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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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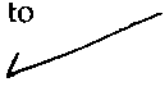
from existing conditions will be that the portion of Newport Coast Drive on the Corridor will be widened and a toll will be charged at the interchange of Newport Coast Drive and the Corridor.

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]nstallation 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 *[initials]*
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT

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Enclosures

cc: William Woollett, Jr.