

Newport Coast Drive Defense Fund  
a non-profit corporation



REVISED 5/14/00

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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)

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- 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)

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- 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.

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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  
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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