



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: May 17, 2010

REPORT NO: 10-073

ATTENTION: Council President and City Council

SUBJECT: Management Plan for Children's Pool

Report to the City Council from the Natural Resources and Culture Committee Chair

RE: Requested Action Item #1

This Report provides information that can be used by the City Council in determining that a coastal emergency exists that warrants the immediate and year around placement of the rope at Children's Pool; directing the Mayor or his designee from the appropriate city department to apply for an emergency Coastal Development Permit within 10 days of the effective date of this resolution to maintain the rope barrier at Children's Pool year around to protect the public health and safety and to mitigate the loss of or damage to life, health, and essential public services based on the findings contained herein and any other information or actions required to process and obtain an emergency Coastal Development Permit.

The information contained in this report is a compilation of existing public documents contained in the backup material for this item, with the exception of some public news reports, articles and videos describing and showing what has happened at Children's Pool since May 15, 2010 when the rope barrier was removed.

Harbor seals have been hauling out and pupping at the Children's Pool for over a decade. There continues to be public debate as to how the Children's Pool should be managed.

On January 27, 2009, the City Council voted 6-1 in Closed Session to advance to open session the proposal to amend the 1931 Tidelands Trust to Permit Marine Mammals to Inhabit the Children's Pool Beach in La Jolla before expiration of the Legislature's deadline for submission of proposed legislation.

On February 17, 2009, the City Council voted 7 to 1 at a regular City Council meeting to seek Supporting Legislation to Amend State Law to Permit Marine Mammals to Inhabit the Children's Pool Beach in La Jolla, California and Directing the City's Intergovernmental Relations Department to Seek Such Legal Legislation. The City Attorney recommended that the City Council support the resolution R-304668. According to the City Attorney:

“The Legislature has the authority to amend or revoke a public trust. The proposed Resolution would support legislation to amend the 1931 Tidelands Trust to permit the City, as trustee, to allow marine mammals to continue to inhabit the Children’s Pool and to preserve the marine mammals’ habitat. This proposed amendment to the Trust is consistent with the Trust’s original intent that the Children’s Pool be a source of recreation for children. It is also consistent with a recent appellate court decision that held protection of undomesticated wildlife is a trustee’s obligation under the public trust doctrine. The Resolution mandates that the City’s Intergovernmental Relations Department seek such legislation.”

On February 26, 2009, State Sen. Christine Kehoe introduced legislation that would amend state law to allow seals at Children’s Pool.

In July 2009, the Governor signed into law legislation (Senate Bill 428) drafted by Sen. Christine Kehoe that adds to the Tidelands Trust the additional use of: a *“marine mammal park for the enjoyment and educational benefit of children.”*

On September 22, 2009, City staff proposed a Site Development Permit (SDP), CDP, and Environmental Impact Report (EIR) for the removal of approximately 3,000 cubic yards of sand from the Children’s Pool, to allow water to circulate, thereby reaching decontamination levels for human use of the beach. The City Council voted 7 to 1 not to certify the EIR.

Effective January 1, 2010, the Trust was amended to list an additional use of the tidelands for: a *“marine mammal park for the enjoyment and educational benefit of children.”* California Senate Bill 428.

Based on the above actions by City Council, it is clear that the decision was not to remove the seals.

On March 17, 2010, the Natural Resources and Culture Committee considered several management options for the Children’s Pool as presented by various community organizations. Two motions made at this hearing failed to obtain a majority vote of the Committee members.

On April 5, 2010, the Natural Resources and Culture Committee held a special hearing to consider various management options or combination of management options regarding the Children’s pool during pupping season, December 15 through May 15 and non-pupping season, May 16 through December 14. The Committee took several actions at this hearing, including obtaining an emergency Coastal Development Permit to keep the rope up year round as one part of the management plan.

Additionally, at least three public meetings were held in La Jolla between April 5, 2010, and April 17, 2010, to discuss the issue of the emergency Coastal Development Permit and management plan and there have been numerous articles and stories in the media.

On May 12, 2010, due to ongoing concern about the removal of the rope barrier prior to the May 17, 2010 City Council meeting, four members of the San Diego City Council sent a memo to Mayor Jerry Sanders stating their concerns and requesting that the rope not be taken down prior to the City Council hearing on May 17, 2010.

On May 15, 2010, the rope barrier was removed.

On May 17, 2010 the City Council held a public hearing in the evening in La Jolla to again hear public testimony on this issue, including the emergency Coastal Development Permit.

It is clearly the intention of the San Diego City Council to protect the public health and safety and to mitigate the loss of or damage to life, health, and essential public services, and as such, it is now the responsibility of the San Diego City Council and Mayor to work together to provide a Management Plan for Children's Pool that establishes clear guidelines. One part of the Management Plan is to determine that a coastal emergency exists that warrants the immediate and year around placement of the rope at Children's Pool; directing the Mayor or his designee from the appropriate city department to apply for an emergency Coastal Development Permit within 10 days of the effective date of this resolution to maintain the rope barrier at Children's Pool year around to protect the public health and safety and to mitigate the loss of or damage to life, health, and essential public services based on the findings contained herein and any other information or actions required to process and obtain an emergency Coastal Development Permit.

The City Council's decision to amend the State Tidelands Trust to allow "*a marine mammal park for the enjoyment and educational benefit of children*" requires a Management Plan that includes the immediate placement of the rope barrier that will provide a clear policy for the public so they know what the laws are, while ensuring that the seals and their pups are not harassed. The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup.

The presence of a rope barrier would reduce the conflicts because it provides a clear indicator to the public the appropriate distance from the seals and their pups to avoid harassing them. The immediate placement of the rope barrier will provide a clear message for those who have a sincere desire to respect the seals and their pups and provide some level of heightened protection for them. The Park Ranger can provide enforcement assistance to the police, lifeguards and NOAA personnel for those members of the public who do not have a sincere desire to respect the seals and their pups and are continually pushing the limits with their behavior.

Absent clear policy and immediate action by the City Council to reinstate the rope, the number of incidents at Children's Pool, both human- to- seal and human- to- human, will likely continue to escalate as they have since the rope barrier was removed on May 15, 2010.

The Natural Resources and Cultural Committee staff person has communicated with the California Coastal Commission (CCC) staff regarding whether the proposed action (seeking an emergency Coastal Development Permit) is the proper process to ensure an immediate extension of time for the rope barrier. Coastal Commission staff concurs that the issuance of an emergency Coastal Development Permit is the appropriate means to authorize an immediate extension of time for the rope barrier should the City find that the grounds for an emergency exists.

The San Diego City Council has heard a considerable amount of public testimony regarding the rope barrier at the Natural Resources and Culture Committee and City Council meetings.

The San Diego City Council has reviewed the documents provided for those public hearings and through public testimony and review of those documents has determined that:

A coastal emergency exists at the Children's Pool that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit;

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, their pups and humans and by allowing lifeguards to focus on protecting swimmers from danger and drowning and allowing police to focus on protecting the public from criminal activity;

The rope barrier can be reinstalled immediately and will immediately provide a clear policy for the public as to how to view the seals;

The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup;

The regular permitting process will not allow for the continued use of the rope barrier, since it was taken down on May 15, 2010;

The immediate placement of the rope barrier is the minimum necessary to stabilize the emergency.

There is ample evidence in the record that emergency conditions exist. The seals continue to occupy the Children's Pool year around and the seal pups are still on the beach.

In a March 4, 2010 Addendum from the California Coastal Commission (regarding the last appeal of the rope barrier during pupping season) states that "*According to National Marine Fisheries Service representatives, pup births have been documented as early as November. In addition, pup births have been documented as late as April...*"

According to the same March 4, 2010, Coastal Commission Addendum, "*...there really is not a defined pupping season for seals at Children's Pool...*" and "*The NMFS representatives have stated that the seals benefit greatly from the placement of the rope 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 as keeping them at a safe distance.*"

The recent announcement of a privately-funded Park Ranger for Children's Pool will aid in addressing the ongoing issues at Children's Pool, but it does not eliminate the need for the immediate placement of the rope barrier. The very fact that a Park Ranger is needed for the Children's Pool provides further evidence of the volatility of the serious and on-going problems, especially considering the size of the area. Park Rangers usually have responsibility for hundreds

of acres of parkland or beach and are not assigned to just one very small area as appears to be the case here.

Posted signs are not always effective at deterring people from harassing or disturbing the seals and their pups. The rope barrier serves to deter unlawful harassment and disturbance and also serves to reduce conflicts between people about the appropriate distance to keep from the seals and to reduce the chance of aggressive reaction by a seal against a person getting too close. The newly created, privately-funded Park Ranger will be assisted by the placement of the rope barrier in carrying out his/her duties.

Despite public misconceptions expressed most recently at a La Jolla Planning Group meeting that *"the seals have become humanized and know how to coexist"*, and the behavior seen after the rope came down on May 15, 2010, the seals at Children's Pool are wild marine mammals. Pacific harbor seals spend about half their time on land and half in water. While harbor seals swim safely in the surf, they will often curiously watch humans walking on beaches. However, they are wary of people while on land and will rush into the water if approached too closely or disturbed. In fact, if disturbed too often, they have been known to abandon favorite haul-out sites or their pups.

Encounters with people can be stressful to animals and can alter their normal behaviors. Rookeries, such as the Children's Pool, are especially vulnerable to human disturbance. Harbor seals are less mobile and therefore more vulnerable to disturbance or predation while out of the water. Adult seals are more wary and escape to the water more quickly than pups. Females will flee to the water if disturbed or approached and may leave their pups behind. Although the percentage of successful female/pup reunions has not been documented, anecdotal reports indicate that pups have successfully reunited up to 48 hours after separation. A female seal is more likely to return to reclaim her pup once the disturbance near the pup goes away. If activity continues near the pup, the female may eventually give up trying and the pup will be abandoned. A nursing pup that is separated from its mother will not survive.

According to NOAA Fisheries Policy on Human Interactions With Wild Marine Mammals, *"interacting with wild marine mammals should not be attempted and viewing marine mammals must be conducted in a manner that does not harass the animals. NOAA Fisheries does not support, condone, approve, or authorize activities that involve closely approaching, interacting, or attempting to interact with whales, dolphins, porpoises, seals, or sea lions in the wild. This includes attempting to swim with, pet, touch, or elicit a reaction from the animals."*

NOAA California Seal Viewing Guidelines state that, *"Efforts by the general public to closely approach or otherwise interact with the seals can lead to harassment, which is illegal under the Marine Mammal Protection Act. Harassment is defined under the MMPA as an act of pursuit, torment or annoyance which has the potential to injure the animal or cause a disruption of its natural behavior. From a biological and management standpoint the harassment of seals by members of the public continues to be of concern."*

The San Diego Municipal Code section 63.0102 also makes it unlawful to *"...take, kill, disturb, or maltreat"* wild marine mammals.

As has been pointed out by NOAA in their November 30, 2007 letter to the City Attorney's office, "...harbor seals haul out at CPB for breeding, nursing, molting, and resting. The first full-term pups are usually born in early-mid January. Pups wean from their mothers in approximately 4-7 weeks. The last pups of the season may not wean until the end of May." There is also video evidence that pups are still on the beach.

Without the rope barrier, there is strong evidence that the public will continue to harass the seals and their pups (knowingly or unknowingly), creating a situation that could be avoided/significantly lessened if the rope remains.

Under the Marine Mammal Protection Act, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which--*(Level A Harassment)* has the potential to injure a marine mammal or marine mammal stock in the wild; or, *(Level B Harassment)* **has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns**, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

The *Watchable Wildlife Marine Viewing Working Group*, made up of representatives from the National Park Service; NOAA Fisheries, Office of Protected Resources; NOAA National Marine Sanctuaries; The International Ecotourism Society; U. S. Fish and Wildlife Service; Whale and Dolphin Conservation Society; Wildlife Conservation Society; and Watchable Wildlife, Inc. offers the following guidelines for interactions with wild marine mammals:

Keep your distance. Use binoculars, spotting scopes and cameras with zoom lenses to get a closer look. Marine wildlife may be very sensitive to human disturbance, and if cornered, they can harm the viewer or leave the area. If wildlife approaches you, stay calm and slowly back away. When closer encounters occur, do not make sudden moves or obstruct the travel path of the animals; let them have the unhindered "right of way."

Hands off. Never touch, handle or ride marine wildlife. Touching wildlife, or attempting to do so, can injure the animal, put you at risk and may also be illegal for certain species. Remember, wild animals may bite, body slam or even pull you underwater if startled or threatened.

Never chase or harass wildlife. Following a wild animal that is trying to escape is dangerous. Never completely surround the animal, trap an animal between a vessel and shore, block its escape route, or come between mother and young.

Stay away from wildlife that appears abandoned or sick. Some marine animals such as seals, leave the water or are exposed at low tide as part of their natural life cycle -- there may be nothing wrong with them. Young animals that appear to be orphaned may actually be under the watchful eye of a nearby parent. An animal that is sick or injured is already vulnerable and may be more likely to bite. If you think an animal is in trouble, contact the local authorities for advice.

Unfortunately, at Children's Pool, it is an all too common occurrence for some members of the public to ignore the rules for viewing wild marine mammals, most unknowingly, but some on purpose. There is ample evidence of seals and their pups fleeing from the beach into the water due to human harassment; people not keeping a safe distance from the seals and their pups; people getting too close to the seals and their pups; seal pups being almost fully surrounded by people; people attempting to touch/pet or actually touching/petting seals; people approaching seals that are sick or injured; and people being scared by seals who react to the person being too close to them. For example:

One video shows a beachgoer trying to pet a seal and the seal reacting:

<http://video.google.com/videoplay?docid=-5912920645819484351#>

Another video show a man on the beach and the seals flushing to the ocean as he approaches, people trying to touch a seal on the beach, and an unsuspecting beachgoer being scared by a seal:

<http://www.youtube.com/watch?v=bpCHEYSSGqw&feature=channel>

This video shows seals being flushed by people on the beach and a baby seal being surrounded by people:

<http://www.youtube.com/watch?v=xtS44ZthjQ&feature=channel>

This video shows a man - "The Alpha Male" - as he calls himself, intentionally getting close to the seals to find out if the seals will flush to the water:

<http://www.youtube.com/watch?v=PkeKBaVTWXg&feature=related>

On May 15, 2010 the rope barrier was removed and once again people were left to determine for themselves the proper behavior for watching wild marine mammals. Immediately upon the rope barrier being removed, despite the signs and some police presence, people were not keeping a safe distance from the seals and their pups; people were getting too close to the seals and their pups; people were attempting to touch/pet or actually touching/petting seals. This activity increases the likelihood that members of the general public, especially children, could be bitten by a seal through an attempt to interact with a seal or its pup.

According to a May 16, 2010 article in *The San Diego Union-Tribune* there were 44 seal pups born this pupping season. Additionally, the article stated that visitors to the beach had no idea about the seal viewing guidelines.

"Seal supporter Marjane Aalam, who lives a few blocks from the beach in La Jolla, said the seals were already being scared into the water since the rope had been removed. She worries that the removal could lead to danger for humans and seals alike.

At one point, tempers flared when 20-year-old Vick Dogers, who was visiting from Las Vegas, got within a few feet of some of the seals and onlookers began yelling at him to stay away from them.

Dogers said later that he didn't know about local sensitivities over the seals.

"There's no rope, so I went down there," he said."

The removal of the rope also created a public safety issue. According to a Channel 10 news report on May 15, 2010, after the rope came down, *"The Mayor has assigned two full-time officers to patrol the area for 24 hours until the issue is discussed on Monday."*

According to a May 15, 2010, Channel 8 news report a private citizen funds a security guard at night to make sure the seals are not harassed.

<http://www.cbs8.com/Global/story.asp?S=12488411>

A video taken on May 15, 2010, shows adults and children visiting the beach not understanding that seals are wild marine mammals, as they get too close to the seals and their pups and even try touching and petting the seals and their pups. This behavior could easily result in a child being bitten by a seal.

<http://www.youtube.com/watch?v=MbJVghgi7DE>

Clearly, there are still seal pups on the beach. Immediate action is needed to keep the rope barrier up to ensure that:

- Seals and their pups are not continually harassed and disturbed;
- People do not flush the seals and their pups from the beach into the water;
- People keep a safe distance from the seals and their pups;
- People do not get too close to the seals and their pups;
- People do not surround the seal pups;
- People do not attempt to touch/pet or actually touch/pet the seals and their pups;
- People do not approach seals that are sick or injured; and,
- People are not scared by seals who react to people being too close to them.

Members of the general public are not cited for harassment under the Marine Mammal Protection Act:

Members of the public are not bitten by a seal through an attempt to interact with a seal or its pup.

The immediate placement of the rope barrier will provide a clear message for those who have a sincere desire to respect the seals and their pups and provide some level of heightened protection for them. The Park Ranger can provide enforcement assistance to the police, lifeguards and NOAA personnel for those members of the public who do not have a sincere desire to respect the seals and their pups and are continually pushing the limits with their behavior.

The immediate placement of the rope barrier will aid people in complying with the proper and safe viewing guidelines. The rope barrier will also aid in informing people when they are more likely to be found in violation of the Marine Mammal Protection Act and/or the San Diego Municipal Code. It also will provide a clear guideline to prevent any member of the public, especially children, from being bitten.

The rope barrier is immediately necessary to allow lifeguards and police officers to focus on protecting members of the public.

Lifeguards and Police are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts, which take them away from providing essential public services, such as protecting swimmers from danger and/or drowning and the police from responding to more serious calls for service.

In April 2010, the San Diego Police Department provided information regarding Calls for Service at Children's Pool. The report lists the number of Disturbance Calls, including Battery Calls for Service at Children's Pool. It showed that from February 1, 2009 through January 31, 2010, there were 184 Designated Runs, 37 calls for disturbing the Peace and 4 calls for battery incidents. Out of service time for that same time period was approximately 185 hours as compared to 2005 (70 hours); 2006 (95 hours); 2007 (40 hours); 2008 (79 hours). There was also a significant increase in calls for service from 2005 to 2009. According to the Police reports, Total Selected Calls for service at Children's Pool were: 55 (2005); 62 (2006); 26 (2007); 55 (2008) and 290 (2009). The evidence shows that the number of Total Selected Police Calls for Service has escalated significantly from 55 in 2008 to 290 in 2009.

NOAA reports that in 2009, there were 87 calls to the HOTLINE during non-pupping season, or approximately one call every 2-1/2 days. This number of calls and incidents has added to the workload for police, lifeguards and NOAA personnel. All have limited time and resources and cannot always respond to the calls in a timely manner. The City of San Diego also has limited resources to deal with this.

The rope barrier will provide a clear message for those who have a sincere desire to respect the seals and their pups and provide some level of heightened protection for them. The Park Ranger can provide enforcement assistance to the police, lifeguards and NOAA personnel for those members of the public who do not have a sincere desire to respect the seals and their pups.

While one privately-funded Park Ranger will be able to help and over time, can assist in putting a docent program in place, it does not negate the need for the immediate placement of the rope barrier because it is unclear how quickly the Park Ranger can be stationed or how many hours the Ranger will be at Children's Pool. It is not known whether the Park Ranger will be present 7 days a week. With the advent of the summer season and more visitors to the beach, the rope barrier will provide immediate relief in educating the public about proper viewing of wild marine mammals and helping set guidelines for proper and legal behavior.

There are continually and on a regular basis 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 regularly involve confrontations and yelling. As conflicts arise between people on either side of the issue and between people and seals, lifeguards and police officers are regularly brought into these situations by members of the public. Lifeguards and police are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts, which take them away from providing essential public services, such as protecting swimmers from danger and/or drowning and responding to more serious calls for service.

Without the rope barrier, there is strong evidence that the public will continue to harass the seals (knowingly or unknowingly) as well as each other, which impacts the public safety and creates a situation that could be immediately avoided/significantly lessened if the rope remains. The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup.

The ongoing and immediate potential for more serious confrontations between humans, necessitates the immediate placement of the rope barrier. The rope provides a guideline for the public and most will voluntarily comply with the law. The rope barrier will allow for the privately-funded Park Ranger to provide much needed assistance to the other enforcement agencies and will help reduce human to human and human to seal conflicts.

Despite attempts to manage the situation with no rope barrier during non-pupping season, it has not worked. Signs have not helped because they send a mixed message to the public as to what is acceptable and legal behavior.

Even if the new privately-funded Park Ranger position was staffed today, the rope barrier is immediately necessary to maintain the public safety and prevent the situation from further escalation. Additionally, there is no way of knowing if this position will be permanently funded or how long it will take to establish the volunteer program for docents to assist the public and teach them how to avoid harming the wild marine mammals and each other.

Below are some examples of human-to-human problems at the Children's Pool:

A news report of a woman being body slammed by a male on the beach at Children's Pool:
<http://video.google.com/videoplay?docid=-4269054454668006542#>

This video shows the ongoing debate between people regarding the seals. These debates often escalate, requiring a police response:

<http://www.youtube.com/watch?v=1T2Yb7sG4Xs&feature=related>

At its worst, death threats have been received by people trying to protect the seals, such as the event that occurred in 2007. According to prosecutors, the incident began when a man was with two scuba divers on Sept. 22, 2007, when they were allegedly videotaped walking between two groups of harbor seals at the beach. Officials said the tape shows about 18 of 50 seals entering the water as they were "flushed" from the beach. A volunteer took down the license plate number of the vehicle the divers had arrived in and reported it to the National Oceanic and Atmospheric Administration hot line, authorities said. Federal agents subsequently investigated the incident and charged both divers with violating the Marine Mammal Protection Act. The man who was with the divers and had sent threatening emails pleaded guilty to threatening to retaliate against a federal witness, according to United States Attorney Karen P. Hewitt.

The rope barrier was previously erected within days of authorization and can be replaced immediately. The installation of the rope barrier is the minimum necessary to stabilize the emergency.

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 can be reinstalled immediately. In addition, as required by SDMC Section 126.0718, a standard Coastal Development Permit and Site Development Permit will be applied for by the appropriate City department.

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

There have been numerous public hearings including the two most recent hearings in 2010 at the Natural Resources and Culture Committee where public testimony was heard regarding the placement of a year around rope barrier. In addition, members of the environmental community have attended local planning group meetings in La Jolla and throughout the community and presented information requesting a year around rope.

Independent, scientific public polling in San Diego regarding the seals continued presence has consistently shown the majority of the public supports allowing the seals at Children's Pool and enjoys watching them.

This issue has been litigated, appealed, debated and discussed in public for years. All points of view on this issue have been heard and duly considered at public meetings. Through that testimony, it is clear and the evidence supports 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. The presence of the rope barrier year around would help to reduce the number of conflicts between humans and humans and between humans and seals because it would be a clear indicator to the public of the appropriate distance from the seals to avoid harassing them.

Included in this finding is a short timeline of public involvement and the ability of the public to comment on this issue:

On September 14, 2004, a City Council majority (5 yes, 3 no and District 4 vacant) directed staff to implement a policy at the Children's Pool that included removing the rope barriers and signs and adding new signs indicating that public access is permitted but that seal harassment is a violation of the Marine Mammal Protection Act. See San Diego Resolution R-299646

In April 2006 and December 2006, the City Council resolved that a rope barrier be placed at the Children's Pool during pupping season. A rope barrier was installed, authorized by an emergency Coastal Development Permit (CDP). In each subsequent year, the rope barrier was installed for at least a portion of pupping season, as authorized by an emergency CDP. In 2006-2007, emergencies were declared by the City of San Diego at the Children's Pool and, based on those declarations, the rope barrier was installed under an Emergency Coastal Development Permit.

On September 22, 2009, staff proposed a Site Development Permit (SDP), CDP, and Environmental Impact Report (EIR) for the removal of approximately 3,000 cubic yards of sand

from the Children's Pool, to allow water to circulate, thereby reaching decontamination levels for human use of the beach. The City Council voted at a public hearing not to certify the EIR.

On December 2, 2009, a Hearing Officer approved the annual placement of a rope barrier at the Children's Pool from December 15 to May 15. On December 16, 2009, the Park and Recreation Department placed the rope at Children's Pool as a temporary safety measure. This action was appealed to the Planning Commission and California Coastal Commission; the appeal was denied by both bodies.

Effective January 1, 2010, the Trust was amended to list an additional use of the tidelands: a "*marine mammal park for the enjoyment and educational benefit of children.*" (California Senate Bill 428.)

On March 17, 2010, the Natural Resources and Culture Committee considered several management options for the Children's Pool as presented by various community organizations. Two motions made at this hearing failed to obtain a majority vote of the Committee members.

On April 5, 2010, the Natural Resources and Culture Committee held a special hearing to consider various management options or combination of management options regarding the Children's pool during pupping season, December 15 through May 15 and non-pupping season, May 16 through December 14. The Committee took several actions at this hearing, including obtaining an emergency Coastal Development Permit to keep the rope up year round.

Additionally at least three public meetings were held in La Jolla between April 5, 2010, and April 17, 2010, to discuss the issue and there have been numerous articles and stories in the media.

On May 17, 2010 the City Council held a public hearing in the evening in La Jolla to again hear public testimony on this issue, including the emergency Coastal Development Permit.

Clearly, public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible.

The proposed emergency work is consistent with the Local Coastal Program. The development is consistent with all applicable provisions/development standards of the certified Local Coastal Program as well as the public access and recreation policies of the California Coastal Act. The project is for a rope barrier to provide a buffer between the people using the beach and seals during non-pupping season. The rope barrier is not intended to keep people off the beach or out of the ocean and public access is still available, just more directed so as to provide a safe distance from the seals. This is both for the protection of the seals, their pups and the public. Also, signage is provided to make sure the public is aware the beach and ocean are available for public use. It is also anticipated that there will be a privately funded Park Ranger to further increase public awareness.

In addition, Children's Pool Beach is not the only sandy beach in La Jolla. If the public wants to access the beach or ocean, but does not want to get too close to the seals, there are several other sandy beach areas adjacent to and in close proximity to the subject site. Further, if the public just wants to view the seals, there are multiple vantage points in and around the Children's Pool Beach from which to view the seals at a safe distance.

Further, the seals at Children's Pool Beach have become a public access and recreational amenity in and of themselves. Ever since the seals began hauling out on the beach at this location, they have become a major tourist attraction drawing large numbers of people to this coastal area from around the world. Thus, the seals encourage public access by attracting the public to the shore.

The proposed project is for placement of a rope barrier to act as a buffer between harbor seals on the beach and people using the beach during non-pupping season. While the rope barrier will be placed across the beach, a 3 ft. opening is provided and signage is included that makes it clear the beach and ocean are open to the public. Thus, no significant coastal resources are impacted. The issues raised by this project are unique and only occur at this one beach in all of San Diego County.

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. In addition, the goals of the Coastal Act include assuring an orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state and encouraging 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.

The City of San Diego sought legislation from the state in 2009 to add new language to the list of existing uses for the Children's Pool, specifically a "*marine mammal park for the enjoyment and educational benefit of children.*" The rope barrier is consistent with the Local Coastal Program because it better protects the seals, their pups and their habitat and still allows the public access the beach. Additionally, it provides a clear line so that people visiting the beach know the rules.

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 resource 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 maintain the rope barrier

because it better protects the seals and their habitat while allowing the maximum appropriate public access consistent with sound conservation principles.