

1 compromise area that goes practically to the beach that was presented by
2 Barbara Bamburger. This discreet area shall be in effect for five years on a
3 trial basis and is off limits to swimmers, divers and tourists. Access to the
4 riptide is not affected because the divers can come in and go out through the
5 Children's Pool." [Exh. 586.] The ordinance was formally adopted on February
6 22, 1993. [Exh. 589.]

7 On or about October 25, 1993, Jane Sekelsky, Chief, Division of Land
8 Management, State Lands Commission (hereinafter "SLC"), sent a letter to Carl
9 Lind, a private citizen, copied to Robin Stribley, Natural Resources Manager,
10 Park and Recreation District, City of San Diego. The letter concerned the
11 creation of a marine mammal preserve within an area encompassed within a
12 statutory trust grant. The SLC, on behalf of the State of California, expressed
13 its concern that the Reserve may prohibit activities specifically reserved to the
14 people of the State of California. Such activities include "the absolute right to
15 the public use of said tidelands and to fish in the waters thereof, with the right
16 of access to said waters over tidelands for said purpose." [Exh. 67.] The
17 Legislature has vested in the SLC: "All jurisdiction and authority remaining in
18 the State as to tidelands and submerged lands as to which grants have been or
19 may be made," and has given the commission exclusive administration and
20 control of such lands. (Pub. Resources Code § 6301.)

21 The SLC then followed up with a clarifying letter dated November 15,
22 1993, addressed to Ms. Stribley and Barbara Bamburger. In that letter, SLC
23 more thoroughly advised the City of its rights and obligations in regard to lands
24 over which it is the trustee. The State stated that "[t]he proposed ordinance is
25 clearly inconsistent with the provisions of Chapter 937, Statutes of 1931. To
26 ban public recreational uses as proposed would violate the specific provisions
27 of the statute and the City's responsibility as Trustee." [Exh. 70.] The court
28 recognizes that the Reserve is situated within the broader tidelands grant of
1933 and not the much more narrowly and specifically worded grant of 1931.