



## Metropolitan King County Council

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June 3, 2002

TO: Councilmember Julia Patterson

FM: James L. Brewer, Legal Counsel

RE: Des Moines Beach Park

Kimberly Lockard has asked me to give you a written analysis of the County's role and jurisdiction on the issue of the proposed operation in Des Moines Beach Park of a fill material conveyor belt. I would like to thank Scott Johnson, Deputy Prosecuting Attorney, for his assistance to me in responding to your request.

King County owns a real property interest in one section of the Des Moines Beach Park. The deed conveying that portion of the park from the County to Des Moines has a covenant granting: "*King County and its people for their benefit the right to use the real property herein for public park and recreation purposes in perpetuity.*" If that portion of the park is ever used for other purposes without the written consent of King County, ownership of the park property reverts to King County. In addition, Des Moines is under a contractual obligation to King County to only use the park for "park and recreation" purposes unless King County consents to the inconsistent use and other land is substituted. This obligation applies to the entire park. It is likely these covenants were included, in part, because King County's contribution to the purchase of the park came from Forward Thrust bond proceeds.

The Office of the Prosecuting Attorney has indicated that it is their understanding that Des Moines Creek Park also was purchased by King County with Forward Thrust bond proceeds. The park was transferred to Des Moines in 1994. The deed to the City contains a similar covenant requiring that the park be maintained as public open space or a recreational facility or, if not, that other property be substituted. However, there is no requirement that King County approve the conversion before it occurs.

Factual and policy considerations affect the determination of whether any proposed use of a park, such as the proposed gravel conveyor belt, is consistent with park purposes. As a matter of general law: "*Park lands may be leased or licensed for uses which do not substantially interfere with use for park purposes, or for uses which are consistent with, and in furtherance of public use and enjoyment of the park.*" McQuillan, Municipal Corporations, Sec. 28.53. Determining this involves considering the extent of the impact of the proposed use on park uses, including the area, time, and the amount of disruption of enjoyment of the park.

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The findings adopted by the Des Moines City Council in Resolution No. 865 cite the SEIS for the Greater Des Moines Comprehensive Plan's findings that:

*"a significant portion of Des Moines Beach Park, including a play area, would be restricted for the duration of the proposed project – which would be about 30 months (two and one-half years) [and] there were potential impacts to the integrity of historic structures in Des Moines Beach Park during construction, including the Senior Center".* This extent of disruption of the park supports a conclusion that the use is inconsistent with park purposes.

Written consent to an inconsistent use could be granted by the County Executive, unless the council by motion declared that as a matter of county policy that the inconsistent use should not be authorized. To give consent for the inconsistent use requires several additional actions. First, the County's real property interest in the park would need to be declared surplus, at least to the extent of the impairment of use. If the value of the interest is \$10,000 or more, approval of the Council by motion is required before it may be disposed of by the Executive. In addition, replacement lands of equivalent value would need to be acquired by the City.

A council motion could be adopted that would make findings regarding the proposed use and declare that it was the policy of King County that the proposed use would be inconsistent with the park and that no consent to such an inconsistent use would be made.

I would be happy to discuss this further with you at your convenience.

Cc: Kimberly Lockard, Legislative Aide  
Scott Johnson, Deputy Prosecuting Attorney