

# The Foothill-South Toll Road: Fact vs. Fiction

Exposing the truth about the threats a new road poses to one of California's most popular state parks.

In an attempt to win public support for a toll road that would devastate California's beloved San Onofre State Beach, Orange County's Transportation Corridor Agencies (TCA) is spending hundreds of thousands of dollars on a PR campaign designed to perpetuate a host of myths about the road. TCA representatives continually mislead the public by, among other things, denigrating the importance of San Onofre State Beach, downplaying the project's effects on the park, falsely asserting that fixing the I-5 requires massive displacement of homeowners, and incredibly, portraying the road as a "green" alternative.

Here's a look at the most commonly heard myths about the toll road, and the facts they're leaving behind.

## A. Impacts to San Onofre State Beach

**MYTH:** *If the Foothill-South is built, "the park can continue to operate as it does today."*

**REALITY:** The California Parks Department has concluded that it would likely be forced to abandon nearly 60 percent of the park if the toll road is built.

No park can operate for its intended purpose with a six-lane super highway running through its center. The toll road's direct footprint alone would occupy approximately four miles and more than 320 acres of the park. Much of the remainder would be fragmented and unusable as a park. The California Parks Department – in a study commissioned by TCA itself – concluded that it would likely be forced to abandon nearly 60 percent of the park, more 1,000 acres. This includes the park's entire inland subunit, its most popular campground and trails that lead to Trestles Beach.<sup>1</sup>

**MYTH:** *None of the 161 campsites in San Mateo Campground will be removed by the toll road.*

**REALITY:** If the toll road is built, all 161 sites in San Mateo Campground will be unusable as recreational areas and likely shut down.

According to the California Parks Department, the Foothill-South would be built so close to the campground – within 200 feet– that it will likely cause the abandonment of all 161 sites. The Parks Department stated, "It does not take an expert to understand that locating a multilane, limited access highway within a few hundred feet of a secluded campground will so destroy the recreational value of the campground and sense of place as to render it valueless."<sup>2</sup>

**MYTH:** *The San Mateo Campground is merely an "overflow" campground.*

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<sup>1</sup> *Mitigation Assessment of FTC-South Impacts on San Onofre State Beach*, Cal. Parks Dept., (Aug. 1997).

<sup>2</sup> Parks Dept., Comment Letter to TCA, Jan. 10, 2006.

**REALITY:** The San Mateo campground is the most popular campsite in the park.

The San Mateo campground receives over 100,000 visitors a year, more than any other campsite in the park. (The Bluffs campground, by comparison, hosts around 60,000 visitors annually, even though it has 10 percent more campsites than San Mateo). San Mateo's popularity comes from its relatively isolated location in an undeveloped coastal canyon along San Mateo Creek. The campground is not only popular – it is irreplaceable. Since it was constructed 16 years ago, the Parks Department has been unable to add a single campground along California's coast. There are no remaining sites in the region capable of replacing this unique coastal camping resource.

**MYTH:** *The Toll Road would not significantly degrade the camping and outdoor experience in the park.*

**REALITY:** The road would become the dominant feature of the inland portion of the park.

The project would place a six-lane highway down the center of the 1,200-acre inland portion of the park, essentially splitting the park along its spine. San Mateo Creek hikers and campers who now enjoy a quiet unobstructed hillside wilderness experience would find themselves below a massive concrete soundwall that would irrevocably destroy the sense of place and only partially block the traffic sounds that visitors are trying to escape by visiting the park. As stated by the California Attorney General, the Foothill-South would "bisect San Onofre State Beach... one of the last remnants of large coastal open space left in Southern California" and cause the "incessant noise and visual blight of a super highway and its infrastructure."

**MYTH:** *Wildlife and endangered species will be protected if the Foothill-South is built.*

**REALITY:** The toll road would destroy habitat for 11 threatened or endangered species.

The road would fragment and degrade habitat within the park at San Onofre for the steelhead trout, arroyo toad, California gnatcatcher, Least Bell's vireo, Southwestern willow flycatcher, Riverside fairy shrimp, San Diego fairy shrimp, snowy plover, Pacific pocket mouse, thread-leaved brodiaea and tidewater goby. TCA nevertheless approved the project without identifying if, when or where it would acquire new replacement habitat for these species, relying instead on lands that have already been set aside as mitigation for other projects.

**MYTH:** *San Onofre is not a "permanent" part of the California parks system because the federal government owns the land.*

**REALITY:** President Nixon, Governor Reagan, and the California legislature have all made clear that San Onofre is to forever remain a state park.

When President Nixon presided over the creation the state park at San Onofre, he declared that as soon as it is possible for the federal government to declare the property surplus, the lease will be terminated and the property "will be deeded to the State of California for park purposes."<sup>3</sup> Governor Reagan agreed: "This expanse of acreage, San

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<sup>3</sup> President Richard Nixon, *Press Statement*, March 31, 1971.

Onofre Bluffs [sic] State Beach, now has its future guaranteed as an official state park.”<sup>4</sup> The intent to permanently preserve the land as a park is reflected in California law, which provides that “if the Camp Pendleton Marine Base in the County of San Diego ceases to be used as a federal facility, it shall be converted to an open-space area or greenbelt that shall be administered by the [Parks] [D]epartment.”<sup>5</sup> State law further provides that “[a]ll real property acquired for park and recreation purposes by the state which was formerly part of Camp Pendleton shall be used solely for park and recreation purposes and no part thereof shall be declared surplus or disposed of.”<sup>6</sup>

**MYTH:** *Because San Onofre is presently leased, it is not as important as other state parks.*

**REALITY:** San Onofre is the fifth most visited of California’s 278 state parks.

San Onofre is an integral and irreplaceable component of the state park system, not only because of its immense popularity, but because it provides an important resource for middle- and low-income families. According to the Parks Department, “[T]he affordability of this coastal resource for middle and low income visitors makes it even more important that [San Onofre] be kept intact and undiminished” and the park “serves an important societal function which once lost cannot be replicated in whole elsewhere in this region.”<sup>7</sup>

**MYTH:** *The toll road does not set a precedent that threatens other state parks.*

**REALITY:** This is an unprecedented project and would be the first instance in California history that a purely local governmental agency has taken state park lands for its own highway purposes.

Using state parkland for purposes of highway construction would set a dangerous state-wide precedent, allowing state parks to be gradually wiped out by local governments seeking low-cost land for major infrastructure projects. At least 75 other California state parks are currently under threat from infrastructure development or other projects that seek parkland for non-park purposes. If San Onofre is turned over to the TCA for the toll road, it is only a matter of time before other state parklands are targeted for similar projects.

## **B. Authority to Construct the Toll Road through the Park**

**MYTH:** *The lease between the State and the federal government specifically authorizes the construction of the Foothill-South Toll Road through San Onofre.*

**REALITY:** The lease predated the toll road by a decade and expressly prohibits the federal government from approving any right-of-way that would interfere with park operations.

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<sup>4</sup> California Governor Ronald Reagan, *Press Statement*, April 3, 1971 (emphasis added).

<sup>5</sup> Public Resources Code section 5096.400 (emphasis added).

<sup>6</sup> Government Code section 11011.7 (emphasis added).

<sup>7</sup> *Mitigation Assessment*, Cal. Parks Dept., (Aug. 1997); Parks Dept., Comment Letter to TCA, Jan. 10, 2006.

The State's lease with the federal government was entered into in 1971, ten years before the toll road was first proposed in 1981. No provision was made in the lease to allow for construction of a six-lane highway through the park. To the contrary, the lease allows the Navy to grant *only* those easements or rights-of-way across the premises that will not "unreasonably interfere with the use of [State Parks] improvements." The six-lane toll road, which would interfere with (and indeed likely shut down) the entire San Mateo campground, would plainly violate this lease restriction.

**MYTH:** *Congress has explicitly authorized the Secretary of the Navy to grant to TCA an easement through the state park*

**REALITY:** Congress has never approved a toll road through San Onofre State Beach.

TCA frequently cites to Public Law 105-261 (a rider in the National Defense Authorization Act for Fiscal Year 1999) as evidence of congressional support for a toll road through San Onofre. The statute does nothing more than authorize the Navy to convey a right-of-way to TCA through some portion of Camp Pendleton – authority the Navy has always had – and subjects any such easement to certain conditions on the amount and uses of proceeds. Nowhere does the rider mention the San Onofre portion of the base nor does it claim to preempt the Navy's 1971 lease of San Onofre to State, which prohibits projects like the toll road that interfere with park improvements.

**MYTH:** *The Marine Corps has recommended that the toll road go through San Onofre.*

**REALITY:** The Marine Corps has not taken a position on the toll road alignments to date, except to express concern about the military and environmental impacts of any alignment through Camp Pendleton.

Military leaders have actually stated a preference that the toll road not be built anywhere on the base, including those lands leased for San Onofre. In a 2002 letter to the U.S. EPA, Marine Corps Commandant J.L. Jones stated "Frankly, my preference is that the proposed toll road not be constructed on or near Camp Pendleton... This construction is one more encroachment venture that will hinder [our] ability to prepare for war. It will also result in additional losses of natural areas that support endangered species, thus placing an even greater burden on Camp Pendleton to protect the region's biodiversity."<sup>8</sup> The military has not yet taken a position on the road and has stated it will not do so until completion of the federal environmental review process under the National Environmental Policy Act.

**MYTH:** *Federal and state resource agencies approve of building the Foothill-South through the park.*

**REALITY:** No state or federal agencies have issued approvals for the project, and several state agencies have sued to block the project.

The California Department of Parks and Recreation, the California Parks Commission, the Native American Heritage Commission and the California Attorney General have all expressed strong opposition to the toll road and have filed two lawsuits in state court

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<sup>8</sup> See February 9, 2002 letter from Commandant J.L. Jones, U.S. Marine Corps, to Christine Whitman.

challenging TCA's approval of the project. At this time, no other federal or state agencies have approved of the toll road or granted any permits for its construction.

### C. Impacts to Water Quality

**MYTH:** *The Foothill-South would not impact the world-famous Trestles Beach.*

**REALITY:** The six-lane highway would run through four miles of the watershed that feeds Trestles Beach, thereby degrading water quality and jeopardizing surfing conditions.

The world-renowned Trestles Beach is located at the base of the undeveloped San Mateo Creek watershed. The construction of the six-lane toll road would devastate the nearly pristine subwatersheds in the lower reaches of the creek with massive amounts of paving and land disturbance, altering natural sediment flows upon which the beach's superior wave formations depend. According to hydrology experts, TCA failed to adequately consider changes to sediment conditions that could have "significant impacts at various local and regional scales, and possibly alter the morphology of Trestles (and its surfing characteristics), as well as result in water quality impacts."<sup>9</sup>

**MYTH:** *The Foothill-South will actually enhance water quality in the area.*

**REALITY:** Building super highways does not, never has, and never will enhance water quality.

The State Water Board has recognized highways as a leading source of stormwater pollution across the state. The Foothill-South would accommodate thousands of automobiles every day that release oil, grease, heavy metals, and other toxins into the watershed. TCA nevertheless claims the Foothill-South would "improve" existing water quality by adding detention basins to portions of I-5 that currently lack them. But these improvements are not a unique component of the Foothill-South project; they could and should have been incorporated into *any* of the alternatives to the toll road. And stormwater control measures can at best reduce polluted highway runoff, not eliminate it. Constructing a new six-lane highway in a nearly pristine watershed will have far greater impacts to water quality than alternatives focused on improving existing roads.

### D. Alternative Traffic Solutions

**MYTH:** *Construction of the Foothill-South is justified because it will relieve traffic congestion on I-5.*

**REALITY:** The Orange County Transportation Agency (OCTA) has concluded that the Foothill-South would not meaningfully relieve projected traffic congestion in Southern California.<sup>10</sup>

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<sup>9</sup> *Potential Toll Road Impacts on San Mateo Creek Watershed Processes, Mouth Morphology and Trestles Surfing Area*, Philip Williams & Associates, Ltd., Jan. 2006.

<sup>10</sup> *The controversial Foothill South route proposed through a state park would not greatly ease congestion on Interstate 5, according to new figures*, Los Angeles Times, Nov. 14, 2006.

OCTA recently concluded that, absent major improvements to existing roads, the Foothill-South will not “*substantially improve congestion.*”<sup>11</sup> The I-5 will remain “*severely congested*” after the toll road opens.<sup>12</sup> Thus, major improvements to the I-5 will be required *regardless* of whether the toll road is built. TCA’s own traffic studies show that fixing the I-5 would relieve traffic congestion on the I-5 more effectively than the toll road.

**MYTH:** *Expansion of the I-5 necessitates the taking of hundreds of private homes and businesses.*

**REALITY:** Major improvements to the I-5 and other existing roads will need to occur with or without the toll road and can be easily designed to avoid most or all displacement of houses and businesses.

TCA has never produced any analysis to support its claims that many hundreds of homes and businesses would have to be taken to construct I-5 improvements. To the contrary, independent engineers, including a nationally renowned engineering firm, have shown that, by applying state-of-the-art engineering solutions, interchanges and other needed improvements to the I-5 can be designed with minimal disruption to existing homes and businesses.<sup>13</sup> The City of San Clemente has itself commissioned an interchange study that supports the feasibility of expanding the I-5; the study rejects TCA’s outdated interchange designs and substitutes state-of-the-art designs – never considered by TCA – resulting in far less displacement.<sup>14</sup>

**MYTH:** *The Foothill-South will not interfere with needed congestion improvements in south Orange County.*

**REALITY:** A “non-compete” agreement would bar the state from constructing certain needed improvements without compensating TCA for lost toll road revenues.

The provisions of a 1993 “non-compete” agreement between TCA and the state would limit the state’s ability to make needed improvements on I-5 if the toll road is built. Subject to limited exceptions, if Caltrans were to make I-5 or other roadway improvements that reduced demand for the toll road by reducing congestion, it would be liable to TCA for any resulting revenue shortfalls that affect TCA’s ability to pay off its billion-dollar bond debt. The chilling effect caused by this agreement would prevent the state from finding real solutions for fixing I-5, further perpetuating I-5 congestion.

**MYTH:** *The Foothill-South is an environmentally friendly, “green” alternative.*

**REALITY:** The Foothill-South is one of the most environmentally damaging projects in California.

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<sup>11</sup> OCTA's 2006 Long Range Transportation Plan, PEIR, at pp. 5-5 and 5-11, July 26, 2006.

<sup>12</sup> *Id.* at pp. 4.12-29 and 4.12-31.

<sup>13</sup> *A Practical, Cost Effective, and Environmentally Superior Alternative to a New Toll Road for the South Orange County Infrastructure Improvement Project*, Smart Mobility, 2005; *AIP Alternative Refinement for the San Clemente I-5 Interchanges*, Smart Mobility, 2006; *Interstate-5 Widening, San Clemente, California*, KCA Engineers, 2005.

<sup>14</sup> *Avenida Pico at I-5 Improvements*, Moffat and Nichol, 2006.

The only thing “green” about the Foothill-South Toll Road is the landscape it will pave over. The 16-mile alignment runs almost entirely through undeveloped lands that have been set aside as protected open space, including the Donna O’Neil Land Conservancy, San Onofre State Beach and private open space lands on the Rancho Mission Viejo property. It would be difficult to design a transportation project that was more environmentally damaging than Foothill South. Virtually any alternative solution to Orange County’s traffic problems, such as expanding Interstate 5 and existing arterials, would have vastly fewer environmental impacts than the toll road. These alternatives were largely ignored by TCA.

**E. Economic Consequences**

**MYTH:** *The toll road will be affordable for the average citizen.*

**REALITY:** Exorbitant toll fees will preclude the average citizen from riding on the Foothill-South.

The toll road would provide no benefit to the vast majority of drivers who lack the means to pay for the privilege of using it. As explained by Attorney General Bill Lockyer: “...toll roads are fundamentally inegalitarian. Such roads create a two-tier system, where people of ordinary means drive on roads that are falling apart while the affluent pay tolls and drive on new or improved highways.”<sup>15</sup> As shown by the rates charged on other Orange County toll roads,<sup>16</sup> high tolls will make the Foothill-South a realistic option only for the wealthy few, while the rest of us will be stuck on the I-5 as congestion deepens. To date, the toll road agency has refused to disclose projected toll fees, but no one questions that these costs will be high and unaffordable for lower- and middle- income families.

**MYTH:** *The Foothill-South will be constructed and operated at no cost to the taxpayer.*

**REALITY:** Orange County toll roads have and will continue to cost millions of dollars in public funds.

Despite years of telling the public that no public funds would be used for toll roads, TCA, in 2003, asked for \$100 million in federal handouts for construction of the Foothill-South. In addition, the toll road will be financed in part by new development fees, which will be passed on to homeowners regardless of whether they are users of the roll road.

**MYTH:** *The Foothill-South provides the state a low-cost solution to the region’s traffic problems.*

**REALITY:** “Non-compete” provisions are likely to force the state to choose between compensating TCA or foregoing needed major improvements to I-5.

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<sup>15</sup> *Public Funds Should Not Be Used to Build Toll Roads*, Los Angeles Times, March 19, 1991

<sup>16</sup> Roundtrip charges are as high as \$12.50 for Route 241, \$9.50 for Route 73, and \$17 for Route 91.

TCA insisted the state sign a “non-compete” agreement which, if the toll road is built, prevents the state from making certain improvements to competing roads without compensating TCA for lost toll road revenues. This means badly needed improvements to ease traffic on the I-5 might not be possible unless Caltrans, using our tax dollars, pays financial penalties to the toll road agency. There is a history in Orange County of taxpayers getting a raw deal from non-compete agreements. In 2003, OCTA was forced by a non-compete agreement to pay \$207.5 million to the private owner of SR-91 for the right to make safety improvements to the road’s “free” lanes.

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TCA is a single purpose agency with the sole objective of building toll roads, no matter what the costs. The proposed Foothill-South would both needlessly destroy a park and fail to meaningfully address traffic congestion. There are feasible, effective traffic solutions that will protect our park lands and save San Onofre State Beach.