

STATE OF CALIFORNIA

PETE WILSON, Governor

STATE LANDS COMMISSION

LEO T. McCARTHY, *Lieutenant Governor*
GRAY DAVIS, *Controller*
THOMAS W. HAYES, *Director of Finance*

EXECUTIVE OFFICE
1807 - 13th Street
Sacramento, CA 95814-7107

CHARLES WARREN
Executive Officer
(916) 322-4106
FAX (916) 322-3668



January 25, 1994

John W. Witt
City Attorney
City of San Diego
202 "C" St.
San Diego, CA 92101-3863

Re: Seal Rock Marine Mammal Reserve; CCC Appl. # 6-93-26

Dear Mr. Witt:

The City of San Diego has requested that this office transmit a letter confirming that the proposed reserve is consistent with both the applicable statute granting the subject property in trust to the City of San Diego as well as general Public Trust law.

This request was initiated to comply with a specific condition of approval of the reserve adopted by the California Coastal Commission at its meeting of November 17, 1993. Special Condition 2 is as follows:

2. State Lands Commission Approval.

Prior to issuance of the coastal development permit, the applicant shall submit written approval by the State Lands Commission, of the proposed five-year reserve as consistent with applicable tidelands grants and the public trust.

Without fear of contradiction, the actions taken by the City to create this reserve and exclude members of the public from these Public Trust lands has created a significant controversy among supporters of public access and use of Public Trust lands, on the one hand, and those who wish to exclude the public for the stated purpose of

Mr. John W. Witt
January 25, 1994
Page 2

protection of marine mammals, on the other. This controversy has divided local interest groups, governmental representatives and citizens. This is not without good reason. Citizens, interest groups, and responsible governmental officials should not take lightly any proposed restrictions on constitutional public rights. A high standard of reason and review should preface any such action. In our system of representative democratic government, authority derives from the consent of the governed. In our legal system, authority and responsibility to enact and enforce laws is often complicated and complex. The importance of public rights and the authority to represent those rights at the various levels of government in California is discussed in the attached analysis. Our conclusions and response to the foregoing request are explained in more detail therein.

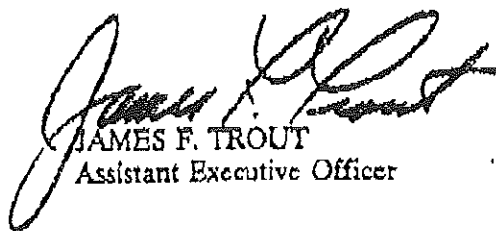
The staff of the State Lands Commission, after reviewing all the information submitted, has concluded that the action by the City of San Diego in designating a temporary marine mammal reserve for scientific study, open space, ecological preservation and passive recreation over a relatively small (1.4 acre) portion of the many thousands of acres of sovereign Public Trust lands managed by the City does not appear to be inconsistent with Chapter 688, Statutes of 1933 or the Public Trust.

Determining the balance between legitimate and competing Public Trust needs as to a particular location, absent a legislative edict, is a matter best dealt with by the State's statutorily delegated trustee (City of San Diego) in the exercise of its discretion and judgment. Such a determination must occur in a manner consistent with its statutory and constitutional mandates.

The Commission and its staff are not disinterested in the actions taken by the City and will appreciate being kept informed of the scope of the scientific study to be performed and results of that study.

We would also like to thank all the interested citizens and groups who offered input into this important matter. Democratic and constitutional principles of free speech and the right to petition the government are only worthwhile if used.

Sincerely,


JAMES F. TROUT
Assistant Executive Officer

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7576 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



September 29, 2000

City of San Diego
Park and Recreation Department
Attn: Robin Stribley
Mail Station 35
202 'C' Street - Balboa Park
San Diego, CA 92101-3860

Re: Coastal Development Permit Application #6-00-126/Establishment of permanent marine mammal reserve at Seal Rock

Dear Ms. Stribley:

This office is in receipt of the above-referenced coastal development permit application for the establishment of Seal Rock as a permanent marine mammal reserve in La Jolla. Commission staff has reviewed the above cited permit application and has determined that additional information is necessary in order to properly review this application and schedule it for public hearing.

Specifically, before we are able to develop a recommendation on the permit, we believe it is important to meet with all agencies involved in this matter to discuss all of the relevant issues (i.e., public access, non-disturbance of seals, closure of Children's Pool, National Marine Fisheries Service's decision to apply status of rookery to Children's Pool, status of the barrier at Children's Pool, etc.). We are particularly interested in obtaining information from the National Marine Fisheries Service on their opinion of making Seal Rock a permanent marine mammal reserve as well as their opinion regarding Children's Pool. In addition, we would like information regarding the long-term plan for Children's Pool. How will the City address the contamination of the water at this location and the long-term closure of the beach to the public? In addition, we would like the City to consider all of the different alternatives to the placement of the barrier at Children's Pool (i.e., limited access to the ocean for divers, other recreational users or for educational purposes, use of other types of barriers that are less inhibiting, etc.).

Please call me at your earliest convenience to arrange scheduling a meeting with this agency, the City, the National Marine Fisheries Service, and representatives from any other agencies you believe should be involved. In the interim, please submit the information identified above to this office. When it is received, reviewed by staff and found to be adequate to analyze the project, your application will be filed and scheduled on the next available Commission agenda. If you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in cursive script that reads "Laurinda R. Owens".

Laurinda R. Owens
Coastal Planner

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



October 30, 2000

Via Facsimile & U.S. Mail

Robin Stribley
City of San Diego
Park and Recreation Department
202 'C' Street – Mail Station 35
San Diego, CA 92101

Re: Coastal Development Permit Application #6-00-126

Dear Robin:

In preparation for our meeting this week, can you please address in writing the status of the Seal Rock Marine Mammal Reserve since the coastal development permit (CDP #6-93-26) expired? Has the City continued to restrict people from entering the waters within the boundaries of the former temporary reserve? If not, does the public currently use this area for water-oriented recreation (i.e., swimming, snorkeling, scuba diving, etc.)? Also, you mentioned that there was information in the permit application regarding the National Marine Fisheries Service's (NMFS) determination that Children's Pool has been documented to be a rookery. However, I could not find a letter from NMFS to this effect. If you have one, could you please bring a copy with you when you come to our meeting this week? Also, can you also provide information regarding the current enforcement efforts of the Marine Mammal Protection Act at Children's Pool?

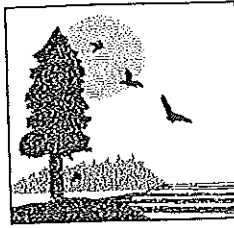
For your convenience, I am faxing this letter to you in addition to mailing it so that you will have enough time to try to obtain this information before our meeting. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Laurinda R. Owens".

Laurinda R. Owens
Coastal Planner

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



PAUL D. THAYER, Executive Officer
California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1828
Contact FAX: (916) 574-1855
Email: fossumc@slc.ca.gov

AUG 21 2000

August 15, 2000

File Ref: G-10-07

Lori W. Girard
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100

Re: Seal Rock Marine Mammal Reserve (SRMMR) in La Jolla; Chapter 688,
Statutes of 1933

Dear Ms Girard:

Staff of the California State Lands Commission has reviewed the city's request for review of the proposed extension of the SRMMR. Our position remains basically unchanged from our letter of January 25, 1994, with attached legal analysis thereto, involving the initial creation of the temporary reserve. In that letter we concluded that, in the context presented, the temporary reserve did not appear to be inconsistent with the provisions of Chapter 688. Also as stated in that letter, "Determining the balance between legitimate and competing Public Trust needs as to a particular location, absent a legislative edict, is a matter best dealt with by the State's statutorily delegated trustee (City of San Diego) in the exercise of its discretion and judgment."

As finally approved, we understand the temporary reserve to have generally prohibited the public from a 1.35 acre area of water surrounding Seal Rock. We also understand that the closure did not exclude members of the public who wished to exercise their Constitutional right to fish within the reserve. The City now desires to make the temporary reserve permanent. Please refer to our legal analysis provided in 1994, particularly the time, place and manner discussion on restricting public rights and the California Constitution.


While not attempting to substitute our judgment for that of the trustee/city we would like to offer some comments. As we stated in our 1994 letter and legal analysis, the city's determination of appropriate trust use for a particular portion of its public trust lands on a temporary basis, or for "limited periods", is authorized by Chapter 688. We would therefore recommend that any extension that might ultimately be approved be for a *limited* period. This will provide the city the opportunity to observe changing public needs and modify or reassess the situation on a timely basis. In addition, the size of the reserve and restriction of public rights should involve the *smallest area practicable* to achieve the desired goal of preventing harassment to marine mammals. Some testimony that 20 - 30 feet was the distance at which the seals reacted to humans would indicate that certain areas of the reserve might not be necessary for exclusion of the

August 15, 2000

public. As to possible conflict with federal and state law involving protection of marine mammals we suggest that the city refer to the relevant responsible agencies for advice on the specific application of the those laws as they relate to the city's proposed reserve. The conclusions reached in the written report of the scientific study undertaken as part of the temporary reserve did not appear to provide sufficient detail to provide decision makers the kind of information necessary to design a program that would optimize appropriate use and benefits among competing public needs for this highly prized natural resource. Finally, as one alternative to the restrictions set forth in the previously approved reserve, we believe that the city could explore, in conjunction with its widely supported and at least partially successful education and docent program, opportunities for allowing controlled educational and instructional opportunities for divers. The Seal Rock area apparently provides a somewhat unique opportunity to study interaction of humans and marine mammals in the wild.

The La Jolla coastline and this area in particular are clearly highly attractive to both humans and marine mammals. We urge the city to exercise its responsibilities in a flexible, balanced and thoughtful manner and to continue to explore alternatives which will maintain that balance in the public's best interest. Thank you for the opportunity to comment.

Sincerely



Curtis L. Fossum
Senior Staff Counsel
Southern California Region

cc: Paul D. Thayer, Executive Officer
Jack Rump, Chief Counsel
Grace Kato, Public Land Management Specialist
Robin Stribley, Senior Planner, Natural Resources, Park and Recreation Dept.,
City of San Diego

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MAR 07 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

MAR 2 2001 F/SWR3:JGC

Ms. Laurinda Owens
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, California 92108

Dear Ms. Owens:

This responds to your request for an official statement from the National Marine Fisheries Service (NMFS) regarding the Commission staff's recommendation to renew the Seal Rock Marine Mammal Reserve's status as a temporary reserve for another five years.

Given that the number of harbor seals inhabiting the area outside the boundary of the reserve has increased, the effectiveness of the reserve as a seal sanctuary is questionable. Because the harbor seal population both locally and statewide is healthy and stable, removal of the reserve status for Seal Rock will not have an adverse impact on the population, although it may result in the general public inadvertently harassing animals that frequent Seal Rock. Alternatively, maintaining Seal Rock as a reserve does offer the City of San Diego an opportunity to educate the general public about harbor seals and other pinnipeds.

Therefore, the official position of NMFS regarding the reserve is that we will assist the City of San Diego in proceeding with whichever option it chooses regarding the future status of Seal Rock.

If you have any questions, please contact Joseph Cordaro at (562) 980-4017.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Lecky".

James H. Lecky
Assistant Regional Administrator
for Protected Resources

Letters from Resource
Agencies



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DEPARTMENT OF FISH AND GAME

1416 Ninth Street
Sacramento, CA 95814

RECEIVED



MAR 07 2001

March 5, 2001

Ms. Laurinda Owens, Coastal Planner
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Re: City of San Diego-Seal Rock Marine Mammal Preserve.

Dear Ms. Owens:

The following is in response to your voicemail request of March 1, 2001, requesting that I formalize in a letter the comments that I e-mailed to you on February 20 concerning the draft Special Permit Conditions relating to the above reference permit application.

- Condition #1 (annual monitoring). The issue here is the sufficiency of the study design, which is a scientific question best addressed by NMFS. However, Condition #1 is moot if the City has no authority under its tidelands grant to undertake the proposed project in the first place.
- Condition #2 (State Lands Commission concurrence). This condition appears to shift the burden onto the SLC to approval or deny the scope of the tidelands grant in question. This was a requirement of the Coastal Commission's first conditional approval of the ordinance in 1993. Then, the SLC concluded that the proposed activity exceeded the grant's scope. This same conclusion was reached in our March 31, 2000 letter.
- Condition #3 (Proposed Reserve Boundaries). As with Condition #1, this requirement is moot if the City has no authority under its tidelands grant to undertake the proposed project in the first place.
- Condition #4 (Limits of Permit). The temporary nature of the reserve is irrelevant: either the City has the authority or it does not, and the weight of the applicable law indicates conclusively that it does not.

Rather than pursuing quixotic interpretations of tidelands grant law that cannot survive judicial scrutiny, the City's efforts would be better spent outlining a cooperative plan whereby their goal could be achieved within the respective local, state and federal authorities. Once such a plan is prepared, a monitoring report could then go forward as envisioned under Condition #1.

Joseph Milton
JOSEPH MILTON
Staff Counsel