

Although Children's Pool is not the subject of this coastal development permit application, it should be noted that SLC staff has indicated that because the existing statute specifically talks about public access and recreational use of the area, a permanent barrier on the beach which blocks access to the ocean is inappropriate. This particular land grant is more specific than the broader state land grants because it specifically calls for the area being devoted to a bathing pool for children. This is the only grant to the City that has these specific requirements in it. The City should be doing everything possible to protect public access in this area and to alleviate the health concerns. However, if the City believes that protecting the seals is a higher public need than public access to the waters, then they should seek a change to the law. SLC staff has also indicated that if the barrier is only temporary, however, and is needed for health and water quality reasons, such a barrier is not inconsistent with the grant language. Furthermore, all agencies agree that if the water is contaminated, that access to the water should not be allowed to assure public health and safety. As noted previously, the issues associated with Children's Pool and the barrier will be dealt with separately.

With regard to the proposed Seal Rock Marine Mammal Reserve, SLC staff and DFG staff both expressed their reservations about the area being made into a permanent reserve. SLC staff refer to a separate grant, Chapter 688, a Legislative Grant dated 6/5/33 which essentially turned over a three mile area of submerged lands under the ocean to the City. The language of that grant cites a much broader use that the lands can be used for. This statute is clearly applicable to Seal Rock and the proposed boundaries of the reserve (ref. Exhibit No. 7). The grant provides that the tidelands shall be used for the establishment, improvement and conduct of harbors and construction of bulkheads or breakwaters for the protection of lands within its boundaries, and the like. In addition, the last subsection of the grant specifically states:

"...(d) There is hereby reserved, however, in the people of the State of California the absolute right to the public use of said tidelands and to fish in the waters thereof, with the right of access to said waters over said tidelands for said purpose."
[Emphasis added]

Therefore, the City's action to exclude public access to the water on a permanent basis is inconsistent with the above land grant. SLC staff further stated that making the reserve "temporary" for purposes of conducting a study, etc., could be found consistent with the land grant but that a permanent reserve would clearly be inconsistent and could not be permitted unless the City sought and received approval of an amendment to the grant to specifically prohibit the public from access to the open coastal waters. DFG staff also stated that they had sent a letter to the City indicating that they did not believe the City had the legal authority under their tidelands grant to exercise resource management of this area.

With regard to whether or not making the area a reserve would afford the seals more protection, NMFS staff stated that if the seals could not use Seal Rock, it would not significantly harm the seals at this location. However, this would not be the case if they were pupping on the rock. In addition, the existing Marine Mammal Protection Act