Addendum

August 13, 2014

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to Item Th13a, Coastal Commission Permit Application #6-14-0691 (Children’s Pool), for the Commission Meeting of August 14, 2014

Staff recommends the following changes be made to the above-referenced staff report. Language to be added is underlined and language to be deleted is struck-out.

1. All references to the applicant shall be corrected from “Parks and Recreation” to “Park and Recreation.”

2. On Page 3 of the staff report, in the first paragraph, the fifth sentence shall be revised as follows:

   In the other seven non-pupping season months of the year, there would be no public access restrictions and no regulations against public use of the sandy beach or the water would be restored along with the existing guidelines including continuation of the year-round rope barrier with an opening providing access to the water.

3. On Page 10 of the staff report, in the first paragraph, the last sentence shall be revised as follows:

   The beach area would have unrestricted restored public access along with the existing guidelines including continuation of the year-round rope barrier with an opening providing access to the water from May 16 to December 14 of each year, during which time the “Beach Closed” signs would be stored off-site.

4. On Page 17 of the staff report, at the end of the last complete paragraph, the following sentence shall be inserted:

   The City currently has Incidental Take Authorization (IHA) from NMFS to take small numbers of marine mammals incidental to construction activities at the Children’s Pool Lifeguard Station from June 28, 2014 through June 27, 2015.
NFMS found that the construction activities would have negligible impacts on marine mammals and their habitat in this area, and conditioned the IHA to prohibit construction activities during the harbor seal pupping season.

5. On Page 19 of the staff report, before the first complete paragraph, the following paragraph shall be inserted:

Nonetheless, the seals at the haul out site at Children’s Beach are especially fragile coastal resources. The seals at the haul out site are considered a fragile coastal resource because the seals are more vulnerable to harassment by the public at this site than other haul out sites along the coast. This higher vulnerability is present because there is a very high potential that great numbers of people from the densely populated San Diego Metropolitan Area and beyond will visit the popular downtown La Jolla area and Children’s Pool, and attempt to interact with the seals which leads to frequent harassment and flushing of the seals into the water. As proof, staff noted earlier in the report that several people and the Seal Cam have witnessed several incidents of harassment, leading to frequent flushing which significantly affects the behavior patterns of the seals. Therefore, the seals at the haul out site are considered a fragile coastal resource because they are highly vulnerable to frequent flushing which significantly affects their well-being.

6. On Page 23 of the staff report, after the first paragraph, the following paragraph shall be inserted:

Opponents of the proposed seasonal beach closure have suggested that protecting the seals at Children’s Pool from on-going harassment could result in an increase in the seal population, resulting in a further deterioration of water quality and putting fish populations at risk. However, the total number of seals that can haul out at Children’s Pool is limited by the size of the cove. As noted above, recent counts of seals present at Children’s Pool Beach have been observed to reach well over 200 seals in one day. The City’s Negative Declaration for the project noted that the sub-regional harbor seal population is approximated at 600 seals, from which a maximum of about 250 seals will haul out at Children’s Pool Beach at one time due to the spatial limitations of the beach. Thus, the current amount of seals that haul out at Children’s Pool at a time appears to already be at or close to the carrying capacity of the habitat. Therefore, the proposed project is not expected to substantially affect either the regional seal or fish populations, or the current water quality conditions.

7. On Page 27 of the staff report, the first complete paragraph shall be revised as follows:

As cited above, the Coastal Act has numerous policies supporting, encouraging, and requiring the protection of public access. Preserving public access to the shoreline and public recreational facilities is one of the primary goals of the Coastal Act. However, as described above, there are occasionally circumstances where the Coastal Act mandate to protect marine resources requires limiting public access, such as the provisions in Sections 30212 and 30214, which allow the
Commission to restrict access in a particular time, place and manner if to do so would protect fragile coastal resources. As noted above in the Marine Resources section, the seals at the haul out site are considered a fragile coastal resource because they are highly vulnerable to frequent flushing which significantly affects their well-being, particularly during pupping season. In such cases, When the Commission restricts access to protect fragile coastal resources, it requires that alternatives be considered, and that any restrictions on access be the minimum necessary to achieve the goal of protecting fragile coastal resources.

8. On Page 28 of the staff report, in the third paragraph, the first sentence shall be revised as follows:

In the other seven non-pupping season months of the year, there would be no public access restrictions and no regulations against public use of the sandy beach or the water would be restored along with the existing guidelines including continuation of the year-round rope barrier with an opening providing access to the water.

9. On Page 29 of the staff report, the first complete paragraph shall be revised as follows:

There have been assertions by members of the public that the proposed project would severely affect the ability of disabled people to access the shoreline. The La Jolla Community Plan identifies three locations in La Jolla with beach access ramps: Children’s Pool, Boomer Beach, and just north of Scripps Pier. However, currently the facilities at all three of these locations are not designed to provide ADA access to the beach or water. However, there are many San Diego beaches that not only have Health Department approved water quality but also are easily accessible to beach-goers with disabilities. While Children’s Pool Beach does have an “access ramp,” it is a gated, unimproved emergency vehicle access ramp that was not constructed for ADA compliance and is only allowed for use by emergency personnel. The La Jolla certified LUP indicates two other concrete ramps designated for shoreline access aside from the ramp at Children’s Pool just north of Scripps Pier with beach access at the end of Discovery Way, and at Ellen Scripps Park with access to Boomer Beach. These beach access ramps are located approximately less than two miles and less than a half-mile north of Children’s Pool Beach, respectively. The ramp is gated to prevent unauthorized vehicular access, although the wide bar design of the gate does not strictly prevent pedestrian access. The City has asserted that their research into the history of the ramp has not uncovered any evidence that this ramp was used for any purpose other than emergency vehicle access. The history of the gate across the ramp is unknown, and it is not clear whether the gate was part of the original ramp construction or installed at a later date. However, while the existing ramp is not currently ADA accessible, nothing in the proposed project would prevent the City from exploring the potential to create an ADA accessible ramp leading to Children’s Pool, either at the existing ramp or another location. Any access improvements approved by the Commission in the future would presumably be
subject to the same seasonal restrictions (if any) as those applicable elsewhere at Children’s Pool.

Although there are currently no ADA accessible facilities at Children’s Pool, there are many San Diego beaches that not only have Health Department-approved water quality but also are easily accessible to beach-goers with disabilities. There are ADA beach access ramps located at Pacific Beach, south of the main lifeguard tower; Mission Beach, in front of the main lifeguard tower; South Mission Beach, south of the main lifeguard tower; Ocean Beach, in front of the main lifeguard tower; Crown Point, south of the southern comfort station; Bonita Cove, near the southwest parking lot; and at Mission Point Park, at the western end of the park. La Jolla Shores, approximately two miles north of Children’s Pool Beach, provides one free power beach wheelchair for disabled visitors and is a flat, accessible beach. Beach wheelchairs can also be found, free of charge, at Ocean Beach, Mission Beach, Pacific Beach, Coronado Beach, and Imperial Beach. The facilities at Crown Point, Bonita Cove, and Mission Point Park allow people to access the calmer waters of Mission Bay. The public will be able to utilize these many clean, accessible beaches during the five months that access would be restricted at Children’s Pool. In addition, in conjunction with the reconstruction of the existing lifeguard station at Children’s Pool, the City will be renovating the access ramp that leads to the breakwater viewing area to ADA standards. As noted, the proposed project will not close access to the breakwater, or affect this new ADA accessible ramp. The proposed project will not have any impact on public access from any existing ADA accessible facilities.

10. On Page 30 of the staff report, the first sentence of the first complete paragraph shall be revised as follows:

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.
DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:
Application by the City of San Diego to amend their Local Coastal Program to allow for partial closure of Children’s Pool in La Jolla during seal pupping season.

Date and time of receipt of communication:
July 22, 2014 at 2:00pm

Location of communication:
San Diego

Type of communication:
In person meeting

Person(s) in attendance at time of communication:
Cheri Jacobs Aspenleiter, Wes Johnson

Person(s) receiving communication:
Greg Cox and Greg Murphy

Detailed substantive description of the content of communication:
(Attach a copy of the complete text of any written material received.)

I spoke with two local residents, Cheri Jacobs Aspenleiter and Wes Johnson as representatives of the disabled community in opposition to proposed beach closure at Children’s Pool. The two presented a number of historical photos and research regarding the Children's Pool. They also presented letters among city staff that indicate a capital project for a disabled access ramp at the pool was once considered. Cheri has had a couple of accidents that resulted in her handicaps and she believes that the snorkeling therapy at the children’s pool has saved her from being in a wheelchair. Through her research, she has met other disabled and veterans who also use the pool for therapeutic benefit.

From their research they cite that Ellen Browning Scripps developed this pool for children and handicapped individuals for safe public access to the ocean. One of their concerns is that closing the beach during the winter creates a dangerous situation by forcing people to enter the ocean from different locations that have dangerous riptides. Another concern is related to access for lobster fishing, and Cheri said she was aware of 19 Native American tribes that should have access to diving and fishing year-round in this area. Instead of closing the pool for periods of time, Cheri presented an alternative solution to open up the sluiceways to refresh the water and keep it clean of the fecal matter from the seals. Cheri and Wes advocate for year-round public access to the pool.

Date: 7/25/14

Signature of Commissioner: [Signature]

RECEIVED
JUL 28 2014
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
August 11, 2014

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Dear Coastal Commissioners:

The Seal Conservancy of San Diego encourages the California Coastal Commission to vote in favor of Harbor Seal Pupping Season Closure of Casa Beach in La Jolla annually from December 15 through May 15. There are many compelling reasons to support pupping season closure including:

1. Casa Beach is used by harbor seals in winter for birthing, nursing, and raising their pups while use by humans is reduced due to colder weather conditions
2. Human harassment during pupping season has been shown to cause premature births, abandoned pups, increased pup mortality, and mother and pup malnutrition
3. Many California mainland coast beaches are closed to the public to protect harbor seals during pupping season

We encourage the Coastal Commission to join the Mayor of San Diego, the San Diego City Council, the San Diego Planning Commission and thousands of individuals and numerous organizations in supporting Harbor Seal Pupping Season Closure of Casa Beach in La Jolla annually from December 15 through May 15.

Sincerely,

Ellen M. Shively  
President

Carol Archibald, Ph.D.  
Vice President

Jahe Reldan, M.D.  
Treasurer

Armando Flores  
Secretary

Deborah Saracini, M.A.  
Docent Coordinator

Adrian Kwiatkowski  
Executive Director
August 11, 2014

RE: File 6-14-0691
Attn: Brittney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Ms. Laver:

Enclosed you will find a flash drive containing two presentations that are already part of the public record that our organization has been utilizing during meetings with Coastal Commissioners.

1. Seal Conservancy of San Diego presentation to San Diego City Council on February 24, 2014
2. Dr. Jane Reldan presentation to San Diego City Council on February 24, 2014

If you have any questions about the presentations or any ex parte communications, please feel free to contact me directly at (619) 704-0180.

Sincerely,

Adrian Kwiatkowski
Executive Director
August 5, 2014

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

RE: LCP-6-LJS-14-0607-1/ 6-14-0691

Dear Chairman Kinsey and Members of the Commission:

I strongly urge you to approve the staff recommendation to grant the amendments to the subject Land Use plan in order to secure and protect the public’s enjoyment of this particular Harbor Seal habitat. The proposed amendment successfully addresses the need to balance public access and protection of fragile coastal resources (CA Section 30212.a)

I lived in La Jolla for nearly 60 years, and was the senior lifeguard stationed at the Children’s Pool in the early 1960s. During all of those years I observed, first hand, the Harbor Seals use of the beach, rocks and sometimes the Sea Wall to haul out and rest. I also observed the public’s access and use to the shoreline and ocean. The increase in urban population and corresponding redevelopment to accommodate the intensification of use of the beaches over that time has lead for competition for use of the beaches which are a limited resource. It is clear, and there is no doubt, that the public’s use and enjoyment of the Children’s Pool has increased exponentially due to the wonderful natural event of the Harbor Seal Habitat and Rockery, compared to that of sunbathing, swimming and skin diving at this small beach. Similar to the small beach at Hopkins Marine Lab here in Pacific Grove where the seals are protect year round, visitors from all over the world seek out this beach to observe the seals natural behavior in a natural setting … all for free, not in a zoo or aquarium, but part of the Pacific Ocean.

As a long standing proponent for public access to and along the shoreline, I must strongly disagree with those who consider the asphalt ramp as a safe beach access. To the contrary, it is far took steep, as well as, normally covered with sandy deposits that act like bali bearings, to be safe even for sure footed persons. As the head guard in the early 60s, we had to caution folks to be careful using the steep ramp and/or provide first aid for those who slipped, especially the children!

There is ample pocket beaches nearby that provide for comparable access for sunbathing, swimming and diving. There are miles of other beaches north and south of this relatively tiny beach for all sorts of public use and enjoyment. It is only at the Children’s Pool the general public can witness the wonder of seals including giving birth to a new generation.

Sincerely,

Anthony A. Ciani, Architect
August 4, 2014

California Coastal Commission
San Diego District Office
Brittney Laver, Coastal Program Analyst
7575 Metropolitan Drive Suite 103
San Diego, CA 92108

RE: Children's Pool Closure for the Harbor Seals Pupping Season 2015
LCP-6LJS-14-0607-1 / 6-14-0691

To Whom It May Concern:

I am requesting that Children's Pool Beach be closed to public access only during Harbor seal pupping season, December 15 to May 15, of each year.

I would like the California Coastal Commission to know that I am a disabled person and do not see the need for disabled access for Children's Pool. There are many other beaches, which have disabled access and even provide beach wheelchairs. Additionally, during the pupping season, I have seen crowds of people come specifically to view a live harbor seal birth and they are delighted at the baby seals. We have visitors from all over the world that express disappointment and anger that the seal pups are not protected. I visit Children's Pool about 4-5 times a week and support the closure of Children's Pool during the pupping season.

This closure of the beach during the pupping season to public access is necessary because Shared Use doesn't work. These photos are from the pupping season this year.

Once visitors cross the rope the seals are frighten off the beach. Mothers will leave their newborn pups in fear. Frequently a pup is abandoned by the mother and since it is not weaned, it will starve to death.

Abandoned pup becoming thinner every day. The mother never returned.

These people crossed the rope and frightened the seals off the beach. Mothers cannot nurse their newborn pups with human interference. All it takes is one person to cross the rope and the seals are frightened and flush.
Even one small child entering the water can flush every seal off the beach.

During winter high tides the seals will come right up to the edge of the rope and even cross over it. This is a pup left by itself while the mother goes off to fish. I witnessed people touching this pup.

Here's another incidence when the seals crossed the rope and a person is touching a wild animal to get a photo. One evening I witness women in their early 20s lying on their backs next to a seal and pretending they were a seal to get a photo. The seal became stressed and tried to bite the young woman who then backed away and laughed and laughed. These people do not step away even after being told the seals are wild animals and will bite. The visitors ignore the lifeguards telling them the same thing. They act as if it is a petting zoo. I believe that we have an obligation to educate people about wild life and to protect it at the same time.
This photo clearly taken on another day shows how many seals crossed the rope due to high tide. Note the young person getting ready to lie down next to the seal and reaching out to touch it.

Here's yet another photo taken on a different day with a mother and pup on the other side of the rope. I personally spent several hours trying to keep the crowd back from the seals. There are always people who will curse at me and tell me I have no right to keep them from getting close to the seals or touching the seals. Referring people to the sign is not helpful because the sign states the viewing distance is 50 feet. When the seals cross the rope, they have zero protection even from people who will stay behind the rope. The rope becomes useless. The pups are stressed and so are the mothers.

Seals behind the rope after dark can be stepped on by visitors. There is no restriction of people going down to the beach in the dark. If visitors frighten the seals and they flush, a pup will be left behind for people to harass it intentionally or step on it.
People seem to have no fear about walking very close next to a wild harbor seal. Requesting people to not go down to the beach when the harbor seals have crossed the rope does not work, because they will not listen. Even if the lifeguards try to tell people what they are doing is dangerous, the people will not listen. Calling the San Diego Police Department doesn’t help either because as long as people have the right to public access, there is nothing that can be done to protect the seals. The only answer is to close the beach during pupping season.

I have photo after photo after photo of people touching and even kicking the seals. During the pupping season this is especially harmful to the pregnant and nursing seal mothers and their vulnerable pups that need to nurse.

This very pregnant seal is using her flipper to try to tell this young man to move away from her. This Pro-Public Access young man frequents the beach on a regular basis and loves to “perform” for the tourists who take his photo. He refuses to understand that this causes the pregnant seal stress and that she can miscarry her baby. Some of the worst offenders against the seals during the pupping season are still the Pro-Public Access group.
This woman sat as close as she could get to the seal. When I try to explain to people that this causes the seals stress and frightens them, I am told “I’m not doing anything to the seals” and they refuse to move away. As you can see, these seals are across the rope.

Harbor seals are mammals just like us. This year I saw 2 pups that died. The harbor seal mothers did not abandon their deceased pups, but stayed with them to grieve. One mother stayed with her pup for days and days and days. It is heartbreaking to see this. We need to close the beach only during the pupping season so these pregnant mothers can carry their pregnancy to term, give birth to a healthy pup and nurse the pup in peace until it is weaned.

This is a harbor seal pup that has just been born. These pups deserve and need protection.

The City of San Diego has approved this closure. I request that the California Coastal Commission take this action, too.

Sincerely,

Nancy Lee

Nancy Lee
RE: File 6-14-0691
Attn: Britney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

August 3, 2014

Dear Commissioners:

I am writing to express my support for closing Casa Beach in La Jolla during the critical months of harbor seal pupping season from December 15 through May 15. This is a balanced compromise that protects seals during the 5 critical months of pupping season (and months of diminished human use due to the colder weather) and also allows people access to the beach for the other 7 months of the year.

As a professor of Geography at San Diego State University, I study human-environment interactions. The conflict between human use and seal use at Casa Beach certainly presents a challenge. In spite of guide ropes and notifications regarding the requirements of the Marine Mammal Protection Act (MMPA), people continue to disturb seals during their pupping season. This constitutes harassment under the MMPA, as the presence of humans on the beach causes behavior disruption, which, under the MMPA, includes disrupting “breathing, nursing, breeding, feeding, or sheltering.” Harassment at the beach can be intentional (as has been videotaped recently), or unintentional (in the case of people approaching seals to touch them or take photos, which flushes seals into the water and can separate nursing mothers from their pups).

Ideally, people would respect guide ropes, would be educated enough not to approach or harass seals (intentionally or unintentionally), and would comply with the regulations of the MMPA. But this has not happened after many years of conflict, and the city does not have adequate resources to enforce full time ranger presence to ensure that people behave responsibly. Given the history of conflict in the area, and the failure of a guide rope to stop people from harassing seals, beach closure is a necessary compromise. It allows people to maintain access for part of the year, but ensures that seals will not be harassed during their pupping season.

Ellen Browning Scripps created the Children’s Pool for the enjoyment of children. My own children, and others I have observed, love to see the seals at Casa Beach. This is a unique opportunity for them to safely observe a phenomenon of nature, seals with their pups, which they cannot see elsewhere. This experience is much more valuable to children than a few months of swimming access, during a season when they are less likely to swim in cold waters, and in an area which has many other excellent swimming beaches within walking distance.

Closing Casa Beach during the pupping season provides a compromise that allows continued use by both people and seals. Please support this decision.

Sincerely,

Dr. Arielle Levine
Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

Naomi Dar
PO Abox 7483
San Diego, CA 92167

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Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

George Liddle
4944 Cass St Unit 501
San Diego, CA 92109-2042

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Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

Steve Hunter
3536 1st Ave Apt 8
San Diego, CA 92103-4866

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Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

Kelly Nordstrom
3021 Dove St
San Diego, CA 92103-5544
RE: File 6-14-0691
Attn: Brittney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

August 5, 2014

Dear Commissioners:

I support closing Casa Beach in La Jolla.

My partner lives in La Jolla and so the two of us frequently walk down to Casa Beach to see the seals. We have been witness to some atrocious acts. We have seen people chase the seals, kick sand at them and in so many ways spoil the idyllic scene that the majority of us enjoy watching from the walkways at a distance. There are few places where people can still view animals in their natural habitat. My personal preference is that the beach be closed to humans and a rope kept up at all times. However, as a compromise, I will support the closing of Casa Beach during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

Some of the scenes that we have witnessed against a mother and it’s young have been heart wrenching and unconscionable. Beach closure will help prevent premature births, abandoned pups, pup mortality and mom and pup malnutrition. Please support the closing of Casa Beach, especially during such a critical and vulnerable period.

Sincerely,

[Signature]

Dr. Mary M. Yang
807 N. Rios Ave.
Solana Beach, CA 92075
August 8, 2014

Re: LCP-6-JJS-14-0607-1/6-14-0691

Dear Commissioners,

I grew up in La Jolla, and live in La Jolla, and enjoyed the Children’s Pool as a child.

Now, my family and I enjoy having this wonderful harbor seal rookery there, and the opportunity to observe them. We support the Harbor Seal Rookery, and support La Jolla and the Coastal Commission for setting this area aside for these wonderful creatures.

Thankyou,

Tane Lucic Paget
7839 Prospect Pl.
La Jolla, CA 92037
California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Dr., Suite 103  
San Diego, CA 92108-4402  
August 5, 2014

Re: LCP-6-LJS-14-0607-1/6-14-0691 Agenda 13 IN FAVOR

Dear Commissioners:

I am in favor of keeping the Harbor Seal Rookery at Children's Pool Beach in La Jolla.

Please support this valuable resource and keep the beach open for the seals during the rookery season.

I'm a native La Jollan, appreciating the experience and wonderment of the seals in a natural habitat at the Children's Pool. Visitors and locals are blessed to see the seals and enjoy wildlife in full bloom.

It would be a huge loss to take this experience away from the visitors and locals.

La Jolla is enhanced by this annual event of nature on our shoreline. I urge you to vote to retain the seal rookery at the Children's Pool.

Thank for your interest in preserving the precious natural resource.

Sincerely,

[Signature]

Gayle Tejada  
7328 Ray Avenue  
La Jolla, CA. 92037
Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

[Signature]
RE: File 6-14-0691
Attn: Brittney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

Heli Sajaniemi
Finland
RE: File 6-14-0691
Attn: Brittney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

[Signature]

Eric Rauscher
1958 Pacific Beach Drive, #2
San Diego, CA 92109
RE: File 6-14-0691
Attn: Brittney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

Tamara Cross
4020 Kendall Street
San Diego, CA 92109
RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

Craig Schreiber  
3170 Fourth Avenue, Suite 200  
San Diego, CA 92103
The first place we
take our visitors.
Our children are
fortunate enough
to have so many
beautiful beaches.
Please keep this
piece of beach
for Nature—we
would like to
appreciate.
Thank you.

Sincerely,
Lyman & Mel Burke
9883 La Jolla Farms Rd
La Jolla, 92037

Dear Mrs. Lever,
My husband & I
have become aware of
pupping and research
at The Children's Pool.
We hope that
you will consider
protecting the pups
during the pupping
time. We'll walk
the beach daily.
We love them & so
does our son.

955-750-77

31
RE: File 6-14-0691
Attn: Brittnay Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

July 24, 2014

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year. Humans have access to so many beaches and seals need this one area for pupping.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

Denise Hudson

[Signature]

[Postmark: AUG 0 8 2014]
7/25/2014

RE: File 6-14-0691

Attn:
Brittney Laver, Coastal Analyst California Coastal Commission
7575 Metropolitan Dr.
Ste. 103
San Diego, CA 92108-4402

Dear Ms. Laver and Members of the California Coastal Commission:

This letter is regarding the San Diego City Council's proposal to prohibit public access to Casa Beach from mid-December to mid-May in order to protect harbor seals from harm and/or harassment during their pupping season.

Everyone is aware of the history of this yearly event. These Seals have been the subject of harassment and cruelty for a long time, but the so-called "protective" barriers have not helped protect them.

As a businessman and a long time activist against any cruelty towards all life, I have long felt that we at the top rung on the phylogenetic scale have an obligation and responsibility to protect our lower relatives when they are defenseless and in peril, especially when they are the most vulnerable.

I truly hope that you all will do the right thing here and accept and endorse the City Council's proposal.

Yours truly,

Stephen A. Stone

[Signature]
4479 Silverberry Court
Concord, CA  94521

August 1, 2014

California Coastal Commission
7575 Metropolitan Dr., Ste. 103
San Diego, CA 92108-4402

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst

Dear Ms. Laver and Members of the California Coastal Commission:

I am writing with regard to the San Diego City Council’s proposal to prohibit public access to Casa Beach from mid-December to mid-May in order to protect harbor seals from harm and/or harassment during their pupping season. Seals have been the target of cruelty for many years, and protective barriers have not remedied concerns.

I own several properties in San Diego County and intend to come back to live in San Diego when I retire. I am very concerned about protection of wildlife and hope you will take the right and compassionate action to protect these sentient beings.

I fully support the council’s proposal and respectfully ask that the commission approve it.

Sincerely,

Barbara Lafaver Gleason

Barbara Lafaver Gleason
RE: File 6-14-0691
Attn: Brittney Laver, Coastal Analyst
California Coastal Commission
7575 Metropolitan Dr., Ste. 103
San Diego, CA 92108-4402

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I fully support the council’s proposal and respectfully ask that the commission approve it.

Sincerely,

[Signature]

Suzanne Shelton
796 Platinum Lane
West Sacramento, CA 95691
California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Dr., Suite 103  
San Diego, CA 92108-4402

August 5, 2014

Re: LCP-6-LJS-14-0607-1/ 6-14-0691

Dear Commissioners:

I whole - heartedly support the Harbor Seal Rookery at Children's Pool Beach in La Jolla. I grew up in La Jolla and swim at the Cove 4 days a week.

It has been a joy to witness these graceful beings in close proximity and to see the excitement of the children as well as adults who come in droves to see our coastal wildlife. A docent program would be a natural progression to this preservation opportunity. My wish would be to make it closed all year.

As humans we have taken so much from the natural world for our use and abuse, that I applaud La Jolla and the Coastal Commission for setting aside this special place for our Harbor Seals who need this safe haven as so many beaches/places are now lost to them.

Thank you for your consideration on this matter.

Sincerely, Linda Lyerly  
825 Munevar Rd.  
Cardiff by the Sea, CA 92007

Agenda 13a In favor  
Linda Lyerly

RECEIVED  
AUG 08 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT
Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because... Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE. PLEASE DON'T CLOSE IT DOWN!!!! Respectfully, Lyndee Logan
July 30, 2014

Brittney Laver, Coastal Program Analyst
C/O California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Dear Friends:

Please DO NOT Close the Children's Pool. It is a beautiful spot and should be enjoyed by the people of San Diego, and NOT given over to the seals. The pressure from a few individuals to protect the wild animals there has made it difficult for the majority to use this beautiful swimming area.

Please read this letter to the commission.

Thank you,

[Signature]

c. keller

clkeller@gmail.com

PS: Many who feel this way cannot attend as we are working.
LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the CCC, before erasing public access safeguards from any LCP

The Commission should understand that legal opinions offered by the City are not unbiased legal assessments because the City Attorney created a conflict of interest. When the City Council approved seeking the 5 month forever beach closure (5/18/2010), the City Attorney had himself appointed to administer the job.

1. From the Council record of May 17, 2010
   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...

2. The City Attorney had introduced a notion the City did not have to live up to the law the previous year. He had introduced a maneuver to have the legislature amend the Children’s Pool land grant trust to avoid a court order to remove entrapped sand from behind the seawall and make the water safe from bacteria caused by seals.

3. The original task was to get an emergency permit for the closure, but he had to tell the Mayor the findings needed for an emergency permit could not be made and emergency permits are only good for 60 days anyway. Just a setback. For four years.

4. The arguments he gave for the trust amendment were about not spending City money and resources any more. Seals were not mentioned. It worked mostly, though the trust amendment did not come out as the City Council requested and the money kept flowing.

5. The City Attorney’s hallmark legislation has yet to be the panacea he promised, but this closure could finally achieve his goal. To make the problem go away. But understand, any City legal statement on this issue is not an unbiased legal assessment, but a public statement by a lawyer on behalf of the goals of his client and himself.

6. If the staff has not cleared issues with the Commission legal staff, then the action recommended not only will not end the problem, but make it worse. This is a civil rights issue, and you need to be on the right side, for the people, against the closure.

Bob Ewing, formerly from San Diego and saw it all
To:
California Coastal Commission c/o
brittney.layer@coastal.ca.gov, Diana.Lilly@coastal.ca.gov
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

On October 25, 2013, the San Diego CCC local staff wrote and published to San Diego a generic plan to close beaches that would not require any proof or justification. The City had already planned to elegantly eliminate conflict with the LCP by removing public access protection from that beach in its LCP. Local staff dissuaded San Diego from using an ESHA declaration and proposed the more effective and less specific simple declaration of "economic or biological significance" for closing a tideland that had become expensive and troublesome to maintain open to the public. The exact wording of the CDP application and ordinance proposal was dropped into placeverbatim.

The application text avoided the word "marine mammal" to skirt provisions of the Marine Mammal Protection Act, even though the clear intent remains to impose a statute that usurps federal authority specifically noted in a previous letter to the City Council from the National Oceanographic and Atmospheric Administration. This made the CDP a product of the Coastal Commission itself. For example, when the City Council needed to ratify the declaration of this method allowing closure of convenience, the City Council member Marti Emerald made the motion and then refused to consider any suggested amendment or compromise wording, stating "If we change one word it might no longer be what the Coastal Commission wants".

If the Commission at large goes along with this, it will be accepting a new loophole in the Coastal Act applicable to any tideland that a municipality finds expensive or otherwise inconvenient to maintain open. The closure plan already had support from statewide special interest groups that wanted the Commission to disavow unconditional public access in California and set about designating tidelands to be available at the discretion of special interests on a case by case basis.

Unfortunately, unlike the year round rope barrier that was not a barrier, this closure cannot be treated as a local issue contained to a single beach. It is well known there is another tideland next door that has also been a seal rookery for years. I see no way this beach will not follow the path of Children's Pool.

Scott Anderson
Opposed to weakening the public access policies of the Coastal Commission.
Sent from my iPhone
July 31, 2014

Honorable Steve Kinsey
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Dear Commissioner:

I am writing to request that you REJECT your staff recommendation to seasonally close the Children’s Pool. The report is based on an inaccurate assumption that the seals at the Children’s Pool need “protection.” The fact that the recommendation includes a caveat that the California Coastal Commission be held harmless is a clear indication that the author knows that approval will generate legitimate litigation that will only waste scarce taxpayer resources that eventually will reverse your decision. Let me summarize a couple of key points:

1. People were there first — not the seals. Your staff report calls the Children’s Pool “their habitat.” Indeed, the beach is man-made and was specifically built for children in 1931. Seals started appearing at the beach six decades later.

2. A man-made retaining wall paid for by a donation by Ellen Browning Scripps created an artificial beach. Upon acceptance of this gift, the City of San Diego promised to keep it in good repair so that the public, especially children, could safely learn to swim. The City has failed in its promise to maintain the wall.

3. Seals do not need “protection,” as your staff report claims. There is no proof that shared has negatively affected the population growth of seals. Seals by nature are transient and are not listed as endangered. Indeed, their numbers along the entire California coastline have increased to near the carrying capacity of the present ecosystem.

4. “Harassment” incidents of seals have been rare, and as long as there are ignorant individuals who ignore signs, a rope barrier will not prevent people from walking onto the beach and getting inappropriately close for a “photo op”.

5. The City has not performed any due diligence as to the economic value of the seals, yet it claims the seals are an economic tourist attraction. Ever since La Jolla became a vacation destination, tourists have come to the area to swim in the ocean — not to be blocked by a rope with seals basking in their own waste.

6. Restricting access to the only beach where disabled individuals, including disabled combat veterans, can enter the ocean safely is a direct violation of the Americans with Disabilities Act, which specifies that persons with disabilities be given the same opportunities as able-bodied individuals. Your staff report erroneously states that there are other safe entry points into the ocean for the disabled.

In common sense, I respectfully request that you reject your staff recommendation.

Sincerely,

[Signature]

Marvin Baker
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

To the CCC Local Staff,

Your recommendation to approve the City of San Diego Parks and Recreation Departments proposal to restrict public access at Children’s Pool beach in the La Jolla community of San Diego, is unwarranted, wrong, and will only add to the already long and costly controversy regarding the use of this site.

I find it sadly laughable that Staff could somehow find favor in restricting access at this site in spite of so many rights, prior rulings and judgments that the record clearly shows to be in support of maintaining this site for public access on a year around basis, in perpetuity.

My layman’s understanding of the critical factors that are to be weighed and balanced against the public’s rights to freely access this site 24/7 are whether or not certain marine mammals, mostly seals in this matter, need extraordinary protection due to their very existence being endangered and that they (also) are of economic benefit to various nearby business interests.

When we are talking about depriving the public citizenry of their right under the California Constitution to freely access our ocean must only be “approved” when balancing competing interests clearly favors one side over another.

This is clearly not the case in this matter.

The general seal population is no longer in danger of disappearing, and is now stable and even flourishing, as was intended by passage of certain environmental laws such as the Marine Mammal Protection Act.

As to the local economic benefit(s) that may flow from the current population levels of marine mammals, namely seals, I know of no data or other evidence that can actually link their presence to any such local economic benefits either positively or negatively.

And, in either case, any evidence in support of restricting the public’s rights to ocean access must be substantial and direct. To find such conditions exist that would allow for restricting beach access would be an incredible reach into a fantasy world that does not exist.

And, seals, in general, are not tormented nor abused by the general public while they are on or near this site.
The “controversy” now in place is between citizens who are willing to share with the seals and those who would not let the seals share with people. There are admittedly people who regret the presence of the seals because it has led to ordinary citizens being run off public land for no reason. Those people have no voice though because nobody wants to harm the seals, and certainly not hassle them to disperse to other beaches.

Some of the very controversies you and the City seek to quell by force were actually caused by the Coastal Commission. The approval of the rope barrier created a line in the sand to battle over while the seals blithely ignored it and us. That rope barrier was specified by the Commission to NOT be intended to diminish beach access, and signs were required by the commission on the sidewalk and rope posts stating the beach was open. What happened next should not have surprised anyone.

Before you strengthen the barrier to cover the entire beach and replace it with lock and chain and police power, you could consider undoing some of your damage and see if peaceful sharing could be restored through public education and attention to the local advisory groups that have never wanted our beach taken from us but have been disregarded.

Just do this: Tell San Diego to take their CDP back because it is a drastic overkill for a local problem not worthy of endangering beaches all over California. Let San Diego go back and solve its problems locally, within the confines of existing laws. If the public access requirements of California present too onerous a burden for San Diego then it should petition the Legislature for relief, not seek to have the Coastal Commission rewrite the Coastal Act in invisible ink.

Thank you.

Charles R. Barringer
La Jolla area resident since 1975
The Coastal Commission needs to read the closure application as embodied on in the staff report very carefully, with red pencil in hand.

1. A major rationalization throughout is the Marine Mammal Protection Act (MMPA). It is not a function of the Coastal Commission to give federal enforcement permits, however.

2. Ten years ago and again this year, the National Oceanographic and Atmospheric Administration (NOAA) took the trouble to inform the City that closing our beach is not needed and Children’s Pool is not necessary to the well being of the seals.

3. The federal statute in question (MMPA) was also shown to make enforcement of any marine mammal protection law outside the Department of Commerce to be a violation of the Act. All references to the MMPA in the staff report may be crossed out.

4. References to scientific papers purported to support hard closure can also be deleted as they were all done on grants from NOAA, and so cannot have been intended to justify a violation of the MMPA.

5. All references to seals as a fragile coastal resource must also be discarded. Substitute flies, fleas, beetles, beach hoppers, and marine mammal parasites such as hookworms.

6. Unfortunately without an imperative to assume the function of marine mammal protection for the federal government, the CDP loses any reason be limited to 5 months. That can also be struck. The good news would be this closure issue would not have to be revisited later for the inevitable expansion to all year.

7. The desired global effect would be achieved. To make it official that public access is not a primary concern of the Commission, but a secondary one to any other resource. The reduction in workload will be sizable.

8. Another effect would be any California beach could be cordoned off with advisory rope barriers “to protect beach wrack and in habitants”. But without enforcement, only the power of suggestion and intimidation which has worked so well in La Jolla for years.

Dan Byrnes: Beach goer and supporter of public access.
To:
California Coastal Commission c/o brittney.laver@coastal.ca.gov, Diana.Lilly@coastal.ca.gov
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

The CDP approval would carry with it a dangerous precedent endangering any tideland that
would benefit a municipality to close. In the short term it would promise to end the constant
escalation of San Diego CDP’s that do not solve the problem of human trespass on a difficult
and expensive beach. The year round rope barrier, had that promise, and so was reluctantly
granted 2 years ago. At the very same time the Commissioners were dismayed to hear that
San Diego was preparing the closure measure.

San Diego now holds out the promise it can finally end. But there is no mention of the other
seal rookeries in San Diego and how they will inevitably be required to close, Nor is there
mention of how the City can ignore what it claims to be uncontrollable human and seal
interaction on the other 7 months. By San Diego’s own claims, the rope “does not work” as a
handful of people have discovered it is not enforced.

In the short term, this closure and the ease of future closures will diminish the work load of the
local staff. A good thing, except it will create duplications in every other locality. Why else
has this little beach attracted the energy of several statewide organizations that spend
resources trying to have the last word in Coastal Commission policies? Humane society, Sierra
Club, PETA, Surfriders, Wan Conservancy, etc. These seals make a perfect poster child for an
end to Coastal Commission unflinching support for public access in California for all citizens, the
unconnected and unrepresented as well.

Dan Byrnes  Beach goer and supporter of public access.
Dear Coastal Commissioners,

I am opposed to closing Children's Pool Beach because . . .

Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast.

There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers.

The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well.

The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City’s application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.
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~Cary
From: Nancy Shields  
Sent: Sunday, August 02, 2009 4:47 PM  
To: MLPAComments  
Subject: La Jolla Seals

I know you have been getting lots of e-mails from the Seal proponents who prevent citizens from accessing the Children's Pool (it is not Casa Beach, a name invented to make the seal takeover from the children more palatable). Many La Jolla citizens want the beach returned to the children, but as usual it is the rude, aggressive, and loud individuals who sway our politicians. The seals have fouled the water and the beaches so it is unusable for humans. Lately seals have appeared on the rocks at the edge of La Jolla Cove so it appears only a matter of time before they invade that beach. The Seal proponents choose to disregard the smell, health hazards (large retirement home across street from the Children's Pool, seal dangers (article in Forbes Traveler on beaches with shark attacks mentions the Solana Beach death as well as one in Marin County--Stinson Beach, and in both cases seals were mentioned as causes), ethics of breaking the Scripps Trust, fact that there are thousands of places for seals along the coast, but the Children's Pool breakwater was built for kids, not seals. A recent article in the San Diego Union-Tr. pointed out the devastation on our endangered fish and sea life by the ravenous appetites of all those seals. Your regulations to protect various species from fishermen is a joke since the seals consume many times what even a group of fisherman would catch. I would think your department would be one of the first groups to want to have a clean beach, clean water, and protect endangered sea life. I hope that is true.
February 9 1984 La Jolla Light Funds for Improvements to Children's Pool OK's by Joe Nabbefeld

The Children's Pool should get a "façade lift" soon.
The San Diego City Council recently approved allocating 15,000 for replacing 210 feet of railing along the sidewalk next to the bluffs and 90 feet of railings along the stairway to the beach south of the lifeguard station, as well as putting in several steps and a sidewalk just north of the lifeguard house.
The money for this comes from the 1983 Transient Occupancy Tax (T.O.T.) fund, which is not a traditional source for beach related repairs according to Hucko Chairman of the Parks and Beaches Committee of the Jolla Town Council.
The T.O.T. is generated from 6% tax on hotels and is earmarked for improving tourism according to an aid to 6th City District City Councilman Mike Gotch. The tax raised approximately 314 million in 1983, Gott's aide said. But Hucko said, "No pennies have ever been spent from the T.O.T. for beach repairs comma, even though beaches are probably San Diego's #1 tourist attraction. Gotch had been looking last fall for money from other funds for the repairs in response to requests by the parks and beaches Committee when he learned that roughly 300 thousand dollars of the T.O.T was still unallocated, the Gotch aide said,
Finding the available T.O.T. funds speeded up funding the repairs by six months to a year, according to a release from Gotch's office.
On Dec. 15, the La Jolla Town Council and I submitted the original 1984 Grant application which would not have been heard by the City Town Council until July of this year.
Since money was available from the 1983 revenues, the Town Council's request was moved forward by six to twelve months. "Gotch said.
Hucko said the Committee won't forget the T.O.T. It intends to tap this source again for Beach improvements, he said, "We've discovered a new source,"
The next project for the Children's Pool is to replace the eroded sand access ramp to the Children's Beach with a cement ramp. That's something we are going after, Hucko said.
Gotch has asked the City manager Ray Blair to look into funding a cement ramp from the City General Fund as a capital improvements project for fiscal year 1984-1985 according to Gotch's aide.
"This ramp will replace the existing ramp, which is both a safety hazard and eye sore", Gotch said. "With in the next week I will receive a report outline available funding sources and share this with the La Jolla Town Council,"
"If the capital improvement project fails to generate funding, Gotch's aide said the T.O.T. is an alternative, though it's still a tough fund to get hold of.
*The new railings and cement work will now go out bid, the aid said.
"Gotch said, I feel certain this project will add to the beauty of this La Jolla landmark. Construction should be completed by late Spring and ready for summer enjoyment.
In December 350 thousand worth of new railings were put on the Children's Pool Seawall. They replaced railing that had been bent almost off by last winter's severe storms.

Lil for the ramp.

Please do not say the ramp was not done.
Please do not say it was moved. "ADDA" that is your fault and the City's. Obviously the City knew to update the ramp as you can plainly read it. The C.I.P. was approved and funded. So what happened? See World Did
Children's Pool Ramp Eroding: 9/1/1988 by Bobbie Joe Lee  La Jolla Light

The La Jolla Town Council parks and beach voted unanimously to ask the city for a study of a variety of solutions to the problem of the declining state of the Children's Pool Access Ramp. The issue hinges on atheistic and safety, but area lifeguards say the environment of the beach itself is slowing bearing negative impacts from the ramp.

Life Guard Joe Barnett told the Aug 24 Committee Meeting the problems began in 1982, after giant swells washed out the existing mostly asphalt ramp. The ramp was then covered with “ten to fifteen truck loads of hard base red clay”. And a top layer of decomposed granite. He said the continual beat of the ocean then “mulched with that red clay and turned it into a hard, gelatinous type of fluid and made the red clay kind of sneak out toward the beach further….bubbling up like a strange kind oil into a muddy insidious kind of sand.

“The problem is the Children’s Pool Beach is now being slowly, completely destroyed because we have an amoeba-like red clay that is forever creeping toward the beach and taking it over ....”

Then Barnett told a recent committee meeting attended by several City Officials. “Now it’s becoming part of the sand.” Barnett said the solution would be to remove the ramp, and this is the issue. Some area residents and lifeguard want the ramp removed, others want it replaced to something akin to concrete. The Committee Voted unto have the issue extensively studied. Much of the Committees’ Discussion urged the City to hire “expert consultants’ but Terri Carroll, head of the City Parks and Rec. Departments Coastal Division, said the City has talked to various persons about this issue and may consider only ‘an in-house’ look at the problem.

Committee members spoke of health hazards to the public because the ramp is unsafe. The gelatinous access make cause bathers to slip and and wheelchairs to over turn, but Carroll, other City Officials and a representatives from City Attorney John Witt's office stopped short of promising an answer.

They asked how the City crews could access the beach for removing kelp and emergency teams........... (Illegible wording) Ward off personal injury lawsuits caused by removing the well-used access and leaving behind the steeper natural bluff?

"There are so many issues; there is no easy answer,” Said Bill Corbett, Witt’s supervising litigation investigator, who added he did consult with “National Expert,” Dan Gillian, formerly of the CA. Parks and Recreation Department. He says Gillian share his concern. My First reaction was to just let it erode, Corbett said, people will get used to having a steeper gradient there. If you take it away immediately, you are going to have people mistakenly thought, “Well, we went down here before.” You’re going to wind up with a problem. Our concern is a safe, positive recreational experience for everyone.’ In reference to current wheelchair access problems Corbett asked, “What is the problem of having a lifeguard help them?”

He also mentioned the necessity for emergency access. But Barnett lifeguard, Mike O’Hara and area Activist Tony Ciaia all said emergency teams would not need to physically bring their transportation on the beach.

And the ever-growing kelp beds?

Barnett said,” The lifeguards could easily rake the kelp into piles on a periodic basis, a solution City Officials and long time Children’s Pool protector Dolly Bray argued against. Instead they said, a smaller access ramp could be constructed for City Removal.

Others such as Ciaia and Committee chair woman Gayle Pate suggested “Unplugging the barriers now in place in the pool’s seawall. The holes in the base originally allowed self-cleaning of the beach, despite the barrier period they were plugged for safety reason and erosion of the ramp.

The slueway feasibility studies are completed. Open them.
Children’s Pool ramp eroding; harming beach

By ROSELYN SOE LEE
Light Staff Writer 9-1-88

The La Jolla Town Council's Parks and Recreation Committee voted unanimously to ask the city for a study of a variety of solutions to the problems of the deteriorating state of the Children’s Pool access ramp.

The issue viaes on aesthetics and safety, but area residents say the environment of the beach itself is slowly being damaged from the ramp.

La Jolla Town Councilerman Joe Bertaut told the Aug. 31 committee meeting the problems began in 1983, when giving swells washed out the peeling, flaky asphalt base. The ramp was then covered with "10 to 15 handfuls of hard, heavy red clay" and a top layer of clean pebbles.

He said the continued use of the clay has "molded" the sand, thus increasing the potential of injury to swimmers. The sand now is a "hard, pitted type of sand and makes the red clay kind of sand that winds toward the beach further." Another proposal was to build up the sand.

The town councilman told the committee he was going to ask the city to study the problems and get a plan to fix the ramp.

The committee voted unanimously to have the area extensively studied.

Bertaut said the solution would be to remove the ramp and replace it with new sand柏头, "Sandcaged, without wheels." Bertaut, head of the city Parks and Recreation Department, said the investigation has many possibilities about the area and may consider only an "in-water" look at the problem.

Committee members spoke of health hazards to the public because the ramp is an "unhealthy." The situation may come about to a disease and wheelchairs are "unhealthy." Bertaut, head of the city Parks and Recreation Department, said the investigation has many possibilities about the area and may consider only an "in-water" look at the problem.

The ramp at the Children’s Pool erodes, Bertaut said. "People get very healthy having a "a large" area of sand, but once the sand is washed away, it's a sediment." Bertaut, head of the city Parks and Recreation Department, said the investigation has many possibilities about the area and may consider only an "in-water" look at the problem.

The ramp at the Children’s Pool erodes, Bertaut said. "People get very healthy having a "a large" area of sand, but once the sand is washed away, it's a sediment." Bertaut, head of the city Parks and Recreation Department, said the investigation has many possibilities about the area and may consider only an "in-water" look at the problem.
Accessible Pools
Means of Entry and Exit

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design ("2010 Standards").

Overview

Providing equal opportunity to people with disabilities is the fundamental principle of the Americans with Disabilities Act. This publication is designed to help title II and title III entities understand how new requirements for swimming pools, especially existing pools, apply to them.

People with disabilities were, for too long, excluded from participating in many recreational activities, including swimming. The revised 2010 Standards change that. For the first time, the 2010 Standards set minimum requirements for making swimming pools, wading pools, and spas (pools) accessible. Newly constructed and altered pools must meet these requirements. Public entities and public accommodations also have obligations with respect to existing pools. State and local governments must make recreational programs and services, including swimming pool programs, accessible to people with disabilities. Public accommodations must bring existing pools into compliance with the 2010 Standards to the extent that it is readily achievable to do so.
The requirements for newly constructed and existing pools will ensure that, going forward, people with disabilities can enjoy the same activities—a community swim meet, private swim lessons, a hotel pool—at the same locations and with the same independence, ease, and convenience as everyone else.

The 2010 Standards establish two categories of pools: large pools with more than 300 linear feet of pool wall and smaller pools with less than 300 linear feet of wall. Large pools must have two accessible means of entry, with at least one being a pool lift or sloped entry; smaller pools are only required to have one accessible means of entry, provided that it is either a pool lift or a sloped entry.

There are a limited number of exceptions to the requirements. One applies to multiple spas provided in a cluster. A second applies to wave pools, lazy rivers, sand bottom pools, and other pools that have only one point of entry. For more information on the specific requirements and exceptions, see sections 242 and 1009 of the 2010 Standards.

Existing Pools

Title II Program Accessibility

Individuals with disabilities cannot be excluded from or denied participation in State and local government programs, services, or activities because a facility is inaccessible or unusable. This means that all programs, services, and activities, when viewed in their entirety, must be accessible to individuals with disabilities unless doing so results in a fundamental alteration in the nature of the program or in an undue financial and administrative burden. This requirement is known as "program accessibility."

Program accessibility applies to all pool-related programs, services, and activities (swimming programs). Program accessibility does not typically require that every pool be made accessible. However, if a public entity has only one existing pool, it must take steps to ensure that its swimming program at that pool is accessible.

A public entity determines which method it will use for meeting its program accessibility obligations. When structural changes are made to existing pools, including installation of a fixed pool lift, the changes must comply with the 2010 Standards. If a public entity chooses to acquire equipment (e.g., a portable lift) to provide program accessibility, the entity should select equipment that includes features required by the 2010 Standards, including independent operation by individuals with disabilities. Sharing accessible equipment between pools is not permitted, unless it would result in undue burdens to provide equipment at each one. Accessible pool features must be available whenever the facility is open to the public. When choosing to purchase equipment or to make structural changes, the public entity should factor in staff and financial resources required to maintain
program accessibility.
Over time, a public entity will need to reassess its compliance with program accessibility, and it may become necessary to acquire new accessible equipment or make structural modifications. For more information about program accessibility, see the title II regulations at Section 35.150.

To determine which pools must be made accessible, public entities should consider the following factors:

- How to provide swimming programs in the most integrated setting appropriate;
- The ways in which people participate in the programs (e.g., individually, in families, in youth groups);
- Locations where the programs are offered;
- What programs are offered at each pool and to which constituencies (e.g., family swims, children's swimming lessons, older adult exercise classes, high school swim meets);
- Which pools are accessible and to what extent; and
- Level of dispersion of the accessible locations and convenience to reach them (e.g., one pool in each quadrant of the town, all on accessible mass transit).

**Title III Readily Achievable Barrier Removal**

Title III of the ADA requires that places of public accommodation (e.g., hotels, resorts, swim clubs, and sites of events open to the public) remove physical barriers in existing pools to the extent that it is readily achievable to do so (i.e., easily accomplishable and able to be carried out without much difficulty or expense).

Determining what is readily achievable will vary from business to business and sometimes from one year to the next. Changing economic conditions can be taken into consideration in determining what is readily achievable.

For an existing pool, removing barriers may involve installation of a fixed pool lift with independent operation by the user or other accessible means of entry that complies with the 2010 Standards to the extent that it is readily achievable to do so. If installation of a fixed lift is not readily achievable, the public accommodation may then consider alternatives such as use of a portable pool lift that complies with the 2010 Standards. It is important to note that the barrier removal obligation is a continuing one, and it is expected that a business will take steps to improve accessibility over time.
When selecting equipment, the public accommodation should factor in the staff and financial resources needed to keep the pool equipment available and in working condition at poolside. For more information about barrier removal, see the title III regulations at Section 36.304.

If you have purchased a non-fixed lift before March 15th that otherwise complies with the requirements in the 2010 Standards for pool lifts (such as seat size, etc.), you may use it, as long as you keep it in position for use at the pool and operational during all times that the pool is open to guests. Because of a misunderstanding by some pool owners regarding whether the use of portable pool lifts would comply with barrier removal obligations, the Department, as a matter of prosecutorial discretion, will not enforce the fixed elements of the 2010 Standards against those owners or operators of existing pools who purchased portable lifts prior to March 15, 2012 and who keep the portable lifts in position for use at the pool and operational during all times that the pool is open to guests so long as those lifts otherwise comply with the requirements of the 2010 Standards. Generally, lifts purchased after March 15, 2012 must be fixed if it is readily achievable to do so.

To determine which pools must be made accessible, public accommodations should consider the following factors:

- The nature and cost of the action;
- Overall resources of the site or sites involved;
- The geographic separateness and relationship of the site(s) to any parent corporation or entity;
- The overall resources of any parent corporation or entity, if applicable; and
- The type of operation or operations of any parent corporation or entity, if applicable.

New Construction and Alterations

New Construction

The 2010 Standards, which set requirements for fixed elements and spaces, require that all new pool facilities built by State and local governments, public accommodations, and commercial facilities must be accessible to and usable by persons with disabilities.

Alterations

A physical change to a swimming pool which affects or could affect the usability of the pool is considered to be an alteration. When pools are altered, the alterations must comply with the 2010 Standards, to the maximum extent feasible. Changes to the mechanical and electrical systems, such as filtration and chlorination systems, are not alterations. Entities must ensure that an alteration does
not decrease accessibility below the requirements for new construction. For example, if a hotel installs a fixed pool lift powered by water pressure, it must ensure that the hose connecting to the lift does not create a barrier across the accessible route to the pool.

Compliance Dates

On or after March 15, 2012

All newly constructed or altered facilities of public entities and public accommodations, including pools, must comply with the 2010 Standards.

On or after March 15, 2012

All existing facilities of public entities and public accommodations, except pools, must comply with the 2010 Standards to the extent required under title II program accessibility or title III readily achievable barrier removal requirements.

On or after January 31, 2013

Subject to other provisions of this guidance, all existing pools of public entities and public accommodations must comply with the 2010 Standards to the extent required under title II program accessibility or title III readily achievable barrier removal requirements.

For more information on effective dates, see the Department's publication called ADA 2010 Revised Requirements: Effective Date and Compliance Date and the 2010 Standards for Accessible Design.

Maintenance of Accessible Features

Accessible pool features must be maintained in operable, working condition so that persons with disabilities have access to the pool whenever the pool is open to others. For example, a portable pool lift may be stored when the pool is closed but it must be at poolside and fully operational during all open pool hours.

An entity should recognize that certain types of equipment may require more staff support and maintenance than others (e.g. ensuring there are enough batteries for a pool lift to maintain a continued charge during pool hours). Entities should plan for these issues and modify operational policies as needed to provide accessible means of entry while the pool is open.

Staff Training

Ongoing staff training is essential to ensure that accessible equipment (particularly pool lifts) and pool facilities are available whenever a pool is open. Staff training should include instruction on what accessible features are available, how to operate and maintain them, and any necessary safety considerations.
Title III entities may be able to take advantage of federal tax credits for small businesses (Internal Revenue Code section 44) or deductions (Internal Revenue Code section 190) for barrier removal costs or alterations to improve accessibility regardless of the size of the business. See the IRS website www.irs.gov for more information.

For more information about the ADA, please visit our website or call our toll-free number.

ADA Websites: www.ADA.gov

ADA Information Line
800-514-0301 (Voice) and
800-514-0383 (TTY)
24 hours a day to order publications by mail.

M-W, F 8:30 a.m. – 5:30 p.m.,
Th 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist.
All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged.

May 2012

ADA Requirements: Accessible Pools - Updated May 24, 2012

PDF Version of this Document
Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1 in

The situation at Children's Pool is a complicated one, that cannot be understood in the absence of understanding of it's history. The history from its 1931 creation until the 1990s is very murky, but better documented since then. I was dismayed in the extent that the California Coastal Commission staff recommendation (of approval with several qualifications) seems to have swallowed so much of the misinformation propagated by the city, namely:

1. No mention of the (dozens to hundreds? At least from 1992 to 2005) of harbor seals released by sea world, that bear witness to the total artificiality of the seal population. With this omission, they imply that it was a natural process of seal population increase by birthing. I don't see this point has been brought to their attention in correspondence they have included in the public record attached. It seems to me the cc doesn't recognize how far the city has gone, it creating the situation. The Friends of theSeals can be seen to have been artificially creating this situation in collusion with the city, from the first establishment of the temporary Seal Rock reserve, through the mysterious rerouting of released harbor seals, and disgraced former mayor Filner's "emergency" closure and citations, and present year round rope. This visual closure cannot be denied effectively by signs stating the pool is open- at least to the casual observer that constitutes the majority of visitors. As long as the rope exists, seals will haul out and multiply until the Marine Protected Areas are exhausted of seal food, and seal predators will thrive, and accidentally assault human ocean goers. A Solana Beach dentist died of blood loss after a great white shark bit his leg while he was swimming there, with a group of fellow triathletes, a couple years ago. A pair of seals was noted refusing to leave the beach there. He was probably the only shark bite fatality in the SD area since the forties. While the woman's body that disappeared off Ocean Beach not so long ago had a large shark bite noted, but I believe it was decided that it had occurred post mortem. Also witness the current record number of adult great white sharks, related to the increase in harbor and gray seals in the vicinity of Cape Cod, Massachusetts in recent years.

2. Page 2 of the staff report regurgitates the city's position that seals began hauling out in greater numbers in the 1990s, without regard to point 1 above, implying that the rope was strung to prevent the public from the mistaken idea that NOAA law requires a 50' separation. This concept was denied by Chris Yates, representing the National Marine Fisheries component of NOAA. He categorically stated in a Jun 13th, 2014 letter to Ken, that shared use was their preferred option, no specific distance exists, and specifically denied that the City has authority to enforce laws or regulations pertaining to marine mammals. Mr. Yates, in his capacity of Assistant Regional Administrator for Protected Resources at NMF, repeating a Jan 2nd, 2014 letter to Todd Gloria and the City Council, (cc-ed to K. Brown at the California Coastal Commission), informed them that the law does not require set separation distances, or beach closures. Emphasizing again the importance of education, and reminding the City they have no authority to enforce federal marine mammal regulations, even if they exist.
3. One of the most reliable histories of the pool must be the court finding presented in the O'Sullivan vs SD case, statement of decision by superior court judge William Pate in August 2005. According to that document, on pP6, "there was no evidence of any concern about or discussion of seals in the Children's Pool area until July 1992, when Jim Antrim of Sea World discussed creation of a seal reserve in the vicinity of the rock off Shell beach (in front of 939 Coast Blvd)" with Barbara Bamberger of the Friends of the Seals organization. The reserve (beginning 200 feet to the seaward entrance to children's pool) passed city council unanimously Feb. 1993 (including the compromise area that goes practically to the beach, presented by Barbara). The staff report assumes as fact that because seal rock was so called in the 1930s, and CP was built on "seal rock point", seals were hauling out there prior to the pool. There is no evidence for that, except for descriptions of "seals barking" (only sea lions bark) on a second seal rock, currently underwater, then at least awash at low tide. See "Myth of Seal Rock" reference. Seals being the timid animals they are, may have seldom or never hauled out on what little beach existed at the site of the pool then, being limited, as I noted during my first dives there in the late 1970s, to offshore rocks. I never saw seals on the beach then. On pP11, the NMFS informed the city that a small number of seals were hauling out on seal rock in 1994, and none hauling out on cp beach. The point was merely so named due to the proximity of the seal rocks The first count referenced by Judge Pate was in 1996, max 62 on the presently above water seal rock in April, while max 120 were counted on the cp beach. Perhaps they preferred the cp beach, sheltered from the prevailing NW winds as it is, to the rocks totally exposed to swell and wind. The first mention of barriers on the beach was in the City's Manager's report to the Natural Resources and Culture Committee (October 1997), stating that lifeguard had been maintaining "barriers" between the public and seals for a year and a half (since 1996). pP16 of the court findings, "to protect the public from being bitten (no evidence exists of that consequence), or being fined for disturbing the seals". This is on pP10. Unstated was that it made the lifeguard's job a little easier. The factor undoubtedly drawing the seal to the beach was the presence of the barriers, reassuring the seals of their security on the beach, not the presence of the beach!

4. The staff report states on pP 17 that NMFS data describes Children's Pool as the only rookery in San Diego and LA counties, with a protected rookery at Pt Mugu and Carpinteria. Reference to another protected haulout that has seen pupping is in one of the letters submitted. I have seen numbers of harbor seals hauled out in the multiple pocket coves off Pt Loma, and the Coronado Islands. Ms Linder's master thesis on harbor seal populations describes the computer enhanced photo id based population estimate nearing 600, and describes the likelihood of individuals travel between haul outs on the Mexican Coronado islands, Children's Pool, and the Channel islands. NMFS harbor seal information indicates harbor seals are known to travel hundreds of kilometers between feeding and pupping sites, and states an unspecified number of rookeries exist in the Channel Islands. I believe that pupping occurs at whatever haul out the nomadic seal happens to be on when birth is about to occur. The Children's Pool doesn't have a resident population, it's population consists of individuals transitory among haul out sites/rookeries throughout at least the southern part of California, and at least northern Mexico.

5. The staff report emphasizes that the City has determined that shared use has been ineffective in preventing harassment mostly in the form of flushing, implying that if the public is allowed on the beach, it will lead to pup abandonment. It states that pup abandonment has occurred there, but doesn't document it. No mention is made of the precocious nature of harbor seal pups, able to swim at birth, and breathe/ dive for up to two minutes within 2-3 days of birth, according to NMFS published information.

6. The staff report makes no mention that City actions have historically been as little, later and inexpensive as possible. The trust requires the pool be used for a protected children's pool. Judge Pate found the city (pP21) in breach of the Scripps 1931 trust, on multiple counts.
   a. The pool has been choked with sand, to the point it no longer protects bathers. The small amount of water still present is now in dangerous proximity to a semi-permanent rip. Lifeguard
rescues had increased, until the point in time point c (itemized below) occurred. The City has made no attempt to correct the situation, by ever either removing the built up sand, or opening the previously existing sluiceways, or recommended by it’s staff on numerous occasions.

b. The City violated the right of the public to access the beach by roping of the beach to the public from 1999 to 2005, according to Judge Pate’s decision (pP27). A rope across the beach at mean high tide point has convinced many of the public (especially the visiting tourists, unacquainted with cp history) that the beach is closed. The visual barrier psychologically overwhelms the signage. The year round “advisory rope” continues into the present.

c. The City erected barriers have lead to seal haul out and presence that has allowed fecal possibly pathogenic bacteria from them to accumulate until the bacteria level has increased to the point that the county has declared the pool under an advisory status. The county today classifies Children’s Pool as polluted 24/7 from 1997 to the present (pP23). State Law AB411 passed in 2003 changed the status from “Closed”, to “Advisory”, as the bacteria were not due to a human sewage spill. The second most polluted area in the county ocean is the Tijuana River Slough, polluted an average of 149 days a year. In August 1998, the Center for Disease Control advised the city that seals can transmit disease to humans. Some carry tuberculosis and giardia. Fecal contaminant bacteria and viruses are also of concern. A danger to seals themselves exists. Two outbreaks of disease in the Point Reyes National Seashore resulted in the deaths of 90 pinnipeds in one documented case.

d. On September 14th, 2004 James Lecky of the NMFS advised the city council that harbor seals are a healthy species, whose population is growing, and not in any way endangered of threatened, causing problems up and down the coast, invading harbors, causing property damage and limiting beach access. They can be moved out of an area if either presenting a public nuisance, or a public health hazard. He suggested the seals were a local issue for the City to resolve. Judge Pate made these observations on pP 19, noting the City had taken no meaningful steps to return CP to a safe, unpolluted or usable state since that meeting.

The Superior court would have forced the City to rectify the above 3 conditions, except that the City prevailed upon the California Legislature to pass SB 428. The substantive addition consists of the 11 bold words below:

"That said lands shall be devoted exclusively to public park, marine park for the enjoyment and educational benefit for children, bathing pool for children, playground and recreational purposes, and to such other uses as may be incident to or convenient to the enjoyment of such purposes."

I find this city and legislative action incredibly cynical. To escape their legal obligations, the City does not think twice of maintaining it’s dangerous status quo. Surely the Coastal Commission cannot seriously consider rubberstamping this, denying the beach to the public for 5 of seven months, to maintain a situation the City has manufactured by denying citizens the beach access the state constitution guarantees, by the coastal commission, whose job it is to uphold beach access rights.

7. There exists the crumbling remains of a cement ramp, that goes through the currently locked gate next to the landward end of the seawall, down to the high tide line, which up until the 1940’s provided wheeled vehicle access, from trucks to wheelchairs. What remains of it is now covered with a badly eroded clay ramp built in the late 1980’s. Had San Diego been maintaining the pool, opening the sluices, removing the sand, and maintaining the ramp, the Pool would be the only shining example of disabled American direct easy access to the real ocean, in southern California. With our large disabled military population crying for the saltwater therapy and scuba access, and in the light of the currently shockingly inadequate veterans medical care facilities, it is inexcusable that our city repeatedly attempts to escape it’s responsibility to it’s citizens, in order to establish a poorly thought out seal colony in this unique gift setting. Children’s Pool allows direct access to 15’ deep ocean, through a channel at the end of the wall where waves predominately do not break, in close proximity to a sheltered gradually sloping
sand beach. Do not allow the handicapped to continue to be laboriously carried in their wheelchairs down the two flights of many steep steps that is currently the only access to Children’s Pool. This has to occur within an environment so often comprised of the ill-informed (or misinformed by seal activists) public, shouting harassment, that a City Ranger has had to be stationed there for several years now. San Diego is already famous for it’s large homeless veteran population. Should it now continue to neglect it’s handicapped veterans, in favor an artificially encouraged pinniped population, feeding in our finally established neighboring Marine Protected Areas, with it’s attendant pollution, smell, and predator problems?

8. According to the Richard Belesky, ranger at cp, in his 5/18/2014 email he observed 54 pups born on Children’s Pool beach, + 13 in an alcove on Pt Loma, + 8 stillbirths, + 1 pup found in the cove = 76 pups born in 2014. He goes on to say about 30 of the 76 were born on South Casa Beach. The Friends of the Seals, part of the pro-seal activist group that Valerie O’sullivan alleged in her suit (decided in 2005 by Judge Pate, who agreed “certain individuals have engaged in uncivil and occasionally illegal conduct” that “conducted themselves in a manner that effectively denies access to users of the pool, beach and adjoining areas”) are on public record as having as their goal, the closure of all SD beaches, on which seals haul out. This is an influential group, with some wealthy and influential members. They were on good terms with former mayor Bob Filner, and were involved with supplying the web cam that recorded a widely published episode of two girls harassing harbor seals at the pool one night. That episode (widely suspected of being staged) lead directly to an “emergency closure” of Children’s Pool, every night for months. I and others fear that this measure under coastal commission consideration now, is just a stepping stone on the way to closure of many of the other San Diego beaches and coastal areas on which pinniped have been observed to haul out and give birth, including the Cove. The political actors have changed, but City policy seems to persist. Their machinations resulted in a 10 year seal sanctuary on seal rock, but that was abandoned, in favor of taking over Children’s Pool. Shared use by humans and seals worked well until the barriers of 1992 or so. San Diego thinks it can save money by closing Children’s Pool, at the same time it does it’s best to discourage and relocate another pinniped (California Sea Lion) population at the La Jolla Cove, less than a mile away. Just as has been done at the cove, the barriers must come down. We cannot enter the slippery slope closing any but the remote Pt. Loma coves already barred from land access, and heretofore utilized extensively by pinnipeds. The cost of a seal sanctuary you can walk to after dinner is too high, for these populations, their prey, predators, and the public. The National Marine Fisheries arm of the Federal National Ocean and Atmospheric Administration has repeatedly pronounced these populations are in no way endangered or threatened. They claim exclusive right to enforce their regulations. They deny that closing beaches is necessary for the good of the Harbor Seal species. The motivations for the actions San Diego is taking are obscure, but clearly not motivated by public good, for either the citizens, or the pinniped.

The City of San Diego needs to do its homework before declaring any of the beach closed to the public. I have shown above, that City sanctioned barriers, the aborted seal rock reserve, and have resulted in the haul outs and pupping at the Pool. A complete closure will doubtless lead to a further increase at not only the Pool, but also the neighboring beaches of South Casa, Wipeout, Shell, and the LJ Cove. The city has not even defined the meaning of the “Marine Park” it’s state legislative bailout describes, has not grasped the effect of increased seal haul out and population increase will have on the marine resources of the Protected areas, or the effect on the already congested parking and traffic in La Jolla, let alone made any sort of plans to deal with it. La Jolla is a suburb
that has only two major entry and exit roads. Mission / La Jolla Blvd representing one, has been choked from a four lane to a two lane road by the multiple traffic circles the City recently imposed. A change of beach use and access of this requires a complete Environmental Impact Report AND mitigation plan before implementation. You, the California Coastal Commission, exist for and is the last resort, to require the adequate situational analysis and the planning this project requires.

All of the facts I have stated above can be substantiated, as most are documented. A few I have observed, and so noted. I have nothing against pinnipeds, do not want to drive them from our shores, and enjoy their company in the water. I only wish to return to the shared use situation that existed prior to the human meddling in the form of barriers that occurred during and after the 1990s.

Philip Miller, Former Scuba Instructor, Registered Nurse
San Diego Resident (>45 years)
6317 Brooklyn Ave.
San Diego, CA 92114
Brittney Laver,

As a diver and former President of the San Diego Council of Divers I am opposed to closing Children’s Pool Beach.

Some of my post memorable diving experience was doing my first open water dive at Children's pool and I cannot tell you how many I've enjoyed there. It would be tragic if this beach had restrictions accessing the beach at anytime of year.

I agree that there is no scientific evidence of harm to the animals that willingly share this beach with their human admirers and have witnessed this both on the beach and in the water personally.

The seal colony is growing rapidly!!

The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort.

I also believe it will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children’s Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.
Thank you!

David Donahue, DL1238185
MH Properties & Investments, Inc.
New & Pre-Owned Manufactured Homes
19758 Crystal Hills Dr.
Porter Ranch, CA 91326
619-251-9273 cell
818-217-4487 fax

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Dear Coastal Commissioners, I am opposed to closing Children’s Pool Beach because I grew up in San Diego and as a kid visited Children's Pool very often. Now I have 2 children that love the beach as much as I did and taking them Children’s Pool has been a let down. The seals have ruined it for the children, it stinks of seal waste, the fish are gone. When I grew up there the seals were rarely seen there. The seals could calmly be removed from there. Let's give it back to the Children, Ellen B. Scripps would of wanted it that way. Children’s Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children’s Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children’s Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE. Thank You. Thomas Engelhardt
To:  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402  

CDP # 6-14-0691, LCP-6LJS-14-0607-1

Dear Coastal Commission,

The CDP to allow San Diego’s closure of the Children’s Pool as crafted will lower the bar all over California for municipalities to deny access on flimsy pretext instead of rigorous demonstration of need.

1. The Commission will be agreeing an LCP does NOT have to conform to state and local laws, but can stand alone as either a means to carry out the Coastal Act and its policies, or to bypass them by deleting inconvenient provisions.
2. The Commission will be agreeing a CDP for outlawing public access in a place can be justified without even stating whether the “significance” of the targeted tideland is biological or economic or require any quantification thereof.
3. Trying to resolve controversy should not be done by compromising coastal access protections in the Coastal Act. The Commission can only end this by no longer rewarding San Diego with every new encroachment.
4. This CDP is so drastic it needs an emergency permit in order to contain it as an isolated happening and not a new clarification of standard CCC policy and practice.
5. Nobody could fault the Commission for requiring an emergency permit to introduce the closure. San Diego is asking for a local exception to the Public Trust Doctrine based on anecdotal convictions a population of animals is at risk of ending by injury and death.

Bob Ewing
July 28, 2014

Children’s Pool Project CDP # 6-14-0691, LCP-6LJS-14-0607-1

Dear Coastal Commissioners,

Friends of the Children’s Pool offer this presentation of reference information to assist you in making your decision about Children’s Pool beach closure. We ask you to uphold the founding principles of the Coastal Act and stop this needless beach closure. A copy of this presentation was provided to every Commissioner and the San Diego office of the Coastal Commission.

Blocking public access to the coast is not to be taken lightly. Please consider this information carefully. Your decision about Children’s Pool could change the status of beach access in all of California as it starts a series of unintended consequences.

If San Diego’s method of beach closure is adopted by the Commission by carving out a drastic exception to its own LCP, it will start the certain reversal of the coastal access protections in the Coastal Act. Other beach communities in California will surely follow on the slightest justification looking for an easy way out of difficult beach management decisions.

San Diego City Officials are attempting to close Children’s Pool without justification and documented harm to the animal they claim they are out to protect. The fact is, the wildlife has shared this beach for decades with their human admirers without harm to either.

Beach closure advocates have made false claims that the natural seal mortality rate is somehow caused by human interaction with the animals. They do so without providing any documentation or evidence. The rapid growth of the Harbor Seal colony at Children’s Pool and surrounding beaches is evidence to indicate just the opposite. This population of seals is thriving so drastic curtailment of human access cannot be justified.

The City of San Diego issued itself a self-serving Negative Declaration in minimal compliance with CEQA mandates. The history of the City’s myopic insistence on beach closure since 2010, demands that any environmental review be done by an independent analyst. The staff at the City is not independent. They have systemic motivation to approve this project and to dismiss and overlook the environmental impacts. This project originated from a mostly termed out City Council from 2010.

The specific purpose of this corporation is to educate the public as to the use of the Children’s Pool in accord with Miss Ellen Scripps’ charitable intent in 1931. In order to protect La Jolla Children’s Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children’s Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.
I am including the written objections to the Draft Negative Declaration from our organization on this presentation. The environmental review was based on a declaration that Children's Pool Beach was an Environmentally Sensitive Habitat Area (ESHA). The local CCC staff urgently warned against the ESHA designation knowing it was completely inappropriate to the Children's Pool Beach. At the last minute, that scheme was discarded by the City. The City's response was to strikecut any reference to ESHA in their Negative Declaration and substitute in its place, Coastal Act section 30230 hoping that would replace the significance and impact of ESHA designation. It does not.

This clearly is a shortcut end-around to the requirements of CEQA. It also shows the inadequacy of the City's analysis of the known and foreseeable impacts to the local environment. Closing Children's Pool Beach is a significant change in the use of the beach and will create foreseeable impacts that must be known and mitigated.

Blocking beach access will cause significant environmental changes as well as impacts to the community and the local residents. Protections for coastal access in our State Constitution will have to be ignored to let this slip through. The City is unwilling to conduct any meaningful study beyond the automatic dismissal of known or likely impacts from their project. The Coastal Commission should require a full environmental study be conducted by an independent organization before this project proceeds. There is too much at stake to rely on the City's continued mismanagement of Children's Pool.

This presentation was created to bring together our Key Issues we have been advocating for over the last ten years. Always our goal has been to promote the restoration and maintenance of the Children's Pool so that the intended beneficiaries of Miss Ellen Browning Scripps' gift could receive benefit from her gift.

We are asking you to reject the City of San Diego's application for a permit to close Children's Pool Beach and the associated LCP amendment.

Children's Pool is not just another beach; it is the true Jewel of La Jolla as the demonstration of our community's continuing respect for human life, planned public safety and environmental stewardship.

Sincerely,

Kenneth L. Hunrichs  
President, Friends of the Children's Pool  
kenhunrichs@cox.net  
619 787-3372

The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.
Hi Brittney,

After a review of the staff report for the Children's Pool closure project, LCP-6LJS-14-0607-1, CDP # 6-14-0691, I found a glaring omission you must be made aware of. There were two letters from Chris Yates explaining the current policy of NMFS/NOAA in applying the MMPA and the attempt to close Children's Pool. Mr. Yates is the Assistant Regional Administrator for Protected Resources.

The first letter was on January 2, 2014 addressed to Mayor Gloria and the San Diego City Council and was copied to the Coastal Commission. The letter advised it was unnecessary to impose drastic access restrictions at Children's Pool to maintain compliance with the MMPA.

Mr. Yates was kind enough to follow up to me directly on June 13, 2014 to restate his agency's policies and actually strengthen his warning about MMPA sec 109(a) regarding enforcement jurisdiction reserved to the Federal Government in marine mammal management. Unfortunately the City of San Diego did not heed that advice and still is attempting to apply their interpretation of the MMPA when seeking closure of Children's Pool. I have included the two letters from Mr. Yates.

The beach closure proposal from the City of San Diego falls directly in violation of MMPA sec 109(a) as it is attempting to manage the Harbor Seal colony at Children's Pool. This is a function clearly reserved to specific agencies of the Federal government. If the "Standard of Review" done by your staff is limited to compliance with the Coastal Act, why is it that references are made to outdated interpretations of the MMPA? Why isn't the most recent interpretation from NOAA/NMFS from Mr. Yates included in your analysis? Could it be the City is attempting to cherry pick misleading policy statements to support their limited scope of review in their project application hoping you would not notice?

The CCC staff report has a reference to incorrect statements made by Rodney McInnis in 2010, provided by the applicant, about the proposed year round rope barrier. The latest clarification from NOAA/NMFS from Mr. Yates clearly
states there is not a requirement to remain any certain distance from seals. The McInniss statement claiming a fixed boundary to enforce an imaginary distance from constantly moving animals is not supported in regulations in the MMPA. The rope barrier, and now a total closure of Children’s Pool beach are entirely based on that false premise.

The purpose of MMPA sec 109(a) was to prevent hundreds of different agencies and coastal city municipalities with marine mammal issues, from interpreting and enforcing their own version of the MMPA. It is easy to see how that variety of interpretations would be inconsistent between those jurisdictions and not in keeping with the policies of NOAA/NMFS. There needs to be consistency or the entire process is driven by political motivations. Politics, and not legal or scientific analysis, has been motivating San Diego’s officials in their fifteen year failed attempt at managing the Children’s Pool. The reason for MMPA sec 109(a) was to prevent mismanagement by the whims of political correctness.

This policy should be immediately reviewed by your staff to clarify this point in the staff report and recommendations.
August 2, 2014

California Coastal Commission
7575 Metropolitan Drive Suite 103
San Diego, CA 92108-4402

Ref: CDP # 6-14-0691, LCP-6LJS-14-0607-1, Children’s Pool

Dear Coastal Commissioners,

The staff report for Application No.6-14-0691, Th13a for the Children’s Pool beach closure project lacks critical analysis of conflicting values contained in the Coastal Act and other statutes. This report has been carefully crafted to diminish the value of all other attributes of public safety, ease of coastal access, community traditions and legal considerations outside the Coastal Act for this project. The very narrow “standard of review” focusing primarily on sec. 30230 casually dismisses too many relevant access sections in the Coastal Act. The report does a disservice to Commissioners who are unfamiliar with the issues at Children’s Pool. You depend on accurate information on which to make an informed decision. The basis for our objections, to statements in the staff report that are contradictory or misleading, generally fall in these categories:

- Conflicts within the Coastal Act [page 1]
- Conflicts with the California Constitution and other State statutes [page 5]
- Conflicts with Federal law [page 7]
- Diminished Public Safety [page 9]
- Seal Biology and Community Impacts [page 10]

Conflicts within the Coastal Act

The Coastal Commission staff repeated warned the City of San Diego to not attempt to use an unjustified ESHA designation as the tool to close Children’s Pool Beach. Only at the very last minute did the City staff finally accept that recommendation. That started a process to find something equally weighty and significant to justify beach closure to use as justification. The result was the Commission staff recommending section 30230 as a substitute for the weight and applicability of ESHA. However, this new designation is a general statement of policy lacking the significance of ESHA and does not compel the action proposed in the subject beach closure plan. And yet, the City’s desired beach closure plan has been clumsily and incorrectly justified by this one section. This is a mischaracterization of the relationship and significance of this one resource section compared to all other access sections of the Coastal Act.

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The reasons cited by the Commission staff to reject ESHA designation also apply to the misapplication of the even less significant section in 30230. These reasons still exist at Children’s Pool and repetition of the claim of applicability does not make it any more relevant to the conditions at the Pool.

The reasons both ESHA designation and sec. 30230 are a bad fit to justify beach closure are:

- Close proximity to urban setting
- Current joint use management strategy
- Beach is easily accessible to the public
- Beach has a dedicated user group

Claims are repeated from the applicant throughout this report with little supporting evidence. The author has simply repeated the claim over and over without critical analysis or verification. This is especially important when the basis of the claim is harm that will continue unless all other conflicting values protected in the Coastal Act are dismissed as being without significance and are set aside. The staff’s recommendation to accept the City’s absolute reliance on Coastal Act sec 30230 demands that supporting evidence is provided. This report is lacking that supporting evidence. Repetition of a claim is not evidence and cannot be relied on to support the project.

A brief reference is made in the staff report about the Harris/Lifeguard Plan. The comments demonstrate the staff’s lack of understanding of the proposal put forward by the Lifeguard Union. The claim made that “people could continue to disobey partitioning” completely misses the key element of the plan. The area reserved for exclusive use by seals would be backed up with an ordinance prohibiting human entry into that area. In as much as any municipal ordinance is complied with, the supporting ordinance for partitioning sections of the beach at Children’s Pool would be as well. The boundary would be clearly defined with any barrier device that could be anything from large boulders or traffic cones or the rope barrier now stretched across the entire beach. The actual barrier material is not important and nothing would be constructed that would “corral” seals or limit their use of the beach. It would be a device that is easily understood by visitors as being the limit to their entry into the seal area. The seals would remain under the protection of the MMPA wherever they were including the “human” side of the boundary.

If this plan were adopted the barrier would be turned perpendicular to the shore to clearly define the off limit area for people to easily understand. This adaptive plan would be seasonally adjusted to reflect the changing presence of seals and the increased demand for space for people during the summer. In simple terms, 75 percent of the beach for seals in winter, 25 percent for people including access to the water. In summer, that ratio is reversed protecting an area along the seawall exclusively for seals. This is a plan the City has never given full consideration before resorting to the full closure option before you. The lifeguard plan has been embraced by the community is the only plan that has any chance of success because of the community acceptance.
adjustments, and sand disposal. In addition, as Commission staff indicated to the City in a letter dated 12/13/12, the Harris/Lifeguard Plan would likely not be sufficient for improved protection of the seals during pupping season, as all of the same concerns as the existing rope barrier would still exist; the seals would still be free to occupy all beach areas and the on-going enforcement issues would remain since people could continue to disobey the partitioning. In addition, any effort to corral the seals into a boulderized-off area would be inconsistent with the MMPA, and the boulders would create a physical and visual barrier that would impact public access much more than a rope.

Comments in the staff report make an absurd claim that viewing the coast is equivalent to actually going to the coast. This makes denial of coastal access by providing a view of the coast compliant with the Coastal Act. If this standard were applied uniformly, nearly all actual coastal access through private property easements would be unnecessary. “Look at the beach but don’t touch” appears to be the concept of mitigation for the loss of true coastal access. Parents at Children’s Pool will have to explain, “Sorry children, you can look at your beach but can no longer use your beach”. This staff report endorses policies to “protect” the California coast from the citizens of California instead of for the citizens of California.

Repeatedly saying that Coastal Act section 30230 will enhance the protected status of harbor seals is like saying your car will last much longer if you never drive it. This analogy seems obvious but is similar to the baseless argument throughout this staff report to adopt section 30230 as justification for this project. If there were no other conflicting coastal access considerations, this assertion might have merit. However, there are a dozen conflicting sections in the Coastal Act that demand a thorough analysis of the weight and significance they have. It was not done in this report.

The obvious is repeated when the staff report claims closing the beach will reduce seal/human interaction on the beach and will provide more effective “protection” for seals. But where in nature is an animal provided unimpeded protection except where they are artificially sheltered? This condition doesn’t exist in nature. It is a major flaw in the City’s plan to continue treating wild animals as if they cannot survive without the hand of man protecting them somehow.

Therefore, the City has proposed to seasonally restrict public access at Children’s Pool Beach to provide the seals with unimpeded protection during the five vulnerable pupping season months. In comparison to the existing conditions, the proposed project is expected to provide far more effective protection for the seals, because prohibiting all public access beyond the “Area Closed” signs at the lower staircase and the emergency access gate (Exhibit 4) requires the public to stay farther away from the seals. The clear

Only if you believe the convenience of animals (and their human admirers watching from afar) is more significant than human safety could you possibly think closing the safest beach in San Diego would have any merit. The protection of human life should be the highest standard for review of any project.
Public safety is trivialized in this report that fosters a contrived sense of urgency to "protect" seals.

The Local Coastal Program Amendment No. LCP-6-LJS-14-0607-1 for La Jolla is being concurrently amended to add policy language to the La Jolla Community Plan. The proposed amendment goes against everything in the current LCP. Only by carving out a contrary exception to that LCP can a beach closure ever be considered. It completely reverses the will expressed in the La Jolla Community Plan written by the residents of La Jolla. The amendment proposes to take away a cherished local swimming beach. It completely undermines the process to allow local decisions on local issues and discourages citizen involvement when outside entities disregard the expressed desires of the community. The following quote is from the La Jolla Community Plan/Local Coastal Program:

"Enhance existing public access to La Jolla's beaches and coastline areas (for example La Jolla Shores Beach and Children's Pool areas) in order to facilitate greater public use and enjoyment of these and other coastal resources."

The State Legislature recognized potential conflicts and requires the most significant resource be protected by balancing all the uses; not just the most fashionable, trendy or politically correct. Conflicting sections of the Coastal Act must be evaluated under section 30007.5 and balanced for significance. The safe ocean pool is the most significant coastal resource when protecting human life is considered in the discussion. A broader evaluation of the meaning of all policies of the Coastal Act would provide the guidance needed to reject the use of sec. 30230 when evaluating the City's plan for Children's Pool.

Coastal Act Sections 30210 through 30214, as well as Sections 30220 and 30221 specifically protect public access and recreation.

- Section 30210 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: requires that "Development shall not interfere with the public's right of access to the sea..."

- Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects

- Section 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.
• Section 30214: Implementation of public access policies; legislative intent
  (b) It is the intent of the Legislature that the public access policies of this article be carried out in
  a reasonable manner that considers the equities and that balances the rights of the individual
  property owner with the public's constitutional right of access pursuant to Section 4 of Article X
  of the California Constitution. Nothing in this section or any amendment thereto shall be
  construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of
  the California Constitution.

• Section 30220: 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: 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.

Conflicts with the California Constitution and other State statutes

The pertinent text of the Children's Pool Trust is copied here. There has been a limited reference to this
statute in this staff report. It appears to be an unintended casualty to the limited "Standard of Review" in
this report. This limitation prevents a full discussion of this legally defective beach closure project. The
park at Children's Pool is a creation of this tidelands land grant to the City of San Diego by the State
Legislature. It was intended to be in place forever... or as long as the breakwater wall stood. The City
of San Diego was found to be in breach of their obligation to the Trust in the O'Sullivan v. City of San
Diego lawsuit. The City was ordered to restore the Pool to a condition safe for human use. The
amendment to the Trust in 2010 only added a use. It did not authorize the City to pick and choose what
in the statute they would comply with. The City has a clear duty to uphold the all terms of the Trust or
return management authority back to the State if they are unwilling or unable to do so.

Children's Pool Trust

... to be forever held by said City of San Diego and its successors in trust for the uses and purposes
and upon the express conditions following, to wit:

   (a) That said lands shall be devoted exclusively to public park, marine mammal park for the
   enjoyment and educational benefit of children, 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;

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.
(b) The 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.

The City wayward experiment to removing human access to Children's Pool has been tried before. Several years ago, the City attempted to establish a seal reserve at Seal Rock near Children's Pool. In doing so they circumvented the authority of the State and the Federal government to create a reserve in the tidelands. The 1931 Children's Pool Trust prevented that reserve from being extended into Children's Pool. The City was given two, five year trials but the project was so full of flaws it was abandoned when the truth about the City's lack of jurisdiction to create a seal reserve were called into question by the State Lands Commission, Department of Fish and Game and the State Attorney General. San Diego doesn't have the authority to create reserves in coastal tidelands. They should not be trying to do this again at Children's Pool. The Coastal Commission should not provide cover by issuing a CDP to repeat the failed Seal Rock Reserve project. Children's Pool has an even stronger tidelands trust than the area of Seal Rock Reserve.

The Children's Pool Trust clearly defines acceptable uses and all enumerated uses must be allowed at all times. Beach closure is not an option. The absolute right to fish with convenient access to the waters of Children's Pool is clearly a protected right in the plain language of the Trust. A right guaranteed in Article 1, section 25 of the California Constitution that was completely ignored in the staff analysis.

This report ignores constitutionally guaranteed coastal access for fishing. In fact, the Constitution is mentioned only once where the “maximum access” of section 4, article X of the Constitution is incorporated into the many sections in the Coastal Act. The report continues on to ignore the protections in the Constitution. This is a glaring example of the analytical shortcomings in this report.

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.

If the Coastal Commission relies on limiting the “Standard of Review” to the Coastal Act, it creates the danger a project will be approved that is not compliant with all applicable law. This staff report is a clear example of that limitation. This project conflicts with a host of State Constitutional and Federal preemption issues the Coastal Commission would be wise to consider.

The City's negative declaration is not in compliance with CEQA law because the City fails to account for the impacts known to have occurred already though previous seal protection measures. Baseline data ignoring those prior impacts skews the analysis to provide for a finding of “no significant impact”. A full Environmental Study is needed through an independent analysis.
California Environmental Quality Act, CEQA
Article 20. Definitions:
15358. EFFECTS
(a)(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

The staff report quotes: “Terms and conditions run with the land.” That is, except when a term or condition gets in the way of a desired outcome. The tidelands land grant for Children’s Pool is the perfect example of not letting inconvenient statutes get in the way. It should not be standard practice of the Coastal Commission staff to simply ignore laws outside the Coastal Act or discount their legal effect until you are later called to account. This is the failure of the Commission’s “Standard of Review” that allow projects to proceed with known legal defects.

The current state of water quality at the Pool should cause enough concern to compel the City to address the problem. A few halfhearted attempts to address the problem were made including reopening the sluiceways built into the breakwater wall. None were followed through to completion and the issue has never been corrected. The City is seeking to put even more seals in this confined area without a plan to restore water quality for the time when people will be using the Pool. Sluiceway opening studies reveal the likely success of the project in allowing continuous tidal cleaning of the beach. This will help reduce the buildup of animal waste. The City failed to act on the engineering report and never made a serious attempt to correct the seal waste pollution. Instead they are proposing a plan that will impact the water quality to a greater extent and create a greater hazard to human health. Their self-serving Negative Declaration may be minimally CEQA compliant but the known effects of closing the beach should not be ignored without a full Environmental Impact Report. The City’s history of mismanagement demands an independent review of known and foreseeable impacts.

Conflicts with Federal law

If the claimed harm to seals actually occurred at the frequency and level of a MMPA violation, NOAA/NMFS would have stepped in long ago and dealt with the issue. NOAA/NMFS receives the same information from the seal activists and knows the occasional inadvertent disturbances are not significant enough to bring about a drastic beach closure. Many years ago, NOAA warned the City to discourage a growing seal colony in the Children’s Pool. Unfortunately the City ignored the advice and pursued policies that had just the opposite effect. I have personally seen and counted upwards of 300 seals hauled out on the beach in the winter. The carrying capacity of this small beach was exceeded long ago to the detriment of the seals and people who use the beach. City policies have failed and there is no reason to allow the City to continue mis-managing the beach by closing it.

MMPA section 109(a) makes Federal preemption clear as the City continues dabbling in seal protections schemes in violation of sec. 109(a). The cover the City seeks from the Coastal Commission will not change the fact that the City will be in violation the moment they close the beach to “protect"
seals. [See UFO Chuting, Inc. v. State of Hawaii, Civ. No. 03-00651 SOM/BMK] The Coastal Commission will be a party to this violation if a Coastal Development Permit is approved for this City project.

The artificial sheltering has had its effect resulting in too many seals in too small a space. Instead of managing the problem the City chooses to make it worse and they continue to follow the same failed policies as evidenced by this project proposal. The obligations of the 1931 and 1933 tidelands land grants to the City have been trashed by the City's past policies in La Jolla. Coastal access has been proposed to be illegally restricted by the actions called for in the City plan for Children's Pool. Why would any responsible agency provide the means for the City of San Diego to continue on this failed course of action?

The intent of the Marine Mammal Protection Act is misapplied when some imaginary fixed distance from seals is mandated by the City. This mandate can't apply to constantly moving seals when a fixed barrier is used to enforce the City imaginary distance. Federal law does not specify a set distance from seals. The agency responsible for MMPA enforcement advised against beach closure pointing out the MMPA can be complied with without closing the beach. (NMFS, Yates letters, Jan 2, 2014 and June 13, 2014)

A curious dilemma has resulted for the City of San Diego from the installation of the "seal viewing guideline" rope barrier. The designation and placement of that rope barrier, approved in a CDP from the Coastal Commission, triggers the requirement to comply with Federal law in the Americans with Disabilities Act (ADA) generally described in § 35.149 Discrimination prohibited.

§ 35.149 Discrimination prohibited: Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The staff report references ADA accessibility with a completely erroneous reference to ADA ramps claimed to be in the vicinity of Children's Pool at Scripps Park and La Jolla Shores. Neither location has ADA ramps. Since the Coastal Commission does not enforce Federal ADA law, this erroneous reference can only be described as attempting to cover for the City's lack of compliance with ADA law at Children's Pool and deflect attention from the City's refusal to re-open the beach access ramp.

A lawsuit has been filed against the City in Federal Court to compel the City to provide access to the beach at Children's Pool. [Robertson v. City of San Diego] This lawsuit provides underlying motivation to the City to close the beach year round and thus avoid liability for beach access at the subject site. The staff report never mentions this related component of the motivation to close the beach by the City but does go so far as to attempt to fabricate ADA access somewhere else to excuse the City from its obligation to provide that access at Children's Pool. This is one more relevant component of this project outside the "Standard of Review".
**Diminished Public Safety**

The staff report has a discussion of the access to the ocean on both sides of Children’s Pool. The discussion leads a reader to believe that one beach is just like another and using any beach would be the same as using Children’s Pool. Unfortunately, the report author reveals a lack of understanding of local conditions at the proposed alternate beaches. Both beaches mentioned, Shell Beach to the north and South Casa Beach to the south are well known for recurring rip currents and are posted to warn visitors of those conditions. Both beaches are heavily guarded by lifeguards to prevent accidents and drowning. Both beaches are known for a pounding shore break that can be very dangerous when the swell height is over three feet which is most days in winter.

La Jolla Cove is often mentioned as a substitute beach entry site to Children’s Pool. The Cove has been surrounded by a long standing underwater park that was recently expanded into a State Marine Protected Area (MPA). La Jolla is known for the active diving community that depends on safe ocean access. The modern sport of spearfishing started in La Jolla in the 1930’s with the Bottom Scratchers’ dive club. Modern spearfishing equipment was developed by club members. Those early pioneers of the sport had access to waters now in the MPA through the La Jolla Cove. Because of updated fishing regulations today’s spear fishermen can no longer use the La Jolla Cove to enter or exit the ocean. This makes access to the ocean through Children’s Pool even more significant.

Entering and exiting the ocean through Children’s Pool provides an extra level of safety not available anywhere else. Closing Children’s Pool will force swimmers and divers into those more dangerous beaches especially during the most dangerous season in the winter. Human lives are endangered when the safest beach in San Diego is closed. Any monitoring plan to determine the full impact of beach closure must include the records of water rescues and recoveries of beachgoers, swimmers and divers forced out of the safety of Children’s Pool to nearby beaches.

Children’s Pool has been dedicated park land since 1931 when a grateful San Diego accepted the gift from Ellen Browning Scripps. Problems arose when the City chose to ignore their duty under the Trust and tried to bar the use of the Pool by the intended recipients of Miss Scripps gift. Conflicts began when the City began interfering with the balance between humans and seals from the creation of a seal reserve near Children’s Pool. The problem was compounded when seals were secretly released from Sea World’s rehab program just offshore from Children’s Pool. The City has proven it is incapable of fixing this problem with the current proposals. It is the City’s problem to deal with under existing law. They cannot be allowed to circumvent the law.

Children’s Pool has a beach access ramp to the beach which is identified on the LCP. It was added a few years after the construction of the stairway. The City has tried to redefine the ramp and recently has begun calling it an “emergency vehicle” access ramp. Calling a well-traveled beach access ramp something that it isn’t doesn’t make it so. The ramp has been gated and closed by the City for the past 15 years. In so doing they are in violation of the Coastal Act when a historically established access to the beach is blocked. The emergency ramp label never was applied until it became expedient for the City to do so. The City now finds this beach access ramp inconvenient to their closure plan.
Seal Biology and Community Impacts

Comments in the staff report only touch on the origin of the seal colony at Children's Pool. A strong argument can be made that Sea Worlds' rescue and release program was the major cause of colonization of this beach. The secret program of concentrating rehabilitated seals just offshore from Children's Pool was done concurrently with the failed Seal Rock Reserve project. Animals raised in Sea World rehab facility by human caretakers were accustomed to human contact and simply chose a sheltered location at Children's Pool among their human admirers. This policy was only revealed in the testimony of the O'Sullivan v. City of San Diego lawsuit. The release of habituated seals to the La Jolla coast was stopped immediately after it was revealed during the O'Sullivan lawsuit. The releases went on for eleven years and after nearly one hundred Harbor Seals were released.

The common myth of “Seal Rock” being the home of an original or “ancestral” seal colony is without merit. The claim is based on a map in a real estate sales brochure from the earliest days of La Jolla. The rock feature called Seal Rock on the sales brochure was 100 yards west of the Children’s Pool breakwater wall and is now completely submerged due to years of erosion. There may have been some feature of the rock that resembled a seal thus attracting a common landmark name. More likely it was the occasional presence of Sea Lions. But to say the reference on a sales brochure is the basis for claims that seals “most likely utilized the area as a natural haul out” is completely without substantiation and proves nothing about the current seal species at Children’s Pool. It is at best, speculation and at worst, a deliberate attempt to mislead the analysis without context. You only need to look at the pounding by winter waves to this area to know this was an unlikely pupping site before the breakwater wall was built.

The City has declared an economic and biological value to the seals at Children’s Pool without defining or quantifying what that value is. Children’s Pool is not the only seal rookery in San Diego or Los Angeles County as there is an established rookery in Point Loma. Hidden from view, this rookery provides all the seclusion a seal could need without the demand to block human access to a popular public beach. It is contrary to sound wildlife management principles to artificially protect fully capable, non-endangered animals on a man-made beach designed to protect human lives. There are many areas in San Diego available to seals that are far more suitable for a seal colony.

Coastal Act, by minimizing human-seal interaction and eliminating any potential for harassment of the seals during the vital pupping months. 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,

There is absolutely no justification to manage seal populations to become dependent on human intervention. On balance, the safe access to the ocean is the most significant resource at Children’s Pool that must be recognized under Coastal Act section 30007.5. Human safety must be paramount in any discussion of beach closure.

The specific purpose of this corporation is to educate the public as to the use of the Children’s Pool in accord with Miss Ellen Scripps’ charitable intent in 1931 in order to protect La Jolla Children’s Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children’s Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.
The effect of the rope barrier is the subject of a preliminary report by the City Park Ranger. In that report a small number (30) of disturbance incidents occurred from human activity in the 2013-14 pupping season. Considering the number of visitors claimed by the City, and repeated in the staff report of one to 2.6 million visitors coming to see seals, it is an insignificant rate of disturbance for an urban location so heavily visited. The first year data for inadvertent disturbance does not support the most extreme remedy of closing the beach. There is no evidence the habituated seals at Children’s Pool will abandon the site or suffer harm because of infrequent disturbances. Likewise, the ranger’s count of abandoned or deceased pups does not attribute a cause to any human activity. The natural mortality rate is significantly less at Children’s Pool than populations in more “wild” remote locations.

The staff report has used seal disturbance counts collected by the Friends of Seals now known as Seal Conservancy. This data is wildly different from the count taken by the City’s ranger. This leads to the question of why the unsubstantiated count from this unverified source with a clear bias would appear in the staff report. The answer of course is the CCC staff is not in any way impartial. They appear to have crossed the line for advocacy to a position instead of presenting factual data to assist Commissioners to make informed decisions. The inclusion of Seal Conservancy counts should cause Commissioners to question the validity of other information in this flawed report. There certainly is more than enough evidence for the Commission to vote against the staff recommendation for this project and not allow themselves to be misled into a bad decision.

In addition, Dr. Jane Reldan, founder of the Seal Conservancy, along with members of the Seal Conservancy and additional volunteers, observed and recorded a total of 269 flushing incidents from April 9, 2013 to May 15, 2014. Of these flushing incidents, 79 occurred during pupping season. Whether done ignorantly or intentionally, any form of

The ranger has begun monitoring the other seal rookery at Point Loma near the City wastewater treatment plant. Newborn pups have been observed at that location for many years but because of the remote location, a witnessed seal birth has not been recorded. The often repeated myth of Children’s Pool being the only Southern California mainland rookery is just that; a myth. There are dozens of likely haul out sites hidden along our local coast at Bird Rock, La Jolla and Point Loma. Marine Biologist Dr. Doyle Hanan has recorded Torrey Pines and Point Loma as actively used sites.

The City was found to be in breach of their duty to the beneficiaries of the Children’s Pool Trust in the O’Sullivan lawsuit. The court order still obligates the City to restore the Pool to a condition suitable for human use. That requires the City to address ongoing pollution problems that will be increased if the beach is closed. Seal management is the responsibility of the Federal Government; not the City of San Diego and not the State of California.

This staff report recounts the long history of the City’s attempt to manage the Pool without actually discussing the true source of conflicts at the site. Claims are incorrectly made of conflicts between seals and people. In fact the conflicts have always been between lawful beach goers and the seal activists bent on stopping them. Those activists decided they were entitled to make the rules and enforce those rules themselves. This lawlessness continues today with the vigilante actions driving lawful users away from the Pool. Citizen’s requests for intervention from the City and the Coastal Commission were futile. The City claimed the agitators had “Free Speech” rights to harass and intimidate anyone they wished. The City neglected its responsibility to maintain order at the Pool and vigilantes ruled the day. Only the most egregious criminal acts by seal activists, such as stun gun
assaults, thefts, battery and spitting ever were investigated and prosecuted. Intimidation of families and children became standard practice under the indifferent watch of City officials.

The conclusions offered in the staff report focus solely on one outcome; to close Children’s Pool Beach. This outcome, no matter the cost, no matter the increased danger to human lives, no matter the conclusion is based on false premises about the value and unique nature of an animal as common as ground squirrels and pigeons. The lack of full discussion for closure alternatives makes this report incomplete. The referenced Lifeguard plan is clearly misunderstood by the report author. The Commission staff appears to be unwilling to seek information outside of the applicants narrowly focused justification.

For all this discussion it must be noted that Children’s Pool is a special place in the lives of hundreds of thousands of past and current San Diegans who know and love this unique place. Friends of the Children’s Pool are committed to preserving and restoring the Pool for current and future generations and for the intended use. Nothing like this cherished pool will ever be built again. The value of the gift of ocean safety from Ellen Browning Scripps must be honored and protected. Preservation of human lives must be given priority over the convenience of animals. To approve any proposal that knowingly endangers human lives would be irresponsible.

Sincerely,

Kenneth L. Hunrichs
President, FoCP
kenhunrichs@cox.net
Dear Coastal Commissioners,

I am opposed to closing Children’s Pool Beach because . . .

Children’s Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast.

There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers.

The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well.

The City of San Diego has a fifteen year track record of mis-managing the Children’s Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City’s application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children’s Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

Please allow my family, friends and others to enjoy a beautiful attraction that was intended for such enjoyment.

Sincerely, Stephen Ford
To: California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

Re: LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the CCC local staff,  
I am a local spearfisherman and familiar with the offshore life and biology of La Jolla. The Children’s Pool was specifically accepted by the City of San Diego under a trust that specified, as still is found in the State Constitution that the right to fish over the land and waters of California tidelands is guaranteed to the people. It is alarming to see the disdain for these fundamentals shown by the local Commission office. In reading 6-14-091 any thoughtful person is struck by the lack of critical analysis or scientific references.

In fact the “analysis” is little more than parroting the assertions of the applicant as if gospel. This leaves the Commissioners without access to facts they need.

1. We have watched the seal population increase faster at the Children’s Pool than in the wild, yet Staff readily buys the contention that the choices on the table are only end Public Access or no seals any more.

2. Page 7 calls for a monitoring plan exactly duplicating the monitoring plan to justify the year round rope permit of 2012. And again, there is no control background, no criteria for success or failure, no requirement for analysis except for the applicant’s assessment of its own program. Just a requirement for a pile of numbers and a self assessment. The data for the rope program came to the staff in June and no analysis of the data was performed, only the City’s summary report was sufficient. Bad science.

3. Page 9, the staff refers to the hard closure by lock and chain as a “restriction of public access”. Such a euphemism is irresponsible. Complete denial of access should be called what it really is.

4. Page 10, the staff reveals “Children’s Pool Beach is designated as “Parks, Open Space” in the City’s certified Land Use Plan”. Good that they made that official as the City Attorney had tried to deny it was so designated by the 1931 trust whose language is unequivocal. His denial was because section 55 of the City Charter states “All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.” Therefore the City cannot use the beach at any time for anything but a public park without that special election.

5. Page 10, staff asserts an opinion from the mapping department defines jurisdiction for the Commission to be the historic high tide line of 1930. But that was 45 years before the CCC existed. Where in the Coastal Act did the legislature declare any tidelands that
existed at any point in time before the Commission did fall under present day jurisdiction? At one time all of San Diego was under water. The claim to jurisdiction cannot stand as it is absurd. People were complaining in 1955 that entrapped sand had filled the Pool.

6. Page 11 the report swallows a local myth that any local skindiver or local waterman could have explained. I have included a scaled map showing the old “seal rock” was NOT where the sea wall stands today. There was indeed that old map showing a rock about 100 yards west offshore call Seal Rock. It is today only the high end of a reef still causing visible wave action but perpetually submerged.

7. Page 12. County Health did not deem the water unsafe. They posted an advisory, because seal e coli tripped their tests. County Health has not tested the water there in over 8 years. Nobody knows if any human pathogens exist there. The City’s story is carefully misleading and would fool the casual observer.

8. Page 12. “The City then issued an emergency permit for the temporary rope barrier and the barrier was installed.” The City Attorney granted the permit which was a violation in the face of an ongoing appeal. The violation was forgiven by the staff.

9. There has never been effective public education at the Pool or most of the alleged problems would never have happened. The signs installed said the beach was open and the ranger stopped going on the beach at all because people would ask him if the beach was open and he could not lie.

10. Pointing out the deficiencies in this simple rephrasing of the City’s position by the staff would be beyond the scope of a simple letter. There are another 148 pages to go. Nobody expected anything less than a whitewash here. The local staff rewrote the CDP proposal for the City and gave it the text to insert verbatim on October 25, 2013. The Commissioners have the freedom to stand aside and let San Diego flaunt all the laws it wants. The only issue at question is whether they will choose expediency or integrity.

Sincerely,

Ryan Sweeney
San Diego Freedivers - President
Raoul Harpin
1251 Rhoda Drive
La Jolla, CA 92037-5222
July 22, 2014

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Ste 103
San Diego, CA 92108-4402

Re: Children’s Pool Closure Project
CDP # 6-14-0691, LCP-SLS-14-0607-1

Dear People, I am writing to request that you not act to close the Children’s Pool to children. The Pool is the only beach in the Village of La Jolla that is safe for small children to play on. It is the only beach in the Village that is free of rip currents, undertows, and sharp drop-offs. That is why it was originally created through the compassionate bequest of Ellen B. Scripps. When my children were young I took them to The Children’s Pool almost every day to play in the sand and in the water and tide pools. Never once was there a safety problem. At the other Village beaches I could never let them in the water because the conditions were so dangerous. I want to be able to take my grandchildren to The Children’s Pool for the very same reasons. Please do not close The Children’s Pool to our children.

Sincerely,

Raoul Harpin

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Kenneth L. Hunrichs  
President, Friends of the Children’s Pool  
3090 Admiral Avenue  
San Diego, CA 92123

Dear Mr. Hunrichs,

Thanks you for your letter to Mr. William Stelle dated April 21, 2014, expressing your concerns regarding actions at Children’s Pool Beach in La Jolla. Mr. Stelle has asked me to reply to your letter on his behalf.

As you noted in your letter, on January 2, 2014, I sent a letter to the City of San Diego explaining my perspectives regarding alternatives they were considering at Children's Pool. It remains my opinion that the most preferable outcome is one of shared use – where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users.

As I stated, the MMPA does not require that beaches be closed, or that people maintain any specific distance from the animals. Rather, the MMPA generally prohibits the harassment, hunting, capturing, or killing of marine mammals. As these terms relate to the pinnipeds at Children’s Pool, the primary concern is the harassment of these animals that could occur as a result of human activities. Harassment would be acts of pursuit, torment, or annoyance that have the potential to injure the animal(s) or disrupt natural behavior patterns. I clarified that I do believe that pupping season is a particularly important time for ensuring that harbor seals are not impacted by human activities, but do not believe that complete closure of the beach is the only way of achieving that protection.

I also recommend the City, in making decisions to addresses the conflicts at Children’s Pool Beach, review the pre-emption provisions of MMPA Section 109 (a), 16 U.S. Code Section 1379(a). In general terms, Section 109 (a) prohibits enforcement of laws or regulations relating to the taking of marine mammals except by a state to which the Secretary of Commerce or the Secretary of the Interior has transferred authority for the conservation and management of the species. That authority has not been transferred to the City.

Sincerely,

Chris E. Yates  
Assistant Regional Administrator  
for Protected Resources

cc: Administrative File: 151410WCR2014PR00135
To:
California Coastal Commission
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.

The California Coastal Commission (CCC) has the opportunity to present its consideration on the removal of public access to the La Jolla Children’s Pool, or Casa Cove. The closure of the Children’s Pool sets a dangerous precedent with no tangible benefits but to appease the tyranny of a majority swayed by a marine mammal that has the fortunate looks of humanity’s closest friend. Members of the CCC, please remember your mission, and find the considerations below to show that closure of the beach is not in the best interest of the local community, the broader city, the environment, and California’s mission to protect and conserve our coastal resources while maintaining our constitutional right to coastal access.

1. The state has no contractual obligation to close the beach short of instruction from NOAA on the authority of the MPAA, or a public health and safety concern.
   a. The amended trust uses the vague and undefined term of ‘marine mammal park’ with respect to the Children’s Pool which typically is the result of a commercial enterprise. The language of the trust offers no guidance on the treatment of pinnipeds and other marine mammals within the vicinity of the pool. To claim otherwise would be to project one interpretation on an otherwise undefined term.
   b. In fact, beach closure would set aside many key provisions of the California Coastal Act for the one provision in Article 4 Section 30230.
      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.
   c. Section 30230 is violated however, because beach closure disrupts the balance of all species in the La Jolla Coastal region because of favoritism towards a single species without regard for what that species impact is on the local environment.
   d. Disregard for these considerations undermines the commitment of the City of San Diego and California towards a healthy environment in this locale, from a public health standpoint, a conservation standpoint, and from a business standpoint. Disregard for these considerations is in violation of the mission of the CCC.
e. In addition, the language within the LCP follows the same principles as Section 20230, and are violated in much the same way. However one might contend that the Pacific Harbor Seal, being protected only by the MPAA and of the conservation status of Least Concern, is not a ‘sensitive resource’. In fact, the strength of the Children’s Pool Colony is causing ecological pressure on the local environment above and below the water.

2. Closure of the Children’s Pool sets dangerous precedent due to the nature of established Harbor Seal colonies and ongoing public health concerns
   a. The CCC staff recommendation suggests a 5 year sunset clause on the closure to evaluate the condition of ‘least possible restriction necessary’
      i. The recommended closure would likely expand after the 5 year evaluation period with the expansion of the current seal colony. Temporary closure of the Children’s Pool would likely result in a permanent closure of the beach in perpetuity.
   b. The CCC staff recommendation refers to other colonies with restricted access
      i. Many of the listed colonies are designated at marine reserves, which the Children’s Pool is not and thus does not carry the considerations that a reserve requires.
      ii. Closure of the Children’s Pool would set precedent to close other regions of California Coastline where pinnipeds and humans interact regardless of the pinniped conservation status or the status of the region in question. This represents a broad overreach of governance by the state and city into the resources of a locale such as La Jolla.
   c. The CCC has no jurisdiction to exercise the authority of the MMPA
      i. Closure of the Children’s Pool is overreach by the City of San Diego and the CCC
      ii. NOAA has already weighed in on this matter and has determined that closure is not necessary and has expressed opposition to closure as well as concern over a shared use policy.
         1. In fact, NOAA’s statement expresses no concern to the altered behavior of the seals, but the use of the MMPA to harass members of the general public!
   d. Periods of closure would lead to significant degradation in water quality in the Children’s Pool
      i. This would lead to further closure
      ii. The City has reneged on its obligation to clean water at the pool, instead opting to amend the trust with the undefined term of ‘marine mammal park’. The term ‘marine mammal park’ might suggest still that the resource is managed and the water cleaned!
   e. The Children’s Pool is the only protected coastal region within La Jolla that has a ramp installed. Scripps Beach and Boomer Beach, which also have ramps does not offer safe water access for the disabled due to surf exposure. With the inclusion of a man-made wall, the Children’s Pool is the only location in the

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vicinity that would offer safe ADA access. Closure of the Children’s Pool would crush the development of safe access to coastal waters for the disabled.

The closure of the Children’s Pool represents gross overreach by the City of San Diego and the CCC into the constitutional rights of the California Citizens and exceeding the authority of the MMPA. In broader terms, the closure of the Children’s Pool represents the tyranny of resources outside the locale of La Jolla, and forces this community to cope with the decision of the city and the state. Local businesses and constituents must already contend with the public nuisance that the seals have become with regard to public health, with little economic improvement. Closure of the Children’s Pool would offer only negative economic consequence as public health would deteriorate, without offering any additional benefit as an educational resource. Ultimately, the CCC must weigh the cost of environmentally sustainable and prudent use of the coast against the conservation of a marine mammal species that has, in its current status, no need for conservation, no tangible positive economic impact, and negative public health impact. Furthermore, favoritism towards this single marine mammal species negatively impacts the local marine environment which is not easily seen above the surface, and undermines the purpose of the nearby marine protected areas.

With the considerations above, please protect the safe and responsible use of the Children’s Pool and reject the Children’s Pool Closure as requested by the City of San Diego.

Christopher K. Huynh
Electrical Engineer and Scuba Diver
5343 Conrad Ave.
San Diego, CA 92117
California Coastal Commission  
c/o brittney.laver@coastal.ca.gov, Diana.Filly@coastal.ca.gov  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

The proposed ordinance to forbid citizen access to a beach that may or may not have a seal on it would be illegal on municipal, state and federal levels. The Commission can go ahead and grant the closure permit with no immediate consequences by the proposed tactic, claiming a permit does not create any obligation or responsibility except to allow the City to proceed without interference from the Coastal Commission. On the face of it, the Coastal Commission would have no responsibility for the application of the permit and be blameless for not considering the liabilities the City would incur.

Getting the City to pay the legal fees for the expected civil complications for the Commission may not be all that is needed however.

It is not true that there is never liability for a party which only advocates an illegality but does one actually perpetrate one. For instance, the ordinance the City wants the Commission to approve makes it unlawful for any person to be on the beach or cause any person to be on the beach. The Commission’s approval of that will be agreement with the concept of collective guilt extending to the enabler of a violation.

David Johnson,

Founder of The Other La Jolla Swim Club  
Long time beach user of the Children’s Pool
From: Melinda Merryweather [mailto:mbeherenow@sbcglobal.net]
Sent: Thursday, August 07, 2014 10:37 AM
To: Sarb, Sherilyn@Coastal; Dan Allen; Daniel Daneri; Ken Hunrichs; Cheri Aspenleiter
Subject: Hazardous, not true advise.

Sherilyn, My name is Melinda Merryweather and I was so concerned when I saw these disabled beach accesses you created out of thin air, I went and took pictures and drove them down to you at your office, I am quite sure you have never been to these places as if someone took your advise they would be badly hurt! this is a SAFTEY issue.
The access you suggest as the photo shows at Boomer Beach is a set of narrow 2 and one half foot wide stairs that dump out on the rocks!
How could you suggest that to someone in a wheelchair??
The other one is just north of Scripps Pier, it is a truck ramp used by Scripps that all of a sudden drops off way way to steep for a chair. I spoke to the people in the building next to the ramp and they said no way was that a ramp for a wheelchair (to steep) and if they saw someone on the ramp in a chair they would tell them to leave.
So I believe this information should be removed from the report, I helped write the beach accesses for our community plan and they do NOT exist.
The only wheelchair access we have ever had is in La Jolla is at the Children's Pool, till the access became in bad repair due to the city not being able to do the maintenance (due to funding) and locked the gate to the Beach Access Ramp, that IS in our community plan.

All Best Melinda Merryweather La Jolla
July 26, 2014

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

David T. Johnson
4222 Wightman Street
San Diego, CA 92105-2618

Reference: The Children's Pool Beach Closure Project
CDP # 6-14-0691, LCP-6LJS-14-0607-1

There is no question that the City of San Diego has mismanaged the operation of the Children's Pool (CP). There is a question that only you, the Coastal Commission can answer and that is, "Why are you rewarding the city for its decades of mismanagement?" and a second related question, "Why are you considering to reverse your 2001 ruling against creating a permanent seal reserve?"

The facts and history are clear. The city broke both state trust law and the CP wall mechanisms by cementing closed the sluice gates that were designed to maintain the pool and keep the land side reef protected and healthy. The result we can see today is a polluted man made beach, a buried reef, a collection of apex predators and a ravaged marine life ecosytem.

If you reverse this 2001 ruling, while there is an ongoing federal law suit against the city for ignoring ADA law, it sets you up to be a supporter of a violator of both state and federal ADA law. Why would you go against the wishes of the local representatives and close the only LCP access site for the disabled to the ocean? The CP was created for "those handicapped in life's game". The city has gone against the wishes of the local representatives for over a decade, since they locked the gate leading to the primary CP access.

The local city council member, Sherri Lightner, presented well spelled out reasons against the CP closure in her plea to the city council. The CP is in her district. Two other council members voted with her against the closure. The only council member, Marty Emerald, who spoke up for closure prior to the vote, did not address the many points brought out by the Council member Lightner. Her only point was that it was time this issue was brought to rest.

To conclude, the city did not provide proof that closure will not do harm. The closure has for all intents and purposes been in effect ever since the city allowed hundreds of seals to reside upon the CP beach breaking federal law and providing an alteration of nature and creating animal dependence on a human supplied shelter. This decade of ongoing damage and the request for an 'official' closure should include a study that can document the harm already done to the environment and the effects to the citizens by preventing ADA and other public access to the only protected coastal access site.

Thank you for your time and consideration.

Sincerely,

[Signature]
July 30, 2014

California Coastal Commission
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

There is an important section of the Marine Mammal Protection Act that this office was advised of last January. It would appear no copy was given to you, until recently. Or of a second stronger letter, which you also have now received.
The first letter was Jan 2 to the City of San Diego City and your office from the Director of Protected Resources for National Oceanographic and Atmospheric Administration (NOAA) West Coast. Since the Marine Mammal Protection Act is not mentioned in the LCP, perhaps one would expect such a factor to be ignored, but I notice in the report Th13a-8-2014-1, discussions cover history and legal actions back to 1931 and NOAA rulings are cited 10 times.

The letter was sent after Mr. Yates came down to visit Children’s Pool at my invitation with Scott Anderson, then President of the San Diego Council of Divers. We had notified him of signs placed by the City at Children’s Pool and South Casa Beach defining less than 50’ from a seal or swimming near seals to be a violation and requesting citizens report such “violations” to NOAA. He subsequently had the signs removed and sent his January 2nd letter. In that letter he noted City officials should pay attention to section 109(a) of the Marine Mammal Protection Act, (MMPA) but did not explain it, expecting officials would investigate.

As the City ignored his letter and its implications, my friend Ken Hunrichs wrote to him and received back a second letter, explaining the first and spelling out the text of that Section 109(a). Ken tried to show it to Park and Rec, but they had their marching orders from 2010. I recently wrote one more time to Mr. Yates and he sent me the federal case of UFO vs Hawaii which is definitive case law of the clearest kind.

I am attaching only the first 2 pages and the last page which contain the gist of the ruling, and I will get you a hard print of all 24 pages for your study and the file. With a ruling this strong, I fear if the City enacts your recommended ordinance, many people will be unafraid to cross onto the beach anyway because a quick reference to this federal case law will dismiss any citation. The City may fruitlessly appeal anyway, as they typically do to punish defiant citizens and grandstand against any infringement on their actions. This will leave the Coastal Commission in the curious position of co-litigant in action to deny public access. On the wrong side.

San Diego has a history of nurturing civil action and confrontations on this beach in order to claim it has an intractable problem that can only be solved by harsh action, not compromise or working with its own communities. The Commission should not fall prey to such things.

John Leek 3090 Admiral Ave San Diego, CA 92123
Todd Gloria
Interim Mayor

Councilmembers
City of San Diego
202 C Street
San Diego, CA 92101

Dear Mayor Gloria and City of San Diego Councilmembers:

This letter provides comments from the West Coast Region of the National Marine Fisheries Service (NMFS) on the City of San Diego’s (City) proposal to prohibit the public from entering the sandy area of Children’s Pool Beach in La Jolla during harbor seal pupping season from December 15th through May 15th.

NMFS has communicated with the City for many years regarding pinnipeds at Children’s Pool Beach, and has attempted to provide helpful guidance and scientific expertise to both the City and the various stakeholders. In this arena, our principle responsibility is to implement the Marine Mammal Protection Act (MMPA) and promote the conservation of marine mammal populations.

Unfortunately, our efforts to provide guidance on complying with the MMPA has not helped to diminish the human conflict that persists between various groups at Children’s Pool Beach. It is unfortunate that the human conflicts overshadow what is a MMPA conservation success story that all should enjoy — the population growth of harbor seals along our West coast. The ideal solution to this type of conflict is one of shared use – where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users.

Therefore, we want to clarify that we do not believe that complete closure of Children’s Pool Beach is necessary to protect the harbor seals from violations of the MMPA. The MMPA does not require that beaches be closed, or that people maintain any specific distance from the animals. Rather, the MMPA generally prohibits the harassment, hunting, capturing, or killing of marine mammals. As these terms relate to the pinnipeds at Children’s Pool, the primary concern is the harassment of these animals that could occur as a result of human activities. Harassment would be acts of pursuit, torment, or annoyance that have the potential to injure the animal(s) or disrupt natural behavior patterns.
Our attempts to reduce the likelihood of harassment of marine mammals by providing distance recommendations and other guidance have been interpreted by various interests as requiring or prohibiting certain actions, such as requiring people maintain set distances while observing the animals or swimming in the vicinity of the animals. In fact, the law does not mandate set distances. We do believe that pupping season is a particularly important time for ensuring that harbor seals are not impacted by human activities, but do not believe that complete closure of the beach is the only way of achieving that protection.

Our advice is that all individuals, communities, and governments be made aware of the prohibitions of the MMPA and take steps to reduce the possibility of harassing marine mammals wherever they are encountered in the wild. We encourage efforts to reach out to the public and affected communities to educate them about these animals and foster respect for the animals through responsible and safe viewing practices.

Also, we recommend the City review the pre-emption provisions of MMPA Section 109 (a), 16 U.S. Code Section 1379(a), as it makes decisions to addresses the conflicts at Children’s Pool Beach.

If you have any questions, please contact me at 562-980-4007.

Sincerely,

Chris E. Yates
Assistant Regional Administrator for Protected Resources

cc: California Coastal Commission Attn: Kanani Brown, Coastal Program Analyst
ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION.

Plaintiffs UFO Chuting of Hawaii, Inc., and K.M.B.S., Inc. (collectively, "UFO"), are parasail operators who challenge the validity of a Hawaii law that bans parasailing in the navigable waters surrounding the west and south shores of Maui from December 15 to May 15. UFO argues that the state law is preempted by federal law and therefore violates the Supremacy Clause. UFO and the State of Hawaii have filed cross-motions for summary judgment. The court agrees with UFO that the State's
seasonal parasailing ban is expressly preempted by the Marine
Mammal Protection Act ("MMPA") and actually conflicts with
federal law.¹

II. BACKGROUND FACTS.

UFO operates a parasailing business along the navigable
waters between Lahaina and Kaanapali on the coast of Maui. The
navigable waters between Lahaina and Kaanapali are within the
Hawaiian Islands Humpback Whale National Marine Sanctuary. UFO's
two vessels have been inspected and licensed by the Coast Guard
to carry up to twelve passengers in coastwise trade. UFO also
holds permits issued by the State Division of Boating and Ocean
Recreation, Department of Land and Natural Resources ("DOBOR"),
authorizing the use of its vessels for parasailing between
Lahaina and Kaanapali from May 16 to December 14, 2003. From
December 15, 2003, to May 15, 2004, the permits issued by DOBOR
forbid parasailing and certain other forms of recreational
activity, but allow the use of the vessels for other purposes.
The DOBOR restriction was adopted pursuant to Haw. Rev. Stat.
§ 200-37(I), which states, "Between December 15 and May 15 of
each year, no person shall engage in parasailing . . . or operate

¹ As this ruling is dispositive of the entire case except
the prayer for a permanent injunction, discussed later in this
order, the court does not address other arguments or claims
raised by UFO.
Because parasailing is authorized, any state law prohibiting parasailing more than 100 yards from a whale is in actual conflict with the federal authorization to approach within 100 yards and is preempted.9

The court recognizes the Hawaii Legislature's laudable goal in passing the seasonal parasailing ban. Clearly, the State was seeking to increase protections for an endangered species in Hawaiian waters. Unfortunately, the State employed an unconstitutional method of achieving its goal. There is no evidence in the record that the federal government has

feet of the whale sanctuary). No party here argues that a parasail should be deemed an aircraft and therefore prohibited from coming within 1000 feet of the whale sanctuary. But see United States v. Red Frame Parasail, 160 F. Supp. 2d 1048, 1055 (D. Ariz. 2001) (holding that a parasail is considered an "aircraft" under the provisions of the Airborne Hunting Act).

9 Though section 17 amended the MMPA, it was placed as a note to 16 U.S.C. § 1538, see Pub. L. No. 103-238, 1994 Stat. 1636, which is part of the ESA, not the MMPA. Even if the provision allowing an approach within 100 yards is part of both the ESA and the MMPA, the analysis above does not change. See 15 C.F.R. § 922.184(a)(1) (deeming the prohibition on approaching within 100 yards as deriving from the MMPA and the ESA). Though the ESA, unlike the MMPA, allows states to supplement federal environmental regulations, even under the ESA a state may not prohibit what is expressly authorized by the ESA. 16 U.S.C. § 1535(f). Therefore, once Congress says that one can lawfully approach no closer than 100 yards from a whale, a state cannot pass, even under the ESA, a regulation proscribing such activity. While 15 C.F.R. § 922.183(a) says that "All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction," the parasailing regulation is not validly imposed because it conflicts with substantive federal law.
transferred authority to the State with respect to how far from humpback whales boats must stay. The seasonal parasailing ban imposed by state law therefore actually conflicts with federal law and is preempted.

V. CONCLUSION.

UFO's motion for summary judgment is granted, and the State's motion for summary judgment is denied. Section 200-37(I) of Hawaii Revised Statutes and all rules and regulations derived from that statute are declared unconstitutional.10

IT IS SO ORDERED.


SUSAN OKI MOLLWAY
UNITED STATES DISTRICT JUDGE

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10 The only issue remaining in this case is the request in UFO's pleadings for a permanent injunction. A permanent injunction may be a foregone conclusion based on the present order, but UFO has not yet moved for a permanent injunction. Therefore, the court does not issue an injunction at this time, and the case file remains open.

UFO Chuting of Hawaii, Inc. v. Peter T. Young, Civ. No. 03-00651 SOM/LEK, ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

23
For LCP-6LJS-14-0607-1, CDP # 6-14-0691

Before the Commissioners are lied to, the facts on a false accusation,

I went to Children's Pool for a swim one day and found there was little room to get by seals by the water's edge. Rather than disturb a seal, I thought I should be able to set a good example and go out on the sea wall, hop the railing, and climb down the side where I could reach the water well away from seals. That worked until I had to put on my swim fins and proceed. One fin stepped on the other and I lost my balance. I plummeted headfirst to the water, twisting to avoid the rock wall. No lasting injury, but seals on the shore had never seen something like that and flushed.

I wondered why I had seals all around me, but I am used to them playing with me in the water. My fall was captured on video. When I went to the City Council hearing later on the closure proposition, that video was shown, claiming I had purposely done a "cannonball" to roust the seals. To press the advantage, Council member Emerald took up the accusation and railed for the camera about my doing this cannonball move, though she knew nothing about it.

The local activist lawyer said he would turn me in to NOAA, on this pretext. I contacted the local NOAA agent for law enforcement and explained what had happened and that she would be getting the video delivered. We traded a couple more emails and I heard nothing more.

So if this video is trotted out and you are told in advance what to see, use your own eyes to see what you see, and not what you are told to see. If people are forced off the safest beach in San Diego, there can be unforeseen results.

John Leek
3090 Admiral Avenue
San Diego, CA 92123.
For LCP-6LJS-14-0607-1, CDP # 6-14-0691

A personal investigation into the origin of our seal colony

It is well documented that seals did not come up on the sand at the Children’s Pool until the early 90’s when they seemed to mysteriously lose instinctive fear of humans. Eventually seals that had normally hauled out on Seal Rock to the north left there and joined the newcomers on Children’s Pool beach, leaving scientists and officials mystified. Passages in the court records of the famous O’Sullivan case (2005) caught my eye.

Page 22:
Plaintiff cites to the fact that since at least 1997, Hubbs-SeaWorld has been engaged in a rescue, rehabilitation and release program under the aegis of the National Oceanographic and Atmospheric Administration or its sub-agency, NMFS, [Exh. 245.] That program consists of retrieving injured or diseased animals, rehabilitating them at SeaWorld in San Diego, and, upon return to health, and after tagging, releasing them in Pacific waters. The release of harbor seals is accomplished generally in the kelp beds immediately outside the Children’s Pool. Tagged harbor seals are routinely observed hauling-out at the Children’s Pool. Once it was determined that the released seals were impacting the use of the Children’s Pool, the City took no steps to protect the Pool from becoming a haul-out for such seals.

Page 27:
The City knew of the release of harbor seals near the Children’s Pool by Hubbs-SeaWorld and did nothing about the build-up of seals at the Pool. The City violated the right of the public to have access to the beach by roping off the beach to the public. The City kept the rope in place from 1999 until late 2004.

Page 30:
The substantial increase in the number of seals using the Children’s Pool seems to have some relationship to the actions or inactions of the City. The creation of the Reserve in close proximity to the Children’s Pool and the release by Sea World of rehabilitated harbor seals in the kelp beds off-shore of the Pool, seem to have contributed to an increasing number of seals using portions of the Children’s Pool in the mid-1990’s. The City’s decision to separate the seals from humans and then closing off the Pool to humans, likewise appears to have encouraged the seals to occupy more and more of the beach with ever increasing numbers.
I wrote a Freedom of Information Act request to NOAA asking for release data for rehabilitated rescued seals in San Diego County 1989-2006. Sea World is the only organization allowed to do this, under NOAA supervision.

I received a spreadsheet which I have attached. However, I added 3 columns with “1’s” to denote released in La Jolla off Children’s Pool. A sudden change was evidenced in 1993 as harbor seal releases were mostly diverted to offshore La Jolla. By October 2005, of 72 releases from ’93 to ’05 happened, 58 were right off Children’s Pool (81%). Other FOIA’s gave me actual release records and points of capture as well. They had been captured from all over the county. Many times more sea lions were released, but they all took a different ride down past Point Loma.

Using the release coordinates I was able to map the concentration of releases off La Jolla on overlay maps and place those on the internet at 4 maps of San Diego After the conclusion of the O’Sullivan case with the release of testimony, the harbor seal releases of La Jolla stopped and did not resume.

This letter is the only way a Commissioner might learn of this, as the information is not in the La Jolla Local Coastal Plan and so is not subject for review for this hearing.

John Leek
3090 Admiral Avenue
San Diego, CA 92123.
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NOAA FOIA 2006-00198 with itemizations added
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NOAA FOIA 2006-00188 with itemizations added

Page 3 of 3
Please add this communication to the file

CDP # 6-14-0691, LCP-6LJS-14-0507-1

You may not have seen a copy of his Jan 2 letter, or know he is the head of the Office of Protected Resources for the U. S. West Coast at NOAA.

-------- Original Message --------
Subject: Re: There is a lingering problem in San Diego
Date: Tue, 29 Jul 2014 09:52:39 -0700
From: Chris Yates - NOAA Federal <chris.yates@noaa.gov>
To: John Leek <jleek001@san.rr.com>
CC: Penny Ruvelas - NOAA Federal <penny.ruvelas@noaa.gov>, Chris Yates - NOAA Federal <chris.yates@noaa.gov>

Hi John, thanks for the letter. I won't be able to attend the Coastal Commission meeting as I will be on the East Coast that week in August. I included the Coastal Commission on my January letter to the City of San Diego spelling out my position, which I am aware has broad distribution.

I have seen the lifeguard plan - when we visited you explained that proposal to us. I don't intend to advocate for a specific plan, but that plan does include the concept of shared use which I believe is worth striving for if the protections of the MMPA can be realized without unnecessary restrictions to beach access. Chris

On Tue, Jul 22, 2014 at 11:07 PM, John Leek <jleek001@san.rr.com> wrote:
I have attached a letter and a couple of corroborating documents. Sorry to bother you again, but I think you would want to know what is happening.
July 29, 2014

Chairman Kinsey and Commissioners
California Coastal Commission

Re: Item #12c, August 14, 2014 Meeting: La Jolla’s Children’s Pool

Dear Commissioners:

I regret that I will be out of town and unable to speak in opposition to this request by the City of San Diego to close the Children’s Pool beach to public access during the pupping season.

The polluted and odiferous abomination that exists today at Children’s Pool cannot be fixed by closing it during the pupping season as proposed by the City of San Diego, with the apparent intent to ultimately turn it into a year round preserve for the seals. The existing Seal Rock Preserve originally chosen by the seals is a more appropriate habitat because the rocks are self-cleansing from the wave action, and create positive physical challenges to the colony, which help them to survive, instead of becoming “couch potatoes” lying in their own filth in a zoo-like environment under the gaze of hordes of spectators.

By way of introduction, I was a San Diego City Councilmember representing District One, which includes La Jolla, 1993-2000. It was during that period that seals began to leave their normal habitat on nearby Seal Rock, and haul up in growing numbers on the breakwater protected expanse of sand known as Children’s Pool. Prior to that time, there were limited incursions at Children’s Pool because the seals were reluctant to mix with the significant numbers of bathers that frequented it.

Children’s Pool has been treasured by local residents and visitors for more than a century as a place of recreation for families to enjoy. It was this purpose that prompted Ellen Browning Scripps to bestow an endowment to make it safe for children to learn to swim there by protecting it with a breakwater in 1931.

The breakwater was originally designed with sluiceways to allow the action of the ocean to prevent the build up of sand in the cove-like setting. Early photos show that the sluices were effective in limiting the beach to a small area with a large pool suitable for swimming behind the breakwater. I understand that many years ago, a daring but foolish youth attempted to make his way through one of the sluices, got stuck and drowned. Unfortunately, the reaction by the authorities to this tragic accident was to wall up the sluices. Thereafter, the area behind the breakwater gradually filled in with sand to create an expansive beach with little room for a pool in the protected area, thus creating an attractive hauling up place for the seals.

During my time in office, we devised a plan to resolve the increasing seal encroachment problem without harm to the seals by restoring the original configuration of the beach through sand removal, thus reducing the desirability of the location for hauling out, and allowing it to return to its original recreational purpose. We had the funds and the support of State and Federal agencies as long as it was done without seals being harmed. I believe this is consistent with one of the principal mandates of the Coastal Commission to protect the coastal resources for the recreational enjoyment of the public.
Regrettably, the plan was controversial because some were determined that the seals had more right to the area than people. My view was that the area because of its artificial nature was not the natural habitat of the seals, and that not taking action to discourage them from using it, would reduce them to a sideshow tourist attraction and alter their natural behavior. I wanted to restore the pre-existing historical working balance between seals and people. Regrettably, the City Council by a narrow margin failed to reach a consensus on the plan because of the intensity and combativeness of the advocates on both sides of the issue.

The legacy of inaction to remove the seals has been an endless and bitter controversy characterized by legal wrangling, the stench from the seals’ fecal matter, unacceptable and unhealthy pollution of the beach and pool, tourists overwhelming the available parking, distractions for the lifeguards, confrontations between opposing factions, instances of deplorable behavior by individuals, and so on.

I continue to believe that the recreation opportunities afforded by the gem of a protected cove provided by Ellen Browning Scripps’ generosity at Children’s Pool 83 years ago can be restored by recreating the original configuration of the beach and pool which kept the interests of seals and people in a delicate balance for so many decades. It is a relatively simple matter of removing some sand, and reopening the sluiceways with an appropriate means of preventing efforts to traverse them.

I respectfully urge you to look to a long-range solution, which I have outlined, rather than settle for a perpetuation of the current contentious, unhealthy and unsatisfactory situation.

Sincerely,

Harry Mathis

cc Councilmember Sherri Lightner, District One
Harry Mathis  
5649 Sandburg Avenue  
San Diego, CA 92122-4132  
hmathis1@san.rr.com

June 22, 2004

Chairman Jim Madaffer & Members of the  
Natural Resources and Culture Committee  
San Diego City Council  
City Administration Building  
202 C Street  
San Diego, CA 92101

Re: NRC Agenda of June 23, 2004, Item #1: La Jolla Children's Pool Joint Use

Dear Chairman Madaffer & NRC Committee Members:

I regret that I cannot appear because of a previous commitment. However, I wanted to communicate my feelings on this matter to you:

Back in 1997, as District One Representative, I championed a measure to dredge Children’s Pool back to its original configuration. Its intent was to preserve the use of Children’s Pool for its endowed purpose as a recreation resource for children in a safe salt water environment in the face of a growing encroachment by the seals from neighboring Seal Rock. While we could not prevent the seals from hauling up, I wanted to maintain a human presence to act as a deterrent by significantly decreasing the size of the beach thereby densifying its use by people, and increase the volume of the water behind the breakwater to help deal with the potential contamination problems. I also knew that the Children’s Pool was not a natural environment for the seals because of the breakwater, and I wanted to discourage the seals from moving into an area which would bring them into closer contact with people. I wanted to restore the natural balance between people and seals that had existed over the years since Children’s Pool was first created.

Since the measure failed on a 5-4 vote largely because of misguided sympathy for the seals by a number of well-intentioned people, my worst fears for Children’s Pool have been realized. Its denial to the public and the subsequent accelerated growth of the seal colony and the resultant contamination have perpetuated the controversy to this day. I wish this could have been avoided in 1997, but now the Council has an opportunity to take an action which will help restore the legacy of Children’s Pool to its rightful place as a recreation resource rather than as an unnatural sideshow for seals.

This was never about the survival of the seals. Their natural habitat is a thousand miles of coastline. Their existence is not threatened here by any measure you take to restore Children’s
Pool to public use. Rather, the man-made environment behind the breakwater has artificially generated a local seal population explosion which threatens to spill over into other areas of our beaches, and threatens the viability of the seal population itself in terms of the available food supply. In effect, our past abandonment of the beach to the seals has upset the balance of nature which will only become worse if some action is not taken to restore the competition for space between humans and seals at Children's Pool.

It is tragic that the Council failed to take action in 1997 when it could have been done much more readily, at much less expense, with available funds. A mistake was made then. It is time long overdue to correct it. Despite the greater challenges which exist today, I urge you to take corrective action to dredge Children's Pool and make it once more available for use as it was intended when the breakwater was built.

Thank you.

Sincerely,

[Signature]
Refer to Childrens Pool CDR #6-14-0691, LCP 6LS 14-0607-1

To all California Coastal Commissioners
In response to report on Childrens Pool

To whom it may concern:
Fact #1 No ONE has ever been convicted for a violation at the Children's Pool.
Fact #2 No seal has ever been hurt.
Fact #3 It is my constitutional RIGHT in California to enter the ocean.
Fact #4 I am entitled to a CLEAN beach free of seal poop.
Fact #5 We are all entitled to CLEAN water.
Fact #6 The seals have NEVER needed the pool.
Fact #7 The Children, Handicapped and divers DO need the beach.
Fact #8 We are in the process of building a 4 MILLION Dollar Lifeguard tower at the pool.
Fact #9 The project is not consistent with the coastal act with NO Beach Access.
Fact #10 There is only ONE handicap access to the ocean in La Jolla and it is at the Children’s Pool.
Fact #11 The change in the Trust ONLY added seals it did NOT take out swimmers and divers, and fishermen.

Please stand up for who YOU are, it is YOUR job to protect Beach Access and Clean Water WE in La Jolla need you to stand with us on asking for both. Please do not take them away,
I do not believe any of you would ever what this to happen to your beach!!

Sincerely, Melinda Merryweather 522 Weatbourne st La Jolla 92037 858 454 5939
July 31, 2014

To Whom It May Concern,

During my tenure lifeguarding at the Children's Pool from 1969 to 1989, the City of San Diego's beach cleaning team and the San Diego Lifeguard Service had cooperative relationship to ensure that the beaches were safe and clean for the public.

The beach cleaning procedure was performed each Friday at the Children's Pool on a regular basis and also on an 'as-called' basis when the Lifeguards requested additional services. The Baja Road (road leading to the beach) was maintained diligently by the City of San Diego beach cleaning crew for two different purposes: 1) for heavy machinery to access the beach for the purposes of removing kelp and sand; and 2) for making it safer and easier for people with disabilities to get onto the Children's Pool beach.

At one instance, the City removed tons of sand from the Children's Pool Beach and placed it on the ocean side of the Children's Pool wall in an attempt to maintain the water depth in the Children's Pool for purposes of safe swimming.

The above statement is a true and honest recollection of the reality of events between 1969 and 1989 at the Children's Pool.

Sincerely,

Joseph Barrett

Brittney: This is the proof that you showing the beach access at the Children's Pool is NOT a emergency access which you say over and over again in the report it was used by people by disabled and to take out seaweed. Please add to the report Thank you Melinda Merryweather
Mr. J. C. Burger, Attorney in Fact, 
For Miss Allen Browning Scripps, 
La Jolla, California.

Dear Sir:

RePLYING further to your communication of June 21 requesting permission for the construction of a concrete breakwater in the Pacific Ocean at La Jolla, beg to advise that we have been advised by the City Attorney that inasmuch as this recreational improvement proposed by you does not affect any property under the control of the Playground Commission, the said Commission has no jurisdiction whatsoever over same.

However, the Board of Playground Commissioners will be glad if you will express to Miss Scripps our sincere appreciation of this proposed addition to the recreational facilities in La Jolla, and that the Board will be happy to cooperate in any and every way possible by placing our superintendent at the disposal of your engineer and the contractors before and during construction of the bathing stone area, and also to cooperate with you in the maintenance and construction of same after it is completed, in so far as our jurisdiction will permit.

Respectfully yours,

J. B. Pendleton (Signature) 
President 
Board of Playground Commissioners

Copy to Mr. M. F. Savage

Promise to maintain
On January 19, 1984, I visited the Children’s Pool in La Jolla and observed the ramp area noted in the December 20, 1983 memo from Councilman Gotch and Councilman Mitchell.

The ramp, which is constructed of decomposed granite did not appear to be in a state of disrepair at the time of my inspection. According to Coastal Division, the ramp which is primarily a service ramp for vehicles was recently reconstructed and poses no urgent problems.

Construction of an "all purpose ramp" as suggested in the December 20 memo would be a significant project requiring adherence to current codes for pedestrian as well as vehicular access for safety and service vehicles. A project of this nature constructed of concrete with associated retaining walls, cutoff walls and handrails could conceivably cost in the neighborhood of $75,000.

There are really many improvements to be made in that area, which appear to me to be just as necessary, if not more so. The asphalt walks and the deteriorating railings along the bluff top should all be replaced.

I would suggest initiating a project to do all of the beautification work in this area, including a ramp if funding can be made available through the normal CIP Processes. A project budget of some $150,000 to $200,000 should be considered.
CITY of SAN DIEGO
MEMORANDUM

FILE NO.:

DATE: January 18, 1984

TO: Deputy Director - Park & Recreation Department/Park Development & Open Space

FROM: Deputy Director - Park & Recreation Department/Coastal

SUBJECT: Felt CHILDREN'S POOL RAMP

Attached is a copy of a memorandum dated December 20, 1983 from Councilmen Gotch and Mitchell to the City Manager regarding a proposed Capital Improvement Project.

You and I discussed the contents of this memorandum on Thursday, December 29, 1983. You informed me that you would pursue the capital project in your division and would respond to the memorandum. This division has no objection to improving the ramp at Children's Pool. If you require input to the memorandum from this division, please feel free to contact either Bill Norton, Lifeguard Captain or myself.

Jack Krasovich

cc: Assistant Park and Recreation Director
    Bill Norton
For many years the Children's Pool area in La Jolla has been the gathering place for tourists and residents alike. Recently, however, the area has received strong criticism from members of the La Jolla Town Council regarding its appearance.

Specifically, we would like to bring your attention to the condition of the access ramp that services the beach. Several months ago, staff was required to install a dirt ramp in order to provide beach maintenance and lifesaving services. As you may recall, a permanent cement ramp is present but due to erosion and severe weathering, the ramp needed special treatment, therefore a dirt-clay ramp was installed.

Now that the winter months are upon us, we find the dirt ramp being washed away on a daily basis. This action is not only causing the sandy area to harden, but is also creating a serious safety hazard that needs to be eliminated. With this in mind we would like to request that you direct staff to review the existing problems at Children's Pool, and develop a CIP for the construction of a cement, all-purpose ramp. Our hope is to have the project placed in the 1984-85 CIP budget. This would include estimates on construction, engineering and other costs associated with a project of this magnitude.

We would appreciate a response regarding this matter and a prospective year when you plan to place the CIP in the budget.

MG/ms
To Brittney, Lawyer

7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

California Coastal Commission

To the Coastal Commission, San Diego,

I have watched in disbelief as the Commission granted one unwarranted dispensation after another to allow San Diego to slowly steal a public beach from its own children. Do you know why it is called the Children's Pool? Did your father ever take you to the beach so you could stand on the sidewalk and look at it?

The effect of letting San Diego create its own local exception to the Coastal Act will change California history. You would make public access secondary in significance to unsubstantiated claims by a dysfunctional municipality guided by money.

I have long been involved in La Jolla community actions and note that La Jolla is the only San Diego district with a visible secessionist movement. I watched every local advisory group try to save our beach access, only to be ignored by City Hall; aided by the Coastal Commission of all people. What splendid irony.

I found the CCC_Final_StrategicPlan and of the three core Commission policy concerns, #1 was Maximize Public Access and Recreation. That is very clear. Below that was to Protect Coastal Resources. It does not say Protect Coastal Resources from public access.

Artificially creating a sub-culture in an animal stock that depends on human intervention for shelter is not preservation of a resource, it is fooling with Mother Nature. Decisions about wildlife and people on our coast are supposed to be based on good science. There is none to validate the claims from our City government, especially that local mismanagement should be solved by the Commission on the back of Public Access principles. That would be an abuse of power.

This closure scheme will be contagious. Any beach in California is of economic and biological significance. All a city has to do is fib a bit to misuse 30230.

If the Commission feels strongly that seals must be protected from their own poor judgment, then tell Sea World to collect them up and take them somewhere safe.

Melinda Merryweather, lifelong La Jolla resident

[Signature]

858-454-5939

120
To Calif. Coastal Commission  
re: Item # LCP-6-LJS-14-0807-1/Th12c  
CDP# 6-14-0691/TH13a  
Childrens Pool in La Jolla  
To ALL the Coastal Commissioners

To who it may concern I have read the report, and found some mistakes you should be aware of they are statement told over and over that are NOT the facts or the truth.

This was said on page 29,31,9, and 16 perhaps more.
The report says that the Beach Access Ramp at the Children's Pool is a Emergency ramp IT IS NOT! it is a ramp that people have used for years to get to the beach! I used it to get small children and food to the beach in a little red wagon, and back up again, the stairs were to steep and we could not lift all that down the stairs for years we used the ramp it was NOT A EMERGENCY it was just getting to the beach like we always did.
The other people that used it were people with strollers, wheelchairs, baby buggies, coolers, divers and fisherman with their stuff, hardly any one used the stairs, they were to steep.
The facts: I helped write our Community Plan and my part was the beach access so I know what I am talking about.
I have given you a copy of our community plan and as you can see it is a BEACH ACCESS RAMP!!
Just because the city stopped taking care of it did NOT change what it is. It Is our BEACH ACCESS RAMP also used to take the seaweed off the beach by the city.
WORDS DO NOT CHANGE THE FACTS!
Sincerely Melinda Merryweather 522 Westbourne st La Jolla 858 454 5939
To Brittney Lover and all the Costal Commissers  

In your report you called out 2 wheelchair access that do not exist, I helped write all the beach accesses in La Jolla for our Community Plan and you are completely misinformed!

# The access at Boomer Beach is a 3 and a half foot wide short ramp that runs in to a set of 2 and one half foot wide stairs, that goes on to the rocks!! This is NOT a wheelchair access!

Perhaps it would be good to send some one out to the places and look at them before making these statements.

#The access at Scripps by the pier is also NOT a wheelchair access, is a wide ramp for cars then it turns left and is very steep drop to the beach it is for their trucks you could never try to get a wheelchair down it, and the people at the building on site the Center for Coastal Studies said they would stop any one from using it for a wheelchair access, one of the girls that works there has a mother in a chair and would never ever try and push her down there. This is NOT a wheelchair access.

# The shores is almost a insult to people in a chair, pushing people in a chair in to waves is NOT a good idea, that is why the Children's pool is so great! no waves that is why Ellen Scripps said about the pool this my gift to those handicapped in life. God knows we have all those soldiers coming home with no legs what could be better for them?

The lifeguard at the shores agreed with me it could be very dangerous to push a chair in to waves.

I grew up in La Joila and saw Wheelchairs use the ramp I pulled a wagon full of kids down it trucks used it to take the seaweed off the beach, I have a photo from a year ago with a wheelchair on it.

The Children's Pool has been and should still be for handicap access, there is no better beach as it is a man made pool, no waves.

You should remove you statements about wheelchair access from the report as they are not true.

Sincerely Melinda Merryweather
Intentionally
Blank
Intentionally Blank
Miss Miller, Executive Secretary of the California Coastal Commission Headquarters San Francisco
August 8 2014

Dear Miss Miller,

Thank you for your message and instructions. Off topic of the Children’s Pool it seems to me that perhaps a discussion of updating the communications opportunity to the people of California to be able to use email is in order. If the Commissioner and staff are using emails in their everyday business and you are, then the public has the right to communicate with the Commission this way as well. Every single government agency from the President of the United States to the Mayor has allowed this. There is a link on their websites to email them. As a disabled woman it is very difficult for me to communicate any other way. Many people do not have landlines any longer and faxes are not that common for people to own. The Commissioners are all over the state. I traveled hours to a meeting in Huntington Beach and waited lying on ice for 10 hours to have 3 minutes to speak.

Not many disabled people can do this; it was difficult for me. The disabled community is ignored terribly and the CA Coastal Commission needs to please think about us. I appreciated the opportunity to send emails with attachments. In this day and age of computer technology it is possible for each commissioner to have their own sub website. It can give a profile for each commissioner, and list the current projects and have a button to link to that project to send information. It is easy to create and would streamline communications and allow the public the same mode of communications that you all use everyday. It would make it easier for the commissioners and also cut down on paper waste. Each commissioner can file the information in the correct project file and be able to send it to another commissioner for discussion and networking. It should save time if done right.

The young analyst Britney Lavere recently stated to me that the California Coastal Commission does not have any oversight. Think about the arrogance of that statement to me, a disabled California Taxpayer. The United States of America is founded upon a democratic system of checks and balances. When a government body does not have to answer to anyone it creates more of a dictatorship board that acts on its own accord regardless of the public’s input. Regardless of the facts and regardless of codes and laws as well it seems. I know this is a pretty serious statement. Disability laws and codes have been in effect since the 1940’s. Codes and laws are important and they have been and are being violated at our only ocean pool. But as important are the values behind those laws. Even if there were no laws common decency and moral compassion should prevail. Greed is prevailing and ignorance because the Commissioners already have an agenda and it does not matter what facts are brought before them. It seems that input and hearings are just going through the motions. What guarantee do the taxpayers have that our input is being considered? None. In fact my triangulated facts of information so diligently research and reported were treated as lies. This is insulting to me. There is no other safe ramped access into a safe calm ocean swimming area or ocean pool on the coast. And Commissioner Sarb lists two accesses that are impossible for a paralyzed swimmer to access. Impossible and very dangerous. Paralyzed people can not negotiate wide soft sand beaches or surf or stairs and boulders and cliffs. La Jolla Shores is not ADA accessible for swimming, and Boomer is too dangerous for the best of swimmers, the entry is to wait for a wave and jump in it off a cliff into rocks. Swimming is not allowed, only experience body surfers can go there. I do not mention it as a part of the C.P. discussion but to point out that Commissioner Sarb is totally ignorant of her own San Diego Coastline! Her intention purposeless disrespect for disabled veterans laying all over the city and country who need access is tantamount to treason in my opinion. She insults the disabled, our Veterans, and the one in five disabled Americans, and the potential of the only ocean pool we have. That the pool is not restored and perfect and filled with disabled people healing on a daily basis is criminal literally. That the ocean at this location is now a DEAD ZONE void of fish, crustaceans; Tide Pool Creatures is an insult to the Ocean for which the Commission is also responsible.
This has been my first experience dealing with the Commission as a concerned disabled California tax payer. I report here and now that I feel the Commission needs to reorganize and make your organization a democratic one, as it is not.

I cannot close with out inquiring if Britney Lavere, the staff writer of the recommendation to close my only ocean therapy pool is a dues paying member of the organizations financing the closure? Sierra Club and Surf Riders, Friends of the Seals, APRL? This is an ethical issue. If she just came from a meeting rallying the closure the night before she cannot be anything but biased when writing the report. Her dues if she is a member, is paying for the effort to close the pool; a financial conflict of interest clearly. When I met with Britney she made it very clear she does not care for the rights of the disabled and she made it very clear that the pollution problem is best solved by closure of the human bathing pool protected by a Trust that stood the test of court. All this has been ignored: a human health ruling in 2004 prompted by the Centers for Disease Control to remove the filthy bacteria ridden sand to discourage the seals from birthing in their own feces and urine still stands. If the Children’s Pool IS closed this will cause the pollution concentration to increase. T.B. and E.coli can be present in seal waste & airborne. This too ignored by the Commission. My point is that the impression I got is that the Commission picks and chooses the facts to consider depending if they support the agenda they have. All facts are of course needed. The Commission is really required to obey the human health ruling, of course. This is what I mean, a human health ruling ignored? Based upon the Centers for Disease Control? Really? This is the point of my message. It is wrong on every level to ignore a human health ruling and for the Commission to ignore such a ruling to serve special interest groups is unethical and does not serve the greater good in any stretch of the imagination. So to the old and new commissioners I ask for your moral commitment to do the right thing. Know the laws of the project and obey them. Judge Pate ruled and it still stands. The Commission is ignoring it thereby potentially putting people and seals in harm’s way. This is wrong; I hope you can begin to understand. Or perhaps you are so far gone on agenda power trips that my words fall on blocked minds? By the time you lay your heads to sleep tonight about 22 young severely disabled veterans will have chosen suicide over facing the terrors of their wounds. They should have every chance to rehabilitate when they return and they do not. The Commission is ignoring them; preventing them from being able to experience the real Pacific Ocean and get out their wheelchair confinement supported in the healing calm waters of the only ocean pool for them. This is morally wrong. And of course is breaking every disability code ever written since 1948 when the primary access ramp was to code. This is a fact that the Commission is calling me a liar about. This is wrong and adds insult to injury and is disrespectful and as far from a democratic system as one can get. It is reminiscent of Hitler’s system. He picked and chose the facts to consider, human civil rights ignored as they are by the Commission and the City of San Diego. The behaviors of the people preventing access at my pool remind me of the SS, seriously. Spy cameras that honed in on women, in the showers too, noting license plate numbers, grabbing people, and intimidating disabled people. Videoing beach goers and swimmers up close and personal for long lengths of time. All this has been promoted by the City of San Diego and supported by the Commission. Why?

Cheryl Jacobs Aspenleiter
Disabled Ocean Swimmer
858 568 1257
Subject: Fw: childrens pool
From: christopher oldstone <christopher.oldstone@sbcglobal.net>
To: mbeherenow@sbcglobal.net;
Date: Friday, August 1, 2014 11:39 AM

On Friday, August 1, 2014 11:22 AM, christopher oldstone <christopher.oldstone@sbcglobal.net> wrote:

To whom it may concern,
my name is Christopher Oldstone and for all but the first six months of my life I lived in La Jolla. I learned how to swim and spent countless days at the Children's Pool swimming, playing and fishing off the Wall. I saw city employees who's office so to speak was a small room that was behind the bathrooms at the cove remove kelp and other items that washed up on the beach at the Children's pool all the time. They not only did this during the summer but also in the winter months it was done year round. These city employees worked for the city for many rears and because I grew up bodysurfing Boomer beach and seeing them all the time developed a friendship with them as well.

Any questions I am more than happy to speak with you. 
Chris Oldstone 760 212 6168
Subject: Re: Heavy equipment on Children's Pool beach, LA Jolla, CA
From: Leslie Shoots <leslieshoots@yahoo.com>
Date: 8/21/2012 1:50 PM
To: Marie Hunrichs <mariehunrichs@cox.net>

I was first there in 83 and 84 while in the Navy. I took my wife and I there August of 89 on our honeymoon. We stayed at the Shell Beach Apts. where I watched a yellow bulldozer cleaning the Childrens Pool from our room. Later in August of 95 we took our two toddlers to the Childrens Pool and remember having to wait before we could go down to the beach while the same type of equipment finished cleaning the beach. I remember it exiting the beach up the sandstone ramp. It had a bucket type scoop which he was using to pick up sea weed, kelp, etc. You might enjoy this 1970 Dodge Commercial that was filmed on the beach there at the Childrens Pool.
http://www.youtube.com/watch?v=R5IM5YaCVII
Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because ... Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

I had the privilege, as a young immigrant from Finland, to enjoy Children's Pool or Casa Cove when my parents brought me there in the 60's. I learned to swim there, learned to skin dive there and also was able play on all of the rocks and go through the caves. I traversed all of the beach and rocks from Hospital Beach to Boomer beach. I body surfed at Boomer and dove for abalone there, at Shell beach and also outside the breakwall. Casa Cove-Children's Pool was where my sister's families(5 sisters) came to bring their children to swim whenever they visited us from Canada. My mother picked mussels off of the breakwall, then cooked and ate them. I jumped off of the breakwall when I was a kid(at high tide). I lived for the beach when ever mom would take me and my brother there. My older brother, Henry Velli Risto Mikkonen, taught me how to dive for abalone there and how to spearfish. We continued to go there as a family and brought the neighbor kids. We
played and went from rock to rock, jumping or diving in. From Hospital Beach to Casa to Shell beach, to Boomer and La Jolla Cove, that was our playground. The seals, the few that there were, lounged on the large rock in Shell beach and really, there were hardly any. I dove from that rock into the water all of the time, never had an issue with seals. Fast forward to 1998, when I was able to show my daughter the wonders of the Ocean looking from a skin diving mask. She was 8 years old and had the opportunity to see firsthand, a school of fish under the water at The Children's Pool, right next to the rock in a 3-4 foot deep area. That was my duty, honor and privilege to pass on what I had been privy to as a youngster at Casa Cove-Children's Pool.

We (the Public) had access to Casa Cove in the 60's, 70's, 80's and the 90's. There was never any issue sharing the beach with the few seals that came around. They usually stayed on the rock at Shell Beach and came around when they wanted to.

Now, something has happened to the Beach I so loved and it has been ruined. The Life Guard Tower and Bathrooms are in a state of ruin and the beach has been taken over by activists. Never in my life would I have imagined that the people would do such a thing because of a seal. Taking away a Family Beach for the sake of seals is unconscionable.

They used to have their pups on the rocks and it was warm for the pup. They could go to a sandy beach if they wanted to or needed to have seclusion.

But to take away a gift from a wonderful Lady and the Children that are supposed to enjoy it in perpetuity for the sake of the few is a crime. I am sure that the motive behind all of this is $. Shame on you for stealing the gift of life and a wonderful Beach from the Children it was gifted to.

Hannu Arvo Mikkonen
Recipient: RAMP Committee, Mayor Kevin Faulconer, California Coastal Commission, and Director of Civil Rights Joseph Hairston

Letter: Greetings,

Please note this support to update the access to ADA codes at the Children’s Pool built especially for “those handicapped in life’s game” (E. Scripps 1932)

Sincerely, Cheri Jacobs Aspenleiter disabled swimmer RAMP chairperson
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<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Date</th>
<th>Comment</th>
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<tbody>
<tr>
<td>Richard D. Jacobs</td>
<td>St. Louis, MO</td>
<td>2014-05-07</td>
<td>To me it represents a last ditch effort of the people being heard over special interests. (There is too many special interests in the country today even affecting as high a level as the Supreme Court.)</td>
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<tr>
<td>John Leek</td>
<td>San Diego, CA</td>
<td>2014-05-08</td>
<td>I have had to carry a friend in a wheelchair down the stair there and ask strangers to help carry his wheelchair back up. I saw a one-legged woman crawl across the beach to reach the water. I swam with a paraplegic who needed 6 people to help him scuba dive there because he had to be carried down the stairs.</td>
</tr>
<tr>
<td>David Johnson</td>
<td>San Diego, CA</td>
<td>2014-05-08</td>
<td>It was built for children and the handicapped and the City of San Diego broke trust with the purpose from the beginning and remains against children and the handicapped to this very day.</td>
</tr>
<tr>
<td>Jeffrey Lyons</td>
<td>San Diego, CA</td>
<td>2014-05-08</td>
<td>I am disabled</td>
</tr>
<tr>
<td>Brian Vacker</td>
<td>La Quinta, CA</td>
<td>2014-05-08</td>
<td>To keep this open to disabled and children for which it was made for. It was not intended for a seal sanctuary</td>
</tr>
<tr>
<td>David Ambrose</td>
<td>Foway, CA</td>
<td>2014-05-08</td>
<td>Children's Pool is on of the few safe entry and exit points in that section of coast. We need to preserve human access.</td>
</tr>
<tr>
<td>Joe Wulf</td>
<td>Escondido, CA</td>
<td>2014-05-08</td>
<td>So that all people can enjoy what was created for all of us.</td>
</tr>
<tr>
<td>Ken Hunrichs</td>
<td>San Diego, CA</td>
<td>2014-05-08</td>
<td>The safe access to the ocean at Children's Pool is the most significant resource that must be protected for the uses it was intended for. This pool was built for all the people of San Diego and is the only tidal pool of its kind in the US. The City of San Diego's plans to close Children's Pool must be stopped. Sign the petition and contact the Coastal Commission to demand they uphold coastal access laws in the California Coastal Act.</td>
</tr>
<tr>
<td>Hayley Cluff</td>
<td>Brooklyn, CA</td>
<td>2014-05-09</td>
<td>I grew up in San Diego and went to La Jolla almost every weekend growing up, for me it was another home and meant a lot to me, I feel others should be able to experience it as well.</td>
</tr>
<tr>
<td>Name</td>
<td>Location</td>
<td>Date</td>
<td>Comment</td>
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</tr>
<tr>
<td>David Traynor</td>
<td>La Jolla, CA</td>
<td>2014-05-14</td>
<td>grew up in La Jolla Beach is for children (people)</td>
</tr>
<tr>
<td>Darlene Spriggs</td>
<td>La Mesa, CA</td>
<td>2014-05-14</td>
<td>as a child my family would go through out the summer and when I had children they spent many wonderful days in the pools water</td>
</tr>
<tr>
<td>Phyllis Minick</td>
<td>La Jolla, CA</td>
<td>2014-05-15</td>
<td>I am an 85-year-old with a steel replacement femur in my right leg. Only with ramp access can I reach the healing waters of the Children's Pool.</td>
</tr>
<tr>
<td>Maxine Baker</td>
<td>San Diego, CA</td>
<td>2014-05-15</td>
<td>This beach was meant for children to learn to swim in a safe environment. It has now become the ONLY safe and accessible entry point for disabled individuals to swim in the ocean in the San Diego area.</td>
</tr>
<tr>
<td>Doris White</td>
<td>La Jolla, CA</td>
<td>2014-05-16</td>
<td>this area was meant for access by everyone particularly children and elderly</td>
</tr>
<tr>
<td>Jan Bengson</td>
<td>San Diego, CA</td>
<td>2014-05-16</td>
<td>I hate seeing a historical treasure crumble</td>
</tr>
<tr>
<td>Will Schussel</td>
<td>San Diego, CA</td>
<td>2014-05-16</td>
<td>sea animals have the rest of the coast and ocean to use - let them move to new quarters and let the human back where it is safe</td>
</tr>
<tr>
<td>Sally Reddick</td>
<td>Saint Charles, MO</td>
<td>2014-05-17</td>
<td>For several reasons. First and foremost, a persons will or trust should never be allowed to be broken by the anyone! Secondly, when I visit, this is an area I'd like to be able to swim without worry of the surf.</td>
</tr>
<tr>
<td>Cheryl Aspenleiter</td>
<td>San Diego, CA</td>
<td>2014-05-17</td>
<td>Dear Signers. This is RAMP Committee here trying to master this website that is not user friendly for me at least. There was a way to send all signers a motivational email, that button has disappeared from view. So I ask that each of you please send the petition on to your contacts. I think we can get 1000 signatures easy. One in every five Americans are disabled. So this closure affects everyone. Please join me in my efforts to have access restored at this pool and thank you for your time to do this. Many disabled are unaware and are so in pain that they can not 'get involved' even in this to help themselves. That is why we have ADA laws to make sure access occurs especially at this pool built for them in mind. Thank you, The RAMP Committee</td>
</tr>
<tr>
<td>melinda merryweather</td>
<td>La Jolla, CA</td>
<td>2014-05-17</td>
<td>We must help others when ever we can.</td>
</tr>
<tr>
<td>Theresa Lutzker</td>
<td>Riddle, OR</td>
<td>2014-05-18</td>
<td>My profession as a nurse, I pledge to do whatever I can to make a person's life safe, healthy, and enriched. I've witnessed many disabled people go without the needed water therapy because of not being able to access safely from their wheelchair. This ramp will not only provide increased safety but also give them freedom of autonomy to access water by themselves; something for which many (who are not disabled) take for granted. Please restore the ramp!</td>
</tr>
<tr>
<td>ALEDA MARSHALL</td>
<td>FT. MYERS, FL</td>
<td>2014-05-18</td>
<td>It is very difficult for the disabled to maneuver successfully without ramps</td>
</tr>
<tr>
<td>Chris Kokeas</td>
<td>San Diego, CA</td>
<td>2014-05-18</td>
<td>FEW PLACES ACCESS THE OCEAN AS THE CHILDRENS POOL.</td>
</tr>
<tr>
<td>Clement Hoffman</td>
<td>La Jolla, CA</td>
<td>2014-05-19</td>
<td>Unique resource for persons with physical disabilities</td>
</tr>
<tr>
<td>Name</td>
<td>Location</td>
<td>Date</td>
<td>Comment</td>
</tr>
<tr>
<td>------------------</td>
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</tr>
<tr>
<td>Cheryl Aspenleiter</td>
<td>San Diego, CA</td>
<td>2014-06-07</td>
<td>Please leave a comment for your reason for signing if you will please. The reasons for signing include one in five Americans are disabled, and the Children's Pool is the only one of its kind in our Country. The ecosystem is devoured and decimated seriously. With Marine Agencies surrounding this area you'd think one of them would do an EIR and help our underwater ecology. Nope! The Sierra Club, the Coast Keepers and even the Humane Society are just ignorant of the total conspiracy to close this pool. Remember Valorie O'Sullivan sued San Diego for violation of Ellen Scripps Trust for allowing seals to haul out on sand that should not be there, and pollute the area that cannot wash clear because of the breakwater. And all Ocean Agencies and the Center for Disease Control agreed it was not healthy for the seals to haul out and birth in their own waste, and the bacteria can potentially be transmitted to the humans watching above and the retinaxes across the street. Check out how our MPA and Children's Pool area could look like. Seals can take birth control just like we do. Easy solution to being the balance back. Children's Pool Restored would make a great sea-star sanctuary and give a disabled person the chance to snorkel in safety and see one! Please donate $10 to our petition and change. or will send it to 50 more people. I will be traveling to Huntington Beach for the CA Coastal Commission Meeting and have about three minutes to speak for the Disabled and for the Ocean Ecology. This ramp is the only one on the La Jolla Coastal Plan. And the Mission Statement for the CCC is to Enforce Access of LCP's, not remove the only access ramp on this LCP. Thank you for your Continued Support. Imagine not having the use of your legs and wanting to snorkel. Sincerely, Cheri Disabled Mermaid RAMP Committee</td>
</tr>
<tr>
<td>ray berry</td>
<td>San Diego, CA</td>
<td>2014-06-14</td>
<td>therapeutic</td>
</tr>
<tr>
<td>Paul Schreiber</td>
<td>Washougal, WA</td>
<td>2014-06-14</td>
<td>It is very important to me to take care of our disabled children and veterans.</td>
</tr>
<tr>
<td>Marvin Manes</td>
<td>Ariel, WA</td>
<td>2014-06-14</td>
<td>A friend of mine is disabled, lives in San Diego and would like to be able to use the pool again</td>
</tr>
<tr>
<td>Kay Stafford</td>
<td>La Jolla, CA</td>
<td>2014-06-14</td>
<td>I was built for children and disabled. The seals are not being harmed. They choose proximity to people. They have other more appropriate sites for those who don't wish proximity to people. It is a precedent that will change California beach enjoyment forever.</td>
</tr>
<tr>
<td>Ken Gardner</td>
<td>Cardiff By The Sea, CA</td>
<td>2014-06-14</td>
<td>Because as a wheelchair bound active person there are few options for access to public areas like this. I pay a heavier tax burden than most in the area and have substantially fewer services provided. Not to mention the incredible cost paid by our returning veterans not just in races but in lost body parts and crippling injuries. From a standpoint of fairness in distribution of public services, the disabled are incredibly underrepresented and ignored.</td>
</tr>
<tr>
<td>Ryan Sweeney</td>
<td>San Diego, CA</td>
<td>2014-06-16</td>
<td>The city has stood strong behind it's decision NOT to uphold it's obligations to maintain this beach in a safe manner for the community and within the boundaries of the Trust they agreed to uphold and the State Constitution. Shared use has been working for many years and actual well thought out shared use plans have not been truly explored. The city refuses to do what's right and instead continues to try and flip the script by using reasons for the closure that were created by and perpetuated from their very own negligence. Sorry city of San Diego... it should not be OK for you to restrict beach access because simply because you don't want to.</td>
</tr>
<tr>
<td>Bernadette Gore</td>
<td>San Diego, CA</td>
<td>2014-06-16</td>
<td>I work with a lot of spinal cord injury survivors and they need access to enjoy everything as much as able bodied individuals do.</td>
</tr>
<tr>
<td>Andrew Hippert</td>
<td>San Diego, CA</td>
<td>2014-06-17</td>
<td>I am in a wheelchair</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Date</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kalli Hipper</td>
<td>San Diego, CA</td>
<td>2014-06-17</td>
<td>Support for access to all.</td>
</tr>
<tr>
<td>Paula Donovan</td>
<td>San Diego, CA</td>
<td>2014-06-17</td>
<td>My Son is in a wheelchair</td>
</tr>
<tr>
<td>John Grande</td>
<td>Escondido, CA</td>
<td>2014-06-19</td>
<td>Because I care about the welfare of handicapped people.</td>
</tr>
<tr>
<td>Betty Cruz</td>
<td>Kaunakakai, HI</td>
<td>2014-06-20</td>
<td>I support restoring access to the disabled to the ocean at the Children's Pool in La Jolla, California. Disabled persons and children used to share the Children Pool, and today, disabled persons and children are forbidden from using the Children's Pool a California public beach. Enough!</td>
</tr>
<tr>
<td>Mary Prat</td>
<td>La Jolla, CA</td>
<td>2014-06-20</td>
<td>Restoring access to the disabled</td>
</tr>
<tr>
<td>Katlie Buchanan</td>
<td>S D, CA</td>
<td>2014-06-20</td>
<td>All of us have the Right to have access to this beautiful beach. We are the children of the ocean.</td>
</tr>
<tr>
<td>Dolly Casro</td>
<td>La Jolla, CA</td>
<td>2014-06-20</td>
<td>All of us have the Right to have access to this beautiful beach. All of us have the Right to have access to this beautiful beach.</td>
</tr>
<tr>
<td>Jennifer Rushnell</td>
<td>El Cajon, CA</td>
<td>2014-06-22</td>
<td>I remember a time when I use to be able to use the beach because the ramp was there. It was in disrepair but it was THERE! I currently use a wheelchair part time and fore arm crutches the rest of the time. I miss being able to access this part of the beach.</td>
</tr>
<tr>
<td>Robert Thompsons</td>
<td>San Diego, CA</td>
<td>2014-06-23</td>
<td>I'm in a wheelchair</td>
</tr>
<tr>
<td>Ernie Casco</td>
<td>La Jolla, CA</td>
<td>2014-06-23</td>
<td>I Live in La Jolla</td>
</tr>
<tr>
<td>Peggy Davis</td>
<td>La Jolla, CA</td>
<td>2014-06-23</td>
<td>I also have a disability due to an accident. La Jolla needs to consider the needs of disabled residents and visitors in many locations of La Jolla.</td>
</tr>
<tr>
<td>Mike Sanchez</td>
<td>San Diego, CA</td>
<td>2014-06-23</td>
<td>My son uses a wheelchair</td>
</tr>
<tr>
<td>Judy Halter</td>
<td>La Jolla, CA</td>
<td>2014-06-25</td>
<td>I think it is critical that disabled citizens have the opportunity to swim in the ocean and enjoy a wonderful experience</td>
</tr>
<tr>
<td>Bonita Knapp</td>
<td>La Jolla, CA</td>
<td>2014-06-29</td>
<td>I am disabled and I loved the Children's Pool Beach since 1974 when it was clean and easy to get into for old and young-no pollution and magical place then</td>
</tr>
<tr>
<td>Anne Schofield</td>
<td>La Jolla, CA</td>
<td>2014-06-29</td>
<td>I am a senior with total bilateral hip replacement due to a birth defect. Swimming is my best exercise, and is not weight bearing because of the water. I cannot afford a pool membership. Also, let us respect Ellen Scripps legacy. Scripps Oceanographic Institute as well as many other benefactors do, and are thriving. There are thousands of miles of coastline on earth, and seals can survive anywhere. They do not pay state or federal taxes but humans do.</td>
</tr>
<tr>
<td>Chandra Sakti</td>
<td>San Diego, CA</td>
<td>2014-07-10</td>
<td>because im disabled person that want to enjoy the beach that have easy access and with little help i can still do my own thing.</td>
</tr>
<tr>
<td>Michael Conroy</td>
<td>San Diego, CA</td>
<td>2014-07-10</td>
<td>The City must provide access for all in its programs and services. This protected area is unique and would be safer to use than many beaches, unprotected from breaking ocean waves.</td>
</tr>
<tr>
<td>Sami Cucuini</td>
<td>Arlington, VA</td>
<td>2014-07-11</td>
<td>We visit San Diego often hope to take our future children here</td>
</tr>
<tr>
<td>Jing YY</td>
<td>San Diego, CA</td>
<td>2014-07-11</td>
<td>This is very important to me because disabled people have every right to share the ocean like normal people. I am willing to help them all i can. This place is occupied by seals now, but it was originally built for human especially for kids and people who don't have a bodyguard type. The seals have the whole ocean to live, but san diego residents only have this one pool in the ocean which is safe. I support this place to be modified for better access to disabled people and children.</td>
</tr>
<tr>
<td>Yolanda Zaldivar</td>
<td>San Diego, CA</td>
<td>2014-07-12</td>
<td>I love the beach and to be able to go in the water would be AWESOME! H2O is very therapeutic.</td>
</tr>
<tr>
<td>Name</td>
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<td>Comment</td>
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</tr>
<tr>
<td>Eriberto Garcia</td>
<td>San Ysidro, CA</td>
<td>2014-07-13</td>
<td>Ramp access to the ocean for wounded warriors and people in wheel chairs.</td>
</tr>
<tr>
<td>Michael LaForge</td>
<td>San Diego, CA</td>
<td>2014-07-14</td>
<td>Disabled Vets are a large part of San Diego community and access to the ocean gives disabled people a way to get out of there chairs.</td>
</tr>
<tr>
<td>Daniel Hursaker</td>
<td>Santa Ana, CA</td>
<td>2014-07-17</td>
<td>Safe beach access for all</td>
</tr>
<tr>
<td>Donna Sookin</td>
<td>San Diego, CA</td>
<td>2014-07-17</td>
<td>I have osteo arthritis and it is extremely difficult to enter water elsewhere (stairs or sand expenses) and have friends who would like to swim and are very disabled.</td>
</tr>
<tr>
<td>David Aspenleiter</td>
<td>El Cajon, CA</td>
<td>2014-07-20</td>
<td>This is a historic part of San Diego, created for children and people with disabilities to have a safe swimming environment in the ocean. It should remain that way.</td>
</tr>
<tr>
<td>Mike Sanders</td>
<td>SAN DIEGO, CA</td>
<td>2014-07-26</td>
<td>so i can play with my kids instead of stay on the sidewalk.</td>
</tr>
</tbody>
</table>
August 3, 2014
California Coastal Commission
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

San Diego has learned from its animal rights activists that you can get away with anything if you have an animal in front of you. The City has been working on a complete theft of Children's Pool for a decade, with cooperation from the Coastal Commission. It has every confidence now it can ban the public from trusted tidelands.

San Diego offers the Commission a "final solution" that is anything but, and now we will find out if the Commission can ever go back to its roots. Slow constant encroachment seems to have the Commission backed into a corner, guaranteeing capitulation.

1. Sept 1997, the City had closed the Pool to the public for fecal contamination. Lifeguards had put barriers on the beach the previous year. No permits.
2. March 2003, the CCC noticed the City closed off most of the beach 4 years before and it appeared to be permanent and really should have a CDP. A change in California law no longer allowed closure for animal coliform.
3. Sept 2004, the City posted new signs on the rope barrier explaining it was a guideline and swimming was "not recommended".
4. Aug 2005, a court required San Diego to carry out its own plan from 1999 to remove the accumulated entrapment of sand behind the sea wall which had buried the Pool and to make the water clean enough for public swimming again, per the state trust. The Coastal Commission had never thought to do that.
5. The rope barrier was installed in 2006 on an emergency CDP, while the City appealed the court order. The permit stated "...not intended to prevent access..."
6. By 2007 the City had delayed living up to the court order and wanted to install its rope barrier again on a one-year basis.
7. Jan 2008, San Diego applied to install its rope barrier for another year. A citizen appealed and held up the process. The City Attorney had the rope barrier installed on a self-proclaimed emergency had the Superior Court had denied it. (Attached) The CCC rejected the appeal months later in Santa Barbara where no citizens were present. It was noted the City Attorney putting up the project with a pending appeal had been a violation, but he was forgiven.
8. Also in 2008 a complaint was filed that the City had closed the former access ramp without a coastal permit a decade before, and submitted proof it was still used when the City wanted to provide an alternate route for tourists during construction. The investigation was quashed in the local office.
9. May 2010, the City Council decides on the "pupping season" closure, and year round rope barrier, giving the City Attorney the task of carrying it out. The measure is to be done on an emergency permit. The findings needed for an emergency closure cannot be made and the City settles in for...
the long haul. Community opposition holds up the forever rope barrier permit for 2 years.
10. July 2012, the Coastal Commission reluctantly grants the year round rope, only to find out the 5 month closure is already in the works. It will not end there after all.
The staff report had written up the year round rope as a flawless action and still “not intended to prevent beach access”.
11. Dec 24th 2013, the City Attorney warned the Mayor not to extend the rope barrier past the length specified in the coastal permit. He did it anyway. Local staff submitted a permit to allow it after the fact. A judge ruled the Mayor had broken the law, but it was moot because of the swift action by the CCC.
12. March 21st, the Mayor closes the beach after dark on a self-written emergency permit. March 29th, Sherilyn Sarb creates an after the fact emergency permit that protects the Mayor. It is accepted as a de minimus waiver on April 10th, in Santa Barbara.
13. May 14th, the Mayor posts a memo requiring citations for persons on the seaward side of the rope when a seal moves. Several citations result.
14. Today, the staff report on the hard closure by law is presented as flawless. The closure is described as “limited access”. No consideration of violations of state or federal statutes is considered, as they are not part of the Coastal Act or the LCP, which will be changed to ensure there is no conflict.
15. Just in case this is not legal, as with the 2012 year round rope barrier, any costs of litigation to the Commission will be borne by San Diego, though not all the blame.
The future: The staff report recommending the closure in winter also mentions the rope is inadequate in the summer. The permit fails to mention South Casa Beach next door has been a growing rookery since 2010. Two blocks north, at La Jolla Cove, the City encourages the public to go through a fence to drive sea lions off the rocks with their presence. A number of dead sea lion pups have been recorded there.
16.

I have attached a copy of this letter, and a supporting document to this email.

Philip Miller
6317 Brooklyn Ave
San Diego, CA 92114
BIG INJUSTICE AT A VERY SMALL POOL

The injustice I address here is the attempt to establish so-called “limited” access at the Children’s Pool Beach. This unnecessary permit would illegally modify San Diego’s community plan by restricting/prohibiting beach access during the lengthy harbor seal pupping season. “Limited” in this permit means complete closure of our public beach to be accomplished by placing a locked chain across the access stairs.

The action is unjust because (1) animal excrement is not the name for a sensitive habitat area, (2) harbor seal puppings are not an endangered species on any authoritative list (see NOAA, Sea World/Hubbs). (3) To seek a Coastal Development Permit (CDP) banning access to the Children’s Pool Beach annually from December 15 – May 15 unjustly defies The Federal Interagency Ocean Policy of the U.S. government, the State of California Constitution, Article 10, the California Coastal Act Sections 30210 through 30213, Sections 30220, 30221 and San Diego’s Local Coastal Program.

Now, even as the City of San Diego is building a $31/2 million lifeguard/room/shower complex at the Children’s Pool, which confirms the City’s long-term intent to preserve human life and health at that site, you are being asked to unjustly close the very beach which that facility serves.

The foul, toxic odors from the excrement of an overpopulation of seals, sea lions and birds is documented repeatedly in our national press, warning tourists to stay away. However, no documentation supports the false City claim that an amendment to the La Jolla Local Coastal Program is necessary to limit access. The local population and organizations have repeatedly voted against any beach closure. Our City Councilmember vigorously opposes such closure.

Federal law on this issue is summarized in the following excerpts: July 19, 2010.

THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY:

It is the Policy of the United States of America to:

- Protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- Improve the resiliency of ocean, coastal, and Great Lakes ecosystems; communities, and economies;
- Bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- Use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity’s capacity to understand, respond, and adapt to a changing global environment;
- Support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;
- Respect and preserve our Nation’s maritime heritage, including our social, cultural, recreational, and historical values;
- Exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;
- Increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;
- Improve our understanding and awareness of changing environmental...
conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and

• Foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

Questions about the long-term outcome of seals overtaking our shoreline, under auspices of the proposed permit, remain valid. How will the City’s plan for a marine mammal park at the Children’s Pool affect other beaches now that the increasing seal population inhabits them? Plans exist to close those beaches to people too. We have seen the danger of sharks due to the increased seal population. The saddest effect is that seals and sea lions are dying from starvation and possible contamination from their own feces. The tidepools are empty of sealife now consumed by seals. Most garibaldi, the California State fish, are gone. The former flourishing and diverse sealife no longer exists. These injustices constitute a severe, negative environmental impact.

To preserve a balance of nature, the Tidelands Trust must be honored and co-existence of people, seals, and a range of sealife at Children’s Pool must continue in a way that works for everyone. Realistically, the seals are healthier and better off in sustainable numbers and in the wild. People are better off when they know and use their oceans. The Children’s Pool is an international treasure that can effectively support shared use by all.

I urge you to forbid its closure or limited use. I plead for human justice.

Sincerely,

Stan Minick
La Jolla resident
July 30, 2014
4340 East-West Highway • Room 700 • Bethesda, MD 20814-4498 • T: 301.504.0087 • F: 301.504.0099
www.mmc.gov
consider the feasibility and advisability of providing explicit technical guidance on trend analysis and, for each stock assessment with no trend analysis, require an explicit explanation for why such an analysis could not be completed; and

establish an internal review process to standardize the updating of the SARs within and across regions, and consider using a copy editor to check for completeness, errors, and consistency.

To improve stock assessment efforts in the Atlantic and Gulf of Mexico, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

• expand Table 2 in the North Atlantic right whale report to include right whale #3903 as a serious injury and the unidentified dead right whale seen on 18 May 2006 as an entanglement-related mortality, and recalculate the five-year average of entanglement-related mortality and serious injury;

• expand the section of the report on right whale fishery-related mortality and serious injury to include the total number of entanglements between 2006 and 2012;

• expand the report for the Gulf of Maine harbor porpoise either to include a trend analysis and explanation, or to describe the reasons that the analysis and explanation cannot be provided. If the latter, then the Service also should explain how it plans to rectify the problem(s);

• contact Canadian officials to (1) determine the feasibility of an analysis of port catch levels to estimate the number of harbor porpoises caught in the Canadian Bay of Fundy sink gillnet fishery since 2002 and (2) pursue the development of a reliable means for estimating harbor porpoise bycatch in the Canadian Bay of Fundy; and

• conduct the required surveys of the western North Atlantic harbor and gray seal stocks, incorporate the results into the stock assessment reports, and use that information in its management of those stocks and the risk factors affecting them.

To improve stock assessment efforts in the Alaska region, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

• meet with the Commission to discuss the impending changes in the Arctic and consider the development of (a) a long-term assessment strategy to characterize population abundance, stock status, and ecological and human interactions as climate disruption continues and (b) a long-term management strategy that anticipates the risks to ice seals and develops pro-active measures to avoid or minimize those risks;

• continue its efforts to (1) collaborate with the Alaska Native community to monitor the abundance and distribution of ice seals and (2) use seals taken in the subsistence harvest to obtain data on demography, ecology, life history, behavior, health status, and other pertinent topics; among other things, subsistence harvests provide opportunities to collect valuable data on ice seal populations in many parts of their ranges while minimizing the logistical requirements and costs;

• revise its stock assessments for the north Kodiak, south Kodiak, and Cook Inlet harbor seal stocks by (1) reducing the recovery factor to be consistent with the Service’s 2005 guidelines,
(2) recalculating their PBR values, (3) updating the stock assessment reports accordingly, including changing the status of the north Kodiak stock, and (4) working with Native communities to ensure that harvest numbers, when combined with other human-related serious injuries and deaths, do not exceed the PBR for the north Kodiak stock;

- conduct the research needed to (1) analyze and describe the risks to North Pacific right whales associated with increasing shipping traffic in the Bering Sea and North Pacific, paying particular attention to Unimak Pass, and of entanglement in fishing gear and (2) use that information to design management measures that will minimize the risk of ship strikes and entanglement, and that it ensure its activities do not significantly increase the risk faced by the whales;
- make every effort to expedite the analysis of all passive acoustic, satellite telemetry, and other data available for North Pacific right whales, update the stock assessment report accordingly, and use those data to develop protective measures for this population; and
- revise the stock assessment report for the North Pacific right whale stock to indicate that based on knowledge of migratory patterns of similar species, Hawaii and Mexico could be low latitude habitats used more regularly by North Pacific right whales than currently recognized.

To improve stock assessment efforts in the Pacific, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- first verify that compliance with the measures of the 1997 take reduction plan for sperm whales remains at a high level and monitor any changes in fishery effort that might systematically affect entanglement risk, and then reconvene the take reduction team only if either of those efforts reveal deficiencies;
- continue to plan and request funding for the necessary surveys to estimate abundance of Pacific Coast harbor seals but also consider alternative assessment approaches to update stock assessment reports for harbor seals along the Pacific coast; and
- review all available information on stock structure for Pacific Island stocks of melon-headed whales, pantropical spotted dolphins, and rough-toothed dolphins and update the stock assessment reports accordingly.

RATIONALE

GENERAL COMMENTS

Large whale mortality and serious injury from entanglement and ship strikes

Entanglement in fishing gear and ship strikes are important causes of mortality and serious injury for some whale species. Entanglement was determined to be the cause of death for 36 percent (31 of 87) of North Atlantic right whales necropsied between 1970s and 2009 (van der Hoop et al. 2012). In addition, photographs of whales with scars indicate that the rate of entanglement is increasing: 57 percent of individuals photographed through 1989 showed evidence of entanglement (Krauss 1990), 62 percent through 1996 (Hamilton et al. 1998), 73 percent through 2002 (Knowlton et al. 2005), and 83 percent through 2009 (Knowlton et al. 2012). This trend suggests that actions taken in recent decades to reduce the frequency and severity of entanglements have not been
Ms. Nicole R. Le Bocuf  
14 November 2012  
Page 12

PACIFIC

Sperm whales

Following the 1997 implementation of a Pacific Offshore Cetacean Take Reduction Plan, which included skipper education workshops and required the use of pingers and minimum 6-fathom extenders, overall cetacean entanglement rates in the drift gillnet fishery off the Pacific West Coast dropped considerably (Barlow and Cameron 2003). Sperm whales have been entangled only 10 times in over 8,000 observed drift gillnet sets since 1990. Six entanglements occurred prior to the use of pingers in this fishery. Two entanglements (1996 and 1998) occurred in sets that did not use a full complement of pingers, and two animals were entangled in 2010 in a single net where a full complement of 40 pingers was used (Carretta and Enriquez 2012). However, because of the low estimated abundance of sperm whales (751) the two entanglements in 2010 result in estimated annual fisheries mortality of 3.8 individuals, which exceeds the PBR (1.5) of the California/Oregon/Washington sperm whale stock. Exceeding the PBR usually would lead the Commission to recommend that the Service reconvene the take reduction team. However, sperm whale entanglements in the California drift gillnet swordfish fishery are infrequent and the coefficient of variation for the mortality estimate is relatively high (0.95), which indicates the take estimate has considerable variability. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service first verify that compliance with the measures of the 1997 take reduction plan for sperm whales remains at a high level and monitor any changes in fishery effort that might systematically affect entanglement risk, and then reconvene the take reduction team only if either of those efforts reveal deficiencies.

Harbor seals

Abundance estimates for harbor seals along the Oregon and Washington coasts and in Washington inland waters currently are more than eight years old and are considered outdated based on standards that the Service has set and the Commission supports. Those harbor seals are taken in both gillnet and trawl fisheries, and new aerial surveys to estimate abundance are needed to evaluate the significance of such takes. The Commission understands that the Service has planned and requested funding for both harbor seal and harbor porpoise surveys in this region in recent years but the surveys were not funded. The Marine Mammal Commission recommends the National Marine Fisheries Service for recognizing the need for these surveys and recommends that the Service continue to plan and request funding for the necessary aerial surveys to estimate abundance of Pacific Coast harbor seals, but also consider alternative assessment approaches (e.g., boat- or land-based surveys, use of index sites) to update stock assessment reports for harbor seals along the Pacific coast.

Pacific Islands cetaceans

The Commission acknowledges the efforts of the Service to survey and generate abundance estimates for many of the cetaceans in the Hawaiian Archipelago and Palmyra Atoll. Still, much more remains to be done to meet the objectives of the Marine Mammal Protection Act, particularly to assess cetacean stock structure around remote Pacific island groups such as American Samoa, Guam, the Northern Marianas, and Wake Island. Information on the stock structure of three
species—melon-headed whales, pantropical spotted dolphins, and rough-toothed dolphins—has been published recently or has been presented at recent meetings of the Pacific Scientific Review Group. All three species face threats from anthropogenic interactions, including fisheries interactions and shooting, and management efforts are more likely to be effective if stock structure is accurately described. Therefore the Marine Mammal Commission recommends that the National Marine Fisheries Service review all available information on stock structure for Pacific Islands stocks of melon-headed whales, pantropical spotted dolphins, and rough-toothed dolphins and update the stock assessment reports accordingly.

Please contact me if the Commission can support in any way the Service’s efforts to improve these important stock assessments.

Sincerely,

Timothy J. Ragen, Ph.D.
Executive Director

cc: Shannon Bettridge

References


California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

Dear Coastal Commission,

San Diego bases the harmlessness of closing the Pool on its own negative declaration that there will be no effect. Then why must you do an ineffective thing? The answer given before the Planning Commission was, the rope barrier is hard to enforce and is “only 95% effective”.

Since the Coastal Commission already approved that effective rope closure 2 years ago, a final violation of its principles and basic goals might seem relatively harmless, except to its public image and ability to hold other unprofitable beaches open to the public in the future.

In 2012 the Commission required the City to gather data to show the value of the year round rope barrier. First year’s rope barrier data was submitted this May to Local Staff, but it was not required to be looked at, only the synopsis published. I obtained a copy containing the raw data and a set of 22 photos with titles. The pictures tell the story. Closure can be deemed harmless because the rope barrier had already effectively closed the beach.

Three of the photos were of a time somebody cut the rope. Cost to the City was not indicated. Four photos showed seals or people or both. Four other were titled “Seals across the rope”. Eleven photos were titled “Rope effectiveness”. All were rendered here in grayscale, since color often scans badly in reports.

1. Category – photos of people and seals: Title, “No people or seals” 6/24/2013
2. Category – photos of people and seals: Title, “People and seals” 6/22/2013

3. Category – photos of people and seals: Title, “People and seals” 6/22/2013

5. Category Seals across rope: Title, "seal across rope" 12/08/2013
6. Category Seals across rope: Title, "seals across rope" 3/2/2014

7. Category Seals across rope: Title, "seals across rope" 4/27/2014
8. Category Rope Effectiveness: Title, Rope effectiveness 1-21-2014

9. Category Rope Effectiveness: Title, Rope effectiveness 2-2-2014
10. Category Rope Effectiveness: Title, Rope effectiveness 3-16-2014-1 (Shell Beach)

12. Category Rope Effectiveness: Title, Rope effectiveness 3-16-2014-3 (South Casa Beach)

13. Category Rope Effectiveness: Title, Rope effectiveness 9-2-2013-1 (Shell Beach)

15. Category Rope Effectiveness: Title, Rope effectiveness 9-2-2013-3 (South Casa Beach)
The research shows in the pictures – the rope barrier effectively limits the access to standing behind a rope and so people wanting to reach the shoreline crowd onto other beaches. These pictures are what the researcher chose to submit to show effectiveness.
Tue 12e

REGULAR CALENDAR

STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-126

Applicant: City of San Diego, Park and Recreation Department

Agent: Robin Stubble

Description: Establishment of the "Seal Rock Marine Mammal Reserve" on a permanent basis over 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; and, installation of signage for identification purposes and for public education and information.

Site: West of Coast Boulevard, between Children's Pool to the south and Shell Beach to the north and northwest, La Jolla, San Diego, San Diego County.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed marine mammal reserve with a number of special conditions. The proposed project raises the issue of conflicts between public access to the ocean and protection of the harbor seals that use the area as a haul-out location. As proposed, establishment of Seal Rock as a permanent marine mammal reserve will prohibit public access (swimming, scuba diving, tidepooling, etc.) in the water for a large area surrounding the rock and it has not been documented that establishing the area around the rock as a reserve will afford any more protection to the seals than signage and a good docent program. In addition, establishing Seal Rock as a permanent marine mammal reserve would be inconsistent with the state tidelands grant (Chapter 688) which specifically calls for the absolute right of access to the water. Thus, the Commission cannot approve this area as a permanent marine mammal reserve. According to State Lands Commission staff, it is not possible to make this area a permanent reserve without first amending the tidelands grants.
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.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Permit Limitations. The permitted marine mammal reserve shall expire five years from the date of Commission action. Any future proposal to continue the area as a reserve shall require another coastal development permit.

2. Interpretive/Identification Signage. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director final plans for the proposed identification, information and education signage related to the proposed marine mammal reserve. The proposed signage shall consist of monument signs or wall signs, not to exceed eight signs total. No freestanding signs shall be placed on sandy beach at Children’s Pool Beach. No tall, free-standing pole or roof signs shall be allowed. Said plans shall be subject to the review and written approval of the Executive Director.

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

3. Revised Boundaries for Marine Mammal Reserve. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised site plan which includes revisions to the boundaries of the proposed reserve such that the reserve shall extend 100 feet to the east and south of Seal Rock, as identified in Exhibit No. 2 (Site Plan/Revised Boundaries of Seal Rock Marine Mammal Reserve Pursuant to Special Condition No. 3).

The permittee shall undertake the development in accordance with the approved site plan. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the site plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
To:
California Coastal Commission
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

I have read the recommendations of local staff allow closing a world recognized public beach. It goes against every purpose and goal of the Coastal Commission.

1. Public access is not a resource of secondary significance below building a tourist attraction by altering the natural behavior of harbor seals, no matter how well meaning.
2. Public safety is not a resource of secondary significance below solving local self-inflicted management problems for San Diego.
3. An Act of the Legislature to entrust a tidelands to safe ocean swimming by children is not a resource of secondary significance below any non-emergency created by San Diego’s incompetence, real or feigned.
4. There is no biological value in concentrating a colony of semi-domesticated carnivores between 2 state Marine Protected Areas. Quite the contrary.
5. If the commission gives indication that public beaches can be picked off one by one by nationally based special interest groups packing the house at hearings, then such will become the Commission’s new way of doing business.
6. If the Commission feels a set of seals is making the wrong choice about the stress of living among pesky people, it should fund moving them to some safe place, like Northern California. But don’t ask the locals up there first.

Kay Stafford
La Jolla resident
To:
California Coastal Commission c/o brittney.laver@coastal.ca.gov, Diana.Lilly@coastal.ca.gov
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

Dear Ms Laver,

I am president of the San Diego Freedivers, a large dive club devoted to spearfishing in San Diego. I and our board are very concerned about the advocated closure of Children’s Pool for a large part of the year, encouraging the City to make it unlawful to set foot on the safest ocean entry and exit beach in San Diego. This is based on unsubstantiated “danger” to a fairly recent colony of harbor seals on an artificial beach created by sand entrapment behind a sea wall. That is contrary to Commission purposes, policies and intents.

1. The seal colony is a fairly recent (20 years old) implantation of rehabilitated harbor seals on an artificial beach created by sand entrapment behind a sea wall.
2. The alleged danger to these animals is unsubstantiated by any scientific studies and is belied by their increasing numbers every year.
3. No consideration is given to the violation of sections of the State Constitution.
4. Unlike the previous abandoned Seal Rock Reserve, no exception is given for fishermen demonstrably pursuing the right to access and fish in those trusted waters.
5. No exception is given in the proposed law for emergency exits.
6. The right to fish and access for that purpose is also clearly called out in the 1931 land grant trust.
7. The text of the permit would find public access and public safety to be resources of secondary significance, compared to the value to California of enhancing seal colonies on whatever beach seals end up on.
8. The population of seals is at record levels, estimated in a recent federal survey as possibly about to exceed the carrying capacity of their environment. That will mean they will spread. They have learned that people don’t eat seals. That is all they need to know. We taught them that and now must suffer for it?

Ryan Sweeney
San Diego Freedivers - President
Bad science and census by the federal government have mislead everybody, about our seal population. The Commission does not have enough information to proceed. National Marine Fisheries Service (NMFS) is charged with keeping track of marine mammal populations but has withheld attention to common animals like seals and sea lions. I have attached a letter from the Marine Mammal Commission to National Marine Fisheries criticizing the 2012 Stock Assessment Report (SAR). The Commission looked at harbor seal data but only found numbers for Oregon and Washington. Quote: “Abundance estimates for harbor seals along the Oregon and Washington coasts and in Washington inland waters currently are more than eight years old and are considered outdated based on standards that the Service has set and the Commission supports.” The heading of the letter was scathing.
Quote: “Unfortunately, stock assessment information often is not sufficient to meet the requirements of the Marine Mammal Protection Act. Many stock assessments lack even the most basic information such as up-to-date minimum abundance estimates, which are necessary to calculate the stocks’ potential biological removal (PBR) levels. Estimates of serious injury and mortality rates are lacking for even more stocks. In the absence of such information, managers cannot confidently determine the status of these stocks, the extent of impacts from human interactions, and whether management measures intended to protect them are effective. In the end, the lack of information means that managers are more likely to err by over- or under-protecting marine mammal species, either of which can be unnecessarily costly.”

That was the exact same introduction in a similar letter of November, 2011. Nothing had changed.
Real counts in California for harbor seals are also old, but the numbers are rehashed to look new. An aerial survey probably was last done in 2005, but not in Southern California. Look at the results of census prior to 2005.
An amazing success story.

Figure 2. Harbor seal haulout counts in California during May/June (Hanan 1996; R. Read, CDFG unpubl. data; NMFS unpubl. data from 2002 and 2004 surveys).

Unpublished data? Wasn’t it any good? Since the trend data is all derived from mathematical regressions of old data, it is pretty flat.

Seemingly from 2004 to 2010, we lost 7000 seals but no alarm was sounded. (Because it was just math)

The SARs of 2008 on harbor seals does not mention real field data either, only Hanan’s last aerial count in 1995. The flat population trend was explained in the 2005 SARs and was included in every SAR thereafter “The population appears to be stabilizing at what may be its carrying capacity and the fishery mortality is declining. There are no known habitat issues that are of particular concern. When data previous to 2008 was discarded, previous rapid growth of harbor seal population was hidden, making it appear California harbor seals now have a growth trend of zero.

You have to go all the way back to SAR 2000 to find mention of an actual count.

“An aerial survey in May/June 2000 was successful in obtaining a new haul-out estimate for the Channel Islands in southern California (Fig. 2), but weather and other factors precluded a complete survey of the entire state”.

So in 2000, the number of harbor seals in the Channel islands was counted, but for the mainland the data entry was ZERO. To this day, the absurd idea lingers that there are no harbor seals on the Southern California mainland but they are all in the Channel Islands, except at Children’s Pool where you don’t need an aerial survey to make a count.

Without aerial surveys, counts are made from fishing boat observers. They spot seals in the islands, they don’t go close enough to shore to spot seals on beaches. ZERO counted on the mainland.

Figure 2. Harbor seal haulout counts in California during May/June (Hanan 1996; R. Read, CDFG unpubl. data).
The Myth of Seal Rock

To illustrate the difficulty separating truth from urban myth at Children’s Pool, we cite the claim that the Children’s Pool sea wall was built over an ancient seal habitat called “Seal Rock” and the seals have come home from their diaspora. Below is the 1982 geodetic map from the La Jolla Historical Society museum, with an insert from a 1989 City map. Note when the sea wall is shown to scale, this old Seal Rock is way outside the Children’s Pool, but where was it?

Divers know – the end of the reef behind the sea wall is high at its westmost point, and anyone can see surf break out there at low tide. 100 years ago it was above the surface.

Back then it was mentioned the locals could hear seals barking all the way to shore. Harbor seals don’t bark. Those were sea lions.
Dear Britney,

My comment is simple, but heartfelt, against any closure of our treasured Children's Pool.

Let hearts be open and and let the area known as Children's Pool be open as well. The seals will find wild waters more to their native way of life, and their young will appreciate growing up in waters not 'protected' by humans. After 50 years in La Jolla with my children enjoying the pool, searching for cave creatures, snorkeling, etc.; now my grandchildren are unhappy to see the area blocked off to them.

The seals are becoming a nuisance and do not add anything that cannot be found at Sea World, TV, internet, etc. The fish are disappearing as we speak, and sharks are finding tasty treats near the CP. Of course, the waters are becoming a health issue, and the amounts of 'pups' being born will not help solve any of the above problems.

Please consider the personal sides of those opposing the closure and open our hearts and let the pool be open as well as our 'au natural' coastline.

Thanks for your consideration,

Portia S. Wadsworth

Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because . . . Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City’s application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.
Laver, Brittney@Coastal

From: jimleek <jim@roadq.com>
Sent: Wednesday, August 06, 2014 4:48 PM
To: Laver, Brittney@Coastal
Subject: LCP-6LJS-14-0607-1, CDP # 6-14-0691

TO: California Coastal Commission

7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

There will be movies at the hearing. They are a favorite way to substitute emotional misrepresentations out of context to replace science or documentation. We can only ask that you remember if a human is told they are going to see something, they will see it. It is human nature, we are all prey to it. You must, instead of seeking to “get it”, view video evidence with your eyes and rational mind alone.

The favorite is the product of the Wan Conservancy which filmed the beach 24/7 until it could catch something to try to make a mini-Blackfish out of.

The lurid description is found in the staff report is as follows: Page 13 and repeated on Page 20.

Shortly after installation, the video camera captured several nights of footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals.

Especially here, please look carefully with your own eyes. A couple of drunken women clearly do approach and annoy seals. The seals tolerate proximity of a yard or so, as our acclimated seals do. At no time is a seal touched. When at last, one tries to get a picture standing over one, so their camera would give the illusion the woman was astride the beast, he finally shuffles off to the water. Why didn’t he bite her? Apparently it was not that big a deal to him.
In the staff report, San Diego’s account claims this happened over several nights. The same women returning in the same state of inebriation, the camera monitors never thinking to call police until the suspects had safely left the scene? This story is clearly false, yet it way put in the staff report with no reservations attached. It is an insult to anyone’s intelligence.

And the eventual result of this device that stamped our officials? It worked on our former Mayor, but when two hapless women were hauled into court, they proved they were not the suspects, and the case was dismissed “for lack of evidence”. The Wan Conservancy had spent $45,000 on the camera expecting to sell it to San Diego and recoup its costs. They have been disappointed.

You will see other film clips introduced as proof of abuse – so look closely. Do they not show animals sleeping with people all around? Does it not show earned trust? Remember, you not only are being asked to impose punishment on all of San Diego for unsubstantiated “crimes”, but on every community that will lose beaches this way when they could have found ways to share.

This closure proposition is in no shape to be brought before a State level deliberative body. A history of mismanagement of one beach must not translate into an emergency for all California. The tools have been there for San Diego to solve its problems within the law for 10 years. The CCC is an inappropriate venue for a dodge around state laws. Just say no, “take it back and fix it yourself”.

Jim Leek  Chico, California  jim@roadq.com
California Coastal Commission
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the Commissioners:

There is not enough accurate or truthful information for the Commission to proceed. The CDP sets a dangerous precedent, yet is based on flimsy evidence, and no documentation of the claims San Diego is making. This project would have widespread and permanent effects on the Commission’s ability to maintain even present levels of public access.

San Diego has seized on a weakness in federal pinniped census caused by neglect of duty in the National Atmospheric and Oceanographic Administration (NOAA). San Diego rests its urgency on claims there are no other seals in Southern California that matter except for those in La Jolla. If you allow the city to make this premature decision, the decision will come back to you both due to its negative repercussions locally but also due to others using this decision inappropriately elsewhere along the coast. Just as we are warning you about this increase, NOAA has been notified concerning the increase in pinnipeds by the scientific oversight group, the Marine Mammal Commission (see accompanied files).

The facts are that the Harbor Seal population has increased from the low double digits to the mid triple digits in the last ten years. This is reflected in what scientists are observing up and down the West as well as East coasts.

NOAA scientists have been baffled by hordes of starving sea lions all this year. This increase in sea lions has been noted only one half mile north of the Children's Pool. The City of San Diego has implemented a policy due to this tremendous parallel increase in Sea Lion population (along with the Harbor Seals). They put in a gate along the cliffs so that people are now able to walk down to where large numbers of Sea Lions have moved in and caused a very irritating odor. This odor has had a negative effect on patrons visiting the nearby restaurants.

It is only a matter of time when the effects of the increased Harbor Seals at the Children's Pool will affect the community and bring out similar ire and similar demands. The Commission will hasten that day by closing down the Children's Pool. The fence which the City built along the La Jolla Cove cliffs essentially closed the cliffs to people and it was that restriction to public access that drew the Sea Lions onto the cliffs where they had previously not made access due to the presence of people along the cliffs. The same holds true at the Children's Pool. With the City's closing off of the popular access ramp, allowing extremists to harass users of the CP and the rope giving the appearance of a closed beach, the Harbor Seals have in like manner become attracted to the mostly unused beach.

CONCLUSION:
The Commission needs to recognize the Children’s Pool closure scheme is a radical solution to one town’s
social and economic self-inflicted wounds and send it back to San Diego, for them to solve their problems locally, within the confines of existing law.

Just before this call for data NOAA made its stand on the matter of Children’s Pool.

FROM COURT RECORDS:
On September 14, 2004, the City Council once again held hearings on the Children's Pool. Addressing the Council that day was James Lecky of the NMFS. He advised the Council that harbor seals are a healthy species which are growing in population and not in any way endangered or threatened as a species. In fact, as the population of harbor seals expands "[t]hey are causing problems ... up. and down the coast in terms of invading harbors, causing property damage and limiting access to beaches that are important for other " public uses." He then told the Council: "The tools that are available to the City and other local governments agencies really reside in [Marine Mammal Protection Act] §109(h)." He said "animals can be moved out of an area if they are either presenting a public nuisance or they're causing a public health hazard." It was his position that the seals at Children's Pool were a local issue for the City to resolve. [Exh 129.]
At the end of the meeting, the Council voted "to design and permit the sand removal project and open the pool for year-round use. Direct that the opening of the sluiceways in the Children's Pool be evaluated as an alternative method to obtain the sand removal and tidal flushing as part of this effort. Direct that the rope barriers and sign posts be immediately removed to restore public access to the area and that new signs be placed."

That is a curious way for the head of Protected Resources for NOAA Southwest to talk if there were really only one harbor seal colony in Southern California. But then, he had access to inside information. The alternatives to solve the problem the City Council agreed on in 2004 were abandoned later and now San Diego comes crying to the Coastal Commission to let it take what looks like an easy way out, though it will re-ignite and exacerbate the root problems in the long run. But then it can be attributed to the Coastal Commission.

SEND IT BACK. The higher courts do that all the time when a case comes before them prematurely.

David Johnson
4222 Wightman Street
San Diego, CA 92105
August 5, 2014

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive Suite 103
San Diego, CA 92108-4402

LCPA #LCP-6-LJS-14-0607-1 Children's Pool

Dear Commissioners,

The City of San Diego plans to close the Children’s Pool in La Jolla between December 15 and May 15 in order to address what they call “conflicts between people and seals”. The City must amend the certified Land Use Plan (La Jolla Community Plan) in order to stop beach access at Children’s Pool Beach during this time period. Please do not approve the amendments to the LUP based on the following:

The proposed modifications to the LCP are illegal. The local CCC staff report regarding LCP-6-LJS-14-0607-1 is very similar to the local CCC staff report, regarding application CDP 6-14-0691. Neither the State nor the City is authorized to enforce federal laws regarding marine mammal protection under the MMPA 109(a):

Sec. 109. (a) [STATE ENFORCEMENT OF STATE LAWS OR REGULATIONS PROHIBITED WITHOUT TRANSFER TO STATE OF MANAGEMENT AUTHORITY BY SECRETARY.] — No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).

Also the CA state Constitution guarantees access. The local CCC staff is supporting the City’s misguided plan of seasonal closure forgetting that it violates Section 4 of Article X of the California Constitution:

CALIFORNIA CONSTITUTION
ARTICLE 10 WATER

SEC. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for
any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

The CCC report relies on the validity of the City Negative Declaration. The ND report should have been done by an independent agency. The ND does not address transportation impacts such as parking or “cumulative impacts” to the environment.

Based on my above rebuttal to the local CCC staff report, I respectfully ask that the CA Coastal Commissioners DO NOT APPROVE Amendment No. LCP-6LJS-14-0607-1.

Thank you for taking the time to read this rebuttal letter. Beach access is not to be taken lightly as you know and it affects many people. Children's Pool is a special place for many generations of San Diegans. Please do not surrender it to special interest groups.

Sincerely,

[Signature]

Marie Hunrichs
mariehunrichs@cox.net
8/4/14

Brittney Lauer
Coastal Program Analyst
Cal Coastal Commission

Children’s Pool Beach Closure Project CDP # 6-14-0691,
LCP-6LJS-14-0607-1 in

The situation at Children’s Pool is a complicated one, that cannot be understood in the absence of understanding of it’s history. The history from it’s 1931 creation until the 1990s is very murky, but better documented since then. I was dismayed in the extent that the California Coastal Commission staff recommendation (of approval with several qualifications) seems to have swallowed so much of the misinformation propagated by the city, namely:

1. No mention of the (dozens to hundreds? At least from 1992 to 2005) of harbor seals released by seal world, that bear witness to the total artificiality of the seal population. With this omission, they imply that it was a natural process of seal population increase by birthing. I don’t see this point has been brought to their attention in correspondence they have included in the public record attached. It seems to me the cc doesn’t recognize how far the city has gone, in creating the situation. The Friends of the Seals can be seen to have been artificially creating this situation in collusion with the city, from the first establishment of the temporary Seal Rock reserve, through the mysterious rerouting of released harbor seals, and disgraced former mayor Filner’s “emergency” closure and citations, and present year round rope. This visual closure cannot be denied effectively by signs stating the pool is open- at least to the casual observer that constitutes the majority of visitors. As long as the rope exists, seals will haul out and multiply until the Marine Protected Areas are exhausted of seal food, and seal predators will thrive, and accidentally assault human ocean goers. A Solana Beach dentist died of blood loss after a great white shark bit his leg while he was swimming there, with a group of fellow triathletes, a couple years ago. A pair of seals was noted refusing to leave the beach there. He was probably the only shark bite fatality in the SD area since the forties. While the woman’s body that disappeared off Ocean Beach not so long ago had a large shark bite noted, but I believe it was decided that it had occurred post mortem. Also witness the current record number of adult great white sharks, related to the increase in harbor and gray seals in the vicinity of Cape Cod, Massachusetts in recent years.

2. Page 2 of the staff report regurgitates the city’s position that seals began hauling out in greater numbers in the 1990s, without regard to point 1 above, implying that the rope was strung to prevent the public from the mistaken idea that NOAA law requires a 50’ separation. This concept was denied by Chris Yates, representing the National Marine Fisheries component of NOAA. He categorically stated in a Jun 13th, 2014 letter to Ken, that shared use was their preferred option, no specific distance exists, and specifically denied that the City has authority to enforce laws or regulations pertaining to marine mammals. Mr. Yates, in his capacity of Assistant Regional Administrator for Protected Resources at NMFS, repeating a Jan 2nd, 2014 letter to Todd Gloria and the City Council, (cc-ed to K. Brown at the California Coastal Commission), informed them that the law does not require set separation distances, or beach closures. Emphasizing again the importance of education, and reminding the City they have no authority to enforce federal marine mammal regulations, even if they exist.

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3. One of the most reliable histories of the pool must be the court finding presented in the O'Sullivan vs SD case, statement of decision by superior court judge William Pate in August 2005. According to that document, on pP6, “there was no evidence of any concern about or discussion of seals in the Children's Pool area until July 1992, when Jim Antrim of Sea World discussed creation of a seal reserve in the vicinity of the rock off Shell beach (in front of 939 Coast Blvd), with Barbara Bamberger of the Friends of the Seals organization”. The reserve (beginning 200' east of the seaward entrance to children's pool) passed city council unanimously Feb, 1993 (including the compromise area that goes practically to the beach, presented by Barbara). The staff report assumes as fact that because seal rock was so called in the 1930s, and CP was built on "seal rock point", seals were hauling out there prior to the pool. There is no evidence for that, except for descriptions of "seals barking"(only sea lions bark) on a second seal rock, currently underwater, then at least awash at low tide. See "Myth of Seal Rock" reference. Seals being the timid animals they are, may have seldom or never hauled out on what little beach existed at the site of the pool then, being limited, as I noted during my first dives there in the late 1970s, to offshore rocks. I never saw seals on the beach then. On pP11, the NMFS informed the city that a small number of seals were hauling out on seal rock in 1994, and none hauling out on cp beach. The point was merely so named due to the proximity of the seal rocks The first count referenced by Judge Pate was in 1996, max 62 on the presently above water seal rock in April, while max 120 were counted on the cp beach. Perhaps they preferred the cp beach, sheltered from the prevailing NW winds as it is, to the rocks totally exposed to swell and wind. The first mention of barriers on the beach was in the City's Manager's report to the Natural Resources and Culture Committee (October 1997), stating that lifeguard had been maintaining "barriers" between the public and seals for a year and a half (since 1996). pP16 of the court findings, "to protect the public from being bitten (no evidence exists of that consequence), or being fined for disturbing the seals". This is on pP10. Unstated was that it made the lifeguard's job a little easier. The factor undoubtedly drawing the seal to the beach was the presence of the barriers, reassuring the seals' security on the beach, not the presence of the beach!

4. The staff report states on pP 17 that NMFS data describes Children's Pool as the only rookery in San Diego and LA counties, with a protected rookery at Pt Mugu and Carpinteria. Reference to another protected haulout that has seen pupping is in one of the letters submitted. I have seen numbers of harbor seals hauled out in the multiple pocket caves off Pt Loma, and the Coronado Islands. Ms.Linder's master thesis on harbor seal populations describes the computer enhanced photo id based population estimate nearing 600, and describes the likelihood of individuals travel between haul outs on the Mexican Coronado islands, Children's Pool, and the Channel islands. NMFS harbor seal information indicates harbor seals are known to travel hundreds of kilometers between feeding and pupping sites, and states an unspecified number of rookeries exist in the Channel Islands. I believe that pupping occurs at whatever haul out the nomadic seal happens to be on when birth is about to occur. The Children's Pool doesn't have a resident population, it's population consists of individuals transitory among haul out sites/rookeries throughout at least the southern part of California, and at least northern Mexico.

5. The staff report emphasizes that the City has determined that shared use has been ineffective in preventing harassment mostly in the form of flushing, implying that if the public is allowed on the beach, it will lead to pup abandonment. It states that pup abandonment has occurred there, but doesn't document it. No mention is made of the precocious nature of harbor seal pups, able to swim at birth, and breathhold dive for up to two minutes within 2-3 days of birth, according to NMFS published information.

6. The staff report makes no mention that City actions have historically been as little, late and inexpensive as possible. The trust requires the pool be used for a protected children's pool. Judge Pate found the city (pP21) in breach of the Scripps 1931 trust, on multiple counts.

   a. The pool has been choked with sand, to the point it no longer protects bathers. The small amount of water still present is now in dangerous proximity to a semi-permanent rip. Lifeguard
rescues had increased, until the point in time point c (itemized below) occurred. The City has made no attempt to correct the situation, by ever either removing the built up sand, or opening the previously existing sluiceways, or recommended by it's staff on numerous occasions.

b. The City violated the right of the public to access the beach by roping of the beach to the public from 1999 to 2005, according to Judge Pate's decision (pP27). A rope across the beach at mean high tide point has convinced many of the public (especially the visiting tourists, unacquainted with cp history) that the beach is closed. The visual barrier psychologically overwhels the signage. The year round "advisory rope" continues into the present.

c. The City erected barriers have lead to seal haul out and presence that has allowed fecal possibly pathogenic bacteria from them to accumulate until the bacteria level has increased to the point that the county has declared the pool under an advisory status. The county today classifies Children's Pool as polluted 24/7 from 1997 to the present (pP23). State Law AB411 passed in 2003 changed the status from "Closed", to "Advisory", as the bacteria were not due to a human sewage spill. The second most polluted area in the county ocean is the Tijuana River Slough, polluted an average of 149 days a year. In August 1998, the Center for Disease Control advised the city that seals can transmit disease to humans. Some carry tuberculosis and giardia. Fecal contaminant bacteria and viruses are also of concern. A danger to seals themselves exists. Two outbreaks of disease in the Point Reyes National Seashore resulted in the deaths of 90 pinnipeds in one documented case.

d. On September 14th, 2004 James Leaky of the NMFS advised the city council that harbor seals are a healthy species, whose population is growing, and not in any way endangered of threatened, causing problems up and down the coast, invading harbors, causing property damage and limiting beach access. They can be moved out of an area if either presenting a public nuisance, or a public health hazard. He suggested the seals were a local issue for the City to resolve. Judge Pate made these observations on pP19, noting the City had taken no meaningful steps to return CP to a safe, unpolluted or usable state since that meeting.

The Superior court would have forced the City to rectify the above 3 conditions, except that the City prevailed upon the California Legislature to pass SB 428. The substantive addition consists of the 11 bold words below:

"That said lands shall be devoted exclusively to public park, marine park for the enjoyment and educational benefit for children, bathing pool for children, parkway, highway, playground and recreational purposes, and to such other uses as may be incident to or convenient to the enjoyment of such purposes."

I find this city and legislative action incredibly cynical. To escape their legal obligations, the City does not think twice of maintaining its dangerous status quo. Surely the Coastal Commission cannot seriously consider rubber-stamping this, denying the beach to the public for 5 of seven months, to maintain a situation the City has manufactured by denying citizens the beach access the state constitution guarantees, by the coastal commission, whose job it is to uphold beach access rights.

7. There exists the crumbling remains of a cement ramp, that goes through the currently locked gate next to the landward end of the seawall, down to the high tide line, which up until the 1940s provided wheeled vehicle access, from trucks to wheelchairs. What remains of it is now covered with a badly eroded clay ramp built in the late 1980s. Had San Diego been maintaining the pool, opening the sluices, removing the sand, and maintaining the ramp, the Pool would be the only shining example of disabled American direct easy access to the real ocean, in southern California. With our large disabled military population crying for the saltwater therapy and scuba access, and in the light of the currently shockingly inadequate veterans medical care facilities, it is inexcusable that our city repeatedly attempts to escape it's responsibility to it's citizens, in order to establish a poorly thought out seal colony in this unique gift setting. Children's Pool allows direct access to 15' deep ocean, through a channel at the end of the wall where waves predominately do not break, in close proximity to a sheltered gradually sloping
sand beach. Do not allow the handicapped to continue to be laboriously carried in their wheelchairs down the two flights of many steep steps that is currently the only access to Children’s Pool. This has to occur within an environment so often comprised of the ill-informed (or misinformed by seal activists) public, shouting harassment, that a City Ranger has had to be stationed there for several years now. San Diego is already famous for it’s large homeless veteran population. Should it now continue to neglect it’s handicapped veterans, in favor an artificially encouraged pinniped population, feeding in our finally established neighboring Marine Protected Areas, with it’s attendant pollution, smell, and predator problems?

According to the Richard Belesky, ranger at cp, in his 5/18/2014 email he observed 54 pups born on Children’s Pool beach, + 13 in an alcove on Pt Loma, + 8 stillbirths, + 1 pup found in the cove = 76 pups born in 2014. He goes on to say about 30 of the 76 were born on South Casa Beach. The Friends of the Seals, part of the pro-seal activist group that Valerie O’sullivan alleged in her suit (decided in 2005 by Judge Pate, who agreed “certain individuals have engaged in uncivil and occasionally illegal conduct” that “conducted themselves in a manner that effectively denies access to users of the pool, beach and adjoining areas” are on public record as having as their goal, the closure of all SD beaches, on which seals haul out. This is an influential group, with some wealthy and influential members. They were on good terms with former mayor Bob Filner, and were involved with supplying the web cam that recorded a widely published episode of two girls harassing harbor seals at the pool one night. That episode (widely suspected of being staged) lead directly to an “emergency closure” of Children’s Pool, every night for months. I and others fear that this measure under coastal commission consideration now, is just a stepping stone on the way to closure of many of the other San Diego beaches and coastal areas on which pinniped have been observed to haul out and give birth, including the Cove. The political actors have changed, but City policy seems to persist. Their machinations resulted in a 10 year seal sanctuary on seal rock, but that was abandoned, in favor of taking over Children’s Pool. Shared use by humans and seals worked well until the barriers of 1992 or so. San Diego thinks it can save money by closing Children’s Pool, at the same time it does it’s best to discourage and relocate another pinniped (California Sea Lion) population at the La Jolla Cove, less than a mile away. Just as has been done at the cove, the barriers must come down. We cannot enter the slippery slope closing any but the remote Pt. Loma coves already barred from land access, and heretofore utilized extensively by pinnipeds. The cost of a seal sanctuary you can walk to after dinner is too high, for these populations, their prey, predators, and the public.

The National Marine Fisheries arm of the Federal National Ocean and Atmospheric Administration has repeatedly pronounced these populations are in way endangered or threatened. They claim exclusive right to enforce their regulations. They deny that closing beaches is necessary for the good of the Harbor Seal species. The motivations for the actions San Diego is taking are obscure, but clearly not motivated by public good, for either the citizens, or the pinniped.

The City of San Diego needs to do its homework before declaring any of the beach closed to the public. I have shown above, that City sanctioned barriers, the aborted seal rock reserve, and have resulted in the haul outs and pupping at the Pool. A complete closure will doubtless lead to a further increase at not only the Pool, but also the neighboring beaches of South Casa, Wipeout, Shell, and the LJ Cove. The city has not even defined the meaning of the “Marine Park” it’s state legislative bailout describes, has not grasped the effect of increased seal haul out and population increase will have on the marine resources of the Protected areas, or the effect on the already congested parking and traffic in La Jolla, let alone made any sort of plans to deal with it. La Jolla is a suburb
that has only two major entry and exit roads. Mission / La Jolla Blvd representing one, has been choked from a four lane to a two lane road by the multiple traffic circles the City recently imposed. A change of beach use and access of this requires a complete Environmental Impact Report AND mitigation plan before implementation. You, the California Coastal Commission, exist for and is the last resort, to require the adequate situational analysis and the planning this project requires.

All of the facts I have stated above can be substantiated, as most are documented. A few I have observed, and so noted. I have nothing against pinnipeds, do not want to drive them from our shores, and enjoy their company in the water. I only wish to return to the shared use situation that existed prior to the human meddling in the form of barriers that occurred during and after the 1990s.

Philip Miller, Former Scuba Instructor, Registered Nurse
San Diego Resident (>45 years)
6317 Brooklyn Ave.
San Diego, CA 92114
August 1, 2014

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive Suite 103
San Diego, CA 92108-4402

PROJECT CDP # 6-14-0691, LCP-6-LJS-14-0607-1

The City of San Diego plans to close the Children’s Pool in La Jolla between December 15 and May 15 in order to address what they call “conflicts between people and seals”. The City must amend the certified Land Use Plan (La Jolla Community Plan) in order to stop beach access at Children’s Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year through a Coastal Development Permit (CDP) application. Unfortunately the San Diego staff of the California Coastal Commission (CCC) recommends approval of the City of San Diego’s amendment to the certified Land Use Plan and approval of the CDP for seasonal closure with 4 conditions. However, there are many inconsistencies, fallacies or exaggerations written in the staff recommendation:

CCC staff report p. 11:

“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. These maps demonstrate that seals most likely utilized this area as a natural haul out site prior to the breakwater’s construction.”

One of those maps was a rendering and the other was a rough sketch on a real estate sales brochure. Seal Rock is actually about 100 yards offshore and is now a submerged reef. It is more likely that sea lions used the area since they bark and people heard barking in that time period. Just as people today interchangeably call seals sea lions and vice versa, people back then likely did the same. It does not mean the reef was actually inhabited solely by seals. If one looks at any winter photos of waves breaking on the reef at Children’s Pool, one will know that the Children’s Pool area was never a seal pupping area. Besides that, there is an area called Alligator Point, aka La Jolla Point. Does that mean there were alligators in that area?

P. 11 continued:

“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 No. 6-93-026) to establish Seal Rock Marine Mammal Reserve for five years. In 2001, the Commission approved another five-year permit
(CDP No. 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.”

This paragraph is true but it neglects to point out that in the year 2000, CA Fish and Game (now Wildlife) advised the City that they had no authority to create a seal reserve on public trust tidelands. Reasons included were; violation of the State Constitution, preemption by Federal law and violation of the 1933 Land Grant Trust. Although attempts were made to put Children’s Pool in the Reserve, the protections of the Children’s Pool Trust prevented its inclusion.

CCC staff report p.12:

“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.”

The court order to dredge the pool was not vacated contrary to the opinion of the City Attorney. A “marine mammal park” was never defined but there is no reason it cannot have clean water and clean sand for both seal and human benefit. What was stopped was the option to disperse the seals.

CCC staff report p. 13:

“On January 25, 2013, the City installed a “Seal Cam” video camera at the Children’s Pool lifeguard station so people could access live video footage of the seals and the birthing process on the Internet at any time. Shortly after installation, the video camera captured several nights of footage of people breaching the rope barrier at night and intentionally, (continued on p. 14) harassing, kicking, and sitting on the seals. These egregious harassment events prompted the mayor to authorize an emergency CDP on March 7, 2013 for the closure of Children’s Pool Beach from sunset to sunrise through May 15, 2013—the remainder of the pupping season. The emergency permit was issued on March 19, 2013; however, due to the jurisdictional boundary assumed at the time, the City’s emergency permit was adequate to close the stairs leading to the beach but required Coastal Commission approval to close the actual beach. Thus the City applied to the Coastal Commission for emergency CDP No. 6-13-014-G on March 29, 2013, which was subsequently approved by the Commission and put into effect on April 10, 2013. As conditioned, the
City was not required to apply for a follow-up coastal development permit with the Commission as the emergency permit was only in effect through May 15, 2013."

The former City Mayor Bob Filner was approached by seal activists Jane Reldan and former CCC Commissioner Sara Wan to install a seal cam for seal research. The report states there were several nights of people “breaching” (whatever that implies) the rope barrier and intentionally harassing, kicking, and sitting on the seals. In fact there was only one occurrence of those women harassing seals which has been seen widely on YouTube. However, if you study the video closely, you will see that the claim of “kicking or sitting” on seals was exaggerated. The two women were hauled into court and the case was dismissed due to lack of evidence. Please see: http://www.10news.com/news/first-people-to-stand-trial-in-a-seal-harrassment-case-in-sandiego-found-not-guilty-04022014

CCC staff report p. 14:

“There were numerous harassment events observed and recorded by the Park Ranger assigned to Children’s Pool throughout the 2013-2014 pupping season as well as outside of the pupping season months, despite the year-round protective rope barrier. Of about 30 recorded harassment incidents that resulted in flushing of the seals between June 22, 2013 and May 14, 2014, half occurred during the 2013-2014 pupping season.”

Children’s Pool has been historically accessed by human ocean users since 1931 when it was built and dedicated for human use. In a perfect world no harassment would occur but the incidents at Children’s Pool are primarily incidental and rarely intentional. No seal at Children’s Pool has been harmed from these incidents. People break highway laws daily, sometimes resulting in accidental human death. Should we ban people from roads? Sea World’s secret seal release program helped stock this artificial colony by changing their rehabilitated seal releases to the Children’s Pool area instead of the Coronado Islands and Point Loma.

p. 14 continued:

“Following reports of seal harassment, as described in greater detail below, the City determined that the rope barrier was not adequately protecting the seals, therefore a seasonal closure was necessary to provide undisturbed protection during the vulnerable months of their pupping seasons. The proposed project is intended to eliminate the potential for harassment of the seals by the public during the vulnerable pupping season, and subsequently eliminate the adverse impacts that can result from such harassment events.”

The City is promoting unnatural habitat conditions by trying to remove reactions to sounds or visual stimuli from nearby human activities at the Children’s Pool beach area. Seals were unlikely to establish rookeries at Children’s Pool because of native people hunting or land
based predators. There was no beach suitable for a harbor seal rookery at this location prior to the building of the artificial breakwater. Instead, the local CCC staff is promoting the hysteria of possible pup mortality despite the fact it is exceptionally low at Children's Pool. Where is the data for seal mortality resulting from human use of Children's Pool? The CCC mapping unit confirmed the historic high tide line was at the base of the bluffs and only after construction of the breakwater was a beach formed at this location of the “Seal Rock Point”.

CCC staff report p. 15:

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.”

There are no current studies to support that this project “…will maintain healthy populations of all species of marine organisms…” Also an unnatural concentration of one species (seals), encouraged by the breakwater, will have a detrimental effect on all other marine organisms.

p. 15 continued:

“In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contain 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 should not be limiting access to a Park. This is a rewrite of history to avoid conflicts of City Charter Section 55 which protects dedicated park land. It is not “open space” in spite of what the City claims. It is a dedicated park, a playground and a bathing pool for children. This was confirmed by an act of the State Legislature in 1931. It is also now a marine mammal park.

p. 15 continued:

“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
lanús 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... “

Again, this area is a Park not open space. The City states “Development... shall be limited to preserve the Park, recreation... and to protect public health and safety...” Children’s Pool is a safe place to exit for any ocean users caught by changing ocean conditions. Lifeguards make rescues and depend on the protection of the breakwater to bring them into Children’s Pool during rough ocean conditions.

p. 15 continued:

“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 above paragraph states the City should also maximize physical access to and along the shoreline.

CCC staff report p. 16:

“The project site is Children’s Pool Beach, 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 and educational opportunities for swimmers, divers, tourists, scientists, 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 a closed, gated emergency beach access ramp. The City has indicated that this ramp was installed for emergency purposes, including for Parks & Recreation and lifeguards vehicles, not for public access. In addition to being a public beach, Children’s Pool is a “marine mammal park for the enjoyment and educational benefit of children” as declared by the amended 1931 Tidelands Grant (Statute of 2009, Chapter 19).”

There are City memorandums and citizen statements which show the “ramp” was historically used by children, elderly, the disabled and anyone with baby strollers or wagons since the 1940’s. Only in the last few years has the City claimed the ramp is only for emergency use. This new label for the ramp came about when it became inconvenient for the City’s plan to close the Children’s Pool beach. The ramp is designated in the LCP as a beach access ramp.

CCC staff report p. 17:

Harbor seals are generally non-migratory and are found 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. 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. Public access is restricted at this site. The City of Carpinteria is also home to a mainland rookery; this beach is not readily accessible to the public who must walk over half a mile to reach the bluff top overlook. Additionally, the City closes this 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. In Northern California, Fitzgerald Marine Reserve is a very publicly accessible state marine reserve that has been a haul-out site and rookery to harbor seals since the mid-1900’s and requires visitors to remain 300 feet away from all marine mammals for their year-round protection.”

Indeed NOAA/NMFS is responsible “for enforcement of the MMPA”. The City has no business trying to enforce the MMPA through regulation of “take” at Children’s Pool. NOAA has not yet recognized the haul-out/rookery below the Point Loma Sewage Treatment Plant. The City is having the Ranger do counts there to verify presence of newborn pups. Federal funds are likely necessary to have an observer check on pup births to identify a rookery and to do aerial counts of seals which have not been done in several years. Seal lions haul out at the La Jolla Cove but only this year did NOAA change their website to call the area a haul-out. Does that mean we could not identify the Cove area as a sea lion haul-out before this year? In all the above cited rookeries or haul-outs, not one is protected by a legally enforceable Land Grant Trust like the 1931 Trust for Children’s Pool.

p. 17 continued:

“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 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, nor is there an option for intentional take permits (See 16 U.S.C. section 1371(5)(A)(i) [procedures related to incidental take permits]).”
No one person has been issued a “take” permit but the City did obtain an Incidental Harassment Authorization (IHA) permit, RIN 0648-XC498, so it can construct a new Lifeguard Tower at Children’s Pool. The City has the IHA as well as approved extensions. This is contrary to the assertions made in the CCC’s staff report of no option for intentional take permits.

p. 17 continued:

"While the Commission does not regulate the taking of marine mammals, the statutory framework provided in the MMPA on this issue provides the Commission with a platform from which it can evaluate whether or not a proposed development is consistent (continued on p.18) with section 30230 of the Coastal Act. In other words, if 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 because such activities would not achieve the protections provided under section 30230. Even if there were authorization from NMFS to incidentally take seals at Children’s Pool, depending on the authorized activity, such authorization might not be consistent with Chapter 3 of the Coastal Act."

The CCC staff has misinterpreted Section 30230 of Chapter 3 policies. The CCC is not accounting for other significant sections of Chapter 3. For example, Section 30200, Policies as standards; resolution of policy conflicts; (b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts:

Section 30007.5 Legislative findings and declarations; resolution of policy conflicts; The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

The term “significant coastal resources” applies to the safety provided by the breakwater to children, disabled and other ocean users at Children’s Pool. The CCC report erroneously states that even if NMFS gives authorization to “take” seals that it may not be consistent with Chapter 3 of the Coastal Act. Even if this is how it is written, it means nothing because Federal law trumps State law. After all, the current Lifeguard Tower at Children’s Pool is being built with an IHA permit. The Coastal Commission knowing this permit had been issued
had an opportunity to weigh in and object to the IHA based on 30230 but they did not. In other words, the State Coastal Commission is randomly and selectively enforcing the Coastal Act.

CCC staff report p. 18:

"Unlike the state’s other pinniped haul out areas and rookeries, 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. As a result, over the years there has been 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 relatively small sandy beach area available at Children’s Pool Beach, NMFS Regional Administrator Rodney McInnis has recommended in a letter to the Coastal Commission dated June 27, 2012 that people maintain a minimum distance of 50 feet for viewing hauled out seals while standing on the sandy beach area at the subject site. McInnis also asserted that although this is a guideline that does not have the force of law, unauthorized harassment is a violation of the MMPA regardless of the distance from which it occurs. Efforts by the public to closely approach or otherwise interact with seals have led to unauthorized harassment of the hauled out seals, which is illegal under the MMPA.”

As the CCC report reiterates, the seal haul out area at Children’s Pool is at a “...location in an urban setting that is easily accessible to the public.” Yes indeed that was the intent of the gift by Ellen B. Scripps to create an area safe for ocean use in an urban area made for people especially children and “those handicapped in life’s game”. CCC local staff further comments on the 50’ distance from seals recommendation given by McInnis. After a letter of clarification, written on January 2nd 2014 by Chris Yates from NOAA/NMFS and sent to City officials, those signs were removed last year by City staff. The City Ranger can verify removal of the signs.

CCC staff report p. 20:

"However, after installation of the “Seal Cam” at the Children’s Pool lifeguard station in January 2013, it became apparent that the rope barrier was not sufficient for proper protection of the seals and their pups from harassment. The video camera captured footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals. These harassment events prompted the issuance of emergency CDP No. 6-13-014-G for the closure of Children’s Pool Beach from sunset to sunrise through the remainder of the 2013 pupping season. Even with these protective measures, the Children’s Pool Park Ranger’s first annual monitoring report for Special Condition 4 of CDP No. 6-11-078 recorded about 30 harassment incidents that resulted in flushing of the seals between June 22, 2013 and May 14, 2014, half of which occurred during the 2013-2014 pupping season, which resulted in the flushing of 662 seals total (Exhibit 9). In addition, Dr. Jane Reldan, founder of the Seal Conservancy, along with members of the Seal Conservancy and additional volunteers, observed and recorded a total of 269 flushing incidents from April 9, 2013 to May 15, 2014. Of these flushing incidents, 79 occurred during
pupping season. Whether done ignorantly or intentionally, any form of harassment poses a serious threat to the survival of the seals and their pups. Furthermore, while these instances may be few relative to the amount of people who visit and use the beach, these harassment events are illegal under the MMPA and inconsistent with section 30230 of the Coastal Act.”

The CCC local staff states that the Seal Cam “captured footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals.” This statement wrongfully implies that this happened many times when in fact it happened once. The two women suspects were taken to court and the case was dropped due to lack of evidence. Jane Reldan was so upset that she told the marine biologist witness to “F... off”. Please see: http://www.10news.com/news/first-people-to-stand-trial-in-a-seal-harrassment-case-in-san-diego-found-not-guilty-04022014

This is the same woman who changed the La Jolla Friends of Seals to Seal Conservancy perhaps to try to start a clean image. Reldan and some others in her group are certainly biased and their recorded number of 269 flushing incidents cannot be trusted and should never have appeared in this report.

The statement “any form of harassment poses a serious threat to the survival of the seals and their pups” is a hysterical claim by someone who has chooses be dramatic and misinterpret the facts. After all, where is the data to show that harassment at Children’s Pool has resulted in harm to pups? Where are the citations or prosecutions from seal harassment? Intentional harassment is not condoned but please remember, Children’s Pool was built as a safe human recreation site. Section 30230 is being misapplied to a highly modified urban recreation area which has attracted large dedicated ocean user groups.

**CCC staff report p. 21**

“As an alternative to rope barriers, various members of the public have raised the viability of a plan known as the “Harris/Lifeguard Plan,” which would partition off approximately 75% of the sandy beach area for the seals with large boulders during pupping season and 25% of the beach for the seals during non-pupping season. However, this would require adjusting the boulders twice a year, removal of polluted sand at the time of the boulder adjustments, and sand disposal. In addition, as Commission staff indicated to the City in a letter dated 12/13/12, the Harris/Lifeguard Plan would likely not be sufficient for improved protection of the seals during pupping season, as all of the same concerns as the existing rope barrier would still exist; the seals would still be free to occupy all beach areas and the on-going enforcement issues would remain since people could continue to disobey the partitioning. In addition, any effort to corral the seals into a bouldered-off area would be inconsistent with the MMPA, and the boulders would create a physical and visual barrier that would impact public access much more than a rope.”
The above paragraph from the CCC staff report just proves the lack of will by the City to explore alternatives to hard beach closure. Common sense says that if people go into the designated seal area beyond boulders and explanatory signs, then that could be intentional harassment. People could be cited and prosecuted by the Federal government.

“The ‘no project’ alternative would clearly be ineffective at providing proper protection for the seals as well. The existing guidelines provided by the rope barrier, informational signage, and stationed park ranger have not deterred or eliminated seal harassment, as described above with the numerous recordings of flushing and harassment incidents. The seals will continue to be subject to harassment and endangerment if the beach is not closed off during pupping season. The issue of seal harassment is exacerbated by the fact that the existing rope barrier is a guideline that relies on the respect and compliance of the public, and lacks a strict threshold between what is viewing the seals from a distance that does not disturb them and what is harassment and thus an illegal taking under the MMPA. Unfortunately, for as long as the rope barrier has been in place, a relatively small but persistent number of people have continued to deliberately bother the seals, rendering the shared use concept unsuccessful.”

This report continually repeats the theme of a “small but persistent number of people have continued to deliberately bother the seals, rendering the shared use concept unsuccessful.” Where are the Federal prosecutions of these people whom the City and the CCC seemingly have identified? How can shared use be unsuccessful when every year produces a record year of seal births? If these incidents are so detrimental and illegal as the report constantly repeats, why does the State not take back jurisdiction?

CCC staff report p. 22:

"Access and Recreation. However, as previously mentioned, there are multiple locations across the state where the Commission has approved CDPs, LCPAs, or Federal Consistency Determinations that require limiting public access in order to protect marine resources. The following provides several significant examples. The Commission established a Marine Mammal Reserve as Seal Rock, just north of Children’s Pool, prohibiting all public access except for permitted commercial fishing, emergency access, and fishing consistent with the MMPA within the designated 1.35-acre reserve boundary from 1994-1999 with CDP #6-93-26, and from 2001-2006 with CDP #6-00-126. Similar to the subject proposal, the applicant for those permits (the City of San Diego Parks and Recreation Department) proposed to establish the marine mammal reserve in perpetuity, but the Commission approved each CDP with a five-year permit limit to provide protection for marine resources while maintaining limited types of public access. Earlier this year, the Commission approved CDP #3-13-1175-W for installation of minimal, “symbolic” fencing and educational signage at various locations along the Pacific Grove shoreline in Monterey County to temporarily reduce public use of the beach and shoreline and prevent harassment of the local harbor seals for the 2014 pupping season."
In the year 2000, CA Fish and Game (now Wildlife), advised the City that they City had no authority to create a seal reserve on public trust tidelands. Reasons included were; violation of the State Constitution, preemption by Federal law and violation of the 1933 trust. The “symbolic” fencing at the Pacific Grove shoreline in central California is likely unnecessary and probably should be challenged. After all, how many seal deaths can be attributed to harassing seal pups? The Pacific Grove shoreline is not held in trust as is Children’s Pool. In fact none of these areas mentioned in this report enjoy the protections and safeguards of the Children’s Pool Trust. Conditions are much different in La Jolla than in Pacific Grove.

“Federal Consistencies Determinations” would certainly consider the recent policy statements from Chris Yates, NOAA/NMFS. He states “The ideal solution to this type of conflict is one of shared use – where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users. Therefore we want to clarify that we do not believe that complete closure of Children’s Pool Beach is necessary to protect the harbor seals from violations of the MMPA.”

p. 22 continued:

“Aside from harbor seals, the federally threatened western snowy plover and endangered California least tern have been the subject of many Commission actions involving partial or total beach closures to provide habitat and population protection. In November 2001, the Commission approved CDP #4-01-139 for year-round symbolic fencing and associated signage creating a restricted roost area near the mouth of the Devereux Slough near UC Santa Barbara, Ventura County, to protect the local snowy plover population. This permit was approved with a two-year permit term, with permission for a one-year extension for good cause, due to the project’s impacts on public access and to allow time to collect and analyze data from the required monitoring plan. The same project was proposed with CDP #4-08-007 and approved by the Commission in June 2008 with a five-year permit term and permission for a one-year extension for good cause. In February 2014, the Commission approved CDP #2-13-1020 for year-round and seasonal fencing at Pacifica State Beach, San Mateo County, for protection of and public access restriction from a section of the backbeach sand dunes that provide snowy plover habitat. The year-round fencing was approved in perpetuity, while the seasonal fencing is authorized for a five-year period with permission for an additional five years with Executive Director approval. In December 2002, the Commission approved CDP amendment #5-87-647-A1 to increase an existing 4-acre restricted least tern nesting area by five additional acres with protective fencing, limiting public access in the designated restricted areas at Venice Beach and Dockweiler State Beach, Los Angeles County. In an act of much broader marine resource protection, the Commission approved CDP #2-00-005 in August 2000 for prohibition of personal motorized watercraft within all shoreline waters and estuaries of Marin County to eliminate adverse impacts to the diverse and sensitive marine resources found in said shoreline waters and estuaries.”

Above paragraph discusses federally threatened and endangered birds; of course they should be protected. Harbor seals at Children’s Pool are not endangered and even if they
were to abandon the site it would not affect the population as a whole. None of these locations mentioned above have the protections of the Children’s Pool Trust.

p. 22 continued:

“in each of these cases, the Commission placed limits on public access in areas that require special protection due to the sensitive species and marine resources. The subject project involves seasonal restrictions on a popular beach, but as the subject beach is an area that provides valuable habitat for the seal life cycle, it warrants special protection under Section 30230. Although it is unusual for the Commission to approve access (continued on p. 23) restrictions to state waters, this is also an unusual circumstance because access to the water is available on either side of Children’s Pool Beach and will be available at Children’s Pool for seven months of the year. As discussed above, the proposed seasonal beach closure would maintain and enhance the seal rookery and haul out site as well as the seal population at Children’s Pool Beach, consistent with Section 30230 of the Coastal Act, by minimizing human-seal interaction and eliminating any potential for harassment of the seals during the vital pupping months. 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 to respectfully view and study the seals. The proposed seasonal beach closure would help maintain a healthy seal population for long-term recreational, scientific, and educational purposes.”

The CCC staff states there is access to the water of both sides of Children’s Pool. The report neglected to state that the south side is called S. Casa Beach and it has a rip tide most days of the year. Last year 19 seal pups were born on that beach so it is also a rookery. North of Children’s Pool the beach is called Shell Beach and it has the worst rip tides of the La Jolla area with many deaths attributed to it. Since when is the elimination of seal disturbance more important than human safety? An attempt to apply ESHA standards is evident in the statement “the haul out site at Children’s Pool Beach provides habitat of biological and economic significance.” This area does not qualify for ESHA status by the local CCC staff’s determination.

CCC staff report p. 27

*As discussed previously, the City has considered and implemented measures that are less restrictive on public access. The rope barrier should have been sufficient to means of protecting the seals while maintaining limited but sufficient public access to the water. Unfortunately, the current shared use guidelines and rope barrier at Children’s Pool Beach have failed to prevent continual harassment of the seals during their pupping season as well as non-pupping season. Even under supervision of a lifeguard or park ranger, a small but insistent number of people have refused to adhere to the shared use informational signs with guidelines that call for maintaining an appropriate distance for safe and respectful viewing of the seals, and that the seals require further protection from human harassment.
during the vulnerable months of their pupping season as provided for in section 30230 of the Coastal Act. 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 defend the seals and people who want to approach the seals and/or use the beach and ocean at this location without maintaining a reasonable distance from the wildlife. There have been multiple occurrences of people in support of wholly unrestricted public access holding demonstrations on the beach protesting the use of the rope as an enforceable barrier and encouraging others to disregard the intention of the rope guidelines. 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.”

The CCC report calls out “Even under supervision of a lifeguard or park ranger, a small but insistent number of people have refused to adhere to the shared use informational signs...” This comment is 2nd guessing the in-actions of onsite law enforcement personnel. In fact the majority of the incidents are caused by a constantly changing group of new unaware visitors in their attempts to photograph seals. The CCC reports statistics of police calls but it does not provide the outcome of the investigations. The seal activists have an agenda to phone in unfounded complaints. Calls were made to NOAA by animal activists to complain about people legally using the beach. If this is even significant where is the current data of police complaints? The City created the Children’s Pool problem by encouraging the seals to get a significant foothold in the Children’s Pool area. This also encouraged animal rights organizations to carry out vigilante action.

CCC staff report p. 28:

“In the other seven non-pupping season months of the year, there would be no public access restrictions and no regulations against public use of the sandy beach or the water. Visitors will continue to be encouraged to maintain a safe and respectful distance from the seals, as mandated by the MMPA, and advised against contact with the water, as the San Diego County Health Department has an ongoing advisory warning due to the water’s high bacteria levels in this location. 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 as it poses a serious health risk. Thus, even in the absence of the proposed temporary closure, Children’s Pool will remain a less-than-ideal location for safe water access.”
The CCC report states there will be seven months of unrestricted public access. This does not account for animal rights activists harassing beach users the other seven months of the year regardless if there are seals on the beach. I have personal knowledge of years of human harassment by seal activists, most recent of which three incidents occurred in July of this year. The sand on the beach is feces ridden and the ocean water quality is poor from that accumulated seal pollution. Although the beach may be legally open, these conditions discourage the use Children's Pool contrary to what the CCC staff report claims. Still, this remains an ideal location for safe water access.

CCC staff report p. 29:

"There have been assertions by members of the public that the proposed project would severely affect the ability of disabled people to access the shoreline. However, there are many San Diego beaches that not only have Health Department-approved water quality but also are easily accessible to beach-goers with disabilities. While Children's Pool Beach does have an "access ramp," it is a gated, unimproved emergency vehicle access ramp that was not constructed for ADA compliance and is only allowed for use by emergency personnel. The La Jolla certified LUP indicates two other concrete ramps designated for shoreline access aside from the ramp at Children's Pool: just north of Scripps Pier with beach access at the end of Discovery Way, and at Ellen Scripps Park with access to Boomer Beach. These beach access ramps are located approximately less than two miles and less than a half-mile north of Children’s Pool Beach, respectively. La Jolla Shores, approximately two miles north of Children’s Pool Beach, provides free power beach wheelchairs for disabled visitors. These beach chairs can also be found, free of charge, at Ocean Beach, Mission Beach, Coronado Beach, and Imperial Beach. The public will be able to utilize these many clean, accessible beaches during the five months that access would be restricted at Children's Pool."

The CCC staff report states there are "many beaches... easily accessible to beach-goers with disabilities." Where are these beaches? The report cites two other shoreline access ramps at Discovery Way and Boomer Beach. Discovery Way is a steep concrete ramp unfit for ADA access. There is no ramp at Boomer Beach. It is a dangerous beach and there is no way someone in a wheel chair could access that shoreline. This area appeals to bodysurfers because of large pounding waves breaking over barely concealed rocks. The water is cleaner but the waves are dangerous. Only recently during the last few years has the City been claiming that the beach access ramp at Children’s Pool is for emergency use only. It was constructed during the 1940's to provide beach access for everyone including families with children and the disabled including those in wheelchairs. Unfortunately the City locked the gate 15 years ago and since then has allowed the ramp to deteriorate.

p. 29 continued:

"As noted above, ever since the seals began hauling out on the beach at Children's Pool, they have become a major tourist attraction and a public access and recreation amenity in and of themselves. The
ability to closely yet respectfully observe seals in a natural environment from the shoreline and breakwater at Children's Pool is unique to this location, and the seasonal beach closure would protect this passive public access and recreation amenity. Viewing the seals is often the primary purpose of a visit to Children's Pool Beach, and visitors will continue to be able to view the seals from several areas without 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, and 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, 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.”

The CCC report states that Children’s Pool is major tourist attraction but provides no verifiable statistics for the claimed seal tourism. Seals come on their own schedule making predictable seal viewing unreliable. The statistics of 2.6 million people is not co related to any data to show what percentage of those visitors comes to see seals. Therefore any claim of economic, scenic or lower cost visitor amenity cannot be made. Also there is no data to prove that any visitor coming to La Jolla spends any money in La Jolla as a result of their visit to view seals. Use of Children’s Pool beach has declined during the past 10 years because of the harassment by the animal activists and the prominently posted water quality warning signs. Those visitors discouraged from Children’s Pool have created a greater impact on nearby beaches and visitor facilities and can be verified by the Ranger’s monitoring report. La Jolla Cove is the most significant of that fact. The year round rope makes people think the beach is closed so that also deters ocean users. The City refuses to clean the beach or open the sluice ways which also would help clean the beach from seal poop after pupping season. The filthy beach condition also discourages beach access.

CCC staff report p. 30:

“In conclusion, while the proposed project will impact public access from December 15 to May 15 of each year, this is not only necessary but also the least possible to effectively protect the seals from harassment during their vulnerable months of pupping season. Public access protection is one of the Commission’s highest priorities, and this proposed project will have an impact on public access, but this is the least environmentally damaging alternative and it would result in a limited restriction for a limited time of the year for a limited permit term of five years to ensure the seals and their pupping habitat are effectively protected. There is clear evidence that the seals will continue to be subject to harassment and endangerment if the beach is not closed off during pupping season. The seasonal beach closure will improve the protection and enhancement of the harbor seal population, while maintaining public access.
to all but a small area of beach. Therefore, the proposal as conditioned is consistent with Sections 30212 and 30214 of the Coastal Act. “

The Coastal Commission was established by CA citizens wanting more public access to their coast. Public access is at the core of the Coastal Commission’s mission. The City encouraged seal colonization on this beach intended for children and those “handicapped in life’s game”. The CCC staff report states, “...while maintaining public access to all but a small area of beach.” This is not a small area, this is the entire beach.

The CCC staff report goes on to claim compliance with Section 30214 which is qualified to include in the subsection (b) which says in part “Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.” The report also claims compliance with Section 30212 which includes subsection (c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.” Section 4 of Article X of the constitution requires beach access. Therefore, it is inconsistent with the Coastal access requirement provided in sections 30214 and 30212 if this project were to be approved. The highest standard of coastal access is provided in the CA Constitution.

p. 30 continued:

“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 seasonal beach closure, as conditioned, is consistent with Sections 30210, 30212, and 30214 of the Coastal Act because it maintains public access to the beach for seven months of the year while providing protection of the haul out site, or natural resource area, from overuse by people for the other five months of the year.”

The overriding standard of 30210, 30212 and 30214 is Section 4 of Article X of the California Constitution:

CALIFORNIA CONSTITUTION

ARTICLE 10 WATER

SEC. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted
to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

This proposed seasonal beach closure project is not consistent with the Coastal Act as conditioned by these three sections which rely on the CA Constitution, Section 4 of Article X.

The CCC report states that Children’s Pool provides a “natural” haul out site for seals. This area is described as an artificial embayment by Dr. Dixon, the CCC’s own staff ecologist. The rocky reef just outside the breakwater provides an opportunity to view seals in their natural environment. The constitutional protection does not permit seasonal beach closure for any amount of time.

CCC staff report p. 33:

“The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Pursuant to the City’s own obligations under CEQA as the lead agency, the City approved and adopted Negative Declaration 225045. As the proposed project would provide increased protection of marine resources, the Commission finds that it is unlikely that any significant adverse effects on the environment would occur. Mitigation measures, including conditions addressing assumption of risk, a final sign program, and a monitoring plan to effectively record and monitor the effectiveness of the seasonal beach closure in preventing seal harassment, will minimize or prevent all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.”

As the CCC report states, the City approved their own Negative Declaration (ND) 225045. However this ND was biased and did not address transportation impacts such as parking or “cumulative impacts”.

Contrary to the staff report, the proposed project is not consistent with all Ch. 3 policies of Coastal Act:

Section 3000: Legislative Findings and declarations; ecological balance, letter (c)

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.
Public safety is not promoted if this beach were to be closed. Instead of protecting the ecological balance, this project creates additional imbalance to the coastal marine environment.

Section 30001.5 Legislative findings and declarations; goals, letters (b) & (c),
(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

Children's Pool has been a gathering place for 80 years for the residents of La Jolla. It is a historical landmark of La Jolla and it has drawn tourism as a sheltered beach since 1931. It has contributed to the economic well-being of the local community. Generations of San Diegans have learned to swim in the ocean at Children's Pool and that is the area where modern spearfishing began. The climate is conducive to year round ocean use.

Section 30001.5

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Maximum public access is year round and not seven months as claimed in the CCC staff report. The seasonal cycle of seal viewing occurs year round.

Section 30007.5, Legislative findings and declarations; resolution of policy conflicts

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

The “significant coastal resource” is the unique, sheltered ocean pool at Children's Pool. It is a result of a gift to the people of San Diego from Ellen Browning Scripps which provides safe harbor. The legislature enacted a statute to protect its defined uses in perpetuity. Wildlife viewing is not the most significant resource because it can be done in many other places including Point Loma.

Section 30200 Policy Conflicts, letter (b)
Section 30200 Policies as standards; resolution of policy conflicts

(b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the
conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Section 30007.5 requires a finding of “significant coastal resources”. At this location, access to the unique resource which Children’s Pool provides is the most significant coastal resource.

**Section 30211 Development not to Interfere w/Access.**

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.

The Children’s Pool beach constructed in 1931 has been used almost continuously for over 80 years for its intended uses. The Legislature adopted a statute to enable creation and protection of children’s bathing pool in perpetuity.

A claim is made by the CCC staff report, that mitigation measures such as signs and monitoring should prevent environmental impacts. Impacts will occur to the fish and crustaceans and other marine organism in the vicinity of Children’s Pool from an ever growing population of seals encouraged to concentrate at Children’s Pool. No amount of signs and monitoring will reduce that impact. Once the impacts are discovered it will be too late.

_CCC staff report includes Dr. Dixon, comments on p. 52:_

“In a 2012 memorandum to Kanani Brown, CCC staff analyst, Dr. Dixon, CCC staff ecologist concludes the following:”

“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.”
Due to this continued harassment of seals by a minority of beach visitors, the City has proposed to close the beach at the Children’s Pool from December 15 through May 15 each year, which generally brackets the pupping season. Dependent pups are usually present from about March through about June. The closure can only have beneficial effects on the local seal population and I concur with staff’s recommendation to approve the proposed project. Monitoring should continue in order to determine whether this seasonal closure has more beneficial effects than the rope barrier.

Dr. Dixon states that it is unlikely that there will be “population consequences” regardless of what action is taken at Children’s Pool. However he further states steps should be taken to prevent seal harassment. The steps that have already been taken are signage, a City Ranger and a year round rope which discourages any access to the ocean at Children’s Pool. It is strictly the job of NOAA/NMFS to enforce Federal law regarding pinniped harassment. However the City is trying to create laws relating to the “take” of seals at Children’s Pool and now the CCC staff report is reinforcing this usurping of the Federal government authority.

Based on my above rebuttal to the local CCC staff report, I respectfully ask that the CA Coastal Commissioners DO NOT APPROVE THE FOLLOWING:

City of San Diego LCP Amendment No. LCP-6-LJS-14-0607-1 (Children’s Pool). Please do not approve the request by the City of San Diego to amend the certified Land Use Plan (La Jolla Community Plan) to incorporate additions and changes to the marine resource protection and public access policies to limit beach access at Children’s Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

Application No. 6-14-0691 (City of San Diego Parks and Recreation Department, Children’s Pool Seasonal Closure). Please do not approve the application of the City of San Diego Parks and Recreation Department to limit beach access at Children’s Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

Thank you for taking the time to read this rebuttal letter. Beach access is not to be taken lightly as you know and it affects many people. Children’s Pool is a special place for many generations of San Diegans. Please do not surrender it to special interest groups.

Sincerely,

Marie Hunrichs
mariehunrichs@cox.net
COUNCILMEMBER SHERRI S. LIGHTNER
FIRST DISTRICT
City of San Diego

August 8, 2014

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402

Re: LCP Amendment No. LCP-6-LJS-14-0607

Dear Commissioners:

As the San Diego City Councilmember who represents La Jolla and has followed the Children’s Pool issue closely for over a decade, I respectfully request that you grant the community’s request to deny the La Jolla Community Plan/Local Coastal Program amendment to incorporate additions and changes to the marine resource protection and public access policies to eliminate public physical beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

La Jolla community organizations, including the La Jolla Community Planning Association, La Jolla Town Council and La Jolla Parks and Beaches Committee, have all formally opposed this closure because they believe that shared use of this beach between people and seals is the preferred alternative for the community of La Jolla.

I am deeply concerned that this action sets a dangerous precedent, eliminating public physical access guaranteed by the California Coastal Act of 1976. The Children’s Pool has provided public physical access to the ocean for nearly a century. Page 170 of the La Jolla Community Plan describes the Children’s Pool as a “small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized.”

This area has been used for physical access in the La Jolla Community Plan/Local Coastal Program since it was written. It is premature to permanently close the physical access and the beach, given that the effects of the year round rope required by the existing Coastal Development Permit have not been evaluated. The permit requires the placement of a year round rope and detailed monitoring of the seals by the City.

The California harbor seal populations have increased statewide over the past 20 years. This increase has also been evident at Children’s Pool regardless of the past shared use of the beach.

It is important to note that this species is not listed as “endangered” or “threatened” under the Endangered Species Act. It is also not considered “depleted” under the Marine Mammal
Protection Act (MMPA). The National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS) most recent stock assessment states that the California harbor seal “would not be considered as ‘strategic’ under the MMPA.” According to the MMPA, if a species is not considered “strategic,” then it is not likely that human impacts will reduce the stock below its optimum sustainable population.

The proposed permanent, seasonal beach closure and precedent setting elimination of a long-standing public physical access is unwarranted and is regulatory overkill. The continued shared use policy can better achieve all the goals of the Coastal Act in providing public access to the beach and ocean while also keeping both seals and people safe.

Please contact me at (619) 236-6611 or sherrilightner@sandiego.gov if I may provide additional information.

Sincerely,

[Signature]

Sherri S. Lightner
August 7, 2014

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

Re: LCP Amendment No. LCP-6-LJS-14-0607

Dear Commissioners:

I respectfully request that you deny the La Jolla Community Plan/Local Coastal Program amendment that would eliminate public access to Children's Pool Beach from December 15 to May 15 of each year. Shared use of the beach by people and seals is a better solution.

Approving this amendment would set a dangerous precedent, eliminating public physical access guaranteed by the California Coastal Act of 1976. The Children's Pool has provided public physical access to the ocean for nearly a century and has been used for physical access in the La Jolla Community Plan/Local Coastal Program since it was written.

It is premature to permanently close the beach before the effects of the year-round rope required by the existing CCC Permit have been evaluated. In addition to the rope, the permit requires detailed monitoring of the seals by the City.

The harbor seal population has increased statewide over the past twenty years. This species is not listed as "endangered" or "threatened" under the Endangered Species Act, nor is it considered "depleted" under the Marine Mammal Protection Act (MMPA). The most recent stock assessment by the National Oceanic and Atmospheric Administration states that the California harbor seal "would not be considered as 'strategic' under the MMPA," meaning it is not likely that human impacts will reduce the stock below its optimum sustainable population.

The proposed beach closure and precedent-setting elimination of long-standing public physical access is unwarranted. Shared use can better achieve the goals of the Coastal Act in providing public access to the beach and ocean while also keeping both seals and people safe.

Please contact me at (619) 236-6655 or markkersey@sandiego.gov with any questions.

Sincerely,

Mark Kersey
At the end of page 15 of the staff report there is one change to the LCP shown. Many more LCP changes are needed. (additions in bold type)

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...except at Children’s Pool.

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... except at Children’s Pool.

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... except at Children’s Pool.

New development should not prevent or unduly restrict access to beaches or other recreational areas... except at Children’s Pool.

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... except at Children’s Pool.

The need to increase public awareness of beach and coastal access points within the community through appropriate signage except at Children’s Pool.

Enhance existing public access to the ocean, beach and park areas such as Ellen B. Scripps Park and Kellogg Park along the shoreline in order to be of greatest benefit to neighborhood residents and visitors to the community except at Children’s Pool.

to protect and enhance beach access, both visually and physically; except at Children’s Pool.

Further intentions of this overlay zone are to maximize public access to and along the shoreline consistent with sound resource conservation principles and the rights of property owners but minimize access at Children’s Pool.

The plan also states that the City will review new developments for the potential of prescriptive rights of access in accordance with the California Coastal Act and state law except at Children’s Pool.

The policies and recommendations contained in this plan are intended to balance the rights of individual property owners with the public’s right of access except at Children’s Pool.
A comprehensive sign program is needed throughout La Jolla to identify existing but underutilized access points, except at Children’s Pool.

Enhance existing public access to La Jolla’s beaches and coastline areas (for example La Jolla Shores Beach and Children’s Pool areas) in order to facilitate greater public use except at Children’s Pool.

Public access at designated beach and shoreline points has been improved with the addition of stairways or ramps at certain points along the coastline including Tourmaline Surfing Park, Linda Way, Bird Rock Avenue, Windansea Park, La Jolla Strand Park, Jones Beach, Coast Boulevard Park, Shell Beach, Scripps Park, Children’s Pool and La Jolla Shores Beach.

Public coastal access should be considered when evaluating redevelopment along the coast except at Children’s Pool.

The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways and railings along the shoreline to preserve vertical access (to the beach and coast), to allow lateral access (along the shore), and to increase public safety at the beach and shoreline areas except at Children’s Pool.

Maintain, and, where feasible, enhance and restore existing facilities including streets, public easements, stairways, pathways and parking areas in order to provide adequate public access to the shoreline except at Children’s Pool.

Maintain, and, where feasible, enhance and restore all existing steps and paved access ramps to beach and shoreline parks, except at Children’s Pool.

Children’s Pool: Small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff much of the time. Heavily utilized in Summer.

NOTE: To save typing in the future, a more generic term could be used, like “except at beaches deemed biologically or economically significant”.
Request for Information on Pinnipeds in California

Dear Colleagues:

NOAA’S National Marine Fisheries Service (NMFS) Southwest Regional Office (SWR) is requesting assistance to collect information on pinniped haulout sites in California.

Documenting the location and seasonal use of pinniped haulout sites is important for managing activities that may impact pinnipeds and also for prioritizing research needs. NMFS-SWR, in collaboration with NMFS-Southwest Fisheries Science Center, has created an interactive GIS database that will provide a comprehensive inventory of pinniped haulout sites in California, based primarily from an extensive review of literature and from contributions from fellow researchers.

We are requesting assistance from pinniped researchers and others who are willing to share their information on pinniped haulout information in California. We understand the sensitivity of sharing data, but we want to make sure that the database incorporates both historical and current information on pinnipeds in California. Many pinniped surveys are conducted at the end of the breeding season when the majority of the animals are hauled out. Much can be inferred about dispersal of pinnipeds by comparing movement between the breeding and non-breeding seasons. However, less is known about dispersal within the breeding and particularly, during the non-breeding season. Thus, we hope that with your assistance, we will be able to compile year-round information on pinniped haulout sites in California. Primarily, we are interested in information (past and present) on: 1) species; 2) location (e.g., name of area and/or latitude/longitude); 3) counts; 4) date and time observed; 5) whether the area was/is used as a rookery or non-rookery; and 6) age class. Any other additional information would also be greatly appreciated. We also request that you include reference information, so that this may be included in the database as well.

Presently, the database will only be accessible to NMFS-SWR staff as we continue to develop this database and collect information. The information in the database will be evaluated and updated on an annual basis. In the future, we may want to make a restricted version of this database available to the public (likely to include the GIS map, species and location), but we will notify participating researchers prior to publicizing.

If you have information on pinniped haulout sites in California, but are unsure about disseminating data, please feel free to contact me so that we may discuss alternatives.

Please contact me with any questions.

Thank you in advance for your time.

Cheers,
Monica DeAngelis
TO: California Coastal Commission  
All Commissioners and alternates and local staff  
Information needed for Aug 14 hearing

Re: LCP-6LJS-14-0607-1, CDP # 6-14-0691

Dear Commissioners,

This cover letter only clarifies that the slide show draft enclosed meets all ex parte conditions and you need only read it, if you would.

We are trying to speak for the locals and dedicated user groups that are supposed to be protected under the Coastal Act and other laws against being barred from our own land.

For that we have always depended on the Coastal Commission.
Allowing this new way for a town to remove Constitutional guarantees of public access from an LCP would be a dangerous precedent.

David Valentine.

RECEIVED
AUG 0 8 2014
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT
LA JOLLA CHILDREN'S POOL

COASTAL COMMISSION—August 14, 2014

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA COASTAL ACT, Section 39230 states
  - Special protection shall be given to areas of special biological, economic significance.

Mr. James Lechy, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service in testimony before San Diego City Council on 14 September 2004

"The Children's Pool harbor seals are not necessary for maintaining a healthy sea population."

- Dr. Chris Yone, SEA for PR, NMFS in an open letter to San Diego's Mayor and City Council members dated 2 January 2014

"...are unlikely to be population consequences regardless of what actions are taken at the Children's Pool..."

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA CONSTITUTION, ARTICLE 1, Section 25
  - The people shall have the right to fish upon and from the public lands... and no law shall ever be passed making it a crime for the people to enter upon the public lands

The proposed City action violates this section of the State Constitution

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN
LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA CONSTITUTION, Article 10, Section 4
  - No [one]...possessing the frontage of tidal lands...shall be permitted to exclude the right of way to such... the Legislature shall enact such laws as will give the most liberal construction... so that access to the navigable waters of this State shall be always attainable for the people thereof

The proposed City action violates this section of the State Constitution

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LEGAL REASONS TO MAINTAIN BEACH ACCESS

- AMERICANS WITH DISABILITIES ACT, 2010 ADA Title II requirements for government facilities
  - (4) Path of travel. An alteration that affects the access to an area readily accessible to individuals with disabilities.
    - (b) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the area may be approached, entered and exited
    - (A) An accessible path of travel may consist of walks and sidewalks, curb ramps and pedestrian ramps

The proposed City action violates this section of Federal law

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LEGAL REASONS TO MAINTAIN BEACH ACCESS

- AMERICANS WITH DISABILITIES ACT
  - State and local governments must follow the ADA requirements of the 2010 Standards, including both the Title II regulations at 28 CFR 35.157; and the 2004 ADAAG at 36 CFR part 1191, appendices B and D

The proposed City action violates this section of Federal law

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LEGAL REASONS TO MAINTAIN BEACH ACCESS

- MARINE MAMMAL PROTECTION ACT, 199(a) Prohibition of state level enforcement of marine mammal protection.
- In a letter from NOAA Office of Protected Resources 6/3/14:
  - "Section 109 (a) prohibits enforcement of laws or regulations relating to the taking of marine mammals except by a state to which the Secretary of Commerce or the Secretary of the Interior has transferred authority for the conservation and management of the species. That authority has not been transferred to the City."

The proposed City action violates this section of Federal law
LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CHILDREN'S POOL TRUST, Section 1(b) of Chapter 937 of 1931 as modified (aka Children's Pool Trust)
  - That said lands shall be devoted exclusively to public park, marine mammal park for the enjoyment and educational benefit of children, bathing pool for children, parkway, highway, playground and recreational purposes...

The City has always controlled implementation of the Trust. There is no indication that the City treats all uses equally
  - The City must honor ALL trust uses

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CHILDREN'S POOL TRUST, Section 1(b) of Chapter 937 of 1931 as modified (aka Children's Pool Trust)
  - The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands with the right of convenient access...is hereby reserved to the people of the State of California

The City and state are obligated to honor *this portion of the trust* and allow fishermen complete access over Children's Pool tidelands

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

LEGAL REASONS TO MAINTAIN BEACH ACCESS

- O'SULLIVAN v CITY OF SAN DIEGO, also known as the Pate decision of 2005 (August 26)
  - ... To protect the rights of the people of California to the full use and enjoyment of a unique asset, the Children's Pool... The City is ordered...to restore the Pool to its 1941 condition by removing the sand build-up and further to reduce the level of water contamination in the pool to levels certified...as being safe for humans

The Pate decision is still in force. Changing the Trust to allow for 'enjoyment of seals' did not relieve the City of it's responsibility to provide a safe place for children to swim. And that includes protecting beach access

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

MORAL REASONS TO MAINTAIN BEACH ACCESS

It is oxymoronic for the City, on one hand, to severely restrict access to the Children's Pool to protect harbor seals and encourage people to 'take' sea lions at and around the La Jolla Cove. The City is cherry picking portions of the law they wish to enforce... The La Jolla Cove and the Children's Pool are 2000 feet apart.

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN
From: Cheri Aspenleiter [mailto:cheriaspen@gmail.com]
Sent: Wednesday, July 30, 2014 1:13 PM
To: Miller, Vanessa@Coastal
Subject: Rebuttal to CCC Staff Report for Children's Pool Closure

Date: July 30, 2014
TO: Britney Lavern, Greg Murphy, Greg Cox and All other Coastal Commissioners of the CA Coastal Commission

RE: Staff Report specifically about ADA access for swimming.

I wish to correct the staff report. The Children's Pool IS the only safe access with a dedicated vertical easement ramp to the high water mark on the La Jolla Coastal Plan. This LCP is the issue. You need to please get very clear on the truth about the disability access.

1. La Jolla Shores: Is not accessible or safe for disabled ocean swimming. The facility has one beach chair that can 'get splashed' that has to be reserved far in advance. Disabled people especially paraplegic and quadriplegics can not crawl out through the surf with out the use of their limbs. This is an impossibility.

2. La Jolla Cove, Also under facility remodel and also ignoring and not providing access for disabled swimming, no ramp to the water.

3. Boomer: Cliffs, dangerous rocks, rips and large surf.
4. Shell Beach, Dangerous stairway, surf & the worse rip tide in Southern California
5. All along Coast Blvd.: Stairways and cliffs, surf
6. North P.B. Stairs and dangerous surf
Surf Beaches all the way to Mexico.

7. Children's POOL: Safe calm water, dedicated ramp to the high water mark, built especially for the disabled, In a Tidelands Trust that has withstood the test of the Courts to be maintained only as a Children's Pool with out seal feces pollution. See the 2004 Human Health Ruling by Superior Court Judge Pate.

if the Children's Pool is closed for any time of the year, The CA Coastal Commission will be continuing the disability violations there and not honoring their main mission of ACCESS for ALL , & To honor the recreational facility of our only safe harbor and ocean pool that did serve wheelchairs for over half a century. The City of San Diego and The CA Coastal Commission is terribly guilty of promoting the violations of all disability codes. The ramp at the Children's Pool WAS to the current disability codes in 1948. By law

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every time that ramp was touched it had to be brought up to the then current codes. As the codes progressed and codified the ramp needed to be kept to code and then would be ADA compliant once those laws were enacted. The City of San Diego and The CA Coastal Commission is in violation. This disrespectful Staff Report proves the violations.

I have sent to you all the history of the ramp, that proves beyond a shadow of a doubt the legal uses of this ocean pool. You are aware that this is the only safe ocean access for disabled people and you are acutely aware that your actions will continue to block the disabled from their rightful access. I suggest that you begin to follow your dictates of recreation and access for all and enforce the La Jolla Local Community Plan and restore the Access Ramp with the Best ADA Ramp in the World. And give back to the Disabled who have fought for your rights to be in the positions you do hold.

Britney told me specifically that the CA Coastal Commission Staff and Commissioners do not have any 'Over-Sight'. I want to remind her and all of you that I am your oversite, all of the people are. The disabled many times can not speak for themselves that is why we have laws to protect us, and that is why Ellen Browning Scripps had this bathing therapy pool built to be a 'clean' 'safe' human swimming pool. This was and is held up in Superior Court, that the CCC is disrespecting our Civil Rights and the Human Health Codes and Human Health Ruling to restore the pool, is really disgraceful for an American Body whose mission is to provide accessible recreation. Since this is our only Ocean Pool you can not legally close it and should take away the rope on the legal playground it is also dangerous to children at their Pool.

I have sent you enough prove that the only right thing to do is to order an Environmental Impact Report in relation to the pollution and the devastation to the undersea ecosystem as a result of the serious overpopulation of pinnipeds along the La Jolla Coastline.

I further need to advice you that if Britney or any other staff member is connected personally with the Surf Riders or the Sierra Club then their membership dues are financing the closure along with the ignorance of the truth. And therefore any CCC Staff or Commissioners that are dues paying members are hereby on notice of a serious ethical conflict of interest.

The Disabled and the Ocean Ecosystem is at stake.

Attached you will find for your records photos of La Jolla Shores surf beach, with not one wheelchair out of thousands of people. La Jolla Shores is a surf beach and surf is too dangerous for wheelchair swimmers. There are no safe access areas for a wheelchair swimmer except the Children’s Pool engineered for this purpose.

Cheryl K. Aspenleiter
Disabled Ocean Swimmer.
Dear Ms. Sherilyn Sarb of the California Coastal Commission,

I am writing to you today to 'talk turkey' so-to-speak. You may not be aware that we have over 185,000 amputations in our country each year. We have more disabled American Military Veterans with severe disabilities here in San Diego than any other city. Water therapy is unsurpassed for people missing limbs, as the water is supportive and allows one to be out of the wheelchair, a rare and wonderful experience. The Children's Pool was especially designed and built for us disabled people and for small children to be safe swimming and floating doing water therapy. Your staff report did not respect Americans with Disabilities. I need not remind you that access for all is the specific mission for the Coastal Commission. The Staff Report stated that there was no issues that will affect anyone by closing the Children's Pool. The Staff Report appears to be written by a young person with out the proper experience to be able to understand the Mission of Access and Recreation and instead very obviously had a mind set for closure prior to receiving and reading any information submitted by the public. I suspect that there are serious conflicts of interest especially if she or any member is also a member of the groups financing this illegal and unconstitutional closure.

In all the politics about our only ocean pool, people or marine mammal park? (definition=Sea World) the real reason for the existence of the Children's Pool was totally forgotten and deliberately so. The reason it was built is for "children and especially for those handicapped in life's game", these are Ellen Scripps words as well as those of Engineer Savage who took ten years of his life for this purpose. Miss Scripps Tidelands trust did stand the test of a lawsuit. Superior Court Judge Pate issued a Human Health ruling to remove the filthy sand and ordered the sluiceway reopening feasibility studies completed, they are. All marine agencies testified they agreed. The Centers for Disease Control concurred. These rulings still stand and the pollution is now worse. It was totally agreed and ruled that by removing the sand the seals would be encouraged to return to Seal Rock, S. Casa where they go now and thousands of other natural less human populated haul outs. Sand is not necessary nor natural for birthing pups, and to birth in their own feces is unhealthy for the seals and the environment.

What you need to know is that your Staff Report is very incorrect, as to remove the only dedicated easement to the high water mark into the only Ocean pool will be to further the Disability Violations that the Commission in confusion with the City of San Diego has promoted by ignoring the Disability Codes for decades.

I have come before you, I have met with you and I have sent in all the documents proving with out a doubt the above. As you can see the ramp is on the map into the pool there is no dispute. The Conspiracy to close the Children's Pool is has been very successful, to the exact...
definition of the word.
Please be aware of the following facts:
1. The Children's Pool is the only safe Pacific Ocean Access for a paraplegic or quadraplegic ocean bather.
2. The Children's Pool ramp was to code in 1948.
3. The Children's Pool ramp served wheelchairs for over half a century, was paved and was the PRIMARY access into the pool.
4. The Children's Pool inner wall was also the primary access into the pool, with stadium style seating that doubled as stairs into the pool. The CCC & the City of San Diego has allowed this huge access avenue to deteriorate to ruin.
5. La Jolla Shores is a surf beach and it not possible for a wheelchair swimmer to negotiate the surf.
6. La Jolla Cove is also under facility remodel and Americans With Disabilities is not being honored there either, no ramp to the water, only to a viewing level. That is terribly mean and just plain criminal.
7. Boomer is a cliff, and very dangerous waves.
8. Shell Beach is dangerous stairs and the worse rip tide in Southern CA, next to the safe harbor of Children's Pool very needed for rescues caused by this adjoining beach's extreme danger. This is also the site of Seal Rock a better natural place for seals, as the rip tide keeps people away. Seals love rip tides being excellent swimmers.
8. South Casa is a natural seal haul out and has a dangerous rip tide as well as sharp reefs and very steep stairs.
9. All other beaches down Coast Blvd. have cliffs and steep stairs that lead to surf.
10. North Bird Rock, very steep stairs to cliffs and rip tides.
11. All the way to Mexico: Surf

12. Children's Pool: A pool as opposed to a surf beach. Ramped access and many ADA designs fit very well. A 2004 Human Health Ruling ordered the sand to be removed and the sluice way studies completed to be reopened for sand control and water circulation. Wheelchairs could roll in and a paraplegic can transition from a wheelchair into the POOL water (no surr) with out any assistance. Children's Pool is a one of a kind safe access for wheelchair swimmers. There is no other safe ocean access pool on the West Coast, or in the Continental United States.

I am a disabled snorkeler with a Snorkel Swimming Club, many members are disabled. Bus loads of people are over crowding other beaches that are much more dangerous for small children to snorkel than the Children's Pool which lays vacant of seals and of people because of the Conspiracy supported by our government catering to opportunist profiting from the view of seals.
Totally illogical. The seals have for sure, no argument far exceeded the carrying capacity of the local underwater environment and have seriously polluted the sand and the Tide Pools killing ALL Tide Pool Creatures. This is why an environmental impact report is way overdue. Seal World did drop those seals with out an EIR to ascertain if the sea could support so many new marine mammals NEVER there before in such populations or their subsequent huge birth rates. Each creature needing 8,000 calories / 50 lbs of bio-mass each day. Thousands of seals and sea lions=DEAD ZONE. Seriously.

Also within the Mission Statement of the CCC: Healthy fish stocks, now G.O.N.E.!

Gone are the CA Black Mussels a Tide Pool Staple. I am a Tide Pool interpreter at Birch Aquarium, and I know that the areas of S. Casa, Children's Pool, Seal Rock and Shell Beach are fast becoming dead zones directly because of the overpopulation of seals. You will be promoting the dead zone, starvation of the seals, fecal pollution to the point of the bacteria including T.B. and e.coli being airborne and the stench is already so powerful that the residents of Casa De Manana have to close their windows to the horrible smell and fear of illness.

This is what your staff report is supporting. Pollution and disability Code Violations, that have continued unabated for decades. The CCC is a puppet for the Seal Opportunists Groups who have used our government as political puppets with lies and total ignorance of the truth. They care not for the seals as the seals are birthing in their own feces and becoming ill and dying. This is not educational for anyone to watch. I am a retired teacher of 30 years and
have taught Earth Sciences. I also hold a degree in Early Human Development, and I would not want students to view what is going on at the Children's Pool. It is a filthy unnatural environment manned by Nazi Style Opportunists frightening disabled bathers daily. The Ranger, the Police and the Lifeguards have been sucessfully controlled for the purposes of fund raising for a sells for financial gain. Large financial gain. The Children's Pool is nothing more than a Sea World created pool, only filthy, blocking the only access for a wheelchair swimmer, decimated, dead zone, and hungry seals having to go out further and further to find food. Biologist Michael Costello stated that they are devouring the dolphins fish stocks now. He explained that birth control for the seals and sea lions is effective. The balance of the ocean is at stake. If you do not wise up and really learn the truth and close the Children's Pool, you will be directly responsible for continuing the dead zone, the pollution and the hunger of the seals, and for blocking wheelchair swimmers continuing the serious prolonged disability violations. Please be on notice. This is the most despicable behavior of any American government body I have ever had the displeasure of dealing with. I was patronized, called a liar and told that the California Coastal Commission does not have any over sight, when I respectfully asked. This by Miss Britney Lavern. No over site in a democratic nation? No checks and balances? Special interest votes rule? Shameful. Extremely difficult to contact, email addresses are not available for all members. The California Coastal Commission is not user friendly. And to ignore our disabled people is so immoral that I can not help but tell you that I feel the Commission needs to really take notice of this Sea Wall. This Sea Wall is a wall of a sand bottom human bathing pool, one that is needed more now that ever before. And I request that each member of the Commission imagine bringing home a sister or friend from the hospital, who just had two legs and one arm blown off. Who used to snorkel and swim in the real ocean, who wants to again, to have that magic of experiencing the ocean gives. Where would you roll her into? The Children's Pool of course! This will put San Diego on the ADA map of the World, This is exactly what the CA Coastal Commission IS for, Access for all and Recreation. Please image the facility if restored as per Judge Pate's 2004 Human Health ruling that, by the way still stands today. Please have the courage to see the truth. And yes even go snorkeling with me at the Children's Pool this week. Come experience the safety and fun and magic. Know exactly what it is you are deciding upon. The water is not polluted as it goes in and out twice a day with the tides. The sand up around the rope is deadly, that is where they want people to stand. A rope is dangerous on a Children's Playground, which is legally what it still is. In 2004 the sand was to be removed, the seals would be discouraged from hauling out and polluting and birthing in their own large piles of feces, spats of urine, and afterbirth pieces that accumulate and never wash clean ever. Image closing this pit and how the stencil and filth will build up and up and up until someone dies from it. Seals will for sure, they get ill from their own filth. When just over the wall at South Casa where the sand is to be conveyed the seals filth washes clean and they are happy there just fine.

Please stop the disability violations, by understanding that you are now informed that there is no other safe access for a wheelchair swimmer, especially not La Jolla Shores. You can confer with Melinda Merryweather who is the Access Chairwoman for the La Jolla Parks And Beaches.

Please reply that you now understand that the Children's Pool is the only safe access with dedicated ramp on the map for a wheelchair swimmer and that La Jolla Shores is too dangerous. Go to these places and see for yourself, please. And when you get to Miss Scripps's Ocean Pool imagine the ramp I will attach and have sent. If you knew the research and the excellent triangulation that I have been especially careful with you would totally be on board with Restoring our only Pacific Ocean Pool. Are you aware that the Children's Pool
also does qualify as a Registered State and National Historic Site? I am disabled, I am a teacher, I am a docent teaching ocean ecology and marine mammal migration educator, (via Scripps onboard the Whale watching excursions). I snorkel using the old ramp at the Children's Pool, I see the dead zone, I have to walk through piles of feces, but the swimming is safe, and the water washes clean. The seals are part of the therapy and are my pals, I can tell you wonderful stories about these very tame seals. One mother brought her pup to my lap when I was sitting far away over by the cave. One full moon night trying to catch a lobster at Children's Pool two years ago, my dive buddy got an immediate ear ache and did not go in. I went alone, full moon, like a lake, low tide, very shallow. Immediately a seal bushed my body and looked right in my face, and he followed me for over an hour, loving my dive light, and I even turned it off and we swam together in the safe shallows of the Children's Pool in the moon light. Pupping Season is lobster hunting season. I got 28 zeros. That means I tried 28 times with no luck. But what fun and only at the Children's Pool is it safe. Great night swimming there.

Judge Paté's entire court case; all testimony is still valid right now. All conditions are exactly the same only the pollution and the population is much worse and larger. Balance is key in the Sea and there is no balance any longer. It is a decimated filthy dead zone. Wounded warriors are committing suicide to the tune of 22 each day rather than face the terrors of their wounds. They come home not to a hero's welcome but to depression and exclusion. At least allow them the healing magic of the Pacific Ocean Bathing Pool. I am fighting to stay out of a wheelchair, and if you close my therapy pool I will not have any where else to go. Please go to the new website to educate yourself with triangulated information. restorechildrenspool.org

Cheryl K. Aspenleiter
Disabled Pacific Ocean Swimmer.
858.568.1257
From: Miller, Vanessa@Coastal  
Sent: Friday, August 01, 2014 9:24 AM  
To: Sarb, Sherilyn@Coastal; Lee, Deborah@Coastal  
Cc: Parker, Holly@Coastal  
Subject: FW: Children's Pool LCP-6-lis-14-0607-1/ath12c, Staff Report Correction

From: Cheri Aspenleiter [mailto:cheriaspen@gmail.com]  
Sent: Thursday, July 31, 2014 4:26 PM  
To: Miller, Vanessa@Coastal  
Subject: Children's Pool LCP-6-lis-14-0607-1/ath12c, Staff Report Correction

To All CA Coastal Commissioners vis Ms. Miller Administrative Secretary as a disability accommodation. Please send to each commissioner and San Diego Staff Members. This is very important corrections to the recent Staff Report.

The attached statements from disabled people describing themselves using the ramp to access the bathing pool, and the heating need for the violations to be corrected so the recreational facility can be used by all people for the purposes protected in the Tidelands Trust upheld in Superior Court.

P.S. The Children's Pool is the only safe ocean access for wheelchair swimmers built especially for this purpose. The Staff Reporter Author did not consider the evidence before her, especially the La Jolla Community Plan that clearly shows the Children's Pool ramp as the only dedicated vertical easement ramp to the high water mark on the map. La Jolla Shores is a surf beach and I have already sent you a slide show of it and all the other access sites into the ocean. Only the Children's Pool has the safe surf-free access. Only Children's Pool has the easement ramp and the perfect location and space for a great ADA ramp that curves along the contours of the wall into the calm waters of the pool, by La Jolla Architect Mark Bucon. The Drawing of this ADA ramp and two others have been submitted to you. The CA Coastal Commission's Mission is ACCESS and RECREATION. This was specifically built for both.

P.S. Your report did not address pollution levels and how they would increase dramatically if the pool is allowed to close and fill up with seals birthing in their own feces. Judge Pate in 2004 via the Centers for Disease Control's testimony and all marine agencies issued a strict human health order to restore the Children's Pool and remove the filthy sand. The CCC is on notice that this commission is in direct violation of their mandates by not maintaining the Children's Pool Disability Access and indeed by promoting and supporting the illegal removal of the access ramp that served wheelchairs for decades.

The CA Coastal Commission's Mission is also healthy fish stocks. The Children's Pool is a dead zone, there are not healthy fish stocks the seals have devoured them. An immediate environmental impact report is in order and decades overdue. Britney herself admitted the
pollution and stated she would not swim there. The pollution needs to be prevented not increased by closure. The bacteria may be airborne to humans and to the retirement community who now has to close their windows to the stench.

Ellen Browning Scripps Trust held up in Superior Court and the order to restore the pool still stands.

I hereby state that if the Commission should vote to close the only safe entry and exit into the only ocean pool then the Commission will be furthering their own collusion of dishonoring Americans with Disabilities. It will go against the whole philosophy of the Coastal Commission. Please have the courage to bow away from the special interest groups who were not even aware that a ramp was ever there, that is how good the conspiracy is to the true definition of the word. It is horrific and mean to use the seals for profit, and to dupe the Commission and some of the City into being total puppets for their seal viewing business. Children's Pool's problems were begun by Sea World and without any responsibility for the ecosystem sustainability and pollution. You close the pool and you are responsible for the continued pollution and dangerous bacteria that affects the seals, the environment and people adversely as well as the ever increasing hunger of the seals and starving sea lions, tide pools totally dead.

If you don't think an immediate EIR is warranted then you are guilty of what is tantamount to treason, both for the continued ruination of the undersea ecosystem and for blocking disabled American Veterans and all other disabled people, and Children. It is only a 200 foot pool for people sake. People without limbs need it!!

Cheryl K. Aspekteiner  
Coastal Ocean Access & Sustainability Team

1. attached proof via many comments from real people whose access ramp was blocked, and who will tell you there is no other safe ocean access pool for them. The ramp was used as the primary access for decades. A ramp that you & the City of San Diego needed to make sure was excellent and kept to code every time it was touched for maintenance, and it was not. Severe violations exist and it is your job to stop them by initiating a Restoration Project to Restore Access To the Disabled for Whom the Children's Pool was built. This is an act that can not be disputed. Many ADA ramp designs fit well there.

2. attached is Judge Pate's Human Health ruling disallowing the build up of seal feces by ordering the sand removed & the sluiceway studies completed.

3. attached photo of increasing the percentage of shark attacks by not decreasing the seal population to be in balance with their environment, very poor marine mammal management; Sea World.

PLEASE REJECT THE STAFF REPORT AS IT CAN NOT BE TRIANGULATED, IS NOT BACKED BY SCIENCE, AND HEREIN IS PROOF OF THE DISABILITY ISSUE.

4. I direct you to the educational website:
   http://www.restorechildreenspool.org/ to learn the actual truth that is thoroughly researched and the information triangulated unless otherwise stated.

Our goal is inclusion to the sport of ocean swimming for all people, this is the Commission's Goal as well. You have forgotten us disable people and we ask that you please remember us here at the only safe ocean access pool we have. Please
From: Cheri Aspenleiter [mailto:cheriaspen@gmail.com]
Sent: Saturday, August 02, 2014 3:07 PM
To: Miller, Vanessa@Coastal
Subject: Children’s Pool Closure Project

Ms. Miller, Thank You for sending this message to all Coastal Commissioners:

Dear California Coastal Commissioners: I direct you to please read the information in the following website to become more aware of the situation at the Children's Pool. If you have not been in the water there it will be difficult to make an informed decision. I doubt that any of the commissioners has been swimming in the pool? I would like to suggest that a swim in the Children's Pool be a part of your research. I fail to understand how you can close a pool you know very little about. I know if I were in your positions I would go there and snorkel swim and really understand the situation. And look up at the unfinished hillside construction and imagine a good ADA ramp with wheelchairs rolling in on their own. There simply is no other place for this to occur. This is a human built sand bottom swimming pool for humans. A with all the disabled people our country has, one in five, we sure need it for healing and for inclusion. Please use this website as part of your much needed research: http://www.restorechildrenspool.org/ Please do not use the staff report written by Ms. Lavere as she failed terribly with reporting the significant and vital information that was before her. We have disabled American Veterans laying all over this City without limbs who could and should have access to the healing waters of the Children's Pool and the Commission is failing in its Mission of Access for All. And The Commission Staff Report actually promotes the under sea dead zones that are rapidly occurring as a direct result of the over population of seals and sea lions and absolutely no marine mammal management occurring to prevent their starvation. This has gone on long enough; the very balance of the undersea ecosystem is gone and disabled people have been excluded long enough from the only ocean pool built especially for them. ENOUGH. Please see the forest through the trees, and just follow your mission of Access for all and Recreation at the proper locations as this definitely is. The Commission's lack of proper decisions and the deliberate violations of every Disability Law enacted are the issue at this pool that boasts the Grandfather of Disability Ramps into an Pacific Ocean Swimming Pool. This is serious and this is a direct complaint that the CA Coastal Commission Staff writer Britney Laverne is biased and therefore has a conflict of interest. The report was not professional and she needs to be relieved of her duties with relation to the Children's Pool. I understand that The Sierra Club and the Surf Riders Organization are directly financing the closure of this our human bathing pool. I would like to know if Mr. Lavere is a member of either of these organizations? If so then I request that she excuse herself and that the Staff Report be rewritten. Her dues are helping to finance the special interests of the group fighting to close the pool. That is a serious conflict of interest. I am appalled at her lack of respect to the disability codes and the facts before her
that the ramp is the only one on the map into the only safe pool. She is an poor excuse for an American. As are any of you who vote to close the only ocean pool available to our thousands of limbless wounded veterans, men and women, most very young. Many are committing suicide each day, the suicide rate exceeds the death tolls of the wars they fought in, Iraq and Afghanistan.

Over 185,000 amputations in our country alone each year, not to mention the thousands of disabled tourists that come.

I suggest that you each think about this and do what you know is right, disregard the totally biased staff report. Please have the courage to see through the greed of the seal opportunists using marine mammals for fund raising while the seals over populate and totally devastate their own environment. Why would anyone want to watch seals birth in their own feces and urine? This is not a natural lesson in seals at all, it is a lesson is using them for greed. And literal Nazi style control of the City of San Diego and you the Coastal Commission. Please see the marine science truth and triangulate the information via an immediate Environmental Impact Report.

Furthermore please consider the Children's Pool Restoration a Commission Project for the Future and really put San Diego on the ADA Map of the World and help out our Veterans and your own terrible image. I was told that the CA Coastal Commission is the enemy. An Enemy of the Disabled! That is a very bad reputation to have ladies and gentlemen. Please have the courage to turn it around and restore this wonderful seawall and the pool. It is not one of those sea walls you all seem to hate, this one collects sand that can be taken to South Case to cushion the seal haul out there. Access for all, all year at the only Pacific Ocean Pool with ramp on the map.

Thank you for you time,

RAMP Committee
Cheri Jacobs Aspenleiter, Disabled Ocean Swimmer
858 568 1257
According to new data released Wednesday, more than 1,500 Americans have lost a leg or arm in combat in Iraq or Afghanistan, and hundreds have suffered the amputation of multiple limbs.

The Huffington Post reported Oct. 25 that the number of American battle wounded has passed 50,000, a grim milestone of more than a decade of war and a reminder of the war’s enduring human cost. On Wednesday, the wounded toll stood at 50,159, according to Defense Department data.

Since 2001, when the war in Afghanistan was launched in response to the 9/11 terrorist attacks, 5,225 American military personnel have been killed in action in Afghanistan or Iraq.

The casualty statistics only begin to suggest the suffering of the injured and of the families of those killed or injured. Because so many of the wounded are in their early 20s, they and their families face a lifetime during which the medical care required may be costly, intense and constant. Amputees, for example, must be fitted for new prosthetics every few years.

The roster of wounded, including those with physical and psychological wounds, explains why the Department of Veterans Affairs is rushing to expand its medical and mental health services for the new generation of veterans.

According to a 10-month investigation by The Huffington Post, more than 16,000 Americans have been taken from the battlefield with severe, disabling wounds.

The new casualty data, released by the U.S. Army Surgeon General’s Office in response to a request by The Huffington Post, shows a dismaying range of injuries. Overall, 253,330 servicemen and women have suffered traumatic brain injury on the battlefield or elsewhere, including 3,949 with penetrating head wounds and 44,610 with severe or moderate brain injury.

Please allow our wounded veterans the healing waters of the children's pool. Safe supportive protected year around what pool.

in the Army alone, 73,674 soldiers have been diagnosed with post-traumatic stress disorder as a result of their combat experience. The Army also has diagnosed 30,480 soldiers who returned from combat with traumatic brain injury, often caused by one or more severe blows to the head or exposure to a concussive blast.

Among the combat wounded from all the military services are 1,572 patients with major limb amputations, including 463 wounded troops with multiple amputations. These numbers do not include those who suffered the loss of fingers or toes.

Most of the amputees, 83 percent, have lost one or both legs, mostly from the blast of improvised explosive devices. These deadly homemade bombs are also the cause of most of the genital wounds suffered by 1,410 U.S. troops.

The data released Wednesday indicates that 2,542 servicemen and women have suffered traumatic burns; 142 have lost at least one eye, and five lost both eyes in combat.

The financial cost of caring for the wounded is dwarfed by the emotional cost, of course. But in 2008, Harvard economist Linda Blimes has estimated the lifetime cost of caring for the war wounded to be between $600 billion and $900 billion. Since then, the data she has gathered indicate that the cost will rise, she told The Huffington Post Wednesday.
Enforce this Plan
Do not amend it.

La Jolla Community Plan
City of San Diego - Planning Department

Subarea E: Coast Boulevard - Physical Access

The "Beach Access Ramp" was the MAD THOT. Community Plan is LAD

The only safe Ocean Access Pool with ramp for Wheelchair Swimmers. No Surf it's a Pool.

Cherri
This is out of our Community Plan they would have to Change it to Take A

- 171 -
One of many ADA ramp designs that fit perfectly at our only Pacific Ocean Pool here.
Harbor Seals have many adaptations, which make them good at swimming and diving. They have specialized fore flippers that help them to steer. Their hind flippers can be moved from side to side to move forward. They can swim upside down. Harbor seals can swim as fast as 12 m.p.h.

The Children's Pool was especially engineered and constructed for disabled people. It could and should be an incredible ADA Ocean Rehab Pool. The ramp was the primary access & served wheelchairs for decades. This is the only Pacific Ocean Access. The Pool is protected & safe from surf & obstacles & perfect for disabled people. Water therapy here is very healing physically, mentally & spiritually. The City of San Diego would be wise to Restore this Pool & put S.D. on the ADA map of the World. The seals are healthier hauling out on the natural reef behind the wall that washes clean. Seals are they are part of the therapy & there is space for all mammals.
TO WHOM IT MAY CONCERN:

THE GREAT MAJORITY OF THE PEOPLE IN LA JOLLA DO NOT WANT THE CHILDREN'S POOL STOLEN FROM OUR CHILDREN. THE SEAL ACTIVISTS HAVE NO CONSCIENCE WASTED TAXPAYER MONEY FOR TEN YEARS NOW TO ACCOMPLISH THIS THEFT, AND TO CRIMINALLY DISHONOR THE SPECIFIC INTENTION OF THE DOCUMENT WHICH MADE IT CRYSTAL CLEAR THAT THE BEACH WAS BEING FINANCED AND BUILT FOR THE PURPOSE OF PROVIDING A BEACH FOR OUR CHILDREN.

AT LEAST THREE TIMES OR MORE THE LA JOLLA TOWN COUNCIL HAS VOTED TO KEEP THE BEACH FOR THE CHILDREN. JUDGES AND COURTS HAVE UPHeld THE INTENTION OF THE DONOR.

BUT THE MEAN-SPRITTED ACTIVISTS WHO CARE NOTHING FOR ETHICS OR CHILDREN HAVE CONTINUED THEIR BATTLE TO CHASE AWAY CHILDREN AND REPLACE THEM WITH SEALS, AND THEIR WASTE WHICH DIRTY THE BEACH AND WATERS, ATTRACTS DANGEROUS SHARKS TO OUR SHORES, AND CREATE A FOUL ODOR THAT PERMEATES THE AREA.

THE SENIORS WHO CAME TO CASA DE MANANA WHO LIVE OUT THEIR LIVES BY THE SEA CAN NO LONGER STEP OUTSIDE WITHOUT SUFFERING THE FOUL ODORS AND COMPLAIN BITTERLY ABOUT WHAT THESE NON-CARING ACTIVISTS HAS DONE TO THEIR LIVES.

THE MANY PROBLEMS CAUSED AND MONEIES WASTED BY THE ACTIVISTS IS ALL THE MORE COMPLETELY RIDICULOUS IN THAT THE SEALS HAVE ALWAYS HAD A COMpletely GOVERNMENT PROTECTED AREA JUST AN EXTREMELY SHORT DISTANCE AWAY FROM CHILDREN'S POOL ON SEAL ROCK, WHERE NATIVES AND TOURISTS HAVE ALWAYS HAD THE OPPORTUNITY TO WATCH THEM UP CLOSE AND ENJOY THEM. THERE WAS NEVER ANY NEED FOR ANY OF THIS COMPLETE WASTE OF THE PEOPLE'S MONEY AND THE BITTERNESS CAUSED.

THIS PAST FOURTH OF JULY CHILDREN'S BEACH WAS FILLED WITH HAPPY CHILDREN ENJOYING IT. THEY SHARED THE WATERS WITH SOME SEALS AND SNOKELERS, AND THEY WERE ALL HAPPY, EXCEPT FOR THE EVIL ACTIVISTS AND SOME GREEDY BUSINESS PEOPLE WHO THINK THEY WILL MAKE A FEW MORE DOLLARS IF THEY CAN KICK THE CHILDREN OFF THEIR BEACH.

MAKE NO MISTAKE - THE GOOD PEOPLE OF LA JOLLA WANT THE CHILDREN TO KEEP THEIR BEACH.

ADELE MEYERS
LA JOLLA
PUBLIC SCHOOL TEACHER
Recollections regarding Children’s Pool beach maintenance

Mark S. Brown, SD Lifeguard II from Feb 1975 to Oct 1979, left to become a paramedic in the City of San Diego.

I was assigned to Children’s Pool as a LG II during 1978-79.

When I was a Permanent lifeguard stationed at the Children’s Pool I do not recall any regularly scheduled beach maintenance. In my experience, Children’s Pool beach maintenance occurred more on an “as needed” basis. Seaweed was occasionally cleaned off the beach by a skip loader that used the manmade berm ramp as access. This ramp was called the “Baja Road” because it lead to the beach below the tower. I have no knowledge of any records that were kept of beach cleaning at the Children’s Pool.

I have a strong recollection of an attempt at sand excavation from the Children’s Pool that went on for several months in 1977 and then was stopped out of pure futility. Turned out there was way too much sand that would take years to move using the skip loader. I recall the crews just dumping the sand onto the South Casa beach after trudging slowly and carefully up the ramp. This aborted attempt at returning the Children’s Pool to its original size of course left a huge hole in the middle of the beach that became filled with quickly stagnant seawater after ensuing high tides. The smelly, unsightly mess only disappeared months later after huge winter swells finally swept even into the protected area of the Children's Pool and leveled the beach once again.

During the six months I was stationed at the Children’s Pool in 1978, the ramp gate was rarely locked. I don’t know when it became SOP to lock it.

More information could be forthcoming from the other Permanent Staff with whom I worked in the North Area. These include LG IIs Steve Wood, Joe Barnett, Tom Thayer, Jeff Koch, Dan Jurman, Tom Redlinger. My supervisors were Sgt. Mike O’Hare, Lt. Buster Mico, and Captain Bob Shea.

Mark B

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Children's Pool Ramp Eroding: 9/1/1988 by Bobbie Joe Lee La Jolla Light

The La Jolla Town Council parks and beach voted unanimously to ask the city for a study of a variety of solutions to the problem of the declining state of the Children's Pool Access Ramp.

The issue hinges on aesthetic and safety, but area lifeguards say the environment of the beach itself is slowing bearing negative impacts from the ramp.

Life Guard Joe Barnett told the Aug. 24 Committee Meeting the problems began in 1982, after giant swells washed out the existing mostly asphalt ramp. The ramp was then covered with "ten to fifteen truck loads of hard base red clay". And a top layer of decomposed granite.

He said the continual beat of the ocean then" mulched with that red clay and turned it into a hard, gelatinous type of fluid and made the red clay/kind of sneak out toward the beach further.....bubbling up like a strange kind oil into a muddy insidious kind of sand.

"The problem is the Children's Pool Beach is now being slowly, completely destroyed because we have an amoeba-like red clay that is forever creeping toward the beach and taking it over...." Then Barnett told a recent committee meeting attended by several City Officials. "Now it's becoming part of the sand."

Barnet said the solution would be to remove the ramp, and this is the issue. Some area residents and lifeguard want the ramp removed, others want it replaced to something akin to concrete. The Committee Voted unto have the issue extensively studied. Much of the Committees' Discussion urged the City to hire "expert consultants' but Terri Carroll, head of the City Parks and Rec. Departments Coastal Division, said the City has talked to various persons about this issue and may consider only 'an in-house' look at the problem.

Committee members spoke of health hazards to the public because the ramp is unsafe. The gelatinous access make cause bathers to slip and and wheelchairs to over turn, but Carroll, other City Officials and a representatives from City Attorney John Witt's office stopped short of promising an answer.

They asked how the City crews could access the beach for removing kelp and emergency teams......... (illegible wording) Ward off personal injury lawsuits caused by removing the well-used access and leaving behind the steeper natural bluff?

"There are so many issues; there is no easy answer, " Said Bill Corbett, Witt's supervising litigation investigator, who added he did consult with "National Expert, " Dan Gillian, formerly of the CA. Parks and Recreation Department. He says Gillian share his concern. My First reaction was to just let it erode, Corbett said, people will get used to having a steeper gradinent there. if you take it away immediately, you are going to have people mistakenly thought, "Well, we went down here before." You're going to wind up with a problem. Our concern is a safe, positive recreational experience for everyone.'

In reference to current wheelchair access problems Corbett asked, "What is the problem of having a lifeguard help them?"

He also mentioned the necessity for emergency access. But Barnet lifeguard, Mike O'Hara and area Activist. Tony Ciaria all said emergency teams would not need to physically bring their transportation on the beach.

And the ever-growing kelp beds?

Barnet said, the Lifeguards could easily rake the kelp into piles on a periodic basis, a solution City Officials and long time Children's Pool protector Dolly Bray argued against. Instead they said, a smaller access ramp could be constructed for City Removal.

Others such as Ciani and Committee chair woman Gayle Pate suggested "Unplugging the barriers now in place in the pool's seawall. The holes in the base originally allowed self-cleaning of the beach, despite the barrier period they were plugged for safety reason and erosion of the ramp.

Handwritten text:

"This shows the pool was cleaned and wheelchairs used the ramp"
Request for Information on Pinnipeds in California

Dear Colleagues:

NOAA's National Marine Fisheries Service (NMFS) Southwest Regional Office (SWR) is requesting assistance to collect information on pinniped haulout sites in California.

Documenting the location and seasonal use of pinniped haulout sites is important for managing activities that may impact pinnipeds and also for prioritizing research needs. NMFS-SWR, in collaboration with NMFS-Southwest Fisheries Science Center, has created an interactive GIS database that will provide a comprehensive inventory of pinniped haulout sites in California, based primarily from an extensive review of literature and from contributions from fellow researchers.

We are requesting assistance from pinniped researchers and others who are willing to share their information on pinniped haulout information in California. We understand the sensitivity of sharing data, but we want to make sure that the database incorporates both historical and current information on pinnipeds in California. Many pinniped surveys are conducted at the end of the breeding season when the majority of the animals are hauled out. Much can be inferred about dispersal of pinnipeds by comparing movement between the breeding and non-breeding seasons. However, less is known about dispersal within the breeding and particularly, during the non-breeding season. Thus, we hope that with your assistance, we will be able to compile year-round information on pinniped haulout sites in California. Primarily, we are interested in information (past and present) on: 1) species; 2) location (e.g., name of area and/or latitude/longitude); 3) counts; 4) date and time observed; 5) whether the area was/is used as a rookery or non-rookery; and 6) age class. Any other additional information would also be greatly appreciated. We also request that you include reference information, so that this may be included in the database as well.

Presently, the database will only be accessible to NMFS-SWR staff as we continue to develop this database and collect information. The information in the database will be evaluated and updated on an annual basis. In the future, we may want to make a restricted version of this database available to the public (likely to include the GIS map, species and location), but we will notify participating researchers prior to publicizing.

If you have information on pinniped haulout sites in California, but are unsure about disseminating data, please feel free to contact me so that we may discuss alternatives.

Please contact me with any questions.

Thank you in advance for your time.

Cheers,

Monica DeAngelis
COUNCILMEMBER SHERRI S. LIGHTNER
FIRST DISTRICT
CITY OF SAN DIEGO

August 8, 2014

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA  92108-4402

Re:  LCP Amendment No. LCP-6-LJS-14-0607

Dear Commissioners:

As the San Diego City Councilmember who represents La Jolla and has followed the Children’s Pool issue closely for over a decade, I respectfully request that you grant the community’s request to deny the La Jolla Community Plan/Local Coastal Program amendment to incorporate additions and changes to the marine resource protection and public access policies to eliminate public physical beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

La Jolla community organizations, including the La Jolla Community Planning Association, La Jolla Town Council and La Jolla Parks and Beaches Committee, have all formally opposed this closure because they believe that shared use of this beach between people and seals is the preferred alternative for the community of La Jolla.

I am deeply concerned that this action sets a dangerous precedent, eliminating public physical access guaranteed by the California Coastal Act of 1976. The Children’s Pool has provided public physical access to the ocean for nearly a century. Page 170 of the La Jolla Community Plan describes the Children's Pool as a “small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized.”

This area has been used for physical access in the La Jolla Community Plan/Local Coastal Program since it was written. It is premature to permanently close the physical access and the beach, given that the effects of the year round rope required by the existing Coastal Development Permit have not been evaluated. The permit requires the placement of a year round rope and detailed monitoring of the seals by the City.

The California harbor seal populations have increased statewide over the past 20 years. This increase has also been evident at Children’s Pool regardless of the past shared use of the beach.

It is important to note that this species is not listed as “endangered” or “threatened” under the Endangered Species Act. It is also not considered “depleted” under the Marine Mammal
Protection Act (MMPA). The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) most recent stock assessment states that the California harbor seal “would not be considered as ‘strategic’ under the MMPA.” According to the MMPA, if a species is not considered “strategic,” then it is not likely that human impacts will reduce the stock below its optimum sustainable population.

The proposed permanent, seasonal beach closure and precedent setting elimination of a long-standing public physical access is unwarranted and is regulatory overkill. The continued shared use policy can better achieve all the goals of the Coastal Act in providing public access to the beach and ocean while also keeping both seals and people safe.

Please contact me at (619) 236-6611 or sherrilightner@sandiego.gov if I may provide additional information.

Sincerely,

Sherri S. Lightner
-----Original Message-----
From: dtj@reagan.com [mailto:dtj@reagan.com]
Sent: Wednesday, August 06, 2014 2:50 PM
To: Lee, Deborah@Coastal
Subject: California Coastal
Commission:
7575 Metropolitan Drive Ste 103
San Diego, CA 92108-4402
LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the Commissioners:
There is not enough accurate or truthful information for the Commission to proceed. The CDP sets a dangerous precedent, yet is based on flimsy evidence, and no documentation of the claims San Diego is making. This project would have widespread and permanent effects on the Commission's ability to maintain even present levels of public access.

San Diego has seized on a weakness in federal pinniped census caused by neglect of duty in the National Atmospheric and Oceanographic Administration (NOAA). San Diego rests its urgency on claims there are no other seals in Southern California that matter except for those in La Jolla. If you allow the city to make this premature decision, the decision will come back to you both due to its negative repercussions locally but also due to others using this decision inappropriately elsewhere along the coast. Just as we are warning you about this increase, NOAA has been notified concerning the increase in pinnipeds by the scientific oversight group, the Marine Mammal Commission (see accompanied files).

The facts are that the Harbor Seal population has increased from the low double digits to the mid triple digits in the last ten years at the Children's Pool. Scientists have noticed an increase up and down both the west and east coasts as well.

NOAA scientists have been baffled by hordes of starving sea lions all this year. This increase in sea lions has been noted only one half mile north of the Children's Pool. The City of San Diego has implemented a policy due to this tremendous parallel increase in Sea Lion population (along with the Harbor Seals). They put in a gate along the cliffs so that people are now able to walk down to where large numbers of Sea Lions have moved in and caused a very irritating odor. This odor has had a negative effect on patrons visiting the nearby restaurants.

It is only a matter of time when the effects of the increased Harbor Seals at the Children's Pool will affect the community and bring out similar ire and similar demands. The Commission will hasten that day by closing down the Children's Pool. The fence which the City built along the La Jolla Cove cliffs essentially closed the cliffs to people and it was that restriction to public access that drew the Sea Lions onto the cliffs where they had previously not made access due to the presence of people along the cliffs.

The same holds true at the Children's Pool. With the City's closing off of the popular access ramp, allowing extremists to harass users of the CP and the rope giving the appearance of a closed beach, the Harbor Seals have in like manner become attracted to the mostly unused beach.
CONCLUSION:
The Commission needs to recognize the Children's Pool closure scheme is a radical solution to one town's social and economic self-inflicted wounds and send it back to San Diego, for them to solve their problems locally, within the confines of existing law.

Just before this call for data NOAA made its stand on the matter of Children's Pool.

FROM COURT RECORDS:
On September 14, 2004, the City Council once again held hearings on the Children's Pool. Addressing the Council that day was James Lecky of the NMFS. He advised the Council that harbor seals are a healthy species which are growing in population and not in any way endangered or threatened as a species. In fact, as the population of harbor seals expands "[t]hey are causing problems ... up, and down the coast in terms of invading harbors, causing property damage and limiting access to beaches that are important for other " public uses."

He then told the Council: "The tools that are available to the City and other local governments agencies really reside in [Marine Mammal Protection Act] §109(h)." He said "animals can be moved out of an area if they are either presenting a public nuisance or they're causing a public health hazard." It was his position that the seals at Children's Pool were a local issue for the City to resolve. [Exh 129] At the end of the meeting, the Council voted "to design and permit the sand removal project and open the pool for year-round use. Direct that the opening of the sluiceways in the Children's Pool be evaluated as an alternative method to obtain the sand removal and tidal flushing as part of this effort. Direct that the rope barriers and sign post be immediately removed to restore public access to the area and that new signs be placed."

That is a curious way for the head of Protected Resources for NOAA Southwest to talk if there were really only one harbor seal colony in Southern California. But then, he had access to inside information. The alternatives to solve the problem the City Council agreed on in 2004 were abandoned later and now San Diego comes crying to the Coastal Commission to let it take what looks like an easy way out, though it will re-ignite and exacerbate the root problems in the long run. But then it can be attributed to the Coastal Commission.

SEND IT BACK. The higher courts do that all the time when a case comes before them prematurely.

David Johnson
4222 Wightman Street
San Diego, CA 92105
TO: California Coastal Commission  
c/o Local Staff Office  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402  

8/5/2014  

Re: CDP # 6-14-0691, Th13a-8-2014-1

Staff report Th13a-8-2014-2 was filed in May, extolling the benefits to the public of being denied access to historic tidelands they thought were theirs. Th131a-8-2014-1 has just appeared, dated Aug 1.

A notable difference was the local director took credit (responsibility) for authorship. It still contains solely the San Diego City version of what they would have you believe, absent investigation, critical thought, data, legal analysis fact checking. It also lack any hint of the years of struggle by community leaders and advisory groups to stop the theft of access to a coastal heritage from their citizens and their heirs.

In touting needed and beneficial effects of beach closure to end nettlesome mismanagement problems, it further dashed any hope that closure can stop here. The clever new way the Staff gave the City to rip a hole in its LCP has no one-time limit. You will be accepting that any excuse will serve a City to terminate public access by force. The concept can be used anywhere. It lowers the bar to allow any municipality unable or unwilling to stand up to special interest groups. The Coastal Commission would cede the most precious resource the Commission is called on to guard for the people of California – the right to visit the ocean, in peace, unthreatened.

San Diego has spent years inventing its sales pitch, and I can only quickly hit the most obvious documented falsehoods in Th13a-8-2014-1, as they appear.

1. The City has committed to restoring the access ramp to the beach, “for emergency access only”; so called, to avoid having to install federally mandated ADA access which it ended twenty years ago by locking the ramp gate without a coastal permit. With Commission approval San Diego can have its needed ramp to let machinery finish the tower construction and then slam the gate on the disabled.

2. However, the rope barrier was controversial, and the City continued to examine options for addressing use conflicts between seals and the public. Conflict has not been between people and seals or the seals would have left. The conflict is between the public and anti-access bullies from all over the state.

3. accidental and intentional harassing of the seals by the public has been continuously observed and recorded. Where is the proof? Ask the Ranger how many times he has seen somebody hurt a seal. How many times has he seen seals dash into the water for no reason? Has he proved that the seals will abandon the beach if it is not closed?
4. How can the Staff continually refer to total closure as “limiting access”?
5. The public will still be able to enjoy walking, fishing, and viewing the seals on the breakwater. That places people 10-15’ directly above the seals. They make noise, even scream and drop things. The seals park directly under them to stay cool. Clearly the City is not worried about human proximity or seal trauma. This is just cheap crowd control but keeping the exploitation of the seals for a tourist attraction. Hypocrites.
6. Unrestricted access to the many nearby beaches would remain. And there it is, public access is not a public right, but is to be selectively allotted, and considered intact as long as there is some beach people can find somewhere.
7. the public at Children’s Pool to observe seals close up has become a significant tourist draw and natural attraction This is the “economic significance” that justifies closure under 30230, the tourist money the City wants to keep while cutting overhead to zero.
8. months of the year, there would be no public access restrictions and no regulations against public use of the sandy beach or the water. Yet the Ranger’s data submitted into this file shows the summertime rope is very effective at curtailing public access. And he says there are seals on the beach year round. The year round closure is inevitable because the City purposely invites the public to make mistakes in summer.
9. respectful distance from the seals, as mandated by the MMPA. There is no legal distance from a seal. Ask the Ranger.
10. this is not only necessary but also the least possible restriction necessary. So what is next? If closure is the least possible restriction, what have we yet in store? There can be no excuse for not applying the “least possible restriction necessary” to the other beaches that are becoming habitats for sea lions and seals. Sorry, but we cannot trust the City trustees or a staff that endorses their every subterfuge.
11. to prevent a small but significant number of people from harassing the seals. Who? Name them. Turn them over to NOAA. How significant are they? This beach is under constant surveillance. Spare us the mysterious boogyman and make sense.
12. seasonal beach closure will benefit the seal population. Not according to the City’s Negative Declaration which states it will do nothing. The real research is being funded by real scientists to justify the rebuilding of the lifeguard tower. They found that a nice reasonable 12,000 harassments in a season would have no harmful effect on the seal population and so the construction got federal approval.

It is clear I cannot continue. I have only reviewed 2 ½ pages of 160. May you keep your head while others around you are losing theirs. The future of California public access is in your hands. Inconvenient as it may be to one dysfunctional town.

Michelle Anderson  San Diego, CA
Dear Miss Miller,

Thank you for your message and instructions. Off topic of the Children's Pool it seems to me that perhaps a discussion of updating the communications opportunity to the people of California to be able to use email is in order. If the Commissioner and staff are using emails in their everyday business and you are, then the public has the right to communicate with the Commission this way as well. Every single government agency from the President of the United States to the Mayor has allowed this. There is a link on their websites to email them. As a disabled woman it is very difficult for me to communicate any other way. Many people do not have land lines any longer and faxes are not that common for people to own. The Commissioners are all over the state. I traveled hours to a meeting in Huntington Beach and waited laying on ice for 10 hours to have 3 minutes to speak.

Not many disabled people can do this, it was difficult for me. The disabled community is ignored terribly and the CA Coastal Commission needs to please think about us. I appreciated the opportunity to send emails with attachments. In this day and age of computer technology it is possible for each commissioner to have their own sub website. It can give a profile for each commissioner, and list the current projects and have a button to link to that project to send information. It is easy to create and would streamline communications and allow the public the same mode of communications that you all use everyday.

The young analyst Britney Lavere recently stated to me that the California Coastal Commission does not have any oversight. Think about the arrogance of that statement to me, a disabled California Taxpayer. The United States of America is founded upon a democratic system of checks and balances. When a government body does not have to answer to anyone it creates more of a dictatorship board that acts on its own accord regardless of the public’s input. Regardless of the facts and regardless of codes and laws as well it seems. I know this is a pretty serious statement. Disability laws and codes have been in effect since the 1940’s. Codes and laws are important and they have been and are being violated at our only ocean pool. But as important are the values behind those laws. Even if there were no laws common decency and moral compassion should prevail. Greed is prevailing and ignorance because the Commissioners already have an agenda and it does not matter what fact are brought before them. It seems that input and hearings are just going through the motions. What guarantee do the taxpayers have that our input is being considered? None. In fact my triangulated facts of information so diligently research and reported were treated as lies. This is insulting to me. There is no other safe ramped access into a safe calm ocean swimming area or ocean pool on the coast. And Commissioner Sarb lists two accesses that are impossible for a paralyzed swimmer to access. Impossible and very dangerous. Paralyzed people cannot negotiate wide soft sand beaches or surf or stairs and boulders and cliffs. La Jolla Shores is not ADA accessible for swimming, and Boomer is too dangerous for the best of swimmers, the entry is to wait for a wave and jump in it. Swimming is not allowed, only experience body borders can go there. I do not mention it as a part of the C.P. discussion but to point out that Commissioner Sarb is totally ignorant of her own San Diego Coastline! Her intentional disrespect for disabled veterans laying all over the city and country who need access is tantamount to treason in my opinion. She insults the disabled, our Veterans, and the one in five disabled Americans, and the potential of the only ocean pool we have. That the pool is not restored and perfect and filled with disabled people healing on a daily basis is criminal literally. That the ocean at this location is now a
DEAD ZONE void of fish, crustaceans, Tide Pool Creatures is an insult to the Ocean for which the Commission is also responsible.

This has been my first experience dealing with the Commission as a concerned disabled California tax payer. I report here and now that I feel the Commission needs to reorganize and make your organization a democratic one as it is not.

I can not close with out inquiring if Britney Lavere the staff writer of the recommendation to close my only ocean therapy pool is a dues paying member of the organizations financing the closure? Sierra Club and Surf Riders, Friends of the Seals APRL? This is an ethical issue. If she just came from a meeting rallying the closure the night before she can not be anything but biased when writing the report. Her dues if she is a member are paying for the effort to close the pool, that is a financial conflict of interest clearly. When I met with Britney she made it very clear she does not care for the rights of the disabled and she made it very clear that the pollution problem is best solved by closure of the human bathing pool protected by a Trust that stood the test of court. All this has been ignored: a human health ruling in 2004 prompted by the Centers for Disease Control to remove the filthy bacteria ridden sand to discourage the seals from birthing in their own feces and urine still stands. If the Children's Pool IS closed this will cause the pollution concentration to increase. T.B. and E.coli can be present in seal waste & airborne. This too ignored by the Commission. My point is that the impression I got is that the Commission picks and chooses the facts to consider depending if they support the agenda they have. All facts are of course needed. The Commission is really required to obey the human health ruling, of course. This is what I mean, a human health ruling ignored? Based upon the Centers for Disease Control? Really? This is the point of my message. It is wrong on every level to ignore a human health ruling and for the Commission to ignore such a ruling to serve special interest groups is unethical and does not serve the greater good in any stretch of the imagination. So to the old and new commissioners I ask for your moral commitment to do the right thing. Know the laws of the project and obey them. Judge Pate ruled and it still stands. The Commission is ignoring it thereby potentially putting people in harms way. This is wrong, I hope you can begin to understand. Or perhaps you are so far gone on agenda power-trips that my words fall on blocked minds? By the time you lay your heads to sleep tonight about 22 young severely disabled veterans will have chosen suicide over facing the terrors of their wounds. They should have every chance to rehabilitate when they return and they do not. The Commission is ignoring them; preventing them from being able to experience the real Pacific Ocean and get out their wheelchair confinement supported in the healing calm waters of the only ocean pool for them. This is morally wrong. And of course is breaking every disability code ever written since 1948 when the primary access ramp was to code. This is a fact that the Commission is calling a liar about. This is wrong and adds insult to injury and is disrespectful and as far from a democratic system as one can get. It is reminiscent of Hitler's system. He picked and chose the facts to consider, human civil rights ignored as they are by the Commission.

Cheryl Jacobs Aspenleiter
Disabled Ocean Swimmer, Environmentalist
858 568 1257

On Mon, Aug 4, 2014 at 2:30 PM, Miller, Vanessa@Coastal <Vanessa.Milier@coastal.ca.gov> wrote:

Ms. Aspenleiter,

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We want the public to be able to send information to the Commissioners and we thank you for your interest in this matter. However, we are not able to continue forwarding these messages to Commissioners due to the number and volume of these attachments. Some Commissioners do not have the capacity to receive that much data and they get bounced back to me. As I've
previously mentioned to you, these messages are using a lot space in my inbox as well. To accommodate you and to ensure that the Commissioners will receive all of your attachments, we are no longer forwarding these messages to the Commissioners, but will include them in the addendum that every Commissioner will receive prior to the hearing. Again thank you for your interest in this matter.

All the best,

Vanessa Miller
Executive Division
California Coastal Commission
45 Fremont St., Ste. 2000
San Francisco, CA 94105
415-904-5201

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Cheri
TO: California Coastal Commission
All Commissioners and alternates and local staff
Information needed for Aug 14 hearing

Re: LCP-6LJS-14-0607-1, CDP # 6-14-0691

Dear Commissioners,

This cover letter only clarifies that the slide show draft enclosed meets all ex parte conditions and you need only read it, if you would.

We are trying to speak for the locals and dedicated user groups that are supposed to be protected under the Coastal Act and other laws against being barred from our own land.

For that we have always depended on the Coastal Commission.
Allowing this new way for a town to remove Constitutional guarantees of public access from an LCP would be a dangerous precedent.

David Valentine.
Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1 in

The situation at Children's Pool is a complicated one, that cannot be understood in the absence of understanding of its history. The history from its 1931 creation until the 1990s is very murky, but better documented since then. I was dismayed in the extent that the California Coastal Commission staff recommendation (of approval with several qualifications) seems to have swallowed so much of the misinformation propagated by the city, namely:

1. No mention of the (dozens to hundreds? At least from 1992 to 2005) of harbor seals released by Sea World, that bear witness to the total artificiality of the seal population. With this omission, they imply that it was a natural process of seal population increase by birthing. I don't see this point has been brought to their attention in correspondence they have included in the public record attached. It seems to me the cc doesn't recognize how far the city has gone, it creating the situation. The Friends of the Seals can be seen to have been artificially creating this situation in collusion with the city, from the first establishment of the temporary Seal Rock reserve, through the mysterious rerouting of released harbor seals, and disgraced former mayor Filner's "emergency" closure and citations, and present year round rope. This visual closure cannot be denied effectively by signs stating the pool is open- at least to the casual observer that constitutes the majority of visitors. As long as the rope exists, seals will haul out and multiply until the Marine Protected Areas are exhausted of seal food, and seal predators will thrive, and accidentally assault human ocean goers. A Solana Beach dentist died of blood loss after a great white shark bit his leg while he was swimming there, with a group of fellow triathletes, a couple years ago. A pair of seals was noted refusing to leave the beach there. He was probably the only shark bite fatality in the SD area since the forties. While the woman's body that disappeared off Ocean Beach not so long ago had a large shark bite noted, but I believe it was decided that it had occurred post mortem. Also witness the current record number of adult great white sharks, related to the increase in harbor and gray seals in the vicinity of Cape Cod, Massachusetts in recent years.

2. Page 2 of the staff report regurgitates the city's position that seals began hauling out in greater numbers in the 1990s, without regard to point 1 above, implying that the rope was strung to prevent the public from the mistaken idea that NCAA law requires a 50' separation. This concept was denied by Chris Yates, representing the National Marine Fisheries component of NOAA. He categorically stated in a June 13th, 2014 letter to Ken, that shared use was their preferred option, no specific distance exists, and specifically denied that the City has authority to enforce laws or regulations pertaining to marine mammals. Mr. Yates, in his capacity of Assistant Regional Administrator for Protected Resources at NMF, in a Jan 2nd, 2014 letter to Todd Gloria and the City Council, (cc-ed to K. Brown at the California Coastal Commission), informed them that the law does not require set separation distances, or beach closures. Emphasizing again the importance of education, and reminding the City they have no authority to enforce federal marine mammal regulations, even if they exist.
3. One of the most reliable histories of the pool must be the court finding presented in the O'sullivan vs SD case, statement of decision by superior court judge William Pate in August 2005. According to that document, on pP6, "there was no evidence of any concern about or discussion of seals in the Children's Pool area until July 1992, when Jim Antrim of Sea World discussed creation of a seal reserve in the vicinity of the rock off Shell beach (in front of 939 Coast Blvd)", with Barbara Bamberger of the Friends of the Seals organization. The reserve (beginning 200' east of the seaward entrance to children's pool) passed city council unanimously Feb. 1993 (including the compromise area that goes practically to the beach, presented by Barbara). The staff report assumes as fact that because seal rock was so called in the 1930s, and CP was built on "seal rock point", seals were hauled out there prior to the pool. There is no evidence for that, except for descriptions of "seals barking"(only sea lions bark) on a second seal rock, currently underwater, then at least awash at low tide. See "Myth of Seal Rock" reference. Seals being the timid animals they are, may have seldom or never hauled out on what little beach existed at the site of the pool then, being limited, as I noted during my first dives there in the late 1970s, to offshore rocks. I never saw seals on the beach then. On pP11, the NMFS informed the city that a small number of seals were hauling out on seal rock in 1994, and none hauling out on cp beach. The point was merely so named due to the proximity of the seal rocks. The first count referred to by Judge Pate was in 1996, max 62 on the presently above water seal rock in April, while max 120 were counted on the cp beach. Perhaps they preferred the cp beach, sheltered from the prevailing NW winds as it is, to the rocks totally exposed to swell and wind. The first mention of barriers on the beach was in the City's Manager's report to the Natural Resources and Culture Committee (October 1997), stating that lifeguard had been maintaining "barriers" between the public and seals for a year and a half (since 1996). pP16 of the court findings, "to protect the public from being bitten (no evidence exists of that consequence), or being fined for disturbing the seals". This is on pP10. Unstated was that it made the lifeguard's job a little easier. The factor undoubtedly drawing the seal to the beach was the presence of the barriers, reassuring the seals of their security on the beach, not the presence of the beach!

4. The staff report states on pP17 that NMFS data describes Children's Pool as the only rookery in San Diego and LA counties, with a protected rookery at Pt Mugu and Carpinteria. Reference to another protected haulout that has seen pupping is in one of the letters submitted. I have seen numbers of harbor seals hauled out in the multiple pocket coves off Pt Loma, and the Coronado Islands. Ms.Linder's master thesis on harbor seal populations describes the computer enhanced photo id based population estimate nearing 600, and describes the likelihood of individuals travel between haul outs on the Mexican Coronado islands, Children's Pool, and the Channel islands. NMFS harbor seal information indicates harbor seals are known to travel hundreds of kilometers between feeding and pupping sites, and states an unspecified number of rookeries exist in the Channel Islands. I believe that pupping occurs at whatever haul out the nomadic seal happens to be on when birth is about to occur. The Children's Pool doesn't have a resident population, it's population consists of individuals transitory among haul out sites/rookeries throughout at least the southern part of California, and at least northern Mexico.

5. The staff report emphasizes that the City has determined that shared use has been ineffective in preventing harassment mostly in the form of flushing, implying that if the public is allowed on the beach, it will lead to pup abandonment. It states that pup abandonment has occurred there, but doesn't document it. No mention is made of the precocious nature of harbor seal pups, able to swim at birth, and breathhold dive for up to two minutes within 2-3 days of birth, according to NMFS published information.

6. The staff report makes no mention that City actions have historically been as little, late and inexpensive as possible. The trust requires the pool be used for a protected children's pool. Judge Pate found the city (pP21) in breach of the Scripps 1931 trust, on multiple counts.

   a. The pool has been choked with sand, to the point it no longer protects bathers. The small amount of water still present is now in dangerous proximity to a semi-permanent rip. Lifeguard
rescues had increased, until the point in time point c (itemized below) occurred. The City has made no attempt to correct the situation, by ever either removing the built up sand, or opening the previously existing sluiceways, or recommended by it's staff on numerous occasions.

b. The City violated the right of the public to access the beach by roping of the beach to the public from 1999 to 2005, according to Judge Pate's decision (pP27). A rope across the beach at mean high tide point has convinced many of the public (especially the visiting tourists, unaccustomed with CP history) that the beach is closed. The visual barrier psychologically overwhelms the signage. The year round "advisory rope" continues into the present.

c. The City erected barriers have lead to seal haul out and presence that has allowed fecal possibly pathogenic bacteria from them to accumulate until the bacteria level has increased to the point that the county has declared the pool under an advisory status. The county today classifies Children's Pool as polluted 24/7 from 1997 to the present (pP23). State Law AB411 passed in 2003 changed the status from "Closed", to "Advisory", as the bacteria were not due to a human sewage spill. The second most polluted area in the county ocean is the Tijuana River Slough, polluted an average of 149 days a year. In August 1998, the Center for Disease Control advised the city that seals can transmit disease to humans. Some carry tuberculosis and giardia. Fecal contaminant bacteria and viruses are also of concern. A danger to seals themselves exists. Two outbreaks of disease in the Point Reyes National Seashore resulted in the deaths of 90 pinnipeds in one documented case.

d. On September 14th, 2004 James Lecky of the NMFS advised the city council that harbor seals are a healthy species, whose population is growing, and not in any way endangered of threatened, causing problems up and down the coast, invading harbors, causing property damage and limiting beach access. They can be moved out of an area if either presenting a public nuisance, or a public health hazard. He suggested the seals were a local issue for the city to resolve. Judge Pate made these observations on pP 19, noting the City had taken no meaningful steps to return CP to a safe, unpolluted or usable state since that meeting.

The Superior court would have forced the City to rectify the above 3 conditions, except that the City prevailed upon the California Legislature to pass SB 428. The substantive addition consists of the 11 bold words below:

"That said lands shall be devoted exclusively to public park, marine park for the enjoyment and educational benefit for children, bathing pool for children, parkway, highway, playground and recreational purpose, and to such other uses as may be incident to or convenient to the enjoyment of such purposes."

I find this city and legislative action incredibly cynical. To escape their legal obligations, the City does not think twice of maintaining it's dangerous status quo. Surely the Coastal Commission cannot seriously consider rubberstamping this, denying the beach to the public for 5 of seven months, to maintain a situation the City has manufactured by denying citizens the beach access the state constitution guarantees, by the coastal commission, whose job it is to uphold beach access rights.

7. There exists the crumbling remains of a cement ramp, that goes through the currently locked gate next to the landward end of the seawall, down to the high tide line, which up until the 1940s provided wheeled vehicle access, from trucks to wheelchairs. What remains of it is now covered with a badly eroded clay ramp built in the late 1980s. Had San Diego been maintaining the pool, opening the sluices, removing the sand, and maintaining the ramp, the Pool would be the only shining example of disabled American direct easy access to the real ocean, in southern California. With our large disabled military population crying for the saltwater therapy and scuba access, and in the light of the currently shockingly inadequate veterans medical care facilities, it is inexcusable that our city repeatedly attempts to escape it's responsibility to it's citizens, in order to establish a poorly thought out seal colony in this unique gift setting. Children's Pool allows direct access to 15' deep ocean, through a channel at the end of the wall where waves predominately do not break, in close proximity to a sheltered gradually sloping
sand beach. Do not allow the handicapped to continue to be laboriously carried in their wheelchairs down the two flights of many steep steps that is currently the only access to Children’s Pool. This has to occur within an environment so often comprised of the ill-informed (or misinformed by seal activists) public, shouting harassment, that a City Ranger has had to be stationed there for several years now. San Diego is already famous for it’s large homeless veteran population. Should it now continue to neglect it’s handicapped veterans, in favor an artificially encouraged pinniped population, feeding in our finally established neighboring Marine Protected Areas, with it’s attendant pollution, smell, and predator problems?

8. According to the Richard Belesky, ranger at cp, in his 5/18/2014 email he observed 54 pups born on Children’s Pool beach, + 13 in an alcove on Pt Loma, + 8 stillbirths, + 1 pup found in the cove = 76 pups born in 2014. He goes on to say about 30 of the 76 were born on South Casa Beach. The Friends of the Seals, part of the pro-seal activist group that Valerie O’sullivan alleged in her suit (decided in 2005 by Judge Pate, who agreed "certain individuals have engaged in uncivil and occasionally illegal conduct" that "conducted themselves in a manner that effectively denies access to users of the pool, beach and adjoining areas") are on public record as having as their goal, the closure of all SD beaches, on which seals haul out. This is an influential group, with some wealthy and influential members. They were on good terms with former mayor Bob Filner, and were involved with supplying the web cam that recorded a widely published episode of two girls harassing harbor seals at the pool one night. That episode (widely suspected of being staged) lead directly to an "emergency closure" of Children's Pool, every night for months. I and others fear that this measure under coastal commission consideration now, is just a stepping stone on the way to closure of many of the other San Diego beaches and coastal areas on which pinniped have been observed to haul out and give birth, including the Cove. The political actors have changed, but City policy seems to persist. Their machinations resulted in a 10 year seal sanctuary on seal rock, but that was abandoned, in favor of taking over Children’s Pool. Shared use by humans and seals worked well until the barriers of 1992 or so. San Diego thinks it can save money by closing Children's Pool, at the same time it does it’s best to discourage and relocate another pinniped (California Sea Lion) population at the La Jolla Cove, less than a mile away. Just as has been done at the cove, the barriers must come down. We cannot enter the slippery slope closing any but the remote Pt. Loma coves already barred from land access, and heretofore utilized extensively by pinnipeds. The cost of a seal sanctuary you can walk to after dinner is too high, for these populations, their prey, predators, and the public. The National Marine Fisheries arm of the Federal National Ocean and Atmospheric Administration has repeatedly pronounced these populations are in no way endangered or threatened. They claim exclusive right to enforce their regulations. They deny that closing beaches is necessary for the good of the Harbor Seal species. The motivations for the actions San Diego is taking are obscure, but clearly not motivated by public good, for either the citizens, or the pinniped.

The City of San Diego needs to do its homework before declaring any of the beach closed to the public. I have shown above, that City sanctioned barriers, the aborted seal rock reserve, and have resulted in the haul outs and pupping at the Pool. A complete closure will doubtless lead to a further increase at not only the Pool, but also the neighboring beaches of South Casa, Wipeout, Shell, and the LJ Cove. The city has not even defined the meaning of the “Marine Park” it’s state legislative bailout describes, has not grasped the effect of increased seal haul out and population increase will have on the marine resources of the Protected areas, or the effect on the already congested parking and traffic in La Jolla, let alone made any sort of plans to deal with it. La Jolla is a suburb
that has only two major entry and exit roads. Mission / La Jolla Blvd representing one, has been choked from a four lane to a two lane road by the multiple traffic circles the City recently imposed. A change of beach use and access of this requires a complete Environmental Impact Report AND mitigation plan before implementation. You, the California Coastal Commission, exist for and is the last resort, to require the adequate situational analysis and the planning this project requires.

All of the facts I have stated above can be substantiated, as most are documented. A few I have observed, and so noted. I have nothing against pinnipeds, do not want to drive them from our shores, and enjoy their company in the water. I only wish to return to the shared use situation that existed prior to the human meddling in the form of barriers that occurred during and after the 1990s.

Philip Miller, Former Scuba Instructor, Registered Nurse
San Diego Resident (>45years)
6317 Brooklyn Ave.
San Diego, CA 92114