

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"

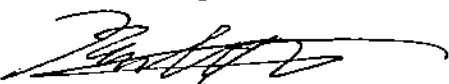
My reply is in two parts:

- 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
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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

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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
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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
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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

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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.

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