



DEPARTMENT OF FISH AND GAME

1416 Ninth Street
Sacramento, CA 95814

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March 5, 2001

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

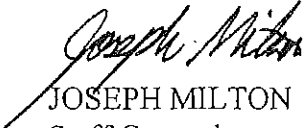
Re: City of San Diego-Seal Rock Marine Mammal Preserve.

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
Staff Counsel