

La Jolla Children's Pool closure unlawful says Orange County judge

May 11, 2016
by Ashley Mackin

An Orange County judge has decided that the seasonal beach closure at La Jolla's Children's Pool (aka Casa Beach), which went into effect in 2014, violates citizen rights to coastal access and is therefore unlawful.

The San Diego City Council requested the closure in March 2014, through an amendment to its Local Coastal Program, which allowed a seasonal beach closure at the Children's Pool during the harbor seal pupping season, Dec. 15 to May 15 annually. The California Coastal Commission approved the amendment unanimously that summer.

In a "final" ruling in La Jolla-based Friends of Children's Pool vs. City of San Diego and California Coastal Commissions dated May 3, 2016, Orange County Superior Court Judge Frederick Horn said, according to a press release, "The City's action to close the Children's Pool beach was unlawful. Further, the City and the California Coastal Commission are prohibited from enforcing the Local Coastal Program amendment and the Coastal Development Permit issued by the California Coastal Commission and City ordinance for the seasonal closure of Children's Pool."

The case was in an Orange County court because Friends of Children's Pool requested a change of venue to help avoid any appearance of outside pressure or influence on the assigned judge, said Friends of Children's Pool president Ken Hunrichs. "The City and California Coastal Commission selected Orange County and we agreed to that court venue." The case was filed in October 2014, and much of the correspondence was done in writing or via e-mail.

Locally, beach-access advocates are considering the ruling a victory, while members of the Seal Conservancy and city representatives are encouraging an appeal.

Leading the charge, the office of City Attorney Jan Goldsmith issued the following statement: "The Orange County judge's decision was in error ... His decision would require cities to get federal government permission before making land-use

decisions on the coast where seals congregate. That is not current law. We will urge the City Council to appeal.”

Given this opinion, San Diego City Council President and La Jolla resident Sherri Lightner has declined to comment on the decision.



During the annual closure of La Jolla Children’s Pool from Dec. 15 to May 15 for harbor seal pupping season, people are not allowed to step foot onto Casa Beach. An Orange County Superior Court Judge ruled May 3, 2016 that the city of San Diego’s policy since 2014 to restrict access to the beach is unlawful; violating state and federal laws. – *Daniel K. Lew*

Representing the Seal Conservancy, Adrian Kwiatkowski said, “We want to express our disappointment with the ruling. We think the judge made a mistake and we are going to encourage the City Council to file an appeal.” In the meantime, he added the group would look at “our legal options and other actions.”

Conversely, the beach-access advocates who opposed the closure from its onset, said they are pleased with the decision.

Among them, Melinda Merryweather said, “It is about time a judge got it right ... in California it is your constitutional right to enter the ocean. I believe Ellen Scripps (whose financial gift funded the construction of the seawall that created Children’s Pool) would be pleased and proud of all of us who would not give up until the truth was told.”

Added Hunrichs, “I’m very pleased with the decision, though I must say we expected it because the legal points made in the judge’s decision are very clear. They are very much the same points of law we presented during all the public hearings with the City and Coastal Commission (leading up to the closure). It was when the City and Coastal Commission tried to misapply a general policy of the Coastal Act ... that we knew we would have to bring this lawsuit. The Coastal Commission ignored all other coastal access protections in the Coastal Act; most of which profoundly favor coastal access as the top priority.”

Regarding any appeal, Hunrichs said, “We believe this decision reflects the correct interpretation of the law regarding the Marine Mammal Protection Act and the State legislation, and any appeal will affirm that position. We hope the City will do the responsible thing and at least consider the amount of money it has spent on all of this before deciding to appeal the decision.”

In addition to court and attorney fees, the city’s expenses thus far have included the posting of a ranger fulltime to oversee interactions between humans and harbor seals at Children’s Pool, and the installation of a guideline rope that spans the beach parallel to the tideline.

At the end of harbor seal pupping season observance, early morning May 16, the beach will be open for public access. However, the guideline rope to separate humans from marine mammals will remain up year-round. Beachgoers are advised to keep a safe distance from any harbor seals that might be hauling out at the beach, and to remember they are wild animals.

Source: <http://www.lajollalight.com/news/2016/may/11/childrens-pool-closure-unlawful/>