

April 17, 1986

REPORT TO THE COMMITTEE ON PUBLIC FACILITIES AND RECREATION  
APPEAL BY WATT INDUSTRIES - STREET TREES - SAN DIEGUITO ROAD

At its meetings on March 12, 1986, and April 9, 1986, the Public Facilities and Recreation Committee reviewed a request from Watt Industries to retain 516 California Pepper trees planted within the unimproved portion of the right-of-way of San Dieguito Road.

As background information, on May 29, 1985, Watt Industries engineer submitted documents indicating that the trees would be planted outside the public right-of-way and the City's Park and Recreation Department did not oppose that plan. Contrary to the plan shown the City, however, the 516 California Pepper trees were, in fact, planted within the right-of-way of San Dieguito Road. The Park and Recreation Department Director required that the trees be removed and an "appeal" was brought to the Committee.

By planting the trees within the right-of-way without a City permit, Watt Industries violated the law as set forth in Section 62.0600 et seq. of the Municipal Code.

Several legal problems exist with the concept of allowing the trees to remain. Watt Industries is presently obligated, under an improvement agreement executed on September 12, 1983, to construct a 72-foot-wide paved roadway within the 88-foot dedicated right-of-way for San Dieguito Road. A copy of the improvement agreement is attached for your review. According to the Park and Recreation Department, the widened road will put the curb line within one to two feet of the tree trunks.

San Dieguito Road, even in its present two-lane status, has no posted speed limit, thereby allowing speeds up to 55 miles per hour. The most significant problem with the above fact situation is that there would be automobiles travelling at a fairly high rate of speed dangerously close to the Pepper trees which are characterized as "fixed objects" by plaintiffs' attorneys in

personal injury lawsuits. The fact that the trees have been planted at approximately 25-foot intervals will create a veritable wall through which any out of control car could not expect to penetrate. Placing large trees so close to the traveled way and at such close intervals violates the City's standards, which would place this office at a great disadvantage in the event of any future accident and lawsuit. This office

feels that such a situation is contrary to the best interests of the City and its residents.

A less significant but nevertheless notable legal problem involves the fact that if the street is widened to within one to two feet of the tree trunks there will almost certainly be significant problems resulting from root damage to the public improvements. Potential injuries could also result from such a situation.

Lastly, if the tree trunks are within one to two feet of the curb line, the tree branches will obviously extend significantly out over the public right-of-way thereby requiring substantial expense for tree trimming and additional potential liability for tree debris falling into the travelled lanes.

For the above reasons, it is strongly recommended that the trees be required to be removed at this time.

The one factual situation which could logically lead to allowing the trees to remain as presently located would be a determination to keep San Dieguito Road permanently as a "two-lane collector street" rather than a "major street" as it is presently classified. Discussions with City staff indicate a high probability that the road will eventually be widened to at least four lanes. As indicated above, Watt Industries has a present obligation to perform such widening and has furnished the City a performance bond in the amount of \$1,794,541.00 for that purpose. There is also apparently a possibility that County Highway 728 will eventually be relocated to the San Dieguito Road alignment and improved as a six-lane prime arterial.

In summary, the present plans for widening San Dieguito Road are totally inconsistent, from a legal liability standpoint, with the existing location of the 516 California Pepper trees. The furnishing of bonds to reimburse the City for extraordinary maintenance costs would not solve the problem of a practically impermeable wall of trees immediately adjacent to the right-of-way. Public liability insurance naming the City as an additional insured for an amount sufficient to cover potential claims could possibly be acquired for a one-year basis but no insurance company will write a policy or guarantee renewal of any policy for a term of years equal to the life of the Pepper trees.

An alternative to insurance from an insurance company would be an agreement by a large, well-capitalized corporation to assume the defense of and indemnify the City for any claims or injuries resulting from the tree location for a period of the life of the trees, fifty years or more. It seems unlikely that Watt Industries would agree to such unlimited liability for such a long period of time, however, and this office would not

recommend the continued existence of a dangerous condition even with such an agreement.

Therefore, in the absence of a determination to permanently maintain San Dieguito Road as a two-lane roadway, there does not appear to be a viable solution to the legal problems created by the illegal placement of the trees in their present location.

Respectfully submitted,

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City Attorney

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Attachment

RC-86-14