

MORRIS DYE: Good afternoon, I'm Morris Dye, Project Manager, Development Services Department and this is the La Jolla Children's Pool dredging project. We have a number of staff members here. I'm going to go through the slides quickly and go back to them to keep this to five minutes. The project is located on a sandy beach below a coastal bluff with an ocean breakwater – sea wall. The project would remove sand from the Children's Pool and relocate it to South Casa Beach and it includes ongoing maintenance. The project, if it goes forward, would need a Coastal Development Permit, a Site Development Permit, along with the Environmental Impact Report that is here today for your certification. The project of the La Jolla Community Planning area designations and is in the Zone 5 La Jolla. The larger area map is to orient you. The map showing the open space park adjacent to the Pool. Closer area showing south of La Jolla Cove. Coming in closer, south of the Cove, you'll see the Children's Pool there. Even closer you'll see Coast Boulevard and Children's Pool identified. This is the project site in the Pool would be the areas in the dashed line in the Pool itself, and the area where the sand would be deposited is to the south – South Casa Beach. The background – Ellen Browning Scripps donated construction and materials to build the breakwater that you see at Children's Pool today. It was built on tidelands and deeded to the City. The trust required of the City to devote the pool to swimming and recreation. You'll see later couple slides showing that sluice gates were built in the sea wall to allow sand passage. We don't know exactly when they were closed but sometime soon after the wall was moved. The water has become contaminated. There's been a connection made between the seals and unsafe level of coliform in the water. In 2004, this Council directed staff initiate design and permit applications and return it for review and certification. a number of different legal challenges and issues over the recent years on this project and in 2005 there was a court order to the City to return the pool to its 1941 configuration. I'll have a picture of that in a moment, to remove the sand and clean the water. the City was asked to return on the sixth of October, 2009, and report progress on that effort. I will note to you that as of just recently the judge in that case has removed himself and appointed another judge so we're not certain if that changes the status of that hearing date on the sixth of October or not. There's also federal lawsuit brought to protect the seals. In 2009 the City requested that the state ask the state to amend the trust giving the City discretion as to whether to make it a seal sanctuary or swimming pool. The governor signed that legislation into law in January. It will become effective January 2010. No such

motion has been granted and the City must report on progress again pending on this hearing on the -- on the 6th. We have to report on progress returning that pool to its 1941 configuration. The sand is much less than it is today. the project is to excavate and place sand from the upper portion of the beach over the wall on to south casa beach, excavate and decontaminate the lower portion of the beach and make it deeper for swimming and to maintain that restored conditions. Basically the tan color area will be dredged first, creating a hole. That sand would be tested before it would be put over the wall. The contaminated sand in the blue area would be dredged, spread in this hole, to decontaminate by ultraviolet light exposure and the pool reconfigured. Just some pictures here, current situation today, this is before and after depiction of what it is today and what it would look like if it's dredged. There are additional federal permits that are required after this action today. Staff has evaluated this and found it to be consistent in the sense of time here I'll pass on that. Come back if you'd like to touch on those. The environmental analysis identified two areas of potential impacts with biological and historical monitoring on the site. There were five alternatives in addition. This is the sluice gate picture that we talked about. You see outside on the top, filled with concrete. The bottom picture shows they are under several feet of sand. The recommendations, last two slides, community planning group September 3, 2009, voted 12-1 to recommend approval of a coastal development site permit. The vote didn't include a recommendation on the E.I.R.. It's in your report, but the recommendation we may need to read it into the record before we're done. We need staff is recommending approval of the two coastal development permit and site development permit.

**BEN HUESO:** Great report. We have two speakers from the public. Ms. Lightner?

**SHERRI LIGHTNER:** As evidenced by your presentation, the state legislature has passed a law which may chart a new path for the future. In anticipation of that I have actually conducted three community forums and plan this fall to hold additional forums to consider the various options and hear from experts this fall. In the meantime, to minimize additional court costs it's imperative to carefully comply with the court order. In 2004 the Council directed the City Manager to prepare an appropriate environmental document and return to City Council with

plans and permits and documents to clean and dredge the beach to be used year round jointly. There was no mention of an E.I.R., in fact this was prior to the litigation. The litigation resulted in the August 2005 court order to return the Children's Pool to its 1941 configuration. City Staff identified excavation as the only way to achieve this requirement and prepared the EIR and permits before us today. Was this the result of litigation or the San Diego City Council resolution? Why was this action taken?

DYE: I'd like for you to clarify exactly what the question is.

LIGHTNER: This EIR and the permit. Is that a result of the court order, and did that direct the alternatives which were considered in the EIR, or is this an attempt to fulfill the City Council's direction of 2004?

DYE: The City Attorney's office is here. I'll let them respond to the part about complying with the court order, but the 2004 September 14 resolution from the Council indicated that the City Manager -- that was the language used at the time -- perform preliminary studies, initiate, design and permit applications in order to comply with their recommendation. They said return to Council with the appropriate environmental document for review and certification for approval to comply with the accepted recommendation of the project. So as far as the resolution part of it goes, we are here --

LIGHTNER: There's more to the resolution than that. So I'm just curious. I think this satisfies the litigation requirement but I'm not sure. Could the City Attorney please answer?

SHANNON THOMAS: Shannon Thomas, Deputy City Attorney. I was going to add the part that Mr. Dye did, that part of the Council action in 2004 was specifically that the appropriate environmental document would return to the Council. It did include direction to look at the alternative of opening the sluiceways but the timing of us being here today is certainly driven by the report

submitted to court to show that the City was making progress on the 2005 court order.

LIGHTNER: And the EIR actually addresses the court ordered configuration. It does not address what was described in the City Council resolution, which was to clean the beach.

THOMAS: Right. The 2004 resolution also directed the Staff to look at joint use. It did not necessarily address how staff was supposed to accomplish that. However, in the City Manager's report at the time it was clearly contemplated that dredging would be part of returning it to joint use, although not to the 1941 configuration that the court has ordered us to use.

LIGHTNER: If we do not approve the permits today the excavation cannot occur and we cannot comply with the court order. Is this correct?

THOMAS: If you do not certify the EIR and approve the permits today, the project will make no progress from here based on that project description and based on this particular environmental document.

LIGHTNER: How does that relate to the court order?

THOMAS: Well, the court has -- we submitted to the court a schedule which included the Council making a decision on the environmental document by the end of this month.

LIGHTNER: I understand the schedule. But isn't the court order to return the Pool to the 1941 configuration?

THOMAS: Yes but the Court Order also specified that we not include any violation of state or federal law, so we do have to comply with CEQA and our local permitting standards, the findings the Council would have to be made to grant the permits.

LIGHTNER: Then you have no clue as to what is going on with the new judge and what that does for the hearing dates.

THOMAS: I'll let George Schaefer, the litigator, speak to that.

GEORGE SCHAEFER: George Schaefer, Deputy City Attorney. The previously assigned judge, Judge Yuri Hoffman, he recused himself in the matter and the City Attorney's office received notice on Friday that the case has been reassigned, we're now assigned to Judge Timothy Taylor. We have not been notified by Judge Taylor's clerk as to when the hearing on the City's pending motion to vacate the injunction will be scheduled. We have to seek clarification from the court as to whether it will still go forward on October 6 as Judge Hoffman has intended, or if, because of Judge Taylor's schedule it will have to be another date. I'm in the process of doing that.

LIGHTNER: I have a question about the motion to vacate. Is that something Council actually took action on?

SCHAEFER: Let me respond in this manner. Council voted in February to ask the state legislature to amend the trust to allow greater discretion by the Council in terms of how the Children's Pool can be used. The legislation was passed and the governor did sign it. The City Attorney's office filed a motion to vacate the injunction based on the fact that there's now a new law that, when it becomes effective January 1, will give this Council the discretion to have a marine mammal park. I can't go into litigation strategy but I can say what is court record, which is that the motion basically contends that because of the change in the law, it's

entirely appropriate for the court to determine whether the injunction should be vacated.

HUESO: Ms. Lightner, how many more questions do you have?

LIGHTNER: I don't remember voting on that. I know I have only missed one closed session. I'm curious as to when we decided that we would proceed with a request to vacate the court order.

SCHAEFER: You are correct in that there was not a formal vote by the Council to request that the court vacate the injunction, but the City Attorney's office was certainly aware that it was Council's request that the legislation be passed. A vote was 7-1 to afford Council greater discretion and consistent with that vote of the Council, the City moved to vacate the injunction. Also because of the enormous additional cost that would be incurred to taxpayers if this injunction must be complied with in the future when the law is changing anyway January 1. There were many factors involved but there was not a formal vote per se by Council to seek that the injunction be vacated.

HUESO: Ms. Frye?

DONNA FRYE: The action before us today is to certify the Environmental Impact Report and to approve the coastal development permits and the site development permits, is that correct?

HUESO: Yes.

FRYE: Because we are a legislative body even though the court has said that we are to do something, is there anything a court can do to compel me as a legislator to compel me to vote a certain way on the CEQA documents?

DYE: I think I would defer to our City Attorney's office to advise you on that.

THOMAS: As I understand the current court order there would be nothing precluding you from exercising your legislative discretion.

FRYE: Regardless of how I vote I would be exercising my own discretion and as such I would not be out of compliance with any court order is that correct?

THOMAS: The schedule submitted to the court just included a decision by the end of this month.

FRYE: The decision, whatever that might be.

THOMAS: Yes.

FRYE: Not a pre-determined decision.

THOMAS: Exactly.

FRYE: Thank you.

HUESO: Ms. Emerald?

MARTI EMERALD: I'll piggyback off that last question. Does the new law that's now in place, or that was signed by the governor and becomes effective January 1, does that preclude the requirement to dredge the Children's Pool?

THOMAS: The language that was added to the City's trust –

EMERALD: Based upon whatever future decision this Council makes on the use of that pool. Go ahead. Sorry.

THOMAS: The language was simply added. it didn't delete any previous language in the trust, but it adds language "marine mammal park for the enjoyment and educational benefit of children." So that is an additional use that can be made of the property. So it does not preclude dredging, it does not require it. In fact it doesn't really address the dredging, it would just give the City the discretion to have that additional use of the property.

EMERALD: So until this Council decides what those uses for the pool might be are we sort of putting the cart in front of the horse here on what kind of dredging project or reconfiguration we do going forward?

THOMAS: Well, you do have competing direction and concerns at this point, but until such time as the City can appear back in front of the new judge, and seek clarification or seek relief from the previous injunction, the status is that the schedule includes the Council making a decision on the environmental document by September 30th.

DYE: I might add, approval of the permits would be in place for three years to execute those permits. There are several federal permits that need to be acquired, which take a significant amount of time to acquire, so there's time before the first spade of sand would be turned, so to speak.



EMERALD: I just want to make sure I understand, were we ordered basically to shoo the seals away and clean it up? Was that basically what we're being told to do? Just want to make sure i understand completely.

SCHAEFER: There's two orders involved in this case. The first was rendered in 2005. That's the order requiring the Children's Pool be returned to its 1941 configuration. That says nothing about shooing seals or dispersing seals, however Judge Hoffman clarified at the request of plaintiff's Council that that order also requires that the City disperse the seals and do so immediately. Judge Hoffman stayed the order requiring immediate dispersal of the seals pending the outcome of the hearing on the City's motion to vacate the original injunction.

EMERALD: Gotcha. so this is going to be tied up in court for a while yet. To know whether we have to go forward with any kind of action plan for dredging or whatever.

SCHAEFER: Well, as Ms. Thomas pointed out, the order requiring that the Children's Pool be reconfigured is still in effect. The City is obligated to comply, but the only means by which the City can seek relief from that is what the City is doing, asking the court based on the change in the law to vacate that order. The court rules are very clear. The court does have that authority when there's a change in the law.

EMERALD: OK, I just want to get that sense. Thank you very much, Mr. Schaefer. Then could somebody explain why the planning group did not offer up a recommendation on the EIR? Were they divided on it? Did they not like it? Why did they not forward on a recommendation?

LIGHTNER: Can I offer a brief explanation? The permits and environmental document came to the planning group I think the Friday before Thursday meeting

in a rush so that they could meet the court deadline. So there was -- I don't know that they refused --

DYE: I was at the meeting. The sense I got was that they had provided comment on the EIR through the review process. Felt that whether or not they felt their issues were adequately addressed or not, there may have been some debate about that, so rather than rehash that at their meeting and go over that they felt they had given their input through the review process. They may not have been happy with the answers but they didn't want to include that in their recommendation so they just voted on the permits.

EMERALD: Well, but for whatever reason, they didn't endorse the EIR.

DYE: Was that a question?

EMERALD: Yes.

DYE: They made no recommendation.

EMERALD: One last question. I'm glad the picture is up. Where did you say again that you would deposit the sand that's going to be dredged out? We're looking at the pool, then we go up --

DYE: I'm trying to show the sand beach to the south.

EMERALD: OK.

DYE: that's where the sand would be deposited.

EMERALD: it would be deposited on land? No.

DYE: that's my understanding. It's on the beach itself.

EMERALD: okay. Would that be subject to any kind of erosion, tide movement, with the sand going someplace else? like with the waves or the current, would that carry that right back –

DYE: That's a fairly technical question, believe it or not. I have staff to try to answer that for you.

EMERALD: Thank you.

JIM QUINN: Jim Quinn, engineering geologist with development services. we actually have a coastal expert on the project that I would like to address that question.

EMERALD: Thank you. the reason I ask, there are so many of these projects where we move sand around and a couple years later it's right back where we hauled it out in the first place.

RHINEHART FLICK: My name is Rinehart Flick. I'm a consultant on this project can terra costa consulting group. I think the short answer is no. The sand if it's put on south costa is not likely to end up back in the pool, not very quickly at least, because the general drift of sand is to the south. That's one of the reasons to put it there in the first place.

EMERALD: Thank you very much.

HUESO: Sir, if you could just come back up here a minute.

FLICK: I'm Rinehart Flick.

FRYE: So I just wanted to ask you a question. You dredge the sand out and put it on a beach over here. Do you think when you dredge the sand out that there's a likelihood that sand will continue to migrate, not the sand you dumped but new sand would actually come in and fill up the existing Children's Pool area again based on the fact there's a sea wall there?

FLICK: Well, sure.

FRYE: That's all I needed to know.

FLICK: On a very slow basis, a small amount of sand per year.

HUESO: OK Mr. Flick, I have several questions. Sorry. I know, I should have waited until you fully sat down. [Laughter] I'm sorry. There's a very known scientific fact in terms of having to do with relocating sand on the waterfront, you put it in one place it causes erosion in another. We have had a lot of opportunities to see projects up and down the coastline in which that's a fact. Isn't that what can happen here when you change the tidal flows along the coastline that you can cause erosion somewhere else?

FLICK: The short answer in this case again is no. Or at least almost certainly not. We actually anticipated this question and did a lot of thinking about this over the last couple of days, and Mr. Dye has some slides at the back of his

presentation. Go to the last one, which I think addresses this point. Hopefully we'll be able to read this. I know I can't. [Laughter] Is there any way to darken the room a little bit? If you read those bullet points on the left -- my eyes can't focus on it. Is there a printout of this thing? The point here is I have put some light arrows that you can see on the slide. that's meant to give a qualitative view of the sand transport as existed in the time before this photo was taken in February 2008. It's a google earth photo. What you can see starting at boomer beach is these pocket beaches are wider on the south than they are in the north. what that suggests is a southward movement of sand. Makes sense because as we have other slides in your packet because of the northwest approach of waves in this area, sand transport is generally to the south. But what you see is these isolated pocket beaches are exactly that, isolated pocket beaches. The kinds of effect that you were talking about is most commonly observed on very long state beaches, moderately long, like La Jolla shores or the beaches from Oceanside south in north county. this environment with these very small, isolated pocket beaches is a totally different environment. So actions in one beach, removal of sand or addition of sand in one of these small pocket beaches, is much less likely to affect the sand and the cliff erosion, I think that was one of the concerns, if the northern beaches erode because of taking sand out of casa, that somehow there's a magnet and somehow the northern beaches – the sand from the northern pocket beaches gets sucked into the casa pool at a greater rate, but there's no mechanism for that. for that to happen because the sand transport is wave driven, the excavation in the casa pool would somehow have to alter the waves as far north as boomer beach and shell beach and there's no mechanism to do that.

HUESO: Okay, thank you for being here. I think you can safely sit down now.

FLICK: You sure?

HUESO: We'll go to public speakers. Cindy Benner, are you here? And Valerie San Filippo, who is opposed, but declined to speak. Miss Benner?

CINDY BENNER: I'm Cindy Benner, I'm President of Friends of the Seals. I hope that most of you have had a chance to read the final EIR, and noted that it dismisses most of the public comment as being outside the scope of the EIR. A lot of people have reviewed this, a lot have had experience in reviewing EIRs, and it amazes me that so many people are totally off target in the comment they submitted. It seems to me that due to the deadline of September 30 the City is trying to move as quickly as possible and possibly circumvented the preferred process, to have the Army Corps of engineers do the initial study. They are much more informed on this. Plus by having a consultant instead the City still is going to have to pay the corps of engineers to do their own study. This is just an additional cost that the City will have to pay for down the road. Also in the final EIR, -- not the City, but the final EIR stated numerous times it disagreed with the federal agency's own established procedure. Furthermore, the final EIR states the seals could possibly haul out at another beach, such as Shell Beach, which is a very short-sighted statement since they have a high degree of sight fidelity. Dredging to 1941 conditions would not remove all the sand, many seals, as many seals as possible will continue to haul out on that small portion of sand that's left. Even if they did eventually move to Shell Beach, the City would create just another problem. The EIR conclusion is that recreational resources will not be impacted. Did someone not read SB428, which specifically adds for the enjoyment and benefit of children? If the beach is dredged and sand removed won't this negatively impact this activity? Won't it also negatively impact the 120,000 visitors that come to see the seals if most of them can't haul out? How can the City refuse to admit that recreational seal watching is not a valid beach goer activity? As far as some of the other statements made, I apologize for my confusion, but some of the questions, you can answer these later, I'm wondering how many permits have been obtained so far? Has there been one from the California Coastal Commission? It sounds like you plan on getting one from the Army Corps of engineers later. Have you gotten the permit from CEQA? Oh. Is it possible for just a few more questions?

HUESO: Questions or comments?

BENNER: Questions.

HUESO: Give us one more sentence - let's wrap it up.

BENNER: Where did the sand come from that's now on casa beach? The statement was made that the flow of sand south won't be significant, but the fact that there is a significant beach there now proves this is going to continue to happen and the City is going to be facing this problem and having to continue to dredge the beach.

HUESO: Thank you, ma'am. Miss Frye, how much time would you like?

FRYE: Five minutes. This action before us today -- specifically we're being asked to make a determination to certify a final Environmental Impact Report and i have read this and had some problems as far as the analysis that has been provided or not provided. One thing that we know is that the City of San Diego has pushed to have legislation approved which was approved to allow the area to be used for seals. I do not see an analysis of that in this document. The other issue that is moving forward in conjunction with that particular piece of legislation is the fact that there's a push under the MLPA to turn this area into a marine protected area. Even though it was mentioned in the EIR, I don't see any sort of analysis about that and what the effects of this action may be as far as our ability to do that. I also was looking and found in the conservation element that the proposed project is inconsistent with the general plans, specifically that requirement or guideline to promote aquatic biodiversity and habitat recovery. I think it's probably completely inconsistent with that. There were some other issues where I felt the analysis was incomplete and one of the concerns that one of the speakers raised that I also had was specifically related to the comments -- let me find the exact page. There were comments that were made by the department of the Army. I would like to go over those briefly as far as some of the reasons that I could not support certifying the Environmental Impact Report. One concern raised, that they say that they are concerned with the lack of integration of the California Environmental Quality Act and the National Environmental Policy processes. The Council implementing NEPA requires the state to cooperate with state and local agencies to reduce duplication between NEPA and comparable

state and local requirements. Such cooperation includes joint documents so one document will comply with all application able laws. During our October 10, 2008, meeting, we encouraged the City to prepare a joint document in lieu of only preparing an EIR. By not preparing a joint document the corps will need to independently explore and evaluate all reasonable alternatives to the proposed actions which may differ from those in the Environmental Impact Report and analyze the direct, indirect and cumulative results. As noted above, preparation of a joint CEQA-NEPA document would have reduced duplication of effort and been more efficient. We encourage the City to reconsider its decision to prepare the finalized, a separate Environmental Impact Report and pursue a joint document with the corps. The City would need to expend some effort along with the corps. one of the things I need to make certain findings as to whether I would support or not support an environmental document is the certainty that all options have or had been put in front of me, that I had looked at all potential alternatives. Certainly I was not able to do that and I don't think it could have been made much more clear than by the department of the Army. There were a variety of other documents that were provided as comments from a variety of agents, but this was probably the most compelling for me, so I cannot make the finding.

HUESO: Two more minutes?

FRYE: Sorry. I cannot make the finding --

HUESO: Ms. Frye, how many more minutes? Two more minutes?

FRYE: I think so. There are certain findings I want to make sure are in the record and that are clear as to why I believe that the Environmental Impact Report is not adequate and why I believe that it cannot be certified at this time. So for me, the failure to have that joint document prepared did not allow me as a legislator, as a member of the City Council, to actually look at all the proposals and to actually have all the analysis for the direct, indirect and cumulative impacts of the proposal, as well as any alternatives in the comparative form to analyze. Lacking that information, it would be my motion not to certify the Environmental



Impact Report and to direct staff to return and work with the Army Corps in order to prepare a joint document while the litigation is moving forward.

EMERALD: I'll second that.

HUESO: We have a motion by Councilmember Frye and a second. No further comments. Ms. Lightner?

LIGHTNER: I actually did comment on the EIR, and was quite pleased with the results of the EIR, and will support -- I will not be able to support the motion. I already have a recommendation from my community planning group.

HUESO: Very well. We have a motion by Councilmember Frye, seconded by Councilmember Emerald. Please vote. Clerk please call the roll. That passes 7-1 with Councilmember Lightner voting no. We have two adjournments in memory. We're at the end of our calendar today. We'll begin with Councilmember Faulconer. You don't? Ms. Frye? Do you still have yours? Okay.

FRYE: I would like to adjourn today's meeting in memory of Don Mackey, senior, who recently passed away unexpectedly at his home in Linda Vista. Don had what many duffers would say was the perfect job. He was the City's first golf superintendent. Don oversaw development the now world famous Torrey Pines course but he started with a seemingly impossible assignment. In the mid 1950's, the City had allocated just over half a million dollars to turn the 343 acre former U.S. Army camp cowan into a pair of municipal golf courses designed by William Bell, senior, but the money ran out and when Don took over in April 1957, his marching orders were to have the south course in shape to open within two months. Don Mackey was not one to despair. He assembled the City crew, went to work and opened on time in June of that year. Over the next 34 years as San Diego's golf superintendent he had the pleasure of seeing Torrey Pines become the jewel in the basket of golf courses across the United States. He wanted to

keep green fees low for the locals. He knew golf was a passion for a lot of people and he wanted to make sure they could use the golf course. Ironically just one Torrey Pine existed so Don gathered pine cones and grew seedlings at home in coffee cans. Over the decades the course has become populated with Torrey Pines, adding to their distinction. He stopped playing golf in recent years but his son got tickets for the 2008 U.S. Open and the old greenskeeper was mightily impressed with the present state of the old course. He thought it was beautiful and that the whole experience was top notch, Don Mackey, Jr said. A service was held in August. The family asks that donations be made to the San Diego Humane Society. Our thoughts and prayers are with the Mackey family.

HUESO: We will adjourn to the next Council meeting of Thursday, September 24, at 2:00 P.M. Thank you for being here.