

**CALIFORNIA COASTAL COMMISSION**

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# W10d

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Staff:	K. Brown-SD
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## STAFF REPORT: REGULAR CALENDAR

<b>Application No.:</b>	<b>6-11-078</b>
<b>Applicant:</b>	<b>City of San Diego Park and Recreation Department</b>
<b>Agent:</b>	Stacey LoMedico
<b>Location:</b>	Children's Pool Beach, west of Coast Boulevard, southwest of Jenner Street, La Jolla, San Diego, San Diego County.
<b>Project Description:</b>	Installation and maintenance of a 4 ft. high, 152 linear ft. rope barrier with 3 ft. opening for ocean access, support posts, foundations and informational signs, on a year-round basis, in perpetuity, to provide a buffer between humans and seals.
<b>Staff Recommendation:</b>	Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed development with **five (5) special conditions** regarding (1) permit term, (2) assumption of risk, waiver of liability and indemnity (3) required local permits and approvals, (4) monitoring plan, and (5) sign program.

The City of San Diego Park and Recreation Department proposes to install and maintain a year-round rope barrier on the beach, in perpetuity, to provide a barrier between people and seals at Children's Pool Beach in the La Jolla community of the City of San Diego (Exhibit 1). The ½-inch diameter rope would be attached to the seawall/breakwater and extend westward 152 feet, leaving a 3 ft. opening for public access at the east end near the access stairway (Exhibit 2). The rope would be strung between a total of four (4) posts, not to exceed 4 ft. in height. The posts, with attached concrete foundations, would be placed in hand dug holes approximately 18-inches in depth and covered with sand. Informational signs would be placed on the posts (Exhibit 4). The objective of the proposed project is to extend the protection that the existing rope barrier provides the harbor seal colony during pupping season (December 15 to May 15) to include the rest of the year.

In 1930, Philanthropist Ellen Browning Scripps provided funding for the construction of a 300-ft. arced concrete breakwater at Children's Pool Beach in order to create a safe bathing pool for children. In 1931, as a condition of the California Legislature's grant of tide and submerged lands in which the State of California granted Children's Pool area submerged and tidelands to the City of San Diego, the area was to be devoted 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." (Statute of 1931, Chapter 937.) Since the completion of the breakwater in 1931, the public has used Children's Pool Beach for sunbathing, swimming, and diving.

Controversy arose in the early 1990s when seals began to regularly "haul out" (exit the water) onto Children's Pool Beach and in greater numbers. However, historic maps from 1887 and 1894 show that the sandstone reef and adjacent rocks on which the breakwater was built were identified as Seal Rock Point and Seal Rock (Exhibit 8). These maps demonstrate that seals most likely utilized this area as a natural haul out site prior to the breakwater's construction. Harbor seals can haul out any time of the day or night on a year-round basis; however, the number of seals hauled out at a given moment may vary dependent upon several factors, including tide height, weather, season, and level of disturbance. Haul out sites provide essential habitat that seals utilize for a variety of functions, including rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, giving birth, and nursing and weaning pups. As a result of the seals' increased use of Children's Pool Beach as a haul out site, there has been ongoing disagreement whether the seals and their habitat should be protected, whether public access should be protected, or whether seals and people should share the beach.

On December 2, 2009, the City of San Diego approved a coastal development permit for the annual placement of a temporary rope barrier at Children's Pool Beach to provide a buffer between people and seals during the seal pupping season (December 15 to May 15). The rope barrier was subsequently installed on December 16, 2009. On May 17, 2010, the City Council adopted a resolution establishing a new Seasonal Shared Use Policy at Children's Pool Beach and directing City staff to: 1) acquire a coastal development permit to maintain a year-round rope barrier; 2) amend the Local Coastal Program (LCP) to prohibit public access to the beach during seal pupping season; 3) prohibit dogs on the beach year-round; 4) seek grant or private funding for a full-time Park Ranger or Lifeguard position and create a Volunteer Docent Program led by this Park Ranger or Lifeguard; and 5) establish clear signage explaining the rules to the public (Exhibit 7). The subject coastal development permit application is for the installation and

maintenance of a year-round rope barrier to protect harbor seals that haul out at Children's Pool Beach from harassment and disturbance.

Although a rope barrier is proposed to be installed and maintained year-round, in perpetuity, public access to the beach and ocean will be maintained and remain open year-round. In addition, Commission staff is recommending **Special Condition #4** that would require the City to prepare a monitoring plan and submit annual monitoring reports that measure the level of use by seals of the haul out site and the effectiveness of the rope. Furthermore, in order to avoid and minimize any potential adverse impact to public access, **Special Condition #1** would limit the permit term for three (3) years and require the City to apply for an amendment or new coastal development permit upon expiration of the permit. With these two conditions, the City will be required to monitor the site to determine the rope barrier's effectiveness and then, based on the monitoring results, come back to the Commission in three years to extend and/or modify the permit.

Based on a jurisdictional boundary determination conducted by the Commission's mapping department, the proposed project is located in an area where the Commission has retained coastal development permit jurisdiction, even though the City of San Diego has a certified LCP (Exhibit 3). The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified La Jolla Community Plan and Local Coastal Program Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

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## APPENDICES

Appendix A – Substantive File Documents

## EXHIBITS

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Letters received will be  
posted to the web  
and linked from here  
early in the week of June 26.

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-11-078 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves coastal development permit 6-11-078 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. SPECIAL CONDITIONS**

This permit is granted subject to the following special conditions:

1. **Permit Term.**

- A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of three (3) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-11-078, after which time the authorization for continuation and/or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of a rope barrier at Children's Pool Beach will require the issuance of a new coastal development permit or an amendment to this coastal development permit.
- B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue installation and maintenance of a year-round rope barrier at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease use of the rope barrier (except as already authorized during the pupping season of December 15 through May 15).
- C. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

2. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.
3. **Required Local Permits and Approvals.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, all necessary local permits and/or approvals that may be necessary for all aspects of the proposed project, or evidence that no such approvals are required.
4. **Monitoring Plan.**
- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a Monitoring Plan for the management and monitoring of the shared use policy at Children's Pool Beach. The plan shall include, but not be limited to, the following criteria:
1. A physical description of the approved rope barrier with an exhibit delineating the precise location of the rope barrier at Children's Pool;
  2. A discussion of the goals and objectives of the plan, which shall include the method by which the applicant will assess the level of use by seals of the haul out site at Children's Pool Beach throughout the year and the method of determining the effectiveness of the rope barrier at minimizing harassment of hauled out seals with both methods employing, at a minimum, the procedures described in section 3 and 4, below, of this special condition;
  3. Upon installation of the rope barrier, a qualified biologist, environmental resources specialist or park ranger shall record the number of seals hauled out at Children's Pool Beach, the number of people present on the beach, the number of people present in the water, the number of harassment instances, the tide, the weather (including water and air temperature), and the date at least 16 days per month from sunrise to sunset at hourly intervals (to include weekends and holidays);
  4. Provisions for taking measurements of the number of harassment instances, including what activities would qualify as harassment consistent with relevant regulatory definitions of harassment (e.g. seals flushing into water).
- B. The City shall submit, for the review and approval of the Executive Director, on an annual basis, a written monitoring report from a qualified biologist or other qualified experts, as necessary to comply with the requirements of the monitoring report. Each monitoring report shall contain the following:
1. All records of measurements, analyses and conclusions created in conformance with the approved Monitoring Plan;

2. An evaluation of the condition and performance of the approved structure, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the structure;
3. Recommendations for repair, maintenance, modifications, or other work to the device; and
4. Photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the condition, performance, and/or effectiveness of the structure.

If a monitoring report contains recommendations for repair, maintenance, modifications, or other work, the permittee shall contact the San Diego Coastal Commission Office to determine whether such work requires an amendment or new coastal development permit.

- C. The permittee shall undertake development in accordance with the approved final Monitoring Plan. No changes to the approved final Monitoring Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
5. **Sign Program.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a comprehensive sign program. As part of the sign program, signs shall not exceed eight (8) feet in height and a maximum of two (2) signs may be posted on the beach, atop the rope barrier support posts.

The applicant shall undertake the development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that non amendment is legally required.

6. **Liability for Costs and Attorneys Fees**

By acceptance of this coastal development permit, the Applicants/Permittees agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.



## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION AND AREA**

The City of San Diego Park and Recreation Department proposes to install and maintain a year-round rope barrier on the beach, in perpetuity, to provide a barrier between people and seals at Children's Pool Beach in the La Jolla community of the City of San Diego (Exhibit 1). The ½-inch diameter rope would be attached to the seawall/breakwater and extend westward 152 feet, leaving a 3 ft. opening for public access at the east end near the access stairway (Exhibit 2). The rope would be strung between a total of four (4) posts, not to exceed 4 ft. in height. The posts, with attached concrete foundations, would be placed in hand dug holes approximately 18-inches in depth and covered with sand. Informational signs would be placed on the posts (Exhibit 4). The objective of the proposed project is to extend the protection that the existing rope barrier provides the seal colony during pupping season (December 15 to May 15) to include the rest of the year.

The purpose of the proposed rope barrier is to reduce the number of conflicts between beach visitors and seals, while maintaining public access to the beach and ocean via the proposed 3 ft. opening. The access stairway leading to the beach and the beach upland of the rope would remain open and available to the public. The ocean would remain open for swimming; however, warning signs have been posted that advise against swimming due to bacteria levels in excess of health standards. The rope barrier is not intended to keep people off the beach or out of the ocean and public access would still be available on a year-round basis, just more directed so as to provide a safe distance from the hauled out seals. This is both for the protection of the seals and the public. Individuals are not prohibited from crossing the rope; however, the rope serves as a guideline to alert people of the haul out site and the appropriate distance for safe and respectful viewing of the seals. Without such a rope guideline and informational signage, visitors can move about the entire beach which could potentially result in seal harassment. Although the rope serves as a visual barrier for people, seals do not always haul out into the area roped off, but sometimes haul out past the rope, especially during high tide events.

The project site is located at Children's Pool Beach (also known as Casa Beach), west of Coast Boulevard and southwest of Jenner Street in the La Jolla community of the City of San Diego (Exhibit 1). Children's Pool Beach is a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931. Children's Pool Beach is designated as "Parks, Open Space" in the City's certified Land Use Plan. Children's Pool Beach provides recreational opportunities for swimmers, divers, tourists, and the general public through its provision of lifeguard facilities, access stairway from Coast Boulevard, parking along Coast Boulevard, viewing gazebo along Coast Boulevard, benches, portable restrooms, pedestrian walkway atop the seawall, and an emergency beach access ramp that has remained closed by the City via a gate. It is bounded on the north and west by the Pacific Ocean; on the east by Coast Boulevard and Casa de Manana Retirement Community; and on the south by South Casa Beach. In addition, an adjacent haul out site (Seal Rock) is located approximately 500 feet northeast of Children's Pool Beach. Several beaches are located adjacent to or in close proximity to Children's Pool, including La Jolla Shores, Marine Street Beach, La Jolla Cove, Whispering Sands Beach, Shell Beach, South Casa Beach and Windansea.

Based on a jurisdictional boundary determination conducted by the Commission's mapping department, the proposed project is located in an area where the Commission has retained coastal development permit jurisdiction, even though the City of San Diego has a certified LCP (Exhibit 3). The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified La Jolla Community Plan and Local Coastal Program Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

## **B. PROJECT HISTORY AND PREVIOUS COMMISSION ACTION**

Addressing the conflicts between people and seals at Children's Pool Beach has a long history. In 1930, Philanthropist Ellen Browning Scripps provided funding for the construction of a 300-ft. arced concrete breakwater at Children's Pool Beach in order to create a safe bathing pool for children. In 1931, as a condition of the California Legislature's tide and submerged lands grant, in which the State of California granted Children's Pool area tide and submerged lands to the City of San Diego, the area was to be devoted 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." (Statute of 1931, Chapter 937.) Subsequent to this grant, the State of California relinquished its trustee responsibilities over these public trust tide and submerged lands and the City of San Diego became the successor trustee for these tide and submerged lands. Since the completion of the breakwater in 1931, the public has used Children's Pool Beach for sunbathing, swimming, and diving.

Controversy arose in the early 1990s when harbor seals began to regularly "haul out," or exit the water to rest, onto Children's Pool Beach, and in greater numbers. Historic maps from 1887 and 1894 show that the sandstone reef and adjacent rocks on which the breakwater was built were originally identified as Seal Rock Point and Seal Rock (Exhibit 8). These maps demonstrate that seals most likely utilized this area as a natural haul out site prior to the breakwater's construction. As a result of the seals' increased use of Children's Pool Beach as a haul out site, there has been ongoing disagreement whether the seals and their habitat should be protected, whether public access should be protected, or whether seals and people should share the beach. The City has been trying to develop a solution to address the issue of competing uses.

Harbor seals have also used a flat-topped, offshore rock that is known as Seal Rock, located between Children's Pool Beach and Shell Beach, as a haul out site. In 1993, the Commission approved the City of San Diego Park and Recreation Department's permit application (CDP #6-93-026) to establish Seal Rock Marine Mammal Reserve for five years. In 2001, the Commission approved another five-year permit (CDP #6-00-126) to continue the reserve. The reserve protected 1.35 acres of open coastal waters, prohibiting human access within reserve boundaries except for permitted commercial fishing, emergency access and fishing consistent with the Federal Marine Mammal Protection Act. Signs were installed for identification purposes and for public education and information.

Since the seals started using this area more heavily, the water quality of the "pool" has deteriorated to such a point that the San Diego County Health Department has deemed the water unsafe, as it poses a serious health risk. It was determined that due to limited tidal exchange in

the pool and use of the area by so many seals, the water has become contaminated with high levels of bacteria that exceed health standards. Since September 1997, a water quality advisory has been posted at Children's Pool Beach advising against water contact.

After a number of legal challenges, the City was ordered to clean the water in the pool and return the beach to its 1941 configuration. As such, the City began the environmental review and permitting process to dredge the pool and return it to its historic configuration (refer to withdrawn CDP Application No. 6-05-098). Subsequently, Senate Bill 428 was passed by the State Legislature and signed by the Governor into law effective January 1, 2010. This law amended the conditional uses of the 1931 Tidelands Grant of the tide and submerged lands at Children's Pool, giving the City Council the discretion to allow Children's Pool Beach to be used as a "marine mammal park for the enjoyment and educational benefit of children." (Statute of 2009, Chapter 19.) As a result of this law, the court order to dredge the pool was vacated and the City Council denied the request to dredge the pool to return it to its 1941 configuration.

However, while the City was pursuing the necessary permits for the dredging project, a new issue arose, which was separating the seals from people on the beach during the seal pupping season. To address this issue, the City first installed a rope barrier directly upland of the Mean High Tide Line (MHTL). After consultation with Commission staff, the City was informed that installation of the rope barrier constituted development (physical development and change of intensity of access to the water) and thus required review pursuant to a coastal development permit. Subsequently, in 2006 and 2007, the City issued emergency coastal development permits for the temporary installation of the rope barrier during seal pupping season. A subsequent legal challenge prevented the installation of the rope barrier for the 2008 pupping season. However, on March 10, 2008, the Ninth Circuit Court of Appeals stayed the earlier ruling preventing the placement of the rope barrier and allowed the rope to be placed until May 30, 2008. The City then issued an emergency permit for the temporary rope barrier and the barrier was installed.

Subsequently, the City approved a regular coastal development permit (CDP No. 545642) as a follow-up to the emergency permit for the installation of the rope barrier during the 2008 seal pupping season. On July 7, 2008, the Coastal Commission's San Diego District Office received a Notice of Final Action from the City of San Diego for this after-the-fact coastal development permit and the 10 working day appeal period was opened. On July 15, 2008, an appeal was filed by John Leek (Appeal No. A-6-LJS-08-065). Because this was a follow-up to an emergency permit, and the emergency permit only allowed the rope barrier to remain until May 30, 2008, by the time the follow-up CDP was approved and the Notice of Final Action was received in the Commission's San Diego District Office, the rope barrier had already been removed, making the appeal moot and no longer in need of review by the Commission. The applicant (City of San Diego Park and Recreation Department) subsequently waived the right to a hearing within 49 days and thus, the matter has never been brought before the Commission. Because this appeal was for essentially the same development as a subsequent appeal (Appeal No. A-6-LJS-10-009 discussed in the following paragraph that the Commission determined there was no substantial issue), Appeal No. A-6-LJS-08-065 is moot and no longer in need of review by the Commission.

On December 2, 2009, the City of San Diego approved Coastal Development Permit No. 701673 for the annual placement of a temporary rope barrier at Children's Pool Beach to provide a buffer between people and seals during the seal pupping season (December 15 to May 15). The rope barrier was installed on December 16, 2009. The City's decision on the coastal development

permit was appealed to the Planning Commission; however, on January 21, 2010, the Planning Commission upheld the Hearing Officer's decision for the annual placement of the rope barrier. On February 3, 2010, an appeal was filed with the Commission by John Leek (Appeal No. A-6-LJS-10-009) and on March 10, 2010 the Commission determined that there was no substantial issue with respect to the grounds on which the appeal was filed.

On May 17, 2010, the City Council adopted a resolution establishing a new Seasonal Shared Use Policy at Children's Pool Beach and directing City staff to: 1) acquire a coastal development permit to maintain a year-round rope barrier; 2) amend the Local Coastal Program (LCP) to prohibit public access to the beach during pupping season; 3) prohibit dogs on the beach year-round; 4) seek grant or private funding for a full-time Park Ranger or Lifeguard position and create a Volunteer Docent Program led by this Park Ranger or Lifeguard; and 5) establish clear signage explaining the rules to the public (Exhibit 7).

As a result of the City's adoption of this resolution, the subject Coastal Development Permit Application No. 6-11-078, for the installation and maintenance of a year-round rope barrier at Children's Pool Beach, was submitted on October 19, 2011. Upon submission of the subject permit application, the City of San Diego specifically requested that the Coastal Commission consider the coastal development permit application prior to the City's approval and pursuant to Section 13053 of the California Code of Regulations, the Commission waived the requirement for preliminary approval by the City of San Diego. Thus, **Special Condition #3** has been added to put the City on notice that prior to issuance of this permit, the City must first provide copies of all required local discretionary permits. On December 15, 2011, the file was deemed complete. Pursuant to Government Code Section 65957, on February 8, 2012 the applicant signed an agreement extending the deadline for Commission action an additional 90 days from June 12, 2012 to September 10, 2012.

## C. MARINE RESOURCES

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which*

*would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

*“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contains policies regarding the protection of marine resources which include the following:

*The City should limit public access in open space areas that contain sensitive resources to scientific or educational use. Access should be confined to designated trails or paths and no access should be approved which would result in the disruption of habitat areas.*

*The City shall ensure the preservation of portions of public and private property that are partially or wholly designated as open space to the maximum extent feasible. Development potential on open space lands shown on Figure 7 shall be limited to preserve the Park, recreation, scenic, habitat and/or open space values of these lands, and to protect public health and safety...*

*The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline...*

The project site is located at Children’s Pool Beach (also known as Casa Beach), west of Coast Boulevard and southwest of Jenner Street in the La Jolla community of the City of San Diego (Exhibit 1). Children’s Pool Beach is a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931. Children’s Pool Beach is designated as “Parks, Open Space” in the City’s certified Land Use Plan. Children’s Pool Beach provides recreational opportunities for swimmers, divers, tourists, and the general public through its provision of lifeguard facilities, access stairway from Coast Boulevard, parking along Coast Boulevard, viewing gazebo along Coast Boulevard, benches, restrooms, pedestrian walkway atop the seawall, and an emergency beach access ramp that has remained closed by the City via a gate. It is bounded on the north and west by the Pacific Ocean; on the east by Coast Boulevard and Casa de Manana Retirement Community; and on the south by South Casa Beach. In addition, an adjacent haul out site (Seal Rock) is located approximately 500 feet northeast of Children’s Pool Beach. Several beaches are located adjacent to or in close proximity to Children’s Pool, including La Jolla Shores, Marine Street Beach, La Jolla Cove, Whispering Sands Beach, Shell Beach, South Casa Beach and Windansea.

Harbor seals (*Phoca vitulina*) and other pinnipeds used Seal Rock and Children’s Pool Beach as haul out sites prior to the construction of the breakwater, but started to haul on in greater numbers in the early 1990s. Historic maps from 1887 and 1894 show that the sandstone reef and

adjacent rocks on which the breakwater was built were identified as Seal Rock Point and Seal Rock (Exhibit 8). These maps demonstrate that seals utilized this area as a natural haul out site prior to the breakwater's construction. In response to the increased use of Seal Rock as a haul out site in the 1990s, the Coastal Commission approved the City of San Diego's request to designate that area as a Marine Mammal Reserve in November 1993 pursuant to CDP No. 6-93-026. As of 1996, when National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) began to regularly survey the number of seals present at Children's Pool Beach, data indicates that haul out numbers ranged from as little as 11 seals on a day in November 1996 to as many as 160 seals on a day in June 1996.<sup>1</sup> More recent data, collected by the Park Ranger in spring 2012, indicates that it is not unusual for over 200 seals to haul out onto Children's Pool Beach, as demonstrated by counts on March 18, April 2, April 14, April 29, April 30, and May 1. Although peak haul out numbers have been recorded predominantly during the pupping season (December 15 to May 15), seal count data from a variety of sources (refer to substantive file documents) indicates that seals use Children's Pool Beach as a haul out site on a year-round basis.

Harbor seals are generally non-migratory and occur on both the U.S. east and west coasts. On the west coast, harbor seals are found in near-shore coastal and estuarine waters off Baja California, north to British Columbia, west through the Gulf of Alaska and in the Bering Sea. Since the passage of the Marine Mammal Protection Act (MMPA) of 1972, the California coast stock has begun to stabilize at approximately 34,233 seals.<sup>2</sup> NOAA's National Marine Fisheries Service (NMFS) is the agency that manages the California stock of harbor seals and is responsible for enforcement of the MMPA. The Southwest Region of NMFS has created a map depicting pinniped haul out areas and rookeries (pupping sites) in California. According to NMFS data, the Children's Pool Beach is the only mainland rookery and haul out site in San Diego and Los Angeles Counties. The next closest mainland rookery is located at Point Mugu Lagoon within the Point Mugu Naval Air Weapons Station; however, public access is restricted. The City of Carpinteria is also home to a mainland rookery; however, the beach is not as readily accessible to the public who must walk over half a mile to reach the bluff top overlook. Additionally, the City closes the beach 750 feet to the east and west of the site during pupping season (December 1 through May 31) pursuant to Municipal Code 12.23.090. Offshore, there are harbor seal rookeries located at the Channel Islands.

The Legislature enacted the MMPA to prevent the extinction or depletion of marine mammal stocks as a result of human activity. (Title 16 U.S.C. section 1361(1); *Natural Resources Defense Council, Inc. v. Evans* (2003) 279 F.Supp.2d 1129, 1141.) In achieving this goal, the MMPA generally prohibits the "taking" of marine mammals, with limited statutory exemptions, with an act of "taking" meaning "to harass, hunt, capture, collect or kill, any marine mammal." (Title 50 C.F.R. section 216.3; Title 16 U.S.C. section 1362(13); see, e.g. *Natural Resources Defense Council, Inc. v. Evans* (2003) 279 F.Supp.2d 1129, 1141.) Harassment, as defined under

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<sup>1</sup> NOAA's National Marine Fisheries Service Southwest Regional Office. *California Pinniped Rookeries and Haul-out Sites*. <http://www.arcgis.com/home/webmap/viewer.html?webmap=2ff3fabe20cf4c83959cae1597500b09>. May 30, 2012.

<sup>2</sup> NOAA's National Marine Fisheries Office of Protected Resources. *Harbor Seal Population Trends*. <http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/harborseal.htm>. Updated April 24, 2012. Accessed May 30, 2012.

the MMPA, is “any act of pursuit, torment or annoyance which – (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) 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.” (Title 16 U.S.C., section 1362(18).) No person has an authorized incidental take permit from NMFS to incidentally take the seals at Children’s Pool; there is no option for intentional take permits, (See 16 U.S.C. section 1371(5)(A)(i) [procedures related to incidental take permits].)

While the Commission does not regulate the taking of marine mammals, the statutory framework provided in MMPA on this issue provides the Commission a platform from which it can evaluate whether or not a proposed development is consistent with section 30230 of the Coastal Act. In other words, the Commission finds that if there is unauthorized harassment, or incidental “taking”, of the seals at the Children’s Pool area, then such acts of harassment are not consistent with Chapter 3 policies of the Coastal Act. Even if there is authorization from NMFS to incidentally take seals at Children’s Pool, depending on the authorized activity, it is unclear, without more detail of the activity, whether such authorization would even be consistent with Chapter 3 of the Coastal Act. The seal rookery and haul-out site at Children’s Pool Beach is unique due to its location in an urban setting that is easily accessible to the public, which has resulted in ongoing disturbance and harassment of the hauled out seals. While a distance of at least 100 yards, or 300 feet, is recommended by NMFS’s “Guidelines for Viewing Seals and Sea Lions in California,” due to the unique nature and location of Children’s Pool Beach, NMFS Enforcement Agent Michelle Zetwo has recommended that people maintain a minimum distance of 20 feet for viewing hauled out seals at the subject site. Efforts by the public to closely approach or otherwise interact with seals have lead to harassment of the hauled out seals, which is illegal under the MMPA. According to observations by the Park Ranger, although the seals at this location are more acclimated to human presence than other areas of the coast, harassment and flushing of the seals into the water does occur which disturbs the seals’ behavior pattern to haul out so that they can rest, sleep, thermal regulate, maintain skin and molt, socially interact, evade predators, give birth, and nurse and wean pups; however, due to the shared use nature of the beach, NMFS only pursues harassment penalties in cases of extreme or malicious harassment. Activities that have caused hauled out seals to flush into the water, thus disrupting their behavior patterns, include people making loud noises, approaching or surrounding seals to take pictures, pet, feed, chase, follow, throw rocks/sand/seaweed at, and entering and exiting the water. A study conducted at Children’s Pool found that disturbances associated with construction activities (for the replacement of the wall and bluff improvements) only caused seals to flush into the water once during the week when demolition and heavy debris removal was conducted; however, humans in the water or on land resulted in 144 flush events.<sup>3</sup> Not only are seals at risk, but public health and safety are also at risk from seal bites and nips when people attempt to interact too closely with the seals.

Although Harbor seals are neither endangered nor threatened, the haul out sites and pupping sites, otherwise known as rookeries, that they use provide valuable habitat for the seal life cycle. Harbor seals may use rocks, reefs, beaches, intertidal sandbars, and drifting glacial ice as haul out and pupping sites. Harbor seals can haul out any time of the day or night on a year-round

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<sup>3</sup> Yochem P. 2005. Summary of conclusions regarding the harbor seal rookery at Children’s Pool Beach, La Jolla, CA. La Jolla Cove Wall Replacement and Bluff Improvements Project (Sept 21, 2004 – Jan 1, 2005). March 25, 2005. Hubbs-SeaWorld Research Institute Paper.

basis; however, the number of seals hauled out at a certain moment may vary dependent upon several factors, including tide height, weather, time of day, season, and level of disturbance.<sup>4</sup> Haul out sites provide essential habitat that seals utilize for a variety of functions, including but not limited to rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, giving birth during the spring and summer, and nursing and weaning pups.<sup>5 6</sup>

The potential adverse impacts of disturbance to hauled out seals are particularly significant during pupping season when seals haul out and remain on the beach for longer periods of time in order to prepare for birth, go through the birthing process, and nurse the seal pups once they are born. Through the entire range of harbor seals, pupping is typically from January to October; however pupping season occurs earlier in southern areas such as San Diego.<sup>7</sup> At Children's Pool Beach, pupping season is typically from December 15 to May 15, as determined by the City in consultation with NMFS representatives as part of the permit approval for the annual placement of a rope barrier during seal pupping season. Pups are capable of swimming immediately after birth and they are weaned from their mothers after approximately three to six weeks of nursing.<sup>8</sup> During that time, seal pups are frequently left on the beach by their mothers, who spend time in the water foraging for food. Additionally, during this period, the mother seals become more aggressive due to their instinct to protect themselves and their pups from people who get too close. Harbor seals will usually return to breed in the same location as they were born, unless frequent disturbances cause them to abandon the site. Further, harassment during the pupping season may cause mothers to abandon their pups. When a disturbance causes the seals to flush quickly into the water, a seal pup may become separated from its mother and abandoned. Additionally, too many disturbances on the beach may prevent a mother from returning from the water to reunite with her pup after hunting. Abandonment severely decreases the pup's chance for survival. At Children's Pool Beach there have been several cases of seal pup abandonment. To avoid potential adverse impacts such as seal pup abandonment and pursuant to CDP #701673, the City installed a rope barrier with an opening during pupping season.

Although the potential adverse impacts of harassment to hauled out seals are not as significant during the non-pupping season, disturbance and flushing does have the potential to disrupt the natural habitat that seals require for a variety of life cycle functions. As discussed above, as a part of seals' behavior patterns, they use haul out sites on a year-round basis for rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, giving

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<sup>4</sup> Watts, P. 1993. Possible Lunar Influence on Hauling-Out Behavior by the Pacific Harbor Seal (*Phoca vitulina richardsi*). *Marine Mammal Science* 9(1):68-76.

<sup>5</sup> NOAA's National Marine Fisheries Office of Protected Resources. *Species: Harbor Seal*. <http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/harborseal.htm>. Updated April 24, 2012. Accessed May 30, 2012.

<sup>6</sup> Terhune, J.M. and M. Almon. 1983. Variability of Harbour Seal Numbers on Haul-Out Sites. *Aquatic Mammals* 10(3):71-78.

<sup>7</sup> NOAA's National Marine Fisheries Service Southwest Regional Office. *California Seal and Sea Lion Viewing Guidelines*. <http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>. May 30, 2012.

<sup>8</sup> NOAA's National Marine Fisheries Service Southwest Regional Office. *California Seal and Sea Lion Viewing Guidelines*. <http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>. May 30, 2012.



birth during the spring and summer, and nursing and weaning pups. The City asserts that the installation of a rope barrier on the beach on a year-round basis would extend the protection offered by the existing permit (CDP #701673) and provide a necessary visual barrier between the public utilizing the sandy beach and accessing the ocean at Children's Pool Beach, and the seals that haul out on the sand on a year-round basis to enhance the public's awareness that the seals deserve particular treatment under the MMPA.

As discussed above, the proposed rope barrier would help to maintain and enhance the seal rookery and haul out site at Children's Pool Beach, consistent with Section 30230 of the Coastal Act, by minimizing human-seal interaction. Although harbor seals are not an endangered or threatened species, the haul out site at Children's Pool Beach provides habitat of biological and economic significance. It is the only mainland rookery in San Diego and Los Angeles counties and has become a destination for visitors, residents, scientists/researchers, and students. The proposed year-round rope barrier would help maintain a healthy seal population, adequate for long-term recreational, scientific, and educational purposes. Again, the purpose of the rope barrier is to provide a guideline of the appropriate distance for safe and respectful viewing of the seals, while at the same time maintaining public access.

The Commission imposes **Special Condition #4** requiring the preparation, submission to the Executive Director for review and approval, and implementation of a monitoring plan. The monitoring plan will help the City establish baseline data for the three years specified by the permit term condition and assess a) the level of use by seals of the haul out site at Children's Pool Beach, and b) the effectiveness of the rope barrier at minimizing harassment of hauled out seals. A qualified biologist, environmental resources specialist, or park ranger shall record the number of seals hauled out at Children's Pool Beach, the number of people present on the beach, the number of people present in the water, the number of harassment instances, the tide, the weather (including water and air temperature), and the date, a minimum of 16 days per month. The monitoring reports will assist the City and Commission with determining the effectiveness of the year round barrier and whether changes are necessary in the future.

In conclusion, the Coastal Act policies regarding Marine Resources and Environmentally Sensitive Habitat Areas ensure protection of the valuable habitat that Children's Pool Beach provides harbor seals in the form of a rookery, for giving birth to pups, and a haul out site that seals use for other important life functions/behavioral patterns, including rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, nursing and weaning pups. One of the main objectives of the proposed rope barrier is to maintain and enhance the harbor seal habitat, consistent with Section 30230 and Section 30240 of the Coastal Act. The other stated objective of the proposed project is to protect public access to the beach and ocean at Children's Pool Beach, which the City will maintain via a 3 ft. opening in the rope barrier, to be discussed in greater detail in the Public Access and Recreation section of this report. Furthermore, the proposed year-round rope barrier has been sited and designed to prevent adverse impacts that would degrade adjacent parks and recreation areas, as well as coastal waters and bluffs. Commission's staff ecologist, Dr. John Dixon, has reviewed the proposed project and concurs with the staff recommendation that the rope barrier is necessary to ensure that the use of the marine environment, Children's Pool area, will sustain the biological productivity of coastal waters and will assist to maintain healthy populations of the seals, as mandated under section 30230, because it will reduce or eliminate the existing periodic harassment of the seals (Exhibit

9). In addition, in conversations with Commission staff, NMFS representatives from the Office of Protected Resources have stated that they are in full support of the City's permit application for a rope barrier to help protect the seals not only during pupping season, but on a year round basis. Therefore, the proposed permit application, as conditioned, is consistent with the applicable Coastal Act policies regarding protection of Marine Resources.

#### **D. PUBLIC ACCESS AND RECREATION**

Section 30604(c) of the Coastal Act states:

*Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200)*

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212(a) of the Coastal Act states, in part:

*Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby...*

Section 30213 of the Coastal Act states, in part:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...*

Section 30214(a) of the Coastal Act states, in part:

*(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public*

*access depending on the facts and circumstances in each case including, but not limited to, the following:*

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain sue and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*

Section 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Upon reliance of these policies of the Coastal Act, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contains policies to protect public access as well, which include the following:

*La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved...*

*The City should preserve and protect the coastal bluffs, beaches and shoreline area of La Jolla assuring development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline...*

*The City should ensure that new development does not restrict or prevent lateral, vertical or visual access to the beach on property that lies between the shoreline and first public roadway...*

*New development should not prevent or unduly restrict access to beaches or other recreational areas...*

*The City's beach and parkland along the shoreline should be expanded wherever possible...*

*Construction, grading, or improvements of any sort, except those mentioned in this plan, should be discouraged at beach areas. Public access to the shoreline should be increased (or improved) wherever possible...*

The rope barrier, as proposed by the City of San Diego Park and Recreation Department, would be located on the sandy beach and would provide enough area landward of the rope to accommodate public access to a large number of people. This distance also provides a safe distance, or at least 20 ft., from the seals during most tidal levels (Exhibit 2). However, at the highest spring tides, seals may be forced to haul out on the landward side of the rope and visitors may be unable to access the entire landward section of the beach depending on the tide and haul out pattern of the seals.

As discussed previously, the proposed project is for the installation and maintenance of a year-round, 152 ft. rope barrier to provide a buffer between the people and seals using the beach; however public access to the beach and ocean would remain open year-round via a 3 ft. opening in the rope barrier near the east end of the beach, adjacent to the access stairway. The City previously approved CDP #701673 for installation of a 130 ft. rope barrier with 3 ft. opening for public access during seal pupping season; however, the distance was inadvertently miscalculated as 130 ft., instead of the correct 152 ft. To remain in compliance with the permit, a 130 ft. rope was installed with a nearly 25 ft. opening. The implementation of this alternative configuration with a 25 ft. opening during pupping season of 2012 was problematic and did not provide the same level of protection as did the 3 ft. opening implemented in previous years. According to the City, the original 3 ft. gap “made the rope presence unmistakable and made its purposes clear while still providing a large enough opening for beach visitors to pass through.” The current 25 ft. gap is large enough that some visitors do not see the rope at all or miss the informational signage posted on the support posts.

In addition, the City has indicated that since the seals started hauling out on Children’s Pool Beach, there have been ongoing conflicts between people who want to protect the seals and people who want to view the seals up close and/or use the beach and ocean at this location. As these conflicts arise, the park ranger and lifeguards are regularly called to intervene and/or mediate. While lifeguards are asked to diffuse conflicts over the seals at Children’s Pool Beach, it takes them away from providing essential public services as lifeguards to protect swimmers from danger and drowning. Additionally, in April 2010, the San Diego Police Department provided information regarding the number of calls for service at Children’s Pool Beach. The report 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 period was approximately 185 hours as compared to 2005 (70 hours); 2006 (95 hours); 2007 (40 hours); and 2008 (79 hours). This is a significant increase in calls for service at Children’s Pool Beach from 2005 to 2009 which takes police time away from more important public safety issues.

According to the City, observations by the City’s park ranger show that the greatest number of disturbances of seals by people occur on the weekends when visitors are encouraged onto the beach by people in support of unimpeded beach access. To demonstrate this, the City submitted a photo taken in April 2012 by the park ranger of a typical Saturday (Exhibit 5). In this photo, pro-access individuals have placed banners, umbrellas, and non-official signage on the beach to demonstrate that the beach is open for public use and that the rope is only a guideline, not a legal or enforceable barrier. This encourages visitors onto the beach without reading the official signage that explains the

guidelines directing people to maintain a safe distance to avoid disturbing the seals. In contrast, another photo shows the beach on the following day without umbrellas, banners, and non-official signage (Exhibit 5). According to the City, without the presence of pro-access individuals, visitors tend to observe the seals from behind the rope and maintain a safe distance that varies with the tide and also the location of the hauled out seals. According to the City, it has been their observation that the rope is an effective visual deterrence from people getting too close to the seals on the beach, absent the presence of people who encourage people to bypass the rope.

The City asserts that the rope barrier is intended to reduce the number of conflicts between beach visitors and the seals, while maintaining public access to the beach and water. The stairway leading to the beach and the beach upland of the rope would remain open and available to the public. The beach would remain open for swimming; however, warnings are posted that swimming is not recommended due to bacteria levels exceeding health standards. The rope barrier is not intended to keep people off the beach or out of the ocean and public access would still be available on a year-round basis, just more directed so as to provide a safe distance, or buffer, from the hauled out seals. This is both for the protection of the seals and the public. Individuals are not prohibited from crossing the rope; however, the rope serves as a guideline to alert people of the haul out site and the appropriate distance for safe and respectful viewing of the seals.

To ensure that the public is aware of the shared use policy at Children's Pool Beach, signage is proposed to be placed on the support posts of the rope barrier. One of the proposed signs states:

*The beach and waters are open for public enjoyment. This is also a home and resting place for Harbor Seals. Seals at the water's edge may want to come ashore. Give them a chance by moving back from the water's edge.*

While the existing signage does include warnings to avoid disturbing the seals and that the water is contaminated, it does specifically acknowledge that the beach is open for public use and swimming is allowed, but not recommended (Exhibit 4). In addition, the City has also placed signs on the stairway leading to the beach that make it clear that public access on the beach is allowed at all times. Any signs that do not have the official City Seal are not approved or sanctioned by the City. Therefore, the proposed signage in combination with existing signage will ensure that public access is conspicuously posted consistent with Section 30210 of the Coastal Act, cited above.

Additionally, the City has hired a park ranger who works Saturday through Wednesday and is normally on site from 11 AM to 5:30 PM to educate visitors about the shared use policy at Children's Pool Beach, ensure visitors are respectful of the seals, inform visitors and ensure visitors follow all regulations, and provide a visible presence to deter any unlawful acts. City staff notes that in the ranger's absence, there is no replacement, and the position is for a limited term, depending on budgetary constraints. The park ranger can issue citations for misdemeanor violations and infractions of the City of San Diego Municipal Code, but has no jurisdiction to enforce any Federal MMPA laws. The public must call the NMFS enforcement hotline in order to report those types of violations. Although the park ranger does not have enforcement authority, his presence at Children's

Pool Beach ensures that the public is aware that access to the beach and water are available; however, certain guidelines should be followed while sharing the beach with seals.

As noted in Sections 30212 and 30214 of the Coastal Act cited above, in implementing the public access policies of the Act, the Commission must take into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case. This is one circumstance where it is appropriate to rope off a portion of beach in order to provide a buffer between people and seals. Again, the intent of the rope is not to keep the public from reaching the beach or ocean at Children's Pool Beach, but to provide a buffer to help protect the seals that haul out on the beach year-round and the people who use the beach. The public will still be able to access the beach and ocean at Children's Pool Beach. Thus, the Commission finds that placement of the rope barrier on the beach, as proposed, does not result in adverse impacts on public access. Therefore, confining the rope barrier to the pupping season only is not necessary.

As provided for in Sections 30210, 30212, and 30214 of the Coastal Act cited above, public access shall be provided for all people consistent with public safety needs and the need to protect natural resource areas from overuse. Children's Pool Beach provides a natural haul out site for harbor seals and as mandated by the Coastal Act, the provision of public access must be balanced with the protection of fragile coastal resources at the subject site. The proposed year-round rope barrier, as conditioned, is consistent with Sections 30210, 30212, and 30214 of the Coastal Act because it maintains public access to the beach while providing protection of the haul out site, or natural resource area, from overuse by people.

In addition, Children's Pool Beach is not the only beach located in La Jolla. There are several beaches located adjacent to or in close proximity to the subject site including La Jolla Shores, Marine Street Beach, La Jolla Cove, Whispering Sands Beach, Shell Beach, South Casa Beach, and Windansea. Many of these beaches are within walking distance of or a short drive from Children's Pool Beach and offer public amenities such as permanent restrooms, showers, additional parking, and lifeguard facilities. Furthermore, the water quality at these adjacent beaches is better than Children's Pool Beach and the San Diego County Health Department does not have ongoing advisory warnings for water contact at these alternative beaches.

Finally, the Commission finds that the seals at Children's Pool Beach have become a public access and recreation amenity in and of themselves and the year-round rope barrier would provide protection of this amenity. Ever since the seals began hauling out on the beach at this location, they have become a major tourist attraction. If viewing the seals is the primary purpose of a visit to Children's Pool Beach, which it often is, visitors can view the seals from several areas without even going onto the sand. These areas include the gazebo along Coast Boulevard, the walkway along Coast Boulevard, the access stairway at the east end of the beach, the access stairway landing, and the breakwater. From the breakwater, visitors can view the seals up close; however, due to the breakwater's height above the sand, the seals do not flush as easily when viewed from this location. Viewing the seals has drawn huge numbers of people to this coastal area, both locally and from around the world. According to the San Diego Convention and

Visitors Bureau's most recent data, approximately 2.6 million people visited La Jolla in 2009. This figure includes day visitors, visitors staying overnight in La Jolla, and visitors staying in other parts of San Diego, but visiting La Jolla at some point during their trip. Thus, the seals encourage public access by attracting the public to the shore and providing a lower cost visitor amenity, consistent with Coastal Act Section 30213. Most visitors to Children's Pool Beach come to view the seals in their natural setting and the seals can be closely viewed

**Special Condition #4** is proposed to require the preparation, submission to the Executive Director for review and approval, and implementation of a monitoring plan. The monitoring plan will help the City establish baseline data for the three years specified by the permit term condition and assess a) the level of use by seals of the haul out site at Children's Pool Beach, and b) the effectiveness of the rope barrier at minimizing harassment of hauled out seals. The monitoring reports will assist the City and Commission with determining the effectiveness of the year round barrier and whether changes are necessary in the future.

Although the City has proposed a year-round rope barrier, in perpetuity, the Commission imposes **Special Condition #1** limiting the permit term for three (3) years and requiring the City to apply for an amendment or new coastal development permit to continue maintenance of the rope barrier on a year-round basis. By initially limiting the permit to three years, the City will be able to closely monitor implementation of its new shared use policy at Children's Pool Beach and determine how effective and necessary the rope is by collecting baseline data.

Further, the Commission is recommending **Special Condition #5** requiring the City to submit, for review and approval of the Executive Director, a comprehensive Sign Program with clear signage to alert the public of the shared use policy at Children's Pool Beach. Several existing signs are posted at the entrance to the beach on the access stairway; however, it is important that signs be posted atop the rope barrier support posts so that visitors understand the guidelines to avoid seal harassment and that public access to the ocean is open (Exhibit 4).

In conclusion, the Coastal Act policies regarding Public Access and Recreation require that public access to the beach and ocean at Children's Pool Beach be maintained and protected for recreational use. As part of the resolution adopted by the City, their shared use policy is a management strategy that allows both people and seals to use Children's Pool Beach (Exhibit 7). However, the applicant has designed the proposed project to maintain and protect public access to the beach and ocean year-round, consistent with Section 30211 of the Coastal Act. A 3 ft. opening in the rope barrier would allow public access to the water at the east end of the beach. Additionally, the rope barrier has been sited to allow the public unimpeded access to the upland portion of the beach for sunbathing or viewing the seals. As provided for in Sections 30210, 30212, and 30214 of the Coastal Act cited above, public access shall be provided for all people consistent with public safety needs and the need to protect natural resource areas from overuse. As the only mainland harbor seal rookery south of Point Mugu, the rookery and haul out site at Children's Pool Beach is a unique and important natural resource area, and the City's proposed project would ensure that access is maintained, but that it is not overused.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with all of the applicable Coastal Act policies regarding Public Access and Recreation.

## **E. VISUAL RESOURCES**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of the setting.*

The area above Children's Pool Beach is identified as a viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan; however, the proposed project would not result in any adverse impacts to visual resources. The proposed rope would be attached to the seawall/breakwater and extend westward 152 feet, leaving a 3 ft. opening for public access at the east end near the access stairway (Exhibit 2). The rope would be strung between a total of four (4) posts, not to exceed 4 ft. in height. The posts, with attached concrete foundations, would be placed in hand dug holes approximately 18-inches in depth and covered with sand. Additionally, the rope diameter would not exceed ½-inch. Given this height and diameter, the rope would not block any public views from Coast Boulevard or Jenner Street as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan.

The applicant proposes to install informational signs on the support posts to alert the public of the shared use policy at Children's Pool Beach (Exhibit 4). Several existing signs are posted at the entrance to the beach on the access stairway; however, it is important that signs be posted atop the rope barrier so that visitors understand the guidelines to avoid seal harassment and that public access to the ocean is open. In order to avoid any adverse impacts to visual resources, the Commission imposes **Special Condition #5** requiring the City to submit, for review and approval of the Executive Director, a Sign Program. As part of the Sign Program, the City shall limit the height of signs posted. Additionally, the number of signs posted on the beach shall be restricted to a maximum of two (2) signs.

As discussed above, the proposed project, as conditioned, is consistent with all applicable policies of the Coastal Act regarding Visual Resources.

## **F. LOCAL COASTAL PROGRAM**

The proposed project is located within the City of San Diego; however, based on a jurisdictional boundary determination conducted on August 19, 2011 by the Commission's Mapping Department, Children's Pool Beach is located in an area where the Coastal Commission has retained permit jurisdiction (Exhibit 3). The Commission's permit jurisdiction is based on the



existence of tidelands, submerged lands, and public trust lands. According to the Commission's Coastal Zone Boundary Determination No. 14-2011, the subject site, including the sandy beach, is located on tidelands submerged land and land that is potentially subject to the public trust. Based on this boundary determination, the Coastal Commission is asserting jurisdiction over Children's Pool Beach, even though the City of San Diego has a certified Local Coastal Program (LCP). Thus, the standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified City of San Diego Land Use Plan (specifically the La Jolla Community Plan and Local Coastal Program Land Use Plan) serve as guidance. As conditioned, the proposed project is consistent with the certified LCP and all applicable Chapter Three policies of the Coastal Act and will not prejudice the ability of the City of San Diego to continue to implement its LCP for the La Jolla area.

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, the proposed project, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental impacts have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

La Jolla Community Plan and Local Coastal Program Land Use Plan; 1931 Tidelands Trust; Senate Bill 428 effective as of January 1, 2010; CDP #6-93-026; CDP #6-00-126; CDP #6-05-098; CDP #545642; CDP Appeal No. A-6-LJS-08-065; CDP #701673; CDP Appeal No. A-6-LJS-10-009; City of San Diego Resolution R-305837 passed by the City Council on May 17, 2010; Spring 2012 Harbor Seal Counts conducted by Park Ranger Richard Belesky; Historic Maps circa 1887 and 1894; Marine Mammal Protection Act of 1972

*(G:\Reports\2011\6-11-078 City of SD Park & Rec Dpt, Children's Pool 6.21.12.doc)*

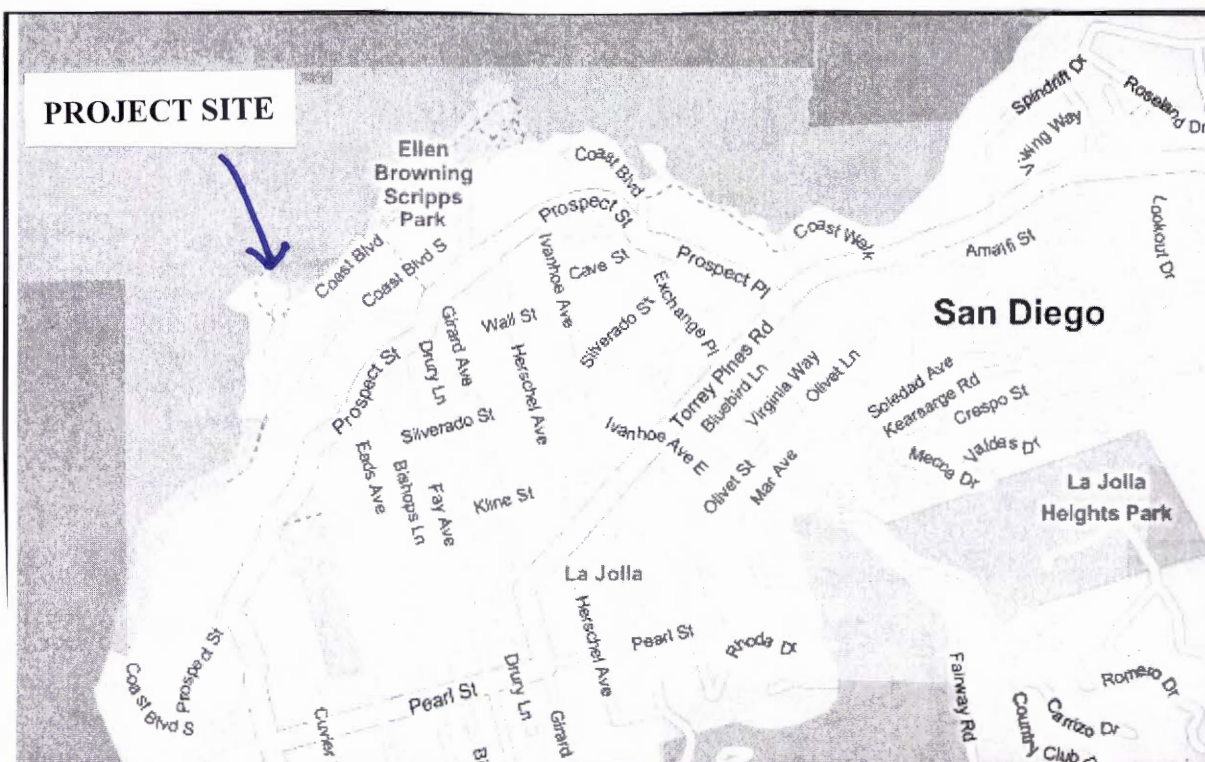
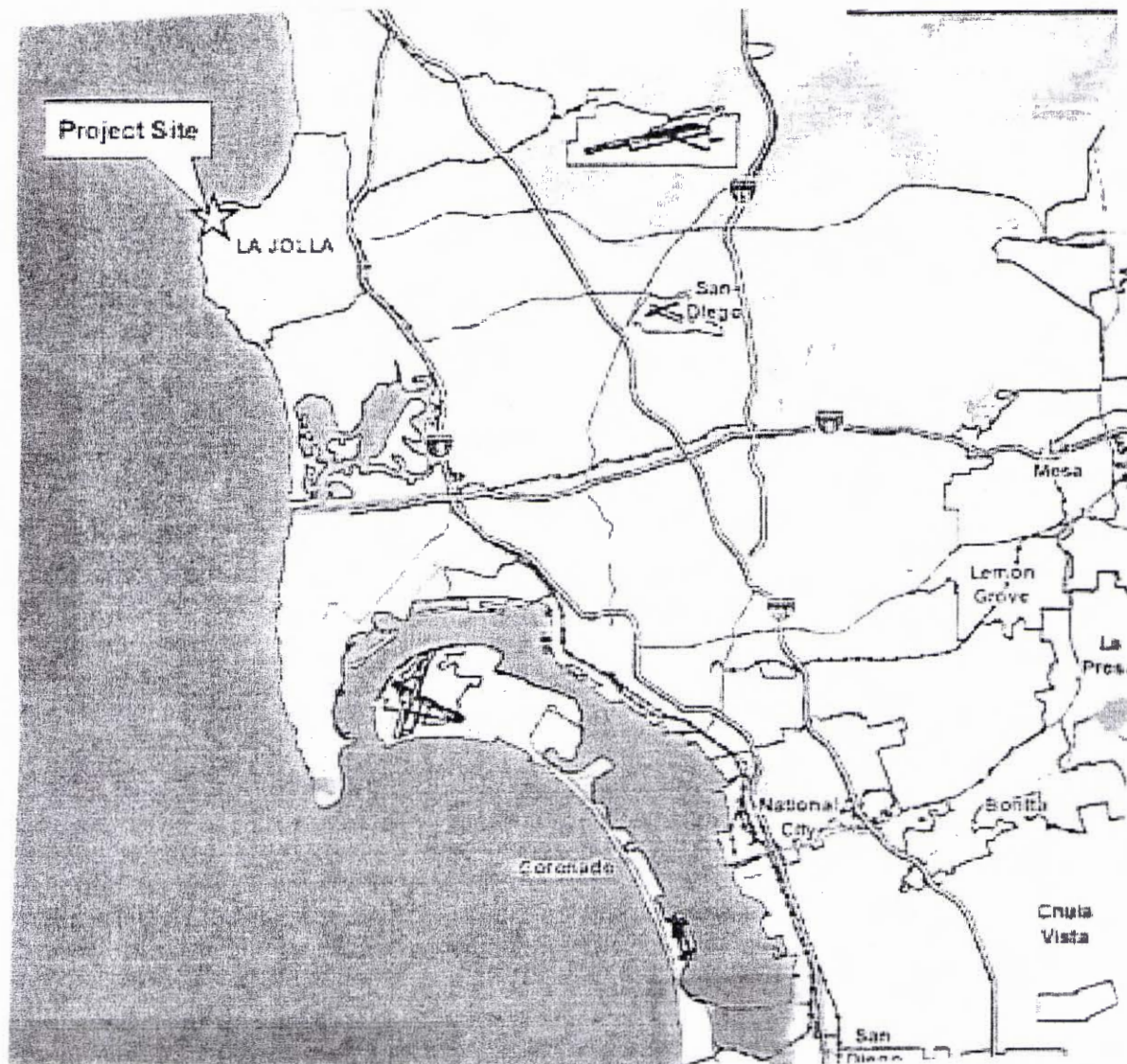


EXHIBIT NO. 1

APPLICATION NO.

6-11-078

Location Map







**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2 219  
VOICE (415) 904-5 200  
FAX (4 15) 904-5 400  
TDD (415) 597-5885



August 19, 2011

To: Deborah Lee, San Diego Coast District Office Manager

From: Jon Van Coops, GIS/Mapping Program Manager

Cc: Jan I. Goldsmith, City Attorney, City of San Diego, Civil Litigation Division,  
1200 Third Avenue, Suite 1100, San Diego, CA 92101-4100

Subject: Coastal Zone Boundary Determination No. 14-2011, Children's Pool Rope  
Barrier Project, City of San Diego.

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A jurisdictional boundary determination has been requested for the Rope Barrier project located at Children's Pool, City of San Diego. Enclosed is a copy of a portion of Coastal Zone Boundary Map No. 158 (La Jolla Quadrangle) with the approximate location of the project area indicated. See Exhibit 1. Also included is an Aerial Site Plan exhibit that depicts the Rope Barrier project with the Coastal Commission's permit jurisdiction identified. See Exhibit 2.

Based on the information provided and available in our office, the Children's Pool Rope Barrier project appears to be located entirely within the coastal zone and entirely with the Coastal Commission's retained permit jurisdiction as indicated on Exhibit 2. Any development that is proposed within this area would require coastal development permit authorization from the Coastal Commission. The Coastal Commission's permit jurisdiction is based on the existence of tidelands, submerged lands and public trust lands. The information available indicates that the area in question appears to be located, in part, on tidelands submerged land and land that is potentially subject to the public trust. Based on this information the Coastal Commission is asserting jurisdiction over the entire Children's Pool Rope Barrier project.

Please contact Darryl Rance of my staff at (415) 904-5335 if you have any questions regarding this determination.

Attachments

EXHIBIT NO. 3

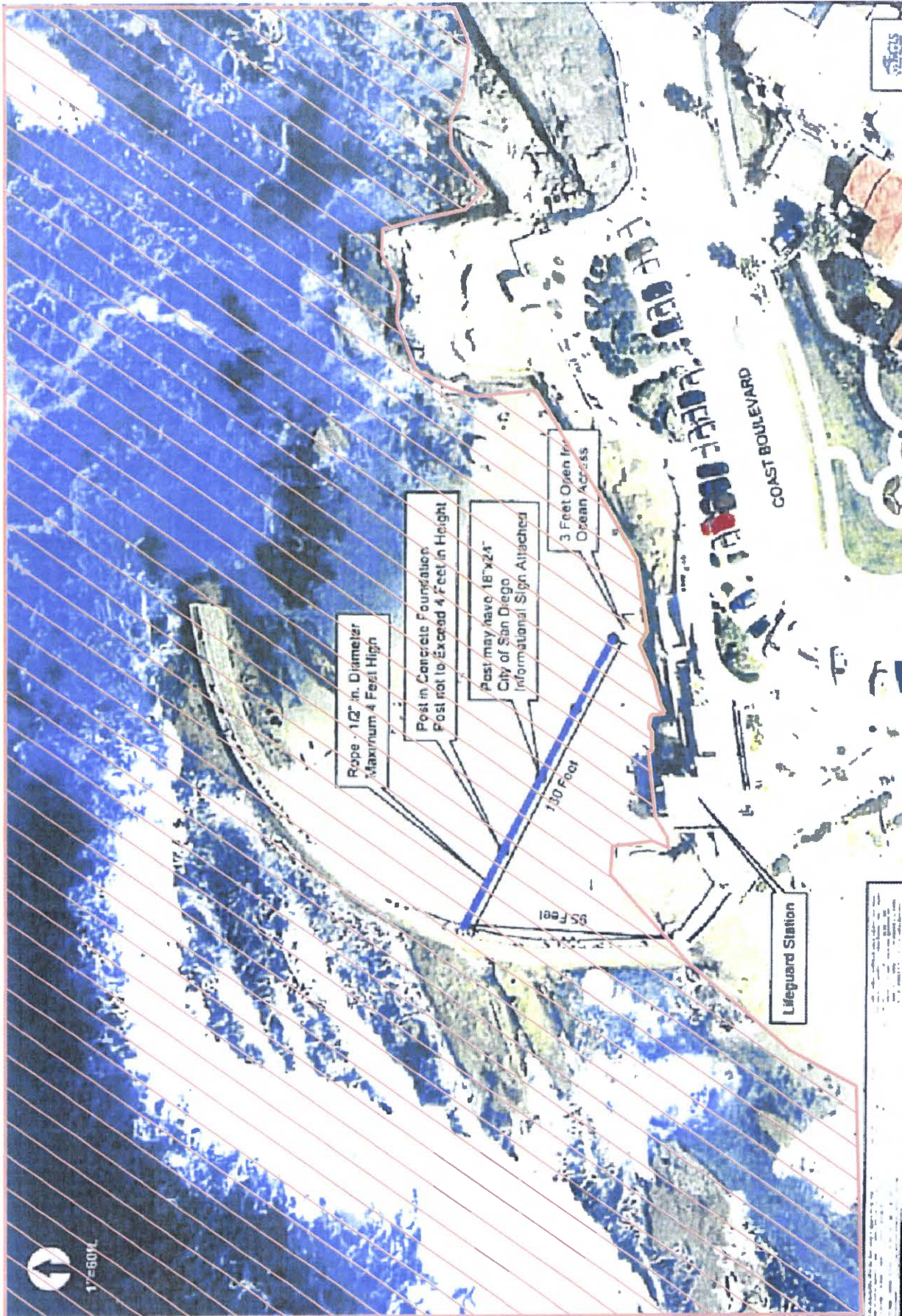
APPLICATION NO.

6-11-078

Jurisdiction Memo

California Coastal Commission





**Exhibit 2**

DAR 07/2011

**Coastal Commission Permit Jurisdiction**

**For illustrative purposes only.**



**EXHIBIT NO. 3**

**APPLICATION NO.  
6-11-078**

**Jurisdiction Map**





EXHIBIT NO. 4

APPLICATION NO.

6-11-078

Proposed Signage





THE CITY OF SAN DIEGO

# WELCOME TO THE CHILDREN'S POOL

Be respectful of the seals in this area

## SHARE THE BEACH WITH THE SEALS but keep a safe distance.

The beach and waters are open for public enjoyment.

This is also a home and resting place for Harbor Seals.

Seals at the water's edge may want to come ashore. Give them a chance by moving back from the water's edge.



### STAY BACK

Wild animals can be unpredictable and may bite.

Get too close and you may frighten the seals.



### MOVE SLOWLY

Sudden movements may cause resting seals to "flush" into the water.

This could cause pups to be abandoned.

**Harassing, disturbing, or flushing seals violates Federal and Local Law and may lead to a citation.**

### WARNING/ADVISORY

Contact with water may cause illness as bacteria levels exceed California State health standards. Call the San Diego County Department of Environmental Health @ (619) 338-2073 for more information.





# 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**





04.28.2012 15:32

 California Coastal Commission	EXHIBIT NO. 5
	APPLICATION NO.
	6-11-078
City Photos	





04.29.2012 10:37



## Children's Pool Beach Site Visit Photos - May 10, 2012





**CLERK'S FILE COPY**(R-2010-794)  
REV. COPY20  
5/17RESOLUTION NUMBER R- 305837DATE OF FINAL PASSAGE JUN 03 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DETERMINING THAT A COASTAL EMERGENCY EXISTS REQUIRING THE IMMEDIATE PLACEMENT OF THE ROPE BARRIER; DIRECTING THE MAYOR TO SEEK AN EMERGENCY AMENDMENT TO COASTAL DEVELOPMENT PERMIT NO. 701673/SITE DEVELOPMENT PERMIT NO. 701765 AND FOLLOW UP PERMITS TO KEEP THE ROPE BARRIER UP YEAR AROUND AT CHILDREN'S POOL; DIRECTING THE CITY ATTORNEY TO DRAFT AN ORDINANCE AMENDING SAN DIEGO MUNICIPAL CODE SECTION 63.0102, PROHIBITING ANY PERSON FROM BEING ON THE CHILDREN'S POOL BEACH DURING HARBOR SEAL PUPPING SEASON; DIRECTING THE MAYOR TO AMEND THE LOCAL COASTAL PROGRAM ACCORDINGLY IF NECESSARY, AND TO PROPOSE SIGNAGE BASED ON THE COUNCIL'S ACTION AND TO REPORT BACK TO NR&C.

WHEREAS, in 1931, the State of California granted Children's Pool area tidelands to the City of San Diego upon the condition that said lands were to be developed exclusively to public park, bathing pool for children, parkway, highway, playground and recreational purposes and other uses as may be convenient for the full enjoyment [Trust]; and

WHEREAS, on September 14, 2004, the Council approved Resolution No. R-299646 authorizing the joint use of Children's Pool; and

WHEREAS, in April 2006 and December 2006, the City Council resolved that a rope barrier be placed at the Children's Pool during pupping season (December 15 to May 15); an emergency Coastal Development Permit [CDP] was obtained and rope barrier was installed at those times and subsequently each year; and



WHEREAS, on September 22, 2009, City staff presented for Council's consideration a Site Development Permit [SDP], CDP and Environmental Impact Report [EIR] that proposed the removal of approximately 3,000 cubic yards of sand from the Children's Pool to allow water to circulate reaching decontamination levels for human use of the beach, at which time Council voted not to certify the EIR; and

WHEREAS, on December 2, 2009, the City Hearing Office approved a CDP for annual placement of the rope barrier during pupping season; the permit was appealed to the Planning Commission and California Coastal Commission and was denied by both bodies; and

WHEREAS, effective January 1, 2010, the Trust was amended by the State legislature to list an additional use of the Trust; a "marine mammal park for the enjoyment and educational benefit of children"; and

WHEREAS, on March 17, 2010, the Natural Resources and Culture Committee considered several management options of the Children's Pool as presented by various community organizations; and

WHEREAS, 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 harbor seal pupping season, December 15 to May 15, and non-pupping season, May 16 to December 14; and

WHEREAS, the Natural Resources and Culture Committee voted to direct the Mayor to seek an emergency amendment to the existing Coastal Development Permit at the Children's Pool to allow the rope barrier to remain year around, to seek a local coastal program amendment to prohibit the public from entering the beach from December 15 to May 15, to prohibit dogs on

the beach year around, and to seek private funding for a Park Ranger or Lifeguard with the primary duty of patrolling Children's Pool and authorizing the Park and Recreation Department to create a volunteer docent program lead by the Park Ranger or Lifeguard; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that a coastal emergency exists requiring the immediate year around placement of the rope barrier.

BE IT FURTHER RESOLVED, that the Mayor or designee is directed to, within 10 days of the date of final passage of this resolution, seek an emergency amendment to Coastal Development Permit Number 701673 and Site Development Permit Number 701765 to keep the rope barrier up year around at Children's Pool 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, Report to Council, and any other information required to process and obtain an emergency Coastal Development Permit.

BE IT FURTHER RESOLVED, that, the Mayor or his designee is directed, 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.

BE IT FURTHER RESOLVED, that the City Attorney is directed 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, for docketing at the City Council no later than June 30, 2010.



BE IT FURTHER RESOLVED, that the Mayor or his designee is directed to amend the Local Coastal Program, only if required, to prohibit the public from entering the beach during harbor seal pupping season, from December 15<sup>th</sup> through May 15<sup>th</sup>.

BE IT FURTHER RESOLVED, that the Mayor or his designee is directed 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.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas  
Shannon M. Thomas  
Deputy City Attorney

SMT:mm  
04/29/2010  
05/18/2010 Rev. Copy  
Or.Dept:City Council Comm.  
R-2010-794  
MMS #12099

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 17 2010.

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 6-3-10  
(date)

[Signature]  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor



# LA JOLLA PARK

## SAN DIEGO CO.

### CALIFORNIA.

*A subdivision of Pueblo Lot 1282 and a  
portion of Pueblo Lots 1283  
and 1284.*

**BOTSFORD & HEALD**  
PROPRIETORS

*Surveyed Jan. 1887, by  
**M. G. WHEELER**  
City Engineer.*

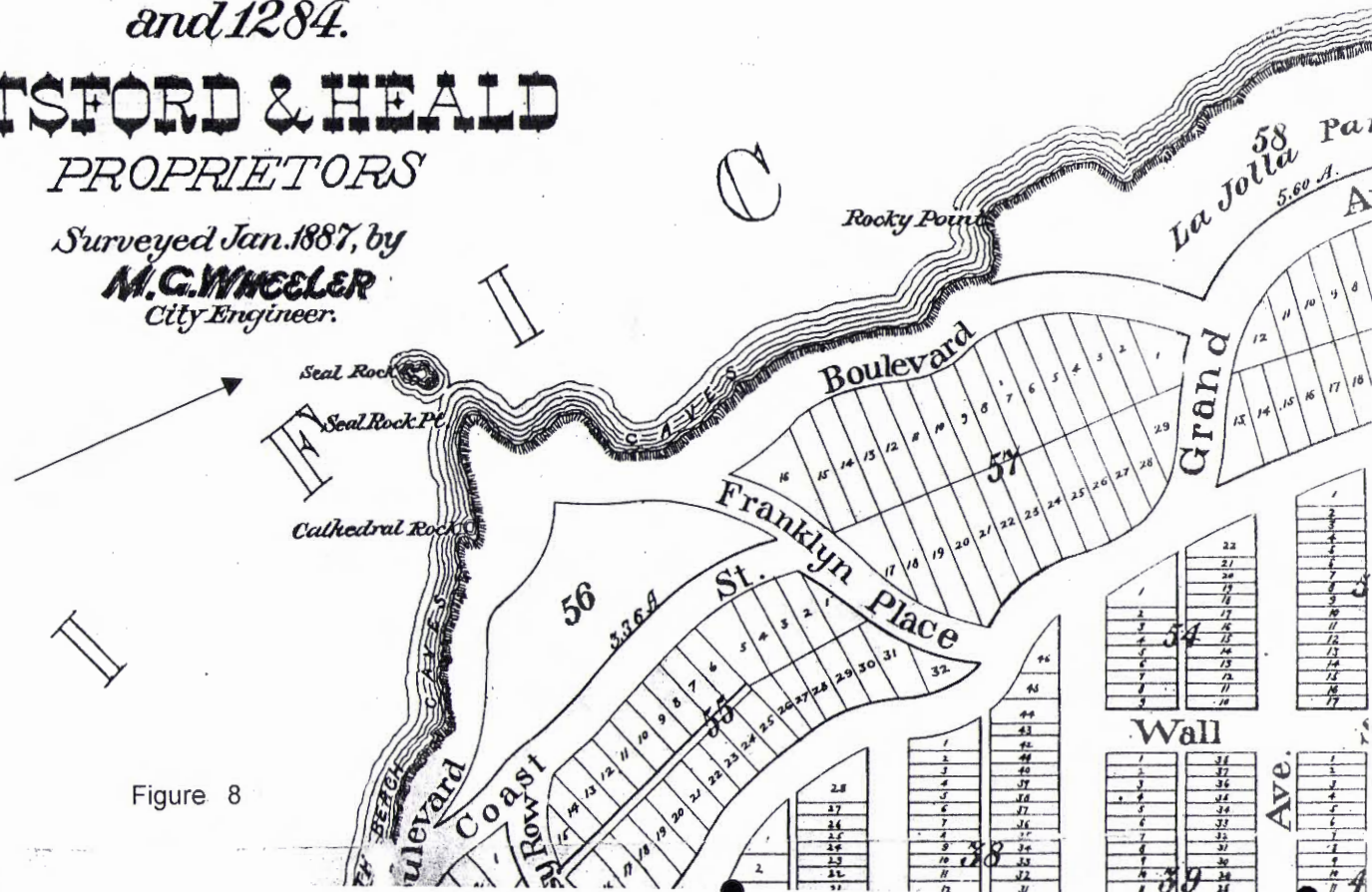
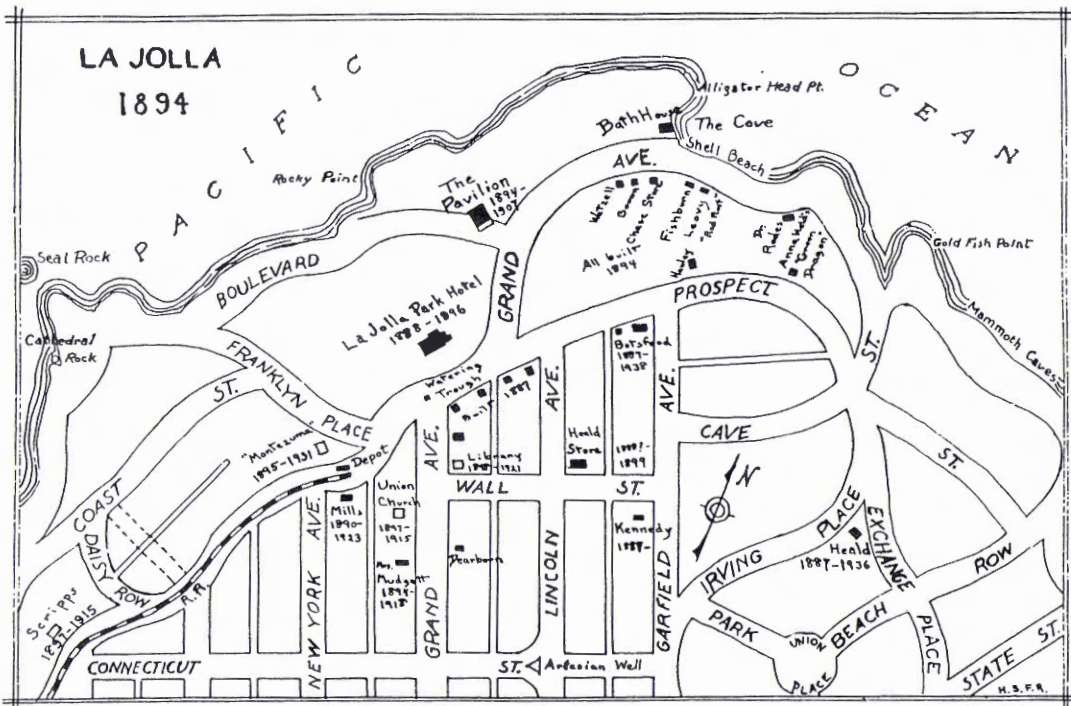


Figure 8



MAP OF LA JOLLA IN 1894

This map shows the old street names, and the site of most of the buildings (shown in black) that were then standing. Other buildings, shown in outline, were erected soon after: The "Montezuma Cottage" (afterward the "Seaside Inn" and then the "Ocean View") was erected in 1895; Miss Scripps' home, "South Moulton Villa" and the Union church in 1897, and the Library in 1898.

"LA JOLLA YEAR BY YEAR" HOWARD S. F. RANDOLPH LA JOLLA 1955  
© 1946 © 1955

the meetings were held at the house of the interest would be slight—on President, Miss Scripps, and the church parlor and spent the afternoon. But then new members would and the club would carry on. It Room—now the Library—until they them out. Then it met at Miss Scripps on Herschel avenue.

**The La Jolla Literary Club**  
In 1897 the name "La Jolla Literary Club," and in October, 1901, evening, with sixty "History of San Diego" the address of welcome.

a sonnet, "La Jolla," Mrs. Woodson on the Beach; Ellen Mills read two duets were sung. In 1901 the a year to one dollar. In 1902 the Federations, and changed its name.

**The La Jolla Woman's Club**  
On motion made to plant a rubber tree Carey, on Arbor Day was so honored was replanted on the site a precarious existence.

grown until it was evident it would Then La Jolla's good fairy came a modern club house, from plans it was laid on December 2, 1913, on occasion.

On Oct. 3, 1914, the club was tuition (drafted by Mr. Jacob C. ) meeting was held in the new club that time.



**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT  
710 "E" STREET, SUITE 200  
EUREKA, CA 95501  
(707) 445-7873

**MEMORANDUM**

FROM: John D. Dixon, Ph.D.  
Ecologist

TO: Kanani Brown

SUBJECT: San Diego Children's Pool

DATE: June 21, 2012

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Document reviewed:

Carretta, J.V. and 15 others. 2011. U.S. Pacific Marine Mammal Assessments: 2011. Chapter entitled "Harbor Seal (*Phoca vitulina richardii*): California Stock. NOAA National Marine Fisheries Service, Southwest Science Center, La Jolla, CA.

Cottingham, D. (Marine Mammal Commission). 2005. Letter to R.R. McInnis (Nation Marine Fisheries Service) dated 3 November 2005 regarding incidental take of harbor seals during dredging of the Children's Pool.

Lecky, J.H. (Nation Marine Fisheries Service). 1999. Letter to T. Williams (City of San Diego) regarding an Incidental Harassment Authorization to dredge the Children's Pool dated October 19, 1999.

Lecky, J.H. (Nation Marine Fisheries Service). 2002. Whose beach is it anyway? Managing seals at Children's Pool, La Jolla, CA. Background paper prepared for the Workshop on the Management of Hawaiian Monk Seals on Beaches in the Main Hawaiian Islands, 29-31 October 2002 cosponsored by the Marine Mammal Commission, National Marine Fisheries Service, and Hawaii Division of Aquatic Resources.

Hanan & Associates. 2004. Biological letter report and recommendations for Contruction regarding pinniped surveys at Children's Pool, La Jolla, California. A report dated May 1, 2004 submitted to the City of San Diego.

Ragen, T.J. (Marine Mammal Commission). 2008. Letter to C.C. Lautenbacher (U.S. Department of Commerce) dated 25 August 2008 regarding harassment of harbor seals at the Children's Pool and public safety.

**EXHIBIT NO. 9****APPLICATION NO.****6-11-078****Staff Bio Memo**

California Coastal Commission

Yochem, P.K. and B.S. Stewart. 1998. Behavioral ecology and demography of seals and sea lions at the Seal Rock Marine Mammal Reserve. Final report dated 2 January 1998 to the Seal Rock Marine Mammal Reserve Ad Hoc Committee convened by the City of San Diego Park and Recreation Department.

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Harbor seals (*Phoca vitulina*) have a cosmopolitan distribution in the coastal waters of the northern hemisphere. As was the case for populations of most pinniped species, harbor seal populations along the west coast of North America were decimated by commercial hunting during the 19<sup>th</sup> and early 20<sup>th</sup> centuries. In 1951, the Department of Fish and Game estimated that there were only about 500 individuals along the California coast. Fortunately, the numbers of most populations have strongly rebounded since the Marine Mammal Protection Act was enacted in 1972. Today, the International Union for Conservation of Nature (IUCN) estimates the worldwide population as being between 350,000 and 500,000. The National Marine Fisheries Service's estimate for the California stock is about 30,000, which is probably approaching the regional carrying capacity. The species is of "least concern" for the IUCN and is considered either stable or growing in California.

In the La Jolla area, harbor seals have long used seal rock as a haul-out site (one of about 1,000 such sites in California) and the City of San Diego designated that area as a Marine Mammal Reserve. In the early 1990s, harbor seals also began hauling out on a regular basis, and in greater numbers, onto the sand beach at the nearby Children's Pool, a protected area created by the construction of a seawall in 1931. By 1995, the seals were more-or-less continuously utilizing the site for hauling out and as a rookery to give birth to and raise their pups. The average number of seals on the beach is around 75, with abundance highest from around January through July. Dependent pups are present from around March through June. The persistent presence of relatively large numbers of harbor seals within this artificial embayment has resulted in high levels of coliform bacteria that exceed that state water quality standard.

Federal law would allow the City to address the water quality problem by harassing the seals (a federal "take") in order to get them to leave the area and haul out elsewhere. Indeed, the National Marine Fisheries Service discourages closing public beaches to the general public because of use by common pinniped species. However, the Service cautions against the shared use of beaches by people and seals. At the Children's Pool their major stated concern was not the effect of people on seal behavior, but that the members of the public could be cited for harassment or even be bitten. In fact, there is ample evidence that curious people are harassing the seals, creating an illegal and dangerous situation that is of concern to the Marine Mammal Commission. The intrusive behavior of the public would be much more disruptive were it not for the unusual behavior of seals at this beach.

Over much of their range, harbor seals tend to be extremely shy and will flush into the water when people approach within a 100 m or so and will react to boats at an even greater distance. At some locations, human disturbance has even caused complete abandonment of a haul-out site. At the Children's pool, people are closely present at all hours moving about and making loud noises. There is also a complete complement of loud urban sounds on the street above. However, for the most part, the seals only tend



to flush when very closely approached and the number of seals present after a significant disturbance has little effect on the numbers present a short time later.

Although there are unlikely to be population consequences regardless of what actions are taken at the Children's Pool, it is nonetheless important that steps be taken to prevent the harassment of individual seals and to avoid forced flushing, especially during the period when dependent pups are present. Due to the fact that the numbers and distribution of seals on the beach varies both seasonally and from day-to-day, an adaptive management plan that could respond to changing circumstances would be most useful. Since a year-round rope barrier at the Children's Pool will have no negative biological impacts and will help protect the harbor seals using the beach, I concur with staff's recommendation to approve the proposed project, as conditioned.

To review comment letters of opposition regarding this project, please see the flowing link:

<http://documents.coastal.ca.gov/reports/2012/7/W10d-7-2012.pdf>

EXHIBIT NO. 10

APPLICATION NO.

**6-11-078**

Letters of Opposition



California Coastal Commission

To review comment letters of support regarding this project, please see the flowing link:

<http://documents.coastal.ca.gov/reports/2012/7/W10d-7-2012.pdf>

EXHIBIT NO. 11

APPLICATION NO.

**6-11-078**

Letters of Support



California Coastal Commission