

1 SCOTT C. SMITH, Bar No. 120736  
scott.smith@bbklaw.com  
2 JEFFREY V. DUNN, Bar No. 131926  
jeffrey.dunn@bbklaw.com  
3 MICHELLE OUELLETTE, Bar No. 145191  
michelle.ouellette@bbklaw.com  
4 ARMEEN KOMEILI, Bar No. 299202  
armeen.komeili@bbklaw.com

**DEEMED VERIFIED PURSUANT  
TO CODE OF CIVIL  
PROCEDURE SECTION 446**

5 **BEST BEST & KRIEGER LLP**  
6 18101 Von Karman Avenue, Suite 1000  
Irvine, California 92612  
7 Telephone: (949) 263-2600  
8 Facsimile: (949) 260-0972

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE § 6103**

9 Attorneys for Petitioner and Plaintiff  
City of San Clemente

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
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By Sarah Loose, Deputy Clerk

13 CITY OF SAN CLEMENTE, a California  
municipal corporation

Case No. 30-2017-00934703-CU-PT-CXC

14 Petitioner and Plaintiff,

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

15 v.

**[California Environmental Quality Act;  
Code of Civ. Proc. §§ 1060, 1085, and 1094.5;  
Pub. Res. Code §§ 21168 and 21168.5]**

16 Foothill/Eastern  
17 Transportation Corridor  
18 Agency, a Joint Powers Agency;  
19 Board of Directors of the  
20 Foothill/Eastern  
21 Transportation Corridor  
22 Agency;  
23 County of Orange, a political  
24 subdivision of the State of California;  
25 Board of Supervisors of the  
26 County of Orange;  
27 State of California  
28 Department of  
Transportation, a state agency;  
MALCOLM DOUGHERTY, acting in his  
official capacity as Director of the  
California Department of Transportation,  
and DOES 1 through 100, inclusive,

Judge William Claster

Dept: CX102

Respondents and  
Defendants.

1 SAVE SAN ONOFRE COALITION;  
2 NATIONAL AUDUBON SOCIETY dba  
3 AUDUBON CALIFORNIA;  
4 CALIFORNIA COASTAL PROTECTION  
5 NETWORK;  
6 CALIFORNIA STATE PARKS  
7 FOUNDATION;  
8 DEFENDERS OF WILDLIFE;  
9 ENDANGERED HABITATS LEAGUE;  
10 LAGUNA GREENBELT, INC.;  
11 NATURAL RESOURCES DEFENSE  
12 COUNCIL, INC.;  
13 ORANGE COUNTY COASTKEEPER;  
14 SEA AND SAGE AUDUBON SOCIETY;  
15 SIERRA CLUB;  
16 SURFRIDER FOUNDATION;  
17 WILD COAST-COSTA SALVAJE;  
18 PEOPLE OF THE STATE OF  
19 CALIFORNIA ex rel. XAVIER  
20 BECERRA, ATTORNEY GENERAL;  
21 NATIVE AMERICAN HERITAGE  
22 COMMISSION;  
23 CALIFORNIA NATURAL RESOURCES  
24 AGENCY,  
25 CALIFORNIA STATE PARK AND  
26 RECREATION COMMISSION, and  
27 ROES 1 through 50, inclusive,  
28

Real-Parties-In-Interest.

1 Petitioner and Plaintiff, the City of San Clemente (the "City") brings this Verified Petition  
2 for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition")  
3 against Respondents and Defendants Foothill/Eastern Transportation Corridor Agency ("TCA"),  
4 the Board of Directors for the Foothill/Eastern Transportation Corridor Agency ("TCA Board"),  
5 the County of Orange ("County"), the Board of Supervisors for the County of Orange ("Board of  
6 Supervisors"), the California Department of Transportation ("CalTrans"), and Malcolm  
7 Dougherty, acting in his official capacity as Director of the California Department of  
8 Transportation and alleges as follows:

9 **THE PARTIES**

10 1. Petitioner and Plaintiff City of San Clemente is a municipal corporation organized  
11 pursuant to California law and the California Constitution.

12 2. Upon information and belief, Respondent and Defendant TCA is a joint powers  
13 authority operating in Orange County, California with its principal office located in the City of  
14 Irvine. TCA is formed under the authority of the Joint Exercise of Powers Act, Government  
15 Code section 6500 *et seq.*, and exists pursuant to a Joint Exercise of Powers Agreement (as  
16 amended) by and among its members. Members of the TCA include the County of Orange, and  
17 the Cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa  
18 Margarita, San Clemente, San Juan Capistrano, Santa Ana, Tustin, and Yorba Linda. The TCA is  
19 a party to the Protective Agreement and Cooperative Agreement (as described below), which are  
20 subjects of this action.

21 3. Upon information and belief, Respondent and Defendant TCA Board is the  
22 governing body of the TCA and is responsible for planning, approving, and implementing toll  
23 road projects within TCA's jurisdictional authority. The TCA Board is obligated to comply with  
24 all state and federal law in governing the TCA and in conducting fair and open public hearings  
25 concerning projects and contracts within the TCA's authority. The TCA Board is comprised of  
26 representatives of the County of Orange and of twelve cities within the County of Orange. TCA's  
27 Executive Officer is Michael Kraman, who executed the Protective Agreement which is the  
28 subject of this action. The TCA Board and its members are sued in their official capacities only.

1           4.       Upon information and belief, Respondent and Defendant County is now, and at all  
2 times material to this action has been, a subdivision of the State of California and a charter county  
3 organized and existing under the laws of the State of California. The County is a party to the  
4 Freeway Agreement (as described below) and Cooperative Agreement, which are subjects of this  
5 action.

6           5.       Upon information and belief, Respondent and Defendant County of Orange Board  
7 of Supervisors is the legislative body and highest administrative body of the County. The Board  
8 of Supervisors are sued in their official capacities only. The Board of Supervisors is a party to the  
9 Freeway Agreement (as described below), which is a subject of this action.

10          6.       Upon information and belief, Respondent and Defendant California Department of  
11 Transportation (“CalTrans”) is an agency of the State of California responsible for maintaining  
12 and operating California's state highway system. To accomplish this objective, CalTrans is  
13 subdivided into twelve (12) different operational units called “Districts” that together form the  
14 geographic whole of California. Each District has jurisdictional responsibilities related to a  
15 county or group of counties and is led by a District Director. District 12 encompasses the entirety  
16 of Orange County. CalTrans’s District 12 Director is Ryan Chamberlain, who executed the  
17 Protective Agreement and Freeway Agreement (as defined below), which are the subject of this  
18 action. Mr. Chamberlain also serves as an *ex officio* member of the TCA Board.

19          7.       Upon information and belief, Respondent and Defendant Malcolm Dougherty is  
20 the Director of the California Department of Transportation. Mr. Dougherty is sued in his official  
21 capacity only. Caltrans is a party to the Protective Agreement and Freeway Agreement, which  
22 are the subject of this action.

23          8.       Upon information and belief, Real Party in Interest Save San Onofre Coalition  
24 (“SSOC”) consists of the National Audubon Society dba Audubon California, California Coastal  
25 Protection Network, California State Parks Foundation, Defenders Of Wildlife, Endangered  
26 Habitats League, Laguna Greenbelt, Inc., Natural Resources Defense Council, Inc., Orange  
27 County Coastkeeper, Sea And Sage Audubon Society, Sierra Club, Surfrider Foundation, and  
28 WILD Coast-COSTASALVAJE. SSOC is a party to the Protective Agreement, which is a

1 subject of this action.

2 9. Upon information and belief, Real Party in Interest National Audubon Society  
3 (“NAS”) is a New York corporation and doing business in California under the name “Audubon  
4 California.” NAS is a member of SSOC and a party to the Protective Agreement, which is a  
5 subject of this action.

6 10. Upon information and belief, Real Party in Interest California Coastal Protection  
7 Network (“CCPN”) is a California public benefit corporation with its principal place of business  
8 located in Santa Barbara, California. CCPN is a member of the SSOC and a party to the  
9 Protective Agreement, which is a subject of this action.

10 11. Upon information and belief, Real Party in Interest California State Parks  
11 Foundation (“CSPF”) is a California non-profit organization with its principal place of business  
12 located in San Francisco, California. CSPF is a member of the SSOC and a party to the  
13 Protective Agreement, which is a subject of this action.

14 12. Upon information and belief, Real Party in Interest Defenders of Wildlife is a non-  
15 profit organization with its principal place of business located in Washington, D.C. Defenders of  
16 Wildlife is a member of the SSOC and a party to the Protective Agreement, which is a subject of  
17 this action.

18 13. Upon information and belief, Real Party in Interest Endangered Habitats League  
19 (“EHL”) is a California non-profit organization with its principal place of business located in Los  
20 Angeles, California. EHL is a member of the SSOC and a party to the Protective Agreement,  
21 which is a subject of this action.

22 14. Upon information and belief, Real Party in Interest Laguna Greenbelt, Inc. is a  
23 California non-profit organization located in Laguna Beach, California. Laguna Greenbelt is a  
24 member of the SSOC and a party to the Protective Agreement, which is a subject of this action.

25 15. Upon information and belief, Real Party in Interest Natural Resources Defense  
26 Council, Inc. (“NRDC”) is a New York non-profit organization with an office located in Santa  
27 Monica, California. NRDC is a member of the SSOC and a party to the Protective Agreement,  
28 which is a subject of this action.

1           16.     Upon information and belief, Real Party in Interest Orange County Coastkeeper is  
2 a California non-profit organization located in Costa Mesa, California. Orange County  
3 Coastkeeper is a member of the SSOC and a party to the Protective Agreement, which is a subject  
4 of this action.

5           17.     Upon information and belief, Real Party in Interest Sea and Sage Audubon Society  
6 is a California non-profit located in Irvine, California. Sea and Sage Audubon Society is a  
7 member of the SSOC and a party to the Protective Agreement, which is a subject of this action.

8           18.     Upon information and belief, Real Party in Interest Sierra Club is a California non-  
9 profit corporation with its headquarters located in Oakland, California. The Sierra Club is a  
10 member of the SSOC and a party to the Protective Agreement, which is a subject of this action.

11           19.     Upon information and belief, Real Party in Interest Surfrider Foundation  
12 (“Surfrider”) is a California non-profit organization with an office located in San Clemente,  
13 California. Surfrider is a member of the SSOC and a party to the Protective Agreement, which is  
14 a subject of this action.

15           20.     Upon information and belief, Real Party in Interest WiLDCOAST-  
16 COSTASALVAJE (“WiLDCOAST”) is a California non-profit organization with an office  
17 located in Imperial Beach, California. WiLDCOAST is a member of the SSOC and a party to the  
18 Protective Agreement, which is a subject of this action.

19           21.     Upon information and belief, Real Party in Interest People of the State of  
20 California ex rel. Xavier Becerra, Attorney General is a representative of the people of the State  
21 of California and a party to the Settlement Agreement, which is addressed in the Protective  
22 Agreement, which is a subject of this action.

23           22.     Upon information and belief, Real Party in Interest Native American Heritage  
24 Commission (“NAHC”) is a public agency of the State of California (constituted pursuant to  
25 Public Resources Code sections 5097.91 and 5097.92) and a party to the Settlement Agreement,  
26 which is addressed in the Protective Agreement, which is a subject of this action.

27           23.     Upon information and belief, Real Party in Interest California National Resources  
28 Agency (“CNRA”) is a public agency of the State of California and a party to the Protective

1 Agreement which is the subject of this action. CNRA's Secretary, John Laird, executed the  
2 Protective Agreement on the CNRA's behalf.

3 24. Upon information and belief, Real Party in Interest California State Park and  
4 Recreation Commission ("CSPRC") is a public agency of the State of California and a party to  
5 the Settlement Agreement, which is addressed in the Protective Agreement, which is a subject of  
6 this action.

7 25. The City does not know the true names and capacities, whether individual,  
8 corporate, associate, or otherwise, of Respondents and Defendants DOES 1 through 100,  
9 inclusive, and therefore sues said Respondents and Defendants under fictitious names. Each of  
10 the Respondents and Defendants is the agent and/or employee of Respondents TCA, TCA Board,  
11 County, Board of Supervisors, and/or CalTrans, and each performed acts on which this action is  
12 based within the course and scope of such party's agency and/or employment. Additionally, the  
13 City does not know the true names and capacities, whether individual, corporate, associate, or  
14 otherwise, of Real Parties in Interest ROES 11 through 50, inclusive, and therefore sue said Real  
15 Parties in Interest under fictitious names. The City will amend this Petition to show the true  
16 names and capacities when the same have been ascertained.

### 17 VENUE AND JURISDICTION

18 26. This Court has subject matter jurisdiction pursuant to Public Resources Code  
19 sections 21167(a), 21168, and 21168.5, and Code of Civil Procedure sections 1060 *et seq.*, 1085,  
20 and 1094.5.

21 27. This Court has personal jurisdiction over each party in this action because each of  
22 them is either incorporated in and/or qualified to do business in the State of California and the  
23 County of Orange. Furthermore each party, by executing the Settlement Agreement and/or  
24 Protective Agreement described herein, has consented to the jurisdiction of this Court.

25 28. Venue is proper in this Court pursuant to Code of Civil Procedure section 395(a)  
26 as the acts and omissions complained of herein occurred, and the Property affected by those acts  
27 is located, in Orange County. Additionally, the Settlement Agreement and Protective Agreement  
28 were executed and performed, in whole or in part, in Orange County. Venue is further proper in

1 this Court under Code of Civil Procedure section 394 subdivision (a) because the TCA and TCA  
2 Board are located within the County of Orange.

3 **OTHER JURISDICTIONAL PREREQUISITES**

4 29. The City has complied with Public Resources Code section 21167.5 by providing  
5 Respondents notice of the City's intent to commence this action. The notices are attached hereto  
6 as Exhibits "A" and "B."

7 30. In accordance with Public Resources Code section 21167.7, the City has  
8 concurrently provided a copy of this Petition to the California Attorney General. The notice is  
9 attached hereto as Exhibit "C."

10 31. In accordance with Public Resources Code section 21167.6, subdivision (a), the  
11 City has concurrently filed a notice of request for Respondent TCA to prepare the administrative  
12 record. The notice is attached hereto as Exhibit "D."

13 32. This lawsuit has been commenced within the time limits imposed for this action  
14 under Code of Civil Procedure sections 1085 and/or 1094.5, and Public Resources Code section  
15 21167.

16 33. Because the Protective Agreement and Freeway Agreement were approved  
17 without legally-required notice, and outside of any formal public meeting context, there was no  
18 administrative process available to the City to challenge the Protective Agreement or Freeway  
19 Agreement. Respondents' approval of the Protective Agreement and Freeway Agreement were  
20 final determinations and the public was foreclosed from participating in those decisions. The City  
21 has no plain, speedy, and/or adequate remedy at law, other than the relief sought in this Petition.

22 **GENERAL FACTS AND ALLEGATIONS**

23 34. TCA is a joint powers agency created in 1986 pursuant to Article 1, Chapter 5,  
24 Division 7, of Title 1 of the Government Code (the "JPA Act"). The JPA Act authorizes public  
25 agencies to jointly exercise powers they hold in common. (Gov. Code, § 6502.) The central  
26 purpose of TCA is to "plan for, acquire, and construct environmentally-sensitive thoroughfares  
27 and bridges . . . ." (Section 2.2b of the 1986 Joint Exercise of Powers Agreement Creating the  
28 Foothill/Eastern Transportation Corridor Agency [hereinafter, the "JPA Agreement"] and Section



1 2.2(b) of the First Amended and Restated Joint Exercise of Powers Agreement Creating the  
2 Foothill/Eastern Transportation Corridor Agency).

3 35. The Foothill Transportation Corridor was added to the Orange County Master Plan  
4 of Arterial Highways (“MPAH”) by the Board of Supervisors in August 1981 following the  
5 certification of Environmental Impact Report 123. Environmental Impact Report 423 was  
6 certified for the Foothill Transportation Corridor in May 1983. The Foothill Transportation  
7 Corridor was originally intended to use state and federal transportation funds and designated as a  
8 non-tolled highway. Following the decrease of available state and federal transportation funding,  
9 the TCA was charged with funding and constructing the Foothill Transportation Corridor as a toll  
10 road and added to the State Highway System. To effectuate this agreement, the TCA and  
11 CalTrans executed various cooperation and non-compete agreements.

12 36. The Legislature establishes the framework for the State Highway System by  
13 describing each route by statute in the Streets and Highways Code. Neither the TCA nor  
14 CalTrans has the authority to establish a state highway system.

15 37. Petitioner City of San Clemente is a member agency and signatory to the JPA.  
16 Pursuant to the JPA Agreement, TCA set out to construct the sixteen-mile remainder of the  
17 Foothill South Toll Road in the route designated as “SR-241,” following a pathway from the  
18 current terminus of the freeway at Oso Parkway, skirting the southeastern urbanized area of  
19 Orange County, then connecting to Interstate 5 (“I-5”) in the vicinity of Basilone Road. In 1988,  
20 the Legislature enacted Streets and Highways Code Section 541 officially designating this  
21 corridor, which was to extend “near the cities of Tustin and Irvine to Route 5 *south of San*  
22 *Clemente.*” (Streets and Highways Code, § 541 [emphasis added].) Accordingly, the Legislature  
23 intended SR-241 to bypass San Clemente and connect to I-5 in San Diego County, as confirmed  
24 by the map employed and relied upon by legislators throughout the legislative history for Streets  
25 and Highways Code section 541. (Map attached hereto and incorporated herein as Exhibit “E”).

26 38. The 1988 legislation creating this route came with an important caveat: “[No]  
27 State funds would be used for planning and project development or for construction of Route  
28 241.” (1988 Cal Stats. ch. 1363.)

1           39.     The southern portion of the Foothill Transportation Corridor has been the subject  
2 of planning efforts for over thirty-five years. From 1989 to 1991, the TCA prepared TCA EIR  
3 No. 3, for the selection of a locally-preferred alignment for the south portion of the Foothill  
4 Transportation Corridor. TCA EIR No. 3 was circulated for a 60-day review period which  
5 included public hearings. A Supplemental EIR (“SEIR”) was then circulated containing changes  
6 to the “C” Alignment through San Onofre State Beach and San Clemente resident to address  
7 concerns regarding noise and visual impacts. The modified alignment around San Clemente and  
8 connecting to Route 5 south of San Clemente was dubbed the “Modified C Alignment,” which  
9 was selected as the locally-preferred alternative by the TCA and is consistent with the codified  
10 route for the SR 241. The Modified C Alignment was further modified following input from the  
11 United States Fish and Wildlife Services, and the new alignment was called the “CP Alignment.”  
12 The CP Alignment went around San Clemente and connected to Route 5 south of the San  
13 Clemente city limits.

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

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

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

27           43.     On February 23, 2006, and after a several year process involving numerous public  
28 hearings, the TCA Board adopted Resolution F2006-1 certifying Final Subsequent Environmental

1 Impact Report TCA SEIR 4 (“2006 SEIR”) for the SR-241 Foothill South Extension. That same  
2 day, the TCA Board also adopted Resolution F2006-2 selecting the locally preferred alignment  
3 (the A7C-FEC-M-Initial Alternative, commonly called the “Green Alignment”) in the DEIS/SEIR  
4 for the South Orange County Transportation Infrastructure Improvement Project (“SOCTIIP”)  
5 (the “2006 Approvals”). Consistent with legislative enactments and state and regional  
6 transportation plans concerning SR 241, the Green Alignment connected to Route 5 south of San  
7 Clemente near Basilone Road in San Diego County.

8 44. In recognition of the Legislature’s mandate that no state funds be used for the  
9 planning and project development or for construction Route 241, the parties to the JPA, including  
10 San Clemente, adopted a Major Thoroughfare and Bridge Fee Program for San Joaquin Hills  
11 Transportation Corridor and Foothill/Eastern Transportation Corridors to partially fund toll road  
12 transportation corridors, including SR-241. (Gov. Code, § 66484.3.) The Fee Program includes  
13 fees for SR-241 as the “Foothill Transportation Corridor.” The Program refers to the southern  
14 SR-241 corridor as “an established alignment” extending from Tustin and Irvine “approx. 32  
15 miles to the San Diego Freeway (I-5) below San Clemente in San Diego County.” (Thoroughfare  
16 Program, p. 7.) The plan contemplated that developers will dedicate the majority of corridor  
17 right-of-way. (*Id.* at 9.) In fact, much of the right-of-way for SR-241 has been incorporated into  
18 community master plans for years, with right-of-way being dedicated in connection with  
19 development as it occurred and as contemplated in those master plans. For example, the City of  
20 Irvine’s 1991 General Plan identified the future SR-241 (labeled as Eastern Transportation  
21 Corridor and the Foothill Transportation Corridor) in its circulation operational characteristics  
22 map (*Id.* at D-3) and arterial highway designation map (*Id.* at D-30). Further, Irvine’s 1991  
23 Circulation Element called for Irvine to “[support planning and development consistent with City  
24 policy for the San Juaquin, Eastern and Foothill Transportation Corridor” as part of the City’s  
25 broader objective to “[d]evelop an integrated vehicular circulation to accommodate projected  
26 local and regional circulation needs.” (*Id.* at D-11.)

27 45. Using this alignment and its estimated cost as a basis, the Fee Program requires  
28 member agencies to dedicate right-of-way in the SR-241 corridor and to charge developers in

1 “areas of benefit” for their pro rata share of the corridor as set in 1985 and 1988. (Thoroughfare  
2 Program at p. 31.) Notwithstanding the Settlement Agreement mentioned below, this SR-241  
3 segment remains a core part of the TCA fee.

4 46. TCA set off to build the toll roads. Its initial efforts included completing an  
5 exhaustive environmental review and obtaining an array of permit applications to build it. Those  
6 efforts immediately met a barrage of opposition and litigation from stakeholders and regulators.  
7 In her challenge to the freeway, the California Attorney General called it “an unprecedented  
8 attempt by a local agency to take California State Park lands for highway purposes.” (Petition for  
9 Writ of Mandate in Case No. 37-2013-00050001-CU-WM-NC, 3:16-17.) Permits for the  
10 original project were not forthcoming. Most notably, the California Coastal Commission, the  
11 U.S. Secretary of Commerce, and the Regional Water Quality Control Board all denied key TCA  
12 applications. (State Route 241 Foothill South and Tesoro Extensions Settlement Agreement  
13 [hereinafter, “Settlement Agreement”] pp. 2-3.) A large coalition of environmental advocacy  
14 groups organized as “Save San Onofre Coalition,” or “SOCC,” the Attorney General, and the  
15 Native American Heritage Commission filed lawsuits in 2006 and 2013 challenging the project  
16 approvals and accompanying environmental analysis. (Settlement Agreement at p. 1.)

17 47. During the pendency of the 2006 action, TCA adopted a timeworn trick to keep a  
18 troubled project viable, i.e., segmenting or piecemealing the large project by disguising it as a  
19 smaller project. In partnership with the County of Orange, TCA recast the northern segment of  
20 the toll road as a stand-alone project, contrary to TCA’s long-standing inclusion of that segment  
21 as part of the larger corridor. That northern segment of the freeway, which includes a freeway  
22 interchange at Oso Parkway, is sometimes characterized as the “Tesoro Extension.” Part of the  
23 pathway for the Tesoro Extension was previously designated as a County arterial road also known  
24 as “F Street” or “Los Patrones Road.”

25 48. On April 18, 2013, TCA approved an Addendum to the 2006 SEIR (“2013  
26 Addendum”) and the segmented extension of SR-241 to Cow Camp Road (“2013 Approvals”).  
27 Through a series of decisions made between June 2013 and March 2015, the San Diego Regional  
28 Water Quality Control Board (“RWQCB”) denied TCA’s application for waste discharge

1 requirements for the Tesoro Extension under the Porter-Cologne Water Quality Control Act.  
2 (Water Code §§ 13000 et seq.) The Addendum included no analysis of the cumulative impacts  
3 of the Tesoro Extension, but rather, analyzed the impacts of the segment as if it were a stand-  
4 alone project. The Attorney General and others challenged the 2013 Tesoro Extension approval  
5 and the Addendum, alleging that the Tesoro Extension was obviously part of the larger SR-241  
6 project and could not be permitted or analyzed in isolation from the larger project impacts.

7 49. At this point, TCA found itself fighting on two fronts. On the one hand, it was  
8 bogged down in the 2006 lawsuits and permit denials on the larger project, with little hope of  
9 seeing the 241 survive that process intact. On the other hand, the Attorney General, the RWQCB,  
10 and other opponents would not allow the Tesoro Extension to be considered in isolation from the  
11 larger project. On May 2, 2016, SSOC, the County of Orange, and TCA entered into an  
12 agreement by which the parties agreed to extend the time for SSOC to challenge this project  
13 increment.

14 50. Having failed in that attempt, TCA initiated a new, even more audacious plan for  
15 a different, vast swath of public open space – much of it protected by two separate voter  
16 initiatives in two different cities – for its purposes. In October 2016, San Clemente Mayor Pro  
17 Temp Kathy Ward, San Clemente’s delegate to the TCA JPA Board, noticed that the captions for  
18 the 2006 and 2013 lawsuits began to appear on TCA’s closed session agendas. On October 13,  
19 2016, Ms. Ward sent an email to TCA’s Chief Executive Officer, Mike Kraman, explaining that  
20 since she was new to the Board, she did not wish to participate in closed sessions about these  
21 cases without a background briefing on them. She requested a brief summary of the cases and  
22 advanced notice of when they were to be discussed. Ward was baffled that the cases would be on  
23 the agenda, since they were being litigated – as they had been for years – apart from the TCA  
24 Board’s regular participation or direction. The cases again appeared on TCA’s November 10,  
25 2016 agenda, but no notice or briefing were provided to Ms. Ward in advance of that meeting.  
26 Upon arriving at the closed session, Ms. Ward was suddenly presented with a Settlement  
27 Agreement of 25-pages (excluding signatures and exhibits) and was informed that every other  
28 party to the agreement (15 to be exact) had already approved it. The Settlement Agreement

1 included a gag order that limited TCA officials' statements on the agreement to laudatory terms  
2 such as "unprecedented," "extraordinary," "magnificent," and "hard-fought" to describe it. The  
3 TCA Board summarily approved the Settlement Agreement over the objection of Ward and her  
4 counterpart from San Juan Capistrano, and then broke for lunch. Subsequently, without notice,  
5 hearing, or any other public meeting or action of its Board, TCA circulated a map of several  
6 potential substitute alignments, including alignments 14 and 17, which bisect a portion of San  
7 Clemente, using as their route significant areas of open space set aside by a 2007 San Clemente  
8 voter initiative in 2007 (Measure V) and some of it designated by its owner and the City for a  
9 conservation and habitat restoration program. Much of those routes, ironically, were dedicated  
10 and protected as mitigation and habitat restoration by the County in connection with its approval  
11 of La Pata Road (a County highway) and County development subsequently annexed to the City.  
12 Some of it is held in public trust by the City and homeowners associations. Route 14 runs in  
13 close proximity to several public and private schools and private homes.

14 51. The Settlement Agreement designates significant "Avoidance Areas," which are  
15 areas the petitioners in the 2006 and 2013 litigation sought to protect. It purports to leave open  
16 the question of a Post-Settlement Alignment, but through process of elimination, it leaves only  
17 Route 14 open to consideration. (Settlement Agreement, Ex. C.) The Settlement Agreement  
18 limits all remaining alignment options of the toll road to a route that is in close proximity to  
19 schools, homes, community parks and trails, creating unmitigable environmental, human, and  
20 socioeconomic impacts. In fact, Exhibit C of the Settlement Agreement shows TCA's hand by  
21 depicting an SR-241/I-5 connection that clearly contemplates a route bifurcating San Clemente  
22 and tying in to I-5 south of San Clemente High School. These communities were planned, many  
23 by the County before the City annexed them, in reliance on the various state, county, and local  
24 planning documents which depicted any proposed toll road alignment bypassing those  
25 communities and connecting to I-5 in San Diego County, as dictated by the Legislature. The  
26 Settlement Agreement provides no process for consideration or approval of the "Post-Settlement"  
27 alignment by the City of San Clemente or any other affected jurisdiction. It completely  
28 disregards public ownership or protection by local initiative. It prohibits TCA and its Board from

1 criticizing the Post-Settlement Alignment even though it has not been sited. (Settlement  
2 Agreement, at pp. 14-17.)

3           52.     The Settlement Agreement’s Avoidance Areas actually prohibit construction of the  
4 toll road in the area where Streets and Highways Code Section 541 requires it be built. Perhaps  
5 for this reason, the California State Transportation Agency was not a party to the Settlement  
6 Agreement. Section 4.1 of the Settlement Agreement purports to address this conflict through a  
7 condition subsequent that (1) the Legislature would pass a law to alter the designated route to  
8 honor the Avoidance Areas or (2) the California State Transportation Agency, SSOC, TCA, and  
9 the California Natural Resources Agency enter into a “Protective Agreement” with the same  
10 effect. An ultra vires Protective Agreement purporting to do just that was executed by Michael  
11 Kraman (TCA’s Chief Executive Officer), Ryan Chamberlain (CalTrans’s District 12 Director),  
12 and John Laird (California Natural Resource Agency’s Secretary for Natural Resources). The  
13 TCA Board never considered or approved the Protective Agreement and neither State agency has  
14 given its executive the authority to sign it. As discussed in detail below, on the date of its  
15 execution (on or about March 10, 2017), the Protective Agreement also violated Streets and  
16 Highways Code Section 541 and TCA Major Thoroughfare and Bridge Fee Program discussed  
17 earlier, as well as the Orange County General Plan , the OCTA Master Plan of Arterial Highways  
18 (“MPAH”), the San Clemente General Plan and Measure V, and the San Juan Capistrano General  
19 Plan and Measure X, as discussed below. and the officers executing it had no separate delegation  
20 of authority to do so:

- 21           • **Orange County General Plan:** The Orange County General Plan’s circulation  
22           plan map does not envision or support the TCA’s proposed extensions of SR-241  
23           through the City. The circulation plan map does show a proposed extension of  
24           SR-241 that nearly entirely circumvents the City.
- 25           • **OCTA MPAH:** The OCTA MPAH does not include or anticipate an extension of  
26           SR-241 through the City. The MPAH shows Vista Hermosa and Avenda Pico  
27           intersecting I-5 the City, but does not show a state road cutting through the City.
- 28           • **San Clemente General Plan and Measure V:** Extension of SR-241 through San

1 Clemente is not envisioned or supported in the San Clemente General Plan. The  
2 Mobility and Complete Streets Element does not identify any route similar to those  
3 proposed by TCA for a highway to cut through the City. (See Figures M-1, M-2,  
4 and M-3.) The Land Use Element establishes open space that provides the City’s  
5 “distinct community edges”—open space that would be cut through the proposed  
6 SR-241 extensions. (p. 2.) Further, this open space property is subject to Measure  
7 V, which, as discussed earlier, requires voter approval to change the permitted uses  
8 of open space lands to non-open space uses. The clear purpose of the General Plan  
9 coupled with Measure V is to preserve open space as a community edge, not to  
10 allow for the development of state roads through the City.

- 11 • **San Juan Capistrano General Plan and Measure X:** Extension of SR-241  
12 through San Juan Capistrano is entirely inconsistent with the San Juan Capistrano  
13 General Plan Circulation Element. The Circulation Element explains that the SR-  
14 241 (referred to as the Foothill Transportation Corridor) will, once constructed,  
15 will run outside of San Juan Capistrano and “will travel to the *east of the City*  
16 *limits* and provide new *regional access* for residents and businesses in the  
17 Planning Area” (emphasis added). Further, Measure X, approved by San Juan  
18 Capistrano voters in 2015, requires voter approval to change any open space land  
19 use designation. Accordingly, aside from inconsistency with the General Plan, any  
20 extension of SR-241 through open space designated property would require voter  
21 approval.

22 53. In order to make any alignment of SR-241 fait accompli, TCA and the County  
23 have continued working to convert the Oso Bridge interchange and Los Patrones Parkway from  
24 their status as local public transportation facilities into for-fee toll road segments, without  
25 appropriate permits and without regard to the environmental consequences of such a serious shift  
26 in traffic patterns or the environmental injustice of limiting access to those dedicated public  
27 roadways to those who can pay. Specifically, on March 28, 2017 the County Board of  
28 Supervisors approved a Cooperative Agreement with TCA under which TCA repackaged and



1 shifted control and oversight over the Oso Bridge component of SR-241 from TCA to the County.  
2 In February 2017, CalTrans and the County entered into a Freeway Agreement under which the  
3 State accepted access control of the SR-241/Oso Parkway interchange. The County and TCA are  
4 poised now to add Los Patrones Parkway to the TCA toll road system. TCA has obtained an  
5 option to acquire Los Patrones Road and the County has agreed to facilitate the conversion of this  
6 public arterial to a toll freeway upon TCA's request. (Cooperative Agreement, p. 3.) This  
7 Cooperative Agreement was approved without any public notice, other than the County's regular  
8 agenda posting. Inadequate environmental review has occurred on this transaction and no  
9 regulatory permits have issued to cover it. The Rancho Mission Viejo master plan included a  
10 Water Quality Certification for Los Patrones Road under Section 401 of the Clean Water Act.  
11 However, that approval by the San Diego Regional Water Quality Control Board explicitly  
12 contemplates only "a new County of Orange arterial road "at the current terminus of State Route-  
13 241." The Certification goes out of its way to say it does not cover the SR-241 toll road and  
14 states that the road "is not the Tesoro Extension of SR-241 that was denied waste discharge  
15 requirements by the San Diego Water Board in 2013 . . .or a facility related to the SR-241[,] and  
16 the Tesoro Extension is not covered by the Certification." ("F" Street from "A" Street to Oso  
17 Parkway Project Certification Number R9-2014-0144.) The County's and TCA's action to  
18 approve and implement these agreements to convert this public street segment into a private  
19 highway violate California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.,  
20 ["CEQA"]; Cal. Code Regs., tit. 14, § 15000 et seq. ["State CEQA Guidelines"]) and the terms of  
21 the Regional Board's Section 401 Certification.

22  
23 **FIRST CAUSE OF ACTION**

24 **(Petition for Writ of Mandate Pursuant to Code Civ. Proc., §§ 1085 and 1094.5-Violation of**  
25 **the California Environmental Quality Act by Protective Agreement)**

26 **[As against TCA, CalTrans, and DOES 1-100]**

27 54. City incorporates herein by reference each previous paragraph of this Petition as  
28 though set forth here in full.

1           55.     “[T]he legislature intended [CEQA] to be interpreted in such manner as to afford  
2 the fullest possible protection to the environment within the reasonable scope of the statutory  
3 language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61  
4 Cal.4th 945, 963 [internal punctuation and citation omitted].) When complying with CEQA, a  
5 lead agency must proceed in the manner required by law, and its determinations must be  
6 supported by substantial evidence. (Pub. Resources Code, § 21168.5.) “CEQA requires a public  
7 agency to mitigate or avoid its projects’ significant effects not just on the agency’s own property  
8 but on the environment.” (*City of San Diego, supra*, 61 Cal.4th at 957 [emphasis and internal  
9 quotations omitted].) “CEQA defines the environment as the physical conditions which exist  
10 *within the area which will be affected by a proposed project* and mandates that [e]ach public  
11 agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries  
12 out or approves whenever it is feasible to do so.” (*Id.* at 961 [italics in original, internal quotes  
13 and citations omitted].)

14           56.     On or about March 10, 2017, Respondents and Real Parties entered into an  
15 Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive  
16 Environmental, Cultural and Recreational Resources (“Protective Agreement”) (Protective  
17 Agreement attached hereto as Exhibit “F”). The Protective Agreement is a discretionary action  
18 undertaken by TCA and CalTrans, both public agencies as defined by CEQA. (Pub. Resources  
19 Code, §§ 21062, 21063, 21080, subd. (a); State CEQA Guidelines §§ 15002, subd. (i) & 15357.)  
20 CEQA applies to any “project” approved by a public agency. (Pub. Resources Code, § 21065.)  
21 Respondents and Real Parties knew at the time they entered into the agreement that the Protective  
22 Agreement has the potential to cause either a direct, or reasonably foreseeable indirect, physical  
23 change in the environment, and as such, is considered a “project” under CEQA. (Pub. Resources  
24 Code, § 21065; State CEQA Guidelines, § 15378.)

25           57.     City is informed and believes, and on that basis alleges, that Respondents violated  
26 CEQA in numerous respects, including, but not limited to the following:

27           **Failure to conduct any environmental review of the Protective Agreement prior to**  
28 **approval.**

1           52.     Respondents did not conduct any review of the potential environmental impacts of  
2 the Protective Agreement or make any of the required findings or determinations required by  
3 CEQA and the State CEQA Guidelines before approving and executing the Protective  
4 Agreement.

5           53.     Environmental documents “should be prepared as early as feasible in the planning  
6 process to enable environmental considerations to influence project program and design...”  
7 (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d  
8 376, 395.)

9           54.     Because the Protective Agreement states that TCA may commence construction of  
10 the Oso Parkway Bridge Project (see Term 3 of the Protective Agreement), it essentially permits  
11 the SR-241 toll road to be extended via Los Patrones Parkway without any environmental  
12 analysis of the direct, indirect, and cumulative impacts of such an action. Respondents did not  
13 prepare an initial study or environmental impact report or any other type of environmental review  
14 document to evaluate the Protective Agreement prior to executing it. Here, no environmental  
15 documents were prepared at all, let alone “as early as feasible in the planning process.”

16           55.     Furthermore, Respondent did not make express findings that the Protective  
17 Agreement was exempt from environmental review under CEQA. Indeed, Respondents could not  
18 have made such a finding because the Protective Agreement does not fall within any statutory or  
19 categorical exemption under CEQA. (State CEQA Guidelines, § 15260-15285, 15300-15333.)  
20 In particular, the Protective Agreement is not a judgment subject to an exemption from CEQA.  
21 While State CEQA Guidelines section 15282, subdivision (s) states that “[a]ny action necessary  
22 to bring a general plan or relevant mandatory element of the general plan into compliance  
23 pursuant to a court order as set forth in Section 65759 of the Government Code” is categorically  
24 exempt, the Protective Agreement is not such an action. Furthermore, the City is informed and  
25 believes and on that basis alleges that Respondents did not find the approval of the Protective  
26 Agreement to be exempt from CEQA nor was a Notice of Exemption filed to indicate that the  
27 Protective Agreement is exempt from CEQA. (Pub. Resources Code, §§ 21108, 21152; State  
28 CEQA Guidelines, § 15062.)

1           56.     Therefore, Respondents' failure to conduct any environmental review of the  
2 Protective Agreement under CEQA before approving and executing the Protective Agreement  
3 constituted a prejudicial abuse of discretion because Respondents failed to proceed in a manner  
4 required by law. (Pub. Resources Code, § 21168.5.)

5           **The Protective Agreement is improperly segmented from the larger SR-241 toll road**  
6 **extension project.**

7           57.     The term "project" refers to the whole of an action and to the underlying activity  
8 being approved, not to each governmental approval. (State CEQA Guidelines, § 15378, subds.  
9 (a), (c)-(d). CEQA requires a lead agency to fully analyze each "project" in a single  
10 environmental review document so that "environmental considerations not become submerged by  
11 chopping a large project into many little ones, each with a potential impact on the environment,  
12 which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport*  
13 *Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; State CEQA Guidelines, § 15003, subd.  
14 (h).)

15           58.     Contrary to this clear legal framework, the Protective Agreement in fact "chops  
16 up" the larger toll road extension project into "little" projects, i.e. the Oso Parkway Bridge project  
17 and the Los Patrones Parkway project, which leads to segmented environmental review that  
18 prevents disclosure and analysis of the impacts of the "project" as a whole. (See Term 3 of the  
19 Protective Agreement ["TCA may commence construction of the Oso Parkway Bridge Project"]  
20 and Recital F of the Protective Agreement ["Los Patrones Parkway, which is presently under  
21 construction"].)

22           59.     Furthermore, because the Protective Agreement – like the Settlement Agreement –  
23 prohibits the TCA from funding or constructing a toll road in the Avoidance Area, the Protective  
24 Agreement necessarily forecloses and limits the scope of alternatives, if any, that TCA could  
25 consider when it evaluates the environmental impacts of the project, as a whole. (State CEQA  
26 Guidelines, § 15126.6 [lead agencies must consider and discuss a reasonable range of  
27 alternatives, including alternative locations, for a project].) Identification of reasonable project  
28 alternatives and mitigation measures is at the core of the fundamental policy behind CEQA – that

1 is, to research and evaluate feasible alternatives and mitigation measures that reduce the  
2 significant impacts of a project. (Pub. Resources Code, § 21002; *Citizens of Goleta Valley v.*  
3 *Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The range of alternatives evaluated must be  
4 sufficient to permit informed decision making and public participation. (State CEQA Guidelines,  
5 § 15126.6, subds. (a)-(f); *Bay Area Citizens v. Assn. of Bay Area Gov'ts* (2016) 248 Cal.App.4th  
6 966, 1017.) Here, by cutting the “project” into small incremental pieces (approving the Protective  
7 Agreement without any environmental review at all), Respondent has completely evaded the core  
8 principles of CEQA and its purpose.

9       60. The impacts of the full SR-241 toll road extension project via Los Patrones  
10 Parkway must be analyzed as a whole, so that meaningful and feasible alternatives and mitigation  
11 measures can be identified. Respondent’s approval of the Protective Agreement by itself, without  
12 any environmental review, is an improper attempt to piecemeal Respondents’ plan to extend SR-  
13 241 to the I-5.

14       61. Respondents violated their duties to comply with CEQA and the State CEQA  
15 Guidelines. The inadequacies described above are prejudicial and require approval of the  
16 Protective Agreement to be revoked and full environmental review in compliance with CEQA to  
17 be conducted before proceeding with the Protective Agreement. Respondents’ failure to conduct  
18 any environmental review of the Protective Agreement under CEQA before approving and  
19 executing the Protective Agreement constituted a prejudicial abuse of discretion because  
20 Respondents failed to proceed in a manner required by law. (Pub. Resources Code, § 21168.5.)

## 21   **SECOND CAUSE OF ACTION**

22   **(Petition for Writ of Mandate Pursuant to Code Civ. Proc., §§ 1085 and 1094.5-Violation of**  
23       **the California Environmental Quality Act by Freeway Agreement)**

24   **[As against CalTrans, County, and DOES 1-100]**

25       City incorporates herein by reference each previous paragraph of this Petition as though  
26 set forth here in full.

27       62. “[T]he legislature intended [CEQA] to be interpreted in such manner as to afford  
28 the fullest possible protection to the environment within the reasonable scope of the statutory

1 language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61  
2 Cal.4th 945, 963 [internal punctuation and citation omitted].) When complying with CEQA, a  
3 lead agency must proceed in the manner required by law, and its determinations must be  
4 supported by substantial evidence. (Pub. Resources Code, § 21168.5.) “CEQA requires a public  
5 agency to mitigate or avoid its projects’ significant effects not just on the agency’s own property  
6 but on the environment.” (*City of San Diego, supra*, 61 Cal.4th at 957 [emphasis and internal  
7 quotations omitted].) “CEQA defines the environment as the physical conditions which exist  
8 *within the area which will be affected by a proposed project* and mandates that [e]ach public  
9 agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries  
10 out or approves whenever it is feasible to do so.” (*Id.* at 961 [italics in original, internal quotes  
11 and citations omitted].)

12 63. On or about February 2, 2017, Respondents County and CalTrans entered into a  
13 Freeway Agreement (“Freeway Agreement”) (Freeway Agreement attached hereto as Exhibit  
14 “G”). The Freeway Agreement is a discretionary action undertaken by CalTrans and the County,  
15 both public agencies as defined by CEQA. (Pub. Resources Code, §§ 21062, 21063, 21080, subd.  
16 (a); State CEQA Guidelines §§ 15002, subd. (i) & 15357.) CEQA applies to any “project”  
17 approved by a public agency. (Pub. Resources Code, § 21065.) Respondents knew at the time  
18 they entered into the agreement that the Freeway Agreement had the potential to cause either a  
19 direct, or reasonably foreseeable indirect, physical change in the environment, and as such, is  
20 considered a “project” under CEQA. (Pub. Resources Code, § 21065; State CEQA Guidelines, §  
21 15378.)

22 64. City is informed and believes, and on that basis alleges, that Respondents violated  
23 CEQA in numerous respects, including, but not limited to the following:

24 **Failure to conduct any environmental review of the Freeway Agreement prior to**  
25 **approval.**

26 65. Respondents did not conduct any review of the potential environmental impacts of  
27 the Freeway Agreement or make any of the required findings or determinations required by  
28 CEQA and the State CEQA Guidelines before approving and executing the Freeway Agreement.

1           66. Environmental documents “should be prepared as early as feasible in the planning  
2 process to enable environmental considerations to influence project program and design...”  
3 (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d  
4 376, 395.)

5           67. Because the Freeway Agreement states that CalTrans “authorizes a connection to  
6 an existing State Highway” and “accepts access control of the SR 241/Oso Parkway interchange  
7 connecting to Los Patrones Parkway county road at 0.4 miles south of Oso Parkway” (see  
8 Freeway Agreement, p. 3.), it essentially permits the SR-241 toll road to be extended via this  
9 interchanges to the Los Patrones Parkway without any environmental analysis of the direct,  
10 indirect, and cumulative impacts of such an action. Respondents did not prepare an initial study  
11 or environmental impact report or any other type of environmental review document to evaluate  
12 the Freeway Agreement prior to executing it. Here, no environmental documents were prepared  
13 at all, let alone “as early as feasible in the planning process.”

14           68. Furthermore, Respondents did not make express findings that the Freeway  
15 Agreement was exempt from environmental review under CEQA. Indeed, Respondents could not  
16 have made such a finding because the Freeway Agreement does not fall within any statutory or  
17 categorical exemption under CEQA. (State CEQA Guidelines, § 15260-15285, 15300-15333.)  
18 Furthermore, the City is informed and believes and on that basis alleges that Respondents did not  
19 find the approval of the Freeway Agreement to be exempt from CEQA nor was a Notice of  
20 Exemption filed to indicate that the Freeway Agreement is exempt from CEQA. (Pub. Resources  
21 Code, §§ 21108, 21152; State CEQA Guidelines, § 15062.)

22           69. Therefore, Respondents’ failure to conduct any environmental review of the  
23 Freeway Agreement under CEQA before approving and executing the Freeway Agreement  
24 constituted a prejudicial abuse of discretion because Respondents failed to proceed in a manner  
25 required by law. (Pub. Resources Code, § 21168.5.)

26           **The Freeway Agreement is improperly segmented from the larger SR-241 toll road**  
27 **extension project.**

28           70. The term “project” refers to the whole of an action and to the underlying activity

1 being approved, not to each governmental approval. (State CEQA Guidelines, § 15378, subds.  
2 (a), (c)-(d). CEQA requires a lead agency to fully analyze each “project” in a single  
3 environmental review document so that “environmental considerations not become submerged by  
4 chopping a large project into many little ones, each with a potential impact on the environment,  
5 which cumulatively may have disastrous consequences.” (*Burbank-Glendale-Pasadena Airport*  
6 *Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; State CEQA Guidelines, § 15003, subd.  
7 (h).)

8 71. Contrary to this clear legal framework, the Freeway Agreement in fact “chops up”  
9 the larger toll road extension project into “little” projects, i.e. the interchange connecting SR  
10 241/Oso Parkway to Los Patrones Parkway, which leads to segmented environmental review that  
11 prevents disclosure and analysis of the impacts of the “project” as a whole. (See Freeway  
12 Agreement, p.3.)

13 72. Furthermore, because the Freeway Agreement authorizes the connection between  
14 SR 241 and Los Patrones Parkway, the Freeway Agreement necessarily forecloses and limits the  
15 scope of alternatives, if any, that could be considered when evaluating the environmental impacts  
16 of the project, as a whole. (State CEQA Guidelines, § 15126.6 [lead agencies must consider and  
17 discuss a reasonable range of alternatives, including alternative locations, for a project].)  
18 Identification of reasonable project alternatives and mitigation measures is at the core of the  
19 fundamental policy behind CEQA – that is, to research and evaluate feasible alternatives and  
20 mitigation measures that reduce the significant impacts of a project. (Pub. Resources Code, §  
21 21002; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The range  
22 of alternatives evaluated must be sufficient to permit informed decision making and public  
23 participation. (State CEQA Guidelines, § 15126.6, subds. (a)-(f); *Bay Area Citizens v. Assn. of*  
24 *Bay Area Gov’ts* (2016) 248 Cal.App.4th 966, 1017.) Here, by cutting the “project” into small  
25 incremental pieces (approving the Freeway Agreement without any environmental review at all),  
26 Respondent has completely evaded the core principles of CEQA and its purpose.

27 73. The impacts of the full SR-241 toll road extension project via Los Patrones  
28 Parkway must be analyzed as a whole, so that meaningful and feasible alternatives and mitigation



1 measures can be identified. Respondents' approval of the Freeway Agreement by itself, without  
2 any environmental review, is an improper attempt to piecemeal Respondents' plan to extend SR-  
3 241 to the I-5.

4 74. Respondents violated their duties to comply with CEQA and the State CEQA  
5 Guidelines. The inadequacies described above are prejudicial and require approval of the  
6 Freeway Agreement to be revoked and full environmental review in compliance with CEQA to be  
7 conducted before proceeding with the Freeway Agreement. Respondents' failure to conduct any  
8 environmental review of the Freeway Agreement under CEQA before approving and executing  
9 the Freeway Agreement constituted a prejudicial abuse of discretion because Respondents failed  
10 to proceed in a manner required by law. (Pub. Resources Code, § 21168.5.)

11 **THIRD CAUSE OF ACTION**

12 **(Petition for Writ of Mandate Pursuant to Code Civ. Proc., §§ 1085 and 1094.5-Violation of**  
13 **the California Environmental Quality Act by Cooperative Agreement)**

14 **[As against TCA, County, and DOES 1-100]**

15 75. City incorporates herein by reference each previous paragraph of this Petition as  
16 though set forth here in full.

17 76. “[T]he legislature intended [CEQA] to be interpreted in such manner as to afford  
18 the fullest possible protection to the environment within the reasonable scope of the statutory  
19 language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61  
20 Cal.4th 945, 963 [internal punctuation and citation omitted].) When complying with CEQA, a  
21 lead agency must proceed in the manner required by law, and its determinations must be  
22 supported by substantial evidence. (Pub. Resources Code, § 21168.5.) “CEQA requires a public  
23 agency to mitigate or avoid its projects’ significant effects not just on the agency’s own property  
24 but on the environment.” (*City of San Diego, supra*, 61 Cal.4th at 957 [emphasis and internal  
25 quotations omitted].) “CEQA defines the environment as the physical conditions which exist  
26 *within the area which will be affected by a proposed project* and mandates that [e]ach public  
27 agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries  
28 out or approves whenever it is feasible to do so.” (*Id.* at 961 [italics in original, internal quotes

1 and citations omitted].)

2 77. On or about March 28, 2017, Respondents County and TCA entered into a  
3 Cooperative Agreement (attached hereto as Exhibit “H”) to formally integrate the Oso Bridge  
4 interchange and Los Patrones Parkway into the SR-241 system, subject to the constraints in the  
5 Settlement Agreement that would inevitably have disastrous effect on San Clemente. The  
6 Cooperative Agreement is a discretionary action undertaken by TCA and the County, both public  
7 agencies as defined by CEQA. (Pub. Resources Code, §§ 21062, 21063, 21080, subd. (a); State  
8 CEQA Guidelines §§ 15002, subd. (i) & 15357.) CEQA applies to any “project” approved by a  
9 public agency. (Pub. Resources Code, § 21065.) Respondents knew at the time they entered into  
10 the agreement that the Cooperative Agreement had the potential to cause either a direct, or  
11 reasonably foreseeable indirect, physical change in the environment, and as such, is considered a  
12 “project” under CEQA. (Pub. Resources Code, § 21065; State CEQA Guidelines, § 15378.)

13 78. City is informed and believes, and on that basis alleges, that Respondents violated  
14 CEQA in numerous respects, including, but not limited to the following:

15 **Failure to conduct adequate environmental review of the Cooperative Agreement**  
16 **prior to approval.**

17 79. Respondents did not conduct adequate review of the potential environmental  
18 impacts of the Cooperative Agreement before approving and executing the Cooperative  
19 Agreement. TCA and the County assert that the Cooperative Agreement was an included element  
20 of Ranch Plan Final Program Environmental Impact Report No. 589 (“FEIR 589”), Final  
21 Environmental Impact Report No. 584 (“FEIR 584”), and Addendum IP 15-252 to FEIR 589 and  
22 FEIR 584. (Cooperative Agreement, p. 1.) However, the project description in those document  
23 does not discuss the terms and provisions of the Cooperative Agreement. Specifically, the  
24 integration of the Oso Bridge interchange and Los Patrones Parkway into the SR-241 system,  
25 subject to the constraints in the Settlement Agreement, is not contemplated in the prior  
26 environmental review referenced by Respondents. As such, the Cooperative Agreement  
27 essentially permits the SR-241 toll road to be extended via the Oso Bridge interchange to the Los  
28 Patrones Parkway without any environmental analysis of the greater direct, indirect, and

1 cumulative impacts of such an action.

2 80. Therefore, Respondents' failure to conduct adequate environmental review of the  
3 Cooperative Agreement under CEQA before approving and executing the Cooperative  
4 Agreement constituted a prejudicial abuse of discretion because Respondents failed to proceed in  
5 a manner required by law. (Pub. Resources Code, § 21168.5.)

6 **The Cooperative Agreement is improperly segmented from the larger SR-241 toll**  
7 **road extension project.**

8 81. The term "project" refers to the whole of an action and to the underlying activity  
9 being approved, not to each governmental approval. (State CEQA Guidelines, § 15378, subds.  
10 (a), (c)-(d). CEQA requires a lead agency to fully analyze each "project" in a single  
11 environmental review document so that "environmental considerations not become submerged by  
12 chopping a large project into many little ones, each with a potential impact on the environment,  
13 which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport*  
14 *Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; State CEQA Guidelines, § 15003, subd.  
15 (h).)

16 82. Contrary to this clear legal framework, the Cooperative Agreement in fact "chops  
17 up" the larger toll road extension project into "little" projects, i.e. the interchange connecting SR  
18 241/Oso Parkway to Los Patrones Parkway, which leads to segmented environmental review that  
19 prevents disclosure and analysis of the impacts of the "project" as a whole. (See Cooperative  
20 Agreement, p. 1 ["the 'PROJECT' consists of an overcrossing bridge structure at Oso Parkway  
21 and mainline roadway between the southern terminus of the State Route 241 [] toll road and the  
22 northern terminus of the future Los Patrones Parkway"].)

23 83. Furthermore, the Cooperative Agreement necessarily forecloses and limits the  
24 scope of alternatives, if any, that could be considered when evaluating the environmental impacts  
25 of the project, as a whole. (State CEQA Guidelines, § 15126.6 [lead agencies must consider and  
26 discuss a reasonable range of alternatives, including alternative locations, for a project].)  
27 Identification of reasonable project alternatives and mitigation measures is at the core of the  
28 fundamental policy behind CEQA – that is, to research and evaluate feasible alternatives and

1 mitigation measures that reduce the significant impacts of a project. (Pub. Resources Code, §  
2 21002; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The range  
3 of alternatives evaluated must be sufficient to permit informed decision making and public  
4 participation. (State CEQA Guidelines, § 15126.6, subds. (a)-(f); *Bay Area Citizens v. Assn. of*  
5 *Bay Area Gov'ts* (2016) 248 Cal.App.4th 966, 1017.) Here, by cutting the “project” into small  
6 incremental pieces (approving the Cooperative Agreement without adequate environmental  
7 review), Respondent has completely evaded the core principles of CEQA and its purpose.

8 84. The impacts of the full SR-241 toll road extension project via Los Patrones  
9 Parkway must be analyzed as a whole, so that meaningful and feasible alternatives and mitigation  
10 measures can be identified. Respondents’ approval of the Cooperative Agreement by itself,  
11 without adequate environmental review, is an improper attempt to piecemeal Respondents’ plan  
12 to extend SR-241 to the I-5.

13 85. Respondents violated their duties to comply with CEQA and the State CEQA  
14 Guidelines. The inadequacies described above are prejudicial and require approval of the  
15 Cooperative Agreement to be revoked and full environmental review in compliance with CEQA  
16 to be conducted before proceeding with the Cooperative Agreement. Respondents’ failure to  
17 conduct any environmental review of the Cooperative Agreement under CEQA before approving  
18 and executing the Cooperative Agreement constituted a prejudicial abuse of discretion because  
19 Respondents failed to proceed in a manner required by law. (Pub. Resources Code, § 21168.5.)

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**

#### 22 **(Against the TCA and Does 1-100)**

23 86. City incorporates herein by reference each previous paragraph of this Petition as  
24 though set forth here in full.

25 87. By approving and entering into the Protective Agreement with CalTrans, TCA  
26 engaged in an *ultra vires* act, thereby immediately invalidating the Protective Agreement.

27 88. Public agencies, such as the TCA, may not delegate, surrender or impair the  
28 present or future exercise of their governmental powers or authority. When an agency unlawfully

1 restrains, surrenders, or abnegates its proper governmental authority and function by contract, the  
2 contract is void under the *ultra vires* rule.

3 89. Pursuant to the Protective Agreement, the TCA agreed “not to fund or construct a  
4 road in the Avoidance Area.” (Protective Agreement ¶ 2) Through this act, the agency illegally  
5 impaired, restricted, and/or surrendered its present authority, and that of future TCA Boards,  
6 regarding the construction and/or funding of any SR-241 alignments located within the several  
7 square mile Avoidance Area. The improper impairment, surrender, and abnegation of the TCA  
8 Board’s discretionary authority in perpetuity was made irrespective of any future public process  
9 or environmental review regarding proposed SR-241 alignments. The TCA’s *ultra vires* act  
10 further violated state law by barring longstanding SR-241 alignments behind closed doors,  
11 without any public hearing, process, or deliberation.

12 90. The Protective Agreement is an unlawful and invalid attempt to restrict through  
13 contract the exercise of governmental authority, both presently and in the future. Therefore, the  
14 TCA’s purported execution of the Protective Agreement constituted an invalid, illegal and *ultra*  
15 *vires* act. The City requests that this Court issue a peremptory writ of mandate and/or injunction  
16 setting aside the TCA’s unlawful action.

17 91. Additionally, the Protective Agreement should also be held as an illegal, void and  
18 *ultra vires* agreement because the City is informed and believes and thereon alleges that the TCA  
19 Board did not authorize Mr. Kraman to execute the Protective Agreement on behalf of either the  
20 TCA or TCA Board or to otherwise agree that the TCA would not “fund or construct a road in the  
21 Avoidance Area.”

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

1 **FIFTH CAUSE OF ACTION**

2 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**

3 **(Against CalTrans and Does 1-100)**

4 93. City incorporates herein by reference each previous paragraph of this Petition as  
5 though set forth here in full.

6 94. CalTrans' approval and agreement of the Protective Agreement was illegal, void,  
7 and *ultra vires* because neither the agency nor its local District Director had the authority to enter  
8 into the agreement.

9 95. The California State Legislature establishes the framework for the State Highway  
10 System ("SHS") by specifically describing each route in the Streets and Highways Code. This  
11 description establishes the route corridor and the termini of the route. Streets and Highways Code  
12 section 541 currently describes the State Route 241 route as "Route 5 *south of San Clemente to*  
13 *Route 91 in the City of Anaheim.*" (Emphasis added) While the California Transportation  
14 Commission ("CTC") selects the exact location of the route, the specific alignment must conform  
15 to the route described in the statute. (See Cal. Str. & High. Code § 75 (empowering the CTC to  
16 "[s]elect, adopt, and determine the location of State highways on *routes authorized by law*"  
17 [emphasis added]); see also CalTrans Project Development Procedures Manual Ch. 23, Art. 1.)

18 96. Neither CalTrans, nor its individual District Directors (*i.e.* Ryan Chamberlain),  
19 have been delegated any authority under California law concerning the selection of a specific  
20 location or alignment for any route described in the Streets and Highways Code. Nor has  
21 CalTrans, or any of its individual District Directors, been delegated any authority to rescind state  
22 highway or freeway routes, or the location/alignment of state highways or freeways, for any route  
23 described in the Streets and Highways Code. In short, CalTrans does not have the authority under  
24 state law to take any action designating where a route described in the Streets and Highways  
25 Code may be located or not located.

26 97. However pursuant to the Protective Agreement, Caltrans affirmed, "that in  
27 exercising its authority under state law, it will not approve, permit, take possession of or  
28 otherwise authorize the construction of a major thoroughfare in the Avoidance Area; provided,

1 however, that this prohibition shall not apply to any proposed widening of the existing Interstate 5  
2 facility.” (Protective Agreement, p. 4.)

3 98. Because CalTrans does not have the authority to agree, whether on its behalf or on  
4 the behalf of the California State Transportation Agency, that it will not approve, permit, take  
5 possession of or otherwise authorize the construction of a major thoroughfare in the Avoidance  
6 Area, its approval of the Protective Agreement was an illegal and *ultra vires* act, thus voiding the  
7 Agreement.

8 99. Furthermore, the City is informed and believes that Mr. Chamberlin was not  
9 authorized to agree, on behalf of CalTrans or on behalf of the California State Transportation  
10 Agency, that CalTrans will not approve, permit, take possession of or otherwise authorize the  
11 construction of a major thoroughfare in the Avoidance Area. Therefore the City believes that the  
12 Director’s action amounted to an illegal, void, and *ultra vires* act, thus invalidating the Protective  
13 Agreement.

14 100. Finally, because CalTrans lacks the authority to rescind and/or preclude state  
15 highway and/or freeway routes and/or alignments dually adopted by the State Legislature and/or  
16 CTC, the Protective Agreement is illegal, void, and *ultra vires*.

17 101. Public agencies, such as the CalTrans, may not delegate, surrender or impair the  
18 present or future exercise of their governmental powers or authority. When an agency unlawfully  
19 restrains, surrenders, or abnegates its proper governmental authority and function by contract, the  
20 contract is void under the *ultra vires* rule.

21 102. The Protective Agreement improperly restricts the governmental authority of  
22 CalTrans and/or the California Transportation Commission to designate the appropriate  
23 route/alignment for the State Route 241 following appropriate environmental review, a noticed  
24 public hearing, and an opportunity for public comment and deliberation.

25 103. The City has no plain, speedy, and adequate remedy in the ordinary course of the  
26 law, other than the relief sought in this Petition/Complaint, in that the City has, and had, no  
27 administrative avenue by which to challenge the Protective Agreement. Regardless, any attempts  
28 to administratively challenge the Protective Agreement would have been futile because that

1 agreement was not considered and approved during a noticed public hearing and the City had no  
2 knowledge of the Protective Agreement until after it had already been approved and executed by  
3 the TCA and CalTrans.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation of Porter-Cologne Water Quality Control Act [Water Code, § 13000 *et seq.*])**

6 **[As against TCA, CalTrans, and DOES 1-100]**

7 104. City incorporates herein by reference each previous paragraph of this Petition as  
8 though set forth here in full.

9 105. The Porter-Cologne Water Quality Control Act (Water Code, § 13000 *et seq.*)  
10 (“Porter-Cologne Act”) governs water quality in California. Under the Porter-Cologne Act, the  
11 State Water Resources Control Board and regional water boards are charged with formulating and  
12 adopting plans and polices for water quality control. (Water Code, §§ 13140, 13170, 13240.)

13 106. On November 24, 2014, Rancho Mission Viejo submitted an application to the  
14 California Regional Water Quality Control Board, San Diego Region (“San Diego RWQCB”) for  
15 Water Quality Certification pursuant to section 401 of the Clean Water Act for the proposed “F”  
16 Street from “A” Street to Oso Parkway Project (a.k.a Los Patrones Parkway). (Clean Water Act  
17 Section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of  
18 Dredged and/or Fill Materials, California Regional Water Quality Control Board, San Diego  
19 Region (June 4, 2015) (“401 Certification”).) The 401 Certification was issued June 4, 2015.

20 107. Section II.E of the 401 Certification provides the following as a condition of  
21 issuance:

22 **“Project Conformance with Water Quality Control Plans or Policies.**

23 Notwithstanding any more specific conditions in this Certification, the Project  
24 shall be constructed in a manner consistent with the Basin Plan and any other  
25 applicable water quality control plans or policies adopted or approved pursuant to  
26 the Porter Cologne Water Quality Act (Division 7, commencing with Water Code  
27 Section 13000) or section 303 of the Clean Water Act (33 U.S.C. § 1313).” (401  
28 Certification, p. 7.)



1 108. Section II.F of the 401 Certification provides the following as a condition:  
2 “**Project Modification.** The “Applicant must submit any changes to the Project,  
3 including Project operation, which would have a significant or material effect on  
4 the findings, conclusions, or conditions of this Certification, to the San Diego  
5 Water Board for prior review and written approval. If the San Diego Water Board  
6 is not notified of a significant change to the Project, it will be considered a  
7 violation of this Certification.” (401 Certification, p. 7.)

8 109. The 401 Certification’s Project Description states that:  
9 “‘F’ Street is not the Tesoro Extension of SR-241 that was denied waste discharge  
10 requirements by the San Diego Water Board in 2013 (in the proceedings on  
11 Tentative Order No. R9-2013-0007) or a facility related to the SR-241 and the  
12 Tesoro Extension is not covered by his Certification. ‘F’ Street will be operated  
13 by the County of Orange as a free road.” (401 Certification, p. 2.)

14 110. By intending to convert “F” Street into a toll road, Respondents have violated the  
15 above stated conditions of the 401 Certification because the Project Description no longer applies  
16 to the modified project, and such modification was not submitted to the San Diego RWQCB for  
17 prior review or written approval. Of note, the 401 Certification referenced Rancho Mission  
18 Viejo’s development plans to include a funding mechanism for operation and long –term  
19 monitoring and maintenance, and by deeding the road to CalTrans, the funding of the road’s  
20 operation, monitoring, and maintenance will be subject to a different funding system not  
21 contemplated in the 401 Certification. (401 Certification, p. 3.)

22 111. Accordingly, the prior 401 Certification is inapplicable and Respondents must  
23 apply for a new 401 Certification before constructing the toll road extension via Los Patrones  
24 Parkway.

25  
26 **SEVENTH CAUSE OF ACTION**

27 **(Violation of California Fish and Game Code, § 1602)**

28 **[As against TCA, CalTrans, and DOES 1-100]**

1 112. City incorporates herein by reference each previous paragraph of this Petition as  
2 though set forth here in full.

3 113. The California Department of Fish and Wildlife (“CDFW”) must be notified of  
4 any work that substantially diverts or obstructs the natural flow or substantially changes the bed,  
5 channel, or banks of any river, stream, or lake. (Fish & Game Code, § 1602, subd. (a).) Work  
6 cannot commence until CDFW approves the work and issues a Streambed Alteration Agreement.  
7 (Fish & Game Code, § 1602, subd. (a)(4)(B).)

8 114. By converting “F” Street into a toll road, it is reasonably foreseeable that  
9 Respondents will impact and potentially alter Cañada Chiquita and Cañada Gobernadora, both of  
10 which are tributary to San Juan Creek to the south. (Addendum to the South Orange County  
11 Transportation Infrastructure Improvement Project Final Subsequent Environmental Impact  
12 Report, February 2013, p. 1-4.) As such, a Section 1602 Streambed Alteration Agreement would  
13 be required prior to any construction of the toll road expansion.

14 115. Accordingly, any prior Section 1602 Streambed Alteration Agreement is  
15 inapplicable. Respondents must notify CDFW of their intention to convert “F” Street into a toll  
16 road and apply for a new Section 1602 Streambed Alteration Agreement from CDFW before  
17 commencing construction of the toll road extension via Los Patrones Parkway.

18 **EIGHTH CAUSE OF ACTION**

19 **(Injunction Against Further Pursuit of the Protective Agreement, Freeway Agreement, and**  
20 **Cooperative Agreement [Code Civ. Proc., § 526 *et seq.*])**

21 **[As against TCA, CalTrans, County and DOES 1-100]**

22 116. City incorporates herein by reference each previous paragraph of this Petition as  
23 though set forth here in full.

24 117. Respondents’ (i) failure to conduct environmental review or state a valid basis for  
25 exempting the Protective Agreement and Freeway Agreement from CEQA’s environmental  
26 review requirements, (ii) failure to conduct adequate environmental review for the Cooperative  
27 Agreement, and (iii) improper piecemealing of the CEQA environmental review, constitute the  
28 failure by Respondents to take an action and perform mandatory duties required by CEQA.

1 118. The City therefore prays for a stay, preliminary injunction, and permanent  
2 injunction against Respondents and any of their agents from further pursuing the Protective  
3 Agreement, Freeway Agreement, and Cooperative Agreement and/or commencing work upon the  
4 toll road extension unless and until such time as they comply with their mandatory duties under  
5 CEQA and all other applicable environmental rules, regulations, and procedures.

6 119. The City has no adequate remedy other than that prayed for herein in that the  
7 subject matter is unique and monetary damages would therefore be inadequate to fully  
8 compensate the City for the consequences of Respondents' actions in their continued failure to  
9 comply with CEQA with respect to the Protective Agreement, Freeway Agreement, and  
10 Cooperative Agreement and the toll road extension via Los Patrones Parkway.

11 120. The City therefore seeks, and is entitled to, injunctive relief under Code of Civil  
12 Procedure section 526 *et seq.*, and to a stay, preliminary injunction, and/or permanent injunction.

13 **NINTH CAUSE OF ACTION**

14 **Declaratory Relief (Code of Civil Procedure, §§ 1060-1062)**

15 **(Against TCA, TCA Board, County, Board of Supervisors, CalTrans and Does 1-100)**

16 121. City incorporates herein by reference each previous paragraph of this Petition as  
17 though set forth here in full.

18 122. An actual controversy has arisen and now exists between the City and the  
19 Respondents, in that the City contends, and Respondents dispute, that the Protective Agreement is  
20 illegal, void, and *ultra vires* because the City is informed and believes and thereon alleges that  
21 Mr. Kraman is not, and was not, authorized to execute the Protective Agreement on behalf of  
22 either the TCA or TCA Board or to otherwise agree that the TCA will not "fund or construct a  
23 road in the Avoidance Area."

24 123. Additionally, an actual controversy has arisen and now exists between the City and  
25 the Respondents in that the City contends, and Respondents dispute, that the Protective  
26 Agreement is further illegal, void, and *ultra vires*. CalTrans' approval of the Protective  
27 Agreement was an illegal, void and *ultra vires* act because: (1) CalTrans does not have the  
28 authority to agree, on behalf of itself or anyone else, that it will not approve, permit, take

1 possession of or otherwise authorize the construction of a major thoroughfare in the Avoidance  
2 Area; (2) CalTrans lacks the authority to rescind and/or preclude state highway and/or freeway  
3 routes and/or alignments dually adopted by the State Legislature and/or CTC; and (3) even if  
4 CalTrans did have such authority, the Protective Agreement improperly restricts the authority of  
5 CalTrans and/or the CTC to designate the appropriate route/alignment for SR 241 following  
6 appropriate environmental review, a noticed public hearing, and an opportunity for public  
7 comment and deliberation.

8 124. Furthermore, an actual controversy has arisen and now exists between the City and  
9 Respondents, in that the City contends, and Respondents dispute, that any alignment approved  
10 concerning the southern portion of the Foothill Transportation Corridor segment of SR-241 must  
11 connect to Route 5 south of San Clemente near Basilone Road in San Diego County. The City  
12 contends, and Respondents dispute, that any alignment for the southern portion of the Foothill  
13 Transportation Corridor segment of the SR-241 connecting to Route 5 in the City of San  
14 Clemente does not, and cannot, conform to the route description for SR-241 as set forth in Streets  
15 and Highways Code section 541.

16 125. The Legislature establishes the framework for the State Highway System by  
17 specifically describing each route in the California Streets and Highways Code. This description  
18 establishes the route corridor and the termini of the route. The Streets and Highways Code  
19 section 541 currently describes the SR-241 route as “Route 5 *south of San Clemente* to Route 91  
20 in the City of Anaheim.” (Emphasis added) While the CTC selects the exact location of the  
21 route, the specific alignment must conform to the route described in the statute. (*See Cal. Str. &*  
22 *High. Code, § 75 [empowering the CTC to “[s]elect, adopt, and determine the location of State*  
23 *highways on routes authorized by law” (emphasis added)]; see also CalTrans Project*  
24 *Development Procedures Manual Ch. 23, Art. 1.) The Legislature intended Route 241 to bypass*  
25 *San Clemente and connect to Route 5 in San Diego County, as confirmed by the map employed*  
26 *and relied upon by legislators throughout the legislative history for Streets and Highways Code*  
27 *section 541. (Exhibit “E.”)*

28 126. Additionally, an actual controversy has arisen and now exists between the City and

1 the Respondents in that the City contends, and Respondents dispute, that (1) 401 Certification for  
2 the construction of "F" Street is inapplicable to and does not cover the toll road extension via Los  
3 Patrones Parkway, and (2) Respondents must apply for a new 401 Certification from the San  
4 Diego RWQCB before commencing construction of the toll road extension via Los Patrones  
5 Parkway.

6 127. Additionally, an actual controversy has arisen and now exists between the City and  
7 the Respondents in that the City contends, and Respondents dispute, that (1) any existing Section  
8 1602 Streambed Alteration Agreement that exists for construction of "F" Street is inapplicable to  
9 and does not cover the toll road extension via Los Patrones Parkway, and (2) Respondents must  
10 apply for a new Section 1602 Streambed Alteration Agreement from CDFW before commencing  
11 construction of the toll road extension via Los Patrones Parkway.

12 128. The City seeks a declaration of the rights and duties of the respective parties  
13 regarding the actual and existing controversies described in paragraphs 121 through 127 above.

14 129. A judicial determination of the rights and obligations of the parties hereto is  
15 necessary and appropriate so that the parties may ascertain those rights and act accordingly.

16 **PRAYER**

17 WHEREFORE, Petitioner and Plaintiff prays for entry of judgment as follows:

18 **ON THE FIRST CAUSE OF ACTION**

19 1. For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
20 1094.5 directing Respondents as follows:

21 a. To cease, vacate, and set aside all actions related to the authorization,  
22 approval, and execution of the Protective Agreement.

23 b. To prepare, circulate, and consider adequate environmental review for the  
24 Protective Agreement in order to meet the requirements of CEQA and the State CEQA  
25 Guidelines.

26 c. To prohibit any action by Respondents in furtherance of the Protective  
27 Agreement until Respondents comply with the mandates of CEQA.

28 **ON THE SECOND CAUSE OF ACTION**

1           1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
2 1094.5 directing Respondents as follows:

3           a.       To cease, vacate, and set aside all actions related to the authorization,  
4 approval, and execution of the Freeway Agreement.

5           b.       To prepare, circulate, and consider adequate environmental review for the  
6 Freeway Agreement in order to meet the requirements of CEQA and the State CEQA Guidelines.

7           c.       To prohibit any action by Respondents in furtherance of the Freeway  
8 Agreement until Respondents comply with the mandates of CEQA.

9   **ON THE THIRD CAUSE OF ACTION**

10          1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
11 1094.5 directing Respondents as follows:

12          a.       To cease, vacate, and set aside all actions related to the authorization,  
13 approval, and execution of the Cooperative Agreement.

14          b.       To prepare, circulate, and consider adequate environmental review for the  
15 Freeway Agreement in order to meet the requirements of CEQA and the State CEQA Guidelines.

16          c.       To prohibit any action by Respondents in furtherance of the Cooperative  
17 Agreement until Respondents comply with the mandates of CEQA.

18   **ON THE FOURTH CAUSE OF ACTION**

19          1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
20 1094.5 declaring the Protective Agreement void and commanding the TCA and TCA Board to set  
21 aside the approval of the Protective Agreement, as well as any and all agreements entered, and  
22 actions taken, pursuant thereto.

23   **ON THE FIFTH CAUSE OF ACTION**

24          1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
25 1094.5 declaring the Protective Agreement void and commanding CalTrans to set aside the  
26 approval of the Protective Agreement, as well as any and all agreements entered, and actions  
27 taken, pursuant thereto.

28   **ON THE SIXTH CAUSE OF ACTION**

1 1. That this Court declare that 401 Certification for the construction of “F” Street is  
2 inapplicable to and does not cover the toll road extension via Los Patrones Parkway.

3 2. That this Court declare that Respondents must apply for a new 401 Certification  
4 from the San Diego RWQCB before commencing construction of the toll road extension via Los  
5 Patrones Parkway.

6 **ON THE SEVENTH CAUSE OF ACTION**

7 1. That this Court declare any existing Section 1602 Streambed Alteration  
8 Agreement that exists for construction of “F” Street is inapplicable to and does not cover the toll  
9 road extension via Los Patrones Parkway.

10 2. That this Court declare that Respondents must apply for a new agreement from  
11 CDFW before commencing construction of the toll road extension via Los Patrones Parkway.

12 **ON THE EIGHTH CAUSE OF ACTION**

13 1. For a stay, preliminary injunction, and permanent injunction prohibiting any  
14 actions by Respondents regarding Respondents’ approval, authorization, or execution of the  
15 Protective Agreement and Freeway Agreement until Respondents and Real Parties fully comply  
16 with all requirements of CEQA and all other applicable state and local laws, policies, ordinances,  
17 and regulations.

18 **ON THE NINTH CAUSE OF ACTION**

19 1. For a declaration of the rights and duties of the respective parties as requested  
20 herein above.

21 **ON ALL CAUSES OF ACTION**


22 1. For an award of attorneys’ fees incurred in this matter as permitted or required by  
23 law. (Code Civ. Proc., § 1021.5).

24 2. For City’s costs of suit incurred herein.

25 3. For such other and further relief as the Court deems just and proper.

1 Dated: July 28, 2017

BEST BEST & KRIEGER LLP



By: \_\_\_\_\_  
SCOTT C. SMITH  
JEFFREY V. DUNN  
MICHELLE OUELLETTE  
ARMEEN KOMEILI

Attorneys for Petitioner and Plaintiff  
City of San Clemente

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9 **(PETITION AND COMPLAINT DEEMED VERIFIED PURSUANT TO CODE OF CIV.  
PROC., § 446)**

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**EXHIBIT "A"**  
**NOTICE OF COMMENCEMENT OF CEQA ACTION**



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Indian Wells  
(760) 568-2611  
Los Angeles  
(213) 617-8100  
Ontario  
(909) 989-8584  
Riverside  
(951) 686-1450

18101 Von Karman Avenue, Suite 1000, Irvine, CA 92612  
Phone: (949) 263-2600 | Fax: (949) 260-0972 | www.bbklaw.com

Sacramento  
(916) 325-4000  
San Diego  
(619) 525-1300  
Walnut Creek  
(925) 977-3300  
Washington, DC  
(202) 785-0800

**Alisha M. Winterswyk**  
(949) 263-6565  
alisha.winterswyk@bbklaw.com  
File No. 55452.02602

July 27, 2017

**VIA U.S. MAIL**

Ryan Chamberlain  
District Director  
Department of Transportation  
District 12  
1750 East Fourth Street, Ste. 100  
Santa Ana, CA 92705

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

Martha M. Ochoa  
Clerk of the Board of Directors  
Transportation Corridor Agencies  
125 Pacifica, Suite 100  
Irvine, CA 92618

Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange  
333 West Santa Ana Blvd., Room 465  
P.O. Box 687  
Santa Ana, CA 92702-0687

Frank Kim  
County Executive Officer  
County of Orange  
Hall of Administration  
333 W. Santa Ana Blvd.  
Santa Ana, CA 92701

Re: NOTICE OF COMMENCEMENT OF CEQA ACTION: Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources (Mar. 2017); Freeway Agreement (Feb. 2, 2017)

Dear Mr. Chamberlain, Mr. Kraman, Ms. Ochoa, Ms. Stieler, and Mr Kim:

PLEASE TAKE NOTICE that, under Public Resources Code section 21167.5, Petitioner/Plaintiff City of San Clemente intends to file a petition for writ of mandate under the provisions of the California Environmental Quality Act against the Foothill/Eastern Transportation Corridor Agency ("TCA"), the Board of Directors for the Foothill/Eastern



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Ryan Chamberlain  
Michael A. Kraman  
Martha M. Ochoa  
Robin Stieler  
Frank Kim  
July 27, 2017  
Page 2

Transportation Corridor Agency (“TCA Board”), the County of Orange (“County”), the Board of Supervisors for the County of Orange (“Board of Supervisors”), and the State of California Department of Transportation (“CalTrans”). The lawsuit will challenge and seek an order to set aside the decisions to approve 1) the Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources among TCA, CalTrans, the Save San Onofre Coalition, and the California Natural Resources Agency, entered into on or about March 10, 2017, and 2) the Freeway Agreement between CalTrans and the County of Orange, entered into on or about February 2, 2017.

Sincerely,

A handwritten signature in blue ink that reads 'Alisha M. Winterswyk'.

Alisha M. Winterswyk  
of BEST BEST & KRIEGER LLP

cc: Scott Smith, City Attorney, City of San Clemente

**EXHIBIT "B"**  
**SECOND NOTICE OF COMMENCEMENT OF CEQA ACTION**

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**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Indian Wells  
(760) 568-2611  
Los Angeles  
(213) 617-8100  
Ontario  
(909) 989-8584  
Riverside  
(951) 686-1450

18101 Von Karman Avenue, Suite 1000, Irvine, CA 92612  
Phone: (949) 263-2600 | Fax: (949) 260-0972 | www.bbklaw.com

Sacramento  
(916) 325-4000  
San Diego  
(619) 525-1300  
Walnut Creek  
(925) 977-3300  
Washington, DC  
(202) 785-0600

**Alisha M. Winterswyk**  
(949) 263-6565  
alisha.winterswyk@bbklaw.com  
File No. 55452.02602

July 28, 2017

**VIA U.S. MAIL**

Ryan Chamberlain  
District Director  
Department of Transportation  
District 12  
1750 East Fourth Street, Ste. 100  
Santa Ana, CA 92705

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

Martha M. Ochoa  
Clerk of the Board of Directors  
Transportation Corridor Agencies  
125 Pacifica, Suite 100  
Irvine, CA 92618

Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange  
333 West Santa Ana Blvd., Room 465  
P.O. Box 687  
Santa Ana, CA 92702-0687

Frank Kim  
County Executive Officer  
County of Orange  
Hall of Administration  
333 W. Santa Ana Blvd.  
Santa Ana, CA 92701

Malcolm Dougherty  
CalTrans Director  
California Department of Transportation  
1120 N. Street  
Sacramento, CA 95814

Re: SECOND NOTICE OF COMMENCEMENT OF CEQA ACTION:  
Cooperative Agreement between TCA and the County of Orange (March  
28, 2017)

Dear Mr. Chamberlain, Mr. Kraman, Ms. Ochoa, Ms. Stieler, and Mr Kim:

PLEASE TAKE NOTICE that, under Public Resources Code section 21167.5, Petitioner/Plaintiff City of San Clemente intends to file a petition for writ of mandate under the provisions of the California Environmental Quality Act against the Foothill/Eastern Transportation Corridor Agency ("TCA"), the Board of Directors for the Foothill/Eastern Transportation Corridor Agency ("TCA Board"), the County of Orange ("County"), the Board of



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Ryan Chamberlain  
Michael A. Kraman  
Martha M. Ochoa  
Robin Stieler  
Frank Kim  
July 28, 2017  
Page 2

Supervisors for the County of Orange (“Board of Supervisors”), the State of California Department of Transportation (“CalTrans”), and Malcom Dougherty, acting in his official capacity as the CalTrans Director. In addition to challenging and seeking an order to set aside the decisions to approve 1) the Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive Environmental, Cultural and Recreational Resources among TCA, CalTrans, the Save San Onofre Coalition, and the California Natural Resources Agency, entered into on or about March 10, 2017, and 2) the Freeway Agreement between CalTrans and the County, entered into on or about February 2, 2017, as stated in the Notice of Commencement of CEQA Action send on July 27, 2017, the lawsuit also will challenge and seek an order to set aside the decisions to approve 3) the Cooperative Agreement between TCA and the County entered into on or about March 28, 2017.

Sincerely,

A handwritten signature in blue ink that reads 'Alisha Winterswyk'.

Alisha M. Winterswyk  
of BEST BEST & KRIEGER LLP

cc: Scott Smith, City Attorney, City of San Clemente

**EXHIBIT "C"**  
**NOTICE TO ATTORNEY GENERAL OF CEQA ACTION**

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1 SCOTT C. SMITH, Bar No. 120736  
scott.smith@bbklaw.com  
2 JEFFREY V. DUNN, Bar No. 131926  
jeffrey.dunn@bbklaw.com  
3 MICHELLE OUELLETTE, Bar No. 145191  
michelle.ouellette@bbklaw.com  
4 ARMEEN KOMEILI, Bar No. 299202  
armeen.komeili@bbklaw.com

5 BEST BEST & KRIEGER LLP  
6 18101 Von Karman Avenue, Suite 1000  
Irvine, California 92612  
7 Telephone: (949) 263-2600  
8 Facsimile: (949) 260-0972

9 Attorneys for Petitioner and Plaintiff  
City of San Clemente

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE § 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ORANGE

12 CITY OF SAN CLEMENTE, a California  
13 municipal corporation,

14 Petitioner and Plaintiff,

15 v.

16 FOOTHILL/EASTERN  
17 TRANSPORTATION CORRIDOR  
AGENCY, a Joint Powers Agency;  
18 BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN  
19 TRANSPORTATION CORRIDOR  
AGENCY;  
20 COUNTY OF ORANGE, a political  
subdivision of the State of California;  
21 BOARD OF SUPERVISORS OF THE  
COUNTY OF ORANGE;  
22 STATE OF CALIFORNIA  
DEPARTMENT OF  
23 TRANSPORTATION, a state agency;  
MALCOLM DOUGHERTY, acting in his  
24 official capacity as Director of the  
California Department of Transportation,  
and DOES 1 through 100, inclusive,

25 Respondents and  
26 Defendants.

27 SAVE SAN ONOFRE COALITION;  
28 NATIONAL AUDUBON SOCIETY dba  
AUDUBON CALIFORNIA;

Case No.

**NOTICE TO ATTORNEY GENERAL  
OF CEQA ACTION**

Assigned for All Purposes to the Honorable  
Judge:

Complaint filed: July 28, 2017

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1 CALIFORNIA COASTAL PROTECTION  
2 NETWORK;  
3 CALIFORNIA STATE PARKS  
4 FOUNDATION;  
5 DEFENDERS OF WILDLIFE;  
6 ENDANGERED HABITATS LEAGUE;  
7 LAGUNA GREENBELT, INC.;  
8 NATURAL RESOURCES DEFENSE  
9 COUNCIL, INC.;  
10 ORANGE COUNTY COASTKEEPER;  
11 SEA AND SAGE AUDUBON SOCIETY;  
12 SIERRA CLUB;  
13 SURFRIDER FOUNDATION;  
14 WILDCOAST-COSTASALVAJE;  
15 PEOPLE OF THE STATE OF  
16 CALIFORNIA ex rel. XAVIER  
17 BECERRA, ATTORNEY GENERAL;  
18 NATIVE AMERICAN HERITAGE  
19 COMMISSION;  
20 CALIFORNIA NATURAL RESOURCES  
21 AGENCY,  
22 CALIFORNIA STATE PARK AND  
23 RECREATION COMMISSION, and  
24 ROES 1 through 50, inclusive,

Real-Parties-In-Interest.

1 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

2 PLEASE TAKE NOTICE that, pursuant to Public Resources Code section 21167.7 and  
3 Code of Civil Procedure Section 388, on July 28, 2017, Petitioner and Plaintiff City of San  
4 Clemente filed a Verified Petition for Peremptory Writ of Mandate; Complaint for Declaratory  
5 and Injunctive Relief ("Petition") against Respondents, Foothill/Eastern Transportation Corridor  
6 Agency, Board of Directors of the Foothill/Eastern Transportation Corridor Agency ("TCA"),  
7 County of Orange ("County"), Board of Supervisors of the County of Orange, the State of  
8 California Department of Transportation ("CalTrans"), and Malcolm Dougherty acting in his  
9 official capacity as CalTrans Director in the Superior Court of the State of California, County of  
10 Orange.

11 The Petition alleges that the Respondents violated the California Environmental Quality  
12 Act ("CEQA") (Public Resources Code sections 21000 *et seq.*), and other laws by their decisions  
13 to approve, among other things: 1) the Agreement to Address Traffic Congestion in South Orange  
14 County and Protect Sensitive Environmental, Cultural and Recreational Resources among TCA,  
15 CalTrans, the Save San Onofre Coalition, and the California Natural Resources Agency, entered  
16 into on or about March 10, 2017, 2) the Freeway Agreement between CalTrans and the County of  
17 Orange, entered into on or about February 2, 2017, and 3) the Cooperative Agreement between  
18 TCA and the County, entered into on or about March 28, 2017.

19 A copy of the Petition is attached to this Notice as "Exhibit A."

20  
21 Dated: July 28, 2017

BEST BEST & KRIEGER LLP

22  
23 By: 

24 SCOTT C. SMITH  
25 JEFFREY V. DUNN  
26 MICHELLE OUELLETTE  
27 ARMEEN KOMEILI

28 Attorneys for Petitioner and Plaintiff  
City of San Clemente

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**EXHIBIT "A"**

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

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1 SCOTT C. SMITH, Bar No. 120736  
scott.smith@bbklaw.com  
2 JEFFREY V. DUNN, Bar No. 131926  
jeffrey.dunn@bbklaw.com  
3 MICHELLE OUELLETTE, Bar No. 145191  
michelle.ouellette@bbklaw.com  
4 ARMEEN KOMEILI, Bar No. 299202  
armeen.komeili@bbklaw.com

**DEEMED VERIFIED PURSUANT  
TO CODE OF CIVIL  
PROCEDURE SECTION 446**

5 BEST BEST & KRIEGER LLP  
6 18101 Von Karman Avenue, Suite 1000  
Irvine, California 92612  
7 Telephone: (949) 263-2600  
8 Facsimile: (949) 260-0972

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE § 6103**

9 Attorneys for Petitioner and Plaintiff  
City of San Clemente

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ORANGE

12  
13 CITY OF SAN CLEMENTE, a California  
municipal corporation

Case No.

14 Petitioner and Plaintiff,

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

15 v.

**[California Environmental Quality Act;  
Code of Civ. Proc. §§ 1060, 1085, and 1094.5;  
Pub. Res. Code §§ 21168 and 21168.5]**

16 FOOTHILL/EASTERN  
17 TRANSPORTATION CORRIDOR  
AGENCY, a Joint Powers Agency;  
18 BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN  
19 TRANSPORTATION CORRIDOR  
AGENCY;  
20 COUNTY OF ORANGE, a political  
subdivision of the State of California;  
21 BOARD OF SUPERVISORS OF THE  
COUNTY OF ORANGE;  
22 STATE OF CALIFORNIA  
DEPARTMENT OF  
23 TRANSPORTATION, a state agency;  
MALCOLM DOUGHERTY, acting in his  
24 official capacity as Director of the  
California Department of Transportation,  
25 and DOES 1 through 100, inclusive,

26 Respondents and  
27 Defendants.

1 SAVE SAN ONOFRE COALITION;  
2 NATIONAL AUDUBON SOCIETY dba  
3 AUDUBON CALIFORNIA;  
4 CALIFORNIA COASTAL PROTECTION  
5 NETWORK;  
6 CALIFORNIA STATE PARKS  
7 FOUNDATION;  
8 DEFENDERS OF WILDLIFE;  
9 ENDANGERED HABITATS LEAGUE;  
10 LAGUNA GREENBELT, INC.;  
11 NATURAL RESOURCES DEFENSE  
12 COUNCIL, INC.;  
13 ORANGE COUNTY COASTKEEPER;  
14 SEA AND SAGE AUDUBON SOCIETY;  
15 SIERRA CLUB;  
16 SURFRIDER FOUNDATION;  
17 WILDCOAST-COSTASALVAJE;  
18 PEOPLE OF THE STATE OF  
19 CALIFORNIA ex rel. XAVIER  
20 BECERRA, ATTORNEY GENERAL;  
21 NATIVE AMERICAN HERITAGE  
22 COMMISSION;  
23 CALIFORNIA NATURAL RESOURCES  
24 AGENCY,  
25 CALIFORNIA STATE PARK AND  
26 RECREATION COMMISSION, and  
27 ROES 1 through 50, inclusive,  
28

Real-Parties-In-Interest.

1 Petitioner and Plaintiff, the City of San Clemente (the "City") brings this Verified Petition  
2 for Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition")  
3 against Respondents and Defendants Foothill/Eastern Transportation Corridor Agency ("TCA"),  
4 the Board of Directors for the Foothill/Eastern Transportation Corridor Agency ("TCA Board"),  
5 the County of Orange ("County"), the Board of Supervisors for the County of Orange ("Board of  
6 Supervisors"), the California Department of Transportation ("CalTrans"), and Malcolm  
7 Dougherty, acting in his official capacity as Director of the California Department of  
8 Transportation and alleges as follows:

9 **THE PARTIES**

10 1. Petitioner and Plaintiff City of San Clemente is a municipal corporation organized  
11 pursuant to California law and the California Constitution.

12 2. Upon information and belief, Respondent and Defendant TCA is a joint powers  
13 authority operating in Orange County, California with its principal office located in the City of  
14 Irvine. TCA is formed under the authority of the Joint Exercise of Powers Act, Government  
15 Code section 6500 *et seq.*, and exists pursuant to a Joint Exercise of Powers Agreement (as  
16 amended) by and among its members. Members of the TCA include the County of Orange, and  
17 the Cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa  
18 Margarita, San Clemente, San Juan Capistrano, Santa Ana, Tustin, and Yorba Linda. The TCA is  
19 a party to the Protective Agreement and Cooperative Agreement (as described below), which are  
20 subjects of this action.

21 3. Upon information and belief, Respondent and Defendant TCA Board is the  
22 governing body of the TCA and is responsible for planning, approving, and implementing toll  
23 road projects within TCA's jurisdictional authority. The TCA Board is obligated to comply with  
24 all state and federal law in governing the TCA and in conducting fair and open public hearings  
25 concerning projects and contracts within the TCA's authority. The TCA Board is comprised of  
26 representatives of the County of Orange and of twelve cities within the County of Orange. TCA's  
27 Executive Officer is Michael Kraman, who executed the Protective Agreement which is the  
28 subject of this action. The TCA Board and its members are sued in their official capacities only.

1           4.       Upon information and belief, Respondent and Defendant County is now, and at all  
2 times material to this action has been, a subdivision of the State of California and a charter county  
3 organized and existing under the laws of the State of California. The County is a party to the  
4 Freeway Agreement (as described below) and Cooperative Agreement, which are subjects of this  
5 action.

6           5.       Upon information and belief, Respondent and Defendant County of Orange Board  
7 of Supervisors is the legislative body and highest administrative body of the County. The Board  
8 of Supervisors are sued in their official capacities only. The Board of Supervisors is a party to the  
9 Freeway Agreement (as described below), which is a subject of this action.

10          6.       Upon information and belief, Respondent and Defendant California Department of  
11 Transportation (“CalTrans”) is an agency of the State of California responsible for maintaining  
12 and operating California's state highway system. To accomplish this objective, CalTrans is  
13 subdivided into twelve (12) different operational units called “Districts” that together form the  
14 geographic whole of California. Each District has jurisdictional responsibilities related to a  
15 county or group of counties and is led by a District Director. District 12 encompasses the entirety  
16 of Orange County. CalTrans’s District 12 Director is Ryan Chamberlain, who executed the  
17 Protective Agreement and Freeway Agreement (as defined below), which are the subject of this  
18 action. Mr. Chamberlain also serves as an *ex officio* member of the TCA Board.

19          7.       Upon information and belief, Respondent and Defendant Malcolm Dougherty is  
20 the Director of the California Department of Transportation. Mr. Dougherty is sued in his official  
21 capacity only. Caltrans is a party to the Protective Agreement and Freeway Agreement, which  
22 are the subject of this action.

23          8.       Upon information and belief, Real Party in Interest Save San Onofre Coalition  
24 (“SSOC”) consists of the National Audubon Society dba Audubon California, California Coastal  
25 Protection Network, California State Parks Foundation, Defenders Of Wildlife, Endangered  
26 Habitats League, Laguna Greenbelt, Inc., Natural Resources Defense Council, Inc., Orange  
27 County Coastkeeper, Sea And Sage Audubon Society, Sierra Club, Surfrider Foundation, and  
28 WILD Coast-COSTASALVAJE. SSOC is a party to the Protective Agreement, which is a

1 subject of this action.

2 9. Upon information and belief, Real Party in Interest National Audubon Society  
3 (“NAS”) is a New York corporation and doing business in California under the name “Audubon  
4 California.” NAS is a member of SSOC and a party to the Protective Agreement, which is a  
5 subject of this action.

6 10. Upon information and belief, Real Party in Interest California Coastal Protection  
7 Network (“CCPN”) is a California public benefit corporation with its principal place of business  
8 located in Santa Barbara, California. CCPN is a member of the SSOC and a party to the  
9 Protective Agreement, which is a subject of this action.

10 11. Upon information and belief, Real Party in Interest California State Parks  
11 Foundation (“CSPF”) is a California non-profit organization with its principal place of business  
12 located in San Francisco, California. CSPF is a member of the SSOC and a party to the  
13 Protective Agreement, which is a subject of this action.

14 12. Upon information and belief, Real Party in Interest Defenders of Wildlife is a non-  
15 profit organization with its principal place of business located in Washington, D.C. Defenders of  
16 Wildlife is a member of the SSOC and a party to the Protective Agreement, which is a subject of  
17 this action.

18 13. Upon information and belief, Real Party in Interest Endangered Habitats League  
19 (“EHL”) is a California non-profit organization with its principal place of business located in Los  
20 Angeles, California. EHL is a member of the SSOC and a party to the Protective Agreement,  
21 which is a subject of this action.

22 14. Upon information and belief, Real Party in Interest Laguna Greenbelt, Inc. is a  
23 California non-profit organization located in Laguna Beach, California. Laguna Greenbelt is a  
24 member of the SSOC and a party to the Protective Agreement, which is a subject of this action.

25 15. Upon information and belief, Real Party in Interest Natural Resources Defense  
26 Council, Inc. (“NRDC”) is a New York non-profit organization with an office located in Santa  
27 Monica, California. NRDC is a member of the SSOC and a party to the Protective Agreement,  
28 which is a subject of this action.



1           16.     Upon information and belief, Real Party in Interest Orange County Coastkeeper is  
2 a California non-profit organization located in Costa Mesa, California. Orange County  
3 Coastkeeper is a member of the SSOC and a party to the Protective Agreement, which is a subject  
4 of this action.

5           17.     Upon information and belief, Real Party in Interest Sea and Sage Audubon Society  
6 is a California non-profit located in Irvine, California. Sea and Sage Audubon Society is a  
7 member of the SSOC and a party to the Protective Agreement, which is a subject of this action.

8           18.     Upon information and belief, Real Party in Interest Sierra Club is a California non-  
9 profit corporation with its headquarters located in Oakland, California. The Sierra Club is a  
10 member of the SSOC and a party to the Protective Agreement, which is a subject of this action.

11           19.     Upon information and belief, Real Party in Interest Surfrider Foundation  
12 (“Surfrider”) is a California non-profit organization with an office located in San Clemente,  
13 California. Surfrider is a member of the SSOC and a party to the Protective Agreement, which is  
14 a subject of this action.

15           20.     Upon information and belief, Real Party in Interest WiLDCOAST-  
16 COSTASALVAJE (“WiLDCOAST”) is a California non-profit organization with an office  
17 located in Imperial Beach, California. WiLDCOAST is a member of the SSOC and a party to the  
18 Protective Agreement, which is a subject of this action.

19           21.     Upon information and belief, Real Party in Interest People of the State of  
20 California ex rel. Xavier Becerra, Attorney General is a representative of the people of the State  
21 of California and a party to the Settlement Agreement, which is addressed in the Protective  
22 Agreement, which is a subject of this action.

23           22.     Upon information and belief, Real Party in Interest Native American Heritage  
24 Commission (“NAHC”) is a public agency of the State of California (constituted pursuant to  
25 Public Resources Code sections 5097.91 and 5097.92) and a party to the Settlement Agreement,  
26 which is addressed in the Protective Agreement, which is a subject of this action.

27           23.     Upon information and belief, Real Party in Interest California National Resources  
28 Agency (“CNRA”) is a public agency of the State of California and a party to the Protective

1 Agreement which is the subject of this action. CNRA's Secretary, John Laird, executed the  
2 Protective Agreement on the CNRA's behalf.

3 24. Upon information and belief, Real Party in Interest California State Park and  
4 Recreation Commission ("CSPRC") is a public agency of the State of California and a party to  
5 the Settlement Agreement, which is addressed in the Protective Agreement, which is a subject of  
6 this action.

7 25. The City does not know the true names and capacities, whether individual,  
8 corporate, associate, or otherwise, of Respondents and Defendants DOES 1 through 100,  
9 inclusive, and therefore sues said Respondents and Defendants under fictitious names. Each of  
10 the Respondents and Defendants is the agent and/or employee of Respondents TCA, TCA Board,  
11 County, Board of Supervisors, and/or CalTrans, and each performed acts on which this action is  
12 based within the course and scope of such party's agency and/or employment. Additionally, the  
13 City does not know the true names and capacities, whether individual, corporate, associate, or  
14 otherwise, of Real Parties in Interest ROES 11 through 50, inclusive, and therefore sue said Real  
15 Parties in Interest under fictitious names. The City will amend this Petition to show the true  
16 names and capacities when the same have been ascertained.

### 17 VENUE AND JURISDICTION

18 26. This Court has subject matter jurisdiction pursuant to Public Resources Code  
19 sections 21167(a), 21168, and 21168.5, and Code of Civil Procedure sections 1060 *et seq.*, 1085,  
20 and 1094.5.

21 27. This Court has personal jurisdiction over each party in this action because each of  
22 them is either incorporated in and/or qualified to do business in the State of California and the  
23 County of Orange. Furthermore each party, by executing the Settlement Agreement and/or  
24 Protective Agreement described herein, has consented to the jurisdiction of this Court.

25 28. Venue is proper in this Court pursuant to Code of Civil Procedure section 395(a)  
26 as the acts and omissions complained of herein occurred, and the Property affected by those acts  
27 is located, in Orange County. Additionally, the Settlement Agreement and Protective Agreement  
28 were executed and performed, in whole or in part, in Orange County. Venue is further proper in

1 this Court under Code of Civil Procedure section 394 subdivision (a) because the TCA and TCA  
2 Board are located within the County of Orange.

3 **OTHER JURISDICTIONAL PREREQUISITES**

4 29. The City has complied with Public Resources Code section 21167.5 by providing  
5 Respondents notice of the City's intent to commence this action. The notices are attached hereto  
6 as Exhibits "A" and "B."

7 30. In accordance with Public Resources Code section 21167.7, the City has  
8 concurrently provided a copy of this Petition to the California Attorney General. The notice is  
9 attached hereto as Exhibit "C."

10 31. In accordance with Public Resources Code section 21167.6, subdivision (a), the  
11 City has concurrently filed a notice of request for Respondent TCA to prepare the administrative  
12 record. The notice is attached hereto as Exhibit "D."

13 32. This lawsuit has been commenced within the time limits imposed for this action  
14 under Code of Civil Procedure sections 1085 and/or 1094.5, and Public Resources Code section  
15 21167.

16 33. Because the Protective Agreement and Freeway Agreement were approved  
17 without legally-required notice, and outside of any formal public meeting context, there was no  
18 administrative process available to the City to challenge the Protective Agreement or Freeway  
19 Agreement. Respondents' approval of the Protective Agreement and Freeway Agreement were  
20 final determinations and the public was foreclosed from participating in those decisions. The City  
21 has no plain, speedy, and/or adequate remedy at law, other than the relief sought in this Petition.

22 **GENERAL FACTS AND ALLEGATIONS**

23 34. TCA is a joint powers agency created in 1986 pursuant to Article 1, Chapter 5,  
24 Division 7, of Title 1 of the Government Code (the "JPA Act"). The JPA Act authorizes public  
25 agencies to jointly exercise powers they hold in common. (Gov. Code, § 6502.) The central  
26 purpose of TCA is to "plan for, acquire, and construct environmentally-sensitive thoroughfares  
27 and bridges . . ." (Section 2.2b of the 1986 Joint Exercise of Powers Agreement Creating the  
28 Foothill/Eastern Transportation Corridor Agency [hereinafter, the "JPA Agreement"] and Section

1 2.2(b) of the First Amended and Restated Joint Exercise of Powers Agreement Creating the  
2 Foothill/Eastern Transportation Corridor Agency).

3 35. The Foothill Transportation Corridor was added to the Orange County Master Plan  
4 of Arterial Highways (“MPAH”) by the Board of Supervisors in August 1981 following the  
5 certification of Environmental Impact Report 123. Environmental Impact Report 423 was  
6 certified for the Foothill Transportation Corridor in May 1983. The Foothill Transportation  
7 Corridor was originally intended to use state and federal transportation funds and designated as a  
8 non-tolled highway. Following the decrease of available state and federal transportation funding,  
9 the TCA was charged with funding and constructing the Foothill Transportation Corridor as a toll  
10 road and added to the State Highway System. To effectuate this agreement, the TCA and  
11 CalTrans executed various cooperation and non-compete agreements.

12 36. The Legislature establishes the framework for the State Highway System by  
13 describing each route by statute in the Streets and Highways Code. Neither the TCA nor  
14 CalTrans has the authority to establish a state highway system.

15 37. Petitioner City of San Clemente is a member agency and signatory to the JPA.  
16 Pursuant to the JPA Agreement, TCA set out to construct the sixteen-mile remainder of the  
17 Foothill South Toll Road in the route designated as “SR-241,” following a pathway from the  
18 current terminus of the freeway at Oso Parkway, skirting the southeastern urbanized area of  
19 Orange County, then connecting to Interstate 5 (“I-5”) in the vicinity of Basilone Road. In 1988,  
20 the Legislature enacted Streets and Highways Code Section 541 officially designating this  
21 corridor, which was to extend “near the cities of Tustin and Irvine to Route 5 *south of San*  
22 *Clemente.*” (Streets and Highways Code, § 541 [emphasis added].) Accordingly, the Legislature  
23 intended SR-241 to bypass San Clemente and connect to I-5 in San Diego County, as confirmed  
24 by the map employed and relied upon by legislators throughout the legislative history for Streets  
25 and Highways Code section 541. (Map attached hereto and incorporated herein as Exhibit “E”).

26 38. The 1988 legislation creating this route came with an important caveat: “[No]  
27 State funds would be used for planning and project development or for construction of Route  
28 241.” (1988 Cal Stats. ch. 1363.)

1           39.     The southern portion of the Foothill Transportation Corridor has been the subject  
2 of planning efforts for over thirty-five years. From 1989 to 1991, the TCA prepared TCA EIR  
3 No. 3, for the selection of a locally-preferred alignment for the south portion of the Foothill  
4 Transportation Corridor. TCA EIR No. 3 was circulated for a 60-day review period which  
5 included public hearings. A Supplemental EIR (“SEIR”) was then circulated containing changes  
6 to the “C” Alignment through San Onofre State Beach and San Clemente resident to address  
7 concerns regarding noise and visual impacts. The modified alignment around San Clemente and  
8 connecting to Route 5 south of San Clemente was dubbed the “Modified C Alignment,” which  
9 was selected as the locally-preferred alternative by the TCA and is consistent with the codified  
10 route for the SR 241. The Modified C Alignment was further modified following input from the  
11 United States Fish and Wildlife Services, and the new alignment was called the “CP Alignment.”  
12 The CP Alignment went around San Clemente and connected to Route 5 south of the San  
13 Clemente city limits.

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

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

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

27           43.     On February 23, 2006, and after a several year process involving numerous public  
28 hearings, the TCA Board adopted Resolution F2006-1 certifying Final Subsequent Environmental

1 Impact Report TCA SEIR 4 (“2006 SEIR”) for the SR-241 Foothill South Extension. That same  
2 day, the TCA Board also adopted Resolution F2006-2 selecting the locally preferred alignment  
3 (the A7C-FEC-M-Initial Alternative, commonly called the “Green Alignment”) in the DEIS/SEIR  
4 for the South Orange County Transportation Infrastructure Improvement Project (“SOCTIIP”)  
5 (the “2006 Approvals”). Consistent with legislative enactments and state and regional  
6 transportation plans concerning SR 241, the Green Alignment connected to Route 5 south of San  
7 Clemente near Basilone Road in San Diego County.

8 44. In recognition of the Legislature’s mandate that no state funds be used for the  
9 planning and project development or for construction Route 241, the parties to the JPA, including  
10 San Clemente, adopted a Major Thoroughfare and Bridge Fee Program for San Joaquin Hills  
11 Transportation Corridor and Foothill/Eastern Transportation Corridors to partially fund toll road  
12 transportation corridors, including SR-241. (Gov. Code, § 66484.3.) The Fee Program includes  
13 fees for SR-241 as the “Foothill Transportation Corridor.” The Program refers to the southern  
14 SR-241 corridor as “an established alignment” extending from Tustin and Irvine “approx. 32  
15 miles to the San Diego Freeway (I-5) below San Clemente in San Diego County.” (Thoroughfare  
16 Program, p. 7.) The plan contemplated that developers will dedicate the majority of corridor  
17 right-of-way. (*Id.* at 9.) In fact, much of the right-of-way for SR-241 has been incorporated into  
18 community master plans for years, with right-of-way being dedicated in connection with  
19 development as it occurred and as contemplated in those master plans. For example, the City of  
20 Irvine’s 1991 General Plan identified the future SR-241 (labeled as Eastern Transportation  
21 Corridor and the Foothill Transportation Corridor) in its circulation operational characteristics  
22 map (*Id.* at D-3) and arterial highway designation map (*Id.* at D-30). Further, Irvine’s 1991  
23 Circulation Element called for Irvine to “[support planning and development consistent with City  
24 policy for the San Juaquin, Eastern and Foothill Transportation Corridor” as part of the City’s  
25 broader objective to “[d]evelop an integrated vehicular circulation to accommodate projected  
26 local and regional circulation needs.” (*Id.* at D-11.)

27 45. Using this alignment and its estimated cost as a basis, the Fee Program requires  
28 member agencies to dedicate right-of-way in the SR-241 corridor and to charge developers in

1 “areas of benefit” for their pro rata share of the corridor as set in 1985 and 1988. (Thoroughfare  
2 Program at p. 31.) Notwithstanding the Settlement Agreement mentioned below, this SR-241  
3 segment remains a core part of the TCA fee.

4 46. TCA set off to build the toll roads. Its initial efforts included completing an  
5 exhaustive environmental review and obtaining an array of permit applications to build it. Those  
6 efforts immediately met a barrage of opposition and litigation from stakeholders and regulators.  
7 In her challenge to the freeway, the California Attorney General called it “an unprecedented  
8 attempt by a local agency to take California State Park lands for highway purposes.” (Petition for  
9 Writ of Mandate in Case No. 37-2013-00050001-CU-WM-NC, 3:16-17.) Permits for the  
10 original project were not forthcoming. Most notably, the California Coastal Commission, the  
11 U.S. Secretary of Commerce, and the Regional Water Quality Control Board all denied key TCA  
12 applications. (State Route 241 Foothill South and Tesoro Extensions Settlement Agreement  
13 [hereinafter, “Settlement Agreement”] pp. 2-3.) A large coalition of environmental advocacy  
14 groups organized as “Save San Onofre Coalition,” or “SOCC,” the Attorney General, and the  
15 Native American Heritage Commission filed lawsuits in 2006 and 2013 challenging the project  
16 approvals and accompanying environmental analysis. (Settlement Agreement at p. 1.)

17 47. During the pendency of the 2006 action, TCA adopted a timeworn trick to keep a  
18 troubled project viable, i.e., segmenting or piecemealing the large project by disguising it as a  
19 smaller project. In partnership with the County of Orange, TCA recast the northern segment of  
20 the toll road as a stand-alone project, contrary to TCA’s long-standing inclusion of that segment  
21 as part of the larger corridor. That northern segment of the freeway, which includes a freeway  
22 interchange at Oso Parkway, is sometimes characterized as the “Tesoro Extension.” Part of the  
23 pathway for the Tesoro Extension was previously designated as a County arterial road also known  
24 as “F Street” or “Los Patrones Road.”

25 48. On April 18, 2013, TCA approved an Addendum to the 2006 SEIR (“2013  
26 Addendum”) and the segmented extension of SR-241 to Cow Camp Road (“2013 Approvals”).  
27 Through a series of decisions made between June 2013 and March 2015, the San Diego Regional  
28 Water Quality Control Board (“RWQCB”) denied TCA’s application for waste discharge

1 requirements for the Tesoro Extension under the Porter-Cologne Water Quality Control Act.  
2 (Water Code §§ 13000 et seq.) The Addendum included no analysis of the cumulative impacts  
3 of the Tesoro Extension, but rather, analyzed the impacts of the segment as if it were a stand-  
4 alone project. The Attorney General and others challenged the 2013 Tesoro Extension approval  
5 and the Addendum, alleging that the Tesoro Extension was obviously part of the larger SR-241  
6 project and could not be permitted or analyzed in isolation from the larger project impacts.

7 49. At this point, TCA found itself fighting on two fronts. On the one hand, it was  
8 bogged down in the 2006 lawsuits and permit denials on the larger project, with little hope of  
9 seeing the 241 survive that process intact. On the other hand, the Attorney General, the RWQCB,  
10 and other opponents would not allow the Tesoro Extension to be considered in isolation from the  
11 larger project. On May 2, 2016, SSOC, the County of Orange, and TCA entered into an  
12 agreement by which the parties agreed to extend the time for SSOC to challenge this project  
13 increment.

14 50. Having failed in that attempt, TCA initiated a new, even more audacious plan for  
15 a different, vast swath of public open space – much of it protected by two separate voter  
16 initiatives in two different cities – for its purposes. In October 2016, San Clemente Mayor Pro  
17 Temp Kathy Ward, San Clemente’s delegate to the TCA JPA Board, noticed that the captions for  
18 the 2006 and 2013 lawsuits began to appear on TCA’s closed session agendas. On October 13,  
19 2016, Ms. Ward sent an email to TCA’s Chief Executive Officer, Mike Kraman, explaining that  
20 since she was new to the Board, she did not wish to participate in closed sessions about these  
21 cases without a background briefing on them. She requested a brief summary of the cases and  
22 advanced notice of when they were to be discussed. Ward was baffled that the cases would be on  
23 the agenda, since they were being litigated – as they had been for years – apart from the TCA  
24 Board’s regular participation or direction. The cases again appeared on TCA’s November 10,  
25 2016 agenda, but no notice or briefing were provided to Ms. Ward in advance of that meeting.  
26 Upon arriving at the closed session, Ms. Ward was suddenly presented with a Settlement  
27 Agreement of 25-pages (excluding signatures and exhibits) and was informed that every other  
28 party to the agreement (15 to be exact) had already approved it. The Settlement Agreement



1 included a gag order that limited TCA officials' statements on the agreement to laudatory terms  
2 such as "unprecedented," "extraordinary," "magnificent," and "hard-fought" to describe it. The  
3 TCA Board summarily approved the Settlement Agreement over the objection of Ward and her  
4 counterpart from San Juan Capistrano, and then broke for lunch. Subsequently, without notice,  
5 hearing, or any other public meeting or action of its Board, TCA circulated a map of several  
6 potential substitute alignments, including alignments 14 and 17, which bisect a portion of San  
7 Clemente, using as their route significant areas of open space set aside by a 2007 San Clemente  
8 voter initiative in 2007 (Measure V) and some of it designated by its owner and the City for a  
9 conservation and habitat restoration program. Much of those routes, ironically, were dedicated  
10 and protected as mitigation and habitat restoration by the County in connection with its approval  
11 of La Pata Road (a County highway) and County development subsequently annexed to the City.  
12 Some of it is held in public trust by the City and homeowners associations. Route 14 runs in  
13 close proximity to several public and private schools and private homes.

14         51. The Settlement Agreement designates significant "Avoidance Areas," which are  
15 areas the petitioners in the 2006 and 2013 litigation sought to protect. It purports to leave open  
16 the question of a Post-Settlement Alignment, but through process of elimination, it leaves only  
17 Route 14 open to consideration. (Settlement Agreement, Ex. C.) The Settlement Agreement  
18 limits all remaining alignment options of the toll road to a route that is in close proximity to  
19 schools, homes, community parks and trails, creating unmitigable environmental, human, and  
20 socioeconomic impacts. In fact, Exhibit C of the Settlement Agreement shows TCA's hand by  
21 depicting an SR-241/I-5 connection that clearly contemplates a route bifurcating San Clemente  
22 and tying in to I-5 south of San Clemente High School. These communities were planned, many  
23 by the County before the City annexed them, in reliance on the various state, county, and local  
24 planning documents which depicted any proposed toll road alignment bypassing those  
25 communities and connecting to I-5 in San Diego County, as dictated by the Legislature. The  
26 Settlement Agreement provides no process for consideration or approval of the "Post-Settlement"  
27 alignment by the City of San Clemente or any other affected jurisdiction. It completely  
28 disregards public ownership or protection by local initiative. It prohibits TCA and its Board from

1 criticizing the Post-Settlement Alignment even though it has not been sited. (Settlement  
2 Agreement, at pp. 14-17.)

3 52. The Settlement Agreement’s Avoidance Areas actually prohibit construction of the  
4 toll road in the area where Streets and Highways Code Section 541 requires it be built. Perhaps  
5 for this reason, the California State Transportation Agency was not a party to the Settlement  
6 Agreement. Section 4.1 of the Settlement Agreement purports to address this conflict through a  
7 condition subsequent that (1) the Legislature would pass a law to alter the designated route to  
8 honor the Avoidance Areas or (2) the California State Transportation Agency, SSOC, TCA, and  
9 the California Natural Resources Agency enter into a “Protective Agreement” with the same  
10 effect. An ultra vires Protective Agreement purporting to do just that was executed by Michael  
11 Kraman (TCA’s Chief Executive Officer), Ryan Chamberlain (CalTrans’s District 12 Director),  
12 and John Laird (California Natural Resource Agency’s Secretary for Natural Resources). The  
13 TCA Board never considered or approved the Protective Agreement and neither State agency has  
14 given its executive the authority to sign it. As discussed in detail below, on the date of its  
15 execution (on or about March 10, 2017), the Protective Agreement also violated Streets and  
16 Highways Code Section 541 and TCA Major Thoroughfare and Bridge Fee Program discussed  
17 earlier, as well as the Orange County General Plan , the OCTA Master Plan of Arterial Highways  
18 (“MPAH”), the San Clemente General Plan and Measure V, and the San Juan Capistrano General  
19 Plan and Measure X, as discussed below. and the officers executing it had no separate delegation  
20 of authority to do so:

- 21 • **Orange County General Plan:** The Orange County General Plan’s circulation  
22 plan map does not envision or support the TCA’s proposed extensions of SR-241  
23 through the City. The circulation plan map does show a proposed extension of  
24 SR-241 that nearly entirely circumvents the City.
- 25 • **OCTA MPAH:** The OCTA MPAH does not include or anticipate an extension of  
26 SR-241 through the City. The MPAH shows Vista Hermosa and Avenda Pico  
27 intersecting I-5 the City, but does not show a state road cutting through the City.
- 28 • **San Clemente General Plan and Measure V:** Extension of SR-241 through San

1 Clemente is not envisioned or supported in the San Clemente General Plan. The  
2 Mobility and Complete Streets Element does not identify any route similar to those  
3 proposed by TCA for a highway to cut through the City. (See Figures M-1, M-2,  
4 and M-3.) The Land Use Element establishes open space that provides the City’s  
5 “distinct community edges”—open space that would be cut through the proposed  
6 SR-241 extensions. (p. 2.) Further, this open space property is subject to Measure  
7 V, which, as discussed earlier, requires voter approval to change the permitted uses  
8 of open space lands to non-open space uses. The clear purpose of the General Plan  
9 coupled with Measure V is to preserve open space as a community edge, not to  
10 allow for the development of state roads through the City.

- 11 • **San Juan Capistrano General Plan and Measure X:** Extension of SR-241  
12 through San Juan Capistrano is entirely inconsistent with the San Juan Capistrano  
13 General Plan Circulation Element. The Circulation Element explains that the SR-  
14 241 (referred to as the Foothill Transportation Corridor) will, once constructed,  
15 will run outside of San Juan Capistrano and “will travel to the *east of the City*  
16 *limits* and provide new *regional access* for residents and businesses in the  
17 Planning Area” (emphasis added). Further, Measure X, approved by San Juan  
18 Capistrano voters in 2015, requires voter approval to change any open space land  
19 use designation. Accordingly, aside from inconsistency with the General Plan, any  
20 extension of SR-241 through open space designated property would require voter  
21 approval.

22 53. In order to make any alignment of SR-241 fait accompli, TCA and the County  
23 have continued working to convert the Oso Bridge interchange and Los Patrones Parkway from  
24 their status as local public transportation facilities into for-fee toll road segments, without  
25 appropriate permits and without regard to the environmental consequences of such a serious shift  
26 in traffic patterns or the environmental injustice of limiting access to those dedicated public  
27 roadways to those who can pay. Specifically, on March 28, 2017 the County Board of  
28 Supervisors approved a Cooperative Agreement with TCA under which TCA repackaged and

1 shifted control and oversight over the Oso Bridge component of SR-241 from TCA to the County.  
2 In February 2017, CalTrans and the County entered into a Freeway Agreement under which the  
3 State accepted access control of the SR-241/Oso Parkway interchange. The County and TCA are  
4 poised now to add Los Patrones Parkway to the TCA toll road system. TCA has obtained an  
5 option to acquire Los Patrones Road and the County has agreed to facilitate the conversion of this  
6 public arterial to a toll freeway upon TCA's request. (Cooperative Agreement, p. 3.) This  
7 Cooperative Agreement was approved without any public notice, other than the County's regular  
8 agenda posting. Inadequate environmental review has occurred on this transaction and no  
9 regulatory permits have issued to cover it. The Rancho Mission Viejo master plan included a  
10 Water Quality Certification for Los Patrones Road under Section 401 of the Clean Water Act.  
11 However, that approval by the San Diego Regional Water Quality Control Board explicitly  
12 contemplates only "a new County of Orange arterial road "at the current terminus of State Route-  
13 241." The Certification goes out of its way to say it does not cover the SR-241 toll road and  
14 states that the road "is not the Tesoro Extension of SR-241 that was denied waste discharge  
15 requirements by the San Diego Water Board in 2013 . . .or a facility related to the SR-241[,] and  
16 the Tesoro Extension is not covered by the Certification." ("F" Street from "A" Street to Oso  
17 Parkway Project Certification Number R9-2014-0144.) The County's and TCA's action to  
18 approve and implement these agreements to convert this public street segment into a private  
19 highway violate California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.,  
20 ["CEQA"]; Cal. Code Regs., tit. 14, § 15000 et seq. ["State CEQA Guidelines"]) and the terms of  
21 the Regional Board's Section 401 Certification.

### **FIRST CAUSE OF ACTION**

24 **(Petition for Writ of Mandate Pursuant to Code Civ. Proc., §§ 1085 and 1094.5-Violation of**  
25 **the California Environmental Quality Act by Protective Agreement)**

26 **[As against TCA, CalTrans, and DOES 1-100]**

27 54. City incorporates herein by reference each previous paragraph of this Petition as  
28 though set forth here in full.

1           55.     “[T]he legislature intended [CEQA] to be interpreted in such manner as to afford  
2 the fullest possible protection to the environment within the reasonable scope of the statutory  
3 language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61  
4 Cal.4th 945, 963 [internal punctuation and citation omitted].) When complying with CEQA, a  
5 lead agency must proceed in the manner required by law, and its determinations must be  
6 supported by substantial evidence. (Pub. Resources Code, § 21168.5.) “CEQA requires a public  
7 agency to mitigate or avoid its projects’ significant effects not just on the agency’s own property  
8 but on the environment.” (*City of San Diego, supra*, 61 Cal.4th at 957 [emphasis and internal  
9 quotations omitted].) “CEQA defines the environment as the physical conditions which exist  
10 *within the area which will be affected by a proposed project* and mandates that [e]ach public  
11 agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries  
12 out or approves whenever it is feasible to do so.” (*Id.* at 961 [italics in original, internal quotes  
13 and citations omitted].)

14           56.     On or about March 10, 2017, Respondents and Real Parties entered into an  
15 Agreement to Address Traffic Congestion in South Orange County and Protect Sensitive  
16 Environmental, Cultural and Recreational Resources (“Protective Agreement”) (Protective  
17 Agreement attached hereto as Exhibit “F”). The Protective Agreement is a discretionary action  
18 undertaken by TCA and CalTrans, both public agencies as defined by CEQA. (Pub. Resources  
19 Code, §§ 21062, 21063, 21080, subd. (a); State CEQA Guidelines §§ 15002, subd. (i) & 15357.)  
20 CEQA applies to any “project” approved by a public agency. (Pub. Resources Code, § 21065.)  
21 Respondents and Real Parties knew at the time they entered into the agreement that the Protective  
22 Agreement has the potential to cause either a direct, or reasonably foreseeable indirect, physical  
23 change in the environment, and as such, is considered a “project” under CEQA. (Pub. Resources  
24 Code, § 21065; State CEQA Guidelines, § 15378.)

25           57.     City is informed and believes, and on that basis alleges, that Respondents violated  
26 CEQA in numerous respects, including, but not limited to the following:

27           **Failure to conduct any environmental review of the Protective Agreement prior to**  
28 **approval.**

1           52.     Respondents did not conduct any review of the potential environmental impacts of  
2 the Protective Agreement or make any of the required findings or determinations required by  
3 CEQA and the State CEQA Guidelines before approving and executing the Protective  
4 Agreement.

5           53.     Environmental documents “should be prepared as early as feasible in the planning  
6 process to enable environmental considerations to influence project program and design...”  
7 (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d  
8 376, 395.)

9           54.     Because the Protective Agreement states that TCA may commence construction of  
10 the Oso Parkway Bridge Project (see Term 3 of the Protective Agreement), it essentially permits  
11 the SR-241 toll road to be extended via Los Patrones Parkway without any environmental  
12 analysis of the direct, indirect, and cumulative impacts of such an action. Respondents did not  
13 prepare an initial study or environmental impact report or any other type of environmental review  
14 document to evaluate the Protective Agreement prior to executing it. Here, no environmental  
15 documents were prepared at all, let alone “as early as feasible in the planning process.”

16           55.     Furthermore, Respondent did not make express findings that the Protective  
17 Agreement was exempt from environmental review under CEQA. Indeed, Respondents could not  
18 have made such a finding because the Protective Agreement does not fall within any statutory or  
19 categorical exemption under CEQA. (State CEQA Guidelines, § 15260-15285, 15300-15333.)  
20 In particular, the Protective Agreement is not a judgment subject to an exemption from CEQA.  
21 While State CEQA Guidelines section 15282, subdivision (s) states that “[a]ny action necessary  
22 to bring a general plan or relevant mandatory element of the general plan into compliance  
23 pursuant to a court order as set forth in Section 65759 of the Government Code” is categorically  
24 exempt, the Protective Agreement is not such an action. Furthermore, the City is informed and  
25 believes and on that basis alleges that Respondents did not find the approval of the Protective  
26 Agreement to be exempt from CEQA nor was a Notice of Exemption filed to indicate that the  
27 Protective Agreement is exempt from CEQA. (Pub. Resources Code, §§ 21108, 21152; State  
28 CEQA Guidelines, § 15062.)

1           56.     Therefore, Respondents' failure to conduct any environmental review of the  
2 Protective Agreement under CEQA before approving and executing the Protective Agreement  
3 constituted a prejudicial abuse of discretion because Respondents failed to proceed in a manner  
4 required by law. (Pub. Resources Code, § 21168.5.)

5           **The Protective Agreement is improperly segmented from the larger SR-241 toll road**  
6 **extension project.**

7           57.     The term "project" refers to the whole of an action and to the underlying activity  
8 being approved, not to each governmental approval. (State CEQA Guidelines, § 15378, subds.  
9 (a), (c)-(d). CEQA requires a lead agency to fully analyze each "project" in a single  
10 environmental review document so that "environmental considerations not become submerged by  
11 chopping a large project into many little ones, each with a potential impact on the environment,  
12 which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport*  
13 *Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; State CEQA Guidelines, § 15003, subd.  
14 (h).)

15           58.     Contrary to this clear legal framework, the Protective Agreement in fact "chops  
16 up" the larger toll road extension project into "little" projects, i.e. the Oso Parkway Bridge project  
17 and the Los Patrones Parkway project, which leads to segmented environmental review that  
18 prevents disclosure and analysis of the impacts of the "project" as a whole. (See Term 3 of the  
19 Protective Agreement ["TCA may commence construction of the Oso Parkway Bridge Project"]  
20 and Recital F of the Protective Agreement ["Los Patrones Parkway, which is presently under  
21 construction"].)

22           59.     Furthermore, because the Protective Agreement – like the Settlement Agreement –  
23 prohibits the TCA from funding or constructing a toll road in the Avoidance Area, the Protective  
24 Agreement necessarily forecloses and limits the scope of alternatives, if any, that TCA could  
25 consider when it evaluates the environmental impacts of the project, as a whole. (State CEQA  
26 Guidelines, § 15126.6 [lead agencies must consider and discuss a reasonable range of  
27 alternatives, including alternative locations, for a project].) Identification of reasonable project  
28 alternatives and mitigation measures is at the core of the fundamental policy behind CEQA – that





1 language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61  
2 Cal.4th 945, 963 [internal punctuation and citation omitted].) When complying with CEQA, a  
3 lead agency must proceed in the manner required by law, and its determinations must be  
4 supported by substantial evidence. (Pub. Resources Code, § 21168.5.) “CEQA requires a public  
5 agency to mitigate or avoid its projects’ significant effects not just on the agency’s own property  
6 but on the environment.” (*City of San Diego, supra*, 61 Cal.4th at 957 [emphasis and internal  
7 quotations omitted].) “CEQA defines the environment as the physical conditions which exist  
8 *within the area which will be affected by a proposed project* and mandates that [e]ach public  
9 agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries  
10 out or approves whenever it is feasible to do so.” (*Id.* at 961 [italics in original, internal quotes  
11 and citations omitted].)

12 63. On or about February 2, 2017, Respondents County and CalTrans entered into a  
13 Freeway Agreement (“Freeway Agreement”) (Freeway Agreement attached hereto as Exhibit  
14 “G”). The Freeway Agreement is a discretionary action undertaken by CalTrans and the County,  
15 both public agencies as defined by CEQA. (Pub. Resources Code, §§ 21062, 21063, 21080, subd.  
16 (a); State CEQA Guidelines §§ 15002, subd. (i) & 15357.) CEQA applies to any “project”  
17 approved by a public agency. (Pub. Resources Code, § 21065.) Respondents knew at the time  
18 they entered into the agreement that the Freeway Agreement had the potential to cause either a  
19 direct, or reasonably foreseeable indirect, physical change in the environment, and as such, is  
20 considered a “project” under CEQA. (Pub. Resources Code, § 21065; State CEQA Guidelines, §  
21 15378.)

22 64. City is informed and believes, and on that basis alleges, that Respondents violated  
23 CEQA in numerous respects, including, but not limited to the following:

24 **Failure to conduct any environmental review of the Freeway Agreement prior to**  
25 **approval.**

26 65. Respondents did not conduct any review of the potential environmental impacts of  
27 the Freeway Agreement or make any of the required findings or determinations required by  
28 CEQA and the State CEQA Guidelines before approving and executing the Freeway Agreement.

1           66. Environmental documents “should be prepared as early as feasible in the planning  
2 process to enable environmental considerations to influence project program and design....”  
3 (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d  
4 376, 395.)

5           67. Because the Freeway Agreement states that CalTrans “authorizes a connection to  
6 an existing State Highway” and “accepts access control of the SR 241/Oso Parkway interchange  
7 connecting to Los Patrones Parkway county road at 0.4 miles south of Oso Parkway” (see  
8 Freeway Agreement, p. 3.), it essentially permits the SR-241 toll road to be extended via this  
9 interchanges to the Los Patrones Parkway without any environmental analysis of the direct,  
10 indirect, and cumulative impacts of such an action. Respondents did not prepare an initial study  
11 or environmental impact report or any other type of environmental review document to evaluate  
12 the Freeway Agreement prior to executing it. Here, no environmental documents were prepared  
13 at all, let alone “as early as feasible in the planning process.”

14           68. Furthermore, Respondents did not make express findings that the Freeway  
15 Agreement was exempt from environmental review under CEQA. Indeed, Respondents could not  
16 have made such a finding because the Freeway Agreement does not fall within any statutory or  
17 categorical exemption under CEQA. (State CEQA Guidelines, § 15260-15285, 15300-15333.)  
18 Furthermore, the City is informed and believes and on that basis alleges that Respondents did not  
19 find the approval of the Freeway Agreement to be exempt from CEQA nor was a Notice of  
20 Exemption filed to indicate that the Freeway Agreement is exempt from CEQA. (Pub. Resources  
21 Code, §§ 21108, 21152; State CEQA Guidelines, § 15062.)

22           69. Therefore, Respondents’ failure to conduct any environmental review of the  
23 Freeway Agreement under CEQA before approving and executing the Freeway Agreement  
24 constituted a prejudicial abuse of discretion because Respondents failed to proceed in a manner  
25 required by law. (Pub. Resources Code, § 21168.5.)

26           **The Freeway Agreement is improperly segmented from the larger SR-241 toll road**  
27 **extension project.**

28           70. The term “project” refers to the whole of an action and to the underlying activity

1 being approved, not to each governmental approval. (State CEQA Guidelines, § 15378, subds.  
2 (a), (c)-(d). CEQA requires a lead agency to fully analyze each “project” in a single  
3 environmental review document so that “environmental considerations not become submerged by  
4 chopping a large project into many little ones, each with a potential impact on the environment,  
5 which cumulatively may have disastrous consequences.” (*Burbank-Glendale-Pasadena Airport*  
6 *Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; State CEQA Guidelines, § 15003, subd.  
7 (h).)

8 71. Contrary to this clear legal framework, the Freeway Agreement in fact “chops up”  
9 the larger toll road extension project into “little” projects, i.e. the interchange connecting SR  
10 241/Oso Parkway to Los Patrones Parkway, which leads to segmented environmental review that  
11 prevents disclosure and analysis of the impacts of the “project” as a whole. (See Freeway  
12 Agreement, p.3.)

13 72. Furthermore, because the Freeway Agreement authorizes the connection between  
14 SR 241 and Los Patrones Parkway, the Freeway Agreement necessarily forecloses and limits the  
15 scope of alternatives, if any, that could be considered when evaluating the environmental impacts  
16 of the project, as a whole. (State CEQA Guidelines, § 15126.6 [lead agencies must consider and  
17 discuss a reasonable range of alternatives, including alternative locations, for a project].)  
18 Identification of reasonable project alternatives and mitigation measures is at the core of the  
19 fundamental policy behind CEQA – that is, to research and evaluate feasible alternatives and  
20 mitigation measures that reduce the significant impacts of a project. (Pub. Resources Code, §  
21 21002; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The range  
22 of alternatives evaluated must be sufficient to permit informed decision making and public  
23 participation. (State CEQA Guidelines, § 15126.6, subds. (a)-(f); *Bay Area Citizens v. Assn. of*  
24 *Bay Area Gov’ts* (2016) 248 Cal.App.4th 966, 1017.) Here, by cutting the “project” into small  
25 incremental pieces (approving the Freeway Agreement without any environmental review at all),  
26 Respondent has completely evaded the core principles of CEQA and its purpose.

27 73. The impacts of the full SR-241 toll road extension project via Los Patrones  
28 Parkway must be analyzed as a whole, so that meaningful and feasible alternatives and mitigation

1 measures can be identified. Respondents' approval of the Freeway Agreement by itself, without  
2 any environmental review, is an improper attempt to piecemeal Respondents' plan to extend SR-  
3 241 to the I-5.

4 74. Respondents violated their duties to comply with CEQA and the State CEQA  
5 Guidelines. The inadequacies described above are prejudicial and require approval of the  
6 Freeway Agreement to be revoked and full environmental review in compliance with CEQA to be  
7 conducted before proceeding with the Freeway Agreement. Respondents' failure to conduct any  
8 environmental review of the Freeway Agreement under CEQA before approving and executing  
9 the Freeway Agreement constituted a prejudicial abuse of discretion because Respondents failed  
10 to proceed in a manner required by law. (Pub. Resources Code, § 21168.5.)

11 **THIRD CAUSE OF ACTION**

12 **(Petition for Writ of Mandate Pursuant to Code Civ. Proc., §§ 1085 and 1094.5-Violation of**  
13 **the California Environmental Quality Act by Cooperative Agreement)**

14 **[As against TCA, County, and DOES 1-100]**

15 75. City incorporates herein by reference each previous paragraph of this Petition as  
16 though set forth here in full.

17 76. “[T]he legislature intended [CEQA] to be interpreted in such manner as to afford  
18 the fullest possible protection to the environment within the reasonable scope of the statutory  
19 language.” (*City of San Diego v. Board of Trustees of the California State University* (2015) 61  
20 Cal.4th 945, 963 [internal punctuation and citation omitted].) When complying with CEQA, a  
21 lead agency must proceed in the manner required by law, and its determinations must be  
22 supported by substantial evidence. (Pub. Resources Code, § 21168.5.) “CEQA requires a public  
23 agency to mitigate or avoid its projects’ significant effects not just on the agency’s own property  
24 but on the environment.” (*City of San Diego, supra*, 61 Cal.4th at 957 [emphasis and internal  
25 quotations omitted].) “CEQA defines the environment as the physical conditions which exist  
26 *within the area which will be affected by a proposed project* and mandates that [e]ach public  
27 agency shall mitigate or avoid the significant effects *on the environment* of projects that it carries  
28 out or approves whenever it is feasible to do so.” (*Id.* at 961 [italics in original, internal quotes

1 and citations omitted].)

2 77. On or about March 28, 2017, Respondents County and TCA entered into a  
3 Cooperative Agreement (attached hereto as Exhibit “H”) to formally integrate the Oso Bridge  
4 interchange and Los Patrones Parkway into the SR-241 system, subject to the constraints in the  
5 Settlement Agreement that would inevitably have disastrous effect on San Clemente. The  
6 Cooperative Agreement is a discretionary action undertaken by TCA and the County, both public  
7 agencies as defined by CEQA. (Pub. Resources Code, §§ 21062, 21063, 21080, subd. (a); State  
8 CEQA Guidelines §§ 15002, subd. (i) & 15357.) CEQA applies to any “project” approved by a  
9 public agency. (Pub. Resources Code, § 21065.) Respondents knew at the time they entered into  
10 the agreement that the Cooperative Agreement had the potential to cause either a direct, or  
11 reasonably foreseeable indirect, physical change in the environment, and as such, is considered a  
12 “project” under CEQA. (Pub. Resources Code, § 21065; State CEQA Guidelines, § 15378.)

13 78. City is informed and believes, and on that basis alleges, that Respondents violated  
14 CEQA in numerous respects, including, but not limited to the following:

15 **Failure to conduct adequate environmental review of the Cooperative Agreement**  
16 **prior to approval.**

17 79. Respondents did not conduct adequate review of the potential environmental  
18 impacts of the Cooperative Agreement before approving and executing the Cooperative  
19 Agreement. TCA and the County assert that the Cooperative Agreement was an included element  
20 of Ranch Plan Final Program Environmental Impact Report No. 589 (“FEIR 589”), Final  
21 Environmental Impact Report No. 584 (“FEIR 584”), and Addendum IP 15-252 to FEIR 589 and  
22 FEIR 584. (Cooperative Agreement, p. 1.) However, the project description in those document  
23 does not discuss the terms and provisions of the Cooperative Agreement. Specifically, the  
24 integration of the Oso Bridge interchange and Los Patrones Parkway into the SR-241 system,  
25 subject to the constraints in the Settlement Agreement, is not contemplated in the prior  
26 environmental review referenced by Respondents. As such, the Cooperative Agreement  
27 essentially permits the SR-241 toll road to be extended via the Oso Bridge interchange to the Los  
28 Patrones Parkway without any environmental analysis of the greater direct, indirect, and

1 cumulative impacts of such an action.

2 80. Therefore, Respondents' failure to conduct adequate environmental review of the  
3 Cooperative Agreement under CEQA before approving and executing the Cooperative  
4 Agreement constituted a prejudicial abuse of discretion because Respondents failed to proceed in  
5 a manner required by law. (Pub. Resources Code, § 21168.5.)

6 **The Cooperative Agreement is improperly segmented from the larger SR-241 toll**  
7 **road extension project.**

8 81. The term "project" refers to the whole of an action and to the underlying activity  
9 being approved, not to each governmental approval. (State CEQA Guidelines, § 15378, subds.  
10 (a), (c)-(d). CEQA requires a lead agency to fully analyze each "project" in a single  
11 environmental review document so that "environmental considerations not become submerged by  
12 chopping a large project into many little ones, each with a potential impact on the environment,  
13 which cumulatively may have disastrous consequences." (*Burbank-Glendale-Pasadena Airport*  
14 *Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592; State CEQA Guidelines, § 15003, subd.  
15 (h).)

16 82. Contrary to this clear legal framework, the Cooperative Agreement in fact "chops  
17 up" the larger toll road extension project into "little" projects, i.e. the interchange connecting SR  
18 241/Oso Parkway to Los Patrones Parkway, which leads to segmented environmental review that  
19 prevents disclosure and analysis of the impacts of the "project" as a whole. (See Cooperative  
20 Agreement, p. 1 ["the 'PROJECT' consists of an overcrossing bridge structure at Oso Parkway  
21 and mainline roadway between the southern terminus of the State Route 241 [] toll road and the  
22 northern terminus of the future Los Patrones Parkway"].)

23 83. Furthermore, the Cooperative Agreement necessarily forecloses and limits the  
24 scope of alternatives, if any, that could be considered when evaluating the environmental impacts  
25 of the project, as a whole. (State CEQA Guidelines, § 15126.6 [lead agencies must consider and  
26 discuss a reasonable range of alternatives, including alternative locations, for a project].)  
27 Identification of reasonable project alternatives and mitigation measures is at the core of the  
28 fundamental policy behind CEQA – that is, to research and evaluate feasible alternatives and

1 mitigation measures that reduce the significant impacts of a project. (Pub. Resources Code, §  
2 21002; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The range  
3 of alternatives evaluated must be sufficient to permit informed decision making and public  
4 participation. (State CEQA Guidelines, § 15126.6, subds. (a)-(f); *Bay Area Citizens v. Assn. of*  
5 *Bay Area Gov'ts* (2016) 248 Cal.App.4th 966, 1017.) Here, by cutting the “project” into small  
6 incremental pieces (approving the Cooperative Agreement without adequate environmental  
7 review), Respondent has completely evaded the core principles of CEQA and its purpose.

8 84. The impacts of the full SR-241 toll road extension project via Los Patrones  
9 Parkway must be analyzed as a whole, so that meaningful and feasible alternatives and mitigation  
10 measures can be identified. Respondents’ approval of the Cooperative Agreement by itself,  
11 without adequate environmental review, is an improper attempt to piecemeal Respondents’ plan  
12 to extend SR-241 to the I-5.

13 85. Respondents violated their duties to comply with CEQA and the State CEQA  
14 Guidelines. The inadequacies described above are prejudicial and require approval of the  
15 Cooperative Agreement to be revoked and full environmental review in compliance with CEQA  
16 to be conducted before proceeding with the Cooperative Agreement. Respondents’ failure to  
17 conduct any environmental review of the Cooperative Agreement under CEQA before approving  
18 and executing the Cooperative Agreement constituted a prejudicial abuse of discretion because  
19 Respondents failed to proceed in a manner required by law. (Pub. Resources Code, § 21168.5.)

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**

#### 22 **(Against the TCA and Does 1-100)**

23 86. City incorporates herein by reference each previous paragraph of this Petition as  
24 though set forth here in full.

25 87. By approving and entering into the Protective Agreement with CalTrans, TCA  
26 engaged in an *ultra vires* act, thereby immediately invalidating the Protective Agreement.

27 88. Public agencies, such as the TCA, may not delegate, surrender or impair the  
28 present or future exercise of their governmental powers or authority. When an agency unlawfully

1 restrains, surrenders, or abnegates its proper governmental authority and function by contract, the  
2 contract is void under the *ultra vires* rule.

3 89. Pursuant to the Protective Agreement, the TCA agreed “not to fund or construct a  
4 road in the Avoidance Area.” (Protective Agreement ¶ 2) Through this act, the agency illegally  
5 impaired, restricted, and/or surrendered its present authority, and that of future TCA Boards,  
6 regarding the construction and/or funding of any SR-241 alignments located within the several  
7 square mile Avoidance Area. The improper impairment, surrender, and abnegation of the TCA  
8 Board’s discretionary authority in perpetuity was made irrespective of any future public process  
9 or environmental review regarding proposed SR-241 alignments. The TCA’s *ultra vires* act  
10 further violated state law by barring longstanding SR-241 alignments behind closed doors,  
11 without any public hearing, process, or deliberation.

12 90. The Protective Agreement is an unlawful and invalid attempt to restrict through  
13 contract the exercise of governmental authority, both presently and in the future. Therefore, the  
14 TCA’s purported execution of the Protective Agreement constituted an invalid, illegal and *ultra*  
15 *vires* act. The City requests that this Court issue a peremptory writ of mandate and/or injunction  
16 setting aside the TCA’s unlawful action.

17 91. Additionally, the Protective Agreement should also be held as an illegal, void and  
18 *ultra vires* agreement because the City is informed and believes and thereon alleges that the TCA  
19 Board did not authorize Mr. Kraman to execute the Protective Agreement on behalf of either the  
20 TCA or TCA Board or to otherwise agree that the TCA would not “fund or construct a road in the  
21 Avoidance Area.”

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



1 **FIFTH CAUSE OF ACTION**

2 **Writ of Mandate – To Set Aside Approval of the Protective Agreement**

3 **(Against CalTrans and Does 1-100)**

4 93. City incorporates herein by reference each previous paragraph of this Petition as  
5 though set forth here in full.

6 94. CalTrans' approval and agreement of the Protective Agreement was illegal, void,  
7 and *ultra vires* because neither the agency nor its local District Director had the authority to enter  
8 into the agreement.

9 95. The California State Legislature establishes the framework for the State Highway  
10 System ("SHS") by specifically describing each route in the Streets and Highways Code. This  
11 description establishes the route corridor and the termini of the route. Streets and Highways Code  
12 section 541 currently describes the State Route 241 route as "Route 5 *south of San Clemente* to  
13 Route 91 in the City of Anaheim." (Emphasis added) While the California Transportation  
14 Commission ("CTC") selects the exact location of the route, the specific alignment must conform  
15 to the route described in the statute. (See Cal. Str. & High. Code § 75 (empowering the CTC to  
16 "[s]elect, adopt, and determine the location of State highways on *routes authorized by law*"  
17 [emphasis added]); see also CalTrans Project Development Procedures Manual Ch. 23, Art. 1.)

18 96. Neither CalTrans, nor its individual District Directors (*i.e.* Ryan Chamberlain),  
19 have been delegated any authority under California law concerning the selection of a specific  
20 location or alignment for any route described in the Streets and Highways Code. Nor has  
21 CalTrans, or any of its individual District Directors, been delegated any authority to rescind state  
22 highway or freeway routes, or the location/alignment of state highways or freeways, for any route  
23 described in the Streets and Highways Code. In short, CalTrans does not have the authority under  
24 state law to take any action designating where a route described in the Streets and Highways  
25 Code may be located or not located.

26 97. However pursuant to the Protective Agreement, Caltrans affirmed, "that in  
27 exercising its authority under state law, it will not approve, permit, take possession of or  
28 otherwise authorize the construction of a major thoroughfare in the Avoidance Area; provided,

1 however, that this prohibition shall not apply to any proposed widening of the existing Interstate 5  
2 facility.” (Protective Agreement, p. 4.)

3 98. Because CalTrans does not have the authority to agree, whether on its behalf or on  
4 the behalf of the California State Transportation Agency, that it will not approve, permit, take  
5 possession of or otherwise authorize the construction of a major thoroughfare in the Avoidance  
6 Area, its approval of the Protective Agreement was an illegal and *ultra vires* act, thus voiding the  
7 Agreement.

8 99. Furthermore, the City is informed and believes that Mr. Chamberlin was not  
9 authorized to agree, on behalf of CalTrans or on behalf of the California State Transportation  
10 Agency, that CalTrans will not approve, permit, take possession of or otherwise authorize the  
11 construction of a major thoroughfare in the Avoidance Area. Therefore the City believes that the  
12 Director’s action amounted to an illegal, void, and *ultra vires* act, thus invalidating the Protective  
13 Agreement.

14 100. Finally, because CalTrans lacks the authority to rescind and/or preclude state  
15 highway and/or freeway routes and/or alignments dually adopted by the State Legislature and/or  
16 CTC, the Protective Agreement is illegal, void, and *ultra vires*.

17 101. Public agencies, such as the CalTrans, may not delegate, surrender or impair the  
18 present or future exercise of their governmental powers or authority. When an agency unlawfully  
19 restrains, surrenders, or abnegates its proper governmental authority and function by contract, the  
20 contract is void under the *ultra vires* rule.

21 102. The Protective Agreement improperly restricts the governmental authority of  
22 CalTrans and/or the California Transportation Commission to designate the appropriate  
23 route/alignment for the State Route 241 following appropriate environmental review, a noticed  
24 public hearing, and an opportunity for public comment and deliberation.

25 103. The City has no plain, speedy, and adequate remedy in the ordinary course of the  
26 law, other than the relief sought in this Petition/Complaint, in that the City has, and had, no  
27 administrative avenue by which to challenge the Protective Agreement. Regardless, any attempts  
28 to administratively challenge the Protective Agreement would have been futile because that

1 agreement was not considered and approved during a noticed public hearing and the City had no  
2 knowledge of the Protective Agreement until after it had already been approved and executed by  
3 the TCA and CalTrans.

4 **SIXTH CAUSE OF ACTION**

5 **(Violation of Porter-Cologne Water Quality Control Act [Water Code, § 13000 *et seq.*])**

6 **[As against TCA, CalTrans, and DOES 1-100]**

7 104. City incorporates herein by reference each previous paragraph of this Petition as  
8 though set forth here in full.

9 105. The Porter-Cologne Water Quality Control Act (Water Code, § 13000 *et seq.*)  
10 (“Porter-Cologne Act”) governs water quality in California. Under the Porter-Cologne Act, the  
11 State Water Resources Control Board and regional water boards are charged with formulating and  
12 adopting plans and polices for water quality control. (Water Code, §§ 13140, 13170, 13240.)

13 106. On November 24, 2014, Rancho Mission Viejo submitted an application to the  
14 California Regional Water Quality Control Board, San Diego Region (“San Diego RWQCB”) for  
15 Water Quality Certification pursuant to section 401 of the Clean Water Act for the proposed “F”  
16 Street from “A” Street to Oso Parkway Project (a.k.a Los Patrones Parkway). (Clean Water Act  
17 Section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of  
18 Dredged and/or Fill Materials, California Regional Water Quality Control Board, San Diego  
19 Region (June 4, 2015) (“401 Certification”).) The 401 Certification was issued June 4, 2015.

20 107. Section II.E of the 401 Certification provides the following as a condition of  
21 issuance:

22 **“Project Conformance with Water Quality Control Plans or Policies.**

23 Notwithstanding any more specific conditions in this Certification, the Project  
24 shall be constructed in a manner consistent with the Basin Plan and any other  
25 applicable water quality control plans or policies adopted or approved pursuant to  
26 the Porter Cologne Water Quality Act (Division 7, commencing with Water Code  
27 Section 13000) or section 303 of the Clean Water Act (33 U.S.C. § 1313).” (401  
28 Certification, p. 7.)

1 108. Section II.F of the 401 Certification provides the following as a condition:  
2 “**Project Modification.** The “Applicant must submit any changes to the Project,  
3 including Project operation, which would have a significant or material effect on  
4 the findings, conclusions, or conditions of this Certification, to the San Diego  
5 Water Board for prior review and written approval. If the San Diego Water Board  
6 is not notified of a significant change to the Project, it will be considered a  
7 violation of this Certification.” (401 Certification, p. 7.)

8 109. The 401 Certification’s Project Description states that:  
9 “‘F’ Street is not the Tesoro Extension of SR-241 that was denied waste discharge  
10 requirements by the San Diego Water Board in 2013 (in the proceedings on  
11 Tentative Order No. R9-2013-0007) or a facility related to the SR-241 and the  
12 Tesoro Extension is not covered by his Certification. ‘F’ Street will be operated  
13 by the County of Orange as a free road.” (401 Certification, p. 2.)

14 110. By intending to convert “F” Street into a toll road, Respondents have violated the  
15 above stated conditions of the 401 Certification because the Project Description no longer applies  
16 to the modified project, and such modification was not submitted to the San Diego RWQCB for  
17 prior review or written approval. Of note, the 401 Certification referenced Rancho Mission  
18 Viejo’s development plans to include a funding mechanism for operation and long –term  
19 monitoring and maintenance, and by deeding the road to CalTrans, the funding of the road’s  
20 operation, monitoring, and maintenance will be subject to a different funding system not  
21 contemplated in the 401 Certification. (401 Certification, p. 3.)

22 111. Accordingly, the prior 401 Certification is inapplicable and Respondents must  
23 apply for a new 401 Certification before constructing the toll road extension via Los Patrones  
24 Parkway.

25  
26 **SEVENTH CAUSE OF ACTION**

27 **(Violation of California Fish and Game Code, § 1602)**

28 **[As against TCA, CalTrans, and DOES 1-100]**

1 112. City incorporates herein by reference each previous paragraph of this Petition as  
2 though set forth here in full.

3 113. The California Department of Fish and Wildlife (“CDFW”) must be notified of  
4 any work that substantially diverts or obstructs the natural flow or substantially changes the bed,  
5 channel, or banks of any river, stream, or lake. (Fish & Game Code, § 1602, subd. (a).) Work  
6 cannot commence until CDFW approves the work and issues a Streambed Alteration Agreement.  
7 (Fish & Game Code, § 1602, subd. (a)(4)(B).)

8 114. By converting “F” Street into a toll road, it is reasonably foreseeable that  
9 Respondents will impact and potentially alter Cañada Chiquita and Cañada Gobernadora, both of  
10 which are tributary to San Juan Creek to the south. (Addendum to the South Orange County  
11 Transportation Infrastructure Improvement Project Final Subsequent Environmental Impact  
12 Report, February 2013, p. 1-4.) As such, a Section 1602 Streambed Alteration Agreement would  
13 be required prior to any construction of the toll road expansion.

14 115. Accordingly, any prior Section 1602 Streambed Alteration Agreement is  
15 inapplicable. Respondents must notify CDFW of their intention to convert “F” Street into a toll  
16 road and apply for a new Section 1602 Streambed Alteration Agreement from CDFW before  
17 commencing construction of the toll road extension via Los Patrones Parkway.

18 **EIGHTH CAUSE OF ACTION**

19 **(Injunction Against Further Pursuit of the Protective Agreement, Freeway Agreement, and**  
20 **Cooperative Agreement [Code Civ. Proc., § 526 *et seq.*])**

21 **[As against TCA, CalTrans, County and DOES 1-100]**

22 116. City incorporates herein by reference each previous paragraph of this Petition as  
23 though set forth here in full.

24 117. Respondents’ (i) failure to conduct environmental review or state a valid basis for  
25 exempting the Protective Agreement and Freeway Agreement from CEQA’s environmental  
26 review requirements, (ii) failure to conduct adequate environmental review for the Cooperative  
27 Agreement, and (iii) improper piecemealing of the CEQA environmental review, constitute the  
28 failure by Respondents to take an action and perform mandatory duties required by CEQA.

1 118. The City therefore prays for a stay, preliminary injunction, and permanent  
2 injunction against Respondents and any of their agents from further pursuing the Protective  
3 Agreement, Freeway Agreement, and Cooperative Agreement and/or commencing work upon the  
4 toll road extension unless and until such time as they comply with their mandatory duties under  
5 CEQA and all other applicable environmental rules, regulations, and procedures.

6 119. The City has no adequate remedy other than that prayed for herein in that the  
7 subject matter is unique and monetary damages would therefore be inadequate to fully  
8 compensate the City for the consequences of Respondents' actions in their continued failure to  
9 comply with CEQA with respect to the Protective Agreement, Freeway Agreement, and  
10 Cooperative Agreement and the toll road extension via Los Patrones Parkway.

11 120. The City therefore seeks, and is entitled to, injunctive relief under Code of Civil  
12 Procedure section 526 *et seq.*, and to a stay, preliminary injunction, and/or permanent injunction.

### 13 NINTH CAUSE OF ACTION

#### 14 **Declaratory Relief (Code of Civil Procedure, §§ 1060-1062)**

#### 15 **(Against TCA, TCA Board, County, Board of Supervisors, CalTrans and Does 1-100)**

16 121. City incorporates herein by reference each previous paragraph of this Petition as  
17 though set forth here in full.

18 122. An actual controversy has arisen and now exists between the City and the  
19 Respondents, in that the City contends, and Respondents dispute, that the Protective Agreement is  
20 illegal, void, and *ultra vires* because the City is informed and believes and thereon alleges that  
21 Mr. Kraman is not, and was not, authorized to execute the Protective Agreement on behalf of  
22 either the TCA or TCA Board or to otherwise agree that the TCA will not "fund or construct a  
23 road in the Avoidance Area."

24 123. Additionally, an actual controversy has arisen and now exists between the City and  
25 the Respondents in that the City contends, and Respondents dispute, that the Protective  
26 Agreement is further illegal, void, and *ultra vires*. CalTrans' approval of the Protective  
27 Agreement was an illegal, void and *ultra vires* act because: (1) CalTrans does not have the  
28 authority to agree, on behalf of itself or anyone else, that it will not approve, permit, take

1 possession of or otherwise authorize the construction of a major thoroughfare in the Avoidance  
2 Area; (2) CalTrans lacks the authority to rescind and/or preclude state highway and/or freeway  
3 routes and/or alignments dually adopted by the State Legislature and/or CTC; and (3) even if  
4 CalTrans did have such authority, the Protective Agreement improperly restricts the authority of  
5 CalTrans and/or the CTC to designate the appropriate route/alignment for SR 241 following  
6 appropriate environmental review, a noticed public hearing, and an opportunity for public  
7 comment and deliberation.

8 124. Furthermore, an actual controversy has arisen and now exists between the City and  
9 Respondents, in that the City contends, and Respondents dispute, that any alignment approved  
10 concerning the southern portion of the Foothill Transportation Corridor segment of SR-241 must  
11 connect to Route 5 south of San Clemente near Basilone Road in San Diego County. The City  
12 contends, and Respondents dispute, that any alignment for the southern portion of the Foothill  
13 Transportation Corridor segment of the SR-241 connecting to Route 5 in the City of San  
14 Clemente does not, and cannot, conform to the route description for SR-241 as set forth in Streets  
15 and Highways Code section 541.

16 125. The Legislature establishes the framework for the State Highway System by  
17 specifically describing each route in the California Streets and Highways Code. This description  
18 establishes the route corridor and the termini of the route. The Streets and Highways Code  
19 section 541 currently describes the SR-241 route as “Route 5 *south of San Clemente* to Route 91  
20 in the City of Anaheim.” (Emphasis added) While the CTC selects the exact location of the  
21 route, the specific alignment must conform to the route described in the statute. (*See Cal. Str. &*  
22 *High. Code, § 75 [empowering the CTC to “[s]elect, adopt, and determine the location of State*  
23 *highways on routes authorized by law” (emphasis added)]; see also CalTrans Project*  
24 *Development Procedures Manual Ch. 23, Art. 1.) The Legislature intended Route 241 to bypass*  
25 *San Clemente and connect to Route 5 in San Diego County, as confirmed by the map employed*  
26 *and relied upon by legislators throughout the legislative history for Streets and Highways Code*  
27 *section 541. (Exhibit “E.”)*

28 126. Additionally, an actual controversy has arisen and now exists between the City and

1 the Respondents in that the City contends, and Respondents dispute, that (1) 401 Certification for  
2 the construction of "F" Street is inapplicable to and does not cover the toll road extension via Los  
3 Patrones Parkway, and (2) Respondents must apply for a new 401 Certification from the San  
4 Diego RWQCB before commencing construction of the toll road extension via Los Patrones  
5 Parkway.

6 127. Additionally, an actual controversy has arisen and now exists between the City and  
7 the Respondents in that the City contends, and Respondents dispute, that (1) any existing Section  
8 1602 Streambed Alteration Agreement that exists for construction of "F" Street is inapplicable to  
9 and does not cover the toll road extension via Los Patrones Parkway, and (2) Respondents must  
10 apply for a new Section 1602 Streambed Alteration Agreement from CDFW before commencing  
11 construction of the toll road extension via Los Patrones Parkway.

12 128. The City seeks a declaration of the rights and duties of the respective parties  
13 regarding the actual and existing controversies described in paragraphs 121 through 127 above.

14 129. A judicial determination of the rights and obligations of the parties hereto is  
15 necessary and appropriate so that the parties may ascertain those rights and act accordingly.

16 **PRAYER**

17 WHEREFORE, Petitioner and Plaintiff prays for entry of judgment as follows:

18 **ON THE FIRST CAUSE OF ACTION**

19 1. For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
20 1094.5 directing Respondents as follows:

21 a. To cease, vacate, and set aside all actions related to the authorization,  
22 approval, and execution of the Protective Agreement.

23 b. To prepare, circulate, and consider adequate environmental review for the  
24 Protective Agreement in order to meet the requirements of CEQA and the State CEQA  
25 Guidelines.

26 c. To prohibit any action by Respondents in furtherance of the Protective  
27 Agreement until Respondents comply with the mandates of CEQA.

28 **ON THE SECOND CAUSE OF ACTION**



1           1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
2 1094.5 directing Respondents as follows:

3           a.       To cease, vacate, and set aside all actions related to the authorization,  
4 approval, and execution of the Freeway Agreement.

5           b.       To prepare, circulate, and consider adequate environmental review for the  
6 Freeway Agreement in order to meet the requirements of CEQA and the State CEQA Guidelines.

7           c.       To prohibit any action by Respondents in furtherance of the Freeway  
8 Agreement until Respondents comply with the mandates of CEQA.

9                                   **ON THE THIRD CAUSE OF ACTION**

10          1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
11 1094.5 directing Respondents as follows:

12          a.       To cease, vacate, and set aside all actions related to the authorization,  
13 approval, and execution of the Cooperative Agreement.

14          b.       To prepare, circulate, and consider adequate environmental review for the  
15 Freeway Agreement in order to meet the requirements of CEQA and the State CEQA Guidelines.

16          c.       To prohibit any action by Respondents in furtherance of the Cooperative  
17 Agreement until Respondents comply with the mandates of CEQA.

18                                   **ON THE FOURTH CAUSE OF ACTION**

19          1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
20 1094.5 declaring the Protective Agreement void and commanding the TCA and TCA Board to set  
21 aside the approval of the Protective Agreement, as well as any and all agreements entered, and  
22 actions taken, pursuant thereto.

23                                   **ON THE FIFTH CAUSE OF ACTION**

24          1.       For a writ of mandate pursuant to Code of Civil Procedure sections 1085 and/or  
25 1094.5 declaring the Protective Agreement void and commanding CalTrans to set aside the  
26 approval of the Protective Agreement, as well as any and all agreements entered, and actions  
27 taken, pursuant thereto.

28                                   **ON THE SIXTH CAUSE OF ACTION**

1           1.       That this Court declare that 401 Certification for the construction of “F” Street is  
2 inapplicable to and does not cover the toll road extension via Los Patrones Parkway.

3           2.       That this Court declare that Respondents must apply for a new 401 Certification  
4 from the San Diego RWQCB before commencing construction of the toll road extension via Los  
5 Patrones Parkway.

6   **ON THE SEVENTH CAUSE OF ACTION**

7           1.       That this Court declare any existing Section 1602 Streambed Alteration  
8 Agreement that exists for construction of “F” Street is inapplicable to and does not cover the toll  
9 road extension via Los Patrones Parkway.

10          2.       That this Court declare that Respondents must apply for a new agreement from  
11 CDFW before commencing construction of the toll road extension via Los Patrones Parkway.

12   **ON THE EIGHTH CAUSE OF ACTION**

13          1.       For a stay, preliminary injunction, and permanent injunction prohibiting any  
14 actions by Respondents regarding Respondents’ approval, authorization, or execution of the  
15 Protective Agreement and Freeway Agreement until Respondents and Real Parties fully comply  
16 with all requirements of CEQA and all other applicable state and local laws, policies, ordinances,  
17 and regulations.

18   **ON THE NINTH CAUSE OF ACTION**

19          1.       For a declaration of the rights and duties of the respective parties as requested  
20 herein above.

21   **ON ALL CAUSES OF ACTION**

- 22          1.       For an award of attorneys’ fees incurred in this matter as permitted or required by
- 23 law. (Code Civ. Proc., § 1021.5).
- 24          2.       For City’s costs of suit incurred herein.
- 25          3.       For such other and further relief as the Court deems just and proper.

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1 Dated: July 28, 2017

BEST BEST & KRIEGER LLP

2  
3 By: 

4 SCOTT C. SMITH  
5 JEFFREY V. DUNN  
6 MICHELLE OUELLETTE  
7 ARMEEN KOMEILI

8 Attorneys for Petitioner and Plaintiff  
9 City of San Clemente

10 **(PETITION AND COMPLAINT DEEMED VERIFIED PURSUANT TO CODE OF CIV.  
11 PROC., § 446)**

12 55452.02602\29983786.5

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**EXHIBIT "A"**  
**NOTICE OF COMMENCEMENT OF CEQA ACTION**

**EXHIBIT 'B'**  
**SECOND NOTICE OF COMMENCEMENT OF CEQA ACTION**

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**EXHIBIT "C"**  
**NOTICE TO ATTORNEY GENERAL OF CEQA ACTION**

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**EXHIBIT "D"**  
**NOTICE OF REQUEST TO RESPONDENT TCA TO PREPARE ADMINISTRATIVE  
RECORD**

**EXHIBIT "E"**  
**MAP**

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**EXHIBIT "F"**  
**PROTECTIVE AGREEMENT**

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**EXHIBIT "G"**  
**FREEWAY AGREEMENT**

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**EXHIBIT "H"**  
**COOPERATIVE AGREEMENT**

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**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is 18101 Von Karman Avenue, Suite 1000, Irvine, California 92612. On July \_\_, 2017, I served the following document(s):

**NOTICE TO ATTORNEY GENERAL OF CEQA ACTION**

**By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

**By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Riverside, California.

**By personal service.** At \_\_\_ a.m./p.m., I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an Individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

**By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service for service. A Declaration of Messenger is attached.

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**By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below before 5:00 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Xavier Becerra, Attorney General  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July \_\_, 2017, at Irvine, California.

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**EXHIBIT "D"**  
**NOTICE OF REQUEST TO RESPONDENT TCA TO PREPARE ADMINISTRATIVE  
RECORD**

1 SCOTT C. SMITH, Bar No. 120736  
scott.smith@bbklaw.com  
2 JEFFREY V. DUNN, Bar No. 131926  
jeffrey.dunn@bbklaw.com  
3 MICHELLE OUELLETTE, Bar No. 145191  
michelle.ouellette@bbklaw.com  
4 ARMEEN KOMEILI, Bar No. 299202  
armeen.komeili@bbklaw.com  
5

6 BEST BEST & KRIEGER LLP  
18101 Von Karman Avenue, Suite 1000  
Irvine, California 92612  
7 Telephone: (949) 263-2600  
8 Facsimile: (949) 260-0972

**EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE § 6103**

9 Attorneys for Petitioner and Plaintiff  
City of San Clemente

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ORANGE

12 CITY OF SAN CLEMENTE, a California  
13 municipal corporation,

14 Petitioner and Plaintiff,

15 v.

16 FOOTHILL/EASTERN  
17 TRANSPORTATION CORRIDOR  
AGENCY, a Joint Powers Agency;  
18 BOARD OF DIRECTORS OF THE  
FOOTHILL/EASTERN  
19 TRANSPORTATION CORRIDOR  
AGENCY;  
20 COUNTY OF ORANGE, a political  
subdivision of the State of California;  
21 BOARD OF SUPERVISORS OF THE  
COUNTY OF ORANGE;  
STATE OF CALIFORNIA  
22 DEPARTMENT OF  
TRANSPORTATION, a state agency;  
23 MALCOLM DOUGHERTY, acting in his  
official capacity as Director of the  
24 California Department of Transportation,  
and DOES 1 through 100, inclusive,  
25

26 Respondents and  
Defendants.

27 SAVE SAN ONOFRE COALITION;  
28 NATIONAL AUDUBON SOCIETY dba  
AUDUBON CALIFORNIA;

Case No.

**NOTICE OF REQUEST FOR  
RESPONDENT FOOTHILL/EASTERN  
TRANSPORTATION CORRIDOR  
AGENCY TO PREPARE  
ADMINISTRATIVE RECORD**

[Pub. Res. Code § 21167.6(a)]

Assigned for All Purposes to the Honorable  
Judge:

Complaint filed: July 28, 2017

[Filed concurrently with Verified Petition for  
Peremptory Writ of Mandate; Complaint for  
Declaratory and Injunctive Relief]

55452.0260229991859.2

1 CALIFORNIA COASTAL PROTECTION  
2 NETWORK; CALIFORNIA STATE  
3 PARKS FOUNDATION; DEFENDERS  
4 OF WILDLIFE; ENDANGERED  
5 HABITATS LEAGUE; LAGUNA  
6 GREENBELT, INC.; NATURAL  
7 RESOURCES DEFENSE COUNCIL,  
8 INC.; ORANGE COUNTY  
9 COASTKEEPER; SEA AND SAGE  
10 AUDUBON SOCIETY; SIERRA CLUB;  
11 SURFRIDER FOUNDATION;  
12 WILDCOAST-COSTASALVAJE;  
13 PEOPLE OF THE STATE OF  
14 CALIFORNIA ex rel. XAVIER  
15 BECERRA, ATTORNEY GENERAL;  
16 NATIVE AMERICAN HERITAGE  
17 COMMISSION;  
18 CALIFORNIA NATURAL RESOURCES  
19 AGENCY,  
20 CALIFORNIA STATE PARK AND  
21 RECREATION COMMISSION, and  
22 ROES 1 through 50, inclusive,  
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Real-Parties-In-Interest.



1 Pursuant to Public Resources Code section 21167.6, subd. (a), Petitioner and Plaintiff City  
2 of San Clemente ("Petitioner") hereby requests that Respondent, Foothill/Eastern Transportation  
3 Corridor Agency ("TCA") prepare the record of proceedings relating to Respondents' decisions  
4 to approve 1) the Agreement to Address Traffic Congestion in South Orange County and Protect  
5 Sensitive Environmental, Cultural and Recreational Resources among TCA, CalTrans, the Save  
6 San Onofre Coalition, and the California Natural Resources Agency, entered into on or about  
7 March 10, 2017, 2) the Freeway Agreement between CalTrans and the County of Orange, entered  
8 into on or about February 2, 2017, and 3) the Cooperative Agreement between TCA and the  
9 County of Orange entered into on or about March 28, 2017.

10 Prior to TCA's preparation of the record of proceedings, Petitioner requests that TCA  
11 prepare and transmit to Petitioner an estimate of the costs to assemble, prepare and produce the  
12 record.

13 Petitioner reserves the right to amend or alter its election on the record preparation under  
14 CEQA based on the receipt of the estimate, further consultation with Respondents, or other  
15 circumstances.

16 Dated: July 28, 2017

BEST BEST & KRIEGER LLP

17  
18 By: 

19 SCOTT C. SMITH  
20 JEFFREY V. DUNN  
MICHELLE OUELLETTE  
ARMEEN KOMEILI

21 Attorneys for Petitioner and Plaintiff  
22 City of San Clemente  
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**EXHIBIT "E"**  
**MAP**

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

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

CAMP JOSEPH  
H. PENDLETON

**EXHIBIT "F"**  
**PROTECTIVE AGREEMENT**

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## **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**”)<sup>1</sup>, (ii) the Save San Onofre Coalition (“**SSOC**”)<sup>2</sup>, (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.

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<sup>1</sup> 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.

<sup>2</sup> 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 WILD Coast-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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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](mailto: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 H. Nagami*  
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.

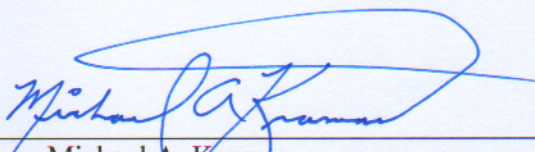
Dated: March \_\_, 2017

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

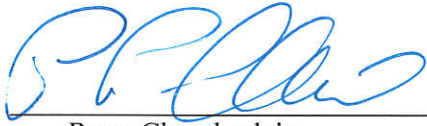
Approved as to form:

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:

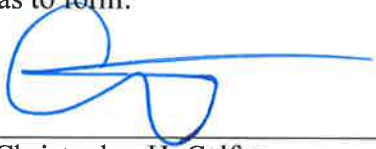
By: \_\_\_\_\_  
Glenn B. Mueller  
Assistant Chief Counsel

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 A**  
**SETTLEMENT AGREEMENT**

## 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 WILDCOAST-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 WILDCOAST-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.

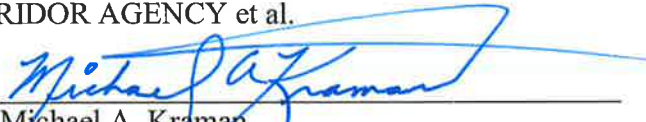
*SIGNATURES BEGIN ON NEXT PAGE*

**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*

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*

**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*

**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: \_\_\_\_\_

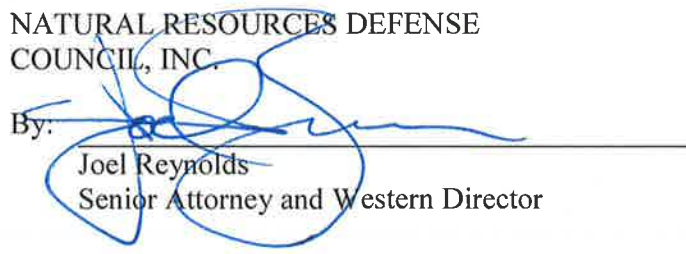
  
Elisabeth M. Brown, Ph.D.  
President

*SIGNATURES CONTINUE ON NEXT PAGE*

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*



Dated: November \_\_\_, 2016

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.


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Senior Attorney and Western Director

Dated: November 1, 2016

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 Ph.D  
G. Victor Leipzig, Ph.D  
President

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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*

Dated: November \_\_\_, 2016

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

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Joel Reynolds  
Senior Attorney and Western Director

Dated: November \_\_\_, 2016

SEA AND SAGE AUDUBON SOCIETY


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President

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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*

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*

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

WILDCOAST-COSTASALVAJE  
By: \_\_\_\_\_  
Serge Dedina, Ph.D.  
Executive Director

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-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

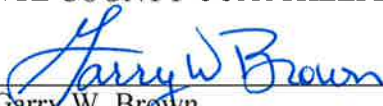
By: \_\_\_\_\_

Susan Jordan  
Executive Director

Dated: November 1<sup>st</sup>, 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 \_\_, 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-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 \_\_\_, 2016

DEFENDERS OF WILDLIFE

By: \_\_\_\_\_

Kim Delfino  
California Program Director

Dated: November 09, 2016

WILDCOAST-COSTASALVAJE

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*

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*

Dated: November 1, 2016

NATIVE AMERICAN HERITAGE COMMISSION

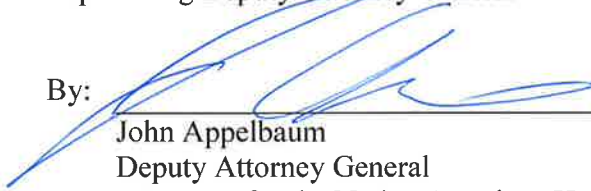
By:

  
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

CRIG YOUNG  
Print Name  
CRIG 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 H. Shea  
Print Name  
Christina H. 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



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 Bv: \_\_\_\_\_  
24 WILLIAM J. WHITE

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

27 [signatures continued on the following page]

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DATED: November . 2016

SHUTE. MIHALY & WEINBERGER LLP

By: \_\_\_\_\_  
WILLIAM J. WHITE

Attorneys for Defenders of Wildlife and WILDCOAST-COSTASALVAiE

DATED: November \_\_, 2016

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

By: \_\_\_\_\_  
BENJAMIN Z. RUBIN  
Attorneys for Respondents Foothill/Eastern  
Transportation Corridor Agency et al.

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

[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)  
 EDWARD T. SCHEXNAYDER (State Bar No. 284494)  
 2 SHUTE, MIHALY & WEINBERGER LLP  
 3 396 Hayes Street  
 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

<p>10 CALIFORNIA STATE PARKS          11 FOUNDATION, et al.,           12 Petitioners,           13 v.           14 FOOTHILL/EASTERN          15 TRANSPORTATION CORRIDOR          16 AGENCY, et al.,           17 Respondents.</p>	<p>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   <b>STIPULATION FOR ENTRY OF          JUDGMENT CONFIRMING AND          IMPLEMENTING SETTLEMENT</b>           (Code of Civ. Proc., § 664.6)</p>
<p>18 THE PEOPLE OF THE STATE OF          CALIFORNIA, et al.,           19 Petitioners,           20 v.           21 FOOTHILL/EASTERN          22 TRANSPORTATION CORRIDOR          23 AGENCY, et al.,           24 Respondents.</p>	<p>Judge: Hon. Earl H. Maas, III          Dept.: 28           Action Filed: March 23, 2006   <b>[Exempt from Filing Fees Pursuant to          Government Code Section 6103]</b></p>
<p>25 AND CONSOLIDATED CASES</p>	



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 WILDCOAST-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).<sup>1</sup>

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25  
26  
27 <sup>1</sup> 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: \_\_\_\_\_

4

William J. White

5

Attorneys for Petitioners California State Parks  
Foundation, et al.

6

7 DATED: November \_\_\_, 2016

CALIFORNIA STATE PARKS FOUNDATION

8

9

By: \_\_\_\_\_

10

Elizabeth Goldstein

11

President

12 DATED: November \_\_\_, 2016

ENDANGERED HABITATS LEAGUE

13

14

By: \_\_\_\_\_

15

Dan Silver

16

Executive Director

17

18 DATED: November \_\_\_, 2016

LAGUNA GREENBELT, INC.

19

20

By: \_\_\_\_\_

21

Elisabeth Brown

22

President

23 DATED: November \_\_\_, 2016

NATURAL RESOURCES DEFENSE  
COUNCIL, INC.

24

25

By: \_\_\_\_\_

26

Damon Nagami

27

Senior Attorney

28

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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

WILDCOAST-COSTASALVAJE

By: \_\_\_\_\_  
Serge Dedina  
Executive Director

[signatures continued on the following page]

1 DATED: November \_\_, 2016

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

2  
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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.

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**

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

Petitioners,

v.

FOOTHILL/EASTERN  
TRANSPORTATION CORRIDOR  
AGENCY, et al.,

Respondents.

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

Action Filed: March 23, 2006

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

AND CONSOLIDATED CASES

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 WiLDCOAST-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.

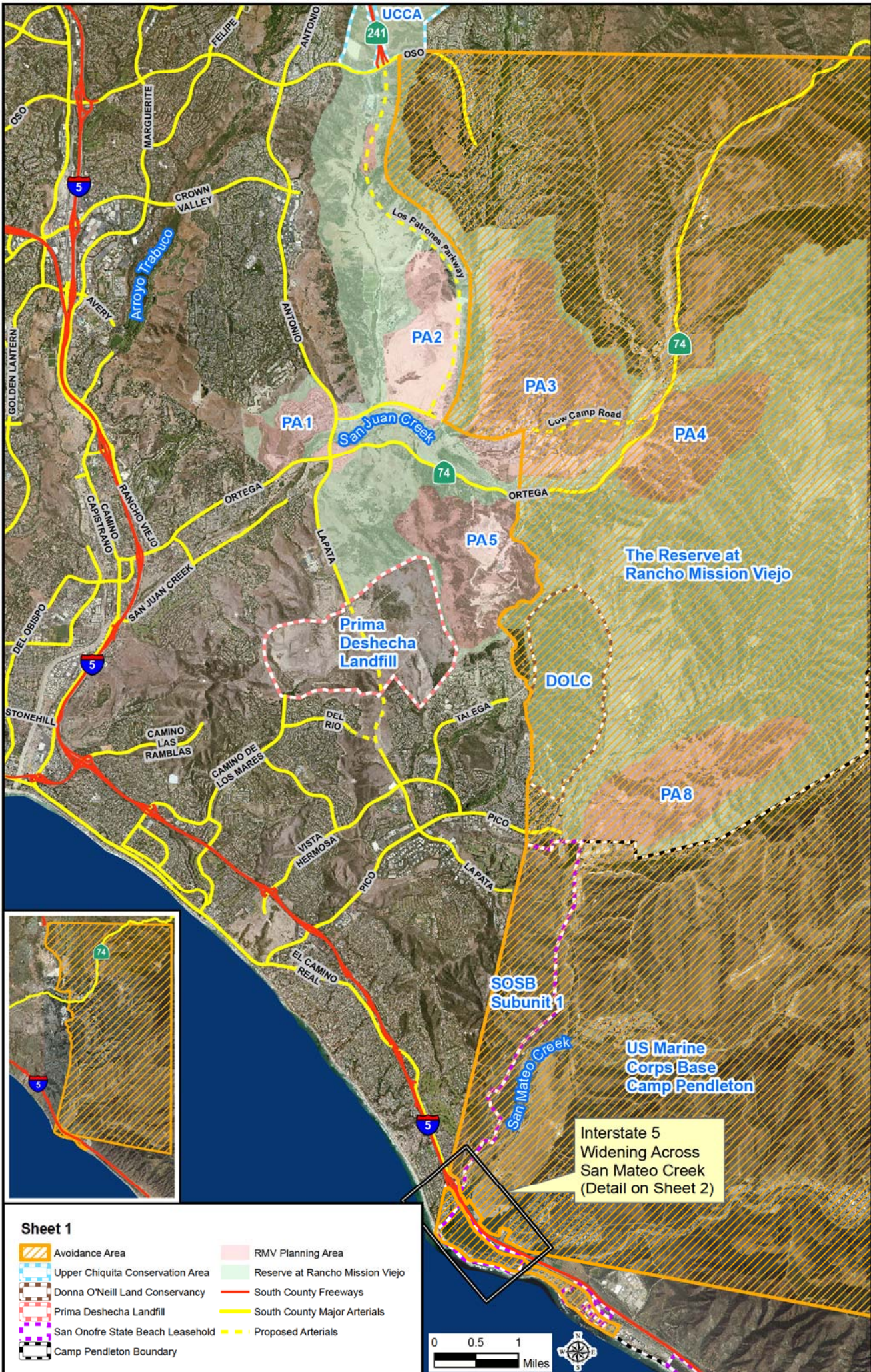
23  
24 DATED: \_\_\_\_\_, 2016

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

# 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          |  |                                 |

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



U.S. Marine Corps Base  
Camp Pendleton

Subunit 1

City of  
San Clemente

Subunit 2



**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

# EXHIBIT D



1 WILLIAM J. WHITE (State Bar No. 181441)  
2 EDWARD T. SCHEXNAYDER (State Bar No. 284494)  
3 SHUTE, MIHALY & WEINBERGER LLP  
396 Hayes Street  
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.,  
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Petitioners,  
v.

Case No. GIN051194  
Consolidated with:  
Case No. GIN051371

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

**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

v.  
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]*

1 **RECITALS**

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

6 B. The Lawsuits are *Cal. State Parks Foundation et al. v. Foothill/Eastern*  
7 *Transportation Corridor Agency et al.* (Case No. GIN051194), consolidated for limited  
8 purposes with *People of the State of California et al. v. Foothill/Eastern Transportation*  
9 *Corridor Agency et al.* (Case No. GIN051371); *Cal. State Parks Foundation et al. v.*  
10 *Foothill/Eastern Transportation Corridor Agency et al.* (Case No. 37-2013-00049797-  
11 CU-WM-NC), consolidated for limited purposes with *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); and *Native American Heritage*  
14 *Commission v. Foothill/Eastern Transportation Corridor Agency, et al.* (Case No.  
15 GIN051370), which had been consolidated with a related case (*Jeffrey A. Turner v. Native*  
16 *American Heritage Commission* (Case No. 37-2008-0006058)), but that related case was  
17 voluntarily dismissed on \_\_\_\_\_, 2016.

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

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

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

24 F. The Settlement provides that, in the event [the Court affirmatively declines  
25 to enter proposed judgment called for in the Settlement/the proposed judgment called for  
26 in the Settlement is not entered within 90 days of the effective date of the Settlement], the  
27 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: \_\_\_\_\_  
18 WILLIAM J. WHITE  
19 Attorneys for Petitioners California State Parks  
Foundation, et al.

20 DATED: \_\_\_\_\_, 2016

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

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24 By: \_\_\_\_\_  
25 BENJAMIN Z. RUBIN]  
26 Attorneys for [Respondents/Defendants]  
Foothill/Eastern Transportation Corridor  
Agency et al.

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 WILD/COAST/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]

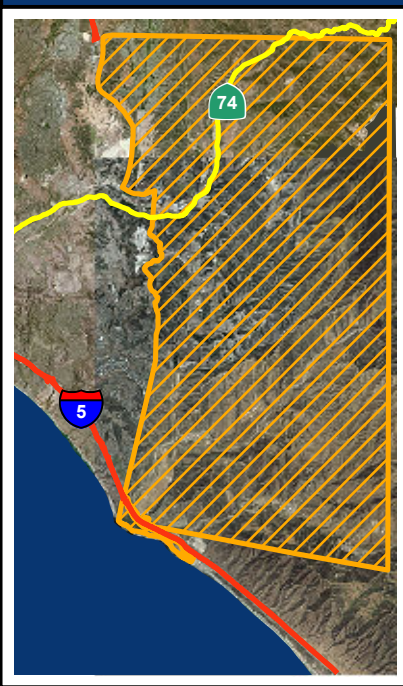
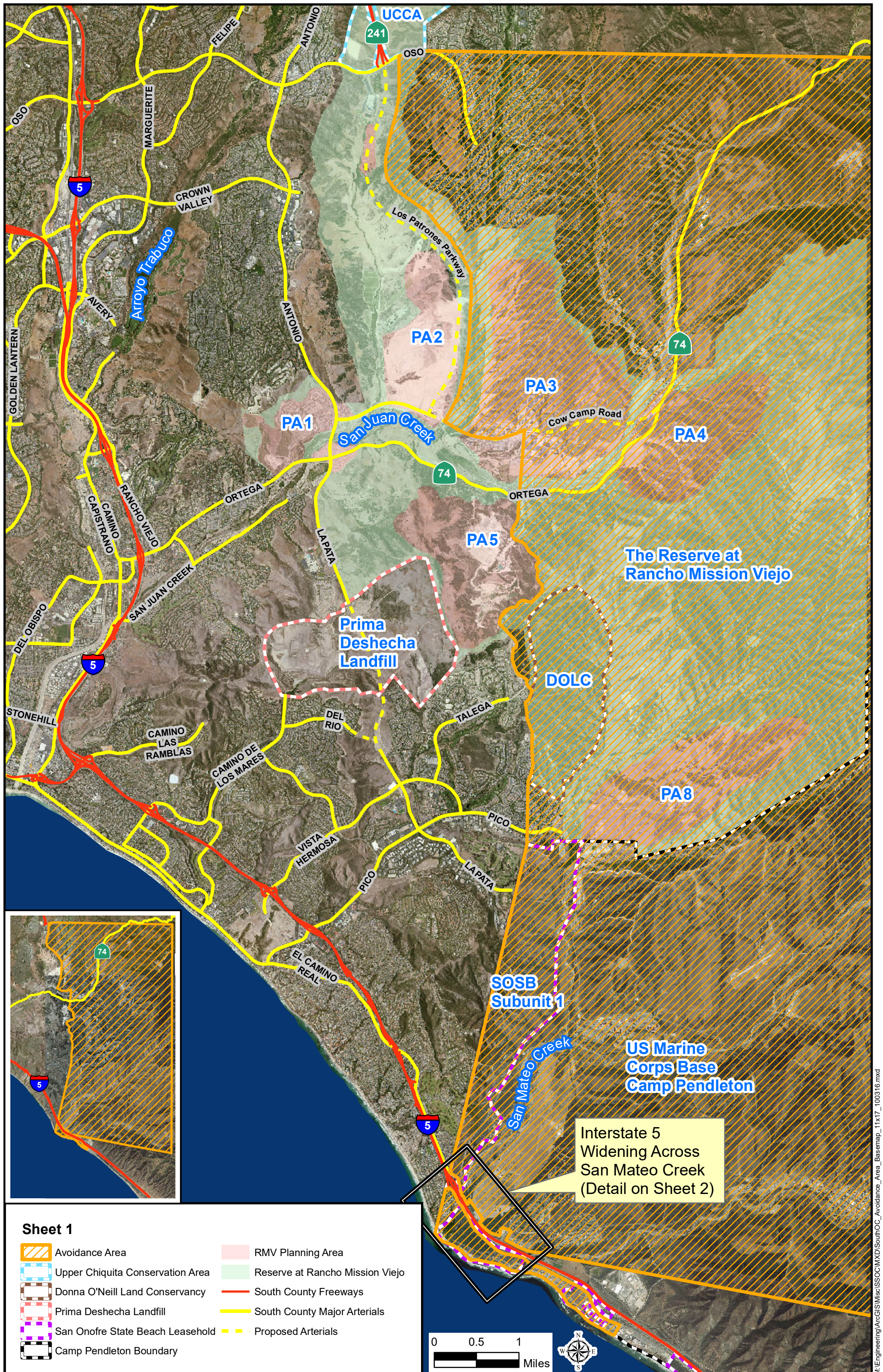
To Whom It May Concern:

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].

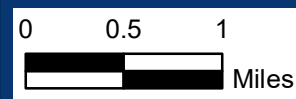
[TCA SIGNATURE]

**EXHIBIT B**  
**AVOIDANCE AREA MAP**



**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          |   |



U.S. Marine Corps Base  
Camp Pendleton

Subunit 1

City of  
San Clemente

Subunit 2



**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



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**EXHIBIT "G"**  
**FREEWAY AGREEMENT**

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12-ORA-241 PM 14.1/36.7  
From 0.4 miles south of Oso Parkway to 1.3  
miles north of Windy Ridge Rd  
State Route 241 within the County of Orange  
County Agreement No. MA-080-16011316

## **FREEWAY AGREEMENT**

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ 2<sup>nd</sup> \_\_\_\_\_ day of February, 2017, by and between the STATE OF CALIFORNIA acting by and through the Department of Transportation (herein referred to as "STATE"), and the County of Orange (herein referred to as "COUNTY"),

WITNESSETH:

WHEREAS, Government Code Section 66484.3, added by Statutes 1984, Chapter 708, Section 1, and as amended by subsequent legislation, provided for the COUNTY's participation, through a joint exercise of powers agreement, to impose fees for the purpose of constructing major thoroughfares that are designed and constructed to STATE'S standards and specifications then in effect; and

WHEREAS, Government Code Section 66484.3 provides that any entity constructing major thoroughfares in the COUNTY may, at any time, transfer all or a portion of the major thoroughfares to the STATE subject to such terms and conditions as shall be satisfactory to the Director of the Department of Transportation; provided, however, that the major thoroughfares shall be designated as a portion of the State Highway System prior to their transfer; and

WHEREAS, Government Code Section 66484.3 provides that the participants in a joint exercise of powers agreement may, as a duly authorized original power, establish and collect toll charges only for the purpose of paying the costs of construction of the major thoroughfare and the costs of collecting tolls; and

WHEREAS, the Foothill/Eastern Transportation Corridor Agency ("Foothill/Eastern Agency") was formed pursuant to the Joint Exercise of Powers Act (Government Code sections 6500 et seq.) by a joint exercise of powers agreement dated January 30, 1986, amended and restated on October 21, 1988, entered into by and among the COUNTY and the cities of Anaheim, Irvine, Mission Viejo, Orange, Tustin, San Clemente, San Juan Capistrano, Santa Ana, and Yorba Linda, for the purpose of designing, financing and constructing the major thoroughfares and bridges collectively known as the Foothill and Eastern Transportation Corridors, which corridor is now known as State Route 241 (SR 241); and

WHEREAS, STATE and Foothill/Eastern Agency, among others, entered into an Agreement on November 14, 1988 which was supplemented by a Cooperative Agreement entered into on April 7, 1995, providing that STATE will accept ownership of each major thoroughfare after (1) the major thoroughfare has been made part of the State Highway System; and (2) construction has been completed in accordance with all applicable STATE and federal standards, practices and specifications in effect; and



12-ORA-241 PM 14.1/36.7  
From 0.4 miles south of Oso Parkway to 1.3  
miles north of Windy Ridge Rd  
State Route 241 within the County of Orange  
County Agreement No. MA-080-16011316

WHEREAS, on May 25, 1993, COUNTY executed a Major Thoroughfare Agreement with the Foothill/Eastern Agency, whereby the COUNTY agreed to the construction of the major thoroughfare (SR 241) and its effects on the local roads, the location of separations, including overcrossings and undercrossings, and interchanges related to SR 241 (formerly known as Route 231); and

WHEREAS, SR-241 has been adopted as a state highway by Resolution of the California Transportation Commission on July 9, 1993 and on August 19, 1998, and has been declared to be a freeway; and

WHEREAS, STATE and COUNTY have entered into a Freeway Agreement dated February 9, 2016, relating to that portion of State Highway Route from 0.4 miles south of Oso Parkway to 1.3 miles north of Windy Ridge Road; and

WHEREAS, a plan map for such freeway has been prepared showing the proposed plan of the STATE as it affects streets of the COUNTY; and

NOW, THEREFORE, IT IS AGREED:

1. This Agreement supersedes in its entirety said Freeway Agreement, dated February 9, 2016.
2. COUNTY agreed and consented to the closing of COUNTY roads, relocation of COUNTY roads, construction of frontage roads and other local roads, and other construction affecting COUNTY roads, all as shown on the plan map attached hereto marked Exhibit A and made a part hereof by this reference.
3. STATE has, pursuant to Government Code section 66484.3 and the Cooperative Agreements referred to in the recitals above, accepted ownership of portions of SR 241.
4. The obligations of STATE and COUNTY with respect to any future funding, construction plan approval and construction regarding the freeway project shall be dealt with in separate Cooperative Agreement(s) between the parties, and any amendments thereto, or Encroachment Permits issued to COUNTY or to STATE. The parties responsible for such construction shall make any changes affecting COUNTY roads only in accordance with the plan map attached hereto, marked Exhibit A. Execution of this Freeway Agreement does not constitute COUNTY's or STATE's acknowledgment of any funding obligations.

12-ORA-241 PM 14.1/36.7  
From 0.4 miles south of Oso Parkway to 1.3  
miles north of Windy Ridge Rd  
State Route 241 within the County of Orange  
County Agreement No. MA-080-16011316

5. The obligations of STATE and COUNTY with respect to the acquisition of the rights of way required for the construction, reconstruction, or alteration of the freeway and COUNTY roads, frontage roads, and other local roads shall be dealt in separate Cooperative Agreement(s) between the parties, and any amendments thereto, or Encroachment Permits issued to COUNTY or to STATE. Execution of this Freeway Agreement does not constitute COUNTY's or STATE's acknowledgment of any right of way obligations.

6. It is understood between the parties that the rights of way may be acquired in sections or units, and that both as to the acquisition of rights of way and the construction of the freeway projects, the obligations of STATE hereunder shall be carried out at such time and for such unit or units of the projects as funds are budgeted and made lawfully available for such expenditures.

7. COUNTY will accept control and maintenance over each of the relocated or reconstructed COUNTY roads, any frontage roads, and other local roads constructed by or on behalf of STATE on receipt of written notice to COUNTY from STATE that the work thereon has been completed in accordance with COUNTY approved plans as addressed in separate Cooperative Agreement(s) between the parties, and any amendments thereto, except for any portion which is adopted by STATE as part of the freeway proper. If acquired by STATE, COUNTY will accept title to the portions of such COUNTY roads lying outside the freeway limits upon relinquishment by STATE.

8. This Agreement may be modified at any time by the mutual written consent of the parties hereto, as may become necessary for the best accomplishment, through STATE and COUNTY cooperation, of the whole freeway project for the benefit of the people of the STATE and of the COUNTY.

9. Execution of this Freeway Agreement does not constitute STATE's approval of interchange design features. Design exceptions, as required, are subject to STATE's prior approval. Furthermore, execution of this Freeway Agreement does not constitute COUNTY's approval of design plans and other related documents impacting COUNTY roads nor County's acceptance of the proposed improvements.

10. By way of this Agreement, State is only authorizing a connection to an existing State Highway. By way of this Agreement, State accepts access control of the SR 241/Oso Parkway interchange connecting to Los Patrones Parkway county road at 0.4 miles south of Oso Parkway (consistent with the August 19, 1998 California Transportation Commission Resolution HRA 98-6). By way of this Agreement, State does not accept any portion of any facility, thoroughfare or COUNTY road southerly of 0.4 mile south of SR-241 Oso Parkway, including Los Patrones Parkway, into the State Highway System.

12-ORA-241 PM 14.1/36.7  
From 0.4 miles south of Oso Parkway to 1.3  
miles north of Windy Ridge Rd  
State Route 241 within the County of Orange  
County Agreement No. MA-080-16011316

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
by their respective duly authorized officers.

STATE OF CALIFORNIA  
Department of Transportation

COUNTY OF ORANGE,  
a political subdivision of  
the State of California


MALCOLM DOUGHERTY  
Director of Transportation

By:   
RYAN CHAMBERLAIN  
District 12 Director

By:   
Chairman of the Board of Supervisors


Approved as to Form

Approved as to Form

By:   
Attorney (State)

By:   
Attorney (County)

Signed and Certified that a copy of  
this Document has been delivered to  
the Chair of the Board of Supervisors

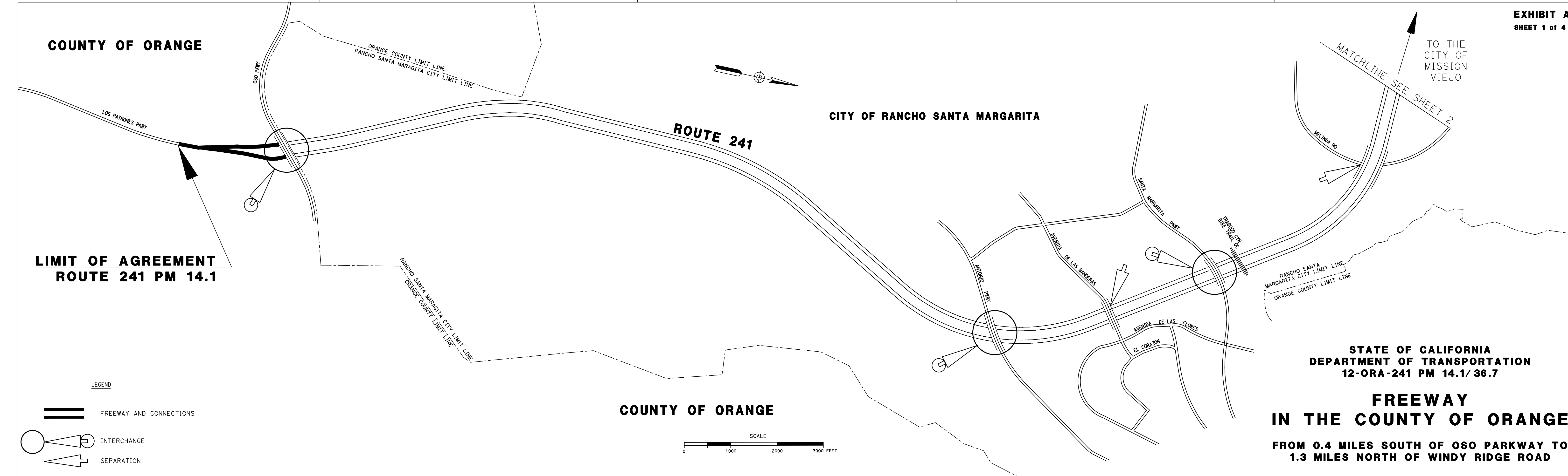
By:   
~~DARLENE BLOOM~~  
Clerk of the Board of Supervisors  
of Orange County, California



COUNTY OF ORANGE

CITY OF RANCHO SANTA MARGARITA

COUNTY OF ORANGE




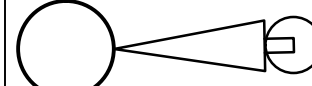
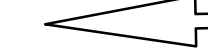
**LIMIT OF AGREEMENT  
ROUTE 241 PM 14.1**

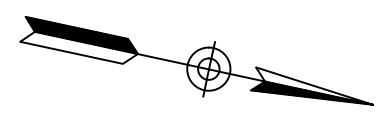
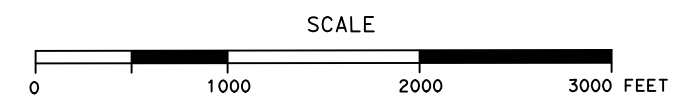
STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
12-ORA-241 PM 14.1/36.7

**FREEWAY  
IN THE COUNTY OF ORANGE**

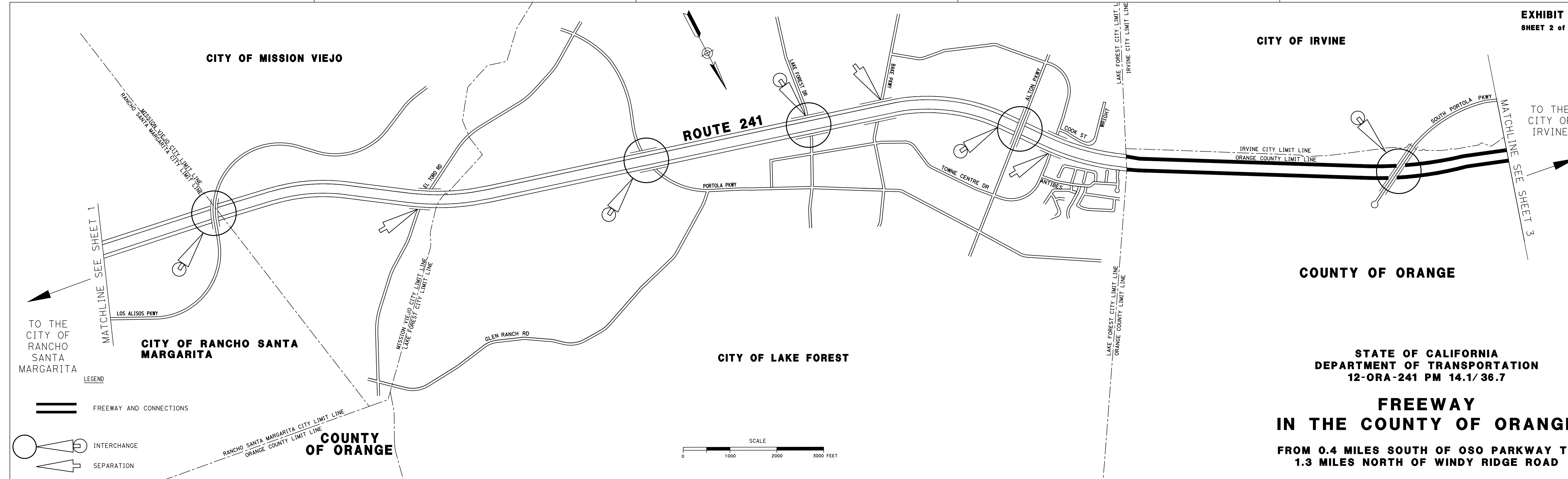
**FROM 0.4 MILES SOUTH OF OSO PARKWAY TO  
1.3 MILES NORTH OF WINDY RIDGE ROAD**

LEGEND

-  FREEWAY AND CONNECTIONS
-  INTERCHANGE
-  SEPARATION



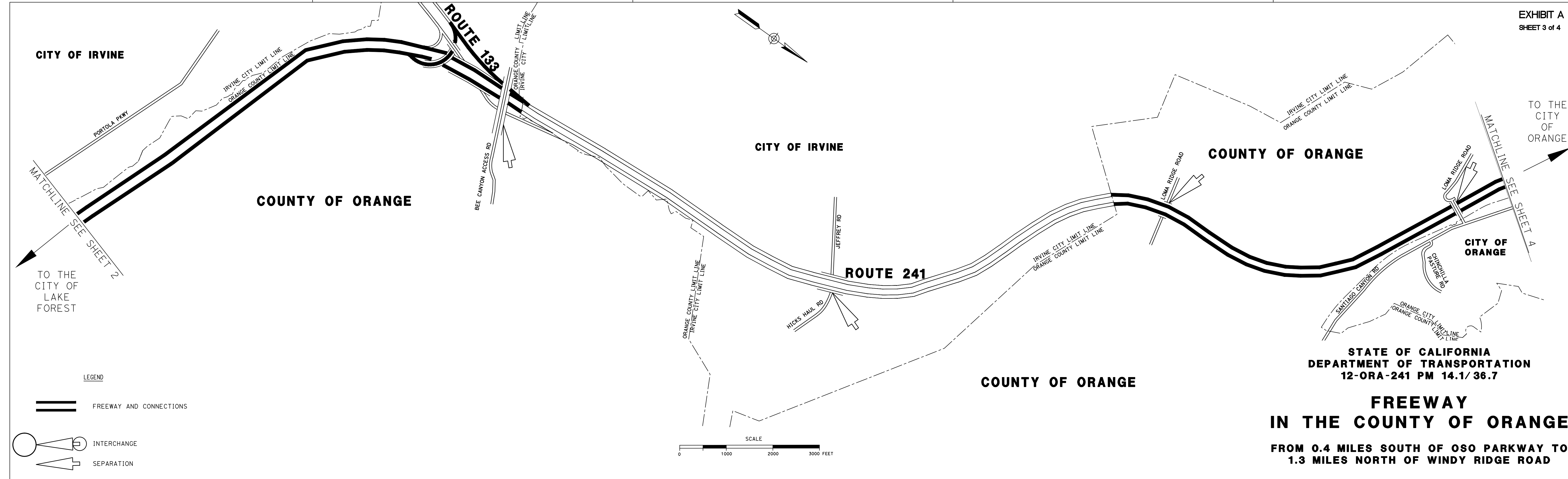
MATCHLINE SEE SHEET 2  
TO THE CITY OF MISSION VIEJO



STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
12-ORA-241 PM 14.1/36.7

# FREEWAY IN THE COUNTY OF ORANGE

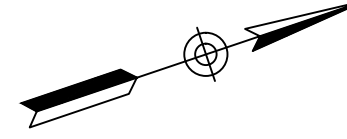
FROM 0.4 MILES SOUTH OF OSO PARKWAY TO  
1.3 MILES NORTH OF WINDY RIDGE ROAD



STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
12-ORA-241 PM 14.1/36.7

# FREWAY IN THE COUNTY OF ORANGE

FROM 0.4 MILES SOUTH OF OSO PARKWAY TO  
1.3 MILES NORTH OF WINDY RIDGE ROAD



CITY OF ORANGE

COUNTY OF ORANGE

ROUTE 261

LIMIT OF AGREEMENT  
ROUTE 241 PM 36.7

COUNTY OF ORANGE

ORANGE COUNTY  
ANAHEIM CITY

TO THE  
CITY OF  
ANAHEIM

CITY OF ORANGE

ROUTE 241

CITY OF ANAHEIM

MATCHLINE SEE SHEET 3

TO THE  
CITY OF  
IRVINE

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
12-ORA-241 PM 14.1/36.7

**FREWAY  
IN THE COUNTY OF ORANGE**

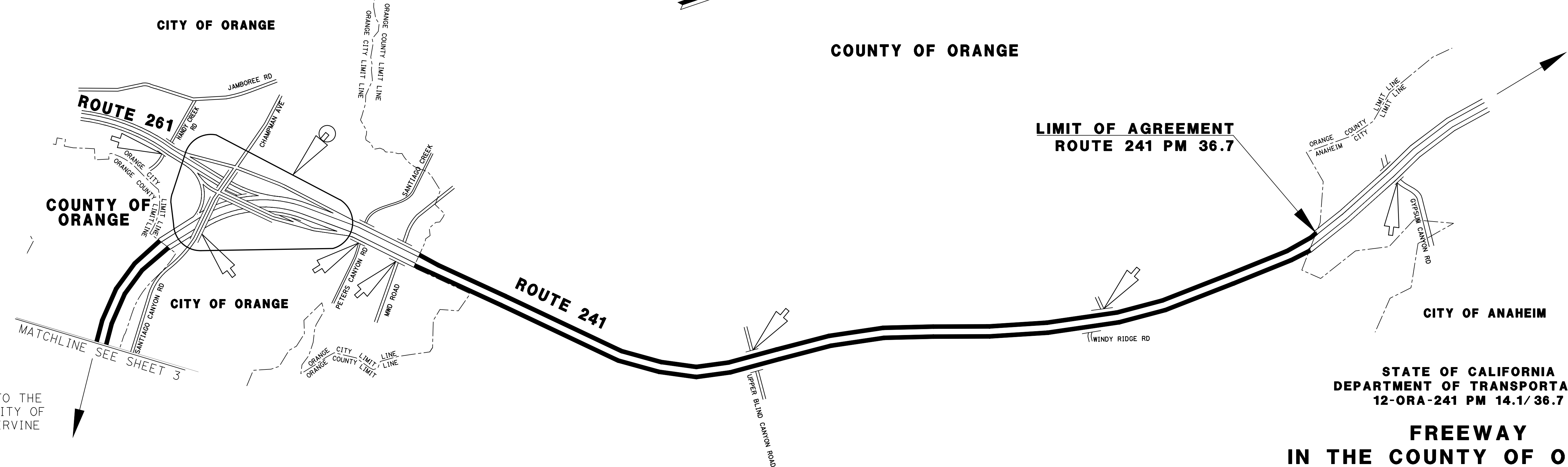
**FROM 0.4 MILES SOUTH OF OSO PARKWAY TO  
1.3 MILES NORTH OF WINDY RIDGE ROAD**

LEGEND

FREWAY AND CONNECTIONS

INTERCHANGE

SEPARATION





AGENDA STAFF REPORT

Agenda Item

8

ASR Control 15-001715

MEETING DATE: 02/09/16
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 3, 5
SUBMITTING AGENCY/DEPARTMENT: OC Public Works (Approved)
DEPARTMENT CONTACT PERSON(S): Shane Silsby (714) 667-9700
Khalid Bazmi (714) 667-3213

Handwritten notes: 32A2, JUN 27 11:19:24

SUBJECT: Approve Cooperative Agreements for Oso Parkway Bridge and State Route 241

Table with 3 columns: CEO CONCUR (Concur), COUNTY COUNSEL REVIEW (Approved Agreement to Form), CLERK OF THE BOARD (Consent Calendar, 3 Votes Board Majority)

Budgeted: Yes Current Year Cost: N/A Annual Cost: N/A
Staffing Impact: No # of Positions: Sole Source: No
Current Fiscal Year Revenue: \$100,000
Funding Source: Road Fund 115: 100% County Audit in last 3 years: No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

- 1. Find that the subject activity is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to review under CEQA.
2. Approve Cooperative Agreement with Foothill/Eastern Transportation Corridor Agency which defines the parties' respective rights and obligations with respect to preparation and adoption of the CEQA compliance documents and preparation of Plans, Specifications and Estimates for the Oso Parkway Bridge over State Route 241 Project, effective upon Board approval.
3. Authorize the Director of OC Public Works or designee to execute future amendment(s) to the Cooperative Agreement, provided those amendments would result in minor, non-substantive changes which do not create or increase a financial obligation on the part of the County.
4. Approve Freeway Agreement with the California Department of Transportation for State Route 241.

SUMMARY:

Approval of Cooperative Agreement with the Foothill/Eastern Transportation Corridor Agency and Freeway Agreement with the California Department of Transportation will support future construction of



ORANGE COUNTY BOARD OF SUPERVISORS  
MINUTE ORDER  
February 09, 2016

Submitting Agency/Department: OC PUBLIC WORKS

Approve cooperative agreement D15-033 with Foothill/Eastern Transportation Corridor Agency and agreement MA-080-16011316 with State Department of Transportation for future construction of Oso Parkway Bridge over State Route 241; authorize Director or designee to execute future amendments to cooperative agreement and Freeway Agreement under certain conditions; and make California Environmental Quality Act and other findings - Districts 3 and 5

**The following is action taken by the Board of Supervisors:**

APPROVED AS RECOMMENDED  OTHER

Unanimous  (1) DO: Y (2) STEEL: Y (3) SPITZER: Y (4) NELSON: Y (5) BARTLETT: Y  
Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- Resolution(s)
  - Ordinances(s)
  - Contract(s)
- 1 LOOP AGREE.  
2 FWY AGREE.

Item No. 8

Special Notes:

Copies sent to:

OCPW: Wendy Brown  
Eric Swint

2-16-16



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Orange County, State of California.  
Robin Stieler, Clerk of the Board

By: [Signature]  
Deputy

**EXHIBIT "H"**  
**COOPERATIVE AGREEMENT**

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## **COOPERATIVE AGREEMENT**

THIS COOPERATIVE AGREEMENT (“**AGREEMENT**”), ENTERED INTO EFFECTIVE ON March 28<sup>th</sup>, 2017, is by and between the Foothill/Eastern Transportation Corridor Agency, a joint powers authority (referred to herein as “**F/ETCA**”), and the County of Orange, a political subdivision of the State of California (referred to herein as “**COUNTY**”), each individually known as “**PARTY**” and collectively known as the “**PARTIES**.”

### **RECITALS**

**WHEREAS**, for the purpose of this AGREEMENT, the “**PROJECT**” consists of an overcrossing bridge structure at Oso Parkway and mainline roadway between the southern terminus of the State Route 241 (SR 241) toll road and the northern terminus of the future Los Patrones Parkway;

**WHEREAS**, Los Patrones Parkway and the Los Patrones Parkway ramps, including a northbound ramp connecting Los Patrones Parkway to Oso Parkway and a southbound ramp connecting Oso Parkway to Los Patrones Parkway are being constructed by others and are not covered by this AGREEMENT;

**WHEREAS**, the COUNTY and F/ETCA previously entered into a Cooperative Agreement D15-033 (Exhibit C), dated February 9, 2016, that defined the PARTIES’ respective rights and obligations with respect to preparation and adoption of the CEQA compliance documents for the PROJECT, and preparation of Plans, Specifications and Estimate (“**PS&E**”) for the PROJECT;

**WHEREAS**, the COUNTY, as the California Environmental Quality Act (CEQA) Lead Agency, determined as appropriate, prepared and approved Addendum IP 15-252 to the Ranch Plan Final Program Environmental Impact Report (EIR) No. 589 and Final EIR No. 584 and the COUNTY prepared and filed a Notice of Determination for the PROJECT on June 14, 2016;

**WHEREAS**, F/ETCA has prepared a project report in Caltrans format and the report has been deemed complete and signed by the COUNTY and Caltrans on June 10, 2016;

**WHEREAS**, F/ETCA is currently preparing the PROJECT PS&E which the COUNTY is a participant under the terms of Cooperative Agreement D15-033 (Exhibit C), dated February 9, 2016;

**WHEREAS**, the COUNTY is to accept the PROJECT right-of-way south of Oso Parkway, including the Los Patrones Parkway ramps, in accordance with the Agreement for Grant of Fee Credits (Agreement No. D14-034) entered into on June 24, 2014 between the COUNTY and Rancho Mission Viejo, LLC; and

**WHEREAS**, the purpose of this AGREEMENT is to define the PARTIES' respective rights and obligations with respect to **ADVERTISE, AWARD AND ADMINISTER (AAA)** the PROJECT.

**NOW, THEREFORE**, it is mutually understood and agreed by COUNTY and F/ETCA as follows:

## **AGREEMENT**

### **COMPLETE AGREEMENT**

1. This AGREEMENT, including any attachments incorporated herein and made applicable by reference and the recitals above, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this AGREEMENT between COUNTY and F/ETCA and it supersedes all prior representations, understandings, and communications with respect to the subject matter hereof. The invalidity in whole or in part of any term or condition of this AGREEMENT shall not affect the validity of other term(s) or conditions(s) of this AGREEMENT. The above referenced Recitals are true and correct and are incorporated by reference herein.

### **SCOPE OF AGREEMENT**

2. This AGREEMENT specifies the roles and responsibilities of the PARTIES as they pertain to the subjects and PROJECT addressed herein. Both COUNTY and F/ETCA agree that each will cooperate and coordinate with the other in all activities covered by this AGREEMENT and any other supplemental agreements that may be required to facilitate the purposes thereof.

### **SPONSORSHIP & FUNDING**

3. F/ETCA is the sponsor for the PROJECT in this AGREEMENT.
4. F/ETCA is the only PARTY obligating funds in this AGREEMENT and will fund the cost of the PROJECT plus COUNTY AAA services in accordance with this AGREEMENT.
5. COUNTY does not have any financial obligations towards funding the construction of the PROJECT.

## PARTIES AGREE

6. COUNTY shall AAA the PROJECT in accordance with the PS&E developed by the F/ETCA and reviewed and concurred by staff of the COUNTY and Caltrans via Cooperative Agreement D15-033 (Exhibit C) executed by COUNTY Board of Supervisors on February 9, 2016.
7. COUNTY shall complete the AAA of the PROJECT at a cost not exceeding \$4,000,000, without prior written approval of the F/ETCA.
8. COUNTY shall transfer, at no cost, to the F/ETCA the PROJECT right-of-way south of Oso Parkway that is not presently within existing Caltrans right-of-way, including the Los Patrones Parkway ramps, as shown on the map attached hereto as Exhibit A. The COUNTY shall convey the property free and clear of all liens and encumbrances except for those approved by F/ETCA. Subsequently, F/ETCA shall convey the property to Caltrans and that conveyance shall occur prior to the PROJECT opening for public use.
9. F/ETCA shall prepare, at no cost to the COUNTY, all required PROJECT right-of-way documentation related to the conveyances needed between COUNTY and F/ETCA, and F/ETCA and Caltrans.
10. Neither COUNTY nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the F/ETCA under or in connection with any work, authority or jurisdiction delegated to the F/ETCA under this Agreement. It is also understood that to the extent permitted by law, F/ETCA shall defend, indemnify, protect with counsel approved in writing by COUNTY, and hold harmless COUNTY and all of its officers, directors, employees, and agents (collectively the "INDEMNIFIED PARTIES"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "CLAIMS"), including but not limited to CLAIMS arising from injuries to or death of persons (F/ETCA's employees included), for damage to property, including property owned by COUNTY, or from any violation of any federal, state, or local law or ordinance, caused by the negligent acts, omissions or willful misconduct of F/ETCA, its officers, directors, employees or agents in connection with or arising out of the F/ETCA's performance of its obligations under this AGREEMENT, except to the extent that such CLAIMS result from COUNTY's own gross negligence or willful misconduct.
11. Neither F/ETCA nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the COUNTY under or in connection with any work, authority or jurisdiction delegated to the COUNTY under this Agreement. It is also understood that to the extent permitted by law, COUNTY shall defend,

indemnify, protect with counsel approved in writing by F/ETCA, and hold harmless F/ETCA and all of its officers, directors, employees, and agents (collectively the “INDEMNIFIED PARTIES”), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively “CLAIMS”), including but not limited to CLAIMS arising from injuries to or death of persons (COUNTY’s employees included), for damage to property, including property owned by F/ETCA, or from any violation of any federal, state, or local law or ordinance, caused by the negligent acts, omissions or willful misconduct of COUNTY, its officers, directors, employees or agents in connection with or arising out of the COUNTY’s performance of its obligations under this AGREEMENT, except to the extent that such CLAIMS result from F/ETCA’s own gross negligence or willful misconduct.

**RESPONSIBILITIES OF F/ETCA DURING “ADVERTISE and AWARD” PHASE**

12. F/ETCA shall provide COUNTY with 100% PS&E in both print and electronic formats. COUNTY to provide F/ETCA with the total number of PS&E copies required at a later date before the end of the phase.
13. F/ETCA staff shall request F/ETCA Board approval for funding of total PROJECT cost, as shown in Exhibit B, using engineers estimate and subsequently, at the sole discretion of the F/ETCA, provide COUNTY with Notice to Proceed with AAA.
14. Upon COUNTY request, F/ETCA shall provide timely responses to bidder questions generated via Bidsync and/or ARC Planwell.
15. F/ETCA shall provide COUNTY with 100% Conformed PS&E in both print and electronic formats. COUNTY to provide F/ETCA with the total number of PS&E copies required at a later date.
16. F/ETCA shall prepare and provide COUNTY with a Right-of-Way Certification and Utility Certification packets. Certification packet content requirements will be provided by COUNTY at a later date before the end of the phase.

**RESPONSIBILITIES OF COUNTY DURING “ADVERTISE and AWARD” PHASE**

17. Upon COUNTY Execution of this AGREEMENT, COUNTY shall begin all work necessary to ready the PROJECT to be advertised. Costs incurred by the COUNTY to prepare for advertisement will be paid from funds in the holding account established in Section 41.
18. Once PROJECT funding has been approved and NTP has been provided by F/ETCA, per Section 13, COUNTY shall request Board of Supervisors approval to advertise the PROJECT.

19. COUNTY shall advertise the PROJECT per the requirements of the latest OC Public Works Design and Construction Procurement Policy Manual (DCPM) and the California Public Contract Code (PCC). The PROJECT shall be advertised and awarded via the Design-Bid-Build project delivery method, unless otherwise mutually agreed so, in writing, by both PARTIES.
20. COUNTY shall, with F/ETCA approval, develop additional minimum experience requirements to supplement Section 6.1 "Prequalification Criteria" of the DCPM for contractor selection.
21. COUNTY shall, with F/ETCA approval, develop construction bid package. The construction bid package shall provide that F/ETCA and Caltrans will be named as intended third party PROJECT beneficiaries in the construction contract as the ultimate operator and owner of the facility, respectively.
22. In recognition that PROJECT construction work will be funded by F/ETCA but will not be directly paid for by F/ETCA, for the purpose of protecting stop payment notice claimants and the interests of F/ETCA relative to the successful completion of the PROJECT, COUNTY shall require the contractor to furnish both a payment and performance bond, issued by a California admitted surety naming COUNTY as obligee and F/ETCA as an additional obligee, with both bonds complying with the requirements of applicable laws and in the form provided in the contract documents included in the bid package. COUNTY shall defend, indemnify, and hold harmless F/ETCA and all its officers and employees from all claims by stop payment notice claimants related to the construction of the PROJECT under the payment bond.
23. COUNTY shall include in the terms and conditions of the construction contract in the construction bid package a requirement that the contractor maintain all insurance appropriate for the construction of a project of the size and scope of the PROJECT. Liability insurance and other appropriate policies shall contain an endorsement naming the F/ETCA, the State of California and their respective officers, agents, and employees as additional insureds. COUNTY shall require the contractor to provide evidence of coverage acceptable to F/ETCA by the time specified in the construction bid package.
24. If the low bid is within the F/ETCA's approved engineer's estimate, or if COUNTY has obtained F/ETCA's approval of a low bid that exceeds the approved engineer's estimate, then COUNTY shall award construction contract per standard Design-Bid-Build low bid procedures.
25. If the low bid exceeds the F/ETCA's approved engineer's estimate, F/ETCA shall have the right to direct COUNTY to reject all bids.

26. COUNTY shall recommend Board of Supervisors approval for award of construction contract to F/ETCA approved apparent lowest bidder.

**RESPONSIBILITIES OF F/ETCA DURING “ADMINISTER” PHASE**

27. F/ETCA shall provide design support upon request from the COUNTY.
28. F/ETCA shall provide construction support (i.e., specialized inspection & testing) and COUNTY staff augmentation services upon request from the COUNTY.
29. F/ETCA shall provide construction inspection for tolling facilities.
30. F/ETCA shall prepare right-of-way documentation for the PROJECT right-of-way south of Oso Parkway, including the Los Patrones ramps, that is not presently within existing Caltrans right-of-way. This shall include:
  - a. Post Construction Monument Presentation/File Post Construction Record of Survey with COUNTY.
  - b. Preparation of the Caltrans Final Right-of-Way Record Map and coordination with Caltrans for review and approval.
  - c. Adverse Title Clearance Deed Documents and coordination with Adverse Title Owners for clearance and removals from title. As provided in Section 8, COUNTY shall obtain the property free and clear of all liens and encumbrances, except for those liens and encumbrances approved by F/ETCA, prior to COUNTY’s acceptance of dedication from Rancho Mission Viejo, LLC.
  - d. Facilitate recording the conveyance to F/ETCA from the COUNTY.
31. F/ETCA shall prepare and obtain utility agreements with affected utility owners including:
  - a. Review and process invoicing and payments for utility relocation work.
  - b. Obtain final drawings and as-builts from utility owners and confirm that all items of work have been completed.
  - c. Ensure all easement and property rights have been properly conveyed to utility owners as necessary.
  - d. Prepare the Utility Section of the Right-of-Way Certification.
  - e. Condition utility owners, who will complete their own relocation work, to commit to utility work windows within the PROJECT contract documents.



## **RESPONSIBILITIES OF COUNTY DURING “ADMINISTER” PHASE**

32. COUNTY or contractor shall obtain all encroachment permits required to complete the PROJECT.
33. COUNTY shall perform Construction Engineering Management (CEM) services including, but not limited to:
  - a. Development of PROJECT schedule with monthly updates for review and approval of F/ETCA.
  - b. Schedule, attend and document PROJECT status meetings on a weekly basis with F/ETCA, Caltrans and contractor.
  - c. Implement Quality Assurance/Quality Control program.
  - d. Provide inspection services (F/ETCA staff augmentation may be required).
  - e. Perform materials testing (F/ETCA staff augmentation may be required).
  - f. Provide surveying services.
  - g. Coordinate with Caltrans Resident Engineer and inspectors.
  - h. Prepare and close-out final PROJECT punch list items. COUNTY and F/ETCA to participate in preparation of the final PROJECT punch list with all items on the list to be identified within 30 days following completion of the final PROJECT walk through.
  - i. Maintain an up-to-date set of as-built drawings reflecting the actual as-built condition and ensure that the contractor maintains a daily up-to-date set of as-built drawings for verification purposes. Deliver a complete set of verified as-built drawings to F/ETCA within 180 days following PROJECT completion. The submittal must also include any requested contract records, including land survey documents. Sign the completed record drawings.
  - j. Provide documentation demonstrating compliance with the PROJECT Mitigation Monitoring Program, permits and other approvals.
  - k. Participate in PROJECT acceptance and turn-over to Caltrans including attending and resolving Caltrans Safety Committee meeting issues.
34. COUNTY shall implement all the commitments and conditions set forth in the PROJECT environmental documentation, environmental permits, approvals and applicable agreements. If work on the PROJECT stops for any reason, COUNTY will continue to implement all of the applicable commitments and conditions that are in effect in order to keep the PROJECT in environmental compliance until work resumes. The COUNTY shall be responsible to implement said environmental commitments and conditions through the end of the

construction phase. F/ETCA shall be responsible for the implementation of all other continued environmental commitments and conditions beyond the end of the construction phase (e.g., multi-year on-site and/or off-site mitigation requirements).

35. COUNTY shall, with F/ETCA approval, develop, review and approve monthly contractor progress payments. If necessary, COUNTY shall correct progress payment discrepancies with the contractor.
36. COUNTY shall compile contractor progress payment requests and upon approval from F/ETCA make payment to the contractor from funds in the holding account established in Section 42.
37. COUNTY shall administer contract change orders. COUNTY will prepare independent cost estimates with respect to any potential change orders. F/ETCA shall have the right to review proposed change orders and to participate in any change order negotiations and/or dispute resolution proceedings with respect to claims or entitlements to additional payment relating to the PROJECT. F/ETCA shall have the exclusive right to settle in good faith the amount payable to the contractor with respect to any claim that is F/ETCA's cost responsibility. Following approval from F/ETCA, COUNTY shall process change orders within 20 working days.
38. COUNTY shall supply to F/ETCA all right-of-way documentation prepared as part of the Los Patrones Parkway right-of-way dedication from Rancho Mission Viejo, LLC to the COUNTY that is pertinent to the PROJECT, including the Los Patrones ramps.

### **COMPENSATION**

39. COUNTY shall invoice F/ETCA for COUNTY's actual costs incurred as part of the PROJECT AAA, including overhead and burden, on a monthly basis, in arrears, for COUNTY's costs incurred during the immediately preceding month. Invoices submitted by COUNTY shall itemize such costs, including an accounting and description of staff and consultant time spent on the PROJECT, and shall include back-up documentation as reasonably requested by F/ETCA. Following F/ETCA approval, invoice will be paid from funds in the holding account established in Section 42. For payment of construction contractor see Section 36.
40. F/ETCA's maximum obligation to COUNTY for AAA services under this AGREEMENT shall not exceed \$4,000,000 unless such maximum obligation is increased by amendment to this AGREEMENT. COUNTY shall not, however, be required to perform any services related to PROJECT for which there are no funds on deposit to cover cost for services. If COUNTY anticipates incurring charges which exceed \$4,000,000 COUNTY shall provide F/ETCA with justification for the need to exceed the established maximum and PARTIES shall meet and confer to negotiate additional funds for continuation of COUNTY AAA services.

41. Upon COUNTY Execution of this AGREEMENT, F/ETCA shall make an Initial Deposit of \$40,000 to a COUNTY holding account for Advertise and Award services.
42. Upon COUNTY construction contract award of PROJECT, F/ETCA shall deposit into a COUNTY holding account 25% of Total Project Cost as shown in Exhibit B, also known as Installment No. 1. Subsequent Installment payments (2 thru 4) shall be triggered and made by F/ETCA when the account is depleted below \$1,000,000. The holding account is only to be drawn down to cover construction contractor progress payments and monthly COUNTY invoices for AAA services associated with the PROJECT. All progress payments and COUNTY invoices must be approved by F/ETCA for payment prior to release of funds from the holding account. Upon completion of the PROJECT or termination of this Agreement, County shall return any funds remaining in the account to F/ETCA within 60 days.
43. Within 120 days after filing a notice of completion of construction of the PROJECT and the resolution of all claims, COUNTY will provide to F/ETCA a final accounting report for the PROJECT for review and approval by F/ETCA. Said report shall be accompanied by a certification signed by COUNTY's OC Public Works Accounting Manager, or designee, that all expenditures applicable to the PROJECT have been made and that all copies of invoices and warrants are on file with COUNTY.

#### **PARTIES**

44. Each PARTY shall ensure that personnel participating in the PROJECT are appropriately qualified or licensed to perform the tasks assigned to them.
45. Each PARTY shall review and provide written comments to all PROJECT submittals within 10 working days and resubmittals within 10 calendar days of the date of transmittal for timely processing of the PROJECT documents.

#### **MISCELLANEOUS**

46. This AGREEMENT shall terminate upon the earlier to occur of (A) satisfaction of the following conditions: (i) completion of the PROJECT, (ii) the PARTIES completion of all scope, cost, and schedule commitments included in this AGREEMENT, and (iii) the PARTIES' execution of a cooperative agreement closure statement verifying the completion of the PROJECT and all scope, cost and schedule commitments included in this AGREEMENT; or (B) upon notice of termination from the non-breaching PARTY in the event the other PARTY breaches any provision of this AGREEMENT and such breach is not cured within thirty (30) days after written notice from the non-breaching PARTY specifying such breach in reasonable detail. A PARTY may submit a written request to execute a cooperative agreement closure statement to the other PARTY at any time. Within 30 days of such request

the other PARTY shall either sign such closure statement or provide the requesting PARTY with a written response indicating the items that need to be completed. Upon termination of this Agreement all rights and obligations of the respective PARTIES hereunder shall cease, provided however that notwithstanding any contrary provision hereof, all of the rights and obligations of the PARTIES under Section 10, Section 11, Section 42 and Section 56 hereof shall survive expiration or termination of the AGREEMENT and remain in full force and effect.

47. Any amendments to this AGREEMENT must be approved in writing by both PARTIES to this AGREEMENT.
48. Any notices, requests and demands made between the PARTIES pursuant to this AGREEMENT shall be in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, or (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by telefacsimile communication or e-mail followed by a mailed copy or with receipt confirmed by telephone, to the below addresses (or to such other address as may from time to time be specified in writing by such PARTY) and shall be deemed delivered when actually received or when delivery is refused:

If to F/ETCA:                      Foothill/Eastern Transportation Corridor Agency  
125 Pacifica, Ste. 100,  
Irvine, CA 92618  
Attn: Michael A. Kraman, CEO  
Phone: 949-754-3413  
Fax: 949-754-3491

If to COUNTY:                      County of Orange / OC Public Works  
300 N. Flower Street, 8<sup>th</sup> Floor  
Attn: Khalid Bazmi, Assistant Public Works Director  
Phone: 714-667-3213  
Fax: 714-667-7520

49. Neither PARTY shall have the right to assign this AGREEMENT without the express written approval of the other PARTY. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their permitted successors, assigns and legal representatives.
50. It is not intended by any of the provisions of this AGREEMENT to create any third party beneficiary hereunder. The duties, obligations and responsibilities of the PARTIES with respect to such third parties shall remain as imposed by law. This AGREEMENT shall not be construed to create a contractual relationship of any kind between a PARTY and the employees, contractors or consultants of the other PARTY.

51. The invalidity or unenforceability of any portion or provision hereof shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this AGREEMENT and the balance hereof shall be construed and enforced as if this AGREEMENT did not contain such invalid or unenforceable portion or provision.
52. Each PARTY represents and warrants that the execution, delivery and performance of this AGREEMENT have been duly authorized by all necessary action of such PARTY's governing board, and the person executing this AGREEMENT on behalf of such PARTY has been duly authorized and empowered to do so on behalf of such PARTY.
53. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this AGREEMENT.
54. This AGREEMENT may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.
55. Either PARTY shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material wrongful act or omission by the other PARTY; when satisfactory evidence of such cause is presented to the other PARTY, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the PARTY not performing.
56. After acceptance of the PROJECT, if F/ETCA or Caltrans notifies COUNTY of any warranty work required under the construction contract, upon such notification, COUNTY agrees to cooperate with F/ETCA and Caltrans if necessary to require the contractor to promptly repair such work.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed on the date first above written.

**COUNTY OF ORANGE, a political subdivision of the State of California**

**FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY**

Chair of the Board of Supervisors  
County of Orange, California

Michael A. Kraman  
Chief Executive Officer

**APPROVED AS TO FORM:**  
Office of the County Counsel

Deputy County Counsel 03.01.17  
County of Orange, California

**ATTEST:**

Martha M. Ochoa  
Clerk of the Board

**SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD OF SUPERVISORS PER GC § 25103, RESO. 79-1535**

**APPROVED AS TO FORM AND PROCEDURE:**

  
E. George Joseph Ben Rubin  
General Counsel

Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange, California



EXHIBIT A



**EXHIBIT B**

**OCPW Cost Estimate  
for  
AAA of Oso Parkway Bridge on SR-241**

<b>Item</b>	<b>Description</b>	<b>% of</b>	<b>Cost</b>
1	Construction Estimate		\$22,822,146.00
	Construction Contingency	15.00% of (1)	\$3,423,322.00
	<i>Subtotal 1</i>		
2	Construction Costs		\$26,245,468.00
3	Advertise & Award	0.15% of (2)	\$39,369.00
	<i>Say (Initial Deposit) &gt;&gt;&gt;</i>		<i>\$40,000.00</i>
4	Administer	15.00% of (2)	\$3,936,821.00
	<i>Subtotal 2</i>		
	<i>(County Costs):</i>		<i>\$3,976,190.00</i>
	<i>Say &gt;&gt;&gt;</i>		<i>\$4,000,000.00</i>
5	Total Project Cost	(2 + 4)	\$30,182,289.00
	<i>F/ETCA Installment 1</i>	<i>25% of (5)</i>	<i>\$7,545,572.25</i>
	<i>F/ETCA Installment 2</i>	<i>25% of (5)</i>	<i>\$7,545,572.25</i>
	<i>F/ETCA Installment 3</i>	<i>25% of (5)</i>	<i>\$7,545,572.25</i>
	<i>F/ETCA Installment 4</i>	<i>25% of (5)</i>	<i>\$7,545,572.25</i>

**Notes:**

1. Due to the nature of the Design-Bid-Build low-bid construction delivery method, AAA Cost Estimate is subject to change.
2. F/ETCA shall fund the total PROJECT cost which includes: low bid construction cost, 15% construction contingency and \$4 million for AAA services.
3. After COUNTY construction contract award, F/ETCA shall make 4 equal Installment Payments of 25% of Total Project Cost and shall replenish account whenever funds are depleted below \$1 million.



**EXHIBIT C**

**Cooperative Agreement D15-033**

ORANGE COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

February 09, 2016

Submitting Agency/Department: OC PUBLIC WORKS

Approve cooperative agreement D15-033 with Foothill/Eastern Transportation Corridor Agency and agreement MA-080-16011316 with State Department of Transportation for future construction of Oso Parkway Bridge over State Route 241; authorize Director or designee to execute future amendments to cooperative agreement and Freeway Agreement under certain conditions; and make California Environmental Quality Act and other findings - Districts 3 and 5

The following is action taken by the Board of Supervisors:

APPROVED AS RECOMMENDED [X] OTHER [ ]

Unanimous [X] (1) DO: Y (2) STEEL: Y (3) SPITZER: Y (4) NELSON: Y (5) BARTLETT: Y

Vote Key: Y=Yes; N=No; A=Abstain; X=Excused; B.O.=Board Order

Documents accompanying this matter:

- Resolution(s)
- Ordinances(s)
- Contract(s)

1 LOOP. AGREE.  
2 FWY AGREE.

Item No. 8

Special Notes:

Copies sent to:

OCPW: Wendy Brown  
Eric Swint

2-16-16



I certify that the foregoing is a true and correct copy of the Minute Order adopted by the Board of Supervisors, Orange County, State of California.  
Robin Stieler, Clerk of the Board

By: [Signature]  
Deputy

## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“**AGREEMENT**”), ENTERED INTO EFFECTIVE ON FEBRUARY 9, 2016, is by and between the Foothill/Eastern Transportation Corridor Agency, a joint powers authority (referred to herein as “**F/ETCA**”), and the County of Orange, a political subdivision of the State of California (referred to herein as “**COUNTY**”), each individually known as “**PARTY**” and collectively known as the “**PARTIES**.”

### RECITALS

**WHEREAS**, for the purpose of this AGREEMENT, the “**PROJECT**” consists of an overcrossing bridge structure at Oso Parkway and mainline roadway between the southern terminus of the State Route 241 (SR 241) toll road and the northern terminus of the future Los Patrones Parkway, including a northbound ramp connecting Los Patrones Parkway to Oso Parkway and a southbound ramp connecting Oso Parkway to Los Patrones Parkway. Los Patrones Parkway and the Los Patrones Parkway ramps are not covered by this AGREEMENT; and

**WHEREAS**, the purpose of this AGREEMENT is to define the PARTIES’ respective rights and obligations with respect to preparation and adoption of the CEQA compliance documents for the PROJECT, and preparation of Plans, Specifications and Estimates (“**PS&E**”) for the PROJECT. The PROJECT will not be completed prior to the termination of this AGREEMENT.

**NOW, THEREFORE**, it is mutually understood and agreed by COUNTY and F/ETCA as follows:

### AGREEMENT

#### COMPLETE AGREEMENT

1. This AGREEMENT, including any attachments incorporated herein and made applicable by reference and the recitals above, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this AGREEMENT between COUNTY and F/ETCA and it supersedes all prior representations, understandings, and communications. The invalidity in whole or in part of any term or condition of this AGREEMENT shall not affect the validity of other term(s) or conditions(s) of this AGREEMENT. The above referenced Recitals are true and correct and are incorporated by reference herein.

## **SCOPE OF AGREEMENT**

2. This AGREEMENT specifies the roles and responsibilities of the PARTIES as they pertain to the subjects and PROJECT addressed herein. Both COUNTY and F/ETCA agree that each will cooperate and coordinate with the other in all activities covered by this AGREEMENT and any other supplemental agreements that may be required to facilitate the purposes thereof.

## **RESPONSIBILITIES OF COUNTY**

3. COUNTY shall be the California Environmental Quality Act ("CEQA") lead agency for the PROJECT.
4. COUNTY shall exercise its independent judgment to review and finalize the draft CEQA compliance document.
5. COUNTY shall review and approve the Project Report per the California Department of Transportation ("Caltrans") format.
6. COUNTY shall adopt and/or certify the CEQA compliance document prior to approval of the Project Report.
7. COUNTY shall Advertise, Award and Administer ("AAA") the PROJECT in accordance with Plans, Specifications and Estimates ("PS&E") developed by the F/ETCA and reviewed and concurred by staff of the COUNTY.
8. COUNTY shall invoice F/ETCA for COUNTY's actual costs incurred as the CEQA lead on the PROJECT, and for costs associated with COUNTY review of the Project Report and PS&E, on a monthly basis, in arrears, for COUNTY's costs incurred during the immediately preceding month. Invoices submitted by COUNTY shall itemize such costs, including an accounting and description of staff and consultant time spent on the PROJECT, and shall include back-up documentation as reasonably requested by F/ETCA.

## **RESPONSIBILITIES OF F/ETCA**

9. To the extent permitted by law, F/ETCA shall defend (at F/ETCA's sole cost and expense with legal counsel reasonably acceptable to COUNTY), indemnify, protect, and hold harmless COUNTY and all of its officers, directors, employees, and agents (collectively the "INDEMNIFIED PARTIES"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "CLAIMS"), including but not limited to CLAIMS arising from injuries to or death of persons (F/ETCA's employees included), for damage to property, including property owned

by COUNTY, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct of F/ETCA, its officers, directors, employees or agents in connection with or arising out of the performance of this AGREEMENT, except to the extent that such CLAIMS result from COUNTY's own gross negligence or willful misconduct. The COUNTY may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve F/ETCA of its obligations under this condition, including the obligation to reimburse the COUNTY for any court costs and attorney's fees that the COUNTY may be required to pay as a result of such action. The indemnification and defense obligations of this AGREEMENT shall survive its expiration or termination. COUNTY shall not consent to judgment or concede or settle or compromise any CLAIM without the prior written approval of F/ETCA (which approval shall not be unreasonably withheld), unless such concession or settlement or compromise includes a full and unconditional release of F/ETCA and members of its Board Directors, officers, employees, agents and representatives from all liabilities in respect of such CLAIM.

10. F/ETCA shall prepare the Project Report in Caltrans format for the PROJECT.
11. F/ETCA shall complete PS&E for the PROJECT and deliver the PS&E to the County staff for review and concurrence.
12. F/ETCA shall pay invoices submitted by COUNTY pursuant to paragraph 8, above, for its actual costs incurred as the CEQA lead on the PROJECT and for costs associated with their review of the Project Report and PS&E. F/ETCA shall pay approved invoices within 30 days of receipt, and shall advise COUNTY in writing of the reason for any disapproved amounts. The total amount to be reimbursed by F/ETCA to COUNTY pursuant to this AGREEMENT shall not exceed \$100,000. COUNTY hourly staff rates shall be based on the current County of Orange Board of Supervisors adopted Schedule of Fees (Attachment A). County consultant charges shall be based on their respective contract fee schedules.

### **PARTIES**

13. Each PARTY shall ensure that personnel participating in the PROJECT are appropriately qualified or licensed to perform the tasks assigned to them.

### **SCHEDULE**

14. COUNTY shall review and provide written comments to all PROJECT submittals from F/ETCA within 30 calendar days and resubmittals within 30 calendar days of the date of transmittal to COUNTY staff for timely processing of the PROJECT documents, including providing quality assurance reviews and approvals consistent with its existing policies.
15. The PARTIES shall make their best effort to complete the CEQA documentation and Project Report phase of the PROJECT by February 15, 2016.

## MISCELLANEOUS

16. The PARTIES shall negotiate in good faith to enter into a separate Cooperative Agreement that addresses the AAA phase of the PROJECT.
17. This AGREEMENT shall terminate upon the earlier to occur of (A) satisfaction of the following conditions: (i) completion of the PS&E phase of the PROJECT (ii) the PARTIES completion of all scope, cost, and schedule commitments included in this AGREEMENT, and (iii) the PARTIES' execution of a cooperative agreement closure statement verifying the completion of the PS&E phase of the PROJECT and all scope, cost and schedule commitments included in this AGREEMENT; or (B) upon notice of termination from the non-breaching PARTY in the event the other PARTY breaches any provision of this AGREEMENT and such breach is not cured within thirty (30) days after written notice from the non-breaching PARTY specifying such breach in reasonable detail. A PARTY may submit a written request to execute a cooperative agreement closure statement to the other PARTY at any time. Within 30 days of such request the other PARTY shall either sign such closure statement or provide the requesting PARTY with a written response indicating the items that need to be completed. Upon termination of this Agreement all rights and obligations of the respective PARTIES hereunder shall cease, provided however that notwithstanding any contrary provision hereof, all of the rights and obligations of the PARTIES under Section 9 and Section 16 hereof shall survive expiration or termination of the AGREEMENT and remain in full force and effect.
18. Any amendments to this AGREEMENT must be approved in writing by both PARTIES to this AGREEMENT.
19. Any notices, requests and demands made between the PARTIES pursuant to this AGREEMENT shall be in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, or (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (iv) sent by telefacsimile communication followed by a mailed copy or with receipt confirmed by telephone, to the below addresses (or to such other address as may from time to time be specified in writing by such PARTY) and shall be deemed delivered when actually received or when delivery is refused:

If to F/ETCA: Foothill/Eastern Transportation Corridor Agency  
125 Pacifica, Ste. 100,  
Irvine, CA 92618  
Attn: Michael Kraman, CEO  
Phone: 949-754-3427  
Fax: 949-754-3491

If to COUNTY: County of Orange / OC Public Works  
300 N. Flower Street, 8<sup>th</sup> Floor  
Attn: Khalid Bazmi, Assistant Public Works Director  
Phone: 714-667-3213  
Fax: 714-6677520

20. Neither PARTY shall have the right to assign this AGREEMENT without the express written approval of the other PARTY. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their permitted successors, assigns and legal representatives.
21. It is not intended by any of the provisions of this AGREEMENT to create any third party beneficiary hereunder. The duties, obligations and responsibilities of the PARTIES with respect to such third parties shall remain as imposed by law. This AGREEMENT shall not be construed to create a contractual relationship of any kind between a PARTY and the employees, contractors or consultants of the other PARTY.
22. The invalidity or unenforceability of any portion or provision hereof shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this AGREEMENT and the balance hereof shall be construed and enforced as if this AGREEMENT did not contain such invalid or unenforceable portion or provision.
23. Each Party represents and warrants that the execution, delivery and performance of this AGREEMENT have been duly authorized by all necessary action of such PARTY's governing board, and the person executing this AGREEMENT on behalf of such PARTY has been duly authorized and empowered to do so on behalf of such PARTY.
24. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this AGREEMENT.
25. This AGREEMENT may be executed and delivered in any number of counterparts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.
26. Either PARTY shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material wrongful act or omission by the other Party; when satisfactory evidence of such cause is presented to the other PARTY, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the PARTY not performing.

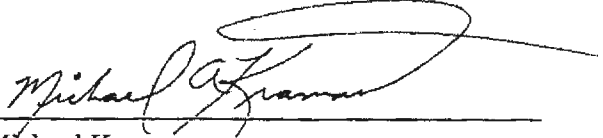
IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed on the date first above written.

**COUNTY OF ORANGE**



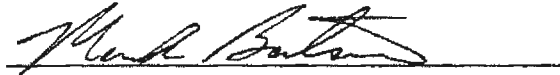
Chair, Board of Supervisors  
County of Orange, California

**FOOTHILL/EASTERN  
TRANSPORTATION CORRIDOR  
AGENCY**



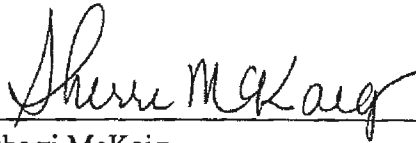
Michael Kraman  
Chief Executive Officer

**APPROVED AS TO FORM:**



Deputy County Counsel  
County of Orange, California

**ATTEST:**



Sherri McKaig  
Assistant Secretary of the Board

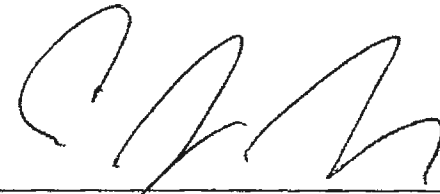
**SIGNED AND CERTIFIED THAT A  
COPY OF THIS DOCUMENT HAS BEEN  
DELIVERED TO THE CHAIR OF THE  
BOARD OF SUPERVISORS PER GC §  
25103, RESO. 79-1535**



Robin Stieler  
Clerk of the Board of Supervisors  
County of Orange, California



**APPROVED AS TO FORM AND  
PROCEDURE:**



E. George Joseph  
General Counsel