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MEMORANDUM OF LAW

DATE: November 13, 2008

TO: Kip Sturdevan, Environmental Services Department Assistant Director

FROM: City Attorney

SUBJECT: Recycling Sites and Holiday Tree Collection Points at Dedicated Parks

INTRODUCTION

This Memorandum of Law is in response to your verbal request for our Office to revisit two conclusions we made in a memorandum dated October 28, 1997, regarding the use of dedicated park lands.[1] Specifically, you have asked us to review the conclusions that using dedicated park lands for recycling sites and for temporary holiday tree recycling collection points are improper park uses. Given the passage of time and the fact that these two issues were not discussed in depth in the previous memo, we believe it worthwhile to explore these issues once again.

QUESTIONS PRESENTED

1. Whether using dedicated park land as a temporary holiday tree recycling collection point is a proper park use?

2. Whether using dedicated park land for a recycling site is a proper park use?

SHORT ANSWERS

1. No definitive answer emerges from the case law. However, the greater weight of authority suggests that the temporary holiday tree recycling collection points, as presently constituted, are permissible park uses. Also, if operated as a recreational, educational or cultural event, the holiday tree collection points clearly would be a proper park use.

2. Yes. Using dedicated park lands for recycling sites, as they are presently constituted, is a proper park use.

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[1]Memorandum by Doug Humphreys, Deputy City Attorney, to Marcia McLatchy, Deputy Director Park & Rec. Dept. dated Oct. 28, 1997.

ANALYSIS

I. General Rules Governing Uses of Dedicated City Park Lands

The use of dedicated park lands in the City of San Diego is governed by Charter section 55 which provides in pertinent part:

> All real property owned in fee by the City . . . formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City . . . .

Over the years, our Office has issued numerous opinions with regard to proper park uses.[2] This topic has been the subject of a substantial amount of case law across the country as well. Our research has revealed no opinion addressing whether a recycling site, either permanent or temporary, is a proper park purpose for dedicated parkland. Nevertheless, case law and our prior opinions provide guidance in examining the issues here.

We begin with the general rule that where a park is dedicated by a private individual, the permissible uses of the land are strictly construed in accordance with the grant deed. In contrast, where the City is the grantor, the permissible uses are more liberally construed. In the latter case, particular uses are permissible as long as they "tend to further and promote the enjoyment of the people under the general dedication of the land for their benefit." *Spires v. City of Los Angeles*, 150 Cal. 64, 66 (1906); *Slavich v. Hamilton*, 201 Cal. 299, 303 (1927).[3]

A park is broadly defined as "a pleasure ground set apart for recreation of the public, to promote its health and enjoyment." *San Vicente Nursery School v. County of Los Angeles,* 147 Cal. App. 2d 79, 85 (1956). It is a "piece of ground set apart to be used by the public as a place for rest, recreation, exercise, pleasure, amusement, and enjoyment." *City of Bangor v. Merrill Trust Co.*, 99 A.2d 298, 303 (1953).

Accordingly, uses which the courts generally have recognized as permissible park uses include: public libraries, hotels, restaurants, museums, art galleries, zoological gardens, botanical gardens, veterans' memorial halls, picnic grounds, athletic fields, golf courses, tennis courts, playgrounds, and recreational centers. *Spires,* 150 Cal. at 66; *Slavich*, 201 Cal. at 309; *Griffith*

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[2]A small sampling includes the following: 2001 City Att'y MOL 307; 1989 City Att'y MOL 65; 1986 City Att'y MOL 561; 1984 City Att'y MOL 234; 1983 City Att'y MOL 51; 1975 Op. City Att'y 139; 1953 Op. City Att'y 71; 1933 Op. City Att'y 141; 1925 Op. City Att'y 171.

[3]The two cases cited in this paragraph are the seminal cases in California on the proper uses of dedicated park lands.

v. City of Los Angeles, 175 Cal. App. 2d 331, 337-38 (1959); *City and County of San Francisco v. Linares*, 16 Cal. 2d 441, 448 (1940); *Abbot Kinney Co. v. City of Los Angeles*, 223 Cal. App. 2d 668, 674 (1963).[4] In contrast, those uses which courts have found improper include: a city hall, fire station, hospital, jail, municipal buildings or offices, a school, and a courthouse. *Spires v. City of Los Angeles*, 150 Cal. at 67; *San Vicente Nursery School*, 147 Cal. App. 2d at 85-87.

Generally speaking then, permissible park uses are those which offer the public opportunities for relaxation, recreation, educational and/or cultural enrichment, exercise, pleasure, entertainment, and refreshment. In addition, "courts have upheld the use of portions of property for purposes that are incidental to its use as a public park [,]" i.e., that facilitate or enhance the public's enjoyment of the park. *Abbot Kinney Co.,* 223 Cal. App. 2d at 673. Accordingly, incidental uses such as parking lots and public restrooms have been upheld. *Id.* at 674; *Priory v. Borough of Manasquan*, 120 A.2d 625, 632-33 (N.J. Super.1956).

II. A Particular Use is Permissible if Consistent with Park Purposes

In determining whether a use is a proper park use, the primary question is "whether the use *in a particular case, and for a designated purpose*, is consistent or inconsistent with park purposes." *Slavich,* 201 Cal. at 303 (emphasis added); *Wattson v. Eldridge*, 207 Cal. 314, 320 (1929). Uses which are consistent with park purposes are permissible uses. Uses which are incidental or ancillary to use of the property as a park are also permissible uses. *Abbot Kinney Co.,* 223 Cal. App. 2d at 673. In contrast, a use which would be inconsistent with park purposes or which would unreasonably interfere with the public's enjoyment of the park is impermissible. *Simons v. City of Los Angeles*, 63 Cal. App. 3d 455, 470 (1976); *San Vicente Nursery School*, 147 Cal. App. 2d at 85; *Hyland v. City of Eugene*, 173 P.2d 464, 466 (1946); 48 Cal. Jur. 3d, *Parks, Playgrounds, and Recreation Districts* § 21 (2004); 11A McQuillin, The Law of Municipal Corporations, § 33.74, p.527 (3rd Ed. rev. 2000).

A. Common Custom and Usage is Indicative of Consistency with Park Purposes, Which May Change Over Time

In analyzing consistency with park purposes, we begin with the well-established principle that a dedication of property should be interpreted with reference to its primary purpose. *Wattson*, 207 Cal. at 320; *Abbot Kinney Co*., 223 Cal. App. 2d at 675. At any given time, this interpretation should take into account changing conditions in customs, usages, and improvements because these changes are deemed to have been contemplated in the dedication. *Id*. "In other words, the dedicator is presumed to have intended the property to be used in such way by the public as will be most convenient and comfortable, and according to not only the proprieties and usages known at the time of the dedication, but also to those justified by the lapse of time and change of conditions." *Wattson*, 207 Cal. at 320.

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[4] 1986 Op. City Att'y 561 also lists numerous proper and improper dedicated park uses.

Thus, in order to "ascertain the uses to which parks may be, and commonly are put, without interfering with or destroying their character as park property," courts will look to common usage and custom. *Griffith v. City of Los Angeles*, 78 Cal. App. 2d 796, 800 (1947).[5] A long-standing park use which has been accepted by the public is indicative of a proper park purpose. *Id*. at 800-801; *State of Idaho v. Hodel*, 814 F.2d 1288, 1294-95 (9th Cir. 1987) (Historical evidence of park uses is instructive in determining proper park uses), *cert. denied,* 484 U.S. 854 (1987); *Spires*, 150 Cal. at 66 (Court acknowledged numerous park uses deemed proper park uses as a result of general public acceptance of such uses); 48 Cal. Jur. 3d *Parks, Playgrounds, and Recreation Districts* § 24 (2004).

B. Miscellaneous Uses Also May Constitute Proper Park Uses

Courts also have upheld miscellaneous park uses where the use, while not necessarily consistent with traditional park purposes, has nevertheless benefited the park in the long-term. *Griffith v. City of Los Angeles*, 175 Cal. App. 2d 331 (1959) (*Griffith II*); *Central Land Co. v. City of Grand Rapids*, 4 N.W. 2d 485 (1942); 11A McQuillin, The Law of Municipal Corporations, § 33.74, p. 532-33 (3rd Ed. rev. 2000). The outcome in these cases has turned on the issue of interference with the public's enjoyment of the park. Where the park realized a tangible benefit from the particular use and the interference was not substantial, the court upheld the use despite the fact that it was not necessarily consistent with historical park purposes.

For example, the *Griffith II* court held that using 40 acres in a remote canyon in Griffith Park as a city dump for 5-10 years was an appropriate park use. The land was part of a private grant of 3800 acres to the City of Los Angeles to be used as a public park. *Griffith II,* 175 Cal. App. 2d at 333-34. The City determined to fill and level the canyon with residential solid waste in order to eventually produce 40 acres of level land to be planted with grass and devoted to athletic fields, tennis courts, archery ranges, and picnic grounds. *Id*. at 335-37. The court rejected

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[5]In *Griffith*, the court permitted the City of Los Angeles to set aside park property to temporarily house thousands of veterans returning from World War II, whose return to a city without adequate housing to accommodate them constituted a severe emergency. We note that this office has opined, most recently in an informal memorandum on September 7, 2007, that space in Balboa Park may not be used for the housing of homeless persons absent a finding of an emergency posing an "immediate" threat to "the public peace, property, health, or safety." [Memorandum from the Office of The San Diego City Attorney (September 7, 2007) (on file with author), which in turn cited Report to the Committee on Public Services and Safety from the Office of The San Diego City Attorney (May 14, 1993) (on file with author).] That memo was decided on a different set of facts than those at issue here. As the cases demonstrate, while the rules governing questions of proper park uses are well-established and have remained largely stable for decades, the application of these rules to a particular question is always fact-specific. Thus, we caution against excessive reliance on any given case to predict the outcome of a question involving different facts.

a claim by an heir of the grantor that this use was an improper park use in violation of the grant. *Id*. at 336. Noting first that the plan would ultimately benefit the park by creating more level park land, the Court then turned to the issue of interference. It concluded the interference with the

public's use of the park was not unreasonable because it was temporary, the canyon area was less than 1% of the entire park, the location was in a remote area of the park, and the use, by eventually increasing the total amount of park space usable by the public, provided a long-term benefit to the park. *Id.* at 342. Accordingly, the court held the use was proper. *Id.*

Similarly, in the *Central Land Co.* case, the Michigan Supreme Court held that the operation of two oil wells on park property was a permissible park use. *Central Land Co.,* 4 N.W. 2d at 488. A private grantor had deeded 25 acres of land to the city solely for park and road purposes. *Id*. at 486. Oil was subsequently discovered under the land, and the city contracted with a private company to drill for oil on the land. *Id*. The company installed two structures each resembling a tool shed or restroom, measuring 10' x 16' in size, to house pumps and engines and also installed some above ground pipes. *Id.* at 487, 489. The court stated that the City and its contractor had taken such extraordinary care in conducting the drilling operations that they did not materially impair the use of the land for park purposes. Moreover, the court noted the use would be temporary, lasting about 2 years. *Id.* at 487. Finally, the court emphasized that the fact that oil revenues would be used for park and road purposes consistent with the grant was a significant factor in its conclusion that the use was proper. *Id.; see also State Lands Commission v. City of Long Beach,* 200 Cal. App. 2d 609 624 (1962) (Oil drilling not in violation of park grant as long as it does not substantially interfere with recreational uses). Thus, miscellaneous uses may be proper park uses if: (1) they do not unreasonably interfere with the public's free use and enjoyment of the park; and (2) they provide a tangible benefit to the park.

C. Uses May Not Unreasonably Interfere with the Public's Enjoyment of Park

The most critical aspect of the courts' analyses in the numerous cases reviewed focuses on whether the particular use unreasonably interferes with the public's free use and enjoyment of the park. In answering that question, the courts tend to focus on three factors: (1) the amount of space occupied by the use relative to the size of the park; (2) the location of the use in the park; and (3) the duration of the use. *Linares,* 16 Cal. 2d at 447 (Temporary suspension of park surface use for 10 months and permanent installation of entrance and exit for underground public parking which occupied 6.5% of the park was an insignificant interference with park use); *Abbot Kinney Co.,* 223 Cal. App. 2d at 671, 674 (Use of dedicated park property for public parking lot which occupied 7% of park area was not an impermissible use); *compare San Vicente Nursery School v. County of Los Angeles,* 147 Cal. App. 2d 79, 85 (1956)(Private school which had exclusive, permanent use of .05% of park property, including building and horseshoe area, for 5 days per week from 9 a.m. to noon and which did not contribute in any manner to public's enjoyment of park constituted unreasonable interference with park purposes). Uses, whether temporary or permanent, which occupy a relatively small space in a relatively remote or unfrequented location in the park typically result in a finding that the use does not materially interfere with the public's enjoyment of the park.

The clear lesson learned from these cases, as well as the many other cases we reviewed, is that the analysis in each instance is fact specific. A use which may be a proper park use in one instance may not be in another, all depending upon the facts of the particular situation.

Humphreys v. City and County of San Francisco, 92 Cal. App. 69, 76-77 (1928). With the foregoing principles in mind, we turn first to the issue of holiday tree collection points on dedicated park lands.

III. Temporary Holiday Tree Recycling Points at Dedicated Parks

A. Factual Background

For the last 34 years, the City has provided holiday tree recycling collection points at various City parks. This recycling opportunity currently is offered at twelve City parks as well as four non-park locations. A majority of City residents do not receive curbside greenery collection services. So, these collection points provide a convenient drop-off location for residents to recycle their holiday trees rather than dispose of them as waste, in their trash container, which ultimately is landfilled.

Residents are encouraged to drop off their holiday trees at their local park for recycling at no charge. About 50,000 trees are collected at these sites annually. Holiday trees collected at parks are transported by ESD to the Miramar Greenery to be processed into mulch and compost. In return, mulch and compost are provided to the parks free of charge for landscaping and soil enrichment.

The holiday tree recycling points are temporary. The collection points open immediately after Christmas and remain available for four weeks. The area used for each site varies according to the popularity of the site, but generally is less than 20' x 80' (1600 sq ft). According to ESD, the sites generally are located in seldom used portions of the parks, such as areas of a parking lot furthest from buildings and fields or in an isolated dirt lot.

B. Legal Analysis

Holiday tree recycling is a phenomenon of the modern age. It has grown out of society's recognition that waste must be reduced and natural resources must be conserved. As such, it likely would not have been viewed, decades ago, as a proper park use. However, it has become a publicly accepted and customary use of parks.

The City of San Diego has established temporary holiday tree recycling points in City parks for the last 34 years. Research has revealed that other jurisdictions in California also use parks as drop-off sites for holiday tree recycling. While not exhaustive, this list includes the cities of Escondido, Carlsbad, Los Angeles, Redondo Beach, Santa Monica, La Puente, Lakewood, and the County of El Dorado.[6] This widespread and long-standing use of parks for

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[6]City of Escondido Official Website. Visited Sept. 3, 2008. < http://www.ci.escondido.ca.us/depts/cs/maint/recycling/reduction/trees>; City of Carlsbad Official Website. Visited Sept. 3, 2008. <http://www.carlsbadca.gov/waste/xmastree>; City of Los Angeles Official Website. Visited Sept. 3, 2008. <http://www.lacitysan.org/tree-recycle>; City of Redondo Beach Official Website. Visited Sept. 3, 2008. <http://www.redondo.org/faqs/categorygna>; City of

holiday tree recycling points indicates that this use has become publicly accepted as a proper park use. In fact, it would be fair to say that the public has come to expect holiday tree recycling sites at their parks. According to ESD, past experience demonstrates that when a holiday tree recycling site is closed, members of the public continue to leave holiday trees at the site for recycling for as long as five years after closure. According to ESD, it has received no complaints that the holiday tree collection points are not proper park uses.

As presently operated, these sites do not unreasonably interfere with the public's enjoyment of the parks. The sites are temporary, lasting only four weeks per year, are located in remote areas of the parks, occupy an area no greater than 20' x 80', and respond to what the Legislature has called an "urgent need" to more effectively deal with the state's solid waste needs. Cal. Pub. Res. Code § 40000(d).

Moreover, like the *Griffith v. City of Los Angeles*, 175 Cal. App. 2d 331 (1959) and *Central Land Co. v. City of Grand Rapids*, 4 N.W. 2d 485 (1942) cases discussed above, the operation of the holiday tree collection sites results in a benefit to the parks. The trees are collected by ESD and processed into compost and mulch at the Miramar Greenery. In return, the parks receive free mulch and compost to use for landscaping and as a soil amendment to enrich the soil, thereby promoting the beauty, health, and growth of park plants.

In sum, this particular use has become a common and publicly accepted park use, serves an urgent public need to recycle waste, does not unreasonably interfere with the public's free use and enjoyment of the parks, and benefits the parks. So, while holiday tree recycling points would best be characterized as a miscellaneous use, we believe that this particular use of parks is more likely than not a proper park use.

In addition, the use of dedicated parks for holiday tree recycling also might be justified as a proper park use if the activity were operated as a recreational, educational, or cultural event.[7] Parks often provide venues for temporary booths and exhibits encouraging and promoting socially beneficial values and practices, such as those featured annually at Earth Fair in Balboa Park. *See Slavich,* 201 Cal. at 301 (Establishment of veterans' memorial hall to stimulate and promote patriotism is a proper park use). Earth Fair features exhibits on conservation, recycling, wildlife preservation, organically grown crops, alternative energy sources, clean air and clean water products, etc., all aimed at encouraging good environmental stewardship. In past years, Earth Fair exhibits have included recycling opportunities such as compact fluorescent light bulb exchanges and electronic waste recycling for items such as cell phones, etc.

Like the Earth Fair exhibits, an organics recycling exhibit, for example, combined with an opportunity to recycle holiday trees would not only attract residents to the park, but also give them the opportunity to practice environmentally responsible behavior, which in the long-term will benefit the parks. Thus, if it were conducted as a recreational, educational or cultural event, a holiday tree recycling collection point clearly would be a proper use of dedicated park lands.

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[7] 1975 Op. City Att'y 139 at pp. 140-141.

IV. Recycling Sites on Dedicated Park Lands

A. Factual Background

A "recycling site" at City parks typically consists of one or two recycling dumpsters located next to a trash dumpster. For the few larger parks, more recycling dumpsters are provided. Recycling dumpsters are depositories for recyclable wastes, providing for the segregation of recyclables from trash. In many instances, the recycling dumpster simply substitutes for a second trash dumpster. Most recycling and trash dumpsters are located in the park parking lots. Some are within islands or medians within a parking lot. Some are in unlocked, fenced enclosures on park grounds in unobtrusive locations. The recycling dumpsters are open to the public.

The dumpsters measure about 3 cubic yards each. The area needed for each dumpster is about 9' x 4' (36 sq ft) or less than the size of one parking space. Relative to the size of each park, the space required for a recycling dumpster is insignificant.

Parks have been used to host recycling sites since 1992, when the City launched recycling sites at 41 parks. Since then, the number of parks hosting recycling sites has varied from a low of 41 to a high of 55. Currently, recycling sites are located at 43 City parks. While the recycling dumpsters service the park, the public also expressly has been invited to use these dumpsters to recycle residential recyclable wastes generated off park premises. An informal survey by ESD of 11 park recycling sites suggests that use by the community is probably greater than use by park patrons. Also according to ESD, it has received no complaints that the recycling sites are not proper park uses.

The recyclables are collected by ESD and processed for marketing and sale by ESD's contractor. The revenue from the sales of recyclables collected at a given park is disbursed to that park for use consistent with park and recycling goals. For example, these revenues may be used to purchase sports equipment made from recycled materials, biodegradable supplies, etc.

With the adoption of the City's Recycling Ordinance, and its sequenced implementation over the next three years, the City anticipates that non-park-related use of park recycling dumpsters will diminish considerably by 2010. Over that same time frame, the City expects to increase significantly the number of smaller recycling containers spread throughout each park, and expects a corresponding increase in the percentage of recyclables disposed of at parks that have been generated on site.

B. Legal Analysis

The recycling sites, as presently constituted, are consistent with park purposes. Without question, providing waste receptacles in parks is a use incidental to other proper park uses, most of which result in trash generation including significant amounts of recyclables in the way of plastic bottles, aluminum cans, and cardboard packaging among others. The existence of

recycling dumpsters provides a valuable service and convenience to those park users who are environmentally conscious and wish to recycle the waste they generate in conjunction with their use of the park, rather than dispose of it in the trash receptacle. Waste and recyclables receptacles serve a purpose very similar to restrooms, which have been recognized as a necessary adjunct to the public's enjoyment of dedicated parklands, in that they provide for the health, welfare, and safety of the public using the park, and thereby promote the public's enjoyment of the remainder of the park premises. *Priory,* 120 A.2d at 632; *Wessinger v. Mische*, 142 P. 612, 614 (1914). Thus, the availability of recycling dumpsters at a park facilitates and enhances the public's enjoyment of the park, making these sites consistent with park purposes.

The fact that the recycling dumpsters serve the surrounding community as well as the park does not convert an otherwise proper park use into an improper one. *Dodge v. North End Improvement Assn*., 155 N.W. 438, 440-441 (Mich. 1915). In *Dodge,* an improvement association received permission from the city to build a sheltered, roadside pavilion on park land for use by street car patrons awaiting streetcars to access areas of the city north of the park. *Id.* at 439. In response to a complaint filed by a nearby property owner that the use was an impermissible park use, the city and improvement association alleged the pavilion also served park patrons as a shelter, seating area, and refreshment stand. *Id.* at 439-440. The court found that the pavilion was indeed used by park patrons. *Id.* at 440-441. Notwithstanding the fact that the roadside pavilion served a non-park purpose, the court concluded the pavilion was not an impermissible use of park land because it also served a park purpose. *Id.* at 441; *see also Humphreys,* 92 Cal. App. at 77-78 (Street car tracks, connecting two sides of town, located on 16' x 220' strip of park land, were permissible because area was generally unfrequented by park visitors and relatively small, and street-car also benefited park). This conclusion is also consistent with those cases which have found that underground public parking lots which are accessed by permanent entrances and exits on the surface of the park are permissible. Those lots served both the park and the surrounding area. *See Linares,* 16 Cal. 2d at 447; *Abbot Kinney Co.,* 223 Cal. App. 2d at 671, 674.

Moreover, as mentioned above, it has been the custom and practice in the City of San Diego for over 16 years to host recycling sites in City parks. Research has revealed that other jurisdictions in California as well as across the country also use parks as recycling sites. While not exhaustive, this list includes the cities of Columbus, Indianapolis, Chicago, San Francisco, Bakersfield, Lamont, Roseville, and Glendale along with Orange County, NC.[8]

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[8]ESD WRAD Division Benchmarking for Zone Recycling Collection Program Survey (2006); City of Chicago Official Website. Visited Sept. 5, 2008. http://egov.cityofchicago.org/city/webportal/portalDeptCategoryAction.do>;

Haight-Ashbury Neighborhood Council website. Visited Sept. 3, 2008. <http://www.hanc-sf.org/recycling-center/>; Kern County Official Website. Visited Sept. 3, 2008. < http://www.co.kern.ca.us/wmd/services/Drop/drop>; City of Roseville Official Website. Visited Sept. 3, 2008. http://www.roseville.ca.us/eu/solid_waste_utility/recycling/newspaper_drop_off_locations>; City of Glendale Official Website. Visited Sept. 3, 2008< http://www.ci.glendale.ca.us/public_works/recycling_drop_off>; Orange County, NC Official Website

This widespread and long-standing use of parks as recycling sites is a strong indicator that this use has become publicly accepted as a proper park use.

Although the recycling sites are considered permanent, they occupy relatively little space in each park and are located in remote areas of the parks. Thus, they do not constitute an unreasonable interference with the public's enjoyment of the park. Moreover, revenues from the sales of recyclables collected at the parks are disbursed to the parks. Thus, the parks benefit from the recycling sites.

Finally, we note that recycling dumpsters tend to attract the public to the park. This factor was deemed noteworthy in the *Spires* case in concluding that a public library was consistent with park purposes. *Spires,* 150 Cal. at 69.

In sum, maintaining recycling sites at dedicated parks is consistent with park purposes as the use is incidental to the public's use and enjoyment of the park, has become a publicly accepted park use, does not unreasonably interfere with the public's enjoyment of the parks, and benefits the parks.

CONCLUSION

Whether a particular use of dedicated park land constitutes a park purpose depends largely on the facts. Thus, proposed uses should be evaluated on a case-by case basis. The primary factors to consider are consistency with park purposes and, of particular significance, the degree of any interference with the public's free use and enjoyment of the park. Long-standing custom and usage, especially when coupled with an urgent public need, may demonstrate consistency with park purposes. A miscellaneous use, which may not be entirely consistent with historical park purposes, may satisfy the consistency requirement if the park receives a tangible benefit from the use. In either case, the use may not unreasonably interfere with the public's free use and enjoyment of the park.

While it is an unsettled question, we believe that using dedicated park lands for temporary holiday tree recycling collection points, as currently constituted, is a permissible park purpose. The use of parks for this purpose has been the custom and practice for over thirty years in San Diego and is also common practice in other cities in the State, demonstrating long-standing public acceptance and expectation of this use of public parks. These sites fulfill an urgent public need by providing residents a convenient place and way to recycle their trees, rather than disposing of them in a landfill. The sites are temporary, lasting no more than four weeks per year. The space devoted to the activity is negligible and located in isolated areas of the parks, creating minimal interference with other park uses. In return for hosting these sites, the parks benefit from receipt of free mulch and compost for park lands. On the whole then, the greater weight of authority suggests that temporary holiday tree recycling collection points, as presently constituted, are a proper use of dedicated park lands. If the holiday tree recycling program were operated as a recreational, educational or cultural event, such use clearly would be a proper park use.

Using dedicated park lands for recycling sites, as presently constituted, is a permissible park use. This use is incidental to the public's use and enjoyment of the park. In addition, maintaining recycling sites at parks has become a common and publicly accepted practice in San Diego and in other cities across the country. They fulfill an urgent public need for recycling capacity. Because the sites occupy only a very small portion of park land, interference with other park uses is negligible. The parks benefit from the sites in that the revenues from the sales of the recyclables is disbursed to the parks to use for park purposes in a manner consistent with permissible uses of recycling fund revenues. Thus, for numerous reasons, the recycling sites are a permissible park use.

Because the analysis and conclusions here turn on the facts of these two uses, if the size, siting, design or operation of either use undergoes any material change, it would be necessary to re-evaluate the propriety of the particular use. Lastly, this memo is not intended to address other proposed park uses which, as the analysis indicates, require a case-by-case evaluation.

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