

MEMORANDUM OF LAW

DATE: July 8, 1988

TO: Maureen Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: Mission Bay Park - Hubbs Marine Research Center

By letter dated December 30, 1987, addressed to John Lockwood, the Director of the Hubbs Marine Research Center, which Center is presently located on a small portion of the Sea World leasehold, described a proposal to expand the Hubbs facilities in Mission Bay Park and requested a legal analysis of the proposal. A copy of the December 30 letter with enclosures is attached for reference as Enclosure (1) to this memorandum.

The legal issue relating to the appropriateness of the proposed activity within Mission Bay Park was addressed in a draft memorandum in January or February of this year but was never placed in final form. Additional requests have now been made through Assemblyman Stirling's office for a response to the December 30, 1987, letter.

You will note from the attached document entitled "Discussion of Legal Considerations in Preparation of a Lease Proposal" first attachment to our Enclosure (1) that the proposed facilities would be open to the public and would include recreational and informational functions in addition to the fisheries related research activities.

Also attached as Enclosure (2) to this memorandum for your information is a copy of a memorandum of law from this office dated October 3, 1986, describing the conditions upon which the proposed Hubbs Marine Research facilities may qualify as a proper use of dedicated public park land.

Attachment 1 to the document entitled "Discussion of Legal Considerations" is an opinion of the Legislative Counsel of California dated February 6, 1987. See our Enclosure (1). This office concurs in the basic conclusion reached by the legislative counsel even though the legislative counsel was

apparently given incorrect information to the effect that the property proposed to be leased by Hubbs was a portion of the property granted by the state to the City pursuant to Chapter 2139 of the Statutes of 1963. The property in question and, in fact, all of the Mission Bay tidelands, was conveyed to the City pursuant to Chapter 142 of the Statutes of 1945. The subject property was subsequently officially dedicated to park use by ordinance of the City Council. Therefore, the property is

subject both to the tidelands trust and City Charter section 55 which precludes use of any dedicated park land for nonpark purposes without a two-thirds vote of approval of such nonpark use by the electorate.

There is no question that the proposed Hubbs use would qualify under the tidelands trust. The real issue is whether or not the proposed use would qualify as a valid use of dedicated park land.

The legislative counsel's opinion cited several key cases involving legal uses of park land and concluded as follows:

Based on the foregoing, we think that whether the marine institute comes within the definition of a park depends upon the exact nature of the institute. If, for example, the institute in fact is in the nature of an aquarium (as, for example, the Steinhart Aquarium in Golden Gate Park), we think a reasonable argument can be made that the marine institute meets the requirements of the statute. If, on the other hand, the marine institute is not open to the public, we think it unlikely that the institute could reasonably be included within property restricted to park purposes.

We concur in the above conclusion. It is also our conclusion that the proposed facilities as described in the "Discussion of Legal Considerations" would qualify as a valid park use if operated as generally described therein.

However, it would be necessary to get more specific information and place additional restrictions on the actual uses which would be allowed. For example, the facilities should not contain substantial areas closed to the public to be used solely by researchers. Also, the educational functions of the facilities should be limited to park and recreation and aquatic subjects directly related to Mission Bay Park and to fisheries-related subjects beneficial to Mission Bay. In addition, the educational opportunities should be available to the general public.

Any lease would, of course, have to be carefully drafted to guarantee the public access, educational and recreational provisions described in the "Discussion of Legal Considerations" so that the facilities would be operated more in the nature of an aquatic and fisheries oriented public park attraction than in the nature of a marine research facility.

JOHN W. WITT, City Attorney

By
Harold O. Valderhaug
Deputy City Attorney

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Attachments

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