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File PLAN 2700(a)

March 24, 1994

Daniel E. Lungren, Attorney General
State of California
455 Golden Gate Avenue, Suite 6200
San Francisco, CA 94102-3658

Attention: Clayton Roche, Deputy Attorney General

Re: Opinion 93-1205

Dear Mr. Lungren:

This is in response to your solicitation of views with respect to the above opinion request revised, as set forth in your letter dated February 10, 1994 to David R. Chaffee, formerly of this office.

We would premise our response to the specific questions with a brief summary of the nature and background of the San Joaquin Hills Transportation Corridor Agency (Agency).

The Agency is a joint powers agency created by agreement between the County of Orange and a number of cities pursuant to Government Code Section 66484.3 and 6500 et seq., for the purpose of constructing and maintaining the San Joaquin Hills Transportation Corridor a state highway. Sts. & Hwys. Code Sec. 373. A brief history of the early years of the Agency and the evolution of Government Code Section 66484.3 is set forth in Committee of Seven Thousand v. Superior Court (1988), 45 Cal. 3d 491.

Government Code Section 66484.3(f) provides that a joint powers agency formed pursuant thereto may exercise the powers authorized by Chapter 5 (commencing with Section 31100) of Division 17 of the Streets and Highways Code. Streets and Highways Code Sections 31201 and 31202 authorize the Agency to take property owned by a county or city by condemnation for purposes of implementing the corridor. Streets and Highways Code Section 31230 authorizes a city or county to advance or contribute rights of way for "building, acquiring and maintaining" the corridor. Government Code Section 66484.3(f) authorizes the Agency to impose and collect toll charges for the purpose of paying the costs of construction of the corridor.

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Streets and Highways Code Section 941.1 authorizes the county and, through the joint powers agreement, the Agency, to make existing streets and highways into freeways and expressways.

In response to questions 1, 2, 4, and 5, we note that they are premised on the assumption that a county road has been or will be "abandoned." Insofar as we are aware, those roads referred to in the questions ("the roads") have not been abandoned and there is no intention to do so.

The roads are located within the City of Irvine (City). In 1990, the County and City entered into an agreement whereby the two entities would take actions provided for in Streets and Highways Code Section 1700 et seq. to make the roads County highways for purposes of accepting right of way dedications, and design and construction of improvements to the roads as set forth in the agreement. Thereafter, the County would take appropriate actions to declare that the roads were no longer County highways pursuant to Streets and Highways Code Section 1704. The actions set forth in the 1990 agreement were completed and the County took action in 1992 (Resolution No. 92-1039) to declare that the roads were no longer County highways. We do not believe these actions constitute "abandonment" of the roads as that term is used in Streets and Highways Code Section 901 or "vacation" as that term is used in Streets and Highways Code Section 8300 et seq. (See Streets and Highways Code Section 8309). (We note also that the Court in People v. Vallejos (1967), 251 Cal App. 2d 414, determined that use by the State for highway purposes of a city street did not constitute an abandonment by the city.) No public hearing is required for any proceedings under Streets and Highways Code Section 1700 et seq.

The County has entered into an agreement with the Agency to enable the Agency to accept offers of The Irvine Company of dedication of the fee to corridor right-of-way which, in large degree, encompasses the roads as they presently exist within the City of Irvine. The Company was required to offer such dedications to the County as a condition of certain development approvals. This interest is separate from the easement for the right-of-way for the road that the County received from The Irvine Company and which was relinquished to the City upon the County's action described above pursuant to Streets and Highways Code Section 1704.

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Question 3 raises the issue of The Irvine Company's development rights under its Local Coastal Plan and Development Agreement and whether they are jeopardized by the advent of the Corridor as a toll facility. We do not believe that they are jeopardized. Neither the Development Agreement nor the development regulations contain provisions limiting development rights in the event that there is a change in the status (with respect to tolls) of the roads, although there are phasing provisions restricting the amount of development until completion of various stages of transportation facilities, including the roads.

With respect to question 6 and 7, we do not believe there are any notice or public hearing requirements.

Very truly yours,

TERRY C. ANDRUS, COUNTY COUNSEL

By



John R. Griset, Deputy

JRG:ep