

MEMORANDUM OF LAW

DATE: March 21, 1990

TO: David Twomey, Assistant Park and Recreation
Director

FROM: City Attorney

SUBJECT: Permissibility of Siting a Library on Land
Acquired by Proposition C Open Space Funds

You have asked whether it would be legally permissible to site a branch library on a parcel of land purchased by the City with Proposition C funds. Your memorandum stated that the parcel was "dedicated" as open space, which we interpret to mean "designated," since, under the City's Charter, there is no provision for dedicating property as "open space." The Charter allows the dedication of property to "park and recreation" use. See San Diego City Charter section 55.

The answer to your question is "yes," qualified by the fact that the library would not occupy a substantial portion of the open space site. Our analysis follows.

Proposition C was adopted by majority vote of the electorate on June 6, 1978. The ballot question presented to the voters was as follows:

Shall the San Diego Open Space Park
Facilities District No. 1 incur an indebtedness, to
be represented by general obligation bonds of
the District, in the maximum principal amount
of Sixty Five Million Dollars (\$65,000,000),
to provide funds for the acquisition of open
space and other park facilities, as more
particularly described in the San Diego Park
Facilities District Procedural Ordinance?

We first reviewed the arguments accompanying Ballot Proposition C (copies attached), and find no language limiting the purchase of land for open space only. The argument in favor of Proposition C does state that the funding would allow for the purchase of open areas, such as canyons and greenbelts, but does not condition funding expenditures under the proposition to only such use.

Proposition C referred to the San Diego Park Facilities

District Procedural Ordinance (Procedural Ordinance) which is contained in Chapter VI, Article 1, Division 20 of the San Diego Municipal Code, commencing with Section 61.2000. The Procedural Ordinance had been previously adopted on February 23, 1977 by Ordinance No. O-12027 (New Series), and was the legal basis for the formation of the city-wide "San Diego Open Space Park Facilities District No. 1."

When San Diego Open Space Park Facilities District No. 1 was formed, a notice of hearing was sent to all affected residents in the proposed city-wide district. The accompanying "Information Summary" suggested that the district was to acquire and preserve open space throughout the city. One of the statements read:

Q. What is open space?

A. Open space may generally be defined as land or water areas, generally free from development or developed with low intensity uses, which respect natural environmental characteristics. It is generally non-urban in character and may have utility for park and recreation purposes; conservation of land, water or other natural resources; and for historic or scenic purposes. This proposal is concerned primarily with canyon or canyon-oriented lands.

Thereafter, no other mention appeared in that summary regarding restrictions on the acquisition and utilization of the properties to be purchased. However, an argument could be made that the general subject matter would therefore refer to some general concept of openness of space, even though there also was reference to the definitions contained in a Procedural Ordinance that could allow for other uses, as shall be later explained in this Memorandum of Law.

We are advised that no protests were filed against formation of the district. We do not speculate whether the "Information Summary" contributed to the absence of protest and whether it could be interpreted as a covenant on city government's part to use the property only for "open space." We believe, however, that this language can be given some consideration, even if only from a non-legal perspective. An illustrative discourse on the effect of the ballot language regarding Proposition C and the formation of the open space district is contained in the attached Memorandum of Law dated September 26, 1989. The author observes on page 4 that "Ballot arguments are generally known to be less than totally objective and would perhaps not be treated by the courts as creating enforceable obligations." The author suggests, as a practical matter, that accompanying ballot language should guide the interpretation or application of measures adopted by

the electoral process.

With this background, we will now turn to the provisions of the Procedural Ordinance as they might affect the use of lands acquired through Proposition C funds.

Within the Procedural Ordinance, Section 61.2023 defines "open space" as: ". . . any area that is characterized by existing openness and undeveloped or substantially undeveloped natural conditions, provided, however, that an open space is a park, and it may at any time be improved or utilized for any additional park or recreational purpose emphasis added." The term "park" is then defined by Section 61.2024 to mean "open space and other parks and recreational areas, purposes and facilities emphasis added." The term "park facilities" means "lands and improvements utilized or useful for park and recreational purposes." Section 61.2025. Finally, the term "recreational" is defined by Section 61.2026 as follows:

Recreational means and includes any activity, voluntarily engaged in, which contributes to the education, entertainment, or physical, mental, cultural or moral development of the individual or group attending, observing or participating therein, and includes any activity in the field of music, drama, art, handsports and athletics or any of them, and any informal play incorporating any such activities emphasis added.

The City Attorney's Office has previously concluded that the siting of libraries is a generally permissible use of dedicated park lands. See Memorandum of Law dated February 11, 1986 (1986 Ops. City Attorney 143, copy attached). See also Memorandum of Law dated July 5, 1983 (1983 Ops. City Attorney 121, copy attached), which opined that Proposition C funds may be utilized to acquire undeveloped land for additional park or recreational purposes, even though the land acquired was used for agriculture.

Even though the Procedural Ordinance would thus allow for library site development, we should consider whether the size of the development is a limiting factor in light of our earlier comments on the effect to be given to literature distributed to the electorate. The proposed footprint of the Valencia Park Library at the Glen Canyon open space area will occupy 10,000 square feet within a 10.63 acre parcel, or approximately 2.2 percent of the area. Apart from the size of any library parking lots which can also serve the park and related amenities, it would appear that the size of the library building is relatively insignificant in relation to the overall openness of the open space park area involved, and thus is not inconsistent with

preserving the open space amenities of the site.

From these prior interpretations and the broad scope of the incorporated definitions in the Procedural Ordinance, a library which is open to the public and which does not significantly detract from the concept of openness within the context of "open space" is a park facility that is permissibly contemplated within Proposition C. Accordingly, we conclude that open space park land acquired through Proposition C funds could be used to site a library as a legally permissible park use.

JOHN W. WITT, City Attorney
Rudolf Hradecky
Deputy City Attorney

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Attachments

cc William W. Sannwald, Library Director

Severo Esquivel, Deputy City Manager

Victor Rollinger, City Engineer

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