

Judge sends seal rope matter back to Planning Commission

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By Dave Schwab

Staff Writer

Superior Court Judge Lisa Foster on Friday sent the matter of the rope barrier at La Jolla's Children's Pool back to the city Planning Commission, asking them to clarify what constitutes "encroachment."

Foster, however, said her decision "does not mean the rope goes back up because there's no permit in place."

Foster also seriously questioned whether the courtroom was the appropriate venue to decide whether the rope barrier separating humans from seals at the pool should be up and for how long.

"This is quintessentially a political issue now," she said. "I think this belongs back in City Hall, not in the Hall of Justice."

Foster noted there are two distinct groups with competing views of how the pool as a public resource should best be used. Local government is the best arena in which to frame that debate, she said.

An animal rights groups, the Animal Protection and Rescue League (APRL), was in Foster's court challenging a ruling by the city Planning Commission that had reversed an earlier decision by the City Council that supported a year-round rope at Children's Pool.

The mostly visual barrier is put up from mid-December to mid-May during the marine mammals' pupping season. Animal rights advocates insist it should be up year-round to protect seals from what they say is ongoing human encroachment.

Foster noted tongue-in-cheek that there is an analytical gap "the size of the Grand Canyon" in the Planning Commission's decision that the rope barrier during pupping season doesn't constitute encroachment into the public's right-of-way on the beach, yet it does constitute encroachment the rest of the time.

“The Planning Commission needs to address this gap in their reasoning,” she concluded.

The judge also said there was other procedural confusion that needs to be clarified as to why the Planning Commission’s decision denying the year-round barrier is not appealable to the California Coastal Commission.

APRL attorney Bryan Pease warned that if the Planning Commission makes the same decision it did before that the case “may end up back here again (court).”

“I hope that is not the case,” replied Judge Foster.

Source: <http://www.lajollalight.com/news/2011/jul/15/judge-sends-seal-rope-matter-back-to-planning/>