DATE ISSUED: June 5, 2008 REPORT NO. PC-08-080

ATTENTION: Planning Commission, Agenda of June 12, 2008

SUBJECT: La Jolla Children's Pool Rope Barrier, PROJECT NO. 119757, PROCESS 3 Appeal

OWNER City of San Diego

APPLICANT: Park and Recreation Department

SUMMARY

Issue(s): Should the Planning Commission approve an appeal of the Hearing Officer's approval to erect a rope barrier, including support posts and foundations, at the La Jolla Children's Pool, located west of Coast Boulevard, near Jenner Street, in the La Jolla Community planning Area?

Staff Recommendation: Deny the appeal and approve Coastal Development Permit No. 545642 and Site Development Permit No. 5456421 and

Community Planning Group Recommendation: Due to the emergency nature of this project, no recommendation was obtained from the La Jolla Planning Association. A prior 7-2 vote on January 3, 2008 recommended denial of the Coastal Development Permit indicating that findings 1, 2, and 3 could not be made.

Environmental Review: This activity is EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) pursuant to: Section 15304 of the State CEQA Guidelines (minor alterations to land), and Section 15333 of the State CEQA Guidelines ("Small habitat restoration projects").

Fiscal Impact Statement: None with this project.
**Code Enforcement Impact:** None with this project.

**Housing Impact Statement:** None with this project.

**BACKGROUND**

**PLEASE NOTE:**

This is an appeal of an April 23, 2008 Hearing Officer approval of a permit allowing the rope barrier to be placed until May 30th, 2008. That date has passed and the rope has been removed. After informing the appellant that the earliest the appeal could be heard was June 12, 2008, he indicated that he would still like the appeal hearing to go forward. The City attorney’s Office has advised Development Services to accept the appeal and schedule the hearing.

Over the last two years, a rope barrier has been placed at the La Jolla Children’s Pool in an effort to create a buffer between humans and seals, and simultaneously allow swimmers access to the ocean. The rope has been strung from the seawall on the western side of the sand beach to a point near the bottom of the coastal bluff (Attachment 2). The rope has been placed during the seal pupping season, generally regarded as approximately December through May. In addition, superior and state appeal courts have ruled in a legal matter that the Children’s Pool should be returned to its 1941 configuration. This would entail dredging the accumulated sand from the beach, thereby reducing the size of the beach area. It is expected that the seals, annually hauling out at the Children’s Pool to rear pups and rest, would no longer do so.

However, on March 10, 2008, the Ninth Circuit Court of Appeals (federal) stayed the earlier ruling preventing the placement of the rope barrier and allowed the rope to be placed until May 30, 2008 (Attachment 2). The prior installations had been permitted until May 15, 2007. On March 19, 2008, the City Attorney’s Office opined that an emergency existed at the La Jolla Children’s Pool and that the emergency necessitated the installation of a rope barrier (Attachment 12). Based on that opinion, the Development Services Department approved an emergency Coastal Development Permit to allow the emergency placement of a rope barrier at the La Jolla Children’s Pool (Attachment 2). The rope barrier was erected by the Park and Recreation Department. The project is located in the La Jolla Community Planning area, within the Coastal Zone. The site is in the LJPD-5 zone, and is adjacent to Open Space and Park land use designations in the La Jolla Community Plan (LJCP).

Land Development Code (LDC) Section 126.0718 (Emergency Procedures for Coastal Development Permits) requires that any emergency development subsequently process a standard Coastal Development permit. Also, LDC Section 143.0110 requires that the rope barrier project obtain a Site Development Permit for Environmentally Sensitive Lands due to its location within a Coastal Beaches resource. On April 23, 2008, the Hearing Officer approved Coastal Development Permit No. 545642 and Site Development Permit No. 545642. The April 23, 2008 Hearing Officer approval
has been appealed by Mr. John Leek (Attachment 1).

**DISCUSSION**

**Appeal Issues**

1. Permit Not Updated

   **Issue**

   The permit to be issued was a reprint of a permit issued in 2006 and was not updated to reflect the new conditions under which it arose, nor was it published with the hearing notice.

   **Response**

   The conditions under which the need for the current proposed permit arose do not affect the resulting draft permit. The permit reflects the need for a follow-up Coastal Development Permit following the emergency permit that was issued, and reflects the physical placement and duration of the rope barrier. Additionally, draft permits are not published with the hearing notice.

2. Planning Group Vote

   **Issue**

   The hearing officer had issued a notice of public hearing in 2007 for the permit application. He had specified in a December 22 Notice of Application that this public input would come from the La Jolla Community Planning Association. That body did hold a public hearing and voted 7-2 to deny the application for permit.

   **Response**

   The January 9, 2008 hearing was noticed, but the hearing was not held. The City Attorney’s Office advised Development Services not to go forward with the hearing in that, just prior, the State Supreme Court had refused to hear an appeal of the State Appeals Court ruling on the rope issue. The Appeals Court upheld the Superior Court’s ruling to return the pool to its 1941 condition. Doing so would in effect eliminate the rope issue as the sand used by the seals to haul out and rear pups would be removed. Therefore, the January 9, 2008 hearing on the rope issue did not take place. On August 2, 2007, the La Jolla Community Planning Association tabled the rope barrier issue on their agenda expecting these court rulings. The LJCPA met and voted on the project on January 3, 2008, expecting a January 9, 2008 hearing, but the project report and associated materials had already been distributed to the Hearing Officer, so that vote was not included. Development Services staff was not made aware of this LJCPA meeting or vote. The January 3, 2008 vote was 7-2 to recommend denial of the Coastal Development Permit for the Rope Barrier at the Children’s Pool, indicating findings 1, 2 & 3 could not be made. No new
recommendation vote was taken by the group on the application for the follow-up permit being appealed today.

3. Permit Need

Issue

The permit is for a rope already installed, so there was no rope installation to be permitted. It is a waste of City resources to do this and incur liability too.

Response

The rope was installed under an emergency Coastal Development Permit (CDP) and a follow-up standard CDP is required.

4. Denying Access

Issue

The permit was for a rope that allowed public access and was not to be considered a hindrance to public to access the beach. Yet the City has used Private Security guards and even lifeguards to demand the public stay behind this rope. Therefore, the City has repeatedly violated the terms of the permit before it was approved and so should not now be granted a permit it has misused in the past. It will only put the City on record as deserving a contempt of court sanction when the O'Sullivan grace period runs out in mid-May.

Response

The rope is not intended to be a hindrance to beach access. City staff may have asked beachgoers to stay behind the rope in the area immediately adjacent to seals on the beach sand in an effort to prevent any perceived seal harassment. This guidance would not prevent access to the ocean around the easterly end of the rope, where it is open to the water.

5. Rope is Federal Issue

Issue

The supposed purpose of the rope is to carry out the Marine Life Protection Act, but that is a Federal matter, not a municipal one. One person in NOAA requested the City do this, did not order it.

Response

The purpose of the rope is to simultaneously create a buffer between humans and seals, and allow
swimmers access to the ocean. The idea is that swimmers would still have access to the beach around the easterly end of the rope, but entering in this manner would help prevent any harassment of the hauled out seals on the sand.

6. Rope Installed Without Permit

Issue

This rope is already installed with no permit because of a temporary 9th Circuit stay of a superior court order, but the City was not ordered to install the rope, the City was only allowed to install the rope. The decision rested solely on the City and it chose to ignore the State Court and put itself in a position of contempt of court. It is an unneeded permit with a 2 week lifetime has only the purpose of setting up for one next year, demonstrating further to the State Court the City has no intention of paying attention to it.

Response

The recent rope installation has been allowed under Emergency Coastal Development Permit/Site Development Permit No. 539520. This emergency permit was issued based on a City Attorney’s opinion that an emergency existed at the Children’s Pool.

7. Permit End Date

Issue

This permit will only be good until May 15. But the 9th Court permission extends to May 30th. This permit puts the City on record as purposefully defying the State Court order, and then the permit will terminate in mid May and the City will have to make a decision whether to defy the state court for two more weeks with no permit for itself. This is a bad position for the City to put itself in. It can just leave the rope up with no permit until May 30th with no complications.

Response

This permit would have allowed the placement of the rope until May 30, 2008. As that time period has elapsed, and the rope has been removed, the issue is moot. The proposed permit, if approved, would have allowed the rope to be placed until May 30, 2008. This would have been due to the Ninth Circuit Court’s stay indicating the rope could be placed until that date. It should be noted that the City is proceeding with the project to dredge the Children’s Pool. Initial work on the project’s associated Environmental Impact Report has begun. It is not know at this time if the project will be completed by the start of the next seal pupping season in December of 2008. If not, the issue of the need for a rope installation may arise again.
8. Hearing Speaker Order

Issue

During the hearing on 4/16, the speakers Against were interrupted by the arrival of 2 more speakers in favor who were allowed to go in front of us. This is contrary to the regulations requiring all speakers have filled out slips before the start of the meeting. Such blatant favoritism was poor form, should not have been allowed and invalidated the proceedings.

Response

The intent of the Hearing Officer in allowing the speakers to turn in speakers slips and testify was to complete the testimony from those in favor of the rope permit and then complete the testimony from those opposed. There was no attempt at favoritism.

Conclusion

The physical conditions at the La Jolla Children’s Pool remain as in past years. There was no need to create a varied permit as the draft permit conditions remained applicable as in previous permits. The La Jolla Community Planning Association recommendation vote of January 3, 2008 is reflected in this report. That information was not know prior to the planned January 9, 2008 hearing, which never took place. The current application for a follow-up standard permit is the result of an emergency permit issued following the City Attorney’s opinion that there was an emergency at the Children’s Pool. The January 3, 2008 recommendation vote by the La Jolla Community Planning Association was on the issue of the rope placement, but the follow-up standard permit was not before them at that time. The permit before the Planning Commission today is not for a rope already installed as contended in the appeal. The rope was installed under an emergency permit. The rope is not intended to be a hindrance, but to serve as a guideline in an effort to avoid seal harassment while allowing ocean access.

Given these facts, staff is recommending that the Planning Commission deny the appeal and approve the project.

ALTERNATIVES

1. Deny the appeal of Coastal Development Permit No. 545642, and Site Development Permit No. 545642, with modifications.

2. Approve the appeal and deny Coastal Development Permit No. 545642, and Site
Development Permit No. 545642.

Respectfully submitted,

Mike Westlake  
Program Manager  
Development Services Department

Morris E. Dye  
Project Manager  
Development Services Department

Attachments:

1. Appeal by Mr. Leek  
2. April 23, 2008, Report to the Hearing Officer, with attachments.

e:\rope\ropecappealreport.doc
Development Permit Appeal Application


1. Type of Appeal:
   - Process Two Decision - Appeal to Planning Commission
   - Process Three Decision - Appeal to Planning Commission
   - Process Three Decision - Appeal to Board of Zoning Appeals
   - Appeal of a Hearing Officer Decision to revoke a permit
   - Process Four Decision - Appeal to City Council

2. Appellant Name: Please check one
   - Applicant
   - Officially recognized Planning Committee
   - "Interested Person" (Per M.C. Sec. 113.0103)

   JOHN LEAK

   Address: 3090 Admiral Ave
   City: SAN DIEGO
   State: CA
   Zip Code: 92108
   Telephone: 858-610-4924

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

4. Project Information
   - Permit/Approval Being Appealed & Permit/Approval No.: 119757
   - Date of Decision: 4/23/08
   - City Project Manager: Morris Dye

   Decision (describe the permit/approval decision):
   "DECISION TO APPROVE PERMIT FOR INSTALLING A ROPE BARRIER ACROSS CHILDREN'S POOL BEACH UNTIL MAY 15"

5. Reason for Appeal
   - Factual Error
   - New Information
   - Conflict with other matters
   - City-wide Significance (Process Four decisions only)
   - Findings Not Supported

   Description of Reasons for Appeal (Please relate your description to the allowable reasons for appeal noted above. Attach additional sheets if necessary.)
   "PLEASE SEE ATTACHED LETTER"

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

   Signature: [Signature]
   Date: 5/16/08

Note: Faxed appeals are not accepted.

This information is available in alternative formats for persons with disabilities.
To request this information in alternative format, call (619) 448-5446 or (800) 735-2929 (TT)

DS-3031 (03-03)
Re: appeal of decision to issue permit for Project 119757; REVISION 5/7/08

Dear Sirs,

This is to enter an appeal of the decision to give a permit to the Parks and Recreation to erect a rope barrier at Children’s Pool. The decision was made on April 23, after continuance of a public hearing on April 16th. At the public input phase, I presented a case against the issuance of that permit on several grounds.

1. **Factual Error:** The permit to be issued was a rewrite of a permit issued in 2006 and was not updated to reflect the new conditions under which it arose, nor was it published with the hearing notice. There was no emergency, and the Hearing Officer erred in deferring to the City Attorney without determining the nature of the “emergency” and erred by settling for the City Attorney “opining” instead of citing case law. It is stated in the permit that it is to protect seals during their pupping season through May 30th. But after mid-April, you have to call it something else.

2. **New Information:** The hearing officer had issued a notice of public hearing in 2007 for the permit application. He had specified in a Dec 22 Notice of Application that this public input would come from the La Jolla Community Planning Association. That body did hold a public hearing and voted 7-2 to deny the application for permit. The 9th Circuit stayed a court order that had not been in force when LJCPA had their hearing so nothing was changed when the stay was granted.

3. **Findings not supported:** The permit is for a rope already installed, so there is no rope installation to be permitted. It is a waste of City resources to do this and incur liability too.

4. **Conflicts:** The permit was for a rope that allowed public access and was not to be considered a hindrance to public to access the beach. Yet the City has used Private Security guards and even lifeguards to demand the public stay behind this rope, so the City has repeatedly violated the terms of the permit before is was approved and so should not now be granted a permit for a construct it has misused in the past. It will only put the City on record as deserving a contempt of court sanction when the O’Sullivan grace period runs out in mid-May. The practices of the City to restrict access already have violated the permit as well as the Coastal Act.
(violate the Coastal Act) or at least install the rope, used the date May 15. That was good enough for him. He fudged a bit when he noted pupping season was through April instead of mid-April as their wildlife biologist Joe Cordaro has said, but there is no exact date, of course.

What the City Council voted on 12/15/06 was a proposal brought by NR&C committee that was dictated to it by SaveourSeals Coalition, as they were the only speakers aware of the 11/15 NR&C meeting and ran the show. It was they who tendered the rope placement dates, with no scientific or legal evidence to back them. This can all be reviewed on City video archives. http://granicus.sandiego.gov/ViewPublisher.php?view_id=14 start time 1:27. Not only the NR&C proceeded without opposing views being taken, their original proposal included replacing the rope with steel cable; an indefensible violation of the Coastal Act, and solely at the behest of a special interest group.

I appreciate your attention and look forward to resolving our differences in this matter

Sincerely yours,

John Leek

JLeek001@san.rr.com 858-610-4724
REPORT TO THE HEARING OFFICER

HEARING DATE: April 23, 2008
REPORT NO. HO 08-073

ATTENTION: Hearing Officer

SUBJECT: LA JOLLA CHILDREN’S POOL ROPE BARRIER COASTAL DEVELOPMENT PERMIT NO. 545642 and SITE DEVELOPMENT PERMIT NO. 545644, FOLLOW-UP TO EMERGENCY COASTAL DEVELOPMENT PERMIT NO. 539520
PTS PROJECT NUMBER: 119757

LOCATION: Children’s Pool, west of Coast Boulevard, near Jenner Street, La Jolla.

APPLICANT: Park and Recreation Department, City of San Diego

SUMMARY

Requested Action - Should the Hearing Officer approve a follow-up Coastal Development Permit No. 545642 and Site Development Permit No. 545642 to erect a rope barrier, including support posts and foundations, at the La Jolla Children’s Pool?

Staff Recommendation -

1. APPROVE an application for a follow-up Coastal Development Permit No. 545642.

2. APPROVE an application for Site Development Permit No. 545644.

Community Planning Group Recommendation – Due to the emergency nature of this project, no recommendation was obtained from the La Jolla Planning Association.

Environmental Review – This activity is EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) pursuant to: Section 15304 of the State CEQA Guidelines (minor alterations to land), and Section 15333 of the State CEQA Guidelines (“Small habitat restoration projects”).

Page 1 of 3
BACKGROUND

On April 16, 2008, the Hearing Officer continued La Jolla Children's Pool Rope Barrier issue to April 23, 2008, to allow time for more information to be provided. That information included more detail on the location of the rope barrier at the Children's Pool, a statement on the determination that the rope should be installed until May 30, 2008, and a copy of the prior report to the Hearing Officer on the issue. That information has now been supplied.

On March 10, 2008, the Ninth Circuit Court of Appeals stayed an earlier ruling preventing the placement of the rope barrier and allowed the rope to be placed until May 30, 2008 (Attachment 11). A prior installation had been permitted until May 15, 2007. The stay gives no reason why the 30th of the month was selected verses the 15th of the month.

On March 19, 2008, the City Attorney's Office opined that an emergency existed at the La Jolla Children's Pool and that the emergency necessitated the installation of a rope barrier (Attachment 12). Based on that opinion, the Development Services Department approved an emergency Coastal Development Permit to allow the emergency placement of a rope barrier at the La Jolla Children's Pool (Attachment 1). The rope barrier was erected by the Park and Recreation Department. The project is located in the La Jolla Community Planning area, within the Coastal Zone. The site is in the LJPD-5 zone, and is adjacent to Open Space and Park land use designations in the La Jolla Community Plan (LJCP).

DISCUSSION

Land Development Code (LDC) Section 126.0718 (Emergency Procedures for Coastal Development Permits) requires that any emergency development subsequently process a standard Coastal Development permit. Also, LDC Section 143.0110 requires that the rope barrier project obtain a Site Development Permit for Environmentally Sensitive Lands due to its location within a Coastal Beaches resource. Development Services accepted an application from the Park and Recreation Department for both permits. The application is for the installation of a rope barrier, held in place by four, vertical posts and their associated footings. The posts and footings are installed by hand. The posts are set in concrete, in small containers, the footings are covered with sand, and would be installed approximately 30 apart (Attachment 5).

The rope length from the seawall to the last support post near the concrete stair access is 130 feet. The westerly end of the rope is attached to the seawall 82 feet from the bottom of the stairs leading down from the lifeguard station to the seawall as shown in Exhibit “A” (Attachment 5). The easterlymost post would be placed three feet from the nearest obstruction near the bottom of the easterly access stairs. At present, the nearest obstruction is a four-foot wide rock adjacent to the stairs. This installation would create a three-foot beach access opening in the rope. This opening is to allow the public to have access the ocean.
Informational signs measuring 18-inches by 24-inches may be attached to the rope posts, warning beachgoers to observe the seals from a distance, advising that harassing the seals is against the law, that the beach is open, that swimming is allowed, but not recommended due to possible high bacteria levels.

Due to the emergency nature of the project, the project did not appear before the La Jolla Planning Association for an advisory vote. However, the public notice for this hearing was sent to the Association, allowing it an opportunity to testify before the Hearing Officer at today’s hearing.

ALTERNATIVES

1. Approve Coastal Development Permit No. 545642 and Site Development Permit No. 545644, with modifications.

2. Deny Coastal Development Permit No. 545642 and Site Development Permit No. 545644, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

[Signature]
Morris E. Dye, Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Emergency Coastal Development Permit No. 539520
5. Project Site Plan(s)
6. Draft Permit with Conditions
7. Draft Resolution with Findings
8. Ownership Disclosure Statement
9. CEQA Exemption
10. January 24, 2007 Report to the Hearing Officer
11. Ninth Circuit Court’s Stay Order
12. City Attorney’s Opinion
13. Site Photos
Community Land Use Map

La Jolla Community Plan
City of San Diego · Planning Department
La Jolla Children's Pool Rope Barrier
COASTAL DEVELOPMENT/SITE DEVELOPMENT PERMIT NO. 539520
La Jolla Children’s Pool Rope Barrier

This Emergency Coastal Development Permit/Site Development Permit is granted by the City of San Diego to the City of San Diego Park and Recreation Department, Owner/Permittee, reliant on City Attorney’s Memorandum, dated March 19, 2008, determining that an emergency exists warranting an Emergency Coastal Development Permit for placement of a rope barrier at the Children’s Pool, and pursuant to San Diego Municipal Code [SDMC] sections 126.0718 and 143.0126. The site is located at the Children’s Pool, west of Coast Boulevard, near Jenner Street in the Coastal Overlay zone of the La Jolla Community Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install a temporary rope barrier on an emergency basis to protect seals during their pupping season, through May 30, 2008 as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated March 19, 2008, on file in the Development Services Department.

The project shall include:

Rope, supporting posts, and footings;

The applicant shall apply for a standard Coastal Development Permit and Site Development Permit for any work authorized by this emergency permit, pursuant to SDMC sections 126.0178 and 143.0126.

All structures shall be maintained in place as shown in exhibits [Exhibit "A"] dated January 9, 2007, on file in the Development Services Department.

All structures approved by this emergency permit shall be kept out of the water at the Children’s Pool.
APPROVED by the City of San Diego on March 19, 2008, Resolution No. CM 5958.
CHILDREN'S POOL ROPE BARRIER

- Rope - 1/2" in. diameter
- Maximum 4 feet high
- Post in concrete foundation
- Post not to exceed 4 feet in height
- Post may have 18" x 24" City of San Diego informational sign attached
- 3 feet open for ocean access
- Lifeguard station

EXHIBIT "A"
COASTAL DEVELOPMENT PERMIT NO. 545642
SITE DEVELOPMENT PERMIT NO. 545644
La Jolla Children's Pool Rope Barrier

This Coastal Development Permit/Site Development Permit is granted by the City of San Diego to the City of San Diego Park and Recreation Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0718 and 143.0126. The site is located at the Children's Pool, west of Coast Boulevard, near Jenner Street in the Coastal Overlay zone of the La Jolla Community Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install a temporary rope barrier during the 2008 seal pupping season, until May 30, 2008 as a follow up to Emergency Coastal Development Permit No. 539520 as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April 23, 2008, on file in the Development Services Department.

The project shall include:

- Rope, supporting posts, support post footings and signs;

All structures shall be maintained in place approximately as shown in exhibits [Exhibit "A"] dated April 23, 2008, on file in the Development Services Department.

STANDARD REQUIREMENTS:

1. This permit must be utilized by May 30th, 2008. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
   
   a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
   
   b. The Permit is recorded in the Office of the San Diego County Recorder.

4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

   In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.
PLANNING/DESIGN REQUIREMENTS:

9. All debris caused by construction must be removed from the site and disposed of appropriately.

10. All materials shall be maintained and managed so as to prevent them from entering sensitive areas including the coastal waters. Placement shall be maintained in location identified on Exhibit "A," during the identified time periods.

11. The westernmost end of the rope shall be attached to the seawall not greater than 82 feet from the beginning of the seawall at the base of the stairs leading down from near the lifeguard station. The installed rope length shall not exceed 130 feet, and a minimum three-foot opening shall be maintained from the post at the easterlymost end of the rope to the nearest obstruction so as to create an opening for beach access. The rope shall not be placed below the Mean High Tide Line.

12. The rope installation shall not use more than four posts, and each post shall not exceed four feet in height. The posts may have an 18-inch by 24-inch City of San Diego informational sign attached.

13. Installed rope height shall not exceed four feet.

14. Rope diameter shall not exceed one half inch in diameter.

APPROVED by the Hearing Officer of the City of San Diego, on April 23, 2008, Resolution No.
WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for a permit to erect a temporary rope barrier (including support posts and foundations), during 2008 seal pupping season, until May 30th, 2008; and

WHEREAS, the project is located at the La Jolla Children's Pool, west of Coast Boulevard, near Jenner Street, La Jolla, within the Coastal Overlay Zone (Coastal Commission Appeal Jurisdiction) and the La Jolla Community Planning Area; and

WHEREAS, on April 23, 2008, the Hearing Officer considered Coastal Development Permit No. 545642 and Site Development Permit No. 545644 (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 545642 and Site Development Permit No. 545644) pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the City of San Diego as follows:

That the City of San Diego adopts the following written Findings, dated April 23, 2008.

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan; and

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would include the rope barrier supported by poles, with pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and the rope would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the 2008 seal pupping season until May 30th, 2008, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels.
possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. The La Jolla Community Plan does not envision the Children's Pool as an improved recreation area, and, therefore, the placement of the rope would not conflict with long range recreation plans for the area. Given that the sand beach and ocean would remain open to the public while the rope would be in place, that the rope's location and type of rope used would not block any identified public views at the Children's Pool, and the placement of the rope would not conflict with future plans for the Children's Pool area, the proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan, and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

2. **The proposed coastal development will not adversely affect environmentally sensitive lands; and**

The adjacent Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The proposed installation of the rope includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. This would allow for the rope barrier to be in place during the 2008 seal pupping season, until May 30th, 2008. At no time would the rope touch the adjacent Coastal Bluff. Proposed permit conditions would require that any debris caused by construction, must be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time periods. As the project involves digging relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions would prohibit any debris or construction materials from entering the ocean, and permit conditions would also prohibit the project affecting the adjacent Coastal Bluff, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

3. **The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program; and**

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the 2008 seal pupping season, until May 30th, 2008, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. Given that
ATTACHMENT 7

the sand beach and ocean would remain open to the public while the rope would be in place, and that the
rope's location and type of rope used would not block any identified public views at the Children's Pool,
the proposed coastal development is in conformity with the certified Local Coastal Program land use plan
and complies with all regulations of the certified Implementation Program.

4. For every Coastal Development Permit issued for any coastal development
between the nearest public road and the sea or the shoreline of any body of water located
within the Coastal Overlay Zone the coastal development is in conformity with the public
access and public recreation policies of Chapter 3 of the California Coastal Act.

Section 30211 of the California Coastal Act requires that no development interfere with the public's right
of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of
terrestrial vegetation. The purpose and intent of Section 30211 is ensure that the public can access the sea
and its associated rock coastal beaches. The purpose and intent of the proposed rope is to create a buffer
between the public utilizing the sand beach and accessing the sea at the Children's Pool, and the seals, as
they are hauled out on the sand during the 2008 seal pupping season until May 30th, 2008. The rope is
not intended to keep the public from reaching either the beach or the sea at the Children's Pool. The
public will be able to enter the sea at the Children's Pool while the rope is installed, due to a three-foot
opening that would be maintained by permit condition. In addition, signage that is posted at the
Children's Pool indicates that the beach is open to the public. Therefore, the proposed rope would not
interfere with the public's right of access to the sea, the use of dry sand and the use of rock coastal
beaches up to the first line of terrestrial vegetation as described in Section 30211.

Section 30220 of the California Coastal Act requires that coastal areas suited for water-oriented
recreational activities that cannot be provided at inland water areas, be protected for such uses. The rope
barrier would not prevent the use of the Children's Pool for recreational activities and no recreational
activities are planned for the Children's Pool area. The rope is not intended to keep the public from
reaching either the beach or the sea at the Children's Pool. The public is able to enter the sea at the
Children's Pool, while the rope has been installed. In addition, signage that is posted at the Children's
Pool indicates that the beach is open for public use.

As the project would not block public access and the beach and ocean would remain open for public
recreation, the project is in conformity with the public access and public recreation policies of Chapter 3
of the California Coastal Act.

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

1. The proposed development will not adversely affect the applicable land use plan;

One of the goals of the Community Facilities, Parks, and Services Element of the LJCP (p. 113) is to,
"Ensure that all new and existing public facilities are designed and developed in a manner that will not
contribute any adverse impacts to the environmentally sensitive areas of La Jolla." The Children's Pool is
located in an area designated as Environmentally Sensitive Lands containing Coastal Beaches and
Coastal Bluffs. The proposed rope installation would have no significant affect on either of these
resources. The proposed rope installation would include hand digging holes in the sand (not exceeding 18
inches in depth), placing the foundation portion of the rope supports in the holes and covering the
foundations up with sand. Proposed permit conditions would require that any debris caused by
collection, must be removed from the site and disposed of appropriately, and would also require that all
materials shall be maintained and managed so as to prevent them from entering sensitive areas, including
the coastal waters. Placement would be required to be maintained in location identified on Exhibit "A,"
during the identified time period. The La Jolla Community Plan also calls for the protection of public
views. The proposed rope would be placed at a height not exceeding four feet and would not exceed one
half-inch in diameter. Given this height and diameter, the rope would not block any public views. In
addition, the La Jolla Community Plan does not envision the Children’s Pool as an improved recreation
area, and, therefore, the placement of the rope would not conflict with long range recreation plans for
the area. As the project would not have any adverse impacts on the Coastal Beach or the Coastal Bluffs,
and the project would not negatively affect any public views or recreation plans for the area, the proposed
development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare;

The primary objective of the proposed rope installation is to serve as a buffer between humans and seals
during the 2008 seal pupping season, until May 30th, 2008. Lifeguards advise beachgoers to avoid
unattended seal pups, as a pup’s mother may be foraging and conflicts could arise upon a mother’s return.
Users are also advised not to place themselves between a seal mother and her pup. While the beach is
open to public use, and beachgoers may pass the rope to enter the beach, the rope’s presence serves as a
caution, and allows users to read signage warning them that it is unlawful to harass the seals, and that the
water may cause illness due to bacteria levels that may exceed health standards. The sign also informs
users that swimming is allowed, but is not recommended, and that the beach is open for public use. As
the project would create a safety buffer between humans and seals, and would provide information to the
beach-going public regarding potential health hazards, the project would not be detrimental to the public
health, safety, and welfare.

3. The proposed development will comply with the applicable regulations of the Land
Development Code.

Land Development Code regulations require that the construction of a project potentially affecting an
environmentally sensitive resource, result in minimum disturbance to that resource. The proposed rope
installation would include digging shallow holes for each post footing and covering them with the sand.
Standard, cord (not exceeding one half-inch in diameter) would then be strung between the posts.
Informational signage would be mounted to the posts to provide the public with safety information. In
addition, the height of the rope would not exceed four feet, and no public views would be obstructed.
None of these activities would significantly disturb the Coastal Beach or Coastal Bluff. As such the
proposed development would result in minimum disturbance of the environmentally sensitive lands, and,
therefore, would comply with the Land Development Code.
B. Supplemental Findings—Environmentally Sensitive Lands

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;

The proposed project site is the sand at the Children’s Pool beach. There is ample sand at the beach to allow the rope support posts to be placed in holes that would be hand dug in the sand, and to cover up the post foundations with the sand when the installation is complete. The proposed rope installation would include digging shallow holes for each post footing and covering them with the sand. Standard, half-inch cord would then be strung between the posts. Informational signage would be mounted to the posts to provide the public with safety information. In addition, the height of the rope would not exceed four feet, and no public views would be obstructed. None of these activities would significantly disturb the Coastal Beach or Coastal Bluff resources. As the site can readily accommodate the installation of the rope barrier project with minimal disturbance to the Children’s Pool beach, and neither the Coastal Beach nor the Coastal Bluff would be negatively affected by the project, the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;

The proposed rope installation would include digging shallow holes (not exceeding 18 inches in depth) for each post footing and covering them with the sand. The rope would be placed above the Mean High Tide Line and, as such, would not create erosional conditions. No geologic forces are expected to be factors with this type of development, and because no structures are proposed, no flood or fire hazards are anticipated. Therefore, the proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;

The proposed installation of the rope would include digging shallow holes (not exceeding 18 inches in depth) in the sand, placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. The rope will be installed in dry sand above the Mean High Tide Line, ensuring the project can be installed and removed with minimal affect on the Coastal Beach and Coastal Bluff. In addition, proposed permit conditions would require that any debris caused by construction to be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time period. Therefore, the proposed development would be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

Page 5 of 6
4. The proposed development will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan;

The project is not located in or near the Multiple Species Conservation Program (MSCP) Subarea. Therefore, the proposed development will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and

The rope barrier pole foundations would be placed in dry sand above the Mean High Tide Line. As such, the project would not create erosional conditions. Sand removed to hand dig the holes for pole installation, would be used to cover the foundations, and therefore, sand would not be removed from the Children’s Pool Beach as a result of the project. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

No mitigation is required of this project. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City of San Diego, Coastal Development Permit No. 545642 and Site Development Permit No. 545644 is hereby GRANTED by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 545642 and Site Development Permit No. 545644, a copy of which is attached hereto and made a part hereof.

Morris E. Dye
Development Project Manager
Development Services

Adopted on: April 23, 2008

Job Order No. 4900

cc: Legislative Recorder, Planning Department
Ownership Disclosure Statement

Project Title: La Jolla Children's Pool - Joint Use
Project Address: Children's Pool Beach is located west of Coast Blvd, La Jolla. (See attached vicinity map)

Part I - To be completed when property is held by individual(s)

Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):
SAMIR MAHMAJI
Owner ☐ Tenant/Lessee ☒
Street Address: 202 C STREET, M.S. 35
City/State/Zip: San Diego, CA 92101-3860
Phone No: (619) 236-7342 Fax No: 
Signature: ☐ Date:

Name of Individual (type or print):

Name of Individual (type or print):

Name of Individual (type or print):

Name of Individual (type or print):

This information is available in alternative formats for persons with disabilities.
To request this information in alternative format, call (619) 446-5446 or (800) 735-2929 (TDD).
Be sure to see us on the World Wide Web at www.sandiego.gov/development-services.

DS-318 (5-03)
NOTICE OF EXEMPTION

TO:  X Recorder/County Clerk  
P.O. Box 1750, MS A-33  
1600 Pacific Hwy, Room 260  
San Diego, CA 92101-2422

FROM:  City of San Diego  
Development Services Department  
1222 First Avenue, MS 501  
San Diego, CA 92101

Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

Project NO:  119757

Project Title:  CHILDREN'S POOL ROPE BARRIER

Description of Project:  The project proposes to erect a temporary rope barrier for the seal pupping season, until May 30, 2008.

Name of Person or Agency Carrying Out Project:  City of San Diego, Park and Recreation Department, Samir Mahmalji.

Exempt Status:

X  Categorical Exemption. State type and section number: 15304 Minor alterations to land

Reasons why project is exempt:  The rope barrier, which will be placed in the sand on the beach, will not result in any significant environmental impacts.

Contact Person:  Allison Sherwood  
Telephone:  (619) 446-5379

If filed by applicant:

1.  Attach certified document of exemption finding.
2.  Has a notice of exemption been filed by the public agency approving the project?  
   Yes ___ No ___

Date Received for Filing:  ________________

Allison Sherwood, Senior Planner
Signature, Title
REPORT TO THE HEARING OFFICER

HEARING DATE: January 24, 2007 REPORT NO. HO 07-023

ATTENTION: Hearing Officer

SUBJECT: LA JOLLA CHILDREN’S POOL ROPE BARRIER
Project 1 – FOLLOW-UP TO EMERGENCY COASTAL DEVELOPMENT PERMIT NO. 408292 - COASTAL DEVELOPMENT PERMIT NO. 410971 AND SITE DEVELOPMENT PERMIT NO. 410975
Project 2 – COASTAL DEVELOPMENT PERMIT NO. 250362 and SITE DEVELOPMENT PERMIT NO. 250363
PTS PROJECT NUMBER: 119757

REFERENCE: Emergency CDP No. 408292 (Attachment 5)

LOCATION: Children’s Pool, west of Coast Boulevard, near Jenner Street, La Jolla.

APPLICANT: Park and Recreation Department, City of San Diego

SUMMARY

Requested Action –

1. Should the Hearing Officer approve Project 1 - a follow-up to Emergency Coastal Development Permit No. 408292 - Coastal Development Permit No. 410971 and Site Development Permit No. 410975 to erect a rope barrier, including support posts, and support post foundations, at the La Jolla Children’s Pool, during the seal pupping season, December 15th, 2006 through May 15th, 2007?

2. Should the Hearing Officer approve Project 2 - Coastal Development Permit No. 250362 and Site Development Permit No. 250363 to annually erect a rope barrier, including support posts, and support post foundations, at the La Jolla Children’s Pool?
Staff Recommendation -

1. **Project 1** - APPROVE Coastal Development Permit No. 410971 and Site Development Permit No. 410975.

2. **Project 2** - APPROVE Coastal Development Permit No. 250362 and Site Development Permit No. 250363.

Community Planning Group Recommendation – Due to the emergency nature of this project, no recommendation was obtained from the La Jolla Community Planning Association.

Environmental Review –

**Project 1** - This project is EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) pursuant to: Section 15269 Emergency Projects (Attachment 13).

**Project 2** – This project is EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) pursuant to: Section 15304 4 Minor Alterations to Land and Section 15333 Small Habitat Restoration Projects (Attachment 14).

BACKGROUND

On December 5th, 2006, the San Diego City Council discussed a proposal to annually erect a rope barrier at the La Jolla Children’s Pool, from December 15th to May 15th. Following the discussion, the City Council directed the Park and Recreation Department to immediately erect the rope barrier, and to secure all required permits for the rope project as soon as possible. On December 15th, 2006 the City Attorney’s Office opined in a Memorandum of Law (Attachment 4) that an emergency existed at the La Jolla Children’s Pool and that the emergency necessitated the installation of a rope barrier. The Development Services Department then approved an emergency Coastal Development Permit to allow the emergency placement of a rope barrier at the La Jolla Children’s Pool (Attachment 5). The Park and Recreation Department erected the rope barrier the following day, Saturday, December 16th, 2006. The site is in the LJPD zone, is immediately adjacent to Open Space and Park land use designations in the La Jolla Community Plan (LJCP), is in the Coastal Zone (Appealable Area), the First Public Roadway and the La Jolla Community Planning Area.

In the interest of efficiency and to avoid redundancy, this report covers two separate project items located at the same site. **Project 1** is an application for a Coastal Development Permit and Site Development Permit as a follow-up to Emergency Coastal Development Permit No. 408292 to allow the installation of a temporary rope barrier at the La Jolla Children’s Pool, during the seal pupping season, **December 15th, 2006 through May 15th, 2007**. **Project 2** is an application for a Coastal Development Permit and Site Development Permit to allow the annual installation of
the temporary rope barrier at the La Jolla Children’s Pool, during the seal pupping season, December 15th through May 15th.

DISCUSSION

Project 1 - Follow up to Emergency Coastal Development Permit No. 408292

Project 1. Land Development Code (LDC) Section 126.0718 (Emergency Procedures for Coastal Development Permits) requires that any emergency development subsequently process a regular development permit. Due to its location in the Coastal Zone, LDC Section 126.0702 requires the project obtain a Coastal Development Permit. LDC Section 143.0110 requires that the rope barrier project obtain a Site Development Permit for Environmentally Sensitive Lands due to its proximity to the adjacent Coastal Beach and Coastal Bluff resources. The project includes the temporary installation of the rope barrier held in place by vertical post and their associated footings at the La Jolla Children’s Pool, during the seal pupping season, December 15th, 2006 through May 15th, 2007. Postholes were hand dug and the removed sand was used to cover the footings following installation (Attachment 6).

Due to its emergency nature, the Project 1 did not appear before the La Jolla Community Planning Association for an advisory vote. However, a combined notice for this hearing regarding both Projects 1 and 2 was sent to the group, allowing it an opportunity to testify before the Hearing Officer at today’s hearing.

Given the emergency nature of the project, only efforts deemed the minimum necessary to avert the emergency were employed. Postholes for the rope posts were dug by hand and at a minimum depth. Rope, and posts with foundations were hand carried to the project site.

Project 2 - Coastal Development Permit and Site Development Permit for Annual Installation

Project 2 is an application for a Coastal Development Permit and Site Development Permit for the annual placement of the rope barrier at the La Children’s Pool, December 15th through May 15th. Due to its location in the Coastal Zone, LDC Section 126.0702 requires the project obtain a Coastal Development Permit. LDC Section 143.0110 requires that the rope barrier project obtain a Site Development Permit for Environmentally Sensitive Lands due to its proximity to the adjacent Coastal Beach and Coastal Bluff resources. The project includes the temporary installation of the rope barrier held in place by vertical post and their associated footings. Postholes would be hand dug and then the removed sand would be used to cover the footings following installation (Attachment 6).

Due to its emergency nature, the Project 2 did not appear before the La Jolla Community Planning Association for an advisory vote. However, a combined notice for this hearing regarding both Projects 1 and 2 was sent to the group, allowing it an opportunity to testify before the Hearing Officer at today’s hearing.
The La Jolla Community Plan and Local Coastal Program Land Use Plan calls for maintaining recreation activities and public views at the Children’s Pool. The area above the Children’s Pool is also identified as a Viewshed area in the Plan. The public views to be protected have vantage points above the Children’s Pool on the adjacent bluffs, and from Jenner Street to the northeast of the Children’s Pool. The proposed rope would be placed on posts in the sand at a height not exceeding four feet, and the rope would not exceed one half-inch in diameter. Given the proposed rope barrier’s height and diameter, the project would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan.

The Local Coastal Program also identifies beach access as an important community asset. While the proposed rope barrier would provide a buffer between humans and seals during the annual pupping season, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project.

The La Jolla Community Plan also emphasizes the importance of protecting the environmentally sensitive resources in the area. The Coastal Beach and the Coastal Bluff are environmentally sensitive resources at the Children’s Pool, and permit conditions have been included in the draft Coastal Development Permit (Attachment 8) that would require any debris caused by construction to be removed from the site, and disposed of appropriately. All materials must be maintained and managed so they do not enter sensitive areas, including the adjacent coastal waters. In addition, at no time will the rope or support system contact the adjacent Coastal Bluff.

The purpose and intent of the rope barrier project is to create a buffer between humans who use the Children’s Pool for recreational activities and the seals who haul out onto the sand during the annual pupping season. During installation the rope would require minimal disturbance to the sand beach and the adjacent coastal bluff would not be affected. Holes for the rope support system would be dug by hand, and the rope itself would be of minimal thickness. Environmentally Sensitive Resources in the area would not be negatively affected, recreational activities would be preserved and no public view would be blocked. Therefore, staff is recommending approval of the project.

**ALTERNATIVES**

1. Approve Coastal Development Permit No. 410971 and Site Development Permit No. 410975, with modifications. **Project 1**

2. Approve Coastal Development Permit No. 250362 and Site Development Permit No. 250363, with modifications. **Project 2**

3. Deny Coastal Development Permit No. 250362 and Site Development Permit No. 250363, if the findings required to approve the project cannot be affirmed. **Project 2**
Respectfully submitted,

Morris E. Dye, Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. City Attorney's Office Memorandum of Law
5. Emergency Coastal Development Permit No. 408292 and Resolution No. 408292
6. Project Photos
7. Project Site Plan
8. Draft Permit with Conditions, Project 1
9. Draft Resolution with Findings, Project 1
10. Draft Permit with Conditions, Project 2
11. Draft Resolution with Findings, Project 2
12. Ownership Disclosure Statement
13. CEQA Exemption, Project 1
14. CEQA Exemption, Project 2
Legend
- Very Low Density Residential (0-5 DU/AC)
- Low Density Residential (5-9 DU/AC)
- Low Medium Residential (9-15 DU/AC)
- Medium Residential (15-30 DU/AC)
- Medium High Residential (30-45 DU/AC)
- Commercial/Mixed Use
- Parks, Open Space
- Schools
- Cultural
- Community Facilities

Community Land Use Map
La Jolla Community Plan
City of San Diego · Planning Department
Location Map

La Jolla Children’s Pool Rope Barrier
MEMORANDUM OF LAW

DATE: December 15, 2006

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Emergency Authorization to Replace the Rope Barrier at the Children's Pool and Implement City Council's December 5, 2006 Resolution

INTRODUCTION

The City Council at the December 5, 2006 meeting adopted a resolution extending the replacement period of the rope barrier at the Children's Pool from December 15th through May 15th of every year (starting December 15, 2006), and directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement, if any. The City Attorney's Office was directed to make the determination as to whether any permits are necessary, and if so which ones.

There has been a considerable amount of public testimony regarding the rope barrier at the Children's Pool and other related issues both at Natural Resources and Culture Committee meetings and City Council meetings. Through that testimony, it is clear that in order to protect the public health and safety and to prevent damage to life, health, and essential public services that an emergency exception to the permit requirements is appropriate. Specifically, public testimony has revealed that:

- Between mid-December and mid-May, more mother seals and their pups will need to haul out (rest) on the Children's Pool beach and for longer periods of time in order to prepare for birth, go through the birthing process, and nurse the seal pups.

- There are continually and on a regular basis (if not daily) conflicts and encounters between people who want to protect the seals from harassment and people who want to use the beach. These conflicts have the potential to turn violent, and often involve confrontations and yelling. It has been reported from the Park and Recreation Department staff that one member of the public went so far as to urinate on another in one of these confrontations.
• The presence of more seals on the beach and the increased sensitivity of the mother and baby seals as the pupping season approaches will likely cause these conflicts between members of the public to occur more often and to become more intense.

• Additionally, the mother seals may become more aggressive during pupping season due to their instinct to protect themselves and their baby seals from humans who are getting too close. The lives of the seal pups are also at stake because the stress of harassment caused by the mothers being flushed from the beach may cause the pups to be stillborn, among other things.

• As conflicts arise between people on either side of the issue and between people and seals, lifeguards are regularly brought into these situations by the public. Lifeguards are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts over the seals at the Children’s Pool, which takes them away from providing essential public services as lifeguards by protecting swimmers from danger and drowning.

• The presence of the rope barrier would reduce the number of conflicts between humans and humans and between humans and seals because it would be a clear indicator to the public the appropriate distance from the seals to avoid harassing them.

• The California Coastal Commission (CCC) has indicated that this is a situation in which an emergency exists such that an Emergency Coastal Development Permit would be appropriate in order to get the rope barrier placed at the Children’s Pool by the mid-December date. See Attachment A.

• The National Oceanic and Atmospheric Administration (NOAA) has newly indicated that it is urgent to replace the rope barrier at the Children’s Pool from mid-December through mid-May of this year. See Attachment B.

QUESTIONS PRESENTED

1. Does an emergency exist per the San Diego Municipal Code warranting the placement of a Children’s Pool rope barrier by December 15, 2006?

2. Should Emergency Authorization be granted to replace the Children’s Pool rope barrier without a Site Development Permit (SDP) by December 15, 2006 to protect public health and safety?

3. Should an Emergency Coastal Development Permit (ECDP) be issued by the City for the replacement of the Children’s Pool rope barrier by December 15, 2006 to mitigate the loss of or damage to life, health, and essential public services?
4. Should the Park and Recreation Department apply for an SDP and a regular City Coastal Development Permit [CDP] for the emergency rope replacement and for all future rope barrier replacement periods at the Children's Pool?

SHORT ANSWERS

1. Yes. As demonstrated herein, based upon an analysis of the information known at this time, an emergency exists per the San Diego Municipal Code warranting the placement of a Children's Pool rope barrier by December 15, 2006.

2. Yes. The rope barrier is needed to protect public health and safety by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning.

3. Yes. The rope barrier will mitigate for damage to life, health, and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. In addition, the CCC has stated an ECDP is appropriate, and it would be consistent for the City to issue a local ECDP.

4. Yes. When emergency work is authorized without an SDP and/or with an ECDP, applications for standard City SDP and CDPs must also be submitted for the emergency work. Additionally, a regular CDP and an SDP are required for all future rope replacement periods.

ANALYSIS

A. An Emergency Exists In Order to Protect Public Health and Safety

The Environmentally Sensitive Land Regulations [ESLRs] apply when development is proposed on environmentally sensitive lands, which include coastal beaches. SDMC § 143.0110. As development under the SDMC is defined in pertinent part as “the act of... erecting [or] placing... any... structure,” the replacement of the rope barrier at the Children’s Pool is considered development within the meaning of the code. However, the ESLRs specify that certain uses and activities are allowed on coastal beach areas, including lifeguard towers, public comfort stations, public piers, safety and public information signs, shoreline protective works, public stairs and ramps, and public recreational equipment. SDMC §§ 143.0130(b); 145.0144. Furthermore, development that is necessary to protect the public health and safety may be authorized without prior approval of an SDP or a public hearing. Specifically, the SDMC provides in section 143.0125:
§ 143.0126 Emergency Authorization to Impact Environmentally Sensitive Lands

Whenever development activity within environmentally sensitive lands is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

a) If the emergency work involves only temporary impacts to environmentally sensitive lands, a Neighborhood Development Permit or Site Development Permit is not required provided the environmentally sensitive lands are restored, in a timely manner to their natural state, to the satisfaction of the City Manager. Restoration shall be in accordance with a restoration plan that conforms with the Biology Guidelines and is approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work and work on the approved restoration plan shall be initiated within 90 days of project completion or prior to the beginning of the next rainy season, whichever is greater.

b) If the emergency work results in permanent impacts to environmentally sensitive lands, a subsequent Neighborhood Development Permit or Site Development Permit is required in accordance with all regulations of this division. The application for the Neighborhood Development Permit or Site Development Permit shall be submitted within 60 days of completion of the emergency work.

c) Within the Coastal Overlay Zone, a Coastal Development Permit is required for any emergency coastal development in accordance with Section 126.0718.

The SDMC allows for an emergency authorization for development without an SDP where the development is necessary to protect public health and safety. SDMC § 143.0126. The rope barrier is needed to protect public health and safety by preventing human-to-human conflicts and violence, preventing encounters between mother seals and humans, and allowing lifeguards to focus on their duties protecting swimmers from danger and drowning. In addition, an ECDP is needed.

**B. An Emergency Coastal Development Permit Is Warranted to Mitigate For Damage to Life, Health, and Essential Public Services**

A Coastal Development Permit is generally required for coastal development within the Coastal Overlay Zone, which includes the Children’s Pool beach. SDMC § 132.0402, Diagram 132-04A. Coastal development in the SDMC has the same meaning.
as under the state California Coastal Act, and is defined in pertinent part as "the placement or erection of any solid material or structure [or a] change in the intensity of use of water, or of access thereto. SDMC § 113.0103. An Emergency Coastal Development Permit may be issued on an expedited basis when there is a coastal emergency.

A coastal emergency is a sudden, unexpected occurrence within the Coastal Overlay Zone that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services. SDMC § 126.0718(a).

The purpose of the CDP procedures is to make the City’s management and treatment of coastal resources comply and be consistent with those of the California Coastal Act as enforced and implemented by the CCC. Cal Pub Resources Code §§ 30108.6, 30240. Specifically, the SDMC section 126.0701 provides:

The purpose of these procedures is to establish a City review process for coastal development that is consistent with the Local Coastal Program, the California Coastal Act of 1976 (Public Resources Code section 30000, et seq.) and the California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 17.

Thus, the SDMC Coastal Development Procedures are a local implementation of the state standards under the Coastal Act. Cal Pub Resources Code § 30108.6.

The rope barrier at the Children’s Pool is coastal development because it places a structure on the beach that changes public access to water. The City has jurisdiction over CDPs for development proposed above (or landward of) the mean high water line at the Children’s Pool beach, and the Coastal Commission has jurisdiction over CDPs for proposed development seaward of the mean high water line. SDMC § 126.0702; See also Cal. Pub. Resources Code § 30600. City CDP grants are appealable to the Coastal Commission. SDMC § 126.0710. However, there are no administrative appeal procedures established for City issued ECDPs. The CCC has indicated that generally ECDPs are not appealable to the CCC, but a regular City permit must be applied for at the same time or soon after the emergency work which is appealable to the CCC.

1 If the rope barrier were erected below the mean high water line, then the Coastal Commission could grant the ECDP. However, as demonstrated by maps of the location of the mean high water line, it appears that the placing of the rope barrier at that level on the beach would provide little protection for the seals. A large area above the mean high water line is currently used for hauling out.
The Park and Recreation Department indicated it was unaware until late November of this year that a CDP was required for the replacement of the rope barrier at the Children’s Pool. Last April, the rope was erected without a permit. Thus, on December 5, 2006 the City Council became newly apprized that no steps had been taken to erect the rope barrier pursuant to the April 2006 resolution. At the same time, the City Council took new action by approving the replacement of the rope barrier at the Children’s Pool beginning on December 15, 2006 rather than January 1, 2007. On December 11, 2006, NOAA issued a new letter indicating that the rope barrier needs to be erected by mid-December of this year to protect the seals and the public. As explained in the Introduction to this memorandum, seal harassment leads to conflicts between people and loss of essential lifeguard services to conflict resolution.

Immediate action is required because a normal CDP could only be processed by mid-January with a more realistic date of mid-March or later. By that time, the pupping season would be half, if not completely over, and the City Council’s action to have the rope barrier placed from December 15, 2006 to May 15, 2007 would be rendered moot. The CCC has stated that an ECDP is appropriate for the current Children’s Pool situation where NOAA provided new direction as to the urgency of the rope barrier.

C. Procedures and Findings for Emergency Development Approval

Notice of the emergency work must be given to the CCC and the public. SDMC § 126.0718(h). The following findings are required under SDMC section 126.0718(f) for an ECDP:

1) A coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit and the development can and will be completed within 30 days unless otherwise specified in the permit;
2) Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible; and
3) The proposed emergency work is consistent with the Local Coastal Program.

---

2 The CCC’s Laurinda Owens provided written confirmation that an ECDP is appropriate; however, in a phone conversation, Lee McEachern from the CCC stated that the City should have and did know as early as April of this year that a CDP was required. Lee stated that with further direction from NOAA, the recent unexpected event requirement could be met. NOAA Special Agent in Charge, Don Masters, agreed that the replacement of the rope barrier to protect the seals from this mid-December through mid-May is urgent. His letter is attached hereto as Attachment B.
Honorable Mayor and City Council

December 15, 2006

In addition, the related finding that it is necessary to protect the public health and safety to take emergency action to replace the rope barrier without an SDP is required. SDMC § 143.0126. As explained below, these findings are supported by the facts.

First, there is ample evidence that emergency conditions exist as explained in the Introduction to this memorandum such that the findings can be made for emergency authorizations under SDMC sections 126.0718 and 143.0126. The City Council, the CCC, and NOAA have all newly indicated it is important to get the rope barrier up by December 15, 2006 in order to protect the seals and the public. The regular permitting process will not allow the replacement of the rope barrier by that time. The rope barrier is needed immediately to protect public health and safety and to mitigate for damage to life, health, and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. The rope barrier was previously erected within days of authorization and can be replaced well within the 30 day limit on completion time. It must be erected by December 15, 2006, or as soon as possible, and remain up through May 15, 2007.

Second, the placement of this rope barrier during pupping season and additionally from December 15th through December 31st and from May 1st through May 15th annually has been open for public comment extensively. In the last City Council meeting on December 5, 2006, the Park and Recreation Department presented oral testimony regarding the need to evaluate expedited permitting procedures in order to effectuate the City Council’s action. Public comment was received on the issue of the permit. The City Council at the December 5, 2006 meeting directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement. Now, City Council is in legislative recess, and the December 15th date is rapidly approaching. The California Coastal Commission has indicated that it would be appropriate to take emergency action to replace the rope barrier as was newly directed by NOAA. Thus, it would be appropriate for the City to also deem it necessary to authorize an ECDP.

Third, the replacement of the rope barrier is consistent with the Local Coastal Program. The Local Coastal Program is an implementation of the California Coastal Act on the local level. The Coastal Act provides that the Coastal Zone is a delicately balanced eco-system and that development needs to be carefully planned to protect the resources. Cal Pub Resources Code § 30001. In addition, the goals of the Coastal Act are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources
Honorable Mayor and City Council

December 15, 2006

conservation principles and constitutionally protected rights of private property owners.
(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.
(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Cal Pub Resources Code § 30001.5. The state legislature declared that where there are conflicts between these goals created by proposed development, such conflicts should be resolved in a way that is "the most protective of significant coastal resources" and "specific wildlife habitat." Cal Pub Resources Code § 30007.5. Thus, it is consistent with the Local Coastal Program to replace the rope barrier because it better protects the seals and their habitat. The public may still access the beach up to the rope barrier, and the rope will only be erected on a seasonal basis so that it allows the maximum appropriate public access consistent with sound conservation principles.

D. Regular Permit Applications are Required after Emergency Work and for Future Rope Barrier Replacements at the Children’s Pool

The authorization under an ECDP may only be for "the minimum necessary to stabilize the emergency. In addition, emergency development requires the subsequent processing of a standard Coastal Development Permit application for any work authorized on an emergency basis by these procedures." SDMC § 126.0718(b). This means that the ECDP should only be granted for this December 15, 2006 through May 15, 2007 rope placement. Also, even though the rope may be erected immediately by the December 15, 2006 date, subsequent processing of a regular CDP is required for the emergency placement and in advance of all future placements of the rope barrier. See also SDMC § 126.0718(g) (requiring that the subsequent processing of a regular CDP must be included as a condition on the ECDP).3

Additionally, an emergency exception to the SDP requires that where there are permanent impacts to environmentally sensitive lands [ESL], an application for a regular SDP must be submitted within 60 days of the completion of the emergency work.4 SDMC § 143.0126(b). Therefore, where this emergency rope replacement is authorized without an SDP and/or with an ECDP, applications for standard City SDP and CDPs must also be submitted for the emergency replacement. Additionally, a regular CDP and an SDP are required for all future rope replacement periods.

3 All of the procedures contained in the SDMC for the processing of the ECDP must be complied with, even if not specifically addressed herein.
4 While the installation of the rope barrier is only replaced from December 15th through May 15th, it will be installed annually on a continuing basis, so it should be assumed for the purposes of the SDP requirement that it will be a permanent impact.
CONCLUSION

Based upon an analysis of the information available at this time, it is clear that an emergency exists within the meaning of the San Diego Municipal Code warranting the placement of a Children's Pool rope barrier by December 15, 2006. Given the existing emergency, no further City council action is needed at this time to proceed, and, therefore, the Mayor is authorized to place the rope barrier at the Children's Pool by December 15, 2006. A standard Coastal Development Permit application must be submitted for the emergency work and be a required condition on the ECDP. Both a CDP and an SDP will be required for all future rope replacement periods, and the regular application processes must be complied with to effectuate the City Council's December 5, 2006 action.

MICHAEL J. AGUIRRE, City Attorney

By Nina M. Fain
Deputy City Attorney

NMF:mm:pev
Attachments
cc: April Penera, Park Planning and Development Deputy Director
     Samir Mahnalji, Project Officer II
     ML-2006-32
Dear Ms. Fain,

Per your request, this fax is a summary of the phone conversation we had this morning pertaining to your request as to whether or not the Coastal Commission can issue an emergency permit for the placement of a temporary rope barrier at Children's Pool Beach to protect the seals during the pupping season. In response to your inquiry, this office concurs that an emergency permit would be appropriate either through the City or possibly the Coastal Commission. However, we still need to do a little more research on this matter including how this request was addressed last year. In any case, we are supportive of reinstating the rope barrier as a temporary means of protecting the seals.

I will coordinate with you regarding any permits, if necessary, or any other kind of written authorization from this office as soon as possible. Thank you.
EMERGENCY COASTAL DEVELOPMENT PERMIT NO. 408292
La Jolla Children's Pool Rope Barrier

This Emergency Coastal Development Permit is granted by the City of San Diego to the City of San Diego Park and Recreation Department, Owner/Permittee, reliant on the City Attorney's Memorandum of Law determining that an emergency exists at the La Jolla Children's Pool, dated December 15, 2006, and pursuant to San Diego Municipal Code [SDMC] sections 126.0718 and 143.0126. The site is located at the Children's Pool, west of Coast Boulevard, near Jenner Street in the Coastal Overlay zone of the La Jolla Community Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install, on an emergency basis, a temporary rope barrier to protect seals during their pupping season, December 15 through May 15, as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 15, 2006, on file in the Development Services Department.

The project shall include:

- Rope, supporting posts, and footings;

The applicant shall apply for a standard Coastal Development Permit and Site Development Permit for any work authorized by this emergency permit, pursuant to SDMC sections 126.0178 and 143.0126.

All structures shall be maintained in place as shown in exhibits [Exhibit "A"] dated December 15, 2006, on file in the Development Services Department.

All structures approved by this emergency permit shall be kept out of the water at the Children's Pool.

APPROVED by the City of San Diego on December 15, 2006, Resolution No. 5607.
WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for an emergency permit to install a temporary rope barrier at the La Jolla Children's Pool (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 408292;

WHEREAS, reliant on the City Attorney's Memorandum of Law, dated December 15, 2006, determining that an emergency exists at the La Jolla Children's Pool;

WHEREAS, the project site is located west of Coast Boulevard, near Jenner Street, in the Coastal Overlay Zone of the La Jolla Community Plan;

WHEREAS, installation of the rope barrier is the minimum necessary to stabilize the emergency;

WHEREAS, on December 15, 2006, the City of San Diego considered Emergency Coastal Development Permit No. 408292 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the City of San Diego as follows:

That the City of San Diego adopts the following written Findings, dated December 15, 2006.

FINDINGS:

Findings for Emergency Coastal Development Permit - Section 126.0718

1. A coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit and the development can and will be completed within 30 days unless otherwise specified in the permit; and

There is ample evidence that emergency conditions exist. The City Council, the California Coastal Commission, and the National Oceanic and Atmospheric Administration (NOAA) have all newly indicated it is important to get the rope barrier up by December 15, 2006 in order to protect the seals and the public. The regular permitting process will not allow the replacement of the rope barrier by that time. The rope barrier is needed immediately to protect public health and safety and to mitigate for damage to life, health and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. The rope barrier was previously erected within days of authorization and can be replaced well within the 30 day limit on completion time. It must be erected by December 15, 2006, or as soon as possible, and remain up through May 15, 2007. It has been determined that the installation of the rope barrier is the minimum necessary to stabilize the emergency. In addition, as required by SDMC Section 126.0718, a standard Coastal Development Permit and Site Development Permit will be applied for by the applicant. Therefore, a coastal emergency exists that
requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit and the development can and will be completed within 30 days unless otherwise specified in the permit.

2. Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible; and

The placement of this rope barrier during pupping season and additionally from December 15th through December 31st and from May 1st through May 15th annually has been open for public comment extensively. In the last City Council meeting on December 5, 2006, the Park and Recreation Department presented oral testimony regarding the need to evaluate expediting permitting procedures in order to effectuate the City Council's action. Public comment was received on the issue of the permit. The City Council at the December 5, 2006 meeting directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement. Now, City Council is in legislative recess, and the December 15th date is rapidly approaching. The California Coastal Commission has indicated that it would be appropriate to take emergency action to replace the rope barrier as was newly directed by NOAA. Thus, it would be appropriate for the City to also deem it necessary to authorize an Emergency Coastal Development Permit.

3. The proposed emergency work is consistent with the Local Coastal Program.

The replacement of the rope barrier is consistent with the Local Coastal Program. The Local Coastal Program is an implementation of the California Coastal Act on the local level. The Coastal Act provides the Coastal Zone is a delicately balanced eco-system and that development needs to be carefully planned to protect the resources. Cal Pub Resources Code Section 30001. In addition, the goals of the Coastal Act are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Cal Pub Resources Code Section 30001.5. The stat legislature declared that where there are conflicts between these goals created by proposed development, such conflicts should be resolved in a way that is "the most protective of significant coastal resources" and "specific wildlife habitat." Cal Pub Resources Code Section 30007.5. Thus, it is consistent with the Local Coastal Program to replace the rope barrier because it better protects the seals and their habitat. The public may still access the beach up to the rope barrier, and the rope will only be erected on a seasonal basis so that it allows the maximum appropriate
public access consistent with sound conservation principles. Therefore, the proposed emergency work is consistent with the Local Coastal Program.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City of San Diego, Emergency Coastal Development Permit No. 408292 is hereby GRANTED by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 408292 a copy of which is attached hereto and made a part hereof.

Morris E. Dye  
Development Project Manager  
Development Services  

Adopted on: December 15, 2006  
Job Order No. 031012  
cc: Legislative Recorder, Planning Department
City crew digs hole for post

Install post with attached footing

Posts and rope installed

La Jolla Children’s Pool Rope Barrier
COASTAL DEVELOPMENT PERMIT NO. 410971
SITE DEVELOPMENT PERMIT NO. 410975
La Jolla Children's Pool Rope Barrier

This Coastal Development Permit/Site Development Permit is granted by the City of San Diego to the City of San Diego Park and Recreation Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0718 and 143.0126. The site is located at the Children's Pool, west of Coast Boulevard, near Jenner Street in the Coastal Overlay zone of the La Jolla Community Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install a temporary rope barrier during the seal pupping season, December 15th, 2006 through May 15, 2007 as a follow up to Emergency Coastal Development Permit No. 408292 as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 24, 2007, on file in the Development Services Department.

The project shall include:

Rope, supporting posts, and support post footings;

All structures shall be maintained in place approximately as shown in exhibits [Exhibit "A"] dated January 24, 2007, on file in the Development Services Department.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
   
a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and

b. The Permit is recorded in the Office of the San Diego County Recorder.

4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.
PLANNING/DESIGN REQUIREMENTS:

9. All debris caused by construction must be removed from the site and disposed of appropriately.

10. All materials shall be maintained and managed so as to prevent them from entering sensitive areas including the coastal waters. Placement shall be maintained in location identified on Exhibit "A", during the identified time periods.

APPROVED by the Hearing Officer of the City of San Diego, on January 24, 2007, Resolution No.
WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for a permit to erect a temporary rope barrier (including support posts and foundations), during seal pupping season, December 15th, 2006 through May 15th, 2007 and

WHEREAS, the project is located at the La Jolla Children's Pool, west of Coast Boulevard, near Jenner Street, La Jolla, within the Coastal Overlay Zone (Coastal Commission Appeal Jurisdiction) and the La Jolla Community Planning Area; and

WHEREAS, the project is a follow-up to an emergency coastal development permit and emergency authorization to impact environmentally sensitive lands, issued on December 15, 2006, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 410971 and Site Development Permit No. 410975); NOW, THEREFORE,

BE IT RESOLVED, by the City of San Diego as follows:

That the City of San Diego adopts the following written Findings, dated January 24, 2007.

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan; and

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. On December 15th, 2006 the City Attorney's Office opined in a Memorandum of Law (Attachment 4) that an emergency existed at the La Jolla Children's Pool and that the emergency necessitated the installation of a rope barrier. The project includes the rope barrier supported by poles, with pole foundations buried in the sand, above the Mean High Tide Line. A rope barrier was erected, and stretches from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope was placed at a height not exceeding four feet and not exceeding one half-inch in diameter. Given this height and diameter, the rope does not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier provides a buffer between humans and seals during the annual pupping
season, the beach remains open for public use and swimming is allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) remain unchanged by the project. Given that the sand beach and ocean remain open to the public while the rope is in place and that the rope’s location and type of rope used does not block any identified public views at the Children’s Pool, the proposed coastal development does not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan, and the coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

2. The proposed coastal development will not adversely affect environmentally sensitive lands; and

The adjacent Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The installation of the rope included hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. The rope does not touch the adjacent Coastal Bluff. Proposed permit conditions require that any debris caused by construction must be removed from the site and disposed of appropriately. Permit conditions also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters. Placement is required to be maintained in location identified on Exhibit "A," during the identified time period. In addition, environmental review was performed and an exemption was prepared for the project per Section 15269, Emergency Projects (Attachment 13). As the project involved digging relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions prohibit any debris or construction materials from entering the ocean, and permit conditions also prohibit the project affecting the adjacent Coastal Bluff, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program; and

The project includes the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. The rope barrier stretches from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit “A.”

The area above the Children’s Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The rope is placed at a height not exceeding four feet, and not exceeding one half-inch in diameter. Given this height and diameter, the rope does not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the rope barrier provides a buffer between humans and seals during the annual pupping season, the beach remains open for public use and swimming is allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) remains unchanged by the project. Given that the sand beach and ocean remain open to the public while the rope is in place, and that the rope’s location and type of rope used does not block any identified public views at the Children’s
Pool, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Section 30211 of the California Coastal Act requires that no development interfere with the public’s right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation. The purpose and intent of Section 30211 is ensure that the public can access the sea and its associated rock coastal beaches. The purpose and intent of the rope barrier is to create a buffer between the public utilizing the sand beach and accessing the sea at the Children’s Pool, and the seals, as they are hauled out on the sand during the current seal pupping season. The rope is not intended to keep the public from reaching either the beach or the sea at the Children’s Pool. The public is able to enter the sea at the Children’s Pool while the rope is in place. In addition, signage that is posted at the Children’s Pool indicates that the beach is open to the public. Therefore, the rope would not interfere with the public’s right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation as described in Section 30211.

Section 30220 of the California Coastal Act requires that coastal areas suited for water-oriented recreational activities that cannot be provided at inland water areas, be protected for such uses. The rope barrier does not prevent the use of the Children’s Pool for recreational activities. The rope is not intended to keep the public from reaching either the beach or the sea at the Children’s Pool. The public is able to enter the sea at the Children’s Pool, while the rope is in place. In addition, signage that is posted at the Children’s Pool indicates that the beach is open for public use.

As the project would not block public access and the beach and ocean would remain open for public recreation, the project is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

1. The proposed development will not adversely affect the applicable land use plan;

One of the goals of the Community Facilities, Parks, and Services Element of the LJCP (p. 113) is to, "Ensure that all new and existing public facilities are designed and developed in a manner that will not contribute any adverse impacts to the environmentally sensitive areas of La Jolla.” The Children’s Pool is located in an area designated as Environmentally Sensitive Lands containing Coastal Beaches and Coastal Bluffs. The rope installation has no significant affect on either of these resources. The rope installation included hand digging holes in the sand (not exceeding 18 inches), placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. Proposed permit conditions require that any debris caused by construction, must be removed from the site and disposed of appropriately, and would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement is required to be maintained in location identified on Exhibit "A," during the identified time period. The La Jolla Community Plan
also calls for the protection of public views. The rope is placed at a height not exceeding four feet and
does not exceed one half-inch in diameter. Given this height and diameter, the rope does not block any
public views. As the project does not have any adverse impacts on the Coastal Beach or the Coastal
Bluffs, and the project does not negatively affect any public views, the development does not adversely
affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare;
and

The primary objective of the rope installation is to serve as a buffer between humans and seals during the
current pupping season. Lifeguards advise beachgoers to avoid unattended seal pups, as a pup’s mother
may be foraging and conflicts could arise upon a mother’s return. Users are also advised not to place
themselves between a seal mother and her pup. While the beach is open to public use, and beachgoers
may pass the rope to enter the beach, the rope’s presence serves as a caution, and allows users to read
signage warning them that it is unlawful to harass the seals, and that the water may cause illness due to
bacteria levels that may exceed health standards. The signs also inform users that swimming is allowed,
but is not recommended, and that the beach is open for public use. As the project is intended to create a
safety buffer between humans and seals, and information is provided to the beach-going public regarding
potential health hazards, the project is not detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the applicable regulations of the Land
Development Code.

Land Development Code regulations require that the construction of a project potentially affecting an
environmentally sensitive resource, result in minimum disturbance to that resource. The rope installation
included digging shallow (not exceeding 18 inches) holes for each post footing and covering them with
the sand. Standard, cord (not exceeding one half-inch) was then strung between the posts. Informational
signage mounted to the posts provides the public with safety information. In addition, the height of the
rope does not exceed four feet, no public views are obstructed, and the project is temporary and
removable. As a result, the rope barrier does not disturb the Coastal Beaches or Coastal Bluffs. In
addition, environmental review was performed and an exemption was prepared for the project per Section
15269, Emergency Projects (Attachment 13). As such, the proposed development would not create a
disturbance of the environmentally sensitive lands, and, therefore, complies with the Land Development
Code.

B. Supplemental Findings—Environmentally Sensitive Lands

1. The site is physically suitable for the design and siting of the proposed development and the
development will result in minimum disturbance to environmentally sensitive lands;

The project site is the sand at the Children’s Pool beach. There is ample sand at the beach to allow the
rope support posts to be placed in hand dug holes in the sand, and to cover the post foundations with the
sand. Standard, half-inch cord is strung between the posts. Informational signage is mounted to the posts
to provide the public with safety information. The installation of the rope barrier at the La Jolla
Children’s Pool was considered to be the minimum necessary to avert the emergency. The height of the
rope does not exceed four feet, and no public views are obstructed. Hand dug holes do not exceed 18
inches, minimizing any effect on the Coastal Beach Resource. The rope barrier does not disturb the
Coastal Beach or Coastal Bluff resources and is temporary and removable. As the site readily accommodates the installation of the rope barrier project with a temporary and minimal change to the Children’s Pool beach, and neither the Coastal Beach nor the Coastal Bluff are negatively affected by the project, the site is physically suitable for the design and siting of the proposed development and the development results in a minimum disturbance to environmentally sensitive lands.

2. **The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;**

The rope installation includes digging shallow holes for each post footing and covering them with the sand. The rope is placed above the Mean High Tide Line and, as such, does not create erosional conditions. No geologic forces are expected to be factors with this type of development, and because no structures are included in the project, no flood or fire hazards are anticipated. Therefore, the development minimizes the alteration of natural landforms and does not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

3. **The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;**

The installation of the rope includes digging small holes in the sand, placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. The rope is installed in dry sand above the Mean High Tide Line, ensuring the project can be installed and removed with minimal affect on the Coastal Beach and Coastal Bluff. In addition, proposed permit conditions require that any debris caused by construction to be removed from the site and disposed of appropriately. Permit conditions also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement is required to be maintained in location identified on Exhibit "A," during the identified time period. In addition, environmental review was performed and an exemption was prepared for the project per Section 15269, Emergency Projects (Attachment 13). Therefore, the proposed development would be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

4. **The proposed development will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan;**

The project is not located in or near the Multiple Species Conservation Program (MSCP) Subarea. Therefore, the proposed development is consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan

5. **The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and**

The rope barrier pole foundations are placed in dry sand above the Mean High Tide Line. As such, the project does not create erosional conditions. Sand removed to hand dig the holes for pole installation, was used to cover the foundations, and therefore, sand was not removed from the Children’s Pool Beach as a result of the project. Therefore, the development does not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.
6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

No mitigation is required of this project. The project is temporary in nature and is removable. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Coastal Development Permit No. 410971 and Site Development Permit No. 410975 are hereby GRANTED by hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 410971 and Site Development Permit No. 410975 a copy of which is attached hereto and made a part hereof.

Morris E. Dye  
Development Project Manager  
Development Services

Adopted on: January 24, 2007

Job Order No. 4900

cc: Legislative Recorder, Planning Department
This Coastal Development Permit/Site Development Permit is granted by the City of San Diego to the City of San Diego Park and Recreation Department, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0702 and 143.0126. The site is located at the Children's Pool, west of Coast Boulevard, near Jenner Street in the Coastal Overlay zone of the La Jolla Community Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to annually install a temporary rope barrier during the seal pupping season, December 15th through May 15th, as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 24, 2007, on file in the Development Services Department.

The project shall include:

Rope, supporting posts, and support post footings;

All structures shall be maintained in place approximately as shown in exhibits [Exhibit "A"] dated January 24, 2007, on file in the Development Services Department.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
   
a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
   
b. The Permit is recorded in the Office of the San Diego County Recorder.

4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.
PLANNING/DESIGN REQUIREMENTS:

9. All debris caused by construction must be removed from the site and disposed of appropriately.

10. All materials shall be maintained and managed so as to prevent them from entering sensitive areas including the coastal waters. Placement shall be maintained in location identified on Exhibit "A", during the identified time periods.

APPROVED by the Hearing Officer of the City of San Diego, on January 24, 2007, Resolution No.
WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for a permit to annually erect a temporary rope barrier (including support posts and foundations), during seal pupping season, December 15th through May 15th; and

WHEREAS, the project is located at the La Jolla Children’s Pool, west of Coast Boulevard, near Jenner Street, La Jolla, within the Coastal Overlay Zone (Coastal Commission Appeal Jurisdiction) and the La Jolla Community Planning Area; and

WHEREAS, on January 24, 2007, the Hearing Officer considered Coastal Development Permit No. 250362 and Site Development Permit No. 250363 (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 250362 and Site Development Permit No. 250363) pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the City of San Diego as follows:

That the City of San Diego adopts the following written Findings, dated January 24, 2007.

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan; and

The project is located on the sand of the La Jolla Children’s Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would include the rope barrier supported by poles, with pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be annually erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit “A.”

The area above the Children’s Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and the rope would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the annual pupping season, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health...
standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. Given that the sand beach and ocean would remain open to the public while the rope would be in place and that the rope’s location and type of rope used would not block any identified public views at the Children’s Pool, the proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan, and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

2. **The proposed coastal development will not adversely affect environmentally sensitive lands; and**

The adjacent Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The proposed installation of the rope includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. This would occur each year to allow for the rope barrier to be in place during the annual seal pupping season, December 15th through May 15th. At no time would the rope touch the adjacent Coastal Bluff. Proposed permit conditions would require that any debris caused by construction, must be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time periods. As the project involves digging relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions would prohibit any debris or construction materials from entering the ocean, and permit conditions would also prohibit the project affecting the adjacent Coastal Bluff, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

3. **The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program; and**

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be annually erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit “A.”

The area above the Children’s Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the annual pupping season, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. Given that the sand beach and ocean would remain open to the public while the rope would be in place, and that the rope’s location and type of rope used would not block any identified public views at the Children’s Pool, the proposed coastal development will not adversely affect environmentally sensitive lands; and
development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Section 30211 of the California Coastal Act requires that no development interfere with the public’s right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation. The purpose and intent of Section 30211 is ensure that the public can access the sea and its associated rock coastal beaches. The purpose and intent of the proposed rope is to create a buffer between the public utilizing the sand beach and accessing the sea at the Children’s Pool, and the seals, as they are hauled out on the sand during the annual seal pupping season. The rope is not intended to keep the public from reaching either the beach or the sea at the Children’s Pool. The public will be able to enter the sea at the Children’s Pool while the rope is installed. In addition, signage that is posted at the Children’s Pool indicates that the beach is open to the public. Therefore, the proposed rope would not interfere with the public’s right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation as described in Section 30211.

Section 30220 of the California Coastal Act requires that coastal areas suited for water-oriented recreational activities that cannot be provided at inland water areas, be protected for such uses. The rope barrier would not prevent the use of the Children’s Pool for recreational activities. The rope is not intended to keep the public from reaching either the beach or the sea at the Children’s Pool. The public is able to enter the sea at the Children’s Pool, while the rope has been installed. In addition, signage that is posted at the Children’s Pool indicates that the beach is open for public use.

As the project would not block public access and the beach and ocean would remain open for public recreation, the project is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

1. The proposed development will not adversely affect the applicable land use plan;

One of the goals of the Community Facilities, Parks, and Services Element of the LJCP (p. 113) is to, "Ensure that all new and existing public facilities are designed and developed in a manner that will not contribute any adverse impacts to the environmentally sensitive areas of La Jolla." The Children’s Pool is located in an area designated as Environmentally Sensitive Lands containing Coastal Beaches and Coastal Bluffs. The proposed rope installation would have no significant affect on either of these resources. The proposed rope installation would include hand digging holes in the sand (not exceeding 18 inches in depth), placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. Proposed permit conditions would require that any debris caused by construction, must be removed from the site and disposed of appropriately, and would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement would be required to be maintained in location identified on Exhibit "A."
during the identified time periods. The La Jolla Community Plan also calls for the protection of public views. The proposed rope would be placed at a height not exceeding four feet and would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views. As the project would not have any adverse impacts on the Coastal Beach or the Coastal Bluffs, and the project would not negatively affect any public views, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare; and

The primary objective of the proposed rope installation is to serve as a buffer between humans and seals during the annual pupping season. Lifeguards advise beachgoers to avoid unattended seal pups, as a pup’s mother may be foraging and conflicts could arise upon a mother’s return. Users are also advised not to place themselves between a seal mother and her pup. While the beach is open to public use, and beachgoers may pass the rope to enter the beach, the rope’s presence serves as a caution, and allows users to read signage warning them that it is unlawful to harass the seals, and that the water may cause illness due to bacteria levels that may exceed health standards. The sign also informs users that swimming is allowed, but is not recommended, and that the beach is open for public use. As the project would create a safety buffer between humans and seals, and would provide information to the beach-going public regarding potential health hazards, the project would not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

Land Development Code regulations require that the construction of a project potentially affecting an environmentally sensitive resource, result in minimum disturbance to that resource. The proposed rope installation would include digging shallow holes for each post footing and covering them with the sand. Standard, cord (not exceeding one half-inch in diameter) would then be strung between the posts. Informational signage would be mounted to the posts to provide the public with safety information. In addition, the height of the rope would not exceed four feet, and no public views would be obstructed. None of these activities would significantly disturb the Coastal Beach or Coastal Bluff. As such the proposed development would result in minimum disturbance of the environmentally sensitive lands, and, therefore, would comply with the Land Development Code.

B. Supplemental Findings—Environmentally Sensitive Lands

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;

The proposed project site is the sand at the Children’s Pool beach. There is ample sand at the beach to allow the rope support posts to be placed in holes that would be hand dug in the sand, and to cover up the post foundations with the sand when the installation is complete. The proposed rope installation would include digging shallow holes for each post footing and covering them with the sand. Standard, half-inch cord would then be strung between the posts. Informational signage would be mounted to the posts to provide the public with safety information. In addition, the height of the rope would not exceed four feet, and no public views would be obstructed. None of these activities would significantly disturb the Coastal Beach or Coastal Bluffs.
Beach or Coastal Bluff resources. As the site can readily accommodate the installation of the rope barrier project with minimal disturbance to the Children's Pool beach, and neither the Coastal Beach nor the Coastal Bluff would be negatively affected by the project, the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

2. **The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;**

The proposed rope installation would include digging shallow holes (not exceeding 18 inches in depth) for each post footing and covering them with the sand. The rope would be placed above the Mean High Tide Line and, as such, would not create erosional conditions. No geologic forces are expected to be factors with this type of development, and because no structures are proposed, no flood or fire hazards are anticipated. Therefore, the proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

3. **The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;**

The proposed installation of the rope would include digging shallow holes (not exceeding 18 inches in depth) in the sand, placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. The rope will be installed in dry sand above the Mean High Tide Line, ensuring the project can be installed and removed with minimal affect on the Coastal Beach and Coastal Bluff. In addition, proposed permit conditions would require that any debris caused by construction to be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time periods. Therefore, the proposed development would be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

4. **The proposed development will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan;**

The project is not located in or near the Multiple Species Conservation Program (MSCP) Subarea. Therefore, the proposed development will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan

5. **The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and**

The rope barrier pole foundations would be placed in dry sand above the Mean High Tide Line. As such, the project would not create erosional conditions. Sand removed to hand dig the holes for pole installation, would be used to cover the foundations, and therefore, sand would not be removed from the Children’s Pool Beach as a result of the project. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.
6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

No mitigation is required of this project. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City of San Diego, Coastal Development Permit No. 250362 and Site Development Permit No. 250363 is hereby GRANTED by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 250362 and Site Development Permit No. 250363 a copy of which is attached hereto and made a part hereof.

Morris E. Dye
Development Project Manager
Development Services

Adopted on: January 24, 2007

Job Order No. 4900

cc: Legislative Recorder, Planning Department
Ownership Disclosure Statement

Project Title: La Jolla Children's Pool - Joint Use

Project Address: Children's Pool Beach is located west of Coast Blvd, La Jolla. (See attached vicinity map)

Part I - To be completed when property is held by individual(s)

Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print): SAMIR MAHMALI
Owner ☐ Tenant/Lessee ☐
City of San Diego, Park & Rec Dept.
Street Address: 1202 E Street, M.S. 35
City/State/Zip: San Diego CA 92101-3860
Phone No: (619) 236-7342
Fax No: (619) 236-7342
Signature: Samir MAHMALI Date: 4/24/05

Name of Individual (type or print): SAMSIR MAHMALI
Owner ☐ Tenant/Lessee ☐
Street Address: 1202 E Street, M.S. 35
City/State/Zip: San Diego CA 92101-3860
Phone No: (619) 236-7342
Fax No: (619) 236-7342
Signature: Samir MAHMALI Date: 4/24/05

This information is available in alternative formats for persons with disabilities.
To request this information in alternative format, call (619) 446-5446 or (800) 735-2229 (TDD)
Be sure to see us on the World Wide Web at www.sandiego.gov/development-services

DS-318 (5-03)
DETERMINATION OF: ENVIRONMENTAL EXEMPTION

Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines


Action/Permit(s) Coastal Development Permit/Site Development Permit Permit No. 119757

Description of Activity: CHILDREN’S POOL ROPE BARRIER. The project proposes to erect a temporary rope barrier during the seal pupping season, December 15th through May 15th.

Location of Activity: The project site is located at the Children’s pool beach, 850 Coast Boulevard, in the La Jolla Community planning area.

1. [ ] This activity is EXEMPT FROM CEQA pursuant to:
   [ ] Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
   [ ] Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").

2. [X] This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

<table>
<thead>
<tr>
<th>ARTICLE 19 of GUIDELINES</th>
<th>CATEGORICAL EXEMPTIONS</th>
<th>(Incomplete list)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec.</td>
<td>Short Name</td>
<td></td>
</tr>
<tr>
<td>[] 15301</td>
<td>Existing Facilities</td>
<td></td>
</tr>
<tr>
<td>[] 15302</td>
<td>Replacement or Reconstruction</td>
<td></td>
</tr>
<tr>
<td>[] 15303</td>
<td>New Construction or Conversion of Small Structures</td>
<td></td>
</tr>
<tr>
<td>[] 15304</td>
<td>Minor Alterations to Land</td>
<td></td>
</tr>
<tr>
<td>[] 15305</td>
<td>Minor Alterations in Land Use Limitations</td>
<td></td>
</tr>
<tr>
<td>[] 15306</td>
<td>Information Collection</td>
<td></td>
</tr>
<tr>
<td>[] 15311</td>
<td>Accessory Structures</td>
<td></td>
</tr>
<tr>
<td>[] 15312</td>
<td>Surplus Government Property Sales</td>
<td></td>
</tr>
<tr>
<td>[] 15315</td>
<td>Minor Land Divisions</td>
<td></td>
</tr>
<tr>
<td>[] 15317</td>
<td>Open Space Contracts or Easements</td>
<td></td>
</tr>
<tr>
<td>[] 15319</td>
<td>Annexation of Existing Facilities and Lots for Exempt Facilities</td>
<td></td>
</tr>
<tr>
<td>[] 15325</td>
<td>Transfer of Ownership of Interest in Land to Preserve Open Space</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 18 of GUIDELINES</th>
<th>STATUTORY EXEMPTIONS</th>
<th>(Incomplete list)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec.</td>
<td>Short Name</td>
<td></td>
</tr>
<tr>
<td>[] 15261</td>
<td>Ongoing Project</td>
<td></td>
</tr>
<tr>
<td>[] 15262</td>
<td>Feasibility and Planning Studies</td>
<td></td>
</tr>
<tr>
<td>[] 15265</td>
<td>Adoption of Coastal Plans and Programs</td>
<td></td>
</tr>
<tr>
<td>[] 15268</td>
<td>Ministerial Projects</td>
<td></td>
</tr>
<tr>
<td>[X] 15269</td>
<td>Emergency Projects</td>
<td></td>
</tr>
<tr>
<td>[] Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Allison Sherwood
Environmental Analysis Section
DETERMINATION OF: ENVIRONMENTAL EXEMPTION

Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO
PROJECT NO.: 119757
DATE: January 8, 2007

Action/Permit(s): Coastal Development Permit
Permit No. 119757

Description of Activity: CHILDREN'S POOL-ROPE BARRIER. The project proposes to erect a temporary rope barrier (annually) during the seal pupping season, December 15th through May 15th.

Location of Activity: The project site is located at the Children's pool beach, 850 Coast Boulevard, in the La Jolla Community planning area.

1. [ ] This activity is EXEMPT FROM CEQA pursuant to:
   
   [ ] Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
   
   [ ] Section 15061(b)(3) of the State CEQA Guidelines ("General Rule").

2. [X] This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Short Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>15301</td>
<td>Existing Facilities</td>
</tr>
<tr>
<td>15302</td>
<td>Replacement or Reconstruction</td>
</tr>
<tr>
<td>15303</td>
<td>New Construction or Conversion of Small Structures</td>
</tr>
<tr>
<td>15304</td>
<td>Minor Alterations to Land</td>
</tr>
<tr>
<td>15305</td>
<td>Minor Alterations in Land Use Limitations</td>
</tr>
<tr>
<td>15306</td>
<td>Information Collection</td>
</tr>
<tr>
<td>15311</td>
<td>Accessory Structures</td>
</tr>
<tr>
<td>15312</td>
<td>Surplus Government Property Sales</td>
</tr>
<tr>
<td>15315</td>
<td>Minor Land Divisions</td>
</tr>
<tr>
<td>15317</td>
<td>Open Space Contracts or Easements</td>
</tr>
<tr>
<td>15319</td>
<td>Annexation of Existing Facilities and Lots for Exempt Facilities</td>
</tr>
<tr>
<td>15325</td>
<td>Transfer of Ownership of Interest in Land to Preserve Open Space</td>
</tr>
</tbody>
</table>

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Allison Sherwood
Environmental Analysis Section

Distribution:
Exemption or Project file
Responsible Departments:
Morris Dye, DPM
Exemption File
Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

We have reviewed appellants' emergency motion and motion to consider new evidence, the response filed by the City of San Diego, appellants' reply and the record in this matter. Appellants' motion to consider new evidence is granted. Appellants' emergency motion for injunctive relief pending disposition of this appeal is granted. Application of state law or any state court order to prevent placement of a guideline rope on the La Jolla Children's Pool Beach is stayed pending further order of the court. A guideline rope may be placed on the beach to protect seals and their pups until May 30, 2008.
08-55319

The court *sua sponte* extends the time for the Attorney General of the United States to respond to the court's March 6, 2008 order. The Attorney General of the United States is invited to file a letter brief in this appeal, no later than Monday, March 24, 2008, expressing the views of the United States on the issues of abstention and federal preemption raised by this appeal.

The court *sua sponte* expedites this appeal. The opening brief is due April 7, 2008; the answering brief is due April 28, 2008; and the optional reply brief is due May 5, 2008.

The provisions of Ninth Circuit Rule 31-2.2(a) shall not apply to this appeal. Written motions for further extensions of time to file the briefs will not be granted absent demonstration of extraordinary and compelling circumstances. *See* 9th Cir. R. 31-2.2(a). Each brief shall be received in the office of opposing counsel at the time the brief is due in this court. The parties are reminded that Ninth Circuit Rule 31-2.1(a) applies.

The Clerk shall calendar this case during the month of June 2008, in Pasadena, California.
QUESTION PRESENTED

Does an emergency exist warranting an Emergency Coastal Development Permit for placement of a rope barrier at the Children's Pool?

ANSWER

Yes. The facts today are the same facts that existed at the time of the December 15, 2006, Memorandum of Law issued by the City Attorney.

On March 10, 2008, the Ninth Circuit Court of Appeals granted the Animal Protection and Rescue League's emergency motion for injunctive relief, staying the state court order preventing placement of a rope on the Children's Pool Beach. The order states that a “guideline rope may be placed on the beach to protect seals and their pups until May 30, 2008.”

On December 5, 2006, in Resolution R-302160, the City Council directed City staff to immediately pursue all permits required for the rope placement. Now that the state court order has been stayed, City staff must follow the Council's directive to obtain an Emergency Coastal Development Permit for the rope barrier, pursuant to the San Diego Municipal Code and Coastal Commission Act.
March 19, 2008
Kelly Broughton, Director
Development Services Department

Please refer to the December 15, 2006, Memorandum of Law (attached) for a full legal analysis.

MICHAEL J. AGUIRRE, City Attorney
By

Kimberly Ann Davies
Deputy City Attorney

KAD
Attachment
Cc: Karen Heumann, Assistant City Attorney
    Kathryn Burton, Managing City Attorney
INTRODUCTION

The City Council at the December 5, 2006 meeting adopted a resolution extending the replacement period of the rope barrier at the Children's Pool from December 15th through May 15th of every year (starting December 15, 2006), and directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement, if any. The City Attorney's Office was directed to make the determination as to whether any permits are necessary, and if so which ones.

There has been a considerable amount of public testimony regarding the rope barrier at the Children's Pool and other related issues both at Natural Resources and Culture Committee meetings and City Council meetings. Through that testimony, it is clear that in order to protect the public health and safety and to prevent damage to life, health, and essential public services that an emergency exception to the permit requirements is appropriate. Specifically, public testimony has revealed that:

- Between mid-December and mid-May, more mother seals and their pups will need to haul out (rest) on the Children's Pool beach and for longer periods of time in order to prepare for birth, go through the birthing process, and nurse the seal pups.

- There are continually and on a regular basis (if not daily) conflicts and encounters between people who want to protect the seals from harassment and people who want to use the beach. These conflicts have the potential to turn violent, and often involve confrontations and yelling. It has been reported from the Park and Recreation
Department staff that one member of the public went so far as to urinate on another in one of these confrontations.

- The presence of more seals on the beach and the increased sensitivity of the mother and baby seals as the pupping season approaches will likely cause these conflicts between members of the public to occur more often and to become more intense.

- Additionally, the mother seals may become more aggressive during pupping season due to their instinct to protect themselves and their baby seals from humans who are getting too close. The lives of the seal pups are also at stake because the stress of harassment caused by the mothers being flushed from the beach may cause the pups to be stillborn, among other things.

- As conflicts arise between people on either side of the issue and between people and seals, lifeguards are regularly brought into these situations by the public. Lifeguards are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts over the seals at the Children’s Pool, which takes them away from providing essential public services as lifeguards by protecting swimmers from danger and drowning.

- The presence of the rope barrier would reduce the number of conflicts between humans and humans and between humans and seals because it would be a clear indicator to the public the appropriate distance from the seals to avoid harassing them.

- The California Coastal Commission [CCC] has indicated that this is a situation in which an emergency exists such that an Emergency Coastal Development Permit would be appropriate in order to get the rope barrier placed at the Children’s Pool by the mid-December date. See Attachment A.

- The National Oceanic and Atmospheric Administration [NOAA] has newly indicated that it is urgent to replace the rope barrier at the Children’s Pool from mid-December through mid-May of this year. See Attachment B.

**QUESTIONS PRESENTED**

1. Should Emergency Authorization be granted to replace the Children’s Pool rope barrier without a Site Development Permit [SDP] by December 15, 2006 to protect public health and safety?

2. Should an Emergency Coastal Development Permit [ECDP] be issued by the City for the replacement of the Children’s Pool rope barrier by December 15, 2006 to mitigate the loss of or damage to life, health, and essential public services?
3. Should the Park and Recreation Department apply for an SDP and a regular City Coastal Development Permit [CDP] for the emergency rope replacement and for all future rope barrier replacement periods at the Children’s Pool?

**SHORT ANSWERS**

1. Yes. The rope barrier is needed to protect public health and safety by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning.

2. Yes. The rope barrier will mitigate for damage to life, health, and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. In addition, the CCC has stated an ECDP is appropriate, and it would be consistent for the City to issue a local ECDP.

3. Yes. When emergency work is authorized without an SDP and/or with an ECDP, applications for standard City SDP and CDPs must also be submitted for the emergency work. Additionally, a regular CDP and an SDP are required for all future rope replacement periods.

**ANALYSIS**

A. An Emergency Authorization Should be Granted to Protect Public Health and Safety

The Environmentally Sensitive Land Regulations [ESLRs] apply when development is proposed on environmentally sensitive lands, which include coastal beaches. SDMC § 143.0110. As development under the SDMC is defined in pertinent part as “the act of...erecting [or] placing...any...structure,” the replacement of the rope barrier at the Children’s Pool is considered development within the meaning of the code. The ESLRs specify that certain uses and activities are allowed on coastal beach areas, including lifeguard towers, public comfort stations, public piers, safety and public information signs, shoreline protective works, public stairs and ramps, and public recreational equipment. SDMC §§ 143.0130(b); 143.0144. Uses that deviate from the list, like the rope barrier at issue, require a deviation from the ESLRs approved through a Process Four Site Development Permit. SDMC § 143.0110, Table 143.01A. This will be required for all future rope placements after the December 15, 2006 through May 15, 2007 period.

---

1 An SDP is granted or denied by the Planning Commission under Process Four review and that decision may be appealed to the City Council. SDMC § 112.0501. However, if no deviation is required, then a Process Three Site Development Permit would be required. SDMC § 126.0503. The issue of whether and how the rope barrier may deviate from the ESLRs warrants further inquiry.
However, development that is necessary to protect the public health and safety may be authorized without prior approval of an SDP or a public hearing. Specifically, the SDMC provides in section 143.0126:

§ 143.0126 Emergency Authorization to Impact Environmentally Sensitive Lands

Whenever development activity within environmentally sensitive lands is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

a) If the emergency work involves only temporary impacts to environmentally sensitive lands, a Neighborhood Development Permit or Site Development Permit is not required provided the environmentally sensitive lands are restored, in a timely manner to their natural state, to the satisfaction of the City Manager. Restoration shall be in accordance with a restoration plan that conforms with the Biology Guidelines and is approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work and work on the approved restoration plan shall be initiated within 90 days of project completion or prior to the beginning of the next rainy season, whichever is greater.

b) If the emergency work results in permanent impacts to environmentally sensitive lands, a subsequent Neighborhood Development Permit or Site Development Permit is required in accordance with all regulations of this division. The application for the Neighborhood Development Permit or Site Development Permit shall be submitted within 60 days of completion of the emergency work.

c) Within the Coastal Overlay Zone, a Coastal Development Permit is required for any emergency coastal development in accordance with Section 126.0718.

The SDMC allows for an emergency authorization for development without an SDP where the development is necessary to protect public health and safety. SDMC § 143.0126. The rope barrier is needed to protect public health and safety by preventing human-to-human conflicts and violence, preventing encounters between mother seals and humans, and allowing lifeguards to focus on their duties protecting swimmers from danger and drowning. In addition, an ECDP is needed.
B. An Emergency Coastal Development Permit Should be Granted to Mitigate For Damage to Life, Health, and Essential Public Services

A Coastal Development Permit is generally required for coastal development within the Coastal Overlay Zone, which includes the Children's Pool beach. SDMC § 132.0402, Diagram 132-04A. Coastal development in the SDMC has the same meaning as under the state California Coastal Act, and is defined in pertinent part as "the placement or erection of any solid material or structure [or a] change in the intensity of use of water, or of access thereto. SDMC § 113.0103. An Emergency Coastal Development Permit may be issued on an expedited basis when there is a coastal emergency.

A coastal emergency is a sudden, unexpected occurrence within the Coastal Overlay Zone that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.

SDMC § 126.0718(a).

The purpose of the CDP procedures is to make the City's management and treatment of coastal resources comply and be consistent with those of the California Coastal Act as enforced and implemented by the CCC. Cal Pub Resources Code §§ 30108.6, 30240. Specifically, the SDMC section 126.0701 provides:

The purpose of these procedures is to establish a City review process for coastal development that is consistent with the Local Coastal Program, the California Coastal Act of 1976 (Public Resources Code section 30000, et seq.) and the California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 17.

Thus, the SDMC Coastal Development Procedures are a local implementation of the state standards under the Coastal Act. Cal Pub Resources Code § 30108.6.

The rope barrier at the Children's Pool is coastal development because it places a structure on the beach that changes public access to water. The City has jurisdiction over CDPs for development proposed above (or landward of) the mean high water line at the Children's Pool beach, and the Coastal Commission has jurisdiction over CDPs for proposed development seaward of the mean high water line. SDMC § 126.0702; See also Cal. Pub. Resources Code § 30600. City CDP grants are appealable to the Coastal Commission. SDMC § 126.0710. However, there are no administrative appeal procedures established for City issued ECDPs. The CCC has indicated that generally

---

2 If the rope barrier were erected below the mean high water line, then the Coastal Commission could grant the ECDP. However, after reviewing maps of the location of the mean high water line, it appears that the placing of the rope barrier at that level on the beach would provide little protection for the seals. A large area above the mean high water line is currently used for hauling out.
BCDPS are not appealable to the CCC, but a regular City permit must be applied for at the same time or soon after the emergency work which is appealable to the CCC.

The Park and Recreation Department indicated it was unaware until late November of this year that a CDP was required for the replacement of the rope barrier at the Children's Pool. Last April, the rope was erected without a permit. Thus, on December 5, 2006 the City Council became newly apprized that no steps had been taken to erect the rope barrier pursuant to the April 2006 resolution. At the same time, the City Council took new action by approving the replacement of the rope barrier at the Children's Pool beginning on December 15, 2006 rather than January 1, 2007. On December 11, 2006, NOAA issued a new letter indicating that the rope barrier needs to be erected by mid-December of this year to protect the seals and the public. As explained in the Introduction to this memorandum, seal harassment leads to conflicts between people and loss of essential lifeguard services to conflict resolution.

Immediate action is required because a normal CDP could only be processed by mid-January with a more realistic date of mid-March or later. By that time, the pupping season would be half, if not completely over, and the City Council’s action to have the rope barrier placed from December 15, 2006 to May 15, 2007 would be rendered moot. The CCC has stated that an ECDP is appropriate for the current Children’s Pool situation where NOAA provided new direction as to the urgency of the rope barrier.

C. Procedures and Findings for Emergency Development Approval

Notice of the emergency work must be given to the CCC and the public. SDMC § 126.0718(h). The following findings are required under SDMC section 126.0718(f) for an ECDP:

1) A coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit and the development can and will be completed within 30 days unless otherwise specified in the permit;
2) Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible; and
3) The proposed emergency work is consistent with the Local Coastal Program.

3 The CCC's Laurinda Owens sent our office confirmation that the an ECDP is appropriate; however, in a phone conversation, Lee McEachern from the CCC stated that the City should have and did know as early as April of this year that a CDP was required. Lee stated that with further direction from NOAA, the recent unexpected event requirement could be met. I contacted NOAA's Special Agent in Charge, Don Masters, who agreed that the replacement of the rope barrier to protect the seals from this mid-December through mid-May is urgent. His letter is attached hereto as Attachment B.
In addition, the related finding that it is necessary to protect the public health and safety to take emergency action to replace the rope barrier without an SDP is required. SDMC § 143.0126. As explained below, these findings are supported by the facts.

First, there is ample evidence that emergency conditions exist as explained in the Introduction to this memorandum such that the findings can be made for emergency authorizations under SDMC sections 126.0718 and 143.0126. The City Council, the CCC, and NOAA have all newly indicated it is important to get the rope barrier up by December 15, 2006 in order to protect the seals and the public. The regular permitting process will not allow the replacement of the rope barrier by that time. The rope barrier is needed immediately to protect public health and safety and to mitigate for damage to life, health, and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. The rope barrier was previously erected within days of authorization and can be replaced well within the 30 day limit on completion time. It must be erected by December 15, 2006, or as soon as possible, and remain up through May 15, 2007.

Second, the placement of this rope barrier during pupping season and additionally from December 15th through December 31st and from May 15th through May 15th annually has been open for public comment extensively. In the last City Council meeting on December 5, 2006, the Park and Recreation Department presented oral testimony regarding the need to evaluate expedited permitting procedures in order to effectuate the City Council's action. Public comment was received on the issue of the permit. The City Council at the December 5, 2006 meeting directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement. Now, City Council is in legislative recess, and the December 15th date is rapidly approaching. The California Coastal Commission has indicated that it would be appropriate to take emergency action to replace the rope barrier as was newly directed by NOAA. Thus, it would be appropriate for the City to also deem it necessary to authorize an ECDP.

Third, the replacement of the rope barrier is consistent with the Local Coastal Program. The Local Coastal Program is an implementation of the California Coastal Act on the local level. The Coastal Act provides that the Coastal Zone is a delicately balanced ecosystem and that development needs to be carefully planned to protect the resources. Cal Pub Resources Code § 30001. In addition, the goals of the Coastal Act are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources
conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Cal Pub Resources Code § 30001.5. The state legislature declared that where there are conflicts between these goals created by proposed development, such conflicts should be resolved in a way that is "the most protective of significant coastal resources" and "specific wildlife habitat." Cal Pub Resources Code § 30007.5. Thus, it is consistent with the Local Coastal Program to replace the rope barrier because it better protects the seals and their habitat. The public may still access the beach up to the rope barrier, and the rope will only be erected on a seasonal basis so that it allows the maximum appropriate public access consistent with sound conservation principles.

D. Regular Permit Applications are Required after Emergency Work and for Future Rope Barrier Replacements at the Children’s Pool

The authorization under an ECDP may only be for "the minimum necessary to stabilize the emergency. In addition, emergency development requires the subsequent processing of a standard Coastal Development Permit application for any work authorized on an emergency basis by these procedures." SDMC § 126.0718(b). This means that the ECDP should only be granted for this December 15, 2006 through May 15, 2007 rope placement. Also, even though the rope may be erected immediately by the December 15, 2006 date, subsequent processing of a regular CDP is required for the emergency placement and in advance of all future placements of the rope barrier. See also SDMC § 126.0718(g) (requiring that the subsequent processing of a regular CDP must be included as a condition on the ECDP).

Additionally, an emergency exception to the SDP requires that where there are permanent impacts to environmentally sensitive lands [ESL], an application for a regular SDP must be submitted within 60 days of the completion of the emergency work. SDMC § 143.0126(b). Therefore, where this emergency rope replacement is authorized without an SDP and/or with an ECDP, applications for standard City SDP and CDPs must also be submitted for the emergency replacement. Additionally, a regular CDP and an SDP are required for all future rope replacement periods.

4 All of the procedures contained in the SDMC for the processing of the ECDP must be complied with, even if not specifically addressed herein.

5 While the installation of the rope barrier is only replaced from December 15th through May 15th, it will be installed annually on a continuing basis, so it should be assumed for the purposes of the SDP requirement that it will be a permanent impact.
CONCLUSION

An emergency authorization to develop without an SDP and with an ECDP should be granted in order to allow the placement of the rope barrier at the Children's Pool from December 15, 2006 through May 15, 2007. In addition, a standard Coastal Development Permit application must be submitted for the emergency work and be a required condition on the ECDP. Both a CDP and an SDP will be required for all future rope replacement periods, and the regular application processes must be complied with to effectuate the City Council's December 5, 2006 action.

MICHAEL J. AGUIRRE, City Attorney

By

Nina M. Fain
Deputy City Attorney

cc: April Penera, Park Planning and Development Deputy Director
    Samir Mahmalji, Project Officer II
THE CITY OF SAN DIEGO

PLEASE WATCH FROM A DISTANCE AND AVOID DISTURBING THE SEALS.

HARASSMENT OF MARINE MAMMALS IS AGAINST THE LAW.

WARNING! CONTACT WITH THIS WATER MAY CAUSE SERIOUS ILLNESS. BACTERIA LEVELS EXCEED HEALTH STANDARDS.

AVISO! EL CONTACTO CON ESTA AGUA PUEDE CAUSAR ENFERMEDADES. LA CANTIDAD DE BACTERIAS EXCEDE DE LOS NIVELES DE SALUD.

THE BEACH IS OPEN FOR PUBLIC USE. SWIMMING IS ALLOWED, BUT NOT RECOMMENDED.

FOR MORE DETAILED INFORMATION CONTACT COUNTY HEALTH DEPARTMENT AT: (619) 338-2073

PARA MAS INFORMACION LAME AL (619) 338-2073.
WARNING!
MARINE MAMMALS ARE PROTECTED BY FEDERAL LAWS

PLEASE! Do NOT Disturb Marine Mammals.
Observe Them From a Safe Distance and Keep Pets on a Leash.
Marine Mammals are Wild Animals and Can be Dangerous!

It is Against the Law to Feed, Harass, Hunt, Capture, or Kill Marine Mammals. This Includes Any Act of Pursuit, Torment or Annoyance that has the Potential to Injure or Disturb a Marine Mammal. Violators are Subject to Civil and Criminal Penalties under The Marine Mammal Protection Act.

Report Violations to the NMFS Enforcement Hotline:
1-800-853-1964
NOTICE OF HEARING OFFICER PUBLIC HEARING
DEVELOPMENT SERVICES DEPARTMENT

DATE OF HEARING: April 16, 2008
TIME OF HEARING: 8:30 A.M.
LOCATION OF HEARING: Council Chambers, 12th Floor, City Administration Building,
202 C Street, San Diego, California 92101
PROJECT TYPE: Site Development Permit/Coastal Development Permit
PROJECT NO: 119757
PROJECT NAME: LA JOLLA CHILDREN'S POOL ROPE BARRIER
APPLICANT: Park and Recreation Department, City of San Diego
COMMUNITY PLAN AREA: La Jolla
COUNCIL DISTRICT: District 1
CITY PROJECT MANAGER: Morris E. Dye, Development Project Manager
PHONE NUMBER: (619) 446-5201

As a property owner, tenant, or person who has requested notice, please be advised that the Hearing Officer will hold a public hearing to approve, conditionally approve, or deny an application for a Site Development Permit/Coastal Development Permit to erect a temporary rope barrier (including support posts and foundations), until May 30th, 2008, at the La Jolla Children's Pool, located west of Coast Boulevard, near Jenner Street, La Jolla, within the Coastal Overlay Zone (Coastal Commission Appeal Jurisdiction) and the La Jolla Community Planning Area.

The decision of the Hearing Officer is final unless appealed to the Planning Commission. To appeal the decision you must be present at the public hearing and file a speaker slip concerning the application or have expressed interest by writing to the Hearing Officer before the close of the public hearing. To file an appeal to the Planning Commission, contact staff at the Planning Department, 202 "C" Street, Fifth Floor, San Diego, CA. The appeal must be made within 10 working days of the Hearing Officer's decision.

The certification of an Environmental Impact Report, adoption of a Mitigated Negative Declaration or Negative Declaration, or determination that the project is exempt from the California Environmental Quality Act may be appealed to the City Council after all other appeal rights have been exhausted. All such appeals must be filed by 5:00 PM within ten (10) business days from the date of the Planning Commission's certification/adoPTION of the environmental document. The proper forms are available from the City Clerk's Office, located on the second floor of the City Administration Building, 202 C Street, San Diego, CA 92101.

The decision made by the Planning Commission is the final decision by the City.
Appeals to the Coastal Commission must be filed with the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108, (Phone: 619-767-2370). Appeals must be filed within 10 working days of the Coastal Commission receiving a Notice of Final Action from the City of San Diego, Development Services Department.

If you wish to challenge the City's action on the above proceedings in court, you may be limited to addressing only those issues you or someone else have raised at the public hearing described in this notice, or written in correspondence to the City at or before the public hearing. If you have any questions after reviewing this notice, you can call the City Project Manager listed above.

This information will be made available in alternative formats upon request. To request an agenda in alternative format or to request a sign language or oral interpreter for the meeting, call the Disability Services Program Coordinator at 236-5679, at least five working days prior to the meeting to insure availability. Assistive Listening Devices (ALDs) are also available for the meeting upon request.

Job Order No. 4900