

REPORT TO THE COMMITTEE ON PUBLIC FACILITIES AND RECREATION
"CURLEW (E-1) PARCEL 6" - LIABILITY ISSUES IN THE EVENT OF CITY
ACQUISITION FOR OPEN SPACE

The Public Facilities and Recreation Committee, at its meeting on December 10, 1986, briefly discussed the potential acquisition of several parcels in the areas of Curlew Street and Reynard Way in the Uptown area. The Manager's Report No. 86-584 indicated that with regard to Parcel 6, since that parcel contained "high, near-vertical, manufactured cliffs," acquisition by the City for open space "could present legal liability problems."

The various parcels were referred back to the Manager for additional study and this office was requested to report back regarding the Parcel 6 liability issue.

Attached is a memorandum dated December 18, 1986, from the City's Risk Management Department. You will note that the property was inspected and that there is an approximately forty-foot-high cliff on the parcel, that the "soil appears to be eroding and could pose a hazard to homes at the base of the cliff" and that the claims representative further felt that injuries resulting from falls off the cliff could result in City liability exposure.

Because of the present state of the law in California, this office must concur in the recommendation that Parcel 6 not be acquired for open space by the City. While, as a general rule, the City is exempt from liability resulting from the natural condition of open space property owned by the City, it is our understanding from the Manager's Report that the cliffs on the property are not a natural condition on the site and are at least partially the result of development in the area. Therefore, if the cliffs do not constitute a "natural" condition it would be appropriate to provide protective devices, such as signs and fences, to protect the public if the property were acquired. Also, once signs and fences are erected, substantial problems and costs may be incurred in making certain the signs and fences are properly maintained.

In addition, the law in California now provides that the owner of property, even in a natural condition, must take reasonable steps to protect adjacent property owners from hazardous conditions which may exist on "the natural property." For example, if a boulder exists on sloping land which could loosen, roll onto and damage adjacent property, the owner of the

land with the boulder now has been determined to have an obligation to take whatever steps are reasonably necessary to keep the boulder from rolling on to his neighbor's property.

In the Parcel 6 situation, therefore, if the cliffs are, in fact, eroding "and could pose a hazard to the homes at the base of the cliff," the City, if it acquires the property, may have to take action, as necessary, to alleviate the potential problem or it may be held liable in the event damage occurs to adjacent homes. The fact that the cliff or cliffs may not, in fact, constitute "a natural condition" only exacerbates the potential liability issue.

In summary, from this office's standpoint, in view of the statements contained in the Manager's report and the claims representative's memorandum, it appears that significant liability potential exists with regard to Parcel 6, which potential liability may outweigh any public benefits to be derived from acquisition of the property.

Respectfully submitted,
JOHN W. WITT
City Attorney

HOV:ps:711(x043.1)

Attachments 2

RC-87-1