

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370

**W26b****Addendum**

March 4, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W26b**, Coastal Commission Permit Application #A-6-LJS-10-009 (**San Diego Parks temporary rope barrier**), for the Commission Meeting of March 10, 2010

Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 9 of the staff report, the second paragraph shall be revised as follows:

Relative to the appellants' assertion that the signage is inadequate and misleading, the Commission finds there is no merit. While the signage does include warnings to avoid disturbing the seals and that the water is contaminated, it does specifically state that the beach is open for public use and swimming is allowed, but not recommended (ref. Exhibit #3). In addition, the City has also placed signs up on the stairway leading to the beach that makes it clear that public access on the beach is allowed at all times and that any signs that do not have the official City Seal are not approved nor sanctioned by the City (ref. Exhibit Nos. 7 & 8). Thus, the signage does not result in adverse impacts on public access.

2. On Page 10 of the staff report, the first incomplete paragraph shall be revised as follows:

[...] situation for the protection of both seals and people so that both can utilize this area. As far as whether or not the City has chosen the "actual" pupping season, there is nothing in the City's file that addresses this issue. The appellants suggest that per NOAA, the official dates of pupping season are defined as January to mid-April. However, based on conversations between Commission staff and a representative from the National Marine Fisheries Service (NMFS), the City's proposal to put the rope barrier up in mid-December is conservative, but warranted (personal conversation/Tina Fahey). According to the NMFS representatives, pup births have been documented as early as November. In addition, pup births have been documented as late as April and, with the necessary weaning period, the proposed

mid-May removal date is also conservative. review of various websites, articles and research papers on harbor seals by Commission staff, it appears the pupping season varies with pups being born as early as February and as late as May. It appears the City may have chosen mid-December through mid-May to include a buffer period as well as to cover the breeding period and weaning of the pups. Thus, the City's dates for installation of the temporary rope barrier are conservative and consistent with the time period when seals pups are present on the beach. In any case, while there really is not a defined pupping season for seals at Children's Pool Beach, the Commission finds that placement of the temporary rope barrier on the beach as proposed does not result in adverse impacts on public access. Thus, confining the rope barrier to a specified defined pupping season is not necessary.

The appellants have also suggested that the City is in violation of the Marine Mammal Protection Act by placing the temporary rope barrier as they have not obtained the necessary federal permits for such. Again, in conversations with Commission staff, NMFS representatives have stated that they are in full support of the rope barrier to protect the seals during the pupping season and the City does not need any permits or authorization from them for placement of the rope barrier. The NMFS representatives have stated that the seals benefit greatly from the barrier as a means to assure people do not get too close. In addition, they have stated that mothers protecting their pups can and do get aggressive and have been known to bite or nip if they feel threatened. Thus, the barrier helps protect people from the seals as well by keeping them at a safe distance.

3. The attached pictures shall be added as Exhibit Nos. 7 & 8 to the staff report.

W26b

Lee McEachern

From: Deborah Lee
Sent: Tuesday, March 02, 2010 3:00 PM
To: Lee McEachern
Subject: FW: Item 26b San Diego Park's temporary rope barrier at Children's Pool

Attachments: PrematureSeal.jpg



PrematureSeal.jpg
(194 KB)

FYI and file, DNL

-----Original Message-----

From: Jim Moore [mailto:jjmoore@ucsd.edu]
Sent: Tuesday, March 02, 2010 2:10 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Item 26b San Diego Park's temporary rope barrier at Children's Pool

Hi - I received an email concerning the above matter, and have read (lightly) W26-b-3-2010, the Staff Report and Recommendation on Appeal.

I have been studying the seals at Children's Pool for some years, with a focus on photo-identification of individuals (I'm happy to provide further details if desired, but I don't think my background per se is necessarily relevant for present purposes).

One of the issues discussed in the document is the appropriate period for the pupping season.

While first successful births have occurred in late January/early February, pregnant females use the beach in the fall and there have been a number of stillbirths reported as early as November (maybe earlier).

I attach a photo I took on 21 November 2009 of a live premature birth.

I did not witness events preceding the birth, but arrived within minutes afterward. The pup was alive and mobile, but the mother had abandoned it and it was killed by seagulls.

Other than observing that there was no obvious human-related stressor in the minutes immediately preceding the birth, I've no idea what lay behind it.

It is well known that stress can contribute to premature births/miscarriages in a variety of mammals, and obviously pregnant seals are present months before the onset of normal pupping. I don't have a recommendation for the exact date when "pupping season" should start (for purposes of the rope barrier) but do urge that a buffer of AT LEAST a month or so be built in (e.g. the existing Dec. 15 start date or earlier).

Thanks for your attention,

Jim
Assoc. Prof.
Anthropology Dept
UCSD
--

Jim Moore 858 534-5572 "Debugging is twice as hard as writing the code in the first place. Therefore, if you write the code as cleverly as possible, you are, by definition, not smart enough to debug it." Brian Kernighan

3

Website: <http://weber.ucsd.edu/~jmoore/>
SoCal Primate Research Forum: <http://scprf.ucsd.edu/>

Letters of Support
for Project

African Ape Study sites: <http://weber.ucsd.edu/~jmoore/apesites/>
Ugalla Primate Project: <http://ugalla.ucsd.edu/>

Report on political censorship of science:
http://ncac.org/science/political_science.pdf

h



21 Nov 2009, Children's Pool

Lee McEachern

From: ellenshively [ellenshively@sbcglobal.net]
Sent: Thursday, March 04, 2010 1:59 PM
To: Lee McEachern
Subject: Fw: Comments to APPEAL No. A-6-LJS-10-009

----- Original Message -----

From: ellenshively
To: ssarb@coastal.ca.gov ; dlee@coastal.ca.gov ; dlilly@coastal.ca.gov
Sent: Thursday, March 04, 2010 1:56 PM
Subject: Comments to APPEAL No. A-6-LJS-10-009

Comments on APPEAL No. A-6-LJS-10-009
San Diego Park's temporary rope barrier at Children's Pool during pupping season.

Dear Members of the California Coastal Commission:

These comments are in support of the motion to find "NO SUBSTANTIVE ISSUE" exists with respect to the grounds on which the appeal mentioned above has been filed.

We found the reasoning to delete further actions on this appeal entirely supported by the facts.


A. Senate Bill 428 has forever changed the approved use of "Children's Pool", or Casa Beach as it is better known. SB 428 inserted the additional usage to be as a marine mammal park for the education and enjoyment of children. To deny unhampered access to this beach by the marine mammals reverts the legislative action inoperative. A fully open beach with no physical barriers fails to acknowledge this provision of the law.

B. We must keep in mind that the Marine Mammal Act of 1973 prevents actions which will cause harm to the animals which are at rest, and thereby vulnerable to frequent human contact. The National Marine Fisheries Service has distance guidelines (sometimes of 100 feet distance) employed more effectively at other rookeries along the Pacific coast. One of the NMFS agents recently committed to a recommendation of keeping at least a fifty foot distance between animals and people in the interests of public safety. She cited that mothers are more predisposed to defending their young before weaning is completed at around 6-7 weeks of age. The rope "barrier" is the least effective type of barrier which could be employed. Total beach closure would be the most effective measure to carry out this Act. This City would be cited world wide as inexcusably cruel and unusually heartless if the rope with a means of enforcing it's restrictive distance was not provided, particularly during pupping season.

Thank You.

Ellen M. Shively
President
La Jolla Friends of the Seals
619-479-3412

3/4/2010



Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 11:28 AM
To: Lee McEachern
Subject: FW: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010
Attachments: 3413005815_317d1c2909.jpg
FYI, addendum and file-- DNL

From: Nick Chill [mailto:nchill4x4@hotmail.com]
Sent: Wednesday, March 03, 2010 7:37 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

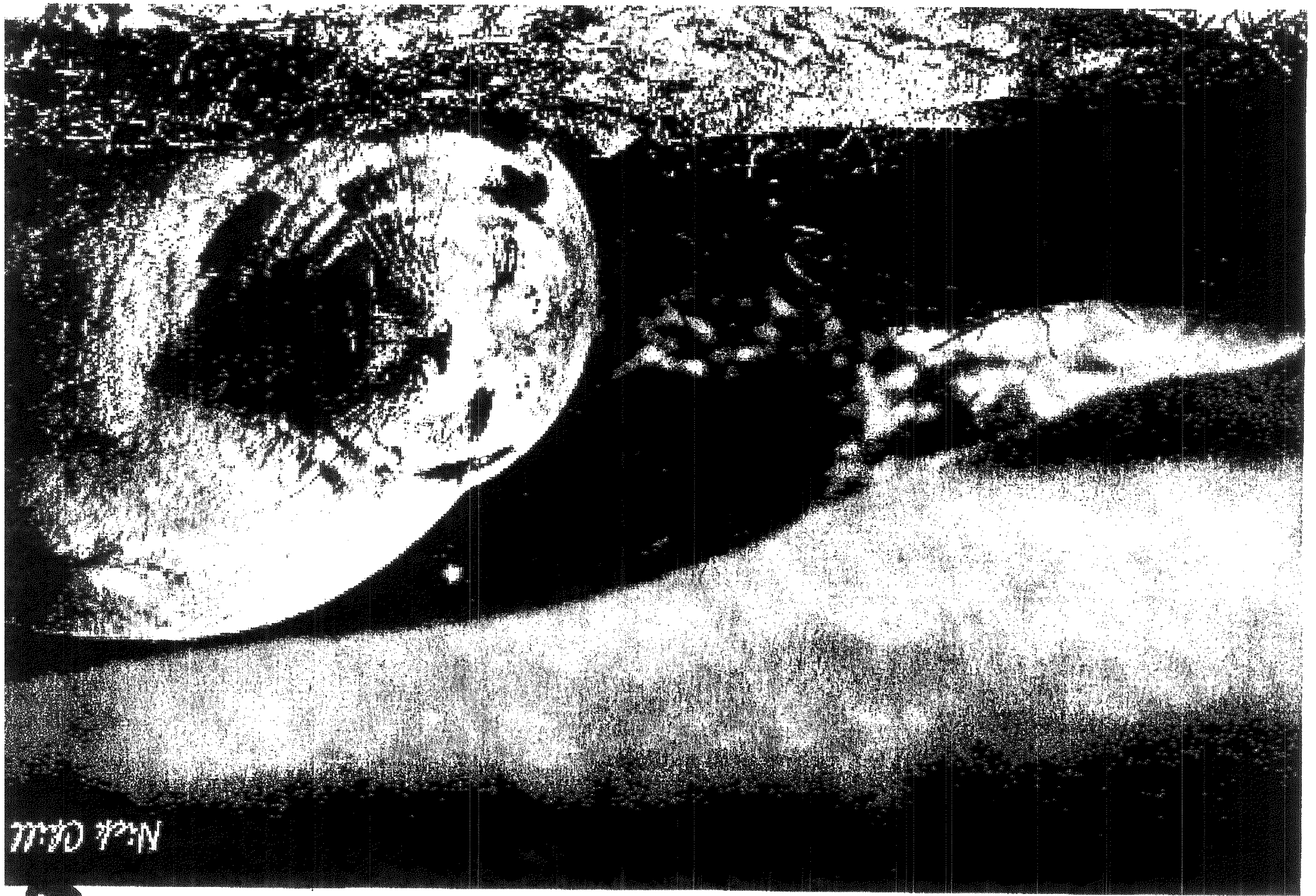
I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

I would hope it's obvious that this is a very bad idea. It really seems as if this appeal has been made out of spite for the seals, and their supporters, in reaction to the recent ruling for the seals. Removing the rope has no benefit for the residents of La Jolla, nor for anyone else. I have personally witnessed what happens when there is no rope and tourists enter the beach. Not realizing the problem they are creating, tourists will walk right up to an injured seal, believing that it's just being friendly. That's exactly what will happen to these small seal pups.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Nicholas Chill
330-518-8018
NickChillPhotography.com

EMAILING FOR THE GREATER GOOD
[Join me](#)



7:50 PM

Deborah Lee

From: Joey Racano [joey_racano@yahoo.com]

Sent: Wednesday, March 03, 2010 8:22 AM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Childrens Pool Appeal

Honorable Commissioners,

Please listen to staff and find no substantial issue with the rope barrier at Casa Beach AKA Childrens Pool, LaJolla.

This is an ongoing saga that won't be solved soon, but the rope allows access while it keeps seals and people apart for safety.

I have been working hard to have the area designated an SMR under the MLPA and I am actually quite hopeful. I have personally appeared before F&G Commission several times over the past two years on this issue and hand delivered over 2,000 letters asking for the SMR.

Hold down the fort, a permanent solution is coming. Then we can get the orcas away from Blackstone Group/AKA seaworld.

love and respect

joey racano Ocean Outfall Group

ps join my Facebook page, Free Tilikum!

www.EarthSourceMedia.com

"Speak truth to youth!"

joey's famous blog:

<http://littleshell.earthsourcemedia.org>

Lee McEachern

From: Diana Lilly
Sent: Thursday, March 04, 2010 7:56 AM
To: Lee McEachern
Subject: FW: rope barrier at Casa Beach seal rookery, La Jolla, CA

From: Robin Lindsey [mailto:moondawgs@mac.com]
Sent: Thursday, March 04, 2010 6:05 AM
To: Diana Lilly
Subject: rope barrier at Casa Beach seal rookery, La Jolla, CA

Dear California Coastal Commissioners,


I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

I personally have visited this harbor seal rookery twice since 2008 and it has been the destination of my travel from Seattle. The rookery is an unparalleled opportunity for the public to observe marine mammals in the wild, seals giving birth, nursing and teaching their young to swim. I would ask further that in addition to keeping the rope barrier up permanently, that the public is prevented from going down on the beach PERIOD. There are amazing vantage points from the sidewalks and seawall above the beach and no need for the public to be so close as to disturb and put the young pups at risk.

Sincerely,
Robin Lindsey
www.robinlindseyphotography.com
www.sealsitters.org

3/4/2010



Lee McEachern

From: Diana Lilly
Sent: Thursday, March 04, 2010 7:57 AM
To: Lee McEachern
Subject: FW: request

From: Janiece Chisholm [mailto:janiecec@cox.net]
Sent: Wednesday, March 03, 2010 7:59 PM
To: Diana Lilly
Subject: request

*Please, please leave the rope up to help protect the seal pups.
Thank you.
Janiece Chisholm
janiecec@cox.net*

Deborah Lee

From: michelle santurro [michelle-santurro@hotmail.com]
Sent: Wednesday, March 03, 2010 2:01 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

It is an atrocity that this needs to be readdressed. Not only are the seals a tourist attraction, but the amount of land they occupy is so minimal to the state of California's beaches. Nature should have a place in our society without question!

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season.

I support that the rope barrier should be maintained all year long.

Michelle Santurro
ms designs
858 229 6312
7665 mission gorge rd. #181
san diego, ca 92120

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3/3/2010

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ITEM W26B

A-6-LGS-10-009

3/4/2010

Dear Honorable Coastal Commissioners:

As a lifelong resident of San Diego who earned her open water S.C.U.B.A. Certification at age 40 at La Jolla Shores in January, no less, I am certain of two things in regard to this issue: 1) The underwater experience divers are seeking would not be worth the time and effort if the wildlife were to disappear and 2) There are many places and opportunities for a diver to ^{access} enter the water in San Diego, therefore, by ensuring the seals a small area of beach in which to reproduce in safety and tranquility you will also ensure conservation of the very reason we dive at all.

Please support the City of San Diego and staff at the Coastal Commission in their endeavors to do the right thing.

Sincerely,

One of your biggest fans!
Chula Vista, CA (since 1956)

Deborah Lee

From: mypugsme@gmail.com on behalf of Jennifer Peirson [jennifercsr13245@gmail.com]

Sent: Wednesday, March 03, 2010 12:46 PM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat. Without the rope barrier, mother seals are startled by people who come too close to take a look at the seals and the baby seals. The sad result is that the frightened mothers flee and the helpless pups are lost or abandoned.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Thank you in advance for your support!

Sincerely,
Jennifer L. Peirson
6131 Rancho Mission Rd, Unit 217
San Diego, CA 92108

A

3/3/2010

Deborah Lee

From: Sue Casad [scasad@cox.net]
Sent: Wednesday, March 03, 2010 3:53 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: PLEASE leave the seal pupping rope UP - PLEASE PLEASE PLEASE!!!!

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

PLEASE support the staff's recommendation that the *rope barrier stay up during pupping season* and that *no persons should step over the rope barrier* during pupping season. *

I support that the rope barrier should be maintained all year long.

*

Our family has had many foreign exchange students, and the seals along the La Jolla Beach are one place we always take our students, and "our: students always super enjoy watching the seals, taking pictures of the seals, being able to be so close to the seals, all in the seals' natural habitat. It is not only educational for everyone, but nice to be able to see and share the natural beauty and natural surroundings of these precious mammals!! *

*

Sincerely,

Susan Casad

Deborah Lee

From: Deana Gunn [dgunn00@hotmail.com]
Sent: Tuesday, March 02, 2010 1:51 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am a San Diego county resident and my family enjoys and supports the presence of the harbor seals in La Jolla. It is an important ecological treasure and a huge tourist attraction.

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long. Please do not allow a very small and very vocal minority to remove the rope - the residents and visitors of San Diego love these seals and recognize what a unique feature we have here in our city. As residents of the area, we have watched this ridiculous debate go on long enough and waste enough of our taxpayer money. Allow the seals to stay and please allow the rope to remain all year long so that we can all enjoy watching these seals undisturbed on their beach. We have miles of coastline to enjoy - let the seals have their tiny patch of sand.

Sincerely,
Deana Gunn
Encinitas, CA

Hotmail: Trusted email with powerful SPAM protection. [Sign up now.](#)

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Deborah Lee

From: Jane Cole [cjanego1946@gmail.com]

Sent: Wednesday, March 03, 2010 8:23 AM

To: Deborah Lee

Subject: Save the Seals

Please save the seals in Southern CA.

Deborah Lee

From: Rachael Phillips [r2rach@yahoo.com]
Sent: Wednesday, March 03, 2010 10:58 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

It is really sad that this issue regarding the seals is still going on. The mothers and pups need to be protected from humans plain and simple. A rope barrier is a simple solution. The anti-seal activists that do not want the seals around need to stop pursuing this. It is wasting a lot of time and money. They don't seem to understand that there are people out there that do want to interact with nature and protect our wildlife.

Thank you for your time,
Rachael Phillips

Deborah Lee

From: Dawn Darling [dawndarling@rocketmail.com]

Sent: Wednesday, March 03, 2010 10:27 AM

To: Deborah Lee

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

This is so important!! I have seen most of these seals grow up in San Diego. We must keep what is left of mother nature's environment preserved. Help San Diego stay it's original habitat.

Thank you,

Dawn Darling
San Diego

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Deborah Lee

From: Trista Golike [tristaturtle@gmail.com]

Sent: Wednesday, March 03, 2010 10:20 AM

To: Deborah Lee

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010.

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long. Unfortunately, not all visitors to this cove are local inhabitants who understand and respect the seals' territory.

Regards,
Trista Golike



Lee McEachern

From: Diana Lilly
Sent: Wednesday, March 03, 2010 12:00 PM
To: Lee McEachern
Subject: FW: Please leave the Rope Barrier

From: Melissa Hughes [mailto:gigglestoo@cox.net]
Sent: Wednesday, March 03, 2010 12:00 PM
To: Diana Lilly
Subject: Please leave the Rope Barrier

SUBJECT: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

My primary concern is that the mothers don't abandon the pups if the area feels unsafe to them. They don't deserve to pup in harms way.

Please support the recommendation that the rope barrier stay up during pupping season.

I also support that the rope barrier should be maintained all year long.

Thank you for your consideration,
Melissa Hughes

2

Deborah Lee

From: June H Kobayashi [jhkobayas18@yahoo.com]

Sent: Wednesday, March 03, 2010 12:12 PM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

The seal population has dwindled considerably over the course of the last couple of decades as I visit them with my family regularly. These pups are precious in maintaining San Diego's image of being America's Finest City and their reputed commitment to wildlife.

Best Regards,

June H. Kobayashi
of Torrance, CA

3/3/2010

22

Deborah Lee

From: Melissa Hughes [gigglestoo@cox.net]

Sent: Wednesday, March 03, 2010 12:01 PM

To: Deborah Lee

Subject: Leave the pupping rope/barrier

SUBJECT: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

My primary concern is that the mothers don't abandon the pups if the area feels unsafe to them. They don't deserve to pup in harms way.

Please support the recommendation that the rope barrier stay up during pupping season.

I also support that the rope barrier should be maintained all year long.

Thank you for your consideration,

Melissa Hughes

23

Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 10:12 AM
To: Lee McEachern
Subject: FW: Please put a sto to this rope removal petition re. Casa Beach!!!!
FYI, addendum and file--DNL

From: Barb S [mailto:babsan99@yahoo.com]
Sent: Wednesday, March 03, 2010 10:05 AM
To: Sherilyn Sarb
Cc: Deborah Lee; Diana Lilly
Subject: Please put a sto to this rope removal petition re. Casa Beach!!!!

Dear California Coastal Commissioners,

It is time to send a clear message to the 'animal anti-activitsts' that do all they can do create trouble for innocent life.

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

I used to live in San Diego, and now live in OC. Just 2 weeks ago I took a visiting Swedish friend (I am Swedish by birth) to see and be amazed by the natural habitat we could watch so closely, including a little pup who was just 1 hour old. Amazing... he was blown away.

Sincerely Barbro Sjutun,
1108 Buckingham Drive, Apt D
Costa Mesa, 92626

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Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 10:11 AM
To: Lee McEachern
Subject: FW: pupping rope

FYI and addendum/file-- DNL

-----Original Message-----

From: jennifer blanchard [mailto:jenniferandike@me.com]
Sent: Wednesday, March 03, 2010 10:10 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: pupping rope

Please keep the pupping rope up. This is vital to ensure the pups are safe and the mothers don't get scared off. Please help keep the natural seals healthy and happy.
jennifer blanchard
jenniferandike@me.com

25

Lee McEachern

From: Diana Lilly
Sent: Wednesday, March 03, 2010 10:21 AM
To: Lee McEachern
Subject: FW: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010.

From: Trista Golike [mailto:tristaturtle@gmail.com]
Sent: Wednesday, March 03, 2010 10:21 AM
To: Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010.

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long. Unfortunately, not all visitors to this cove are local inhabitants who understand and respect the seals' territory.

Regards,
Trista Golike

26

Deborah Lee

From: Heidi Dawn [ediehd@yahoo.com]
Sent: Wednesday, March 03, 2010 7:07 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat. Please support keeping the rope up all year long so that this very special habitat can be maintained for both the seals and their human visitors for years to come!

*~Heidi Dawn
Ocean Beach, San Diego.*

27

Deborah Lee

From: REBECCA FRANKS [rfranks2@mac.com]
Sent: Wednesday, March 03, 2010 7:50 AM
To: Deborah Lee
Subject: Let the Seal Babies keep their home!

Dear California Coastal Commissioners,

I feel Humans should respect Animals and the World we live in! We should not disturb the Baby Seals in La Jolla!!!!!!

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat. Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Rebecca Nan Franks
7642 Palmilla Drive #126
San Diego, CA 92122
(619)888-2094

Deborah Lee

From: sammarye [sammarye@gmail.com]

Sent: Wednesday, March 03, 2010 7:44 AM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

To: California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

The pups are fragile and the mothers are easily frightened. These innocent harbor seals deserve our protection at Casa Beach, just as they are protected in other rookeries along the coastline. The public does not unduly suffer by being separated from the beach rookeries in Pacific Grove, or along the 17-Mile Drive, or near Hopkins Marine Lab, and these are also high use areas. Harbor seal rookeries are protected at Pt. Reyes, another public high-use area.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. Furthermore, I support that the rope barrier should be maintained all year long.

Thank you for making a decision that will affect the survival of a precious species for all our future.

Sincerely,

Sammarye Lewis

San Jose, CA

29

Lee McEachern

From: Deborah Lee
Sent: Tuesday, March 02, 2010 12:29 PM
To: Lee McEachern
Subject: FW: Rope Barrier at the Children's Pool in La Jolla
FYI and print off for addendum and file-- Thanks, DNL

From: Loretta Labianca [mailto:lorettalabianca@sbcglobal.net]
Sent: Monday, March 01, 2010 8:54 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Rope Barrier at the Children's Pool in La Jolla

I hope you will consider a year round rope barrier at Casa Beach in La Jolla to protect this unique colony and rookery of Harbor Seals. Because it is an urban environment, keeping people from getting too close and disturbing and frightening the seals is difficult. With a rope barrier and with proper enforcement of keeping a safe and defined distance, the seals could be protected and the public as well. There is a small group of middle aged men that spend countless hours going down on the beach and scaring the seals thereby causing them to separate from their newborn pups or having them prematurely. This could easily be stopped with proper enforcement of the MMPA and local wildlife laws but enforcement is greatly lacking.

Loretta LaBianca
Sierra Club Volunteer
858-442-1280.

30

Deborah Lee

From: Tracy Henslin [thenslin@yahoo.com]

Sent: Wednesday, March 03, 2010 9:54 AM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. Without the rope barrier, mother seals are startled by people who come too close to take a look at the seals and the baby seals. The sad result is that the frightened mothers flee and the helpless pups are lost or abandoned.

I support that the rope barrier should be maintained all year long.

Thank you!
Tracy Henslin



From: Joey Racano [mailto:talkaboutthebay@yahoo.com]
Sent: Wednesday, March 03, 2010 3:54 PM
To: Pat Kruer; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us;
kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; lwan22350@aol.com;
sblank@kandsranch.com; drbburke@aol.com; mary_shallenberger@ppfa.org;
gonzalez@unionyes.org; mvaughn@coastal.ca.gov; jbishop@coastal.ca.gov;
mark.stone@co.santa-cruz.ca.us; esanchez@oceanside.co.ca.us
Subject: La Jolla Seals at Childrens Pool (Rope Barrier Appeal)

Please support staff they made it clear, public still has access to beach and ocean, but rope tends to protect from the seals and people being too dangerously close.

Thanks

joey racano, OOG

EarthSourceMedia
www.EarthSourceMedia.org
'Speak truth to youth!'
joey's famous blog:
Error! Hyperlink reference not valid.

Joey Racano LIVE! at Last Stage West on March 20th 6PM (California time) watch the simulcast at laststagewest.net

Deborah Lee

From: Becca Sharp [streetbike_babe@yahoo.com]

Sent: Thursday, March 04, 2010 12:26 AM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

As a native San Diegan I grew up using the beach and swimming at the Children's Pool. While it was my favorite place to swim as a child, it is also the first place I saw a sea otter. Twenty five years later we still go to see the seals. I currently take my nieces and cousins, and once I have children, will take them to see the seals also. We have an expansive selection of beautiful beaches here, allowing the seals to have a protected area where children can view and learn about them in the wild is valued much more than another place to play in the water.

Thank you for your time,
Rebecca Sharp

Lee McEachern

From: Janiece Chisholm [janiecec@cox.net]

Sent: Wednesday, March 03, 2010 7:58 PM

To: Sherilyn Sarb

Subject: request

Please, please leave the rope up to protect the seal pups.

Thank you

Janiece Chisholm

janiecec@cox.net

Deborah Lee

From: Andrea Sanchez [asanchez@fmservicesinc.com]

Sent: Thursday, March 04, 2010 12:36 PM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Protect the Seals!!!!!!!

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. **I support that the rope barrier should be maintained all year long.**

Andrea Sanchez and Chase Hudson

Andrea Sanchez (cell 619-991-1216)

Accountant

(858) 578-2300 (office)

(858) 578-2301 (Fax)

35

Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 10:14 AM
To: Lee McEachern
Subject: FW: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010
FYI, file and addendum-- DNL

~~~~~  
Deborah N. Lee  
District Manager  
California Coastal Commission  
San Diego Coast District  
Office: (619) 767-2370  
Fax: (619) 767-2384  
dlee@coastal.ca.gov  
~~~~~

From: Jonathan S. Marion [mailto:jsmarion@gmail.com]
Sent: Wednesday, March 03, 2010 9:56 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

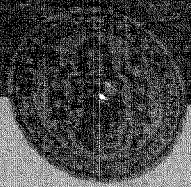
Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Sincerely,

Dr. Jonathan S. Marion

--
Jonathan S. Marion, Ph.D. ~ www.jsmarion.com
Adjunct Professor of Cultural Anthropology ~ California State University, San Marcos
Adjunct Professor of Biological Anthropology ~ MiraCosta College
Board of Directors: Society for Visual Anthropology (2008-2011)
Board of Directors: Society for Humanistic Anthropology (2009-2012)





THE CITY OF SAN DIEGO

PUBLIC ACCESS ON THE BEACH IS ALLOWED
AT ALL TIMES.

PLEASE BE RESPECTFUL OF THE SEALS ON THE BEACH.
HARASSMENT OF MARINE MAMMALS IS AGAINST THE
LAW. FOLLOW THE MARINE MAMMAL PROTECTION
GUIDELINES AS POSTED.

PLEASE NOTE: ANY SIGNS IN THIS AREA THAT DO
NOT HAVE AN OFFICIAL CITY OF SAN DIEGO SEAL
ARE NOT APPROVED NOR SANCTIONED BY
THE CITY OF SAN DIEGO. 08.18.2008

11 10

THE CITY OF SAN DIEGO
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LAW. FOLLOW THE MARINE MAMMAL PROTECTION
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PLEASE NOTE: ANY SEALS IN THIS AREA THAT DO
NOT HAVE AN OFFICIAL SET OF SAN DIEGO SEAL
ARE NOT APPROVED FOR SANCTIONED BY
THE CITY OF SAN DIEGO.

PLEASE DO NOT FEED OR DISTURB
THE SEALS. FEEDING OR DISTURBING
THE SEALS IS AGAINST THE LAW.
FOLLOW THE MARINE MAMMAL PROTECTION
GUIDELINES AS POSTED.

WARNING
DO NOT FEED OR DISTURB
THE SEALS. FEEDING OR DISTURBING
THE SEALS IS AGAINST THE LAW.
FOLLOW THE MARINE MAMMAL PROTECTION
GUIDELINES AS POSTED.

THE CITY OF SAN DIEGO
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LAW. FOLLOW THE MARINE MAMMAL PROTECTION
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PLEASE NOTE: ANY SEALS IN THIS AREA THAT DO
NOT HAVE AN OFFICIAL SET OF SAN DIEGO SEAL
ARE NOT APPROVED FOR SANCTIONED BY
THE CITY OF SAN DIEGO.

08.18.2008 11:23

W26 b

Californian Coastal Commission

Attendees of the March 10 Santa Cruz meeting

Re: Appeal A-6-LJS-10-009

A "temporary rope barrier annually in perpetuity" across Children's Pool, a public trusted beach in San Diego

This supplementary document to be included with the appeal and local Staff report.

Dear Commissioner,

From the size of the Staff report alone, one can see the issue is important. It will affect beach access all over California in future decades, and the ability of the Coastal Commission to move when local governments act first and ask permission later.

On 1/24/2010, a subcommittee of the City Council is scheduled to consider changing the barrier to year round, and to complete closure December to May. While still in violation with the Coastal Commission, San Diego is making quiet plans to more than double the impact.

I ask that you judge the permit terms as to whether consistent with the Coastal Act. (And Article 10, section 4 of the California Constitution) Local Staff seeks to contain the deliberations to consistency with the Local Coastal Plan, but any violation of the Coastal Act, in letter or spirit, is a violation of an LCP which is supposed to conform to the Coastal Act, by definition.

- 30500 "Each local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided." -

Existence of an LCP never removes authority from the Coastal Commission.

I. What I did contend and what I did not.

1)... *the rope barrier across 96% of the beach is an encroachment on public access that results in a defacto closure of the beach to the public;*

I contended the barrier is a violation by being any unpermitted encroachment at all, which it certainly is. I said what the La Jolla Community Planning Association said, "It violates the LCP public access policies particularly vertical access", which means access from the road to the **shoreline**. I do agree our local packs of animal rights activists have found it a tool to intimidate the public off the beach entirely, and the local Coastal Commission enforcement office should have taken action long ago. The barrier is used as a tool for beach restriction by intimidation. That is all it takes to violate the public's right of access under the Coastal Act.

2) ...*the rope is not for habitat preservation but is actually artificial habitat creation which fosters acclimatization of seals and further beach colonization which is bad for both people and seals;*

RECEIVED

MAR 03 2010

CALIFORNIA
COASTAL COMMISSION

Letter of Response

I contended the permit conditions are not based on its stated intent or purpose. The placement and duration are not based on science and law, but convenience and input from one special interest group. To show that, see (Attachment A) a memorandum of law the City used to initiate a series of "temporary" rope barriers. It shows the path by which one special interest group was the only input sought. It also shows the City has long intended to change this to barrier placement throughout the year and eventual closure. This month, a proposal is circulating in our City Hall to change this barrier to a complete winter and spring beach closure, with no input from outside San Diego.

The habitat creation issue (Attachment B) is a federal issue under the 109(a) of the Marine Mammal Protection Act, (Attachment E) and if the Commission endorses this rope barrier permit, it will endorse that violation.

3) ...that the City has already installed the rope barrier even though the appeal is pending and the coastal development permit is not effective;

On 2/27, Lee McEachern told me to my face the City was in violation for proceeding with an appealed project and not submitting a required Emergency Permit. He told me he would tell the Commission the same thing. Hours later, the Staff Report was posted. On page 10, it only says "appellants assert" the installation permit is not effective. The incredible rational followed that therefore no development has yet taken place – that is, if not in effect, no violation because the project must not exist. Poof. I never contended it was not in effect, I contended it is in effect; illegally. And it is.

4)signage proposed next to the rope is inadequate and misleading;

I did not claim the signage was inadequate to the conditions of the permit, because the conditions are so vague as to allow most anything. Those "conditions" should never have escaped scrutiny. Since the Staff Report includes a picture of a sign, I included (Attachment F) what the signs used to look like when they actually explained themselves. Note the signs today posted 60' apart direct citizens to call County Health for information, which is a fool's errand. These City "informational signs" are really County contamination postings with no clear reference to the barrier's purpose or meaning.

5)the project approved by the City does not have a monitoring component to verify its effectiveness, stop verbal harassment or keep animal activists from moving the rope and completely blocking off the beach;

I did say the City has no monitoring to determine effectiveness or consequences. Its placement is arbitrary in location and dates. Its terms were dictated by a special interest group to a City committee that sought no other public or regulatory input. (Attachment A, memorandum) The permit does not create a project under the Coastal Act that balances the right of public access against some other greater good.

6) ...the proposed dates of placement are not the true pupping season.

The official dates of pupping season are defined – January to mid April, per NOAA, the only legal agency. In fact, any State agency and the City are forbidden from enforcing legislation concerning seal protection anyway. *Title 16 USC Chapter 13 Subchapter II Sec. 1379-Transfer of management authority MMPA section 109(a)* Public access is

being encroached for no reason but convenience to San Diego and a special interest group at the expense of the public, of which the extended dates are small part of the offense.

The previous Appeal the Staff Report did not consider.

I went before the Commission on 3/10 pleading for due process because my appeal of a 2008 rope barrier had been buried for 18 months. Mr. Douglas agreed that was wrong and told the Commission it would be brought up to be addressed. The resulting reburial starts at the bottom of page 5 of the Staff Report.

The Staff asserts this project was the same as the 2010 barrier, therefore the issues are the same and the previous appeal will not be addressed by the Commission. So you the Commissioners will never see the 2008 permit and appeal, and if you approve this new permit, you will also have approved the old one without ever seeing it.

Since it is true, as Mr. McEachern told me, that San Diego has been in violation since Dec 16, 2009 for proceeding with the 2010 appealed project, it has also been in violation since March 2008 when it put up that year's barrier with no permit on public trusted land. If this years' appeal can be scuttled, San Diego is off the hook for 2 years of violation, the local Staff is off the hook for ignoring it, the Commission is bypassed and I am left with the denial of due process I started with.

The Barrier Permit was Different in 2008

The 2008 local permit was a true temporary half year project, but the City violated its own permit terms when it used private security guards and even lifeguards to force the public to stay behind its "advisory reminder rope". It happened to me.

The permit for that rope specifically cited a supposed obligation for the City to use it to enforce the Marine Mammal Protection Act. That in fact was illegal (Attachment A) under section 109(a) of that federal act, and under *Title 16 Chapter 31 subchapter II section 1374 -Permits*. Then, as now, San Diego violated federal law by not having a permit from the Commerce Dept to authorize "public display, or enhancing the survival or recovery of a species or stock".

Because you will not get to see that previous appeal, and because the facts have not been adequately investigated, the Commission could find itself repeating and endorsing San Diego's federal and State Tidelands Trust violations (Attachment C) without knowing it.

Review of issues in my appeal are covered however;

Since the Staff Report has brought forward other assertions to invalidate my appeal, so I am forced to address those misconceptions in subsequent text. Consider the pages following to be an appendix if you will.

V. Findings and Declaration (page 4)

1. Project Description

...seal pupping season described as December 15 to May 15

"Described" is a reasonable term. The barrier is over an arbitrary extension of time outside the scientific definition, which San Diego accepted by hearsay from a political special interest group (Exhibit A) that runs a business on the sidewalk above the beach, exploiting the public fascination with the seals.

Any of the many days public access is encroached by this project while there are not seals behind it are pointless loss of public right of way and violations of its stated intent and its LCP. There is no distance ever ruled to be too close for comfort for a seal. An arrangement that would satisfy some imperative to keep seals comfortable at the expense of the public, "with minimal interference with public access" would involve a barrier that would be moved to keep some distance as seals advanced or retreated, or a municipal ordinance making some distance a misdemeanor. The City is unwilling to make any such effort. Rope is cheap, and San Diego has a history of going ahead knowing forgiveness is easier to get than permission.

2. History

...the water quality of the "pool" has deteriorated to such a point that the County Health Department deemed the water unsafe, as it posed a serious health risk. It was determined that due to limited tidal exchange in the pool and use of the area by so many seals, the water had become contaminated with high levels of bacteria.

In 2003, State law no longer required water contaminated with non-human bacteria to be subject to closure. County Health measurements exceed e.colli limits (strictly seal) but not other bacteria, and these bugs have never been shown to be able to take up residence in humans. I know people who swim there regularly with no problem. The bacteria do not come from the water, but go into the water from where the seals soil the sand. I have virology tests showing the bacteria level is normal in middle of the pool. The City of San Diego never cleans at Children's Pool beach though it regularly cleans sand on its other beaches. Volunteers clean the sand at Children's Pool in the summer because the City does not, ever.

...amended the 1931 Trust to the City giving the City Council the discretion to allow the Children's Pool to be used as a "marine mammal park for the enjoyment and educational benefit of the children."

The amendment added the marine mammal park there, but added no discretion. All the other terms requiring public park, convenient access, playground and bathing pool for children are still there as San Diego's continuing responsibility. The Coastal Act specifically does not supersede the terms of a public trust.

...After consultation with Commission staff, the City was informed that installation of the rope barrier constituted development

Nope. The City knew the rules well before. It had had rope barriers from 1999 to 2003 on temporary permits until the CCC advised it the 2003 rope needed a real permit with conditions. The City withdrew its application as it didn't like the conditions. In Spring 2006, it had set out to grant itself a barrier permit and only that Fall did it find nobody

had taken care of the required California Coastal permit. The emergency behind the emergency permit simply was the City had dropped the ball. I was there.

As explained by the City, the intent of the rope barrier is to provide a buffer between people and seals during the seal pupping season

As explained by me, such a purpose would be illegal under federal law. If the City wants that to happen, it must ask NOAA to do it, or apply for its own permit from the Secretary of Commerce. What the City did not say is this barrier, and the previous 3 are based on a Dec 06 City resolution instructing Park and Recreation to apply for permits "immediately".

Additionally, during this period, the mother seals become more aggressive due to their instinct to protect themselves and their pups from people who are getting too close.

Fake Science. No validity. To justify an emergency permit the City needs a public safety issue, so the mother seals are described as ferocious. No. Harbor seals are stubby. Their striking range is about a foot, and no legless animal picks a fight on land with a terrestrial. They are prey animals and will flee real encounters. They are among us because they trust us. I cannot find any documented account of a harbor seal biting somebody. If they feared us they would be elsewhere. The mothers must get food or she and the pup will starve. In the wild they stash the pups while they forage. At Children's Pool they leave them on the beach for safekeeping. I have a picture of a mother seal who brought her pup across the beach, crossing under the rope to lie down next to me.

When the City and the Animal Rights Coalition want to put up a rope to "benefit" the seals and ensure a healthy tourist attraction, then the mother seals are timid and panicky and will trample their young to escape human proximity, or if pregnant, will react in such terror as to effect a miscarriage on the spot. Equally absurd.

I have searched for any observation of such a thing anywhere in the world. Dr. James T Harvey studied actual wild harbor seals for NOAA (1998) to see how close boats came to seals before disturbing them. A group that was mostly mothers was expected to be more skittish and he tried to measure that. Instead, he found they were more inclined to stay put. Of course, since no mammal reacts to annoyance by abandoning its young, yet this myth is so pervasive he had began with that hypothesis.

...conflicts arise, lifeguards are regularly called to intervene

Absolutely not. Years ago the lifeguards were instructed to keep their eyes on the water. They can call police like anybody else. The City could stop this anytime by enforcing its own municipal codes for soliciting, sales with a permit, signs on public property or by prosecuting zealots who repeatedly call police knowing no crime it being committed.

...the installation of the rope barrier is intended to reduce the number of conflicts between beach visitors and the seals.

There is no number of conflicts between visitor and seals.. Only people conflicting with people. The City cannot make a statement like that and not produce some facts. NOAA is the only body that can prosecute anybody for seal harassment. In the last 6 years they have gotten hundreds of well meaning calls and have not found reason to issue a single citation. (Freedom of information act data)

The rope barrier is a clear indicator to the public to keep an appropriate distance from the seals,

There is no appropriate legal distance. No ruling exists. There is no clear indicator possible of an unpublished distance.

...the public access policies of the Act, the Commission must take into account the need to regulate the time, place, and manner of public access depending on the facts

Then why has it not done so? Where is the independent analysis? The Commission has been misled, as I have had to point out, and must make its own investigations and find its own facts, not go by hearsay assertions by stakeholders defending their turf and enterprises.

The public will still be able to access the beach and ocean at Children's Pool.

Only on paper. The reality is quite different. Only if the Commission actually investigates will it know the facts. The Commission has look at who has something to gain by this land grab and who has something to hide. It cannot find that out if it discards these appeals on biased hearsay and does not consult other regulatory agencies.

...artificial habitat creation which fosters acclimatization of seals.....

whatever reason, the seals have chosen Children's Pool Beach as a haul out location

The reason is known and documented. (Attachment B) For 11 years the City had an arrangement with Sea World to misuse its marine mammal rescue program to purposefully drop harbor seals in La Jolla to get a colony going on a nearby natural haulout named Seal Rock. When it started, the miracle of the seals at Children's Pool began and the City had a better tourist attraction than it had hoped for. I have the release data from a Freedom of Information Act request for NOAA records and the Superior Court decision citing to the fact.

<http://www.friendsofthechildrenspool.com/How%20the%20Seals%20.htm> Since the Staff Report did not do its homework, I have to point you to the true story.

As far as whether or not the City has chosen the "actual" pupping season, there is nothing in the City's file that addresses this issue.

Staff Report now says **by its own words** it is based solely on City input. Of course, there is nothing San Diego offered that it does not want there. In the absence of any investigative input, the Commission has to find its own facts. The fox must not guard the henhouse.

Children's Pool Beach is not the only sandy beach in La Jolla.

I am a diver. "Access" in the Coastal Act and the LCP means to the **shoreline**. Telling a diver to go to a different beach for sand is like telling a Black man how fine the seats in the back of the bus are. How can somebody tell me my access to the ocean is not encroached on since I can just alter my recreational needs and go someplace else. The beaches on each side have known rip currents.

There are 11 public beaches listed on the lifeguard's website in San Diego. Half can access some decent diving. Three are noted as protected enough for beginning and intermediate divers, and one of those 3 is Children's Pool.

Below is from the Visitors Bureau site on La Jolla beaches –It aptly states the existing and very real conditions for swimming and diving for the unaware visitor

“At least half of the coast here is rocky or otherwise unsuitable for swimming. And, with the exception of Marine Street and Windansea, the beaches are all small with submerged rocks offshore. Only La Jolla Cove and Children's Pool offer permanent lifeguard and bathroom facilities. There are no dedicated parking lots offering more than a few spaces, and there is fierce competition for street parking from residents and businesses. From The Cove north to Torrey Pines, ocean fishing, spearfishing and collecting is precluded by an Underwater Ecological Preserve. It is unlawful to harm or harass marine mammals (such as seals) anywhere in U.S. waters. South of Hospitals, it's mainly hardcore locals on the beach and in the lineups. WARNING: Submerged rocks and reefs abound, water depths drop off sharply, powerful shorebreaks, shallow reefbreaks and strong rip currents. Little or no lifeguard supervision at most locations. A great place to admire the ocean, perhaps best done from the shore.”

...seals at Children's Pool Beach have become a public access and recreational amenity in and of themselves... they have become a major tourist attraction

The City talking again. It is very open about the income it estimates from having a seal display that pulls tourists. Tourists just stand on the sidewalk and that is to pass for “recreation”, while divers and swimmers and such that don't call that recreation can go pound sand, and on some other beach.

Shall the Coastal Commission promote one aspect of the ocean for its value for one class of citizen to the detriment of others? The Staff Report said, “*IF the public just wants to view the seals, there are multiple vantage points in and around the Children's Pool Beach.*” Yes, because the seals are there to stay, and tourists can watch divers get in the water too, and also call that “recreation”. But if this barrier serves to augment a public display of marine mammals, then federal permit is required. MMPA 109(a) and 104(c).

The issues raised by this project are unique and only occur at this one beach in all of San Diego County

I have personally seen seals come ashore on an adjacent beach and then I was harassed by zealots who tried to drive me away. Much more than San Diego will be affected by a Coastal Commission decision made without adequate investigation.

The harbor seal population in California (Attachment D) is estimated at 40,000, and sea lions at around ¼ million on our West Coast. Population growth is robust. Most natural predators are gone from the coastline. What Children's Pool shows is pinnipeds can be just as adaptable to humans as coyotes are. We anticipate more beaches visited and closure effected by animal rights zealots again, with City apathy to help.

Divers and swimmers never asked for special favors because we need to get to the water instead of sit on sand. Equal protection under the law. To go lawfully on public land without fear. To share beach access to the ocean with our furry dive buddies.

Office of
The City Attorney
City of San Diego

ATTACHMENT A
3 PAGES

MEMORANDUM

DATE: June 14, 2007

TO: Councilmember Donna Frye
Natural Resources and Culture Committee

FROM: City Attorney

SUBJECT: Nighttime Rope Barrier at Children's Pool Beach

INTRODUCTION

On December 5, 2006, the City Council of San Diego adopted a resolution directing the annual placement of a rope barrier at the Children's Pool Beach from December 15th through May 15th. In addition, the Council directed the City Attorney to determine whether any permits would be necessary for the placement of the rope barrier, and if so which ones. The City Attorney determined, as outlined in the Memorandum of Law [MOL] issued on December 15, 2006 (attached hereto as Attachment A), that a Coastal Development Permit [CDP] and a Site Development Permit [SDP] would be required for the annual placement of the rope barrier. The December 15, 2006 MOL also established that based on the specific circumstances present at that time, an emergency existed for the placement of the rope barrier without an SDP and with an emergency CDP.

Currently, the Hearing Officer is scheduled to make a determination on the regular CDP and SDP required for the annual placement of the rope barrier sometime this year, in time for the rope barrier to be placed for the December 15th through May 15th timeframe. However, the Hearing Officer is awaiting a recommendation from the La Jolla Community Planning Group prior to holding a hearing on the permits. Also, Councilmember Donna Frye's Office met with representatives from the Animal Protection and Rescue League [APRL] who presented information to be docketed on the Natural Resources and Culture Committee agenda for June 22, 2007. The APRL information addresses the year-round placement of the rope barrier at Children's Pool Beach at nighttime in order to reduce human conflict over the appropriate distance to remain from the seals, prevent humans from possible seal bites, and to protect the seals from harassment at night. Councilmember Frye requested that the City Attorney's Office prepare a memorandum addressing the legal issues pertaining to the placement of a year-round nighttime rope barrier at the Children's Pool Beach.

QUESTIONS PRESENTED

1. Is it legally advisable to place a year-round nighttime rope barrier at the Children's Pool Beach?
2. What permits are required for the year-round nighttime placement of a rope barrier at the Children's Pool Beach?

SHORT ANSWERS

1. Yes. The rope barrier serves to remind the public when they may be in violation of the Marine Mammal Protection Act [MMPA], which prohibits harassment of harbor seals or the San Diego Municipal Code section 63.0102(b)(10), which prohibits the disturbance of harbor seals on public beach areas.
2. A Site Development Permit is required for the placement of the rope barrier because it is proposed *development on a coastal beach*. In addition, a CDP is required because the rope barrier is considered *coastal development* that would be placed in the Coastal Overlay Zone. The application for the annual placement of the rope barrier could be amended to include the year-round nighttime placement of the same rope. The circumstances at this time are not such that an emergency CDP or emergency work without an SDP would be appropriate.

ANALYSIS

As previously discussed in the City Attorney's November 13, 2006 Memorandum [Memo] (attached hereto as Attachment B) to the Natural Resources and Culture Committee, posted signs are not always effective at deterring people from harassing or disturbing the seals at Children's Pool Beach. The Memo also explains the types of actions that are considered unlawful within the meaning of the MMPA and the San Diego Municipal Code section 63.0102(b)(10). In addition, the Memo explains that the placement of the rope barrier serves to deter unlawful harassment and disturbance, and therefore, the placement of the rope barrier is legally supportable. Moreover, the MOL issued on December 15, 2006, explains that the rope barrier also serves to reduce conflicts between people about the appropriate distance to keep from the seals and to reduce the chance of an aggressive reaction by a seal against a person getting too close. Therefore, the placement of a nighttime rope barrier at Children's Pool Beach would be advisable.

The placement of the nighttime rope barrier on the beach triggers the requirement for a Coastal Development Permit because it is *coastal development* proposed in the Coastal Overlay Zone, and it would trigger the requirement for a Site Development Permit because it is proposed *development on a coastal beach* under the Environmentally Sensitive Lands Regulations of the Municipal Code. See SDMC §§ 126.0702(a), 132.0402, Diagram 132-04A, 126.0502(a)(1), 143.0110(a)(3). These are the same permits required for the annual placement of the rope

barrier. As those permits have not yet been decided on by the Hearing Officer, it would be possible for the Park and Recreation Department to amend the application for the annual rope barrier to include the placement of the rope barrier year-round at night. Unlike the circumstances that existed when the MOL was issued by the City Attorney's Office in December of 2006, there is no emergency justification for proceeding without the standard SDP or for requesting an emergency CDP. The City has not received new or unexpected information, there has been no new direction from the National Oceanic and Atmospheric Administration, the nighttime rope barrier has no impact on the ability of the City Lifeguards to provide essential public services because they do not watch the water at night, and the critical time of pupping season is now over.

CONCLUSION

The rope barrier serves to remind the public when they may be in violation of the MMPA that prohibits harassment of harbor seals or the San Diego Municipal Code section 63.0102(b)(10) that prohibits the disturbance of harbor seals on public beach areas. A Site Development Permit is required for the placement of the rope barrier because it is proposed *development on a coastal beach*. In addition, a CDP is required because the rope barrier is considered *coastal development* that would be placed in the Coastal Overlay Zone. The application for the annual placement of the rope barrier could be amended to include the year-round nighttime placement of the same rope. There is no legal justification for emergency permitting procedures at this time.

MICHAEL J. AGUIRRE, City Attorney

By



Nina M. Fain
Deputy City Attorney

:NMF
Attachments

1 that a prudent person acting in a like capacity would use in the conduct of an
2 enterprise of like character and with like aims to accomplish the purposes of
3 the trust as determined from the trust instrument." (Cal Prob. Code § 16040.)

4 Plaintiff cites to the fact that since at least 1997, Hubbs-SeaWorld has
5 been engaged in a rescue, rehabilitation and release program under the aegis of
6 the National Oceanographic and Atmospheric Administration or its sub-agency,
7 NMFS. [Exh. 245.] That program consists of retrieving injured or diseased
8 animals, rehabilitating them at SeaWorld in San Diego, and, upon return to
9 health, and after tagging, releasing them in Pacific waters. The release of
10 harbor seals is accomplished generally in the kelp beds immediately outside
11 the Children's Pool. Tagged harbor seals are routinely observed hauling-out at
12 the Children's Pool. Once it was determined that the released seals were
13 impacting the use of the Children's Pool, the City took no steps to protect the
14 Pool from becoming a haul-out for such seals.

15 The number of seals at the Children's Pool was minimal, if any, at the
16 time of the creation of the breakwater and the Trust grant. Starting in the
17 early 1990's, seals came to reside in the general area of Children's Pool in
18 growing numbers. During that time frame, the City undertook the designation
19 of the ocean and reef immediately adjoining Seal Rock as a reserve in order to
20 accommodate the seals in that area. The Reserve is within a hundred yards or
21 less of the area granted as the Children's Pool. In such close proximity, the
22 seals, based on counts, seem to prefer the Children's Pool to Seal Rock as a
23 haul-out. Over time, the seal population at Children's Pool has grown to where
24 it now exceeds 200 during portions of the year. Photographs show seals on the
25 beach across the entire width of Children's Pool at the edge of the water.
[Exh. 399.]

26 During the 1990's, seal feces came to pollute the beach and adjoining
27 waters. The County of San Diego, Department of Environmental Health,
28 regularly tests the waters along the San Diego coastline. In 1997, the County

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - January 03, 2008

ATTACHMENT C

EVENT DATE: 01/04/2008 EVENT TIME: 10:30:00 AM DEPT.: C-60
JUDICIAL OFFICER: Yuri Hofmann

CASE NO.: GIC826918

CASE TITLE: O'SULLIVAN VS CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)
CAUSAL DOCUMENT Motion - Other, 12/12/2007
/DATE FILED:

Defendant City of San Diego's "Motion to Clarify the Court's Injunction" is DENIED.

The Court is wary of ruling on the instant Motion, as it appears to seek something akin to an advisory opinion before the controverted issue is ripe. On the other hand, the City appears to be asking the Court to re-analyze an issue which has already been addressed and determined by this Court and the Court of Appeal. Specifically, the "rope issue" was discussed in both this Court's and the Court of Appeal's final rulings in favor of Plaintiff and against the City. Ultimately, both Courts found that the placement of a "rope barrier cutting off public access to the Pool," along with other various restrictions, "served to deter the public, beneficiaries of the trust grant, from using the beach," which resulted in the City's breach of its obligations as trustee under the subject Trust. (See Court of Appeal Ruling, pp. 12-13, quoting portions of the Trial Court's Statement of Decision.) More specifically, the Trial Court stated in its lengthy Statement of Decision:

The next biggest cause of actual or constructive closure of the Children's Pool was the City's decision to erect a rope barrier cutting off public access to the Pool. On March 29, 1999, the City Council . . . voted to rope off the Pool. *In doing so, the City breached its obligations under the Trust, as trustee of the Children's Pool. Instead of returning the Pool to its original and safer configuration and also rectifying the unhealthy condition of the water and sand at the Pool, the City barred the use of the Children's Pool as a "public park, bathing pool for children, . . . and [use for] playground and recreational purposes," as expressly required by the 1931 Trust.* The rope remained up from March 1999 until September 17, 2004.

(8/26/05 Statement of Decision, p. 24, ls. 3-14, emphasis added.)

In the instant Motion, the City asks the Court to reconsider the rope issue in the context of new evidence not proffered at trial. The Court declines to do so. As noted above, the relevant issue has been considered and decided, and the Court's directives to the City are clear and unambiguous.