



THE CITY OF SAN DIEGO
REPORT TO THE PLANNING COMMISSION

DATE ISSUED: August 23, 2012 **REPORT NO. PC-12-083**
ATTENTION: Planning Commission, Agenda of August 30, 2012
SUBJECT: LA JOLLA CHILDREN'S POOL ROPE BARRIER,
PROJECT NO. 213317, PROCESS 3 Appeal – **New Hearing**
REFERENCE: Hearing Officer Report of September 15, 2010 (Attachment 5)
OWNER City of San Diego
APPLICANT: Park and Recreation Department

SUMMARY

Issue(s): Should the Planning Commission approve an appeal (Attachment 1) of the Hearing Officer's approval to install and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot opening, to create a buffer between humans and seals, at the La Jolla Children's Pool within the La Jolla Community Planning Area and the La Jolla Local Coastal Program?

Staff Recommendation: **DENY** the appeal and **APPROVE** an Amendment to Site Development Permit No. 701765, allowing for the installation of a year-round guideline rope.

Community Planning Group Recommendation: September 2, 2010, the La Jolla Planning Association voted 10-1-2 to recommend denial of the project (Attachment 2). The group also voted 11-0-2 to reject the City's determination that the project is categorically exempt from California Environmental Quality Act (CEQA) (Attachment 4). On September 24, 2010, the La Jolla Community Planning Association appealed the Hearing Officer's approval of the year-round guideline rope.

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

Appeal (NORA) Environmental Determination (Attachment 3) was posted on August 3, 2010 in the offices of the Development Services Department. Applications to appeal the CEQA determination made by staff to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of the Notice or within 15 business days from the date of the environmental determination. No appeal was filed.

Fiscal Impact Statement: All costs are covered by a Park and Recreation Department General Fund Account.

Code Enforcement Impact: None with this project.

Housing Impact Statement: None with this project.

BACKGROUND

Project Description

The project site is located in the La Jolla Community Planning area, within the Coastal Zone. The site is in the LJPd-5 zone, and is adjacent to land designated as Open Space and Park land use designations in the La Jolla Community Plan (LJCP). A Site Development Permit is required pursuant to LDC Section 143.0110 due to the project's location within Environmentally Sensitive Lands, the coastal beaches.

The proposed rope installation includes hand digging small holes (less than 18 inches deep) in the sand, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. The rope would be strung through the supports and signs may be attached to the supports providing information to the public. These support posts would be the same as the seasonal seal pupping season rope and, therefore, no new holes or posts would be required.

Previous Actions

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

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

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

On May 17, 2010, the San Diego City Council adopted a resolution establishing a new Seasonal Shared Use Policy at the Children's Pool Beach and directed City staff to acquire a Coastal Development Permit to maintain a year-round rope barrier (Attachment 6). The Park and Recreation Department applied for a Coastal Development Permit and Site Development Permit and City staff reviewed that application.

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

On September 24, 2010, the La Jolla Community Planning Association appealed the Hearing Officer's approval of the year-round rope to the Planning Commission. On December 9, 2010, the Planning Commission upheld the appeal and denied placement of the year-round rope.

A lawsuit ensued in Superior Court from the Animal Protection and Rescue League and several others over this decision. The Court remanded the matter to the Planning Commission and required a new hearing be held, based on the analytical gap between the Planning Commission's decision and the findings made in support of that decision (Attachment 7). The remand allows the Planning Commission another opportunity to evaluate its decision in light of the Court's concerns that their findings were "cursory" and the Court could not find an explanation in the record for the findings denying the permit. Specifically, the Court had difficulty understanding how the Planning Commission could find that a rope barrier during harbor seal pupping season would not encroach on public access to the Children's Pool, but a rope barrier would encroach on public access the rest of the year.

After the Planning Commission's action on the appeal, the California Coastal Commission determined it has exclusive jurisdiction to issue a Coastal Development Permit for projects at the La Jolla Children's Pool. In light of that determination, the City submitted an application for a Coastal Development Permit to the California Coastal Commission for this project. On July 11, 2012, the Coastal Commission approved Coastal Development Permit No. 6-11-078 for a year-round rope at the Children's Pool (Attachment 8). Special Conditions of that approval included a

three-year limit on the permit, the execution of an Assumption of Risk/Waiver of Liability and Indemnity Agreement by the City, a requirement that the City obtain all necessary local permits and/or approvals, and provide a Monitoring Plan for the management and monitoring of the shared-use policy at the Children's Pool. The Monitoring Plan condition included a requirement that the applicant submit an annual monitoring report. Finally, the Special Conditions also included a requirement for a Sign Program and a Liability for Costs and Attorneys Fees condition.

As a result of the Coastal Commission's jurisdictional determination and the Court's ruling, this Planning Commission hearing is a new hearing to consider the appeal of the Hearing Officer's approval, but only of Site Development Permit No. 782184.

DISCUSSION

Superior Court Comments

In ruling to remand the Planning Commission decision of December 9, 2010 back to the Planning Commission, the Court indicated that it was not clear why the Planning Commission believed the rope would encroach on public access to the beach. The Court found the Planning Commission's findings were cursory, and that there was no explanation of the findings. The Court asked how the Planning Commission could conclude that the rope placement does not encroach on public access to the beach or shoreline by approving the rope for the pupping season, and yet, the same installation would encroach on public access to the beach or shoreline during non-pupping season. Therefore, the Court remanded the decision back to the Planning Commission to provide for an opportunity to re-evaluate the decision to uphold the appeal of the Hearing Officer's September 15, 2010 approval of the year-round rope. The Court indicated there was an analytical gap between substantiating the findings for the pupping season rope and in not substantiating the findings for the non-pupping season.

The Court also commented on the Notice of Appeal Hearing, indicating concern that some may have been confused in that the Notice indicated that the decision would be appealable to the California Coastal Commission, when in fact, the resultant decision was not appealable to that body because the project was denied. The California Coastal Commission does not hear appeals of denied projects, with very limited exceptions for some public projects. However, since the California Coastal Commission determined it has jurisdiction for the Coastal Development Permit and the remaining Site Development Permit is not appealable to the California Coastal Commission, the point has been rendered moot.

Project Issues

There are three primary issues regarding the Children's Pool rope installation and the appeal decision before the Planning Commission: Harassment Prevention, Access, and Loss of Pool Use.

Harassment Prevention:

The first issue speaks to the purpose of the rope. The intent of the rope installation is to create a buffer or moment of pause for beachgoers approaching the Children's Pool shoreline while the harbor seals are present on the beach. By pausing, inadvertent harassment of the seals by those unfamiliar with the Children's Pool may be prevented. The rope installation creates this pause. Without the rope installation, visitors have approached resting seals so they can be close to a wild animal, take photographs at close range and to even touch the seals. By adding a City of San Diego ranger along with an installed rope, useful information can be disseminated to assist beachgoers regarding the presence of the seals and appropriate ways to observe them. The addition of a ranger is not part of the proposed project. However, if a ranger is stationed at the Children's Pool, inadvertent harassment could occur before a ranger could assist in this endeavor if the rope were not in place.

Harbor seals are present at the Children's Pool throughout the year. Their numbers are greatest during the pupping season, but their use of the pool also extends into the summer months. Therefore, inadvertent harassment could occur beyond the current 15 December to 15 May seasonal rope installation term if the rope is not installed year-round.

It should also be noted that the rope installation was never intended to prevent purposeful harassment. If there are those intent on disturbing or harassing the seals at the Children's Pool, the rope installation during the pupping season or year-round will not prevent it.

Access:

A goal of the La Jolla Community Plan/Local Coastal Program Land Use Plan (Plan) is to enhance existing public access to La Jolla's beaches and coastline areas and to facilitate greater public use and enjoyment of these and other coastal resources. The plan also states that the City should ensure new development does not restrict or prevent lateral, vertical or visual access to the beach. Rope installation from the 15 December to the 15 May (harbor seal pupping season) has allowed for direct, unrestricted access to the shoreline at all times through an opening at the easterly rope end. In addition, passing over or under the rope has always been legally allowed, but not encouraged. The Planning Commission has previously approved this installation by denying prior appeals to approvals of pupping season installations. Installing exactly the same rope placement throughout the remainder of the year (non-pupping season) would similarly allow for direct, unrestricted access at all times. This access has been provided during the seal pupping season irrespective of the number of seals or beachgoers present at the pool at any given time.

Existing public beach and coastline access at the Children's Pool is provided by the existing concrete stairs and sand beach. The guideline rope, as previously installed and currently proposed for year-round installation, would maintain this existing access. This is true whether the number of visitors to the Children's Pool increases in these intervening months or not. Access would remain identical. Therefore, the year-round rope project would ensure the access recommended in the Plan.

The Plan describes lateral access as access along the shoreline. Lateral access at the Children's Pool is limited to the shoreline across the mouth of the Children's Pool itself. Lateral access north or south of the Children's Pool is interrupted by natural terrain and also by the existing seawall. The installation of the guideline rope would have no affect on lateral access at any time throughout the year. Therefore, the proposal for a year-round rope would be consistent with this Plan recommendation.

It should also be emphasized that repeat Children's Pool users attempting to reach the shoreline in subsequent visits would likely head straight for the opening at the eastern end of the rope to access the Children's Pool shoreline. As this is the case, all but initial Children's Pool users would, in effect, realize access to the shoreline as if the rope were not installed. While adding a ranger is not part of the project, a ranger at the Children's Pool may even provide this same access for initial visitors if they have contact with the ranger prior to reaching the sand beach. This type of direct access would exist for a pupping season installation or a year-round rope installation.

Loss of Pool Use:

The rope has no affect on swimming, teaching others to swim, diving, fishing or the like. Those and other water/shoreline-related activities could continue to be allowed with the installation of a year-round rope. These activities are protected by the California Coastal Act and the rope installation would be consistent with those protections.

Consistency

Finding the seal pupping season rope installation project meets the goals of the Community Plan and Local Coastal Program and finding the same installation during the non-pupping season does not meet those goals was the key reason the decision was remanded back to the Planning Commission. The Court indicated that there was not enough evidence to support the Planning Commission's conclusion that the harbor seal pupping season rope installation would not encroach on vertical or lateral access to the shoreline, but that the permanent year-round guideline rope would.

In upholding the appeal, the Planning Commission sited that the extent of prohibiting access across 98 percent of the sand beach would not be in conformity with the Community Plan and, therefore, the Coastal Development and Site Development Permit findings could not be substantiated. However, public access would not be prohibited by the rope installation. It is this determination that allowed the Planning Commission to approve the rope placement for the Harbor Seal pupping season, currently in effect. Approving the identical rope installation for the remainder of the year does not change the affect the rope would have on public access.

Children's Pool Uniqueness

The physical conditions at the Children's Pool are not found anywhere else along the San Diego coastline. The construction of the seawall and the presence of harbor seals at this location present the need to apply unique solutions to the issues encountered there. Since the installation of the rope barrier at the Children's Pool, no requests for similar devices have been made for other beaches, coves or bodies of water along the San Diego coast. Therefore, it appears the rope barrier has not been precedent setting in that regard. The installation of a similar guideline rope at other beaches may be seen as preventing the public's access to the shoreline given the lack of these unique characteristics. It is these unique features that have allowed for consideration of a guideline rope installation at the Children's Pool. Seals are still present during the summer months and the many visitors come to see them in the wild during summer vacations. Therefore, it is appropriate to consider extending the guideline rope placement for the remainder of the year.

Measurement Error

Earlier this year it was determined that there had been a measurement error regarding the length of the rope installations. While the approved Exhibit A associated with the current permit depicts a three-foot opening from the end of the rope installation to the rock outcropping at the easterly side of the pool, the length of the rope is shown as 130 feet. That is incorrect. The length of rope required to stretch from the seawall to a point that would create a three-foot opening is 152 feet. That error was noticed earlier this year and the installation in the field was shortened to the approved 130 feet. The proposed amendment to the Site Development Permit for the year-round rope would rectify that error, modifying the permit and the Exhibit A to reflect 152 feet accordingly.

Appeal Issues

Staff has summarized the appeal issues provided in the appeal and provided a response to each. Please note some of the issues have become moot due to the California Coastal Commission's determination that they retain Coastal Development Permit jurisdiction.

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

Staff Response:

The La Jolla Community Planning Association vote was included in the September 15, 2010 staff report to the Hearing Officer on the project and considered in the Hearing Officer's decision. A Notice of Right to Appeal (NORA) Environmental Determination (Attachment 3) was posted on August 3, 2010 in the offices of the Development Services Department. Applications to appeal the CEQA determination made by staff to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of the Notice or within 15 business days from the date of the environmental determination. No appeal was filed.

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

Staff Response:

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

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

Staff Response:

This is a Coastal Development Permit finding. Action by the California Coastal Commission to take jurisdiction over Coastal Development Permit issuance at this location has rendered this appeal issue moot. On the 11 July 2012 the California Coastal Commission approved a Coastal Development Permit for the year-round placement of the rope for a period of three years.

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

Staff Response:

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

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

Staff Response:

This is a Coastal Development Permit finding. Action by the California Coastal Commission to take jurisdiction over Coastal Development Permit issuance at this location has rendered this

appeal issue moot. On the 11 July 2012 the California Coastal Commission approved a Coastal Development Permit for the year-round placement of the rope for a period of three years.

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

Staff Response:

Staff supports the inclusion of a Ranger at the Children's Pool and believes the Ranger providing information and guidance at the Children's Pool has proven helpful in reducing conflicts. The rope would provide the Ranger with a reference point tool to ensure minimum disturbance of the seals while indicating to the public that beach access is maintained. However, providing a ranger is not part of the proposed project and is beyond the scope of a development permit.

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

Staff Response:

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

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

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

Staff Response:

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

9. Other issues that may be raised at hearing.

Staff Response:

Staff is not able to respond to this appeal issue.

CONCLUSION

The proposed year-round rope installation would serve as a buffer between humans and the seals. Public access to the beach would be maintained at all times through an opening at the easterly end of the rope, and through the rope itself, if necessary. This access is identical to the seal pupping season rope previously approved by the Planning Commission. The La Jolla Community Plan/Local Coastal Program recommends that this access not be prevented. Therefore, the project would be consistent with the Local Coastal Plan.

Staff believes the installation of the rope would aid the Ranger Program throughout the year. Staff has also determined that the sensitive resources in the area would not be affected by the project. The rope installation is a minor alteration of the land, allows for the seals to haul out to rest and give birth during the pupping season, and would help avoid inadvertent seal harassment year-round. The year-round rope installation would result in no inconvenience to regular Children's Pool users, as direct access to the shoreline would be available. Summer visitors to the Children's Pool would be provided a visual reference point for appropriate seal observation and the year-round rope installation would help the park ranger prevent inadvertent harassment.

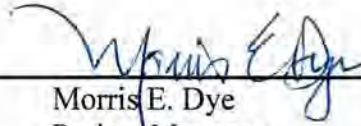
ALTERNATIVES

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

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



Morris E. Dye
Project Manager
Development Services Department

Attachments:

1. Appeal by the La Jolla Community Planning Association
2. La Jolla Community Planning Association Vote
3. Notice of Right to Appeal Environmental Determination
4. Notice of Exemption
5. Hearing Officer Report, September 15, 2010
6. City Council Resolution of May 17, 2010
7. Superior Court's Ruling
8. Coastal Commission Report



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

Development Permit/ Environmental Determination Appeal Application

FORM
DS-3031
MARCH 2007

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

1. Type of Appeal:

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

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

Name

La Jolla Community Planning Association

Address

P. O. Box 889

City

La Jolla

State

CA

Zip Code

92037

Telephone

858.488.0160 (direct)

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

City of San Diego, Department of Park & Recreation

4. Project Information

Permit/Environmental Determination & Permit/Document No.:

ChildrensPoolRope/PN213317/CDP-SDP-CEQA Exemp.

Date of Decision/Determination:

September 15, 2010

City Project Manager:

Morris Dye

Decision (describe the permit/approval decision):

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

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

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

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

- The community planning group voted 10-1-2 to recommend denial of the amendment & 11-0-2 to oppose the CEQA Exemption.
- Amendment is in conflict with several sections of the Local Coastal Plan dealing with lateral and vertical access to the shoreline.
- Can not make finding: "The proposed coastal development is in conformity with the certified Local Coastal Program land use plan."
- Hearing Officer repeated several times that it will be a "...hinderance to people using the beach..."
- Can not making finding: "The proposed...will not encroach upon any exist physical accessway that is legally used by the public..."
- Failed to adequately consider the Ranger Program & other options that will meet the stated needs and comply with the LCP.
- Amendment does not qualify for a CEQA Exemption.
- a. §15304 and §15333 do not apply because those list narrow applications and the project has broader implications.
- b. The project is conflict with the Local Coastal Plan and affects public access to coastal resources.
- CEQA appeal period not valid since there was no way for the public to know that a Notice had been filed.
- Other issues that may be raised at hearing.

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

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

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

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DS-3031 (03-07)

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

11. BISHOP SCHOOL LIBRARY & LEARNING CENTER

Pulled from August Consent Agenda

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

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

12. CHILDREN'S POOL ROPE

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

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

Presenter – Dan Daneri, City Park & Rec

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

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

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

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

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

Voting Record #6

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

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

Oppose: Fitzgerald.

Abstain: LaCava, Weiss.

Voting Record #7

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

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

Abstain: Fitzgerald, LaCava.

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



THE CITY OF SAN DIEGO

Date of Notice: August 3, 2010

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

DEVELOPMENT SERVICES DEPARTMENT

Internal Order or WBS No. 21002110

PROJECT NAME/NUMBER: La Jolla Children's Pool Rope Barrier/Project No. 213317**COMMUNITY PLAN AREA:** La Jolla**COUNCIL DISTRICT:** 1**LOCATION:** West/Northwest of 809 Coast Boulevard. The beach site is located in the Sensitive Coastal Overlay and Coastal Overlay (Coastal Commission Appeal Jurisdiction) Zones within the La Jolla Community Planning Area.**PROJECT DESCRIPTION:** Amendment to Coastal Development Permit No. 701673/Site Development Permit No. 701765 to install, and maintain year-round, in perpetuity, a rope barrier, including support posts, foundations and a three-foot ocean access opening, to create a buffer between humans & seals at the La Jolla Children's Pool.**ENTITY CONSIDERING PROJECT APPROVAL:** City of San Diego – Hearing Officer (Process 3)**ENVIRONMENTAL DETERMINATION:** Categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15304 (Minor Alterations in Land Use) and 15333 (Small Habitat Restoration projects).**ENTITY MAKING ENVIRONMENTAL DETERMINATION:** City of San Diego – Development Services Department**STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:** The project would not result in a significant effect on the environment. The actions to install and maintain a rope barrier, year-round meets the criteria set forth in CEQA Section 15304 which allows for minor public or private alterations in the condition of land, water and/or vegetation and CEQA Section 15333 which consists of projects, not to exceed five acres in size to assure maintenance, restoration, enhancement, or protection of habitat for fish, plants or wildlife; and where the exceptions listed in CEQA Section 15300.2 would not apply.**DEVELOPMENT PROJECT MANAGER:****MAILING ADDRESS:****PHONE NUMBER:**

Morris Dye

1222 First Avenue, MS 501

San Diego, CA 92101-4153

619-446-5201

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

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

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

NOTICE OF EXEMPTION

(Check one or both)

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

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

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

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

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

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

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

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

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

EXEMPT STATUS: (CHECK ONE)

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

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

LEAD AGENCY CONTACT PERSON: Myra Herrmann, Senior Planner

TELEPHONE: (619) 446-5372

IF FILED BY APPLICANT:

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

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

Myra Herrmann, Senior Planner
 SIGNATURE/TITLE

7/8/10
 DATE

CHECK ONE:

- ☒ SIGNED BY LEAD AGENCY
☐ SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

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

ATTENTION: Hearing Officer

SUBJECT: LA JOLLA CHILDREN'S POOL ROPE BARRIER

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

APPLICANT: Park and Recreation Department, City of San Diego

SUMMARY

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

Staff Recommendations:

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

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

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

BACKGROUND

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

Prior Rope Permits:

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

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

Recent City Council Direction

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

DISCUSSION

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

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

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

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

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

ALTERNATIVES

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

Respectfully submitted,

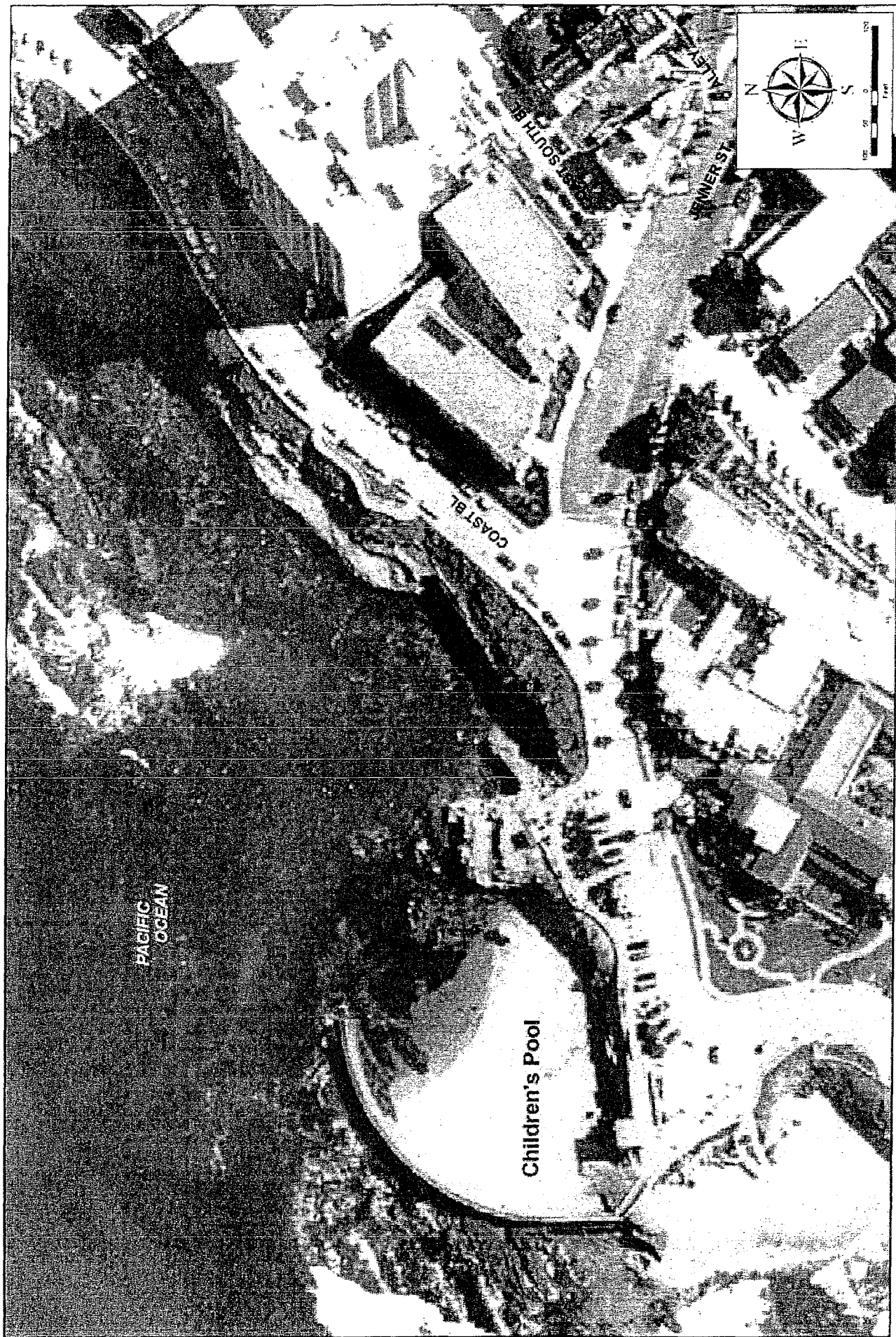


Morris E. Dye, Development Project Manager

Attachments:

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

i:\all\project files\project files 200000 - 299999\213317 - childrens pool\hearing documents\rope\report15sept2010.doc



AERIAL PHOTO

CITY OF SAN DIEGO • DEVELOPMENT SERVICES DEPARTMENT

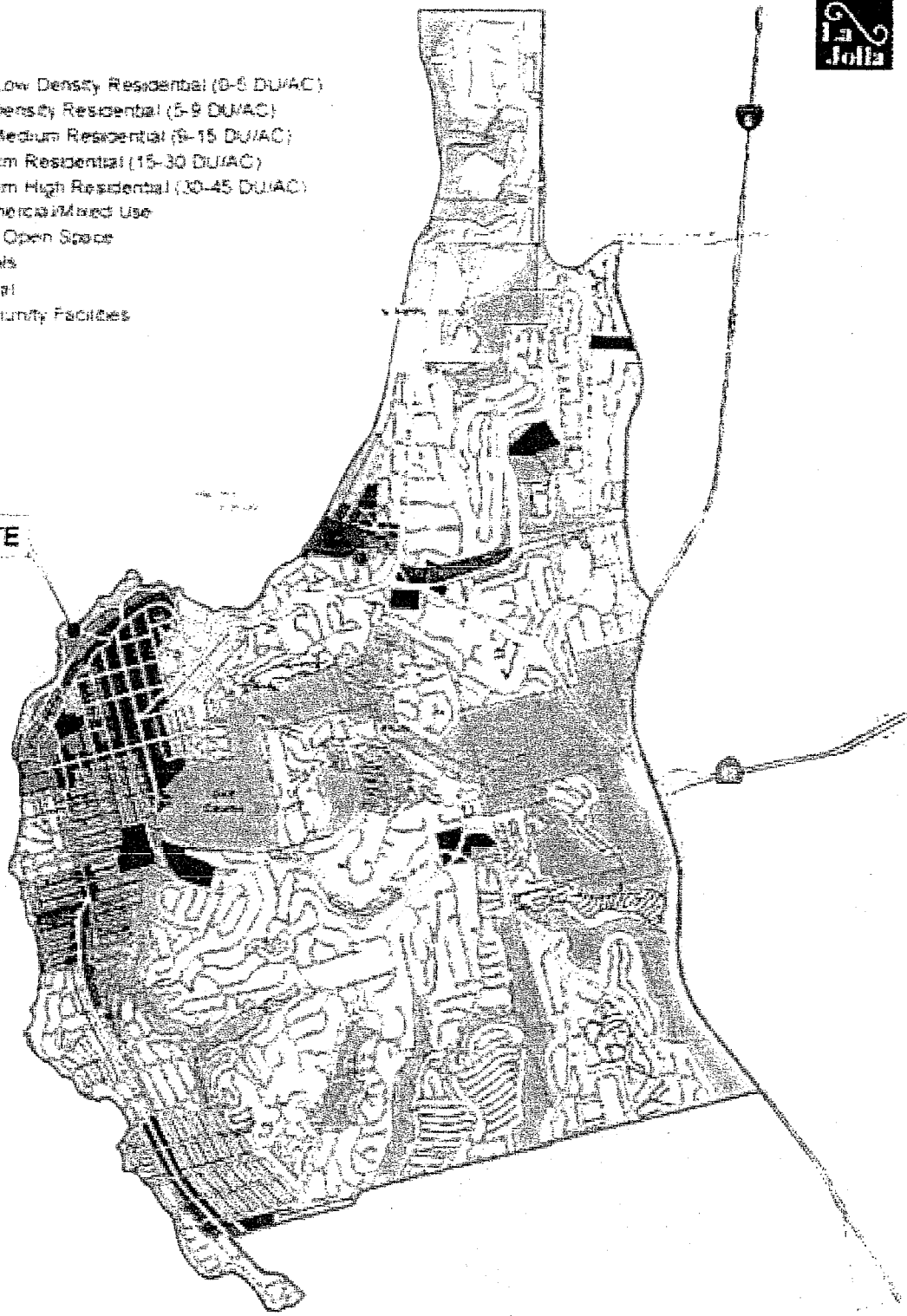
SanGIS

SanGIS is a web-based geographic information system (GIS) that provides a variety of services to the City of San Diego. It is used to manage and analyze spatial data, and to provide a platform for developing web-based applications. SanGIS is a powerful tool for the City of San Diego, and it is used by a wide range of departments and agencies. It is a valuable asset for the City of San Diego, and it is used to provide a variety of services to the public.



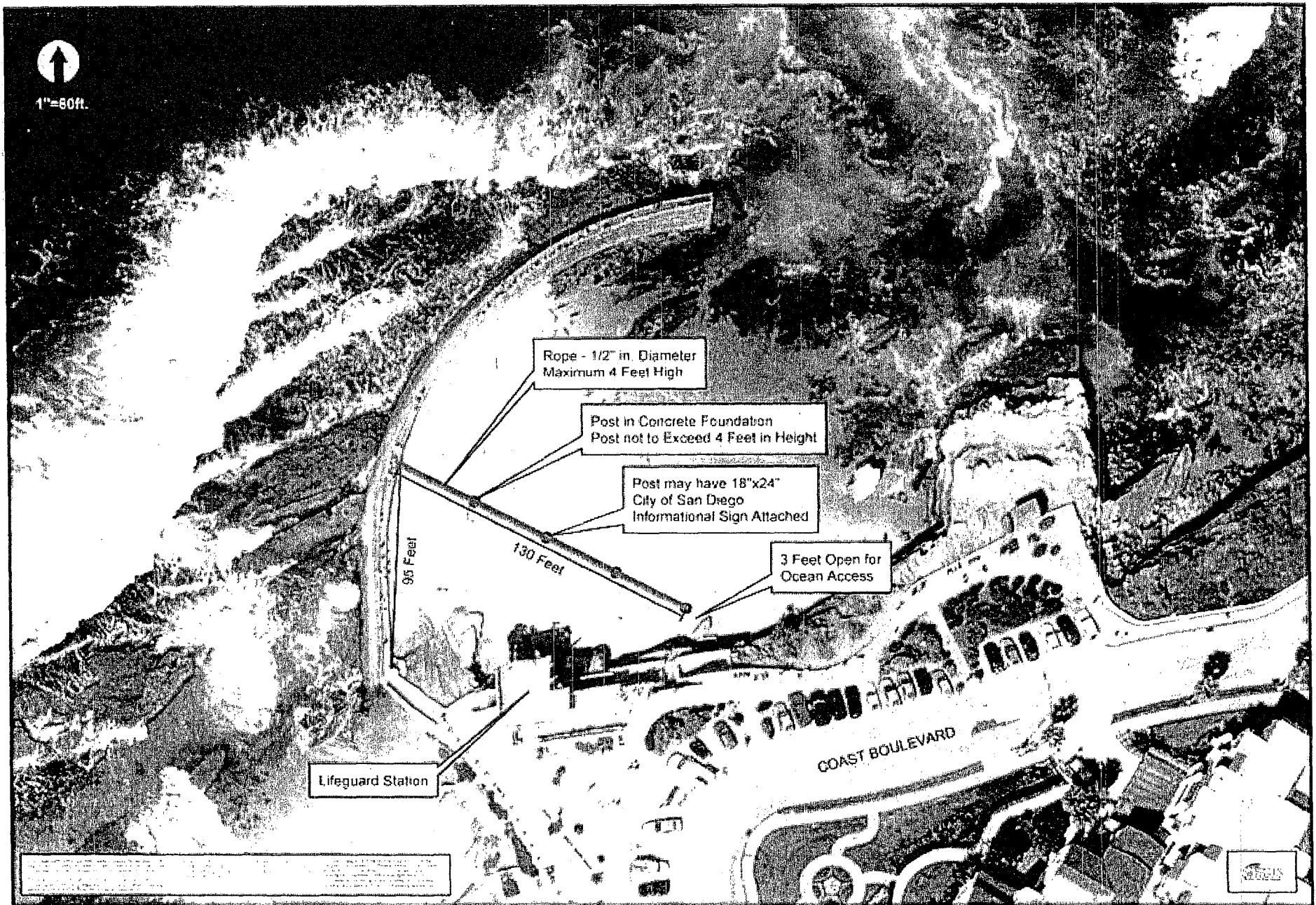
- Legend
- Very Low Density Residential (0-5 DU/AC)
 - Low Density Residential (5-9 DU/AC)
 - Low Medium Residential (9-15 DU/AC)
 - Medium Residential (15-30 DU/AC)
 - Medium High Residential (30-45 DU/AC)
 - Commercial/Mixed Use
 - Parks/Open Space
 - Schools
 - Cultural
 - Community Facilities

PROJECT SITE



Community Land Use Map





2005 Aerial

CHILDREN'S POOL ROPE BARRIER

EXHIBIT "A"

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 21002110

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

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

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

The project shall include:

Rope, supporting posts, support post footings and signs;

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

STANDARD REQUIREMENTS:

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

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

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

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

a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and

b. The Permit is recorded in the Office of the San Diego County Recorder.

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

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

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

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

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

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

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

PLANNING/DESIGN REQUIREMENTS:

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

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

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

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

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

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

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

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

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

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

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

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

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

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

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

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

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

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

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

B. Supplemental Findings--Environmentally Sensitive Lands

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Morris E. Dye
Development Project Manager
Development Services

Adopted on: September 15, 2010

Internal Order No. 12002110

cc: Legislative Recorder, Planning Department

Development Services Department Project Management Section



Development Services Department
Project Management Section



WARNING!

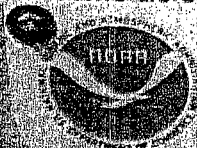
MARINE MAMMALS
ARE PROTECTED
BY FEDERAL LAWS



PLEASE! Do NOT Disturb Marine Mammals.

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

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



Report Violations to the NMFS Enforcement Hotline:

1-800-853-1964

[illegible]

PLEASE WATCH FIRST AID IN THE
 FIRST AID ROOMS. THE FIRST AID
 ROOMS ARE LOCATED AT THE
 ENTRANCE TO THE CAMP.

THE

LA CÁMARA DE COMERCIO INTERNACIONAL

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

1. 姓名: 王德林
 2. 性别: 男
 3. 年龄: 45
 4. 籍贯: 山东烟台
 5. 民族: 汉族
 6. 职业: 教师
 7. 学历: 本科
 8. 婚姻状况: 已婚
 9. 子女情况: 一子一女
 10. 健康状况: 良好
 11. 兴趣爱好: 读书、运动
 12. 自我评价: 为人正直, 工作认真
 13. 推荐理由: 品行端正, 成绩优秀
 14. 其他说明: 无不良嗜好, 遵纪守法

PLEASE WATCH YOUR CHILDREN
AND WARDENS. THE BEACH IS
UNSAFE FOR SWIMMING. THE
WATER MAY BE CONTAMINATED
BY SEWAGE. IT IS NOT
SAFE TO SWIM HERE.

THE BEACH IS OPEN FOR USE
ON MONDAYS, WEDNESDAYS,
FRIDAYS, SUNDAYS AND
PUBLIC HOLIDAYS.

NO SWIMMING
NO SUNBATHING
NO WADING
NO WALKING
NO PLAYING
NO SLEEPING
NO DRINKING
NO SMOKING
NO ALCOHOL
NO DRUGS
NO FIRE
NO CAMPING
NO MOTORHOMES
NO CARAVANS
NO MOTORCARS
NO BIKES
NO SCOOTERS
NO MOPEDS
NO MOTORCYCLES
NO MOTORBOATS
NO POWERBOATS
NO SAILBOATS
NO KAYAKS
NO CANOES
NO SUPS
NO STAND-UP PADDLING
NO SURFSKIS
NO BODYBOARDS
NO WAKEBOARDS
NO WATER SKIS
NO WATER SLEDGES
NO WATER GUNNERS
NO WATER GOLF
NO WATER VOLLEYBALL
NO WATER BASKETBALL
NO WATER TENNIS
NO WATER HOCKEY
NO WATER RUGBY
NO WATER CRICKET
NO WATER BOWLS
NO WATER GOLF
NO WATER TENNIS
NO WATER HOCKEY
NO WATER RUGBY
NO WATER CRICKET
NO WATER BOWLS

THE CITY OF SAN DIEGO

PUBLIC ACCESS ON THE BEACH IS ALLOWED
AT ALL TIMES.

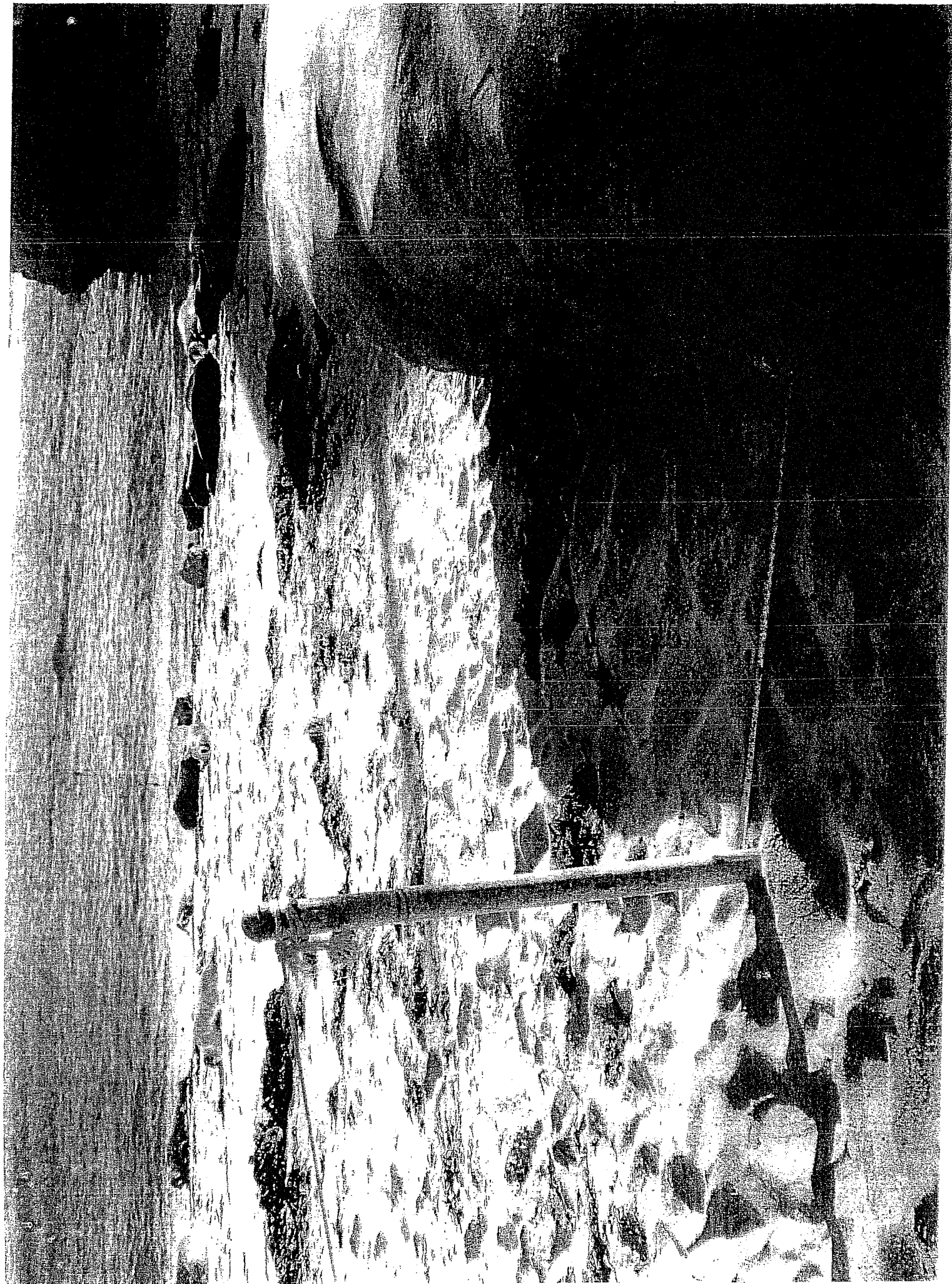
PLEASE BE RESPECTFUL OF THE SEALS ON THE BEACH.
HARASSMENT OF MARINE MAMMALS IS AGAINST THE
LAW. FOLLOW THE MARINE MAMMAL PROTECTION
GUIDELINES AS POSTED.

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

08-18-2008

11:10

[illegible]



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

Table of Contents

CHRONOLOGY OF THE MEETING

ATTENDANCE DURING THE MEETING

ROLL CALL

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PLEDGE OF ALLEGIANCE

COUNCIL COMMENT

CLOSED SESSION ITEMS

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

REPORT OUT OF CLOSED SESSION

NON-DOCKET ITEMS

ADJOURNMENT

DCAs Assigned: J. Cordileone, and J. Dawson

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

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:25 PM

Council President Hueso closed the hearing.

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

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

TODAY'S ACTION IS:

Adopt the following resolution:

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

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

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

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

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

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

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

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

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

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

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

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

Amendment to the motion by Councilmember Lightner, to include:

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

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

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

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

SUPPORTING INFORMATION:

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

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

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

In April 2006, and December 2006, the City Council resolved that a rope barrier be placed at the Children's Pool during pupping season. A rope barrier was installed, authorized by an emergency Coastal Development Permit (CDP). In each subsequent year, the rope barrier was installed for at least a portion of pupping season, as authorized by an emergency CDP.

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

On December 2, 2009, the City Hearing Officer approved a CDP for annual placement of the rope barrier during pupping season, December 15 to May 15. This permit was appealed to the Planning Commission and California Coastal Commission; the appeal was denied by both bodies.

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

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

On April 5, 2010, the Natural Resources and Culture Committee held a special hearing to consider various management options or combination of management options regarding the Children's pool during pupping season, December 15 to May 15, and non-pupping season, May 16 to December 14. The Committee took several actions at this hearing.

FISCAL CONSIDERATIONS:

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

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

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

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

4. Seek private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool. Authorize the Park and Recreation Department or Lifeguard Services to create a Volunteer Docent Program led by this Park Ranger or Lifeguard;
5. Request the Mayor's office to return to this Committee in May of this year with information regarding a ranger or lifeguard and docent program and cost analysis, timeline for the permits, signage issues, merchandise tables, and any other issues the Committee members might have.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

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

Kempczenski

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

FILE LOCATION: MEET

COUNCIL ACTION: Start Time: 6:16 PM

MOTION BY DONNA FRYE TO ADOPT THE RESOLUTION AS AMENDED TO: 1) DETERMINE THAT A COASTAL EMERGENCY EXISTS REQUIRING THE IMMEDIATE YEAR-ROUND PLACEMENT OF THE ROPE BARRIER; AND DIRECT THE MAYOR OR HIS DESIGNEE FROM THE APPROPRIATE CITY DEPARTMENT TO APPLY FOR AN EMERGENCY COASTAL DEVELOPMENT PERMIT WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THIS RESOLUTION TO MAINTAIN THE ROPE BARRIER AT CHILDREN'S POOL YEAR-ROUND TO PROTECT THE PUBLIC HEALTH AND SAFETY AND TO MITIGATE THE LOSS OF OR DAMAGE TO LIFE, HEALTH, AND ESSENTIAL PUBLIC SERVICES BASED ON THE FINDINGS CONTAINED HEREIN AND ANY OTHER INFORMATION OR ACTIONS REQUIRED TO PROCESS AND OBTAIN AN EMERGENCY COASTAL DEVELOPMENT PERMIT. A CITY COUNCIL REPORT DATED MAY 17, 2010, FROM THE NATURAL RESOURCES AND CULTURE COMMITTEE CHAIR, ON THIS ITEM WAS PROVIDED TO ASSIST IN MAKING THE DETERMINATION FOR THE COASTAL EMERGENCY AND EMERGENCY COASTAL DEVELOPMENT PERMIT. IT IS RECOMMENDED THAT IT BE INCORPORATED AS PART OF THE COASTAL EMERGENCY DETERMINATION; 2) DIRECT THE MAYOR OR HIS DESIGNEE, AS A REQUIRED CONDITION OF THE EMERGENCY COASTAL DEVELOPMENT PERMIT, TO AMEND COASTAL DEVELOPMENT PERMIT NUMBER 701673 AND SITE DEVELOPMENT PERMIT NUMBER 701765 TO KEEP THE ROPE BARRIER UP YEAR-ROUND AT THE CHILDREN'S POOL AND TO TIMELY SUBMIT THE PERMIT APPLICATIONS; 3) DIRECT THE CITY ATTORNEY'S OFFICE TO DRAFT AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 63.0102 TO PROHIBIT ANY PERSON TO BE ON THE BEACH DURING PUPPING SEASON, DECEMBER 15 TO MAY 15, AND TO COME BACK TO THE NATURAL RESOURCES AND CULTURE COMMITTEE AS AN INFORMATIONAL ITEM, NO LATER THAN JUNE 30, 2010; 4) DETERMINE IF THE PROPOSED YEAR-ROUND ROPE BARRIER PLACEMENT AT CHILDREN'S POOL AND MUNICIPAL CODE AMENDMENTS SECTION 63.0102 ARE CONSISTENT WITH THE LOCAL COASTAL PROGRAM AND CALIFORNIA COASTAL

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

Passed by the following vote:

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

Nay: Sherri Lightner, Tony Young;

Recused: (None);

Not Present: (None).

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

A RESOLUTION WAS ADOPTED TO REFLECT THE FOLLOWING MOTION:

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

Passed by the following vote:

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

Nay: (None);

Recused: (None);

Not Present: (None).

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

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

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:26 PM

CITY COUNCIL MEETING RESULTS

DATE: MONDAY, MAY 17, 2010

RECORDER: SANCHEZ

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

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

*COMMENTS

Council Comment:

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

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

Non-Docket:

None.

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

20
5/17**CLERK'S FILE COPY**RESOLUTION 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.

(R-2010-794)
REV. COPY

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 15th through May 15th.

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:mmm
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

Bryan W. Pease (239139)
 1901 First Ave., Suite 219
 San Diego, CA 92101
 Phone: (619) 723-0369
 Fax: (619) 923-1001

FILED

Clerk of the Superior Court

AUG 18 2011

By: AMY SHILLINGBURG, Deputy

Attorneys for Petitioners

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

<p>ANIMAL PROTECTION AND RESCUE LEAGUE, a California not-for-profit organization; Marcia Patt, an individual; Tina Menier, an individual; Jeanne Thoennes, an individual; James Hudnall, an individual; Dorota Valli, an individual; Ellen Shively, an individual; Robb Mead, an individual; Deborah Saracini, an individual;</p> <p style="text-align: center;">Petitioners/Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CITY OF SAN DIEGO and THE PLANNING COMMISSION OF THE CITY OF SAN DIEGO,</p> <p style="text-align: center;">Respondents/Defendant.</p>	<p>) Case No. 37-2011-00085228-CU-MC-CTL</p> <p>) PROPOSED FINAL JUDGMENT</p> <p>) GRANTING PEREMPTORY WRIT OF</p> <p>) MANDATE</p> <p>) I/C Judge: Hon. Lisa Foster</p> <p>) Dept.: 60</p> <p>) Complaint filed: February 4, 2011</p>
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Petitioners/Plaintiffs Animal Protection and Rescue League, Marcia Patt, Tina Menier, Jeanne Thocnes, James Hudnall, Dorota Valli, Ellen Shively, Robb Mead, and Deborah Saracini brought a petition for a writ of mandate and a complaint for a permanent injunction and declaratory relief. Petitioner Dorota Valli verified the petition. This Court conducted a final hearing on the petition on July 15, 2011. Based on a review of the entire administrative record, *verified by petitioner Valli*, this Court GRANTS the petition for a writ of mandate because the Planning Commission failed to support its findings with substantial evidence. The Court is also concerned that the public

1 notice may have affected the presentation of evidence at the December 9, 2010 hearing because
2 it suggested the Coastal Commission would review the Planning Commission's final decision on
3 a Coastal Development Permit.

4 Based on the evidence presented and arguments of counsel, the Court adjudicates these
5 claims as follows.

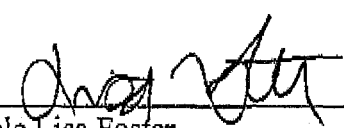
6 **FINAL JUDGMENT** is entered as follows:

7 1. A peremptory writ of mandate shall issue ordering the City to vacate and set aside
8 the Planning Commission's denial of the amendment to Coastal Development Permit Number
9 701673 and Site Development Permit Number 701765, and to reconsider the amendment in light
10 of the Court's Opinion.

11 2. The Planning Commission shall reconsider the permit application within a
12 reasonable period of time and pursuant to the stipulation of the parties that was put on record at
13 the *ex parte* hearing of August 4, 2011.

14 3. The Court shall maintain jurisdiction to ensure compliance with this Court's writ
15 within a reasonable amount of time, and to hear Petitioners' motion for fees and costs.

16
17 August 18, 2011

18 
19 Honorable Lisa Foster
20 Superior Court Judge
21
22
23
24
25
26
27
28

Bryan W. Pease (239139)
1901 First Ave., Suite 219
San Diego, CA 92101
Phone: (619) 723-0369
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RECEIVED
CLERK'S OFFICE
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SAN DIEGO, CALIF.

FILED
Clerk of the Superior Court
OCT 17 2011

Attorneys for Petitioners

By: AMY SHILLINGBURG, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

ANIMAL PROTECTION AND RESCUE
LEAGUE, a California not-for-profit
organization; Marcia Patt, an individual; Tina
Menier, an individual; Jeanne Thoennes, an
individual; James Hudnall, an individual; Dorota
Valli, an individual; Ellen Shively, an
individual; Robb Mead, an individual; Deborah
Saracini, an individual;

Petitioners/Plaintiffs,

v.

CITY OF SAN DIEGO and THE PLANNING
COMMISSION OF THE CITY OF SAN
DIEGO,

Respondents/Defendant.

Case No. 37-2011-00085228-CU-MC-CTL

PEREMPTORY WRIT OF MANDATE

I/C Judge: Hon. Lisa Foster
Dept.: 60

Action filed: February 4, 2011

**TO RESPONDENTS CITY OF SAN DIEGO AND THE PLANNING COMMISSION OF
THE CITY OF SAN DIEGO:**

Judgment having been entered in this proceeding ordering that a peremptory writ
of mandate be issued from this Court:

YOU ARE ORDERED, immediately on service of this writ, to:

1 1. Vacate and set aside the Planning Commission's denial of the amendment to
2 Coastal Development Permit Number 701673 and Site Development Permit Number 701765,
3 and to reconsider the amendment in light of the Court's Opinion.

4 2. Hold a new hearing on the permit amendment application within a reasonable
5 period of time and pursuant to the stipulation of the parties that was put on record at the *ex parte*
6 hearing of August 4, 2011.

7 The Court shall maintain jurisdiction to ensure compliance with this Court's writ within a
8 reasonable amount of time, and to hear Petitioners' motion for fees and costs. Upon
9 determination by this Court that the actions taken by Respondents comply in all respects with the
10 terms of this Peremptory Writ of Mandate, the Court shall discharge the Writ.

11
12 **LET THE FOREGOING WRIT ISSUE.**

13
14
15 Date:

OCT 17 2011

Amy Shillingburg

Clerk of the Superior Court
San Diego County, Central Division

CALIFORNIA COASTAL COMMISSION

7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108
VOICE (619) 767-2370
FAX (619) 767-2384



W10d

Click here to see correspondence
regarding this project.

Filed: 12/15/11
180th Day: 6/12/12
Staff: K. Brown-SD
Staff Report: 6/21/12
Hearing Date: 7/11/12

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-11-078

Applicant: City of San Diego Park and Recreation
Department

Agent: Stacey LoMedico

Location: Children's Pool Beach, west of Coast Boulevard, southwest
of Jenner Street, La Jolla, San Diego, San Diego County.

Project Description: 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.

Staff Recommendation: Approval with conditions.

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

Exhibit 1 – Location Map
Exhibit 2 – Site Plan
Exhibit 3 – Jurisdiction Memo and Map
Exhibit 4 – Proposed Signage
Exhibit 5 – City Submitted Photos
Exhibit 6 – Site Visit Photos
Exhibit 7 – City Resolution
Exhibit 8 – Historic Maps
Exhibit 9 – Staff Ecologist Memorandum
Exhibit 10 – Opposition Letters
Exhibit 11 – Support Letters

Click on the link at left to go
to exhibits 10 and 11.

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 1996.¹ 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.² 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

¹ 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.

² 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.³ 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

³ 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.⁴ 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.^{5 6}

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.⁷ 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.⁸ 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

⁴ 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.

⁵ 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.

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

⁷ 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.

⁸ 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 use 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)

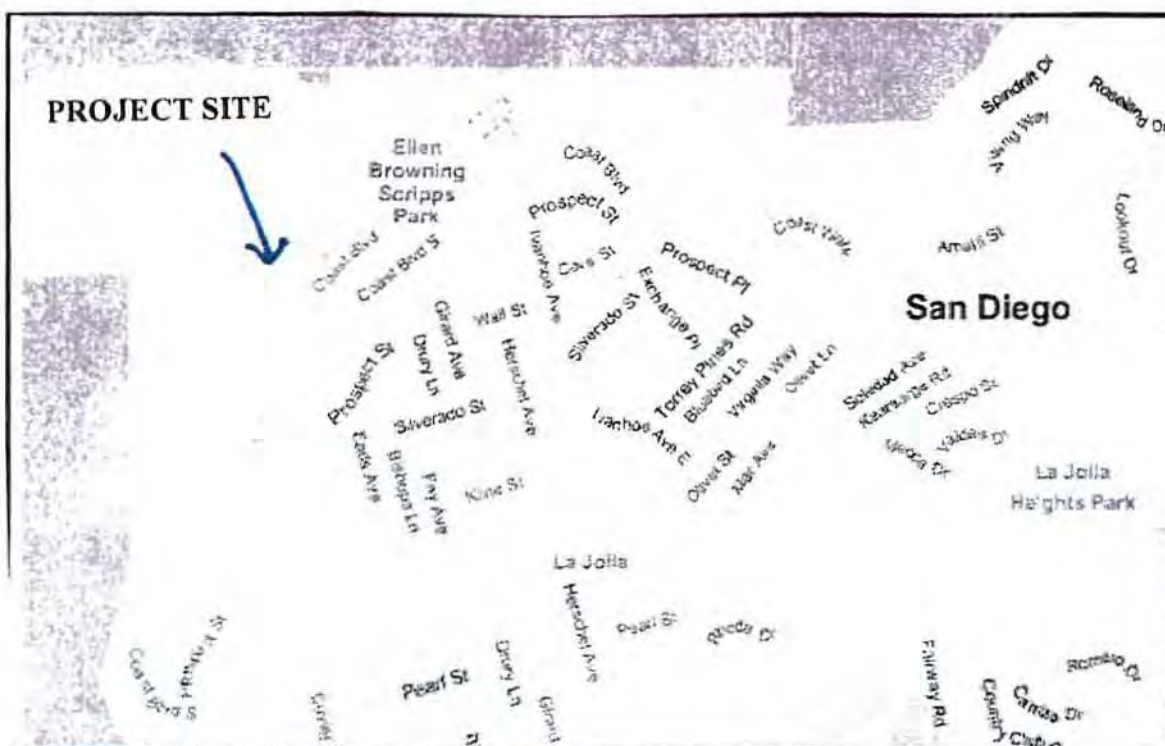
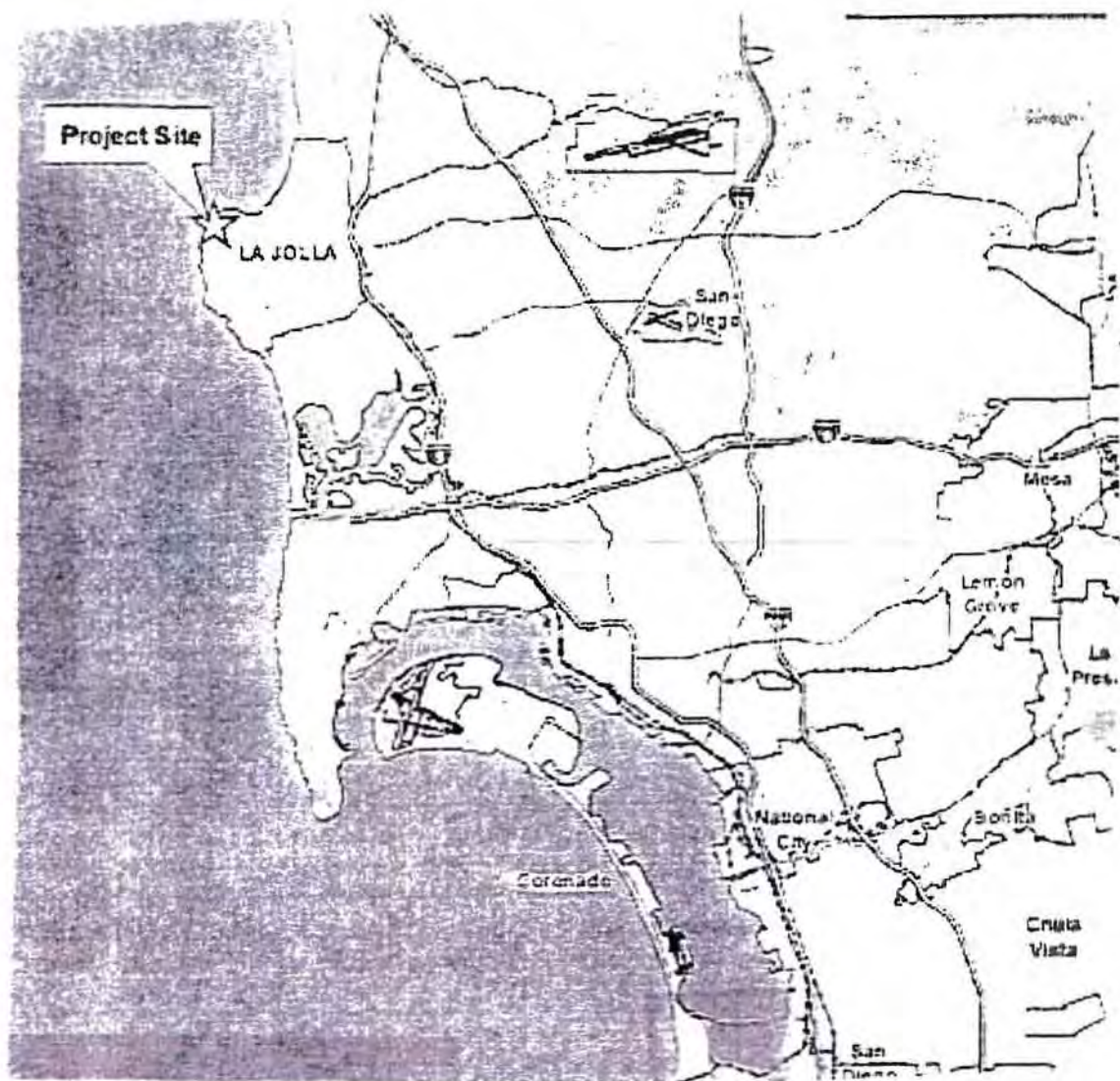


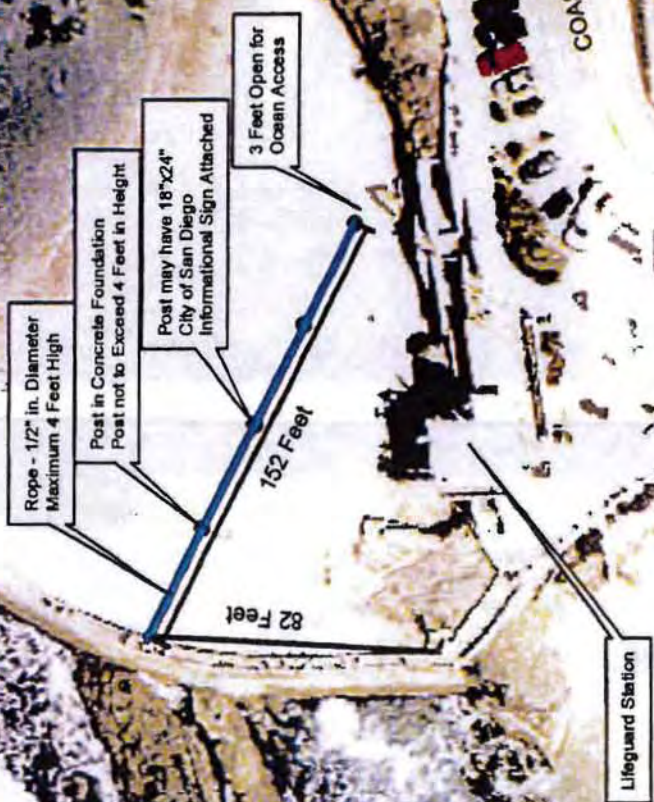
EXHIBIT NO. 1

APPLICATION NO.

6-11-078

Location Map

California Coastal Commission



Lifeguard Station

EXHIBIT NO. 2
APPLICATION NO. 6-11-078
Site Plan
California Coastal Commission

This map was prepared by the California Coastal Commission and is not to be used for any other purpose without the written consent of the Commission. The map is not a legal document and does not constitute an offer of insurance or any other financial product. The map is for informational purposes only.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2 219
VOICE (415) 904-5 200
FAX (415) 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.

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

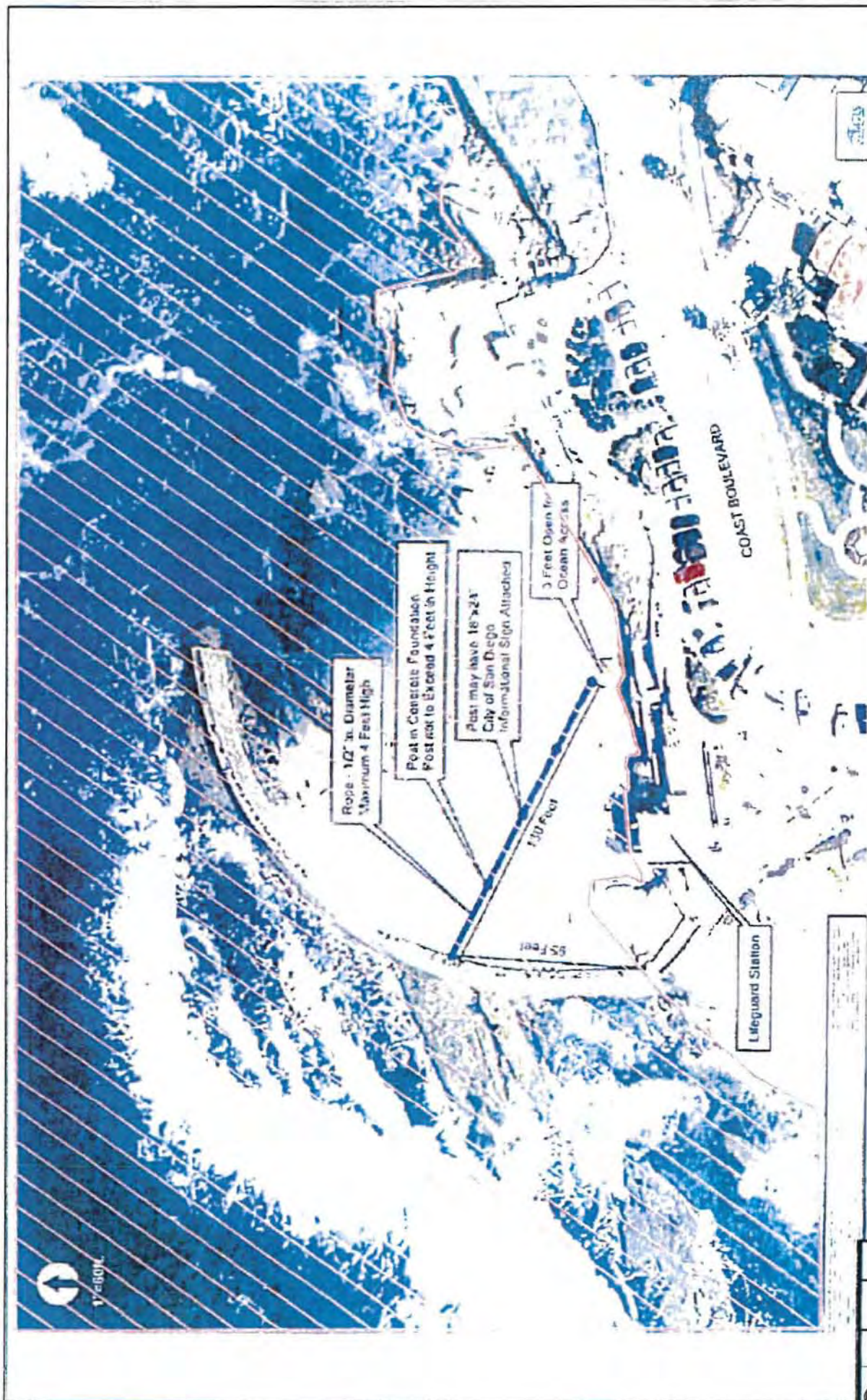


Exhibit 2

DAR 07/2011

Coastal Commission Permit Jurisdiction

For illustrative purposes only.

EXHIBIT NO. 3
APPLICATION NO
6-11-078

Jurisdiction Map

California Coastal Commission

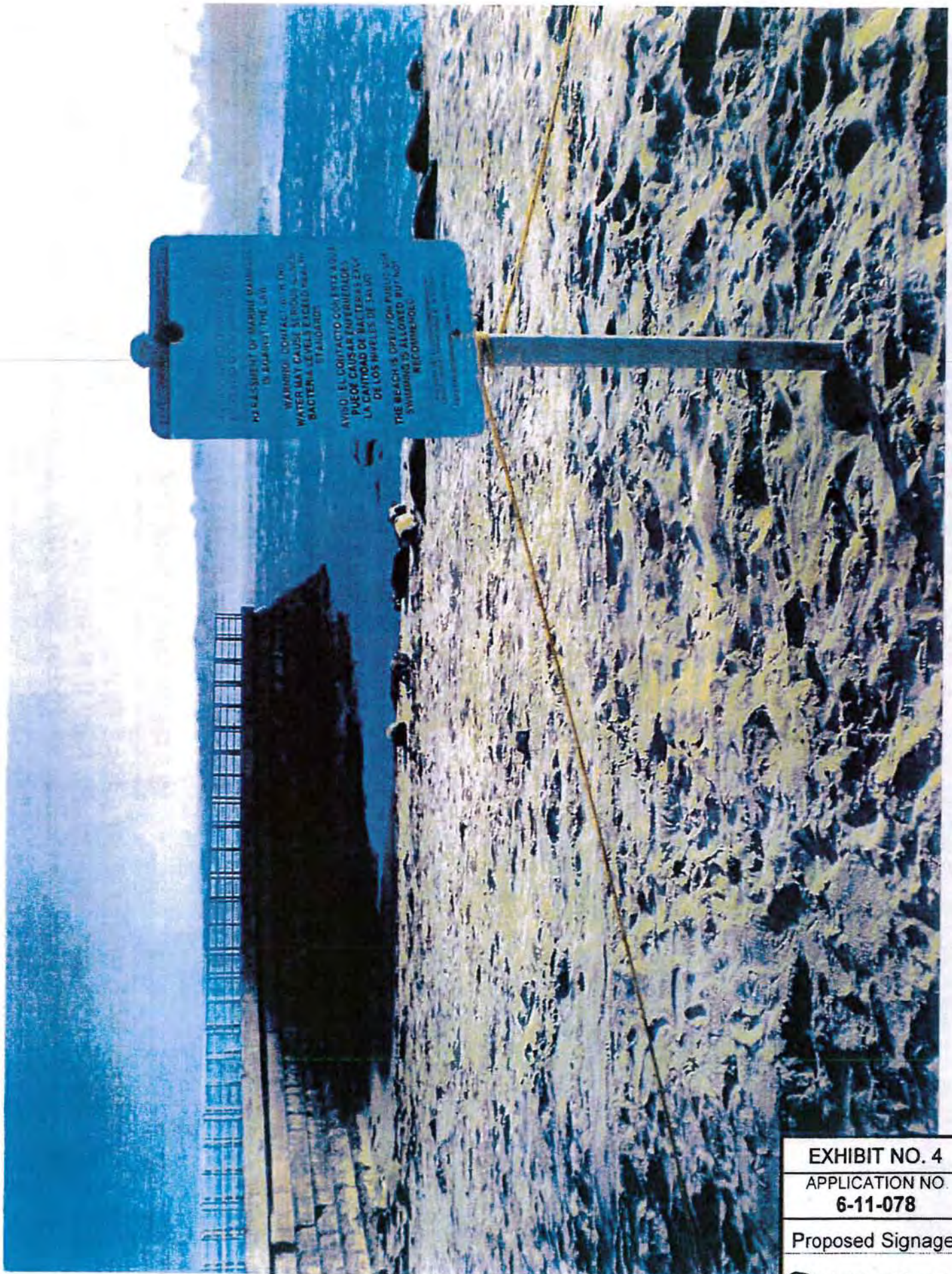


EXHIBIT NO. 4

APPLICATION NO.

6-11-078

Proposed Signage

California Coastal Commission



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

EXHIBIT NO. 5

APPLICATION NO.
6-11-078

City Photos

 California Coastal Commission




04.29.2012 10:37

EXHIBIT NO. 5

APPLICATION NO.

6-11-078

City Photos

 California Coastal Commission

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



EXHIBIT NO. 6
APPLICATION NO. 6-11-078
Site Visit Photos
 California Coastal Commission

BERK'S FILE COPY(R-2010-794)
REV. COPY

5/17

RESOLUTION 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 15th through May 15th.

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.

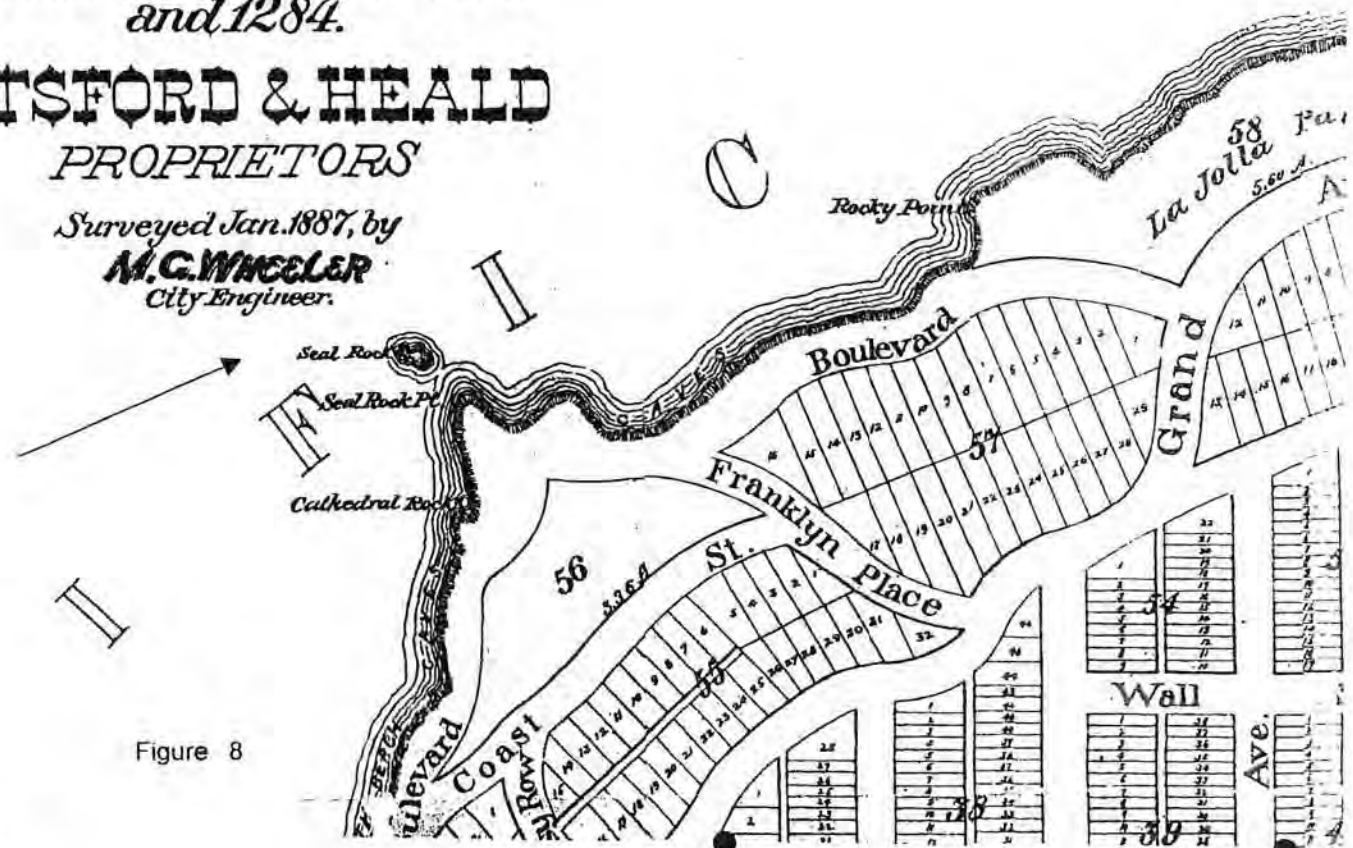
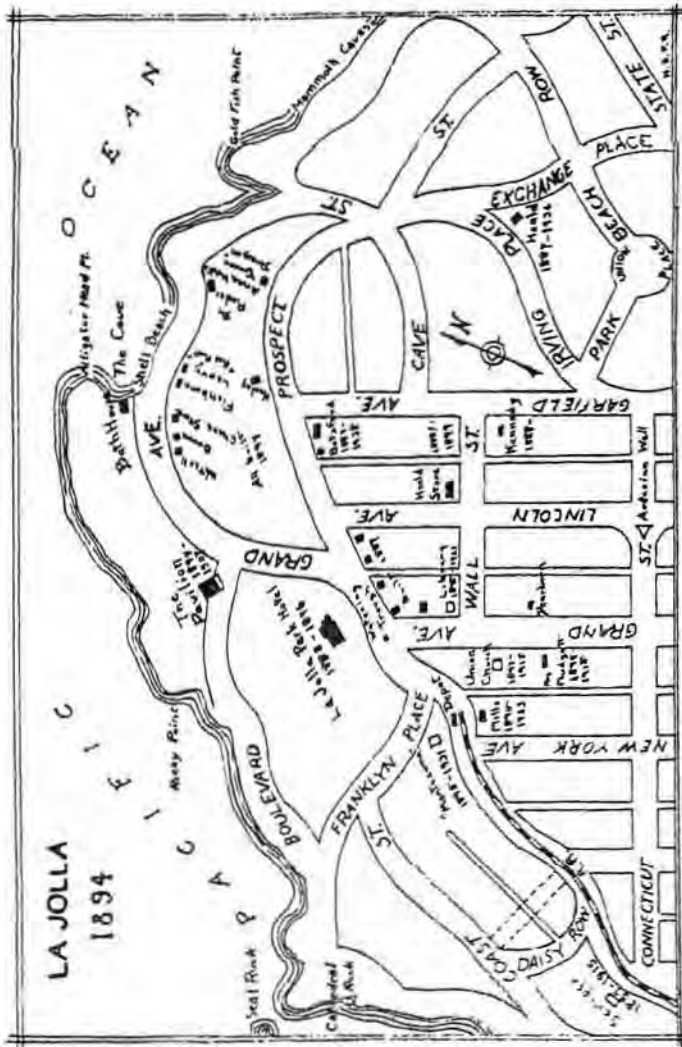


Figure 8



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 home of the interest would be slight—on the President, Miss Scripps, and the church parlor and spent the afternoon." But then new members would join and the club would carry on. It was now the Library—until it was moved out. Then it met at Miss Scripps' home on Herschel avenue.

The La Jolla Literary Club

In 1897 the name "The La Jolla Club," and in October 1898. On Feb. 19, 1899, evening, with sixty members, "History of San Diego" was the address of welcome. a sonnet, "La Jolla;" Mrs. Woodson on the Beach;" Ellen Mills read her prophecy. Ellen Scripps read her prophecy. two duets were sung. In 1901 the club was changed to one dollar. In 1902 the club was changed to one dollar. In 1902 the club was changed to one dollar.

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 fall. Then La Jolla's good fairy came. a modern club house, from plans laid on December 2, 1913, on that occasion.

On Oct. 3, 1914, the club was reconstituted (drafted by Mr. Jacob C. Miller). The first meeting was held in the new club house at that time.

189	EXHIBIT NO. 8	(
189	APPLICATION NO.	get
190	6-11-078	hir
190	Historic Maps	are
190	California Coastal Commission	

Figure 9.

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

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.

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 19th and early 20th 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 following link:

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

EXHIBIT NO. 11
APPLICATION NO. 6-11-078
<i>Letters of Support</i>
 California Coastal Commission