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**Exempt from filing fees Pursuant
to Government Code section 6103**

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN DIEGO
15 NORTH COUNTY DIVISION

16 THE PEOPLE OF THE STATE OF)
17 CALIFORNIA, ex rel. ATTORNEY)
GENERAL BILL LOCKYER and STATE)
18 PARK AND RECREATION)
COMMISSION,)

19 Petitioners,)
20 v.)

21 Foothill/Eastern)
22 Transportation Corridor)
Agency, a joint powers authority;)
23 Board of Directors of the)
Foothill/Eastern)
24 Transportation Corridor)
Agency,)

25 Respondents.)
26

Case No.:
**PETITION FOR WRIT OF
MANDATE**
**(California Environmental Quality
Act, Pub. Resources Code, §§
21168, 21168.5; Code of Civ. Proc.
§§ 1085, 1094.5)**

INTRODUCTION

1
2 1. Petitioners, the People of the State of California, ex rel. Attorney General
3 Bill Lockyer, and the State Park and Recreation Commission (collectively, the “People”),
4 bring this action challenging the approval by Respondents Foothill/Eastern
5 Transportation Corridor Agency (“TCA”) and its Board of Directors (“Board”) of the six-
6 lane, sixteen-mile Foothill South Toll Road (“Toll Road”) through primarily undeveloped
7 and rural land, including a state park, in southern Orange County and northern San Diego
8 County. TCA, a joint powers authority, and its Board approved the Toll Road, which
9 will bisect San Onofre State Beach, a California state park, in violation of the California
10 Environmental Quality Act (“CEQA”; Pub. Resources Code, § 21000 *et seq.*)
11 Respondents failed to consider reasonable, less environmentally harmful, alternatives,
12 failed to fully evaluate impacts to San Onofre State Beach, and failed to consider and
13 adopt appropriate mitigation.

14 2. San Onofre State Beach is one of the last remnants of large coastal open
15 space left in Southern California. The portion of San Onofre State Beach traversed by
16 the Toll Road is located on property that was formerly part of Camp Pendleton Marine
17 Corps Base and is leased from the United States Department of Navy on a long-term
18 basis. The park was created by President Richard M. Nixon and Governor Ronald
19 Reagan. The park was visited by over 2.5 million visitors in 2004 - 2005. The inland
20 portion of San Onofre State Beach provides the last remaining undeveloped coastal
21 valley available for recreation south of Crystal Cove State Park, and is a recreational
22 resource for middle and low income visitors in an area that is rapidly becoming more
23 affluent. Respondents approved the Toll Road even though it will subject the hundreds
24 of thousands of annual visitors to San Onofre State Beach to the incessant noise and
25 visual blight of a super highway and its infrastructure. Respondents failed to evaluate
26 and determine the impacts of the Toll Road on the rural setting, on the campground, and
27 on the habitats of various endangered and threatened species inside the state park,
28 including the critically endangered Pacific pocket mouse. TCA violated CEQA because

1 its SEIR failed to discuss these impacts in a meaningful way and failed to properly
2 analyze alternatives, including widening of the I-5 corridor.

3 3. This is an action for injunctive relief under CEQA against the Respondents.

4 4. On February 23, 2006, Respondents approved the Final Subsequent
5 Environmental Impact Report (“SEIR”) for the South Orange County Transportation
6 Infrastructure Improvement Project (“the Project”), also known as the Foothill South Toll
7 Road, in violation of the requirements of CEQA. Respondents did not adequately
8 analyze alternatives to the preferred alternative for the Toll Road, such as the alternative
9 of adding additional traffic lanes to the San Diego Freeway (“I-5”). TCA also failed to
10 sufficiently describe impacts of the Project to San Onofre State Beach. In addition, TCA
11 failed to present feasible mitigation for each of those impacts.

12 5. Petitioners seek a writ of mandate to set aside Respondents’ approval of the
13 certification of the SEIR and the Toll Road, and a court order to provide environmental
14 review and mitigation in compliance with CEQA.

15 **PARTIES**

16 6. Attorney General Bill Lockyer has broad independent powers under the
17 California Constitution and the California Government Code to participate in all legal
18 matters in which the State is interested, which include protecting California’s
19 environment and its natural resources. (Cal. Const., art. V, § 13; Gov. Code, § 12511.)
20 The California Legislature has given the Attorney General a unique role to participate in
21 actions concerning pollution and adverse environmental effects which could affect the
22 public or the natural resources of the State. (Gov. Code, §§ 12600-12612.) Government
23 Code section 12600 specifically provides: “It is in the public interest to provide the
24 people of the State of California through the Attorney General with adequate remedy to
25 protect the natural resources of the State of California from pollution, impairment, or
26 destruction.” Petitioner People of State of California, ex rel. Attorney General Bill
27 Lockyer, files this Petition for Writ of Mandate pursuant to the Attorney General’s
28 independent power and duty to protect the natural resources of the State from pollution,

1 impairment, or destruction in furtherance of the public interest. The natural resources
2 contained within this area of northern San Diego County are an important component of
3 the natural heritage of the People of this State.

4 7. Petitioner State Park and Recreation Commission (“Park Commission”) is a
5 public agency of the State of California. The Park Commission has broad powers and
6 responsibilities that include the development of general policies that protect all state
7 parks and guide the administration of the state parks system. (Pub. Resources Code, §§
8 539, 540.) The Legislature has declared that “[t]he purpose of state parks shall be to
9 preserve outstanding natural, scenic, and cultural values, indigenous aquatic and
10 terrestrial fauna and flora, and the most significant examples of ecological regions of
11 California [¶] Each state park shall be managed as a composite whole in order to
12 restore, protect, and maintain its native environmental complexes to the extent
13 compatible with the primary purpose for which the park was established.” (Pub.
14 Resource Code, § 5019.53.) The Legislature has also specifically found and declared that
15 it is in the public interest to permit camping and campsites in state parks where the Park
16 Commission finds that use would not threaten the safety and welfare of other park users.
17 (Pub. Resources Code, § 5003.1.) The Park Commission approves general plans for each
18 unit of the parks system. (Pub. Resources Code, § 5002.2, subd. (a).) These plans must
19 “evaluate and define the proposed land uses, facilities, concessions, operation of the unit,
20 any environmental impacts, and the management of resources, and shall serve as a guide
21 for the future development, management, and operation of the unit.” (Pub. Resources
22 Code, § 5002.2, subd. (a).)

23 8. Respondent Foothill/Eastern Transportation Corridor Agency, a joint
24 powers authority located in Orange County, and duly organized and existing under the
25 laws of the State of California, is a “public agency” and the “lead agency” for the Project,
26 as those terms are used in CEQA and the CEQA guidelines.

27 9. Respondent Board of Directors of the Foothill/Eastern Transportation
28 Corridor Agency (“Board”) is the governing body of TCA and is responsible for planning

1 and implementing projects within the Agency’s authority, including complying with state
2 and federal law and approving the Project. The Board is comprised of representatives of
3 the County of Orange, and representatives from twelve cities within Orange County.

4 **VENUE AND JURISDICTION**

5 10. Pursuant to Public Resources Code sections 21168 and 21168.5 and Code
6 of Civil Procedure sections 1085 and 1094.5, this Court has jurisdiction to hear this
7 matter.

8 11. Venue is appropriate in this judicial district, North County division, as the
9 violations of CEQA and the principal environmental impacts alleged herein occurred in
10 San Diego County.

11 **STATEMENT OF FACTS**

12 12. The Toll Road has been in the planning stages for approximately twenty
13 years. TCA proposes it as an extension of existing State Route 241.

14 13. The Toll Road will extend from Oso Parkway in south Orange County for
15 approximately sixteen miles until it reaches the I-5 near the Orange and San Diego
16 counties’ border.

17 14. The last portion of the Project approved by Respondents will bisect the
18 inland unit of San Onofre State Beach in San Diego County and run adjacent to its San
19 Mateo Campground.

20 15. San Onofre State Beach is visited by hundreds of thousands of people each
21 year, and is the sixth most popular state park in the system. The proposed Toll Road
22 directly impacts the duties, powers, purpose, responsibility and jurisdiction of the Park
23 Commission. The prospect of a six-lane super highway cutting through this unique park
24 segment that is currently rural and serene in character implicates policies for the
25 protection and development of the state park system. These policies are squarely within
26 the purview of the Park Commission. The surfing and other recreational opportunities
27 offered by San Onofre State Beach are enjoyed by children and youth – persons
28 identified by the Legislature as being particularly important for the Park Commission to

1 consider when developing recreational policies. (Pub. Resources Code, § 540, subd. (a).)
2 The adjacent campgrounds facilitate use of the park's recreation resources, and would be
3 profoundly and adversely affected by the Toll Road.

4 16. The Federal Highway Administration and TCA prepared and circulated, on
5 May 7, 2004, a draft of a combined state SEIR and federal Environmental Impact
6 Statement ("EIS") for the Project.

7 17. The Attorney General filed timely comments on the draft SEIR. His
8 comments reflected concerns about the failure to consider a sufficient range of
9 alternatives, as well as the deficiencies in evaluation of impacts of the Project and
10 mitigation. In all, TCA received over 7,000 comments on the Project, indicating the
11 controversial nature of this proposal.

12 18. The Park Commission has made explicit findings regarding the impacts the
13 Toll Road would have on San Onofre State Beach. The findings and resolutions are
14 contained in Resolution 66-2005, attached hereto as Exhibit A, and are incorporated
15 herein as if fully set forth.

16 19. In December 2005, TCA issued the Final SEIR for the Project, and
17 provided the public with an opportunity to provide additional comments on this final
18 draft. Petitioners filed timely comments on the final draft, pointing out that less
19 environmentally damaging alternatives, mitigation, and impacts to San Onofre State
20 Beach had still not been adequately addressed, nor had all feasible mitigation been
21 considered for the significant environmental impacts. Petitioners stated that TCA was
22 still in violation of CEQA.

23 20. The SEIR fails to address or analyze all visual impacts from the Project
24 affecting San Onofre State Beach, and fails to describe mitigation for those impacts.
25 Despite the enormous visual blight posed by locating a six-lane high-speed thoroughfare
26 in park land, the SEIR does not propose any effective mitigation for this impact. CEQA
27 requires that an EIR analyze feasible mitigation measures and alternatives to avoid or
28 reduce a proposed project's significant impacts. The SEIR includes a very generalized

1 discussion of possible mitigation for visual impacts along the sixteen-mile length of Toll
2 Road in mitigation measures AS-1 to AS-4, but they are of a landscaping nature. They
3 do not, however, specifically address the disruption of the park visitor's experience
4 caused by the massive concrete supports, roadway, and assorted infrastructure associated
5 with the super highway, as well as the substantial numbers of cars and trucks expected to
6 use the road. While the SEIR states that the sound wall proposed for noise abatement
7 will partially screen the roadway, the sound wall itself will be another major visual
8 impact that will need to be mitigated.

9 21. The SEIR fails to adequately address sound impacts to the park as well. In
10 response to concerns raised about noise impacts, the SEIR cites to the CalTrans noise
11 abatement criteria. However, the document fails to consider that the recreational
12 character of the campground will be altered forever by the constant noise from the Toll
13 Road. Because the noise impact has not been accurately described, no suitable mitigation
14 has been proposed.

15 22. The SEIR is deficient in the vague way that it describes how permanent
16 loss of recreational property will be addressed through mitigation measures R-1, R-2, R-
17 3, R-4, and R-5. Those measures only provide that mitigation will occur to the extent it
18 is required by the Uniform Relocation Assistance and Real Property Acquisition Policies
19 Act of 1970. Since Respondents do not concede that the act is applicable to the state
20 park, the mitigation measures are illusory; as it stands, the SEIR only contemplates
21 negotiations about mitigation at a future date, a self-serving statement that does not meet
22 the requirements of CEQA.

23 23. The SEIR does not adequately describe the socioeconomic impacts of the
24 Project, including among other things, the displacement of recreation resources, the loss
25 of 320 acres of park property, and the substantial degradation and/or destruction of one of
26 the only low-cost lodging alternatives in the area. These impacts will be borne
27 disproportionately by people of low and medium income and by the children and youth,
28 thereby ignoring the fundamental policy of environmental justice.

1 24. On February 23, 2006, Respondents approved the SEIR and approved the
2 Project.

3 25. The Notice of Decision announcing TCA’s decision was received by the
4 State Office of Planning and Research on February 24, 2006.

5 26. The certification of the SEIR was accompanied by the approval of a
6 Statement of Overriding Considerations, even though Respondents had not described all
7 environmental impacts of the Project, nor considered all feasible mitigation for those
8 impacts, in the SEIR.

9 27. On November 18, 2005, the State Park and Recreation Commission passed
10 a resolution urging Respondents not to approve the Project because of its serious
11 environmental impacts to San Onofre State Beach. (Exhibit “A”).

12 28. Unless restrained by the Court, Respondents will proceed with the Project
13 without complying with the requirements of CEQA. If construction of the Toll Road
14 proceeds without compliance with this law, Petitioners will suffer great and irreparable
15 harm. Petitioners have no plain, adequate and speedy remedy at law.

16 29. Petitioners have complied with Public Resources Code section 21177,
17 subdivision (e), and have otherwise exhausted administrative remedies. Petitioners have
18 been informed that TCA has no administrative appeal process for parties wishing to
19 object to the approval of the SEIR or the approval of the Project.

20 30. Petitioners have complied with the requirements of Public Resources Code
21 section 21167.5. A copy of the written notice provided to TCA and a proof of service, as
22 required by that provision, is attached hereto as Exhibit “B”.

23 **STATUTORY AND REGULATORY REQUIREMENTS**

24 31. CEQA requires governmental agencies at all levels to consider the
25 qualitative factors as well as economic and technical factors and long-term benefits and
26 costs, in addition to short-term benefits and costs and to consider alternatives to proposed
27 actions affecting the environment. (Pub. Resources Code, § 21001, subd. (g).) Public
28 agencies should not approve projects as proposed if there are feasible alternatives or

1 feasible mitigation measures available which would substantially lessen the significant
2 environmental effects of such projects. (Pub. Resources Code, § 21002.)

3 32. The purpose of an environmental impact report is to identify the significant
4 effects of a project on the environment, to identify alternatives to the project, and to
5 indicate the manner in which those significant effects can be mitigated or avoided. (Pub.
6 Resources Code, § 21002.1.)

7 33. The purpose of an environmental impact report is to provide public
8 agencies and the public in general with detailed information about the effect that a project
9 is likely to have on the environment, to list ways in which the significant effects of a
10 project might be minimized, and to indicate alternatives to such a project. (Pub.
11 Resources Code, § 21061.) One of CEQA's fundamental goals is to foster informed
12 decision making; an EIR must also inform the public about the project and its impacts.
13 (Cal. Code Regs., title 14, § 15003.)

14 34. California Code of Regulations, title 14, section 15126.6, requires that the
15 SEIR describe a range of reasonable alternatives to the project or its location, which
16 would feasibly attain most of the basic objectives of the project, but would avoid or
17 substantially lessen any of the significant impacts of the project. Comparative merits of
18 the alternatives should be evaluated.

19 35. California Code of Regulations, title 14, section 15126.2, requires that the
20 SEIR identify the significant environmental impacts of the project, including direct and
21 indirect impacts. California Code of Regulations, title 14, section 15126.4, requires that
22 the SEIR describe all feasible measures that can minimize significant adverse impacts of
23 the project. CEQA does not allow an agency to defer analysis of impacts and mitigation
24 measures to another agency which may subsequently approve an aspect of the project.
25 (Cal. Code Regs., title 14, § 15126.4, subd. (a)(1)(B).)

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1 **FIRST CAUSE OF ACTION**

2 (Pub. Resources Code, §§ 21168, 21168.5; Respondents' Failure to
3 Adequately Analyze All Reasonable Alternatives.)

4 36. The allegations of paragraphs 1 through 35 are incorporated into this cause
5 of action by reference as though set forth fully herein.

6 37. Respondents violated California Code of Regulations, title 14, section
7 15126.6, in that, despite significant impacts of the Project to San Onofre State Beach and
8 its San Mateo campground, the SEIR does not adequately discuss alternatives that would
9 avoid these impacts to the state park, such as widening of I-5. The SEIR's flawed
10 analysis of alternatives involving widening I-5 instead of a route down the length of the
11 inland portion of San Onofre State Beach does not constitute an adequate analysis of the
12 comparative merits of these alternatives, as required by the CEQA guidelines.

13 38. Respondents' actions in approving the SEIR and the Project, without
14 adequately analyzing all reasonable alternatives that would lessen its impacts, are
15 arbitrary and capricious, without evidentiary support, a prejudicial abuse of discretion,
16 and are not in accordance with law.

17 **SECOND CAUSE OF ACTION**

18 (Pub. Resources Code, §§ 21168, 21168.5; Respondents' Failure to
19 Adequately Analyze All Impacts of the Project.)

20 39. The allegations of paragraphs 1 through 38 are incorporated into this cause
21 of action by reference as though set forth fully herein.

22 40. Respondents violated California Code of Regulations, title 14, section
23 15126.2, in that the SEIR does not adequately identify all significant environmental
24 impacts of the Project, including, but not limited to the following defects:

25 a. The SEIR does not adequately describe the visual blight that will be
26 created by the Project.

27 b. The SEIR does not adequately describe the interference with the
28 quiet enjoyment of San Onofre State Beach that will occur from the

1 presence of a six-lane thoroughfare immediately adjacent to the San
2 Mateo campground.

3 c. The SEIR does not adequately describe the socioeconomic impacts
4 of the Project thereby ignoring the important public policy of
5 environmental justice.

6 41. Respondents' actions in approving the SEIR and the Project, without
7 adequately analyzing all significant environmental impacts of the Project, are arbitrary
8 and capricious, without evidentiary support, a prejudicial abuse of discretion and are not
9 in accordance with law.

10 **THIRD CAUSE OF ACTION**

11 (Pub. Resources Code, §§ 21168, 21168.5; Respondents' Failure to
12 Adequately Describe All Feasible Mitigation Measures for Impacts of the Project.)

13 42. The allegations of paragraphs 1 through 41 are incorporated into this cause
14 of action by reference as though set forth fully herein.

15 43. Respondents violated California Code of Regulations, title 14, section
16 15126.4, in that the SEIR does not adequately describe all feasible measures that can
17 minimize significant adverse impacts of the Project, including, but not limited to, the
18 following defects:

19 a. The SEIR does not adequately address how the visual blight at San
20 Onofre State Beach will be mitigated.

21 b. The SEIR does not adequately describe all feasible mitigation
22 measures to address the loss of quiet enjoyment at the San Mateo
23 campground.

24 c. The SEIR does not adequately describe all feasible mitigation
25 measures for the physical taking of acreage from the park, nor the
26 loss of use of the campground for visitors caused by the impacts
27 from visual blight and noise.

28 d. The SEIR does not adequately describe feasible mitigation of

1 impacts to the critically endangered Pacific pocket mouse and other
2 species, whose habitat is within San Onofre State Beach, as the
3 SEIR's description of mitigation relies on unproven methods and
4 defers the discussion of mitigation to later processes.

5 44. Respondents also violated California Code of Regulations, title 14, section
6 15126.4, subdivision (a)(1)(B), in that mitigation measures for the loss of recreational
7 property has been unlawfully deferred to a later process.

8 45. Respondents' actions in approving the SEIR and the Project, without
9 adequately analyzing all feasible mitigation for all significant environmental impacts of
10 the Project, and deferring this discussion for later processes, are arbitrary and capricious,
11 without evidentiary support, a prejudicial abuse of discretion and are not in accordance
12 with law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioners respectfully request the following relief:

15 1. A peremptory writ of mandate commanding that:

- 16 a. Respondents vacate and set aside its approval of the SEIR for the
17 Project, the approval of mitigation measures for the Project, the
18 approval of a Mitigation Reporting or Monitoring Plan for the
19 Project, the approval of a Statement of Overriding Considerations
20 for the Project, the Findings for the Project, and the approval of the
21 Project;
- 22 b. Respondents withdraw the Notice of Determination thereof;
- 23 c. Respondents prepare and circulate a revised SEIR for public review
24 and comment that is in compliance with the requirements of CEQA;
25 and
- 26 d. Respondents suspend all activity pursuant to the certification of the
27 SEIR and its approval of the Project that could result in any change
28 or alteration to the physical environment until Respondents have

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taken all actions necessary to comply with CEQA.

2. Preliminary and permanent injunctions restraining Respondents, their agents, employees, contractors, consultants and all person acting in concert with it, from undertaking any construction or development, issuing any approvals or permits, or taking any other action to implement in any way the approval of the Project without full compliance with California law;

3. A declaration of the rights and duties of the parties hereto, including but not limited to a declaratory judgment that prior to permitting any grading, construction, or development of any kind on the Project site, Respondents must prepare, circulate, and adopt a revised SEIR in accordance with the requirements of CEQA and the CEQA guidelines;

4. Petitioners’ cost of suit; and

5. Such other relief as the Court deems just and proper.

Dated:

Respectfully Submitted,
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