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10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SAN DIEGO  
12 North County Branch  
13

14 **NATIVE AMERICAN HERITAGE**  
**COMMISSION,**

15 Plaintiff,

16 v.

17 **FOOTHILL/EASTERN**  
18 **TRANSPORTATION CORRIDOR**  
19 **AGENCY, a joint powers authority; the**  
20 **BOARD OF DIRECTORS OF THE**  
21 **FOOTHILL/EASTERN**  
22 **TRANSPORTATION CORRIDOR**  
23 **AGENCY, and DOES 1-10,**

24 Defendants.

**COMPLAINT FOR**  
**INJUNCTIVE RELIEF**

(Public Resources Code  
§5097.94)

25 PLAINTIFF, NATIVE AMERICAN HERITAGE COMMISSION,  
26 ALLEGES AS FOLLOWS:

27 **INTRODUCTION**

28 1. The Native American Heritage Commission (the Commission) brings this action  
to prevent a six-lane toll road from being built adjacent to the ancient

1 Juaneño/Acjachemen village site of Panhé, which is a sacred religious and ceremonial  
2 site for the Juaneño/Acjachemen people. The toll road, which would connect State  
3 Route 241 to Interstate 5 near the Orange County/San Diego County line, would be  
4 designed, financed and constructed by the Foothill/Eastern Transportation Corridor  
5 Agency (TCA), a joint powers authority formed by the County of Orange and 12 cities  
6 in the County.

7 2. The Village of Panhé, nestled on the banks of San Mateo Creek adjacent to the  
8 proposed route of the toll road, is a sacred site for the Juaneño/Acjachemen people,  
9 used in religious and cultural ceremonies. If constructed as approved by the TCA, the  
10 toll road will pass within feet of Panhé and interfere with the Juaneño/Acjachemen  
11 people's ceremonial practices there and will severely and irreparably damage this  
12 sacred, religious or ceremonial site.

### 13 JURISDICTION AND VENUE

14 3. Jurisdiction is proper in this Court because the sacred Native American site that  
15 the Commission seeks to protect is located, in part, in San Diego County, and the  
16 injury to it, and thus, the violation of state law, will occur, in part, in San Diego  
17 County. In addition, the toll road project that the Commission seeks to enjoin will be  
18 built, in part, in San Diego County.

### 19 PARTIES

20 4. Plaintiff, the Commission, is a public agency of the State of California,  
21 constituted pursuant to California Public Resources Code sections 5097.91 and  
22 5097.92. The Commission is authorized to request the Attorney General to bring an  
23 action on its behalf for injunctive relief to prevent severe and irreparable damage to,  
24 or assure appropriate access for Native Americans to, a Native American sanctified  
25 cemetery, place of worship, religious or ceremonial site, or sacred shrine located on  
26 public property.

27 5. Defendant, the Foothill/Eastern Transportation Corridor Agency (TCA), a joint  
28 powers authority located in Orange County and duly organized and existing under the

1 laws of the State of California, is a "public agency" as that term is used in Public  
2 Resources Code section 5097.9. The TCA is the project sponsor for the South Orange  
3 County Transportation Infrastructure Improvement Project (the Toll Road).

4 6. Respondent Board of Directors of the Foothill/Eastern Transportation Corridor  
5 Agency ("Board") is the governing body of TCA and is responsible for planning and  
6 implementing projects within the Agency's authority, including complying with state  
7 and federal law and approving the Toll Road. The Board consists of representatives  
8 of the County of Orange, and representatives of 12 cities within the County.

9 7. In this complaint, when reference is made to any act of Defendants, such  
10 allegations shall mean that the TCA, the Board, or their officers, agents, employees  
11 or representatives did, or authorized, such acts and did so while acting within the  
12 course and scope of their employment or agency.

13 8. Plaintiff is unaware of the true names or capacities, whether individual,  
14 association, partnership, corporation, or otherwise, of defendants Does 1 through 10,  
15 or any of them, and therefore sues said defendants by such fictitious names. Does 1-  
16 10, inclusive, are responsible in some manner for the conduct described in this  
17 Complaint. When the true names and capacities of such defendants are ascertained,  
18 Plaintiff will seek to amend this Complaint to incorporate them.

19 **THE TOLL ROAD**

20 9. The Toll Road, as approved, will be built on land in San Diego and Orange  
21 counties that was part of Camp Pendleton Marine Corps Base. Specifically, the Toll  
22 Road would be constructed on a proposed easement across the portion of that land that  
23 the United States leases to the California Department of Parks and Recreation,  
24 pursuant to a 50-year lease.

25 10. At or near the time that the lease was entered into, the United States retroceded  
26 jurisdiction over the leased land to the State of California. On or about January 6,  
27 1972, the State of California formally accepted such retrocession and now exercises  
28 concurrent jurisdiction over the property.

1 11. The Toll Road would extend from Oso Parkway in south Orange County for  
2 approximately 16 miles until it reaches Interstate 5 near the border of Orange and San  
3 Diego counties. It would include four general-purpose travel lanes, two in each  
4 direction, with two additional lanes being added in the future if traffic conditions  
5 warrant. The Toll Road would include continuous travel lanes and ramps south of Oso  
6 Parkway, several wildlife structures or bridges to facilitate wildlife movement, an  
7 approximately 2,100-foot bridge structure crossing San Juan Creek, a toll plaza north  
8 of Ortega Highway, ramp toll plazas at Cow Camp Road and Avenida Pico, an  
9 approximately 2,859-foot elevated bridge structure spanning San Mateo Creek and  
10 Interstate 5 providing direct connection to Interstate 5, and reconstruction of the  
11 existing Interstate 5 Basilone Road interchange.

12 12. The last portion of the Toll Road, as approved by TCA, will bisect the inland unit  
13 of San Onofre State Beach in San Diego County. The Village of Panhé lies in the San  
14 Mateo Archaeological District, which is within San Onofre State Beach.

#### 15 **THE VILLAGE OF PANHÉ**

16 13. The indigenous Village of Panhé was the historical home of the  
17 Juaneño/Acjachemen people and continues to be used by them as a ceremonial and re-  
18 burial site. It is recognized as one of the major villages of the Juaneño/Acjachemen  
19 people.

20 14. The village site of Panhé is within the San Mateo Archaeological District, which  
21 is on file with the Commission as a sacred site. It is eligible for listing on the National  
22 Register of Historic Places and likely qualifies as a Traditional Cultural Property  
23 under federal law.

24 15. The Toll Road would come within feet of a Juaneño/Acjachemen cemetery  
25 currently used by the Juaneño/Acjachemen people.

26 16. The TCA acknowledges that the Toll Road will have both short-term and long-  
27 term significant adverse impacts on the San Mateo Archaeological District, including  
28 the Village of Panhé. Short-term adverse impacts will occur during construction.

1 Long-term adverse impacts will be associated with noise, reduction in air quality and  
2 increases in traffic volume in the vicinity the resources. In addition, the TCA  
3 acknowledges that the Toll Road project could potentially increase access to the  
4 Native American religious, cultural or ceremonial resources, creating opportunities  
5 for increased disturbance of archaeological resources, including scavenging and  
6 damage by relic collectors.

7 17. California Native American cultural resources, habitation sites, burial sites, sacred  
8 sites, ceremonial sites, and places of worship are limited resources for Indian and non-  
9 Indian people. They are important to the culture and spiritual beliefs of California  
10 Native Americans and must be protected.

#### 11 **STATUTORY AND REGULATORY REQUIREMENTS**

12 18. Public Resources Code section 5097.9 states that “[n]o public agency . . . shall in  
13 any manner whatsoever interfere with the free expression or exercise of Native  
14 American religion as provided in the United States Constitution and the California  
15 Constitution; nor shall any such agency . . . cause severe or irreparable damage to any  
16 Native American sanctified cemetery, place of worship, religious or ceremonial site,  
17 or sacred shrine located on public property, except on a clear and convincing showing  
18 that the public interest and necessity so require.” That section also provides that it  
19 “shall be enforced by the commission, pursuant to Sections 5097.94 and 5097.97.”

20 19. Public Resources Code section 5097.97 allows the Commission, if it finds that an  
21 action “would do severe and irreparable damage” to such Native American religious  
22 or cultural resources or “bar appropriate access thereto by Native Americans,” to refer  
23 the matter to the Attorney General for appropriate legal action “pursuant to  
24 subdivision (g) of Section 5097.94.” Specifically, Section 5097.97 states:

25 In the event that any Native American organization, tribe, group, or  
26 individual advises the commission that a proposed action by a public  
27 agency may cause severe or irreparable damage to a Native  
28 American sanctified cemetery, place of worship, religious or

1 ceremonial site, or sacred shrine located on public property, or may  
2 bar appropriate access thereto by Native Americans, the commission  
3 shall conduct an investigation as to the effect of the proposed action.  
4 Where the commission finds, after a public hearing, that the  
5 proposed action would result in such damage or interference, the  
6 commission may recommend mitigation measures for consideration  
7 by the public agency proposing to take such action. If the public  
8 agency fails to accept the mitigation measures, and if the  
9 commission finds that the proposed action would do severe and  
10 irreparable damage to a Native American sanctified cemetery, place  
11 of worship, religious or ceremonial site, or sacred shrine located on  
12 public property, the commission may ask the Attorney General to  
13 take appropriate legal action pursuant to subdivision (g) of Section  
14 5097.94.

15 20. Section 5097.94, subdivision (g) authorizes the Commission to bring an action  
16 pursuant to section 5097.97 and to obtain an injunction “[i]f the court finds that severe  
17 and irreparable damage will occur or that appropriate access will be denied, and  
18 appropriate mitigation measures are not available, . . . unless it finds, on clear and  
19 convincing evidence, that the public interest and necessity require otherwise.”

20 21. The Commission was contacted by a member of the Juaneño/Acjachemen  
21 community, who requested that it review the Toll Road and take appropriate action.

22 22. On or about September 13, 2005, Plaintiff voted to direct staff to undertake an  
23 investigation of the impacts of the Toll Road, pursuant to Public Resources Code  
24 section 5097.97.

25 23. On or about January 10, 2006, the Commission submitted comments on the Toll  
26 Road to the TCA, pointing out deficiencies in the analysis of Native American cultural  
27 resources and archaeological sites in the TCA’s environmental review document. It  
28 also urged the TCA to find an alternative design that would not permanently impair



1 the cultural integrity of Panhé.

2 24. On February 15, 2006, the Commission held a public hearing on the Toll Road  
3 project, at which representatives of the TCA and the Juaneño/Acjachemen community,  
4 as well as other interested persons, provided public comment on the project and on  
5 suggested courses of action for the Commission.

6 25. At the end of the public hearing, the Commission determined that construction of  
7 the Toll Road would cause severe and irreparable damage to the Village of Panhé and  
8 voted to, among other things, ask the Attorney General to initiate a legal challenge to  
9 the Toll Road, if it were approved by the TCA.

10 26. On or about February 23, 2006, the TCA approved the Toll Road, without  
11 choosing an alternative route that would avoid impacts to the Village of Panhé, as the  
12 Commission had suggested in its comments submitted to the TCA on or about January  
13 10, 2006..

#### 14 **FIRST CAUSE OF ACTION**

#### 15 **(Injunctive Relief)**

16 27. The allegations of paragraphs 1-26 are incorporated into this cause of action as  
17 though fully set forth.

18 28. The land on which the Toll Road would be built is "public property," as that term  
19 is used in California Public Resources Code section 5097.9 et seq.

20 29. The TCA is a "public agency," as that term is used in California Public Resources  
21 Code section 5097.9, et seq.

22 30. The San Mateo Archaeological District, including the Village of Panhé, is a  
23 Native American sanctified cemetery, place of worship, religious or ceremonial site,  
24 or sacred shrine located on public property, within the meaning of California Public  
25 Resources Code section 5097.9 et seq.

26 31. Construction of the Toll Road, as approved by the TCA, would cause severe and  
27 irreparable damage to a Native American sanctified cemetery, place of worship,  
28 religious or ceremonial site, or sacred shrine located on public property.

1 32. The Commission has fully complied with the procedural requirements of  
2 California Public Resources Code sections 5097.94 and 5097.97 and is authorized to  
3 bring this action for injunctive relief.

4 33. Construction of the Toll Road, as approved by the TCA, would violate California  
5 Public Resources Code sections 5097.9, et seq. and the Commission is, therefore,  
6 entitled to an injunction against the TCA to prevent it from building the project.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, Native American Heritage Commission, prays for  
9 judgment against the defendant as follows:

10 1. For a permanent injunction enjoining defendant, and any persons acting on its  
11 behalf or in concert with it, from undertaking any construction or development,  
12 issuing any approvals or permits, or taking any other action to implement in any way  
13 the approval of the Toll Road as approved on February 23, 2006, or in any manner  
14 that would cause severe or irreparable damage to a Native American sanctified  
15 cemetery, place of worship, religious or ceremonial site, or sacred shrine located on  
16 public property;

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- 1 2. For costs of this suit; and  
2 3. For such other and further relief as the Court deems just and proper.

3 Dated: March 22, 2006

4 Respectfully submitted,

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6 Attorney General of the State of  
7 California

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