

This is from the official City of San Diego web site, City Council Meeting Minutes from 9/22/2009:  
<http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=448&doctype=Minutes>

**ITEM-336: La Jolla Children’s Pool Dredging Project, Project No. 71362. Request to excavate approximately 3,000 cubic yards of sand from the La Jolla Children’s Pool and relocate it at the pocket beach just south of the Children’s Pool. (La Jolla Community Plan Area. District 1.)**

Matter of approving, conditionally approving, modifying or denying a Coastal Development Permit/Site Development Permit/EIR to excavate approximately 3,000 cubic yards of sand from the La Jolla Children’s Pool and relocate it at the pocket beach just south of the Children’s Pool (South Casa Beach) within the La Jolla Community Planning Area.

If you wish to be noticed of the Coastal Commission hearing on this issue, you must submit a request in writing to the Development Services Department, Attention: DPM Morris Dye, Development Project Manager, 1222 First Avenue, MS 501, San Diego, CA, 92101 before the close of the City Council public hearing. 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.

In accordance with the California Coastal Act and Guidelines, if you wish to review a draft of the amendment language or have any questions, you can contact the City Project Manager listed above.

(See Report to the City Council No. 09-125/MND No. 71362/MMRP/CDP No. 860848/SDP No. 860849.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolutions:

**Subitem-A: (R-2010-143 Rev.) DENIED ENVIRONMENTAL IMPACT REPORT, ADOPTED AS RESOLUTION R-305275**

Adoption of a Resolution certifying that Environmental Impact Report No. 71362 has been reviewed and adopting the Mitigation Monitoring and Reporting Program for the La Jolla Children’s Pool Dredging—Project No. 71362;

Certifying that Environmental Impact Report No. 71362, on file in the Office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State Guidelines thereto (California Code of Regulations section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a Coastal Development Permit/Site Development Permit for the La Jolla Children’s Pool Dredging project;

That pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as

required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

**Subitem-B: (R-2010-144) NOTED AND FILED**

Adoption of a Resolution granting Coastal Development Permit No. 680848/Site Development Permit No. 680849—La Jolla Children’s Pool Dredging—Project No. 71362;

Certifying findings supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference, with respect to Coastal Development Permit No. 680848/Site Development Permit No. 680849;

Granting Coastal Development Permit No. 680848/Site Development Permit No. 680849 to the Engineering and Capital Projects Department of the City of San Diego, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

**OTHER RECOMMENDATIONS:**

This item was not presented to the Planning Commission for their consideration.

On September 3, 2009, the La Jolla Community Planning Association voted 12-1-0 that the findings for the Coastal Development Permit/Site Development Permit can be made.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Approval of Coastal Development Permit/Site Development Permit to excavate and relocate approximately 3,000 Cubic Yards of sand from the La Jolla Children’s Pool within the La Jolla Community Planning Area.

**STAFF RECOMMENDATION:**

See Staff Recommendation in Executive Summary below.

Staff Recommendation:

1. Certify Final Environmental Impact Report (EIR) Project No. 71362, SCH No. 1999011060, and that the information contained in it has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said EIR reflects the independent judgment of the City of San Diego as Lead Agency, stating for the record that the final EIR has been reviewed and considered prior to approving the project.
2. Adopt the Mitigation, Monitoring, and Reporting Program.
3. Approve Coastal Development Permit No. 680848; and Site Development Permit No. 680849.

### **EXECUTIVE SUMMARY:**

The La Jolla Children's Pool Dredging Project would restore and maintain the Children's Pool and Casa Beach to their 1941 configurations by excavating and transferring approximately 3,000 cubic yards (CY) of beach sand from Casa Beach to South Casa Beach. As the sand is known to contain unsafe levels of fecal coliform, it must be decontaminated by exposing it to the sun's ultraviolet (UV) rays. The contaminated sand would be spread out and raked until bacteria levels return to safe levels. The decontaminated sand would then be transferred from Casa Beach, up the beach access ramp, south along the bluff-top paved walkway to a conveyor system and deposited on the south portion of South Casa Beach. In addition, the project includes maintaining the Children's Pool in its 1941 configuration by excavating 200-300 CY of sand every two-to-five years.

Due to the project's location within the Coastal Overlay Zone it requires a Coastal Development Permit. Given its proximity to Environmentally Sensitive Lands (Coastal Beach and Bluffs), the project requires a Site Development Permit. In addition, an Environmental Impact Report (EIR) has been prepared for the project.

In 1931, Ellen Browning Scripps donated construction materials and built the Children's Pool breakwater to create a safe swimming zone for children adjacent to La Jolla Park. The breakwater was built on tidelands and the 1931 Tidelands Trust deeded the Children's Pool to the City of San Diego in trust for public use. The City was given right and title to the Children's Pool if the lands were to be devoted exclusively to public park, bathing pool for children, playground and recreational purposes, and other incidental uses. The title also requires that the rights to fish the waters and public access be reserved.

The breakwater initially had operating sluice gates that were designed to allow sand passage and avoid sand accumulation behind the breakwater. However, these sluice gates were closed shortly after construction of the breakwater and eventually capped with concrete. Subsequently, sand accumulated in the pool creating a larger beach than exists today. Although the breakwater fulfilled its intended purpose of protecting the pool from hazardous ocean waves, it also had the unintended consequence of sediment capture. This resulted in putting beachgoers closer to a rip current at the mouth of the pool and attracted seals to rest or haul out on the sand. Additionally, harbor seals have been using the Children's Pool and beach area for a rookery since 1995. The number of seals using the site has grown over the years and reached 164 in 2004. Further, a connection has been confirmed between the seals and unsafe levels of coliform. As long as the seals inhabit the Children's Pool and Casa Beach in large numbers the water and sand there will likely remain unsafe for human contact.

In 2005, the Superior Court of California ruled that use by the City of the Children's Pool as a habitat, animal sanctuary, zoo or seal watching facility that precludes its being used as a bathing pool for children would be outside the scope of the Trust. The Court ordered the City of San Diego to restore the

Children's Pool to its 1941 condition by removing the sand build up and further reduce the contamination levels in the Pool to levels certified by the County of San Diego as safe for humans, and to disperse the seal colony so it can be used as a park and shallow bathing pool for children. In response to this State Court decision, supporters of the seals sued the City in Federal Court and unsuccessfully sought a court order to permanently protect the seal colony based on federal law.

In response to mounting federal and state litigation costs incurred by the City, as well as citizens' concerns, the San Diego City Council passed a resolution in February 2009 calling for a legislative solution to the Children's Pool controversy. The resolution requested that the Legislature amend the Trust to give the City discretion to allow the seal colony to remain at the Children's Pool or to allow for a joint-use of the beach by humans and seals. State Senator Christine Kehoe carried the legislation, Senate Bill 428, which was overwhelmingly passed by the Legislature and recently signed by the Governor into law. The legislation amends the 1931 Trust effective January 1, 2010. The legislative amendment to the Trust gives the Council discretion to allow the Children's Pool to be used as a "marine mammal park for the enjoyment and educational benefit of children."

The City has a pending motion in the state court to vacate the injunction and seal dispersal order in recognition of this new law. The hearing on this motion is scheduled for October 6, 2009. On September 11, 2008, the Court ordered the City to submit a plan showing compliance with its earlier order to return the Children's Pool to its 1941 configuration. The schedule submitted to the Court in response included the Council making a decision on the EIR by September 30, 2009.

The project is consistent with the La Jolla Community Plan and the mitigation measures, included as permit conditions would reduce all potential environmental impacts to below a level of significance. Five alternatives, including a No-Project Alternative were considered in the analysis.

#### **FISCAL CONSIDERATIONS:**

The estimated total project cost is \$900,000. Consultant fees of \$258,490 have been funded from Fund 100. Additionally, consultant fees and labor fees have been funded from CIP 298720 in the amount of \$68,013 and from CIP 298725 in the amount of \$50,804 (E&CP Department Operational Budget). Construction phase in the amount of \$522,693 has not yet been identified.

#### **PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

No previous City Council action.

#### **COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On September 3, 2009, the La Jolla Community Planning Association voted 12-1-0 that the findings for the Coastal Development Permit/Site Development Permit can be made.

#### **KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):**

City of San Diego Engineering and Capital Projects

City Park and Recreation Department

Goldstone/Westlake

**LEGAL DESCRIPTION:**

The project site is located on the beach adjacent to 850 Coast Boulevard, within the Coastal Zone.

**Staff:** Morris Dye – (619) 446-5201

Shannon Thomas – Deputy City Attorney

**NOTE:** This item is not subject to the Mayor's veto.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** Start Time: 2:24 PM

**Speakers in opposition** by Cindy Benner and Valerie Sanfilippo.

**MOTION BY DONNA FRYE TO NOT CERTIFY ENVIRONMENTAL IMPACT REPORT NO. 71362 AND DIRECT STAFF TO WORK WITH THE DEPARTMENT OF THE ARMY CORPS OF ENGINEERS IN ORDER TO PREPARE A JOINT DOCUMENT WHILE LITIGATION IS MOVING FORWARD. Second by Marti Emerald.**

Passed by the following vote:

Yea: Kevin Faulconer, Todd Gloria, Tony Young, Carl DeMaio, Donna Frye, Marti Emerald, Ben Hueso;

Nay: Sherri Lightner;

Recused: (None);

Not Present: (None).