

**ATTACHMENT D: INTER-DEPARTMENTAL CORRESPONDENCE FROM
COUNTY RISK MANAGEMENT**

**DEPARTMENT OF RISK MANAGEMENT AND BENEFITS
COUNTY OF SACRAMENTO**

RISK AND LOSS CONTROL DIVISION
600
P.O. Box 276130
Sacramento, CA 95827

Mail Code: 58-

Phone: (916) 876-5251
FAX: (916) 876-5156

Inter-Department Correspondence

Date : June 18, 2002

To : Liz Bellas, Parks

From : Paul Hight, 876-5019

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

cc : Steven Page

Liz:

Background –

Steven Page asked me to respond to the following question raised in Ron Suter's memo on the subject of off-leash dogs at County Parks:

Would allowing off-leash dogs at County Parks put the County at greater liability risk? Not only are possible dog bites of concern, but also traumatization of current park users from possible encounters with off-leash dogs.

Response –

Allowing off-leash dogs at County Parks would put the County at a somewhat greater liability risk. However, there are steps and procedures the County can follow to help mitigate liability issues in allowing off-leash dogs at County Parks.

Discussion –

As with any recreational area set up by a government entity there is always a liability issue that must be recognized. While government entities enjoy certain defenses and immunities in this area, they are not absolute. Reasonable precautions in design and operation that satisfy prevailing standards must be followed in order for the government entity to meet its "duty of care" if any immunity or legal defense is to be claimed. However, because a government entity may be seen as having the "deep pocket" it faces the problem of being targeted with claims and lawsuits for actions that may be entirely outside the control and legal responsibility of the entity. Risk Management is not aware of any comprehensive research into the number of incident reports,

claims or legal actions against governmental entities that have created off-leash dog parks (also known as Off-Leash Recreational Areas or OLRA's). We can only assume that there will be at least some increase in the number of off-leash dog-related incidences at a OLRA and that some of these incidents may ultimately translate into claims against the County over a period of time. This may more likely happen, for instance, in a serious incident such as a mauling or death of a child at a OLRA. Anecdotal information seems to indicate that there has not been a substantial increase in the numbers of claims or lawsuits against government entities that have created OLRA's. Nevertheless, if an incident at a OLRA turns into a claim against the County either because of some "deep pocket" theory or substantive legal basis, it will require investigation and possible legal defense costs even if no indemnity payment is made. These costs, including any indemnity costs, would be factored into the annual claims and insurance cost allocation to Parks.

In establishing a OLRA, the County will have to address two key areas of concern that will impact liability issues: the physical design of the OLRA and the rules and regulations that it establishes for the OLRA.

Physical Design – The following list is not conclusive, but shows some key areas that must be addressed:

- Physical separation from non-off leash park areas including parking areas
- Proximity to playgrounds, streets and roads
- Access to OLRA (This may range from locked gates with keycard access control to only signage)
- Adequate restrooms
- Adequate water for users of the OLRA (pets and owners)
- Adequate means to dispose of dog feces
- Emergency phone lines

The County must follow prevailing standards to address these issues (and other related design issues) to at least make the case that it has met the "duty of care" for the OLRA in the event a claim is filed against the County.

The second area of concern that will impact liability for the County are the rules and regulations that are set up for the OLRA and how they are communicated to both intentional users and those that do not intend to use the OLRA but find themselves near or in a OLRA for a variety of reasons. The following example is provided by the City of Sacramento and is posted on signs at each of its three OLRA parks. (Material taken from the City's Parks and Recreation web site):

Dog Park Rules

To report damage or an incident affecting the use of this facility, please call Park Safety Services at (916) 277-6093 or the City Operator at 264-5011.

Dog owners/handlers are personally responsible and legally responsible for their animals. You are using this facility at your own risk, and are personally and legally liable for dog bites.

1. Dogs may be off a leash only within the designated fenced area (SCC 9.44.020)
2. Owners/handlers must clean up after their dogs. (SCC 9.44.220 (D))
3. Dogs must have a current license, license must be on dogs' collar, the collar must be on the dog. (SCC 9.44.540)
4. Aggressive dogs are not allowed. The owner/handler of any dog(s) exhibiting aggressive or unruly behavior are required to immediately remove the offending animal. (SCC 12.72.220)
5. For every two dogs brought to the park, there must be at least one owner/handler. (SCC 12.72.220)
6. Children less than 14 must be accompanied by an adult. (SCC 12.72.220)
7. Female dogs in season are not allowed at the facility. (SCC 9.44.280)
8. Consumption of alcohol, food and the use of glass containers are not allowed. (SCC 12.72.080 & 12.72.240)
9. The City of Sacramento reserves the right to close the facility for maintenance and repair. (SCC 12.72.210)

While the above rules and regulations are not necessarily conclusive as to scope and content, it does provide an example of the type of information that should be communicated to OLRA users. Other issues related to communicating rules and regulations include the following:

- Signs should be posted at all reasonable entry points to the OLRA
- Signs should warn non-dog owners that they are entering a OLRA and include appropriate legal language
- Signs must be well-constructed and regularly maintained

Conclusion –

The opinion of the Risk Management Office is that creation of a OLRA at County Parks will somewhat increase the liability risk to the County. The County can manage the risk as with any other recreational development by following appropriate design guidelines and communicating effective rules and regulations for the benefit and protection of users of the OLRA as well as non-users. The Risk Management Office is available to further work with Parks on the issue of OLRA's at County Parks.