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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.

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Received by
CHIEF DEPUTY ATTORNEY GEN.

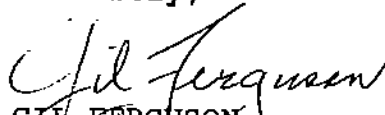
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This situation directly affects hundreds of thousands of residents of Orange County. However, the tollway agency has repeatedly rebuffed the local Chamber of Commerce, homeowners' groups and the City of Newport Beach for nearly a year and thusfar is 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