



1055 Wilshire Blvd., Suite 1660 Los Angeles, CA 90017-2499

T: (213)977-1035

F: (213)977-5457

www.cityprojectca.org

UNITED COALITION TO PROTECT PANHE * ANAHUAK YOUTH ASSOCIATION * CALIFORNIA PAN ETHNIC HEALTH NETWORK * BERNARD BRUCE, BRUCE'S BEACH * CHUMASH MARITIME ASSOCIATION * DESAL RESPONSE GROUP * ENVIRONMENTAL JUSTICE COALITION FOR WATER * ENVIRONMENTAL JUSTICE RESOURCE CENTER AND PROF. ROBERT D. BULLARD, CLARK ATLANTA UNIVERSITY * GABRIELINO/TONGVA TRIBAL COUNCIL * GABRIELENO/TONGVA TRIBE OF SAN GABRIEL * MUJERES DE LA TIERRA * NATIONAL HISPANIC ENVIRONMENTAL COUNCIL * NATIONAL LATINO CONGRESO * NORTHERN CHUMASH TRIBAL COUNCIL * POLICYLINK * PROTECT SACRED SITES, INDIGENOUS PEOPLE ONE NATION * SANTA ROSA RANCHERIA TACHI TRIBE * SOUTHERN CALIFORNIA WATERSHED ALLIANCE * SAVE THE PEAKS COALITION * SEVENTH GENERATION FUND FOR INDIGENOUS DEVELOPMENT * SPARC (SOCIAL AND PUBLIC ART RESOURCE CENTER) AND UCLA PROF. JUDITH F. BACA * THE CITY PROJECT * THE PRAXIS INSTITUTE * TI'AT SOCIETY/TRADITIONAL COUNCIL OF PIMU * URBAN SEMILLAS * WILLIAM C. VELAZQUEZ INSTITUTE * WISHTOYO FOUNDATION * WOMYN IMAGE MAKERS * www.savepanhe.org * www.savesanonofre.org * Allies as of February 5, 2008, and May 28, 2008

May 28, 2008

Carlos Gutierrez
United States Secretary of Commerce
1401 Constitution Ave., N.W.
Washington, DC 20230

**Re: Save Panhe and Save San Onofre State Beach -- Stop the Proposed Toll Road:
Reject Override Request—Consistency Certification for the Foothill-South Toll Road
[FR Doc. E8-5247]**

Dear Mr. Gutierrez:

We submit these comments on behalf of the United Coalition to Protect Panhe – a grass roots coalition of Native Americans – and a diverse and growing national alliance to save the sacred site of Panhe and San Onofre State Beach and stop the proposed Foothill South 241 toll road that would devastate both. We urge you to reject the Transportation Corridor Agency's request to override the 8-2 decision of the California Coastal Commission that denied consistency certification for the toll road, uphold the Commission's decision, and protect California's coastal and cultural resources and the rights of the Native American Acjachemen people. The toll road would violate the Coastal Zone Management Act ("CZMA"), the California Coastal Management Plan, and the equal protection of the laws for the Acjachemen and working class people of color.

Three State agencies formally oppose the toll road: the California Coastal Commission, the California Parks and Recreation Commission, and the California Native American Heritage Commission. Three Acjachemen Tribal Resolutions support sovereign participation by Tribes to protect Panhe.

The proposed toll road would harm affordable recreation including hiking, biking, camping, swimming, and surfing; threaten endangered species; diminish coastal open space; and severely impact the local Native American people, who are members of the Acjachemen Nation, and the sacred site of Panhe.

San Onofre State Beach is one of California's most popular state parks, receiving over 2.4 million visitors per year. More than 3,500 people attended the February 6, 2008, hearing before the Coastal Commission, the largest public turnout in the history of the Commission. More than 88% of campers in San Onofre's San Mateo campground reside in California, and 93% of these California campers reside in the 8 counties with the greatest green space needs – in combined terms of the fewest acres of green space per thousand residents, and highest levels of child obesity, children, poverty, and people of color. San Onofre is in one of those counties. The proposed toll road would represent the first time in California that state park lands were taken by a local governmental entity for a major infrastructure project. Allowing this project to proceed would set a dangerous precedent, threatening coastal parks, open space, and cultural, historical, and Native American resources everywhere in the State.

Panhe bears a special meaning in Native American -- as well as non-Indian -- life, culture and history. Panhe is an ancient Acjachemen village that is over 9,000 years old and a current sacred, cultural, ceremonial, and burial site. Many Acjachemen trace their lineage back to Panhe. Panhe is one of the few remaining Acjachemen sacred sites where the people can still gather for ceremony in an area that is secluded and exists in a pristine, natural state. Panhe is the site of the first baptism in California, and the first close contact between Spanish explorers, Catholic missionaries, and the Acjachemen in 1769. Acjachemen people built the mission at San Juan Capistrano. Destroying Panhe would hurt not only the Acjachemen but all the people of California and the nation.

No legitimate legal or factual basis exists to override the State of California's denial of consistency certification for the toll road. First, no national interest is furthered by the local toll road proposed by a local agency in a "significant or substantial manner." 15 C.F.R. § 930.121(a). Second, even if national interests were served, any benefits would be dwarfed by the road's extensive damage to environmental and cultural resources, and the discriminatory impacts against Native Americans and others. *Id.*, § 930.121(b). Third, reasonable alternatives are available. *Id.*, § 930.121(c). The Commission identified alternatives that "if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the CCMP." Finally, no reasonable basis exists to deem the project "necessary in the interest of national security." It is a local toll road. *See* 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.122. National security does not justify discrimination against the Acjachemen people to build a local toll road. *Cf. Korematsu v. United States (1944)*.

At least one Commissioner explicitly concluded that the harm against the Acjachemen people is reason enough to deny certification. The Acjachemen people will lose an ancient village, and current sacred, ceremonial, and burial site. No one else will. The proposed toll road would impermissibly discriminate against Acjachemen people, impair their access to Panhe and their freedom of religion. There is a history and pattern of depriving Native Americans of their land, culture, sacred sites, and freedom of religion under state and federal law. *See, e.g., Thompson v. U.S.*, 8 Ind. Cls. Comm. 1, 17 (1959).

The toll road would also discriminate against the working poor with limited or no access to a car and people of color. The toll road would disproportionately deprive them of affordable world class recreation and access to a public beach. These communities disproportionately cannot afford to pay tolls for commuter or recreational travel.

We urge you to uphold the Commission's decision, reject the override request for the toll road, and protect California's coastal and cultural resources and the rights of the Acjachemen people. Thank you.

Sincerely,

Rebecca Robles
Coordinator

Robert García
Executive Director and Counsel

Angela Mooney D'Arcy
Policy Director