avoidance Area. This definition is not intended to reflect a position by any Party on the meaning of the term “direct impact” under CEQA.

1.5 “Effective Date” means the date on which the last Party has signed this Agreement.

1.6 “Environmental Review Process” means the environmental reviews, permits, concurrences, and approvals for a project required under all applicable environmental and cultural resources laws, including but not limited to reviews under CEQA, the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), the California Endangered Species Act, Fish and Game Code §§ 2050 *et seq.*, the federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, National Historic Preservation Act § 106, Section 4(f), 23 U.S.C. § 138 and 49 U.S.C. § 303, the California Coastal Act, Public Resources Code §§ 30000 *et seq.*, Public Resources Code §§ 5097-5097.7, 5097.9-5097.991, and CZMA (to the extent the above laws are applicable to the SR 241 Extension Project).

1.7 “Lead Agency” means the agencies identified as lead agencies under CEQA and NEPA for the SR 241 Extension Project.

1.8 “Oppose” or “Opposing” means: (i) to take any action or make any statement (including, but not limited to, submitting written comments or correspondence, or providing oral testimony) in any administrative or judicial forum or proceeding that (a) constitutes a challenge to, or a statement against an action, approval or determination, (b) seeks to prevent or delay any approval, or (c) is inconsistent with or contradicts statements within the Joint Statement; or (ii) to form, fund, counsel, or provide assistance to another entity or individual (including taking actions or making statements directed to the press or the public) for the purpose of challenging, administratively or judicially, such action, determination, or approval.

1.9 “Post-Settlement Alignment” means any alignment for the extension of SR 241 that is consistent with the project goals, objectives and transportation needs identified and established by TCA, connects to Interstate 5, and is not sited in and will not have Direct Impacts to the Avoidance Area. A Post-Settlement Alignment that is proposed to the Lead Agencies but is subsequently modified in the course of the Environmental Review Process shall continue to serve as and be a Post-Settlement Alignment for purposes of this Agreement, provided that the modified alignment is not sited in and will not have Direct Impacts to the Avoidance Area and meets the other criteria, as set forth in this Section, for a Post-Settlement Alignment.

1.10 “Resource Agency” or “Resource Agencies” means any governmental agency or agencies, including, without limitation, a Lead Agency, with discretionary approval authority over all or any portion of the SR 241 Extension Project insofar as that project will or may adversely affect any natural or cultural resources.

2. RESCISSION OF APPROVALS AND DISMISSAL OF LAWSUITS.

2.1 At the next regular meeting of the TCA Board of Directors after the Effective Date, but no later than 70 days after the Effective Date, TCA shall rescind the certification of the 2006 SEIR, the 2006 Approvals, the approval of the 2013 Addendum, and the 2013 Approvals. If, despite good faith efforts by TCA, rescission does not occur within 70 days after the Effective Date, the Parties may mutually agree to extend the 70-day deadline. The rescission shall not limit the right of TCA or a Lead Agency to include or incorporate by reference data, analyses, and findings from the 2006 SEIR and 2013 Addendum, or other applicable adopted planning documents for use, in accordance with federal and state law, in the consideration of and the Environmental Review Process for the SR 241 Extension Project.

2.2 TCA shall cause the RWQCB Tolling Agreement to terminate no later than 30 days after the Effective Date of this Agreement. TCA further agrees not to file a lawsuit challenging the decisions of the RWQCB or State Water Resources Control Board relating to the WDR Denial.

2.3 The Parties shall file the Stipulation for Consolidation and Joinder and the Stipulation for Final Judgment in accordance with Section 8.2. The entry of Final Judgment in accordance with the Stipulation for Judgment shall constitute the full and final determination of

the rights of the parties in the 2006 CEQA Lawsuits, 2013 CEQA Lawsuits, and the NAHC Lawsuit (collectively, "Lawsuits"), consistent with section 577 of the California Code of Civil Procedure, and shall therefore terminate the Lawsuits. No appeal may be taken from the Final Judgment, as entered by the court. Except as the parties may otherwise agree in writing, if the court affirmatively declines to approve the Final Judgment in the Stipulation for Judgment, or if the court has not approved and entered the Final Judgment within 90 days after the Effective Date, then the Parties shall prepare and submit a Stipulation for Dismissal, in substantially the form of Exhibit D, for the dismissal with prejudice of the Lawsuits, no later than 15 days after the later of: (a) the court's denial of the Stipulation for Judgment or, in the absence of court action, the 90th day following the Effective Date; or (b) TCA's completion of the rescissions required in Section 2.1, and the termination required in Section 2.2. If, after reasonable efforts, the Parties are unable to obtain the court's approval of the Stipulation for Dismissal in substantially the form of Exhibit D, the Parties shall use good faith efforts to obtain dismissals of the Lawsuits on such terms as the court will accept and that, to the extent possible, will further the purposes of this Agreement, provided that in any event, this Agreement and all of its terms shall continue to fully bind the Parties.

3. ENVIRONMENTAL REVIEW PROCESS AND MITIGATION FOR SR 241 EXTENSION PROJECT.

It is the Parties' intent to establish a framework for the evaluation of one or more Post-Settlement Alignments, and not bind TCA's discretion to approve, disapprove or condition any Post-Settlement Alignment as may be required by the Environmental Review Process.

3.1 Exclusion of Avoidance Area. The Parties acknowledge that following the rescissions required by Section 2.1, TCA intends to formally commence with the Lead Agencies an Environmental Review Process for the SR 241 Extension Project. As part of that process, TCA shall comply with the following:

3.1.1 TCA shall identify and evaluate one or more Post-Settlement Alignments. If TCA is not the Lead Agency under NEPA or CEQA for the SR 241 Extension Project, TCA shall propose and present to the Lead Agencies, and request that each such Lead Agency study such Post-Settlement Alignments in the Environmental Review Process.

3.1.2 TCA shall not construct or provide funding for the construction of any road alignment that is located within, or that would have Direct Impacts to, the Avoidance Area.

3.2 Conservation Measures Framework. A Post-Settlement Alignment is likely to be located in part in the San Mateo Creek watershed and impact the ecological and recreational values of the affected habitat in the watershed. This watershed has also been the primary focus of SSOC's longstanding efforts to protect recreational and natural resources. It is the Parties' intent to establish a framework, as described in this Section, for developing a habitat resources plan with a priority for potential land acquisitions and habitat restoration projects primarily within the San Mateo Creek Watershed. Nothing in this Agreement limits TCA's obligation to comply with CEQA in connection with determining whether to approve or disapprove Conservation Measures as defined herein. The Parties agree as follows:

3.2.1 Environmental Oversight Committee. Within 90 days after the Effective Date, TCA shall establish a committee (“**Environmental Oversight Committee**”) that shall be responsible for identifying measures to mitigate impacts and protect the environment in connection with the SR 241 Extension Project. In consultation with SSOC, TCA shall prepare a framework that will address, *inter alia*, the identification and appointment of the Environmental Oversight Committee members and the process for identifying eligible mitigation and resource protection measures. The Environmental Oversight Committee shall include, at a minimum, TCA, NAHC, and three members to be selected by SSOC. TCA shall invite representatives from one or more Resource Agencies to serve on the Environmental Oversight Committee.

3.2.2 Habitat Conservation Fund.

3.2.2.1 TCA shall commit to the expenditure of \$28,000,000 as mitigation for a Post-Settlement Alignment for the primary purpose of preserving and restoring San Mateo Creek and its watershed (“**Conservation Fund**”). The Conservation Fund requirement is not intended to limit TCA’s mitigation obligations under applicable laws should those obligations exceed the Conservation Fund requirement.

3.2.2.2 With input from the Environmental Oversight Committee, TCA and SSOC shall cooperate in good faith to: (i) identify and assess potential land acquisitions and habitat restoration projects within the San Mateo Creek Watershed and adjacent watersheds that are ecologically related to habitat potentially impacted by a Post-Settlement Alignment (“**Conservation Measures**”); and (ii) prioritize such Conservation Measures on a list, (“**Conservation Measure List**” or “**List**”). A measure is “ecologically related” if it would provide ecosystem benefits that mitigate for biological values potentially impacted by a Post-Settlement Alignment. If a good faith dispute arises as to whether a proposed acquisition or restoration project is ecologically related to potentially impacted habitat, TCA and SSOC shall jointly request that the U.S. Fish and Wildlife Service (“**USFWS**”) provide a determination as to whether a measure is or is not ecologically related to potentially impacted habitat, which determination shall be binding on the Parties for purposes of this Section. If the USFWS refuses to issue such a determination, TCA and SSOC shall meet and confer to identify another mutually-agreeable Resource Agency to provide a binding determination.

3.2.2.3 The Conservation Measure List shall not include any measure that (a) is determined by USFWS (or another mutually-agreeable Resource Agency if USFWS refuses to consult and issue a determination) as not ecologically related to habitat potentially impacted by a Post-Settlement Alignment, or (b) would physically interfere with the implementation of a Post-Settlement Alignment being considered in the Environmental Review Process. In preparing the Conservation Measure List, priority shall be given to Conservation Measures within the San Mateo Creek watershed. If TCA and SSOC determine such measures are infeasible or do not require expenditure of the full Conservation Fund, other measures, including measures outside of the San Mateo Creek watershed, may be approved by mutual agreement between TCA and SSOC. Preparation of the Conservation Measure List shall be completed no later than December 31, 2017. Upon completion of the Conservation Measure List, TCA shall provide a written copy of the List to the State Parties.

3.2.2.4 After the Conservation Measure List has been prepared, TCA shall diligently and in good faith proceed to implement promptly each of the Conservation Measures on the List, in compliance with applicable laws, in the priority order set forth in the List, until the full Conservation Fund is exhausted. At least 15 days prior to making an expenditure from the Conservation Fund, TCA shall provide SSOC with written notice of the expenditure. If SSOC opposes such proposed expenditure within such 15 day period, the Parties shall meet and confer to resolve the dispute. TCA shall not proceed with the expenditure until such dispute has been resolved as identified in this Section. Upon making any expenditure from the Conservation Fund, TCA shall provide written notice containing a brief description of the expenditures to the State Parties. Nothing in this paragraph shall limit TCA's ability to expend monies other than or in excess of those in the Conservation Fund on any item on the Conservation Measure List or for other mitigation measures related to the SR 241 Extension Project.

3.2.2.5 All property acquisition costs and fees associated with the measures on the Conservation Measure List, including the reasonable costs of long term habitat restoration, management, and monitoring, shall be eligible to be credited toward satisfaction of TCA's Conservation Fund obligation. Eligible costs may include the costs of reasonably required outside consultants, but shall not include any staff or legal costs incurred by TCA or SSOC.

3.2.2.6 TCA and SSOC may from time to time amend the Conservation Measure List by joint written agreement, as may be needed to, *inter alia*, address measures on the Conservation Measure List that can no longer be reasonably accomplished and to ensure that the Conservation Measure List includes sufficient measures to allow expenditure of all of the Conservation Fund. In coordination with SSOC, as required by this Agreement, TCA shall use best efforts to implement each Conservation Measure at the earliest possible date, and to fully expend the Conservation Fund no later than December 31, 2021. If the Conservation Fund has not been fully expended by December 31, 2021, TCA shall place the remaining funds in an escrow account for the sole purpose of implementing the SSOC and TCA mutually agreed upon Conservation Measures for the benefit of the San Mateo Creek or adjacent watersheds.

3.2.2.7 Conservation Measures funded and performed under this Section 3.2.2 shall serve as mitigation required under the Environmental Review Process for any approved Post-Settlement Alignment to the full extent permitted by the Lead Agencies or applicable Resource Agency. Except as provided in Section 3.2.2.8, TCA shall be obligated to expend all of the Conservation Fund, regardless of whether the measures identified on the Conservation Measure List exceed the minimum project mitigation required by the Resource Agencies.

3.2.2.8 If TCA provides written notice to the Parties that it has formally abandoned the SR 241 Extension Project, TCA's obligations under this Section 3.2.2 shall cease; provided, however, that if TCA thereafter revives the SR 241 Extension Project, TCA's obligations under this Section 3.2.2 shall resume. If TCA formally abandons the SR 241 Extension Project, TCA shall be permitted to utilize, sell or bank, as mitigation credit, any Conservation Measure established with Conservation Fund monies prior to the abandonment of

the SR 241 Extension Project, provided the credit is for a specific project or projects, and further provided that none of the projects is in or will have a Direct Impact to the Avoidance Area. Unless the SR 241 Extension Project is formally abandoned, TCA may not utilize, sell or bank any mitigation credit established with Conservation Fund monies for any non-TCA project.

3.2.3 Coastal Access Management Plan.

3.2.3.1 Any future work performed or funded by TCA for the SR-241 Extension Project, and occurring in that portion of San Mateo Creek and adjacent lands that are outside of the Avoidance Area, as shown on Sheet 2 of Exhibit C, shall conform and be subject to a coastal access management plan (“**Coastal Access Management Plan**”). As early in the Environmental Review Process as possible, but no later than December 31, 2017, TCA and SSOC, in consultation with the Environmental Oversight Committee, and with the participation of TCA and SSOC consultants, shall prepare and execute a mutually-agreeable Coastal Access Management Plan that is designed to achieve the following:

(a) During construction, ensure continuous pedestrian access to Trestles Beach from Panhe Nature Trail/San Onofre State Beach Trail (“**Beach Trail**”), and continuous pedestrian, skateboard, and bicycle access both across Interstate-5 via Cristianitos Road and to the existing trail located just west of and paralleling the southbound on-ramp to Interstate 5 at Cristianitos Road, which connects Cristianitos Road to the Beach Trail (“**Bike Trail**”). For reference, the Beach Trail and Bike Trail are depicted on Sheet 2 of Exhibit C. TCA may, at times, provide an alternate means of access where required for safety or constructability purposes. Such alternative access shall ensure at least an equivalent level of pedestrian, skateboard and bicycle access, shall be in place whenever access to the Beach Trail or Bike Trail is closed or substantially restricted, and shall be in place for the minimum period needed for safety or constructability purposes.

(b) Ensure that permanent road improvements do not adversely affect permanent public access on the Beach Trail and Bike Trail, including, without limitation, avoiding construction of structures or installation of pavement within the area shown as the “No Pavement Area” on Sheet 2 of Exhibit C, and provide a minimum 10-foot setback of any above-ground permanent improvements from the Bike Trail. The parties acknowledge that it may not be possible to provide a 10-foot setback at the southbound on-ramp to Interstate 5 at Cristianitos Road, in which case, TCA shall provide the maximum setback distance that is possible within the existing State right-of-way.

(c) Provide improvements, which shall be specifically identified in the Coastal Access Management Plan, that will enhance the public access experience for SOSB visitors.

(d) Avoid ground disturbance, vegetation removal, and impacts to wetlands and riparian areas within the disturbance limits shown on Sheet 2 of Exhibit C to the maximum extent feasible.

3.2.3.2 In preparing and implementing the Coastal Access Management Plan, TCA and SSOC recognize and mutually agree that: (i) TCA shall implement each of the Coastal Access Management Plan measures so long as the measure does not preclude compliance with a direction, regulation, or guidance that is issued by a Resource Agency and is applicable to an approved Post-Settlement Alignment; (ii) the Coastal Access Management Plan measures shall be separate from, and in addition to, the Conservation Measures required by Section 3.2.2; and (iii) TCA's ability to agree to or implement a Coastal Access Management Plan measure may be limited by an obligation to mitigate impacts to Camp Pendleton imposed on TCA by the Marine Corps ("MC Measures"), provided, however, that TCA will use its best efforts to obtain MC Measures that avoid any conflicts with or limitations on the Coastal Access Management Plan measures, and where such conflict or limitation exists, the Parties will use good faith efforts to resolve such conflict or limitation in a manner that achieves the parameters identified in Section 3.2.3.1, or to the extent those parameters cannot be fully achieved, agree on alternative measures that will achieve those parameters to the maximum extent possible. Nothing in this Section 3.2.3.2 shall be construed as an endorsement by SSOC of any MC Measures or other proposals, projects or actions related to Camp Pendleton that are within the Avoidance Area or located southerly and easterly of the Project Limit Line, or as limiting SSOC's rights to Oppose such measures, proposals, projects or actions.

3.2.3.3 This Section 3.2.3 is not intended to limit TCA's mitigation obligations under applicable laws should those obligations exceed TCA's obligations under the Coastal Access Management Plan as required by this section. Coastal Access Management Plan obligations shall serve as mitigation required under the Environmental Review Process for any approved Post-Settlement Alignment to the full extent permitted by the Lead Agencies or applicable Resource Agency.

3.3 SSOC Engagement in Environmental Review Process. TCA and SSOC shall work cooperatively during the Environmental Review Process, consistent with the terms of this Agreement, including the following:

3.3.1 To the extent permitted by law, and subject to Section 3.3.4, TCA shall actively seek the participation and input of SSOC and/or specific SSOC Members concerning the development of the Post-Settlement Alignments, evaluation of alternatives, analysis of impacts, and development of mitigation measures.

3.3.2 Within 30 days of the Effective Date, representatives of SSOC shall meet with TCA to establish a general framework for implementation of this Agreement and for SSOC's continued engagement in the Environmental Review Process. The framework shall provide for regular meetings between SSOC representatives and TCA, which shall be at least quarterly except as otherwise provided in the agreed framework or in this Agreement. TCA and SSOC shall cooperate in good faith to implement the framework and to resolve issues arising in the Environmental Review Process or in the implementation of this Agreement.

3.3.3 SSOC shall designate an SSOC Member representative to act as the lead participant in the Environmental Review Process ("**Lead Participant**"). The initial Lead Participant shall be Dan Silver of the Endangered Habitats League. SSOC may from time to

time change the designated Lead Participant upon written notice to TCA and with TCA approval, which TCA shall not unreasonably withhold.

3.3.4 If TCA requests that the Lead Participant participate in a meeting with a Resource Agency, the Lead Participant is encouraged, but not required, to attend. The Lead Participant shall be permitted to require, as a condition of participating in any meeting with a Resource Agency that is not a public meeting, that TCA waive in writing the non-opposition obligations in Sections 5.1.2 and 5.3 concerning mitigation measures and alternatives applicable to the Lead Participant, for the duration of the meeting.

4. OSO BRIDGE CONSTRUCTION AND LOS PATRONES PARKWAY TOLL COLLECTION.

4.1 Timing of Bridge Project Construction. Until a new Environmental Impact Report (“EIR”) for the SR 241 Extension Project is certified and a Post-Settlement Alignment is approved, TCA shall not commence construction of the Bridge Project or any other structure that would permit a direct connection between SR 241 and Los Patrones Parkway, including but not limited to construction of any temporary or permanent bridge over SR 241 or over Oso Parkway, unless any one of the following events has occurred (each a “**Triggering Event**”):

4.1.1 A written agreement is entered into that is enforceable by SSOC between TCA, the California State Transportation Agency, the California Natural Resources Agency, and SSOC, agreeing that no new major thoroughfare shall be constructed in the Avoidance Area (“**Protective Agreement**”).

4.1.2 The Legislature has passed and the Governor has signed into law legislation preventing TCA from constructing a road in the Avoidance Area, in substantially the form and substance attached as Exhibit F to this Agreement, without any additional non-*de minimis* obligations or requirements that are imposed upon but not acceptable to TCA, and without any additional non-*de minimis* provisions unacceptable to SSOC (“**Protective Legislation**”).

4.1.3 Conservation easements, in a form acceptable to TCA and SSOC, are acquired that prohibit the construction of a major thoroughfare, and in which the state or federal government has a third party beneficiary or other enforceable interest, on a sufficient area of lands and in such location within the Avoidance Area so as to effectively preclude construction of a major thoroughfare in whole or part in the lands comprising DOLC, and any part of SOSB within the Avoidance Area, as the DOLC and SOSB exist on the Effective Date (“**Protective Easements**”).

4.1.4 Following a meet and confer session, any other measure, occurrence, or circumstance to which TCA and SSOC agree in writing, may constitute a Triggering event.

4.2 Cooperation on Triggering Event. For purposes of this Section 4, TCA and SSOC agree as follows:

4.2.1 TCA and SSOC shall work cooperatively and use good faith efforts to secure the prompt occurrence of a Triggering Event.

4.2.2 TCA and SSOC agree to pursue the Protective Agreement initially.

4.2.3 If, by January 15, 2017, all of the parties to the Protective Agreement other than the California Natural Resources Agency have agreed to enter into the Protective Agreement, TCA and SSOC shall promptly meet and confer to determine the need for the California Natural Resources Agency to enter into the Protective Agreement and/or the need to secure Protective Legislation. Following the meet and confer, TCA and SSOC may, at their discretion, agree in writing whether and on what terms the proposed agreement would constitute a Triggering Event, as referenced in Section 4.1.4 without the need to execute a formal amendment of this Agreement.

4.2.4 If the Protective Agreement has not been entered into by January 15, 2017, TCA and SSOC shall use good faith efforts to cause, through a mutually-agreed upon process, the Protective Legislation to be introduced in the 2017 legislative session and to support its passage by the Legislature and signature by the Governor.

4.2.5 Upon the occurrence of a Triggering Event, the Parties shall have no further obligation to pursue any other Triggering Event under this Section 4.

4.2.6 Neither TCA nor SSOC shall have any obligation to support Protective Legislation that has been modified to include terms and conditions that materially differ from those provided in Exhibit F, unless TCA and SSOC have consented to the modification. If the Protective Legislation bill is amended or proposed to be amended, TCA and SSOC agree to meet and confer in good faith to review the amendment or proposed amendment and determine whether the change is material or *de minimis*, and whether to request that the author and/or another legislator, as appropriate, amend, withdraw or take other appropriate action with respect to the bill.

4.3 Preliminary Activities Excepted. Nothing in this Section shall prohibit TCA from taking actions preliminary to construction of the Bridge Project, including, without limitation, any required environmental review and design activities for the bridge, land or right-of-way acquisition, and construction or improvement of Los Patrones Parkway (including construction of on- and off-ramps between Los Patrones and Oso Parkway, but excluding construction of the bridge or any other improvements allowing a direct connection between Los Patrones and SR 241).

4.4 Interim Toll Collection on Los Patrones. TCA may collect tolls on Los Patrones Parkway on an interim basis in advance of certification of an EIR for the SR 241 Extension Project and approval of a Post-Settlement Alignment; provided, however, that TCA shall cease such collection by September 30, 2019, unless on or before that date: (a) an EIR has been certified and a Post-Settlement Alignment has been approved, or (b) a Triggering Event has occurred. If by June 1, 2019, the events described in either (a) or (b) have not occurred and TCA so requests, TCA and SSOC shall meet and confer on or before July 30, 2019 regarding an

extension of the September 30, 2019 deadline. Once toll collection is required to have ceased, TCA shall continue to refrain from toll collection on Los Patrones until such time as the events described in either (a) or (b) above have occurred; provided, however, that upon request by TCA, SSOC shall grant an extension of the September 30, 2019 deadline if SSOC has determined, in its reasonable discretion, that TCA has made substantial progress toward completing the Environmental Review Process for the SR 241 Extension Project and is diligently pursuing completion of that process.

4.5 Waiver of Challenge to Approval of Bridge Project.

4.5.1 TCA and SSOC shall use best efforts to obtain approval from the County of Orange for an amendment of the Oso Bridge Tolling Agreement that will extend the tolling period under that agreement to the occurrence of the earlier of: (a) a Triggering Event; or (b) certification of an EIR for the SR 241 Extension Project and approval of a Post-Settlement Alignment. If the County's approval is obtained, TCA and SSOC shall use best efforts to cause such amendment to be executed.

4.5.2 If such amendment to the Oso Bridge Tolling Agreement is not executed before the tolling period under that agreement expires, SSOC may file a lawsuit challenging the County's approval of the Oso Bridge Project as may be necessary to preserve its legal right to do so, but shall request that the court stay the challenge until the earlier of: (a) a Triggering Event; (b) certification of an EIR for the SR 241 Extension Project and approval of a Post-Settlement Alignment; or (c) a breach of TCA's obligations under Section 3.1.2 or an action taken by a Lead Agency or other agency to approve, construct or fund an extension of SR 241 located in, or with Direct Impacts to, the Avoidance Area. A lifting of the stay pursuant to clause (c) shall be in addition to, and not in lieu of, SSOC's remedies for TCA's breach of Section 3.1.2.

4.5.3 No later than 30 days after the occurrence of the earlier of (a) a Triggering Event, or (b) certification of an EIR for the SR 241 Extension Project and approval of a Post-Settlement Alignment, SSOC shall: (i) cause the Oso Bridge Tolling Agreement (if still in effect) to be terminated and refrain thereafter from filing any legal challenge to or otherwise opposing the County's approval of the Oso Bridge Project; or (ii) if SSOC has filed litigation pursuant to Section 4.5.2, dismiss such litigation with prejudice.

4.5.4 In addition to the Parties' obligations to meet and confer as set forth in other sections of this Agreement, the Parties shall also meet and confer in August 2017, October 2017, and at such other times as may be reasonably necessary if requested by one of the Parties.

5. FUTURE STATEMENTS, SUPPORT AND CHALLENGES.

5.1 Joint Statement.

5.1.1 The Parties will announce the Agreement in a joint statement, in substantially the form of Exhibit G ("Joint Statement"). The Parties shall publicly distribute the Joint Statement, which may include a mutually agreed upon joint summary of the Agreement, to the media and the public on a date to be determined by the Parties. The Parties shall refrain

from making any public statements or comments regarding the terms of the Agreement prior to the date on which the Joint Statement is publicly distributed, unless otherwise required by law, or agreed-upon in writing by the Parties.

5.1.2 No Party, without the prior written consent of the other Parties, may submit, issue or make any statement, posting or comment (whether written, oral, or electronic), including but not limited to in any administrative or judicial tribunal or proceeding, to any person, organization or agency, or on the internet, regarding the Agreement or a Post-Settlement Alignment, that is inconsistent with or contradicts statements within the Joint Statement. Notwithstanding the foregoing, statements made in the Joint Statement describing or summarizing this Agreement shall not be construed as limiting, enlarging or otherwise modifying any rights or obligations under this Agreement, and in the event of any inconsistency between the Joint Statement and this Agreement, this Agreement shall control.

5.2 **Future Support.** TCA and SSOC shall work cooperatively and use good faith efforts to obtain global support of the Agreement.

5.3 **SSOC Non-Opposition.**

5.3.1 **Restrictions.** SSOC and SSOC Members, individually and collectively, shall not Oppose any of the following:

5.3.1.1 Any certifications, permits, findings or approvals of any kind that may be issued specifically for and limited to a Post-Settlement Alignment under the Environmental Review Process for the SR 241 Extension Project so long as TCA complies with the mitigation required by any state or federal agency as a condition of any approval, finding, concurrence, or permit under the Environmental Review Process.

5.3.1.2 Efforts by TCA to streamline the Environmental Review Process for the SR 241 Extension Project, consistent with federal and state law, under statutory streamlining provisions that have been enacted as of the Effective Date.

5.3.1.3 The inclusion or incorporation by reference by TCA or a Lead Agency of data, analyses and findings from prior environmental review or permitting documents for SR 241 Foothill South, Tesoro Extension, and adopted regional transportation plans, for use in the Environmental Review Process for the SR 241 Extension Project. Such data, analyses and findings include, but are not limited to, Final EIR 123 (County of Orange in 1981); Final EIR #423 Foothill Transportation Corridor Orange County General Plan Transportation Element Amendment Specific Route Location (County of Orange, May 25, 1983); The Foothill Transportation Corridor Alternatives Alignment Analysis (County of Orange and TCA, 1986); Foothill Transportation Corridor Cristianitos Segment Alternative Alignment Analysis (County of Orange, September 1986); TCA EIR 3 and a Supplemental EIR (TCA, October 10, 1991); Foothill Transportation Corridor - South Major Investment Study (MIS, Michael Brandman Associates, April 1996); 2006 SEIR; and 2013 Addendum.

5.3.1.4 TCA's participation in a pilot program that allows TCA, Caltrans or FHWA to substitute CEQA for NEPA in the Environmental Review Process for the SR 241 Extension Project, under statutory pilot program provisions that have been enacted as of the Effective Date.

5.3.1.5 TCA's funding for Resource Agency participation in the Environmental Review Process for the SR 241 Extension Project through a mechanism that could include making contributions to the state budget to fund state personnel and funding state and/or federal agency staff through agreements.

5.3.1.6 Any Post-Settlement Alignment evaluated during or in connection with the Environmental Review Process for the SR 241 Extension Project, including but not limited to, not Opposing (i) any certification, permit, finding, or approval of any kind, and (ii) efforts to secure funding to construct an approved Post-Settlement Alignment, including the provision of local, state or federal funding of any kind, and the application for and use of Transportation Infrastructure Finance and Innovation Act ("TIFIA") financing or any other financing for any authorized SR 241 Extension Project activity, to the extent such funding is limited to the costs associated with the Environmental Review Process for the SR 241 Extension Project or the design or construction of the Post-Settlement Alignment.

5.3.2 Exceptions. Notwithstanding the foregoing, SSOC's and SSOC Members' non-Opposition obligations shall not preclude SSOC or SSOC Members, individually or collectively, from any of the following:

5.3.2.1 Advocating for, Opposing, challenging or otherwise taking positions on state or federal legislation or regulations, including without limitation any decision by a Resource Agency with respect to listing or de-listing any species as threatened or endangered, or designating or modifying the designation of critical habitat, except to the extent the effect of the legislation or regulation is substantially limited to, and would directly affect, the SR 241 Extension Project Environmental Review Process or a Post-Settlement Alignment.

5.3.2.2 Advocating for, Opposing, challenging or otherwise taking positions on local or regional laws and regulations, matters of policy, or local or regional planning documents, except to the extent the effect of the law, regulation, policy or planning document is substantially limited to, and would directly affect, the SR 241 Extension Project Environmental Review Process or a Post-Settlement Alignment.

5.3.2.3 Advocating for, Opposing, challenging or otherwise taking positions on funding proposals or requests (including TIFIA funding) for any projects or other activities, except where the proposal or request is substantially limited to funding for the SR 241 Extension Project Environmental Review Process or a Post-Settlement Alignment.

5.3.2.4 Opposing or otherwise challenging any approval or action by any public agency with respect to any proposed or potential project that lies within or would have Direct Impacts to the Avoidance Area or that is otherwise not a Post-Settlement Alignment ("**Excepted Project**"), including, without limitation: (a) Opposing or challenging in the

Environmental Review Process for the SR 241 Extension Project any data, analyses, findings and other documents from prior environmental review or permitting documents for SR 241 Foothill South, Tesoro Extension, adopted regional transportation plans, including any documents as described in Section 5.3.1.3, to the extent such data, analyses, findings or documents are used to support, or, based upon the statement or action of any public agency, SSOC reasonably expects may be used to support a proposed or potential Excepted Project; (b) Opposing or challenging any streamlining of the Environmental Review Process or participation in any NEPA pilot program under any statutory provision enacted after the Effective Date; (c) Opposing or challenging any streamlining of the Environmental Review Process or participation in any NEPA pilot program under any statutory provision enacted before the Effective Date in the event the Lead Agency carries forward for detailed review in a Draft Environmental Impact Statement or Draft Environmental Impact Report an Excepted Project; and (d) advocating for, Opposing, challenging or otherwise taking a position on federal, state, regional or local legislation, laws, regulations (including, without limitation, decisions relating to listing and delisting of species), matters of policy, or planning documents, or on funding proposals or requests, that affect or could affect any proposed or potential Excepted Project. SSOC Members may submit comments or testimony in the Environmental Review Process for the SR 241 Extension Project as necessary to preserve their legal rights under this paragraph. Any such comments or testimony shall be directed at, and limited to addressing, issues relevant to the proposed or potential Excepted Project, but such limitation shall not preclude SSOC from submitting comments or testimony on issues that are relevant to both the Excepted Project and a Post-Settlement Alignment.

5.3.2.5 Opposing or otherwise challenging any project or portion of a project located southerly or easterly of the "Project Limit Line" depicted on sheet 2 of Exhibit C, or east of the eastern boundary line of the Avoidance Area.

5.3.2.6 Opposing or otherwise challenging any action of TCA that is inconsistent with this Agreement.

5.3.3 Sierra Club. The Sierra Club and its respective employees, officers, governing boards and committees covenant not to take any action to challenge, in a formal administrative or judicial proceeding, any certifications, permits or approvals for a Post-Settlement Alignment that may be required under the Environmental Review Process for the SR 241 Extension Project, including the specific actions set forth in Section 5.3.1.1 through 5.3.1.6 inclusive, so long as TCA complies with the mitigation required by any state or federal agency as a condition of any approval, finding, concurrence, or permit under the Environmental Review Process for the SR 241 Extension Project, and subject to each of the exceptions set forth in Section 5.3.2.

5.3.4 Disputes. If a dispute arises in connection with any actions undertaken by SSOC or SSOC Members under Section 5, SSOC (or applicable SSOC Member) and TCA shall make good faith efforts to resolve such dispute. If such dispute cannot be resolved, TCA may utilize the procedures set forth in Section 6 concerning Breach of Agreement and Remedies.

5.3.5 Clarification of Opposition by Unauthorized Persons. SSOC and each SSOC Member shall deliver to TCA a signed letter in the form of Exhibit E ("**Non-Opposition**

Letter”) no later than five (5) business days after the Effective Date. If TCA becomes aware that an individual has taken an action or makes a statement in the Environmental Review Process that would constitute a violation of the Agreement under this Section or Section 5.1.2 if such action were undertaken by SSOC or an SSOC Member, and such individual states or implies that he represents SSOC or an SSOC Member, or that such action or statement is the position of SSOC or an SSOC Member, the SSOC Designee or the SSOC Member, as applicable, shall, as promptly as possible but no later than 3 business days of a request by TCA, indicate to TCA whether the individual was authorized to speak on behalf of the SSOC or SSOC Member. If the individual was not authorized to speak on behalf of the SSOC or SSOC Member, TCA may submit the Non-Opposition Letter signed by SSOC or the applicable SSOC Member to the appropriate agency for inclusion in the administrative record to clarify the position of SSOC or the SSOC Member. In the event that there is a reasonable likelihood that the Non-Opposition Letter would be insufficient to clarify the position of SSOC or the SSOC Member, and that the statement or action that is covered by this Section could adversely affect the approval of a Post Settlement Alignment in the Environmental Review Process, then upon request by TCA, SSOC or the SSOC Member, as appropriate, shall meet and confer with TCA to identify a mutually-agreeable approach to clarify SSOC’s or the SSOC Member’s position. If SSOC or an SSOC Member becomes aware that an individual has taken an action or made a statement that is covered by this Section, the SSOC Designee, or SSOC Member, as applicable, shall promptly notify TCA of such action or statement.

5.4 TCA Future Obligations. TCA shall not Oppose, challenge or otherwise interfere with any of the following:

5.4.1 SSOC efforts to secure Protective Easements.

5.4.2 Efforts to renew the lease, or to obtain a new lease, between the State of California and Department of the Navy for SOSB at Camp Pendleton, whether or not the renewed or new lease would contain the same or modified terms as the current lease, including, without limitation, terms excluding any new or expanded road, highway or thoroughfare through SOSB, and terms providing for no or low monetary rent; provided, however, that TCA may Oppose any efforts to renew the lease, or to obtain a new lease, that would prohibit or unreasonably restrict or delay TCA’s ability to construct a Post-Settlement Alignment.

5.4.3 The prompt introduction and passage of the Protective Legislation if a Protective Agreement has not been entered into by January 15, 2017; provided, however, that TCA reserves the right to Oppose or challenge any legislation that imposes any material obligations or requirements on TCA beyond those provided in Exhibit F. Nothing in this Section 5.4.3 shall be construed as limiting TCA’s obligations with respect to the Protective Legislation under Section 4.1 and Section 4.2.

6. BREACH OF AGREEMENT AND REMEDIES.

6.1 Processes in the Event of a Breach.

6.1.1 Notice of Breach. If a Party ("**Complaining Party**") believes that another Party ("**Alleged Breaching Party**") has Breached the Agreement, the Complaining Party shall notify the Alleged Breaching Party (with a copy to all other Parties) of the alleged Breach in writing within ten (10) business days of the time that the Complaining Party becomes aware of, or reasonably should have become aware of, the circumstance constituting the alleged Breach. Such notification shall include a written explanation of the basis of the alleged Breach ("**Notice of Breach**").

6.1.2 Response to Notice of Breach. Within the Cure Period, the Alleged Breaching Party shall either cure the Breach or provide a written response to the Complaining Parties explaining why the Alleged Breaching Party believes that no such Breach has occurred. If, by the nature of the Breach, such cure cannot reasonably be completed within the Cure Period, the Breaching Party must commence such cure within the Cure Period and, having so commenced, thereafter prosecute with diligence and dispatch until such Breach is cured or such dispute is resolved.

6.1.3 Meet and Confer Obligation. Should the Parties disagree on whether a Breach has occurred, a Breach has been adequately cured, or the remedy necessary to cure any alleged Breach, or if a Breach has not been cured within the Cure Period, the Alleged Breaching Party and Complaining Party or Complaining Parties shall meet and confer in good faith in an attempt to resolve any differences. Such meeting shall occur as soon as practicable on a mutually-agreeable date, but no later than twenty-one (21) days after receipt of the Notice of Breach. If an Alleged Breaching Party fails to respond to the Notice of Breach within the Cure Period, the Complaining Party or Parties shall not be required to meet and confer prior to taking appropriate action to enforce the Breach.

6.1.4 Court Resolution of Breaches. If an alleged Breach is not resolved through the procedures set forth in this Section 6.1, then the Complaining Party shall be entitled immediately to seek relief in the San Diego County Superior Court. No Party shall be entitled to seek relief in the San Diego County Superior Court without having complied with the procedures set forth in this Section 6.1, except where the alleged Breach would result in irreparable harm if immediate relief were not obtained and except as set forth in section 6.3 below.

6.2 Available Remedies in the Event of Breach. The Parties agree that, in the event of a Breach under this Agreement that is not cured, and following exhaustion of the process set forth in Section 6.1, the sole and exclusive remedies available to the Complaining Parties shall be to: (a) enforce, by specific performance, the Agreement obligations of the Alleged Breaching Party; (b) obtain an appropriate injunction to ensure compliance with the terms of this Agreement; or (c) exercise any other rights or remedies specifically set forth herein or otherwise permitted by law. Notwithstanding the above, and except as set forth in Section 6.3 below, no Party shall seek or be entitled to any monetary damages in the event of any breach or default

under this Agreement. Nothing in this Section shall limit the ability of a Party to enforce an express payment obligation under Section 7 of this Agreement.

6.3 The State Parties' Enforcement Authority. Except as expressly provided herein, nothing in this Agreement is intended nor shall be construed to limit the State Parties from taking appropriate enforcement actions or otherwise exercising their authority under any law. Further, nothing in this Agreement is intended nor shall be construed to limit the State Parties from taking any action related to any future proposed project, including any future project that may be related to the SR 241 Extension Project or the Bridge Project. Where a breach of this Agreement also constitutes a separate violation of law (in addition to a violation of this Agreement), the State Parties are not limited to the enforcement of this Agreement, the Stipulation for Judgment, or Final Judgment, but may seek, in another action, any fines, costs, penalties, injunctive relief, or other remedies provided for by law.

6.4 Cure of Breach.

6.4.1 Breach of SSOC Non-Opposition Provisions.

6.4.1.1 If SSOC or an SSOC Member has Breached an obligation under Section 5.1.2 or Section 5.3, and such Breach relates to statements or comments made in an administrative, regulatory, governmental, or other public forum, or on the internet, the Alleged Breaching Party shall deliver a letter in substantially the form of Exhibit H to TCA and any applicable Governmental Agency before the earlier of expiration of the Cure Period or the close of the record in the forum at issue. Timely delivery of such letter shall serve to cure the non-Opposition obligation Breach.

6.4.1.2 If SSOC or an SSOC Member has Breached an obligation under Section 5.3, and such Breach pertains to the filing of a legal action in state or federal court or filing an administrative action or complaint, such breach may be fully cured by dismissal of such action or complaint by the SSOC Member during the Cure Period, so long as such dismissal results in full termination of such action or complaint with prejudice.

6.4.2 Breach of TCA Non-Opposition Provisions. If TCA has Breached its non-opposition obligation under Section 5.4 pertaining to the Protective Legislation, TCA shall submit a letter in substantially the form of Exhibit I to SSOC and to all members of the legislature and/or committee consultants affected by the Breach within the earlier of the expiration of the Cure Period or the committee hearing or floor vote affected by the Breach. Delivery of such letter shall serve to cure the Breach if the letter was delivered prior to the affected committee hearing or floor vote. If TCA has Breached any other non-opposition obligation, it shall cure by delivering within the Cure Period a letter to SSOC and to the appropriate persons or entities clearly stating its non-opposition to the applicable activity.

6.4.3 Notice of Cure. Within five (5) business days after the Complaining Party becomes aware that the Alleged Breaching Party has taken action to cure an alleged Breach of this Agreement in accordance with this Section 6, the Complaining Party shall deliver written

notice stating that the Breach has been cured or otherwise describing what actions are required to cure the alleged Breach.

7. REIMBURSEMENT OF SSOC COSTS.

7.1 TCA shall reimburse SSOC for legal and other costs that have been incurred by SSOC Members in connection with this matter, in the amount of \$7,100,000, pursuant to the following schedule: (a) \$4 million shall be paid no later than 30 days after the earlier of (i) entry of Final Judgment pursuant to the Stipulation for Judgment, or (ii) entry of the dismissal of the Lawsuits filed by SSOC Members (Case No. GIN051194 and Case No. 37-2013-00049797-CU-WM-CTL); (b) \$2.6 million shall be paid upon the earlier of (i) the start of construction of the Oso Bridge Project or (ii) August 1, 2018; and (c) \$500,000 shall be paid upon the earlier of (i) issuance of the later of a Record of Decision (if one is required) or Notice of Determination in the Environmental Review Process or (ii) December 31, 2021.

7.2 TCA shall make each payment required by this Section 7 by delivering to a payee specified in writing by SSOC on or before the due date a check payable to payee in the required amount.

8. MISCELLANEOUS.

8.1 Term of Agreement.

8.1.1 The term of this Agreement shall commence on the Effective Date and the Parties' obligations hereunder shall terminate on the date on which all of the following have occurred: (a) the rescissions required by Section 2.1; (b) the termination of the RWQCB Tolling Agreement and the permanent forfeit of TCA's right to challenge the WDR Denial, by passage of applicable statute of limitations or otherwise; (c) the provision of the Conservation Measures required by Section 3.2.2; (d) TCA serves SSOC and the State Parties with written notice of the completion of construction of a Post-Settlement Alignment, including any mitigation required by the Environmental Review Process and any Coastal Access Management Plan obligation required by Section 3.2.3; and (e) TCA has paid the full amount of the funds required to be paid under Section 7.1(a) – (c), notwithstanding whether all of the actions in Section 7.1 have or have not occurred.

8.1.2 If, after December 31, 2021, or after the occurrence of a Triggering Event, all of the actions in clauses (a) through (e) of Section 8.1.1, inclusive, have occurred except for the actions in clause (d), and TCA has served SSOC and the State Parties with written notice that TCA has formally abandoned the SR 241 Extension Project and will take no further action to seek approval of or funding for the SR 241 Extension Project, this Agreement shall terminate; provided, however that TCA's obligations under Section 4.4 shall survive termination under this Section 8.1.2.

8.1.3 Notwithstanding the foregoing, TCA's obligations under Section 3.1.2 to refrain from constructing or funding an alignment within or that has a Direct Impact to the

Avoidance Area, and TCA's obligations under Section 3.2.2 as conditioned by Section 3.2.2.8, shall survive any termination of the Agreement under this Section 8.1.

8.1.4 In the event of termination of this Agreement, any terms and conditions of this Agreement pertaining to the interpretation, implementation, and enforcement of the surviving Section 3.1.2 and Section 3.2.2, and, if applicable, Section 4.4, including without limitation those relating to definitions, breach and remedies, court jurisdiction and venue, notices, and other general provisions pertinent to the surviving provisions, shall also survive termination.

8.2 Stipulation for Entry of Final Judgment. As early as possible, but no later than fifteen (15) business days after the Effective Date, the Parties shall file the Stipulation for Consolidation and Joinder (if not already filed). No later than five (5) business days after the Court enters the Stipulation for Consolidation and Joinder, the Parties shall file the Stipulation for Judgment, in the lowest numbered case of the Lawsuits. The Stipulation for Judgment shall contain the Parties' consent to the entry of a Final Judgment incorporating the terms of this Agreement by reference and as an exhibit. This Agreement shall be binding on the Parties regardless of whether the Stipulation for Judgment is approved and Final Judgment is entered by the court. Should the court refuse to enter the Final Judgment, the Parties agree to meet and confer regarding possible amendments to this Agreement (consistent with paragraph 8.12) to address the court's concerns.

8.3 Jurisdiction. The Parties agree that the Superior Court of California, County of San Diego, has subject matter jurisdiction over the matters alleged in the Lawsuits and personal jurisdiction over the Parties to this Agreement for purposes of enforcing this Agreement. The Parties consent to the continuing jurisdiction of and venue in the San Diego Superior Court for purposes of enforcing the Stipulation for Judgment, the Final Judgment entered by the court, and this Agreement.

8.4 SSOC Designee. SSOC shall designate and duly authorize a person ("SSOC Designee") to be a single point of contact for matters related to this Agreement, and to take such actions and perform such obligations on behalf of SSOC as may be required pursuant to this Agreement, including keeping the members of SSOC reasonably informed of the Parties' activities pursuant to this Agreement. The SSOC Designee may be changed upon not less than fifteen (15) days prior written notice to TCA, duly signed and authorized by at least a majority of the SSOC Members, but in order for such notice to be effective, the notice must designate a replacement SSOC Designee. The initial SSOC Designee shall be Damon Nagami.

8.5 Sierra Club Exclusions. The term "Party," "SSOC", and "SSOC Member" as used in Sections 3.3.2, 5.1.1, 5.1.2, 5.2, and 5.3.1 (except as incorporated by reference in 5.3.3), shall include all of the SSOC Members except the Sierra Club.

8.6 The People and CSPRC's Exclusions. With respect to Section 3, the People and CSPRC are parties to and may enforce: (a) subsection 3.1.2 with respect to any alignment within the portion of the Avoidance Area that is within SOSB, and (b) subsection 3.2, but shall not otherwise have any rights or obligations, including enforcement rights, under Section 3. The

People and CSPRC are not parties to Sections 4, 5 and 7, and shall have no rights or obligations thereunder, including enforcement rights.

8.7 NAHC Exclusions. With respect to Section 3, NAHC is a party to and may enforce: (a) subsection 3.1.2 with respect to any alignment within the Avoidance Area, and (b) subsection 3.2, but shall not otherwise have any rights or obligations, including enforcement rights, under Section 3. NAHC is not a party to Sections 4, 5 and 7, and shall have no rights or obligations thereunder, including enforcement rights.

8.8 Binding on Successors. Except as expressly provided in this Agreement, the covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective representatives, heirs, successors, and assigns.

8.9 Right To Enforce. Only the Parties and their respective representatives, heirs, successors, and assigns may enforce this Agreement against any other Party and such Party's respective representatives, heirs, successors, and assigns and any such enforcement shall be subject to the terms and limitations set forth in this Agreement.

8.10 Assignment. No Party may, collectively or individually, assign or otherwise transfer their respective rights under this Agreement without the prior written consent of the remaining Parties.

8.11 Entire Agreement. This Agreement constitutes the entire agreement among the Parties. Further, none of the Parties shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein.

8.12 Amendments. Except as expressly provided in this Agreement, this Agreement may be amended only pursuant to a written agreement signed by all of the Parties that are governed by or have obligations under the section(s) of the Agreement that are subject to such amendment. Any amendment that is in conflict with the Agreement as set forth in the Final Judgment approved by the court, shall require approval of the court, which the Parties shall use good faith efforts to secure.

8.13 Captions. The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

8.14 Exhibits. All exhibits referenced in this Agreement are attached hereto and made a part of and incorporated herein.

8.15 Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of California.

8.16 Statutory References. Except as otherwise provided in Section 5.3.1.2 and 5.3.1.4, all statutory references in this Agreement shall mean and include the applicable statute, as amended from time to time, or, if such statute is repealed and replaced, any successor statute.

8.17 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between the Parties that are required by or in connection with this Agreement shall be sufficiently given if delivered personally (including delivery by private courier); dispatched by certified mail, postage prepaid and return receipt requested; delivered by nationally recognized overnight courier service; or transmitted electronically (e-mail) followed by delivery of a "hard" copy to the offices of the Parties indicated below:

TO TCA:

Chief Executive Officer
Foothill/Eastern Transportation Corridor Agency
125 Pacifica
Irvine, CA 92618
Attn: Michael A. Kraman

With copies to:

Chief Environmental Planning Officer
Foothill/Eastern Transportation Corridor Agency
125 Pacifica
Irvine, CA 92618
Attn: Valarie McFall

Nossaman LLP
18101 Von Karman Avenue, Suite 1800
Irvine, CA 92612

TO SSOC:

Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401
Attn: Damon Nagami

With copies to:

Surfrider Foundation
P.O. Box 6010
San Clemente, CA 92674
Attn: Angela Howe

Shute, Mihaly & Weinberger LLP
396 Hayes St.
San Francisco, CA 94102
Attn: William J. White

TO THE PEOPLE:

Environment Section
Office of the Attorney General, California Dept. of Justice
600 West Broadway, Suite 1800
San Diego, CA 92101
Attn: John Everett

TO CSPRC:

Tara E. Lynch, Chief Counsel
California State Parks
1416 Ninth Street, Room 1404-6
Sacramento, California 95814

With copies to:

Supervising Deputy Attorney General Eric Katz
Natural Resources Law Section
Office of the Attorney General, California Dept. of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

TO NAHC:

Native American Heritage Commission
General Counsel's Office
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691

Office of the Attorney General, California Dept. of Justice
Attn: Senior Assistant Civil Rights Enforcement Section
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as any Party may from time-to-time designate in writing at least fifteen (15) days prior to the name or address change. Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of: (a) actual receipt

by any of the addressees designated above as the Party to whom notices are to be sent; or (b) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by nationally recognized overnight courier service (such as Federal Express) as provided above shall be deemed to have been received upon delivery. Notices delivered by electronic transmission shall be deemed received upon sending, provided that a "hard" copy is delivered by overnight courier as provided above.

8.18 Counterparts. This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same Agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

8.19 Nonwaiver. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

8.20 Authority. Each of the persons signing this Agreement on behalf of a Party hereby represents that he or she has the requisite authority to bind the Party on whose behalf he or she is signing this Agreement, and that all requisite approvals of such Party, its board of directors, shareholders, general partners, or others have been obtained. Upon the request of any Party, each Party shall deliver evidence of such authorization to all other Parties within five (5) business days. Each of the Parties represents and warrants that the execution and delivery of this Agreement by such Party, and the performance of such Party's obligations hereunder, have been duly authorized by such Party, and that all consents or approvals necessary to cause this Agreement to be binding upon such Party have been obtained and are in full force and effect.

8.21 Understanding of Terms. The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and after having been advised by counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants, as they may have desired prior to executing this Agreement.

8.22 Construction. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

8.23 No Third Party Beneficiaries. The Parties agree that no third party beneficiaries to this Agreement exist and that nothing contained herein shall be construed as giving any other Person third party beneficiary status.

8.24 Severability. The invalidity of any portion of this Agreement shall not invalidate the remainder. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent and purpose of this Agreement in a manner consistent with the ruling of the court. Notwithstanding the foregoing, if TCA's obligations under Section 3.1.2 are invalidated, annulled or otherwise rendered unenforceable, SSOC's obligations under Section 5 of this Agreement shall terminate.

8.25 Further Assurances. The Parties shall promptly perform, execute and deliver or cause to be performed, executed and delivered any and all acts, deeds and assurances, including the delivery of any documents, as any Party may reasonably require in order to carry out the intent and purpose of this Agreement.

SIGNATURES BEGIN ON NEXT PAGE


IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

Dated: November 10, 2016

**FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.**

By: 
Michael A. Kraman
Chief Executive Officer

Approved as to form only:

By: 
Ben Rubin
Nossaman LLP
Counsel to TCA

Dated: November __, 2016

CALIFORNIA STATE PARKS FOUNDATION

By: _____
Elizabeth Goldstein
President

Dated: November __, 2016

ENDANGERED HABITATS LEAGUE

By: _____
Dan Silver
Executive Director

Dated: November __, 2016

LAGUNA GREENBELT, INC.

By: _____
Elisabeth M. Brown, Ph.D.
President

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 1

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

Dated: November __, 2016

**FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.**

By: _____

**Michael A. Kraman
Chief Executive Officer**

Approved as to form only:

By: _____

**Ben Rubin
Nossaman LLP
Counsel to TCA**

Dated: November 1, 2016

CALIFORNIA STATE PARKS FOUNDATION

By: _____


**Elizabeth Goldstein
President**

Dated: November __, 2016

ENDANGERED HABITATS LEAGUE

By: _____

**Dan Silver
Executive Director**

Dated: November __, 2016

LAGUNA GREENBELT, INC.

By: _____

**Elisabeth M. Brown, Ph.D.
President**

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 1

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

Dated: November __, 2016

**FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.**

By: _____

**Michael A. Kraman
Chief Executive Officer**

Approved as to form only:

By: _____

**Ben Rubin
Nossaman LLP
Counsel to TCA**

Dated: November __, 2016

CALIFORNIA STATE PARKS FOUNDATION

By: _____

**Elizabeth Goldstein
President**

Dated: November 1, 2016

ENDANGERED HABITATS LEAGUE

By: _____

**Dan Silver
Executive Director**

Dated: November __, 2016

LAGUNA GREENBELT, INC.

By: _____

**Elisabeth M. Brown, Ph.D.
President**

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 1

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

Dated: November ___, 2016

**FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.**

By: _____

**Michael A. Kraman
Chief Executive Officer**

Approved as to form only:

By: _____

**Ben Rubin
Nossaman LLP
Counsel to TCA**

Dated: November ___, 2016

CALIFORNIA STATE PARKS FOUNDATION

By: _____

**Elizabeth Goldstein
President**

Dated: November ___, 2016

ENDANGERED HABITATS LEAGUE

By: _____

**Dan Silver
Executive Director**

Dated: November 1, 2016

LAGUNA GREENBELT, INC.

By: EM Brown

**Elisabeth M. Brown, Ph.D.
President**

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 1

Dated: November 1, 2016

NATURAL RESOURCES DEFENSE
COUNCIL, INC.

By: _____

Joel Reynolds
Senior Attorney and Western Director

Dated: November __, 2016

SEA AND SAGE AUDUBON SOCIETY

By: _____

G. Victor Leipzig, Ph.D
President

Dated: November __, 2016

SIERRA CLUB

By: _____

Sharon Lee Koch
Executive Committee Chair
Angeles Chapter

Dated: November __, 2016

NATIONAL AUDUBON SOCIETY, INC.

By: _____

David Yarnold
President and Chief Executive Officer

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 2

Dated: November __, 2016

NATURAL RESOURCES DEFENSE
COUNCIL, INC.

By: _____

Joel Reynolds
Senior Attorney and Western Director

Dated: November 1, 2016

SEA AND SAGE AUDUBON SOCIETY

By: _____


G. Victor Leipzig, Ph.D
President

Dated: November __, 2016

SIERRA CLUB

By: _____

Sharon Lee Koch
Executive Committee Chair
Angeles Chapter

Dated: November __, 2016

NATIONAL AUDUBON SOCIETY, INC.

By: _____

David Yarnold
President and Chief Executive Officer

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 2

Dated: November __, 2016

NATURAL RESOURCES DEFENSE
COUNCIL, INC.

By: _____

Joel Reynolds
Senior Attorney and Western Director

Dated: November __, 2016

SEA AND SAGE AUDUBON SOCIETY


By: _____

G. Victor Leipzig, Ph.D
President

Dated: November 1, 2016

SIERRA CLUB

By: _____


Sharon Lee Koch
Executive Committee Chair
Angeles Chapter

Dated: November __, 2016

NATIONAL AUDUBON SOCIETY, INC.

By: _____

David Yarnold
President and Chief Executive Officer

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 2

Dated: November __, 2016

NATURAL RESOURCES DEFENSE
COUNCIL, INC.

By: _____

Joel Reynolds
Senior Attorney and Western Director

Dated: November __, 2016

SEA AND SAGE AUDUBON SOCIETY

By: _____

G. Victor Leipzig, Ph.D
President

Dated: November __, 2016

SIERRA CLUB

By: _____

Sharon Lee Koch
Executive Committee Chair
Angeles Chapter

Dated: November 1, 2016

NATIONAL AUDUBON SOCIETY, INC.

By: _____


David Yarnold
President and Chief Executive Officer

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 2

Dated: November 1, 2016

SURFRIDER FOUNDATION

By: 

Chad Nelsen
Chief Executive Officer

Dated: November __, 2016

CALIFORNIA COASTAL PROTECTION
NETWORK

By: _____

Susan Jordan
Executive Director

Dated: November __, 2016

ORANGE COUNTY COASTKEEPER

By: _____

Garry W. Brown
Founder and President

Dated: November __, 2016

DEFENDERS OF WILDLIFE

By: _____

Kim Delfino
California Program Director

Dated: November __, 2016

WILD COAST-COSTASALVAJE

By: _____

Serge Dedina, Ph.D.
Executive Director

Signatures - 3

SIGNATURES CONTINUE ON NEXT PAGE

SETTLEMENT AGREEMENT

Dated: November __, 2016

SURFRIDER FOUNDATION

By: _____

Chad Nelsen
Chief Executive Officer

Dated: November 1, 2016

CALIFORNIA COASTAL PROTECTION
NETWORK

By: _____


Susan Jordan
Executive Director

Dated: November __, 2016

ORANGE COUNTY COASTKEEPER

By: _____

Garry W. Brown
Founder and President

Dated: November __, 2016

DEFENDERS OF WILDLIFE

By: _____

Kim Delfino
California Program Director

Dated: November __, 2016

WILD COAST-COSTA SALVAJE

By: _____

Serge Dedina, Ph.D.
Executive Director

Signatures-3

SIGNATURES CONTINUE ON NEXT PAGE

Dated: November __, 2016

SURFRIDER FOUNDATION

By: _____

Chad Nelsen
Chief Executive Officer

Dated: November __, 2016

CALIFORNIA COASTAL PROTECTION
NETWORK

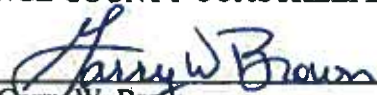
By: _____

Susan Jordan
Executive Director

Dated: November 1st, 2016

ORANGE COUNTY COASTKEEPER

By: _____


Garry W. Brown
Founder and President

Dated: November __, 2016

DEFENDERS OF WILDLIFE

By: _____

Kim Delfino
California Program Director

Dated: November __, 2016

WILDCOAST-COSTASALVAJE

By: _____

Serge Dedina, Ph.D.
Executive Director

Signatures - 3

SIGNATURES CONTINUE ON NEXT PAGE

Dated: November __, 2016

SURFRIDER FOUNDATION

By: _____

Chad Nelsen
Chief Executive Officer

Dated: November __, 2016

CALIFORNIA COASTAL PROTECTION
NETWORK

By: _____

Susan Jordan
Executive Director

Dated: November __, 2016

ORANGE COUNTY COASTKEEPER

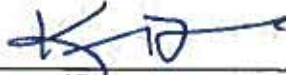
By: _____

Garry W. Brown
Founder and President

Dated: November 3, 2016

DEFENDERS OF WILDLIFE

By: _____


Kim Delfino
California Program Director

Dated: November __, 2016

WILD COAST-COSTA SALVAJE

By: _____

Serge Dedina, Ph.D.
Executive Director

Signatures - 3

SIGNATURES CONTINUE ON NEXT PAGE

Dated: November __, 2016

SURFRIDER FOUNDATION

By: _____

**Chad Nelsen
Chief Executive Officer**

Dated: November __, 2016

**CALIFORNIA COASTAL PROTECTION
NETWORK**

By: _____

**Susan Jordan
Executive Director**

Dated: November __, 2016

ORANGE COUNTY COASTKEEPER

By: _____

**Garry W. Brown
Founder and President**

Dated: November __, 2016

DEFENDERS OF WILDLIFE

By: _____

**Kim Delfino
California Program Director**

Dated: November 09, 2016

WILD COAST-COSTA SALVAJE

By: _____

**Serge Dedina, Ph.D.
Executive Director**

Signatures - 3

SIGNATURES CONTINUE ON NEXT PAGE

Dated: November 3, 2016

PEOPLE OF THE STATE OF CALIFORNIA

Kamala D. Harris
Attorney General of California
Jamee Jordan Patterson
Supervising Deputy Attorney General

By: _____


John W. Everett
Deputy Attorney General

Dated: November __, 2016

CALIFORNIA STATE PARK AND RECREATION
COMMISSION

By: _____

Diane Wittenberg
Chair

Approved as to form:

Kamala D. Harris
Attorney General of California

By: _____

Eric Katz
Supervising Deputy Attorney General
Attorneys for the California State Park and
Recreation Commission

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 4

Dated: November __, 2016

PEOPLE OF THE STATE OF CALIFORNIA

**Kamala D. Harris
Attorney General of California
Jamee Jordan Patterson
Supervising Deputy Attorney General**

By: _____

**John W. Everett
Deputy Attorney General**

Dated: November 1, 2016

**CALIFORNIA STATE PARK AND RECREATION
COMMISSION**

By: _____

**Diane Wittenberg
Chair**

Approved as to form:

**Kamala D. Harris
Attorney General of California**

By: _____

**Eric Katz
Supervising Deputy Attorney General
Attorneys for the California State Park and
Recreation Commission**

SIGNATURES CONTINUE ON NEXT PAGE

Signatures - 4

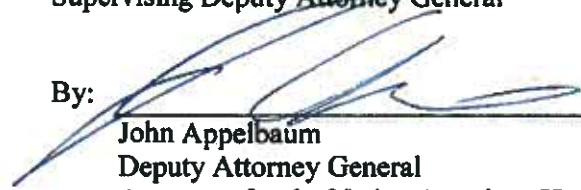
Dated: November 1, 2016

NATIVE AMERICAN HERITAGE COMMISSION

By: 
Cynthia Gomez
Executive Secretary

Approved as to form:

Kamala D. Harris
Attorney General of California
Angela Sierra
Senior Assistant Attorney General
Nancy A. Beniati
Supervising Deputy Attorney General

By: 
John Appelbaum
Deputy Attorney General
Attorneys for the Native American Heritage
Commission

END SIGNATURES

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
BOARD OF DIRECTORS

PAIGE YOUNG

Print Name

PAIGE YOUNG 11-10-16

Signature

Date

Lisa Barlett

Print Name

Lisa Barlett 11-10-16

Signature

Date

Scott Voigts

Print Name

Scott Voigts 11-10-16

Signature

Date

CHARLES E. PUCKETT 11/10/16

Print Name

Charles E. Puckett 11/10/16

Signature

Date

J. Scott Schoeffel 11/10/16

Print Name

J. SCOTT SCHOEFFEL

Signature

Date

Christina Shea

Print Name

Christina Shea 11/10/16

Signature

Date

L. Anthony Beall

Print Name

L. Anthony Beall 11-10-16

Signature

Date

Lucille Krings

Print Name

Lucille Krings 11-10-16

Signature

Date

ED SACHS

Print Name

Ed Sachs

Signature

Date

Mark A. Murphy

Print Name

Mark A. Murphy 11-10-16

Signature

Date

LIST OF EXHIBITS

- Exhibit A:** Form of Stipulation for Consolidation and Joinder
Exhibit B: Form of Stipulation for Judgment
Exhibit C: Avoidance Area Map
Exhibit D: Form of Stipulation for Dismissal
Exhibit E: Form of Non-Opposition Letter
Exhibit F: Form of Protective Legislation
Exhibit G: Joint Statement
Exhibit H: Form of SSOC Cure Letter
Exhibit I: Form of TCA Cure Letter

830563.3

EXHIBIT A

1 WILLIAM J. WHITE (State Bar No. 181441)
EDWARD T. SCHEXNAYDER (State Bar No. 284494)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, CA 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816
white@smwlaw.com
5 schexnayder@smwlaw.com

6 Attorneys for Petitioners
California State Parks Foundation, et al.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

9 CALIFORNIA STATE PARKS
10 FOUNDATION, et al.,

11 Petitioners,

12 v.

13 FOOTHILL/EASTERN
14 TRANSPORTATION CORRIDOR
AGENCY, et al.,

15 Respondents.

Case No. GIN051194

Consolidated with Case No. GIN051371

**STIPULATION AND [PROPOSED]
ORDER RE CONSOLIDATION AND
PERMISSIVE JOINDER OF
ADDITIONAL PETITIONERS**

Judge: Earl H. Maas, III
Dept: N-28

Actions Filed: March 23, 2006

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA, et al.,

19 Petitioners,

20 v.

21 FOOTHILL/EASTERN
22 TRANSPORTATION CORRIDOR
AGENCY, et al.,

23 Respondents.

1 CALIFORNIA STATE PARKS
FOUNDATION, et al.,

2 Petitioners,

3 v.

4 Foothill/Eastern
5 Transportation Corridor
Agency, et al.,

6 Respondents.

Case No. 37-2013-00049797-CU-WM-CTL

IMAGED FILE

Action Filed: May 22, 2013

Consolidated with Case No. 37-2013-
00050001-CU-WM-NC

Action Filed: May 23, 2013

Judge: Earl H. Maas, III
Dept: N-28

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA, EX REL. ATTORNEY
GENERAL KAMALA D. HARRIS,,

13 Petitioners,

14 v.

15 Foothill/Eastern
16 Transportation Corridor
Agency, et al.,

17 Respondents.

19 NATIVE AMERICAN HERITAGE
20 COMMISSION,

21 Plaintiff,

22 v.

23 Foothill/Eastern
24 Transportation Corridor
Agency, et al.,

25 Defendants

Case No. GIN051370

Judge: Earl H. Maas, III
Dept: N-28

Action Filed: March 23, 2006

26
27
28
**STIPULATION AND [PROPOSED] ORDER RE CONSOLIDATION AND PERMISSIVE JOINDER OF
ADDITIONAL PETITIONERS**

1 The parties to the above-captioned actions, together with proposed joined petitioners
2 Defenders of Wildlife and WiLDCOAST-COSTASALVAjE, hereby stipulate as follows:

3 **RECITALS**

4 1. The above-captioned actions are related lawsuits challenging certain approvals and
5 other actions taken by respondents/defendants Foothill/Eastern Transportation Corridor Agency
6 et. al (“TCA”) in connection with the in connection with the State Route 241 Extension Project.

7 2. A number of environmental organizations, including the National Audubon
8 Society, dba Audubon California, the California Coastal Protection Network, the California
9 State Parks Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna Greenbelt,
10 Inc., Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon
11 Society, Sierra Club, Surfrider Foundation, and WiLDCOAST-COSTASALVAjE, formed a
12 coalition known as the Save San Onofre Coalition (“SSOC”) to oppose certain alignments of the
13 State Route 241 Extension Project.

14 3. On March 23, 2006, certain members of the SSOC filed *Cal. State Parks*
15 *Foundation et al. v. Foothill/Eastern Transportation Corridor Agency et al.* (Case No.
16 GIN051194), challenging the TCA’s approval of the Foothill-South project, a 16-mile extension
17 of SR 241 to Interstate 5, under the California Environmental Quality Act, Public Resources
18 Code §§ 21000 et seq. (“CEQA”).

19 4. On the same day, the People of the State of California ex rel. Kamala D. Harris,
20 Attorney General (“People”) and the California State Park and Recreation Commission
21 (“CSPRC”) filed *People of the State of California et al. v. Foothill/Eastern Transportation*
22 *Corridor Agency et al.* (Case No. GIN051371), which also challenged the Foothill South project
23 under CEQA.

24 5. Also on the same day, the Native American Heritage Commission (“NAHC”) filed
25 *Native American Heritage Commission v. Foothill/Eastern Transportation Corridor Agency, et*
26 *al.* (Case No. GIN051370) to enjoin construction, development and permitting of the Foothill-
27 South project under Public Resources Code sections 5097.94 and 5097.

1 6. By stipulation of the parties, on June 16, 2006, the CEQA cases (Case Nos.
2 GIN051194 and GIN051371) were consolidated for limited purposes, but not for purposes of
3 judgment. (On April 24, 2009, *Native American Heritage Commission* (Case No. GI051370)
4 was consolidated with a related case, *Turner v. Native American Heritage Commission* (Case No
5 37-2008-00060583); however, a notice of dismissal was filed in the *Turner* case on _____.)

6 7. On May 22, 2013, certain members of the SSOC filed *Cal. State Parks*
7 *Foundation et al. v. Foothill/Eastern Transportation Corridor Agency et al.* (Case No. 37-2013-
8 00049797-CU-WM-NC), challenging under CEQA TCA's approval of a five-mile extension of
9 State Route 241 to Cow Camp Road, known as the Tesoro Extension. On May 23, 2013, the
10 People filed *People of the State of California, ex rel. Attorney General Kamala D. Harris v.*
11 *Foothill/Eastern Transportation Corridor Agency et al.* (Case No. 37-2013-00050001-CU-WM-
12 NC), which raised a similar CEQA challenge to the Tesoro Extension. On December 9, 2013,
13 these two cases were consolidated for limited purposes, but not for judgment, by stipulation of
14 the parties.

15 8. On September 20, 2013, this Court ordered all five of these related cases
16 (collectively, the "Lawsuits") coordinated for purposes of tracking, discovery and
17 communication.

18 9. On September 12, 2014, this Court ordered the CEQA cases stayed pending
19 further order of the Court. On September 29, 2014, the Court similarly stayed proceedings in
20 the NAHC case..

21 10. On November ___, 2016, the TCA, the SSOC, the People, the CSPRC, and the
22 NAHC entered into a settlement agreement to resolve all of the outstanding issues in the
23 Lawsuits and other issues related to the State Route 241 Extension Project. The settlement
24 requires the parties to seek court approval of the settlement agreement as a stipulated judgment,
25 with the continuing jurisdiction of the Court to enforce the settlement under Section 664.6 of the
26 Code of Civil Procedure.

1 11. Because the settlement addresses and resolves the issues in all of the Lawsuits in
2 a single agreement, it would be impracticable to require that it be incorporated into five separate
3 judgments, each to be enforced separately. Accordingly, to implement the settlement
4 agreement, the parties desire that all five Lawsuits be consolidated for purposes of judgement.

5 12. The settlement agreement includes two members of the SSOC—Defenders of
6 Wildlife and WILDCOAST-COSTASALVAjE—who are not presently parties to any of the
7 Lawsuits. It is important that all parties to the settlement, including Defenders of Wildlife and
8 WILDCOAST-COSTASALVAjE, have the ability to enforce, and be subject to enforcement of,
9 the settlement as a stipulated judgment. Accordingly, the parties desire to join Defenders of
10 Wildlife and WILDCOAST-COSTASALVAjE as petitioners under Code of Civil Procedure
11 section 378.

12 **STIPULATION**

13 In view of the foregoing, IT IS HEREBY STIPULATED AND AGREED, subject to the
14 approval of the Court, as follows:

- 15 1. The Lawsuits shall be consolidated for purposes of judgment.
16 2. Defenders of Wildlife and WILDCOAST-COSTASALVAjE shall be joined as
17 additional petitioners in Case No. 37-2013-00049797-CU-WM-NC.
18 3. The stay of proceedings in the Lawsuits shall remain in effect pending further
19 order of the Court.

20
21 DATED: November . 2016 SHUTE, MIHALY & WEINBERGER LLP

22
23 By: _____
24 WILLIAM J. WHITE

25 Attorneys for Petitioners
26 California State Parks Foundation. et al.

27 [signatures continued on the following page]

1 DATED: November . 2016

SHUTE, MIHALY & WEINBERGER LLP

2
3 By: _____
4 WILLIAM J. WHITE

5 Attorneys for Defenders of Wildlife and WILDCOAST-
6 COSTASALVAiE

7 DATED: November __, 2016

NOSSAMAN LLP
8 ROBERT D. THORNTON
9 JOHN J. FLYNN III
10 BENJAMIN Z. RUBIN

11 By: _____
12 BENJAMIN Z. RUBIN
13 Attorneys for Respondents Foothill/Eastern
14 Transportation Corridor Agency et al.

15 DATED: November __, 2016

KAMALA D. HARRIS
16 Attorney General of California
17 JAMEE JORDAN PATTERSON
18 Supervising Deputy Attorney General
19 JOHN W. EVERETT
20 Deputy Attorney General

21 By: _____
22 JOHN W. EVERETT
23 Attorneys for the People of the State of California, ex
24 rel. Attorney General Kamala D. Harris

25 [signatures continued on the following page]

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DATED: November __, 2016

KAMALA D. HARRIS
Attorney General of California
ERIC KATZ
Supervising Deputy Attorney General

By: _____
ERIC KATZ
Attorneys for the California State Park and Recreation
Commission

DATED: November __, 2016

KAMALA D. HARRIS
Attorney General of California
ANGELA SIERRA
Senior Assistant Attorney General
JOHN APPELBAUM
Deputy Attorney General

By: _____
JOHN APPELBAUM
Attorneys for the Native American Heritage
Commission

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ORDER

Having read the foregoing stipulation of the parties, and good cause appearing,
IT IS SO ORDERED

DATED: _____, 2016

Hon. Hon. Earl H. Maas, III
Judge of the Superior Court

EXHIBIT B

1 WILLIAM J. WHITE (State Bar No. 181441)
 2 EDWARD T. SCHEXNAYDER (State Bar No. 284494)
 3 SHUTE, MIHALY & WEINBERGER LLP
 396 Hayes Street
 3 San Francisco, CA 94102
 Telephone: (415) 552-7272
 4 Facsimile: (415) 552-5816
 white@smwlaw.com
 5 schexnayder@smwlaw.com

6 Attorneys for Petitioners
 7 California State Parks Foundation, et al

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

10 CALIFORNIA STATE PARKS
 11 FOUNDATION, et al.,
 12
 13 Petitioners,
 14
 15 v.
 16
 17 Foothill/Eastern
 18 TRANSPORTATION CORRIDOR
 19 AGENCY, et al.,
 20
 21 Respondents.

Case No. GIN051194
 Consolidated with:
 Case No. GIN051371
 Case No. 37-2013-00049797-CU-WM-CTL
 (IMAGED FILE)
 Case No. 37-2013-00050001-CU-WM-NC
 Case No. GIN051370

**STIPULATION FOR ENTRY OF
 JUDGMENT CONFIRMING AND
 IMPLEMENTING SETTLEMENT**

(Code of Civ. Proc., § 664.6)

18 THE PEOPLE OF THE STATE OF
 19 CALIFORNIA, et al.,
 20
 21 Petitioners,
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 23 v.
 24
 25 Foothill/Eastern
 26 TRANSPORTATION CORRIDOR
 27 AGENCY, et al.,
 28
 Respondents.

Judge: Hon. Earl H. Maas, III
 Dept.: 28
 Action Filed: March 23, 2006

**[Exempt from Filing Fees Pursuant to
 Government Code Section 6103]**

AND CONSOLIDATED CASES

1 The Foothill/Eastern Transportation Corridor Agency et. al (“TCA”); the National
2 Audubon Society, dba Audubon California, the California Coastal Protection Network,
3 the California State Parks Foundation, Defenders of Wildlife, Endangered Habitats
4 League, Laguna Greenbelt, Inc., Natural Resources Defense Council, Orange County
5 Coastkeeper, Sea and Sage Audubon Society, Sierra Club, Surfrider Foundation, and
6 WILD Coast-COSTASALVAJE, (each an “SSOC Member” and collectively the “Save
7 San Onofre Coalition” or “SSOC”); the People of the State of California ex rel. Kamala
8 D. Harris, Attorney General (“People”); the Native American Heritage Commission
9 (“NAHC”); and the California State Park and Recreation Commission (“CSPRC”) (each a
10 “Party”), and their respective counsel, hereby stipulate as follows:

11 1. **THE PARTIES.** The Parties comprise all of the parties to the following five
12 related lawsuits (collectively, “Lawsuits”), which have been consolidated for purposes of
13 judgment:

- 14 • *Cal. State Parks Foundation et al. v. Foothill/Eastern Transportation*
15 *Corridor Agency et al.* (Case No. GIN051194);
- 16 • *People of the State of California et al. v. Foothill/Eastern*
17 *Transportation Corridor Agency et al.* (Case No. GIN051371);
- 18 • *Cal. State Parks Foundation et al. v. Foothill/Eastern Transportation*
19 *Corridor Agency et al.* (Case No. 37-2013-00049797-CU-WM-NC);
- 20 • *People of the State of California, ex rel. Attorney General Kamala D.*
21 *Harris v. Foothill/Eastern Transportation Corridor Agency et al.* (Case
22 No. 37-2013-00050001-CU-WM-NC); and
- 23 • *Native American Heritage Commission v. Foothill/Eastern*
24 *Transportation Corridor Agency, et al.* (Case No. GIN051370).¹

25
26
27 ¹ A sixth related case, *Jeffrey A. Turner v. Native American Heritage Commission* (Case No. 37-
28 2008-0006058), had been consolidated with the *Native American Heritage Commission* case, but
was voluntarily dismissed with prejudice on _____.

1 2. **THE PROJECT.** Each of the Lawsuits arises from TCA’s proposal to extend
2 State Route 241 beyond its current terminus at Oso Parkway (“SR 241 Extension
3 Project”). Two of the Lawsuits filed in 2006, brought by certain Members of the SSOC,
4 and by the People and CSPRC, challenged under the California Environmental Quality
5 Act, Public Resources Code §§ 21000 et seq. (“CEQA”) the TCA’s approval of the
6 Foothill-South project, a 16-mile extension of SR 241 to Interstate 5. The third Lawsuit
7 filed in 2006, brought by the NAHC, sought to enjoin construction, development and
8 permitting of the Foothill-South project under Public Resources Code sections 5097.94
9 and 5097. In 2013, the two remaining Lawsuits were filed by certain members of the
10 SSOC and by the People, challenging under CEQA TCA’s approval of a five-mile
11 extension of State Route 241 to Cow Camp Road, known as the Tesoro Extension.

12 3. **THE SETTLEMENT AGREEMENT.** On November ___, 2016, the Parties
13 entered into a settlement agreement resolving all of the issues in the Lawsuits and related
14 issues in connection with the SR 241 Extension Project (“Settlement Agreement”). A
15 true and correct copy of the Settlement Agreement is attached to, and incorporated by
16 reference into, the [Proposed] Judgment Confirming and Implementing Settlement (“Final
17 Judgment”), attached hereto as Attachment A. The Parties desire to have the Settlement
18 Agreement incorporated into a judgment to give the settlement binding effect within the
19 litigation, with the Court to exercise continuing jurisdiction under Code of Civil
20 Procedure § 664.6 to ensure that the terms of the settlement are carried out.

21 4. **STIPULATION FOR ENTRY OF FINAL JUDGMENT.** For the foregoing
22 reasons, the Parties respectfully request that the Court enter Final Judgment in this matter
23 in the Lawsuits in the form set forth in Attachment A.

24 5. **AUTHORITY TO ENTER INTO STIPULATION.** Each signatory to this
25 Stipulation certifies that he or she is fully authorized by the Party he or she represents to
26 enter into this Stipulation, to execute it on behalf of the party represented, and to legally
27 bind that Party in consenting to the entry of Final Judgment.

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6. **COUNTERPARTS.** This Stipulation may be executed in several counterpart originals, all of which taken together shall constitute an integrated document.

7. **EFFECT OF SETTLEMENT AGREEMENT IF FINAL JUDGMENT IS NOT ENTERED.** Final Judgment shall not be effective until it is approved and entered by the Court. If the Court does not approve this Stipulation and enter Final Judgment in the form and substance proposed, the Parties agree to collaborate in good faith to overcome the Court's objections to this Stipulation or the Final Judgment. Regardless of whether Final Judgment is entered, the Settlement Agreement reached by the Parties shall remain binding.

[signatures begin on following page]

1 DATED: November __, 2016

SHUTE, MIHALY & WEINBERGER LLP

2

3

By: _____
William J. White
Attorneys for Petitioners California State Parks
Foundation, et al.

4

5

6

7 DATED: November __, 2016

CALIFORNIA STATE PARKS FOUNDATION

8

9

By: _____
Elizabeth Goldstein
President

10

11

12 DATED: November __, 2016

ENDANGERED HABITATS LEAGUE

13

14

By: _____
Dan Silver
Executive Director

15

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18 DATED: November __, 2016

LAGUNA GREENBELT, INC.

19

20

By: _____
Elisabeth Brown
President

21

22

23 DATED: November __, 2016

NATURAL RESOURCES DEFENSE
COUNCIL, INC.

24

25

By: _____
Damon Nagami
Senior Attorney

26

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DATED: November __, 2016

SEA AND SAGE AUDUBON SOCIETY

By: _____
G. Victor Leipzig
President

DATED: November __, 2016

SIERRA CLUB

By: _____
Sharon Lee Koch
Executive Committee Chair
Angeles Chapter

DATED: November __, 2016

SURFRIDER FOUNDATION

By: _____
Chad Nelsen
Chief Executive Officer

DATED: November __, 2016

NATIONAL AUDUBON SOCIETY dba
AUDUBON CALIFORNIA

By: _____

DATED: November __, 2016

CALIFORNIA COASTAL PROTECTION
NETWORK

By: _____
Susan Jordan
Executive Director

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DATED: November __, 2016

ORANGE COUNTY COASTKEEPER

By: _____
Garry Brown
Founder and President

DATED: November __, 2016

DEFENDERS OF WILDLIFE

By: _____
Kim Delfino
California Program Director

DATED: November __, 2016

WILD COAST-COSTA SALVAJE

By: _____
Serge Dedina
Executive Director

[signatures continued on the following page]

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DATED: November __, 2016

NOSSAMAN LLP
ROBERT D. THORNTON
JOHN J. FLYNN III
BENJAMIN Z. RUBIN

By: _____
Benjamin Z. Rubin
Attorneys for Respondents and Defendants
Foothill/Eastern Transportation Corridor
Agency et al.

DATED: November __, 2016

FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.

By: _____
Michael A. Kraman
Chief Executive Officer

[signatures continued on the following page]

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DATED: November __, 2016

KAMALA D. HARRIS
Attorney General of California
JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General
JOHN W. EVERETT
Deputy Attorney General

By: _____
John W. Everett
Attorneys for the People of the State of
California, ex rel. Attorney General Kamala D.
Harris

DATED: November __, 2016

KAMALA D. HARRIS
Attorney General of California
ERIC KATZ
Supervising Deputy Attorney General

By: _____
Eric Katz
Attorneys for the California State Park and
Recreation Commission

DATED: November __, 2016

KAMALA D. HARRIS
Attorney General of California
ANGELA SIERRA
Senior Assistant Attorney General
NANCY A. BENINATI
Supervising Deputy Attorney General
JOHN APPELBAUM
Deputy Attorney General

By: _____
John Appelbaum
Attorneys for the Native American Heritage
Commission

ATTACHMENT A TO EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

CALIFORNIA STATE PARKS
FOUNDATION, et al.,

Petitioners,

v.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, et al.,

Respondents.

THE PEOPLE OF THE STATE OF
CALIFORNIA, et al.,

Petitioners,

v.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, et al.,

Respondents.

AND CONSOLIDATED CASES

Case No. GIN051194

Consolidated with:

Case No. GIN051371

Case No. 37-2013-00049797-CU-WM-
CTL (IMAGED FILE)

Case No. 37-2013-00050001-CU-WM-
NC

Case No. GIN051370

**[PROPOSED] JUDGMENT
CONFIRMING AND
IMPLEMENTING SETTLEMENT**

Judge: Hon. Earl H. Maas, III

Dept.: N-28

Action Filed: March 23, 2006

**[Exempt from Filing Fees Pursuant to
Government Code Section 6103]**

[PROPOSED] JUDGMENT CONFIRMING AND IMPLEMENTING SETTLEMENT

1 This consolidated litigation involves five lawsuits (“Lawsuits”) challenging certain
2 approvals and other actions taken by respondents Foothill/Eastern Transportation
3 Corridor Agency et. al (“TCA”) in connection with the State Route 241 Extension
4 Project. The petitioners in the cases are: the National Audubon Society, dba Audubon
5 California, the California Coastal Protection Network, the California State Parks
6 Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna Greenbelt, Inc.,
7 Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon
8 Society, Sierra Club, Surfrider Foundation, and WILD COAST-COSTASALVAJE, (each
9 an “SSOC Member” and collectively the “Save San Onofre Coalition” or “SSOC”); the
10 People of the State of California ex rel. Kamala D. Harris, Attorney General (“People”);
11 the Native American Heritage Commission (“NAHC”); and the California State Park and
12 Recreation Commission (“CSPRC”).

13 *Cal. State Parks Foundation et al. v. Foothill/Eastern Transportation Corridor*
14 *Agency et al.* (Case No. GIN051194) and *People of the State of California et al. v.*
15 *Foothill/Eastern Transportation Corridor Agency et al.* (Case No. GIN051371), were
16 filed on March 23, 2006 by certain SSOC Members, and by the People and the CSPRC,
17 respectively, and were consolidated for limited purposes, but not for judgment, by
18 stipulation of the parties on June 16, 2006.

19 *Cal. State Parks Foundation et al. v. Foothill/Eastern Transportation Corridor*
20 *Agency et al.* (Case No. 37-2013-00049797-CU-WM-NC), and *People of the State of*
21 *California, ex rel. Attorney General Kamala D. Harris v. Foothill/Eastern Transportation*
22 *Corridor Agency et al.* (Case No. 37-2013-00050001-CU-WM-NC), were filed on May
23 22, 2013 and May 23, 2013, respectively, by certain SSOC Members, and by the People,
24 respectively, and were consolidated for limited purposes, but not for judgment, by
25 stipulation of the parties on December 9, 2013.

26 *Native American Heritage Commission v. Foothill/Eastern Transportation*
27 *Corridor Agency, et al.* (Case No. GIN051370), was filed on March 23, 2006, by the
28 NAHC. The case had been consolidated with a related case (*Jeffrey A. Turner v. Native*

1 *American Heritage Commission* (Case No. 37-2008-0006058)), but that related case was
2 voluntarily dismissed on _____, 2016.

3 On September 20, 2013, this Court ordered all of the cases coordinated for
4 purposes of tracking, discovery and communication.

5 On _____, 2016, by stipulation of the parties, the five cases were consolidated for
6 purposes of judgment, and SSOC members Defenders of Wildlife WILDCOAST-
7 COSTASALVAjE were joined as parties to Case No. 37-2013-00049797-CU-WM-NC.

8 On November __, 2016, the parties to the consolidated cases entered into a
9 settlement agreement, attached hereto as Exhibit A ("Settlement"), to resolve the
10 litigation and related issues, and on _____, 2016, the parties filed a Stipulation for Entry
11 of Judgment Confirming and Implementing Settlement ("Stipulation").

12 The Court having reviewed the Stipulation, the Settlement, and the record of
13 proceedings in this matter, and good cause appearing therein, finds that the settlement
14 between the parties is fair and reasonable and in the public interest.

15 **IT IS ORDERED AND ADJUDGED that:**

16 1. Final judgment in the Lawsuits is entered pursuant to the terms of the
17 Settlement, which is incorporated by reference herein as if set out in full.

18 2. The entry of this judgment shall constitute the full and final determination
19 of the rights of the parties in the Lawsuits, consistent with section 577 of the California
20 Code of Civil Procedure.

21 3. The Court reserves jurisdiction to enforce the terms of the Settlement
22 pursuant to Code of Civil Procedure section 664.6.

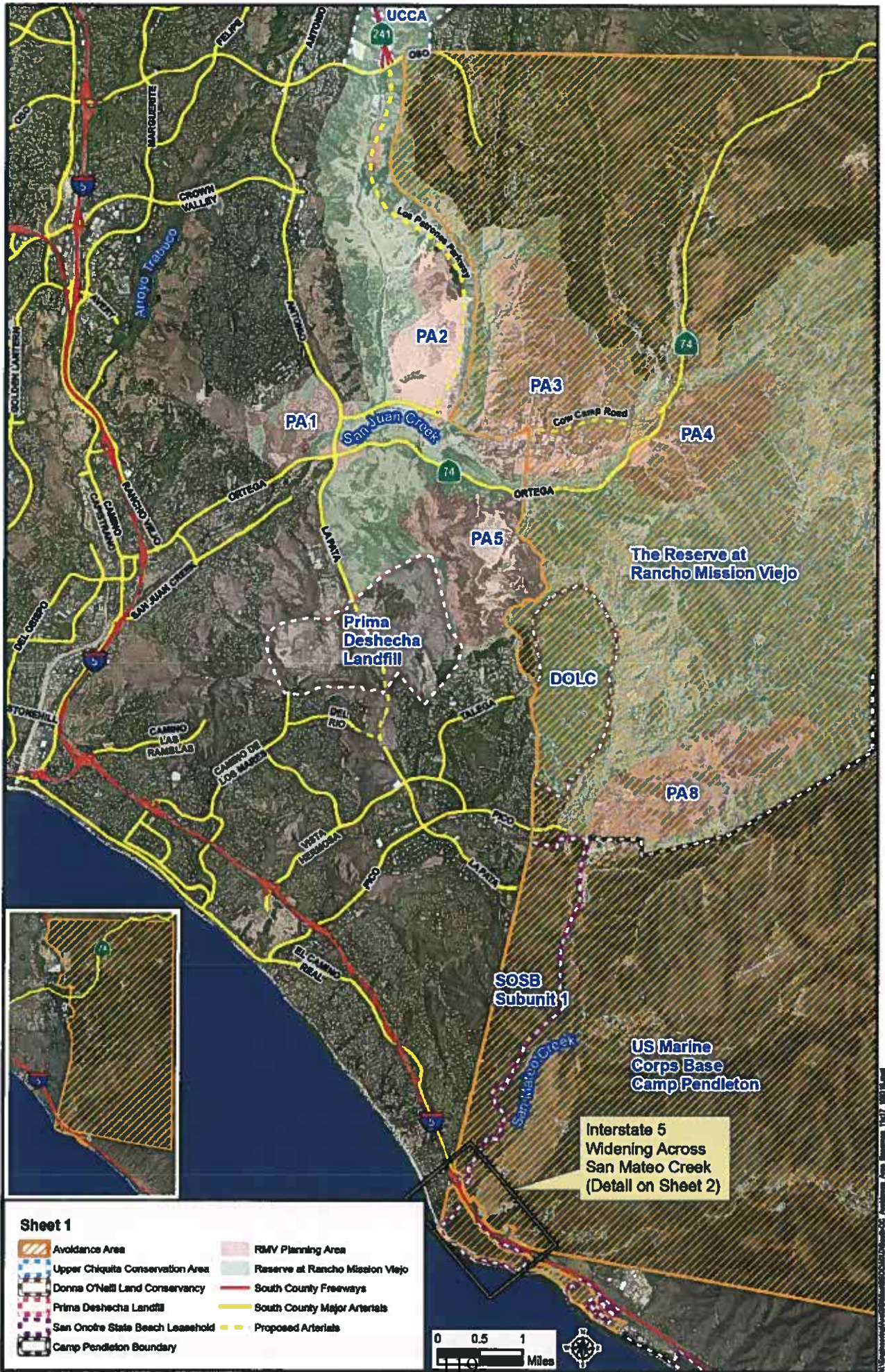
23
24 DATED: _____, 2016

25 Hon. Hon. Earl H. Maas, III
26 Judge of the Superior Court
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EXHIBIT A
Settlement Agreement

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EXHIBIT C



Interstate 5
Widening Across
San Mateo Creek
(Detail on Sheet 2)



EXHIBIT D

1 WILLIAM J. WHITE (State Bar No. 181441)
 EDWARD T. SCHEXNAYDER (State Bar No. 284494)
 2 SHUTE, MIHALY & WEINBERGER LLP
 396 Hayes Street
 3 San Francisco, CA 94102
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 4 Facsimile: (415) 552-5816
 white@smwlaw.com
 5 schexnayder@smwlaw.com

6 Attorneys for Petitioners
 7 California State Parks Foundation, et al

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION

10 CALIFORNIA STATE PARKS
 11 FOUNDATION, et al.,
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Petitioners,

v.

FOOTHILL/EASTERN
 TRANSPORTATION CORRIDOR
 AGENCY, et al.,
 Respondents.

Case No. GIN051194
 Consolidated with:
 Case No. GIN051371

**STIPULATION AND [PROPOSED]
 ORDER DISMISSING ACTION
 PURSUANT TO SETTLEMENT
 AGREEMENT AND RESERVING
 TRIAL COURT JURISDICTION
 PURSUANT TO C.C.P. SECTION
 664.6**

THE PEOPLE OF THE STATE OF
 CALIFORNIA, et al.,
 Petitioners,

Judge: Hon. Earl H. Maas, III
 Dept.: N-28

Action Filed: March 23, 2006

FOOTHILL/EASTERN
 TRANSPORTATION CORRIDOR
 AGENCY, et al.,
 Respondents.

**[Exempt from Filing Fees Pursuant to
 Government Code Section 6103]**

[Revise caption page in each case to conform to applicable case caption]

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RECITALS

A. This case is one of five related lawsuits (“Lawsuits”) challenging certain approvals and other actions taken by [respondents/defendants] Foothill/Eastern Transportation Corridor Agency et. al (“TCA”) in connection with the State Route 241 Extension Project.

B. The Lawsuits are *Cal. State Parks Foundation et al. v. Foothill/Eastern Transportation Corridor Agency et al.* (Case No. GIN051194), consolidated for limited purposes with *People of the State of California et al. v. Foothill/Eastern Transportation Corridor Agency et al.* (Case No. GIN051371); *Cal. State Parks Foundation et al. v. Foothill/Eastern Transportation Corridor Agency et al.* (Case No. 37-2013-00049797-CU-WM-NC), consolidated for limited purposes with *People of the State of California, ex rel. Attorney General Kamala D. Harris v. Foothill/Eastern Transportation Corridor Agency et al.* (Case No. 37-2013-00050001-CU-WM-NC); and *Native American Heritage Commission v. Foothill/Eastern Transportation Corridor Agency, et al.* (Case No. GIN051370), which had been consolidated with a related case (*Jeffrey A. Turner v. Native American Heritage Commission* (Case No. 37-2008-0006058)), but that related case was voluntarily dismissed on _____, 2016.

C. On September 20, 2013, this Court ordered all of the Lawsuits coordinated for purposes of tracking, discovery and communication.

D. The parties to each of the Lawsuits (“Parties”) have entered into a settlement agreement, a copy of which is attached hereto as Exhibit A (“Settlement”).

E. In accordance with the Settlement, the TCA has rescinded the actions challenged in the Lawsuits.

F. The Settlement provides that, in the event [the Court affirmatively declines to enter proposed judgment called for in the Settlement/the proposed judgment called for in the Settlement is not entered within 90 days of the effective date of the Settlement], the Parties shall file a dismissal in this form in each of the Lawsuits.

1 F. The Settlement provides that the Parties request that this Court enter an
2 order retaining jurisdiction to enforce the Settlement pursuant to Code of Civil Procedure
3 section 664.6; and

4 G. The Court is authorized to retain jurisdiction to enforce the Settlement
5 pursuant to Code of Civil Procedure section 664.6 upon written request of the Parties as
6 provided in *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439-441.

7
8 **STIPULATION**

9 THEREFORE, it is hereby STIPULATED and jointly requested by
10 [Petitioners/Plaintiffs] and TCA that this action be dismissed with prejudice and that the
11 Court reserve jurisdiction to enforce the Settlement pursuant to Code of Civil Procedure
12 section 664.6 and this written stipulation of the Parties.

13
14 DATED: November __, 2016

SHUTE, MIHALY & WEINBERGER LLP

15
16
17 By: _____

WILLIAM J. WHITE

Attorneys for Petitioners California State Parks
Foundation, et al.

18
19
20 DATED: _____, 2016

NOSSAMAN LLP
ROBERT D. THORNTON
JOHN J. FLYNN III
BENJAMIN Z. RUBIN

21
22
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24 By: _____

BENJAMIN Z. RUBIN]

Attorneys for [Respondents/Defendants]
Foothill/Eastern Transportation Corridor
Agency et al.

25
26
27 [signatures continued on next page]

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DATED: , 2016

KAMALA D. HARRIS
Attorney General of California
JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General
JOHN W. EVERETT
Deputy Attorney General

By: _____
JOHN W. EVERETT
Attorneys for the People of the State of
California, ex rel. Attorney General Kamala D.
Harris

DATED: , 2016

KAMALA D. HARRIS
Attorney General of California
ERIC KATZ
Supervising Deputy Attorney General

By: _____
ERIC KATZ
Attorneys for the California State Park and
Recreation Commission

DATED: , 2016

KAMALA D. HARRIS
Attorney General of California
ANGELA SIERRA
Senior Assistant Attorney General
JOHN APPELBAUM
Deputy Attorney General

By: _____
JOHN APPELBAUM
Attorneys for the Native American Heritage
Commission

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[PROPOSED] ORDER

This Court hereby reserves jurisdiction to enforce the Settlement pursuant to Code of Civil Procedure section 664.6 and this written stipulation, and the action is hereby dismissed with prejudice.

IT IS SO ORDERED:

DATED: _____, 2016

Hon. Earl H. Maas, III
Judge of the Superior Court

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EXHIBIT A
Settlement Agreement

EXHIBIT E

EXHIBIT E

Form of SSOC Non-Opposition Letter

[SSOC MEMBER LETTERHEAD]

[DATE]

To Whom it May Concern:

This letter is written with reference to the State Route 241 Extension project proposed by the Foothill/Eastern Transportation Corridor Agency ("TCA").

The Settlement Agreement pertaining to State Route 241 Foothill South and Tesoro Extensions, dated November __, 2016 ("Agreement"), achieves major protections for critical environmental, recreational and cultural resources in southern Orange County and northern San Diego County. Under the Agreement, TCA has agreed not to construct or fund any road alignment sited in or with direct impacts to the area described in the attached diagram which is known as the "Avoidance Area", which includes San Onofre State Beach, the Richard and Donna O'Neill Conservancy, and other important open space lands.

The Agreement also requires TCA to consider at least one alternative alignment for the State Route 241 Extension project that meets the goals, objectives and transportation needs established by TCA, connects to Interstate 5, and is not sited in and will not have direct impacts to the Avoidance Area ("Post-Settlement Alignment").

In light of the major environmental benefits realized through the Agreement, [SSOC Member] does not oppose the approval, funding, or construction of a TCA Post-Settlement Alignment as provided in the Settlement Agreement.

[SSOC MEMBER SIGNATURE]

Attachment

[ATTACH Avoidance Area Diagram]

EXHIBIT F

EXHIBIT F

Form of Protective Legislation

Section 66484.4 is added to the Government Code to read:

Section 66484.4. Notwithstanding any provision of law to the contrary, a joint powers agency empowered under Government Code section 66484.3 shall have no authority to construct, fund or operate a major thoroughfare within the area identified as the Avoidance Area in that certain consent decree entered by the San Diego Superior Court on _____ in case numbers GIN051194, GIN051371, 37-2013-00049797-CU-WM-CTL, 37-2013-00050001-CU-WM-NC, and GIN051370.

EXHIBIT G

EXHIBIT G

Joint Statement

LANDMARK AGREEMENT ENDS 15-YEAR DISPUTE OVER SR 241 TOLL ROAD EXTENSION

Agreement between Orange County toll road agency, Attorney General and a broad coalition of national and local environmental groups will protect San Onofre State Beach, the Richard and Donna O'Neill Conservancy and San Mateo Creek watershed while allowing exploration of other transportation solutions for South Orange County

IRVINE, CALIF. – Announcing an end to the 15-year fight over the proposed Foothill-South Toll Road in southern Orange County and northern San Diego County, representatives from the Foothill/Eastern Transportation Corridor Agency (TCA), California Attorney General Kamala Harris, the Save San Onofre Coalition, the California Park and Recreation Commission and the Native American Heritage Commission detailed the elements of a historic, comprehensive settlement.

The agreement presents an opportunity for TCA to consider a number of transportation project ideas including State Route 241 – Interstate 5 connection options while protecting sensitive lands and cultural resources within the San Mateo Creek watershed, including San Onofre State Beach, the Richard and Donna O'Neill Conservancy. "TCA is very pleased to join over a dozen environmental organizations in this unprecedented outcome, which underscores the collaboration between the Agency's leadership and leaders of the environmental community," stated Foothill/Eastern Transportation Corridor Agency Chairman Craig Young.

"For the past two years, TCA and its team of experts have engaged in thoughtful and productive discussions about the future of improving transportation mobility and the importance of protecting environmentally sensitive areas. This agreement is a baseline for achieving both of those objectives," added Transportation Corridor Agencies Chief Executive Officer Mike Kraman.

"The Settlement Agreement reached today is the culmination of years of work by the Save San Onofre Coalition to ensure the protection of the extraordinary recreational, cultural and natural resources of San Onofre State Beach and the Richard and Donna O'Neill Conservancy," commented Elizabeth Goldstein, president of the California State Parks Foundation and spokesperson for the Save San Onofre Coalition. "This agreement will guarantee that millions of Californians will be able to enjoy this magnificent park, its beaches and natural areas for years to come."

This agreement resolves all outstanding litigation arising out of the TCA's Foothill-South and Tesoro Extension plans to extend the 241 toll road in southern Orange County. Those plans were opposed by the Save San Onofre Coalition, the Attorney General and various state agencies because they would have significantly damaged environmental and cultural resources in San Onofre State Beach, the Richard and Donna O'Neill Conservancy and other open space lands. In 2008, the California Coastal Commission and the U.S. Secretary of Commerce found that the proposed Foothill-South alignment was inconsistent with state and federal coastal protection policies.

San Onofre State Beach, established in 1971 by then-Governor Ronald Reagan, is one of California's most popular state parks, receiving more than 2.4 million visitors per year and providing habitat for 11 endangered or threatened species. San Onofre also offers low-cost recreational opportunities for working families and boasts a world-renowned surf spot at Trestles Beach.

"This agreement brings an end to one of the most hard fought, long-lasting environmental battles in California history, one that we have successfully pursued for the people of the region, our state's natural heritage and the integrity of our state park system," stated Joel Reynolds, western director and senior attorney for the Natural Resources Defense Council. "Today's action is a definitive determination that the California state park at San Onofre will be preserved."

The final agreement achieves the following objectives:

1. Settles five lawsuits challenging TCA's 2006 and 2013 approvals of its Foothill-South and Tesoro Extension projects brought by the California Attorney General and members of the Save San Onofre Coalition.
2. Provides that TCA will rescind its 2006 approval of the so-called "Green Alignment" that would have run through San Onofre State Beach and its 2013 approval of its Tesoro Extension project.
3. Ensures permanent protection of San Onofre State Beach, the Richard and Donna O'Neill Conservancy, and other critical open space, wildlife habitat and cultural resources in the San Mateo Creek and adjacent watersheds from TCA-sponsored road projects.
4. Allows TCA to move forward with a formal CEQA/NEPA process to review alternative routes for connecting SR-241 to the Interstate 5 freeway and develop an SR-241 extension project that avoids San Onofre State Beach and other environmentally and culturally sensitive lands designated in the agreement, without opposition by the environmental organizations comprising the Save San Onofre Coalition.

5. Establishes a cooperative framework by which an alignment for the SR-241 and other I-5 traffic congestion solutions can be identified, evaluated and potentially advanced in a manner that follows applicable laws, is consistent with recommendations issued by regulatory agencies in 2008, and meets south Orange County's transportation needs.

6. Creates a robust conservation fund to help preserve and restore San Mateo Creek and its watershed. An important component of the agreement is an unprecedented commitment by TCA to create a \$28 million conservation fund that will help preserve and restore San Mateo Creek and its watershed. An independent oversight committee comprised of Save San Onofre Coalition members, TCA and resource agencies will work collaboratively to target priority land acquisitions and carry out critical habitat restoration projects.

"The San Mateo Creek Watershed is a unique undammed, intact watershed in coastal Southern California. Protecting the natural and recreational resources that depend upon it has been a key goal of the Save San Onofre Coalition," added Dan Silver, executive director, Endangered Habitats League. "Through this agreement, we not only guarantee protection, but also gain positive benefits now and into the future."

"This settlement agreement is the result of an innovative and collaborative process by a group of bold leaders who have worked together to develop an environmentally conscientious approach for the development of solutions to the region's mobility challenges," said Foothill/Eastern Transportation Corridor Agency Vice Chair Lisa Bartlett, who is also the chairwoman of the Orange County Board of Supervisors.

The agreement also requires preparation of a Coastal Access Management Plan that will mitigate impacts from any construction of an alternative toll road alignment project, ensure continuous public shoreline access to San Onofre State Beach during construction of any project and result in permanent public access enhancements.

"Our coalition has worked diligently for more than a decade to save the park and the surrounding watershed. This settlement agreement permanently protects these invaluable cultural, recreational and ecological resources that are treasured by the public," concluded Stefanie Sekich-Quinn of the Surfrider Foundation.

###

[Editor's Note:]

The Save San Onofre Coalition comprises the following 12 California and national environmental organizations: Audubon California, California Coastal Protection Network, California State Parks Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna

Greenbelt, Inc., Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon Society, Sierra Club, Surfrider Foundation and WILDCOAST/COASTALVAJE

The Transportation Corridor Agencies (TCA) are two joint powers authorities formed by the California legislature in 1986 to plan, finance, construct and operate Orange County's public toll road system. Fifty-one miles of the system are complete, including the 73, 133, 241 and 261 Toll Roads. More than three hundred thousand people from all over Southern California use TCA's toll roads each day. Elected officials from surrounding cities and county supervisorial districts are appointed to serve on each agency's board of directors. Public oversight ensures that the interests of local communities and drivers are served and that TCA continues to meet the region's growing need for congestion-free transportation alternatives

EXHIBIT H

EXHIBIT H

Form of SSOC Member Cure Letter

[SSOC MEMBER LETTERHEAD]

[DATE]

To Whom It May Concern:

This letter is intended to be incorporated into the official record of proceedings relative to your agency's consideration of the SR 241 Extension Project ("Project"). [SSOC MEMBER] is a Party to the agreement entitled "State Route 241 Foothill South and Tesoro Extensions Settlement Agreement" ("Agreement") dated ____, 2016. The Agreement achieves major conservation objectives by ensuring that the Project will not be built in the extensive area of open space, conservation and park lands depicted in the map attached hereto as Exhibit A ("Avoidance Area"), and by pledging a minimum of \$28 million to habitat conservation.

On [DATE] your agency received [DESCRIBE BREACHING COMMENTS/ TESTIMONY/ ETC] ("Comments") with a statement that the Comments were made on behalf of [SSOC MEMBER]. This letter is to inform you that [SSOC MEMBER] hereby disavows the Comments. In addition, by this letter, [SSOC MEMBER] requests that the Comments be withdrawn from the record of proceedings for the Project. Finally we wish to confirm that in light of the benefits to critically important biological resources realized through the Agreement, [SSOC MEMBER] does not oppose the development of the Project outside of the Avoidance Area.

[SSOC MEMBER SIGNATURE]

EXHIBIT I

EXHIBIT I

Form of TCA Cure Letter

[TCA LETTERHEAD]

[DATE]

To Whom It May Concern:

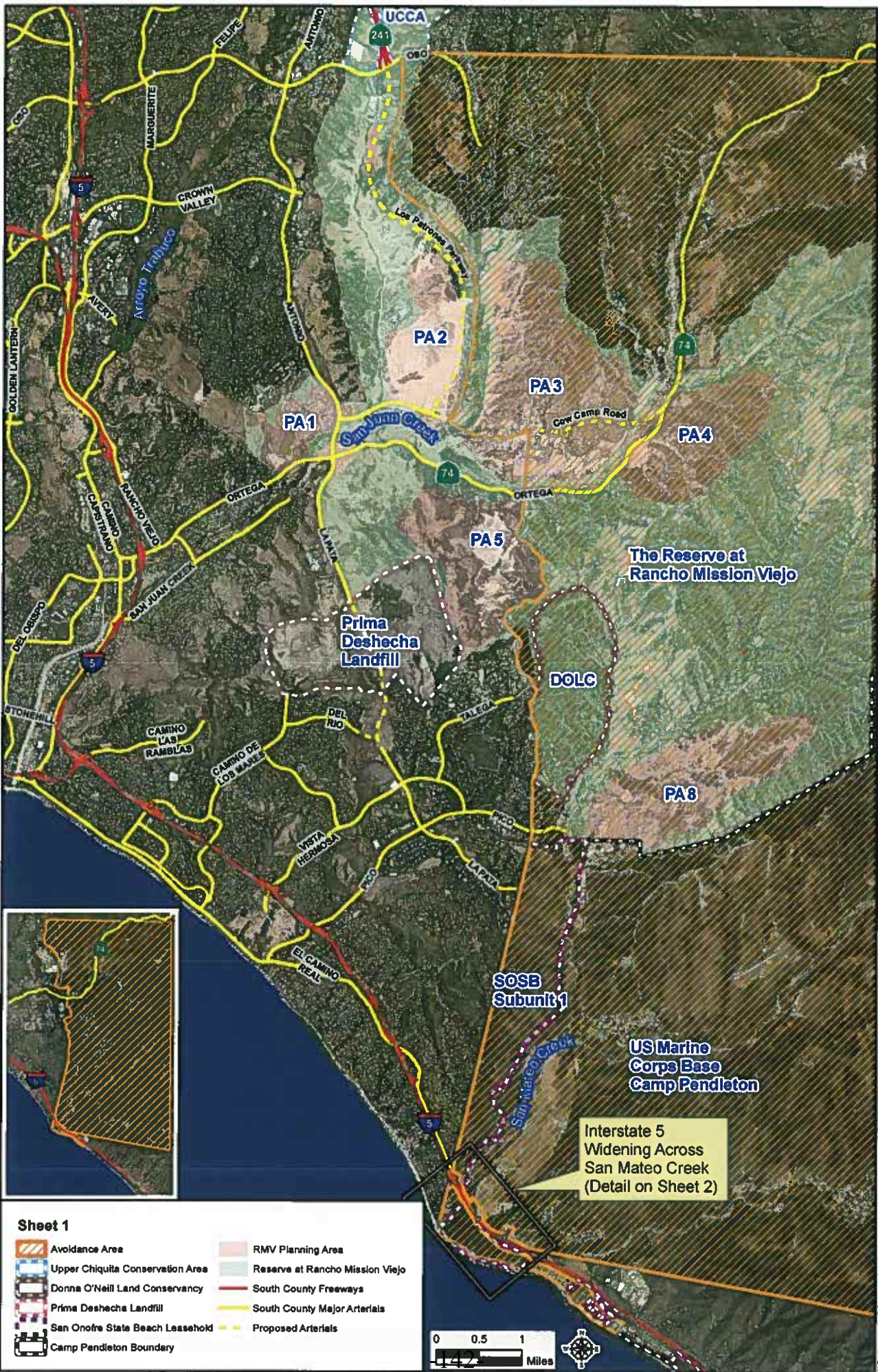
The Foothill/Eastern Transportation Corridor Agency ("TCA"), a Joint Powers Authority, is proposing to construct the SR 241 Extension Project ("Project"). The purpose of this letter is to convey to [AGENCY/COMMITTEE/INDIVIDUAL] TCA's current position on [PROTECTIVE EASEMENT/SOSB LEASE/PROTECTIVE LEGISLATION].

On [DATE] [YOU/YOUR AGENCY/YOUR COMMITTEE] received [DESCRIBE BREACHING ACTION]. This letter is to inform you that it is TCA's current position that TCA [SUPPORTS THE PROTECTIVE LEGISLATION//DOES NOT OPPOSE THE PROTECTIVE EASEMENT/PROTECTIVE LEGISLATION/SOSB LEASE]. TCA therefore requests that [YOU/YOUR AGENCY/YOUR COMMITTEE] disregard the [TCA COMMUNICATION REGARDING THE PROTECTIVE EASEMENT/SOSB LEASE/PROTECTIVE LEGISLATION].












[TCA SIGNATURE]

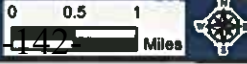
EXHIBIT "C"

EXHIBIT "C"



Sheet 1

- | | |
|--|---|
|  Avoidance Area |  RMV Planning Area |
|  Upper Chiquita Conservation Area |  Reserve at Rancho Mission Viejo |
|  Donna O'Neill Land Conservancy |  South County Freeways |
|  Prima Deshecha Landfill |  South County Major Arterials |
|  San Onofre State Beach Leasehold |  Proposed Arterials |
|  Camp Pendleton Boundary | |



C:\Users\jgarcia\Documents\GIS\Projects\SanMateo\Map_Series\Map_Series_1117_10018.mxd



Sheet 2

- Disturbance Area Limits
- Project Limit Line
- Existing Caltrans Right-of-Way
- Coastal Zone Boundary
- Bike Trail
- Beach Trail
- Avoidance Area
- No New Pavement Avoidance Area
- San Onofre State Beach Leasehold
- Camp Pendleton Boundary

0 250 500 Feet



EXHIBIT "D"

EXHIBIT "D"

**AGREEMENT TO ADDRESS TRAFFIC CONGESTION IN SOUTH ORANGE
COUNTY AND PROTECT SENSITIVE ENVIRONMENTAL, CULTURAL AND
RECREATIONAL RESOURCES**

This Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources (“**Agreement**”), is made by and among the following Parties: (i) Foothill/Eastern Transportation Corridor Agency (“**TCA**”)¹, (ii) the Save San Onofre Coalition (“**SSOC**”)², (iii) the California Department of Transportation (“**Caltrans**”), on its own behalf and as designee for the California State Transportation Agency, and (iv) the California Natural Resources Agency (“**Resources Agency**”) (each a “**Party**” and collectively, the “**Parties**”).

RECITALS

A. This Agreement arises from TCA’s proposal to extend State Route 241 (“**SR 241**”) beyond its current terminus at Oso Parkway (“**SR 241 Extension Project**”).

B. On February 23, 2006, TCA certified a Final Subsequent Environmental Impact Report (“**2006 SEIR**”) for the SR 241 Foothill South Extension and approved an alignment (the A7C-FEC-M-Initial Alternative, also known as the Green Alignment) in the DEIS/SEIR for the South Orange County Transportation Infrastructure Improvement Project (“**2006 Approvals**”). On April 18, 2013, TCA approved an Addendum to the 2006 SEIR (“**2013 Addendum**”) and approved an extension of SR 241 to Cow Camp Road (“**2013 Approvals**”), also known as the Tesoro Extension.

C. The Green Alignment would have run through the environmentally sensitive eastern parts of southern Orange County and northern San Diego County, which include the Richard and Donna O’Neill Conservancy, formerly known as the Donna O’Neill Land Conservancy (“**DOLC**”), San Onofre State Beach (“**SOSB**”) and the historic Acjachemen/Juaneno village of Panhe, among others.

D. The 2006 SEIR and 2006 Approvals were challenged under the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* (“**CEQA**”) by certain SSOC Members, the People of the State of California ex rel. Kamala D. Harris, Attorney General (“**People**”) and the California State Park and Recreation Commission (“**CSPRC**”). The Native American Heritage Commission (“**NAHC**”) also filed a lawsuit seeking to enjoin construction, development, and permitting of the Green Alignment under Public Resources Code §§ 5097.94 and 5097.97.

¹ Foothill/Eastern Transportation Corridor Agency, a Joint Powers Authority, comprised of the County of Orange and the cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Tustin and Yorba Linda.

² Save San Onofre Coalition consists of Audubon California, California Coastal Protection Network, California State Parks Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna Greenbelt, Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon Society, Sierra Club, Surfrider Foundation, and WILDCOAST-COSTASALVAJE.

E. In 2013, the 2013 Approvals and 2013 Addendum were challenged under CEQA in the lawsuits filed by certain SSOC Members and by the People.

F. The Oso Parkway Bridge project ("**Bridge Project**") proposed by the County of Orange with TCA as a funding partner would grade separate the extension of SR 241 and its connection to Los Patrones Parkway, which is presently under construction. In 2016, SSOC raised CEQA objections to the Bridge Project, and reserved its rights to challenge the project in a tolling agreement.

G. On November 10, 2016, TCA, SSOC, the People, CSPRC, and NAHC signed an agreement to end the numerous legal actions concerning and arising from the 2006 SEIR, 2006 Approvals, Bridge Project, and the Tesoro Extension ("**Settlement Agreement**"). The Settlement Agreement finally resolves the pending lawsuits and potential lawsuits, and will avoid certain future claims, provide certainty as to the protection of certain natural and cultural resources, and establish a framework by which an alignment for the SR 241 Extension Project can be identified, evaluated, and potentially advanced in a manner that is consistent with applicable laws and meets the transportation needs of TCA. A copy of the Settlement Agreement is attached hereto as **Exhibit "A"**.

H. The Settlement Agreement allows TCA to explore options for extension of SR 241 to address concerns regarding congestion on I-5 freeway in southern Orange County in a manner that would minimize environmental and cultural resource impacts, is economically feasible and practicable and is consistent with applicable state and federal environmental laws.

I. The Settlement Agreement further provides that TCA will not construct or provide funding for the construction of any road alignment that is located within, or would have direct impacts to, the sensitive area in the eastern part of Orange County and portions of northern San Diego County, known as the Avoidance Area (identified on the map included as **Exhibit "B"** to this Agreement).

J. Caltrans has a legal and public policy interest in the implementation and durability of the Settlement Agreement:

- Under California law, Caltrans is the owner and operator of California's state highway system. Route 241 is part of the state highway system.
- Caltrans partners with TCA in the planning and operation of key state routes in Orange County.
- It is the policy of Caltrans generally to support project proposals which align with its mandated mission of providing a safe, sustainable, integrated, and efficient transportation system that enhances California's economy and livability.
- Reducing and managing traffic congestion on the I-5 corridor is an integral part of State and regional transportation planning objectives. The Settlement Agreement resolves litigation and allows TCA to explore viable options for reducing I-5 traffic congestion in southern Orange County, including the potential extension of SR 241,

in accord with Caltrans' policy goals. The Settlement Agreement advances the mission of Caltrans by ensuring any future project proposal from TCA for extension of SR 241 beyond Cow Camp Road would not impact specific areas which have already been determined to be environmentally sensitive as set forth in the Settlement Agreement, and by eliminating legal obstacles associated with consideration of a new major thoroughfare in those areas.

- Caltrans desires to expedite construction of the Oso Bridge Project. The Agreement contains provisions that allow TCA to move forward with construction of the Bridge Project, and for SSOC to relinquish its rights under the existing tolling agreement between TCA, SSOC and Orange County to bring legal action under CEQA that could halt the project, upon execution of this Agreement.
- The Parties anticipate Caltrans would serve as the lead agency under the National Environmental Policy Act ("NEPA") for an SR 241 Extension Project initiated by TCA. Approving, permitting or otherwise allowing the construction of a major thoroughfare through the Avoidance Area could subject Caltrans to litigation, claims, and liability.

K. The Resources Agency's mission includes restoring, protecting and managing the state's natural, historical and cultural resources, and therefore the Resources Agency has a legal and public policy interest in the implementation and durability of the Settlement Agreement as well as the protection of the Avoidance Area as provided therein:

- The Avoidance Area consists primarily of undeveloped lands in the San Juan Creek and San Mateo Creek watersheds. The San Juan Creek and San Mateo Creek watersheds support high-quality coastal sage scrub habitat and the San Mateo Creek watershed is one of last remaining intact drainages within the south coast region.
- The California Essential Habitat Connectivity Project, prepared for the California Department of Fish and Wildlife ("CDFW"), a department of the Resources Agency, and Caltrans, recognized the Avoidance Area as part of a natural habitat block that supports native biodiversity with connectivity to open space and other wildland areas, such as Cleveland National Forest.
- Much of the Avoidance Area is located within the Orange County Southern Subregion Habitat Conservation Plan area ("HCP"). The area also provides important biological connectivity to habitat areas in the Orange County Central-Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan and the Western Riverside County Multiple Species Habitat Conservation Plan. Both plans have been adopted by CDFW.
- The Avoidance Area includes portions of the Reserve at Rancho Mission Viejo, including the DOLC. The DOLC is recognized in the HCP as containing important

habitat resources and an important connectivity function for the California gnatcatcher. The Reserve at Rancho Mission Viejo and the DOLC are critical parts of a regional conservation strategy.

- The Avoidance Area also includes SOSB. The California Department of Parks and Recreation, also a department of the Resources Agency, manages SOSB, one of the most popular parks within the California State Parks system. SOSB includes the San Mateo Campground, one of southern California's most important low-cost recreational facilities, and the renowned surfing spot Trestles Beach. The park is also a potential recovery area for the critically endangered pacific pocket mouse.
- The Resources Agency desires to minimize regional habitat fragmentation within Orange County consistent with the goals of the HCP, the Orange County Subregion Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan, and the Western Riverside County Multiple Species Habitat Conservation Plan,

TERMS

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, promises, and benefits contained herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Caltrans agrees that in exercising its authority under state law, it will not approve, permit, take possession of or otherwise authorize the construction of a major thoroughfare in the Avoidance Area; provided, however, that this prohibition shall not apply to any proposed widening of the existing Interstate 5 facility. Notwithstanding the foregoing, the Parties acknowledge and enter into this Agreement with the express recognition that this Agreement cannot and does not limit, bind or otherwise dictate any actions mandated by the California Legislature, including any future statutory requirement mandating Caltrans approve or take other action pertaining to the construction of a major thoroughfare through the Avoidance Area.

2. Consistent with the terms of the Settlement Agreement, TCA agrees not to fund or construct a road in the Avoidance Area.

3. Consistent with the terms of the Settlement Agreement, SSOC agrees that upon the Effective Date of this Agreement, TCA may commence construction of the Oso Parkway Bridge Project. SSOC further agrees to cause the Oso Bridge Tolling Agreement (if still in effect) to be terminated and refrain thereafter from filing any legal challenge to or otherwise opposing the County's approval of or the construction of the Oso Bridge Project.

4. **MISCELLANEOUS.**

4.1. **Effective Date.** This Agreement shall commence on the date on which all of the signatories have executed the Agreement ("**Effective Date**").

4.2. **Jurisdiction.** The Parties agree that the Superior Court of California, County of San Diego, has subject matter jurisdiction and personal jurisdiction over the Parties to this Agreement for purposes of enforcing this Agreement. The Parties consent to the jurisdiction of and venue in the Superior Court of California, County of San Diego for purposes of enforcing this Agreement.

4.3. **Binding on Successors.** Except as expressly provided in this Agreement, the covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective representatives, heirs, successors, and assigns.

4.4. **Right To Enforce.** Only the Parties and their respective representatives, heirs, successors, and assigns may enforce this Agreement against any other Party and such Party's respective representatives, heirs, successors, and assigns and any such enforcement shall be subject to the terms and limitations set forth in this Agreement.

4.5. **Assignment.** No Party may, collectively or individually, assign or otherwise transfer their respective rights under this Agreement without the prior written consent of the remaining Parties.

4.6. **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties. Further, none of the Parties shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein. Nothing in this Agreement is intended to amend or modify the terms and conditions of the Settlement Agreement. As between TCA and SSOC, in the event of any conflict between this Agreement and the Settlement Agreement, the Settlement Agreement shall control.

4.7. **Amendments.** Except as expressly provided in this Agreement, this Agreement may be amended only pursuant to a written agreement signed by all of the Parties.

4.8. **Captions.** The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

4.9. **Exhibits.** All exhibits referenced in this Agreement are attached hereto and made a part of and incorporated herein.

4.10. **Governing Law.** This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of California.

4.11. **Statutory References.** All statutory references in this Agreement shall mean and include the applicable statute, as amended from time to time, or, if such statute is repealed and replaced, any successor statute.

4.12. **Notices, Demands and Communications Between the Parties.** Formal written notices, demands, correspondence and communications between the Parties that are required by or in connection with this Agreement shall be sufficiently given if delivered personally (including delivery by private courier); dispatched by certified mail, postage prepaid and return receipt requested; delivered by nationally recognized overnight courier service; or transmitted electronically (e-mail) followed by delivery of a “hard” copy to the offices of the Parties indicated below:

If to SSOC:

Damon Nagami
1314 Second Street
Santa Monica, CA 90401
Phone: (310) 434-2300
Cell Phone: (310) 883-8629
Fax: (310) 434-2399
E-mail: dnagami@nrdc.org

With a copy to:

William J. White
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94110
E-mail: white@smwlaw.com

If to TCA:

Michael A. Kraman
Chief Executive Officer
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, CA 92618
E-mail: mkraman@thetollroads.com

With a copy to:

Ben Rubin
Nossaman LLP
18101 Von Karman Ave., Suite 1800
Irvine, CA 92612
E-mail: brubin@nossaman.com

If to Caltrans:

Ryan Chamberlain
District Director
Department of Transportation
District 12
1750 East Fourth Street, Ste. 100
Santa Ana, CA 92705
E-mail: Ryan.Chamberlain@dot.ca.gov

With a copy to:

Glenn B. Mueller
Assistant Chief Counsel
California Department of Transportation
Legal Division
4050 Taylor Street, MS-130
San Diego, CA 92110
E-mail: Glenn.B.Mueller@dot.ca.gov

If to Resources Agency:

John Laird
Secretary for Natural Resources
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
E-mail: secretary@resources.ca.gov

With a copy to:

Christopher H. Calfee
General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Christopher.calfee@resources.ca.gov

Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as any Party may from time-to-time designate in writing at least fifteen (15) days prior to the name or address change. Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated above as the Party to whom notices are to be sent; or (b) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by nationally recognized overnight courier service (such as Federal Express) as provided above shall be

deemed to have been received upon delivery. Notices delivered by electronic transmission shall be deemed received upon sending, provided that a "hard" copy is delivered by overnight courier as provided above.

4.13. **Counterparts.** This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same Agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

4.14. **Nonwaiver.** Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

4.15. **Authority.** Each of the persons signing this Agreement on behalf of a Party hereby represents that he or she has the requisite authority to bind the Party on whose behalf he or she is signing this Agreement, and that all requisite approvals of such Party, its board of directors, shareholders, general partners, or others have been obtained. Upon the request of any Party, each Party shall deliver evidence of such authorization to all other Parties within five (5) business days. Each of the Parties represents and warrants that the execution and delivery of this Agreement by such Party, and the performance of such Party's obligations hereunder, have been duly authorized by such Party, and that all consents or approvals necessary to cause this Agreement to be binding upon such Party have been obtained and are in full force and effect.

4.16. **Understanding of Terms.** The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and after having been advised by counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants, as they may have desired prior to executing this Agreement.

4.17. **Construction.** The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

4.18. **No Third Party Beneficiaries.** The Parties agree that no third party beneficiaries to this Agreement exist and that nothing contained herein shall be construed as giving any other Person third party beneficiary status.

4.19. **Severability.** The invalidity of any portion of this Agreement shall not invalidate the remainder. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent and purpose of this Agreement in a manner consistent with the ruling of the court.

4.20. **Further Assurances.** The Parties shall promptly perform, execute and deliver or cause to be performed, executed and delivered any and all acts, deeds and assurances, including the delivery of any documents, as any Party may reasonably require in order to carry out the intent and purpose of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

Dated: March 8, 2017

SAVE SAN ONOFRE COALITION

By:



Damon Nagami
Natural Resources Defense Council
SSOC Designee

Dated: March __, 2017

FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.

By:

Michael A. Kraman
Chief Executive Officer

Approved as to form:

By:

Ben Rubin
Nossaman LLP
Counsel to TCA

[signatures continued on next page]

4.20. **Further Assurances.** The Parties shall promptly perform, execute and deliver or cause to be performed, executed and delivered any and all acts, deeds and assurances, including the delivery of any documents, as any Party may reasonably require in order to carry out the intent and purpose of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

Dated: March __, 2017

SAVE SAN ONOFRE COALITION

By: _____

Damon Nagami
Natural Resources Defense Council
SSOC Designee

Dated: March 7, 2017

FOOTHILL/EASTERN TRANSPORTATION
CORRIDOR AGENCY et al.

By: _____



Michael A. Kraman
Chief Executive Officer

Approved as to form:

By: _____




Ben Rubin
Nossaman LLP
Counsel to TCA

[signatures continued on next page]

Dated: March 10, 2017

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: 

Ryan Chamberlain
Director, District 12

Approved as to form:

By: 

Glenn B. Mueller
Assistant Chief Counsel

Dated: March __, 2017

CALIFORNIA NATURAL RESOURCES AGENCY

By: _____
John Laird
Secretary for Natural Resources

Approved as to form:

By: _____
Christopher H. Calfee
General Counsel

Dated: March __, 2017

CALIFORNIA DEPARTMENT OF
TRANSPORTATION


By: _____
Ryan Chamberlain
Director, District 12

Approved as to form:

By: _____
Glenn B. Mueller
Assistant Chief Counsel

Dated: March 7, 2017

CALIFORNIA NATURAL RESOURCES AGENCY

By: _____

John Laird
Secretary for Natural Resources

Approved as to form:

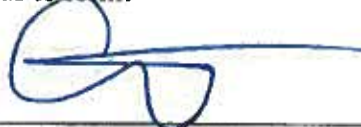
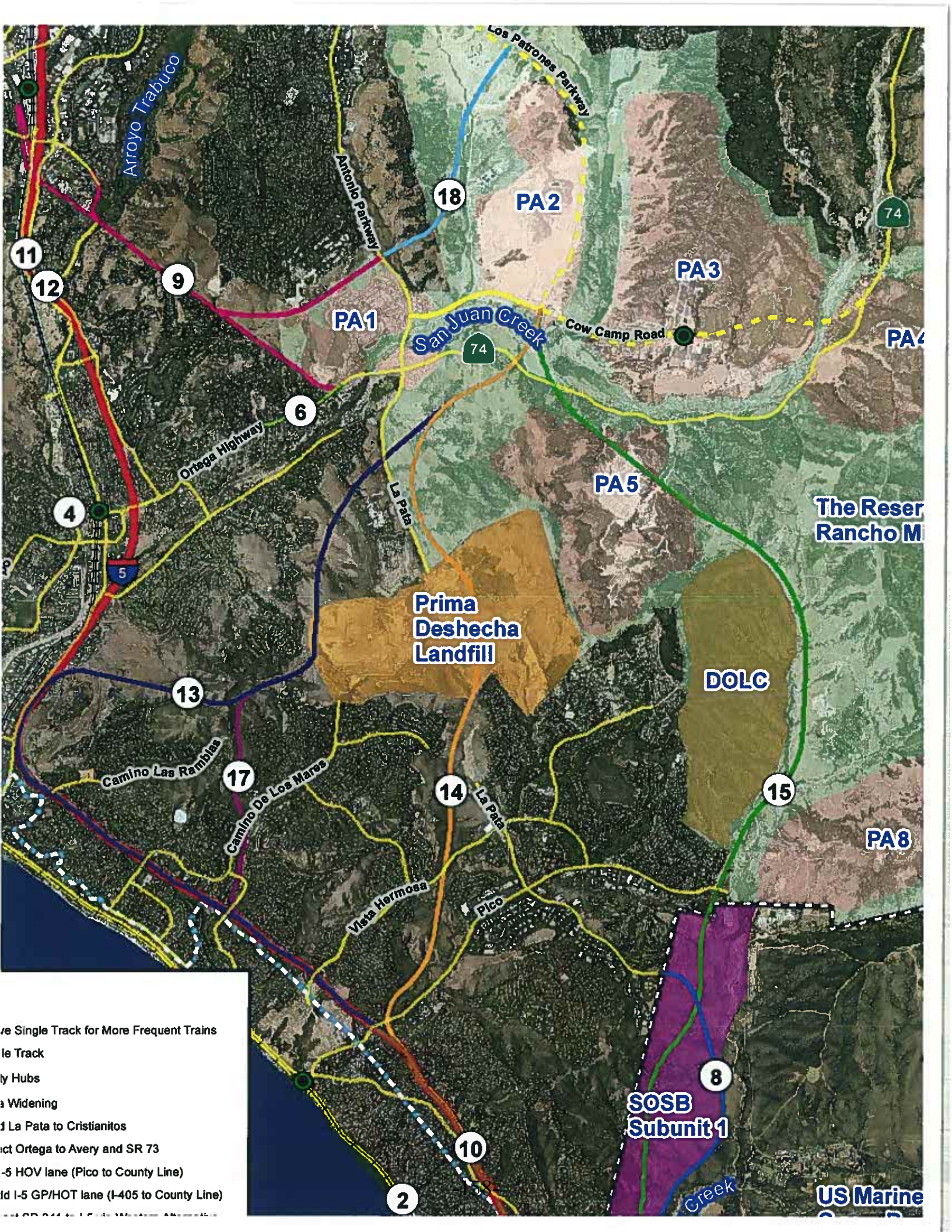
By: _____

Christopher H. Calfee
General Counsel

EXHIBIT "E"

EXHIBIT "E"



Arroyo Trabuco

18

PA2

PA3

74

11

12

9

PA1

San Juan Creek

Cow Camp Road

PA4

Ortega Highway

6

La Pata

PA5

The Reser
Rancho M

4

5

Prima
Deshecha
Landfill

DOLC

13

Camino Las Rambias

17

Camino De Los Mares

14

La Pata

15

PA8

Vista Hermosa

Pico

8

SOSB
Subunit 1

10

2

Creek

US Marine

- ve Single Track for More Frequent Trains
- le Track
- ly Hubs
- a Widening
- d La Pata to Cristianitos
- ct Ortega to Avery and SR 73
- 5 HOV lane (Pico to County Line)
- ld I-5 GP/HOT lane (I-405 to County Line)
- SR 244

EXHIBIT "F"

EXHIBIT "F"

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY

JOINT MEETING OF THE BOARDS OF DIRECTORS

Ross Chun, Chair of the Board of Directors of the San Joaquin Hills Transportation Corridor Agency and Craig Young, Chair of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency, hereby call the following joint meeting of the Boards to be conducted at the following time and location:

**November 10, 2016
9:00 a.m.**

**TCA Offices
125 Pacifica, Board Room
Irvine, California 92618**

AGENDA

I. CALL TO ORDER

INVOCATION

(Director Puckett)

PLEDGE OF ALLEGIANCE

(Director Peotter)

ROLL CALL – SAN JOAQUIN HILLS BOARD OF DIRECTORS

Chair Ross Chun	City of Aliso Viejo
Vice-Chair Melody Carruth	City of Laguna Hills
Director Lisa Bartlett	County of Orange, 5 th District
Director Kerry Ferguson	City of San Juan Capistrano
Director Bert Hack	City of Laguna Woods
Director Fred Minagar	City of Laguna Niguel
Director Michele Martinez	City of Santa Ana
Director Gary Monahan	City of Costa Mesa
Director Scott Peotter	City of Newport Beach
Director Ed Sachs	City of Mission Viejo
Director Scott Schoeffel	City of Dana Point
Director Christina Shea	City of Irvine
Director Todd Spitzer	County of Orange, 3 rd District
Director Kathy Ward	City of San Clemente
Director Ryan Chamberlain	Caltrans, Ex-Officio Member

ROLL CALL – FOOTHILL/EASTERN BOARD OF DIRECTORS

Chair Craig Young	City of Yorba Linda
Vice-Chair Lisa Bartlett	County of Orange, 5 th District
Director Tony Beall	City of Rancho Santa Margarita
Director Kerry Ferguson	City of San Juan Capistrano
Director Lucille Kring	City of Anaheim
Director Michele Martinez	City of Santa Ana
Director Joseph L. Muller	City of Dana Point
Director Mark Murphy	City of Orange
Director Shawn Nelson	County of Orange, 4 th District
Director Charles Puckett	City of Tustin
Director Ed Sachs	City of Mission Viejo
Director Christina Shea	City of Irvine
Director Todd Spitzer	County of Orange, 3 rd District
Director Scott Voigts	City of Lake Forest
Director Kathy Ward	City of San Clemente
Director Ryan Chamberlain	Caltrans, Ex-Officio Member

II. PUBLIC COMMENTS

At this time, members of the public may address the Boards regarding any items within the subject matter jurisdiction of the Boards, but no action may be taken on off-agenda items unless authorized by law. Comments shall be limited to three (3) minutes per person and twenty (20) minutes for all comments.

III. SAN JOAQUIN HILLS - CONSENT CALENDAR (ITEMS 1-5)

All matters listed under the Consent Calendar are considered routine and will be enacted by one vote. There will be no discussion of these items unless Board Members request specific items be removed from the Consent Calendar for separate action.

1. **APPROVAL OF MINUTES**

(Martha M. Ochoa, Clerk of the Board)

FILE NO.:

2016J-013

Approval of the minutes of the October 13, 2016 Joint Meeting of the San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Agency.

ACTION: Approve minutes.

2. **COMMITTEE REPORTS**

(Martha M. Ochoa, Clerk of the Board)

FILE NO.: 2016J-001

ACTION: Receive and file.

3. **QUARTERLY PROCUREMENT REPORT**

(Coleen Franco, Director, Contracts and Procurement)

FILE NO.: 2016J-009

Per the procedures identified in the Contracts and Procurement Services Policies and Procedures Manual, adopted by the Boards of Directors in 2016, staff is providing a quarterly report of procurement activity for the 1st quarter of fiscal year 2017. The attachments to this report identify all requisitions and contract actions authorized between July 1 and September 30, 2016.

ACTION: Receive and file.

4. **INVESTMENT REPORTS – AS OF SEPTEMBER 30, 2016**

(Daryn Martin, Manager of Treasury Operations)

FILE NO.: 2016S-003

Enclosed are the quarterly investment reports for the San Joaquin Hills Transportation Corridor Agency (SJHTCA) as of September 30, 2016. As of September 30, 2016, all indenture funds are invested in accordance with the permitted investment section of the respective indentures and all non-indenture funds are invested in compliance with both the California Government Code and SJHTCA Investment Policy.

ACTION: Receive and file.

5. **FIRST QUARTER FISCAL YEAR 2017 BUDGET STATUS REPORT**

(Maria Fazio, Manager, Budget and Planning)

FILE NO.: 2016S-013

Through the end of the first quarter of FY17, the San Joaquin Hills Transportation Corridor Agency received a total of \$47.4 million in revenue, or 25.6% of the annual budget. Net Toll Revenue, Fees, and Interest Earnings were above target at 26.5%, 25.1%, and 32.9%, respectively. Penalties and Development Impact Fees were under target at 22.5% and 13.3%, respectively.

Total expenditures were at \$26.4 million, or 18.9% of the annual budget through the end of the first quarter. Administration, Planning, Environmental and Construction, and Toll Operations were below the annual budget at 23.3%, 0.4%, and 21.1%, respectively. Debt was at an expected 20.0%.

ACTION: Receive and file.

IV. FOOTHILL/EASTERN - CONSENT CALENDAR (ITEMS 1-3, 6-7)

All matters listed under the Consent Calendar are considered routine and will be enacted by one vote of each Board for the applicable Agency items. There will be no discussion of these items unless Board Members request specific items be removed from the Consent Calendar for separate action.

1. APPROVAL OF MINUTES

(Martha M. Ochoa, Clerk of the Board)

FILE NO.: 2016J-013

Approval of the minutes of the October 13, 2016 Joint Meeting of the San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Agency.

ACTION: Approve minutes.

2. COMMITTEE REPORTS

(Martha M. Ochoa, Clerk of the Board)

FILE NO.: 2016J-001

ACTION: Receive and file.

3. QUARTERLY PROCUREMENT REPORT

(Coleen Franco, Director, Contracts and Procurement)

FILE NO.: 2016J-009

Per the procedures identified in the Contracts and Procurement Services Policies and Procedures Manual, adopted by the Boards of Directors in 2016, staff is providing a quarterly report of procurement activity for the 1st quarter of fiscal year 2017. The attachments to this report identify all requisitions and contract actions authorized between July 1 and September 30, 2016.

ACTION: Receive and file.

6. INVESTMENT REPORTS – AS OF SEPTEMBER 30, 2016

(Daryn Martin, Manager of Treasury Operations)

FILE NO.: 2016F-003

Enclosed are the quarterly investment reports for the Foothill/Eastern Transportation Corridor Agency (F/ETCA) as of September 30, 2016. As of September 30, 2016, all indenture funds are invested in accordance with the permitted investment section of the respective indentures and all non-indenture funds are invested in compliance with both the California Government Code and F/ETCA Investment Policy.

ACTION: Receive and file.

7. **FIRST QUARTER FISCAL YEAR 2017 BUDGET STATUS REPORT**

(Maria Fazio, Manager, Budget and Planning)

FILE NO.: 2016F-020

Through the end of the first quarter of FY17, the Foothill/Eastern Transportation Corridor Agency received a total of \$49.3 million in revenue, or 25.6% of the annual budget. Net Toll Revenue, Fees, Interest Earnings, and Other Revenue were above target at 26.1%, 25.4%, 32.6%, and 25.8%, respectively. Penalties and Development Impact Fees are below target at 23.1% and 23.4%, respectively.

Total expenditures were at \$35.9 million, or 18.1% of the annual budget at the end of the first quarter of the fiscal year. Administration, Planning, Environmental and Construction, and Toll Operations were below the annual budget at 24.6%, 0.5%, and 21.1%, respectively. Debt was at an expected 25.0%.

ACTION: Receive and file.

V. **BOARD BUSINESS (ITEMS 8-9)**

8. **JOINT SJHTCA & F/ETCA ITEM**
TELECOMMUNICATIONS CONTRACT

(Jeff Bond, Director of Information Technology)

FILE NO.: 2016J-056

The Agencies utilize voice and data services extensively to support toll system operations, customer service and general administrative functions. As the current contract is expiring, staff conducted a new procurement in an effort to maintain competitive pricing and add additional service capabilities. As a result of this effort, staff recommends awarding Level(3) Communications, LLC a three-year contract with an amount not-to-exceed \$780,000 and one three-year extension option for telecommunications services.

ACTION:

San Joaquin Hills Transportation Corridor Agency Recommendation:

Authorize the chief executive officer (CEO) to execute a three-year contract with Level(3) Communications, LLC for an amount not-to-exceed \$354,900 plus one three-year extension option, for voice and data services.

Foothill/Eastern Transportation Corridor Agency Recommendation:

Authorize the chief executive officer (CEO) to execute a three-year contract with Level(3) Communications, LLC for an amount not-to-exceed \$425,100 plus one three-year extension option, for voice and data services.

9. **F/ETCA ONLY ITEM**
241/91 EXPRESS CONNECTOR PROJECT APPROVAL/ENVIRONMENTAL DOCUMENT (PA/ED) CONTRACT AMENDMENT

(Juliet Su, Corridor Manager-Design)

FILE NO.: 2016F-035

The 241/91 Express Connector project continues in the preliminary approval and environmental document (PA/ED) phase. The original contract with Michael Baker International for the project was approved in January of 2011. Work needed for the continuing involvement of the environmental consultant during the final engineering phase is included in the proposed Amendment 5.

ACTION: Foothill/Eastern Transportation Corridor Agency Recommendation:

1. Authorize the Chief Executive Officer (CEO) to execute Amendment No. 5 to Contract No. K000628 with Michael Baker International for project approval/ environmental document consulting services in support of the 241/91 Express Connector Project. Authorization of \$310,000 is requested to augment available contingency funds of \$290,000 previously approved by the Board of Directors, for a total not-to-exceed amendment value of \$600,000.
2. Authorize the CEO to execute additional changes to this contract within five percent (\$15,500) of the above requested authorization.

CHIEF EXECUTIVE OFFICER'S REPORT

(Michael A. Kraman, Chief Executive Officer)

DIRECTOR'S REPORTS AND NEW BUSINESS

(Chair Ross Chun)

(Chair Craig Young)

VI. CLOSED SESSION

JOINT SJHTCA & F/ETCA ITEMS

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Subdivisions (a) and (d)(1) of Government Code Section 54956.9)

- In Re Toll Roads Litigation, United States District Court, Central District of California, Case No. 8:16-cv-00262 AG (JCGx)
- Robert Cohen, et al. v. Foothill/Eastern Transportation Corridor Agency et al., United States District Court, Central District of California, Case No. SACV15-1698 DDP (DFMx)

F/ETCA ONLY ITEMS

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

(Subdivisions (a) and (d)(2) of Government Code Section 54956.9)

- One matter

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Subdivisions (a) and (d)(1) of Government Code Section 54956.9)

- California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051194
- The People of the State of California v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051371
- Native American Heritage Commission v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051370
- Jeffrey A Turner v. Native American Heritage Commission San Diego Superior Court, Case No. 37-2008-00060583-CU-WM-NC
- California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. 37-2013-00049797
- The People of the State of California v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. 37-2013-00050001-CU-WM-NC
- California Regional Water Quality Control Board, San Diego Region, Waste Discharge Requirements Tentative Order No. R-09-2103-0007

VII. ADJOURNMENT

The next regularly scheduled meeting of the San Joaquin Hills Board of Directors will be held December 8, 2016 at 9:00 a.m.

The next regularly scheduled meeting of the Foothill/Eastern Board of Directors will be held December 8, 2016 at 9:00 a.m.

X SAN JOAQUIN HILLS BOARD OF DIRECTORS
X FOOTHILL/EASTERN BOARD OF DIRECTORS

File No. 2016J-013

BOARD MEETING DATE: November 10, 2016

SUBJECT: Approval of Minutes

STAFF RECOMMENDATION:

San Joaquin Hills Transportation Corridor Agency Recommendation:

Approve Minutes.

Foothill/Eastern Transportation Corridor Agency Recommendation:

Approve Minutes

SUMMARY:

Approval of the minutes of the October 13, 2016 Joint Meeting of the San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Agency.

CONTRACTOR/CONSULTANT: N/A

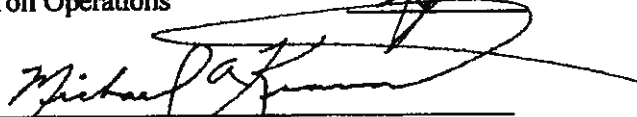
BUDGET: SJH: N/A
F/E: N/A

REPORT WRITTEN BY: Martha M. Ochoa, Clerk of the Board
(949) 754-3402

REVIEWED BY:

Communications	_____
Engineering	_____
Environmental	_____
Finance	_____
Strategic Planning	_____
Toll Operations	_____

SUBMITTED BY:


Michael A. Kraman, Chief Executive Officer

JOINT MEETING OF THE BOARDS OF DIRECTORS

**SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
MINUTES**

November 10, 2016

9:00 a.m.

TCA Offices

**125 Pacifica, Board Room
Irvine, California 92618**

I. CALL TO ORDER

INVOCATION

(Director Puckett)

PLEDGE OF ALLEGIANCE

(Director Peotter)

ROLL CALL – SAN JOAQUIN HILLS BOARD OF DIRECTORS

Chair Ross Chun	City of Aliso Viejo
Vice-Chair Melody Carruth	City of Laguna Hills
Director Lisa Bartlett	County of Orange, 5 th District
Director Kerry Ferguson	City of San Juan Capistrano
Director Bert Hack	City of Laguna Woods
Director Fred Minagar	City of Laguna Niguel
Director Scott Peotter	City of Newport Beach
Director Ed Sachs	City of Mission Viejo
Director Scott Schoeffel	City of Dana Point
Director Christina Shea	City of Irvine
Director Kathy Ward	City of San Clemente
Alternate Jim Righimer	City of Costa Mesa
Director Ryan Chamberlain	Caltrans, Ex-Officio Member

ABSENT:

Director Michele Martinez	City of Santa Ana
Director Todd Spitzer	County of Orange, 3 rd District

ROLL CALL – FOOTHILL/EASTERN BOARD OF DIRECTORS

Chair Craig Young	City of Yorba Linda
Vice-Chair Lisa Bartlett	County of Orange, 5 th District
Director Tony Beall	City of Rancho Santa Margarita
Director Kerry Ferguson	City of San Juan Capistrano
Director Lucille Kring	City of Anaheim
Director Mark Murphy	City of Orange
Director Charles Puckett	City of Tustin
Director Ed Sachs	City of Mission Viejo
Director Christina Shea	City of Irvine
Director Scott Voigts	City of Lake Forest
Director Kathy Ward	City of San Clemente
Alternate Scott Schoeffel	City of Dana Point
Director Ryan Chamberlain	Caltrans, Ex-Officio Member

ABSENT:

Director Michele Martinez	City of Santa Ana
Director Shawn Nelson	County of Orange, 4 th District
Director Todd Spitzer	County of Orange, 3 rd District

II. PUBLIC COMMENTS

There were no public comments.

III. SAN JOAQUIN HILLS - CONSENT CALENDAR (ITEMS 1-5)

ACTIONS: Approve Consent Calendar Items 1-5.

MOTION: Hack
SECOND: Carruth
VOTE: Unanimous
Director Minagar was not present for the vote.

1. APPROVAL OF MINUTES

(Martha M. Ochoa, Clerk of the Board)

FILE NO.:

2016J-013

Approval of the minutes of the October 13, 2016 Joint Meeting of the San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Agency.

ACTION: Approve minutes.

2. **COMMITTEE REPORTS**

(Martha M. Ochoa, Clerk of the Board)

FILE NO.: 2016J-001

ACTION: Receive and file.

3. **QUARTERLY PROCUREMENT REPORT**

(Coleen Franco, Director, Contracts and Procurement)

FILE NO.: 2016J-009

Per the procedures identified in the Contracts and Procurement Services Policies and Procedures Manual, adopted by the Boards of Directors in 2016, staff is providing a quarterly report of procurement activity for the 1st quarter of fiscal year 2017. The attachments to this report identify all requisitions and contract actions authorized between July 1 and September 30, 2016.

ACTION: Receive and file.

4. **INVESTMENT REPORTS – AS OF SEPTEMBER 30, 2016**

(Daryn Martin, Manager of Treasury Operations)

FILE NO.: 2016S-003

Enclosed are the quarterly investment reports for the San Joaquin Hills Transportation Corridor Agency (SJHTCA) as of September 30, 2016. As of September 30, 2016, all indenture funds are invested in accordance with the permitted investment section of the respective indentures and all non-indenture funds are invested in compliance with both the California Government Code and SJHTCA Investment Policy.

ACTION: Receive and file.

5. **FIRST QUARTER FISCAL YEAR 2017 BUDGET STATUS REPORT**

(Maria Fazio, Manager, Budget and Planning)

FILE NO.: 2016S-013

Through the end of the first quarter of FY17, the San Joaquin Hills Transportation Corridor Agency received a total of \$47.4 million in revenue, or 25.6% of the annual budget. Net Toll Revenue, Fees, and Interest Earnings were above target at 26.5%, 25.1%, and 32.9%, respectively. Penalties and Development Impact Fees were under target at 22.5% and 13.3%, respectively.

Total expenditures were at \$26.4 million, or 18.9% of the annual budget through the end of the first quarter. Administration, Planning, Environmental and Construction, and Toll Operations were below the annual budget at 23.3%, 0.4%, and 21.1%, respectively. Debt was at an expected 20.0%.

ACTION: Receive and file.

IV. FOOTHILL/EASTERN - CONSENT CALENDAR (ITEMS 1-3, 6-7)

ACTIONS: Approve Consent Calendar Items 1-3, 6-7.

MOTION: Voigts
SECOND: Puckett
VOTE: Passed
Director Beall abstained from Item #1 Approval of Minutes.

1. APPROVAL OF MINUTES

(Martha M. Ochoa, Clerk of the Board)

FILE NO.: 2016J-013
Approval of the minutes of the October 13, 2016 Joint Meeting of the San Joaquin Hills Transportation Corridor Agency and the Foothill/Eastern Transportation Agency.

ACTION: Approve minutes.

2. COMMITTEE REPORTS

(Martha M. Ochoa, Clerk of the Board)

FILE NO.: 2016J-001

ACTION: Receive and file.

3. QUARTERLY PROCUREMENT REPORT

(Coleen Franco, Director, Contracts and Procurement)

FILE NO.: 2016J-009
Per the procedures identified in the Contracts and Procurement Services Policies and Procedures Manual, adopted by the Boards of Directors in 2016, staff is providing a quarterly report of procurement activity for the 1st quarter of fiscal year 2017. The attachments to this report identify all requisitions and contract actions authorized between July 1 and September 30, 2016.

ACTION: Receive and file.

6. INVESTMENT REPORTS – AS OF SEPTEMBER 30, 2016

(Daryn Martin, Manager of Treasury Operations)

FILE NO.: 2016F-003
Enclosed are the quarterly investment reports for the Foothill/Eastern Transportation Corridor Agency (F/ETCA) as of September 30, 2016. As of September 30, 2016, all indenture funds are invested in accordance with the permitted investment section of the respective indentures and all non-indenture funds are invested in compliance with both the California Government Code and F/ETCA Investment Policy.

ACTION: Receive and file.

7. **FIRST QUARTER FISCAL YEAR 2017 BUDGET STATUS REPORT**

(Maria Fazio, Manager, Budget and Planning)

FILE NO.:

2016F-020

Through the end of the first quarter of FY17, the Foothill/Eastern Transportation Corridor Agency received a total of \$49.3 million in revenue, or 25.6% of the annual budget. Net Toll Revenue, Fees, Interest Earnings, and Other Revenue were above target at 26.1%, 25.4%, 32.6%, and 25.8%, respectively. Penalties and Development Impact Fees are below target at 23.1% and 23.4%, respectively.

Total expenditures were at \$35.9 million, or 18.1% of the annual budget at the end of the first quarter of the fiscal year. Administration, Planning, Environmental and Construction, and Toll Operations were below the annual budget at 24.6%, 0.5%, and 21.1%, respectively. Debt was at an expected 25.0%.

ACTION: Receive and file.

V. **BOARD BUSINESS (ITEMS 8-9)**

8. **JOINT SJHTCA & F/ETCA ITEM
TELECOMMUNICATIONS CONTRACT**

(Jeff Bond, Director of Information Technology)

FILE NO.:

2016J-056

The Agencies utilize voice and data services extensively to support toll system operations, customer service and general administrative functions. As the current contract is expiring, staff conducted a new procurement in an effort to maintain competitive pricing and add additional service capabilities. As a result of this effort, staff recommends awarding Level(3) Communications, LLC a three-year contract with an amount not-to-exceed \$780,000 and one three-year extension option for telecommunications services.

ACTION:

San Joaquin Hills Transportation Corridor Agency Recommendation:

Authorize the chief executive officer (CEO) to execute a three-year contract with Level(3) Communications, LLC for an amount not-to-exceed \$354,900 plus one three-year extension option, for voice and data services.

Foothill/Eastern Transportation Corridor Agency Recommendation:

Authorize the chief executive officer (CEO) to execute a three-year contract with Level(3) Communications, LLC for an amount not-to-exceed \$425,100 plus one three-year extension option, for voice and data services.

SJHTCA		F/ETCA	
MOTION:	Shea	MOTION:	Shea
SECOND:	Sachs	SECOND:	Sachs
VOTE:	Unanimous	VOTE:	Unanimous

Director Schoeffel did not participate due to the Levine Act.
Director Minagar was not present for the vote.

9. **F/ETCA ONLY ITEM**
241/91 EXPRESS CONNECTOR PROJECT APPROVAL/ENVIRONMENTAL
DOCUMENT (PA/ED) CONTRACT AMENDMENT
(Juliet Su, Corridor Manager-Design)

FILE NO.: 2016F-035

The 241/91 Express Connector project continues in the preliminary approval and environmental document (PA/ED) phase. The original contract with Michael Baker International for the project was approved in January of 2011. Work needed for the continuing involvement of the environmental consultant during the final engineering phase is included in the proposed Amendment 5.

ACTION: Foothill/Eastern Transportation Corridor Agency Recommendation:

1. Authorize the Chief Executive Officer (CEO) to execute Amendment No. 5 to Contract No. K000628 with Michael Baker International for project approval/environmental document consulting services in support of the 241/91 Express Connector Project. Authorization of \$310,000 is requested to augment available contingency funds of \$290,000 previously approved by the Board of Directors, for a total not-to-exceed amendment value of \$600,000.
2. Authorize the CEO to execute additional changes to this contract within five percent (\$15,500) of the above requested authorization.

MOTION: Shea
SECOND: Kring
VOTE: Unanimous
Director Schoeffel did not participate due to the Levine Act.

CHIEF EXECUTIVE OFFICER'S REPORT

(Michael A. Kraman, Chief Executive Officer)

- Traffic and Revenue Update
 - SJHTCA – Transactions for the month of October up 2.3%, revenue up 5.1%.
 - F/ETCA – Transactions for the month of October up 3.4%, revenue up 5.9%.
- 241/91 Project update. Draft Environmental Document and Technical Study was released for Public Review on Monday, November 7, 2016 and will be out for a 60-day review, will include a Public Meeting at the East Anaheim Community Center on November 29, 2016 from 5:30pm to 8:30pm, meeting

will also be available on a virtual format. Thanked Caltrans for their partnership on document.

DIRECTOR'S REPORTS AND NEW BUSINESS

(Chair Ross Chun)

(Chair Craig Young)

- Director Ward discussed her concerns over the current Rewards Program offer to San Diego Zoo and Safari Park. She stated that while doing traffic studies in the south going into San Diego, the Agency shouldn't be offering rewards which induces people to be driving that road and adding to the traffic counts.
- Director Bartlett announced the Board of Supervisors Holiday Open House on December 13 from 3:00pm to 5:00pm at the Hall of Administration.

VI. CLOSED SESSION

JOINT SJHTCA & F/ETCA ITEMS

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Subdivisions (a) and (d)(1) of Government Code Section 54956.9)

- In Re Toll Roads Litigation, United States District Court, Central District of California, Case No. 8:16-cv-00262 AG (JCGx)
- Robert Cohen, et al. v. Foothill/Eastern Transportation Corridor Agency et al., United States District Court, Central District of California, Case No. SACV15-1698 DDP (DFMx)

F/ETCA ONLY ITEMS

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

(Subdivisions (a) and (d)(2) of Government Code Section 54956.9)

- One matter

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

(Subdivisions (a) and (d)(1) of Government Code Section 54956.9)

- California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051194
- The People of the State of California v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051371
- Native American Heritage Commission v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. GIN051370

- Jeffrey A Turner v. Native American Heritage Commission San Diego Superior Court, Case No. 37-2008-00060583-CU-WM-NC
- California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. 37-2013-00049797
- The People of the State of California v. Foothill/Eastern Transportation Corridor Agency San Diego Superior Court, Case No. 37-2013-00050001-CU-WM-NC
- California Regional Water Quality Control Board, San Diego Region, Waste Discharge Requirements Tentative Order No. R-09-2103-0007

REPORTABLE ACTION: While in closed session, the Board of Directors approved a settlement agreement between the Foothill/Eastern Transportation Corridor Agency (TCA), on the one hand, and the following parties, on the other:

- **The Save San Onofre Coalition (SSOC)**, which consists of Audubon California, California Coastal Protection Network, California State Parks Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna Greenbelt, Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon Society, Sierra Club, Surfrider Foundation and WILD Coast-COSTASALVAJE
- **State Parties:** People of the State of California as represented by Attorney General Kamala D. Harris, Native American Heritage Commission (NAHC) and California State Park and Recreation Commission (CSPRC)

The material terms of the Settlement are as follows:

- The settlement and dismissal of five lawsuits challenging TCA's 2006 and 2013 approvals of the Foothill-South and Tesoro Extension projects brought by the California Attorney General and the SSOC, which lawsuits are specifically identified on page 7 of the Agenda for the closed session as those in which the TCA is named as a defendant.
- The TCA will rescind its 2006 approval of the so-called "Green Alignment" that would have run through San Onofre State Beach (SOSB) and its 2013 approval of its Tesoro Extension project.
- The TCA will refrain from building or funding a road project within an area (referred to as the Avoidance Area) that includes San Onofre State Beach, the Richard and Donna O'Neill Conservancy and other critical open space, wildlife habitat and cultural resources in the San Mateo Creek watershed.
- TCA and SSOC will cooperate in seeking additional long-term protections for the Avoidance Area in the form of legislation, interagency agreements, or conservation easements.

- Establishment of a cooperative framework by which an alignment for the SR-241 extension and other I-5 traffic congestion solutions can be identified, evaluated and potentially advanced in a manner that follows applicable laws and meets south Orange County's transportation needs, without opposition from environmental organizations comprising the SSOC for alternatives outside the Avoidance Area that connect to the I-5 and that meet the other requirements of the settlement agreement.
- TCA may take preliminary actions related to construction of the Oso Street Bridge Project, including required environmental review and design activities for the bridge, land or right of way acquisition, and construction related to Los Patrones Parkway, but requires completion of environmental review for SR 241-Extension and adoption of a Post-Settlement Alignment or additional protections in place prior to construction.
- TCA may collect tolls on Los Patrones Parkway, subject to certain conditions.
- TCA shall establish a \$28 million conservation fund, to help preserve and restore San Mateo Creek and its watershed.
- TCA and SSOC shall jointly develop a Coastal Access Management Plan to ensure public coastal access in San Onofre State Beach is maintained and enhanced.
- SSOC shall be reimbursed for \$7.1 million in legal and other costs incurred.
- State Parties shall retain full authority to enforce any environmental or other law.

The Directors voted on this item as follows, Directors Bartlett, Sachs, Schoeffel, Shea, Young, Beall, Kring, Murphy, Puckett and Voigts voted AYE. Directors Ward and Ferguson voted NO.

VII. ADJOURNMENT

- The next regularly scheduled meeting of the San Joaquin Hills Board of Directors will be held December 8, 2016 at 9:00 a.m.
- The next regularly scheduled meeting of the Foothill/Eastern Board of Directors will be held December 8, 2016 at 9:00 a.m.
- Meeting adjourned:
 - SJHTCA at 9:27 a.m.
 - F/ETCA at 10:17 a.m.

EXHIBIT "G"

EXHIBIT "G"

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626-1993
714 513.5100 main
714 513.5130 main fax
www.sheppardmullin.com

Daniel P. Bane
714.424.8246 direct
dbane@sheppardmullin.com

July 6, 2017

File Number: 57HL-258690

VIA FACSIMILE AND E-MAIL

Members of the Board of Directors
Foothill/Eastern Transportation Corridor Agency
Attn: Martha Ochoa, Clerk of the Board
125 Pacifica
Irvine, CA 92618
Fax: (949) 754-3467
E-mail: clerkoftheboard@thetollroads.com

Re: DEMAND TO IMMEDIATELY CEASE AND DESIST FROM VIOLATIONS OF THE RALPH M. BROWN ACT

Dear Foothill/Eastern Transportation Corridor Agency Board Members:

My office represents The Reserve Maintenance Corporation, which acts as the homeowner's association for the San Clemente community known as "The Reserve."

Pursuant to California Government Code section 54960.2, we write to demand that the Foothill/Eastern Transportation Corridor Agency ("TCA") cease and desist from further violations of the Ralph M. Brown Act (Govt. Code §§ 54950 *et seq.*) and immediately take action to correct past violations concerning the approval of (1) the November 10, 2016 settlement agreement by and between TCA and the Save San Onofre Coalition (SSOC) (among other parties) ("Settlement Agreement"); and (2) the March 10, 2017 "protective agreement" by and between the TCA, SSOC, California Department of Transportation ("CalTrans"), and the California Natural Resources Agency ("Protective Agreement").

More specifically, the TCA executed and approved the Settlement Agreement during closed session on November 10, 2016, without any public hearing or opportunity for the public to be heard regarding the various mandates included in that agreement. A true and correct copy of the November 10, 2016 meeting agenda is attached hereto as Exhibit 1. We do not question the TCA Board's authority under the Brown Act to discuss with its counsel, in closed session, settlement of a lawsuit to which the TCA was a party. (See Govt. Code, § 54956.9.) However, the TCA Board is not, and was not, authorized to execute and/or approve the Settlement Agreement during closed session because that agreement includes provisions for actions which are subject to the Brown Act's open meeting requirements and which are intrinsically required by law to be made only after a noticed public hearing with public comment. (See, e.g., *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 183-187.) Indeed, the Settlement Agreement is replete with broad policy dictates which can only be adopted by the

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Martha Ochoa
July 6, 2017
Page 2

TCA Board following a noticed public hearing and a full, fair opportunity for public comment. As explained by the California Attorney General, "the purpose of [section 54956.9] is to permit the body to receive legal advice and make litigation decisions only; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions." (Cal. Atty. Gen. Office, *The Brown Act* (2003), p. 40.) Here, the Settlement Agreement was plainly used as subterfuge by the TCA for various nonlitigation oriented policy decisions, such as the designation of a several square mile "avoidance area" concerning any and all conceivable toll road alignments. Such ploys are illegal as a matter of law under the Brown Act.

Similarly, the TCA's subsequent Protective Agreement (as expressly mandated by the Settlement Agreement) further runs afoul of the open public hearing mandates of the Brown Act. Like the Settlement Agreement, the Protective Agreement provides for broad policy directives which could only be adopted by the TCA Board following a noticed public hearing and a full, fair opportunity for public comment. But that is not how the TCA proceeded. Instead, the Protective Agreement was executed by the TCA's Chief Executive Officer, Michael Kraman, in private and without any public hearing at all in direct violation of the Brown Act's opening meeting requirements.

As a preliminary matter, Mr. Kraman does not have the authority to decide, on behalf of the TCA, that the "TCA agrees not to fund or construct a road in the Avoidance Area." Even ignoring the fact that Mr. Kraman lacks the authority to execute such an agreement on behalf of the TCA, the Protective Agreement was never discussed by the TCA Board during a noticed public hearing and is not even mentioned on the March 9, 2017 meeting agenda. To underscore the point, my office only recently learned of the Protective Agreement following a public requests act request in May 2017 concerning documents related to the Settlement Agreement; we would have otherwise had no idea such an agreement existed. Thus, it is highly doubtful the public at large (*i.e.* the residents of Orange County impacted by this agreement) is aware of this agreement or the broad policy constraints included herein.

There is little doubt the TCA's execution of the Settlement Agreement and Protective Agreement violated the Brown Act. The remedies for these violations could include criminal sanctions and/or civil penalties. (See Govt. Code §§ 54959, 54960, 54960.1.) In order to cure the TCA's Brown Act violations, we demand the following actions within 30 days of the TCA's receipt of this letter:

1. The TCA Board shall declare the Settlement Agreement null and void until such time as the TCA holds a noticed public hearing with a meaningful opportunity for public comment concerning the content of the agreement and the policy constraints included therein;
2. The TCA Board shall immediately declare the Protective Agreement null and void until such time as the TCA has held a noticed public hearing with a meaningful opportunity for public comment concerning the content of the agreement and the policy constraints included therein;
3. The TCA shall cease and desist from any and all actions taken pursuant to the Settlement Agreement and/or Protective Agreement, including but not limited to the

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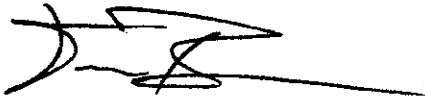
Martha Ochoa
July 6, 2017
Page 3

construction of the Oso Bridge, until such time as the TCA has held a noticed public hearing with a meaningful opportunity for public comment concerning the content of these agreements and the policy constraints included therein; and

4. The TCA Board's written acknowledgement of, and apology for, the above-referenced Brown Act violations along with an unconditional commitment to cease, desist from, and not repeat the Brown Act violations described above in the future.

If the TCA truly desires to engage the residents of Orange County in its purported "process" concerning mobility solutions as it has repeatedly asserted, then the TCA Board can start by ensuring compliance with California law regarding the provision of noticed, open, and fair public hearings with a full opportunity afforded for meaningful public comment regarding important policy decisions. Until this occurs, the TCA is not truly listening and is not representing the interests of the Orange County residents it purports to serve.

Regards,



Daniel P. Bane
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:483366300.1

cc: Scott Smith, Esq. (via email only)

EXHIBIT "H"

EXHIBIT "H"



EXPERT BLOG > JOEL REYNOLDS

San Onofre Saved: Nov 2016 Agreement Ends Toll Road Dispute

November 09, 2016

Joel Reynolds



Photo: Pamela Marches

It's fair to say that, for the better part of three decades, NRDC has had a difficult relationship with the Transportation Corridor Agencies (TCA) of Orange County, the toll road agency that has been [trying for years](#) to build a toll road through the California State Park at San Onofre State Beach.

With that long history in mind, it is extraordinary to announce today a [landmark agreement](#) between the TCA, California Attorney General Kamala Harris, and a broad coalition of national and local environmental groups, including NRDC. In short, the agreement will protect San Onofre State Beach, the Richard and Donna O'Neill Conservancy and San Mateo Creek while also allowing for exploration of other transportation solutions for South Orange County.

[This agreement](#) is a definitive determination that the state park at San Onofre – and its natural, historical and cultural resources – will be permanently preserved.



This outcome would not have been possible without the leadership of TCA Chief Executive Officer Mike Kraman, who worked quietly but effectively to bring an end to so many years of conflict.

And it would not have been possible without the focused efforts of every member of the Save San Onofre Coalition – organizations and individuals, staff and hundreds of thousands of members – who have joined together for years to defend one of California's greatest and most popular state parks. The long-term collaboration reflected by this coalition has been one of the greatest professional privileges and experiences of my life. NRDC is proud of the work that we have done together.



Photo: Pamela Marches

This agreement brings to an end one of the most hard-fought, long-lasting environmental battles in California history – one that NRDC and every member of the Save San Onofre Coalition have pursued with single-minded purpose on behalf of the people of our region, in defense of California’s natural heritage, to protect the indispensable integrity of our world-class state park system.

Years from now, as current and future generations of Californians continue to enjoy Trestles and the entire state park at San Onofre State Beach, we will look back on this agreement as definitive proof that our parklands are no longer expendable:

Proof that the people, working together, can protect them – even against important competing priorities.

Proof that our transportation and other infrastructure needs can no longer be found in the outdated, unsound proposition that the “path of least resistance” for highways and other infrastructure development runs through our public parks.

This is a memorable moment. All of us join in congratulating the Save San Onofre Coalition, Attorney General Harris, and the TCA on this agreement.

ABOUT THE AUTHORS



JOEL REYNOLDS

Western Director and Senior Attorney

SUPPORT OUR WORK

EXHIBIT "I"

EXHIBIT "I"

Audublog

Agreement ends 15-year OC toll road battle

Audubon California and its partners in the Save San Onofre Coalition are celebrating the end of a 15-year fight over a proposed tollroad extension through critical bird habitat in southern Orange County.

c b a

By Garrison Frost

November 16, 2016



Make a gift!

Please consider supporting Audubon California. Your gifts will support so much, including our work educating farmers about creating bird-friendly habitat. Every gift makes a different



Surfers aren't the only ones that enjoy the water at Trestles/San Onofre. Photo: Mark Weston

Audubon California and its partners in the Save San Onofre Coalition are



celebrating the end of a 15-year fight over a proposed tollroad extension through critical bird habitat in southern Orange County. Toll road agency officials joined with environmental groups, state officials and others last week to announce a settlement that **will not allow any proposed Foothill-South Toll Road alignment in southern Orange County and northern San Diego County in these sensitive areas.**

Popular Stories

[Coastal Commission moves to protect vital bird habitat in Humboldt Bay](#)

[Defending our California desert national monuments](#)

[Organizing to protect the San Gabriel National Monument](#)

[Audubon activists descend on Capitol to urge action on climate and conservation](#)

[The fight to save national monuments comes to Kern and Tulare counties](#)

The proposed tollroad extension would have cut directly through critical coastal sage scrub habitat in San Onofre State Beach and other nearby areas. It would also have had a substantial impact on park usage and the world-famous Trestles surfing beach.

“This was one of the biggest wins for Southern California wildlife and habitat conservation, as well as the people of California, in decades,” said Pete DeSimone, who manages the nearby Audubon Starr Ranch Sanctuary.

The agreement allows the Transportation Corridor Agency to pursue alternative projects in the area that do not threaten sensitive lands and cultural resources within the San Mateo Creek watershed, including San Onofre State Beach and the Richard and Donna O'Neill Conservancy.

This agreement resolves all outstanding litigation arising out of the TCA's Foothill-South and Tesoro Extension plans to extend the 241 toll road in southern Orange County. Those plans were opposed by the Save San Onofre Coalition, the Attorney General and various state agencies because they would have significantly damaged environmental and cultural resources in San Onofre State Beach, the Richard and Donna O'Neill Conservancy and other open space lands.

In 2008, the California Coastal Commission and the U.S. Secretary of Commerce found that the proposed Foothill-South alignment was inconsistent with state and federal coastal protection policies.



Audubon advocates joined thousands of others to oppose the Foothill-South Tollroad at a raucous California Coastal Commission meeting in Del Mar in 2008.

San Onofre State Beach, established in 1971 by then-Governor Ronald Reagan, is one of California's most popular state parks, receiving more than 2.4 million visitors per year and providing habitat for 11 endangered or threatened species. San Onofre also offers low-cost recreational opportunities for working families and boasts a world-renowned surf spot at Trestles Beach.

Audubon California is one member of the Save San Onofre Coalition. Other organizations include California Coastal Protection Network, California State Parks Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna Greenbelt, Inc., Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon Society, Sierra Club, Surfrider Foundation and WILDCOAST/COSTASALVAJE.

How you can help, right now

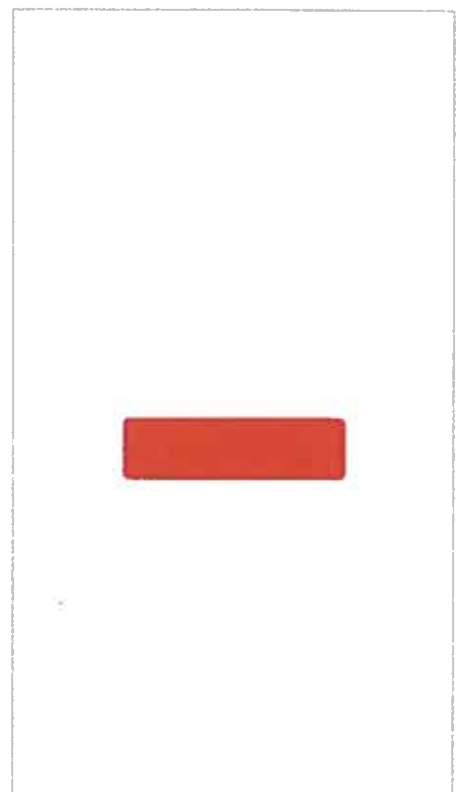
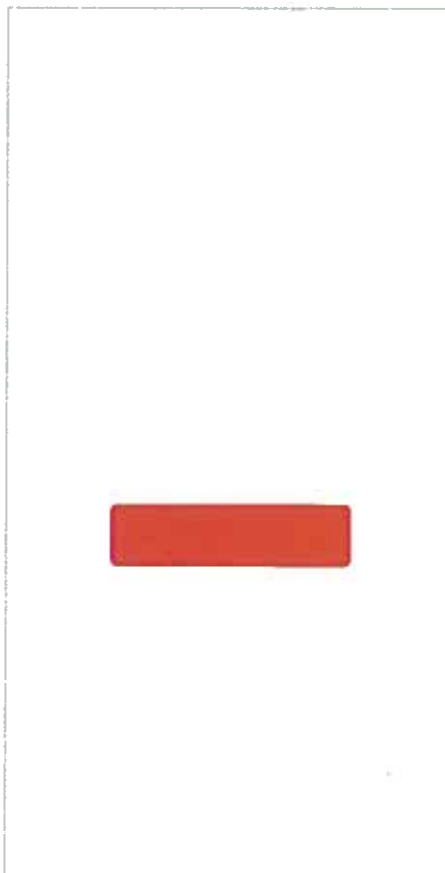


EXHIBIT "J"

EXHIBIT "J"

[Give](#)

COASTAL PRESERVATION
NOVEMBER 10 2016
Trestles Saved Forever!

< [SHARE](#) >

It's hard to believe that 11 years ago, in November 2005, the first throng of Save Trestles supporters showed up at a Parks and Recreation Commission hearing to speak out against a six-lane toll road that was proposed to cut through San Onofre State Beach—irreparably harming the park and surrounding watershed.

That particular meeting kicked off what later became a historic campaign.

That fateful Parks and Recreation hearing brought together many different local and national organizations, and, as serendipity would have it, those groups officially started organizing and formed the Save San Onofre Coalition (SSOC). The 12 organizations that make up SSOC represent millions of people who cherish the park and the surrounding watershed.

Over the course of a decade, the SSOC would create history. This formidable coalition organized the largest public turn out in Coastal Commission history. In 2008, nearly 4,000 people attended the Commission hearing where the road was unanimously rejected. Following

the Coastal Commission vote, the Transportation Corridor Agencies (TCA) appealed to the Bush Administration to overturn the Commission decision. But the TCA's appeal decision didn't stop our activists. Once again we organized! More than 3,500 attended the Department of Commerce hearing to voice strong opposition to the toll road that threatened San Onofre State Beach.

SSOC continued our winning streak in 2013, 2014 and 2015, when both the State and Regional Water Quality Control Boards rejected TCA's attempts to build the road in "segments."

These victories, over the course of a decade, helped us arrive where we are today – achieving a landmark settlement that forever saves Trestles!

This agreement settles five lawsuits brought by the SSOC and the California Attorney General and requires the TCA to rescind its 2006 approval of the so-called "Green Alignment" that would have run through San Onofre State Beach (SOSB) and its 2013 approval of its Tesoro Extension project, the first segment of the Foothill South.

The most significant and most hard-fought aspect of the settlement carves out "avoidance areas" that requires TCA to refrain from building or funding a road project within an area that includes San Onofre State Beach, the Richard and Donna O'Neill Conservancy and other critical open space, wildlife habitat and cultural resources in the San Mateo Creek watershed.

In addition to the avoidance areas, the settlement establishes a \$28 million conservation fund to help preserve and restore San Mateo Creek and its watershed. View a summary of lawsuit settlement [here](#) and a joint public statement [here](#).

The word "historic" is often over-used, but in light of this settlement, today truly is a historic day. This settlement culminates a decade of hard work to save San Onofre and brings an end to one of the most hard fought, long-lasting environmental battles in California history.

This victory would have not been possible without the thousands of passionate and motivated advocates who stood our ground to **FOREVER save Trestles**.

COMMENT SECTION

17 Comments Surfrider

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EXHIBIT "K"

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TRESTLES TOLL ROAD FAQ

This page contains information about a lawsuit settlement reached between the Save San Onofre Coalition and the Transportation Corridor Agencies (TCA) in November 2016. The Save San Onofre Coalition was founded to protect San Onofre State Beach from a proposed toll road. The Save San Onofre Coalition is comprised of 12 California and national environmental organizations, including: Audubon California, California Coastal Protection Network, California State Parks Foundation, Defenders of Wildlife, Endangered Habitats League, Laguna Greenbelt, Inc., Natural Resources Defense Council, Orange County Coastkeeper, Sea and Sage Audubon Society, Sierra Club, Surfrider Foundation and WILDCOAST/COASTALVAJE

The lawsuit settlement permanently protects San Onofre State Beach by establishing avoidance areas where the TCA is not allowed to build a road. To read more about this historic settlement that ends one of California's most hard fought environmental battles, review this [blog](#). Visit this [page](#) to read past blogs that were posted over the course of a decade summarizing milestones of this flagship campaign.

TOLL ROAD SETTLEMENT AGREEMENT FREQUENTLY ASKED QUESTIONS

What did the Save San Onofre Coalition accomplish?

For 15 years, the Save San Onofre Coalition has fought to protect San Onofre State Beach and the surrounding watershed. Through the November 2016 lawsuit settlement, we were able to permanently protect these irreplaceable resources by establishing an "Avoidance Area" which clearly defines where a toll road cannot be constructed. Our Coalition successfully negotiated the Avoidance Area not only to protect the Park and watershed, but also for the benefit of the millions of people who use the Park each year and for the thousands of people who fought to protect the park through the years.

What is the Transportation Corridor Agency (TCA) doing now?

The TCA, as required by the California Environmental Quality Act (CEQA), is in the process of studying a number of toll road alternatives. These alternatives must go through an open, public and transparent CEQA review process. Members of the public can participate in this process and address any concerns raised by these alternatives. The City of San Clemente is a founding member of the TCA and a voting member of TCA's board of directors. The City of San Clemente has a direct role in this decision-making process.

Why isn't the Save San Onofre Coalition opposing the TCA's efforts now?

The Coalition was formed to protect San Onofre State Beach and other watershed lands from the so-called "Green Alignment" that was designed to bifurcate the state park. The Coalition was not formed to oppose all toll roads. Under the Settlement Agreement between the TCA and the Save San Onofre Coalition, the TCA agreed not to build the road in the areas the Coalition worked to protect and the Coalition agreed not to take a position on any TCA project that avoids the area protected by the agreement. **The Settlement Agreement does not dictate where a toll road can be built or where it can go. Instead, it states where a road cannot go.**

What is the Save San Onofre Coalition's position on a route through San Clemente?

The Save San Onofre Coalition and individual Coalition members do not have a position on any of the TCA's proposed routes, provided that none of them go through San Onofre State Beach and the surrounding watershed.

What about the so-called "La Pata/Cristianitos" route?

TCA cannot build or fund the La Pata/Cristianitos route because that route would run through the Avoidance Area including San Onofre State Beach. Furthermore, it would pose some of the same irreconcilable conflicts with the California Coastal Act as the "Green Alignment." The Coalition will continue to oppose any and all proposed routes through San Onofre State Beach, including the La Pata/Cristianitos route.

Why Isn't the Save San Onofre Coalition getting involved in this issue?

The mission of the Save San Onofre Coalition is to protect San Onofre State Beach. Some people believe the Coalition was formed to fight against toll roads in general. But our purpose has always been to fight for the Park. We set out to protect the Park for San Clemente residents and the more than 2.5 million people that come from all around the world to use it. We achieved that with the Settlement Agreement and we will continue to ensure that the TCA fully abides by that agreement.

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ABOUT US

[Our Mission](#)

EXHIBIT "L"

EXHIBIT "L"



American Council of Engineering Companies Orange County Chapter

Mike Chesney, P.E.
Chief Strategy Officer

March 22, 2017



Transportation Corridor Agencies™

The Toll Roads®
of Orange County



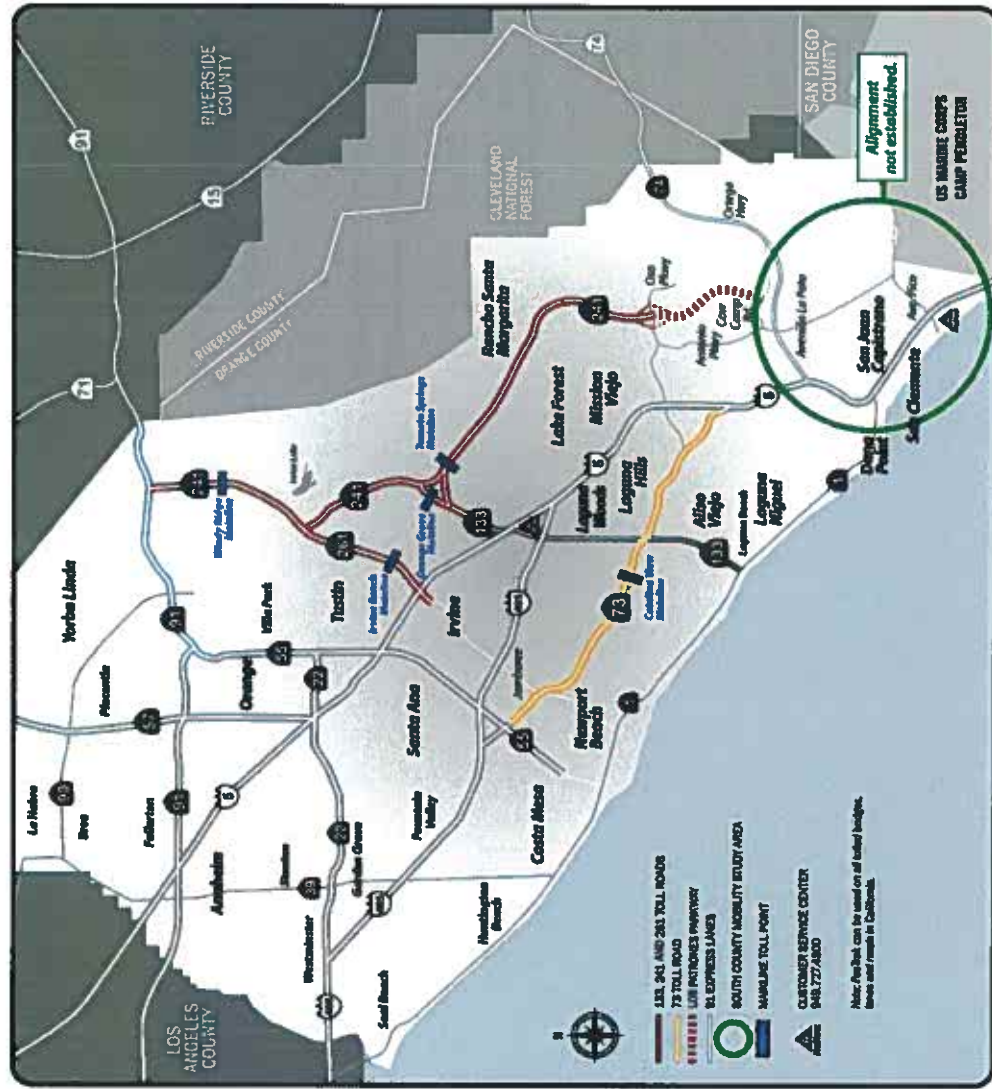
Transportation Corridor Agencies

Enhancing the mobility in Orange County and Southern California by developing and operating publicly owned toll roads as part of the state highway system.



241 Connection to I-5

- Re-evaluating the possibilities
- Completed community ascertainment study Jan. 2016
- Conducted two (2) Public Forums:
 - June 20, 2016
 - October 5, 2016
- Committed to a new federal and state environmental process
- Announced a settlement agreement on Nov. 10, 2016

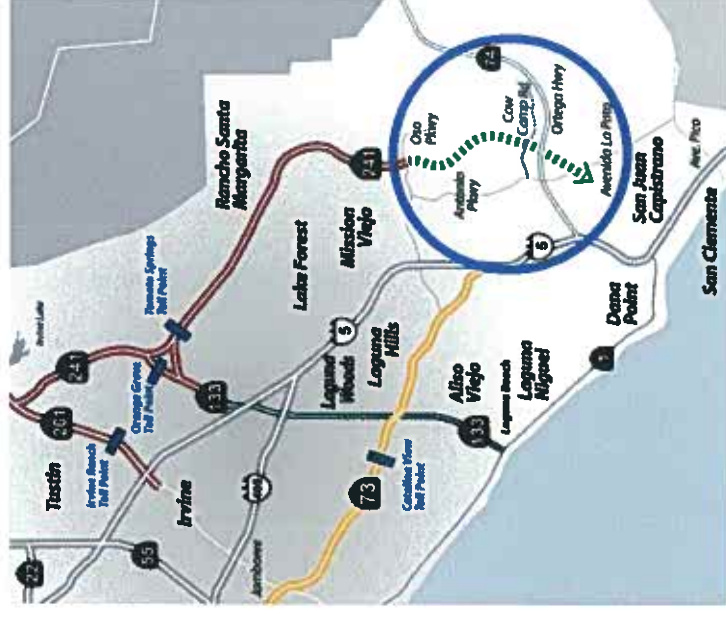




Landmark Settlement Agreement

- Settles five lawsuits challenging TCA's 2006 and 2013 approvals of the Foothill-South and Tesoro Extension Projects
- Ensures permanent protection of San Mateo Watershed, Donna O'Neill Land Conservancy, and other critical open space
- Allows TCA to move forward with a formal Project Initiation Document and subsequently a CEQA/NEPA process on a transportation solution

This Settlement Agreement marks the end of a 15-year legal battle





Landmark Settlement Agreement

- Creates a \$28 million Conservation Fund to help preserve and restore San Mateo Creek and its watershed
- Establishes a cooperative framework by which a transportation solution can be identified

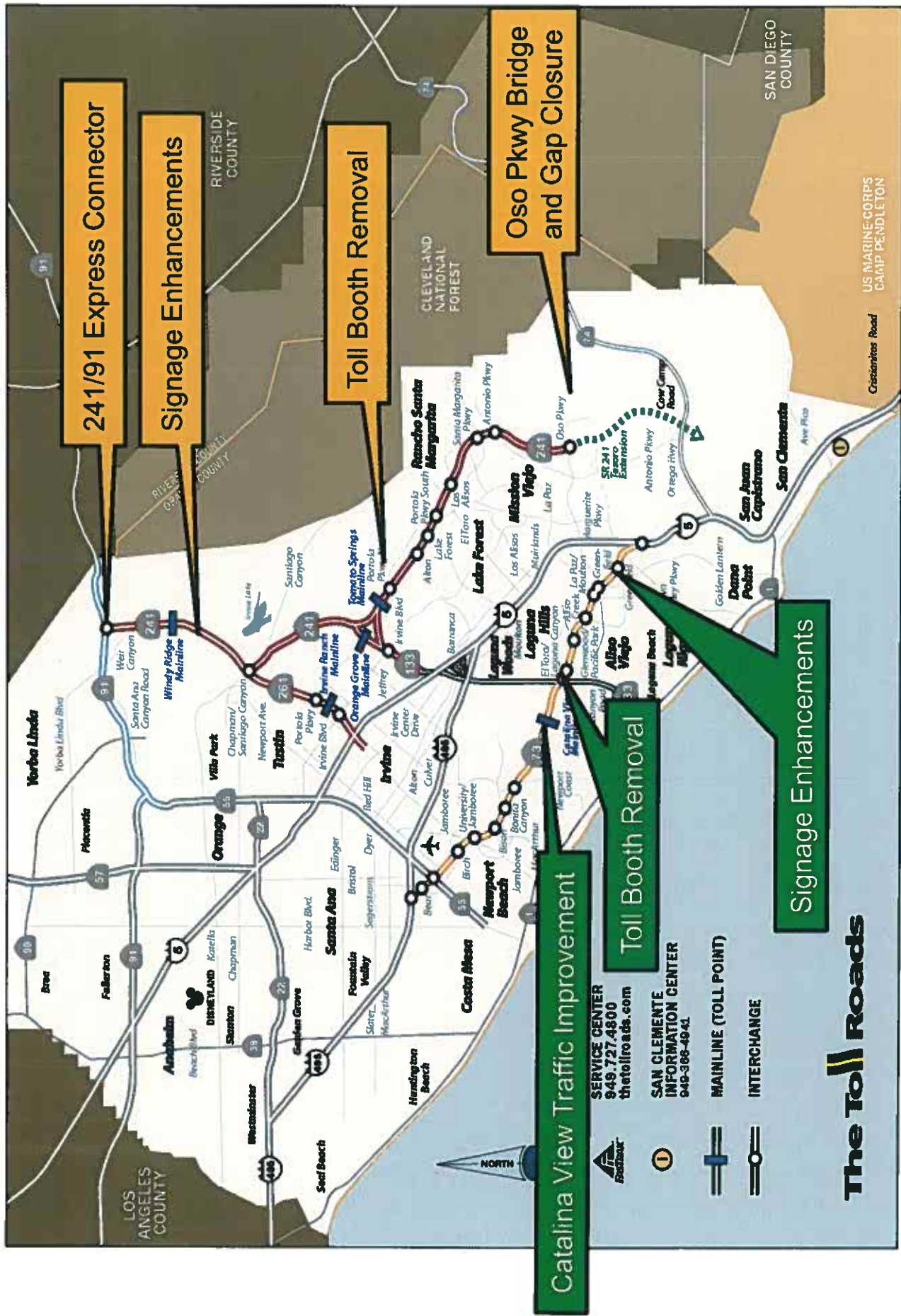


This Settlement Agreement does not establish any specific alignment or route.

This Settlement Agreement allows TCA to move forward in the formal process of finding a transportation mobility solution.

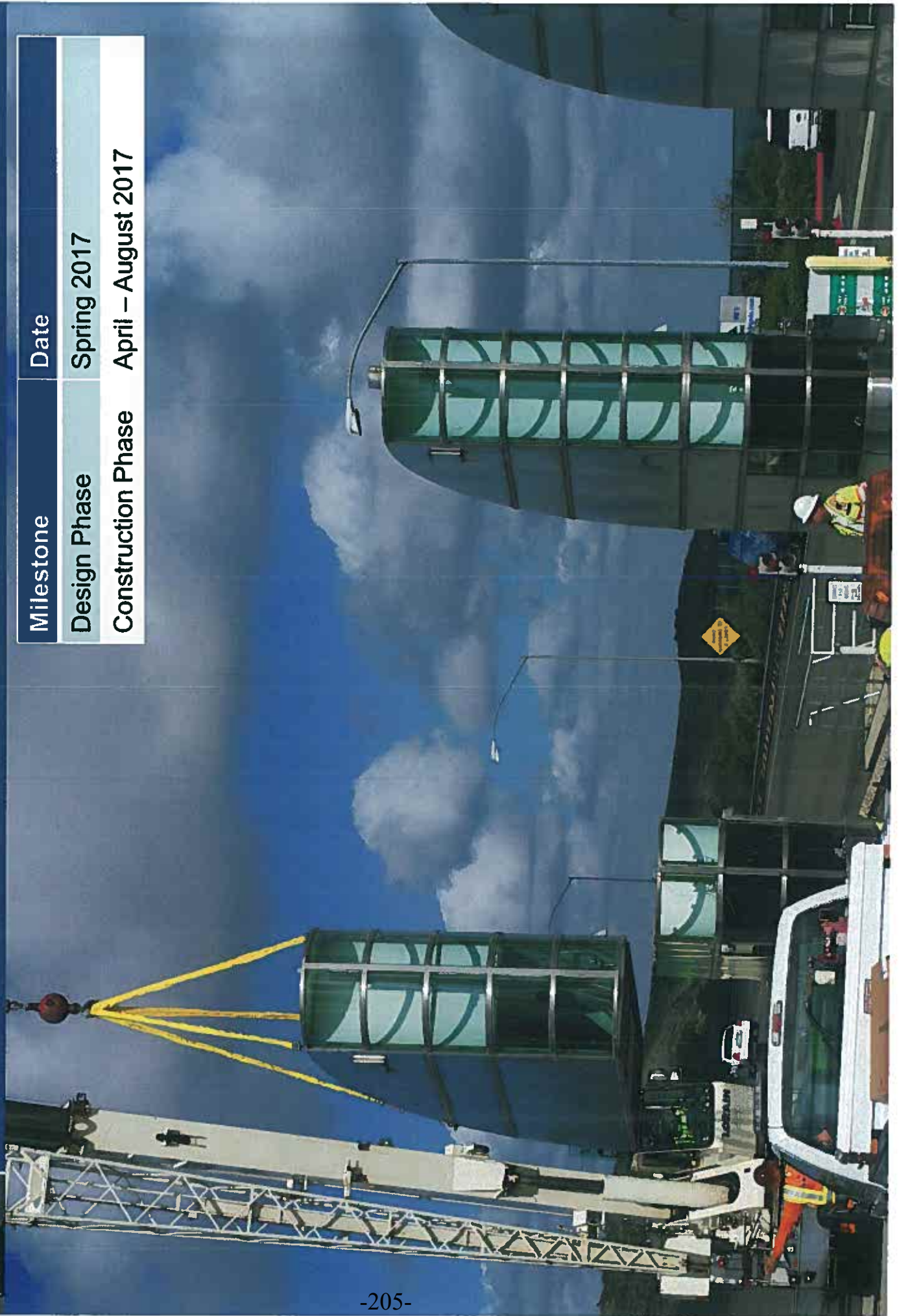


FY17 Capital Improvement Projects



Toll Booth Removal (Phase 1)

Milestone	Date
Design Phase	Spring 2017
Construction Phase	April – August 2017



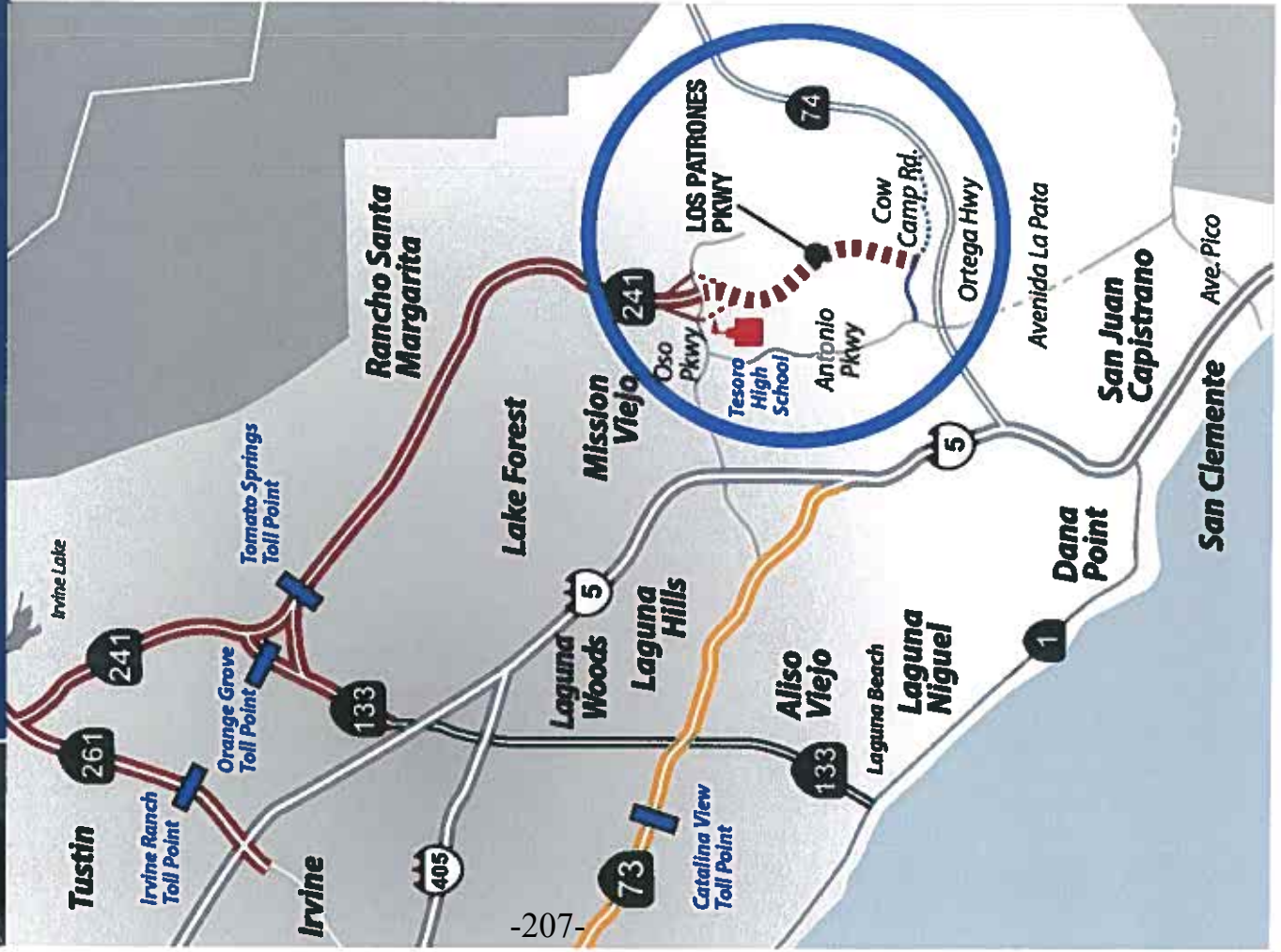
Signage Enhancements

Milestone	Date
Design Phase	Summer 2017
Construction Phase	August – December 2017



Los Patrones Parkway

- 5 Mile Extension
- Connects to Cow Camp Road
- Two Projects
 - RMV & County proceeding with Los Patrones Parkway arterial
 - TCA underway with final PS&E for Oso Parkway Bridge & Gap Closure – Construction by OCPW
- Estimated opening Spring 2018





OSO BRIDGE PROJECT

LOS PATRONES PARKWAY

Tesoro HS

Future Widening Projects

Milestone	Date
Capacity Study	Underway
Project Development	TBD





Foothill/Eastern FY17 CIP Projects

Project	FY17 Status	FY17 Proposed Budget \$M
Los Patrones Parkway Oso Bridge and Gap Closure	Coordination with County & RMV Final design/County coordination	\$3.5
241 to I-5 Connection	Community Outreach Initiation of new CEQA/NEPA process Acquire open space/mitigation property	\$27.3
241/91 Express Connector	Final Environmental Document Final Project Report Public Outreach Begin Final Engineering	\$13.8
Toll Booth Removal	Complete Design/Begin Construction	\$2.2
Signage Improvements	Complete Design (Begin Construction in FY18 - \$1.8M)	\$0.2



San Joaquin Hills FY17 CIP Projects

Project	FY17 Status	FY17 Proposed Budget \$M
Toll Booth Removal	Complete Design/Begin Construction	\$1.8
Signage Improvements	Complete Design (Begin Construction in FY18 - \$2.0M)	\$0.2



Future Contracting Opportunities



Project	PAVED	PS&E	CEM	CONST
Oso Parkway Bridge & Gap				
			On-Call (In process)	County
Signage Enhancements			In process	Summer FY18
241/91 Express Connector				
			On-Call (In process)	Summer FY19
241 to I-5 Connection		◆	◆	◆
Toll Booth Removal Phases 2 and 3		◆	◆	◆
73 Glenwood Phase II	◆	◆	◆	◆
Future Widening Projects	◆	◆	◆	◆

FY 17-18

Future



Next Steps

TCA leadership will keep you updated as we move forward in the outreach process and ask that we continue to have your support.



For More Information

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Transportation Corridor Agencies

The Toll Roads
of Orange County