MEMORANDUM OF LAW

DATE: July 5, 1989

TO: Councilman Ron Roberts

FROM: City Attorney

SUBJECT: Use of Bonding Authority From Proposition C (1978) for New Open Space and Park Acquisition

By memorandum dated June 14, 1989, you referred to present consideration of alternative funding methods for new open space and posed the following four questions:

1) What specific legal authority exists in Proposition C that allows the City to issue bonds for new park and open space acquisition?

2) Were any legally binding commitments made by the City at the time of the passage of Proposition C that may keep the City from going forward with a second bond issue?

3) Is a second vote of the City required prior to the issuance of these bonds? If a vote is necessary, what percentage of the vote is required for approval? Are there any potential conflicts between this vote and the 2/3 voting requirements of Proposition 13?

4) Was there a limit designated by Proposition C on the amount of bonds that could be sold in a second issue? If not specifically limited, what other legal constraints may affect the amount the City may choose to issue for new open space and park bonds?

In answer to the above questions, and as historical background, the City, in the early 1970s, utilized assessment districts for the purpose of providing funds for acquiring open space. As land values escalated, the feasibility of financing acquisition through assessments against the surrounding property owners diminished and, in fact, a majority protest occurred in the last two or three instances where assessment districts were proposed. The City thereupon sought an alternative method of financing open space acquisition.

In 1972, two proposals were placed on the ballot. One was an authorization to sell a specified amount of general obligation bonds for the purpose of acquiring open space park land. A two-thirds vote was required for such general obligation bonds.

An additional provision was placed on the same ballot adding Section 103.1a to the City Charter creating the Environmental Growth Fund. A copy of that provision is attached as Attachment 1.

The concept was to sell general obligation bonds but to service such bonds not with property taxes but with two-thirds of the Environmental Growth Fund, which fund is made up basically of twenty-five percent of the San Diego Gas & Electric Company franchise fees. A Charter amendment required a majority vote. The Charter amendment passed, but the general obligation bond proposal did not.

Subsequently, the City solicited proposals from various consultants on a method of financing open space and as a result, Section 61.2000 et seq. was added to the City's Municipal Code. The sections cumulatively constitute the San Diego Park Facilities District Procedural Ordinance. A copy of the ordinance is attached as Attachment 2.

The ordinance provides for the creation of a park facilities district or districts and authorizes the City Council, acting for a park facilities district, to call for an election for the voters in a district to approve, by majority vote, the issuance of bonds for the purpose of acquiring park facilities, including open space.

Pursuant to the provisions of the ordinance, a City-wide district was, in fact, formed after sending notice to all of the property owners in the City and after conducting a Council hearing. Thereafter, the Council adopted a resolution which called for a majority vote in the district, i.e., City, on the issue of whether or not the district could issue up to $65 million for open space acquisition. Representations were made at the time that the Environmental Growth Fund would be utilized to make the payments of principal and interest on the bonds. You will note that Charter section 103.1a specifically mandates that two-thirds of the monies in the Environmental

Growth Fund must be used to service any outstanding open space bonds.

As you know, the bonding measure received the requisite majority vote and thereafter the City, acting for the district, sold three $15 million bond issues and a final $20 million bond issue, with the last issue being sold in about June 1986.

The reasons that the bonds were sold in increments rather than selling all $65 million at once are two. First, the City Auditor's and Financial Management Departments proceeded with sales only when it was clear that sufficient funds would be available in the Environmental Growth Fund to pay both the

principal and interest on the bonds.

Second, the federal arbitrage regulations require a bona fide spending plan which involves expenditure of all bond proceeds within three years at the time bonds are sold. Because of a rather long time frame required to appraise, make offers and, if necessary, condemn properties to be acquired for open space, it is necessary as a practical matter to sell such bonds in increments so that all the bond proceeds can, in fact, be expended within the three-year limit.

Because of significant growth in the City and substantial increases in energy costs, the franchise fees from the Gas & Electric Company increased substantially during the period 1978 through 1986. However, in recent years the gross income of the San Diego Gas & Electric Company, on which the franchise fee and, therefore, the Environmental Growth Fund is based, has not been increasing at the same rate as occurred in the 70s and early 80s. Therefore, it is projected that substantially all of the two-thirds portion of the Environmental Growth Fund pledged for bond service will be needed for many years to come to service the existing $65 million indebtedness.

In 1978, on the same ballot where the City voters approved the sale by the park district of the $65 million in bonds, the voters statewide also approved Proposition 13 which, as you know, continues to preclude property tax increases, at least in the absence of a two-thirds vote of the electorate.

Recently, the City solicited proposals from bond counsel and underwriters with regard to several potential new bond issues for various City improvements. Proposals were specifically solicited for a potential new open space bond measure. The various bond counsel were questioned as to the legal capacity of the City to proceed at this time with an additional majority vote of the

electorate within the already established City-wide San Diego Open Space Park Facilities District No.1. It should be noted that the basic security for the previous $65 million issue was and is the legal capacity of the district to impose an ad valorem assessment against all the property owners in the City to pay for the bonds. The concept discussed with various bond counsel reflected the present inability to, in fact, service additional open space bonds with funds from the Environmental Growth Fund and, therefore, involved the possibility of a majority vote, in the existing district, which would allow an ad valorem assessment against all of the property owners to finance additional bonds.

The firm of Jones Hall Hill and White, based in San Francisco, was tentatively chosen as bond counsel for a new issue on the basis of their expertise in the area as well as the basis

that they are a successor bond counsel firm to the firm which handled the original $65 million issue, together with their reasonable fee schedule.

While no final conclusions have been reached, it appears that it may, in fact, be both legal and appropriate to utilize the existing City-wide open space park district for the issuance of additional open space bonds. There would be a requirement for an additional majority vote and, of course, an acquisition plan would be necessary showing proposed open space acquisitions spread throughout the City, which individual acquisitions would provide specifically special benefits for residents of the various areas of the City.

We are continuing to work with bond counsel on this potential financing plan, and additional discussions regarding the impacts of Proposition 13 and the court decisions interpreting Proposition 13 and, to a large extent, exempting assessment districts from the provisions of Proposition 13, will be necessary.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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Attachments 2
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