

THE IRVINE COMPANY

Gary H. Hunt
Executive Vice President

April 1, 1993

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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.)

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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 65864, 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.

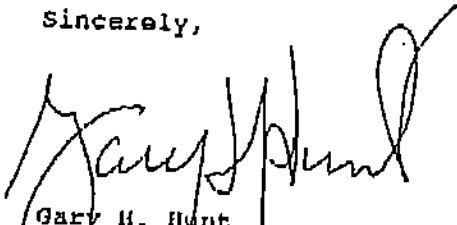
³ See the enclosed Technical Memorandum TM-2-67A, page 2, prepared by the TCA to determine whether collecting tolls for use of the Corridor, including tolls on Newport Coast Drive, would change the conclusions of the Irvine Coast Area Traffic Analysis regarding the traffic relief provided by Newport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

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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