

**NATIVE AMERICAN HERITAGE COMMISSION**

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May 27, 2008

Mr. Thomas Street
NOAA Office of General Counsel for Ocean Services
1305 East-West Highway
RM 611
Silver Spring MD 20910

Re: Comments: Foothill Transportation Corridor South (FTC-S) Toll Road

Dear Mr. Street:

The Native American Heritage Commission (NAHC) is the trustee state agency for the state of California with jurisdiction over cultural resources. In response to Federal Register notice dated March 17, 2008 and the California Coastal Commission (CCC) Adopted Staff Report and Recommendation on Consistency Certification No. CC-018-07, the NAHC submits the following comments for your consideration in the South Orange County Transportation Infrastructure Improvement Project (SOCTHP) toll road extension.

The Toll Road as approved will be built on land in San Diego and Orange counties that was part of Camp Pendleton Marine Corps Base. It would be constructed on a proposed easement across the portion of that land that the United States leases to the California Department of Parks and Recreation, pursuant to a 50 year lease. The toll road will bisect the inland unit of San Onofre state beach and the San Mateo Archaeological District which is approximately 480,000 square meters and includes 6 sites including the ethnographic Juaneno village of *Panhe*. (CA ORA-22). There are four sites at or near *Panhe*, CA SDI 8435, CA-SDI 4282 and CA SDI 4535. (Fig 1)

Many Acjachemen/Juaneno tribal members today can trace their lineage directly to the Village of *Panhe* which is estimated to be at least 8,000 years old. This is evidenced by genealogical research, research with Spanish Mission records, interviews. *Panhe* was the largest Indian village in the region in prehistoric and early historic time. Today evidence of the village complex of *Panhe* includes occupation debris (midden deposits, aboriginal artifacts and subsistence remains, human burials, house remains, fire hearth remains, other cultural remains, historical documents and the memory of living Acjachemen people. (Letter dated January 21, 2008 p. 3 to CCC from Rebecca Robles, Robert Garcia and Angela Mooney D'arcy; Michael Sampson, Associate State Archaeologist, Southern

Service Center, California Department of Parks and Recreation, *Proposed extension of State Route 241 and the ethnographic village of Panhe*, Letter to Dan Silver, Endangered Habitats League, September 7, 2007.)

Present day Juaneno Native Americans have strong feelings for *Panhe* as a place central to their cultural traditions and heritage. Juanenos and other American Indians regard certain places in their ancestral lands as having spiritual power and such places are central to Indian peoples relationship to the world and integral to identity and culture. Juanenos so regard *Panhe* and still use a portion of *Panhe* today as a place for ceremonies integral to culture and a place for burial of their dead. The village site is important to activities including the Ancestor Walk an important cultural event today among the Juaneno/Acjachemen, Tongva, Chumash, Tataviam and other Southern California tribal communities. *Panhe* is one of the few remaining Juaneno/Achachmenn sacred sites where the people can still gather for ceremony in an area that is secluded and exists in a relative pristine and natural state. Three Tribal Resolutions from the Juaneno Band of Mission Indians, Acjachemen nation, have been passed supporting the Tribe's supporting the Tribe's full sovereign participation in any and all land and water use decisions likely to impact the Village of *Panhe*. (letter dated January 21, 2008 p. 3, 4 to CCC from Rebecca Robles, Robert Garcia and Angela Mooney D'arcy.)

Archaeological sites CA-ORA-22 as well as CA-SCI 8435 are registered as sacred sites with the NAHC as representing the village site of *Panhe* and these are used for ceremonial and burial purposes. Listing on the NAHC Sacred Lands File is based on a site's traditional, cultural, or religious significance to, or its ceremonial use by, or by virtue of its requirement as a place for a ceremony by a California Indian tribe.¹ As such *Panhe* is a place that continues to be an integral part of Juaneno culture as practiced today.

The NAHC agrees with the determination of the Coastal Commission that the proposed mitigation will not reduce adverse impacts to below a level of insignificance. The NAHC believes that the impacts to the Juaneno people who use the site of *Panhe* for ceremony are completely unmitigated.

In comments to the TCA in a letter dated January 10, 2006 regarding the FEIR the NAHC pointed out the need to fully consider the impacts to *Panhe* and consider avoidance, which TCA has not done to date. The NAHC stated:

“It (FSEIR) does not adequately address the severe, adverse impacts...It does not adequately address noise, traffic, air quality, visual/aesthetic and aggregate impacts on the site's historical and cultural integrity and continued use by the Juaneno community. Although these impacts are categorized as indirect in the FSEIR, these impacts will functionally destroy *Panhe's* historical and cultural integrity and viability for the Juaneno people... Rather the chosen alternative would come within a matter of feet of a Juaneno cemetery currently used by Juaneno people thus destroying their ability to carry out

¹ The NAHC maintains a sacred lands inventory pursuant to California Public Resources Code section 5097.94.

religious and ceremonial activities at that site.” (Larry Meyers, Executive Secretary, Native American Heritage Commission, *Comments, Final Supplemental Environmental Impact Report for proposed south Orange County Transportation Infrastructure Improvement Project, Transportation Corridor Authority*, Letter to TCA and Federal Highway Administration, January 10, 2006.

In addition the NAHC agrees with the determination of the Coastal Commission and State Historic Preservation Officer that *Panhe* should have been analyzed as a Traditional Cultural Property (TCP). The State Historic Preservation Officer (SHPO) has requested that TCA provide a Traditional Cultural evaluation for *Panhe* and such evaluation has not been done. The SHPO advises that the Traditional Cultural Property assessment is required so that impacts and the adequacy of the proposed mitigation can be assessed. (Milford Wayne Donaldson, FAIA, State Historic Preservation Officer, *Section 106 Consultation of the South Orange County Transportation Infrastructure Improvement Project, Orange and San Diego Counties, California*, Letter to Federal Highway Administration, April 27, 2007.

The NAHC believes that it is critical that *Panhe* be analyzed as a Traditional Cultural Property. Native American consultation on the project did not include descendents of *Panhe*, nor did it recognize that the NAHC has listed it as Sacred Lands site. The NAHC believes *Panhe* fits the description of a Traditional Cultural Property...The proposed mitigation measures do not address the impacts the project will have on *Panhe*'s overall cultural integrity and its use by the Juaneno people as a TCP, that is a contemporary cultural ceremonial ground. The TCA indicates that it does not dispute that *Panhe* is a TCP. However, without an evaluation of the qualities and values of the TCP, there cannot be genuine consideration of how the project will adversely impact these qualities and values which caused the property to be listed. There is also insufficient consideration of avoidance and inadequate discussion of preservation in place as possible alternatives. There should have been consideration of mitigation of impacts on cultural use of the site, the issue of long term access to the site for ceremonial activities, the preservation of *Panhe*'s historical and cultural integrity through mitigation and through redesign of the project.

In addition the NAHC concurs with the Coastal Commission and the SHPO that TCA has not provided sufficient information to enable an evaluation of the full range of adverse impacts to cultural resources and their potential mitigation. The NAHC is of the opinion that all mitigation options including avoidance have not been explored. As it stands the NAHC believes that the impact on *Panhe* is not mitigated. As related above, on January 10, 2006 the NAHC submitted comments on the Toll Road to the TCA pointing out deficiencies in the cultural resources and archaeological sites review in the TCA's environmental review. It also urged the TCA to find an alternative design that would not permanently impair the cultural integrity of *Panhe*. On February 15, 2006 the NAHC held a hearing on the Toll Road project at which representatives of the TCA and the Juaneno/Acjachemen community provided public comment on the project and suggested courses of action for the NAHC. At the end of the hearing the NAHC determined that construction of the Toll Road would cause severe and irreparable damage to the Village

of *Panhe* and voted to among other things, ask the Attorney General to initiate a legal challenge to the Toll Road, if it were approved by the TCA. On or about February 23, 2006, the TCA approved the Toll Road, without choosing an alternative route that would avoid impacts to the Village of *Panhe*, as the NAHC had requested in its comments to the TCA.² On March 22, 2006 the Attorney General filed suit on behalf of the NAHC to enjoin the toll road project on the grounds that it would cause severe and irreparable damage to *Panhe*, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, in violation of Public Resources Code sections 5097.9 et seq. The complaint alleged that the toll road would come within feet of a Juaneno/ Acjacheman cemetery currently used by the Juaneno/Acjachemen people and would cause both short and long term adverse impacts.³

The NAHC appreciates this opportunity to comment on this project.

Sincerely,

Larry Meyers, Executive Secretary NAHC

² California Public Resources Code section 5097.9 and 5097.97 authorizes the Native American Heritage Commission to seek an injunction in the case where severe and irreparable harm threatens a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

³ See Native American Heritage Commission, Complaint for Injunctive Relief, No. 06-GIN051370 (S.D. Superior Court filed March 22, 2006)