

**ATTACHMENT B: INTER-DEPARTMENTAL CORRESPONDENCE FROM
COUNTY COUNSEL**

COUNTY OF SACRAMENTO
OFFICE OF THE COUNTY COUNSEL
Inter-Department Correspondence

Date: June 13, 2002

To: Ron Suter, Director
Regional Parks, Recreation and Open Space

From: Lawrence J. Duran
Deputy County Counsel

Subject: Proposal for a pilot program to allow off-leash dogs at Paradise Beach
in the American River Parkway

You indicate that the Department of Regional Parks, Recreation and Open Space (hereinafter "Department") has been requested to report to the Board of Supervisors regarding a proposal for a pilot program to allow off-leash dogs at Paradise Beach, an area of the American River Parkway (hereinafter "Parkway"). The Parkway is governed by the American River Parkway Plan (ARPP), which is an element of the Sacramento County General Plan. You have asked our advice regarding any legal issues that should be considered during review and evaluation of this proposal, including the implication of non-enforcement of existing County Codes.

Our review of the ARPP finds that the ARPP does not prohibit allowing park patrons to access the Parkway with off-leash dogs. However, Sacramento County Code Section 9.36.061(d) expressly prohibits bringing a dog without a leash onto any County park facility. Therefore, it is our opinion that the Department cannot legally implement the proposed pilot program unless the County Code is amended to allow for off-leash dogs on the Paradise Beach area of the Parkway during the term of the pilot program.

DISCUSSION

Paradise Beach is an area of the Parkway on the South side of the American River between the I-80 bridge and the "H" Street bridge. The Cal Expo floodplain area is across the river to the north. Paradise Beach is dominated by a large sandy beach

////
////

and is a popular area for fishing, wading, sunbathing, volleyball, and similar beach activities. There are no permanent structures in the area. The entire area is served by one parking lot which is located at Glenn Hall Park, a City-operated park abutting the Parkway

As stated above, the Parkway is governed by the ARPP, which is an element of the Sacramento County General Plan. Our review of the ARPP finds that this plan does not contain any express provision either authorizing¹ or prohibiting dogs in the Parkway. However, ARPP Section 4.14.1 provides a list of certain specified activities that are expressly prohibited in the Parkway pursuant to Section 4.14. On its face, Section 4.14 makes it clear that the following specified items are prohibited because they are "incompatible with the Parkway."

- "4.14.1 Activities
- motor vehicles on trails
 - hunting and target shooting
 - tournament and league sports
 - motorized model airplane flying
 - rocket flying
 - dog training and field trials**
 - gathering or collecting plants, except for approved research, and animals, except for health safety purposes.
 - hot air balloons
 - helicopters, except for public safety purposes
 - hang gliders
 - tree swings
 - skim boards
 - jumping or diving from bridges
 - fireworks"
- (Emphasis added)

In interpreting particular words, phrases, or clauses in a statute, in this case the ARPP, the entire substance of the statute or that portion relating to the subject under review should be examined in order to determine the scope and purpose of provisions containing such words, phrases, or clauses. (*West Pico Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal.3d 594, 608) The words in question must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230) Therefore, we need to examine in what regard it is that ARPP Section 4.14 finds the specified activities "incompatible with the Parkway." In order to do this we must look to the stated goals of the ARPP.

////

////

¹ In fact, the only animal that the ARPP expressly authorizes in the Parkway is horses, in as much as the ARPP expressly authorizes horseback riding on designated equestrian trails. (See, e.g., ARPP § 4.8)

Chapter 2 of the ARPP provides, in pertinent part, as follows:

"This plan is a policy document which provides guidelines for preservation, recreational use, development and administration of the American River Parkway. The following Goals and Policies shall be used to implement this Plan.

GOALS

- * To provide, protect and enhance for public use a continuous open space greenbelt along the American River extending from the Sacramento River to Folsom Dam; and
- * To provide appropriate access and facilities so that present and future generations can enjoy the amenities and resources of the Parkway which enhance the enjoyment of leisure activities; and
- * To preserve, protect, interpret and improve the natural, archaeological, historical and recreational resources of the Parkway, including an adequate flow of high quality water, anadromous and resident fishes, migratory and resident wildlife, and diverse natural vegetation; and
- * To mitigate adverse effects of activities and facilities adjacent to the Parkway; and
- * To provide public safety and protection within and adjacent to the Parkway."

In light of the above-stated goals of the ARPP, and given that ARPP Section 4.14 is a legislative finding of what activities are incompatible with those goals, it is my opinion that ARPP Section 4.14.1 is meant to be an all-inclusive list. The Board of Supervisors could have easily included the activity of "dog walking", but it did not. Presumably this is because the Board did not find "dog walking" as being incompatible with the Parkway. Instead, it only prohibited "dog training and field trials."

Where a statute enumerates things upon which it is to operate, its is to be construed as excluding from its effect all those not expressly mentioned. (*Conservatorship of Romo* (1987) 190 Cal.App.3d 279, 285) Moreover, generally the enumeration of acts or things as coming within the operation of a statute precludes the inclusion by implication of other acts or things not listed. (*Elysian Heights Residents Assn., Inc. v. City of Los Angeles* (1986) 182 Cal.App.3d 21, 29) Therefore, we cannot read a prohibition of dogs into the ARPP where the Board of Supervisors has not so provided. Accordingly, absent an express or implied proviso to that effect, it is my

////
////

opinion that the ARPP does not prohibit dogs in the Parkway, without regard to whether they are there with or without a leash.²

Although the ARPP does not prohibit dogs in the Parkway, it does include certain limitations on how the proposed pilot program can be implemented. As stated earlier, ARPP Section 4.14 expressly provides that certain specified incompatible activities and facilities are prohibited in the Parkway. Specifically, under that section dog training and field trials are prohibited activities (§4.14.1), and perimeter fences are prohibited facilities (§ 4.14.2). Also, ARPP Section 9.6.1 provides that permanent structures and any other physical change that would attract groups of users should not be introduced to the area.

In addition to the ARPP, the County Code also regulates the Parkway in as much as it regulates all County Parks generally. As it pertains to this matter, Sacramento County Code Section 9.36.061 provides, in pertinent part, that no person shall:

"(d) Bring into, maintain or allow in or upon any park facility any dog, cat, or other animal except a horse, unless such animal at all time is kept on a leash of sufficient strength and durability that it cannot be broken by the animal so leashed, and no longer than six feet in length, and be under the full and complete physical control of its owner or custodian at all times, except that all dogs, cats or other animals shall be prohibited at all times in or upon any area, within fifteen feet of such an area, designated as a nature study area, horse trail, or bicycle trail; provided, however, the director may designate areas and times within which persons may show, demonstrate, or train unleashed animals but under full control of their owners or custodians.

...

(h) Permit or suffer any animal owned by him, or in his possession, custody or control, to defecate upon park facility property without immediately removing such animal feces, placing said feces in a sealed bag or other sealed container, and placing such bag or container with feces in proper refuse receptacle. . . . unsighted persons while relying on a guide dog, are exempt from the provisions of this subsection.

(i) A violation of any of the provisions of this section shall be punishable as follows:

(1) A first violation of any of the provisions of this section is punishable as an infraction; and

(2) A second or subsequent violation of the same provisions of Section 9.36.061 committed within thirty days of the previous violation shall be a misdemeanor." (SCC § 9.36.061) (Emphasis added)

Thus, as can be seen from the foregoing, County Code Section 9.36.061(d) expressly prohibits bringing unleashed dogs within the Parkway, unless this is done in

² The enactment of Sacramento County Code Section 9.36.061, prohibiting unleashed dogs in County parks, is consistent with this view, and would seem to support it. This ordinance is discussed *infra*.

designated areas, and designated times, as the Department Director has so authorized for the purpose of showing, demonstrating, or training unleashed animals under full control of their owners or custodians. Under the proposed pilot program, however, it does not appear that the unleashed dogs would be under the full control of their owners or custodians. Nor does it appear that having the unleashed dogs on the Parkway would be for the purpose of "showing, demonstrating or training the dogs." Therefore, the proposed pilot program cannot legally be implemented without first amending the County Code to exempt the Paradise Beach area from the provisions of County Code Section 9.36.061(d).

However, even the County were to exempt dogs in the proposed pilot program from the provisions of County Code Section 9.36.061(d), it seems that the owners would still be subject to the provisions of County Code Section 9.36.061(h), which requires owners to clean up after their dogs. Failure to do so would subject them to possible criminal prosecution under County Code Section 9.36.061(i). Consequently, the Department will have to consider whether it wants to also exempt the proposed pilot program from these clean-up provisions as well, or how it will deal with the practical problems of enforcing these requirements.

CONCLUSION

Our review of the ARPP finds that the ARPP does not prohibit allowing park patrons to access the Parkway with off-leash dogs. Accordingly, the ARPP would not have to be amended in order to implement the proposed pilot program. However, Sacramento County Code Section 9.36.061(d) expressly prohibits persons from bringing a dog without a leash onto any County park facility, unless done so in designated areas, at designated times, to show, demonstrate, or train the unleashed dog under full control of its owner or custodian, as authorized by the Department Director. Since the proposed pilot program does not appear to fit within the limitations of County Code Section 9.36.061(d), it is our opinion that the Department cannot legally implement the proposed pilot program unless that section of the County Code is amended to allow for off-leash dogs in the Paradise Beach area of the Parkway during the term of the pilot program. However, even if unleashed dogs are exempted from the provisions of County Code Section 9.36.061(d), presumably they would still be subject to the clean-up requirements of County Code Section 9.36.061(h). Therefore, the Department will have to consider whether it also wants to exempt the proposed pilot program from the provisions of this section as well, or how it will deal with the practical problems of enforcing those clean-up requirements.

Date: _____

LAWRENCE J. DURAN, Deputy