



Via Email (mespino@octa.net) and U.S. Mail

February 4, 2011

Mr. Will Kempton
Chief Executive Officer
Orange County Transportation Authority (OCTA)
550 S. Main St.
Orange, CA 92863-1584

Re: Comments on OCTA's Draft 2010 Long Range Transportation Plan

Dear Mr. Kempton:

On behalf of the undersigned organizations, thank you for the opportunity to comment on OCTA's draft 2010 Long Range Transportation Plan (LRTP). At this time, we are limiting our comments to a single issue: the proposed Foothill-South Toll Road (Route 241 from Interstate 5 to Oso Parkway) should not be included in the 2010 LRTP's "baseline" or constrained plan.

The Toll Road Has Been Found Not to Comply with Federal Environmental Law. Agencies at both the state and federal levels have rejected the proposed Foothill-South Toll Road. In February of 2008, the California Coastal Commission denied the Transportation Corridor Agencies' (TCA) request for a federal Coastal Zone Management Act (CZMA) consistency certification for the Foothill-South, finding that the road was inconsistent with key provisions of the CZMA, the federal law designed to protect the nation's coastal zone. In fact, the Commission's staff report stated that "it would be difficult to imagine a more environmentally damaging alternative location for

the proposed toll road.” Ten months later, the U.S. Department of Commerce rejected the TCA’s appeal of the Coastal Commission’s decision, basing its denial primarily on the availability of less damaging transportation routes.

The LRTP Itself Dictates That the Toll Road Cannot Be Included in the LRTP “Baseline.” The Draft LRTP inexplicably places the Toll Road in the baseline even though, as noted above, it cannot be implemented because it has been found inconsistent with environmental mandates. The LRTP itself defines the “baseline” as “[c]omprised of projects or services that have been *assessed for their environmental impacts and approved to be implemented.*”¹ The LRTP emphasizes that the “assumed future transportation network for the Year 2035 Baseline includes only projects that are *currently under construction or will be implemented soon.*”² The Foothill-South project fits neither of these descriptions; indeed, the opposite is true. The road is not under construction and its implementation was disapproved by the Coastal Commission and Department of Commerce based on its harmful environmental impacts.³ To maintain internal consistency, the LRTP therefore must remove the Toll Road from the “baseline.”

Improperly Including the Toll Road in the Baseline Distorts the Big Picture. Removing the Toll Road from the baseline is important not only to maintain the internal consistency and integrity of the LRTP, but also because an inaccurate baseline skews the accuracy and reliability of the analysis for the entire plan. Including a speculative project in the baseline—as is the Toll Road since its rejection by regulatory agencies and since the U.S. Marine Corps’ rejection of alternative alignments on the Camp Pendleton Marine Base⁴—compromises the regional traffic analyses for the LRTP by diverting a regionally significant amount of anticipated traffic onto a phantom road. As a result, the evaluation of projects in the LRTP for cost-effectiveness and performance are impermissibly distorted. No planning process should be based on conclusions that are demonstrably false.

Even the County of Orange has recognized the folly of assuming the existence of the Toll Road in the future baseline when conducting traffic analyses of proposed projects in the vicinity. In conducting its environmental review of the La Pata extension, for example, the County of Orange assessed that road’s performance and impacts under a scenario where the 241 extension would not be built. In doing its long range planning for the County, OCTA owes a similar obligation to be honest with the public and should follow the example set by the County.

¹ OCTA Draft 2010 LRTP at G2 (emphasis added).

² *Id.* at 29 (emphasis added).

³ OCTA cannot rely on the TCA’s 2006 certification of its own EIR to meet this criterion first because other environmental approvals are required which TCA was unable to obtain and also because the project TCA approved under CEQA cannot be built consistent with the CZMA.

⁴ See Letter from Secretary of the Navy Ray Mabus to Sen. Dianne Feinstein, Feb. 22, 2010 (rejecting a proposed new toll road alternative on Camp Pendleton and stating that further intrusion into the Marine Corps base is unacceptable). This letter is attached below for your reference.

The Toll Road Lacks a Realistic Funding Plan. Ridership and receipts are down for all of Orange County's toll roads.⁵ Yet the 2010 LRTP lists the Foothill-South's price tag at over \$1.2 *billion* – the most expensive highway project in the LRTP's baseline. This figure is sure to increase substantially under FHWA's new guidelines requiring that project costs be based on year of construction dollars. And to make matters worse, the TCA's efforts to refinance its existing debt load have gone nowhere. These factors make it unlikely that the Foothill-South can meet federal fiscal constraint requirements, under which funds for projects included in the "fiscally constrained" Regional Transportation Plan submitted for federal approval must be "reasonably expected to be available."

For the reasons stated above, the proposed Foothill-South Toll Road has no place in OCTA's long-term vision for the County's transportation future. We urge OCTA to remove the Foothill-South Toll Road from the 2010 LRTP's baseline, and acknowledge that the project is not going forward by limiting the road to the LRTP's unconstrained plan.

Thank you for your consideration of these comments.

Very truly yours,

Damon Nagami
Staff Attorney
Natural Resources Defense Council

Elizabeth Goldstein
President
California State Parks Foundation

Susan Jordan
Director
California Coastal Protection Network

Dan Silver
Executive Director
Endangered Habitats League

Bill Holmes
Chair, Friends of the Foothills Task Force
Sierra Club

Stefanie Sekich-Quinn
Coastal Campaign Specialist
Surfrider Foundation

Jason Rylander
Staff Attorney
Defenders of Wildlife

Pete DeSimone
Manager, Starr Ranch Sanctuary
Audubon California

Briana Madden
Education Director
Orange County Coastkeeper

Serge Dedina, Ph.D.
Executive Director
WiLDCOAST-COSTASALVAJE

Attachment

⁵ See, e.g., Nicole Santa Cruz, "Recession slows use of Orange County's toll roads," *Los Angeles Times* (Feb. 1, 2011), available at <http://www.latimes.com/news/local/la-me-toll-roads-20110201,0,941540.story>.