



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: November 23, 2010 **REPORT NO.** PC-10-103

ATTENTION: Planning Commission, Agenda of December 9, 2010

SUBJECT: LA JOLLA CHILDREN'S POOL ROPE BARRIER,
PROJECT NO. 213317, PROCESS 3 Appeal

REFERENCE: Hearing Officer Report of September 15, 2010 (Attachment 5)

OWNER City of San Diego

APPLICANT: Park and Recreation Department

SUMMARY

Issue(s): Should the Planning Commission approve an appeal of the Hearing Officer's approval to install and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot opening, to create a buffer between humans and seals, at the La Jolla Children's Pool within the La Jolla Community Planning Area and the La Jolla Local Coastal Program?

Staff Recommendation:

DENY the appeal and **APPROVE** Coastal Development Permit No. 758925 and Site Development Permit No. 782184

Community Planning Group Recommendation: September 2, 2010, the La Jolla Planning Association voted 10-1-2 to recommend denial of the project. The group also voted 11-0-2 to reject the City's determination that the project is categorically Exempt from California Environmental Quality Act (CEQA) (Attachment 4).

Environmental Review: This activity is Exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15304 (minor alterations to land), and 15333 ("small habitat restoration project").

Fiscal Impact Statement: None with this project. All costs are covered by a Park and Recreation Department General Fund Deposit Account.

Code Enforcement Impact: None with this project.

Housing Impact Statement: None with this project.

BACKGROUND

The project site is located in the La Jolla Community Planning area, within the Coastal Zone. The site is in the LJPd-5 zone, and is adjacent to land designated as Open Space and Park land use designations in the La Jolla Community Plan (LJCP). The project requires a Coastal Development Permit (CDP) pursuant to Land Development Code (LDC) Section 126.0702 as the installation of the rope is considered "development" in the Coastal Overlay Zone. LDC Section 143.0110 requires the rope project obtain a Site Development Permit for Environmentally Sensitive Lands due to its location within a Coastal Beaches resource.

On September 14, 2004, the San Diego City Council directed City staff to implement a joint use policy at the Children's Pool. In April 2006, and December 2006, the Council passed resolutions directing that a rope barrier be placed at the Pool during seal pupping season (generally accepted to be from December 15 to May 15). The City of San Diego Park and Recreation Department has applied for permits to place the rope barrier each year since 2006.

On December 2, 2009, the City Hearing Officer approved Coastal Development Permit No. 701673 and Site Development Permit No. 701765 for the annual placement, in perpetuity, of the rope barrier during pupping season, December 15 to May 15. This permit was appealed to the Planning Commission and the California Coastal Commission. Appeals were denied at both bodies. Therefore, the rope is currently allowed to be placed on the beach every year from December 15 to May 15. The rope was taken down in mid-May of this year pending the decision on this appeal.

On September 15, 2010, the Hearing Officer approved the year-round, in perpetuity, placement and maintenance of a rope barrier at the La Jolla Children's Pool. Over the last four years, the rope barrier has been placed at the La Jolla Children's Pool in an effort to create a buffer between humans and seals, and simultaneously allow swimmers access to the ocean. The rope has been strung from the seawall on the western side of the sand beach to a point near the bottom of the coastal bluff (Attachment 5).

The proposed rope installation includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. The rope would be strung through the supports and signs may be attached to the supports providing information to the public.

In 1931, Ellen Browning Scripps donated construction materials and built the Children's Pool breakwater to create a safe swimming zone for children adjacent to La Jolla Park. The breakwater was built on tidelands and the 1931 Tidelands Trust deeded the Children's Pool to the City of San Diego in trust for public use. The City was given right and title to the Children's Pool if the lands were to be devoted exclusively to public park, bathing pool for children, playground and recreational purposes, and other incidental uses. On January 1, 2010, Senate Bill 428 went into effect and amends the 1931 Trust. The legislative amendment to the Trust gives the Council discretion to allow the Children's Pool to be used as a "marine mammal park for the enjoyment and educational benefit of children."

The September 15, 2010 Hearing Officer approval has been appealed by the La Jolla Community Planning Association (Attachment 1). Staff has summarized the appeal issues and provided a response to each below:

DISCUSSION

Appeal Issues

1. The community planning group voted 10-1-2 to recommend denial of the amendment & 11-0-2 to oppose the CEQA Exemption.

Staff Response:

The La Jolla Community Planning Association vote was included in the September 15, 2010 staff report to the Hearing Officer on the project and considered in the Hearing Officer's decision.

2. Amendment is in conflict with several sections of the Local Coastal Plan dealing with lateral and vertical access to the shoreline.

Staff Response:

The La Jolla Local Coastal Program requires that lateral and vertical access be maintained to coastal resources such as the Children's Pool Beach. Lateral access to the ocean is provided through a three-foot opening in the rope at the eastern end near the Coastal Bluff. Vertical access between the Coastal Bluff and the ocean would not be impeded by the rope installation in the sand below the Bluff. The three-foot opening allows for users to reach the ocean from the Bluff or to reach the Bluff from the ocean. Staff analyzed the placement of the rope and determined that it would not impede access to and from the Coastal Bluff and the Coastal Beach.

3. Cannot make finding: "The proposed coastal development is in conformity with the certified Local Coastal land use plan."

Staff Response:

While this is a general statement and no specifics were provided, the project would not impede access to the ocean, no views to the ocean would be blocked by the project and there would be no impacts to either the Coastal Beach or the Coastal Bluff. The Local Coastal Program identifies the area above the Children's Pool as a Viewshed area. The proposed rope would be placed at a height not exceeding four feet and the rope would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program. While the proposed rope would provide a buffer between humans and seals, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to high bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access via the concrete stairs would remain unchanged by the rope installation. The La Jolla Community Plan does not envision the Children's Pool as an improved recreation area and therefore, the placement of the rope would not conflict with the long range recreation plans for the area. Given that the sand beach and ocean would remain open to the public while the rope would be in place, that the rope's location and type of rope used would not block any identified public views at the Children's Pool, and the placement of the rope would not conflict with future plans for the Children's Pool area, the proposed coastal development would not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan.

4. "Hearing Officer repeated several times that it will be a "hindrance to people using the beach..."

Staff Response:

The purpose of the rope is to create a buffer between humans and the seals that may be hauled out on the Children's Pool sand to rest or give birth to their young. The intent is to give pause and allow an opportunity for humans to access the ocean in a manner that does not inadvertently harass the seals. The rope is a nylon cord strung through support posts that are held in place by the beach sand. Thus, the rope serves its purpose with the minimum of hindrance, creates the human-to-seal buffer, all while providing ocean access through the three-foot opening on the eastern end.

5. Cannot make finding "The proposed...will not encroach upon any exist(ing) physical accessway that is legally used by the public..."

Staff Response:

While the proposed rope would provide a buffer between humans and seals, the beach would

remain open for public use and swimming would be allowed and not prevented. The rope is **not** intended to, and does not prevent access to the sand beach or the ocean. The rope is not impenetrable and a three-foot opening would remain on the eastern end of the rope providing open access to the sand beach and the ocean. The purpose and intent of the finding is to ensure that access to the beach is maintained. The rope installation would maintain beach access.

6. Failed to adequately consider the Ranger Program & other options that will meet the stated needs and comply with the LCP.

Staff Response:

Staff supports the inclusion of a Ranger at the Children's Pool and believes the Ranger providing information and guidance at the Children's Pool has proven helpful in reducing conflicts. However, the rope would provide the Ranger with a tool to ensure minimum disturbance of the seals while indicating to the public that beach access is maintained.

7. Amendment does not qualify for a CEQA Exemption. Section 15304 and 15333 do not apply because those list narrow applications and the project has broader implications. The project is in conflict with Local Coastal Plan and affects public access to coastal resources.

Staff Response:

The Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The proposed installation of the rope includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. At no time would the rope or supports touch the adjacent Coastal Bluff. Proposed permit conditions would require that any debris caused by either initial installation or removal and repair, must be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters.

Sections 15304 and 15333 of the California Environmental Quality Act (CEQA) Guidelines address minor alterations to land and small habitat restoration projects respectively. Staff analysis of the project determined that actions to install and maintain the rope year-round would meet the criteria set forth in Section 15304, which allows for minor public or private alterations in the condition of land, water and/or vegetation. Staff also determined the project is consistent with Section 15333 which consists of projects, not to exceed five acres in size to assure maintenance, restoration, enhancement, or protection of habitat for fish, plants or wildlife. The project would not be in conflict with the Local Coastal Plan and public access to the ocean would be maintained.

8. CEQA appeal period not valid since there was no way for the public to know that a Notice had been filed.

Staff Response:

A Notice of Right to Appeal (NORA) Environmental Determination (Attachment 3) was posted on August 3, 2010 in the offices of the Development Services Department. As stated in the Notice, applications to appeal the CEQA determination made by staff to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of the Notice or within 15 business days from the date of the environmental determination. No appeal was filed. Neither the San Diego Municipal Code nor the California Environmental Quality Act requires that a Notice of Right to Appeal Environmental Determination be sent to community planning groups or other interested parties. As a courtesy, NORAs are posted in the third floor lobby of the Development Services Department.

9. Other issues that may be raised at hearing.

Staff Response:

Staff is not able to respond.

CONCLUSION


The proposed rope barrier would serve as a buffer between humans and the seals. Public access to the beach would be maintained at all times through an opening at the easterly end of the rope, and therefore, the project would be consistent with the Local Coastal Plan. Staff believes the Ranger Program is beneficial and is aided by the installation of the rope. Staff has determined that the sensitive resources in the area would not be affected by the project. The rope installation is a minor alteration of the land and allows for the seals to haul out to rest and give birth without inadvertent harassment.

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

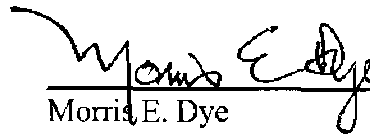
ALTERNATIVES

1. **Deny** the appeal of Coastal Development Permit No. 758925, and Site Development Permit No. 782184, **with modifications.**
2. **Approve** the appeal and **deny** Coastal Development Permit No. 758925, and Site Development Permit No. 782184.

Respectfully submitted,



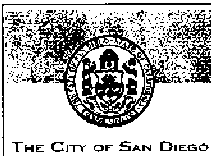
Mike Westlake
Program Manager
Development Services Department



Morris E. Dye
Project Manager
Development Services Department

Attachments:

1. Appeal by the La Jolla Community Planning Association
2. La Jolla Community Planning Association Vote
3. Notice of Right to Appeal Environmental Determination
4. Notice of Exemption
5. Hearing Officer Report, September 15, 2010



City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
MARCH 2007

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- ☒ Process Two Decision - Appeal to Planning Commission
☒ Process Three Decision - Appeal to Planning Commission
☐ Process Four Decision - Appeal to City Council
☐ Environmental Determination - Appeal to City Council
☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant *Please check one* ☐ Applicant ☒ Officially recognized Planning Committee ☐ "Interested Person" (Per M.C. Sec. 113.0103)

Name
La Jolla Community Planning Association

Address City State Zip Code Telephone
P. O. Box 889 La Jolla CA 92037 858.486.0160 (direct)

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

City of San Diego, Department of Park & Recreation

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
ChildrensPoolRope/PN213317/CDP-SDP-CEQA Exemp.	September 15, 2010	Morris Dye

Decision (describe the permit/approval decision):

Hearing Officer approved the Amendment to CDP and SDP, took no action on the appeal of the CEQA Exemption.

5. Grounds for Appeal (Please check all that apply)

- ☒ Factual Error (Process Three and Four decisions only)
☐ Conflict with other matters (Process Three and Four decisions only)
☒ Findings Not Supported (Process Three and Four decisions only)
☐ New Information (Process Three and Four decisions only)
☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

1. The community planning group voted 10-1-2 to recommend denial of the amendment & 11-0-2 to oppose the CEQA Exemption.

2. Amendment is in conflict with several sections of the Local Coastal Plan dealing with lateral and vertical access to the shoreline.

3. Can not make finding: "The proposed coastal development is in conformity with the certified Local Coastal Program land use plan."

4. Hearing Officer repeated several times that it will be a "...hinderance to people using the beach..."

5. Can not making finding: "The proposed...will not encroach upon any exist physical accessway that is legally used by the public..."

6. Failed to adequately consider the Ranger Program & other options that will meet the stated needs and comply with the LCP.

7. Amendment does not qualify for a CEQA Exemption.

7.a. §15304 and §15333 do not apply because those list narrow applications and the project has broader implications.

7.b. The project is conflict with the Local Coastal Plan and affects public access to coastal resources.

8. CEQA appeal period not valid since there was no way for the public to know that a Notice had been filed.

9. Other issues that may be raised at hearing.

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

Signature: Joseph LaCava, President, La Jolla CPA Date: 24 September 2010

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

Agenda Item #11: Heard out of sequence, see above.

11. BISHOP SCHOOL LIBRARY & LEARNING CENTER

Pulled from August Consent Agenda

DPR ACTION: Motion that the variance findings can be made for variance of zoning height per Land Development Code Section 113.0270(a)(1) and 113.0270(a)(2) of a maximum of 2.1 ft. or less for no more than an area which is equal to or less than 39% of proposed ground floor area. 7-0-0.

7607 La Jolla Blvd. – Amend existing PDP, CDP, SUP, SDP to increase the maximum building height of the previously approved library structure by 4 feet (as measured by the PDO, project conforms to Prop D) in PDO Zones 5 & 6.

12. CHILDREN'S POOL ROPE

Public testimony will be limited to 2 minutes or less per person depending on turnout and no organized presentations.

Proposal by the City to amend the current Coastal Development Permit, which allows for a "rope" during the pupping season to allow the "rope" to remain in place year round.

Presenter – Dan Daneri, City Park & Rec

Presented: **Mr. Dan Daneri**, City of San Diego District Manager, Park & Recreation Department, presented a history of The Children's Pool. San Diego Park & Recreation has been directed to apply for an amended Coastal Development Permit to permit a year-round "Rope Barrier." Mr. Daneri advocated for a permanent "Rope Barrier."

President LaCava invited Community Members to register their opinions in reference to the advisability of establishing a permanent "Rope Barrier" on The Children's Pool beach. Community Members spoke eloquently and civilly, in opposition to the establishment of a permanent "Rope Barrier." There was unanimous praise for the recently established Park Ranger Program, and consensus in support of the "Joint Use Policy."

Speaking in opposition to the Permanent Rope Barrier: **Mark S. Brown, Doug Burley, Dan Byrnes, Elaine Greco, Richard Guarascio, Ken Hunrichs, Marie Hunrichs, Don Perry, Kay Stafford, Steve Thometz, Mitch Throwel, Portia Wadsworth**, and on behalf of the San Diego Council of Divers: **John Leek**, and on behalf of The Friends of the Children's Pool: **Melinda Merryweather, John Steel, M.D.** Community Members registering their opposition, declining to speak: **Robert F. Clarke, Phyllis Minick, Janie A. Noon, William Robbins, Cindy Thorsen**, and on behalf of the La Jolla Town Council: **Rick Wildman. Anthony Ramirez** registered his opposition by e-mail sent to the LJCPA.

Community Member **Ms. Linda Pearce** registered her position in support of the "Rope Barrier," and declined to speak.

Trustees Addington, Brady, Conboy, Costello, Gabsch, Little, Lucas, and **President LaCava** spoke in opposition to establishing a permanent "Rope Barrier" and spoke in opposition to requesting an amendment to the current Coastal Development Permit. **Trustee Weiss** commented. **Trustee Fitzgerald** spoke in support of establishing a permanent "Rope Barrier."

Voting Record #6

Approved Motion: Motion to deny a "Rope Barrier" to remain in place year round on the Children's Pool Beach because the "Rope Barrier" creates more problems than it resolves and findings cannot be made for a Coastal Development Permit, (Lucas/Addington 10/1/2).

In favor: Addington, Brady, Conboy, Costello, Crisafi, Gabsch, Little, Lucas, Manno, Whittemore.

Oppose: Fitzgerald.

Abstain: LaCava, Weiss.

Voting Record #7

Approved Motion: Motion to reject the City of San Diego's determination that The Children's Pool Beach "Rope Barrier" Project is categorically exempt from CEQA Guidelines, (Costello/Brady 11/0/2).

In favor: Addington, Brady, Conboy, Costello, Crisafi, Gabsch, Little, Lucas, Manno, Weiss, Whittemore.

Abstain: Fitzgerald, LaCava.

13. Adjourn to Next Regular Meeting on October 7, 2010, 6:00 pm



THE CITY OF SAN DIEGO

Date of Notice: August 3, 2010

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

Internal Order or WBS No. 21002110

PROJECT NAME/NUMBER: La Jolla Children's Pool Rope Barrier/Project No. 213317

COMMUNITY PLAN AREA: La Jolla

COUNCIL DISTRICT: 1

LOCATION: West/Northwest of 809 Coast Boulevard. The beach site is located in the Sensitive Coastal Overlay and Coastal Overlay (Coastal Commission Appeal Jurisdiction) Zones within the La Jolla Community Planning Area.

PROJECT DESCRIPTION: Amendment to Coastal Development Permit No. 701673/Site Development Permit No. 701765 to install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans & seals at the La Jolla Children's Pool.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego – Hearing Officer (Process 3)

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15304 (Minor Alterations in Land Use) and 15333 (Small Habitat Restoration projects).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego – Development Services Department

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: The project would not result in a significant effect on the environment. The actions to install and maintain a rope barrier, year-round meets the criteria set forth in CEQA Section 15304 which allows for minor public or private alterations in the condition of land, water and/or vegetation and CEQA Section 15333 which consists of projects, not to exceed five acres in size to assure maintenance, restoration, enhancement, or protection of habitat for fish, plants or wildlife; and where the exceptions listed in CEQA Section 15300.2 would not apply.

DEVELOPMENT PROJECT MANAGER:

MAILING ADDRESS:

PHONE NUMBER:

Morris Dye

1222 First Avenue, MS 501

San Diego, CA 92101-4153

619-446-5201

On July 8, 2010, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Development Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice OR 15 business days from the date of the environmental determination. Applications to appeal CEQA determinations made by the Planning Commission from a Process Two or Three Appeal under SDMC section 112.0506 must be filed in the Office of the City Clerk within 10 business days from the date of the Planning Commission's decision. The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

NOTICE OF EXEMPTION

(Check one or both)

TO: X RECORDER/COUNTY CLERK
 P.O. BOX 1750, MS A-33
 1600 PACIFIC HWY, ROOM 260
 SAN DIEGO, CA 92101-2422

FROM: CITY OF SAN DIEGO
 DEVELOPMENT SERVICES DEPARTMENT
 1222 FIRST AVENUE, MS 501
 SAN DIEGO, CA 92101

OFFICE OF PLANNING AND RESEARCH
 1400 TENTH STREET, ROOM 121
 SACRAMENTO, CA 95814

PROJECT NO.: 213317**PROJECT TITLE: LA JOLLA CHILDREN'S POOL ROPE BARRIER**

PROJECT LOCATION-SPECIFIC: West/Northwest of 809 Coast Boulevard. The beach site is located in the Sensitive Coastal Overlay and Coastal Overlay (Coastal Commission Appeal Jurisdiction) Zones within the La Jolla Community Planning Area.

PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: Amendment to Coastal Development Permit No. 701673/Site Development Permit No. 701765 to install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans & seals at the La Jolla Children's Pool.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: City of San Diego, Park and Recreation Department
 202 C Street, MS 35, San Diego, CA 92101
 Attn: Stacey LoMedico, 619-236-6643

EXEMPT STATUS: (CHECK ONE)

- ☐ MINISTERIAL (SEC. 21080(b)(1); 15268);
☐ DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a));
☐ EMERGENCY PROJECT (SEC. 21080(b)(4); 15269 (b)(c))
☒ **CATEGORICAL EXEMPTION: ARTICLE 19, SECTION 15304 (MINOR ALTERATIONS TO LAND) AND 15333 (SMALL HABITAT RESTORATION PROJECTS)**
☐ STATUTORY EXEMPTIONS:

REASONS WHY PROJECT IS EXEMPT: The project would not result in a significant effect on the environment. The actions to install and maintain a rope barrier, year-round meets the criteria set forth in CEQA Section 15304 which allows for minor public or private alterations in the condition of land, water and/or vegetation and CEQA Section 15333 which consists of projects, not to exceed five acres in size to assure maintenance, restoration, enhancement, or protection of habitat for fish, plants or wildlife; and where the exceptions listed in CEQA Section 15300.2 would not apply.

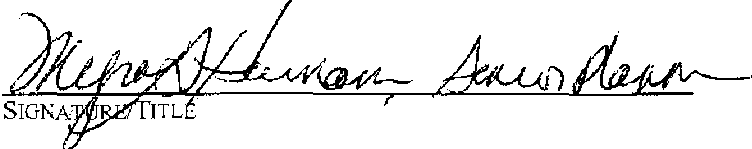
LEAD AGENCY CONTACT PERSON: Myra Herrmann, Senior Planner

TELEPHONE: (619) 446-5372

IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?
☐ YES ☐ NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA


 SIGNATURE/TITLE

7/8/10
 DATE

CHECK ONE:

- ☒ SIGNED BY LEAD AGENCY
☐ SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: September 15, 2010 REPORT NO. HO 10-091

ATTENTION: Hearing Officer

SUBJECT: LA JOLLA CHILDREN'S POOL ROPE BARRIER

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

APPLICANT: Park and Recreation Department, City of San Diego

SUMMARY

Requested Action - Should the Hearing Officer approve a Coastal Development Permit and a Site Development Permit to install and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool?

Staff Recommendations:

1. APPROVE Coastal Development Permit No. 758925.
2. APPROVE Site Development Permit No. 782184.

Community Planning Group Recommendation – September 2, 2010, the La Jolla Planning Association voted 10-1-2 to recommend denial of the project. The group also voted 11-0-2 to reject the City's determination that the project is categorically Exempt from CEQA.

Environmental Review – This activity is Exempt from California Environmental Quality Act (CEQA) pursuant to: Section 15304 of the State CEQA Guidelines (minor alterations to land), and Section 15333 of the State CEQA Guidelines ("Small habitat restoration projects").

BACKGROUND

The project site is located on Casa Beach in the La Jolla Community Planning area, within the Coastal Zone. The site is in the LJPD-5 zone, and is adjacent to Open Space and Park land use designations in the La Jolla Community Plan (LJCP).

Prior Rope Permits:

On September 14, 2004, the San Diego City Council voted to direct City staff to implement a joint use policy at the Children's Pool and in April 2006 and December 2006, the Council passed resolutions directing that a rope barrier be placed at the Pool during pupping season (generally accepted to be from December 15 to May 15). The City of San Diego Park and Recreation Department has applied for permits to place the rope barrier each year since 2006.

On December 2, 2009, the City Hearing Officer approved Coastal Development Permit No. 701673 and Site Development Permit No. 701765 for the annual placement of the rope barrier during pupping season, December 15 to May 15. This permit approval was appealed to the Planning Commission and the California Coastal Commission. Appeals were denied at both bodies. Therefore, the rope is currently allowed to be placed on the beach every year from December 15 to May 15.

Recent City Council Direction

On May 17, 2010, the San Diego City Council directed the Park and Recreation Department to seek an amendment to allow for the year-round placement of the rope barrier (Attachment 8).

DISCUSSION

The project before the Hearing Officer is to amend the current permits and allow the rope to be placed year-round in perpetuity. Land Development Code (LDC) Section 126.0702 requires the project to obtain a Coastal Development Permit due to its location in the Coastal Zone. Also, LDC Section 143.0110 requires that the rope barrier project obtain a Site Development Permit for Environmentally Sensitive Lands due to its location within a Coastal Beaches resource. Development Services accepted an application from the Park and Recreation Department for both permits. The application is for the installation of a rope barrier, held in place by four, vertical posts and their associated footings. The posts and footings would be installed by hand. The posts would be set in concrete, in small containers. The footings would be covered with sand and would be installed approximately 30 feet apart (Attachment 4).

The rope length from the seawall to the last support post near the concrete stair access would be 130 feet. The westerly end of the rope would be attached to the seawall 95 feet from the bottom of the stairs that lead down from the lifeguard station to the seawall as shown in Exhibit "A" (Attachment 4). The easterlymost post would be placed three feet from the nearest obstruction near the bottom of the easterly access stairs. The nearest obstruction would be a four-foot wide

rock adjacent to the stairs. This installation would create a three-foot beach access opening in the rope. This opening would allow the public to access the ocean.

Informational signs measuring 18-inches by 24-inches may be attached to the rope posts, advising beachgoers to observe the seals from a distance, that harassing the seals is against the law, that the beach is open, and that swimming is allowed, but not recommended due to possible high bacteria levels.

It is recognized that the rope may require maintenance or repair from time to time. This would be permitted with the approval of this permit.

ALTERNATIVES

1. Approve Coastal Development Permit No. 758925 and Site Development Permit No. 782184, with modifications.
2. Deny Coastal Development Permit No. 758925 and Site Development Permit No. 782184, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



Morris E. Dye, Development Project Manager

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Site Plan
5. Draft Permit with Conditions
6. Draft Resolution with Findings
7. Site Photos
8. May 17, 2010 City Council Meeting Minutes



GIS

AERIAL PHOTO

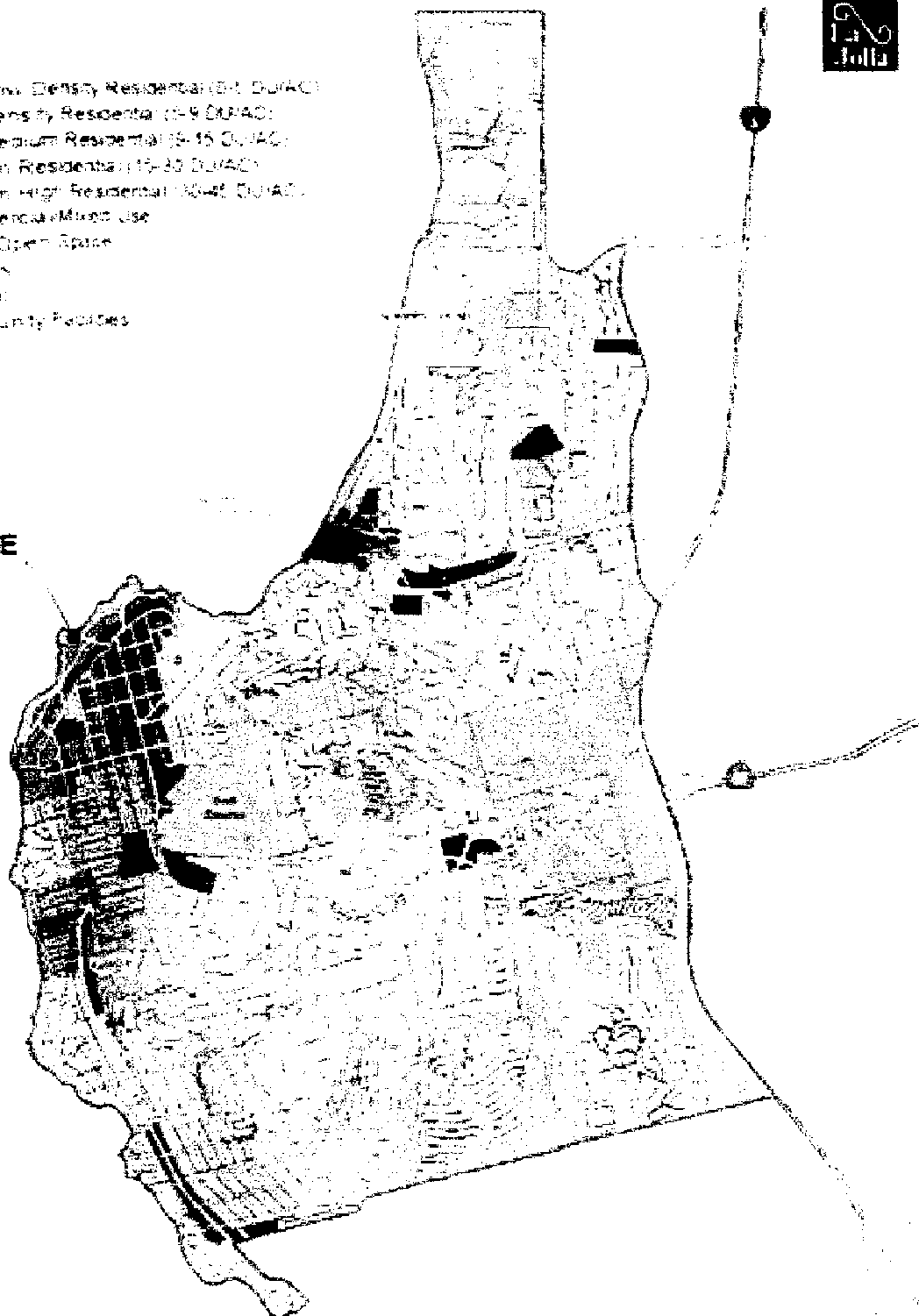
CITY OF SAN DIEGO • DEVELOPMENT SERVICES DEPARTMENT



Legend

- Very Low Density Residential (0-1 DU/AC)
- Low Density Residential (2-9 DU/AC)
- Low-Medium Residential (10-15 DU/AC)
- Medium Residential (16-30 DU/AC)
- Medium-High Residential (30-45 DU/AC)
- Commercial/Mixed Use
- Parks/Open Space
- Schools
- Cultural
- Community Facilities

PROJECT SITE



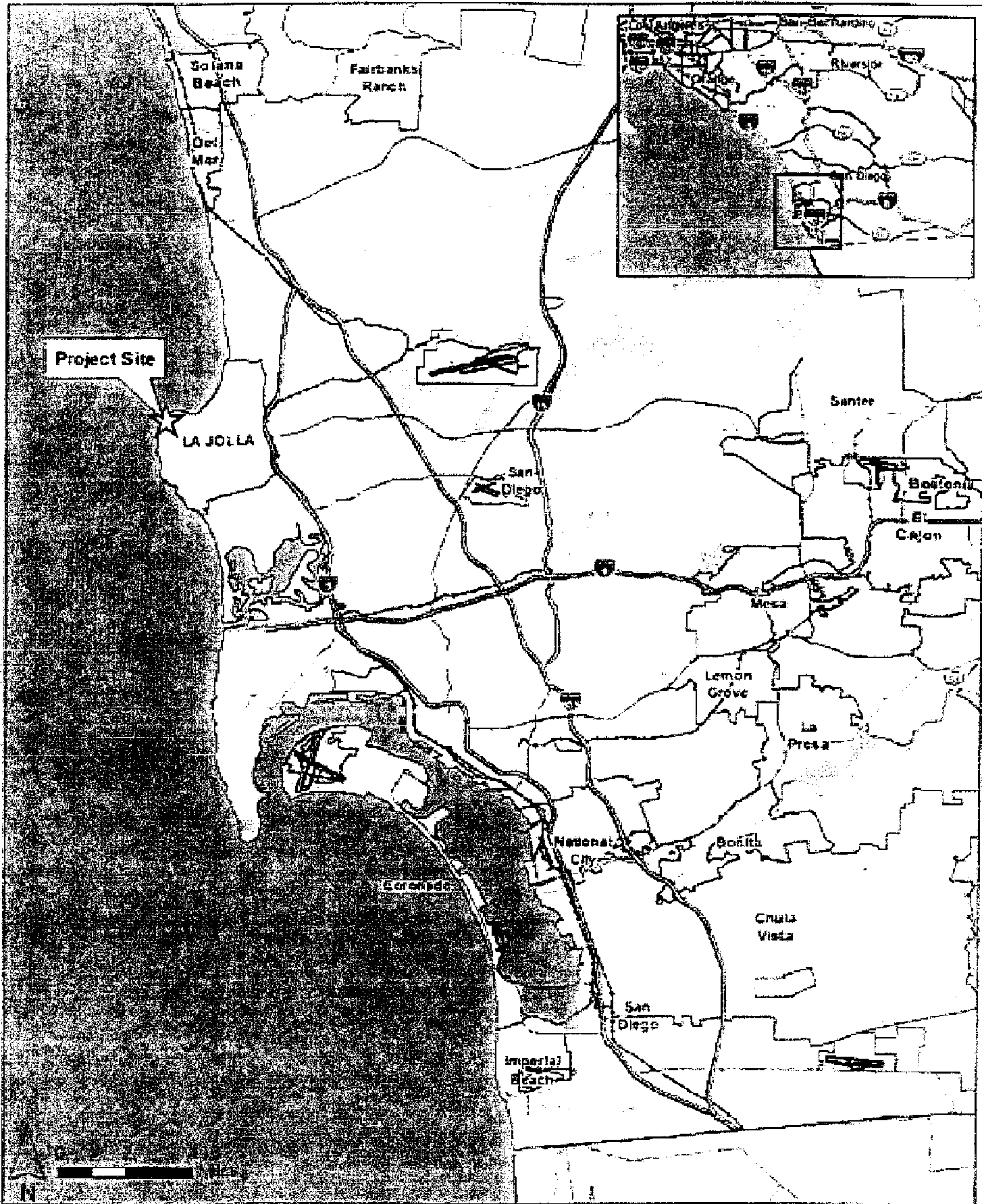
Community Land Use Map



Figure 1

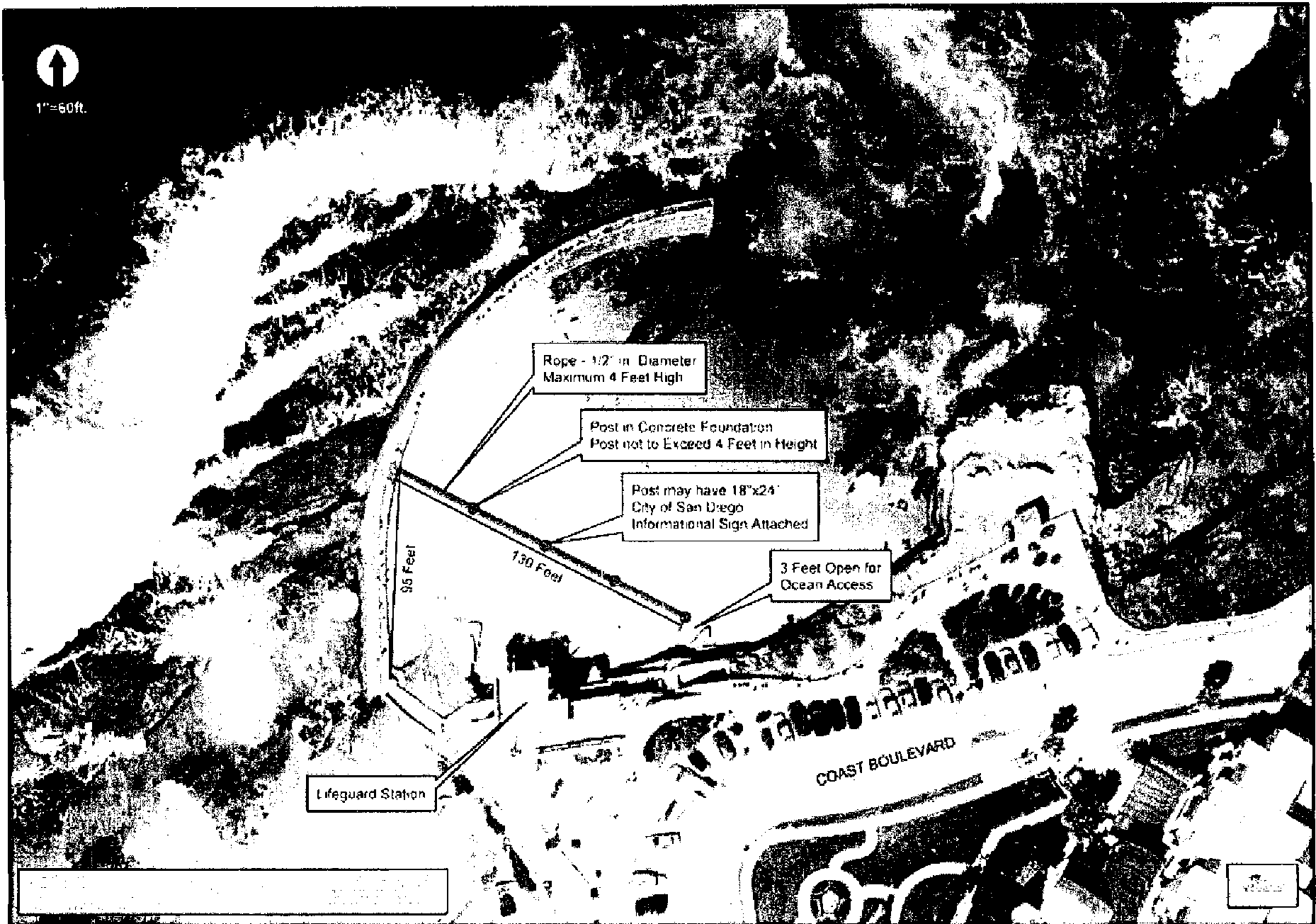


La Jolla Community Plan
City of San Diego Planning Department



SOURCE: E DRI, Shading: DEA, 2000

Figure 2-1
Regional Map - La Jolla Children's Pool Project



2005 Aerial

CHILDREN'S POOL ROPE BARRIER

EXHIBIT "A"

RECORDING REQUESTED BY
 CITY OF SAN DIEGO
 DEVELOPMENT SERVICES
 PERMIT INTAKE, MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 21002110

COASTAL DEVELOPMENT PERMIT NO. 758925
SITE DEVELOPMENT PERMIT NO. 782184
Amending Coastal Development Permit No. 701673
and Site Development Permit No. 701765
La Jolla Children's Pool Rope Barrier

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

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 15, 2010, on file in the Development Services Department.

The project shall include:

Rope, supporting posts, support post footings and signs;

All structures shall be maintained in place approximately as shown in exhibits [Exhibit "A"] dated September 15, 2010, on file in the Development Services Department.

STANDARD REQUIREMENTS:

1. This permit must be utilized by September 29, 2013. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC

requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.

2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

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

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

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

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

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

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

be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

PLANNING/DESIGN REQUIREMENTS:

9. All debris caused by construction must be removed from the site and disposed of appropriately.
10. All materials shall be maintained and managed so as to prevent them from entering sensitive areas including the coastal waters. Placement shall be maintained in location identified on Exhibit "A," during the identified time periods.
11. The westernmost end of the rope shall be attached to the seawall not greater than 95 feet from the beginning of the seawall at the base of the stairs leading down from near the lifeguard station. The installed rope length shall not exceed 130 feet, and a minimum three-foot opening shall be maintained from the post at the easterlymost end of the rope to the nearest obstruction so as to create an opening for beach access. The rope shall not be placed below the Mean High Tide Line.
12. The rope installation shall not use more than four posts, and each post shall not exceed four feet in height. The post nearest the 3-foot opening at the easterly end of the rope, and the post nearest the center of the length of rope may have an 18-inch by 24-inch City of San Diego informational sign attached.
13. Installed rope height shall not exceed four feet.
14. Rope diameter shall not exceed one half inch in diameter.

APPROVED by the Hearing Officer of the City of San Diego, on September 15, 2010,
Resolution No.

CITY OF SAN DIEGO
 RESOLUTION NO. HO-
 COASTAL DEVELOPMENT PERMIT NO. 758925
 SITE DEVELOPMENT PERMIT NO. 782184
 Amending Coastal Development Permit No. 701673
 and Site Development Permit No. 701765
La Jolla Children's Pool Rope Barrier

WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for a permit to install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool; and

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

WHEREAS, on September 15, 2010, the Hearing Officer considered Coastal Development Permit No. 758925 and Site Development Permit No. 782184 (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 758925 and Site Development Permit No. 782184) pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

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

That the City of San Diego adopts the following written Findings, dated September 15, 2010.

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and the rope would not exceed one half-inch in diameter. Given this height and diameter, the

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The adjacent Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The proposed installation of the rope includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. Once installed, the rope would remain in perpetuity, with the exception of removal and replacement due to wear and deterioration of the rope and/or support structure. At no time would the rope touch the adjacent Coastal Bluff. Proposed permit conditions would require that any debris caused by either initial installation or removal and repair, must be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters. Placement would be required to be maintained in location identified on Exhibit "A." As the project involves initial and maintenance-related digging of relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions would prohibit any debris or construction materials from entering the ocean, and permit conditions would also prohibit the project affecting the adjacent Coastal Bluff, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation as described in Section 30211.

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

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

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

any public views or recreation plans for the area, the proposed development will not adversely affect the applicable land use plan.

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

B. Supplemental Findings--Environmentally Sensitive Lands

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier,

including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans and seals at the La Jolla Children's Pool in the sand above the Mean High Tide Line. A rope barrier would be erected and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City of San Diego, Coastal Development Permit No. 758925 and Site Development Permit No. 782184 is hereby GRANTED by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 758925 and Site Development Permit No. 782184, a copy of which is attached hereto and made a part hereof.

Morris E. Dye
Development Project Manager
Development Services

Adopted on: September 15, 2010

Internal Order No. 12002110

cc: Legislative Recorder, Planning Department

**Development Services Department
Project Management Section**



**Development Services Department
Project Management Section**



WARNING!

**MARINE MAMMALS
ARE PROTECTED
BY FEDERAL LAWS**



PLEASE! Do NOT Disturb Marine Mammals.

**Observe Them From a Safe Distance and Keep Pets on a Leash.
Marine Mammals are Wild Animals and Can be Dangerous!**

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



Report Violations to the NMFS Enforcement Hotline:

1-800-853-1964

PLEASE WATCH FROM A DISTANCE
AND AVOID DISTURBING THE SEALS.
HARASSMENT OF MARINE MAMMALS
IS AGAINST THE LAW.

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

ENTONCES EL CONTACTO CON ESTA AGUA
PUEDE CAUSAR ENFERMEDADES.
LA CANTIDAD DE BACTERIAS EXCE
DE LOS NIVELES DE SALUD.

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

[illegible][illegible]

Development Services Department Project Management Section





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.

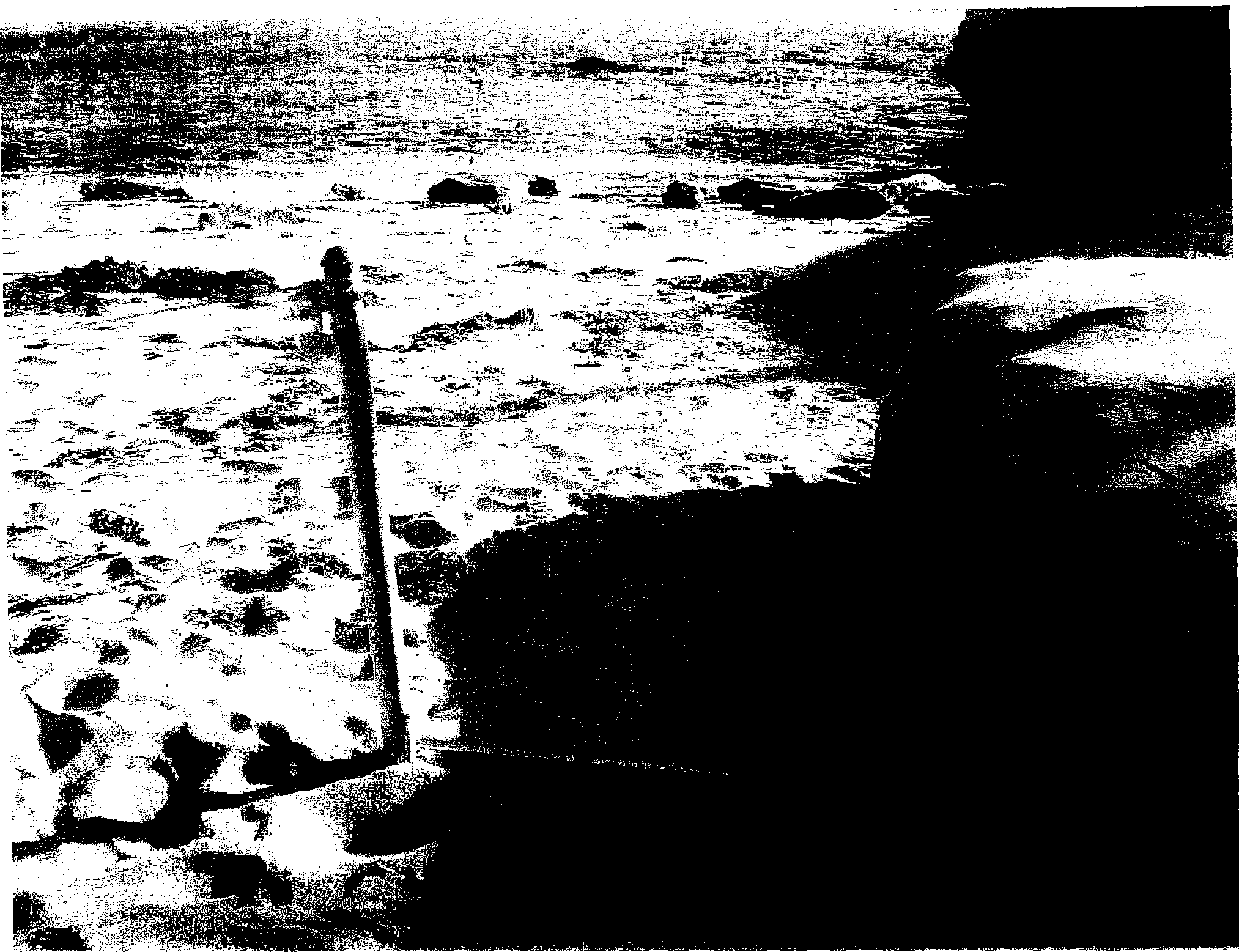
PLEASE NOTE: ANY SIGNS IN THIS AREA THAT DO
NOT HAVE AN OFFICIAL CITY OF SAN DIEGO SEAL
ARE NOT APPROVED NOR SANCTIONED BY
THE CITY OF SAN DIEGO. 08-18-2008

THE CITY OF SAN DIEGO
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THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, MAY 17, 2010
AT 6:00 PM
MUSEUM OF CONTEMPORARY ART
SHERWOOD AUDITORIUM
LA JOLLA, CALIFORNIA

Table of Contents

CHRONOLOGY OF THE MEETING

ATTENDANCE DURING THE MEETING

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

COUNCIL COMMENT

CLOSED SESSION ITEMS

ITEM-150: Seasonal Shared Use Policy for Children's Pool

REPORT OUT OF CLOSED SESSION

NON-DOCKET ITEMS

ADJOURNMENT

DCAs Assigned: J. Cordileone, and J. Dawson

This closed session is to brief the Mayor, and the City Council on the status of the case pending before the State of California Public Employment Relations Board regarding implementation of San Diego Charter Section 117(c) and seek direction.

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:25 PM

Council President Hueso closed the hearing.

ITEM-150: Seasonal Shared Use Policy for Children's Pool. (La Jolla Community Area, District 1.) (Rev. 5/12/10)

(See Report to the City Council No. 10-069; Document Index Nos. 1-11; City Attorney's March 26, 2010, memorandum; San Diego Police Department's Calls for Service record; Costs Associated with Adding Positions for Park Ranger or Life Guard; City Manager's Report No. 04-135; Minutes from the City Council Meeting dated September 14, 2004; Senate Bill No. 428; Councilmember DeMaio's March 18, 2010, memorandum; Councilmember Lightner's March 19, 2010, memorandum; Councilmember Lightner's March 25, 2010, memorandum; and Chief Operating Officer's March 29, 2010, memorandum.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2010-794 Rev. Copy) ADOPTED AS AMENDED AS RESOLUTION R-305837

Directing the Mayor, or his designee, within 10 days of the date of final passage of this resolution, to seek an emergency amendment to Coastal Development Permit Number 701673 and Site Development Permit Number 701765 to keep the rope barrier up year round at Children's Pool;

Directing the Mayor, or his designee, as a required condition of a grant of an Emergency Coastal Development Permit, to amend Coastal Development Permit Number 701673 and Site Development Permit Number 701765 to keep the rope barrier up year round at Children's Pool and to timely submit the permit applications;

Directing the City Attorney to draft an ordinance amending Municipal Code Section 63.0102, Use of Public Parks and Beaches Regulated, to prohibit public access to the Children's Pool beach during harbor seal pupping season, from December 15 to May 15, and to make it illegal to allow a dog on the beach at Children's Pool at any time, for docketing at the City Council no later than June 30, 2010;

Directing the Mayor, or his designee, to amend the Local Coastal Program, if required, to prohibit the public from entering the beach during harbor seal pupping season, from December

15 through May 15, and to prohibit dogs on the beach at any time;

Directing the Mayor, or his designee, to seek grant or private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool, to create a Volunteer Docent Program led by this Park Ranger or Lifeguard, and to prepare a written report to present to the Natural Resources and Culture Committee within 45 days;

Directing the Mayor, or his designee, to propose appropriate signage based on the Council actions and provide a written report back to the Natural Resources and Culture Committee within 45 days.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 4/5/2010, NR&C voted 4 to 0 to:

a) Seek an emergency amendment to the existing Coastal Development Permit to keep the guideline rope up year round.

Amendment to the motion by Councilmember Frye, to include direction to seek a Local Coastal Program amendment to prohibit the public from entering the beach during pupping season, 24 hours a day from December 15 through May 15.

Amendment to the motion by Councilmember Lightner, to include:

b) Prohibit dogs on the Children's Pool beach year round, 24 hours a day;

c) Seek private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool. Authorize the Park and Recreation Department or Lifeguard Services to create a Volunteer Docent Program led by this Park Ranger or lifeguard.

Amendment to the motion by Councilmember DeMaio, to request the Mayor's Office to return to this Committee in May of this year with information regarding a ranger or lifeguard and docent program and cost analysis, timeline for the permits, signage issues, merchandise tables, and any other issues the Committee members might have.

(Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea.)

SUPPORTING INFORMATION:

In 1931, the State of California granted Children's Pool area tidelands to the City of San Diego upon certain trust conditions: "[t]hat said lands shall be developed exclusively to public park, bathing pool for children, parkway, highway, playground and recreational purposes, and to such other uses as may be incident to, or convenient for the full enjoyment of, such purposes;" as well as "[t]he absolute right to fish in the waters of the Pacific ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California." Cal. Stats. 1931, Ch. 937.

On September 14, 2004, the City Council directed staff to implement a joint use policy at the

Children's Pool. See San Diego Resolution R-299646 (September 14, 2004).

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.

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 not to certify the EIR.

On December 2, 2009, the City Hearing Officer approved a CDP for annual placement of the rope barrier during pupping season, December 15 to May 15. This permit 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 to May 15, and non-pupping season, May 16 to December 14. The Committee took several actions at this hearing.

FISCAL CONSIDERATIONS:

Development Services Department staff estimate the cost to process the Emergency Coastal Development Permit to be in the range of \$1,000-\$3,000; the cost to process the Site Development Permit and a Coastal Development Permit amendments to be in the range of \$30,000-\$40,000 and the cost to amend the Local Coastal Program, if required, to be in the range of \$30,000-\$40,000. If the Site Development Permit, Coastal Development Permit and Local Coastal Program amendment, if required, are processed concurrently the cost for all three is estimated to be \$50,000.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On April 5, 2010, the NR&C Committee voted 4-0 (Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea) to:

1. Seek an emergency amendment to the existing Coastal Development Permit to keep the guideline rope up year round;
2. Direction to seek a Local Coastal Program amendment to prohibit the public from entering the beach during pupping season, 24 hours a day from December 15 through May 15;
3. Prohibit dogs on the Children's Pool beach year round, 24 hours a day;

4. Seek private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool. Authorize the Park and Recreation Department or Lifeguard Services to create a Volunteer Docent Program led by this Park Ranger or Lifeguard;

5. Request the Mayor's office to return to this Committee in May of this year with information regarding a ranger or lifeguard and docent program and cost analysis, timeline for the permits, signage issues, merchandise tables, and any other issues the Committee members might have.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There have been several community meetings in La Jolla on this issue along with Committee and City Council meetings.

Kempczenski

Staff: Mary Ann Kempczenski - (619) 236-5996
Shannon M. Thomas - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: Start Time: 6:16 PM

MOTION BY DONNA FRYE TO ADOPT THE RESOLUTION AS AMENDED TO: 1) DETERMINE THAT A COASTAL EMERGENCY EXISTS REQUIRING THE IMMEDIATE YEAR-ROUND PLACEMENT OF THE ROPE BARRIER; AND DIRECT 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-ROUND 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. A CITY COUNCIL REPORT DATED MAY 17, 2010, FROM THE NATURAL RESOURCES AND CULTURE COMMITTEE CHAIR, ON THIS ITEM WAS PROVIDED TO ASSIST IN MAKING THE DETERMINATION FOR THE COASTAL EMERGENCY AND EMERGENCY COASTAL DEVELOPMENT PERMIT. IT IS RECOMMENDED THAT IT BE INCORPORATED AS PART OF THE COASTAL EMERGENCY DETERMINATION; 2) DIRECT THE MAYOR OR HIS DESIGNEE, AS A REQUIRED CONDITION OF THE EMERGENCY COASTAL DEVELOPMENT PERMIT, TO AMEND COASTAL DEVELOPMENT PERMIT NUMBER 701673 AND SITE DEVELOPMENT PERMIT NUMBER 701765 TO KEEP THE ROPE BARRIER UP YEAR-ROUND AT THE CHILDREN'S POOL AND TO TIMELY SUBMIT THE PERMIT APPLICATIONS; 3) DIRECT THE CITY ATTORNEY'S OFFICE TO DRAFT AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 63.0102 TO PROHIBIT ANY PERSON TO BE ON THE BEACH DURING PUPPING SEASON, DECEMBER 15 TO MAY 15, AND TO COME BACK TO THE NATURAL RESOURCES AND CULTURE COMMITTEE AS AN INFORMATIONAL ITEM, NO LATER THAN JUNE 30, 2010; 4) DETERMINE IF THE PROPOSED YEAR-ROUND ROPE BARRIER PLACEMENT AT CHILDREN'S POOL AND MUNICIPAL CODE AMENDMENTS SECTION 63.0102 ARE CONSISTENT WITH THE LOCAL COASTAL PROGRAM AND CALIFORNIA COASTAL

ACT, AND ONLY IF REQUIRED, DIRECT THE MAYOR OR HIS DESIGNEE TO AMEND THE LOCAL COASTAL PROGRAM ACCORDINGLY; AND 5) DIRECT THE MAYOR OR HIS DESIGNEE TO PROPOSE APPROPRIATE SIGNAGE BASED ON THE COUNCIL ACTIONS AND PREPARE A WRITTEN REPORT TO PRESENT TO THE NATURAL RESOURCES AND CULTURE COMMITTEE WITHIN 45 DAYS. Second by Carl DeMaio.

Passed by the following vote:

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

Nay: Sherri Lightner, Tony Young;

Recused: (None);

Not Present: (None).

(R-2010-837) ADOPTED AS RESOLUTION R-305862

A RESOLUTION WAS ADOPTED TO REFLECT THE FOLLOWING MOTION:

MOTION BY SHERRI LIGHTNER TO: 1) APPROVE THE CITY PARK RANGER AND CITY-SANCTIONED VOLUNTEER DOCENT PROGRAM FOR CHILDREN'S POOL; 2) DIRECT THE CITY ATTORNEY'S OFFICE TO DRAFT AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 63.0102 TO PROHIBIT DOGS ON THE CHILDREN'S POOL BEACH AT ANY TIME; AND 3) DIRECT STAFF TO RETURN TO COUNCIL WITH RECOMMENDATIONS ON WHETHER THE PUPPING SEASON DATES NEED TO BE ALTERED, AND WHAT PROCESS WOULD NEED TO BE FOLLOWED IN ORDER TO ALTER THESE DATES, ALONG WITH ANY ASSOCIATED COSTS. Second by DeMaio.

Passed by the following vote:

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

Nay: (None);

Recused: (None);

Not Present: (None).

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 10:26 p.m.

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:26 PM

CITY COUNCIL MEETING RESULTS

DATE: MONDAY, MAY 17, 2010

RECORDER: SANCHEZ

This is a summary of the actions taken by the City Council.
It is NOT equivalent to the Minutes which, when approved by the City Council,
constitute the official record of the meeting.

ITEM NO.	ACTIONS	R	305837	Motion / Second	VOTE
		O	00000		
150	Adopted as Amended (R-2010-794 Rev. Copy) Directing Several Actions Regarding the Seasonal Shared Use Policy for Children's Pool	R	305837	6/5	235678-yea; 14-nay
	Adopted as Amended (R-2010-837) Directing Several Actions Regarding the Seasonal Shared Use Policy for Children's Pool	R	305862	1/5	Unanimous; all present
	QUIT	Q			

*COMMENTS

Council Comment:

CC-1: Council Member DeMaio thanked Council Member Lightner for requesting that the Children's Pool issue be heard at an evening meeting out in the community. He also acknowledged the City Clerk's staff for their hard work.

CC-2: Council Member Lightner thanked the public for such a great turnout and recognized the City Clerk staff and City staff for a job well done.

Non-Docket:

None.

The meeting was adjourned by Council President Hueso at 10:26 p.m.