



**JOHN GARAMENDI**  
**Lieutenant Governor**



**California State Senate**

April 7, 2008

Carlos M. Gutierrez  
Secretary of Commerce  
U.S. Department of Commerce  
Herbert C. Hoover Building  
14<sup>th</sup> Street and Constitution Ave., NW  
Washington, D.C. 20230

NOAA Office of General Counsel for Ocean Services  
1305 East-West Highway, Room 6111  
Silver Spring, MD 20910

RE: *Foothill/Eastern Transportation Corridor Agency Appeal for Secretary of Commerce Override of California Coastal Commission Objection to Consistency Certification for Foothill-South Toll Road*

Dear Secretary Gutierrez:

As you are aware, on February 6, 2008, after a 14-hour public hearing attended by more than 3,500 people, the California Coastal Commission voted 8-2 to reject the proposed Foothill-South Toll Road ("Toll Road"), a project that would site a multi-lane highway through the heart of the California State Park at San Onofre State Beach. The Commission found that the project violated the California Coastal Act and failed to conform to California's approved coastal management plan.

We urge you to defer to the Coastal Commission's legitimate exercise of its authority to protect the California coastline and reject the TCA appeal. In voting to reject the TCA's consistency certification, the Coastal Commission acted in accordance with the authority delegated to it by Congress and faithfully executed its legal responsibility to the public. Your override of the Coastal Commission's action would violate the substance and spirit of both the Federal Coastal Zone Management Act and the California Coastal Act.

Your override of the Coastal Commission's decision would also create dangerous precedent and would undermine California's ability to protect its coastal resources, preserve and operate its State Parks, and ensure that these areas remain intact for the benefit of future generations. If this project were to be approved and constructed, it would be the first time in history that California park lands were taken by a local governmental entity for a major infrastructure project. Such an intrusion would mock the foundational principles of preservation and stewardship underlying California's public park system.

These principles dictate that lands of ecological and recreational value and great natural beauty be set aside in perpetuity, to be enjoyed by current and future generations.

We believe that you should out of hand reject the TCA's appeal. However, should you take it up, we urge you to hold a public hearing in Southern California and to extend the public comment period accordingly to ensure full opportunity for public participation. We are certain that at such a public hearing you would quickly learn that Californians consider this coastal public park a treasure and that there is broad public opposition to the Toll Road.

The California Coastal Commission's determination was based on a rigorous legal and factual analysis that exposed numerous serious inconsistencies with the State's coastal management plan, including:

- *Destruction of Environmentally Sensitive Habitat Areas.* Most of the coastal area impacted by the Toll Road is within an ESHA serving as habitat for numerous endangered species, including the California gnatcatcher, the Pacific pocket mouse, the arroyo toad, the southern steelhead and the tidewater goby. The Coastal Act does not permit the destruction of such habitat.
- *Fill of wetlands.* The Toll Road would use critical coastal lands that are part of a complex system of wetlands, estuary, marsh and adjacent uplands. The Coastal Act does not permit the use of wetlands for a toll road project.
- *Degradation of water quality.* Cutting, filling, and paving over miles of the San Mateo watershed would increase erosion and sediment production and would impair the quality of one of the last undeveloped and healthiest watersheds remaining in Southern California.
- *Threat to surf break at Trestles Beach.* Paving and cut and fill construction from the Toll Road would alter the hydrology of the watershed that feeds Trestles Beach, thereby jeopardizing the unique, world-renowned surf break at Trestles.
- *Potential harm to Native American cultural resources.* The Toll Road would run adjacent to and through the site of Panhé, an ancient Acjachemen/Juaneño village located on the banks of San Mateo Creek. Its construction undermines an important objective of the California Coastal Management Plan, to preserve native cultural resources.
- *Loss of public access and affordable recreation opportunities.* According to California State Parks, the construction of the Toll Road would require abandonment of as much as 60% of the park. The park is the sixth most popular in California and hosts 2.4 million visitors annually. Moreover, the San Mateo Campground, which hosts 100,000 Californians annually who are looking for affordable camping experiences, would likely have to be closed, and access to its popular trails would be cut off.

It is our understanding that to override the Coastal Commission's February decision, you would have to find that the Toll Road is either consistent with the objectives or purposes of the Coastal Zone Management Act (CZMA) or that the project is otherwise necessary in the interest of national security. A review of the record upon which the Coastal Commission made its decision shows that the project

Toll Road  
April 7, 2008

contradicts the objectives or purposes of the CZMA and fails to meet the standard articulated in the implementing regulations that determine when a consistency certification can be overridden.

Therefore, the only remaining basis for overriding the Commission's decision would be to find that the Toll Road is required by national security. There has been no showing of such a national security need. Indeed, building a highway through Camp Pendleton, the important Marine Corps Training Base on the West Coast, is more likely to undermine homeland security and military training than to promote them.

In summary, we respectfully request that: 1) you reject TCA's appeal and uphold the California Coastal Commission's legitimate authority to deny consistency certification for the Foothill-South Toll Road; 2) should you take up the issue, hold a public hearing in Southern California and extend the public comment period accordingly; and 3) you prohibit federal agencies from meeting or negotiating with the TCA on this matter while the appeal is pending.

Thank you for your consideration of this important California issue.

Sincerely,



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John Garamendi  
*Lieutenant Governor*



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Don Perata  
*Senate President pro Tem*



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Darrell Steinberg  
*Chair, Senate Natural  
Resources Committee*



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Christine Kehoe  
*California State Senator*