MEMORANDUM OF LAW

DATE: July 26, 1989

TO: Ellen Capozzoli, Chief of Staff to Councilman Ed Struiksma, Fifth District

FROM: City Attorney

SUBJECT: Miramar Lake Viewshed - Open Space - Potential Acquisition Through Assessment District or Other Method

By memorandum received July 24, 1989, you asked for our comments as to the alternative methods available for potential acquisition of certain open space land known as the Miramar Lake Viewshed. Your memorandum included a recommendation of the task force involved in the proposed acquisition and a copy of that recommendation is attached hereto as Attachment 1.

As we discussed briefly late last week, there are several methods through which funds could potentially be obtained for acquisition of the property. Historically, in several instances, open space park land was acquired through an assessment district process. The process involved a city contribution together with an assessment levied against all of the property owners in the vicinity of the property to be acquired. Crest Canyon, Navajo Canyon and Tecolote Canyon were acquired through such an assessment district process, as were several smaller canyons and open space properties. The City's procedural ordinance for such districts is contained in section 61.0601 of the Municipal Code. The largest assessment district involved the Tecolote Canyon acquisition and I believe involved approximately 2,500 parcels in the area around Tecolote Canyon, with the immediately adjacent parcels being assessed at two or three times the amount of nonadjacent parcels. Tax exempt bonds are sold by the district and are paid off by annual or semiannual assessments against the benefiting properties.

It should be noted that the provisions of section 61.2000 et seq. of the Municipal Code, which constitute the City's park facilities district procedural ordinance and which were the bases for the Proposition C bonds, specifically provide in Section

61.2051 et seq. for the reimbursement from open space park district funds of owners of properties which have been assessed to acquire open space lands. This authorization was specifically included to allow the City Council to pay off the bonds and reimburse property owners in the Tecolote Canyon, Crest Canyon

and Navajo Canyon assessment districts which had been created prior to the passage of Proposition C.

Council Policy 600-31 explains the process for open space acquisition through such assessment district. There is no election involved in creating such an assessment district. Only properties receiving a "special benefit" as a result of an open space acquisition can legally be included within the assessment district. Azzaro v. Fresno County, 273 Cal.App.2d 16, 77 Cal.Rptr. 692 (1969). The "special benefit" must be different from the general benefit which the City's citizens as a whole receive from the improvement. A City-wide assessment district could, therefore, not be created for the purpose of acquiring the Miramar Lake Viewshed, since the properties outside the area of Miramar Lake, while benefiting "generally," could not be shown to receive a "special" benefit from such acquisition.

The second process for obtaining funds would involve an election with a necessity of a two-thirds vote to authorize the issuance of general obligation bonds by the City. The proceeds of the bonds would be earmarked for one or more open space acquisitions.

A third potential method of acquiring the Miramar Lake Viewshed property would be to include the property, together with numerous other parcels throughout the City, in a plan for new open space acquisitions under the San Diego Open Space Park Facilities District No. 1. Please see the attached memorandum on this subject (Attachment 2) which explains the history of Proposition C and the potential for a new acquisition program through a majority vote of the electorate.

While we have not completely resolved the extent of necessary changes to the District ordinance to comply with Proposition 13, it does appear that, with certain changes and a majority vote of the electorate, the City will be able to proceed with continued acquisition of parcels of open space throughout the City. The negative aspect of this alternative is that it may take considerable time to develop a priority list for acquisition, obtain the approval of the electorate, and sell the bonds necessary to obtain funds for acquisition of parcels.

As we discussed, the task force may be looking toward a fourth alternative which would involve a City-wide election with a majority vote on the subject of creating a City-wide assessment district to acquire the Miramar Lake Viewshed property. This alternative does not appear legally feasible since, as discussed above, assessment districts are legally based upon the concept of "special benefit" to properties adjacent to, or in the vicinity

of, some public improvement. Even if a majority of the electorate voted to place their properties in such a City-wide district, any property owner who voted against the assessment district would have standing to challenge the district on the basis that his or her property received no special benefit as a result of acquiring the Miramar Lake Viewshed property. Court decisions in the past would indicate that such a challenge would be successful if the property owned by the challenger was located a significant distance from the property acquired.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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Attachments 2
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