

DATE: October 3, 1986

TO: Dick Randolph, Property Department
FROM: City Attorney
SUBJECT: Hubbs Marine Research Institute - Proposal to
Lease Portion of Hospitality Point in Quivira
Basin

By memorandum dated September 17, 1986, you requested comments from this office with regard to a proposal (copy attached) from Hubbs Marine Research Institute to lease a portion of Hospitality Point in the Quivira Basin area of Mission Bay for use "as a marine information, education and research center for San Diego."

Since all of Mission Bay is dedicated to public park purposes, your question involves the legality of the proposed use in a dedicated public park.

It appears from the proposal that the primary use of the property would be the hatching and "rearing of locally important commercial and sport fish species to be used to enhance the natural populations." Smaller scale facilities for that purpose are already located in Mission Bay Park as part of the Sea World facilities.

The proposal also specifies that the site would also be used "for later expansion into an educational/research center for use by students, faculty and staff of all the local universities, junior colleges and grade schools." The proposal further states that "a permanent laboratory will be designed which will allow public access (at no cost) for viewing research programs underway at the facility."

Please see the attached memorandum of law dated February 11, 1986, which cites prior judicial decisions as to what is and what is not a proper use of a dedicated park. As a general rule, schools are not a legal use of dedicated park land. McCullough

v. Board of Education, 51 C418 (1876); San Vincente Nursery School v. Los Angeles County, 147 CA 2d 79, 304 P2d 837 (1956).

An exception would be where, as in the case of the Mission Bay Aquatic Center run by San Diego State University, classes are conducted giving instruction in various park uses, i.e., sailing, rowing and related aquatic uses.

Likewise, a research center would not be, as a general rule, a proper use of a dedicated park. An exception could be where the research related directly to a proper park use and where it could be shown that the research facility could not, as a practical matter, be located outside the park and still perform

the park research function. For example, Hubbs Marine Research Institute presently occupies a small portion of the Sea World leasehold for the purposes of conducting research which is connected directly to the function of hatching fish for the purpose of transplanting such fish into the Mission Bay and adjacent tidelands to provide presently unavailable fishing opportunities to park visitors.

Also, a "marine information" facility would probably be held a proper use of Mission Bay Aquatic Park if the City Council found that the marine information facility provided incidental and valuable information regarding Mission Bay Park and the marine species available in the park to park visitors.

Without having more specific information with regard to the Hubbs Marine Research Institute proposal it is not possible to determine whether the proposal as a whole would constitute a legal use of the dedicated park land.

However, it does not appear that "an educational/research center for use by students, faculty and staff of all the local universities, junior colleges and grade schools" would be a legal use of park land. While such a use would clearly be appropriate under the tidelands use restrictions applicable to the property, a school and research center which deals primarily in teaching and doing research in general marine science subjects would clearly not, under the present state of the law, be a proper use of a dedicated public park.

If your department wishes to proceed with potential location of Hubbs Marine Research Institute facilities on Hospitality Point, it is suggested that you request a more specific proposal so that we can give Hubbs a more definitive answer with regard to which portions of the proposed use are legal park uses and which portions cannot be approved because of legal restraints.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachments

cc John Fowler

Jim Spotts

Don Barone

ML-86-119