Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: February 2, 2016

TO: Charter Review Committee

FROM: City Attorney

SUBJECT: Proposed Charter Amendment to Allow San Diego High School to Remain in Balboa Park

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INTRODUCTION

The Office of the City Attorney has been asked further questions arising out of the attached Memorandum discussing the legality of the use of City property leased to San Diego Unified School District (District). City Att'y MS 2014-13 (June 26, 2014). The property at issue is located in Balboa Park and is used by the District for San Diego High School. The District has requested the City's Charter Review Committee to consider an amendment to San Diego Charter section 55 to allow the continued use by San Diego High School.

QUESTIONS PRESENTED

1. Is a Charter amendment legally required to allow the continued use of portions of Balboa Park for San Diego High School?

2. Can the high school use in Balboa Park be ratified by an ordinance of the San Diego City Council finding the use necessary for a public purpose?

SHORT ANSWERS

1. No. A Charter amendment is not legally required to allow the continued use of portions of Balboa Park for San Diego High School. Charter section 55 currently states that a non-park use of dedicated parkland may be authorized or ratified by two-thirds of the qualified City voters; therefore, the District could seek voter approval for the continued operation of San Diego High School in Balboa Park.

2. No. An ordinance passed by the City Council would not legally resolve the Charter section 55 issues raised in the attached Memorandum because Balboa Park was dedicated for park purposes by the State Legislature.

BACKGROUND

The relationship between the City and San Diego High School has a long history, summarized, in part, in the attached Report from the City Manager and City Attorney. 1973 City Att'y Report 389 (Apr. 16, 1973). Balboa Park was set aside and dedicated as a public park by the City's Board of Trustees in 1868, which was ratified by the State Legislature in 1870. *Id.*; *see also* 1933 Op. City Att'y 746 (Nov. 2, 1933). In ratifying the City's action, the State Legislature declared by statute that Balboa Park was "to be held in trust forever, by the municipal authorities of said city, for the use and purposes of a free and public park . . . and for no other or different purpose." *Id.*

ANALYSIS

Charter section 55 states, in part:

> All real property owned in fee by the City heretofore or hereafter *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 voting at an election for such purpose. However, real property which has been heretofore or which may hereafter be *set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes* may be used for any public purpose deemed necessary by the Council. (emphasis added.)

Since its adoption, the Charter has included language that restricted the City's use of property set aside for park purposes. The 1931 Charter included language that required voter authorization or ratification of any changed use of "[a]ll real property *heretofore or hereafter designated or set aside* for park, recreation or cemetery purposes." San Diego Charter § 55 (1931) (emphasis added). The 1931 Charter did not authorize the City to allow non-park uses of designated or set aside parkland that pre-dated adoption of the Charter. Instead, the restriction on use of parkland applied to all property set aside for park purposes before or after adoption of the 1931 Charter.

The 1953 amendment to Charter section 55 created a distinction between those properties that were designated as parks (i.e., used as parks by the City informally) and those properties that were formally dedicated for park purposes either by Council ordinance or State statute. This amendment allowed the City Council to change the use of park property that was not

formally set aside by ordinance or statute. This distinction continues in the current language of Charter section 55.

Since Balboa Park was set aside for park use by the State Legislature in 1870, Balboa Park would be considered formally dedicated by State statute and not subject to the language in Charter section 55 that allows the City to use the property for "any public purpose deemed necessary by the Council." Instead, Balboa Park is restricted to uses consistent with park and recreation purposes, unless the "changed use or purpose [is] first authorized or later ratified by a vote of two-thirds of the qualified electors of the City." San Diego Charter § 55. A Charter amendment would not be legally required to allow the use by San Diego High School to continue; the District could use the mechanism already in place in Charter section 55 and seek ratification from the City voters of the school use of a portion of Balboa Park.

CONCLUSION

Balboa Park is dedicated parkland and may not be used in a manner that is inconsistent with a park and recreation purpose. The Charter does not authorize the City Council to adopt an ordinance allowing the continued use of Balboa Park by San Diego High School. Since Charter section 55 contains a mechanism for voter approval of the District's continued use, an amendment to the Charter would not be required. This Office remains available to work with City staff and to evaluate additional proposals from the District.

JAN I. GOLDSMITH, CITY ATTORNEY

By _____
Heather M. Ferbert
Deputy City Attorney

HMF:nja
MS-2016-4
Doc. No.: 1214804
Attachments
cc: Andrea Tevlin, Independent Budget Analyst
Herman Parker, Director, Park and Recreation Department
Cybele Thompson, Director, Real Estate Assets Department

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: June 26, 2014

TO: Kristin Geitz, Interim Director, Real Estate Assets Department

FROM: City Attorney

SUBJECT: Legality of Two Leases with San Diego Unified School District to Allow the District's Continued Use of Dedicated Parkland

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INTRODUCTION

This Memorandum is in response to the Real Estate Assets Department's (READ) request for a legal opinion concerning the legality of entering into two leases with the San Diego Unified School District (District) to allow the District's continued use of two separate parcels of City-owned property when the existing leases expire.[1] The first lease includes a 0.784-acre parcel of property located adjacent to Roosevelt Middle School, over which the District built a performing arts auditorium.[2] The second lease includes an approximately 34-acre parcel of property used by the District for public school purposes (San Diego High School) and a stadium (Balboa Stadium).[3] Both parcels are located in Balboa Park, which is dedicated parkland subject to San Diego Charter section 55.[4]

QUESTIONS PRESENTED

1. May the City legally enter into a lease with the District to continue the District's use of dedicated parkland for an auditorium located adjacent to Roosevelt Middle School?

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[1] The inquiry originated with the District asking READ whether the City would allow the District's continued use of the two leaseholds. At this time, it is unknown how the District will proceed with respect to use of these two properties, but this Office is available to assist with any such discussions in the future.

[2] Agreement Between the City of San Diego and San Diego Unified School District and Lease of Property Adjacent to Roosevelt Junior High School (November 14, 1974) (on file with San Diego City Clerk as Document No. 749248) (Roosevelt Lease). The San Diego City Council approved the Roosevelt Lease on October 31, 1974, by San Diego Resolution R-211907. The Roosevelt Lease expires in 2024.

[3] Agreement Between the City of San Diego and San Diego Unified School District for Lease of San Diego High School Property and Balboa Stadium (May 9, 1974) (on file with the San Diego City Clerk as Document No. 747335) (SDHS Lease). The SDHS Lease was approved by City Council on May 9, 1974, by San Diego Resolution R-210590. The SDHS Lease expires in 2024.

[4] Balboa Park was dedicated by the City as a park for public use in 1868 and ratified by the State Legislature in 1870. 1933 Op. City Att'y 746 (Nov. 2, 1933).

2. May the City legally enter into a lease with the District to continue use of dedicated parkland for San Diego High School?

3. May the City legally enter into a lease with the District to continue use of dedicated parkland for Balboa Stadium?

SHORT ANSWERS

1. Yes. An auditorium is a legally permissible use of dedicated parkland consistent with Charter section 55, provided that the auditorium remains available to use by the public. Therefore, the City may legally lease the 0.784-acre parcel to the District on terms similar to the current Roosevelt Lease providing for the public's use and enjoyment of the auditorium.

2. No. A school is not a permissible use of dedicated parkland and is inconsistent with Charter section 55. Therefore, the City may not legally lease dedicated parkland to the District for a public high school unless approved by two-thirds of the City electorate.

3. Yes. A stadium is a legally permissible use of dedicated parkland consistent with Charter section 55. Therefore, the City may legally lease Balboa Stadium to the District on terms similar to the current SDHS Lease providing for the public's use and enjoyment of the stadium.

ANALYSIS

I. USE OF DEDICATED PARKLAND

Charter section 55 governs the use of City-owned real property dedicated for park and recreation purposes, and states, in part:

> All real property owned in fee by the City heretofore or hereafter 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 voting at an election for such purpose. (emphasis added.)

As a general rule, a permissible park use is one that is consistent with the recreational character of a park and does not interfere with the enjoyment of the park by the public. *Simons v. City of Los Angeles*, 63 Cal. App. 3d 455, 470 (1976); *San Vincente Nursery School v. Los Angeles County*, 147 Cal. App. 2d 79, 86 (1956). Permissible uses which the courts have generally recognized include public libraries, hotels, restaurants, museums, art galleries, zoological and botanical gardens, conservatories, monuments and memorials. *Spires v. City of Los Angeles*, 150 Cal. 64, 66-67 (1906); *Slavich v. Hamilton*, 201 Cal. 299, 306-07 (1927). By contrast, case law has repeatedly confirmed that a city hall, fire-engine station, hospital, jail or other buildings for the transaction of municipal business are not permissible uses of dedicated parkland. *Id.*

II. AN AUDITORIUM AT ROOSEVELT MIDDLE SCHOOL IS A PERMISSIBLE USE OF DEDICATED PARKLAND THAT IS CONSISTENT WITH CHARTER SECTION 55

Adjacent to Roosevelt Middle School is a 0.784-acre parcel of City-owned property, bounded by the school, Park Boulevard and Zoo Drive, located in Balboa Park.[5] In 1974, the City leased that parcel to the District for fifty years and authorized the District's construction of an encroachment over dedicated parkland to build a performing arts auditorium.[6] Generally, an auditorium is a legally permissible use of dedicated parkland. *Los Angeles Athletic Club v. City of Long Beach*, 128 Cal. App. 427, 431 (1932); 10 McQuillin Mun. Corp. § 28.67 (3d ed. 2010); 1931 Op. City Att'y 132 (May 1, 1931) (community theater a permissible park use). There is substantial evidence that a court could rely on to determine that the auditorium does not unreasonably interfere with the public's enjoyment of the park. Specifically, the Roosevelt Lease requires the District to use the auditorium for "park purposes" and make the auditorium available to the public for recreational and cultural purposes. Roosevelt Lease, Art. II "Responsibilities of District," paras. 1-2. The District is further required to use the remaining portion of the 0.784-acre parcel "for park purposes." *Id.*

The Roosevelt Lease states that it may be renewed by mutual consent of the District and the City, as permitted by law. Roosevelt Lease, Art.VI "Additional Terms and Conditions," para. 11. Based on the information provided, a court would likely find that the District's continued use of dedicated parkland for an auditorium, pursuant to terms similar to that of the present Roosevelt Lease, is a permitted use of dedicated parkland consistent with Charter section 55. Therefore, the City may legally lease the 0.784-acre parcel to the District for the District's continued use of the auditorium, provided that the public continues to be able to use and enjoy the auditorium.

III. SAN DIEGO HIGH SCHOOL IS NOT A PERMISSIBLE USE OF DEDICATED PARKLAND

In 1974, the District filed an eminent domain action against the City (San Diego Superior Court Case No. 350540). Compl. at 3 (Feb. 1, 1974). In settlement of this litigation, the City and the District entered into the SDHS Lease of approximately 34-acres of City-owned property for fifty years.[7] The property will be returned to the City when the SDHS Lease terminates. SDHS Lease, Art. IV "Terms and Conditions," para. 4. At that time, the City may request the District remove all buildings and improvements on the property. *Id.*
Based on the information provided, the District's use of the leased property is primarily for public school purposes. The SDHS Lease authorized the District's construction of school improvements, including a gymnasium, media center, administration center, performing arts, and several school buildings, now commonly known as San Diego High School. SDHS Lease, Art. II

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[5] Roosevelt Middle School is located on dedicated parkland in Balboa Park, which was granted by the City to the District for school use in 1921. The City electorate ratified the change in use. *See* Roosevelt Lease.
[6] The auditorium encroaches on approximately one-third of leased property. The District maintains the remainder of the property with landscaping for public open space park purposes. Roosevelt Lease, Art. II "Responsibilities of District", para. 3; Resolution R-211907 (Oct. 31, 1974).
[7] At that time, the District and the City agreed that the school was "a higher and more necessary use" of the property and entered into the SDHS Lease as part of the settlement. Stipulation for Judgment at 2 (Apr. 23, 1974).

"Responsibilities of District," para. B. The SDHS Lease requires that the entire property be used for "*educational*, cultural, recreational, and civic programs and activities." SDHS Lease, Art. IV "Terms and Conditions," para. 1 (emphasis added).

It is well established that a school use is not consistent with legally accepted uses of dedicated parkland. *City of Salem v. Attorney General*, 183 N.E.2d 859, 862 (Mass. 1962). A school generally interferes with the public's enjoyment of the dedicated parkland. *San Vincente Nursery School*, 147 Cal. App. 2d at 86. Furthermore, this Office has declined to interpret Charter section 55 as allowing the use of dedicated parkland for school and child care purposes. 1919 Op. City Att'y 46 (Dec. 16, 1919) (private dancing school); 1933 Ops. City Att'y 746 (Nov. 2, 1933) (children's home); 1979 Op. City Att'y 385 (July 23, 1979) (child care center); 1985 City Att'y MOL 252 (85-49; Aug. 28, 1985) (child care facility for City employees).

The SDHS Lease provides that it may be renewed by mutual consent of the City and the District "as permitted by law and by the Court." SDHS Lease, Art. IV "Terms and Conditions," para. 20. Based on the information provided, a court would likely find the District's use of dedicated parkland for school purposes to be impermissible pursuant to Charter section 55 because a school is not consistent with the recreational character of the park and would interfere with the public's enjoyment of the park. Pursuant to Charter section 55, an inconsistent use of dedicated parkland may only be authorized by a two-thirds vote of the qualified electors of the City. Therefore, the City may not legally lease dedicated parkland to the District for San Diego High School unless the school use is approved by the electorate.

IV. BALBOA STADIUM IS A PERMISSIBLE USE OF DEDICATED PARKLAND THAT IS CONSISTENT WITH CHARTER SECTION 55

Approximately one-fifth of the property leased to the District pursuant to the SDHS Lease is used by Balboa Stadium, which is operated by the District.[8] SDHS Lease, Art. I "Interest Acquired by District." The District is required to use Balboa Stadium "only for park and/or recreation purposes." SDHS Lease, Art. II "Responsibilities of District," para. E and Art. IV "Terms and Conditions," para. 23. Like an auditorium, a stadium is generally a permissible use of dedicated parkland. 10 McQuillin Mun. Corp. § 28.67 (3d ed. 2010); *Aquamsi Land Co. v. City of Cape Girardeau*, 142 S.W.2d 332, 335 (Mo. 1940). Stadiums and sporting facilities have been found to aid in the public's enjoyment of the park and not unreasonably interfere with use of the park. *See Spires*, 150 Cal. at 66-67. Based on the information provided, a court would likely find Balboa Stadium to be a permissible park use that is consistent with Charter section 55. Therefore, the City may legally enter into a lease with the District over that portion of dedicated parkland occupied by Balboa Stadium, provided that the lease contained similar terms and conditions as in the current SDHS Lease providing for the public's continued use and enjoyment of the stadium.

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[8] The City, the District and San Diego Community College District share the maintenance and costs of Balboa Stadium pursuant to a written agreement that expires at the same time as the SDHS Lease. Agreement Between the City of San Diego, San Diego Unified School District, and San Diego Community College District (February 9, 1987) (on file with the San Diego City Clerk as Document No. RR-267647).

CONCLUSION

Under the facts provided to this Office, the City may legally lease dedicated parkland to the District for continued use by Roosevelt Middle School's auditorium and Balboa Stadium because a court would likely find these uses to be consistent with park purposes as required by Charter section 55. However, since a school is not a permissible use of dedicated parkland, the City may not legally lease dedicated parkland to the District for San Diego High School unless that use is approved by two-thirds of the City electorate pursuant to Charter section 55.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Heather M. Ferbert
Heather M. Ferbert
Deputy City Attorney

HMF:nja
cc: Herman Parker, Director, Park & Recreation Department
Andrew Field, Assistant Director, Park & Recreation Department
Barry Slotten, Supervising Property Agent, Real Estate Assets Department
MS-2014-13
Doc. No.: 770000_5

REPORT

THE CITY OF SAN DIEGO

To the Honorable Mayor and City Council

From the City Manager AND CITY ATTORNEY

April 16, 1973 INFORMATION

SUBJECT: SAN DIEGO HIGH SCHOOL

On March 22, 1973, Mrs. Kathleen Porter addressed the City Council by communication urging the Council to take steps to bring about an early solution to any problems involved in the proposed reconstruction or relocation of San Diego High School.

On March 29, 1973, Mr. Ed Butler also addressed the Council representing the Academic Senate of San Diego City College presenting the conclusions of a report conducted by the Academic Senate to the effect that San Diego High School should not be reconstructed in its present location.

The basic question arising out of the presentations of Mrs. Porter and Mr. Butler is as follows: "Who owns the property currently occupied by San Diego High School?"

The City requested a preliminary title report on the property in question. The conclusion of the report (copy attached) is that The City of San Diego owns the fee interest in the property.

ANALYSIS

On May 26, 1868, the Board of Trustees of The City of San Diego set aside the "400 acre park" and dedicated it for public use forever.

On February 4, 1870, the State Legislature ratified the action of the City Trustees. In the first section of the legislative act, the following appears:

> * * * to the use of the citizens of said city, for a public park, is hereby approved, confirmed and ratified, and the said lands, and none others, are by this statute declared to be held in trust forever, by the municipal authorities of said city, for the use and purposes of a free and public park, and to be under the control and management of the said authorities, and for no other or different purpose, as fully and effectually as though set apart and dedicated in strict pursuance of a statute passed by the Legislature for such purpose.

The area set aside by the Board of Trustees in 1868 included the property now occupied by San Diego High School. The Legislature, in ratifying the trustees' action also included the high school area. The contention of Mr. Shannon, the legal representative of the School District, that the property in question was acquired from Mr. Alonzo Horton by deed of April 13, 1874, is incorrect since Mr. Horton had no title to the property allegedly conveyed by the said deed. (See attached title report.) A search of the minutes of the Council meetings to the date of the attempted conveyance discloses no transfer of this original Pueblo land by the City to Mr. Horton. The Patent to the Pueblo land, incidentally, was finally confirmed April 10, 1874.

In 1881 the Board of Trustees, by resolution, purported to set apart to "the new San Diego School District" a 550 by 660 foot portion of the "City Park," which portion is part of the area currently occupied by the school. The Trustees had no power to remove a portion of the Park from park use by resolution.

California case law indicates that no title or right to land dedicated to a public use can be acquired by adverse possession. The City has never given a deed to the property to the School District. The Legislature has never ratified any removal from the Park of the area occupied by the school. The citizens of the City of San Diego have never voted to exclude from the Park the area occupied by the school.

It would appear, therefore, that The City of San Diego still owns the high school site. This view is supported by an opinion of the City Attorney's Office dated November 2, 1933, relative to a controversy involving the location of a children's home in Balboa Park.

The question of the title of the San Diego High School site is not new. The San Diego Union of January 25, 1935, contained a lengthy news article which commenced:

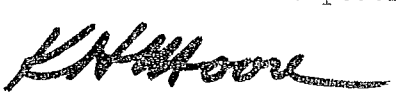
> School officials yesterday asked the Council to take steps for the removal of a cloud that has hung over the high school district's title to the Russ or Senior High School property for more than a half a century.
>
> At the same time the school board asked that the people be permitted to vote on the matter of turning the stadium over to the school district. It was suggested that both propositions could be voted on at one of the spring elections.

We do not know why the proposal to put the matter before the voters was not carried forward. However, it remains a feasible suggestion. City Charter Section 55 does not permit use of parks for other than park purposes. The Courts have ruled a school is not a proper park use. However, Section 55 of the Charter would permit a change from a park to school use by a two-thirds (2/3) vote of the electorate. Therefore, placing the matter on the ballot is a practical solution. The ballot proposition could be worded to ensure the return of the property to the City when it is no longer needed for school purposes. This could be accomplished by retaining a reversionary interest in the City or by establishment of a long-term lease.

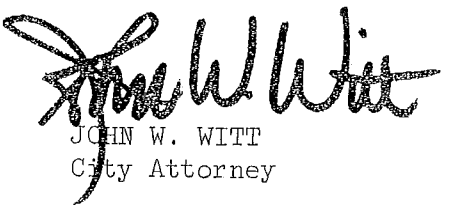
An alternative solution which may not be as practical would be for the school district to exercise its power of eminent domain and initiate a condemnation action in the Superior Court to acquire the site. Under Section 1241.7 of the Code of Civil Procedure, there is a rebuttable presumption that park lands have "been appropriated for the best and most necessary public use." Such a presumption normally might be hard to overcome. However, in this case, both the General Plan of the City and the Community Plan of the Area show a high school at the present location. Therefore, the only problem would be the determination of "just compensation." If the School District only proposed to acquire a terminable interest, say one of 55 years, the City might well stipulate that in the public interest "nominal rent" of $1 a year was adequate.

A Council conference to discuss these and other alternatives appears to be in order.

Respectfully submitted,



KIMBALL H. MOORE
City Manager



JOHN W. WITT
City Attorney

Attachment

LAND TITLE INSURANCE COMPANY
Subsidiary of Lawyers Title Insurance Corporation of Richmond, Virginia

1330 FOURTH AVENUE
SAN DIEGO CALIFORNIA 92101
PHONE 234-7192

PRELIMINARY REPORT

City of San Diego
Property Department
Station 81, 202 "C" Street
San Diego, California 92101
Attention: B. W. Hagar, Assistant Director

YOUR REF: Balboa Park

OUR NO: 286408-R

Dated as of March 29 1973 at 7:30 A.M.

C. J. Smith
C. J. Smith TITLE OFFICER

In response to your application for a policy of title insurance, LAND TITLE INSURANCE COMPANY hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a

- [X] California Land Title Association Standard Coverage form, or an
- [ ] American Land Title Association Loan form, or an
- [ ] American Land Title Association Owner's form

(as indicated by box checked above)

policy of Title Insurance of LAND TITLE INSURANCE COMPANY and LAWYERS TITLE INSURANCE CORPORATION, describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy form.

This report (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A FEE.

Title to said estate or interest at the date hereof is vested in:

THE CITY OF SAN DIEGO, a Municipal corporation as to Parcel 1; and the SAN DIEGO UNIFIED SCHOOL DISTRICT, successor to the San Diego School District, as to Parcel 2.

The land referred to in this report is described as follows:

SEE ATTACHED.

the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy form would be as follows:

1. Such limitation as to the use of said land which may be existent by reason of the recital in the dead, shown in item 3 below and by reason of the recital "City Park Reservation" on the map of the Pueblo Lands made by Pascoe in 1870.

2. The effect of a dead dated January 8, 1874, and recorded January 9, 1874 in Book 22, page 273 of Deeds, executed by A. E. Horton to Douglas Gunn purporting to convey said land with other property. At the date of said deed the grantor therein had no record interest in said land, nor has said grantor since acquired any. Said deed refers to the fact that it conveys "all the right, title and interest that the said party acquired through and by virtue of a certain deed of Conveyance from E. W. Morse and Thomas H. Bush, Trustees of the City of San Diego dated May 11, 1857 and recorded in Book No. 2 of Deeds, page 307". Said deed of the City of San Diego referred to did not describe said land. Any interest conveyed by the first above mentioned deed has since passed to and now vests in the City of San Diego by deed recorded April 13, 1874 in Book 23, page 117 of Deeds.

3. The effect of the dead referred to in paragraph 2 above as recorded April 13, 1874 in Book 23, page 117 of Deeds, from A. E. Horton to the City of San Diego, which said deed recites as follows:

"For the purposes and upon the following conditions, to wit: To be dedicated to and to forever be and remain, a part of the Public Park of said City of San Diego, and for no other purposes whatever, respecting only any vested rights of the San Diego Water Company therein, and upon condition that the said City, party of the second part, shall not sell, alienate, or in any manner, dispose of any of the lands in the Public Park Reservation of said City as now shown and designated as such Park, upon the Map of the Pueblo Lands of said City, made by James Pascoe in May, A. D. 1870, and approved on the Official Map of said City by The authorities thereof;... and when a failure of said party of the second part to maintain the purposes and comply with the conditions aforesaid, this conveyance to be void and of no effect, and the property herein described be and remain as if the conveyance had never been executed."

4. The effect of the provisions of the Minutes of the Common Council of the City of San Diego, dated August 6, 1881, setting apart said land to the New San Diego School District on which to erect the contemplated new school building, together with other necessary grounds to be used in connection therewith, as disclosed by a copy of said minutes, as presented to this company.

5. The effect of the following recital as contained in deed recorded December 8, 1921 in Book 861, page 488 of Deeds:

"Said premises shall be used only for school purposes, and at any time they shall no longer be actually used for the purpose last aforesaid, they shall at once revert to the City of San Diego, as a public park, and all right of the said San Diego School District by virtue of this conveyance shall thereupon at once cease; and provided, further that the public shall, notwithstanding this con-

Exceptions, Item 5, continued:

vayance, still be entitled to the use of said premises as a public park, except so far as said last mentioned use is inconsistent with their use for school purposes; and provided, further, that no building or buildings other than those necessarily used for school purposes shall be placed on said premises."

Said deed affects that portion of said land vested in the San Diego Unified School District,

6. The rights of the public to use that portion of said land lying within Park Boulevard as it is now located and established as shown on Map on file in the office of the County Assessor of San Diego County, and as evidenced by reference to "Boulevard" in that certain deed recorded December 8, 1921 in Book 861, page 488 of Deeds.

7. An easement over said land for poles, wires and incidental purposes, as granted to the San Diego Gas and Electric Company, by deed recorded September 15, 1966 as File No. 149917.

The route thereof across said land is more particularly described as follows:

A strip of land being 12.00 feet in width being 6.00 feet measured at right angles on each side of the follow-described center lines:

Commencing at the Northeast corner of Lot "H" in Block 185 of Horton's Addition, according to Map thereof on file in the Office of the County Recorder of said County of San Diego; thence North 89°57'31" East along the Easterly prolongation of the Northerly line of said Block 185 to a point on a line that is parallel with and 7.00 feet Easterly of the Easterly line of said Block 185; thence North 00°02'29" West along the Northerly prolongation of said parallel line to an intersection with the Easterly prolongation of a line that is parallel with and 5.00 feet Northerly of the Northerly line of said Block 185; thence South 89°57'31" West along said parallel line, 196.39 feet; thence leaving said parallel line, North 00°58'31" East, 79.44 feet to the True Point of Beginning of the center line of right of way herein described; thence from said True Point of Beginning, continuing North 00°58'31" East 369.24 feet, to the Southerly terminus of that certain easement granted to the San Diego Gas & Electric Company as described in a Deed recorded April 26, 1962 at Recorder's File/Page No. 71972 of Official Records of said San Diego County.

ALSO: Beginning at the above-described True Point of Beginning; thence South 27°18'29" East, 85.50 feet.

ALSO: Within that certain 4.00-foot strip of land, being 2.00 feet on each side of the following-described center line:

Beginning at the above-described True Point of Beginning; thence South 00°58'31" West, 25.00 feet.

-continued-

Exceptions, Item 7, continued:

It is understood and agreed that in the event the above-described line of poles and wires should interfere with future construction or improvements on said property, said line of poles and wires will be relocated to a position on the above-described property satisfactory to all parties concerned, said relocation to be made at no expense to said Grantor, and Grantor further agrees to grant rights of way in the form satisfactory to Grantee for the relocated position at no expense to Grantee.

EXCEPTING from the above-described right of way any portion thereof lying within any deeded or dedicated road, street, or highway.

Provided, however, that in the event the use of said real property for electric pole line purposes is discontinued, said property shall revert to the San Diego Unified School District of San Diego County, California.

Grantor therein covenants for himself, successors and assigns not to place or maintain any building or structure on said easement.

CJS/lmg

PARCEL 1:

Those portions of Pueblo Lot 1144 of the Pueblo Lands of San Diego, according to the Map thereof made by Poole in 1856, being also a portion of that tract of land shown as "City Park Reservation" on Map of the Pueblo Land of San Diego made by James Pascoe in 1870 in the City of San Diego, County of San Diego, State of California, being described as follows:

Beginning at a point 100.00 feet North of the South line of said "City Park Reservation" and 10.00 feet West of the West line of 12th Street as shown on Map of Hortón's Addition to San Diego made by L. L. Lockling in June of 1871; thence Northerly from said point, parallel with a continuation of the West line of said 12th Street, 560.00 feet; thence at right angles Easterly 660.00 feet; thence at right angles, Southerly 560.00 feet to a point 100.00 feet North of the South line of said "City Park Reservation" and 10.00 feet East of the East line of 14th Street as shown on said Map of Horton's Addition; thence Westerly from said last named point, 660.00 feet to the Point of Beginning.

EXCEPTING therefrom that portion lying Westerly of a line described as follows:

Beginning at the intersection of the South line of Balboa Park with the center line of Twelfth Street as shown on Map of Horton's Addition; thence Northwesterly making an angle of 83°01'50" to the right from the South line of Balboa Park a distance of 325.00 feet to a point; thence Northeasterly, making an angle of 29°04'00" to the right, a distance of 375.00 feet to a point; thence Northeasterly making an angle of 21°37'00" to the right, a distance of 300.00 feet to a point; thence Northeasterly making an angle of 13°02'30" to the right a distance of 268.00 feet to a point.

PARCEL 2:

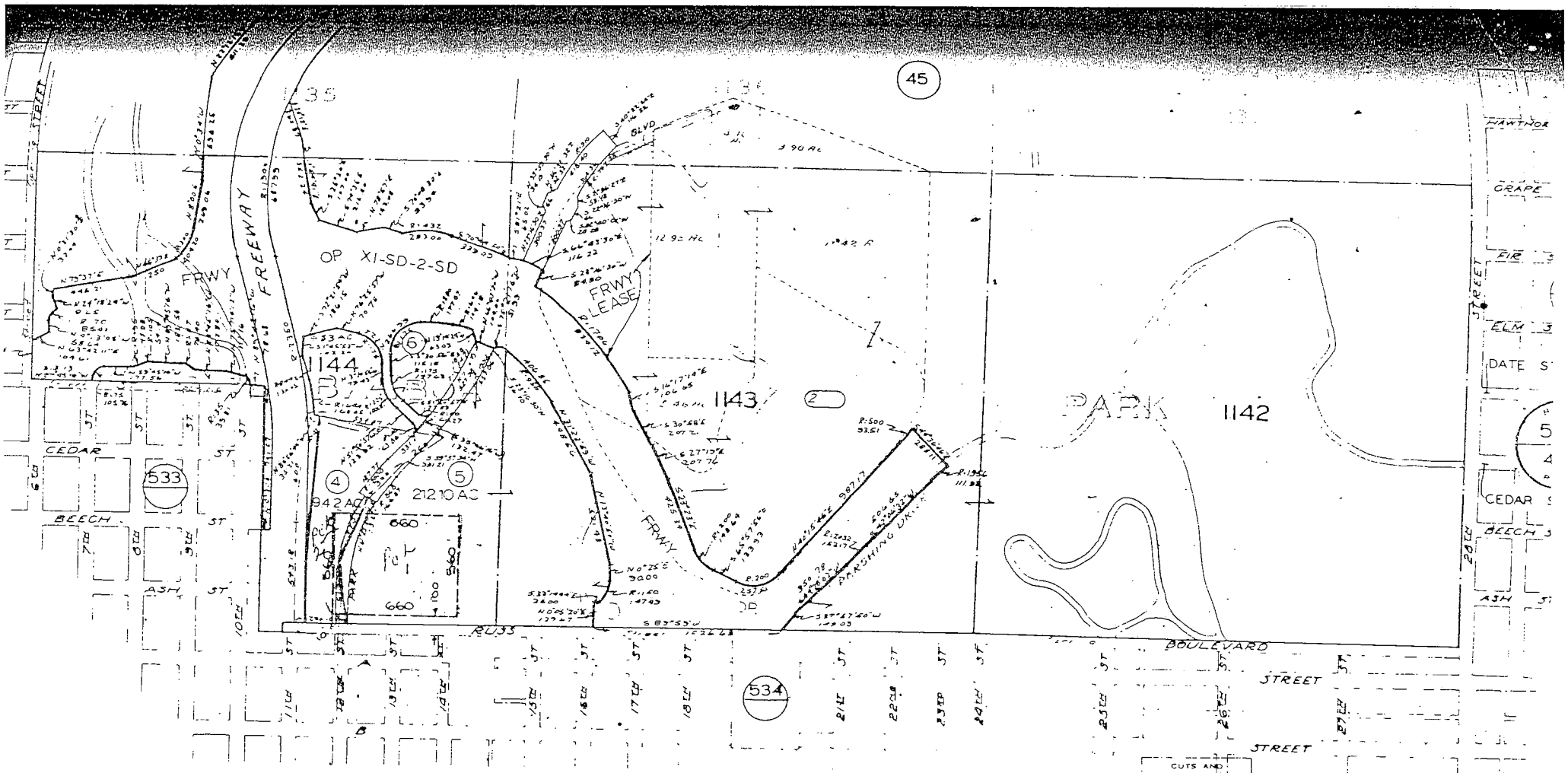
Those portions of Pueblo Lot 1144 of the Pueblo Lands of San Diego, according to the Map thereof made by Poole in 1856, being also a portion of that tract of land shown as "City Park Reservation" on Map of the Pueblo Land of San Diego, made by James Pascoe in 1870, in the City of San Diego, County of San Diego, State of California, being described as follows:

Beginning at a point 100.00 feet North of the South line of said "City Park Reservation" and 10.00 feet West of the West line of 12th Street as shown on Map of Horton's Addition to San Diego, made by L. L. Lockling in June of 1871; thence Northerly from said point, parallel with a continuation of the West line of said 12th Street, 560.00 feet; thence at right angles, Easterly 660.00 feet; thence at right angles Southerly 560.00 feet to a point 100.00 feet North of the South line of said "City Park Reservation", and 10.00 feet East of the East line of 14th Street as shown on said Map of Horton's Addition; thence Westerly

from said last named point, 660.00 feet to the Point of Beginning.

EXCEPTING therefrom that portion lying Easterly of a line described as follows:

Beginning at the intersection of the South line of Balboa Park with the center line of Twelfth Street as shown on Map of Horton's Addition; thence Northwesterly making an angle of 83°01'50" to the right from the South line of Balboa Park, a distance of 325.00 feet to a point; thence Northeasterly making an angle of 29°04'00" to the right, a distance of 375.00 feet to a point; thence Northeasterly making an angle of 21°37'00" to the right, a distance of 300.00 feet to a point; thence Northeasterly making an angle of 13°02'30" to the right a distance of 268.00 feet to a point.



TITLE PLANT SERVICE

SECURITY TITLE

"This plat is for your aid in locating your land. It is not a survey. While this plat is believed to be correct, the Company assumes no liability for any loss occurring by reason of reliance thereon."

LAND TITLE

CITY OF SAN DIEGO

PUEBLO LANDS

LOTS 1142,1143 & PTN. 1144

SCALE 1 IN. 400 FT.