

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF COMMERCE

Foothill/Eastern Transportation Corridor Agency;
Board of Directors of the Foothill/Eastern Transportation Corridor Agency,
Appellants

vs.

California Coastal Commission,
Respondent

**APPEAL OF FOOTHILL/EASTERN TRANSPORTATION CORRIDOR
AGENCY UNDER THE COASTAL ZONE MANAGEMENT ACT**

Amended

1. Pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(3)(A) (the “Act” or “CZMA”), Foothill/Eastern Transportation Corridor Agency and the Board of Directors of the Foothill/Eastern Transportation Corridor Agency (collectively “TCA”) hereby requests that the Secretary of Commerce (“Secretary”) override the February 6, 2008 objection by the California Coastal Commission (“Commission”) to the TCA’s certification of the consistency of the completion of California State Route 241 (“Consistency Certification”) with the State of California’s federally-approved Coastal Zone Management Program (the California Coastal Management Program, or “CCMP”). As a threshold matter, the Commission’s objections are procedurally invalid under 15 C.F.R. § 930.129(b). The Commission’s objections also should be overridden on substantive grounds, under 15 C.F.R. §§ 930.121 and 930.122. More specifically, the grounds for appeal are as follows:

(a) The Commission's objections were not in compliance with the Act and the regulations promulgated thereunder. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.129(b).

(b) The activity for which the TCA provided the Consistency Certification is consistent with the objectives of the Act. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.121.

(c) The activity for which the TCA provided the Consistency Certification is necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.122.

(d) The Commission exceeded its consistency review jurisdiction because (i) the project is not located in the "coastal zone" as defined by the Coastal Zone Management Act (16 U.S.C. § 1453(1)); (ii) state law does not provide the Commission with the authority to exercise consistency authority inland of the coastal zone boundary established by the CCMP and the California Coastal Act; and (iii) the Commission has not complied with the requirements of Coastal Zone Management Act in order to exercise consistency review inland of the coastal zone boundary established by the California Coastal Act and the CCMP.

I. BACKGROUND.

2. The TCA proposes to construct the completion of California State Route 241 known as the Foothill Transportation Corridor – South ("FTC-S" or "Project") in southern Orange County and northern San Diego County, California. The California Legislature designated the Project as a component of the State Highway System. Cal. Sts. & High. Code §§ 300, 541. The FTC-S is also a critical component of the

adopted regional transportation plans of Southern California and is an important transportation control measure of California's Clean Air Act State Implementation Plan.

3. The Project is critically necessary to the relief of existing and future congestion on Interstate-5 ("I-5") in southern Orange County – the only north-south route between Los Angeles and San Diego – and to provide access to the California coast for residents from inland areas. As California Governor Arnold Schwarzenegger communicated to the Commission on January 15, 2008:

Many parts of Southern California are becoming known for traffic gridlock and crumbling roads, rather than for the magic of our coastline. That is unacceptable to me. Our freeways were built for a population of 18 million, and today these critical arteries are clogged with cars and trucks serving a population of 37 million. Every mile of stopped traffic poisons our air with tons of carbon and pollution, undermining all the great work we've done to clean our air and reduce greenhouse gas emissions.

For the last few years, my administration has conducted an extensive review of the proposed southern extension of State Route 241 in Orange and San Diego Counties. I personally visited the project site . . . I have concluded that this project is essential to protect our environment and the quality of life for everyone in Southern California. I am convinced that, with the extensive mitigation and avoidance measures proposed by the TCA, the

project can be built in a manner that will enhance and foster use of the coast and protect coastal resources.

4. The FTC-S is approximately 16 miles long, extending from the existing California State Route 241 terminus to a connection with Interstate 5 (“I-5”) at Christianitos Road in San Diego County. A portion of FTC-S would traverse U.S. Marine Corps Base (“MCB”) Camp Pendleton in San Diego County and intersect the inland boundary of the state “coastal zone,” as defined in the California Coastal Act (the “Coastal Act;” Cal. Pub. Res. Code § 30000 *et seq.*), approximately 0.25 miles northeast of and generally parallel to the I-5 freeway. Approximately 2.2 miles of the FTC-S would be located within the state “coastal zone,” of which 1.7 miles are improvements along the existing I-5 to provide northbound and southbound connectors and to provide other improvements to MCB Camp Pendleton. Those improvements include the construction of national security improvements, which were coordinated closely with Camp Pendleton to meet current Homeland Security and Anti-Terrorist Force Protection Program guidelines and various other improvements to enhance security at MCB Camp Pendleton and to enhance the ability of the Marine Corps to implement MCB Camp Pendleton’s mission of training Marines to defend the United States. The total Project footprint in the state “coastal zone” would amount to 138 acres, 80 acres of which consist of the existing I-5 and other transportation facilities.

5. The TCA is a California public Joint Powers Agency established by joint powers agreements among the County of Orange (“County”) and twelve cities in Orange County in 1986, to plan, design, finance, and build regional transportation facilities. The TCA’s governing board is composed of elected officials from the County and each of

the member cities, which include the cities of San Clemente, Dana Point, San Juan Capistrano, Anaheim, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, Santa Ana, Tustin, and Yorba Linda.

6. Planning efforts for FTC-S have been underway for approximately thirty years. Beginning in the 1970s, the County and regional transportation planning organizations evaluated alternatives to address the transportation needs of southern Orange County and northern San Diego County. In 1981, the County of Orange, after certifying an environmental impact report pursuant to the California Environmental Quality Act, included the Project on the County Master Plan of Arterial Highways. Subsequently, the metropolitan planning organizations for Southern California, the Southern California Association of Governments and the San Diego Association of Governments, after evaluating alternative transportation solutions, included the Project in the approved regional transportation plans and the transportation improvement programs for Southern California. The U.S. Department of Transportation approved the regional transportation plans and the transportation improvement programs that include the FTC-S. The South Coast Air Quality Management District included the Project as a Transportation Control Measure in the South Coast Air Quality Management Plan. Thus, the timely implementation of FTC-S is important to the region's compliance with the Clean Air Act and the ability of the region to remain in conformity with the State Implementation Plan and to be eligible to receive federal transportation funds. In 1991, after evaluating numerous alternatives to the Project, the TCA certified a state environmental impact report ("EIR") for the Project and approved a locally-preferred alignment.

7. In the 1990s, the Federal Highway Administration initiated analysis of the Project and alternatives pursuant to the National Environmental Policy Act. In the mid-1990s, the federal and state transportation and environmental agencies (Federal Highway Administration, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, California Department of Transportation, and the TCA) initiated a collaborative process (the “Collaborative”) to evaluate the Project and a wide range of alternatives to the Project pursuant to the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act and other applicable laws. The alternatives evaluated by the Collaborative included alternative transportation modes, the widening of I-5, improvements to local streets and many alternative alignments of the Project. The U.S. Marine Corps also participated in the collaborative process with regard to the potential impact of the Project and alternatives on MCB Camp Pendleton.

8. During a six-year process involving 50 meetings, the Collaborative supervised technical studies and identified, screened, and evaluated possible project alternatives. In 2000, the Collaborative agreed on the alternatives to be evaluated in the Draft EIS/Subsequent EIR (“DEIS/SEIR”). The Collaborative agreed on 24 alternatives for evaluation, including 20 toll road alternatives, two non-toll road alternatives and two no-action alternatives.

9. Ultimately, after careful review of all alternatives, the federal and state transportation and environmental agencies in the Collaborative unanimously determined the Green Alignment of the FTC-S to be the Least Environmentally Damaging Practicable Alternative (“LEDPA”). The U.S. Fish and Wildlife Service also issued its

preliminary biological opinion that the Green Alignment is not likely to jeopardize the continued existence of any endangered or threatened species.

10. In February 2006, consistent with the unanimous recommendations of the Collaborative, the Board of Directors of the TCA certified the Final Subsequent Environmental Impact Report (“Final SEIR”) regarding the FTC-S and approved the Green Alignment.

11. Section 307(c)(3)(A) of the CZMA requires any application for a federal approval within or affecting the coastal zone to include “a certification that the proposed activity complies with the enforceable policies of the state’s approved program and that such activity will be conducted in a manner consistent with the program.” 16 U.S.C. § 1456(c)(3)(A). The California Coastal Act operates as the state coastal zone management program for the purposes of the federal CZMA consistency requirements.

12. Under Section 307(c)(3)(A), no license or permit may be granted by a federal agency until the state (acting through the Coastal Commission) has concurred with the applicant’s certification, “unless the Secretary [of Commerce], on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.” *Id.*

13. On March 26, 2007, the Commission received the TCA’s Consistency Certification (No. CC-018-07) with regard to the Army Corps of Engineers permit for the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act. The Final SEIR, the conclusions of the Collaborative, and

identified technical reports provided the basis for the TCA's consistency finding.

On May 31, 2007, the TCA agreed to a one-month extension of the six-month time period for review of the FTC-S.

14. The Commission initially scheduled consideration of the Consistency Certification for its October 11, 2007 meeting. However, on September 25, 2007, Commission staff ("Staff") provided the TCA a letter stating that additional information was needed on wetlands, water quality, archaeology, and energy and vehicle miles traveled. Staff also issued a 236-page "Staff Report and Recommendation on Consistency Certification" ("2007 Staff Report"), which asserted, *inter alia*, that five alternatives that the Collaborative had determined to be infeasible were feasible. The 2007 Staff Report further claimed that another alternative proposed by Project opponents, the widening of the I-5 and local streets, also was feasible, despite the fact that this alternative was a variation on an alternative already studied and rejected as infeasible, would have massive adverse community impacts and no foreseeable funding source, and was rejected by the California Department of Transportation ("Caltrans") as "not supported by adequate engineering and technical analysis" and "does not meet Department standards . . . [or] meet applicable engineering standards of care." The TCA requested a postponement of the hearing in order to prepare its written response to the 2007 Staff Report, and it again agreed to extend the six-month time period for review of the Project to late February 2008. The Commission rescheduled the hearing on the Consistency Certification for February 6, 2008.

15. On October 4, 2007, the TCA amended its Consistency Certification to add, in addition to the mitigation required by the Project SEIR, a \$100 million package to

fund extraordinary public access, recreation, and habitat improvements to the California State Parks System, which currently is subject to substantial budget cuts that threaten closure of approximately 48 California state parks or services within those parks.

16. Thereafter, the TCA supplied to the Commission, in a timely fashion, all information requested by Staff. On January 9, 2008, the TCA additionally submitted to the Commission a detailed response to the 2007 Staff Report.

17. The TCA also formally filed a permit application under Section 404 of the Clean Water Act with the U.S. Army Corps of Engineers (SPL-2000-00392).

18. On January 18, 2008 Staff released a revised staff report, which was followed by two addenda, on January 23 and January 30, 2008. The TCA thereafter submitted two additional detailed responses to the addenda.

19. On February 6, 2008, after a public hearing, the Commission objected to the Consistency Certification. On February 14, 2008, the TCA received a letter (the "Objection") from Mark Delaplaine, Manager, Energy, Ocean Resources, and Federal Consistency Division of the Commission, informing the TCA that the Commission objected to the TCA's Consistency Certification and identifying the grounds of the Commission's Objection. The Objection letter is attached hereto as Exhibit A.

20. Pursuant to Section 307(c)(3)(A) of the Act, the TCA hereby appeals the Commission's Objection to the Consistency Certification. The Objection should be reversed for the reasons set forth below.

II. THE COMMISSION HAS NO JURISDICTION OVER THE PROJECT UNDER THE CZMA.

21. The small portion of the Project putatively located within the coastal zone would be constructed on land wholly owned by the U.S. Department of the Navy and within a federal enclave ceded by the State of California to the United States. This property, which is part of MCB Camp Pendleton, was leased to California State Parks Department until 2021; the Navy reserved full rights in the lease to approve roads on the property. Congress adopted legislation authorizing the Department of the Navy to grant an easement to the TCA within this portion of MCB Camp Pendleton. The property is not subject to Commission jurisdiction because (1) it is a federal enclave, which the CZMA expressly excludes from the coastal zone (16 U.S.C. § 1453(1)), and (2) California's coastal zone management program for purposes of the CZMA defines "coastal zone" to include only "that land and water area of the State of California. . ." Cal. Pub. Res. Code, 30103. Camp Pendleton is not "land. . . of the State of California. . ." and is therefore excluded from the coastal zone.

22. The Commission has also illegally asserted jurisdiction over impacts and activities outside the coastal zone. The Commission is prohibited from considering such impacts because it has failed to comply with regulations contained in 15 C.F.R. Part 930 subpart D (15 C.F.R. § 930.53), which require the state to adopt a description of geographic locations in which activities outside the coastal zone would have reasonably foreseeable coastal effects prior to exercising jurisdiction.

23. Moreover, in acting on the Consistency Certification, the Coastal Commission also acted in excess of its jurisdiction by asserting jurisdiction over the

entire 16-mile alignment of the FTC-S, including impacts and activities outside of the coastal zone. *Sierra Club v. California Coastal Commission*, 28 Cal. Rptr. 3d 316 (2005) (holding the Commission may not exercise regulatory jurisdiction inland of the coastal zone). Further, the Commission is prohibited by federal law from considering impacts of portions of the Project inland of the coastal zone because it has failed to comply with federal consistency regulations adopted by the National Oceanic and Atmospheric Administration and contained in 15 C.F.R. Part 930 subpart D (15 C.F.R. § 930.53), which require a state to adopt a description of “geographic location” in which activities outside the coastal zone would have reasonably foreseeable coastal effects prior to exercising jurisdiction. 15 C.F.R. section 930.53 provides in relevant part: “In the event the State agency chooses to review Federal licenses and permits activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.” California’s coastal zone management program does not contain the required description of the “geographic location” in which such jurisdiction would be exercised.

III. THE COMMISSION’S CONSISTENCY OBJECTION IS NOT IN COMPLIANCE WITH THE REGULATIONS OF THE COASTAL ZONE MANAGEMENT ACT.

24. The Secretary should override the Objection as a threshold matter on the grounds that the Objection is not in compliance with Section 307(c)(3)(A) of the Act, 16 U.S.C. § 1456(c)(3)(A), and the regulations contained in subpart D of 15 C.F.R. Part 930 (“subpart “D”). The regulations implementing the CZMA provide: “If the State agency’s consistency objection is not in compliance with Section 307 of the Act and the

regulations contained in subparts D, E, F, or I of this part [15 C.F.R. Part 930], the Secretary shall override the State’s objection.” 15 C.F.R. § 930.129(b) (emphasis added). The Secretary may make this determination as a threshold matter before reaching the merits. *Id.*

A. The Commission’s Objection Is Illegally Based on Impacts and Activities Outside the Coastal Zone, in Violation of 15 C.F.R. Part 930 Subpart D.

25. The Objection is illegally based on impacts and activities outside the coastal zone. The Commission is prohibited from considering such impacts because it has failed to comply with regulations contained in 15 C.F.R. Part 930 subpart D (15 C.F.R § 930.53), which requires the state to adopt a description of geographic locations in which activities outside the coastal zone would have reasonably foreseeable coastal effects prior to exercising jurisdiction. Although the state failed to adopt this geographic location description, its Objection relies extensively on impacts outside the coastal zone and is, therefore, invalid.

B. The Commission’s Objection on the Grounds That “Necessary Information” Was Not Provided Violates 15 C.F.R. Part 930 Subpart D.

26. Although the Consistency Certification was based on painstaking environmental review, extending over a period of many years, and the TCA has responded in a complete and timely fashion to every request for additional information, the Commission based its Objection on the grounds that “necessary information” was not provided. This basis for objection violates the CZMA regulations, which provide that

“[t]he State agency’s determination that a certification and necessary data and information . . . is complete is not a substantive review of the adequacy of the information received.” 15 C.F.R. § 930.60(c). Under Subpart D, the Commission’s objection may not be based on the Commission’s substantive review of data; otherwise, the Commission could use repeated and unending data requests as a means to reject projects, in violation of the law. Further, the Commission’s Objection to consistency with wetland and archeology policies is improperly based on inconsistent grounds. The Commission cannot object simultaneously that the Project is inconsistent with policies relating to wetlands and archeological resources and that it has insufficient information to make such a determination.

IV. THE FTC-S IS CONSISTENT WITH THE OBJECTIVES OF THE COASTAL ZONE MANAGEMENT ACT.

27. The Secretary may also override the Objection on the ground that the FTC-S is consistent with the objectives of the Act. 16 U.S.C. § 1456(c)(3)(A). As stated in the Project DEIS, the purpose of the FTC-S is to “help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement, and future traffic demands” in Southern California, home of the nation’s second-largest metropolis. It is clearly in the national interest and furthers the objectives of the Act.

28. A project is considered to be consistent with the objectives of the Act if it satisfies each of the following: (1) the activity furthers the national interest, as articulated in Section 302 or 303 of the CZMA, in a significant or substantial manner (“Element 1”); (b) the national interest furthered by the activity outweighs the activity’s adverse coastal effects, whether those effects are considered separately or cumulatively (“Element 2”);

and (c) there is no reasonable alternative available that would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal zone management program ("Element 3"). 15 C.F.R. § 930.121. The FTC-S readily satisfies each of these three elements of the consistency standard.

A. Element 1: The FTC-S Furthers the National Interest in a Significant and Substantial Manner.

29. The FTC-S promotes the national interest as articulated in Section 303 of the Act in a significant and substantial manner. The FTC-S will contribute to the national interest in economic development of the coastal zone (16 U.S.C. § 1452(1)) by reducing congestion and delay and allowing for increased mobility of goods and services.

As California Governor Arnold Schwarzenegger observed in the above-quoted letter to the Commission urging support of the Consistency Determination: "Rebuilding our infrastructure is one of the single most important steps we can take to keep California strong and prosperous. . ."

30. The FTC-S also furthers the national interest in "priority consideration being given to . . . orderly processes for siting major facilities related to . . . transportation." 16 U.S.C. § 1452(1)(D).

31. The FTC-S furthers the national interest by providing "public access to the coasts for recreation purposes." 16 U.S.C. § 1452(1)(E). The FTC-S will provide significant new, more direct public access from inland areas to coastal recreational areas in southern Orange County and San Diego County, and though congestion relief, will facilitate and enhance overall public access to the coast by way of I-5 and State Route 241. Coastal areas that will benefit from improved public access extend from San Diego

down-coast to Crystal Cove State Park up-coast, and specifically include San Onofre State Beach, San Clemente State Beach, Doheny State Beach, Dana Point Harbor, Salt Creek Beach, and Crystal Cove State Beach. Public access to and along this portion of the coast is currently restricted because of severe traffic congestion on I-5 and on local streets, and will only worsen as congestion increases in the future. As evidenced by the closure of I-5 during the recent wildfires, disruption of service on this single access route would have a significant impact on coastal access.

32. The FTC-S furthers the national interest in providing for “the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters.” 16 U.S.C. § 1452(1)(C). Currently, coastal waters are degraded by untreated runoff from several miles of the I-5 freeway. The FTC-S would employ a state-of-the-art water quality treatment system, and would treat approximately five million gallons of runoff water each year that currently flows untreated from the existing I-5 into San Onofre and San Mateo Creeks, and ultimately into the Pacific Ocean.

B. Element 2: The National Interest Furthered by the FTC-S Outweighs the Project’s Limited, Mitigated Direct and Cumulative Impacts on the Coastal Zone.

33. The discussion of Element 1 summarizes some of the Project’s beneficial impacts on the coastal zone, the region, and the nation as a whole. The Project further contributes to the national interest by enhancing military security and tactical training at MCB Camp Pendleton. Significantly, this includes, construction of national security improvements developed in coordination with MCB Camp Pendleton to meet current

Homeland Security and Anti-Terrorist Force Protection Program guidelines, which include security fencing, the realignment of the Basilone Road interchange, the relocation, expansion and upgrade of Camp Pendleton's San Onofre Gate, and other improvements to increase efficiency and flexibility for military training. The Project will also provide a vital alternative route for deployment of U.S. Marine Corps forces to MCB Camp Pendleton's point of debarkation (March Air Force Base in Riverside County). The Project additionally contributes to the national interest by providing an alternate major evacuation route for San Onofre Nuclear Generating Station ("SONGS"); providing an additional evacuation options for the nuclear plant, area residents, the public, and coastal recreation users in the event of wildfires or flood by tsunami; and enhancing fire protection benefits and emergency vehicle access. The Project's contribution to the national interest also includes assisting the region in complying with the Clean Air Act and in relieving congestion on I-5.

34. The Project has been designed and refined over the years to avoid environmental impacts on the coastal zone. Its footprint is small and its impacts have been reduced and mitigated to the greatest extent feasible. This process has been carefully documented through the DEIS and Final SEIR, and through additional studies and analysis provided to the Commission. The TCA has also committed to contributing \$100 million, a sum equal to one fourth of the California State Parks annual operating budget, to fund extraordinary public access, recreation, and habitat improvements to the California State Parks System. The limited negative environmental effects of the Project are more than offset by environmental benefits, and in any case, the Project's furtherance of the national interest strongly outweighs any adverse effects. The Coastal Commission

itself misapplied the state's coastal management program in failing to properly balance the applicable enforceable policies of the management program which reflect these considerations.

C. Element 3: There Is No Reasonable Alternative.

35. The FTC-S clearly satisfies the third element of consistency with the objectives of the CZMA, which states that there must be no reasonable alternative available that would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal zone management program. 15 C.F.R. § 930.121. Flying in the face of thirty years of planning studies by all levels of government and the conclusion reached after six years of study by the federal agencies with jurisdiction over resources affected by the Project, the Commission claims that there are other reasonable alternatives. The selection of the FTC-S alignment was the outcome of the Collaborative's six-year process of planning and analysis to ensure the selection of the LEDPA, a test equivalent to the California Coastal Act requirement that the chosen alternative be the "least environmentally damaging feasible alternative." The planning process for the Project clearly established that there is no other reasonable or feasible alternative. The alternatives cited by the Commission in its Objection are not reasonable because there is no identified funding for these alternatives. As indicated in Governor Schwarzenegger's letter to the Commission, California has a \$500 billion infrastructure deficit. In addition, the alternatives would result in massive adverse impacts on coastal communities including the elimination of over a thousand homes and businesses, low and moderate income housing, and many affordable coastal visitor-serving facilities. Caltrans

conducted a detailed analysis of the alternative to widen I-5 and local streets and determined that it did not comply with design and safety standards.

V. THE FTC-S IS NECESSARY IN THE INTEREST OF NATIONAL SECURITY.

36. The FTC-S is also necessary in the interest of national security.

Construction of the Project will enhance military security at MCB Camp Pendleton because it will provide specific and vitally important improvements requested by MCB Camp Pendleton, including security fencing, rebuilding the I-5 Basilone Road interchange and the northern entrance to the Marine Corps Base to comply with anti-terrorism standards, and other important improvements to enhance the tactical training mission of MCB Camp Pendleton – including enhanced amphibious training operations. The current I-5 Basilone Road interchange is inadequate to handle existing traffic, and the existing interchange design does not allow for adequate clearance for the security station at the Base entrance. The Project will also provide a vital alternative route for deployment of U.S. Marine Corps forces to MCB Camp Pendleton’s point of debarkation (March Air Force Base in Riverside County). MCB Camp Pendleton is the Marine Corps’ only amphibious training center for the west coast of the United States. With over 50,586 hectares (125,000 acres) of land, 29 kilometers (18 miles) of beaches, training areas, ranges and restricted airspace, MCB Camp Pendleton is an irreplaceable military training installation. MCB Camp Pendleton trains Marines to meet the Marine Corps Mission as described in the Marine Corps Strategy 21. The challenge to the Marine Corps is to maintain and upgrade the capability to effectively train Marines in all elements of ground, amphibious, and aviation-related warfare and combat readiness. The

task of maintaining such a capability is an ongoing effort as facilities and procedures must be continually evaluated to ensure that the Marine training is commensurate with the skills the Marines will require to meet and defeat any potential hostile challenges to the nation's security and vital interests. The Project's contribution to national readiness and security is in the interest of national security.

VI. REQUEST FOR SECRETARIAL ACTION.

Accordingly, the TCA respectfully asks the Secretary to find and conclude that:

1. The Commission has no jurisdiction over the Project under the CZMA.
2. The Commission failed to comply with Section 307 and the regulations contained in subpart D of 15 C.F.R. Part 930 and, therefore, pursuant to 15 C.F.R. § 930.129(b), its objections should be overridden.
3. The Project is consistent with the objectives and purposes of the Act and, as such, all of Commission's objections must be overridden.
4. The Project is necessary in the interest of national security and, as such, all of Commission's objections must be overridden.

VII. REQUEST FOR LIMITING DEVELOPMENT OF DECISION RECORD.

The TCA respectfully requests that the development of the decision record be limited to sixty days. The regulations regarding consistency certification appeals provide that the Secretary is to close the decision record not later than 160 days after the date that the Secretary's Notice of Appeal is published in the *Federal Register*. 15 C.F.R. § 930.130(a)(1). The Secretary therefore has discretion to limit the development of the decision record to a shorter period of time. Given (i) the length of time the TCA has been working with all relevant federal and state agencies, both before and after it submitted is

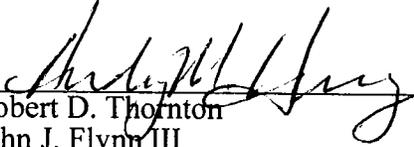
Consistency Certification, (ii) the importance to the economy and environment of California of relieving congestion and ensuring mobility, and (iii) the uncertainty that is presented to local governments who are implementing land use plans based on the decades-long inclusion of the Project in local and regional transportation plans, the TCA maintains that good cause exists to shorten the amount of time provided to develop the decision record.

VIII. RESERVATION OF RIGHTS.

The TCA reserves all rights to raise and address such other procedural and substantive issues that may be necessary or appropriate in support of its appeal.

Dated: February 15, 2008

Respectfully submitted:


Robert D. Thornton
John J. Flynn III
Jean O. Melious
Audrey M. Huang
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
18101 Von Karman Avneue, Suite 1800
Irvine, CA 92612
Telephone: (949) 833-7800
Facsimile: (949) 833-7878
E-mail: rthornton@nossaman.com

Steven H. Kaufmann
RICHARDS/WATSON/GERSHON
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Telephone: (213) 626-8484
Facsimile: (213) 626-0078
E-mail: skaufmann@rwglaw.com

Attorneys for Appellants
Foothill/Eastern Transportation Corridor Agency
The Board of Directors of the Foothill/Eastern
Transportation Corridor Agency

PROOF OF SERVICE

The undersigned declares:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 18101 Von Karman Avenue, Suite 1800, Irvine, California 92612-0177.

On February 15, 2008, I served the foregoing **Appeal of Coastal Commission Objection to Federal Coastal Consistency Certification** on parties to the within action as follows:

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Tel: (415) 904-5200
Fax: (415) 904-5400

The Office of General Counsel for Ocean Services
Attn: Assistant General Counsel
1305 East-West Highway
SSMC-4, Room 6111
Silver Spring, MD 20910
Tel: (301) 713-2967
Fax: (301) 713-4408

- (By U.S. Mail) On the same date, at my said place of business, a true copy thereof enclosed in a sealed envelope, addressed as shown on the attached service list was placed for collection and mailing following the usual business practice of my said employer. I am readily familiar with my said employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and, pursuant to that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, on the same date at Irvine, California.
- (By Overnight Service) I served a true and correct copy by overnight delivery service for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- (By Electronic Service) By emailing true and correct copies to the persons at the electronic notification address(es) shown on the accompanying service list. The document(s) was/were served electronically and the transmission was reported as complete and without error.

Executed on February 15, 2008.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Robin Golder

PROOF OF PERSONAL SERVICE

I, the undersigned, declare:

I am over the age of 18 years, employed in the County of Orange, State of California, and am not a party to the above-entitled cause. My business address and place of employment is **Same Day Process Service, 1322 Maryland Ave. NE, Washington, DC 20002.**

On February 15, 2008, I served the following document(s) **Appeal of Coastal Commission Objection to Federal Coastal Consistency Certification accompanied by a \$500 filing fee** on the person(s) hereinafter mentioned by personally delivering a true copy thereof to a person accepting service as follows:

**U.S. Secretary of Commerce
Herbert C. Hoover Building
14th Street and Constitution Ave., NW
Washington, DC 20230**

Executed on February 15, 2008.

- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

(Printed Name)

(Signature)

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



February 13, 2008

Thomas E. Margro
Chief Executive Officer
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, CA 92618-3304

Re: **CC-018-07** Consistency Certification, Transportation Corridor Agencies (TCA), Foothill
Transportation Corridor – South (FTC-S), northern San Diego and southern Orange
County

Dear Mr. Margro:

On February 6, 2008, the California Coastal Commission objected to the above-referenced consistency certification, by a vote of two to concur in the certification, and eight to object thereto. The grounds for the Commission's objection under the enforceable policies of the California Coastal Management Program (CCMP) are set forth in detail in the attached Adopted Staff Report and Recommendation. Generally, the Commission's objection was based on the failure of the project to conform to enforceable policies of the CCMP in the policy areas of environmentally sensitive habitat, wetlands, public access and recreation, surfing, archeological resources, and energy consumption and vehicle miles traveled.

The Commission also determined that the consistency certification did not supply sufficient information to determine the project's consistency with the enforceable water quality, wetlands, and archaeology policies of the CCMP. This information was requested in letters to TCA dated June 25, 2007 (archaeology), July 9, 2007 (wetlands), and September 25, 2007 (wetlands, water quality, and archaeology).

The Commission's findings also discuss the alternative measures which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the CCMP (see Attachment, pages 4-5, 11, 24-25, and 110-130).

The Commission's action was timely. The Transportation Corridor Agencies (TCA) submitted the consistency certification on March 26, 2007. The review period commenced on that date. On June 15, 2007, the Commission sent TCA the letter required by Section 930.62(b) of the CZMA regulations. TCA and the Commission twice mutually agreed to extend (stay) the six-month review period. In the second of

these written agreements (TCA letter to me dated October 8, 2007), TCA agreed to extend (stay) the review period until February 26, 2008.¹

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the California Coastal Commission and the U.S. Army Corps of Engineers. The Secretary may collect fees from you for administering and processing your request.

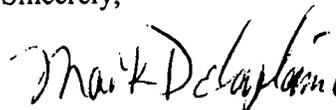
Appeals should be filed at:
U.S. Secretary of Commerce
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

A copy of the appeal should be sent to the California Coastal Commission at the above address, and to:

Assistant General Counsel for Ocean Services (GCOS)
1305 East West Highway, Room 6111 SSMC 4
Silver Spring, Maryland 20910

If you have any questions about this letter, feel free to contact me at (415) 904-5289.

Sincerely,



MARK DELAPLAINE
Manager, Energy, Ocean Resources,
and Federal Consistency Division

Attachment (Adopted Staff Recommendation)

cc: OCRM (David Kennedy, David Kaiser)
NOAA's Office of General Counsel for Ocean Services
U.S. Army Corps of Engineers, Los Angeles District (Susan Meyer)
Federal Highway Administration
CCC, San Diego District (Deborah Lee)
CCC, Long Beach District (Teresa Henry)
Nancy Lucast

¹ TCA's first agreement to extend the six-month review period, dated May 31, 2007, was based on our mutual agreement, and extended (stayed) the review period from September 26, 2007, until October 26, 2007.