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# EXHIBIT 7

TCA EXHIBIT 7

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DEPARTMENT OF JUSTICE



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August 20, 2012

Ronald Douglas Kennedy  
4741 Sleeping Indian Road  
Fallbrook, CA 92028-8875

RE: Public Records Act Request

Dear Mr. Kennedy:

This letter is in response to your correspondence of July 20, 2012, requesting records under the Public Records Act which is contained in Government Code section 6250 et seq. We have completed our review of additional files for responsive records.

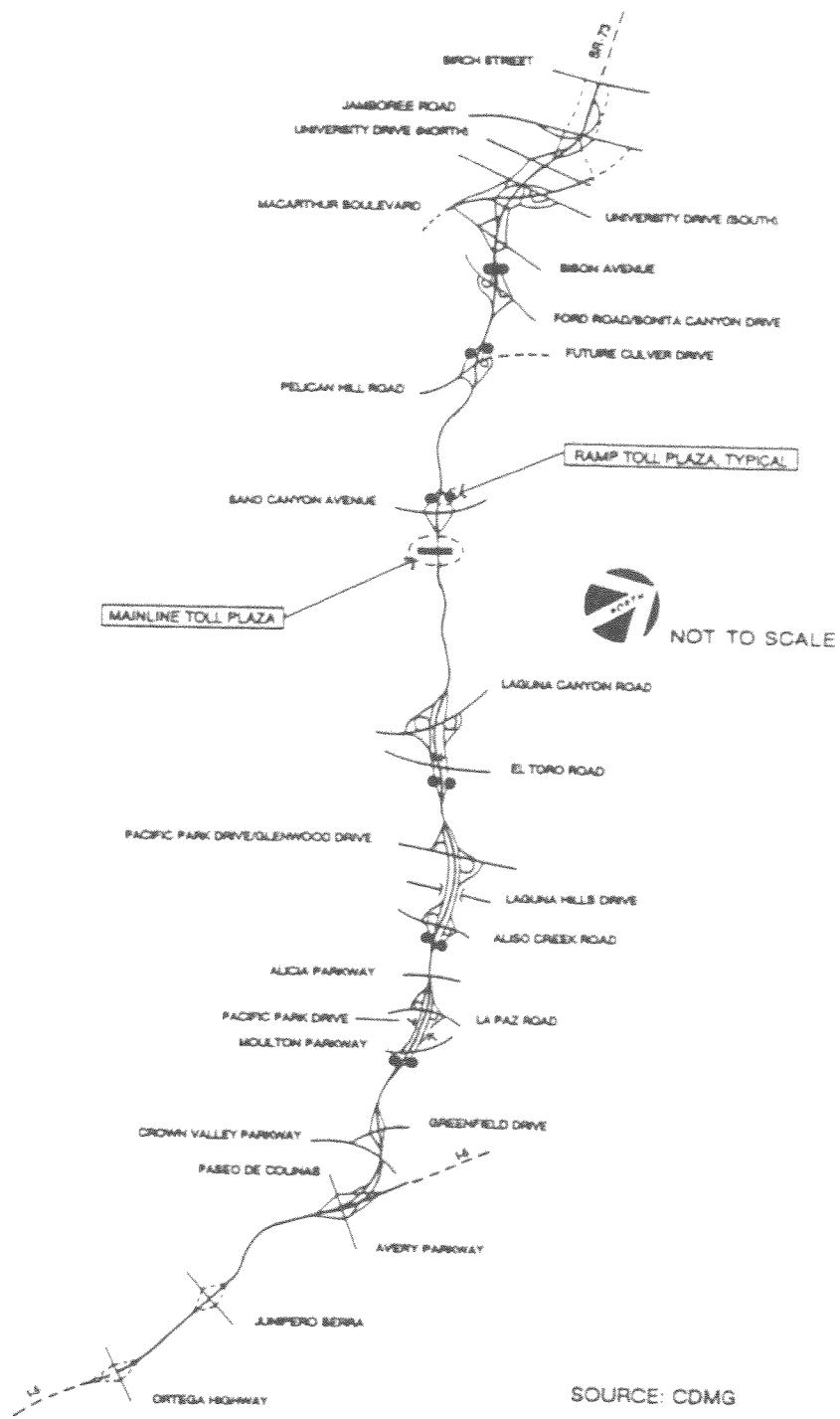
Specifically you requested Exhibit 3 and Exhibit 7 as outlined in correspondence addressed to the Attorney General from Nossaman, Guthner Knox & Elliot dated March 25, 1994.

Moreover, you requested

✕ "Exhibit 3—And also with the front page of the Document this exhibit is a part of." "Exhibit 7—And also with the front page of the Document this exhibit is a part of" and "any Page's that '**explicitly indicated**' If there is additional language that supports exhibit 7."

In response to your request, enclosed are the following documents:

1. First Amended and Restated Joint Exercise of Powers Agreement Creating the San Joaquin Hills Transportation Corridor Agency (Exhibit 3).
2. Figure 2.5—Toll Plaza Locations, Bate Nos. 002999 and 006545 (Exhibit 7).



TOLL PLAZA LOCATIONS

FIGURE 2.5

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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,<sup>2/</sup> the TCA Board of Directors certified the Final EIR and approved

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<sup>2/</sup> 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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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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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: