

MEMORANDUM OF LAW

DATE: March 5, 1987

TO: Councilmember Abbe Wolfsheimer  
Attn: Linda Bernhardt  
FROM: City Attorney  
SUBJECT: City/Genstar Land Exchange - Los Penasquitos  
Canyon Preserve

By a memorandum dated February 25, 1987, you asked for our views with respect to the status of the voter approved land designation shift from "future urbanizing" to "planned urbanizing" for the 178 acres to be exchanged with Genstar. You also ask whether the City could legally sell or lease its land to others if Genstar were not to conclude the agreement; and what land designation, "future urbanizing" or "planned urbanizing" would be applicable under these circumstances.

There are two separate issues here, i.e. disposal of the property and the status of land designation which the voters approved.

In our view the City could legally otherwise dispose of the property if the proposed Genstar agreement is not concluded.

However, we believe the land designation shift which was approved on the basis of the proposed exchange would no longer apply if that agreement fails. We think the proposition itself explains the terms and conditions of the voter approval of the land designation shift. It reads:

AMENDMENT OF PROGRESS GUIDE AND GENERAL PLAN FOR THE CITY OF SAN DIEGO. Shall the Progress Guide and General Plan be amended to shift 178 acres of land (consisting of 166 acres owned by The City of San Diego and 12 acres privately owned) from the "future urbanizing" designation to the "planned urbanizing" designation so that the 166 acres may be traded by the City to Genstar

Development, Inc. for 291 acres of land presently owned by Genstar plus payment by Genstar to City of approximately \$1,000,000?

Emphasis supplied.

We think the full impact of this measure is that the land shift approval is, in effect, conditional and in the event the land exchange with Genstar is not completed for any reason the land remains in the "future urbanizing" category.

We also believe the argument in favor of Proposition "D" which you coauthored supports this view. The entire thrust of that argument is toward a land exchange with Genstar which will enhance the Los Penasquitos Canyon Preserve and Genstar presently owns the property which would be added to the Preserve.

We thus conclude that the land shift approval was conditioned upon a successful land exchange and that absent that exchange the property in question remains categorized as "future urbanizing." However, the fact that the City property remains in the "future urbanizing" category under these circumstances would not preclude the City from selling or leasing it to some other party if the Genstar agreement is not consummated.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

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