

benefits resulting from this road would be forfeited including, providing public access to coastal resources, and providing regional traffic capacity.

No affordable housing units would be constructed pursuant to local requirements.

D. NO PROJECT ALTERNATIVE (II)

The second no project alternative would be to proceed with development as allowed in the approved 1982 LUP. This alternative has been rejected because it would not provide the public benefits and additional mitigation measures resulting from the proposed amendments. Specifically, it would not 1) increase open space from 61% to 76%; 2) provide a trail and park system in Los Trancos, Buck Gully and Muddy Canyon; 3) create a major destination resort; 4) eliminate office uses; 5) create a golf course greenbelt; 6) reduce residential acreage; 7) increase habitat protection; 8) create new habitat; 9) reduce overall and peak hour traffic; 10) simplify the open space dedication program; 11) include early dedication of first increment of open space to facilitate access to Laurel Canyon and coastal ridge; 12) designate dedication areas for wilderness protection; 13) require early construction of four lanes of Pelican Hill Road; 14) include numerous transportation mitigations; 15) define resort intensity limits; 16) include water quality monitoring program; 17) reduce PA 6 to allow for dedication of "Moro Sliver;" 18) redesignate major portions of Muddy Canyon for recreation use; and numerous other small refinements.

The Commission finds that the Irvine Coast Land Use Plan as amended, and the Implementation Actions Program is consistent with Public Resources Code Sections 21080.5 and Sections 30500-30514 of the Coastal Act.

CAPITOL OFFICE ADDRESS
STATE CAPITOL BUILDING
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
PHONE (916) 445-7222

DISTRICT OFFICE ADDRESS
4299 MacARTHUR BOULEVARD,
SUITE 204
NEWPORT BEACH, CA 92660
PHONE (714) 758-0665

Assembly California Legislature

GILBERT W. FERGUSON
ASSEMBLYMAN, SEVENTIETH DISTRICT

COMMITTEES
FINANCE AND INSURANCE
HOUSING AND COMMUNITY
DEVELOPMENT
REVENUE AND TAXATION

COMMISSIONER
LITTLE HOOVER COMMISSION



14

December 9, 1993

The Honorable Dan Lungren
Attorney General, State of California
1515 "K" Street #511
Sacramento, CA 95814

Dear Dan:

RE: REQUEST FOR INVESTIGATION AND LEGAL OPINION

As you know, yesterday I conducted a meeting in an attempt to elicit, from the local officials involved, the legal basis for the conversion of two public roads into the planned San Joaquin Hills tollway, and the legal basis for the County of Orange to convey, to the joint powers tollway entity, one longstanding public road in its jurisdiction and another built as a condition of approval of the County's permit to develop.

In addition, I attempted to learn whether or not the public was made aware and public hearings held to abandon public roads, and how development of the coast between Newport Beach and Laguna Beach could continue after the conditional dedication of roads upon which it was permitted were abandoned.

After our 2 1/2 hour meeting and examining the rationale presented, I am not convinced that these decisions and actions were legal under state law.

My assessment is based on my experience, which includes 6 years as Vice Chairman of the Assembly Transportation Committee, 9 years as Vice Chairman or lead Republican on Housing & Community Development, and, prior to my service in the Legislature, some 16 years in which I was first a vice president of The Irvine Company and later the founder and executive director of the largest property rights coalition of business, industry and labor in America.

Therefore, I am requesting that you conduct a formal investigation and render an official opinion as to the legality of the matters in question and whether malfeasance has occurred. Enclosed is a brief statement of the facts and issues.

DEC 13 1993

Received by
CHIEF DEPUTY ATTORNEY GEN.

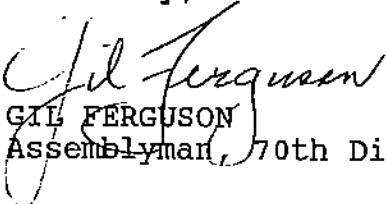
2421

This situation directly affects hundreds of thousands of residents of Orange County. However, the tollway agency has repeatedly rebuffed the local Chamber of Commerce, homeowners' groups and the City of Newport Beach for nearly a year and thusfar is determined to proceed with the conversion of the public roads into toll roads.

Hence, local public or private entities are expected to litigate this matter, as little other recourse is left. But this could cost taxpayers millions and further delay construction of this much needed transportation corridor. Your investigation and legal opinion, however, could head off such untoward consequences.

I appreciate your cooperation and personal attention to this matter. If I or my office can be of assistance, please do not hesitate to call me or Pete Calagna of my staff.

Sincerely,


GIL FERGUSON
Assemblyman, 70th District

GF/pj

Enclosure

NEWPORT COAST DRIVE AND BONITA CANYON ROAD:
CONVERSION INTO TOLL ROADS

FACTS & ISSUES

Background

* Bonita Canyon Road, a free public road for the past 40-odd years, is located in unincorporated Orange County and connects to MacArthur Blvd., a major arterial which connects to Pacific Coast Highway (PCH).

* Located on the other side of Bonita Canyon Rd. is Newport Coast Drive (formerly Pelican Hills Rd.). It was built as Orange County's condition of approval which The Irvine Company (TIC) had to meet in order to develop its land on the coast between Newport Beach and Laguna Beach. Newport Coast Dr. was to connect to MacArthur Blvd. and provide an additional accessway to and out of PCH.

✓ * The Coastal Development Permit approved by the Coastal Commission for TIC's down-coast development, was based on construction of Newport Coast Dr. as a free public road. This mitigation did not consider the impacts of a toll road, nor the additional conversion of Bonita Canyon Rd. into a toll road. (Irvine Coast EIR #485, Feb. 24, 1988; Irv. Coast Proposed Land Use Amendment Exec. Summary, March 1987; Irvine Coast Planned Community Development Plan & Supplemental Text [Index], 1982).

* TIC gave the land and the County established the Newport Coast Dr. Assessment District to fund construction of the road.

* The road has been built connecting PCH with Bonita Canyon Road, which was widened and improved. Tens of thousands of drivers use it each day to come up from the coast to MacArthur Blvd. and then to central Orange County areas, the airport, or to access freeways in various directions.

* According to news reports, the public, the City of Newport Beach and TIC were surprised to learn, early this year, that the last couple of miles or so of Newport Coast Dr., including the old Bonita Canyon Rd., will be incorporated into the San Joaquin Hills tollway and motorists in the future will be required to pay a toll.

* TIC land for Newport Coast Dr. was dedicated to the County, but fee title was transferred to the Transportation Corridors Agencies (TCA), the joint-powers agency (JPA) constructing the San Joaquin Hills Corridor. The County is a member of the TCA.

* Likewise, Bonita Canyon Rd., though a historic county public road, was also abandoned and apparently deeded to the TCA by the County.

* The County was given an easement to maintain Newport Coast Dr., which the TCA has incorporated into the Corridor. After the

Pg. 2, Facts & Issues (12-9-93 Ltr. from Assemblyman Ferguson)

Corridor is constructed, it becomes state property, including the previously County roads or portions thereof.

* At some point, the TCA paid approximately \$3.5 million to the County or to the Assessment District, the latter's board of which is identical to the Board of Supervisors. It is not clear whether this sum was payment for maintaining the road, or payment for "purchase" of the road itself, the land it sits on, or both. This applies as well to Bonita Canyon Road.

Legal Rationale

* The County and the TCA argue that Newport Coast Drive was always part of the San Joaquin Hills Corridor alignment. That is true, but the Corridor itself was planned originally - and for a decade or more - as a freeway, not as a tollway. The need to make it a tollway became apparent only in 1987 and state legislation was enacted late that year to enable it. However, that legislation, Govt. Code Sect. 66483.3, does not empower any entity to incorporate any existing free public road into a tollway.

* The County and the TCA contend that Newport Coast Drive can be converted, and tolls placed on that portion which overlays the Corridor, based on: Govt. Code Sects. 6500-6522 and Sect. 66484.3; Streets & Hwys. Code Sects. 31100-31246; and the Joint Powers Agreement entered into by the entities making up the JPA Board. They do not cite specific authorization under these laws or the Agreement.

* The County contends that the Joint Powers Agreement "authorizes" it to convey to the TCA, or in effect convey to the TCA, a separate governmental jurisdiction, both Bonita Canyon Rd. and TIC land dedicated to the County (as a condition of approval to develop). The County does not cite specific authorization to do so.

* Furthermore, the County cannot explain how it is empowered, once it is part of a JPA, to take action which on its own it has no power to take, namely the conversion of a free public road into a toll road and the conveyance of County land to another jurisdiction--land which was dedicated to the County, and, further, which was dedicated to serve a specified purpose which did not take into account the precise way in which it is now intended to be used.

* The TCA and the County contend that the public had adequate notice and opportunity to express their views specifically regarding the conversion of free public roads into toll roads. However, numerous business and homeowner associations, local elected officials and thousands of residents in the immediate area, vehemently disagree that such specific notice, and thus real opportunity, was provided.

ATTENDEES:

Patricia Bates, Chairman, SJH Corridor Agency (Mayor Pro-Tem,
City of Laguna Niguel)

Bill Bassett, Attorney, Caltrans Legal Division (Sac.)

Paul Brady, City Manager, City of Irvine

Ken Bruner, Executive Assistant, Orange County Supervisor Tom Riley

Dave Chaffee, Deputy County Counsel, County of Orange

Walt Hagen, Chief Deputy Director, Caltrans Dist. 12

Yvonne Houssels, Pres., Harbor View Hills (South) Homeowners Assn.
(also is rep. for Jasmine Creek and Laguna North assns.)

Ron Kennedy, past member, City of Newport Beach Traffic Committee

Joel Lautenschleger, TCA Board Member (Council Member, City of
Laguna Hills)

✓ Olivia Maiser, Special Assistant to Attorney General Dan Lungren

Kevin Murphy, City Manager, City of Newport Beach

Phil Sansone, Council Member, City of Newport Beach

Ken R. Smith, Orange County EMA, Director of Transportation

Mike Stockstill, TCA Director of Public Affairs

Rob Thornton, TCA Legal Counsel

Clarence Turner, Mayor, City of Newport Beach

Paula Werner, Council Member, City of Irvine

Bill Woollett, TCA Chief Executive Officer

PRESS INVITED

Date Dec. 10, 1993

TO: Clara Silva Mauer

Fax # _____

15

From: Ronald Kennedy (714) 640-7177

Re: Presentation at Assemblyman Ferguson / TCA meeting Dec. 8, 1993

Number of pages, including coversheet _____ *

* Please call (714) 497-1884 if you did not get the total pages listed above.

Ron Kennedy had dropped this material off and ask me to get it to you. When you called and ask to have it mailed, Ron asked me to include the time line he had used part of. I didn't know if he wanted the exhibits too, but included some of them - I have complete documentation. If you have any questions on time line, please call Carolyn @ (714) 497-1884. I'm going to update it in response to the "memorandum". Ron didn't know if you had received a copy before you left. He had to get a copy ^(memorandum) from the L.A. Times reporter (Reporter's writing, marking on it).

Ron will be back first of week and he will probably call you
Carolyn

BACK PAGE ADD 1988 COPY DEVELOPMENT
 AGREEMENT AS AGREED CONDITION
 OF PUBLIC UNRESTRICTED USE OF ALL OF
 NEWPORT COAST RD.

May 4, 1994

16

Honorable Rodney O. Lilyquist
 Senior Assistant Attorney General
 110 West "A" Street
 Suite 700
 San Diego, California 92101

Re: Attorney General Opinion Request No. 93-1205
 San Joaquin Hills Transportation Corridor;
 Imposition of Tolls; Authority to Act; Notice

Dear Mr. Lilyquist:

This letter is written in response to the very recent statement of Deputy Attorney General Clayton Roche that did not intend to consider the more than 600 written communications from citizens and laypersons in drafting an opinion in response to certain questions posed to the Attorney General by Assemblymember Gilbert W. Ferguson. Because of the very small amount of time during which I have had to draft this letter, and the volume of written materials which are necessary to consider, of necessity this response is brief, and it would be my intention to supplement it, if necessary, before the review and opinion process is completed.

1. The Proper Questions to Consider.

Regrettably, the ⁷eight specific questions which were posed to the Attorney General by Assemblymember Ferguson, to which the San Joaquin Hills Transportation Corridor Association ("TCA") has narrowly responded, lent themselves to the avoidance by the TCA of the principal legal issues and the relevant facts which would lead to a conclusion that is substantially different than that advanced by the TCA. Consequently, in order for an accurate answer to be given to those citizens on whose behalf Mr. Ferguson brought their concerns to your attention, it is necessary to recast the issues somewhat more broadly.

Any opinion which the Attorney General would render on the specific questions actually raised, which does not at the same time deal with the overarching issues which were intended to be raised, will be substantially useless as guidance to those

citizens, the legislature, the affected public entities and those judges and justices who will ultimately rule on these precise questions.

I have had an opportunity to read the March 25, 1994, letter on behalf of the General Counsel to the TCA, the letters from Gary H. Hunt, Executive Vice President of the Irvine Company, and letters from John R. Griset, on behalf of the County Counsel of the County of Orange, which were sent to me 10 days ago. Collectively, they do not address and certainly do not resolve the legal and factual issues of the TCA's decision to attempt to impose tolls on a pre-existing public road.

The two questions which must be answered are: one, whether any portion of an existing free thoroughfare may be converted to a toll road and, if such conversion is legal, two, was the public given adequate legal notice of this conversion and of its environmental impact.

2. The Proper Terminology to Be Used.

In order to reach an accurate conclusion, it is necessary to understand not only the terminology which is used but the significance of the each of the words which is employed in discussing this issue. Any argument or opinion which confuses the San Joaquin Hills Transportation Corridor ("SJHTC"), a legal designation first employed in the late 1970's, with the wholly dissimilar concept of a toll road, as TCA has consistently done, will inevitably lead to a useless conclusion.

Similarly, while TCA cleverly seizes upon the use in Assemblymember Ferguson's letter of the term "abandonment" or "abandon", the effected citizens here to not contend nor do they believe that the process and procedures undertaken to date and contemplated in the future will constitute legal abandonment of any portion of Newport Coast Drive. Indeed, the TCA is quite correct when it states no public entity has caused the abandonment of any portion of Newport Coast Drive. The focus on that issue therefore confuses rather than enlightens.

3. Notice Of The Existence Of The Corridor Does Not Constitute Notice Of The Intention To Seek To Impose A Toll

The SJHTC was established conceptually and in general terms in November 1979 by a Corridor Route Location Study for a major freeway route in order to limit development in the area of the proposed route which would lead to high land acquisition costs later on. The SJHTC is part of the overall circulation plan of the Master Plan of Arterial Highways ("MPAH") for Orange County.

In 1983, the legislature amended the law which established Route 73 along the present Corona del Mar Freeway to the present alignment of MacArthur Boulevard to provide for an alignment

1996
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Lester

Transportation Corridor prior to 1987, because the concept of imposing a toll for the use of any portion of that road simply did not exist.

Similarly, the Attorney General must also disregard each and every assumption or argument made by TCA that giving notice of the alignment of the Corridor ever constituted notice to the public or anyone else that a toll would be imposed on any arterial route or portion thereof which fell into the proposed Corridor. Notice of the alignment of the corridor does not give notice of the imposition of the toll during any period of time that the SJHTC was conceived as a freeway and, indeed, in light of the clear language of Sts. & Hwy. Code § 373 continues to state that Corridor is a freeway, a point which becomes extremely significantly in a discussion of the failure that TCA or anyone else to give adequate notice of the TCA's desire to impose a toll for the use of a portion of Newport Coast Drive, discussed in Section --- hereinafter.

4. The Concept of "Abandonment" Plays No Part In This Discussion.

It is unfortunate that Assemblymember Ferguson's letter of January 7, 1994, expanding his earlier question into eight separate questions used the terms "abandon" and "abandonment" in questions 1, 2, 3, 4, 5 and 8. The concept of "abandonment" has a very specific legal meaning which is irrelevant to the disposition of the issues generally raised by the citizens through Mr. Ferguson, and while it serves the purposes of the TCA gleefully to latch onto that concept in its March 25, 1994, letter, any consideration of this issue by the Attorney General will be a waste of time and not responsive to the real issues.

As TCA correctly states, the Streets & Highways Code addresses abandonment in its streets in Part Three of Division Nine, Sts. & Hwy. Code § 8300 et seq. Not only does the vacation of an existing public street require specific legislative enactments by the local jurisdiction, none of which have taken place here, vacation or abandonment of a street, road or highway leads to the termination of the public right to use such street, road or highway, and that concept is irrelevant here. What the TCA wishes to have the Attorney General approve, and what is not permitted under existing law, is the conveyance or relinquishment to the TCA for use as a portion of the toll road which TCA wishes to construct over the route of the SJHTC, either passively or directly, of an existing highway constructed and dedicated, and in use for 2 1/2 years, as a non-tolled public by-pass route between MacArthur Boulevard and Pacific Coast Highway, around heavily congested commercial streets in Corona del Mar.

For that reason, virtually all of the legal argument presented by the TCA in its March 25, 1994, letter is completely irrelevant.

5. Authorization Of The Inclusion Of Public Roads In
The Freeway And Expressway System Does Not Constitute
Authorization For Their Inclusion In A Toll Road.

The courts have explicitly held that the conversion of a street or highway into a freeway or expressway does not constitute its abandonment. People ex rel. Department of Public Works v. Vallejos (1967) 251 Cal.App.2d 414, 418. Instead, the law explicitly authorizes the incorporation of an existing street or highway into a freeway or an expressway. Streets & Highway Code §§ 941.1 and 1800. Moreover, no existing intersecting street or highway may be closed by the construction of a freeway except pursuant to an express agreement with the city council or Board of Supervisors having jurisdiction over that street or highway. Sts. & Hwy. Code § 100.2. Pursuant to such agreements, the state agrees to pay for all new construction and the jurisdiction agrees to accept control and maintenance of the changes at its expense. City of Fresno v. California Highway Commission (1981) 118 Cal.App.3d 687, 694.

A freeway may only be constructed without the necessary freeway agreements where there is a gap in an existing freeway, a freeway agreement is not possible, there is least one feasible alternative route to the proposed freeway and an environmental impact report or statement has examined the impact of the alternative route alignment on the communities involved, among other conditions. Sts. & Hwy. Code § 100.4.

Manifestly, therefore, if the SJHTC were being constructed by the TCA as a freeway or expressway, it would be entirely proper to incorporate Newport Coast Drive into the Corridor, but the construction of this or any other portion of the Corridor without approval of the affected communities would be forbidden. The essence of the TCA's argument is therefore that its powers are greater and more sweeping than the statutory powers granted to the State of California for the construction of a freeway and that the protection afforded to the residents of the area affected by the TCA's attempt at conversion of a portion of Newport Coast Drive to a toll road, and the cities and county in which they reside, nonexistent. And this unprecedented grab for power is based on absolutely nothing more than reference to Section 66484.3 and the implicit, unstated, and wholly unsupported assumption by the TCA that a toll road is the same as a freeway or expressway.

6. The Power To Convert An Arterial Street To A Freeway
Or Expressway Does Not Equate To The Power to Convert
Such A Road To A Toll Road.

The TCA argues that since its constituent members have the statutory power to convert an existing street or highway into a freeway or expressway, that the TCA has the same authority, and of course it does. Sts. & Hwy. Code §§ 941.1 and 1800. If all that the TCA were attempting was to turn Newport Coast Drive into

a freeway or expressway, this opinion and subsequent litigation would be entirely unnecessary. But that argument, based upon the statutory authority of an agency created under the Joint Exercise of Powers Act to exercise the powers statutorily granted to its constituent jurisdictions is irrelevant unless there is also statutory authority for the County of Orange or any one of the member cities of the TCA to convert an existing street or highway into a toll road, and that power simply does not exist.

Since a county or city is authorized only to convert an existing highway to a freeway or an expressway, and since the authority of the TCA under the Joint Exercise of Powers Act is no greater than the authority of the cities and county which signed the Joint Powers Agreement. As the cities and county do not have the power to convert an existing street or highway to anything except a freeway or expressway, TCA does not have that power either. See Government Code §§ 6502 and 6508.

Section 6502 simply authorizes two or more public agencies jointly to exercise any power which both have in common, while the separate agency which is authorized to be created to administer such an agreement is granted no more than the common power specified in the agreement. Government Code §§ 6506-6508.

No statute or case has ever construed Section 941.1 or Section 1800 of the Streets & Highway Code to grant to a city or county the power to convert an existing street or highway into a toll road. Since neither the county nor the cities are authorized to convert a public street into a toll road, neither is the TCA.

In the recent case of Citizens Against Gated Enclaves v. Whitley Heights Civic Association (March 23, 1994) --- Cal.App.4th --- ('94 Daily Journal D.A.R. 3832), the Court of Appeal dealt with a similar situation, and struck down an attempt to limit the use of previously public streets. In so holding, the Court held that the streets of a city belong to the people of the state and every citizen of the state has the right to use those streets, subject to legislative control by the state and not by a municipality. 1994 Daily Journal D.A.R. at 335, and see City of Lafayette v. County of Contra Costa (1979) 91 Cal.App.3d 749, 754-757. The only permissible regulation of a public street is as to the manner of use. Id. It is the legislature, and not a city or county or joint powers agency which since no exercise those city and county powers, which may exercise control as to the traffic thereon or the manner of use of such streets; all persons have an equal right to use them for the purposes of travel by proper means. Id.

It is settled law that the right of control over street traffic is part of the sovereign power of the state and not of the inferior public entities such as cities or counties. Ex parte Daniels (1920) 183 Cal. 636, 639. Citizens having an inalienable right to use all of the public streets, are subject only to reasonable regulations adopted by the legislature: the use of

highways for purposes of travel and transportation is not a mere privilege, but a common and fundamental right, of which the public individuals cannot rightfully be deprived. Escobedo v. State of California (1950) 35 Cal.2d 870, 875-876 (overruled on other grounds), Rios v. Cozens (1972) 7 Cal.3d 792, 799. Consequently, in the absence of legislative authority to the contrary, a city or county may not restrict the right to travel upon one of its streets. See City of Lafayette v. County of Contra Costa, supra, 91 Cal.App.3d at 754. And the entire field of regulations of the use of existing city and county streets and highways is subject to state regulation and no local authority is entitled to enact or enforce any law to the contrary. Vehicle Code § 21. Moreover, no exceptions may be implied to the broad powers retained by the legislature to the exclusions of the power of cities, counties and joint power agencies. City of Lafayette v. County of Contra Costa, supra, 91 Cal.App.3d at 756-757.

The TCA has not provided any authority that removal of a public road and replacing it with a road to its excess is restricted of the imposition of a toll is a power delegated to it or to its constituent county and city by the legislature, and no such authority appears. Indeed, the express language of Section 66484.3 only permits TCA to exercise the power to establish and collect toll charges and pay the cost of construction of a new road, which the conversion of any portion of Newport Coast Drive to a toll road is clearly not.

^{Sept.} As amended in 1987, Section 66484.3(f) merely authorizes the TCA to construct a toll road but subsection (g) narrowly defines construction to include "design, acquisition of rights-of-way, and actual construction," but does not authorize the conversion, realignment or supplanting of a previously existing highway.

Indeed, the TCA assumes away the question entirely when it suggests that although it does not have the express power to convert a free public road into a toll road, that power is "necessary to the exercise" of the powers expressly granted to it, because that argument is utterly without any limits. If without any further grant of authority, the TCA may turn a portion of a public road into a portion of a toll road without an express statutory grant of that right, it may also and with equal reason have the power to take any property it wishes and do with that property what it will, so long as such taking and such use was arguably for toll road purposes.

While abolishing all property rights within the Corridor may be convenient or useful to the TCA, there is no constitutional basis to turn the TCA into an absolute monarch with absolute extra-constitutional powers by implication, and there is no hint in Section 66484.3 or any other law that this result was ever contemplated or intended by the legislature.

In short, having failed to offer any direct statutory authority for doing what manifestly neither the Court of Orange nor the

which was apparently intended to constitute the SJHTC and simultaneously designated it a freeway. Sts. & Hwy. Code § 373. This designation has never been changed. Consequently, SJHTC will not become a state highway unless it is a freeway.

In 1984, the legislature enacted Government Code § 66484.3 which permitted the collection of developer fees for the purpose of constructing bridges and major thoroughfares. In 1986, a Joint Exercise of Powers Agreement was executed by the County of Orange and certain cities for the purpose of conducting transportation planning, financing and the construction of a major thoroughfare (in the) SJHTC, which also created the San Joaquin Hills Transportation Corridor Agency ("TCA").

In May 1987, a draft Environmental Impact Report describing a proposed alignment of Pelican Hill Road ("PHR") was circulated, describing the preferred alignment for PHR as being either parallel to or overlapping the alignment of the future, SJHTC freeway. *Original adopted Route*

It was not, however, until the September 1987 amendments to Government Code § 66484.3 that the TCA was authorized to seek to use the collection of tolls as an additional means of financing the construction of a thoroughfare in the Corridor and it was not until October 1988, when the 1986 Joint Exercise of Powers Agreement which had created the TCA was amended, that the TCA was authorized to do so pursuant to the authority of Section 66484.3. *effective date*

For this reason, no agreement entered into by the TCA made by the County of Orange, any city, any landowner and any other entity, and no notice disseminated or hearing held, could have involved the effect or impact of the SJHTC as a toll road, because the collection of tolls for the use of any portion of the Corridor was neither contemplated nor known. *Co County Assessor DCP*

This is a vitally important fact, one which is repeatedly and consistently glossed over by TCA in its March 25 letter. Because the Corridor was not a toll road but was (and still is; Sts. & Hwy. Code § 373) a freeway or expressway, its alignment and the issue of whether any arterial street was parallel to or absorbed in the Corridor was irrelevant. Whether Bonita Canyon Road, Pelican Hills Road, or Newport Coast Drive was understood prior to 1987 to be part of or separate from the Corridor was therefore utterly irrelevant, because it *(made)* no earthly difference to any person travelling from MacArthur Boulevard to Coast Highway on what is now Newport Coast Road whether that travel was on an arterial street, an expressway or a freeway, except to the extent that higher speeds were permitted on a freeway or expressway. *(would make)*

Consequently, the Attorney General must disregard each and every reference by TCA to provisions of law or notice given while the alignment of the arterial route variously known as Bonita Canyon Road, Pelican Hill Road and Newport Coast Drive was aligned with subsumed under the generally designated San Joaquin Hill

City 1987

constituent cities may do, the TCA has failed to provide any statutory justification for the act which it intends.

c:\wp\Politics\TCA

THE ROAD IS PART OF A GUID PRO 900 FOR A COASTAL PERMIT AND IS MEMORIALIZED IN THE IRVINE COAST DEV. PERMIT, AS THE LCP REQUIRED

Handwritten notes:
Hill
Cove

JOINT POWERS AGREEMENT HAS NOT THE AUTHORITY TO AMEND 1988 LOCAL COASTAL PROGRAMS BY TOOLING PELICAN HILLS NEWPORT COAST ROAD OR A PART.

[] ADD IRVINE COAST DEVELOPMENT AGREEMENT COUNTY OF ORANGE FILED JUN 9 1988

PAGE 9 1.2.27. 1988 LOCAL COASTAL PROGRAM

PAGE 11 2.2 "CONSISTENCY WITH COUNTY'S GENERAL PLAN AND CERTIFIED LOCAL COASTAL PROGRAMS."

2.3 "SUMMARY OF MAJOR PUBLIC BENEFITS."
* BENEFITS TO BOTH COUNTY (INCLUDING WITHOUT LIMITATIONS THE EXISTING AND FUTURE RESIDENTS AND POPULATIONS OF COUNTY) AND OWNER.

PAGE 12 2.3.1 "TRANSPORTATION IMPROVEMENTS" PELICAN HILL RD.

* RELIEVES CONGESTION DIVERSION OF TRAFFIC FROM PACIFIC COAST HIGHWAY MACARTHUR & PCH.



110 WEST A STREET, SUITE 1100
SAN DIEGO, CA 92101

P.O. Box 85266
SAN DIEGO, CA 92186-5266
(619) 645-2001

FACSIMILE: (619) 645-2191
DIRECT DIAL: (619) 645-2210

17

February 10, 1994

Ron Kennedy
550 Hazel Drive
Corona Del Mar, CA 92625

RE: Opinion No. 93-1205

Dear Mr. Kennedy:

We have received a revised request from Assemblyman Gilbert Ferguson for an opinion of the Attorney General on the following questions:

1. Did the County of Orange have legal authority to abandon an existing public road (Bonita Canyon Road) and convey it to the San Joaquin Hills Tollway (SJHT) where it will contain a toll booth requiring the public to pay for its use in the future?
2. Did the County of Orange have legal authority to abandon a public road (Newport Coast Road) which had been built by the Irvine Company as a condition of its permit to develop its coastal property and convey it to the SJHT?
3. If such authority existed and the free public road requires the public to pay a toll in order to transit part of its length, would this preclude the Irvine Company from developing its property further since the conditions demanded by the permitting authorities no longer pertain?
4. Did the County of Orange give sufficient public notice that it intended to abandon the Bonita Canyon Road and a portion of the Newport Coast Road?
5. Was there an adequate, legal abandonment hearing held for each road?
6. Did the SJHT give sufficient legal notice that it intended to charge a toll to the public for transiting the Bonita Canyon Road and a portion of the Newport Coast Road?

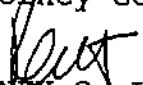
Opinion No. 93-1205
February 10, 1994
Page 2

7. Was there an adequate, legal public hearing held on the tollway's intention to charge such tolls on those roads?

It is the policy of our office to solicit the views of all interested parties prior to issuing an opinion. If you would like to submit comments, a response by March 18, 1994, would be most helpful; materials received after such date will nonetheless be considered. Views submitted will be treated by our office as public records under the Public Records Act. Please address your views to: Deputy Attorney General Clayton Roche, 455 Golden Gate Avenue, Suite 6200, San Francisco, CA 94102-3658; telephone (415) 703-1635.

Sincerely,

DANIEL E. LUNGREN
Attorney General


RODNEY O. LILYQUIST
Senior Assistant Attorney General
Chief, Opinion Unit

ROL:gs

THE IRVINE COMPANY

Gary H. Hunt
Executive Vice President

April 1, 1993

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18

Deputy Attorney General Clayton Roche
Office of the Attorney General
State of California
455 Golden Gate Avenue
San Francisco, CA 94102-3658

RE: PENDING ATTORNEY GENERAL'S OPINION NO. 93-1205

Dear Mr. Roche:

I am writing to respond to a question about The Irvine Company's rights to develop Newport Coast as raised in Senior Assistant Attorney General Rodney O. Lilyquist's February 10, 1994 letter to Mr. Bill Woollett, Executive Director of the Orange County Transportation Corridors Agency ("OCA").

Specifically, Question 3 reads, in effect:

If . . . authority (to abandon Newport Coast Drive as a free public road) exists and . . . the public (is required) to pay a toll in order to transit part of its length, would this preclude The Irvine Company from developing its property further since the conditions demanded by the permitting authorities no longer pertain?

The Irvine Company believes your response to this question must be "No," for two reasons:

1. The Company has fully satisfied all the terms of the duly authorized Irvine Coast Development Agreement ("ICDA") governing the Newport Coast, including construction and dedication of Newport Coast Drive, and is accordingly entitled to proceed with the development authorized under that agreement.

¹ The Irvine Coast Development Agreement, adopted pursuant to Government Code Section 65864 et seq. a copy of which is enclosed. (The Company changed the name of the development project that is the subject of the agreement from the Irvine Coast to the Newport Coast after entering into the development agreement.)

11 EXH. #5

2. The "public benefit" of reduced traffic through Corona del Mar as anticipated by the ICDA is being met, or exceeded, by subsequent actions of the County of Orange ("County") and TCA to construct the San Joaquin Hills Transportation Corridor ("Corridor"). This continues to be the case even if a portion of Newport Coast Drive is tolled.

To understand the context in which Question 3 arises it is important to understand the history of the Newport Coast project and Newport Coast Drive. Newport Coast Drive was constructed and dedicated by the Company pursuant to a development agreement, the ICDA, between it and the County. It was part of a comprehensive program of substantial public benefits the Company agreed to provide the County as consideration for the vesting of the Company's development rights for its Newport Coast property in keeping with the law governing development rights in California. One of the principal benefits intended to be provided by Newport Coast Drive was the diversion of traffic from Corona del Mar.

Subsequent to approval of the ICDA, as part of a plan to alleviate local and regional traffic, including traffic relief in Corona del Mar, the County and the TCA, made the final determination that the plan could best be achieved if a portion of Newport Coast Drive was connected to and made a part of the Corridor. To finance the construction of the Corridor, the TCA determined that the Corridor should be tolled and that a toll should be placed on Newport Coast Drive. However, at the time the Company entered into the development agreement and agreed to construct and dedicate Newport Coast Drive, the decision to toll it had not been made.

Returning to Question 3, with this context in mind, I will address our two points in order. First, the Company has fully complied with its obligations under the ICDA, including the dedication and construction of Newport Coast Drive. It is, in turn, therefore entitled to enforce its rights under the ICDA. The Company has invested hundreds of millions of dollars on Newport Coast Drive, other major public infrastructure and the development of its Newport Coast property, all in reliance on the vested rights it is assured of under the ICDA. Neither the ICDA, nor the legislation under which it was adopted, empowers the County to abrogate its obligations or deny the Company its vested rights because it or the TCA voluntarily chose to change the use of a public facility, or to relinquish or enhance a public benefit, otherwise provided under the ICDA. Such a decision does not alter the fact that the Company has, itself, fully complied with the obligations specified in the ICDA, and accordingly is entitled to enforce its right under that agreement in full.

The State's development agreement legislation (Government Code Section 65854, et seq.) was adopted in contemplation of developments like the Newport Coast. Assurances of the vested right to develop the Newport Coast

provided to the Company by the County by entering into the development agreement enabled the Company to obtain the financing necessary to construct and dedicate, in advance of development, the vast scheme of public infrastructure it agreed to provide under the ICDA. Thus, by entering into the development agreement, the County benefitted by the private financing and early construction of public infrastructure of regional significance that it likely would have been otherwise unable to accomplish. Not only would it be contrary to law, but it would be extremely detrimental to the wise public policy and benefits foreseen and achieved by the Legislature when it enacted the development agreement legislation were the Attorney General to opine that a landowner's rights could be jeopardized, invalidated or abrogated if the government could, after receiving the benefits of a development agreement, nullify the assurance of vested rights provided by the agreement, unless there is justification based on some unforeseen harm to the public health or welfare.

The second reason the answer to Question 3 is "No" is because the traffic relief benefits sought by the County through the ICDA are not in any way being diminished by current plans to construct the Corridor as a toll road and place a toll on a portion of Newport Coast Drive. Traffic reduction in and around Corona del Mar was a primary goal of Newport Coast Drive construction as required by ICDA. Traffic studies conducted for government agencies have consistently shown that 1) traffic relief through Corona del Mar is greater (by approximately 25%) with the Corridor in place than with Newport Coast Drive alone², and 2) the traffic relief provided by the Corridor as a toll road (including a toll on Newport Coast Drive) is generally identical to the relief provided by a "free" Corridor.³ Therefore, current plans for the Corridor and Newport Coast Drive in no way defeat the original traffic benefits expected from Newport Coast Drive under the terms of the ICDA.

² See the enclosed Irvine Coast Area Traffic Analysis, page V-5, which was prepared at the time the Company and the County entered into the ICDA, and assesses, among other things, the traffic benefits provided to the Newport Coast/Corona del Mar area by the Corridor.

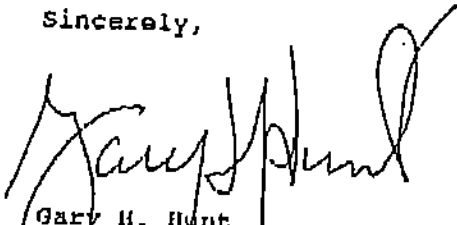
³ See the enclosed Technical Memorandum TM-2-67A, page 2, prepared by the TCA to determine whether collecting tolls for use of the Corridor, including tolls on Newport Coast Drive, would change the conclusions of the Irvine Coast Area Traffic Analysis regarding the traffic relief provided by Newport Coast Drive with and without the construction of the Corridor.

Deputy Attorney General Clayton Roche
Office of the Attorney General
State of California

April 1, 1994
Page 4

I hope this letter has been helpful to you in preparation of pending Attorney General's Opinion No. 93-1205. Please do not hesitate to write if the Company can be of further assistance.

Sincerely,



Gary H. Hunt
Executive Vice President

GHH/jd
Enclosures

cc: Daniel E. Lungren, Attorney General - w/o attachments
Rodney O. Lilyquist, Sr. Assistant Attorney General - w/o attachments

WYNN & ASSOCIATES

567 SAN NICOLAS DRIVE

SUITE 203

NEWPORT CENTER

NEWPORT BEACH, CALIFORNIA 92660

EX

10/24/90

ROBERT L. WYNN
MUNICIPAL MANAGEMENT CONSULTANT

19

(714) 644-9362
(714) 644-8576
FAX (714) 644-4065

Mr. Clayton Roche
Deputy Attorney General
455 Golden Gate Ave.
Suite 6200
San Francisco, CA 94102-3658

Dear Mr. Roche:

The purpose of this letter is to give you my understanding and opinion concerning the proposed toll booth at Ford Road and Newport Coast Drive adjacent to Newport Beach. First let me state that I served as the City Manager of the City of Newport Beach from August, 1971 to December, 1991. As a representative of Newport Beach, I attended the very first meetings of City representatives of this area to discuss and formulate a Joint Powers Agency to construct the three proposed toll roads in Orange County. These meetings occurred in Santa Ana, Costa Mesa, Irvine, and Orange County and included all Cities in the benefit area. I remained personally active with this group until the J.P.A. was created and ratified by State Legislation. As I now recall this step took 18 to 24 months because there were so many Cities involved and each City representative seemed to have a different idea on the process.

Also I have been very much aware that since 1971 the residents of Corona del Mar and the City of Newport Beach have strongly favored and supported a by-pass around C.D.M. A by-pass was universally supported by every group of which I was aware. No one opposed it. Pacific Coast Hiway in C.D.M., especially in the A.M. and the P.M. peak periods, was very badly congested with cars. Newport Coast Drive provided this by-pass and its dedication was almost a sacred event in this community. Traffic congestion was immediately reduced and I can honestly say that I know of no other project that has been so praised and accepted as this project.

Once the Transportation Corridor Agency was organized, my almost daily participation was reduced, but I still kept a high priority interest in the Corridor. I was aware that the E.I.R.-E.I.S. listed many alternatives in the project but I was never aware that a toll was being seriously considered on Newport Coast Drive. I was always of the opinion that while San Joaquin Transportation Corridor intersected Newport Coast Drive before the McArthur intersection, a toll would not be charged to those who traveled

Newport Coast Drive from P.C.H. (east of C.D.M.) through to McArthur Blvd. I was of the opinion that a toll booth would be located east of the Corridor intersection with Newport Coast Drive and that the Newport Coast Drive travelers would use a short section of the Corridor to McArthur Blvd. without paying a toll. As City Manager of Newport Beach, I can honestly say that I never received anything from the T.C.A. that would indicate the establishment of a toll on this much sought after by-pass around C.D.M. After the bonds were sold and this fact surfaced, I remember my total surprise that a toll would be charged.

I hope this brief account of my recollections will be helpful to you in your investigation. Please feel free to call me if you have questions that you think I may be of assistance.

Sincerely,



Robert L. Wynn

bcc: The Honorable Phil Sansone

January 8, 1994

Mr. Clayton Roche
Deputy Attorney General
455 Golden Gate Avenue, Suite 6200
San Francisco, CA 94102-3658

Re: Opinion Request
Assemblyman Gilbert Ferguson
Opinion Request Number 93-1205

In replying to Mr. Rodney O. Lilyquist's letter of December 30, 1993 pending opinion of the above "May a county convey a public road to a joint powers tollway agency"

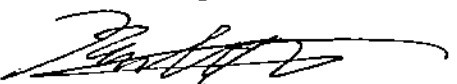
My reply is in two parts:

- 1. Newport Coast Road comments
- 2. Possibly misleading information in disclosure, in bonds sold using Newport Coast Road destination trips to pay a portion of bond sale

My comments to you are in response to the attached letter requesting information from interested parties prior to issuing an opinion. This letter is intended to serve that purpose.

I would be happy to respond to any of your questions regarding these concerns. Please feel free to contact me if there is any way in which I can help.

Sincerely,



Ronald Kennedy
550 Hazel Drive
Corona del Mar, CA 92625
(714)640-7177

Kennedy, Ronald, page 2

Mr. Clayton Roche
Deputy Attorney General

January 8, 1994

Attachment:

Letter from Attorney General Daniel E. Lundgren
Dated 12-30-93

Exhibits 1 to 6 Newport Coast Road
Exhibits 7 to 8 Bond Sale affecting Newport Coast Road.

cc: Honorable Daniel E. Lundgren, Attorney General
Honorable Gil Ferguson, Assemblyman, Seventieth District
Jean A. Kawahara, Chief, U.S. Attorney's Office, Santa Ana
Mark Delaplane, California Coastal Commission

Kennedy, Ronald, page 3

Mr. Clayton Roche
Deputy Attorney General

January 8, 1994

1. Newport Coast Road comments

I believe Newport Coast Road (aka Pelican Hills Road) should stay a free public road from Pacific Coast Highway as first certified in the 1982 Local Coastal Plan (LCP) [Exhibit 2] and certified on January 14, 1988.

This road [Exhibit 3] was proposed by the applicant, The Irvine Company, and agreed to by the Orange County Board of Supervisors. The Irvine Company provided the land and funding for construction for this part of the LCP mitigation from Pacific Coast Highway to the Old Bonita Canyon Road right of way. The westerly leg of Bonita Canyon Road intersects with MacArthur Boulevard, which is the westerly end of the bypass. Bonita Canyon Road has been a thoroughfare for the last forty years, during which time it has continuously been used by the public [Exhibit 5]. This route completes the traffic bypass.

Orange County served as the lead agency for the LCP EIR, holding numerous public hearings in front of its Board of Supervisors, which gave its approval on December 2, 1987 [Exhibit 6]. The LCP was forwarded to the State of California Coastal Commission for its approval and certification, and certified on January 14, 1988.

The County of Orange and the Tollway Agency do not have "jointly" or independently any "alter ego" relationship with the State of California Coastal Act or its commissioners. In addition, they have no legal right to take a public road built as a State Coastal Act mitigation and called out in both Orange County documents [Exhibit 6] and Orange County LCP documents.

Orange County is acting in a fiduciary relationship to the State Coastal Commission and public to see the applicant, The Irvine Company or its assignee, carries out the agreed LCP mitigation which the County agreed to and sent to the Coastal Commission for its approval. This was done to enable the County to issue the applicant the necessary County building permits required by the State to build in the Coastal Zone. The County has a duty to ensure the applicant is compliant: it has no legal right to amend LCP mitigation.

Another part of this LCP mitigation is a dedicated road alignment from the proposed Sand Canyon Avenue to the old Bonita Canyon Road (now Newport Coast) alignment running to MacArthur Boulevard and now referred to as the Toll Corridor Alignment [Exhibit 6, page 2 and its Exhibit A, page 1].

Kennedy, Ronald, page 4

Mr. Clayton Roche
Deputy Attorney General

January 8, 1994

Newport Coast Road comments, continued

At the time of these LCP road mitigations, the corridor was planned as a free public road, the San Joaquin Hills Transportation Corridor (SJHTC).

The funding for building part of this corridor from a free public freeway to a bond and toll payoff has changed. But the "pre-conditioned" and "done deal" of accepted Coastal Act mitigation has first right to stay as a free public road to any coastal user. The County of Orange and the Transportation Corridor Agencies (TCA) have no Joint Powers as a tollway; agency to amend the Irvine Coast LCP.

Kennedy, Ronald, page 5

Mr. Clayton Roche
Deputy Attorney General

January 8, 1994

2. Possibly misleading information in disclosure, in bonds sold using Newport Coast Road destination trips to pay a portion of bond sale

The Transportation Corridor Agencies (TCA) is saying it has a fiduciary responsibility to their bond holders to collect tolls on the Newport Coast Road bypass as it relates to the corridor alignment. There is no fiduciary responsibility to carry on a fraud if they publish incomplete and misleading information.

In the "preliminary official statement" dated February 22, 1993 for the \$1,019,870,573.10* senior lien toll road revenue bonds for the San Joaquin Hills Transportation Corridor Agency [Exhibit 7], Appendix D, the Wilbur Smith Associates' Study maps do not show Newport Coast Road running from Pacific Coast Highway to MacArthur Boulevard. As an example, the following key maps of the preliminary official statement to the bondholders do not show the Newport Coast Road connecting with MacArthur Boulevard:

- o Inside front cover map of the San Joaquin Hills Transportation Corridor
- o Location Map, Figure 1, page 2
- o Survey Station Location Map, Figure 5, page 21
- o Economic Influence Areas, Figure 9, page 41
- o Traffic Screenline, Figure 19, page 70
- o Traffic Flow Map -- 1991 Average Daily Traffic, Figure 2 and Highway Improvements, Figure 12 (found inside back cover).

The official statement (not the preliminary, as above) deletes the reference to the construction of Newport Coast Road as a DEVELOPER AGREEMENT. This deletion is found on Figure 12 of the official statement. Again, as shown in the preliminary, this was a LCP condition of development [Exhibit 4, page 3]. Note that TIC indicates The Irvine Company.

Kennedy, Ronald, page 6

Mr. Clayton Roche
Deputy Attorney General

January 8, 1994

Also, the Bonita Canyon Drive alignment to MacArthur Boulevard is deleted in all these maps as a through road connection.

A very critical and misleading statement is found in the Wilbur Smith Study on page 61: "Many of the critical arterial improvements which are included in the travel networks are funded by agreements developers have made with cities. For instance, Newport Coast from the Pacific Coast Highway to the Corridor is presently under construction and is funded by the [sic] Irvine Company." This quote is taken from Chapter 5 of the "Traffic and Revenue Estimates" cover letter, dated February 9, 1993.

The reference to the road being presently under construction is totally false and misleading. In the real world, this road was opened in 1991 from Pacific Coast Highway to MacArthur Boulevard. In addition, the road was a mitigation required by the Irvine Coast LCP and this important fact should have been stated.

Prior to the bonds being sold there was much concern that full disclosure had not been made. The public was asking a lot of questions and one city councilman, Phil Sansone of Newport Beach, was quoted in an article in the Newport Beach/Costa Mesa Daily Pilot newspaper, dated February 26, 1993 and entitled "San Joaquin Hills tollway forges ahead" [Exhibit 8] that: "... that he was told not to 'muddy the water' with complaints, as tollway officials are negotiating with bond representatives, and changing the project could jeopardize the financing." This article references Sansone's concern about the planned toll on a section of Newport Coast Drive.

- end -

21

TOLLROAD

From Page A1

Ferguson said he still believes the toll is bogus. "I'm not convinced that what has transpired here is legal by state law. Even if it were legal, though, I am convinced that the public didn't know about it."

Corona del Mar residents have expressed fury over the planned toll booth, which they say officials tried several years to hide from them.

"I have attended what seems to be dozens and dozens of meetings — about EIRs, Coastal Commission meetings in Santa Monica — and never once did I

hear a toll was going to be implied," said Lucrena Hayton, president of the Corona del Mar Chamber of Commerce.

People living in Corona del Mar fear Laguna Beach motorists will avoid the \$1 round-trip toll and stop using Newport Coast Drive to get to Irvine, John Wayne Airport and other central county destinations.

They believe they will instead take MacArthur Boulevard or Marguerite Avenue to Coast Highway, bottle necking traffic in their seaside village.

Smith said the public had at least 10 opportunities during the past few years with Newport Coast Drive.

He said the tollbooth was mentioned

in several environmental impact reports, some of which were the size of big-city telephone books.

Ferguson said that's irrelevant. "If I showed you the chronology of how I was going to rob a bank, and then showed you the environmental impact report for how it's going to be done nicely, that still doesn't make it legal," he said.

The legislation permitting tollroads specifies a "parallel" free route must be available to motorists when a tollroad is built. Ferguson said the agency doesn't seem to be fulfilling that requirement.

Thornton said the agency interprets "parallel" to mean existing parallel highways, such as the San Diego, Santa Ana and Costa Mesa Freeways, must be avail-

able. The agency is thinking about building a route around the tollbooth anyway, but their plan doesn't satisfy Newport Beach City Councilman Phil Sansone or Corona del Mar residents.

Yvonne Houseels, who represented the Harbor View and Laguna North neighborhood associations, as well as the Corona del Mar Residents Association and Irvine Conservancy, said the proposed bypass is too convoluted and out of the way.

"It is not acceptable and the toll must be removed," she said.

Sansone, who represents the city on the tollroad agency's operations commit-

tee, said the agency acted illegally when it failed to tell its bondholders about Corona del Mar's protest of the proposed tollbooth.

"None of that got into the prospectus" an angry Sansone said. "We been through that prospectus with a fine-toothed comb."

Ferguson agreed. "They hid it from the public and they hid it from the bond buyers, and that's a federal offense," he said.

Sansone replaced Councilman John Cox on the committee after a majority of the City Council voted to oust Cox, saying he wasn't fighting hard enough to get the toll removed.

Ferguson urges tollroad investigation

Assemblyman will talk with attorney general on validity of turning public road into tollway.

DAVID HEITZ, Staff Writer

NEWPORT BEACH — Unconvinced that a tollbooth can legally be placed on Newport Coast Drive, Assemblyman Gil Ferguson will ask Attorney General Dan Ingren for an investigation of the tollroad agency's plan to build a tollbooth on Newport Coast Drive.

Ferguson called the meeting, held at Newport's ornate Pacific Club, after several city officials and hundreds of residents flooded his office with protests about the 50-cent toll planned for Newport Coast Drive.

He opened the meeting, which was closed to the general public, with a pointed question: "I have had literally hundreds of communications ... all with the same kind of concern. How did this occur that the tollroad author-

ity is going to place tolls on this public road?" he asked.

"Excuse me assemblyman, but it's completely above board," said Rob Thornton, the agency's attorney.

"Well, the citizens don't believe it's above board, and that's why we're having a hearing here," Ferguson countered.

Thornton said state legislation passed in 1987, which was co-authored by Ferguson, explicitly gives the agency the right to build tollroads.

But Ferguson said the legislation says nothing about incorporating previously free roads, such as Newport Coast Drive, into tollroads.

A 1.6-mile portion of Newport Coast Drive, which was built in 1991 to handle traffic generated by housing development, will become part of the San Joaquin Hills Corridor when it's completed in 1997.

"How did this land ever get away from you?" Ferguson asked county transportation director Ken Smith.

Thornton answered for Smith, saying the portion of Newport Coast Drive that will become part of the tollway was transferred to the agency under a joint powers agreement between the county, several cities and the TCA.

"The TCA is the alter ego, if you will, of the county of Orange," Thornton said.

See TOLLROAD/page A13

EX 22

San Joaquin Hills tollway forges ahead

► Officials ready to issue bonds that will finance project. Meanwhile, Sansone continues his fight.

By Tony Cox
Business Editor

COSTA MESA — In spite of community opposition, including a campaign by a Newport Beach councilman to fight a planned toll on a section of Newport Coast Drive, the San Joaquin Hills tollway is now a week or two away from commencing \$1.1 billion in bond issues that will finance the project.

Councilman Phil Sansone, in his latest appeal for public opposition to the toll on the 1.6-mile northern section of Newport Coast Drive, earlier this week sent a letter to Newport Beach and Costa Mesa residents asking them to send letters to the City Council and the Orange County Board of Supervisors. He also urged people to voice their opposition to the tollway at a City Council study session scheduled for March 8.

"Rest assured that I will continue to pursue elimination of the toll," Sansone said in the letter. "The council, however, will need strong community support in this effort since we are up against strong opposition by the non-elected

county bureaucracy."

Sansone attached to the letter a memo he sent to Mayor Clarence Turner — who still supports the tollway — detailing what he considers failures by the tollway agencies to make their plans clear to city officials. He said he will renew his support for the tollway only if no tolls are required to get from Newport Coast Drive to MacArthur Boulevard at least as far north as the planned New Ford Road.

"I am extremely disappointed and dismayed at the lack of communication between TCA (Transportation Corridor Agencies) and the council on this matter," Sansone said in the memo. "It is my opinion that TCA placed a higher priority on their own interests than they did on those of the people they are paid to serve."

"Regardless of what the so-called experts say, toll access from Newport Coast Drive to MacArthur is going to negatively impact Corona del Mar."

Sansone and Corona del Mar merchants have complained that the toll as planned on Newport Coast Drive will divert commuter traffic back down to Pacific Coast Highway and to San Joaquin Hills Road.

The councilman said in his memo that he was told not to "muddy the water" with complaints, as tollway officials are negotiating with

bond representatives, and changing the project could jeopardize the financing. He added that a tollway official told him that the planned 50-cent toll for the northern section of Newport Coast Drive is essential for the project to meet its financial plan and obtain bond financing.

Said TCA finance executive Wally Krcutzen: "If (moving the planned toll on Newport Coast Drive north of New Ford Road) would have a fiscal impact, there's no doubt about it. How much of an impact, I don't know."

TCA spokesman Mike Stockstill said tollway officials have not considered moving the toll on Newport Coast Drive. Asked whether community opposition, at this late stage of the financing process, could jeopardize the bond issues, Stockstill declined to speculate. Krcutzen said, "I'll never say never."

However, TCA officials are optimistic about successfully selling the bonds, most of which have received an investment-grade credit rating. Krcutzen said that once those bonds are sold, he believes the four-year project, which consists of a 15-mile, six-lane road extending from San Juan Capistrano to the Corona del Mar Freeway, will be able to overcome all obstacles.

"If we sell this debt, this agency will prevail, and the road is going to get built," Krcutzen said.

7

1 COONTZ, MATTHEWS & CAMPBELL LLP
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3 30448 Rancho Viejo Road, Suite 120
4 San Juan Capistrano, CA 92675
5 Telephone: (714) 240-3040

7 12 96

23

5 Co-Counsel for Plaintiff

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

11 NEWPORT COAST DRIVE DEFENSE)
12 FUND, a California non-profit)
13 corporation,)

13 Plaintiff,

14 v.)

15 SAN JOAQUIN HILLS)
16 TRANSPORTATION CORRIDOR)
17 AGENCY, a California joint exercise of)
18 powers agency, COUNTY OF ORANGE,)
19 a California general law county, and)
20 DOES 1 through 25, inclusive,)

18 Defendants.)

Case No: 736471

JUDGE WILLIAM F. McDONALD
DEPARTMENT 20

PLAINTIFF NEWPORT COAST
DRIVE DEFENSE FUND'S
RESPONSES TO DEFENDANT
COUNTY OF ORANGE'S SPECIAL
INTERROGATORIES, SET ONE

21 PROPOUNDING PARTY: Defendant County of Orange

22 RESPONDING PARTY: Plaintiff Newport Coast Drive Defense Fund

23 SET NUMBER: One

24 Plaintiff Newport Coast Drive Defense Fund (hereafter referred to as
25 "responding party"), pursuant to California Code of Civil Procedure §2030, responds
26 to defendant County of Orange's Special Interrogatories (Set No. One) as follows,
27 without prejudice to further discovery, reserving the right to present evidence of any
28 subsequently discovered facts at the trial of this action. It should be noted that

1 responding party has not fully completed investigation of the facts relating to this case,
2 has not fully completed discovery in this action, and has not completed preparation for
3 trial. All of the responses contained herein are based only on such information and
4 documents as are presently available to, and specifically known to, responding party
5 and disclose only those contentions which presently occur to responding party. It is
6 anticipated that further discovery, independent investigation, legal research and analysis
7 may supply additional facts and meaning to the known facts as well as establish
8 entirely new factual conclusions and legal conclusions, all of which may lead to
9 substantial additions to and variations in the responses set forth herein.

10 Responding party accordingly reserves the right to change any and all
11 responses herein as additional facts are ascertained, analyses are made, legal research
12 is completed, and contentions are made. The responses contained herein are made in a
13 good faith effort to provide complete responses to properly worded interrogatories to
14 the extent presently known but should in no way be construed to the prejudice of
15 responding party in relation to further discovery, research and analysis.

16 If any information has unintentionally been omitted from these responses,
17 responding party reserves the right to apply for relief so as to permit the insertion of
18 the omitted data from these responses. These introductory paragraphs apply to each
19 and every response given herein and are incorporated by this reference as though fully
20 set forth in each and every following interrogatory response.

21 Answer to Interrogatory No.:

22 1. Responding party hereby responds pursuant to the provisions of Code
23 of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
24 derived or ascertained from the following documents, all of which are public records
25 and are therefore equally accessible, or more easily accessible, to defendant County of
26 Orange than to responding party:

27 Articles of Incorporation filed with the California Secretary of State July 15, 1994.

28 2. Since the response to this interrogatory is based on public records that

1 are available for the review of any member of the public interested in reviewing such
2 records, such facts are known to any person who has looked at the pertinent public
3 records. Responding party has no way to know the names of all such persons, but
4 they include Ronald D. Kennedy.

5 3. Articles of Incorporation filed with the California Secretary of State
6 July 15, 1994.

7 4. Responding party hereby responds pursuant to the provisions of Code
8 of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
9 derived or ascertained from the following documents, all of which are public records
10 and are therefore equally accessible, or more easily accessible, to defendant County of
11 Orange than to responding party:

12 **Resolution No. 87-1327** Irvine Coast Local Coastal Program - First Amendment and
13 Zone Change 83-24P September 30, 1987.

14 **Resolution No. 81-1540** Irvine Coast Local Coastal Program October 21, 1981.

15 **Resolution No. 80-2085** Local Coastal Program LCP 80-4, Irvine Coast Planning
16 Unit, land use and circulation element amendment LCP 80-4, December
17 17, 1980.

18 **Irvine Coast Development Agreement** recorded June 9, 1988 as Document No. 88-
19 272903 in the office of the Orange County Recorder.

20 **Resolution No. 88-46** Master Coastal Development Permit 88-11P (Irvine Coast
21 Planned Community), May 4, 1988.

22 **California Coastal Commission Staff Report and Recommendation on Consistency**
23 **Certification** file date April 2, 1993.

24 **California Government Code § 66484.3.**

25 **Federal Aid Highway Act of 1987**, particularly 23 U.S.C. § 120(j).

26 **Intermodal Surface Transportation Efficiency Act of 1991**, particularly 23 U.S.C. §
27 129(a)(8).

28 5. Since the response to this interrogatory is based on public records that

1 are available for the review of any member of the public interested in reviewing such
2 records, such facts are known to any person who has looked at the pertinent public
3 records. Responding party has no way to know the names of all such persons, but
4 they include Ronald D. Kennedy.

5 **6. Resolution No. 87-1327 Irvine Coast Local Coastal Program - First**
6 **Amendment and Zone Change 83-24P September 30, 1987.**

7 **Resolution No. 81-1540 Irvine Coast Local Coastal Program October 21, 1981.**

8 **Resolution No. 80-2085 Local Coastal Program LCP 80-4, Irvine Coast Planning**
9 **Unit, land use and circulation element amendment LCP 80-4, December**
10 **17, 1980.**

11 **Irvine Coast Development Agreement recorded June 9, 1988 as Document No. 88-**
12 **272903 in the office of the Orange County Recorder.**

13 **Resolution No. 88-46 Master Coastal Development Permit 88-11P (Irvine Coast**
14 **Planned Community), May 4, 1988.**

15 **California Coastal Commission Staff Report and Recommendation on Consistency**
16 **Certification file date April 2, 1993.**

17 **California Government Code § 66484.3.**

18 **Federal Aid Highway Act of 1987, particularly 23 U.S.C. § 120(j).**

19 **Intermodal Surface Transportation Efficiency Act of 1991, particularly 23 U.S.C. §**
20 **129(a)(8).**

21 7. Responding party hereby responds pursuant to the provisions of Code
22 of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
23 derived or ascertained from the following documents, all of which are public records
24 and are therefore equally accessible, or more easily accessible, to defendant County of
25 Orange than to responding party:

26 **San Joaquin Hills Transportation Corridor Newport Coast Drive Analysis**

27 September 1994 prepared by Austin-Foust Associates, Inc.

28 **California Coastal Commission Staff Report and Recommendation on Consistency**

1 **Certification** file date April 2, 1993.

2 8. Since the response to this interrogatory is based on public records that
3 are available for the review of any member of the public interested in reviewing such
4 records, such facts are known to any person who has looked at the pertinent public
5 records. Responding party has no way to know the names of all such persons, but
6 they include Ronald D. Kennedy.

7 9. **San Joaquin Hills Transportation Corridor Newport Coast Drive**
8 **Analysis** September 1994 prepared by Austin-Foust Associates, Inc.
9 **California Coastal Commission Staff Report and Recommendation on**
10 **Consistency Certification** file date April 2, 1993.

11 10. Responding party hereby responds pursuant to the provisions of
12 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
13 derived or ascertained from the following documents, all of which are public records
14 and are therefore equally accessible, or more easily accessible, to defendant County of
15 Orange than to responding party:

16 **"Resolution No. 88-538** to authorize execution of Irvine Coast - 1 - Planned
17 Community Development Agreement No. 87-16" April 20, 1988.

18 **"Resolution No. 88-537** Certify EIR No. 486" April 20, 1988. Development
19 Agreement.

20 **County Record #88-272903**, June 9, 1988, "Irvine Coast Development Agreement
21 County of Orange".

22 **Resolution of the Orange County Planning Commission**, No. 88-46, May 4, 1988,
23 Master Coastal Development Permit 88-11.P (Irvine Coast Planned
24 Community).

25 Page 2. "Now therefore, be it resolved ---- ---Local Coastal Program.

26 The project proposed by the application conforms with the Certified
27 Irvine Coast Local Coastal Program in a manner set forth in Master CDP
28 11-88P and Attachment C. of EMA report dated May 4, 1988 on the

1 project.

2 APPROVED ---Subject to the following conditions:

3 GENERAL REQUIREMENTS----

4 Page 3 "Failure to abide by and comply faithfully with any and all
5 conditions attached to the granting of Master Coastal Development Permit
6 88-11P shall constitute grounds for revocation of said Permit."

7 TRANSPORTATION IMPROVEMENTS ----

8 Page 4 Annual Monitoring Report: "The AMR shall be implemented in
9 such a manner as to reflect the provisions of the 1988 Irvine Coast LCP
10 Transportation/Circulation policies Subsection 1-4-E-22.

11 Page 12 Environmental Impact Mitigation: "All mitigation measures of
12 certified final EIR 485 are incorporated as conditions of Master CDP 88-
13 11-P approval.

14 **Resolution No. 88-537. Certify EIR No. 486, April 20, 1988.**

15 Page 1: "WHEREAS, in December, 1987, an application (File No. DA
16 87-16) was submitted requesting a development agreement between the
17 County and The Irvine Company to allow build-out of the Irvine Coast
18 Planned Community under current regulations and in consideration of
19 substantial public benefits and whereas, draft Environmental Impact
20 Report (EIR) 486 has been prepared to address the effects, mitigation
21 measures, and project alternatives associated with the proposed Irvine
22 Coast Development Agreement."

23 Page 7: "Significant effects, mitigation measures and findings.
24 Transportation/Circulation."

25 **Page 16: Cumulative Impacts. Effects/Findings.**

26 "The cumulative analysis indicates that the proposed Irvine Coast
27 Development, and Pelican Hill Road, would provide a net benefit to the
28 build-out (year 2020) traffic flow and circulation conditions."

1 Page 17: Facts in support of findings: "The Irvine Coast Development
2 Agreement provides a legal assurance that arterial roads will be phased
3 with development to insure that excess capacity is created to redistribute
4 traffic off already congested roads. Therefore, the decision has been made
5 to meet arterial road capacity needs in conjunction with General Plan
6 projections for the area."

7 Page 20: "The implementation of LCP circulation requirements for the
8 construction of Pelican Hill Road and a fifth lane on PCH, in conjunction
9 with project participation in the "Gap" Fee Program which will fund a
10 sixth lane on PCH, will mitigate all project impacts on PCH within the
11 plan area and within Corona del Mar."

12 Page 26: "Project Benefits. The Board of Supervisors finds that the
13 following benefits will result from the proposed project: The benefits of
14 the 1988 LCP which are further assured by the development agreement
15 include:----

16 4) Early construction of four lanes of Pelican Hill Road (PHR) from
17 Pacific Coast Highway (PCH) to MacArthur Boulevard. (Two lanes are
18 creditable toward the public benefits proposed in consideration of the
19 Development Agreement for the segment from project boundary to
20 MacArthur)."

21 **"Resolution No. 88-537 certify EIR No. 486".**

22 Page 7: significant effects, Mitigation Measures and findings.

23 Page 24-27. Feasibility of Mitigation Measures and project
24 environmental effects in relation to overall project benefits.

25 **Supplemental Transmittal, April 20, 1988, Agenda Item No. 14. To Honorable**
26 **Board of Supervisors. Subject: Irvine Coast Development Agreement**
27 **(DA 87-16).**

28 Page 2: Public benefits required in LCP -- improvements to master

1 planned arterial roadways. -- Beyond the requirements of the LCP.

2 Page 4: "Summary of Public Benefits.

3 PHR from PCH to MacArthur -- "Two lanes from SJHR to MacArthur
4 are creditable toward public benefits proposed in consideration of the
5 development agreement.

6 **California Coastal Commission.** Staff Report and recommendation. Applicant: The
7 Irvine Company. Filed 10-19-87. Staff Report 11,24, 87.

8 Page 7: Purpose and Regional context -- Four lanes over two will relieve
9 congestion on section of PCH in Corona del Mar and sections of
10 MacArthur by providing bypass route around Corona del Mar.

11 Project description: 6.1 miles from MacArthur out of coastal zone to
12 Pacific Coast Highway.

13 **"Resolution No. 87-1327 Irvine Coast Local Coastal Program - First Amendment and**
14 **Zone Change 83-24P"** September 30, 1987.

15 Page 30: "CEQA mitigation measures - responses to Coastal Act
16 Policy."

17 Page 31: "Arterial road phasing program specifying all arterial phasing
18 criteria in the LCP itself: Transportation systems management policies
19 added, construction access road required from inland area."

20 Page 39: Transportation Mitigation Measures -- "Traffic studies prepared
21 in conjunction with the Irvine Coast LCP and Pelican Hill EIR 460
22 demonstrate that approximately twice as much traffic will be diverted
23 from Pacific Coast Highway onto Pelican Hill Road as will be added to
24 Pacific Coast Highway from 1987 LCP Development uses." --

25 "Pelican Hill Road provides three regional functions:

- 26 1. The diversion of traffic off Pacific Coast Highway, flowing
27 from south county residential areas to inland employment centers,
28 2. The provision of an alternative access to the University of

1 California - Irvine, and

2 3. The provision of a direct coastal access route for recreational
3 purposes inland from residential areas to Crystal Cove State Park and to
4 new county coastal park."

5 **"Resolution No. 87-1260 Pelican Hill Road Prop. Route Alignment and Environmental**
6 **Impact Report 460"** September 15, 1987.

7 Exhibit A - Mandatory findings for Pelican Hill Road A - to K

8 "#5. Land Use/Relevant Planning - although the Proposed Roadway
9 contributes to the cumulative development of the coastal area, the LUP of
10 the LCP and Circulation Master Plans of the LCP and Circulation Master
11 Plans of the City of Irvine and Orange County have considered the
12 roadway an integral part, and mitigation for, both existing and approved
13 development."

14 **"Resolution No. 81-1540 Irvine Coast Local Coastal Program"** October 21, 1981

15 Page 1, line 20: All mitigation measures contained in draft EIR 237.

16 Page 3, line 7: Street improvements in the Irvine Coast area for Pelican
17 Hill Road as a major arterial highway.

18 line 26: --will offer to dedicate the ultimate right-of-way for the San
19 Joaquin Hills Transportation corridor between Sand Canyon Avenue and
20 MacArthur Boulevard for development within the Irvine Coast area.

21 Page 4, line 2: Prior to recordation -- the Irvine Company -- shall
22 establish a road alignment to connect Pelican Hill Road within the coastal
23 area to the vicinity of Bonita Canyon Road and MacArthur Boulevard.

24 **"Resolution No. 80-2085 - Local coastal program LCP 80-4, Irvine Coast Planning**
25 **Unit, land use and circulation element amendment LCP 80-4, 12-17-80.**

26 Page 1, Line 20 If any conflicts between -- General Plan, the local
27 Coastal Program shall take precedence.

28 Page 1, Line 20: All mitigation measures -- are appropriate mitigation

1 measures for the proposed general plan amendments and local coastal
2 program (LCP).

3 Page 5, Line 26: --Shall provide for the construction of ultimate street
4 improvements in the Irvine coast area for Pelican Hill Road as a major
5 arterial highway and --

6 Page 6, Line 12: The developer shall establish a program for providing
7 an adequate inland circulation system.

8 11. Since the response to this interrogatory is based on public records
9 that are available for the review of any member of the public interested in reviewing
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11 public records. Responding party has no way to know the names of all such persons,
12 but they include Ronald D. Kennedy.

13 12. **"Resolution No. 88-538** to authorize execution of Irvine Coast - 1 -
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18 County of Orange".
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20 Master Coastal Development Permit 88-11.P (Irvine Coast Planned
21 Community).

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23 The project proposed by the application conforms with the Certified
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26 project.

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28 GENERAL REQUIREMENTS---

1 Page 3 "Failure to abide by and comply faithfully with any and all
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5 Page 4 Annual Monitoring Report: "The AMR shall be implemented in
6 such a manner as to reflect the provisions of the 1988 Irvine Coast LCP
7 Transportation/Circulation policies Subsection 1-4-E-22.

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15 Planned Community under current regulations and in consideration of
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25 build-out (year 2020) traffic flow and circulation conditions."

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27 Agreement provides a legal assurance that arterial roads will be phased
28 with development to insure that excess capacity is created to redistribute

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8 plan area and within Corona del Mar."

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10 following benefits will result from the proposed project: The benefits of
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14 Pacific Coast Highway (PCH) to MacArthur Boulevard. (Two lanes are
15 creditable toward the public benefits proposed in consideration of the
16 Development Agreement for the segment from project boundary to
17 MacArthur)."

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2 development agreement.

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7 MacArthur by providing bypass route around Corona del Mar.

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9 Pacific Coast Highway.

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19 demonstrate that approximately twice as much traffic will be diverted
20 from Pacific Coast Highway onto Pelican Hill Road as will be added to
21 Pacific Coast Highway from 1987 LCP Development uses." --

22 "Pelican Hill Road provides three regional functions:

23 1. The diversion of traffic off Pacific Coast Highway, flowing
24 from south county residential areas to inland employment centers,

25 2. The provision of an alternative access to the University of
26 California - Irvine, and

27 3. The provision of a direct coastal access route for recreational
28 purposes inland from residential areas to Crystal Cove State Park and to

1 new county coastal park."

2 **"Resolution No. 87-1260 Pelican Hill Road Prop. Route Alignment and Environmental**
3 **Impact Report 460"** September 15, 1987.
4 Exhibit A - Mandatory findings for Pelican Hill Road A - to K
5 "#5. Land Use/Relevant Planning - although the Proposed Roadway
6 contributes to the cumulative development of the coastal area, the LUP of
7 the LCP and Circulation Master Plans of the LCP and Circulation Master
8 Plans of the City of Irvine and Orange County have considered the
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16 Joaquin Hills Transportation corridor between Sand Canyon Avenue and
17 MacArthur Boulevard for development within the Irvine Coast area.
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19 establish a road alignment to connect Pelican Hill Road within the coastal
20 area to the vicinity of Bonita Canyon Road and MacArthur Boulevard.
21 **"Resolution No. 80-2085 - Local coastal program LCP 80-4, Irvine Coast Planning**
22 **Unit, land use and circulation element amendment LCP 80-4, 12-17-80.**
23 Page 1, Line 20 If any conflicts between -- General Plan, the local
24 Coastal Program shall take precedence.
25 Page 1, Line 20: All mitigation measures -- are appropriate mitigation
26 measures for the proposed general plan amendments and local coastal
27 program (LCP).
28 Page 5, Line 26: --Shall provide for the construction of ultimate street

1 improvements in the Irvine coast area for Pelican Hill Road as a major
2 arterial highway and --

3 Page 6, Line 12: The developer shall establish a program for providing
4 an adequate inland circulation system.

5 13. Responding party hereby responds pursuant to the provisions of
6 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
7 derived or ascertained from the following documents, all of which are public records
8 and are therefore equally accessible, or more easily accessible, to defendant County of
9 Orange than to responding party:

10 Each amendment of the Orange County General Plan since 1964.

11 14. Since the response to this interrogatory is based on public records
12 that are available for the review of any member of the public interested in reviewing
13 such records, such facts are known to any person who has looked at the pertinent
14 public records. Responding party has no way to know the names of all such persons,
15 but they include Ronald D. Kennedy.

16 15. Each amendment of the Orange County General Plan since 1964.

17 16. Responding party hereby responds pursuant to the provisions of
18 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
19 derived or ascertained from the following documents, all of which are public records
20 and are therefore equally accessible, or more easily accessible, to defendant County of
21 Orange than to responding party:

22 **Resolution 76-1105** adopted July 21, 1976.

23 **Southeast Orange County Circulation Study.**

24 **County of Orange General Plan Amendment Circulation Element Amendment**
25 **76-2.**

26 **Environmental Impact Report 267 and Study Report San Joaquin Hills**

27 Transportation Corridor Route Location Study (final EIR certified
28 complete November 28, 1979).

1 17. Since the response to this interrogatory is based on public records
2 that are available for the review of any member of the public interested in reviewing
3 such records, such facts are known to any person who has looked at the pertinent
4 public records. Responding party has no way to know the names of all such persons.

5 18. **Resolution 76-1105** adopted July 21, 1976.

6 **Southeast Orange County Circulation Study.**

7 **County of Orange General Plan Amendment Circulation Element Amendment**
8 **76-2.**

9 **Environmental Impact Report 267 and Study Report San Joaquin Hills**

10 Transportation Corridor Route Location Study (final EIR certified
11 complete November 28, 1979).

12 19. Responding party hereby responds pursuant to the provisions of
13 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
14 derived or ascertained from the following documents, all of which are public records
15 and are therefore equally accessible, or more easily accessible, to defendant County of
16 Orange than to responding party:

17 **"Resolution No. 84-1462A** (October 3, 1984) major thoroughfare and bridge fee
18 program board direction."

19 **"Resolution 84-1462** major thoroughfare/bridge fee program/San Joaquin Hills
20 Transportation corridor/Foothill/Eastern Transportation Corridor."

21 Page 1, Line 16 WHEREAS, the Board of Supervisors added the San
22 Joaquin Hills Transportation Corridor to the Transportation Element of
23 the Orange County General Plan in 1976 in response to the transportation
24 demands identified in said studies; and ----

25 Page 2, Line 1 WHEREAS, the Orange County Board of Supervisors
26 conducted transportation studies as supplemental material to
27 Environmental Impact Report No. 267 which analyzed system wide
28 impacts for the route location of the San Joaquin Hills Transportation

1 Corridor; and ----

2 Page 2, Line 13 WHEREAS, future State and Federal revenue are
3 projected to be inadequate to construct said transportation corridors; and -
4 ---

5 Page 2, Line 22 WHEREAS, Section 7-9-316 of the Codified
6 Ordinances of Orange County provides for the establishment of major
7 thoroughfare and bridge construction fees to be paid by subdividers and
8 building permit applicants in the County of Orange, and ----

9 Page 2, Line 27 WHEREAS, the Director, Environmental Management
10 Agency did prepare

11 Page 3, Line 1 and submit to the Planning Commission, proposed fee
12 programs pursuant to Section 66484.3 of the California Government Code
13 and Section 7-9-316 of the Orange County Codified Ordinances for the
14 San Joaquin Hills and Foothill/Eastern Transportation Corridors; and
15 Page 4, Line 5: BE IT FURTHER RESOLVED that collection of the fee
16 shall be a condition of issuance of a building permit as described in
17 Program.

18 Page 4, Line 13 BE IT FURTHER RESOLVED that Director,
19 Environmental Management Agency, shall establish equitable credit in
20 lieu of fee payment for Transportation Corridor grading and
21 improvements constructed or right-of-way dedicated by developers as
22 provided in Program.

23 EXHIBIT A

24 MAJOR THOROUGHFARE AND BRIDGE FEE PROGRAM

25 FOR

26 SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR

27 Executive Summary

28 Pg 1 Para 1, line 8: "---- Development fees represent a potential

1 supplemental funding source and as such have been under consideration
2 by the Board of Supervisors for some time.

3 Para 2, Line 1 "The development fee program prepared for Board of
4 Supervisors consideration is based upon Government Code Section
5 66484.-----"

6 Para 2, line 11 "No assessment of existing developed property is
7 proposed."

8 **Pg 2** Para 2, line 9 "-----A commercial retail project results in a total fee
9 of \$3.75 and \$3.95 per square foot for the SJHTC and F/ETC,
10 respectively. Fees are proposed to be collected upon issuance of a
11 building permit."

12 **Pg 3** Para 6, line 2 "..... condition annexations and require cities to
13 certify that landowners have entered into agreement to participate in
14 Major Thoroughfare and Bridge Fee programs prior to finalization of any
15 annexation within the Areas of Benefit."

16 CORRIDOR PLANNING

17 **Pg 5** Para 3, line 1 "It is proposed that both corridors eventually be
18 added to the State Highway System. State legislation (AB 86) has now
19 been signed into law which redescribes State Route 73 (Corona Del Mar
20 Freeway) to include the San Joaquin Hills Transportation Corridor.

21 OVERALL FINANCING

22 **Pg 7** Para 1, line 1: "The means to fully fund the transportation
23 corridors have not been determined. However, the Board of Supervisors
24 has established a transportation corridor development policy (Exhibit V-1)
25 which defines the corridor implementation obligations of land
26 development projects, and as noted in Section I of this report has
27 indicated its general intent to require all new development to bear a
28 portion of the cost of the corridors by payment of development fees

1 (Major Thoroughfare Fee)."

2 Para 2, line 1: "Funds from other sources (e.g., existing state and
3 federal taxes on motor vehicle fuel) will be sought for the portion of the
4 cost not funded by development fees. These other funds would be
5 allocated through processes involving the California Transportation
6 Commission and the Orange County Transportation Commission (OCTC).

7 **"Resolution No. 82-598** Transportation corridors development policy."

8 **"Ordinance No. 3534** - An ordinance of the County of Orange, California, amending
9 section 7-9-316 of the codified ordinances of the County of Orange
10 relating to major thoroughfares and bridge fees," September 10, 1985.

11 **"Resolution No. 85-1477** Major thoroughfare and bridge fee program," October 15,
12 1985.

13 EXHIBIT 11

14 **"Resolution No. 82-598** Transportation Corridors development policy."

15 **"Resolution No. 87-1396** Public hearing - major thoroughfare and bridge fee program
16 for foothill circulation phasing plan and regulatory declaration 1P87-068,"
17 October 14, 1987.

18 EXHIBIT 1, Page 1 "The proposed fees will be levied on new
19 development only, prior to issuance of any building permits."

20 Page 3, Para 3. "This major thoroughfare and bridge fee program for the
21 FCPP will require all new development to pay their fair share of road
22 construction."

23 Page 5, Para 3. "The proposed fees will be levied on new development
24 only. Existing homes will not pay fees."

25 **"County Record No. 88-417100, August 22, 1988" - Irrevocable Offer of**
26 **Dedication.**

27 Page 2: Calls out bridge fee program to build on easement as Resolution
28 85-1477.

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Page 4: "On upon the ability of agency or its successor or designee to collect roadway tolls."

20. Since the response to this interrogatory is based on public records that are available for the review of any member of the public interested in reviewing such records, such facts are known to any person who has looked at the pertinent public records. Responding party has no way to know the names of all such persons, but they include Ronald D. Kennedy.

21. "Resolution No. 84-1462A (October 3, 1984) major thoroughfare and bridge fee program board direction."

"Resolution 84-1462 major thoroughfare/bridge fee program/San Joaquin Hills Transportation corridor/Foothill/Eastern Transportation Corridor."

Page 1, Line 16 WHEREAS, the Board of Supervisors added the San Joaquin Hills Transportation Corridor to the Transportation Element of the Orange County General Plan in 1976 in response to the transportation demands identified in said studies; and ----

Page 2, Line 1 WHEREAS, the Orange County Board of Supervisors conducted transportation studies as supplemental material to Environmental Impact Report No. 267 which analyzed system wide impacts for the route location of the San Joaquin Hills Transportation Corridor; and ----

Page 2, Line 13 WHEREAS, future State and Federal revenue are projected to be inadequate to construct said transportation corridors; and -

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1 Agency did prepare
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1 Page 3: "A hierarchy of roadways will serve the Irvine coast, including
2 regional freeway and highway networks, -- Pelican hill Road is
3 designated as a major arterial (six lanes) on the County of Orange Master
4 Plan of Arterial highways,--"

5 26. Since the response to this interrogatory is based on public records
6 that are available for the review of any member of the public interested in reviewing
7 such records, such facts are known to any person who has looked at the pertinent
8 public records. Responding party has no way to know the names of all such persons,
9 but they include Ronald D. Kennedy.

10 27. Irvine Coast Local Coastal Program First Amendment approved
11 September 30, 1987.

12 "Resolution No. 87-1260 Pelican Hill Road Property Route Alignment and
13 Environment Impact Report 460.

14 EXHIBIT A: MANDATORY FINDINGS FOR PELICAN HILL ROAD

15 "A. Provide early construction of four lanes of Pelican Hill Road in
16 advance of adjacent LCP land use needs as contrasted with --"

17 "Resolution No. 87-1327 Irvine Coast local coastal program - First amendment and
18 zone change 83-24P, September 30, 1987.

19 EXHIBIT A - IRVINE COAST LOCAL COASTAL PLAN FINDINGS
20 OF APPROVAL AND SUPPORTING DOCUMENTATION.

21 Page 3: "A hierarchy of roadways will serve the Irvine coast, including
22 regional freeway and highway networks, -- Pelican hill Road is
23 designated as a major arterial (six lanes) on the County of Orange Master
24 Plan of Arterial highways,--"

25 28. Responding party hereby responds pursuant to the provisions of
26 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
27 derived or ascertained from the following documents, all of which are public records
28 and are therefore equally accessible, or more easily accessible, to defendant County of

1 Orange than to responding party:

2 **Department of Transportation document, February 2, 1988.**

3 Page 1: "As you know, the locally adopted alignment for SJHTC has not
4 yet been approved by FHWA. Thus, no final alignment for SJHTC has
5 yet been determined" -- "Project Consultant Team--"

6 Page under W. B. Ballantine, Chief Environmental Planning Branch
7 shows Attachment.

8 Page 1 of attachment - Austin Foust, Inc., Page 111-10 (MAP) Figure
9 111-6 "Orange County Master Plan of Arterial Highways"

10 MAP LEGEND SHOWS SJHTC AS A STATE FREEWAYS

11 "PROPOSED"

12 CAL TRANS FREEWAY

13
14 "Orange County Transportation Commission, December 27, 1979.

15 Subject: Multimodal Transportation Study (MMTS) Draft Final Report."

16 "Develop a Freeway or Expressway along the San Joaquin Hills Corridor
17 between Irvine and Laguna Niguel."

18 **Resolution No. 85-1477, Major thoroughfare and Bridge Fee Program, October 15,**
19 **1985.**

20 EXHIBIT: A, July 1985

21 Page 7: "In order to qualify for State and Federal funding, the corridor
22 routes must be incorporated into the State Highway System and placed in
23 one of the Federal Aid System State Route 73 (Corona del Mar Freeway)
24 has been legislatively redescribed to correspond with the route of San
25 Joaquin Hills Transportation Corridor."

26 29. Since the response to this interrogatory is based on public records
27 that are available for the review of any member of the public interested in reviewing
28 such records, such facts are known to any person who has looked at the pertinent

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1 Supervisors. Subject: EIR 267 and Study Report - Phase 1 San Joaquin
2 Hills Transportation corridor route location study."

3 "Project Location: San Joaquin Hills between Corona del Mar freeway
4 (State Route 73) near Newport Beach and the San Diego Freeway
5 (Interstate Route 5) near San Juan Capistrano."

6 INDEX MAP - Corridor Route segments San Joaquin Hills
7 Transportation Corridor Route location study and EIR."

8 "Recommend to Board of Supervisors by planning
9 commission on October 29, 1979 -- SEGMENT 5, West
10 Sector.

11 **"Resolution No. 80-2085**, Local coastal program LCP 80-4, Irvine Coast planning
12 unit, Land use and circulation element amendment, LCP 80-4. December
13 17, 1980.

14 Page 1: "Whereas, if any conflicts arise between the local coastal
15 program and the existing general plan, the local coastal program shall
16 take precedence."

17 Page 2: "1. All mitigation measures contained in draft EIR 237 with
18 attendant staff report. -- And the California Coastal Act of 1976 as
19 deemed reasonable by this Board are appropriate mitigation measures of
20 the proposed general plan amendments and local coastal program (LCP)."

21 Page 6: "12. Prior to recordation of the first tract inland of Pacific Coast
22 Highway, the developer shall establish a program for providing an
23 adequate inland circulation system, which system shall include at least
24 one new road connecting to acceptable inland highways to serve the plan
25 area other than Pacific Coast Highway and San Joaquin Hills Road. Such
26 circulation system program shall meet the approval of the Director, EMA
27 and shall include a phasing program for the developer construction of
28 such new inland access road."

1 **"Resolution No. 81-1540, Irvine Coast Local Coastal Program, October 21, 1981**

2 Page 3, Line 26: "11. Concurrent with the recordation of the first
3 subdivision map in the Irvine Coast area, the Irvine company, its
4 successors or assigns, will offer to dedicate the ultimate right-of-way for
5 the San Joaquin Hills Transportation Corridor between San Canyon
6 ✓ Avenue and MacArthur Boulevard for development within the Irvine
7 Coast area."

8 Page 4, line 2: "12. Prior to the recordation of the first subdivision map
9 inland of Pacific Coast Highway, the Irvine Company, its successors or
10 assigns shall establish a road alignment to connect Pelican Hill Road
11 within the coastal area to the vicinity of Bonita Canyon Road and
12 MacArthur Boulevard."

13 **May 19, 1987 Environmental Management Agency Report**

14 Subject: First amendment to the Irvine Coast Local Coastal Program and
15 Zone Change 83-24P (District 5).

16 Page 1. "The Irvine Coast local coastal program (LCP) consists of a land
17 use plan (LUP) and an implementing action program (IAP). The LUP
18 was approved by the Board of Supervisors in 1981 and fully certified by
19 the California Coastal Commission in 1982."

20 Page 3. Transportation/circulation: "The approved and proposed
21 development plans include the construction of two arterials, six-lane
22 Pelican Hill Road and two-lane San Canyon Avenue. The T/C-Proposed
23 Pelican Hill road improvements involve the initial construction of four
24 lanes from PCH to MacArthur Boulevard, a portion of which is outside
25 the coastal zone. NOTE: TIC is The Irvine Company."

26 **May 19, 1987. Draft EIR for Pelican Hill Road, Irvine Coast.**

27 Project Sponsor: The Irvine Company

28 "2.1 Project description: the project is construction of a new highway,

1 Pelican Hill Road, extending from the current intersection of MacArthur
2 Boulevard and Bonita Canyon Drive (sometimes referred to as Bonita
3 Canyon Road) to Pacific Coast Highway Southeast of Corona del Mar--.

4 -The proposed project consists of grading for the ultimate roadway width
5 to accommodate six lanes where not overlapping with the SJHTC
6 alignment. The total length of the project from MacArthur Boulevard to
7 Pacific Coast Highway is 6.1 miles. ----

8 - The proposed project alignment is shown on Figure 2."

9 "2 Proposed alignment."

10 June 1987 - Public Notice of Availability of Draft Environmental Impact
11 Report.

12 "Project Description: Pelican Hill Road is a key component of the
13 County of Orange Master Plan of arterial highways, and will provide an
14 alternative route between inland and coastal areas."

15 **California Coastal Commission Staff Report and Recommendation on Consistency**
16 **Certification** file date April 2, 1993.

17 50. Since the response to this interrogatory is based on public records
18 that are available for the review of any member of the public interested in reviewing
19 such records, such facts are known to any person who has looked at the pertinent
20 public records. Responding party has no way to know the names of all such persons,
21 but they include Ronald D. Kennedy.

22 51. **Resolution No. 87-1260**, Pelican Hill Road Proposed Route
23 Alignment and Environment Improvement, Report 460, September 15,
24 1987.

25 Exhibit 3, Page 2 "The segment"

26 1. The Alternative was found to be a long-term concept and not
27 necessary at this time because the San Joaquin Hill Transportation
28 Corridor is a proposed project. In addition, this alternative would not

1 reduce or eliminate any unavoidable adverse environmental effects."
2 The Irvine Coast Proposed Land Use Plan amendment - Executive Summary, March
3 1987.
4 Page Front Index: "This document has been prepared by The Irvine
5 Company as a summary of the proposed land use plan and is based on
6 Orange County's Coastal program submittal for the Irvine Coast."
7 Page 21: Circulation improvements and recreational access.
8 "The approved plan for the Irvine coast identifies two roads within the
9 planning area, Pelican Hill Road and Sand Canyon Avenue. These roads
10 will connect inland areas to Pacific Coast Highway, thus providing
11 improved access to the coast and particularly to the state park."
12 "Pelican Hill road will connect the state park entry at Pelican Point to the
13 coastal hills and join with MacArthur Boulevard south of the University
14 of California Campus at Irvine. EXHIBIT 13, an aerial photo showing
15 the approximate alignment of this road depicts how Pelican Hill Road
16 links inland areas to the coast.
17 Page 22: EXHIBIT 13.
18 **November 28, 1979:** "Public hearing to be held by Orange County Board of
19 Supervisors. Subject: EIR 267 and Study Report - Phase 1 San Joaquin
20 Hills Transportation Corridor Route Location Study."
21 "Project Location: San Joaquin Hills between Corona del Mar Freeway
22 (State Route 73) near Newport Beach and the San Diego Freeway
23 (Interstate Route 5) near San Juan Capistrano."
24 INDEX MAP - Corridor Route Segments San Joaquin Hills
25 Transportation Corridor Route Location Study and EIR."
26 "Recommend to Board of Supervisors by planning
27 commission on October 29, 1979 -- SEGMENT 5, West
28 Sector.

1 **"Resolution No. 80-2085, Local Coastal Program LCP 80-4, Irvine Coast planning**
2 unit, Land use and circulation element amendment, LCP 80-4. December
3 17, 1980.

4 Page 1: "Whereas, if any conflicts arise between the local coastal
5 program and the existing general plan, the local coastal program shall
6 take precedence."

7 Page 2: "1. All mitigation measures contained in draft EIR 237 with
8 attendant staff report. -- And the California Coastal Act of 1976 as
9 deemed reasonable by this Board are appropriate mitigation measures of
10 the proposed general plan amendments and local coastal program (LCP)."

11 Page 6: "12. Prior to recordation of the first tract inland of Pacific Coast
12 Highway, the developer shall establish a program for providing an
13 adequate inland circulation system, which system shall include at least
14 one new road connecting to acceptable inland highways to serve the plan
15 area other than Pacific Coast Highway and San Joaquin Hills Road. Such
16 circulation system program shall meet the approval of the Director, EMA
17 and shall include a phasing program for the developer construction of
18 such new inland access road."

19 **"Resolution No. 81-1540, Irvine Coast Local Coastal Program, October 21, 1981**

20 Page 3, Line 26: "11. Concurrent with the recordation of the first
21 subdivision map in the Irvine Coast area, the Irvine company, its
22 successors or assigns, will offer to dedicate the ultimate right-of-way for
23 the San Joaquin Hills Transportation Corridor between San Canyon
24 Avenue and MacArthur Boulevard for development within the Irvine
25 Coast area."

26 Page 4, line 2: "12. Prior to the recordation of the first subdivision map
27 inland of Pacific Coast Highway, the Irvine Company, its successors or
28 assigns shall establish a road alignment to connect Pelican Hill Road

1 within the coastal area to the vicinity of Bonita Canyon Road and
2 MacArthur Boulevard."

3 **May 19, 1987 Environmental Management Agency Report**

4 Subject: First amendment to the Irvine Coast Local Coastal Program and
5 Zone Change 83-24P (District 5).

6 Page 1. "The Irvine Coast local coastal program (LCP) consists of a land
7 use plan (LUP) and an implementing action program (IAP). The LUP
8 was approved by the Board of Supervisors in 1981 and fully certified by
9 the California Coastal Commission in 1982."

10 Page 3. Transportation/circulation: "The approved and proposed
11 development plans include the construction of two arterials, six-lane
12 Pelican Hill Road and two-lane San Canyon Avenue. The T/C-Proposed
13 Pelican Hill road improvements involve the initial construction of four
14 lanes from PCH to MacArthur Boulevard, a portion of which is outside
15 the coastal zone. NOTE: TIC is The Irvine Company."

16 **May 19, 1987. Draft EIR for Pelican Hill Road, Irvine Coast.**

17 Project Sponsor: The Irvine Company

18 "2.1 Project description: the project is construction of a new highway,
19 Pelican Hill Road, extending from the current intersection of MacArthur
20 Boulevard and Bonita Canyon Drive (sometimes referred to as Bonita
21 Canyon Road) to Pacific Coast Highway Southeast of Corona del Mar--.
22 -The proposed project consists of grading for the ultimate roadway width
23 to accommodate six lanes where not overlapping with the SJHTC
24 alignment. The total length of the project from MacArthur Boulevard to
25 Pacific Coast Highway is 6.1 miles. ----

26 - The proposed project alignment is shown on Figure 2."

27 "2 Proposed alignment."

28 June 1987 - Public Notice of Availability of Draft Environmental Impact

1 Report.

2 "Project Description: Pelican Hill Road is a key component of the
3 County of Orange Master Plan of arterial highways, and will provide an
4 alternative route between inland and coastal areas."

5 **California Coastal Commission Staff Report and Recommendation on Consistency**
6 **Certification** file date April 2, 1993.

7 52. Responding party hereby responds pursuant to the provisions of
8 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
9 derived or ascertained from the following documents, all of which are public records
10 and are therefore equally accessible, or more easily accessible, to defendant County of
11 Orange than to responding party:

12 **"Resolution 80-2085.** Local Coastal Program LCP 80-4, Irvine Coast Planning unit,
13 land use and circulation element amendment, LCP 80-4, September 17,
14 1980.

15 Page 1, Line 16: "Whereas, the local coastal program as presented
16 herewith for the Irvine Coast Planning Unit recommends changes to the
17 Land Use and Circulation Element of the General Plan."

18 Line 20: "Whereas, if any conflicts arise between the Local Coastal
19 Program and the existing General Plan, the local coastal program shall
20 take precedence."

21 Page 2, Line 1. "All mitigation measures contained in draft EIR 237 --
22 are appropriate mitigation measures for the proposed General Plan
23 Amendments and Local Coastal Program (LCP)."

24 Line 16: "Be it further resolved that this Board does hereby certify as
25 complete and final environmental impact report 237 for the Local Coastal
26 Program and circulation and land use element amendment (LCP 80-4) for
27 the Irvine Coast Planning Unit."

28 Page 6, Line 11: "Prior to recordation of the first tract inland of Pacific

1 Coast Highway, the developer shall establish a program for providing an
2 adequate inland circulation system shall include at least one new road
3 connecting to acceptable inland highways to serve the plan area other than
4 Pacific Coast Highway and San Joaquin Hills Road. Such circulation
5 system program shall meet the approval of the Director, EMA and shall
6 include a phasing program for the developer construction of such new
7 inland access road."

8 **"Resolution No. 81-1540** Irvine Coast Local Coastal Program, October 21, 1981."

9 Page 1, line 20: "All mitigation measures contained in Draft EIR 237
10 with attendant staff report. All Goals, policies, and development
11 guidelines contained in the Land Use Element and scenic highway
12 element of the Orange County General Plan. The Orange County Zoning
13 Code, and the California Coastal Act of 1976 as deemed reasonable and
14 feasible, are appropriate mitigation measures for the proposed general
15 plan amendments and local coastal program (LCP)."

16 Page 3, line 6: "The Irvine Company, or its successors or assigns, shall
17 prepare a phasing program which shall provide for the construction of
18 ultimate street improvements in the Irvine Coast area for Pelican Hill
19 Road as a major arterial highway."

20 Line 26: "11, concurrent with the recordation of the first subdivision
21 map in the Irvine Coast Area, the Irvine Company, its successors or
22 assigns, will offer to dedicate the ultimate right-of-way for the San
23 Joaquin Hills Transportation Corridor between San Canyon Avenue and
24 MacArthur Boulevard for development within the Irvine Coast."

25 Page 4, Line 2: "12. Prior to the recordation of the first subdivision map
26 inland of Pacific Coast Highway, the Irvine Company, its successors or
27 assigns, shall establish a road alignment to connect Pelican Hill Road
28 with the coastal area to the vicinity of Bonita Canyon Road and

1 MacArthur Boulevard."

2 **"Resolution No. 84-1462:** Major Thoroughfare/Bridge Fee Program/San Joaquin Hills
3 Transportation Corridor/Foothill/Eastern Transportation Corridor,
4 October 3, 1984.

5 Page 1, line 16: "Whereas, the Board of Supervisors add the San
6 Joaquin Hills Transportation Corridor to the Transportation Element of
7 the Orange County General Plan in 1976 in response to the
8 Transportation demands identified in said studies."

9 Page 2, line 22: "Whereas, Section 7-9-316 of the codified ordinances of
10 Orange County provides for the establishment of major thoroughfare and
11 bridge construction fees to be paid by subdivider and building permit
12 applicants in the County of Orange."

13 **"Resolution No. 85-1477 - Major thoroughfare and bridge fee program,"** October 15,
14 1985.

15 EXHIBIT A, July 1985

16 Page 7: Overall financing. "Funds from other more traditional sources
17 (E.G., existing state and federal taxes on motor vehicle fuel) will be
18 sought for the portion of the cost not funded by development fees."

19 Page 15: "It is proposed that fees be paid by future development within
20 the defined areas of benefit derived. --The share of corridor cost
21 attributable to benefits derived by existing development is proposed to be
22 funded from other sources."

23 Page 7: "In order to qualify for State and Federal funding, the corridor
24 routes must be incorporated into the State Highway System and placed in
25 one of the Federal Aid System State Route 73 (Corona del Mar Freeway)
26 has been legislatively redescribed to correspond with the route of San
27 Joaquin Hills Transportation Corridor."

28 Page 24: Annual Fee Adjustment. "It is intended that the fee program

1 be submitted annually to the Board of Supervisors and City Councils for
2 fees to be automatically adjusted based upon an approved construction
3 cost index."

4 **Environmental Management Agency Report, Date: May 19, 1987; to: Orange**
5 **County Planning Commission. Subject: First amendment to the Irvine**
6 **Coast Local Coastal program and Zone change 83-24P (District 5)**

7 Page 1: "Background ----

8 The Irvine Coast local coastal program (LCP) consists of a land use plan
9 (LUP) and an implementing action program (IAP). The LUP was
10 approved by the Board of Supervisors in 1981 and fully certified by the
11 California Coastal Commission in 1982."

12 Page 3: "The approved and proposed development plans include the
13 construction of two arterials, six-lane Pelican Hill Road and two-lane
14 Sand Canyon Avenue. The TIC-proposed Pelican Hill Road
15 improvements involve the initial construction of four lanes from PCH to
16 MacArthur Boulevard, a portion of which is outside the Coastal Zone."

17 **Pelican Hill Road Draft E.I.R.: Draft accepted May 19, 1987**

18 Page 1: "2.1 Project Description. The project is construction of a new
19 highway, Pelican Hill Road, extending from the current intersection of
20 MacArthur Boulevard and Bonita Canyon Drive (sometimes referred to as
21 Bonita Canyon Road) to Pacific Coast Highway southeast of Corona del
22 Mar. -- The proposed project consists of grading for the ultimate roadway
23 width to accommodate six lanes where not overlapping with the SJHTC
24 alignment."

25 Page 121 - Impacts: "Construction of the roadway is a condition of
26 approval for the Local Coastal Plan."

27 Page 123 - San Joaquin Hills Transportation Corridor. "The County of
28 Orange is currently evaluating alternatives for alignment, size and

1 location of the San Joaquin Hills Transportation Corridor (SJHTC). The
2 corridor is planned for a location which either parallels or overlaps the
3 northwesterly portion of Bonita Canyon Drive.

4 Page 125 - City and County General Plans and Irvine Coast Planning
5 Area. "Pelican Hill Road is a condition of approval for the local Coastal
6 Plan. The project is consistent with the Master Plan of arterial highways,
7 the Land Use Plans for each relevant jurisdiction, and the approved and
8 proposed Land Use Plans for the LCP. The City of Irvine has previously
9 determined that Pelican Hill Road is consistent with its General Plan and
10 the County of Orange and the California Coastal Commission consider
11 the road as an integral part of the LCP."

12 **Public Notice of Availability of Draft Environmental Impact report**

13 Project Description "Pelican Hill Road is a key component of the County
14 of Orange Master Plan of arterial highways and will provide an
15 alternative route between inland and coastal areas."

16 Public Review Period will end July 3, 1987.

17 **"Resolution No. 87-1260 - Pelican Hill Road Proposed Route Alignment and**
18 **Environmental Impact Report 460"**, September 15, 1987.

19 EXHIBIT A

20 "On May 19, 1987, the County of Orange issued draft environmental
21 impact report (Draft EIR) 460 for the Proposed Pelican hill Road, Irvine
22 Coast. The project is construction of a new highway extending from the
23 current intersection of MacArthur Boulevard and Bonita Canyon Drive in
24 the City of Irvine to Pacific Coast Highway in the Irvine Coast."

25 **"Resolution No. 87-1327 - Irvine Coast local Coastal program - First Amendment and**
26 **zone change 83-24P, September 30, 1987.**

27 EXHIBIT A. FINDINGS OF APPROVAL AND SUPPORTING
28 DOCUMENTATION.

1 Page 3: "A hierarchy of roadways will serve the Irvine Coast, including
2 regional freeway and highway networks. -- Two arterial highways are
3 designated through the Irvine Coast in a general north/south direction:
4 Pelican Hill Road and San Canyon Avenue. Pelican Hill Road is
5 designated as a major arterial (six lanes) on the County of Orange Master
6 Plan of Arterial Highway."

7 Page 21: Pelican Hill Road, in particular provides regional traffic
8 benefits in excess of project needs.

9 "The 1987 LCP circulation improvements provide significant relief to the
10 most congested links of the adjacent arterial system (primarily Pacific
11 Coast Highway and MacArthur Boulevard) -- The construction of Pelican
12 Hill Road as provided for in the 1987 Irvine Coast LCP in effect
13 increases Pacific Coast Highway capacity through Corona del Mar by
14 providing a direct link between down-coast residential areas and major
15 inland destinations, including employment centers and the UCI campus."

16 Page 22: "Pelican Hill Road will provide significant new recreational
17 access capacity. In this way the construction of Pelican Hill Road not
18 only meets the requirements of Coastal Act Section 30250, but also
19 furthers the policy concerns of coastal act Section 30254 both by creating
20 new recreational access capacity directly and by freeing up additional
21 recreational access capacity on Pacific Coast Highway through the inland
22 diversion effect."

23 The early construction of Pelican Hill Road at four lanes provides
24 significant public benefits:

25 "Until such times as the San Joaquin Hills Transportation Corridor
26 is construction, no other major roadway can fulfill the regional circulation
27 functions of Pelican Hill Road." --

28 "Although the 1982 LUP required only two lanes of Pelican Hill

1 Road to be constructed initially, the county has determined that it is
2 highly desirably to accelerate the expansion of Pelican Hill Road to four
3 lanes initially in order to increase the regional traffic diversion capability
4 of Pelican Hill Road."

5 **Approval in concept by the California Coastal Commission October 8, 1987, to**
6 applicant, The Irvine Company.

7 **Description of proposed development.** The project proposed
8 within the coastal area is the construction of approximately 2.6 miles of a
9 new highway, Pelican Hill Road, from Pacific Coast Highway inland to
10 the Coastal Area Boundary near the project's planned intersection with
11 San Joaquin Hills Road (See attached Exhibit 1). This segment of
12 roadway is part of a larger project extending from the current intersection
13 of MacArthur Boulevard and Bonita Canyon Drive to Pacific Coast
14 Highway. The length of the total project from MacArthur to Pacific
15 Coast Highway is 6.1 miles.

16 **Property address:** a new highway extending from Pacific Coast
17 Highway (southeast of Corona del Mar) inland to the current intersection
18 of MacArthur Boulevard and Bonita Canyon Road."

19 Exhibit 1: "Pelican Hill Road Location Map"

20 Staff Report and Recommendation. California Coastal Commission,
21 October 19, 1987.

22 Applicant, The Irvine Company:

23 Page 1: "Description: Construction of a 2.6 mile long, 6-lane arterial
24 roadway.

25 Purpose and Regional Context. --

26 Page 7: "Provide early construction of four lanes of Pelican Hill Road in
27 advance of LCP land use needs as contrasted with early construction of
28 two lanes of Pelican Hill Road as required in the 1981 approved LCP.

1 The early construction of the road will relieve congestion on sections of
2 Pacific Coast Highway through Corona del Mar and on sections of
3 MacArthur Boulevard by providing a bypass route around the Corona del
4 Mar area.

5 Provide improved access from inland areas to visitor serving and
6 public recreation facilities such as Crystal cove State Park.

7 "Project Description: The Overall Pelican Hill Road Project has a
8 length of 6.1 miles from MacArthur Boulevard (out of the Coastal Zone)
9 to Pacific Coast Highway (see EXHIBIT 3). The project is divided into 6
10 segments. Segments 5 and 6 are within the Coastal Zone."

11 Page 15:4. "Recreational Access Function"The construction of Pelican
12 Hill Road will provide significant recreational access benefits for inland
13 residents by providing a new access route from inland residential area to
14 Crystal Cove State Park. Pursuant to the requirements of the approved
15 Irvine Coast ICP, Pelican Hill Road will be built as a four lane road early
16 in the development process (as contrasted with the two lane early
17 construction requirement under the 1982 LUP) with ultimate expansion to
18 six lanes. The Commission's findings of approval for the LCP adopted
19 on November 19, 1987 stated the recreational access benefits of Pelican
20 Hill Road and determined Coastal Act consistency as follows:

21 'The 1987 LCP circulation improvements provide significant relief
22 to the most congested links of the adjacent arterial system (primarily
23 Pacific Coast Highway and MacArthur Blvd.), by ultimately diverting
24 approximately 30% of existing traffic around this area via Pelican Hill
25 Road while only adding 15% of existing traffic back onto the system in
26 these critical locations. The result is a substantial net increase in traffic
27 capacity and a significant incremental improvement in levels of service on
28 both roadway links and intersections in this area. Without

1 implementation of LCP land uses and attendant circulation improvements,
2 regional commuting traffic is not offered alternate routes around capacity
3 deficient areas, and levels of service in these areas will continue to
4 deteriorate from traffic related regional growth in the area. In contrast,
5 the construction of Pelican Hill Road as provided for in the 1987 Irvine
6 Coast LCP in effect increases Pacific Coast Highway capacity through
7 Corona del Mar by providing a direct link between down-coast residential
8 areas and major inland destinations, including employment centers and the
9 UCI campus.'

10 "In addition to relieving traffic on Pacific Coast Highway during
11 peak commute hours, the construction of Pelican Hill Road in particular
12 will provide significant recreational access capacity by connecting inland
13 areas directly to Crystal Cove State Park (see Exhibit 13 in the Executive
14 Summary). Because recreational and commuter traffic generally flow in
15 opposite directions in the morning and evening (e.g. morning commuter
16 traffic flows toward the inland employment centers while morning
17 recreational traffic flow toward the Coast, with reversed flow patterns in
18 the evening), Pelican Hill Road will provide significant new recreational
19 access capacity. In this way, the construction of Pelican Hill Road not
20 only meets the requirements of Coastal Act Section 30250 but also
21 furthers the policy concerns of Coastal Act Section 30254 both by
22 creating new recreational access capacity directly and by freeing up
23 additional recreational access capacity on Pacific Coast Highway through
24 the inland diversion effect."

25 Page 16: 5. Compliance with CEQA

26 "All findings, substantive file documents and references cited within
27 the Irvine Coast LUP Amendment and Implementation Plan and staff
28 report certified by the Commission November 19, 1987 shall be

1 incorporated herein by reference.

2 "Under the California Environmental Quality Act ("CEQA"), a plan
3 or other written documentation prepared pursuant to a Certified
4 Regulatory Program "may be submitted in lieu of the environmental
5 impact report required by" CEQA (Public Resources Code 21080.5(a).)
6 The California Coastal Commission's regulatory program "involving the
7 preparation, approval, and certification of local coastal programs" has
8 been certified by the Secretary of Resources agency. (CEQA Guidelines
9 § 15251(f).)

10 "The California Coastal Commission has principal responsibility for
11 approving local coastal programs and ensuring compliance with CEQA's
12 equivalency requirements. Consequently, it is the Lead Agency for this
13 project and the County may rely on the local coastal program as the
14 environmental analysis document in approving the project. (CEQA
15 Guidelines #15253.)

16 "The County of Orange is responsible for submitting adequate
17 information to the Coastal Commission to enable the Commission to carry
18 out its responsibilities pursuant to Public Resources code Sections
19 21080.5 and 30510-30514. Consistent with Public Resources Code
20 Sections 21080.5, 30500-30514 and the applicable CEQA and Coastal
21 commission guidelines, the county of Orange, has considered and has
22 forwarded for Commission review all the information contained in the
23 First Amendment to the Irvine Coast Local Coastal Program, the
24 Appendix, all information and reports contained in the county files for
25 this project, the Pelican Hill Road EIR certified by the Board on
26 September 15, 1987, and all reports and studies submitted in conjunction
27 with the 1982 approved LUP and the 1976 proposed Irvine Coast plan
28 (see pp. 5-6 of these findings). These documents and the following

1 sections describe the project, describe the setting, identify impacts,
2 identify mitigation measures, and present alternatives all as required
3 pursuant to Public Resources Code Section 21080.5. Additionally, in
4 fulfillment of the requirements of Public Resources Code Sections
5 21080.5, compliance with regulatory program requirements has been
6 determined as set forth in the above "Findings and Declarations for
7 Certification" in Section IV of these findings. Public Resources Code
8 Section 21080.5 requirements relating to consultation with public agencies
9 and citizens and responses to significant environmental points raised
10 during the review process have been fulfilled in the manner enumerated
11 in Sections VII and VIII of Exhibit "A" of the County of Orange "Irvine
12 Coast Local Plan - Findings of Approval and Supporting Documentation"
13 incorporated by reference in the resolution of approval of the Irvine Coast
14 Local Coastal Program adopted on September 30, 1987 as set forth in the
15 County LCP submittal to the Coastal Commission.

16 **LETTER FROM THE IRVINE COMPANY TO MR. MICHAEL WORNUM,**
17 **COMMISSIONER, CALIFORNIA COASTAL COMMISSION:**

18 Page 1, Para 2: "We have attached to this letter a brief summary of the
19 main features of the LCP resulting from this process. For your
20 convenience, we also are enclosing three summary documents presenting
21 an overview of the Irvine Coast LCP and some of its key elements. The
22 Executive Summary is provided to outline the major features of the plan."
23 Page 3: "Roads/Recreational Access -- Pelican Hill Road will be
24 constructed early in the development process at four lanes (as contrasted
25 with initial two lanes under the approved plan), thereby providing a major
26 access from inland areas to Crystal Cove State Park. This road will also
27 serve as a bypass for Pacific Coast Highway traffic, providing relief for
28 present and future heavy use of Pacific Coast Highway."

1 **LETTER FROM ORANGE COUNTY ENVIRONMENTAL AGENCY TO MR.**
2 **PETER DOUGLAS, EXECUTIVE DIRECTOR, CALIFORNIA COASTAL**
3 **COMMISSION:**

4 Page 1 "This letter is to advise you of the County of Orange's support
5 for the Irvine Company's request for a Coastal Development Permit to
6 allow construction of Pelican Hill Road within the Irvine Coast Local
7 Coastal Program Area (LCP).

8 --- As discussed in your staff report on the Pelican Hill Road Coastal
9 Development Permit, the County was the lead agency for the Pelican Hill
10 Road EIR approved at our September 15, 1987 County Board of
11 Supervisors meeting and also approved the accompanying Pelican Hill
12 Road Project Report that provided the technical engineering assessment of
13 the roadway alignment.

14 "The subject roadway project provides substantial public benefits,
15 improves access to the coast and is very important to the citizens of
16 Orange County. We have received many statements of support for this
17 project, particularly in the Corona del Mar area of Newport Beach. With
18 this in mind, the County of Orange requests your commission's
19 affirmative action on the Coastal Development Permit so that we can be
20 one major step closer to the ability to begin construction on this key
21 roadway.

22 **CALIFORNIA COASTAL COMMISSION MEMORANDUM DATED**
23 **DECEMBER 4, 1987 FROM CHUCK DAMM, DISTRICT DIRECTOR, SOUTH**
24 **COAST DISTRICT:** Subject: Addendum to Commission Agenda for Commission

25 Meeting of December 9, 1987: Application No. 5-87-886*. Please see
26 attached pages for Addendum Modifications:

27 Page 3: "At page 16 insert the following new section 4:

28 4. Recreational Access Function. The construction of Pelican Hill Road

1 will provide significant recreational access benefits for inland residents by
2 providing a new access route from inland residential areas to Crystal
3 Cove State Park. Pursuant to the requirements of the approved Irvine
4 Coast LCP, Pelican Hill Road will be built as a four lane road early in
5 the development process (as contrasted with the two lane early
6 construction requirement under the 1982 LCP) with ultimate expansion to
7 six lanes. The Commission's findings of approval for the LCP adopted
8 on November 19, 1987 stated the recreational access benefits of Pelican
9 Hill Road and determined Coastal Act consistency (at page ____) as
10 follows:

11 "The 1987 LCP circulation improvements provide significant relief
12 to the most congested links of the adjacent arterial system (primarily
13 Pacific Coast Highway and MacArthur Blvd.), by ultimately diverting
14 approximately 30% of existing traffic around this area via Pelican Hill
15 Road while only adding 15% of existing traffic back onto the system in
16 these critical locations. -- without implementation of LCP land use and
17 attendant circulation improvements, Regional commuting traffic is not
18 offered alternate routes around capacity deficient areas. ---- in contract,
19 the construction of Pelican Hill Road as provided for in the 1987 Irvine
20 Coast LCP in effect increased Pacific Coast Highway capacity through
21 Corona del Mar by providing a direct link between down-coast residential
22 areas and major inland destinations, including employment centers and the
23 UCI campus.

24 "In addition to relieving traffic on Pacific Coast Highway during
25 peak commute hours, the construction of Pelican Hill Road in particular
26 will provide significant recreational access capacity by connecting inland
27 areas directly to Crystal Cove State Park (see EXHIBIT 13 in the
28 Executive Summary). ---- In this way, the construction of Pelican Hill

1 Road not only meets the requirements of Coastal Act Section 30250 but
2 also furthers the policy concerns of Coastal Act Section 30254 Booth by
3 creating new recreational access capacity on Pacific Coast Highway
4 through the inland diversion effect.

5 At page 16, renumber Section 4 to become Section 5.

6 **NOTICE OF INTENT TO PREPARE A DRAFT ENVIRONMENTAL IMPACT**
7 **REPORT #485, JANUARY 14, 1988.**

8 Page (unnumbered) Department of Transportation. Notice of prep for
9 EIR 485. Irvine Coast Master Coastal Development Permit and Tentative
10 Tract Map. Letter dated February 2, 1988.

11 Page 1. "As you know, the locally adopted alignment for SJHTC has not
12 yet been approved by FHWA. Thus, no final alignment for the SJHTC
13 has yet been determined.

14 Page 111-10 Map Figure 111-6 Orange County Master Plan of Arterial
15 Highways Map Legend shows Corridor as a State Freeway.

16 Page IV-17 PELICAN HILL ROAD

17 Pelican Hill Road (PHR) is a key circulation element in the coastal area.
18 Serving as a major access roadway for the Irvine Coast planned
19 community. And also more than offsetting impacts of coastal
20 development by diverting non-coastal area traffic from the critical section
21 of PCH west of the coastal area. The extent of this diversion was shown
22 in the traffic profiles presented above as is discussed in detail in the
23 Pelican Hill Road Report.

24 Programmed initially as a four-lane arterial, PHR will eventually be
25 extended to its full six-lane section consistent with its MPAH
26 classification."

27 **ENVIRONMENTAL MANAGEMENT AGENCY PLANNING.**

28 **SUPPLEMENTAL TRANSMITTAL APRIL 20, 1988, AGENDA ITEM NO. 14.**

1 **TO HONORABLE BOARD OF SUPERVISORS. SUBJECT: IRVINE COAST**
2 **DEVELOPMENT AGREEMENT 9DA 87-16) APRIL 20, 1988:**

3 Page 1 Background: On December 2, 1987, the Board of Supervisors
4 formally adopted the first Amendment to the Irvine Coast Local Coastal
5 Program (1988 LCP), which was subsequently certified by the California
6 Coastal Commission on January 14, 1988"

7 "The 1988 LCP is the culmination of 13 years of cooperative
8 planning efforts. The comprehensive revisions of the aforesaid
9 amendment resulted in substantial open space, early roadway
10 improvements, and other public benefits."

11 Page 2. Summary of Development Agreement. "This agreement is
12 proposed in consideration of the substantial public benefits required in the
13 LCP, including early commitments in the dedication of regional open
14 space an improvements to Master Planned arterial roadways, and new
15 contributions to public facilities beyond the requirements of the LCP.

16 "The County benefits to be gained from the development agreement
17 are summarized in EXHIBIT A." ----"in addition, the agreement
18 provides for the early dedication of the SJHTC right-of-way, a 5.3-miles
19 link from future San Canyon Avenue to MacArthur Boulevard
20 encompassing approximately 300 acres outside the Irvine Coast Planned
21 Community."

22 **EXHIBIT A**

23 **SUMMARY OF PUBLIC BENEFITS**

24 The development agreement will further assure the following major
25 public benefits to be realized from implementation of the 1988 Irvine
26 Coast Local Coastal Program (1988 LCP).

27 C. "Dedication of San Joaquin Hills Transportation Corridor (SJHTC)
28 right-of-way from future San Canyon Avenue to MacArthur Boulevard

1 prior to recordation of the first development tract map."

2 D. "Early construction of four lanes of Pelican Hill Road (PHR) from
3 Pacific Coast Highway (PCH) to MacArthur Boulevard. [Two lanes from
4 San Joaquin Hills Road (SJHR) to MacArthur Boulevard are creditable
5 toward public benefits proposed in consideration of the development
6 agreement.]"

7 **Resolution No. 88-537 Certify EIR 486, April 20, 1988**

8 **EXHIBIT A: STATEMENT OF FACTS**

9 Page 2: "The Irvine Coast Development Agreement serves as an
10 implementation mechanism for "The Irvine Coast Local Coastal
11 Program," adopted by the County of Orange Board of Supervisors on
12 December 2, 1987, and Certified by the California Coastal Commission
13 on January 14, 1988."

14 Page 3: "Provide early construction of four lanes of Pelican Hill Road
15 from Pacific Coast Highway to MacArthur Boulevard."

16 Page 9: "Unavoidable adverse impacts -- the construction of Pelican Hill
17 Road more than offsets Irvine Coast traffic related impacts on PCH
18 through the City of Laguna Beach and on Laguna Canyon Road."

19 Page 17: "Facts in support of findings. -- The Irvine Coast Development
20 Agreement provides a legal assurance that arterial roads will be phased
21 with development to insure that excess capacity is created to redistribute
22 traffic off already congested roads."

23 Page 24: "Feasibility of mitigation measures and project environmental
24 effects in relation to overall project benefits. ---- However any impacts on
25 Laguna Beach are more than offset by (a) the diversion of PCH traffic
26 onto Pelican Hill Road which traffic would otherwise pass through
27 Corona del Mar; (b) the provision of enhanced coastal access to Crystal
28 Cove State Park for inland residents of Orange County, provided by

1 Pelican Hill Road."

2 Page 26-27: "Project Benefits. -- 4) Early construction of four lanes of
3 Pelican Hill Road (PHR) from Pacific Coast Highway (PCH) to
4 MacArthur Boulevard. * (Two lanes are creditable toward the public
5 benefits proposed in consideration of the Development Agreement for the
6 segment from project boundary to MacArthur.)"

7 **Resolution No.. 88-537.** Certify EIR No. 486, April 20, 1988.

8 Page 1, line 7 "Whereas, in December, 1987 an application (file No.
9 DA87-16) was submitted requesting a development between the county
10 and the Irvine Company to allow build-out of the Irvine Coast planned
11 Community under *Current regulations and in consideration of substantial
12 public benefits."

13 Line 10: "Whereas, draft Environmental Impact Report (EIR) 486 has
14 been prepared to address the effects, mitigation measures, and project
15 alternatives associated with the proposed Irvine Coast Development
16 Agreement."

17 Page 1 of EXHIBIT A "STATEMENT OF FACTS"

18 Page 2. "Project objectives. -- The Irvine Coast Development Agreement
19 serves as an implementation mechanism for 'The Irvine Coast Local
20 Coastal Program,;' adopted by the County of Orange Board of
21 Supervisors on December 2, 1987, and certified by the California Coastal
22 Commission on January 14, 1988. Therefore, the primary objective of
23 the Development Agreement is to assure completion of the project as
24 described in 'The Irvine Coast Local Coastal Program.' The specific
25 objectives of the Development Agreement are described below in terms of
26 1) County of Orange Objectives, and 2) Irvine Company Objectives:

27 "1. County of Orange Objectives include: -- Assurance that
28 construction of Pelican Hill Road will occur early in the development

1 phasing to accomplish the following:"

2 Page 3: "Provide early construction of four lanes of Pelican Hill Road
3 from Pacific Coast Highway to MacArthur Boulevard."

4 "Achieve maximum compatibility with the preferred alignment of
5 the future San Joaquin Hills Transportation Corridor."

6 Page 7: "Irvine Coast LCP, Certified in January, CEQA Equipment
7 Document.

8 C. Significant effects, mitigation and findings.

9 1. Transportation/Circulation."

10 Page 9: "C. Unavoidable adverse impacts. -- The construction of Pelican
11 Hills Road more than offsets Irvine Coast traffic-related impacts through
12 the City of Laguna Beach and Laguna Canyon Road.

13 Page 17: "Facts in support of findings. -- The Irvine Coast Development
14 Agreement provides a legal assurance that arterial roads will be phased
15 with development to insure that excess capacity is created to redistribute
16 traffic off already congested roads."

17 Page 19-20: "Transportation/Circulation." -- "The Implementation of
18 LCP circulation requirements for the construction of Pelican Hill Road
19 and a fifth lane on PCH, in conjunction with project participation in the
20 "Gap" Fee Program which will fund a sixth lane on PCH, will mitigate
21 all project impacts on PCH within the plan area and within Corona del
22 Mar."

23 Page 26: "Project Benefits. The Board of Supervisors finds that the
24 following benefits will result from the proposed project:

25 a. The benefits of the 1988 LCP which are further assured by the
26 development agreement include:"

27 Page 27: "4) Early construction of four lanes of Pelican Hill Road
28 (PHR) from Pacific Coast Highway (PCH) to MacArthur Boulevard.

1 *(Two lanes are creditable toward the public benefits proposed in
2 consideration of the development agreement for the segment from project
3 boundary to MacArthur)."

4 b) "In addition to the above public benefits, the following new
5 contribution to public facilities, subsequent to the adoption of the Irvine
6 Coast LCP, are proposed in consideration of the Development
7 Agreement:

8 1) Increase in early Pelican Hill Road construction four
9 lanes to six lanes.

10 2) Early dedication for the San Joaquin Hills Transportation
11 Corridor (SJHTC) right-of-way between future San Canyon Avenue and
12 MacArthur Boulevard, consisting of approximately 5.3 miles (300 gross
13 acres)."

14 **Resolution of the Orange County Planning Commission - Master Coastal**

15 **Development Permit 88-11P (Irvine Coast Planned Community) May 4, 1988.**

16 **Resolution No. 88-46 (received by Coastal Commission May 12, 1988)**

17 Page 1: "Whereas, the Orange County Board of Supervisors adopted the
18 Irvine Coast LCP/Land Use Plan by Resolution No. 87-1606 and the
19 Irvine Coast LCP/Implementing Action Program by Ordinance No. 3675
20 on December 2, 1987; and the California Coastal Commission Certified
21 the Irvine Coast Local Coastal Program on January 14, 1988

22 Pages 2 and 3: "General Requirements: --

23 "5. Failure to abide by and comply faithfully with any and all conditions
24 attached to granting of Master Coastal Development Permit 88-11P shall
25 constitute grounds for revocation of said permit."

26 Page 12 "Environmental Impact Mitigation: --

27 32. All mitigation measures of Certified Final EIR 485 are incorporated
28 as conditions of Master Coastal Development Permit 88-11P approval."

1 **Resolution of the Orange County Planning Commission No. 88-45, May 4, 1988.**
2 **Environmental Impact Report 485 for Master Coastal Development Permit 88-11P,**
3 **Irvine Coast Planned Community.**

4 Page 1. "Whereas, in January, 1988 an application (File No. CD 88-11)
5 was submitted by the Irvine Company requesting a Master Coastal
6 Development Permit (CDP) to allow infrastructure improvements and
7 subdivision for financing and conveyance purposes of a major portion of
8 the Irvine Coast Planned Community."

9 "Whereas, Draft Environmental Impact Report (DEIR) 485 has been
10 prepared to address the effects, mitigation measures, and project
11 alternatives associated with the proposed Master CDP."

12 **IRVINE COAST DEVELOPMENT AGREEMENT, COUNTY OF ORANGE.**
13 **RECORD #88-272903, JUNE 9, 1988.**

14 Page 11: "2.2 Consistency with County's General Plan and Certified
15 Local Coastal Program."

16 "2.3 Summary of Major Public Benefits. -- This agreement is
17 entered into for the purpose of carrying out the development plan for the
18 project in a manner that will ensure these anticipated benefits to both
19 County (including without limitations, the existing and future residents
20 and populations of County) and owner."

21 Page 12: "2.3.1 Transportation Improvements

22 (a) Pelican Hill Road

23 The COUNTY desires to encourage the earliest possible
24 construction of Pelican Hill Road because, in the time period prior to the
25 construction of the SJHTC, Pelican Hill Road is the only regional
26 transportation facility capable of contributing to the achievement of
27 certain regional traffic objectives established by the COUNTY. Under
28 the 1988 Local Coastal Program, Pelican Hill Road will be constructed

1 initially at four lanes instead of the two lanes provided for under the 1982
2 Land Use Plan. The COUNTY will thus achieve all of the benefits set
3 forth in Section 2.3.1(a) in advance of both the Project needs and the
4 time at which they would have been achieved under the 1982 Land Use
5 Plan.

6 In conjunction with the Board of Supervisors Resolution of
7 Certification of EIR 460 and approval of the Proposed Route Alignment
8 for Pelican Hill Road, adopted on September 15, 1987, the COUNTY has
9 determined that the early construction of Pelican Hill Road will provide
10 the following significant public benefits:

11 (1) Relieves congestion on and allows for a significant diversion of
12 traffic from Pacific Coast Highway and sections of MacArthur Boulevard
13 by providing a bypass route around Corona del Mar in Newport Beach,
14 with the attendant commute and recreational access benefits discussed in
15 EIR 460 and noted in the Irvine Coast Area Traffic Analysis. The
16 analysis indicates that approximately twice as much traffic could be
17 diverted from Pacific Coast Highway in Newport Beach onto Pelican Hill
18 Road as may be added to Pacific Coast Highway as a result of the
19 Project. This diversion of traffic will provide a substantial benefit for
20 Corona del Mar residents and businesses and will substantially benefit
21 other users of Pacific Coast Highway living elsewhere in the Region."
22 Page 13: "Establish a route compatible with existing and ultimate
23 regional circulation needs in accordance with the MPAH and all adopted
24 plans of the COUNTY."

25 **Irrevocable Offer of Dedication** recorded August 22, 1988, as No. 88-417100.

26 Page 1: "This irrevocable offer of Dedication ("Offer") of the right-of-
27 way for the proposed San Joaquin Hills Transportation Corridor (The
28 "Corridor") between future San Canyon Avenue and MacArthur

1 Boulevard is made as of August 1, 1988 by The Irvine Company, a
2 Michigan Corporation ("Offeror"), in favor of the County of Orange, a
3 political subdivision of the State of California ("County"), or, if
4 designated by County, the San Joaquin Hills Transportation Corridor
5 Agency ("Agency"), with Reference to the following facts:"

6 Page 2: "E. On October 15, 1985, by Resolution No. 85-1477 the
7 County Board of Supervisors ("The Board") adopted the Major
8 Thoroughfare and Bridge Fee Program ("The Fee Program"), which sets
9 forth a system of fees and credits to and from a joint powers authority in
10 conjunction with the completion of certain road and bridge improvements.
11 On May 6, 1986, by Memorandum of Understanding, the Agency
12 adopted the Fee Program."

13 *16 MAR 1993* EXHIBIT "D" legal description: *DOC. 93-0174937*

14 Pelican Hill Road Construction Easement within the San Joaquin Hills Transportation
15 Corridor *AMENDED AND RESTATED IRREVOCABLE OFFER OF*
DEDICATION (SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR) . . .

16 Page 1: "This amendment and restated irrevocable offer of dedication
17 (Offer) of the right-of-way for the proposal San Joaquin Hills
18 Transportation Corridor (The Corridor) between Jamboree Road and
19 future San Canyon Avenue is made as of March 12, 1993 by the Irvine
20 Company, a Michigan Corporation ("Offer"), in favor of the San Joaquin
21 Hills Transportation Corridor Agency, a joint powers agency ("Agency")"

22
23 Page 4: "Terms and Conditions -- or upon the ability of Agency or its
24 successor or designee to collect roadway tolls for the corridor or to
25 operate the Corridor in a manner consistent with State-owned restricted
26 access Highways.)"

27 53. Since the response to this interrogatory is based on public records
28 that are available for the review of any member of the public interested in reviewing

1 such records, such facts are known to any person who has looked at the pertinent
2 public records. Responding party has no way to know the names of all such persons,
3 but they include Ronald D. Kennedy.

4 54. "**Resolution 80-2085**. Local Coastal Program LCP 80-4, Irvine
5 Coast Planning unit, land use and circulation element amendment, LCP
6 80-4, September 17, 1980.

7 Page 1, Line 16: "Whereas, the local coastal program as presented
8 herewith for the Irvine Coast Planning Unit recommends changes to the
9 Land Use and Circulation Element of the General Plan."

10 Line 20: "Whereas, if any conflicts arise between the Local Coastal
11 Program and the existing General Plan, the local coastal program shall
12 take precedence."

13 Page 2, Line 1. "All mitigation measures contained in draft EIR 237 --
14 are appropriate mitigation measures for the proposed General Plan
15 Amendments and Local Coastal Program (LCP)."

16 Line 16: "Be it further resolved that this Board does hereby certify as
17 complete and final environmental impact report 237 for the Local Coastal
18 Program and circulation and land use element amendment (LCP 80-4) for
19 the Irvine Coast Planning Unit."

20 Page 6, Line 11: "Prior to recordation of the first tract inland of Pacific
21 Coast Highway, the developer shall establish a program for providing an
22 adequate inland circulation system shall include at least one new road
23 connecting to acceptable inland highways to serve the plan area other than
24 Pacific Coast Highway and San Joaquin Hills Road. Such circulation
25 system program shall meet the approval of the Director, EMA and shall
26 include a phasing program for the developer construction of such new
27 inland access road."

28 "**Resolution No. 81-1540** Irvine Coast Local Coastal Program, October 21, 1981."

1 Page 1, line 20: "All mitigation measures contained in Draft EIR 237
2 with attendant staff report. All Goals, policies, and development
3 guidelines contained in the Land Use Element and scenic highway
4 element of the Orange County General Plan. The Orange County Zoning
5 Code, and the California Coastal Act of 1976 as deemed reasonable and
6 feasible, are appropriate mitigation measures for the proposed general
7 plan amendments and local coastal program (LCP)."

8 Page 3, line 6: "The Irvine Company, or its successors or assigns, shall
9 prepare a phasing program which shall provide for the construction of
10 ultimate street improvements in the Irvine Coast area for Pelican Hill
11 Road as a major arterial highway."

12 Line 26: "11, concurrent with the recordation of the first subdivision
13 map in the Irvine Coast Area, the Irvine Company, its successors or
14 assigns, will offer to dedicate the ultimate right-of-way for the San
15 Joaquin Hills Transportation Corridor between San Canyon Avenue and
16 MacArthur Boulevard for development within the Irvine Coast."

17 Page 4, Line 2: "12. Prior to the recordation of the first subdivision map
18 inland of Pacific Coast Highway, the Irvine Company, its successors or
19 assigns, shall establish a road alignment to connect Pelican Hill Road
20 with the coastal area to the vicinity of Bonita Canyon Road and
21 MacArthur Boulevard."

22 **"Resolution No. 84-1462: Major Thoroughfare/Bridge Fee Program/San Joaquin Hills**
23 **Transportation Corridor/Foothill/Eastern Transportation Corridor,**
24 **October 3, 1984.**

25 Page 1, line 16: "Whereas, the Board of Supervisors add the San
26 Joaquin Hills Transportation Corridor to the Transportation Element of
27 the Orange County General Plan in 1976 in response to the
28 Transportation demands identified in said studies."

1 Page 2, line 22: "Whereas, Section 7-9-316 of the codified ordinances of
2 Orange County provides for the establishment of major thoroughfare and
3 bridge construction fees to be paid by subdivider and building permit
4 applicants in the County of Orange."

5 **"Resolution No. 85-1477 - Major thoroughfare and bridge fee program,"** October 15,
6 1985.

7 EXHIBIT A, July 1985

8 Page 7: Overall financing. "Funds from other more traditional sources
9 (E.G., existing state and federal taxes on motor vehicle fuel) will be
10 sought for the portion of the cost not funded by development fees."

11 Page 15: "It is proposed that fees be paid by future development within
12 the defined areas of benefit derived. --The share of corridor cost
13 attributable to benefits derived by existing development is proposed to be
14 funded from other sources."

15 Page 7: "In order to qualify for State and Federal funding, the corridor
16 routes must be incorporated into the State Highway System and placed in
17 one of the Federal Aid System State Route 73 (Corona del Mar Freeway)
18 has been legislatively redescribed to correspond with the route of San
19 Joaquin Hills Transportation Corridor."

20 Page 24: Annual Fee Adjustment. "It is intended that the fee program
21 be submitted annually to the Board of Supervisors and City Councils for
22 fees to be automatically adjusted based upon an approved construction
23 cost index."

24 **Environmental Management Agency Report, Date: May 19, 1987;** to: Orange
25 County Planning Commission. Subject: First amendment to the Irvine
26 Coast Local Coastal program and Zone change 83-24P (District 5)

27 Page 1: "Background ----

28 The Irvine Coast local coastal program (LCP) consists of a land use plan

1 (LUP) and an implementing action program (IAP). The LUP was
2 approved by the Board of Supervisors in 1981 and fully certified by the
3 California Coastal Commission in 1982."

4 Page 3: "The approved and proposed development plans include the
5 construction of two arterials, six-lane Pelican Hill Road and two-lane
6 Sand Canyon Avenue. The TIC-proposed Pelican Hill Road
7 improvements involve the initial construction of four lanes from PCH to
8 MacArthur Boulevard, a portion of which is outside the Coastal Zone."

9 **Pelican Hill Road Draft E.I.R.: Draft accepted May 19, 1987**

10 Page 1: "2.1 Project Description. The project is construction of a new
11 highway, Pelican Hill Road, extending from the current intersection of
12 MacArthur Boulevard and Bonita Canyon Drive (sometimes referred to as
13 Bonita Canyon Road) to Pacific Coast Highway southeast of Corona del
14 Mar. -- The proposed project consists of grading for the ultimate roadway
15 width to accommodate six lanes where not overlapping with the SJHTC
16 alignment."

17 Page 121 - Impacts: "Construction of the roadway is a condition of
18 approval for the Local Coastal Plan."

19 Page 123 - San Joaquin Hills Transportation Corridor. "The County of
20 Orange is currently evaluating alternatives for alignment, size and
21 location of the San Joaquin Hills Transportation Corridor (SJHTC). The
22 corridor is planned for a location which either parallels or overlaps the
23 northwesterly portion of Bonita Canyon Drive.

24 Page 125 - City and County General Plans and Irvine Coast Planning
25 Area. "Pelican Hill Road is a condition of approval for the local Coastal
26 Plan. The project is consistent with the Master Plan of arterial highways,
27 the Land Use Plans for each relevant jurisdiction, and the approved and
28 proposed Land Use Plans for the LCP. The City of Irvine has previously

1 determined that Pelican Hill Road is consistent with its General Plan and
2 the County of Orange and the California Coastal Commission consider
3 the road as an integral part of the LCP."

4 **Public Notice of Availability of Draft Environmental Impact report**

5 Project Description "Pelican Hill Road is a key component of the County
6 of Orange Master Plan of arterial highways and will provide an
7 alternative route between inland and coastal areas."

8 Public Review Period will end July 3, 1987.

9 **"Resolution No. 87-1260 - Pelican Hill Road Proposed Route Alignment and**
10 **Environmental Impact Report 460", September 15, 1987.**

11 EXHIBIT A

12 "On May 19, 1987, the County of Orange issued draft environmental
13 impact report (Draft EIR) 460 for the Proposed Pelican hill Road, Irvine
14 Coast. The project is construction of a new highway extending from the
15 current intersection of MacArthur Boulevard and Bonita Canyon Drive in
16 the City of Irvine to Pacific Coast Highway in the Irvine Coast."

17 **"Resolution No. 87-1327 - Irvine Coast local Coastal program - First Amendment and**
18 **zone change 83-24P, September 30, 1987.**

19 EXHIBIT A. FINDINGS OF APPROVAL AND SUPPORTING
20 DOCUMENTATION.

21 Page 3: "A hierarchy of roadways will serve the Irvine Coast, including
22 regional freeway and highway networks. -- Two arterial highways are
23 designated through the Irvine Coast in a general north/south direction:
24 Pelican Hill Road and San Canyon Avenue. Pelican Hill Road is
25 designated as a major arterial (six lanes) on the County of Orange Master
26 Plan of Arterial Highway."

27 Page 21: Pelican Hill Road, in particular provides regional traffic
28 benefits in excess of project needs.

1 "The 1987 LCP circulation improvements provide significant relief to the
2 most congested links of the adjacent arterial system (primarily Pacific
3 Coast Highway and MacArthur Boulevard) -- The construction of Pelican
4 Hill Road as provided for in the 1987 Irvine Coast LCP in effect
5 increases Pacific Coast Highway capacity through Corona del Mar by
6 providing a direct link between down-coast residential areas and major
7 inland destinations, including employment centers and the UCI campus."
8 Page 22: "Pelican Hill Road will provide significant new recreational
9 access capacity. In this way the construction of Pelican Hill Road not
10 only meets the requirements of Coastal Act Section 30250, but also
11 furthers the policy concerns of coastal act Section 30254 both by creating
12 new recreational access capacity directly and by freeing up additional
13 recreational access capacity on Pacific Coast Highway through the inland
14 diversion effect."

15 The early construction of Pelican Hill Road at four lanes provides
16 significant public benefits:

17 "Until such times as the San Joaquin Hills Transportation Corridor
18 is construction, no other major roadway can fulfill the regional circulation
19 functions of Pelican Hill Road." --

20 "Although the 1982 LUP required only two lanes of Pelican Hill
21 Road to be constructed initially, the county has determined that it is
22 highly desirably to accelerate the expansion of Pelican Hill Road to four
23 lanes initially in order to increase the regional traffic diversion capability
24 of Pelican Hill Road."

25 **Approval in concept by the California Coastal Commission October 8, 1987, to**
26 **applicant, The Irvine Company.**

27 **Description of proposed development.** The project proposed
28 within the coastal area is the construction of approximately 2.6 miles of a

1 new highway, Pelican Hill Road, from Pacific Coast Highway inland to
2 the Coastal Area Boundary near the project's planned intersection with
3 San Joaquin Hills Road (See attached Exhibit 1). This segment of
4 roadway is part of a larger project extending from the current intersection
5 of MacArthur Boulevard and Bonita Canyon Drive to Pacific Coast
6 Highway. The length of the total project from MacArthur to Pacific
7 Coast Highway is 6.1 miles.

8 **Property address:** a new highway extending from Pacific Coast
9 Highway (southeast of Corona del Mar) inland to the current intersection
10 of MacArthur Boulevard and Bonita Canyon Road."

11 Exhibit 1: "Pelican Hill Road Location Map"

12 Staff Report and Recommendation. California Coastal Commission,
13 October 19, 1987.

14 Applicant, The Irvine Company:

15 Page 1: "Description: Construction of a 2.6 mile long, 6-lane arterial
16 roadway.

17 Purpose and Regional Context. --

18 Page 7: "Provide early construction of four lanes of Pelican Hill Road in
19 advance of LCP land use needs as contrasted with early construction of
20 two lanes of Pelican Hill Road as required in the 1981 approved LCP.
21 The early construction of the road will relieve congestion on sections of
22 Pacific Coast Highway through Corona del Mar and on sections of
23 MacArthur Boulevard by providing a bypass route around the Corona del
24 Mar area.

25 Provide improved access from inland areas to visitor serving and
26 public recreation facilities such as Crystal cove State Park.

27 "Project Description: The Overall Pelican Hill Road Project has a
28 length of 6.1 miles from MacArthur Boulevard (out of the Coastal Zone)

1 to Pacific Coast Highway (see EXHIBIT 3). The project is divided into 6
2 segments. Segments 5 and 6 are within the Coastal Zone."

3 Page 15:4. "Recreational Access Function"The construction of Pelican
4 Hill Road will provide significant recreational access benefits for inland
5 residents by providing a new access route from inland residential area to
6 Crystal Cove State Park. Pursuant to the requirements of the approved
7 Irvine Coast ICP, Pelican Hill Road will be built as a four lane road early
8 in the development process (as contrasted with the two lane early
9 construction requirement under the 1982 LUP) with ultimate expansion to
10 six lanes. The Commission's findings of approval for the LCP adopted
11 on November 19, 1987 stated the recreational access benefits of Pelican
12 Hill Road and determined Coastal Act consistency as follows:

13 'The 1987 LCP circulation improvements provide significant relief
14 to the most congested links of the adjacent arterial system (primarily
15 Pacific Coast Highway and MacArthur Blvd.), by ultimately diverting
16 approximately 30% of existing traffic around this area via Pelican Hill
17 Road while only adding 15% of existing traffic back onto the system in
18 these critical locations. The result is a substantial net increase in traffic
19 capacity and a significant incremental improvement in levels of service on
20 both roadway links and intersections in this area. Without
21 implementation of LCP land uses and attendant circulation improvements,
22 regional commuting traffic is not offered alternate routes around capacity
23 deficient areas, and levels of service in these areas will continue to
24 deteriorate from traffic related regional growth in the area. In contrast,
25 the construction of Pelican Hill Road as provided for in the 1987 Irvine
26 Coast LCP in effect increases Pacific Coast Highway capacity through
27 Corona del Mar by providing a direct link between down-coast residential
28 areas and major inland destinations, including employment centers and the

1 UCI campus.'

2 "In addition to relieving traffic on Pacific Coast Highway during
3 peak commute hours, the construction of Pelican Hill Road in particular
4 will provide significant recreational access capacity by connecting inland
5 areas directly to Crystal Cove State Park (see Exhibit 13 in the Executive
6 Summary). Because recreational and commuter traffic generally flow in
7 opposite directions in the morning and evening (e.g. morning commuter
8 traffic flows toward the inland employment centers while morning
9 recreational traffic flow toward the Coast, with reversed flow patterns in
10 the evening), Pelican Hill Road will provide significant new recreational
11 access capacity. In this way, the construction of Pelican Hill Road not
12 only meets the requirements of Coastal Act Section 30250 but also
13 furthers the policy concerns of Coastal Act Section 30254 both by
14 creating new recreational access capacity directly and by freeing up
15 additional recreational access capacity on Pacific Coast Highway through
16 the inland diversion effect."

17 Page 16: 5. Compliance with CEQA

18 "All findings, substantive file documents and references cited within
19 the Irvine Coast LUP Amendment and Implementation Plan and staff
20 report certified by the Commission November 19, 1987 shall be
21 incorporated herein by reference.

22 "Under the California Environmental Quality Act ("CEQA"), a plan
23 or other written documentation prepared pursuant to a Certified
24 Regulatory Program "may be submitted in lieu of the environmental
25 impact report required by" CEQA (Public Resources Code 21080.5(a).)
26 The California Coastal Commission's regulatory program "involving the
27 preparation, approval, and certification of local coastal programs" has
28 been certified by the Secretary of Resources agency. (CEQA Guidelines

1 § 15251(f.)

2 "The California Coastal Commission has principal responsibility for
3 approving local coastal programs and ensuring compliance with CEQA's
4 equivalency requirements. Consequently, it is the Lead Agency for this
5 project and the County may rely on the local coastal program as the
6 environmental analysis document in approving the project. (CEQA
7 Guidelines #15253.)

8 "The County of Orange is responsible for submitting adequate
9 information to the Coastal Commission to enable the Commission to carry
10 out its responsibilities pursuant to Public Resources code Sections
11 21080.5 and 30510-30514. Consistent with Public Resources Code
12 Sections 21080.5, 30500-30514 and the applicable CEQA and Coastal
13 commission guidelines, the county of Orange, has considered and has
14 forwarded for Commission review all the information contained in the
15 First Amendment to the Irvine Coast Local Coastal Program, the
16 Appendix, all information and reports contained in the county files for
17 this project, the Pelican Hill Road EIR certified by the Board on
18 September 15, 1987, and all reports and studies submitted in conjunction
19 with the 1982 approved LUP and the 1976 proposed Irvine Coast plan
20 (see pp. 5-6 of these findings). These documents and the following
21 sections describe the project, describe the setting, identify impacts,
22 identify mitigation measures, and present alternatives all as required
23 pursuant to Public Resources Code Section 21080.5. Additionally, in
24 fulfillment of the requirements of Public Resources Code Sections
25 21080.5, compliance with regulatory program requirements has been
26 determined as set forth in the above "Findings and Declarations for
27 Certification" in Section IV of these findings. Public Resources Code
28 Section 21080.5 requirements relating to consultation with public agencies

1 and citizens and responses to significant environmental points raised
2 during the review process have been fulfilled in the manner enumerated
3 in Sections VII and VIII of Exhibit "A" of the County of Orange "Irvine
4 Coast Local Plan - Findings of Approval and Supporting Documentation"
5 incorporated by reference in the resolution of approval of the Irvine Coast
6 Local Coastal Program adopted on September 30, 1987 as set forth in the
7 County LCP submittal to the Coastal Commission.

8 **LETTER FROM THE IRVINE COMPANY TO MR. MICHAEL WORNUM,**
9 **COMMISSIONER, CALIFORNIA COASTAL COMMISSION:**

10 Page 1, Para 2: "We have attached to this letter a brief summary of the
11 main features of the LCP resulting from this process. For your
12 convenience, we also are enclosing three summary documents presenting
13 an overview of the Irvine Coast LCP and some of its key elements. The
14 Executive Summary is provided to outline the major features of the plan."
15 Page 3: "Roads/Recreational Access -- Pelican Hill Road will be
16 constructed early in the development process at four lanes (as contrasted
17 with initial two lanes under the approved plan), thereby providing a major
18 access from inland areas to Crystal Cove State Park. This road will also
19 serve as a bypass for Pacific Coast Highway traffic, providing relief for
20 present and future heavy use of Pacific Coast Highway."

21 **LETTER FROM ORANGE COUNTY ENVIRONMENTAL AGENCY TO MR.**
22 **PETER DOUGLAS, EXECUTIVE DIRECTOR, CALIFORNIA COASTAL**
23 **COMMISSION:**

24 Page 1 "This letter is to advise you of the County of Orange's support
25 for the Irvine Company's request for a Coastal Development Permit to
26 allow construction of Pelican Hill Road within the Irvine Coast Local
27 Coastal Program Area (LCP).

28 ---- As discussed in your staff report on the Pelican Hill Road Coastal

1 Development Permit, the County was the lead agency for the Pelican Hill
2 Road EIR approved at our September 15, 1987 County Board of
3 Supervisors meeting and also approved the accompanying Pelican Hill
4 Road Project Report that provided the technical engineering assessment of
5 the roadway alignment.

6 "The subject roadway project provides substantial public benefits,
7 improves access to the coast and is very important to the citizens of
8 Orange County. We have received many statements of support for this
9 project, particularly in the Corona del Mar area of Newport Beach. With
10 this in mind, the County of Orange requests your commission's
11 affirmative action on the Coastal Development Permit so that we can be
12 one major step closer to the ability to begin construction on this key
13 roadway.

14 **CALIFORNIA COASTAL COMMISSION MEMORANDUM DATED**
15 **DECEMBER 4, 1987 FROM CHUCK DAMM, DISTRICT DIRECTOR, SOUTH**
16 **COAST DISTRICT: Subject: Addendum to Commission Agenda for Commission**

17 Meeting of December 9, 1987: Application No. 5-87-886*. Please see
18 attached pages for Addendum Modifications:

19 Page 3: "At page 16 insert the following new section 4:

20 4. Recreational Access Function. The construction of Pelican Hill Road
21 will provide significant recreational access benefits for inland residents by
22 providing a new access route from inland residential areas to Crystal
23 Cove State Park. Pursuant to the requirements of the approved Irvine
24 Coast LCP, Pelican Hill Road will be built as a four lane road early in
25 the development process (as contrasted with the two lane early
26 construction requirement under the 1982 LCP) with ultimate expansion to
27 six lanes. The Commission's findings of approval for the LCP adopted
28 on November 19, 1987 stated the recreational access benefits of Pelican

1 Hill Road and determined Coastal Act consistency (at page ____) as
2 follows:

3 "The 1987 LCP circulation improvements provide significant relief
4 to the most congested links of the adjacent arterial system (primarily
5 Pacific Coast Highway and MacArthur Blvd.), by ultimately diverting
6 approximately 30% of existing traffic around this area via Pelican Hill
7 Road while only adding 15% of existing traffic back onto the system in
8 these critical locations. -- without implementation of LCP land use and
9 attendant circulation improvements, Regional commuting traffic is not
10 offered alternate routes around capacity deficient areas. ---- in contract,
11 the construction of Pelican Hill Road as provided for in the 1987 Irvine
12 Coast LCP in effect increased Pacific Coast Highway capacity through
13 Corona del Mar by providing a direct link between down-coast residential
14 areas and major inland destinations, including employment centers and the
15 UCI campus.

16 "In addition to relieving traffic on Pacific Coast Highway during
17 peak commute hours, the construction of Pelican Hill Road in particular
18 will provide significant recreational access capacity by connecting inland
19 areas directly to Crystal Cove State Park (see EXHIBIT 13 in the
20 Executive Summary). ---- In this way, the construction of Pelican Hill
21 Road not only meets the requirements of Coastal Act Section 30250 but
22 also furthers the policy concerns of Coastal Act Section 30254 Booth by
23 creating new recreational access capacity on Pacific Coast Highway
24 through the inland diversion effect.

25 At page 16, renumber Section 4 to become Section 5.

26 **NOTICE OF INTENT TO PREPARE A DRAFT ENVIRONMENTAL IMPACT**
27 **REPORT #485, JANUARY 14, 1988.**

28 Page (unnumbered) Department of Transportation. Notice of prep for

1 EIR 485. Irvine Coast Master Coastal Development Permit and Tentative
2 Tract Map. Letter dated February 2, 1988.

3 Page 1. "As you know, the locally adopted alignment for SJHTC has not
4 yet been approved by FHWA. Thus, no final alignment for the SJHTC
5 has yet been determined.

6 Page 111-10 Map Figure 111-6 Orange County Master Plan of Arterial
7 Highways Map Legend shows Corridor as a State Freeway.

8 Page IV-17 PELICAN HILL ROAD

9 Pelican Hill Road (PHR) is a key circulation element in the coastal area.
10 Serving as a major access roadway for the Irvine Coast planned
11 community. And also more than offsetting impacts of coastal
12 development by diverting non-coastal area traffic from the critical section
13 of PCH west of the coastal area. The extent of this diversion was shown
14 in the traffic profiles presented above as is discussed in detail in the
15 Pelican Hill Road Report.

16 Programmed initially as a four-lane arterial, PHR will eventually be
17 extended to its full six-lane section consistent with its MPAH
18 classification."

19 **ENVIRONMENTAL MANAGEMENT AGENCY PLANNING.**

20 **SUPPLEMENTAL TRANSMITTAL APRIL 20, 1988, AGENDA ITEM NO. 14.**

21 **TO HONORABLE BOARD OF SUPERVISORS. SUBJECT: IRVINE COAST**

22 **DEVELOPMENT AGREEMENT 9DA 87-16) APRIL 20, 1988:**

23 Page 1 Background: On December 2, 1987, the Board of Supervisors
24 formally adopted the first Amendment to the Irvine Coast Local Coastal
25 Program (1988 LCP), which was subsequently certified by the California
26 Coastal Commission on January 14, 1988"

27 "The 1988 LCP is the culmination of 13 years of cooperative
28 planning efforts. The comprehensive revisions of the aforesaid

1 amendment resulted in substantial open space, early roadway
2 improvements, and other public benefits."

3 Page 2. Summary of Development Agreement. "This agreement is
4 proposed in consideration of the substantial public benefits required in the
5 LCP, including early commitments in the dedication of regional open
6 space an improvements to Master Planned arterial roadways, and new
7 contributions to public facilities beyond the requirements of the LCP.

8 "The County benefits to be gained from the development agreement
9 are summarized in EXHIBIT A." ----"in addition, the agreement
10 provides for the early dedication of the SJHTC right-of-way, a 5.3-miles
11 link from future San Canyon Avenue to MacArthur Boulevard
12 encompassing approximately 300 acres outside the Irvine Coast Planned
13 Community."

14 EXHIBIT A

15 SUMMARY OF PUBLIC BENEFITS

16 The development agreement will further assure the following major
17 public benefits to be realized from implementation of the 1988 Irvine
18 Coast Local Coastal Program (1988 LCP).

19 C. "Dedication of San Joaquin Hills Transportation Corridor (SJHTC)
20 right-of-way from future San Canyon Avenue to MacArthur Boulevard
21 prior to recordation of the first development tract map."

22 D. "Early construction of four lanes of Pelican Hill Road (PHR) from
23 Pacific Coast Highway (PCH) to MacArthur Boulevard. [Two lanes from
24 San Joaquin Hills Road (SJHR) to MacArthur Boulevard are creditable
25 toward public benefits proposed in consideration of the development
26 agreement.]"

27 **Resolution No. 88-537 Certify EIR 486, April 20, 1988**

28 EXHIBIT A: STATEMENT OF FACTS

1 Page 2: "The Irvine Coast Development Agreement serves as an
2 implementation mechanism for "The Irvine Coast Local Coastal
3 Program," adopted by the County of Orange Board of Supervisors on
4 December 2, 1987, and Certified by the California Coastal Commission
5 on January 14, 1988."

6 Page 3: "Provide early construction of four lanes of Pelican Hill Road
7 from Pacific Coast Highway to MacArthur Boulevard."

8 Page 9: "Unavoidable adverse impacts -- the construction of Pelican Hill
9 Road more than offsets Irvine Coast traffic related impacts on PCH
10 through the City of Laguna Beach and on Laguna Canyon Road."

11 Page 17: "Facts in support of findings. -- The Irvine Coast Development
12 Agreement provides a legal assurance that arterial roads will be phased
13 with development to insure that excess capacity is created to redistribute
14 traffic off already congested roads."

15 Page 24: "Feasibility of mitigation measures and project environmental
16 effects in relation to overall project benefits. ---- However any impacts on
17 Laguna Beach are more than offset by (a) the diversion of PCH traffic
18 onto Pelican Hill Road which traffic would otherwise pass through
19 Corona del Mar; (b) the provision of enhanced coastal access to Crystal
20 Cove State Park for inland residents of Orange County, provided by
21 Pelican Hill Road."

22 Page 26-27: "Project Benefits. -- 4) Early construction of four lanes of
23 Pelican Hill Road (PHR) from Pacific Coast Highway (PCH) to
24 MacArthur Boulevard. * (Two lanes are creditable toward the public
25 benefits proposed in consideration of the Development Agreement for the
26 segment from project boundary to MacArthur.)"

27 **Resolution No.. 88-537.** Certify EIR No. 486, April 20, 1988.

28 Page 1, line 7 "Whereas, in December, 1987 an application (file No.

1 DA87-16) was submitted requesting a development between the county
2 and the Irvine Company to allow build-out of the Irvine Coast planned
3 Community under *Current regulations and in consideration of substantial
4 public benefits."

5 Line 10: "Whereas, draft Environmental Impact Report (EIR) 486 has
6 been prepared to address the effects, mitigation measures, and project
7 alternatives associated with the proposed Irvine Coast Development
8 Agreement."

9 Page 1 of EXHIBIT A "STATEMENT OF FACTS"

10 Page 2. "Project objectives. -- The Irvine Coast Development Agreement
11 serves as an implementation mechanism for 'The Irvine Coast Local
12 Coastal Program,;' adopted by the County of Orange Board of
13 Supervisors on December 2, 1987, and certified by the California Coastal
14 Commission on January 14, 1988. Therefore, the primary objective of
15 the Development Agreement is to assure completion of the project as
16 described in 'The Irvine Coast Local Coastal Program.' The specific
17 objectives of the Development Agreement are described below in terms of
18 1) County of Orange Objectives, and 2) Irvine Company Objectives:

19 "1. County of Orange Objectives include: -- Assurance that
20 construction of Pelican Hill Road will occur early in the development
21 phasing to accomplish the following:"

22 Page 3: "Provide early construction of four lanes of Pelican Hill Road
23 from Pacific Coast Highway to MacArthur Boulevard."

24 "Achieve maximum compatibility with the preferred alignment of
25 the future San Joaquin Hills Transportation Corridor."

26 Page 7: "Irvine Coast LCP, Certified in January, CEQA Equipment
27 Document.

28 C. Significant effects, mitigation and findings.

1 1. Transportation/Circulation."

2 Page 9: "C. Unavoidable adverse impacts. -- The construction of Pelican
3 Hills Road more than offsets Irvine Coast traffic-related impacts through
4 the City of Laguna Beach and Laguna Canyon Road.

5 Page 17: "Facts in support of findings. -- The Irvine Coast Development
6 Agreement provides a legal assurance that arterial roads will be phased
7 with development to insure that excess capacity is created to redistribute
8 traffic off already congested roads."

9 Page 19-20: "Transportation/Circulation." -- "The Implementation of
10 LCP circulation requirements for the construction of Pelican Hill Road
11 and a fifth lane on PCH, in conjunction with project participation in the
12 "Gap" Fee Program which will fund a sixth lane on PCH, will mitigate
13 all project impacts on PCH within the plan area and within Corona del
14 Mar."

15 Page 26: "Project Benefits. The Board of Supervisors finds that the
16 following benefits will result from the proposed project:

17 a. The benefits of the 1988 LCP which are further assured by the
18 development agreement include:"

19 Page 27: "4) Early construction of four lanes of Pelican Hill Road
20 (PHR) from Pacific Coast Highway (PCH) to MacArthur Boulevard.
21 *(Two lanes are creditable toward the public benefits proposed in
22 consideration of the development agreement for the segment from project
23 boundary to MacArthur)."

24 b) "In addition to the above public benefits, the following new
25 contribution to public facilities, subsequent to the adoption of the Irvine
26 Coast LCP, are proposed in consideration of the Development
27 Agreement:

28 1) Increase in early Pelican Hill Road construction four

lanes to six lanes.

2) Early dedication for the San Joaquin Hills Transportation Corridor (SJHTC) right-of-way between future San Canyon Avenue and MacArthur Boulevard, consisting of approximately 5.3 miles (300 gross acres)."

Resolution of the Orange County Planning Commission - Master Coastal

Development Permit 88-11P (Irvine Coast Planned Community) May 4, 1988.

Resolution No. 88-46 (received by Coastal Commission May 12, 1988)

Page 1: "Whereas, the Orange County Board of Supervisors adopted the Irvine Coast LCP/Land Use Plan by Resolution No. 87-1606 and the Irvine Coast LCP/Implementing Action Program by Ordinance No. 3675 on December 2, 1987; and the California Coastal Commission Certified the Irvine Coast Local Coastal Program on January 14, 1988

Pages 2 and 3: "General Requirements: --

"5. Failure to abide by and comply faithfully with any and all conditions attached to granting of Master Coastal Development Permit 88-11P shall constitute grounds for revocation of said permit."

Page 12 "Environmental Impact Mitigation: --

32. All mitigation measures of Certified Final EIR 485 are incorporated as conditions of Master Coastal Development Permit 88-11P approval."

Resolution of the Orange County Planning Commission No. 88-45, May 4, 1988.

Environmental Impact Report 485 for Master Coastal Development Permit 88-11P, Irvine Coast Planned Community.

Page 1. "Whereas, in January, 1988 an application (File No. CD 88-11) was submitted by the Irvine Company requesting a Master Coastal Development Permit (CDP) to allow infrastructure improvements and subdivision for financing and conveyance purposes of a major portion of the Irvine Coast Planned Community."

1 "Whereas, Draft Environmental Impact Report (DEIR) 485 has been
2 prepared to address the effects, mitigation measures, and project
3 alternatives associated with the proposed Master CDP."

4 **IRVINE COAST DEVELOPMENT AGREEMENT, COUNTY OF ORANGE.**
5 **RECORD #88-272903, JUNE 9, 1988.**

6 Page 11: "2.2 Consistency with County's General Plan and Certified
7 Local Coastal Program."

8 "2.3 Summary of Major Public Benefits. -- This agreement is
9 entered into for the purpose of carrying out the development plan for the
10 project in a manner that will ensure these anticipated benefits to both
11 County (including without limitations, the existing and future residents
12 and populations of County) and owner."

13 Page 12: "2.3.1 Transportation Improvements

14 (a) Pelican Hill Road

15 The COUNTY desires to encourage the earliest possible
16 construction of Pelican Hill Road because, in the time period prior to the
17 construction of the SJHTC, Pelican Hill Road is the only regional
18 transportation facility capable of contributing to the achievement of
19 certain regional traffic objectives established by the COUNTY. Under
20 the 1988 Local Coastal Program, Pelican Hill Road will be constructed
21 initially at four lanes instead of the two lanes provided for under the 1982
22 Land Use Plan. The COUNTY will thus achieve all of the benefits set
23 forth in Section 2.3.1(a) in advance of both the Project needs and the
24 time at which they would have been achieved under the 1982 Land Use
25 Plan.

26 In conjunction with the Board of Supervisors Resolution of
27 Certification of EIR 460 and approval of the Proposed Route Alignment
28 for Pelican Hill Road, adopted on September 15, 1987, the COUNTY has

1 determined that the early construction of Pelican Hill Road will provide
2 the following significant public benefits:

3 (1) Relieves congestion on and allows for a significant diversion of
4 traffic from Pacific Coast Highway and sections of MacArthur Boulevard
5 by providing a bypass route around Corona del Mar in Newport Beach,
6 with the attendant commute and recreational access benefits discussed in
7 EIR 460 and noted in the Irvine Coast Area Traffic Analysis. The
8 analysis indicates that approximately twice as much traffic could be
9 diverted from Pacific Coast Highway in Newport Beach onto Pelican Hill
10 Road as may be added to Pacific Coast Highway as a result of the
11 Project. This diversion of traffic will provide a substantial benefit for
12 Corona del Mar residents and businesses and will substantially benefit
13 other users of Pacific Coast Highway living elsewhere in the Region."
14 Page 13: "Establish a route compatible with existing and ultimate
15 regional circulation needs in accordance with the MPAH and all adopted
16 plans of the COUNTY."

17 **Irrevocable Offer of Dedication** recorded August 22, 1988, as No. 88-417100.

18 Page 1: "This irrevocable offer of Dedication ("Offer") of the right-of-
19 way for the proposed San Joaquin Hills Transportation Corridor (The
20 "Corridor") between future San Canyon Avenue and MacArthur
21 Boulevard is made as of August 1, 1988 by The Irvine Company, a
22 Michigan Corporation ("Offeror"), in favor of the County of Orange, a
23 political subdivision of the State of California ("County"), or, if
24 designated by County, the San Joaquin Hills Transportation Corridor
25 Agency ("Agency"), with Reference to the following facts:"

26 Page 2: "E. On October 15, 1985, by Resolution No. 85-1477 the
27 County Board of Supervisors ("The Board") adopted the Major
28 Thoroughfare and Bridge Fee Program (The Fee Program)", which sets

1 such records, such facts are known to any person who has looked at the pertinent
2 public records. Responding party has no way to know the names of all such persons,
3 but they include Ronald D. Kennedy.

4 57. **Resolution No. 86-1618**, Board of Supervisors December 17, 1986,
5 Transportation Element, County of Orange Environmental Management
6 Agency.

7 **Resolution No. 86-715**, Board of Supervisors May 28, 1986.

8 58. Responding party hereby responds pursuant to the provisions of
9 Code of Civil Procedure section 2030(f)(2) that the answer to this interrogatory may be
10 derived or ascertained from the following documents, all of which are public records
11 and are therefore equally accessible, or more easily accessible, to defendant County of
12 Orange than to responding party:

13 All documents relating to the establishment and operation of Irvine Coast Assessment
14 District, Road Improvement Fund, Assessment District 88-1, effective
15 November 1, 1988.

16 TCA Consent Calendar July 8, 1993.

17 County of Orange Board of Supervisors Consent Calendar July 20, 1993.

18 59. Since the response to this interrogatory is based on public records
19 that are available for the review of any member of the public interested in reviewing
20 such records, such facts are known to any person who has looked at the pertinent
21 public records. Responding party has no way to know the names of all such persons,
22 but they include Ronald D. Kennedy.

23 60. All documents relating to the establishment and operation of Irvine
24 Coast Assessment District, Road Improvement Fund, Assessment District
25 88-1, effective November 1, 1988.

26 TCA Consent Calendar July 8, 1993.

27 County of Orange Board of Supervisors Consent Calendar July 20, 1993.

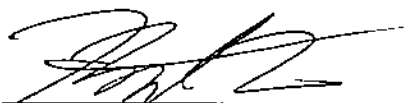
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VERIFICATION

I am an officer of Newport Coast Drive Defense Fund, a party plaintiff to this action, and I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing "PLAINTIFF NEWPORT COAST DRIVE DEFENSE FUND'S RESPONSES TO DEFENDANT COUNTY OF ORANGE'S SPECIAL INTERROGATORIES, SET ONE" and know its contents. I am informed and believe that the contents of the foregoing document are true and on that ground allege that the matters stated in it are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed on July 12, 1996.



Ronald D. Kennedy

1 COONTZ, MATTHEWS & CAMPBELL LLP
2 M. Stephen Coontz, SB# 47614
3 30448 Rancho Viejo Road, Suite 120
4 San Juan Capistrano, CA 92675
5 Telephone: (714) 240-3040

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Co-Counsel for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

NEWPORT COAST DRIVE DEFENSE)
FUND, a California non-profit)
corporation,)

Plaintiff,)

v.)

SAN JOAQUIN HILLS)
TRANSPORTATION CORRIDOR)
AGENCY, a California joint exercise of)
powers agency, COUNTY OF ORANGE,)
a California general law county, and)
DOES 1 through 25, inclusive,)

Defendants.)

Case No: 736471

JUDGE WILLIAM F. McDONALD
DEPARTMENT 20

PLAINTIFF NEWPORT COAST
DRIVE DEFENSE FUND'S
RESPONSES TO DEFENDANT
COUNTY OF ORANGE'S DEMAND
FOR IDENTIFICATION AND
PRODUCTION OF DOCUMENTS,
SET ONE

PROPOUNDING PARTY: Defendant County of Orange

RESPONDING PARTY: Plaintiff Newport Coast Drive Defense Fund

SET NUMBER: One

Plaintiff Newport Coast Drive Defense Fund ("responding party") hereby
responds to defendant's Demand for Identification and Production of Documents
("demand"), served February 20, 1996, as follows:

Preliminary Statement:

Responding party will make available or produce copies of those

1 documents that have been demanded and that exist and that are in responding party's
2 possession whose existence and location are known to responding party. Discovery is
3 ongoing, and responding party may accordingly receive or locate additional documents
4 in the future. Responding party assumes no obligation to produce such documents
5 pursuant to the demand. This response and any production of documents in accordance
6 with this response are made without prejudice to responding party's right to offer into
7 evidence other documents at the time of trial or otherwise to use other documents in
8 connection with this case.

9 Responses to Individual Categories:

10 1. Responding party will produce such documents to the extent they are
11 within responding party's possession, custody or control. Such documents, however,
12 are public documents, many, most or all of which were generated by defendant County
13 of Orange. Responding party is therefore not in possession of the originals of most of
14 such documents, if it is in possession of any of them, and defendant County of Orange
15 is already in possession of many, most or all of such documents.

16 2. Responding party will produce such documents to the extent they are
17 within responding party's possession, custody or control. Such documents, however,
18 are public documents, many, most or all of which were generated by defendant County
19 of Orange. Responding party is therefore not in possession of the originals of most of
20 such documents, if it is in possession of any of them, and defendant County of Orange
21 is already in possession of many, most or all of such documents.

22 3. Responding party will produce such documents to the extent they are
23 within responding party's possession, custody or control. Such documents, however,
24 are public documents, many, most or all of which were generated by defendant County
25 of Orange. Responding party is therefore not in possession of the originals of most of
26 such documents, if it is in possession of any of them, and defendant County of Orange
27 is already in possession of many, most or all of such documents.

28 4. Responding party will produce such documents to the extent they are

1 within responding party's possession, custody or control. Such documents, however,
2 are public documents, many, most or all of which were generated by defendant County
3 of Orange. Responding party is therefore not in possession of the originals of most of
4 such documents, if it is in possession of any of them, and defendant County of Orange
5 is already in possession of many, most or all of such documents.

6 5. Responding party will produce such documents to the extent they are
7 within responding party's possession, custody or control. The documents that respond
8 to this document demand are those referred to responding party's response to special
9 interrogatory no. 3 that accompanies these responses.

10 6. Responding party will produce such documents to the extent they are
11 within responding party's possession, custody or control. Such documents, however,
12 are public documents, many, most or all of which were generated by defendant County
13 of Orange. Responding party is therefore not in possession of any of the originals of
14 such documents, and defendant County of Orange is already in possession of many,
15 most or all of such documents. The documents that respond to this document demand
16 are those referred to responding party's response to special interrogatory no. 6 that
17 accompanies these responses.

18 7. Responding party will produce such documents to the extent they are
19 within responding party's possession, custody or control. Such documents, however,
20 are public documents, many, most or all of which were generated by defendant County
21 of Orange. Responding party is therefore not in possession of any of the originals of
22 such documents, and defendant County of Orange is already in possession of many,
23 most or all of such documents. The documents that respond to this document demand
24 are those referred to responding party's response to special interrogatory no. 9 that
25 accompanies these responses.

26 8. Responding party will produce such documents to the extent they are
27 within responding party's possession, custody or control. Such documents, however,
28 are public documents, many, most or all of which were generated by defendant County

1 of Orange. Responding party is therefore not in possession of any of the originals of
2 such documents, and defendant County of Orange is already in possession of many,
3 most or all of such documents. The documents that respond to this document demand
4 are those referred to responding party's response to special interrogatory no. 12 that
5 accompanies these responses.

6 9. Responding party will produce such documents to the extent they are
7 within responding party's possession, custody or control. Such documents, however,
8 are public documents, many, most or all of which were generated by defendant County
9 of Orange. Responding party is therefore not in possession of any of the originals of
10 such documents, and defendant County of Orange is already in possession of many,
11 most or all of such documents. The documents that respond to this document demand
12 are those referred to responding party's response to special interrogatory no. 15 that
13 accompanies these responses.

14 10. Responding party will produce such documents to the extent they are
15 within responding party's possession, custody or control. Such documents, however,
16 are public documents, many, most or all of which were generated by defendant County
17 of Orange. Responding party is therefore not in possession of any of the originals of
18 such documents, and defendant County of Orange is already in possession of many,
19 most or all of such documents. The documents that respond to this document demand
20 are those referred to responding party's response to special interrogatory no. 18 that
21 accompanies these responses.

22 11. Responding party will produce such documents to the extent they are
23 within responding party's possession, custody or control. Such documents, however,
24 are public documents, many, most or all of which were generated by defendant County
25 of Orange. Responding party is therefore not in possession of any of the originals of
26 such documents, and defendant County of Orange is already in possession of many,
27 most or all of such documents. The documents that respond to this document demand

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1 are those referred to responding party's response to special interrogatory no. 21 that
2 accompanies these responses.

3 12. Responding party will produce such documents to the extent they are
4 within responding party's possession, custody or control. Such documents, however,
5 are public documents, many, most or all of which were generated by defendant County
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7 such documents, and defendant County of Orange is already in possession of many,
8 most or all of such documents. The documents that respond to this document demand
9 are those referred to responding party's response to special interrogatory no. 24 that
10 accompanies these responses.

11 13. Responding party will produce such documents to the extent they are
12 within responding party's possession, custody or control. Such documents, however,
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15 such documents, and defendant County of Orange is already in possession of many,
16 most or all of such documents. The documents that respond to this document demand
17 are those referred to responding party's response to special interrogatory no. 27 that
18 accompanies these responses.

19 14. Responding party will produce such documents to the extent they are
20 within responding party's possession, custody or control. Such documents, however,
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25 are those referred to responding party's response to special interrogatory no. 30 that
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27 15. Responding party will produce such documents to the extent they are
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5 are those referred to responding party's response to special interrogatory No. 33 that
6 accompanies these responses.

7 16. Responding party will produce such documents to the extent they are
8 within responding party's possession, custody or control. Such documents, however,
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13 are those referred to responding party's response to special interrogatory no. 36 that
14 accompanies these responses.

15 17. Responding party will produce such documents to the extent they are
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21 are those referred to responding party's response to special interrogatory no. 39 that
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23 18. Responding party will produce such documents to the extent they are
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1 are those referred to responding party's response to special interrogatory no. 42 that
2 accompanies these responses.

3 19. Responding party will produce such documents to the extent they are
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11 20. Responding party will produce such documents to the extent they are
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19 21. Responding party will produce such documents to the extent they are
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27 22. Responding party will produce such documents to the extent they are
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7 23. Responding party will produce such documents to the extent they are
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15 24. Responding party will produce such documents to the extent they are
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VERIFICATION

I am an officer of Newport Coast Drive Defense Fund, a party plaintiff to this action, and I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing "PLAINTIFF NEWPORT COAST DRIVE DEFENSE FUND'S RESPONSES TO DEFENDANT COUNTY OF ORANGE'S DEMAND FOR IDENTIFICATION AND PRODUCTION OF DOCUMENTS, SET ONE" and know its contents. I am informed and believe that the contents of the foregoing document are true and on that ground allege that the matters stated in it are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed on July 12, 1996.



Ronald D. Kennedy

24

CALIFORNIA COASTAL COMMISSION

421 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105-3973
(415) 543-8555
Hearing Impaired/TDD (415) 896-1876
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 504-5200



February 11, 1991

Steve Letterly
San Joaquin Hills Transportation
Corridor Agency
345 Clinton Street
Costa Mesa, California 92626

RE: Coastal Commission review of proposed San Joaquin Hills
Transportation Corridor

Dear Mr. Letterly:

You have received a letter containing our comments on the Draft EIR/EIS for the above project. This is a follow-up letter regarding some of the procedural elements of the Coastal Commission's formal review of the San Joaquin Hills Transportation Corridor (SJHTC) proposed project.

Procedurally, the project potentially triggers review under both coastal development permit authority and federal consistency authority. The locations where the project is within the coastal zone are in local governments' jurisdictions, some of which have certified Local Coastal Programs (LCPs), while others do not. For the local jurisdictions with certified LCPs, the coastal development permit authority has been delegated to these local governments. Such permits would only be brought before the Coastal Commission if decisions of local governments were to be appealed to the Commission. For those local jurisdictions without certified LCPs, coastal development permits will need to be reviewed and approved by the Commission. However, due to the fact that only small portions of the project are located within the coastal zone, the scope and significance of such review will, for the most part, be limited to local impacts. For all practical purposes, any meaningful review of the entire project by the Commission would occur through the federal consistency process, which is triggered based on impact rather than strict location. Therefore, this letter will primarily focus on the Coastal Commission's consistency authority. Permit authority should be complied with by you in coordination with the applicable local governments (for local jurisdictions with certified LCPs), or the Long Beach district office of the Coastal Commission (for local jurisdictions without certified LCPs), although we would be happy to advise you further on that process. For specific information regarding the jurisdictional aspects or other details of the permit process, please contact Teresa Henry at the Long Beach District office of the Coastal Commission at: (213) 590-5071.

Letter to Steve Letterly
February 11, 1991
Page -2-

With respect to federal consistency, review will be conducted from our office here in San Francisco. Due to the more comprehensive role in the review of the proposed corridor this office will play, you should consider us as the primary contact/coordination office pertaining to overall Coastal Commission review of this project. Therefore, all inquiries and communications regarding the Commission's review of the project as a whole should be directed to this office.

Under the Federal Consistency regulations (15 CFR 930 et seq.) the California Coastal Commission reviews federal projects and support for activities which are located within and outside the coastal zone for consistency with the California Coastal Management Program (CCMP). This review occurs when such activities affect the resources of the coastal zone directly or through spillover impacts. As identified in our comment letter on the project's DEIR/DEIS (11/26/90), the proposed SJHTC project has the potential to create significant spillover impacts to the coastal zone. Federal Consistency review for the entire project is triggered by three aspects of federal involvement:

- (1) The project is eligible for federal funding as a pilot project included in the 1987 Federal Surface Transportation legislation. While no federal funds have been provided to date, all federal procedures and requirements which would allow such funding for the project are being complied with. Additionally, the Federal Highway Administration is proceeding with their environmental clearance assuming federal funding will occur (letter from FHWA's James Bednar to Gerry Chalmers of the Coastal Commission 11/21/90). Due to these facts, the Coastal Commission staff considers the San Juaquin Hills Transportation Corridor to be a federally funded project for purposes of federal consistency review.
- (2) The project will require several Army Corps of Engineers' Section 404 Permits for stream crossings, alterations and encroachments. You must submit a consistency certification and receive Commission concurrence before the Corps will issue any such permits.
- (3) The Federal Highway Administration will need to approve the connection of the SJHTC with Interstate 5. This will occur through the preparation and approval of a new connection report. This authorization constitutes a federal license for an activity affecting the coastal zone, and as such triggers consistency review. For this particular "trigger" of consistency review, the Commission will need to request permission to review the activity from the Offices of Ocean and Coastal Resources Management (OCRM) at the time the connection application is filed with the FHWA.

While there are different timing considerations for the various approaches to federal consistency jurisdiction, federal consistency regulations encourage multiple federal consistency review, where appropriate, at significant decision-making points for federal agencies (Section 930.37(c)). The Coastal

Letter to Steve Letterly
February 11, 1991
Page -3-

Commission staff believes the finalization of the federal NEPA process would be such a significant federal agency decision-making point common to the various distinct federal actions of funding, permits and licenses. Therefore, while it is not at this time clear which of the above federal "triggers" would occur first, the Coastal Commission staff believes federal consistency review for the SJHTC should ideally be coordinated concurrent with the FHWA's certification of the Final EIS for the project. It would appear appropriate for us to conduct our consistency review of this project before the notice of Record of Decision is published by the FHWA (the Record of Decision being the final step in FHWA's NEPA review of this project). However, it should be noted that through the federal consistency submittal, it is the applicant's submittal that formally activates the timing of consistency review. Please note that the Coastal Commission's consistency review is conducted under the federal Coastal Zone Management Act (CZMA), and as such is formally distinct from the NEPA process and timing requirements. Therefore, the NEPA-related timing elements discussed above represent what appears to the Commission staff to be the most expeditious and convenient period to commence consistency review, although we remain open to any alternative suggestions you may have regarding processing.

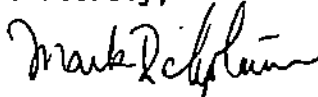
At the time of your application submittal, we would request that the following information be submitted with your application (or a letter indicating that the information is contained within a document previously submitted, such as the DEIS or FEIS):

- (a) A complete packet of the comments to the DEIS as submitted by other agencies and interested parties, and any responses to such comments as have been completed as of the date of application submittal.
- (b) Any additional technical information, studies, reports or substantive revisions which are supplemental to the information presented in the DEIS (and accompanying technical reports) available at the time of application submittal, which would eventually be incorporated into the FEIS, and/or which would be useful for review of coastal zone impacts.
- (c) The consistency certification application must include a statement as to whether the activity will be conducted in a manner consistent with the CCMP, and must also include: (1) a detailed description of the activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects, including maps, diagrams, and technical data; (2) a brief assessment relating the probable coastal zone effects of the project and its associated facilities to the relevant policies of the CCMP (in this case the policies of Chapter 3 of the Coastal Act); and (3) findings sufficient to support the applicant's assertion that the project is consistent with the applicable policies.

Letter to Steve Letterly
February 11, 1991
Page -4-

We appreciate your cooperation in this matter. If you have any further questions regarding the federal consistency process as it pertains to this project, please contact me at (415) 904-5289 or Gerry Chalmers of my staff at (415) 904-5272.

Sincerely,



MARK DELAPLAINE
Federal Consistency Supervisor

cc: Teresa Henry, CCC - South Coast District
James Bednar, FHWA
Judith Heyer, Caltrans
Timothy Keeney, OCRM
Charles Holt, Army Corps of Engineers - L.A. District

8195P

VOLUME I - FINAL ENVIRONMENTAL IMPACT STATEMENT TEXT

PROPOSED CONSTRUCTION OF STATE ROUTE 73 EXTENSION
BETWEEN INTERSTATE ROUTE 5 IN THE CITY OF SAN JUAN CAPISTRANO
AND JAMBOREE ROAD IN THE CITY OF NEWPORT BEACH
KNOWN AS THE SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR

AND I-5 WIDENING BETWEEN SR-74 ORTEGA HIGHWAY AND THE CORRIDOR
AND RAMP IMPROVEMENTS BETWEEN JAMBOREE ROAD AND BIRCH STREET
ON EXISTING STATE ROUTE 73
LOCATED IN ORANGE COUNTY, CALIFORNIA

FINAL ENVIRONMENTAL IMPACT STATEMENT
AND
SECTION 4(F) EVALUATION

SUBMITTED PURSUANT TO:
(State) Division 13, Public Resources Code (Federal) 42 U.S.C. 4332 (2) (C), and 49 U.S.C. 303
BY THE
U.S. Department of Transportation
Federal Highway Administration
AND
San Joaquin Hills Transportation Corridor Agency
Orange County, California

COOPERATING AGENCIES:

Department of Transportation
Department of Interior, Fish and Wildlife Service

California Transportation Commission
California Department of Fish and Game

1/92

for *Russell O. Lightcap*
RUSSELL O. LIGHTCAP
District Director
District 12
California Department of Transportation

30/92

Jeffrey R. Brooks
JEFFREY R. BROOKS
Director, Office of Program Development
Region 9
Federal Highway Administration

1/5/92

for *William Wolett, Jr.*
WILLIAM WOOLETT, JR.
Chief Executive Officer
Transportation Corridor Agencies

Persons may be contacted for additional information concerning this document:

Heyer
Department of Transportation
San Street
CA 92705
2252

James J. Bednar
Federal Highway Administration
California Division
P.O. Box 1915
Sacramento, CA 95812-1915
(916) 551-1310

Steve Letterly
San Joaquin Hills
Transportation Corridor Agency
345 Clinton Street
Costa Mesa, CA 92626
(714) 557-3298 x297

sed action is to meet the need for north/south linkage between Interstate 5 and existing State Route 73 by
ing a new highway facility which would be financed by tolls. Two design alternatives and a "No Build" alterna-
studied. The Preferred Alternative presented in this FEIS is the Demand Management Alternative with the Option
on Interstate 5. Potential benefits include relieving traffic congestion on Interstates 405 and 5, and State
in ved transportation network, and improved access to U.C. Irvine, the John Wayne Airport, and recreational
Or. County. Potential adverse impacts include impacts on sensitive plant species; riparian and animal
public parkland; visual resources; noise; open space; displacement of businesses; and changes in land use.
s are proposed which reduce or avoid impacts. Under the No Build Alternative, no Corridor or associated
s would be built. The traffic relief benefits of the Build Alternative would not occur.

An expected near and long-term benefit of the Corridor is that it would either provide direct access or enhance access to the following recreational areas:

- Newport Beach Harbor and Beach Areas.
- Corona del Mar Beaches;
- 16,000 Acre Laguna Greenbelt Regional Open Space:
 - Crystal Cove State Park;
 - Buck Gully/Los Trancos Canyon Regional Open Space;
 - Laurel Canyon/Irvine Coast Wilderness Park;
 - Laguna Canyon Ridge Open Space;
 - Aliso Greenbelt at El Toro Road;
 - Aliso/Wood Canyon Regional Park;
- Laguna Beach Recreational Areas;
- Laguna Niguel Regional Park;
- Aliso Creek State Beach and Salt Creek County Beach; and
- Dana Point Harbor, Doheny State Park, Lantern Bay Regional Overlook.

With respect to potential overuse of coastal resources, the following information is provided. According to the Harbors, Beaches and Parks Department, the County of Orange has no predetermined carrying capacity for County owned recreational open space or regional parks. Park capacity, to a great extent, is dictated by the number of parking spaces available at each recreational facility, restricting access when available parking is fully engaged. Since many of the proposed County regional parks in the Corridor area have opened recently or are not yet open to public use, there are no current user statistics or estimates of carrying capacity. Orange County's current Regional Recreational Facilities Plan, updating the 1980 Recreational Needs Analysis, is based on recreation need, and reasonable expectations dictated by the County's financial capabilities. As indicated in the recreation element of the County General Plan, wilderness regional parks are designed to be regional parks in which the land retains its undeveloped character with minimal improvements, and which is managed and protected to preserve natural processes. The resource management and development policy for wilderness regional park areas permits only "restricted hardscape and domestication appropriate to provide access and enjoyment/observation of natural resources and processes." Interpretative programs and concessions are permitted. The County's recreational element does not contain regulations which specifically control the number of individuals permitted access to such park areas.

Many of the recreation areas discussed in the Final EIS, such as Aliso/Wood Canyon Regional Park, currently exist as passive recreational sites. It is expected that various levels of active recreation uses will be developed at these locations in the future, increasing both the demand for the sites and their planned carrying capacity. The proposed Corridor and feeder arterials would provide the additional travel capacity to serve the increased traffic demand.

In light of the policies enunciated in the California Coastal Act that encourage access to coastal recreational resources for inland residents as well as those living near the coast, restriction of access to coastal resources in

order to protect their environmental values is more properly accomplished through techniques limiting the use of each site, rather than restriction of regional transportation access to coastal recreation areas. Management techniques such as controlling the size and location of parking areas are both more effective and more equitable means of assuring proper use and availability of coastal recreation sites than attempting to constrain access artificially by limiting the capacity of roadways.

Overuse of coastal recreational resources is further regulated by state law. For example, areas subject to the California Coastal Act, including the coastal recreational sites seaward of the Corridor, must comply with the policies of the Coastal Act including Public Resources Code Section 30212.5 requiring distribution of public facilities in such a way as to avoid "overuse by the public of any single area" and Public Resources Code Sections 30240(a) and (b) protecting sensitive natural resources. Park management techniques for regulating public use of recreation areas are expected to be finalized during the review of park plans adopted for each recreation area. In addition, specific park development plans will be subject to the requirements of CEQA and to specific local coastal programs ("LCPs") approved by the Coastal Commission pursuant to the California Coastal Act. As described in the Final EIS and below, the Corridor is consistent with the approved LCPs for Aliso Creek, Irvine Coast, and the cities of Irvine and Newport Beach. Compliance with these regulations, in conjunction with the utilization of park management techniques, will provide an effective and equitable means of assuring proper use and availability of recreation areas.

The proposed Corridor would intersect, or be adjacent to three areas within the coastal zone boundary. These areas are as follows:

- Corridor would be adjacent to coastal zone boundary south of El Toro Road;
- Corridor would traverse the coastal zone adjacent to future Sand Canyon Avenue; and
- Corridor would traverse the coastal zone at San Diego Creek near the southeasterly end of Upper Newport Bay (see Figure 3.7.1).

These areas of the coastal zone fall under land use regulations contained in the Aliso Creek LCP and the Irvine Coast LCP or, in the case of the San Diego Creek crossing, are not within an adopted LCP. Each LCP includes an adopted Land Use Plan (LUP) which designates land uses within the Planning Unit. For purposes of this discussion, Corridor consistency with applicable LCPs is assessed against the relevant adopted LUP below. The relationship of the Corridor to the Irvine and Newport Beach LUPs is also described.

Aliso Creek LUP. The Aliso Creek LCP Land Use Plan (LUP) was certified by the California Coastal Commission on September 25, 1984.

The proposed Corridor would be adjacent to the Aliso Creek coastal zone boundary near the Aliso Creek Planning Unit. The Corridor would not intrude into the coastal zone (Source: Aliso Viejo Planned Community Development Plan, 3rd Revised Zone Change, 83-23P).

APPENDIX K - COASTAL ACT ISSUES AND CORRESPONDENCE

The Commission's January 21, 1992, letter to NOAA, included in Attachment 1 to this Appendix, indicates that Commission staff intends to recommend to the Coastal Commission that review of the coastal zone effects of this project will be undertaken through consistency review of Army Corps of Engineers permits.

In December 1991, the TCA prepared a "Detailed Analysis Relating EIR Discussion to Issues Raised in California Coastal Commission Letter Dated August 7, 1991," hereafter referred to as "Coastal Analysis". This report is included as Attachment E-1 to the TCA "Report Prepared in Response to Peremptory Writ of Mandate Dated November 18, 1991, Regarding the San Joaquin Hills Transportation Corridor," December 9, 1991. The Coastal Analysis utilized information in this Final EIS to address the Coastal Commission comments geographically and topically, because the EIS does not specifically differentiate between impacts within the coastal zone and potential impacts of development outside the coastal zone on natural resources located within the statutorily defined "coastal zone". For further information on the Corridor's relationship to coastal zone issues, the reader is referred to the Coastal Analysis.

As stated in Section 1.0 of the Final EIS, a secondary project objective is to provide access from inland areas to existing and planned coastal recreational areas.

SR-1 is a major arterial providing access to recreational uses in the coastal communities of Newport Beach, Laguna Beach, Dana Point and San Juan Capistrano. Traffic volumes on SR-1 would be substantially reduced by construction of the Corridor. Provision of the Corridor would provide relief to SR-1, and would facilitate recreational access by allowing non-recreational traffic to utilize a nearby regional parallel route to SR-1. It also permits recreational traffic to utilize a nearby regional parallel route to SR-1, and permits recreational traffic to minimize its use of SR-1 by facilitating access to the coastal recreational areas via other routes such as MacArthur, Pelican Hill, Laguna Canyon, Sand Canyon, Crown Valley Parkway, and Street of the Golden Lantern. Given the recreational needs of an expanding County population, the Corridor provides an essential link between inland residential areas and these major recreational areas of the coast.

The California Coastal Act of 1976 places a high priority on assuring public access to the Coast and on encouraging recreational use of Coastal areas (Public Resources Code Sections 30210-30214, 30220-30224, 30250(c) and 30254). By enhancing public access to important Coastal recreational areas (several of which were created as a result of Coastal Commission permit and LCP conditions, including the Irvine Coast Wilderness Park, the Aliso/Wood Canyons Regional Park, and the Lantern Bay Overlook), the Corridor helps attain these Coastal Act objectives. The Corridor enhances alternative access to Crystal Cove State Park and Laguna Beach via Pelican Hill Road and Sand Canyon Avenue, thereby freeing up capacity on MacArthur for access to the Corona del Mar and Irvine Coast beaches and Laguna Canyon Road for access to beaches in Laguna Beach, and the Laurel Canyon and Irvine Coast open space dedication areas. In the same fashion, the long-term County objectives of assuring major recreational use in the Laguna Greenbelt area are also enhanced, consistent with the County's General Plan land use designations for these areas.

FAST CORRIDOR FACTS

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR

SCHEDULE: Ground breaking in 1991; completion 1994 and 1995.

LOCATION: Extension of Corona Del Mar (73) Freeway from the John Wayne Airport area to San Juan Capistrano, between and parallel to Interstate 5 and Pacific Coast Highway. Length is approximately 15 miles.

NUMBER OF LANES: Three to five each direction, depending on final alternative chosen.

COST: Total estimated cost (1990 \$); \$667 million.

EASTERN TRANSPORTATION CORRIDOR

SCHEDULE: Ground-breaking in 1991. The ETC will take approximately four years to construct.

LOCATION: Begins at the 91 Freeway near the Riverside County line; parallels the Newport (55) Freeway, splitting into two legs near Santiago Canyon Road, the west leg ending at Jamboree Road near I-5 and the east leg connecting with the Laguna (133) freeway at I-5. Length totals approximately 23 miles.

NUMBER OF LANES: Three to four in each direction, depending on final design.

COST: Total estimated cost (1990 \$); \$630 million.

FOOTHILL TRANSPORTATION CORRIDOR

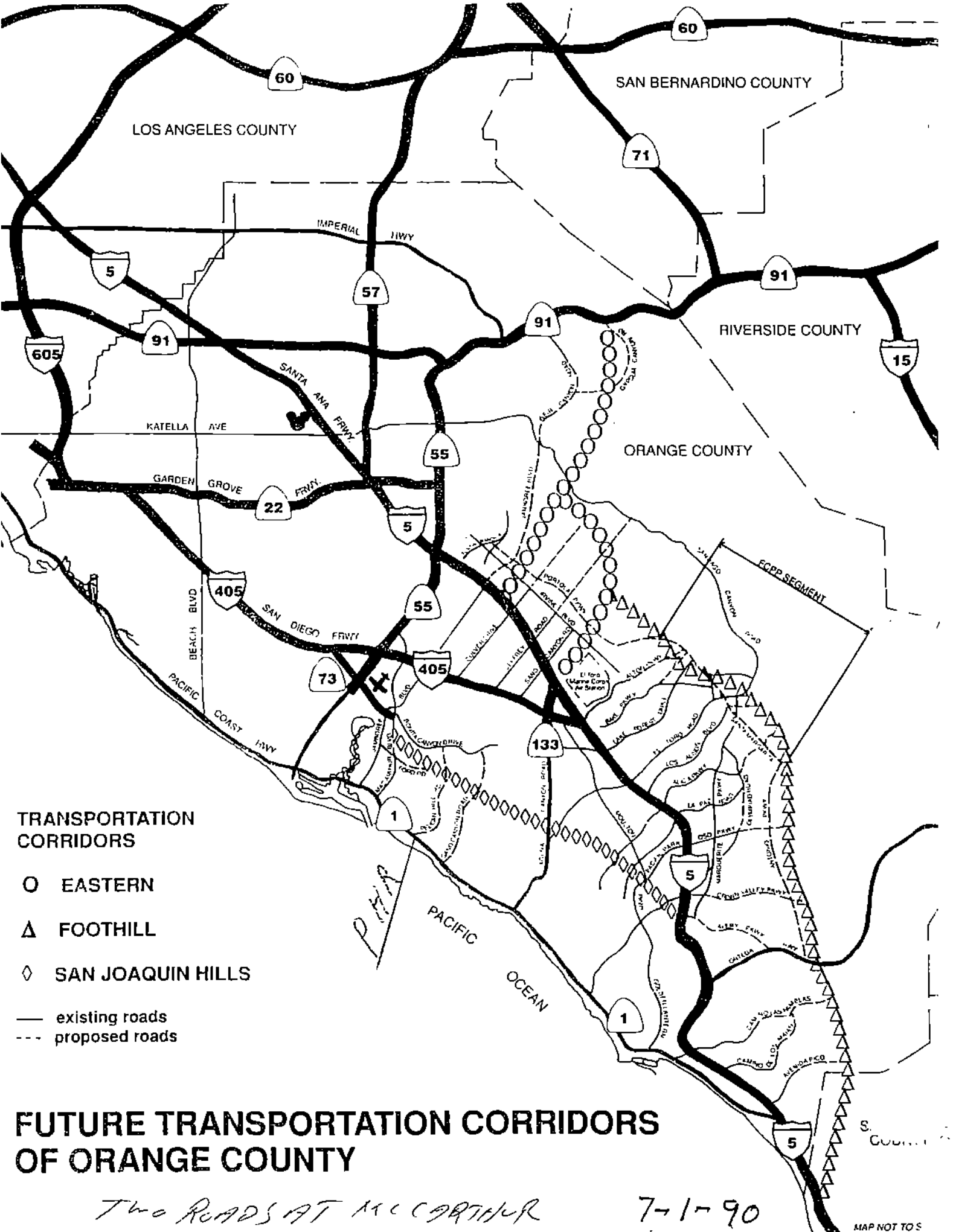
SCHEDULE: Ground-breaking on FCPP section (7.6 miles between Antonio Pkwy. and Portola Pkwy. North) in late 1990; completion in early 1994; ground-breaking on remainder, 1992: completion, 1996.

LOCATION: Connects with east leg of Eastern Transportation Corridor, paralleling and connecting with I-5 near the San Diego County border. Length is approximately 30 miles.

NUMBER OF LANES: Three to four in each direction, depending on final design.

COST: Total estimated cost (1990 \$); \$746 million.

FUNDING: Nearly 50% through fees assessed on new development in areas of benefit surrounding the Corridors. Remainder, construction bonds, paid off through toll revenue. (Small amount of state and/or federal funding is also possible.)



TRANSPORTATION CORRIDORS

- EASTERN
- △ FOOTHILL
- ◇ SAN JOAQUIN HILLS

— existing roads
 --- proposed roads

FUTURE TRANSPORTATION CORRIDORS OF ORANGE COUNTY

Two Roads at McCArthur

7-1-90

FAST CORRIDOR FACTS

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR

SCHEDULE:	Ground breaking in 1991; completion 1994 and 1995.
LOCATION:	Extension of Corona Del Mar (73) Freeway from the John Wayne Airport area to San Juan Capistrano, between and parallel to Interstate 5 and Pacific Coast Highway. Length is approximately 15 miles.
NUMBER OF LANES:	Three to five each direction, depending on final alternative chosen.
COST:	Total estimated cost (1990 \$); \$667 million.

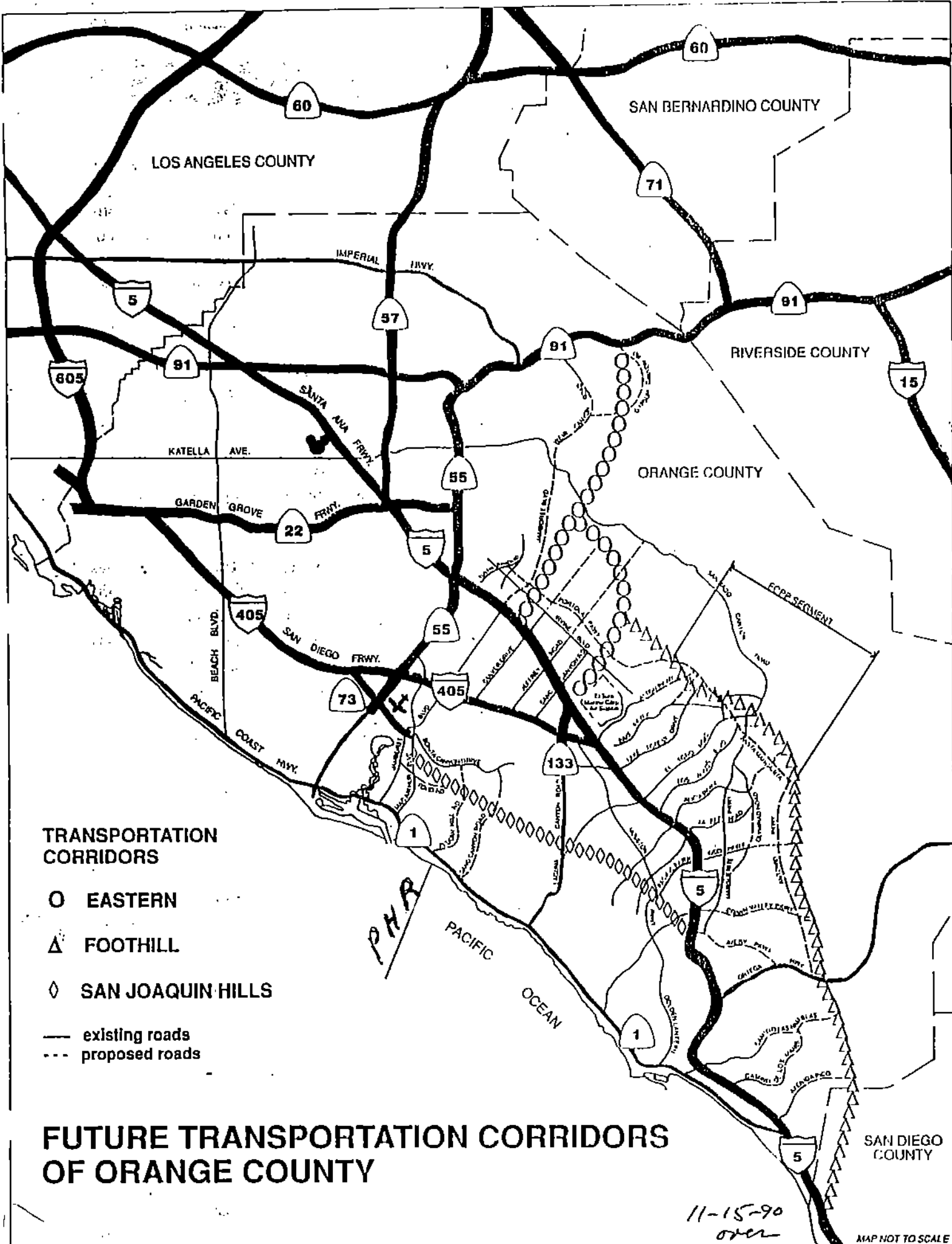
EASTERN TRANSPORTATION CORRIDOR

SCHEDULE:	Ground-breaking in 1991. The ETC will take approximately four years to construct.
LOCATION:	Begins at the 91 Freeway near the Riverside County line; parallels the Newport (55) Freeway, splitting into two legs near Santiago Canyon Road, the west leg ending at Jamboree Road near I-5 and the east leg connecting with the Laguna (133) freeway at I-5. Length totals approximately 23 miles.
NUMBER OF LANES:	Three to four in each direction, depending on final design.
COST:	Total estimated cost (1990 \$); \$630 million.

FOOTHILL TRANSPORTATION CORRIDOR

SCHEDULE:	Ground-breaking on FCPP section (7.6 miles between Antonio Pkwy. and Portola Pkwy. North) in late 1990; completion in early 1993; ground-breaking on remainder, 1992-1996; completion, 1996-2000.
LOCATION:	Connects with east leg of Eastern Transportation Corridor, paralleling and connecting with I-5 near the San Diego County border. Length is approximately 30 miles.
NUMBER OF LANES:	Three to four in each direction, depending on final design.
COST:	Total estimated cost (1990 \$); \$746 million.

FUNDING: Nearly 50% through fees assessed on new development in areas of benefit surrounding the Corridors. Remainder, construction bonds, paid off through toll revenue. (Small amount of state and/or federal funding is also



TRANSPORTATION CORRIDORS

- EASTERN
- △ FOOTHILL
- ◇ SAN JOAQUIN HILLS

— existing roads
 - - - proposed roads

FUTURE TRANSPORTATION CORRIDORS OF ORANGE COUNTY

11-15-90
 over

MAP NOT TO SCALE

287

OFFICIAL STATEMENT

\$1,078,629,411.05

San Joaquin Hills Transportation Corridor Agency
(Orange County, California)
Senior Lien Toll Road Revenue Bonds

Current Interest Bonds Dated March 1, 1993

Due January 1, as set forth on page (i) herein

Convertible Capital Appreciation Bonds Dated Date of Delivery

Capital Appreciation Bonds Dated Date of Delivery

This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The San Joaquin Hills Transportation Corridor Agency (the "Agency") is offering \$1,078,629,411.05 initial principal amount of its Senior Lien Toll Road Revenue Bonds, consisting of the following Series of bonds: \$765,610,000 Series 1993 Senior Lien Current Interest Bonds (the "Current Interest Bonds"); \$149,996,586.40 Series 1993 Senior Lien Convertible Capital Appreciation Bonds (the "Convertible Capital Appreciation Bonds"); and \$163,022,824.65 Series 1993 Senior Lien Capital Appreciation Bonds (the "Capital Appreciation Bonds"). The Current Interest Bonds, the Convertible Capital Appreciation Bonds and the Capital Appreciation Bonds are sometimes referred to herein collectively as the "Senior Lien Bonds." Each Series of the Senior Lien Bonds will be dated as set forth above and will mature in the years and principal amounts and will bear interest at the rates set forth on page (i) of this Official Statement.

The Senior Lien Bonds are being issued in fully registered form, and when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository of the Senior Lien Bonds. Interest on the Current Interest Bonds will be payable on each January 1 and July 1, commencing July 1, 1993. Interest on the Convertible Capital Appreciation Bonds will be payable on each January 1 and July 1, commencing with the first such date subsequent to the expiration of the Accretion Period (which is July 1, 2002). No payments are due to the owners of the Convertible Capital Appreciation Bonds prior to the expiration of the Accretion Period or to the owners of the Capital Appreciation Bonds until the maturity dates of the respective Capital Appreciation Bonds (subject to the right of prior redemption of the Convertible Capital Appreciation Bonds as described herein). Payments of principal of, premium, if any, and interest on the Senior Lien Bonds will be paid by First Interstate Bank of California, Los Angeles, California, as Trustee, to DTC which in turn is obligated to remit such principal, premium, if any, and interest to DTC participants for subsequent disbursement to the beneficial owners of the Senior Lien Bonds. The Senior Lien Bonds are subject to optional, mandatory and extraordinary redemption as described herein.

Simultaneously with the issuance of the Senior Lien Bonds, the Agency is issuing \$90,947,437 initial principal amount of its Junior Lien Bonds. The Senior Lien Bonds and the Junior Lien Bonds are being issued by the Agency for the principal purpose of financing a portion of the costs associated with the design of, acquisition of property for, and construction of, the San Joaquin Hills Transportation Corridor (the "Toll Road"), a limited access six-lane toll highway in Orange County, California (as more fully described herein). See "THE TOLL ROAD" herein. The proceeds of the Senior Lien Bonds will also be applied to fund capitalized interest on such Bonds, to fund a reserve fund for such Bonds and to pay costs of issuance of such Bonds.

The Senior Lien Bonds are special, limited obligations of the Agency payable solely from a pledge of the Pledged Funds under the Indenture, which consist principally of the Tolls to be generated by the Toll Road (net of Agency Current Expenses, as defined herein). The receipt of Tolls is dependent upon the completion of the Toll Road. In addition, Pledged Funds under the Indenture also include certain development impact fees to be received by the Agency in connection with the Toll Road, and certain other funds (such as interest earnings) pledged by the Agency under the Indenture. The pledge of such Pledged Funds (other than amounts in the Junior Lien Bonds Debt Service Fund and the Junior Lien Bonds Reserve Fund described herein) is prior to the pledge of such funds to payment of the Agency's Junior Lien Bonds concurrently or hereinafter issued, as more fully described herein.

**OWNERSHIP OF THE SENIOR LIEN BONDS IS SUBJECT TO RISK.
POTENTIAL INVESTORS ARE ADVISED TO CAREFULLY READ "RISK FACTORS" HEREIN.**

THE SENIOR LIEN BONDS ARE NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE OR LIEN UPON, ANY PROPERTY OF THE AGENCY OR ANY OF ITS INCOME OR RECEIPTS EXCEPT THE PLEDGED FUNDS UNDER THE INDENTURE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA OR ANY PUBLIC AGENCY THEREOF OR ANY MEMBER OF THE AGENCY IS PLEDGED TO THE PAYMENT OF THE SENIOR LIEN BONDS. THE SENIOR LIEN BONDS DO NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE STATE OF CALIFORNIA OR ANY PUBLIC AGENCY THEREOF (OTHER THAN THE AGENCY) OR ANY MEMBER OF THE AGENCY. THE AGENCY HAS NO TAXING POWER.

The First Boston Corporation

Smith Barney, Harris Upham & Co.
Incorporated

Bear, Stearns & Co., Inc.
Goldman, Sachs & Co.

Lehman Brothers
J.P. Morgan Securities Inc.

PaineWebber Incorporated

The date of this Official Statement is March 4, 1993.

39



WILBUR
SMITH
ASSOCIATES

ENGINEERS • ECONOMISTS • PLANNERS

135 COLLEGE STREET • P.O. BOX 9412 • NEW HAVEN, CT 06534 • (203) 865-2191 • FAX (203) 624-0484

February 9, 1993

Mr. William Woollett, Jr.
Executive Director
Transportation Corridor Agencies
345 Clinton Street
Costa Mesa, CA 92626

Dear Mr. Woollett:

We are pleased to submit this report relating to estimated traffic and revenues for the proposed San Joaquin Hills Transportation Corridor (SJHTC).

The study involved the development of a comprehensive data base, including motorist interview surveys throughout Orange County. A traffic model based on that used by the Orange County Environmental Management Agency (OCEMA) and employing the latest socioeconomic data set (OCP-92) was developed specifically for the purpose of estimating traffic and revenue on the proposed SJHTC.

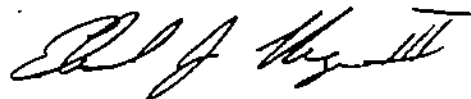
A review was made of the latest Orange County estimates for employment, population, and development to provide a basis for estimating corridor traffic growth. Highway capacity constraints and future highway improvements were also recognized in preparing traffic and revenue estimates.

A review of socioeconomic growth patterns and developer fee potential was conducted by Mr. R. Gregory Clark, Independent Management Consultant to the Transportation Corridor Agency. For convenience of the reader, copies of two reports by Mr. Clark are included in Appendix B.

Our Project Director, Ronald A. North, key staff including Robert R. Josef, Jeffrey A. Byer and others, gratefully acknowledge the excellent assistance and cooperation received throughout the course of the study from your staff, the Corridor Design Management Group, OCEMA, OCTA, Caltrans and others contacted during the study. It has been a pleasure to have participated in this important project.

Very truly yours,

WILBUR SMITH ASSOCIATES



Edward J. Regan III
Senior Vice President

EJR/lao

The Toll Road was officially designated as a State Highway Route in September 1983 by the State Legislature (California Streets and Highway Code Section 373). The Toll Road will become State Route 73 immediately upon acceptance of the completed facility by Caltrans (see "ACCEPTANCE AND MAINTENANCE OF THE TOLL ROAD—CALIFORNIA DEPARTMENT OF TRANSPORTATION" below).

Current Traffic Patterns

LEFT
OST

The principal interstate route serving the County is the Santa Ana Freeway, I-5, which extends from the San Diego County line near San Clemente to the Los Angeles County line at Buena Park. The San Diego Freeway, I-405, is the major route connecting the County with western Los Angeles and Los Angeles International Airport. Long distance travellers from San Diego to points north of Los Angeles also use I-405 as an alternative to I-5. Another important freeway route is SR-55, the Newport Freeway, which connects Costa Mesa and Santa Ana with SR-91, the Riverside Freeway. SR-91 is the major freeway connecting the County with Los Angeles, Riverside, and San Bernardino Counties. The Garden Grove Freeway, SR-22, connects the Costa Mesa Freeway in Santa Ana with northern Orange County and southern Los Angeles County. The major arterials in the transportation corridor include SR-1, Pacific Coast Highway, which is a major recreational route running from I-5 near South San Juan Creek north to the Los Angeles County line and beyond, and SR-133, Laguna Canyon Road, which connects the City of Laguna Beach with I-5 and I-405 in the City of Irvine.

General Description

The Toll Road will be a limited access six-lane toll highway, stretching approximately 15 miles from I-405 in the vicinity of the John Wayne Orange County Airport in Costa Mesa, California, south to a connection with I-5 in San Juan Capistrano, California. The Toll Road will run approximately parallel with the Pacific Coast Highway. At its northern end, the Toll Road will be a direct extension of the existing Corona del Mar Freeway (State Route 73) at Jamboree Road. At its southern end, the corridor will connect to I-5 near Avery Parkway. The Toll Road will include ten interchanges. The Toll Road will pass through hilly terrain and will include grades up to 6%, the maximum grade permitted by Caltrans. The map on the inside front cover page of this Official Statement indicates the proposed route of the Toll Road.

The Toll Road project will involve 19.4 miles of improvements, with 14.5 miles of new construction, 4.2 miles of widening on I-5 and 0.7 miles of improvements on State Route 73. The Moulton Parkway Subsegment of the Toll Road (between Laguna Canyon Road and Moulton Parkway) is expected to be open to traffic 1,055 days after the date of the Second Notice to Proceed (which is expected to be January 1996). The remainder of the Toll Road is expected to be open to traffic by March 1997.

The Toll Road will initially be constructed to include six travel lanes (three lanes in each direction). The Toll Road has been designed with an 88-foot median set aside to allow for the future construction of proposed exclusive HOV lanes and possible transit options. The Traffic and Revenue Consultant has projected that the facility will be capacity constrained during peak periods and that sufficient demand will exist for additional traffic lanes by 2001; however, the Traffic and Revenue Consultant has not assumed that HOV lanes will be constructed during the forecast period.

Pursuant to a MOU with the Southern California Association of Governments regarding air quality conformity requirements, in the event that the Toll Road does not achieve certain average vehicle occupancy goals through various pricing strategies, the Agency will be required to dedicate one lane in each direction as a high occupancy vehicle ("HOV") lane or proceed to construct one or more separate HOV lanes in the Toll Road median. The Agency intends to build the HOV lanes as traffic demand justifies additional capacity or, if earlier, as legally required, and in each case, as sufficient funds are available. It is expected that the HOV lanes, which are expected to generate additional Revenues, if constructed, would be financed on a pay-as-you-go basis from available Agency Revenues or from additional Bonds. See "Current Status of Major Discretionary Permits and Approvals—Air Quality Conformity Requirements—SCAG MOU" below.

LOCATION MAP

LEGEND

TRANSPORTATION CORRIDORS

EASTERN
FOOTHILL

INTERCHANGES

FULL PARTIAL

OPENING YEAR

FUTURE YEAR

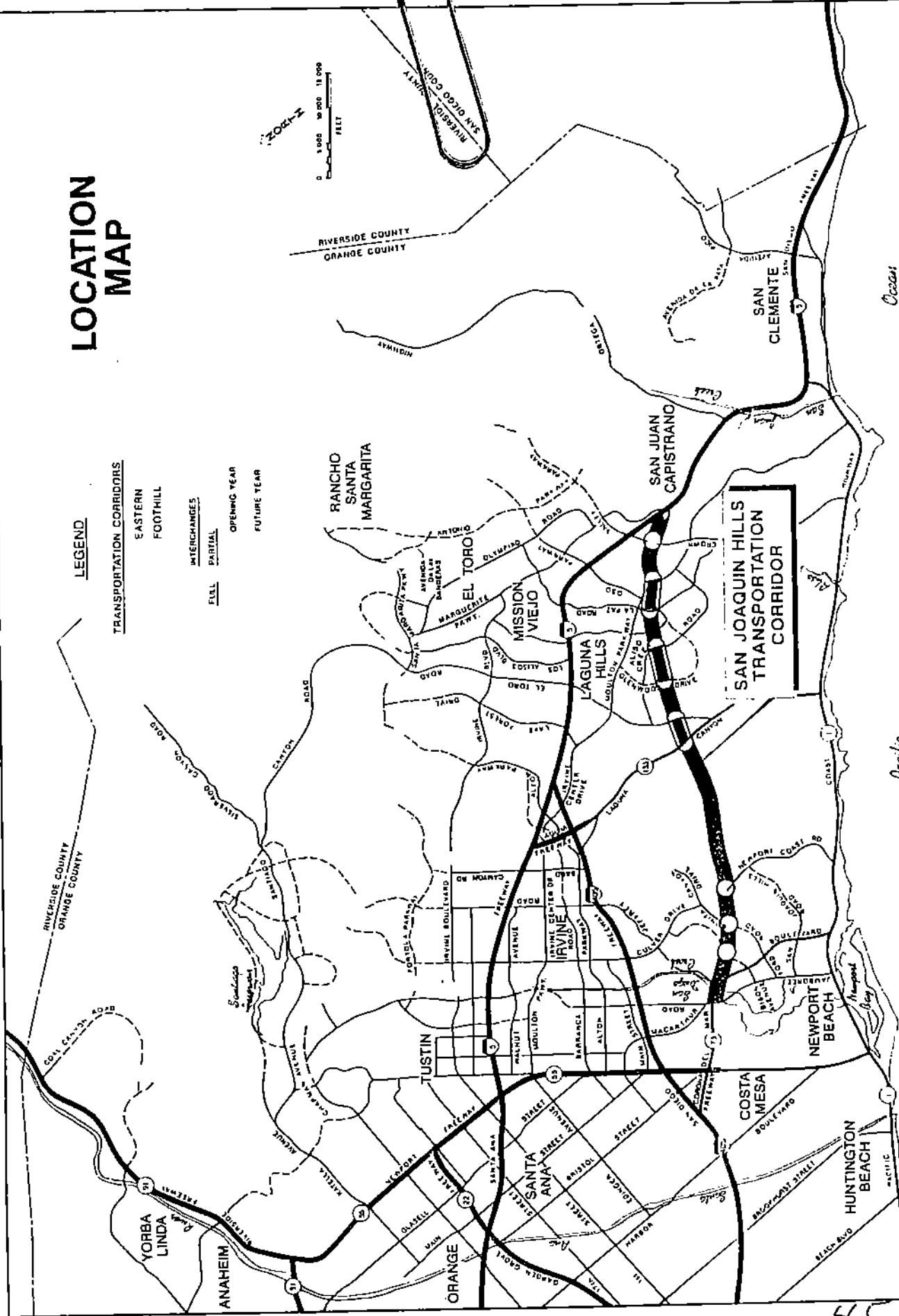
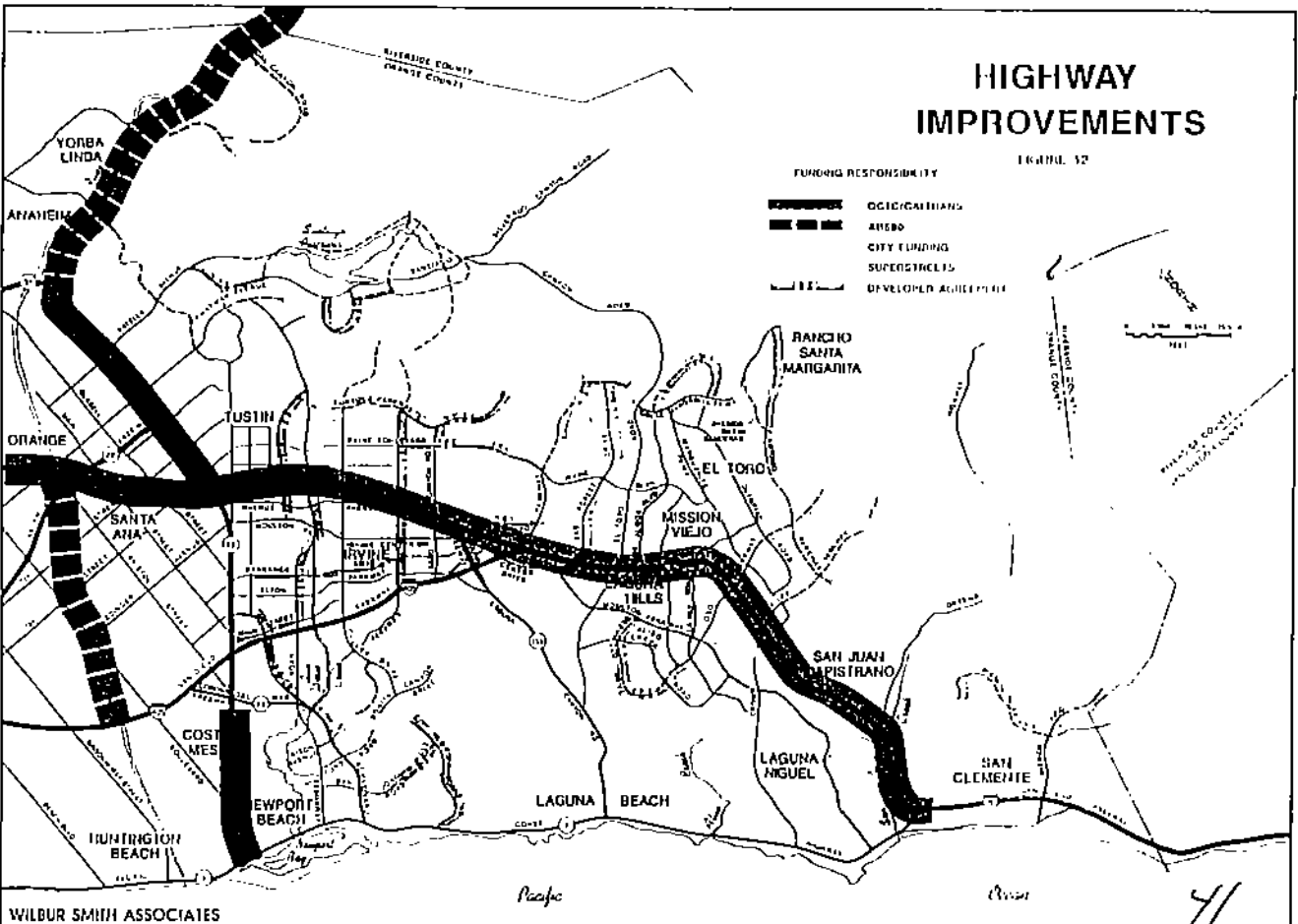
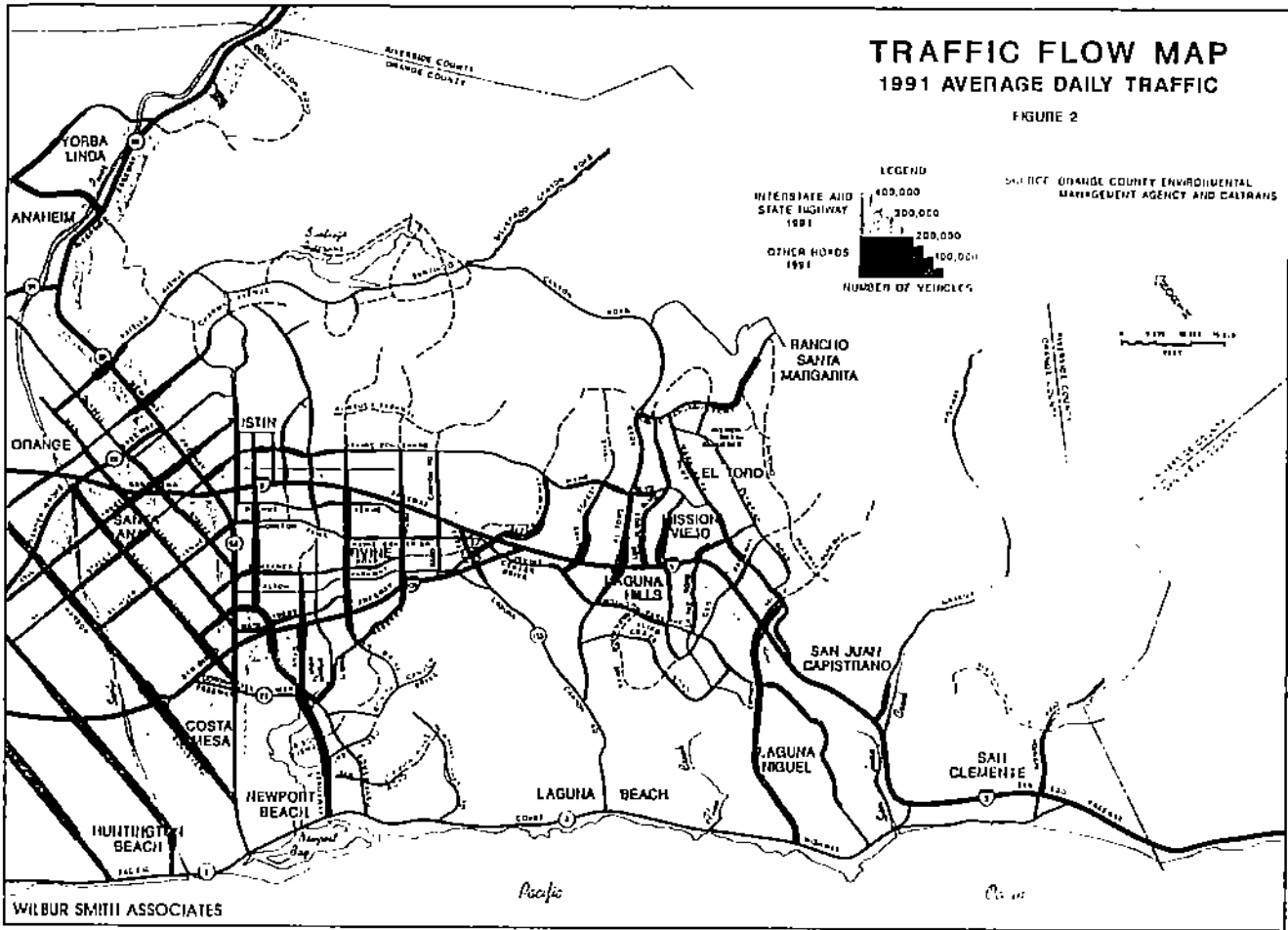


FIGURE 1

WILBUR SMITH ASSOCIATES

45

Nov 1991 PELICAN HILLS OPENO



41

SURVEY STATION LOCATION MAP

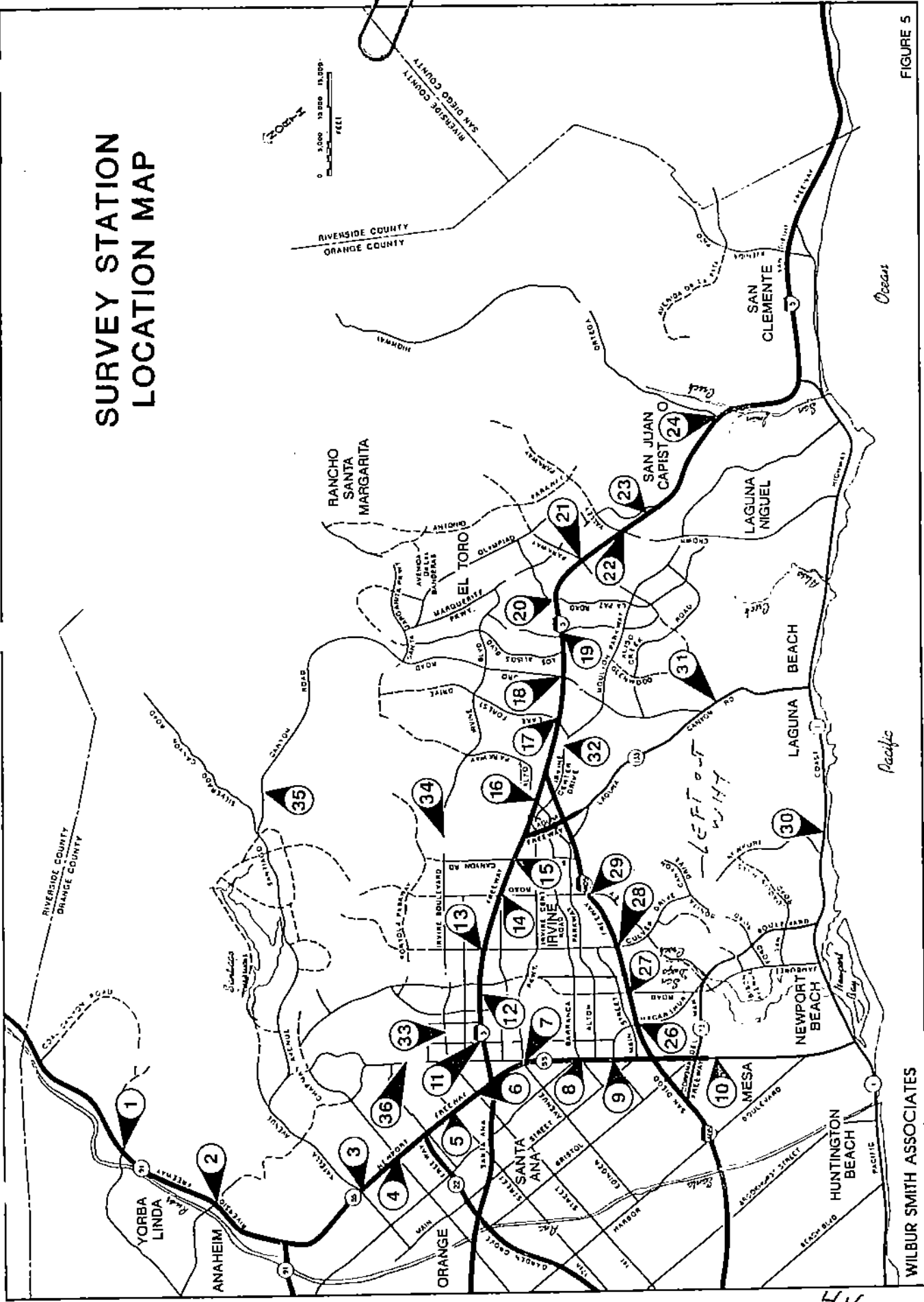


FIGURE 5

WILBUR SMITH ASSOCIATES

ECONOMIC INFLUENCE AREAS

LEGEND
 WSA SECTION BOUNDARIES
 COMMUNITY ANALYSIS AREAS

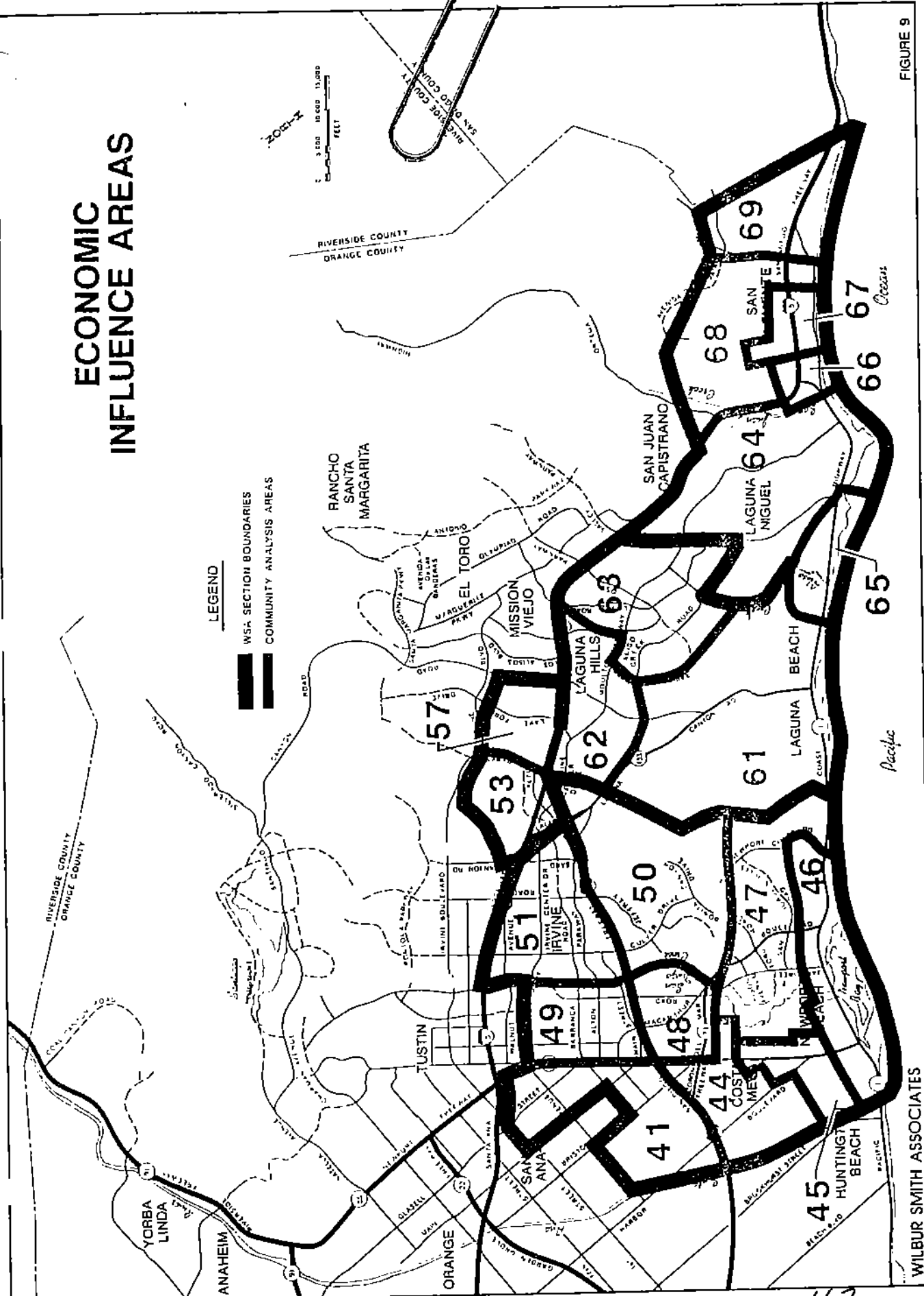


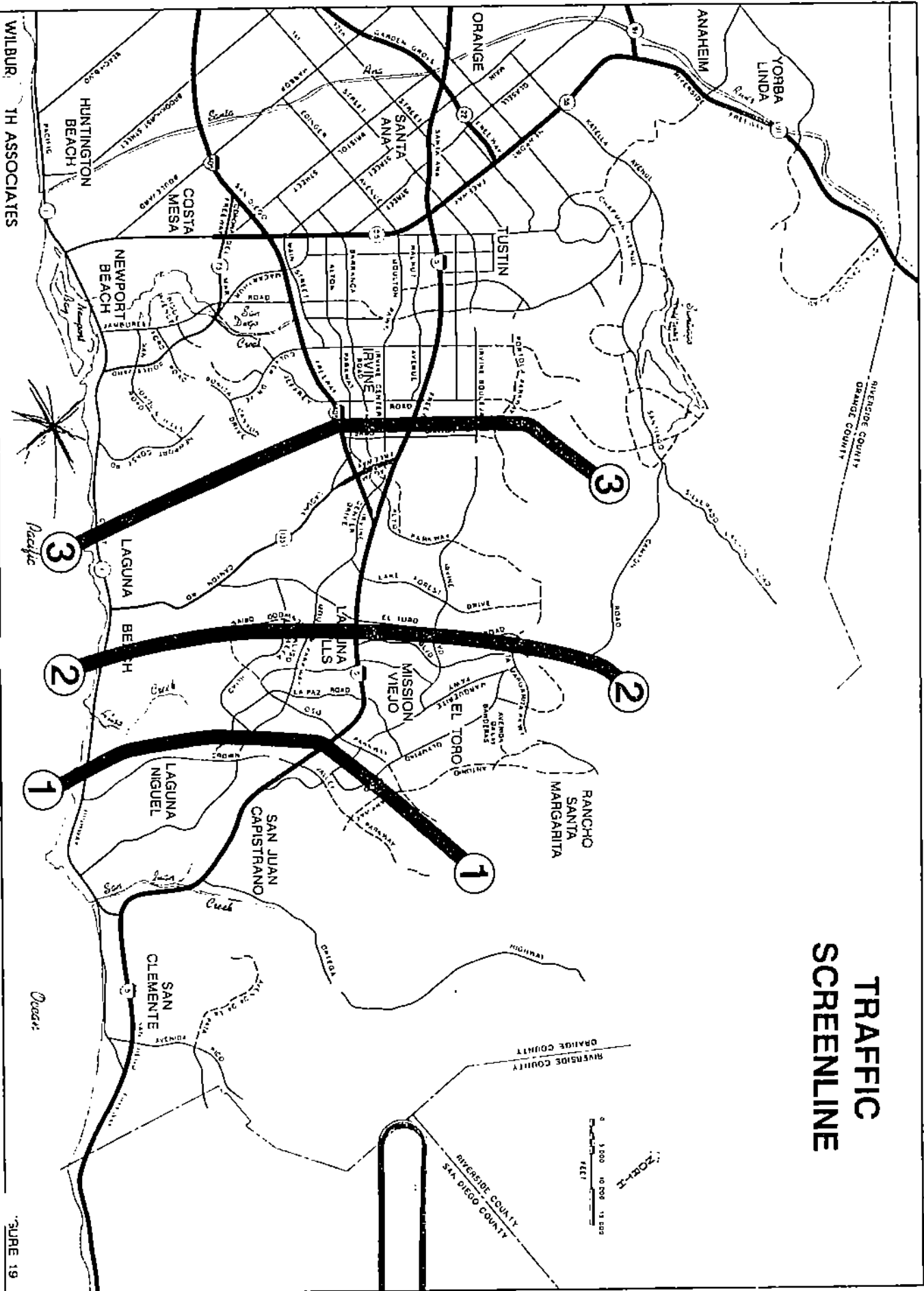
FIGURE 9

WILBUR SMITH ASSOCIATES

43

NEWPORT CANAL HOT SHOW IN FROM PCH TO NACARBTHUR

TRAFFIC SCREENLINE



42

29

COPY

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT COURT OF APPEAL-4TH DIST. DIV. 3

FILED

DIVISION THREE

OCT 12 1999

Deputy Clerk

**NEWPORT COAST DRIVE DEFENSE
FUND,**

Plaintiff and Appellant,

v.

**SAN JOAQUIN HILLS
TRANSPORTATION CORRIDOR
AGENCY et al.,**

Defendants and Respondents.

G020843

(Super. Ct. No. 736471)

OPINION

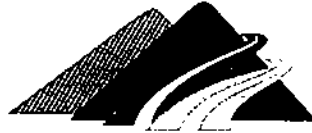
Appeal from a judgment of the Superior Court of California, County of Orange, William F. McDonald, Judge. Affirmed.

Toledano & Wald and James Toledano for Plaintiff and Appellant.

Nossaman, Guthner, Knox & Elliott, Robert D. Thornton, John J. Flynn III, Laurence M. Watson, County Counsel, and Edward N. Duran, Deputy County Counsel, for Defendants and Respondents.

San Joaquin Hills
Corridor Agency

Chairwoman:
Linda Lindholm
Laguna Niguel



TRANSPORTATION CORRIDOR AGENCIES

Foothill/Eastern
Corridor Agency

Chairman:
Peter Herzog
Lake Forest

July 12, 2004

Mr. Ronald Kennedy
4741 Sleeping Indian RD
Fallbrook CA. 92028-8875

Re: Newport Coast Drive Litigation

Dear Mr. Kennedy,

Mr. Robert Hernandez, a member of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency, has asked me to respond to your e-mail to him regarding the construction of State Route 73 on a portion of the former Newport Coast Drive.

As your e mail to Mr. Hernandez recognizes, the issue of whether the San Joaquin Hills Transportation Corridor Agency complied with the law in its construction of State Route 73 as a toll road has been fully resolved after exhaustive review of this issue by the California courts and the California Attorney General. I have enclosed the October 12, 1999 decision of the Court of Appeal in the case of *Newport Coast Drive Defense Fund v. San Joaquin Hills Transportation Corridor Agency* and Opinion No. 93-1205 issued by the California Attorney General on May 12, 1994 for your information. The Court of Appeal and the California Attorney General rejected the claims by the Newport Coast Drive Defense Fund that the construction of State Route 73 as a toll road on a portion of Newport Coast Drive violated state law.

The issues you raise were fully evaluated by a Superior Court Judge, three Justices of the California Court of Appeal and the Attorney General. The claims that the San Joaquin Hills Transportation Corridor Agency violated State law were found to be without merit.

Sincerely,

W.D. Kretzen
Chief Executive Officer

Enclosures

c: Director Bob Hernandez, F/ETCA Board

Walter D. Kretzen, Chief Executive Officer

125 PACIFICA, SUITE 100, IRVINE CA 92618-3304 • P.O. BOX 53770, IRVINE CA 92619-3770 • 949/754-3400 FAX 949/754-3467
www.thetollroads.com

Members: Aliso Viejo • Anaheim • Costa Mesa • County of Orange • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest
Mission Viejo • Newport Beach • Orange • Rancho Santa Margarita • Santa Ana • San Clemente • San Juan Capistrano • Tustin • Yorba Linda

Subj: **Mr Robert Hernandez TCA Board of Directors / Anaheim City Councilman**
 Date: 9/6/04 10:34:42 PM Pacific Daylight Time
 From: Otrkennedy
 To: SRay@anaheim.net
 CC: oletters@latimes.com, Christopher.cox@mail.house.gov

Greetings Councilman Hernandez: Will you please forward this letter with Coastal Commission Findings to MR. Kreutzen CEO. at the TCA. So they may be aware of this breach of California Law. Also my reply 7/19/04 to his letter of 7/12/04 through your good offices has not been answered.

"Newport Coast Drive Defense Fund" Our only goal was to keep the Original Newport Coast Drive from PCH. To Macarthur BLVD. Open as a Free Road as was called out in the Irvine Coast Development Agreement, as Coastal Mitigation. As such the County and Cities did not have the Right to use their Police Powers to Amend any Part of the Quid Pro Quo Coastal Mitigation, for the Development Permit. But The Best Government Money can Buy in Orange County & the AG. Office as usual had their way with the Citizen they're supposed to protect.

This Free Road right of way can Also be found in.

IRREVOCABLE OFFER OF DEDICATION as Recorded in Official Records of Orange County Calif. as Document # 88-417100 as "This Irrevocable Offer Of Dedication ("offer") of the right-of-way for the proposed San Joaquin Hills Transportation Corridor (the "Corridor") August 19, 1988
 Exhibit "D" Legal Description Pelican Hills Road (now Newport Coast DR).
 "Construction Easement within the San Joaquin Hills Transportation Corridor."

IRVINE COAST DEVELOPMENT AGREEMENT COUNTY OF ORANGE as Recorded in Official Records of Orange County Calif. as Document #88-272903 Jun 9 1988.

Exhibit C. has the "findings" for the California Coastal Commission, and further calls out, Exhibit D. as the "Irvine Coast Development Agreement Benefits to "The County And Its Residents"

The Public rights to this Stolen Road is found on page. D-9 "Previously Exacted Benefits:" at line D. "Early construction of four lanes of Pelican Hills Road from Pacific Coast Highway to MacArthur Boulevard;" Who stole this free Road?

I also have a List of OC. Resolutions calling out the same Public Right for this road In the County's acceptance of this Required Coastal Commission Mitigation.

Monday, September 06, 2004 America Online: Otrkennedy

RK ADD
 THIS 8 2 07

Sincerely, Ronald D Kennedy 9-6-04

4741 Sleeping Indian RD.
Fallbrook CA. 92028-8875
otrkennedy@aol.com
760-723-4357

LAW OFFICES

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

18101 VON KARMAN, SUITE 1800
IRVINE, CALIFORNIA 92612-0177
TELEPHONE (949) 833-7800
FACSIMILE (949) 833-7878

Date: 7/9/2004 **Time:** 2:41 PM **Pages (including cover page):** 21

To: Mr. Walter Kreutzen
Firm: Transportation Corridor Agencies
Fax: (949) 789-3514 **Main No.:** 92604

File No: 190477-9999

From: Robert D. Thornton **e-mail:** rthornton@nossaman.com

Comments:

Documents regarding Newport Coast Drive response letter.

ORIGINAL WILL:

<input type="checkbox"/>	BE SENT BY MAIL	<input type="checkbox"/>	BE SENT BY FEDEX/OVERNIGHT COURIER
<input type="checkbox"/>	BE SENT BY MESSENGER	<input checked="" type="checkbox"/>	NOT BE SENT

IF YOU DO NOT RECEIVE THE NUMBER OF PAGES INDICATED ABOVE,
PLEASE CALL Leanne Boucher AT (949) 477-7690

ATTENTION:

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return this original message to us at the above address via the U.S. Postal Service. Thank you.

This is the latest installment in seemingly endless litigation surrounding the San Joaquin Hills Transportation Corridor (the Corridor), a 17-mile toll road between San Juan Capistrano and Newport Beach.¹ The San Joaquin Hills Transportation Corridor Agency (the Agency) is the public agency² charged with overseeing the construction and administration of the Corridor. This case, brought by the Newport Coast Drive Defense Fund (NCDDF), against the Agency and the County of Orange (collectively the Agency unless the context indicates otherwise) is a challenge to the legality of including a 1.35-mile segment of Newport Coast Drive³ into the Corridor. The trial court entered judgment in favor of the Agency and the County after granting their joint motion for summary judgment. NCDDF raises numerous issues on appeal, none of which have merit. We affirm.

* * *

Newport Coast Drive is a major arterial highway which opened in 1991. As originally constructed, it begins at Pacific Coast Highway just east of Corona Del Mar, travels north through the Newport Coast development, crosses San Joaquin Hills Road and Bonita Canyon Road, and ends to the west at MacArthur Boulevard north of Newport Beach. Prior to the Corridor's construction, State Route 73 (SR-73) included a freeway which ran from Interstate-405 in the west and terminated roughly at the intersection of

¹ Judicial decisions involving construction of the Corridor include *San Joaquin Hills Transportation Corridor Agency v. Superior Court* (April 29, 1994) G015487 (nonpub. opn.); *Laguna Greenbelt, Inc. v. San Joaquin Hills Transportation Corridor Agency* (May 27, 1993) G012060 (nonpub. opn.); *Natural Resources Defense Council v. United States Department of the Interior* (9th Cir. 1995) 57 F.3d 1077 (nonpub. disposition); *Laguna Greenbelt, Inc. v. U.S. Dept. of Transp.* (9th Cir. 1994) 42 F.3d 517.

² It was established in 1986 pursuant to the Joint Exercise of Powers Act. (Gov. Code, § 6500 et seq.)

³ Throughout the briefs and the record, Newport Coast Drive is also referred to as Pelican Hill Road, the name originally given to the road. For convenience, we will only refer to it as Newport Coast Drive.

Jamboree Road and MacArthur Boulevard. From that point on, MacArthur Boulevard was designated SR-73 until its end at Pacific Coast Highway.

The Corridor, which now bears the SR-73 designation was completed several years later.⁴ It runs from Interstate-5 in San Juan Capistrano, then joins the original SR-73 freeway at Jamboree Road and continues west to Interstate-405 in Costa Mesa. When the Corridor was constructed, the western end of Newport Coast Drive, 1.35 miles, was incorporated into its alignment and became part of the toll road. Toll booths were installed at the Corridor/Newport Coast Drive interchange. Newport Coast Drive was realigned to terminate on Bonita Canyon Drive, another arterial road.

As an example of what this means to drivers using Newport Coast Drive: when originally constructed, an automobile could travel northwest on Newport Coast Drive to its end at MacArthur Boulevard, and from there get directly onto the toll-free portion the SR-73 freeway. Now a driver on Newport Coast Drive traveling northwest to the freeway must either get onto the Corridor and pay a 50-cent toll to drive the last segment of the Corridor before the toll-free segment begins, or must bypass the Newport Coast Drive toll booth by taking the newly aligned Newport Coast Drive to Bonita Canyon Road and then to MacArthur Boulevard.

The Complaint

NCDDF filed its complaint on September 29, 1994, challenging the incorporation of the original alignment of Newport Coast Drive into the Corridor. It claimed the public had an absolute right to free travel along all of Newport Coast Drive as originally constructed. The imposition of a toll on any portion of Newport Coast Drive would significantly alter existing traffic patterns, negatively affecting citizens who live along the route and all who used the original Newport Coast Drive.

⁴ The Corridor was not completed at the time this lawsuit was filed, but was completed while it was pending.

J

NCDDF's complaint is premised on assertions that Newport Coast Drive was constructed by The Irvine Company as a mitigation measure for the Newport Coast development. In May 1988, the County and The Irvine Company entered into a statutory development agreement (Gov. Code, § 65864 et seq.) by which The Irvine Company agreed to construct Newport Coast Drive. NCDDF alleged that neither the development agreement, the environmental reviews and permits for Newport Coast Drive and the Newport Coast development, nor the environmental documents and permits for the Corridor envisioned or gave the public notice of the inclusion of Newport Coast Drive in the Corridor's final alignment. It was not until 1994, when The Irvine Company dedicated Newport Coast Drive to the County, that it was finally revealed it would be included in the Corridor.

The complaint contained causes of action for declaratory and injunctive relief. It sought a declaration that the Agency had no legal authority to include any portion of Newport Coast Drive in the Corridor and had not complied with the provisions of the California Environmental Quality Act (Gov. Code, § 21000 et seq., CEQA) in so doing; that the use of bond proceeds for the inclusion of Newport Coast Drive in the Corridor was illegal; and that the Agency could not use federal highways funds to incorporate Newport Coast Drive into the Corridor. NCDDF also sought to enjoin the Agency from incorporating Newport Coast Drive into the Corridor.

The Summary Judgment Motion

The Agency sought summary judgment on the grounds there were no triable issues of fact on the following issues: 1) the Agency had legal authority to incorporate Newport Coast Drive into the Corridor; 2) Newport Coast Drive was originally constructed with the understanding and intent that it would ultimately become part of the Corridor; 3) adequate notice of Newport Coast Drive's inclusion in the Corridor was given in the environmental impact report (EIR) for the Corridor and at numerous public hearings; 4) the action is barred by the statutes of limitations under CEQA, the California

Coastal Act (Pub. Resources Code, § 30000 et seq.) and various acts validating the bonds used to finance construction of the Corridor (see Stats. 1993, chs. 10, 341, 342); and 5) no federal funds had been used to construct the Corridor. The Agency's separate statement of undisputed material facts was supported by declarations of Gene Foster, manager of the Agency, and Kenneth R. Smith, Director of Transportation for the County; both declarations were accompanied by various documents.

Smith declared the Corridor, in its present alignment, was added to the County's Master Plan of Arterial Highways (MPAH) in 1976 and has been part of the transportation element of the general plan since 1979. In 1988, the County and The Irvine Company entered into the Development Agreement for the Newport Coast development. The development agreement provided for early construction of Newport Coast Drive, as an interim facility until the Corridor was completed. It obligated The Irvine Company to make an early dedication of the designated right-of-way for the Corridor between Sand Canyon Avenue and MacArthur Boulevard and give it fee credits for the "value of [Newport Coast Drive] improvements within the [Corridor] right-of-way." That northwestern end of Newport Coast Drive where it originally connected to MacArthur Boulevard, was never shown on the MPAH because it was planned and designed as an interim facility until the Corridor was completed; the MPAH always showed Newport Coast Drive ending at Bonita Canyon Road, as it now does.

Foster declared the Agency was formed in 1986 to finance and build the Corridor. After numerous public hearings, the joint powers agreement forming the Agency was amended in 1987 to permit the Agency to impose and collect tolls on the Corridor. In September 1990, the Agency, Caltrans, and the Federal Highway Administration issued a draft environmental impact report (DEIR) on the Corridor. It specifically described Newport Coast Drive's inclusion in the Corridor: "Construction has commenced on [Newport Coast Drive], a new four and six lane highway connecting existing SR-73 (MacArthur Boulevard) and SR-1 (Coast) Highway by bypassing Corona

Del Mar. The [Newport Coast Drive] project follows the existing alignment of Bonita Canyon Road and the proposed alignment of the Corridor between MacArthur Boulevard and the proposed Ford Road extension. It then follows the proposed Corridor alignment between proposed Ford Road and the proposed Corridor/ Pelican Hill Road interchange. The project then constructs [Newport Coast Drive] on its ultimate alignment between the Corridor and SR-1." The DEIR depicted toll booths at the Corridor/Newport Coast Drive interchange and concluded imposing a 50 cents per trip toll at that point would not "impede travel demand that would otherwise suffer a time delay along the conjecture route."

Among comments received on the DEIR were objections from community associations to the Corridor's "usurp[ing]" the end of Newport Coast Drive, which was intended as a bypass route for traffic, and to the imposition of tolls at the Corridor/Newport Coast Drive interchange. The group believed this would greatly increase traffic in the area. The final EIR incorporated the Agency's comments on the objections. It stated the "by-pass route" would be enhanced by the Corridor's alignment. The toll booths at the Newport Coast Drive interchange would impose only a nominal 50-cent toll and not impede traffic. Additionally, traffic going from Corona Del Mar to the existing SR-73 at the Jamboree interchange would move faster because of Newport Coast Drive's inclusion in the Corridor.

During the public hearings on the DEIR, the inclusion of Newport Coast Drive in the Corridor was discussed. At one public hearing in 1990, Foster explained, "[L]et me state very clearly that those roads [Newport Coast Drive, Coyote Canyon Road, and the Corridor,] will not lie next to each other. One road takes the place of the other one sequentially in the following fashion. Coyote Canyon Road exists today. [¶] It will be replaced with [Newport Coast Drive], and ultimately [Newport Coast Drive] will be replaced by the Corridor."

The final EIR for the Corridor was certified, and a notice of determination issued on March 14, 1991. On April 23, 1993, the California Coastal Commission issued a Coastal Development permit for the Corridor, and in May 1993, issued a Consistency Certification. The Agency accepted dedication of the Corridor right of way from the City of Irvine in September 1993. The Agency received no federal funds for construction of the Corridor, and the bonds for construction were issued and offered for sale on March 11, 1993.

The Ruling

The trial court declined to consider NCDDF's opposition to the Agency's motion for summary judgment. It was filed too late and was 40 pages too long. The trial court granted the motion, finding the Agency had legal authority to incorporate Newport Coast Drive into the Corridor; the development Agreement between the County and The Irvine Company did not preclude incorporation of Newport Coast Drive into the Corridor and, in fact, supported its inclusion; and the Agency had given adequate notice of Newport Coast Drive's incorporation into the Corridor in the final EIR certified March 14, 1991. The court also found the complaint was barred by the 30-day statute of limitations applicable to CEQA actions (Pub. Resources Code, § 21167, subds. (c) & (e)), the 60-day statute of limitations contained in the California Coastal Act (Pub. Resources Code, § 30801), and the 6-month statute of limitations contained in the First, Second, and Third Validating Acts of 1993 which validated the bond sales of the Agency. (Stats. 1993, chs. 10, 341, 342.)

I

NCDDF first contends the trial court abused its discretion by denying a continuance of the hearing on the summary judgment motion so it could file adequate opposition. It has grossly mischaracterized the events leading up to the hearing. We find no abuse of discretion.

The summary judgment motion was filed on July 11, 1996, and the hearing was set for August 9. NCDDF's opposition was due July 26. No opposition was timely filed.

On August 2, a full week *after* the due date for its opposition, NCDDF filed an ex parte request to file a late opposition and to continue the hearing. Counsel complained the Agency had not included complete copies of documents which accompanied the motion, and because the motion was "massive," he would need additional time. The Agency's points and authorities were only 15 pages long, but several documents accompanied the declarations. The trial court granted the request. It gave NCDDF until August 8 to file its opposition and continued the hearing to August 16. The Agency was ordered to file its reply by August 12.

No opposition was filed on August 8. Instead, counsel for NCDDF sent a letter to the court advising he had a 70-page draft, was working on cutting it down and would probably file it the next morning along with a request to file an overlong brief. He failed to file the opposition the next morning.

On August 12, NCDDF filed a 60-page opposition along with an application to file late and overlong papers. Included in that opposition was NCDDF's own request for summary judgment. The opposition did not include any written objections to the evidence submitted by the Agency. NCDDF did not request a court reporter at the hearing. The trial court declined to consider the late opposition.

NCDDF's argument that the trial court abused its discretion by not granting it an additional continuance or permitting it to file its late opposition is specious. Code of Civil Procedure section 437c, subdivision (h), gives the trial court discretion to grant a continuance, "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented" Despite the fact that NCDDF failed to satisfy the statutory requirements for a continuance, the trial

court graciously gave it additional time. NCDDF did not seek another continuance. Rather, it allowed that extension to run out and four days later attempted to file its opposition. The trial court is not required to grant an unlimited number of continuances. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 547.) In view of NCDDF's complete indifference to deadlines imposed by Code of Civil Procedure section 437c and the trial court, we see no abuse of discretion in the court's refusal to consider the late opposition.

II

NCDDF next contends all the declarations submitted by the Agency, and all the documents supporting them, are inadmissible hearsay. Thus, it concludes, there was no competent evidence upon which to grant summary judgment. It has waived its objections to the evidence.

A party wishing to make evidentiary objections to evidence submitted in support of a summary judgment motion must either make the objections in writing or arrange to have a court reporter present at the hearing. (Cal. Rules of Court, rule 343.) If the objections are written, they must be filed at least three days before the hearing. (Cal. Rules of Court, rule 345.) Orange County Superior Court Rules, rule 514D separately requires evidentiary objections be filed in writing at the time the opposition is filed. NCDDF argues both rules are made ineffective by the proviso in Code of Civil Procedure section 437c, subdivision (b) that, "Evidentiary objections not made at the hearing shall be deemed waived." It urges it is implicit in this section that *any* objections, written or oral, may be made at the time of the hearing. We disagree.

Nothing in Code of Civil Procedure section 437c precludes the courts from fashioning rules regarding the efficient processing of *written* objections, and there is no record of oral objections at the hearing. NCDDF filed its written objections to the declarations at the time of the hearing, violating both California Rules of Court, rule 354 and Orange County Superior Court Rules, rule 514D.

Additionally, NCDDF neither requested a court reporter be present at the hearing, nor that the court make rulings on the evidentiary objections. Counsel's failure to request rulings on the objections waives the objections on appeal. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1.) Even if "the objections appear meritorious, for purposes of . . . appeal we must view the objectionable evidence as having been admitted in evidence and therefore as part of the record." (*Ibid.*)

III

Among the many reasons the trial court gave for granting summary judgment was that the action filed in September 1994 was barred by several statutes of limitations. First, it found the complaint was barred by the 30-day limitations period applicable to actions challenging the acts of a public agency under CEQA. (Pub. Resources Code, § 21167, subs. (c) & (e).) That statute of limitations commences with the filing of a notice of determination, which in this case was filed March 14, 1991. Second, the court found the action was barred by the 60-day statute of limitations for challenging decisions or actions taken by the Coastal Commission. (Pub. Resources Code, § 30801.) That statute of limitations commences on the date a Coastal Commission action becomes final. Here, the Coastal Commission issued a coastal development permit for the Corridor and certified the Corridor as being consistent with the Coastal Act in April 1993. Finally, the trial court found the complaint was barred by the six-month limitations period contained in the First, Second and Third Validating Acts of 1993. (Stats. 1993, ch. 10, § 8; Stats. 1993, ch. 341, § 8; Stats. 1993, ch. 342, § 8.) Those special bills were enacted to, among other things, validate the bonds of public agencies. Each provides that any action contesting the validity of any action taken by a public agency in connection with the issuance of bonds, must be commenced within six months of the effective date of the act.

NCDDF argues its complaint is not time-barred. But noticeably absent from its brief is *any* citation to *any* legal authority in support of its contention. It does not

even bother to cite the relevant statutes on which the trial court relied. In a 49-page opening brief, it devotes three short paragraphs to these three grounds for dismissal of its action and simply states that because it is not specifically challenging actions taken under those laws, but rather merely seeks to enforce the rights of the public under them, the statutes of limitations are not applicable.

Even if we could decipher NCDDF's argument, we would not. It is not this court's responsibility to make an appellant's argument or to find law to support his or her position. The judgment or order appealed from is presumed correct. (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532.) The appellant must affirmatively demonstrate error. "This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record." [Citation.] (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) In light of NCDDF's failure to provide any proper legal support for its contention, we need not consider it. (*Ojavan Investors, Inc. v. California Coastal Com.* (1997) 54 Cal.App.4th 373, 391; *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.) Furthermore, these grounds for granting summary judgment are dispositive.

IV

Although we affirm for the reasons stated in part III above, we will briefly address NCDDF's contention that there is no legal authority permitting the Agency to incorporate any part of the original alignment of Newport Coast Drive into the Corridor or to charge tolls or fees for its use. The argument is utterly without merit.

As a joint powers agency, the Agency may exercise any power common to its constituent agencies. (Gov. Code, §§ 6502 & 6508.) The Agency's members include the County and several cities. Counties and cities have express statutory authority to

make any portion of a street in their jurisdiction part of a freeway⁵ or expressway. (Sts. & Hy. Code, §§ 941.1 & 1800.) Hence, the Agency has authority to incorporate any portion of a street, including Newport Coast Drive, into the Corridor. Additionally, the Agency is specifically authorized by Government Code section 66484.3, subdivision (f) to impose and collect tolls to pay for the costs of construction of "major thoroughfares." (See 77 Ops. Cal. Atty. Gen. 94 (1994).)

The judgment is affirmed. Respondents are awarded their costs of appeal.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.

⁵ Contrary to NCDDF's misconstruction of the term, "freeway" does not refer to the cost (or lack thereof) of using a road, rather it refers to the access to the road (or lack thereof) by abutting properties. "Freeway" means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access. . . ." (Sts. & Hy. Code, 23.5.)

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March 25, 1994

REFER TO FILE NUMBER

VIA FEDERAL EXPRESS

The Honorable Daniel Lungren
Attorney General
State of California
445 Golden Gate Avenue, Suite 6200
San Francisco, California 94102-3658

Attention: Clayton Roche, Esq.
Deputy Attorney General

Re: Attorney General Opinion Request No. 93-1205; San Joaquin Hills
Transportation Corridor

Dear Mr. Roche:

I. INTRODUCTION

This firm is general counsel to the San Joaquin Hills Transportation Corridor Agency ("TCA"). The TCA is a joint powers authority formed by the County of Orange ("County") and ten cities in the County to plan, design, finance and construct the San Joaquin Hills Transportation Corridor -- a 17 mile extension of State Highway Route 73 in Orange County. This letter responds to the letter from Attorney General Daniel Lungren and Senior Assistant Attorney General Rodney O. Lilyquist dated February 10, 1994, regarding Opinion Request No. 93-1205.

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In this response, we will demonstrate the following:

- (i) The TCA has fully complied with applicable law in authorizing the construction of the San Joaquin Hills Transportation Corridor ("Corridor") as a toll road on a portion of Newport Coast Drive;
- (ii) Bonita Canyon Road and Newport Coast Drive have not been and will not be abandoned in order to construct the Corridor. Rather, these roads will be improved and incorporated into the Corridor. The courts have held that this does not constitute abandonment. (See People ex rel. Dept. Pub. Wks. v. Vallejos (1967) 251 Cal.App.2d 414, 418.);
- (iii) The County of Orange constructed Newport Coast Drive (formerly Bonita Canyon Road and Pelican Hills Road) with the explicit understanding and intent that a portion of Newport Coast Drive would be converted into the Corridor; and
- (iv) The TCA and the County of Orange fully complied with applicable notice and hearing requirements in their decisions concerning the Corridor. The notices included multiple notices published in newspapers of general circulation, actual notice to thousands of individuals and organizations, and posted notices. Although, not required by law, three public hearings were conducted regarding the decision to construct the Corridor in addition to other public meetings.

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First we will present the relevant facts concerning the issues raised in the Opinion request, and then we will answer each question propounded by the Attorney General in the order presented.

II. STATEMENT OF FACTS

A. 1976: County Adds Corridor To Master Plan of Arterial Highways.

The San Joaquin Hills Transportation Corridor is the extension of State Route 73 from Jamboree Road in the City of Newport Beach to the I-5 freeway in San Juan Capistrano. The Corridor has been planned for over eighteen years. The County of Orange added the Corridor to the County Master Plan of Arterial Highways in 1976 after the certification of Environmental Impact Report ("EIR") 187. (See Exhibit 1.)

B. 1979: County Adopts Alignment of Corridor On Portion of Bonita Canyon Road.

The County then conducted an evaluation of 28 specific alignment alternatives. In 1979, after conducting public hearings, the County certified EIR 267 and approved a specific alignment of the Corridor. The alignment approved by the County in 1979 established the western end of the Corridor on what was then Bonita Canyon Road. (Res. No. 1782, see Exhibit 2.) Following the alignment decision, the cities of Irvine and Newport Beach (and other cities in the County) added the Corridor to the circulation elements of their respective general plans. In 1983 the State Legislature adopted legislation identifying the Corridor as a State Highway route. (Sts. & Hy. Code, §373.)

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C. 1986 - 1987: County and Cities Form TCA; Legislature Authorizes Construction of Corridor As Toll road.

In 1986 the County and a number of cities in the County entered into a joint exercise of powers agreement ("Joint Powers Agreement") pursuant to the Joint Exercise of Powers Act (Gov. Code, §6500 et seq.) and Government Code section 66484.3 for the purpose of establishing the TCA and financing and building the Corridor.^{1/} The Joint Powers Agreement authorizes the TCA to jointly exercise the common powers of the County and the cities to plan, design, finance and construct the Corridor. In 1987, the State Legislature authorized the TCA to establish and collect tolls on the Corridor and to exercise certain other original powers. (Gov. Code, §66484.3 subd.(f), Sts. & Hy. Code, § 31200 et seq.) On October 17, 1988, the County and the city members of the TCA amended the Joint Powers Agreement to exercise the power authorized by the Legislature to impose and collect tolls on the Corridor. (See Exhibit 3.) The amendments to the Joint Powers Agreement were adopted only after noticed public meetings in all of the agencies that were parties to the Joint Powers Agreement. Copies of the minutes evidencing adoption of the Amended Agreement at noticed public meetings are attached hereto as Exhibit 4. ✓

D. 1988: EIR 494 Evaluates Construction of Corridor On Bonita Canyon Road; County Approves Irvine Coast Development Agreement Authorizing Construction of Newport Coast Drive as Interim Facility.

In June 1988, the County released for public review and comment EIR 494 which evaluated the environmental effects of constructing the Corridor on the

^{1/} For the history of Government Code section 66484.3, see Committee of Seven Thousand v. Superior Court (1988) 45 Cal.3d 491.

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alignment approved in 1979. The EIR indicated that the Corridor would be constructed on a portion of then-existing Bonita Canyon Road and proposed Pelican Hills Road (now Newport Coast Drive). The County later withdrew EIR 494 to allow for the evaluation of an alternative design of the Corridor proposed by the Cities of Newport Beach and Irvine.

In June 1988, the County entered into a Development Agreement with The Irvine Company regarding the development of the Irvine Coast area. The Development Agreement specifically contemplated that a portion of Pelican Hills Road (now Newport Coast Drive) would serve as an interim facility until the construction of the Corridor. The Development Agreement states:

"The COUNTY desires to encourage the earliest possible construction of Pelican Hill Road because, in the time period prior to the construction of the SJHTC [the Corridor], Pelican Hill Road is the only regional transportation facility capable of contributing to the achievement of certain regional traffic objectives established by the COUNTY."

(Exhibit 5, at p. 12 [emphasis added].)

E. 1990: TCA and Federal Highway Administration Release Draft EIR/EIS Evaluating Construction of Tollroad on Portion of Newport Coast Drive.

In September 1990, the TCA and the Federal Highway Administration released a draft Environmental Impact Report/ Environmental Impact Statement ("EIR/EIS") which evaluated the environmental effects of constructing an eight-lane toll highway on the alignment previously approved by the County. The draft EIR/EIS and Final EIR explicitly indicated that a portion of the Corridor would follow the then

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existing alignment of Bonita Canyon Road and proposed Pelican Hills Road. (Draft EIR/EIS at page 2-56, Final EIR at page 2-58, see Exhibit 6). The draft EIR/EIS and Final EIR also explicitly indicated that toll booths would be constructed at the Pelican Hills Road (Newport Coast Drive) interchange with the Corridor (draft EIR/EIS and Final EIR Figure 2.5, see Exhibit 7).

Comments from the public on the EIR/EIS indicate that the public well understood that the Corridor included the collection of a toll at the proposed interchange with Pelican Hills Road (now Newport Coast Drive) and that the Corridor would replace a portion of Newport Coast Drive. The Spyglass Hill Community Association for example, submitted comments on the draft EIR/EIS stating the following:

The "[i]nstallation of two toll booths will impact upon the Pelican Hills bypass route constructed by the City of Newport [Beach] The bypass route [Pelican Hills Road] is to be usurped by the San Joaquin Corridor [and] will cause this newly constructed route to be abandoned by traffic...to avoid Tolls."

(Final EIR, Comment No. 4-6, see Exhibit 8.) The TCA responded to these comments in the Final EIR, confirmed that the Corridor would be constructed on Pelican Hills Road and noted that it anticipated that the toll at Pelican Hills Road would be fifty cents in each direction. (TCA EIR Responses to Comments, p. T-24, see Exhibit 9.)

On March 14, 1991, after three lengthy public hearings and numerous public meetings,^{2/} the TCA Board of Directors certified the Final EIR and approved

^{2/} The term "public meeting" refers to noticed public meetings conducted pursuant to the Brown Act. All of the TCA's meetings are open to the public and provide an opportunity for public comment on

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the construction of the Corridor as a toll road and the construction of toll facilities at the proposed Pelican Hills Road interchange. The TCA Board of Directors resolutions are attached hereto as Exhibit 10.

In addition to the many formal public notices published by the TCA regarding the proposed construction of the Corridor (See Exhibit 11), the press published a large number of stories regarding the construction of the Corridor as a toll road between 1987 and 1991. Indeed, it was one of the most extensively covered local stories during that period. A sample of the newspaper clippings is attached hereto as Exhibit 12. The publicity was so extensive, that it is likely that anyone who read the paper, if even only occasionally, from 1987 to 1991 would be aware that the Corridor would be constructed as a toll road.

The road that is now called Newport Coast Drive has gone through a number of name changes. It originally existed as a two lane road (called Bonita Canyon Road) from MacArthur Boulevard to Culver Drive in Irvine. In 1991 a portion of Bonita Canyon Road was widened to four lanes and connected with Pacific Coast Highway under the name "Pelican Hills Road." The County subsequently changed the name of Pelican Hills Road to Newport Coast Drive.

As early as 1971, the County Master Plan of Arterial Highways showed that what is now Newport Coast Drive would connect directly with Culver Drive. (See Exhibit 13.) The 1985 County Master Plan of Arterial Highways shows Newport Coast Drive (Pelican Hills Road) connecting with Culver Drive, and shows the Corridor on

agenda and off-agenda items. The term "public hearing" refers to TCA meetings that include one or more agenda items with a noticed public hearing.

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the alignment where Newport Coast Drive was subsequently constructed. (See Exhibit 14.) These plans demonstrate that, despite the changes to the road's name, Newport Coast Drive had always been planned to connect to Culver Drive rather than MacArthur Boulevard. As will be demonstrated later in this letter, when Newport Coast Drive was constructed in the Corridor alignment, it was intended that a portion of Newport Coast Drive would be converted into the Corridor. Pursuant to the Fee Credit Agreement approved by the TCA in November 1992 at a noticed public meeting, the TCA reimbursed the Orange County Assessment District for its expenses for constructing that portion of Newport Coast Drive which will be converted into the Corridor.

F. 1993: TCA Acquires Title to Corridor Right of Way.

In December 1992, at a noticed public meeting, the TCA Board of Directors approved a fee credit and reimbursement agreement with The Irvine Company to provide fee credits to The Irvine Company in return for the dedication of fee title to the TCA on the portion of the Corridor alignment including Newport Coast Drive.^{3/} On February 23, 1993, the County Board of Supervisors, at a noticed public meeting, approved an agreement with the TCA and The Irvine Company assigning to the TCA the right to receive an offer of dedication of the title to the portion of Newport Coast Drive within the Corridor right of way from The Irvine Company. (Copies of the notices are attached hereto as Exhibit 15.) The TCA and The Irvine Company executed the agreement on March 12, 1993. On March 16, 1993, The Irvine Company recorded an

^{3/} The TCA administers a fee program which requires developers to pay fees to finance a portion of the cost of the Corridor and requires TCA to issue fee credits for developers that dedicate right of way for the Corridor.

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offer of dedication of the property within the Corridor right of way to the TCA. The TCA became the fee owner of the property on September 3, 1993.

III. RESPONSE TO QUESTIONS PRESENTED.

Question 1.

Did the County of Orange have legal authority to abandon an existing public road (Bonita Canyon Road) and convey it to the TCA where it will contain a toll booth requiring the public to pay for its use in the future?

Answer.

Bonita Canyon Road was never abandoned and will not be abandoned in order to build the Corridor. Rather, a portion of Bonita Canyon Road was widened to four lanes and renamed Newport Coast Drive. In the same manner, a portion of Newport Coast Drive, in turn, will be widened to six lanes and renamed State Route 73.

The Streets and Highways Code addresses abandonment of streets in Part 3 of Division 9 regarding vacation. (Sts. & Hy. Code, § 8300, et seq.) "Vacation" is defined to mean the "complete or partial abandonment or termination of the public right to use a street, highway, or public service easement." (Sts. & Hy. Code, § 8309.) Bonita Canyon Road will not be "abandoned" or "vacated" as a result of the construction of the Corridor. The public right to use Bonita Canyon Road will not terminate, not even during the period of construction of the Corridor, during which time a construction detour will be provided. Rather, the portion of the road formerly called Bonita Canyon road will be improved and renamed the San Joaquin Hills

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Transportation Corridor -- precisely as contemplated in 1976 when the County added the Corridor to the Master Plan of Arterial Highways and in 1979 when the County adopted the alignment of the Corridor.

The courts have explicitly held that the conversion of a street into a highway does not constitute "abandonment." (People ex rel. Dept. Pub. Wks. v. Vallejos (1967) 251 Cal.App.2d 414, 418.) In People ex rel. Dept. Pub. Wks. v. Vallejos the Court of Appeal held that where the land over which the county had a street easement was converted to the use of the highway system by construction of a drainage channel in the street, the street was not abandoned. For a more detailed analysis of this issue please refer to the response to Question 2.

Question 2.

Did the County of Orange have legal authority to abandon a public road (Newport Coast Road) which had been built by the Irvine Company as a condition of its permit to develop its coastal property and convey it to the TCA?

Answer.

1. Newport Coast Drive Will Not Be Abandoned.

Newport Coast Drive has not been abandoned and will not be abandoned as a result of the construction of the Corridor. (People ex rel. Dept. Pub. Wks. v. Vallejos supra. 251 Cal.App.2d at 418.) After construction of the Corridor, Newport Coast Drive will be open for the use of all members of the public. The only change

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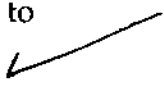
from existing conditions will be that the portion of Newport Coast Drive on the Corridor will be widened and a toll will be charged at the interchange of Newport Coast Drive and the Corridor.

2. The County and TCA Are Authorized To Incorporate Streets Into the Corridor and To Contribute Right-of-Way To the TCA.

Section 941.1 of the Street and Highways Code explicitly authorizes the Board of Supervisors to incorporate Newport Coast Drive into the Corridor. It provides:

"The board of supervisors may lay out, acquire, construct and maintain any section or portion of any street or highway within the county as a freeway or expressway and may make any existing street or highway a freeway or expressway."

The cities have similar authority. (Sts. & Hy. Code, § 1800.) In this instance, a portion of Newport Coast Drive will be maintained as a part of State Highway Route 73.

Because the County of Orange and the city members of the TCA have the power to convert Newport Coast Drive to a highway, the TCA also has the authority to exercise this power under the Joint Exercise of Powers Act and the Joint Powers Agreement as necessary to construct the Corridor. (See Gov. Code, §§ 6502, 6508.)


Government Code section 6502 provides:

"If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties"

"It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting

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party with respect to the geographical area in which such power is to be jointly exercised."

Government Code section 6508 provides:

"The [joint powers] agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement."

The California Attorney General has opined that the powers held by a joint powers authority, such as the TCA, include "not only the powers expressly enumerated by law, but also those implied powers which are necessary to the exercise of the powers expressly granted." (33 Ops.Atty.Gen. 156, 157 (1959), quoting Crawford v. Imperial Irrigation Dist. (1927) 200 Cal. 318, 334.)

In this instance, the legislative bodies of the County and the cities have authorized the TCA to exercise their common powers to "fund, plan, acquire and construct" the Corridor. (See, Joint Powers Agreement, Exhibit 3 at pp. 4-5.)⁴ Because the TCA's member agencies have the power to convert existing streets into highways, the TCA is authorized to exercise this power as may be necessary to construct the Corridor. Thus, the TCA has the authority to convert a portion of Newport Coast Drive into the Corridor.

In addition to the foregoing authority, the County and cities are authorized to contribute rights of way for "building, acquiring and maintaining" the Corridor. (See Gov. Code, § 66484.3, subd. (f) and Sts. & Hy. Code, § 31250.) Thus, the

⁴ In addition to the powers derived from the Joint Powers Agreement, the TCA also has a number of original powers. (See Gov. Code, §§ 66484.3, subd. (f); 6588, Sts. & Hy. Code, § 31200 et seq.)

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County and the City are authorized to convey their interests in Newport Coast Drive to the TCA.

3. Newport Coast Drive Was Constructed With the Intent That It Would Serve As An Interim Facility Prior To The Construction of the Corridor.

The County constructed Newport Coast Drive with the intent that a portion of it would be converted into the Corridor, and that Newport Coast Drive would be an interim facility until the Corridor opened. The County required the construction of Newport Coast Drive in the Irvine Coast Development Agreement between the County and The Irvine Company. The Development Agreement explicitly contemplated that a portion of Newport Coast Drive would be constructed as an interim facility prior to the completion of the Corridor. Section 2.3.1 of the Development Agreement provides the following:

"The COUNTY desires to encourage the earliest possible construction of Pelican Hill Road because, in the time period prior to the construction of the SJHTC [Corridor], Pelican Hill Road is the only regional transportation facility capable of contributing to the achievement of certain regional traffic objectives established by the COUNTY."

(Irvine Coast Development Agreement, Exhibit 5 at p. 12 [emphasis added].) The Development Agreement also provides the following:

"Until such time as the San Joaquin Hills Transportation Corridor is constructed, no other major roadway can fulfill the regional circulation functions of Pelican Hill Road."

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(Exhibit C to Development Agreement at p. 22 [emphasis added] [Exhibit 5].) Moreover, the Development Agreement contemplated the construction of the Corridor on the approved alignment. It required The Irvine Company to record an irrevocable offer of dedication "of the ultimate MPAH width right-of-way for the San Joaquin Hills Transportation Corridor between future Sand Canyon Avenue and MacArthur Boulevard . . ." (Exhibit D of Development Agreement at p. D-7 [See Exhibit 5.] The portion of the Corridor that will contain Newport Coast Drive is between Sand Canyon Avenue and MacArthur Boulevard.

Thus, the Irvine Coast Development Agreement (i) required the construction of Newport Coast Drive as an interim facility prior to the construction of the Corridor, and (ii) required The Irvine Company to dedicate the right-of-way for the Corridor on a portion of the area to be occupied by Newport Coast Drive.

But in the event that there is any lingering doubt that the portion of Newport Coast Drive on the Corridor alignment was only intended to be an interim facility until the construction of the Corridor, that doubt is resolved by the Master Plan of Arterial Highways. The Corridor has been a prominent component of the Master Plan of Arterial Highways since 1976. Since 1976 the MPAH has shown the alignment of the western end of the Corridor on Bonita Canyon Road. Since at least as far back as 1971, the Master Plan of Arterial Highways shows Newport Coast Drive (sometimes under the name Culver Drive or Pelican Hill Road) connecting with Culver Drive rather than with MacArthur Boulevard. (See Exhibit 13.) Even the most recent Master Plan of Arterial Highways (the 1993 Master Plan) (Exhibit 16) shows Newport Coast Drive connecting with Culver Drive rather than MacArthur Boulevard. The fact that

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the TCA reimbursed the Orange County Assessment District approximately \$3.5 million for the cost of constructing Newport Coast Drive in the Corridor alignment is further evidence that it was always intended that the Corridor would replace a portion of Newport Coast Drive.

The intent that Newport Coast Drive would serve an interim facility in this area until the Corridor opened is further documented by communications between the TCA and the City of Newport Beach. In July 1987, the TCA compiled a list of issues presented by the City of Newport Beach regarding the construction of the Corridor. The City's issue list acknowledged that the Corridor would be constructed on a portion of the then-proposed Pelican Hills Road:

"The City of Newport is currently working with the Irvine Company to complete Pelican Hills Road and Bonita Canyon Bypass in order to reduce through traffic in the Corona Del Mar and MacArthur area. The city sees this road-building as the possible first stage of the west end of the corridor."

(Exhibit 17, attached.)

Question 3.

If such authority existed and the free public road requires the public to pay a toll in order to transit part of its length, would this preclude The Irvine Company from developing its property further since the conditions demanded by the permitting authorities no longer pertain?

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Answer.

The TCA was not involved in the permitting of the Irvine Coast Development. Therefore, we refer the Attorney General to the detailed responses to this question prepared by the County of Orange and The Irvine Company. As discussed above, however, we note that the Irvine Coast Development Agreement entered into between the County and The Irvine Company:

- (i) Contemplated that a portion of Newport Coast Drive would be an interim facility until the construction of the Corridor; and
- (ii) Explicitly required The Irvine Company to dedicate to the TCA right-of-way for the Corridor, including right-of-way containing Newport Coast Drive.

We also note that the EIR certified by the TCA in March 1991 evaluated the effect of operating of the Corridor as a toll road on local arterials.⁵ The EIR concluded that the operation of the Corridor as a toll road would not have a significant adverse effect on the traffic generating capacity of local arterials including Newport Coast Drive. (Final EIR, Figure 1.3.1 and p. 1-6 [Exhibit 18].) Indeed, the EIR demonstrated that the Corridor would have a very positive effect on local arterials because it would provide a much-needed alternative for commuter traffic that uses local arterials in place of the congestion-plagued San Diego and Santa Ana Freeways.

⁵ The California Courts have determined that the EIR prepared for the Corridor complied with the requirements of the California Environmental Quality Act. (The Laguna Greenbelt, Inc. et al. v. San Joaquin Hills Transportation Corridor Agency et al. (1993) Court of Appeal, 4th App. Dist. Nos. G012060, G012455, G012411, G012629 [See Exhibit 19].)

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Question 4.

Did the County of Orange give sufficient public notice that it intended to abandon the Bonita Canyon Road and a portion of the Newport Coast Road?

Answer.

Since Bonita Canyon Road and Newport Coast Drive will not be abandoned, the County was not required to give notice of abandonment. However, the County and the TCA provided adequate notice of the intent to convert a portion of Newport Coast Drive into the Corridor.

Since 1976, the Master Plans of Arterial Highways approved by the County provided notice that the alignment of the western end of the Corridor included what is now Newport Coast Drive. The draft EIR/EIS circulated in September 1990 graphically indicated that a portion of the Corridor would follow the then existing alignment of Bonita Canyon Road (Exhibit 7) [EIR Figure 2.5]. The draft EIR/EIS states at page 2-56 that Pelican Hills Road will be constructed in the Corridor alignment, and that it will be initially constructed as 4 lanes and later expanded to 6 lanes. (See Exhibit 6.) The same information is provided on page 2-58 of the Final EIR. (See Exhibit 6.) The TCA circulated draft EIR/EIS in September 1990 to over 4500 individuals and organizations. (See Exhibit 20.) The TCA published a Notice of Availability of the draft EIR/EIS in September 1990 in the Orange County section of the Los Angeles Times, the Orange County Register, the Orange Coast Daily Pilot, Saddleback Valley News, Irvine World News, Laguna Niguel News, and Laguna News Post. (See Exhibit

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11.) The TCA filed a Notice of Availability of the draft EIR/EIS with the Orange County Clerk on October 3, 1990 (See Exhibit 21.), and was published in the Federal Register on September 28, 1990 (See Exhibit 22). A list of the notices provided regarding the draft EIR/EIS and the approval of the Corridor as a toll road is provided in the answer to Question 6.

Comments from the public indicate that the public well understood that the Corridor included the collection of a toll at the proposed interchange with Pelican Hills Road (now Newport Coast Drive) and that the Corridor would replace a portion of Newport Coast Drive. The Spyglass Hill Community Association comments submitted on the draft EIR/EIS, in a letter dated November 1, 1990 state that the "[i]nallation of two toll booths will impact upon the Pelican Hills bypass route constructed by the City of Newport Beach." (Final EIR, Comment No. 4-6, see Exhibit 8.) The TCA responded to these comments and noted that it anticipated that the toll at Pelican Hills Road would be fifty cents in each direction. (TCA EIR Responses to Comments, p. T-24, see Exhibit 9.) The Spyglass Hill Community Association letter also states: "The bypass route [Pelican Hills Road] is to be usurped by the San Joaquin Corridor will cause this newly constructed route to be abandoned by traffic...to avoid tolls."

Six major noticed public meetings and hearings were held prior to the certification of the Final EIR and approval of the Corridor. A list of the notices to the meetings is provided in the response to Question 6. Three hearings were held November 14, 1990, in Laguna Hills (see Exhibit 36), and on February 14 and 28, 1991 in Santa Ana (see Exhibits 37 and 38). Additional public meetings were held on

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October 10, 1990, October 17, 1990 (see Exhibit 11) and March 14, 1991 (see Exhibit 39). In addition, additional public hearings were conducted by the City Councils of Laguna Niguel, Irvine and San Clemente regarding the approval of the Corridor as a toll road. (See Exhibit 23.)

At the November 14, 1990 public hearing, Mr. Gene Foster of the TCA expressly indicated that the Corridor would replace a portion of Pelican Hills Road.

"We've received a number of comments that indicate that there's genuine confusion over what happens with [Bonita] Canyon Road, Pelican Hill Road, and the Corridor in this area. Let me state very clearly that those roads will not lie next to each other. One road takes the place of the other one sequentially in the following fashion. [Bonita]Canyon exists today. It will be replaced with Pelican Hill Road, and ultimately Pelican Hill Road will be replaced by the Corridor."

(Exhibit 24.)

In addition to all of the notices during the Corridor CEQA process that the Corridor would be constructed as a toll road and would replace a portion of Newport Coast Drive, additional notices were provided by both the County of Orange and the TCA of the TCA's acquisition of the right-of-way for the Corridor from The Irvine Company. In November 1992, at a noticed public meeting, the TCA Board of Directors approved a fee credit and reimbursement agreement with The Irvine Company providing fee credits to The Irvine Company in return for the dedication of fee title to the TCA on the portion of the Corridor alignment containing Newport Coast Drive. (See Exhibit 15.) On February 23, 1993, the Orange County Board of Supervisors, at a noticed public meeting, approved an agreement with the TCA and The Irvine

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Company assigning to the TCA the right to receive an offer of dedication of the title to the portion of the Corridor right-of-way containing Newport Coast Drive. (See Exhibit 15.)

Question 5.

Was there an adequate, legal abandonment hearing held for each road?

Answer.

Because there was no abandonment and there is no intention to abandon the roads, as explained in the answer to Questions 1 and 2, no abandonment hearings were required. Nevertheless, although not required by law, the TCA conducted three public hearings and numerous public meetings regarding the decision to construct the Corridor as a toll road on a portion of Newport Coast Drive. For additional detail regarding the public hearing process, see response to Question No. 7.

Question 6.

Did the TCA give sufficient legal notice that it intended to charge a toll to the public for transiting the Bonita Canyon Road and a portion of the Newport Coast Road?

Answer.

The notice provided by the TCA that it would collect tolls on the Corridor met and exceeded legal requirements. The notices included (i) numerous notices published in the Los Angeles Times, the Orange County Register and several local

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publications, (ii) actual notice via first class and certified mail to thousands of individuals and organizations, and (iii) posted notice.

The Brown Act (Gov. Code, § 54950 et. seq.) sets forth the notice requirements applicable to decisions of the TCA. The Brown Act requires (i) mailed notice to any person who has filed a written request for the notice and (ii) posting of the agency's meeting agenda 72 hours prior to the meeting. (Gov. Code, §§ 54954.1, 54954.2.) In addition, the California Environmental Quality Act requires notice of availability of an EIR to be provided through either (1) publication one time in a newspaper of general circulation, (2) posted notice in the area of the project, or (3) mailing to owners of contiguous property. (Cal. Code Regs. tit. 14 § 15087, subd. (a).) The TCA more than complied with Brown Act and CEQA notice requirements. Indeed, rather than utilizing one of the authorized notice methods under CEQA, the TCA utilized all three methods. Therefore, the notice provided by the TCA that it would construct the Corridor as a toll road met and exceeded legal requirements.

1. Notices of TCA Consideration of EIR and Approval of Toll Road.

The draft EIR/EIS circulated by the TCA in September 1990 explicitly indicated that tolls would be charged on the portion of Newport Coast Drive included in the Corridor. The EIR graphically shows that toll booths will be placed at the intersection with Newport Coast Drive (Pelican Hills Road). (Figure 2.5 of draft EIR/EIS, see Exhibit 7.) The TCA provided the following public notices of the Draft and Final EIR and of the several public hearings and meetings regarding the proposed approval of the Corridor:

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Mailing of Notice of Availability and Draft EIR: The TCA distributed the Notice of Availability of draft EIR/EIS ("NOA"), and draft EIR/EIS by certified mail - return receipt requested. The TCA mailing list included thousands of recipients, including adjacent property owners, state, federal and local agencies, interested parties, and anyone else that had requested to be on the TCA's mailing list. (See Exhibit 20.) Persons requesting notice, property owners, and interested parties received the NOA by certified mail. The various public agencies and anyone who requested the draft EIR/EIS received both the draft EIR/EIS and NOA by certified mail. (See Exhibit 20.)

Published Notice of EIR: In September 1990 the TCA published Notice of Availability of the EIR and notice of the scheduled hearings on the Corridor in the Los Angeles Times (Orange County section), Orange County Register, Orange Coast Daily Pilot, Saddleback Valley News, Irvine World News, Laguna Niguel News, and the Laguna News Post. (See Exhibit 11.) Thus, the TCA far exceeded the requirement to publish notice in one newspaper of general circulation.

Federal Register Notice: On September 28, 1990 the Federal Highway Administration published notice of the availability of the Draft EIR/EIS in the Federal Register. (55 Fed. Reg. 39713 (Sept. 28, 1990).) (See Exhibit 22.)

Posted Notice of Availability: On October 3, 1990, the TCA filed the Notice of Availability of the Draft EIR with the Orange County clerk for 30 days posting. (See Exhibit 21.)

Mailing of Revised NOA of Draft EIR. 10/5/90: On October 5, 1990 the TCA mailed a revised notice ("Revised NOA") announcing extension of the public

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comment period on the Draft EIR, and additional public hearing and meeting dates. The Revised NOA was distributed by certified mail - return receipt requested to all of the individuals that had received the original NOA. (See Exhibit 25.)

Publication of Revised NOA. On October 25 and 26, 1990, the TCA published the Revised NOA in the Orange County Register, L.A. Times, and the Irvine World News. (See Exhibit 26.)

Posting of Revised NOA: On November 1, 1990 TCA filed the Revised NOA with Orange County Clerk for 30 days posting. (See Exhibit 27.)

Federal Register Publication. On November 9, 1990 the Federal Highway Administration published the Revised NOA in the Federal Register. (See Exhibit 28.)

Publication of Availability of Draft Final EIR: Although not required by CEQA or the Brown Act, on February 3, 1991, the TCA published a notice of availability of the Draft Final EIR, and notice of the TCA meeting on the EIR and the Corridor in the Orange County Register and the L.A. Times (Orange County Section). (See Exhibit 29.)

Mailing of Draft Final EIR: Although not required by CEQA or the Brown Act, on February 4, 1991 the TCA mailed by certified mail, return receipt requested, a copy of the Draft Final EIR to every individual that requested a copy of the Draft EIR and to all individuals that had submitted comments on the Draft EIR or that had testified at the public hearings. (See Exhibit 30.) The Draft Final EIR included all comments that had been submitted on the Draft EIR and the TCA's responses to those

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comments. The comments included the November 1, 1990 letter from the Spyglass Hill Community Association stating that "[i]n installation of two toll booths will impact upon the Pelican Hills bypass route . . ." as well as the TCA's response to this comment. (See Exhibit 8.)

Posting of Notice: On February 8, 1991 the TCA filed notice of the availability of the Draft Final EIR and notice of the scheduled meetings of the TCA on the EIR and the Corridor with the Orange County Clerk for 30 day posting. (See Exhibit 31.) On March 7, 1991, the TCA posted the agenda of the March 14, 1991 public meeting which included consideration of the Final EIR and the approval of the construction of the Corridor on a portion of Newport Coast Drive. (See Exhibit 32.)

Filing Notice of Determination: On March 14, 1991 the TCA filed notice of its determination approving construction of the Corridor as a toll road with the Orange County Clerk and the California Office of Planning and Research. (See Exhibit 33.)

2. Additional Public Meetings Regarding Construction of Corridor As a Toll Road.

In addition to the formal meetings and hearings referred to above, numerous other public hearings were held by several of the TCA's member local agencies including hearings by: City of Laguna Niguel, City of San Clemente, and the City of Irvine. (See Exhibit 23.)

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3. Extensive Press Coverage Regarding Toll Road.

In addition to all of the formal public notices of the meetings and hearings regarding the EIR, from 1987 through 1991 the local press devoted substantial coverage to the Corridor. It is fair to say that the Corridor was one of most widely covered local news stories during this period. Much of this publicity focused on the fact that the Corridor would be constructed as a toll road. A selected example of the press coverage is attached as Exhibit 12.

4. Other Public Notice of Operation of Corridor As a Toll Road.

Since the Corridor was designated as a toll road in 1987, there has been extensive public notice that the Corridor would be operated as a toll road. In September and October, 1988 the County and the member cities conducted noticed public meetings regarding the adoption of the amendments to the Joint Powers Agreement authorizing the TCA to collect tolls on the Corridor. (See Exhibit 4.)

Other documents provided the public with notice that Newport Coast Drive would be incorporated into the Corridor. In 1989, the University of California at Irvine circulated a Draft EIR regarding the Long Range Development Plan for the Irvine campus. (See Exhibit 34.) The Draft EIR at page 216 stated the following:

"The project will require a southern entrance to the campus in conjunction with the construction of Pelican Hill Road. This road will connect south Orange County from the Coast Highway to the campus bypassing nearby coastal communities. The northern end of Pelican Hill Road is being constructed on the existing alignment of Bonita Canyon Drive which forms the campus' southern boundary.

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This section of Pelican Hill Road will eventually become part of the San Joaquin Hills Transportation Corridor (Route 73)."

(See Exhibit 35 [emphasis added].) Thus, by 1989, it was well understood in the public generally that the northern portion of Newport Coast Drive would be incorporated into the Corridor.

Question 7.

Was there an adequate, legal public hearing held on the tollway's intention to charge such tolls on those roads?

Answer.

The TCA was not required by law to conduct a public hearing regarding the decision to operate the Corridor as a toll road. Nevertheless, the TCA and several of the TCA member agencies conducted a number of public hearings regarding the proposal to operate the Corridor as a toll road. The following is a list of the noticed public meetings and hearings that were conducted in the fall and winter of 1990 and 1991 alone regarding the approval of the construction of the Corridor as a toll road:

- (1) October 10, 1990: Public Meeting, University High School, Irvine California (see Exhibit 11).
- (2) October 17, 1990: Public meeting, Laguna Beach High School, Laguna Beach, California (see Exhibit 11).

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Road will be abandoned. They will be improved and maintained as part of the Corridor. This does not constitute abandonment. (People ex rel. Dept. Pub. Wks. v. Vallejos (1967) 251 Cal.App.2d 414, 418.)

The TCA provided extensive public notice of its intention to construct the Corridor as a toll road on a portion of Newport Coast Drive. The EIR regarding the Corridor expressly indicated that Newport Coast Drive would be incorporated into the Corridor and that tolls would be charged at the Corridor interchange with Newport Coast Drive. Members of the public noted that tolls would be charged on Newport Coast Drive in their comments on the EIR. Representatives of the TCA explicitly indicated during the public hearings on the Corridor that Pelican Hills Road would be incorporated into the Corridor.

Other documents conclusively establish that the public well understood that the Corridor would be constructed as a toll road and that a portion of Newport Coast Drive would be incorporated into the Corridor. The City of Newport Beach expressly told the TCA they understood that a portion of Pelican Hills Road would be incorporated into the Corridor. The Development Agreement entered into between the County of Orange and The Irvine Company expressly indicated that a portion of Newport Coast Drive would be an interim facility until the construction of the Corridor. The 1989 EIR for the Long Range Development Plan for the U.C. Irvine campus expressly stated that Pelican Hills Road would be incorporated into the Corridor.

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The Corridor is one of the largest and most-visible transportation projects in Orange County. It has been extensively debated and discussed within the County over the last 18 years in hundreds of public meetings and hearings. In addition the Corridor has received approvals from over 25 federal, state and local agencies, including the California Coastal Commission, Caltrans, the U.S. Fish and Wildlife Service, the Federal Highway Administration and the U.S. Army Corps of Engineers. All of these approvals occurred only after public notice and, in several cases, public hearings. The decision to construct the Corridor as a toll facility received widespread attention in Orange County and throughout the State because the Corridor was the first modern toll road proposed in the State.

We respectfully suggest that the Attorney General should respond to the opinion request by indicating that the TCA and the County have complied with applicable legal requirements concerning this matter.

Very truly yours,



Robert D. Thornton *z*
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT

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Enclosures

cc: William Woollett, Jr.



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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.

Daniel E. Lungren, Attorney General
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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,

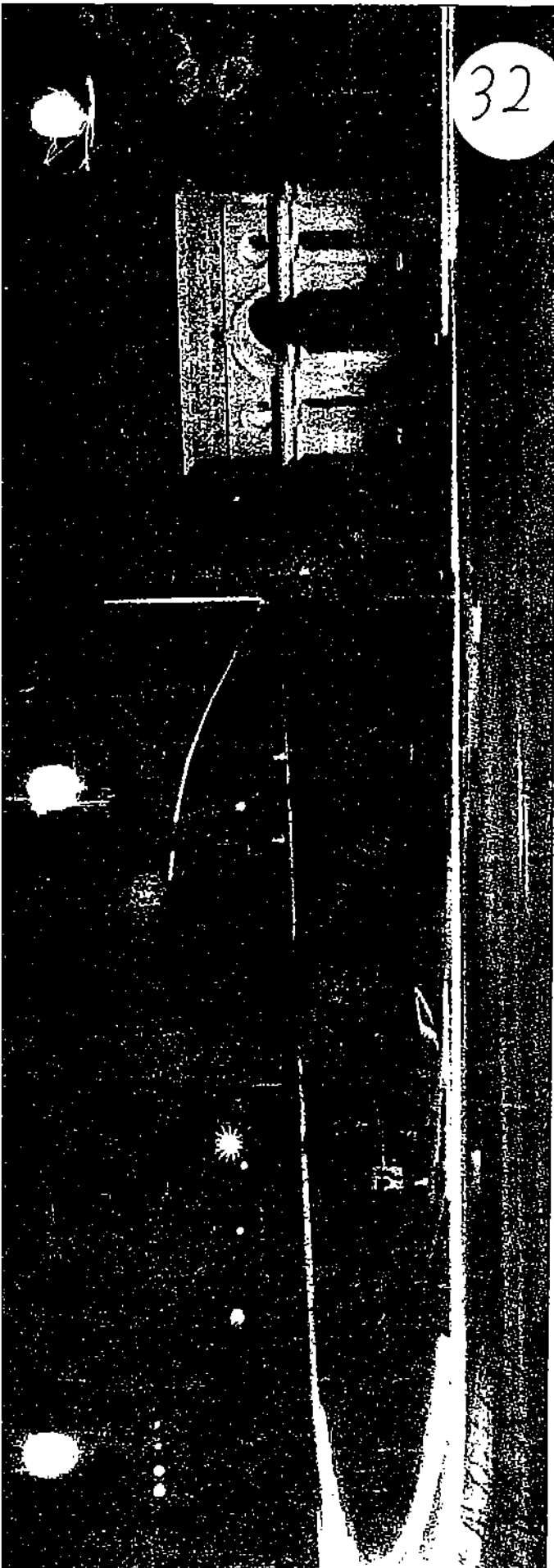
TERRY C. ANDRUS, COUNTY COUNSEL

By



John R. Griset, Deputy

JRG:ep



Newport Coast Drive, which winds from Pacific Coast Highway just south of Cameo Shores to MacArthur Blvd. near University Drive in Irvine, opened Friday.

Irvine Co. officials sing 'Song of the Open Road'

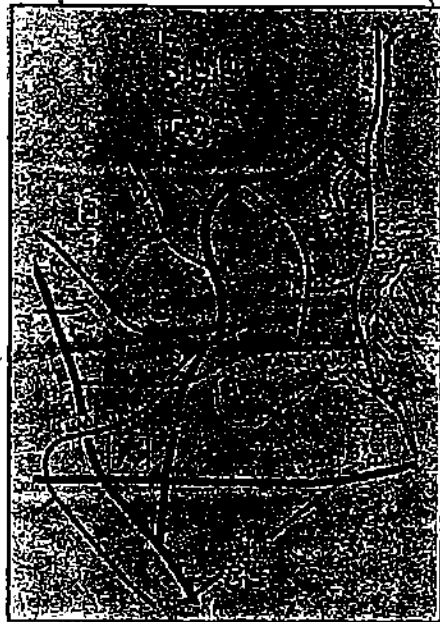
Local dignitaries gather for Newport Coast Drive debut

By Russ Loar
Staff Writer

Walt Whitman he's not, but Irvine Co. Chairman Donald Bren nevertheless delivered his own "Song of the Open Road" Friday afternoon before a crowd of about 500 community leaders perched on Pelican Hill to celebrate the grand opening of Newport Coast Drive.

"Roads have always meant going somewhere; roads have always represented freedom," Bren said, standing at a Plexiglas podium in a towering canvas tent erected for the ceremonies. "Today, I deeply believe we expand our own horizons with the opening of Newport Coast Drive."

Alluding to the titles of literary and musical works such as "The Road Not Taken" and "Hit the Road Jack," Bren declared the new road would significantly



Source: The Irvine Co.

improve access to and from coastal cities, while reducing traffic congestion in the area.

The \$67 million, 6-mile road winds from Pacific Coast Highway just south of Cameo Shores to

MacArthur Boulevard near University Drive in Irvine. The opening of the road Friday afternoon will offer south county residents a more direct route to John Wayne Airport, UCI and Newport Center, along with the promise of significantly reducing rush-hour congestion in Corona del Mar.

"I wasn't sure I'd live to see it," said Luvena Hayton, owner of Hayton's Bay Window dress shop in Corona del Mar and chairwoman of the transportation committee for the Corona del Mar Chamber of Commerce.

"We have been working for many, many years to get a viable bypass around Corona del Mar to alleviate the congestion in our village. Our quality of life will be better."

Although the Irvine Co. funded road was a necessary component of the 2,600-home Newport Coast development, Irvine Co. Senior Vice President Gary Hunt said the resort community would generate only about 19,000 cars a day, leaving 70 percent of road's capacity for outside traffic.

See ROAD/Back Page

A14 Saturday, November 16, 1991

Back P

ROAD: May offer drivers relief from congestion

From A1

Corona del Mar photography shop owner John Blom is not so sure the thinning out of traffic will be good for business. "As a businessman in Corona del Mar, I don't mind a lot of traffic," he said. "The busier, the better."

Although Irvine Co. officials are stressing the positive effects of the new road on local businesses, Blom is not sold on their good intentions. "For all they care, the merchants in Corona del Mar could dry up and blow away," he said. "It's just about the only area in town where they don't have a piece of the action."

But Michelle Zweber, whose family has owned Zweber's Pharmacy on East Coast Highway for 20 years, says relief from local traffic congestion is long overdue. "We deliver, and it can get pretty hectic between 5 and 7 in the evening," she said. "If the road helps reduce congestion, then that's good."

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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August 22, 2007

Ronald D. Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028-8875

RE: Opinion No. 93-1205

Dear Mr. Kennedy:

In your e-mail of August 18, 2007, you refer to a letter from Nossaman, Guthner, Knox & Elliott, dated March 24, 1994 and reference page 29: "In addition the Corridor has received approvals from over 25 federal, state and local agencies including the California Coastal Commission." You have requested a copy of the California Coastal Commission's approval to build a toll road. Please find enclosed a copy of the California Coastal Commission's letter dated October 19, 1987.

Sincerely,


PATRICIA FREEMAN
Legal Assistant

For EDMUND G. BROWN JR.
Attorney General

PF:pkf

Enclosure

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 WEST BROADWAY, SUITE 380
 NEWPORT BEACH, CA 92660
 TEL: 590-5071

FILED: 10-19-87
 49th DAY: 12-2-87
 180th DAY: 4-11-87
 STAFF: J. Leske
 STAFF REPORT: 11-24-87
 HEARING DATE: 12/9/87

REGULAR CALENDARSTAFF REPORT AND RECOMMENDATION

Application: 5-87-886

Applicant: The Irvine Company Agent: Mike Erickson
 550 Newport Center Drive
 Newport Beach CA 92660

Description: Construction of a 2.6-mile long, 6-lane arterial roadway involving approximately 4.5 million cubic yards grading, storm drains, erosion control systems and utilities including sewer, water, electric, gas and telephone.

Site: Beginning approximately 2 miles east of the City of Newport along Pacific Coast Highway, ascending to the north over undeveloped slopes in the County of Orange Irvine Coast area for a distance of 2.6 miles.

Substantive File Documents:

1. Irvine Coast Certified LCP as Amended November 19, 1987.
2. Irvine Coast LUP 1981 Findings.
3. County of Orange FEIR 460 August 1987
4. Pelican Hill Project Report. Robert Bein, William Frost & Assoc. February 1987.

SUMMARY

Staff is recommending approval with conditions addressing grading, erosion control, drainage, landscaping, and assumption of risk.

ENCLOSURE FROM PATRICIA FREEMAN A.G. OFFICE
 AUGUST 22, 1987 LETTER.

STAFF RECOMMENDATION

I. APPROVAL WITH CONDITIONS:

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

provide for an alternative route between existing coastal communities and inland areas to the north. Some of the primary objectives and public benefits are:

- a. Provide early construction of four lanes of Pelican Hill Road in advance of LCP land use needs as contrasted with early construction of two lanes of Pelican Hill Road as required in the 1981 approved LUP. The early construction of the road will relieve congestion on sections of Pacific Coast Highway through Corona Del Mar and on sections of MacArthur Boulevard by providing a bypass route around the Corona Del Mar area.
- b. Provide improved access from inland areas to visitor-serving and public recreation facilities such as Crystal Cove State Park.

D. PROJECT DESCRIPTION.

The overall Pelican Hill Road project has a length of 6.1 miles from MacArthur Boulevard (out of the Coastal Zone) to Pacific Coast Highway (see exhibit 3). The project is divided into 6 segments. Segments 5 and 6 are within the Coastal Zone. Segment 5 extends from the future extension of San Joaquin Hills Road to Pelican Hill Saddle for a distance of approximately 5,900 feet. This segment runs along the ridge which divides Los Trancos Canyon from the headwaters of Buck Gully. Grades vary from one percent to a maximum of six percent. Segment 6 runs from Pelican Hill Saddle to the terminus of the project at Pacific Coast Highway. Grades for segment 6 are six percent. Surface improvements for Segments 5 and 6 are proposed to be developed in two stages upon a roadbed that will be graded to accommodate the ultimate 120 foot right of way and a major arterial highway cross-section. The first stage will construct curb and gutter, drainage facilities and two travel lanes in each direction. When additional highway capacity is needed an additional travel lane may be added as a second stage of construction to increase Pelican Hill Road to a six-lane divided highway. This stage will construct the remainder of the roadway pavement, a raised landscaped median and sidewalk.

E. PELICAN HILL ROAD AS APPROVED IN THE 1981 LUP.

The extent of policy and development standards for Pelican Hill Road in the 1981 LUP is brief, with the emphasis on the conceptual nature of the approval. The LUP states:

"Pelican Hill Road has been designated as a "major" highway, having a six-lane section with a raised median. While some variations may occur during the actual final design process of these roads, the attached alignments should be a close representation of the final alignments. Criteria utilized during the determination of these alignments included: conformance to safe design standards, minimization of grading, consideration of geologic factors, attempting to fit the roadways to the lay of the land and provision of access to the study area. During the detailed design of these roadways, opportunities for emergency parking turnouts and scenic vista turnouts and modifications to sections will be examined".

f



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Facsimile: (619) 645-2012
E-Mail: Jamee.Patterson@doj.ca.gov

September 5, 2007

Ronald Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028-8875

RE: Your Email Correspondence Requesting Public Records
Regarding the California Coastal Commission's TCA Approval

Dear Mr. Kennedy:

I have been asked to respond to your Public Records Act request dated September 4, 2007 requesting documents from this office regarding the California Coastal Commission's approval of the San Joaquin Hills Transportation Corridor Agency (TCA) toll road. We have conducted a search of our records and have determined that we do not have any records within our control or custody responsive to your request.

Sincerely,

A handwritten signature in black ink that reads "Jamee Jordan Patterson".

JAMEE JORDAN PATTERSON
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

JJP

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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May 16, 2007

Ronald D. Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028-8875

RE: Opinion No. 93-1205

Dear Mr. Kennedy:

In your letter of April 30, 2007, you asked "Who are you referring to as 'that he used'". I was referring to Clayton Roche. He does not have an index of letters. Also there is no letter from James Toledano of Toledano and Wald in the file.

I have enclosed a copy of a letter from Charles Damm, Director, California Coastal Commission to Benjamin B. Nolan, dated February 3, 1994. No other exhibits or letters were found in the file.

Sincerely,


PATRICIA FREEMAN
Legal Assistant

For EDMUND G. BROWN JR.
Attorney General

PF:pkf

Enclosure

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST AREA
3111 CAMINO DEL RIO NORTH, SUITE 200
SAN DIEGO, CA 92108-1725
(619) 521-8036

February 3, 1994

Benjamin B. Nolan
Public Works Director, City of Newport Beach
City Hall
3300 Newport Boulevard
Newport Beach, CA. 92659-1768

Subject: San Joaquin Hills Transportation Corridor - Newport Coast Drive
toll road issue

Dear Mr. Nolan:

Pursuant to our telephone discussion a couple of weeks ago, and in follow-up to our October 1, 1993 letter to Councilman Sansone, this letter will confirm what I expressed to you on the telephone. Coastal Commission staff has concluded our review of the Irvine Coast Local Coastal Program (LCP) and the coastal development permit issued for that portion of Newport Coast Drive located in the coastal zone, and our conclusion is that neither document includes policies, terms or conditions which would prohibit the charging of a toll for portions of the Transportation Corridor that overlay Newport Coast Drive.

As I mentioned in our October 1st letter, the portion of Newport Coast Drive where a toll is proposed is not in the coastal zone. As such, we cannot assert jurisdiction based on the toll issue without a direct tie to the adopted provisions of either the Irvine Coast LCP and/or the coastal development permit. Our research shows no such tie.

Again, as stated in our October 1st letter, this letter should not be interpreted as a determination as to whether the Transportation Corridor Agency has met, or violated, any other Government Code sections. That is an issue which the City of Newport Beach and/or others may pursue.

Sincerely,

Charles Damm

Charles Damm
District Director

cc: Councilman Sansone
City Manager

o/c

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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April 17, 2007

Ronald D. Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028-8875


RE: Opinion No. 93-1205

Dear Mr. Kennedy:

I received by mail and e-mail your request for a copy of Exhibit 3 and 4 to the letter dated March 25, 1994 from Nossaman, Gunther, Knox & Elliot. I have enclosed copies of the exhibits. The cost to copy these documents is \$.10 a page and the number of pages is 93. Please send a check in the amount of \$9.30, payable to the Department of Justice, Attention Patricia Freeman, 1300 I Street, Sacramento, CA 95814.

We do not have that index letter that he used.

Sincerely,


PATRICIA FREEMAN
Legal Assistant

For EDMUND G. BROWN JR.
Attorney General

PKF:pkf

Enclosures

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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April 11, 2007

Ronald D. Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028-8875

RE: Opinion No. 93-1205

Dear Mr. Kennedy:

The letter and enclosures, I sent to you on March 20, 2007, were returned to me by the post office stating "unable to forward" on April 11, 2007. I have changed the address from 550 Hazel Drive, Corona Del Mar, CA 92623 to the address you referred to in your recent email to me.

By e-mails dated January 31, 2007 and February 1, 2007, you requested copies of letters from the above-mentioned file. I have enclosed copies of the following letters:

Nossaman, Guthner, Knox & Elliott - letters dated: December 22, 1993 and March 25, 1994, to Daniel Lungren, from Robert D. Thornton.

Orange County Counsel Terry Andrus - letter dated March 24, 1994, to Daniel Lungren, from John R. Griset.

Your letter dated January 8, 1994 to Clayton Roche.

You also requested a copy of a letter to Daniel Lungren from Toledano & Wald. A letter was not found in the file.



PUBLIC RECORDS OMBUDSMAN
1300 I STREET, 17TH FLOOR
P.O. BOX 944255
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Telephone: 916-445-4069
Facsimile: 916-322-4532
e-mail: PublicRecords@doj.ca.gov

September 20, 2007

Ronald Douglas Kennedy
4741 Sleeping Indian Road
Fallbrook CA. 92028-8875

RE: Public Records Act Request

Dear Mr. Kennedy:

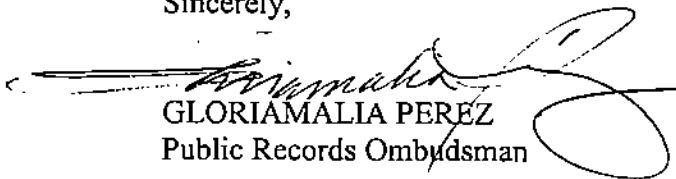
This letter is in response to your email dated September 10, 2007, in which you sought various records pursuant to the Public Records Act as set forth in Government Code section¹ 6250 et seq.

Specifically, your request is stated as follows:

I wish to make Formal request Under Freedom of Information ACT. For a copy of the report by "Olivia Maiser, Special Assistant to Attorney General Dan Lungren". After our Wednesday December 8, 1993 Pacific Club hearing as Arranged by "Assemblyman" Gilbert Ferguson . as detailed in my email dated May 21, 2007 to Ms Freeman below.

In response to your request, we have made a thorough and diligent search of this Department's indexes and databases under the dates, titles and names you have provided. We have also inquired of knowledgeable employees in our office. Unfortunately, all of these efforts have failed to yield any of the records identified in your request. Therefore, we are unable to provide you with the requested records.

Sincerely,


GLORIAMALIA PEREZ
Public Records Ombudsman

For EDMUND G. BROWN JR.
Attorney General

¹All statutory references are to the Government Code.

State of California
Department of Justice
Patricia Freeman

April 14, 2007

Opinion 93 1205

Greetings Ms Freeman

Received your letter of April 11, 2007 And the documents listed. There are two Exhibits & Clarification requested.

Nossaman, Gunther, Knox & Elliot Dated March 25, 1994 Letter

1. page 4. exhibit # 3
2. page 25. exhibit # 4

Regarding the Missing Letter from Toledano & Wald, Jim Toladano Esq.
Do you show that document in your Index of Letters used by Clayton Rouch, Esq. in drafting your Opinion No. 93-1205?

Thank You. Ron

Ronald Kennedy
4741 Sleeping Indian RD
Fallbrook CA 92028-8875

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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June 4, 2007

Ronald D. Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028-8875

RE: Opinion No. 93-1205

Dear Mr. Kennedy:

In your e-mail of May 21, 2007, you requested a copy of the meeting minutes of Assemblyman Gilbert Ferguson's meeting conducted on December 8, 1993. Please find enclosed a copy of a letter from Assemblyman Gilbert Ferguson. There are no other documents.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Freeman".

PATRICIA FREEMAN
Legal Assistant

For EDMUND G. BROWN JR.
Attorney General

PF:pkf

Enclosure

LAW OFFICES
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

WALTER L. NOSSAMAN
1989-1991

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JOHN T. KNOX
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OF COUNSEL

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(202) 721-9108

SACRAMENTO
SUITE 1000
816 L STREET
SACRAMENTO, CA 95814-8701
(916) 442-8288

February 20, 1996

REFER TO FILE NUMBER
190477-024

VIA FACSIMILE AND U.S. MAIL

William Woollett, Jr.
Chief Executive Officer
Transportation Corridor Agencies
201 E. Sandpointe, Suite 200
P.O. Box 28870
Santa Ana, CA 92799-8870

Re: City of Irvine -- Newport Coast Drive Right-of-Way

Dear Mr. Woollett:

You have asked us for our legal opinion regarding recent actions by the City of Irvine's City Council regarding the Newport Coast Drive right-of-way. In particular, you have asked us to comment on the following issues:

1. Does the City have any binding contractual or other explicit legal obligation to transfer to the San Joaquin Hills Transportation Agency ("SJHTCA") certain Newport Coast Drive roadway easements necessary to completion of the San Joaquin Hills Transportation Corridor ("Corridor")?
2. Does the City's threatened violation of its legal obligations expose the City to substantial monetary damages? If so, what is the probable measure of these damages?
3. Can the SJHTCA properly resort to the Courts to compel the City to transfer the roadway easements, regardless of the City's desire? If so, would the City bear the expense of this legal action?

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

William Woollett, Jr.
Chief Executive Officer
Transportation Corridor Agencies
February 20, 1996
Page 2

Short Answer:

The City has a binding legal obligation to transfer the roadway easements. This obligation arises from two sources: the explicit terms of the Joint Powers Agreement, and general principles of eminent domain law.

Any failure to transfer the easements would expose the City to substantial monetary damages, including delay damages which could exceed \$225,000.00 for each day the City's actions interfered with completion or opening of the Corridor. The City would also bear the SJHTCA's legal expenses in obtaining title to the right-of-way through eminent domain.

Assumed Facts:

The City of Irvine is one of the signatories of the First Amended and Restated Joint Exercise of Powers Agreement Creating the San Joaquin Hills Transportation Corridor Agency ("JPA"). As of November 9, 1988, the City entered into the JPA, and became a member of the SJHTCA.

The City Council of the City of Irvine recently voted to refuse to release certain roadway easements to the SJHTCA and to refuse to approve the Major Thoroughfare Agreement. These easements encumber the right-of-way for Newport Coast Drive. This right-of-way is crucial to completion of the San Joaquin Hills Transportation Corridor ("Corridor") and the opening of the Corridor to traffic.

Discussion:

The JPA provides that "when it is within its power to do so, each party shall be individually responsible for the preservation and acquisition by dedication pursuant to Title 7, Divisions 1 and 2, of the Government Code of rights-of-way and similar property interests within its territory which are necessary to accomplish the purposes of this agreement." (JPA, p.10, art. 4.4.) In other words, since entering into the JPA, the City has been obligated to preserve the Corridor right-of-way for the SJHTCA.

The JPA also sets forth specific remedy in the event a member agency fails to meet these requirements. The JPA provides:

[I]n the event that a Party fails to acquire these rights-of-way by the above-mentioned means or fails to preserve such rights-of-way and property

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

William Woollett, Jr.
Chief Executive Officer
Transportation Corridor Agencies
February 20, 1996
Page 3

interests by the above-mentioned means . . . that Party shall compensate the Agency for all costs (including attorneys' fees) incurred by the Agency in acquiring said rights-of-way and property interests. (ibid.)

These two provisions impose a contractual obligation on member agencies such as the City. Under these provisions, the City has a binding obligation to "preserve" right of way for the Corridor. This obligation is an "individual responsibility," accepted by each of the member agencies when it signed the JPA.

The SJHTCA also has a separate avenue for acquisition of the roadway easements, independent of the JPA. No dispute exists that the SJHTCA has the power of eminent domain. It has statutory authority to acquire real property pursuant to, inter alia, California Government Code sections 6502; 66484.3(f); 25350.5 and 37350.5 and Streets and Highways Code, sections 113, 943 and 31201. Moreover, the SJHTCA's proposed use for the easements is deemed a "more necessary public use" than the City's use. (See, Gov't Code, § 666484.3, subd. (f); Sts. and Hy. Code, § 31201.). Moreover, the Corridor is a more necessary public use since the SJHTCA seeks to facilitate the use of the easements by the State, as part of State Route 73. (See Code Civ. Proc. 1240.640.) The easements do not fall into any protected class of public property; they are intended for the very use the SJHTCA contemplates: surface transportation.

Significantly, the City would bear the ultimate expense of any condemnation proceeding. The JPA makes clear that the City must "compensate the Agency for all costs (including attorneys' fees)" incurred by the Agency in this context. Most importantly, the Agency could pursue condemnation without the consent or cooperation of the City. The outcome of such an action would not depend on the consent, or lack of consent of the City.

The City's failure to honor its obligations under the JPA would also potentially expose the City to substantial delay damages. The Agency would have the right to institute a separate lawsuit against the City for such damages for breach of the contractual obligations listed above. The Corridor is a complex construction project. Even ostensibly minor delays can create major delays and significant adverse consequences. The measure of such damages could include lost toll revenues; damages due the contractor; and other increased construction expenses. In another context we recently approximated these damages as capable of accruing at the rate of \$225,000.00 per day.

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

4

William Woollett, Jr.
Chief Executive Officer
Transportation Corridor Agencies
February 20, 1996
Page 4

Conclusion:

The City's recent decision regarding the Newport Coast Drive easements and the Major Thoroughfare Agreement puts the City at risk of a violation of the JPA. The City's action is not likely to prevent the SJHTCA from ultimately acquiring the easements - - by eminent domain if necessary. The City's actions could, however, expose the City to substantial liability for damages. At the very least, the City may be liable for the SJHTCA's legal fees and cost in obtaining title to the easements. In addition, we note that the City will continue to have personal injury liability for accidents and other injuries occurring on Newport Coast Drive as long as the City retains an easement interest.

Very Truly yours,



Robert D. Thornton
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

JCM/cjd

Newport Coast Drive Defense Fund
a non-profit corporation



REVISED 5/14/00

36

May 10, 2000

Chief Deputy Attorney General
Peter Siggins
Office of Attorney General Legal Affairs
State of California
P.O. Box 944255
Sacramento, CA 94204-2550

RE: Anomaly in OPINION No. 93-1205 May 12, 1994

Dear Mr. Siggins:

I am writing to ask you for a review of this past Opinion. The question from day one has been, was Pelican Hills Road (now Newport Coast Drive, from Pacific Coast Highway to MacArthur Blvd.) built as part of the traffic mitigation for the Irvine Coast Local Coastal Plan (LCP) and the Irvine Coast Development Permit. Per the past Attorney General Office's Opinion - Page 6, Footnote 7, says it was not. Please note item 3 below, Mr. Lilyquist's comments.

Court review of this issue was blocked through a declaratory relief review technicality. Opposing council prejudiced this issue from the day the Attorney Generals office rushed to publish their poorly researched and wrongly headed Opinion, by telling the Courts and Media that this issue had been decided in their favor. This was done after the Surprise Release of Legislative Counsel of California findings dated May 9, 1994, (Toll Roads: County of Orange - #5850). Note number thirteen below which states that vacation of public roads requires public hearings and findings by the Board of Supervisors. Of note, the LCP issue was not reviewed.

Substantiation of this argument is listed below:

- 1) The controlling gravestone LCP issue was brushed aside in the Attorney General's Opinion on Page 6, footnote 7. (Exhibit 1)
- 2) Mr. Lilyquist was gracious in forwarding a copy of the letter to me that they relied upon from Mr. Charles Damm, Coastal District Director, dated February 3, 1994, to the city of Newport Beach, stating that there is no direct LCP tie to the Development Permit outside of the coastal Zone. (Exhibit 2)

Chief Deputy Attorney General
Peter Siggins
May 10, 2000
Page Two

- 3) I forwarded a note to Mr. Lilyquist stating that my files produced two documents that were signed off by Mr. Damm in November 19, 1987, and December 4, 1987, that were clear rebuttals to the above letter. Included with this note was additional information. (Exhibit 3)

On receiving this new rebuttal information, Mr. Lilyquist left a telephone recording stating, "We have made a decision, we are out of this, your information will be archived and thrown away, save yourself time and money,

don't send any more, good luck." Tape recording of his words combined with information I gave to an attorney regarding this matter is enclosed.

- 4) Mr. Damm's Synopsis to Commissioners, dated November 19, 1987, page 36, and clearly calls out the "Coastal Development Permit". Page 22 of this same document calls out Map Exhibit 13. This is from the LCP "Irvine Coast Proposed Land Use Plan Executive Summary September 1987" showing the path of this new road, which I have enclosed with this exhibit. (Exhibit 4)
- 5) Mr. Damm's Addendum to Commission Agenda, dated December 4, 1987. Page four, talks of Pelican Hill Road meeting two Coastal Act Section and sites their Exhibit 13. This map clearly shows the road running outside the coastal zone as Off Site Mitigation would show. (Exhibit 5).
- 6) Letter to Attorney General from the past city Manager of Newport Beach who was not aware of the plans to toll Newport Coast Drive. (Exhibit 6)
- 7) Letter to Attorney General from the Irvine Company, page two. Decision to toll not made at time Development Agreement entered into between the County of Orange and the Irvine Company. Transportation Corridor Agency (TCA) decided to toll to help pay off toll bonds. (The development agreement carries out the requirements of the LCP.) (Exhibit 7)
- 8) Letter to Orange County Environmental Management Agency (EMA) from the Coastal Commission, January 16, 1996. On page two, the LCP calls out the road running from Pacific Coast Hwy. to MacArthur Blvd. (Exhibit 8)

Chief Deputy Attorney General
Peter Siggins
May 10, 2000
Page Three

- 9) Los Angeles Times' justification for collecting tolls based on Attorney General's Opinion and stating that tax payers are to pay for the second road. (Exhibit 9)
- 10) Orange County's Special Interrogatories answered citing the County's own resolutions. (As Officers of the Court and carrying out their fiduciary duties to implement the Irvine Coast LCP, as cited in the Development Agreement, this action should have been resolved. The Police Powers of Cities and County's cannot alter or change an approved LCP Coastal Mitigation.) (Exhibit 10)
- 11) Letter to Appellate court per Rule 976 (2) and (3) later denied. (Exhibit 11)
- 12) Maps – note LCP map. As late as 1993, parallel roads are shown. San Joaquin Hills Transportation Corridor Agency (TCA) map. Old Bonita Canyon Road followed Bonita Creek to MacArthur Blvd., which was the original right-of-way for Pelican Hills Road (later renamed Newport Coast Drive), as called out in the Irvine Coast LCP and Irvine Coast Development Agreement. The public's right to use this original right of way is the entire issue of this request to you. (Exhibit 12)
13. Legislative Counsel of California Report #5850, May 1994. They did not look at the LCP issue. They did find public hearings were required with a findings by the board of Supervisor's for taking of a public road, which was never done. (Exhibit 13)

Summation: Neither the Intent nor Rule of Law has been followed:

The Honorable Judge McDonalds of the Orange County Superior court was recovering from back surgery and most likely on medication at the time he denied our counsel his request for adequate time to answer.

Mr. Lilyquist's refusal to look at Mr. Damm's earlier coastal report, impeaches his own later letter, which was the basis of page six, footnote 7 of the Attorney General's Opinion is also suspect.

One wonders how much political pressure and power were brought to bear. The TCA saying their toll bonds would fail, the past Governor Campaign Manager owning the Irvine Company, which he now serves on as a Board of Director.

Chief Deputy Attorney General
Peter Siggins
May 10, 2000
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With the implications of the Irvine Company taking a tax write off for building the original Newport Coast Drive and the latter also receiving Meloruse Toll Bond buildable credits from the TCA for the roadbed (Sand Canyon to MacArthur Blvd.) and past road work.

There should not be a separation in the rule of law for the people and developers as, I believe is found here. Can a past Opinion be corrected if new facts warrant?

Sincerely,

Ronald Kennedy
4741 Sleeping Indian Road
Fallbrook, CA 92028
760 723 4357
otrkennedy@aol.com

RK

Enclosures (13)

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

June 9, 2000

PETER SIGGINS
Chief Deputy Attorney General
Legal Affairs

Mr. Ronald Kennedy
4741 Sleeping Indian Road
Fallbrook, California 92028

Re: Opinion No. 93-1205

Dear Mr. Kennedy:

By letter dated May 10, 2000, you requested that Opinion No. 93-1205 be reviewed. The opinion concluded that the County of Orange had legal authority to turn over Newport Coast Drive to the San Joaquin Hills Transportation Corridor Agency. The opinion was well researched, and you have presented no basis upon which to revisit the questions that were resolved in the opinion.

Accordingly, we must decline your request.

Sincerely,



PETER SIGGINS
Chief Deputy Attorney General
Legal Affairs