

## CALIFORNIA COASTAL COMMISSION

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Staff: LRO-SD  
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## RECORD PACKET COPY

**CLAIM OF VESTED RIGHTS  
STAFF REPORT AND RECOMMENDATION**

# Wed 13

**CLAIM NO:** 6-04-036-VRC

**CLAIMANT:** CITY OF SAN DIEGO

**PROJECT LOCATION:** Immediately offshore of the La Jolla Beach & Tennis Club, between the western extensions of Paseo Dorado and Avenida De La Playa, seaward of 2000 Spindrift Drive, La Jolla, City of San Diego, San Diego County.

**DEVELOPMENT CLAIMED:** Designation of a public swim area and placement of buoy markers in the water every summer surrounding a portion of the designated swim.

**FILE DOCUMENTS:** Claim of Vested Rights Application dated 3/29/04; Letters from City of San Diego Attorney's Office dated 7/1/04 and 9/13/04.

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the claim of vested rights. The City of San Diego claims a vested right for designation of a swim area for the general public and for placement of buoy markers in the ocean by the La Jolla Beach and Tennis Club ("Beach Club") to mark a portion of a designated public swim area in front of the Beach Club. The area that is the subject of the vested rights claim are tidelands granted in trust by the legislature to the City of San Diego. Staff has reviewed all the evidence presented by the applicant as well as other evidence and has concluded that the claim of vested rights is not substantiated for three reasons:

- 1) the City has not demonstrated that the placement of the buoys was undertaken pursuant to a valid governmental authorization obtained prior to February 1, 1973;
- 2) even if the City had demonstrated that the placement of the buoys was undertaken pursuant to a valid governmental authorization obtained prior to February 1, 1973, the placement of the buoys in the tidelands was undertaken by a 3<sup>rd</sup> party and was therefore not undertaken by the City in good faith reliance on any valid government authorization obtained prior to February 1, 1973; and
- 3) even if the City had demonstrated that the placement of the buoys was specifically authorized by a valid governmental authorization obtained prior to February 1, 1973, sufficient factual evidence was not provided to establish a vested right for the placement of buoys to mark off a much smaller swim area than the designated public swim area, especially given that the effect of only placing the buoys over the portion of the designated public swim area in front of the Beach Club is to convey the perception that the tidal area marked by the buoys is a private swim area.

Staff also notes that State Lands Commission staff have submitted a letter in support of the staff's recommendation. For these reasons, staff recommends that the Commission find that the City of San Diego has not met its burden of establishing its claim of vested rights.

## **I. Commission Action**

**Staff Recommendation for Denial of Claim:** Pursuant to California Code of Regulations, Title 14 (14 CCR), section 13203, the Executive Director has made an initial determination that the instant Claim of Vested Rights (Coastal Commission file number 6-04-036-VRC) has not been substantiated. Staff therefore recommends that the claim be rejected.

**Motion:** *"I move that the Commission determine that Claim of Vested Rights 6-04-036-VRC is substantiated and that the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### **Resolution for Denial of Claim:**

*The Commission hereby determines that Claim of Vested Rights 6-04-036-VRC is not substantiated and adopts the Findings set forth below.*

## **II. Findings and Declarations**

The Commission finds and declares as follows:

### **A. Legal Authority and Standard of Review**

#### **1. Basic Statutory Provisions**

California Public Resources Code ("PRC") section 30600(a)<sup>1</sup> provides, in relevant part:

*... in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone ... shall obtain a coastal development permit.*

The term "person" is defined in PRC section 21066 to include cities, towns, "and any of the agencies and political subdivisions of those entities."

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<sup>1</sup> All references to PRC sections in the 30,000's are to the California Coastal Act.

The Coastal Act defines "development," in PRC section 30106, to include the following:

*"on land, in or under water, the placement or erection of any solid material or structure; . . . grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land . . . ; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, . . . ."*

One exception to the general requirement that one obtain a coastal development before undertaking development within the Coastal Zone is provided by the **Vested Rights section of the Coastal Act, PRC section 30608**, which provides as follows:

*"No person who has obtained a vested right in a development prior to the effective date of this division [the Coastal Act] or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commenting with [PRC] Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division."*

The effective date of the division, i.e., the Coastal Act, is January 1, 1976. The subject site was also subject to the permitting requirements of the Coastal Act's predecessor statute, the Coastal Zone Conservation Act of 1972 (aka Proposition 20, "the Coastal Initiative"), which went into effect on February 1, 1973. The Coastal Zone Conservation Act required a coastal development permit for new development on this site occurring after February 1, 1973. Thus, the critical date for evaluating this Claim of Vested Rights is February 1, 1973 and this will be referred to as the effective date of the Coastal Act for this site.

Pursuant to Section 30608, if the City obtained a vested right in a development on the subject site prior to February 1, 1973, no coastal development permit (CDP) is required for that development. However, no substantial change in the exempted development may be made until obtaining either a coastal development permit or other approval pursuant to another provision of the Coastal Act.

## **2. Procedural Framework**

The procedural framework for Commission consideration of a claim of vested rights is found in 14 CCR sections 13200 through 13208.<sup>2</sup> These regulations require Commission staff to prepare a written recommendation for the Commission and require the Commission to determine, after a public hearing, whether to acknowledge or deny the claim or to continue the matter to allow for the submission of further evidence. 14 CCR §§ 13203 & 13205. If the Commission finds that the claimant has a vested right for a specific development or development activity, then the claimant is exempt from Coastal Development Permit requirements for that specific development only. Any changes to the exempt development after February 1, 1973 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then a CDP must be obtained to authorize the development or, if a CDP is not obtained, then the development is not authorized under Coastal Act. 14 CCR § 13207. If a CDP is not obtained, then the development is subject to enforcement action under the Coastal Act to compel its removal.

<sup>2</sup> All references to 14 CCR sections \*\*[in the 13,000's] are to the Commission's administrative regulations.

### 3. Standard of Review

PRC section 30608 provides an exemption from the permit requirements of the Coastal Act for, among others, any “person who has obtained a vested right in a development prior to ...[February 1, 1973] . . .,” but neither the Coastal Act nor the Commission’s regulations articulate any standard for determining whether a person has obtained such a right. Thus, to determine whether the Coastal Act’s vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act’s vested right provision, as well as in common law vested rights jurisprudence. That case law is discussed below.

“”The vested rights theory is predicated upon estoppel of the governing body.”” Raley v. California Tahoe Regional Planning Agency (1977), 68 Cal.App.3d 965, 977.<sup>3</sup> Equitable estoppel may be applied against the government only where the injustice that would result from a failure to estop the government “is of sufficient dimension to justify any effect upon public interest or policy” that would result from the estoppel. Raley, 68 Cal.App.3d at 975.<sup>4</sup> Thus, the standard for determining the validity of a claim of vested rights requires a weighing of the injury to the regulated party from the regulation against the environmental impacts of the project. Raley, 68 Cal.App.3d at 976.

The seminal decision regarding vested rights under the Coastal Act is *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. In *Avco*, California Supreme Court recognized the long-standing rule in California that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete a construction in accordance with the terms of the permit. The court contrasted the affirmative approval of the proposed project by the granting of a permit with the existence of a zoning classification pertaining to the property, which would allow the type of land use involved in the proposed project. The court stated it is beyond question that a landowner has no vested right in existing or anticipated zoning. *Avco, supra*, at p. 796; accord, *Oceanic Calif., Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 357.

The acquisition of a vested right to continue an activity without complying with a change in the law thus depends on good faith reliance by the claimant on a governmental representation that the project is fully approved and legal. If the claimant can thereafter estop the government from applying a change in the law to his project, and from denying that it had in fact approved his project, then the scope of the vested right must be limited by the scope of the governmental representation on which the claimant relied, and which constitutes the basis of the estoppel. In other words, one cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to, or from denying that it has approved a project it has not in fact approved. Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law, which governs his project, was changed. *Avco Community Developers, inc. v. South Coast Regional Commission, supra*, 17 Cal.3d 785.

The early vested rights cases involving the Commission (or its predecessor agency) dealt mostly with the subdivision of land and/or the construction of physical structures on land. The courts focused

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<sup>3</sup> quoting Spindler Realty Corp. v. Monning, 243 Cal.App.2d 255, 269, quoting Anderson v. City Council, 229 Cal.App.2d 79, 89.

<sup>4</sup> quoting City of Long Beach v. Mansell, 3 Cal.3d 462, 496-97.

primarily on whether the developers had acquired all of the necessary government approvals for the work in which they claimed a vested right, satisfied all of the conditions of those permits, and had begun their development before the Coastal Act (or its predecessor) took effect.<sup>5</sup> The frequently cited standard for establishing a vested right was that the claimant had to have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government" in order to acquire a vested right to complete such construction. Avco Community Developers, Inc. v. South Coast Regional Commission (1976), 17 Cal.3d 785, 791.

Beginning in the mid 1980's, a series of cases arose involving claims of vested rights with respect to industrial operations.<sup>6</sup> These cases applied the Avco rule in that they relied on whether the necessary permits had been issued.

However, the Commission is aware of no caselaw involving a municipal agency asserting that it has acquired a vested right to engage in a specific method of managing public lands that would normally be subject to a requirement for a permit from a state agency. Perhaps the most significant differences between this situation and the ones listed in the cases cited herein are that the City is not a for-profit business that has invested funds in its annual activities in order to generate a profit, and the activities truly are management of lands, rather than running of a business.

Because the Commission is aware of no clearly applicable precedent for this scenario, in determining whether the City has acquired a vested right for the claimed development, the Commission will apply the generally accepted legal criteria to determine whether a claimant has a vested right for a specific development. These criteria are based on the terms of the Coastal Act and case law interpreting the Coastal Act's vested right provisions, as well as common law vested rights claims. The standard of review for determining the validity of a claim of vested rights is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to complete the development prior to February 1, 1973. Typically this would be a permit or other legal authorization or evidence that no permit or other legal authorization was required for the claimed development. (*Billings v. California Coastal Commission* (1988) 103 Cal.App.3d at 729).
2. The development must have been completed by the date on which such development became subject to the permit requirements of the relevant law (in this case by February 1, 1973). If work was not completed by January 1, 1977, the claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental authorization received prior to February 1, 1973. (*Tosh v. California Coastal Commission* (1979) 99 Cal.App.3d 388, 393; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).

There is also legal authority that suggests that there are two additional, applicable criteria that should be considered in determining whether a particular claim for an assertion of a vested right to complete a

<sup>5</sup> See, e.g., Patterson v. Central Coast Regional Comm'n (1976), 58 Cal. App. 3d. 833; Avco Community Developers, Inc. v. South Coast Regional Comm'n, 17 Cal.3d 785; Tosh v. California Coastal Comm'n (1979) 99 Cal.App.3d 388; Billings v. California Coastal Comm'n (1980) 103 Cal.App.3d 729.

<sup>6</sup> See Halaco Eng'g Co. v. South Central Coast Regional Comm'n (1986), 42 Cal. 3d 52 (metal recycling); Monterey Sand Co., Inc. v. California Coastal Comm'n (1987), 191 Cal. App. 3d 169 (sand dredging); Hansen Bros. Enter. v. Board of Supervisors of Nevada County (1996), 12 Cal. 4<sup>th</sup> 533 (gravel mining and rock quarrying).

development can be acknowledged. The first is the holding that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577). The other criteria to consider is whether in making an application for a Coastal Development Permit, the claimant relinquishes any right to make a subsequent vested rights claim for the same project.

Accordingly, in order to acknowledge a claim of vested right for a specific development, the Commission must find that the claimant met all applicable permit requirements for the project and, at a minimum, performed substantial work and/or incurred substantial liabilities in good faith reliance on the permits or approvals that were granted prior to February 1, 1973. In addition, the claimant must not have subsequently relinquished any right to make the vested rights claim. Finally, no substantial change in the development that is the subject of the claim can occur without the claimant obtaining a coastal development permit.

The burden of proof is on the claimant to substantiate the claim of vested right. (Title 14, California Code of Regulation, Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. (*Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588).

A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. (*Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, citing, *Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current zoning), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses." *Hansen Bros. Enterprises v. Board of Supervisors* (1996) 12 Cal.4<sup>th</sup> 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

The following vested rights analysis is based on information submitted by the claimant and supplemental Commission staff research or official Commission and County records.

## **B. Background Regarding Claim**

The area subject to the vested rights claim is an area of the ocean located seaward of the La Jolla Beach and Tennis Club in the La Jolla community of the City of San Diego. The La Jolla Beach and Tennis Club is a private beachfront club/resort situated on an 18.18 acre parcel of land which retains ownership of the beach up to the Mean High Tide Line (MHTL). The areas seaward of the MHTL are tidelands held in trust for the public. The subject site is along a stretch of shoreline commonly called "La Jolla Shores". North of the site is a public beach, improved boardwalk, lifeguard station, large grassy picnic areas and several other amenities including public restrooms/showers and children's playground. The public beach extends north all the way to Black's Beach and south to a point just south of the restaurant, "The Marine Room" which is located just south of the La Jolla Beach and Tennis Club. The boat launch is located at the street end of Avenida de la Playa, the street which marks the northern boundary of the La Jolla Beach and Tennis Club property. Intermittent lateral public access is available along the shoreline dependent on the tide conditions, especially at the southern and northern ends where it is near tidepools, rock outcroppings and coastal bluffs. The ocean area of the designated swim area extends seaward of the MHTL. (ref. Exhibit #2).

The subject claim of vested rights was submitted in March 2004 by the City of San Diego Fire-Rescue Department/Lifeguard Services Division to: 1) designate a swim area for the general public in the ocean (seaward of the La Jolla Beach and Tennis Club) and, 2) place buoy markers to mark a portion of the designated swimming area. According to the City, the bathing and swimming zone was designated in March of 1966. Pursuant to City of San Diego Resolution No. 186513 (ref. Exhibit #4), the bathing and swimming zone was described as the beach and waters extending between Avenida de la Playa and 45 ft. north of Roseland Drive in La Jolla. No western limit of the swim area was established. Subsequently, in 1994, the westerly boundary of this swim area was designated as extending 1,000 feet seaward of the mean high tide line (MHTL) pursuant to Ordinance No. 0-18073.

According to the City, at least since 1966 when the swim area was designated by the City Council resolution, a string of marker buoys have been placed in the water each summer to mark a safe swim area. Notably, the City, without explanation, acknowledges that the buoys mark off a much smaller swim area than the designated public swim area. (ref. Exhibit #2). The City also acknowledges that it was not City lifeguards or other City personnel who placed the buoys, but that instead the buoys were placed by employees and/or agents of the adjacent La Jolla Beach and Tennis Club. Even though the buoys mark off a much smaller swim area than the designated public swim area and are only placed by the private beach club over the portion of the designated public swim area in front of the Beach Club, the City believes that demarcation of this swim area with buoy markers is important due to the fact that a public boat launch exists further north at the northern edge of the swim area (at the terminus of Avenida de la Playa). The boat launch is at the westerly terminus of Avenida de la Playa, the street that forms the northern boundary of the La Jolla Beach and Tennis Club. According to the City, the purpose of the buoy markers is to keep boats out of the swimming area in order to ensure public safety of the people swimming in that area.. The buoy markers are placed at the beginning of Memorial Day weekend and removed after Labor Day each year. As shown in an exhibit submitted by the City, the buoy markers are placed in a semi-rectangular fashion in the water and they mark off a much smaller swim area than the designated public swimming area (ref. Exhibit #2). The buoy markers are plastic-coated foam markers that float in the water at approximately ten foot intervals connected by a nylon rope which is anchored with chains connected to cement blocks. Two cement blocks are dropped offshore approximately 50-70 feet seaward of the Mean High Tide Line. One block anchors the beginning of the northern side of the swim area and the other marks the southern side of the swim area. From each of the blocks, the buoy marker line is extended seaward about 300 feet where the line is anchored again and where the westerly boundary is formed joining the northern and southern boundary lines (ref. Exhibit #2).

### **C. Evidence Presented by Claimant**

The City of San Diego submitted a vested rights application form with numerous exhibits (ref. Exhibit #2), including maps showing the public swimming area and swim buoy line. The City also submitted two letters from the City of San Diego's attorney dated July 1, 2004 and September 13, 2004 (ref. Exhibit #3) further explaining the claim of vested rights. The information submitted by the City includes various resolutions/ordinances to establish that the City acted formally and properly to establish the swim area designation subject to this review. In addition, to support the City's claim that the marker buoys were placed every summer, the City provided declarations from several individuals. The declarations, which are attached as Exhibit #5, are summarized below:

Declaration of William Owen – Mr. Owen executed a declaration dated 3/10/04 stating that from 1967 through 1988 he was employed by the City as a sergeant in the lifeguard division. He states that his area of responsibility included La Jolla shores beach and swim area. He further indicates that he patrolled the

public swimming area, designated by the City of San Diego, located adjacent to the ocean beach in front of the La Jolla Beach & Tennis Club. He further states that every year since 1959 and each year during his employment as a lifeguard at La Jolla Shores, that the swimming area buoys marking the City-designated swim area in front of the Beach Club were installed just before Memorial Day and removed just after Labor Day and maintained continuously through the summer months. He states that the swim buoys were placed in approximately the same configuration each year. He states that during the summer of 2002 he visited the swim area and the buoys were in approximately the same configuration and location during the years that he was a lifeguard in that area. Lastly, he states that he and his fellow lifeguards relied on the swim buoys to help them meet their swim area management responsibilities for public safety including keeping the recreational boaters and surfers out of the swim area due to the close proximity of the public boat launch to the swim area.

Declaration of Lorin D. "Buster" Mico – Mr. Mico executed a declaration dated 3/6/04 stating from 1956 through 1988 he was employed by the City in the Marine Safety Division. He was subsequently promoted to lieutenant lifeguard and he supervised ocean beaches and swimming areas including La Jolla Shores beach and swim areas as well as other San Diego beaches. He further states that he patrolled the public swimming area, designated by the City of San Diego, adjacent to the ocean beach in front of the La Jolla Beach and Tennis Club. Throughout the period of his employment he observed on a regular basis the features of that swimming area. He further states that every year during his employment as a lifeguard at La Jolla Shores, that the swimming area buoys marking the City-designated swim area in front of the Beach Club were installed just before Memorial Day and removed just after Labor Day and maintained continuously through the summer months. He states that the swim buoys were placed in approximately the same configuration each year. He states that during the summer of 2002 he visited the swim area and the buoys were in approximately the same configuration and location during the years that he was a lifeguard in that area. Lastly, he states that he and his fellow lifeguards relied on the swim buoys to help them meet their swim area management responsibilities for public safety including keeping the recreational boaters and surfers out of the swim area due to the close proximity of the public boat launch to the swim area.

Declaration of Lorin D. "Buster" Mico – Mr. Mico executed a second declaration dated 9/2/04. This second declaration is nearly identical to the first one with the exception that there is a discrepancy in the years he worked for the City and the duration which he served in the capacity as a Lt. Lifeguard. In addition, the second declaration contains additional information regarding his contacts with Beach Club members. In the declaration he indicates that from the years 1956 through 1988 he was employed by the City of San Diego as a Lt. Lifeguard to ocean beaches and swimming areas. Before 1973, Mr. Mico indicates that he frequently consulted with the Beach Club member William Scripps Kellogg and Beach Club employee Fritz Fehrenson regarding a range of beach management issues which included the placement of the buoys marking the portion of the City-designated public swimming area in front of the Beach Club. He further states that from 1973 through 1979, he continued to consult with Beach Club personnel William Crown Kellogg and his son, Robert Penfield Kellogg about a range of beach management issues. Lastly, he indicates that after 1979 and until his retirement in 1988, he continued to interact on these issue with William J. Kellogg and the Beach Club's General Manager, Mac Brewer.

Declaration of Lt. John Greenhalgh – Mr. Greenhalgh executed a declaration dated 7/1/04 stating that he is currently employed by the City of San Diego Fire and Life Safety Services as a lifeguard Lieutenant. He also states he has worked as a lifeguard for over 24 years, i.e. since approximately 1980. He states his current duties include supervising the La Jolla District involving handling the district budget, personnel, etc. He further states that in his capacity as a Lifeguard Lieutenant he also patrols the public



swimming areas, designated by the City of San Diego, one of which was located next to the ocean beach in front of the La Jolla Beach and Tennis Club. He states that during his employment he has been in a position to and has observed on a regular basis the features of that swimming area. He further states that every year during his employment as a lifeguard at La Jolla Shores, that the swimming area buoys marking the City-designated swim area in front of the Beach club were installed just before Memorial Day and removed just after Labor Day and maintained continuously through the summer months. He states that the swim buoys were always placed in approximately the same configuration. He further states that for safety purposes, these buoys have been placed by the La Jolla Beach and Tennis Club with the approval and consent of the San Diego lifeguards. He states that during the summer of 2002 he visited the swim area and the buoys were in approximately the same configuration and location during the years that he was a lifeguard in that area. Lastly, he states that he and his fellow lifeguards relied on the swim buoys to help them meet their swim area management responsibilities for public safety including keeping the recreational boaters, kayakers and surfers out of the designated swim area in accordance with the City's rules applicable to designated swim areas.

Declaration of William J. Kellogg – Mr. Kellogg executed a declaration dated 9/2/04 stating that he has served as President of the La Jolla Beach and Tennis Club, Inc. and General Manager of La Jolla Beach & Tennis Club Partners L.P. He states that in this capacity, he was responsible to the Club's Board of Directors for all Beach Club management issues. He states that his father, William Crowe Kellogg held these same roles from 1987 to 1989. From 1973 to 1987 William Kellogg was the Managing Trustee of two trusts (the entities that preceded La Jolla Beach & Tennis Club Partners L.P.) that owned and operated the La Jolla Beach & Tennis Club. He further states that from 1940 to 1974, his grandfather, William Scripps Kellogg, was the managing Trustee of the trusts. He also states that his brother, Robert Penfield Kellogg, was an employee of the La Jolla Beach & Tennis Club and assisted his father with beach management from 1974 to 1994. William Kellogg also states he assisted both his father and brother with beach management from 1979 to 1989 as an employee of the La Jolla Beach & Tennis Club. Mr. Kellogg goes on to state that based on conversations with his brother, father and grandfather, he was informed that swimming buoys marking the City-designated swim area in from the Beach Club were installed during the summer every year since 1966 with the exception of the year 2003 when the City of San Diego and the Beach Club were under order by the California Coastal Commission not to place the swim buoys. He also states that the swim buoy lines and their anchors were typically placed by the Beach Club employees, but that the City lifeguards also occasionally assisted in the placement of the buoys by providing boats needed to float the anchors to their drop spots. Mr. Kellogg also states that since 1966, the swim buoy markers were placed with the knowledge and consent of the City lifeguards. He indicates he worked with Lt. Loren T. Mico as the principal point of contact from the 1960's through 1988 when Lt. Mico retired. After that, other lifeguards have worked with him and other Beach Club employees (John Campbell and Bud Stevens). Most recently his principal point of contact has been Lt. John Greenhalgh.

The City has also submitted several copies of local ordinances that were adopted related to beach areas and activities therein (ref. Exhibit #4)

#### **D. Analysis of Claim of Vested Rights**

- 1. The City Has Not Demonstrated That the Placement of the Buoys was Undertaken Pursuant to a Valid Governmental Authorization Obtained Prior to February 1, 1973**

The marker buoys subject to this claim are placed seaward of the MHTL adjacent to the beach in La Jolla. Thus, the buoys are placed in State Tidelands, which in this particular case, are granted in trust by the legislature to the City of San Diego pursuant to Chapter 937, Statute of 1931, as amended (ref. Exhibit #6). Accordingly, title to these tidelands, and the revenues derived therefrom, are held by the City of San Diego in trust for the benefit of the citizens of California. In addition, when the State grants tideland property to a municipality accompanied by a delegation of the right to manage the specified area for particular purposes and to exercise control over facilities located therein, the lands remain subject to State supervision. The local government grantee receives neither an exclusive nor an irrevocable interest but rather becomes the holder of property subject to a trust which must be exercised for the benefit of the public. The State may alter the contractual or property rights acquired by a city in further administration of the affected lands. (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 208-209.) After the grant has been made, the State has a continuing duty to protect the interests of the public. No grant of lands covered by navigable waters can be made which will impair the power of a subsequent Legislature to amend or modify the trust in a manner most suitable to the needs of the people of California. The State is the representative of all the people and all the people are the beneficiaries of the basic trust. (*City of Coronado v. San Diego Unified Port District* (1964) 227 Cal.App.2d 455, 474.)

When the tidelands area that is the subject of the vested rights claim was included within the coastal zone under the Coastal Act of 1972 and the Coastal Act of 1976, the manner in which development activity could occur in the tidelands was significantly affected. The coastal permit requirements of the 1972 Initiative and the 1976 Act in effect amended the grant of the public trust lands to the City. (*People ex rel. San Francisco Bay Conservation & Development Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 549.) Since February 1973, coastal permits have been required for activities which constitute a development under the Coastal Act. Here, the placement of buoys and the designation of a swim area, even though temporary, is development under section 30106 of the Coastal Act because it changes the access to and use of the tidelands during the period of installation.

The City has indicated that based on the individual declarations submitted, the buoys were placed by the La Jolla Beach and Tennis Club. However, the City has not provided any information regarding a lease, permit or other formal actions authorizing the Club to place the buoys. In addition, Commission staff contacted the State Lands Commission (SLC) with regard to the subject vested rights claim. SLC indicated to Commission staff that they had contacted the City of San Diego by letter dated 9/20/01, prior to the City's claim of vested rights, regarding the placement of buoys in the ocean (ref. Exhibit #7). In that letter it was stated that the SLC was aware that certain buoys have been placed in the water seaward of the mean high tide line near the La Jolla Beach and Tennis club. In the cited letter, SLC asked the City for information as to what arrangements the City has with the La Jolla Beach and Tennis Club for the operation of the buoys in the water seaward of the mean high tide line near the La Jolla Beach and Tennis club. Pursuant to a telephone call between Commission staff and SLC staff on 10/18/04, as well as in an October 21, 2004 letter to Commission staff, the State Lands Commission confirmed that the City has not responded to their letter.

Regarding the October 21, 2004 letter received by Commission staff from State Lands raising questions about whether the buoys on public tidelands have ever received proper authorizations, the letter stated, in part:

“As the Legislature’s delegated trustee of these tidelands, the City has the primary responsibility and authority to manage these lands on a day-to-day basis. The City of San Diego should not allow installation of improvements on trust lands, without formal City approval. This could be

accomplished through the issuance of a lease or permit for the placement of buoys. Therefore, we believe that before there could be any vested rights claim, the City must have taken formal action to authorize the placement of these buoys.”

The October 21, 2004 State Lands Commission letter confirms that the City has not demonstrated that it has ever taken any formal action to authorize/permit the La Jolla Beach and Tennis Club to install structures (i.e., placement of buoys, ropes, etc.) in the ocean on state tidelands at the subject site. The City instead indicates in their July 1, 2004 letter to Commission staff that the City’s authority to allow placement of buoys or other markers to designate the swim area is addressed in Ordinance No. 3727 which states that specific activities are unlawful “on or upon water where warning signals have been placed”. In addition, Ordinance No. 3727 gives the City Park and Recreation Department “jurisdiction, possession and control of all beach areas within the City and grants them the responsibility for the control and management of the beach areas and recreational activities thereon.” The City further asserts that Ordinance No. 3727 also gives the Park and Recreation Department the duty to enforce the provisions of the ordinance.

However, the Ordinance does not specifically allow for the placement of marker buoys in the water to mark off safe swimming areas nor did the City take an action authorizing such placement. Section 2 of Ordinance No. 3727 states that the Park and Recreation Department “shall have jurisdiction, possession and control of all beach areas within the limits of the City,” but it does not specifically authorize any given activity to be performed in exercising that control. Similarly, section 16 of Ordinance No. 3727 states that the ordinance does not “prevent any employee of the Park and Recreation Department ... from doing anything ... necessary and proper for the maintenance, improvement or betterment of [the designated] beach areas.” However, it does not provide any new authority. Although the City may have had the ability to designate a public swim area, such an ability is not tantamount to an actual authorization to demarcate or develop the tidal area in a manner that would otherwise require a coastal development permit.

To establish a vested right, the City must show that it had all necessary government authorizations. (*J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844, *citing*, *People v. County of Kern* (1974) 39 Cal.App.3d 830, 838) (unless owner possesses *all* necessary permits, the mere expenditure of funds or commencement of construction does not vest any rights in the development). The scope of the vested right must be limited by the scope of the governmental representation on which the claimant relies, and which constitutes the basis of the estoppel. In other words, one cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to, or from denying that it has approved a project it has not in fact approved. Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law, which governs his project, was changed. See *Avco Community Developers, inc. v. South Coast Regional Commission, supra*, 17 Cal.3d 785.

According to the SLC, any kind of fixture within granted tidelands, including buoys, can only be done by formal action of the City. According to the SLC, a vested right against the trustee cannot occur unless the City has given the applicant a lease or a permit or a license or taken some type of formal action by the City Council which expressly gives permission to place such objects in the surf zone. This means that the City Lifeguard Service, the City Park and Recreational Department and the La Jolla Beach and Tennis Club did not, prior to February 1, 1973, and still do not have express permission to

legally place any structure in the ocean. Only by action of the City Council can such rights be legally authorized.

Therefore, because the City has not ever taken any type of formal action expressly granting permission to the La Jolla Beach and Tennis, the City Lifeguard Service or the City Park and Recreation Department to place buoy markers in the ocean, and State Lands staff have confirmed that such formal City approval is needed, the Commission finds that the City of San Diego cannot establish that it has a vested right for placement of the buoys in the water at this location as their placement has never been "legally" authorized.

**2. Even if the City Had Demonstrated that the Placement of the Buoys was Undertaken Pursuant to a Valid Governmental Authorization Obtained Prior to February 1, 1973, the Placement of the Buoys in the Tidelands was Undertaken by a 3<sup>rd</sup> Party and was Therefore Not Undertaken by the City in Good Faith Reliance on any Valid Government Authorization Obtained Prior to February 1, 1973**

As noted above, the placement of the buoys each summer is not conducted by the City, but instead the buoys are placed by employees/agents of the La Jolla Beach and Tennis Club, a private resort located adjacent to the site where the buoys are placed. In its review of the applicant's claim, Commission staff asked the City to address placement of the buoys by the Beach Club. Specifically, in an April 5, 2004 non-filing letter from Commission staff to the City, the question was raised as follows:

Both declarations state that the buoys were installed, but they do not state by whom. The City's application indicates that it was the Club that traditionally placed the buoys. However, it is the city that is now applying for the vested right determination. Please provide information regarding what individual(s) or entity(ies) actually placed the buoys in the water each year? For any year during which the buoys were placed by an entity other than the city or an individual not working for and acting on behalf of the city, please provide information that documents the relationship that may have existed between that entity or individual and the city.

The City did not provide any information in response to the Commission's non-filing letter other than individual declarations indicating that the buoys were placed by the private Beach Club.

As noted above, the "acquisition of a vested right is grounded on equitable principles of estoppel." *Aries Dev. Co. v. California Zone Conservation Com.*, *supra*, 48 Cal.App.3d at 548; *Spindler Realty Corp. v. Monning*, *supra*, 243 Cal.App.2d at 269; *Anderson v. City Council*, 229 Cal.App.2d 79, 89 (1964). That is, once the government represents to an applicant that his project is fully approved, and the applicant thereafter acts in reliance on that approval by incurring substantial liabilities or performing substantial construction, the applicant is in a position to estop the government from applying any subsequent change in the law to the project so as to render it illegal. *Aries*, *supra*, at 548.

By the same token, the exemption conferred by section 30608 of the Coastal Act is limited by its terms to a "person who has obtained a vested right to undertake the development." In other words,

"...the exemption extends only to those persons whose reliance upon existing permits or authorization induced them to initiate substantial performance of their projects and to incur substantial liabilities in connection therewith." *Urban Renewal Agency v. California Coastal*

*Zone Com.*, *supra*, 15 Cal.3d 577, 586 (interpreting Pub. Res. Code § 27404, an exemption provision substantially similar to § 30608).

Specifically, in *Urban Renewal*, the Supreme Court upheld the trial court's ruling that plaintiffs had acquired a vested right as to the portions of the project they intended to complete, but found no readily observable authority in an exemption provision substantially similar to § 30608 "for expanding the exemption of one person to afford an exemption to another person who has not himself acquired vested rights." *Urban Renewal*, *supra*, 15 Cal.3d at 586. The court reasoned that "the exemption extends only to those persons whose reliance upon existing permits or authorization induced them to initiate substantial performance of their projects and to incur substantial liabilities in connection therewith." *Id.*

Applying this rule to the subject claim, since the acquisition of a vested right is based on estoppel, only the person who acted in reliance on a governmental approval and is thus in a position to estop a revocation of the approval may claim that his reliance has ripened into a vested right. As acknowledged by the materials in support of the vested rights claim, it is the private Beach Club, rather than the City, that has purportedly been placing the buoys in the tidelands in front of the private Beach Club. In that sense, the creation of a vested right is a personal process, and the City may not assert that the Club's actions created a vested right in favor of the City, where the Club cannot itself establish the vested right. The Commission also notes that the City has not incurred substantial liabilities from the Club's placement of the buoys and indeed would not incur substantial liabilities if it is necessary for the Club or the City to obtain a coastal development permit for any future placement of the buoys.<sup>7</sup>

**3. Even if the City had Demonstrated that the Placement of the Buoys was Specifically Authorized by a Valid Governmental Authorization Obtained Prior to February 1, 1973, Sufficient Factual Evidence Was Not Provided to Establish a Vested Right for the Placement of Buoys to Mark Off a much Smaller Swim Area than the Designated Public Swim Area, Especially Given that the Effect of Only Placing the Buoys Over the Portion of the Designated Public Swim Area in front of the Beach Club is to Convey the Perception that the Tidal Area Marked by the Buoys is a Private Swim Area**

The factual evidence provided in support of City of San Diego's claim of vested rights for placement of the buoys is too general to enable the Commission to acknowledge a vested right for the practice of placing buoys in the tidelands to mark off a much smaller swim area with the buoys than the designated public swim area and to only place the buoys over the portion of the designated public swim area in front of the private Beach Club. While Commission staff requested that the City provide pictures, aerial photographs, work orders, log book entries, etc. in specific support of its claim, the City has not provided any such evidence. Instead, to support their claim of vested rights the City has submitted sworn and signed declarations from four individuals. The recollections contained in these declarations consist of events that purportedly commenced over thirty years ago, a period of time over which the reliability of anyone's memory can reasonably be questioned.

In one of the sworn declarations, it is stated that the buoys marking the "City-designated swim area in front of the "Beach Club" have been placed regularly since 1959. However, the City indicated that the swim area was not designated until 1966. No explanation was given for this discrepancy. Each individual indicated that to the best of their knowledge, the buoys have been placed in the ocean every summer since 1966. While the Commission acknowledges that individual declarations are evidence that

<sup>7</sup> The City's vested rights claims generally indicates that the annual cost of installing, removing and storing the buoy markers is approximately \$6,000.00.

should be considered, in this particular case, given the significant public access issues posed by the development (as noted below), absent any other evidence such as aerial photographs of the buoys in the water during the summer months since 1966, the evidence of four individual declarations is not sufficient evidence that would enable the Commission to acknowledge a vested right for the placement of the buoys to mark off a much smaller swim area with the buoys than the designated public swim area and to only place the buoys over the portion of the designated public swim area in front of the private Beach Club.

North of the subject site is La Jolla Shores Beach. The public beach along La Jolla Shores is a heavily-used recreational area. In addition, the public boardwalk east of the shoreline is a public facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west streets off of El Paseo Grande, and provides access to the sandy beach at stairways located at various points along the seawall. With regard to the public beach, it extends north all the way to Black's Beach and south to a point just south of the restaurant, "The Marine Room" which is located just south of the La Jolla Beach and Tennis Club. Intermittent lateral public access is available dependent on the tide conditions.

The subject proposal to assert a claim of vested rights raises several concerns with regard to its impacts on public access opportunities along this shoreline. Notably, it is unclear why the buoys are placed in the ocean only seaward of the La Jolla Beach and Tennis Club, a small subset of the designated swim area. If the concern is truly a safety issue to keep boats, etc out of the swim area, why have the buoys not been placed along the boundary of the designated swim area adjacent to Avenida de la Playa where the boat launch is located? Although there is a public boat launch at the terminus of Avenida de la Playa, there is also a public swimming area immediately north of the boat launch seaward of La Jolla Shores. This is, in fact, one of the most popular and crowded beaches in San Diego County--a public beach which draws such large numbers of people --that the City is also currently proposing to construct a new lifeguard station in the near future to better serve the increasing population demands and recreational usage of this beach. In particular, the area immediately north of the boat launch is designated for swimming and boogie-boarding. The launching of boats and recreational watercraft in this area would be just as dangerous to the swimmers in this area as to those to the south (seaward of the La Jolla Beach and Tennis Club) thus raising the question as to why buoys are not also proposed to be placed at this location as well.

That the buoys are only placed in the water adjacent to the La Jolla Beach and Tennis Club is problematic for several reasons. First, it gives the impression that the swim area is "private" and not open to the public when, in fact, the public has the constitutional right of public access to the ocean seaward of the mean high tide line. Secondly, the placement of the buoys does not coincide with the much larger designated public swimming area thus appearing to privatize only that one small area of the larger public swimming area. Thirdly, the placement of buoys and designation of this swim area hinders and interferes with the public's right to pass and repass along the beach seaward of the mean high tide line in front of the La Jolla Beach and Tennis Club as it appears to be cordoning off an area of the ocean (and beach) for private use. This creates a sense of "privacy" along the beach in this area, that is intended for public use. This sense of privacy is heightened by the existence of "trespassing not allowed" signage on the adjacent Beach Club structures. Due to their location on the beach, the statements "Private Property" and "Trespassing Not Allowed" on the signs affixed to the Beach Club's structures can be understood as declaring that the beach and area marked by the buoys is "Private Property" and that anyone swimming in this area is trespassing, in violation of the CA Penal Code. That is, in conjunction with the adjacent Beach Club signage, the apparent effect of the buoys demarcating

only a smaller subset of the designated swim area in front of the private beach club is to convey the perception that the tidal area marked by the buoys is a private swim area. Such an effect is inconsistent with State law as neither the City or the Club has a right to preclude the public from swimming in these tidelands.<sup>8</sup>

The City does not expressly claim that it has a vested right to exclude the public from tidelands at this site. As discussed above in section D1, the City has no legal right to do so. The public has a right to use public tidelands that is protected by the California Constitution, statutes and caselaw and the City does not have a lease or authorization from the State to exclude the public from the public tidelands at this location. Since the City has not demonstrated that it was authorized by the State Lands Commission to exclude the public from the tidelands at the site, the Commission finds that the City has not established that it has a vested right for the placement of the buoys in the tidelands in front of the private beach club, especially since the apparent effect of only placing the buoys over the portion of the designated public swim area in front of the beach club is to convey the perception that the tidal area marked by the buoys is a private swim area.

Finally, even if the City did have a valid governmental authorization to place the buoys in the public tidelands, if the effect of the placement of the buoys is to privatize a public swim area which the City has no legal authority to do in the first instance, then the City cannot claim a vested right for such an activity. Any change in a project which would require an additional permit or other governmental approval under law in existence at the time of the change would certainly constitute a substantial change. That in itself would indicate that the changed project had not received all necessary governmental approvals and the claimant could therefore not have relied on any such non-existent approvals in commencing the changes to the project.

## E. Conclusion

A vested right is limited to the actual extent or scope of the activity that was being lawfully conducted prior to the Coastal Act. The City has not provided sufficient evidence to establish that the buoys have been lawfully placed in the ocean every summer consecutively since February 1, 1973. For all the reasons set forth above, the Commission finds that the City has not met the burden of proving its claim of vested rights for development in the ocean seaward of the La Jolla Beach and Tennis Club. The Commission therefore finds that because the City has not met its burden of establishing that it has a vested right to place buoys in the ocean, the claim of vested rights for this use must be denied. This is not a determination of whether, ultimately, the current development at the site can be allowed. Rather,

---

<sup>8</sup> Tidelands include "those lands lying between the lines of mean high tide and mean low tide which are covered and uncovered successively by the ebb and flow thereof." (*Lechuza Villas West v. CA Coastal Commission* (1997) 60 Cal.App.4<sup>th</sup> 218, 235). The State owns all tidelands and holds such lands in trust for the public. (*Id.*; *State of Cal. Ex rel. State Lands Com. V. Superior Court* (1995) 11 Cal.4<sup>th</sup> 50, 63; California Civil Code section 670). "The owners of land bordering on tidelands take to the ordinary high water mark. The high water mark is the mark made by the fixed plan of high tide where it touches the land; as the land along a body of water gradually builds up or erodes, the ordinary high water mark necessarily moves, and thus the mark or line of mean high tide, i.e., the legal boundary, also moves." (*Lechuza*, 60 Cal.App.4<sup>th</sup> at 235). In other words, the boundary between private property and public tidelands is an ambulatory line. (*Id.* at 242.)

the decision to deny the claim of vested rights means only that no development is authorized until the claimant goes through the permitting process under the Coastal Act and is granted a CDP.

(G:\San Diego\Reports\2004\6-04-036 VRC City of San Diego stfrptfinal.doc)





EXHIBIT NO. 1  
 APPLICATION NO.  
**VRC-04-36**  
 Thomas Brothers  
 Map of Subject Site





6-04-036-VRC

THE CITY OF SAN DIEGO

RECEIVED

APR 01 2004

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

March 25, 2004

Peter Douglas  
Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

RECEIVED

MAR 29 2004

CALIFORNIA  
COASTAL COMMISSION

Dear Mr. Douglas:

Subject: Vested Rights Application

Enclosed is a Vested Rights Application on behalf of the City of San Diego for review by the Coastal Commission. The developments at issue are the designation of a swim area for the general public and the authority to place buoy markers to mark the swim area.

The swim area in question was designated in 1966 by City of San Diego Resolution No. 186513. Demarcation of this swim area by buoy markers is deemed especially important by the San Diego City Lifeguards because of a public boat launch that is located along the northern edge of the swim area. Without the designated swim area and buoy markers, hundreds of swimmers would be in danger from watercraft that could maneuver freely in and out of the swim area.

Please contact me if you have any questions or need any additional information.

Sincerely yours,

Kenneth M. Hewitt  
Lifeguard Chief

KMH:JS:va

Enclosure: Vested Rights Application

cc: Joseph Sanchez, Deputy City Attorney  
Marsha Venegas, Enforcement Officer, California Coastal Commission

EXHIBIT NO. 2
APPLICATION NO.
<b>VRC-04-36</b>
Claim of Vested Rights Application from City of San Diego with exhibit of subject site
California Coastal Commission

San Diego Fire-Rescue Department • Lifeguard Services Division

2581 Quivira Court • San Diego, CA 92109-8398

Tel (619) 221-8899 Fax (619) 221-8858 World Wide Web: <http://www.sandiego.gov/lifeguards>



# CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



## CLAIM OF VESTED RIGHTS

**NOTE:** Documentation of the information requested, such as permits, receipts, buildings department inspection reports, and photographs, must be attached.

1. Name of claimant, address, and telephone number:  
(Please include zip code & area code):

City of San Diego

2. Name, address and telephone number of claimant's representative, if any:  
(Please include zip code & area code):

Lifeguard Chief Kenneth M. Hewitt, 2581 Quivira Ct., San Diego, CA 92109,  
(619) 221-8832.

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

See attached.

4. California Environmental Quality Act/Project Status.

Check one of the following: N/A

- a. Categorically exempt \_\_\_\_\_. Class: \_\_\_\_\_. Item: \_\_\_\_\_.

Describe exempted status and date granted: \_\_\_\_\_

- b. Date Negative Declaration Status granted: \_\_\_\_\_

- c. Date Environmental Impact Report approved: \_\_\_\_\_

Attach environmental impact report or negative declaration.

### FOR COASTAL COMMISSION USE:

Claim Number: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Date Filed: \_\_\_\_\_

5. List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

City of San Diego Resolution Nos. R-186513 and R-180140.

City of San Diego Ordinance Nos. O-3727 and O-5046.

City of San Diego Municipal Code sections 63.20.2(b) and 63.20.3.

6. List any governmental approvals which have not yet been obtained and anticipated date of approval.

N/A

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

N/A

8. Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (i.e., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1972 and/or January 1, 1977 (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals).

N/A

9. Describe those portions of development remaining to be constructed.

N/A

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

N/A

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental expenses.

Approximately \$6,000 annually for installation, removal, storage and maintenance of the buoy markers.

12. Is the development planned as a series of phases or segments? If so, explain.

N/A

13. When is it anticipated that the total development would be completed?

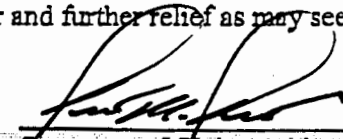
N/A

14. Authorization of Agent.

I hereby authorize Lifeguard Chief Kenneth M. Hewitt to act as my representative and bind me in all matters concerning this application.

  
Signature of Claimant

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission, of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending, or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

  
Signature of Claimant(s) or Agent

## **CLAIM OF VESTED RIGHTS**

Claimant: City of San Diego

3. *Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.*

The developments at issue are the designation of a swim area for the general public and the authority to place buoy markers to mark the swim area. The designated swim area is located in the ocean waters adjacent to the beach in front of the La Jolla Beach & Tennis Club in the City of San Diego. (See Exhibit A.) Title to the submerged lands of this designated swim area is held in trust by the City of San Diego pursuant to Chapter 937, Statutes of 1931, as amended. Pursuant to San Diego Municipal Code section 63.20.2(b), this swim area was designated in 1966 by the City of San Diego Resolution No. 186513, which amended Resolution No. 180140. (See Exhibits B and C.) As a result of this designation, boats and surfers are not permitted in this designated swim area.

The City is authorized to mark designated swim areas with warning signals, such as buoy markers, to help protect swimmers from boats and surfers since 1948 by the City of San Diego Ordinance No. 3727. (See Exhibit D.) This City Ordinance was codified as San Diego Municipal Code section 63.20.3 in 1952 by the City of San Diego Ordinance No. 5046. (See Exhibit E.) With the City's knowledge, buoy markers have been placed by the La Jolla Beach & Tennis Club along the perimeter of the area since at least 1966. Demarcation of this swim area by buoy markers is deemed especially important by the San Diego City lifeguards because of the public boat launch that is located along the northern edge of the swim area, at the end of Avenida de la Playa. (See Exhibits F and G.) Without the designated swim area and buoy markers, hundreds of swimmers would be in danger from watercraft that could maneuver freely in and out of the area.

The buoy markers are plastic-coated foam markers that float in the water at approximately ten foot intervals, connected by nylon rope, and anchored with chains connected to cement blocks. Since at least 1966, the buoy markers have been placed annually, usually right before Memorial Day, and removed right after Labor Day. Installation of the buoy markers requires dropping two 24 x 24 inch cement blocks approximately 60-70 feet seaward of the Mean High Tide Line. One block anchors the beginning of the northern side of the buoy marker line, the other block anchors the southern side. Both blocks become buried in the sand for the season. From these cement blocks, the buoy marker line is extended seaward about 300 feet where the line is anchored again, allowing it to turn ninety degrees to extend parallel to the beach, thereby creating a half rectangular configuration in the designated swim area.

Annual maintenance of the buoy markers includes replacement, as needed, of connection points on the buoy marker line, cleaning the ropes, and occasionally replacing worn-out buoy markers. Annual cost for installation, removal, storage and maintenance of the buoy markers is approximately \$6,000.

# PACIFIC OCEAN

**PUBLIC SWIMMING AREA**  
(CREATED IN 1966 BY CITY RESOLUTION 186513)

PUBLIC SWIMMING AREA  
EXTENDS 1000 FEET WEST FROM  
THE MEAN HIGH TIDE LINE

PUBLIC SWIMMING AREA  
EXTENDS 1000 FEET  
WEST FROM THE  
MEAN HIGH TIDE LINE

SWIM BUOY LINE

SWIM BUOY LINE



MEAN HIGH TIDE LINE

COASTAL ACCESS PATH

SPINDRIFT  
DRIVE

PASEO  
DOMINIO

AVENIDA DE LA PLAZA  
PUBLIC BOAT LAUNCH

LA  
VEREDA

**CITY OF SAN DIEGO - LA JOLLA SHORES**

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1200  
SAN DIEGO, CALIFORNIA 92101-4184  
TELEPHONE (619) 533-5800 FAX (619) 533-5847

HILDA RAMIREZ MENDOZA  
DEPUTY CITY ATTORNEY

Casey Gwinn  
CITY ATTORNEY

July 1, 2004

**RECEIVED**

JUL 02 2004

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Lee McEachern  
District Regulatory Supervisor  
California Coastal Commission, San Diego Area  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

*Re: City of San Diego's Vested Rights Application - Designated Swim Area and Placement  
of Buoy Markers in the Ocean adjacent to the La Jolla Beach & Tennis Club*

Dear Mr. McEachern:

I am in receipt of your letter dated April 5, 2004, addressed to Kenneth M. Hewitt, in which you request additional information and documentation on six major points regarding the above referenced Application by the City of San Diego. Pursuant to Public Resources Code section 30608(a), a vested right exists in a development established prior to the effective date of the Coastal Act of 1976 or obtained by a permit from the California Coastal Zone Conservation Commission for the development pursuant to the California Coastal Zone Conservation Act of 1972. The California Supreme Court has recognized that a vested right includes "the right to continue a nonconforming use of improvements already constructed." *Halaco Engineering Co. South Central Coast Regional Commission*, 42 Cal. 3d 52, 73 (1986). Therefore, the City has focused its Application and this response to the designated swim area and placement of the buoy markers as they existed prior to 1972. Following are the responses to your request, beginning with the second full paragraph of your letter.

In the second paragraph of your letter, you ask if the City was referring to San Diego Municipal Code ("SDMC") section 63.20.2(b)<sup>1</sup>, as it existed in 1966 or at the present. In its Application, the City referred to section 63.20.2(b) as it existed in 1966 pursuant to City of San Diego Ordinance No. 9016, as shown in Exhibit 1,<sup>2</sup> attached herein. Ordinance No. 9016 was adopted by the City of San Diego City Council on May 14, 1964. Pursuant to Ordinance No. 9016, SDMC section 63.20.2(b) established five water activities whose boundaries would be

<sup>1</sup> Your letter incorrectly refers to SDMC section 63.23.2(b).

<sup>2</sup> The attached exhibits contain certified copies only of documents not provided by the City previously with its Application. Otherwise, if the documents were previously provided by the City, those copies of the documents are not certified and are provided again for your review.

EXHIBIT NO. 3
APPLICATION NO. <b>VRC-04-36</b>
Letters from City Attorney's Office dated 7/1/04 & 9/13/04
 California Coastal Commission



designated from time to time by resolution of the City Council. As discussed in the City's Vested Rights Application, the area at issue was designated by Resolution No. 186513, in 1966. (See Exhibit 2.) In the second paragraph of your letter, you also ask what version of SDMC section 63.20.3 did the City refer to in its Application. Again, the City referred to section 63.20.3<sup>3</sup> as it existed prior to 1972 as evidenced by section 5 on page two of the text of Ordinance No. 3727. (See Exhibit 3.) A certified copy of the current versions of SDMC sections 63.20.2(b) and 63.20.3(a) are attached herein as Exhibit 4.

In the third paragraph of your letter, you request further documentation that explains the boundaries of the swim area at issue. Resolution No. 186513, not 180140<sup>4</sup>, designates the northerly and southerly boundaries of the bathing and swim area at issue. (See Exhibits 2 and 5, respectively.) Ordinance No. 9016 defines "bathing and swimming" to mean "all bathing and swimming activities conducted in water, except those activities which involve board surfing or those which involve the possession, control or use of a surfboard." (See Exhibit 1, p. 2.) The westerly boundary was formally designated as extending one thousand (1,000) feet seaward from the mean high tide line in 1994 pursuant to Ordinance No. O-18073, attached herein as Exhibit 6.<sup>5</sup> As explained by the declarations of William Owen and Lorin D. "Buster" Mico, attached to the City's Application, the buoy markers have been placed in approximately the same configuration since 1956 through 1988. (See Exhibits 7 and 8, respectively.) Also, as explained by the declaration of Lt. Greenhalgh, the buoy markers have been placed in approximately the same configuration every year from 1980 to the present. (See Exhibit 9.) Additionally, Lt. Greenhalgh declares that the buoy markers have been placed within the southerly and northerly boundaries designated in Resolution No. 186513. Therefore, as a result of the personal observations of the above referenced declarants, the buoy markers have been placed within the boundaries of the designated swim area since its designation in 1966.

In the fourth paragraph of your letter, you request clarification of the City's authority to place buoys or other markers to designate the swim area. Section 5 of Ordinance No. 3727 makes specific activities unlawful "on or upon water where warning signals have been placed." (See Exhibit 3.) As your letter correctly states, section 2 of Ordinance No. 3727 confers upon the Park and Recreation Department "jurisdiction, possession and control of all beach areas within The City . . . , and shall be responsible for the control and management of said beach areas and the recreational activities thereon." (See Exhibit 3.) Additionally, section 3 of Ordinance No. 3727 charges the Park and Recreation Department with the duty to "enforce the provisions of this Ordinance." (See Exhibit 3.) Finally, section 16 of Ordinance No. 3727 states that nothing in the ordinance shall be construed to

prevent any employee of the Park and Recreation Department from doing anything . . . necessary and proper for the maintenance,

<sup>3</sup> The present version of SDMC section 63.20.3 is divided into subsections (a) and (b). Section 5 of Ordinance No. 3727 is equivalent to the present version of SDMC section 63.20.3(a).

<sup>4</sup> Resolution No. 186513 does state that it is amending Resolution No. 180140. However, it is Resolution No. 186513 that formally designates the swim area at issue in the City's Application.

<sup>5</sup> The current version of SDMC section 63.20.2(b) reflects this seaward boundary. (See Exhibit 2.)

improvement or betterment of said beach area, and further, that nothing herein contained shall be construed to prevent any employee or agent of The City . . . from doing any thing . . . necessary or proper for the best interests of The City.

(See Exhibit 3.) Although not specifically stated in the ordinance, the fact that section 5 of Ordinance No. 3727 refers to warning signals in the water implies that City's employees or agents would place warning signals such as buoys in the water in furtherance of the ordinance. Additionally, the authorities granted in sections 2, 3, and 16 of Ordinance No. 3727 are substantially broad to incorporate the placement of warning signals, such as buoys, in order to properly maintain and control the several activity designations in the ordinance.

In the fifth paragraph of your letter, you request an explanation for the placement of buoy markers prior to the designation of the swim area in 1966 by Resolution No. 186513. An extensive search of files and archives has not disclosed further information to explain this discrepancy. However, the search is continuing and the City will provide further information if it is discovered.


In the sixth paragraph of your letter, you request more information as to which individuals or entities placed the buoys over the years. Additional documents with this information will be provided as soon as possible.

In the seventh paragraph of your letter, you request "any pictures, aerials, work orders, log books, or other information" regarding the placement, location and the regularity of placing the buoy markers. If available, such documents with this information will be provided as soon as possible.

Please call with any questions or further requests regarding the above information.

Sincerely yours,

CASEY GWINN, City Attorney

By   
Hilda Ramirez Mendoza  
Deputy City Attorney

HRM:cq:Civ.  
Enclosure(s)  
cc: Kenneth M. Hewitt

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

HILDA RAMIREZ MENDOZA  
DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

Casey Gwinn  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1200  
SAN DIEGO, CALIFORNIA 92101-4184  
TELEPHONE (619) 533-5800 FAX (619) 533-5847

September 13, 2004

Lee McEachern  
District Regulatory Supervisor  
California Coastal Commission, San Diego Area  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

RECEIVED  
SEP 15 2004  
CIVIL DIVISION  
CITY ATTORNEY

*Re: City of San Diego's Vested Rights Application - Designated Swim Area and Placement of Buoy Markers in the Ocean adjacent to the La Jolla Beach & Tennis Club*

Dear Mr. McEachern:

I am in receipt of your letter dated September 8, 2004, in which you request that the City of San Diego provide additional information and documentation regarding the above referenced Application by the City of San Diego. In my letter to you dated July 1, 2004, I explained that the City was continuing its search for more information and documents to respond to the fifth, sixth and seventh paragraphs of your letter dated April 5, 2004, addressed to Kenneth M. Hewitt.

In the fifth paragraph of your April 5, 2004 letter, you request an explanation for the placement of buoy markers prior to the designation of the swim area in 1966 by Resolution No. 186513. An extensive search of files and archives has not disclosed further information to explain this discrepancy. However, although the area was not formally designated until 1966 by the San Diego City Council, the safety needs for placement of the buoy markers were present prior to the designation as explained in paragraph 5 of Lorin D. "Buster" Mico's declaration dated March 8, 2004, previously provided to you by the City.

In the sixth paragraph of your letter, you request more information as to which individuals or entities placed the buoys along the designated swim area over the years. As explained by the declarations of Lorin D. "Buster" Mico and William J. Kellogg, the buoy markers were placed along the swim area by the La Jolla Beach & Tennis Club employees with the occasional assistance of City of San Diego Lifeguards. (See Exhibits A and B, respectively.)

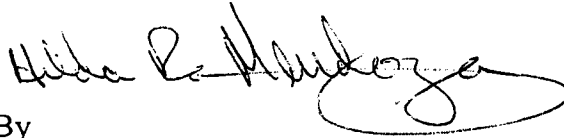
In the seventh paragraph of your letter, you request "any pictures, aerials, work orders, log books, or other information" regarding the placement, location and the regularity of placing the buoy markers. As explained by the declarations of Lorin D. "Buster" Mico and William J. Kellogg, the buoy markers were placed every year during the summer months since at least

1966. (See Exhibits A and B, respectively.) Again, an extensive search of files and archives has not disclosed additional information than already provided by the City of San Diego.

The City of San Diego requests that its Vested Rights Application be deemed "filed" for purposes of section 13202 of the California Code of Regulations. Please call with any questions or further requests regarding the above information.

Sincerely yours,

CASEY GWINN, City Attorney

A handwritten signature in black ink, appearing to read "Hilda Ramirez Mendoza", written over a circular scribble.

By  
Hilda Ramirez Mendoza  
Deputy City Attorney

HRM:cq:Civ.

Enclosure(s)

cc: Kenneth M. Hewitt

RESOLUTION NO. 186513

A RESOLUTION AMENDING RESOLUTION NO. 180140, RELATING TO THE BOUNDARIES OF WATER ACTIVITY ZONES, BY DESIGNATING A DESCRIBED AREA AS A CONTROL ZONE AND ADDING PARAGRAPH 1 (1) TO THAT EFFECT.

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

That Resolution No. 180140 be, and the same is hereby amended by adding paragraph 1 (1) as follows:

1. BATHING AND SWIMMING ZONE:

- (1) The waters of the beach area between the westerly extension of a point approximately 45 feet north of the northerly line of Roseland Drive and the westerly extension of the southerly line of Avenida de la Playa.

Presented by T. W. Butler *WB*

APPROVED: EDWARD T. BUTLER, City Attorney

By Louis M. Wolfsheimer  
Louis M. Wolfsheimer, Deputy

elb  
3/66

EXHIBIT NO. 4  
APPLICATION NO.  
**VRC-04-36**

City Resolutions/  
Ordinances/Municipal  
Code Citations

MAR 3 - 1966

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_  
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Helen R. Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ivor de Kirby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Harry F. Scheidle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Hom	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jack Walsh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank E. Curran	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

FRANK E. CURRAN

Mayor of The City of San Diego, California.

PHILLIP ACKER

City Clerk of The City of San Diego, California.

By Emily K. Worrell, Deputy.

(Seal)

I, CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk

By V. J. Avila, Deputy.

Dated 3-4-66

RECEIVED  
CITY CLERK'S OFFICE  
1966 FEB 28 PM 12:03  
SAN DIEGO, CALIF.

Office of the City Clerk, San Diego, California

Document Number

696554

Filed

MAR - 2 1966

Resolution Number

186513

Adopted

MAR 3 - 1966

FORM CC 1276  
(11/65)

RESOLUTION NO. 180140

RESOLUTION DESIGNATING THE BOUNDARIES  
OF THE WATER ACTIVITY ZONES.

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

That, pursuant to Section 63.20.2(b) of the San Diego  
Municipal Code, the boundaries of the water activity zones are  
designated as follows:

1. BATHING AND SWIMMING ZONE:

- (a) The waters of the beach area between the westerly extension of the northerly line of Santa Monica Avenue and the westerly extension of the southerly line of Brighton Avenue.
- (b) The waters of the beach area between the westerly extension of the southerly line of San Gabriel Place and the westerly extension of a line parallel to and 200 feet south of the westerly extension of the southerly line of Ventura Place.
- (c) The waters of the beach area between the westerly extension of the southerly line of Niantic Court and the westerly extension of the southerly line of Redondo Court.
- (d) The waters of the beach area between the westerly extension of the northerly line of Oliver Avenue and the westerly extension of the northerly line of Hornblend Street.
- (e) The waters of the beach area between the westerly extension of the southerly line of Palomar Street and the westerly extension of the southerly line of Playa del Sur.
- (f) The waters of that area known as Childrens Pool and being on the inside of the breakwater established at said point.

- (g) The waters of that area known and designated as La Jolla Cove.
- (h) The waters of the beach area between the westerly extension of the southerly line of Vallecitos Avenue and the La Jolla Shores lifeguard station.

2. BOARD SURFING ZONE:

- (a) The waters of the beach area between the westerly extension of the southerly line of Niagara Avenue and the westerly extension of the southerly line of Santa Monica Avenue.
- (b) The waters of the beach area between the westerly extension of the northerly line of Brighton Avenue and the jetty separating the Mission Bay Channel entrance from the San Diego River Flood Control Channel.
- (c) The waters of the beach area between the north jetty of the Mission Bay Channel entrance and the westerly extension of the southerly line of Avalon Court.
- (d) The waters of the beach area between the westerly extension of a line parallel to and 100 feet south of the westerly extension of the southerly line of Ventura Place and the westerly extension of the southerly line of Jamaica Court.
- (e) The waters of the beach area between the westerly extension of the southerly line of Zanzibar Court and the westerly extension of the southerly line of Oliver Avenue.
- (f) The waters of the beach area between the westerly extension of the southerly line of Law Street and a point 1000 feet northerly of the Tourmaline Canyon storm drain.
- (g) The waters of the beach area between the westerly



extension of the northerly line of Playa del Sur and the westerly extension of the southerly line of Westbourne Street.

- (h) The waters of the beach area between a point 100 feet northerly of the La Jolla Shores lifeguard station and the northerly end of the sea wall near Calle Opima.

3. CONTROL ZONE:

- (a) The waters of the beach area between the westerly extension of the southerly line of Avalon Court and the westerly extension of the southerly line of San Gabriel Place.
- (b) The waters of the beach area between the westerly extension of the southerly line of Jamaica Court and the westerly extension of the southerly line of Niantic Court.
- (c) The waters of the beach area between the westerly extension of the southerly line of Redondo Court and the westerly extension of the southerly line of Zanzibar Court.
- (d) The waters of the beach area between the westerly extension of the southerly line of Felspar Street and the westerly extension of the southerly line of Law Street.

4. NO BOARD SURFING ZONE:

- (a) The waters of the beach area between Childrens Pool and Goldfish Point, excepting therefrom the waters of La Jolla Cove, which are a BATHING AND SWIMMING ZONE \_\_\_\_\_

5. CLOSED ZONE:

- (a) The waters of the beach area between the westerly extension of the southerly line of Santa Monica Avenue and the westerly extension of the northerly

line of Santa Monica Avenue.

- (b) The waters of the beach area between the westerly extension of the southerly line of Brighton Avenue and the westerly extension of the northerly line of Brighton Avenue.
- (c) The waters of the beach area between the westerly extension of a line parallel to and 200 feet south of the westerly extension of the southerly line of Ventura Place, and the westerly extension of a line parallel to and 100 feet south of the westerly extension of the southerly line of Ventura Place.
- (d) The waters of the beach area between the westerly extension of the southerly line of Oliver Avenue and the westerly extension of the northerly line of Oliver Avenue.
- (e) The waters of the beach area between the westerly extension of the northerly line of Hornblend Street and the westerly extension of the southerly line of Felspar Street.
- (f) The waters of the beach area between the westerly extension of the southerly line of Playa del Sur and the westerly extension of the northerly line of Playa del Sur.
- (g) The waters of the westerly extension of that area 100 feet wide extending northerly from the north side of the La Jolla Shores lifeguard station.

Presented by J. M. Biddle

APPROVED: EDWARD T. BUTLER, City Attorney

By Robert S. Teaze  
Robert S. Teaze, Chief Deputy

RST:rjt  
5/22/64  
Rev. 5/27/64

180140

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FORM

Passed and adopted by the Council of the City of San Diego on MAY 28 1964,  
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Helen R. Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Isaac Kirby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mary F. Scheffle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hatch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Horn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jack Walsh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank E. Curran	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ATTESTED BY:

*Isaac Kirby*  
Mayor of The City of San Diego, California.

(Seal)

PHILLIP ACKER

City Clerk of The City of San Diego, California.

By *R. H. ...*, Deputy.

M/5

RECEIVED  
CITY CLERK'S OFFICE  
MAY 27 10 31 AM '64  
SAN DIEGO CALIFORNIA

Office of the City Clerk, San Diego, California	
Document Number <b>672403</b>	Filed <b>JUN 15 1964</b>
Resolution Number <b>180140</b>	Adopted <b>MAY 28 1964</b> <i>max</i>
Recorded on microfilm roll number: _____	

FORM CC-1276  
(11-63)

CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk

By *V HAVIN*, Deputy

Dated *3-4-64*

I, CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk

By CHAVIN Deputy

Dated 3-4-04

ORDINANCE No. 3727  
(New Series)

AN ORDINANCE REGULATING BATHING, SWIMMING, SURFBOARD RIDING, ROWING, BOATING AND BUILDING OF FIRES AND OTHER USES UPON THE BEACHES OF THE CITY OF SAN DIEGO: PROHIBITING THE DEPOSITING OF WASTE MATERIAL AND THE DRIVING OF MOTOR VEHICLES AND THE RIDING OF HORSES UPON SAID BEACHES, AND PROVIDING FOR A PENALTY FOR THE VIOLATION HEREOF, AND REPEALING ORDINANCES No. 233 (NEW SERIES), ADOPTED MAY 8, 1933; No. 1786 (NEW SERIES), ADOPTED MARCH 12, 1940; AND No. 2655 (NEW SERIES), ADOPTED MAY 11, 1943.

BE IT ORDAINED, By the Council of The City of San Diego, as follows:

Section 1. In order to promote the public peace, health and safety, and to provide for the public welfare, the Council hereby adopts certain rules and regulations governing and controlling swimming, surfboard riding, rowing, boating and the depositing of waste materials, building of fires, driving of motor vehicles and the riding of horses, and other uses, upon the beaches and in certain portions of The City of San Diego.

Section 2. The Park and Recreation Department of The City of San Diego shall have jurisdiction, possession and control of all beach areas within the limits of The City of San Diego, including all lands heretofore and hereafter owned or controlled by the City, adjoining the waterfront of the Pacific Ocean, and shall be responsible for the control and management of said beach areas and the recreational activities thereon.

Section 3. It shall be the duty of the Park and Recreation Director to enforce the provisions of this Ordinance and in that behalf all and any employees of the Park and Recreation Department charged with the duty of maintaining peace, order and safety in said beach areas shall be and hereby are empowered to assist the police officers of The City of San Diego in the enforcement of the provisions of this ordinance including the power to make arrests for the violation hereof.

Section 4. It shall be unlawful for any person to bathe, swim, surfboard ride, row, canoe, or operate a sailboat or power boat or other device in the surf or adjacent waters there-  
to of the Pacific Ocean between the following described limits:

- (a) Between Asbury Court and Voltaire Street;
- (b) Between the westerly extension of the north line of Pueblo Lot 1337 and the westerly extension of the northerly line of Pueblo Lot 1298;

Section 5. It shall be unlawful for any person to bathe, swim, surfboard ride, row, canoe and/or operate a sailboat or power boat or other device on or upon water where warning signals have been placed except for the purpose of making a rescue.

Section 6. It shall be unlawful for any person to refuse to follow or comply with any lawful order, signal or other lawful direction of a lifeguard, or for any person without lawful authority to deface, injure, knock down or remove any sign or warning placed for the purpose of enforcing the provisions of this ordinance, or for any person to deface, injure, knock down, break into or destroy or molest any lifeguard structure placed in said beach area by the Park and Recreation Department.

Section 7. It shall be unlawful for any person, firm or corporation to leave, discard, deposit or throw away any glass container, tin can, waste food, wood, papers or any other refuse or rubbish upon any beach area in The City of San Diego.

All waste materials shall be deposited in trash cans provided for that purpose. It shall be unlawful for any person, firm or corporation to move, molest, turn over, remove, deface or knock down any trash can or receptacle placed in any beach area by the Park and Recreation Department.

All fires are to be extinguished, the ashes shall not be covered and the unburned wood, refuse or rubbish to be removed

or placed in trash cans provided for that purpose, so that the beach is left in a clean, sanitary and presentable condition.

In those beach areas where fire circles have been provided by the Park and Recreation Department, all fires in that area must be confined to said fire circles.

Section 8. It shall be unlawful for any person, firm or corporation to build any fire or leave any waste materials in the following described beach areas, which areas are hereby designated as primarily BATHING AND SWIMMING AREAS:

- UNRECORDED
- (a) Between the westerly extension of the south line of Newport Avenue and the westerly extension of the north line of Cape May Avenue;
  - (b) Between the westerly extension of a line parallel to the south line of San Fernando Place which line shall be fixed at a point 400 feet south of the entrance to the life-guard station located in the Mission Beach Amusement Center and the westerly extension of the north line of Venture Place;
  - (c) Between the westerly extension of the south line of Santa Clara Place and the westerly extension of the north line of Salem Court;
  - (d) Between the westerly extension of the north line of Grand Avenue and the westerly extension of the south line of Cliver Street;
  - (e) Between the westerly extension of the south line of Diamond Street and the westerly extension of the north line of Lew Street;
  - (f) Between the westerly extension of the south line of Pelamar Street and the westerly extension of the north line of Belvedere Street;
  - (g) That area known as the Casa de Marana Pool and being on the inside of the breakwater established at said point;

(h) That area being known and designated as the La Jolla Cove;

(i) Between the westerly extension of the South line of Vellecitos Avenue and the westerly extension of the north line of Mascote Avenue;

(j) Between the westerly extension of a line 100 yards south of the life-guard station at Torrey Pines Beach, and the westerly extension of the north line of a line 100 yards north of the said life-guard station.

Section 9. It shall be unlawful for any person, firm or corporation to row, canoe, sailboat and/or operate a power boat or other device in the vicinity of and within 100 feet of any bather or swimmer in the above designated beach areas known primarily as bathing and swimming areas, except for the purpose of making a rescue, or for launching or beaching a boat in the area described in section 11 of this Ordinance.

Section 10. It shall be unlawful for any person, firm or corporation to ride a surfboard or other device in or near the vicinity of the above designated beach areas known primarily as bathing and swimming areas, except that it shall be lawful to surfboard ride in that area between the westerly extension of the south line of Palomar Street and the westerly extension of the north line of Belvedere Street, as set aside and marked by the Park and Recreation Department for the use of SURFBOARD RIDING exclusively.

Section 11. It shall be unlawful for any person, firm or corporation to drive or cause to be driven any motor vehicle, including motorcycles and motor-bikes and bicycles upon any beach in the City of San Diego excepting such motor vehicles as are on official business on behalf of The City of San Diego, and further excepting such motor vehicles as are being driven for the purpose of launching or beaching a boat upon that portion of the beach of The City of San Diego described as follows:

(e) Between the westerly extension of the south line of Avenida de la Playa and the westerly extension of the south line of Vellecitos Street, for the purpose of either beaching or launching boats.

Section 12. It shall be unlawful for any person, firm or corporation to build any fire or leave any waste materials in the area described in paragraph (a) of section 11 of this ordinance.

Section 13. It shall be unlawful for any person, firm or corporation to camp, lodge, sleep or tarry overnight, or to erect, maintain, use or occupy upon any public beach in this city any tent, lodge, shelter or structure, unless the same shall have two sides thereof open and unless there shall be an unobstructed view into such lodge, structure, shelter or tent from the outside on at least two sides thereof.

Section 14. It shall be unlawful for any person, firm or corporation to bring, leave, turn loose or allow to go, any horse, cow, ox, sheep, goat, ass, swine, dog or fowl of any kind in or upon any beach area in The City of San Diego, provided that this section shall not apply to dogs when fastened, or led by a chain or line not more than eight feet in length of suitable strength.

And further provided that in those beach areas designated primarily as bathing and swimming areas in section 8 hereof, no dogs shall be allowed.

Section 15. It shall be unlawful for any person, firm or corporation within the limits of any beach areas of The City of San Diego to do any act or acts contrary to the rules established by the Park and Recreation Department, as approved by the City Manager for the use of said beach, provided however, that said rules shall be conspicuously posted in said beach area.

Section 16. Nothing in this ordinance shall be construed to prevent any employee of the Park and Recreation Department from doing anything that in the opinion of the City Manager or



of the Park and Recreation Director may be thought necessary and proper for the maintenance, improvement or betterment of said beach area, and further, that nothing herein contained shall be construed to prevent any employee or agent of The City of San Diego from doing any thing that in the opinion of the City Council may be thought necessary, <sup>or</sup> proper for the best interests of The City of San Diego.

Section 17. That Ordinance No. 233 (New Series), adopted May 8, 1933; Ordinance No. 1786 (New Series), adopted March 12, 1940, and Ordinance No. 2655 (New Series), adopted May 11, 1943, be, and the same are hereby repealed.

Section 18. If any section, sub-section, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of The City of San Diego hereby declares that it would have passed the ordinance and each section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases thereof, be declared invalid or unconstitutional.

Section 19. Any person, firm or corporation violating any provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable by fine of not more than \$500.00 or by imprisonment in the city jail for a period of not more than six months or by both such fine and imprisonment.

Section 20. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

Presented by *St. W. Rindler*

APPROVED as  
to form by J. F. DuPAUL, City Attorney

By *Thomas H. Sarp*  
Deputy City Attorney.

I HEREBY CERTIFY that the money required for the appropriation made and/or indebtedness and/or obligation incurred by reason of the provisions of the foregoing ordinance is in the Treasury, and that it is otherwise unencumbered.

Dated.....

Auditor and Comptroller of The City of San Diego, California.

By.....Deputy.

Passed and adopted by the Council of the City of San Diego, California, this 4th day of May, 1948, by the following vote, to-wit:

YEAS—Councilmen: Crary, Wincote, Blase, Dorman, Dail, Godfrey

NAYS—Councilmen : None

ABSENT ~~Councilmen~~ : Mayor Knox

(ATTEST):

*[Signature]*  
Vice Mayor of The City of San Diego, California.

FRED W. SICK

City Clerk of The City of San Diego, California.

(SEAL)

By *[Signature]* Deputy.

I HEREBY CERTIFY that, as to the foregoing ordinance, the provisions of Section 16 of the Charter of the City of San Diego requiring the reading of ordinances on two separate calendar days prior to passage, was, by a vote of not less than five members of the Council, dispensed with; and that said ordinance was by a vote of not less than five members of the Council put on its final passage at its first reading

this 4th day of May, 1948

~~I FURTHER CERTIFY that the final reading of such ordinance was in full.~~

I FURTHER CERTIFY that, prior to the final reading of such ordinance, a written or printed copy thereof was furnished to each member of the Council.

FRED W. SICK

City Clerk of The City of San Diego, California.

(SEAL)

By *[Signature]* Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until it had been read on two separate calendar days of the Council, to-wit: on the..... day of..... and on the..... day of.....

I FURTHER CERTIFY that the final reading of such ordinance was in full.

I FURTHER CERTIFY that, prior to the final reading of such ordinance, a written or printed copy thereof was furnished to each member of the Council.

(SEAL)

City Clerk of The City of San Diego, California.

By.....Deputy.

Form 1225

MAY 5 2 5 PM '48

ORDINANCE NO. 5016  
(New Series)

AN ORDINANCE ADOPTING A MUNICIPAL CODE OF THE CITY OF SAN DIEGO.

WHEREAS, the Council of The City of San Diego has authority under Section 20 of the Charter of The City of San Diego to publish ordinances in book form, at least once in two years; and

WHEREAS, the Council has not caused the ordinances to be published in book form since July, 1943; and

WHEREAS, the Council by Resolution No. 99949 has commissioned Morey S. Levenson, Attorney at Law, to codify the ordinances of The City of San Diego; and

WHEREAS, said codification has been submitted to this Council and filed in the office of the City Clerk of said City as an official document numbered 443622; and

WHEREAS, this Council is now of the opinion that it will be to the best interests of the City and its inhabitants that said proposed code be adopted; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the Municipal Code of The City of San Diego, as submitted to this Council and filed in the office of the City Clerk of said City as an official document numbered 443622, be, and the same is hereby approved in the form submitted under said document number; and the same is hereby adopted as the official Municipal Code of The City of San Diego.

Section 2. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

Presented by \_\_\_\_\_

APPROVED as to form by J. F. Du PAUL, City Attorney,

00034

By Alain M. Luastano  
Deputy City Attorney.

I HEREBY CERTIFY that the money required for the appropriation made and/or indebtedness and/or obligation incurred by reason of the provisions of the foregoing ordinance is in the Treasury and that it is otherwise unencumbered.

Dated.....

Auditor and Comptroller of The City of San Diego, California

By..... Deputy.

Passed and adopted by the Council of the City of San Diego, California, this 22nd day of January, 1952, by the following vote, to-wit:

YEAS—Councilmen Swan, Wincote, Schneider, Kerrigan, Godfrey, Mayor Butler.

NAYS—Councilmen None.

ABSENT—Councilmen Dail.

*John D. Butler*  
Mayor of The City of San Diego, California.

FRED W. SICK

City Clerk of The City of San Diego, California.

(SEAL)

By *Donald L. Steinert* Deputy.

I HEREBY CERTIFY that, as to the foregoing ordinance, the provisions of Section 16 of the Charter of the City of San Diego requiring the reading of ordinances on two separate calendar days prior to passage, was, by a vote of not less than five members of the Council, dispensed with; and that said ordinance was by a vote of not less than five members of the Council put on its final passage at its first reading this 22nd day of January, 1952.

FRED W. SICK

City Clerk of The City of San Diego, California.

(SEAL)

By *Donald L. Steinert* Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until it had been read on two separate calendar days of the Council, to-wit: on the..... day of..... and on the..... day of.....

I, CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

(SEAL)

City Clerk of The City of San Diego, California.

Deputy.

FORM 1255

CHARLES G. ABDELNOUR, City Clerk

By *V. HAVIN* Deputy

Dated *3-4-54*

00035

ORDINANCE NO. 9016  
(New Series)

AN ORDINANCE AMENDING ARTICLE 3, CHAPTER VI,  
OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING  
SECTIONS 63.20, 63.20.2, 63.20.5 AND 63.20.12  
THEREOF, AND BY REPEALING SECTIONS 63.20.6,  
63.20.8 AND 63.20.15 THEREOF, RELATING TO  
BEACH AREAS AND ACTIVITIES THEREIN.

BE IT ORDAINED, by the Council of The City of San Diego,  
as follows:

Section 1. That Sections 63.20, 63.20.2, 63.20.5 and  
63.20.12 of Article 3, Chapter VI, of the San Diego Municipal  
Code, be, and the same are hereby amended to read as follows:

"SEC. 63.20 BEACH AREAS--AUTHORITY AND CONTROL--MEANING

(a) The Park and Recreation Department of The City  
of San Diego shall have jurisdiction and control over all  
beaches owned or controlled by The City of San Diego and  
all waters abutting or adjacent thereto within the limits  
of The City of San Diego, and of all lands heretofore and  
hereafter owned or controlled by the City, adjoining the  
waterfront of the Pacific Ocean and the waters of Mission  
Bay, and it shall be responsible for the control and man-  
agement of said beaches and lands, and waters abutting or  
adjacent thereto, and of the recreational activities thereon  
and therein.

(b) In the following sections dealing with the same  
subject, wherever the context thereof shall permit, the term  
'beach area' shall mean any beach or land and the waters  
abutting or adjacent thereto under the jurisdiction and con-  
trol of the Park and Recreation Department, as set forth in  
paragraph (a) of this section.

"SEC. 63.20.2 SAME--WATER ACTIVITY ZONES ESTABLISHED

(a) It is the intent and purpose of the Council of  
The City of San Diego in enacting this section to regulate  
and control such recreational water activities as bathing  
and swimming and board surfing in and upon the waters of

all beach areas.

(b) There are hereby established, in and upon the  
waters under the jurisdiction and control of the Park and  
Recreation Department, the following five water activity  
zones:

BATHING AND SWIMMING ZONE  
BOARD SURFING ZONE  
CONTROL ZONE  
NO BOARD SURFING ZONE  
CLOSED ZONE

The boundaries of each zone shall be as designated  
from time to time by resolution of the Council of The City  
of San Diego.

(c) Definitions:

- (1) 'Bathing and swimming' shall mean all bathing  
and swimming activities conducted in water  
except those activities which involve board  
surfing or those which involve the possession,  
control or use of a surfboard.
- (2) 'Surfboard' shall mean any rigid inflexible  
device upon which or with the use or aid of  
which a person can ride waves or be carried  
along or propelled by the action of the waves.
- (3) 'Board surfing' shall mean any activity which  
involves riding waves with the use or aid of  
a surfboard, or being carried along or being  
propelled by the action of the waves with the  
use or aid of a surfboard. To 'board surf'  
shall mean to do or engage in board surfing.

(d) Only bathing and swimming shall be permitted in a  
BATHING AND SWIMMING ZONE, and it shall be unlawful for any  
person to board surf in, or to possess, control or use a  
surfboard in, or to release or place a surfboard in, or to  
carry, throw or discharge a surfboard into, or to permit a  
surfboard to float, drift or be carried into, a BATHING AND  
SWIMMING ZONE.

(e) Only board surfing shall be permitted in a BOARD SURFING ZONE, and it shall be unlawful for any person to engage in bathing and swimming activities, except such as may be incidental to board surfing, in a BOARD SURFING ZONE.

(f) Board surfing shall be permitted in a CONTROL ZONE except during the hours of eleven o'clock a.m. and six o'clock p.m. daily. It shall be unlawful for any person to board surf in, or to possess, control or use a surfboard in, or to release or place a surfboard in, or to carry, throw or discharge a surfboard into, or to permit a surfboard to float, drift or be carried into, a CONTROL ZONE during the hours between eleven o'clock a.m. and six o'clock p.m. daily.

(g) It shall be unlawful for any person to board surf in a NO BOARD SURFING ZONE.

(h) It shall be unlawful for any person to board surf in, or to possess, control or use a surfboard in, or to release or place a surfboard in, or to carry, throw or discharge a surfboard into, or to permit a surfboard to float, drift or be carried into, or to engage in bathing and swimming activities in, a CLOSED ZONE.

(i) Signs giving notice of the applicable water activity zone, if any, shall be erected in appropriate places upon the beach or lands abutting or adjacent thereto. For each water activity zone, there shall be displayed upon the signs therefor notice as follows:

- (1) For a BATHING AND SWIMMING ZONE:  
BATHING AND SWIMMING ONLY--SURFBOARDS UNLAWFUL.
- (2) For a BOARD SURFING ZONE:  
BOARD SURFING ONLY--BATHING AND SWIMMING UNLAWFUL.
- (3) For a CONTROL ZONE:  
BOARD SURFING UNLAWFUL BETWEEN 11:00 A.M. AND 6:00 P.M.

(4) For a NO BOARD SURFING ZONE:  
BOARD SURFING UNLAWFUL.

(5) For a CLOSED ZONE:  
SURFBOARDS, SWIMMING AND BATHING UNLAWFUL.

"SEC. 63.20.5 SAME--WASTE, REFUSE, ETC.--FIRES

(a) It shall be unlawful for any person to leave, discard, deposit or throw away any glass container, tin can, waste food, papers or any other refuse or rubbish upon any beach area in The City of San Diego. All waste materials shall be deposited in trash cans or receptacles provided for that purpose.

(b) It shall be unlawful for any person to move, molest, turn over, remove, deface or knock down any trash can or receptacle placed in any beach area by the Park and Recreation Department.

(c) In any beach area where fire circles are provided, it shall be unlawful for any person to build a fire except in a fire circle or except as otherwise provided herein. It shall be permissible to build a fire in a portable barbecue or other similar device; provided, however, that any such barbecue or device shall not burn grass or landscaping, and provided further that the coals from said barbecue or device shall be removed from the beach or deposited in an official fire circle. Said fire circle shall be used only to build beach fires for cooking or warmth, and it shall be unlawful to use the same as an incinerator to burn rubbish and waste materials.

(d) It shall be unlawful for any person to abandon any fire upon any beach area without first having extinguished said fire. The ashes thereof, however, shall not be covered. All unburned wood, refuse or rubbish shall be removed or placed in trash cans or receptacles provided therefor, so that the beach is left in a clean, sanitary and presentable condition.

"SEC. 63.20.12 SAME--ANIMALS ON BEACH PROHIBITED--EXCEPTIONS

It shall be unlawful for any person to bring, leave, turn loose or allow to go, any animal in or upon any beach area in The City of San Diego, provided that this section shall not apply to dogs when fastened, or led by a chain or line not more than eight feet in length of suitable strength.

And further provided that no dogs shall be allowed in a BATHING AND SWIMMING ZONE, designated pursuant to Section 63.20.2, or upon any of the beaches or lands abutting or adjacent thereto."

Section 2. That Section 63.20.6, entitled "SAME--BATHING AND SWIMMING AREAS ESTABLISHED," Section 63.20.8, entitled "SAME--SURFBOARD AREAS ESTABLISHED," and Section 63.20.15, entitled "SAME--FIRE AND WASTE MATERIALS IN BATHING AND SWIMMING AREAS--PROHIBITED," all contained in Article 3, Chapter VI, of the San Diego Municipal Code, be, and the same are hereby repealed.

Section 3. A violation of any provision or the failure to comply with any of the requirements established by this ordinance shall constitute a misdemeanor. Any person convicted of such violation or such failure shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the City jail for a period of not more than six (6) months or by both fine and imprisonment. The provisions of Section 11.12 of the San Diego Municipal Code shall apply.

Section 4. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

Presented by Edward T. Butler  
 APPROVED: EDWARD T. BUTLER, City Attorney  
 By Robert S. Tease  
 Robert S. Tease, Chief Deputy

CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk  
 By V. HAVAN Deputy  
 Dated 3-4-64

RST:rijt  
 5/6/64

9016 -5-

Auditor and Comptroller of The City of San Diego, California

By \_\_\_\_\_ Deputy:

Passed and adopted by the Council of The City of San Diego on MAY 14 1964  
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Helen R. Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ivor de Kirby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Harry F. Scheidle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Hom	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jack Walsh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank E. Curran	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

Frank E. Curran  
 Mayor of The City of San Diego, California

(Seal)

**PHILIP ACKER**  
 City Clerk of The City of San Diego, California

By Ruth Klausner Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until six calendar days had elapsed between the day of its introduction and the day of its final passage, to-wit, on

MAY 7 1964 and on MAY 14 1964

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

**PHILIP ACKER**

City Clerk of The City of San Diego, California

(Seal)

By Ruth Klausner Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to-wit, said ordinance being of the kind and character authorized for passage on its introduction by Section 16 of the Charter.

I FURTHER CERTIFY that the final reading of said ordinance was in full.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

City Clerk of The City of San Diego, California

By \_\_\_\_\_ Deputy

RECEIVED  
 CITY CLERK'S OFFICE  
 154 MAY -6 PM 4:35  
 SAN DIEGO CALIFORNIA

Office of the City Clerk, San Diego, California

Document Number 670929 Filed MAY 13 1964

Ordinance Number 9016 Adopted MAY 14 1964

Goes into effect

Recorded on microfilm roll number:

FORM CC-1255  
 12-641

RESOLUTION NO. 186513

A RESOLUTION AMENDING RESOLUTION NO. 180140, RELATING TO THE BOUNDARIES OF WATER ACTIVITY ZONES, BY DESIGNATING A DESCRIBED AREA AS A CONTROL ZONE AND ADDING PARAGRAPH (1) TO THAT EFFECT.

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

That Resolution No. 180140 be, and the same is hereby amended by adding paragraph (1) as follows:

BATHING AND SWIMMING ZONE:

(1) The waters of the beach area between the westerly extension of a point approximately 45 feet north of the northerly line of Roseland Drive and the westerly extension of the southerly line of Avenida de la Playa.

Presented by [Signature]  
APPROVED: EDWARD T. BUTLER, City Attorney  
By [Signature]  
Louis M. Wolfsheimer, Deputy

MAR 3 1966

Passed and adopted by the Council of the City of San Diego on the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Helen R. Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ivar De Kirby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Harry F. Scheidle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Horn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jack Walsh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Nike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank E. Curran	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

FRANK E. CURRAN

Mayor of the City of San Diego, California

PHILIP ACKER

City Clerk of the City of San Diego, California

[Signature] Deputy

CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk  
By V. NANTAN Deputy  
Dated 3-1-66

RECEIVED  
CITY CLERK'S OFFICE  
1966 FEB 28 10:12:09  
SAN DIEGO, CALIF.

Office of the City Clerk, San Diego, California	
Document Number	696554 Filed MAR - 2 1966
Resolution Number	186513 Adopted MAR 3 - 1966



1. CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk  
BY V. HAVIN, Deputy

Dated 3-4-44

ORDINANCE No. 3727  
(New Series)

AN ORDINANCE REGULATING BATHING, SWIMMING, SURFBOARD RIDING, ROWING, BOATING AND BUILDING OF FIRES AND OTHER USES UPON THE BEACHES OF THE CITY OF SAN DIEGO; PROHIBITING THE DEPOSITING OF WASTE MATERIAL AND THE DRIVING OF MOTOR VEHICLES AND THE RIDING OF HORSES UPON SAID BEACHES, AND PROVIDING FOR A PENALTY FOR THE VIOLATION HEREOF, AND REPEALING ORDINANCES No. 233 (NEW SERIES), ADOPTED MAY 8, 1933; No. 1786 (NEW SERIES), ADOPTED MARCH 12, 1940; AND No. 2655 (NEW SERIES), ADOPTED MAY 11, 1943.

BE IT ORDAINED, By the Council of The City of San Diego, as follows:

Section 1. In order to promote the public peace, health and safety, and to provide for the public welfare, the Council hereby adopts certain rules and regulations governing and controlling swimming, surfboard riding, rowing, boating and the depositing of waste materials, building of fires, driving of motor vehicles and the riding of horses, and other uses upon the beaches and in certain portions of The City of San Diego.

Section 2. The Park and Recreation Department of The City of San Diego shall have jurisdiction, possession and control of all beach areas within the limits of The City of San Diego, including all lands heretofore and hereafter owned or controlled by the City, adjoining the waterfront of the Pacific Ocean, and shall be responsible for the control and management of said beach areas and the recreational activities thereon.

Section 3. It shall be the duty of the Park and Recreation Director to enforce the provisions of this Ordinance and in that behalf all and any employees of the Park and Recreation Department charged with the duty of maintaining peace, order and safety in said beach areas shall be and hereby are empowered to assist the police officers of The City of San Diego in the enforcement of the provisions of this ordinance including the power to make arrests for the violation hereof.

Section 4. It shall be unlawful for any person to bathe, swim, surfboard ride, row, canoe, or operate a sailboat or power boat or other device in the surf or adjacent waters there-to of the Pacific Ocean between the following described limits:

- (a) Between Asbury Court and Voltaire Street;
- (b) Between the westerly extension of the north line of Pueblo Lot 1337 and the westerly extension of the northerly line of Pueblo Lot 1298;

Section 5. It shall be unlawful for any person to bathe, swim, surfboard ride, row, canoe and/or operate a sailboat or power boat or other device on or upon water where warning signals have been placed except for the purpose of making a rescue.

Section 6. It shall be unlawful for any person to refuse to follow or comply with any lawful order, signal or other lawful direction of a lifeguard, or for any person without lawful authority to deface, injure, knock down or remove any sign or warning placed for the purpose of enforcing the provisions of this Ordinance, or for any person to deface, injure, knock down, break into or destroy or molest any lifeguard structure placed in said beach area by the Park and Recreation Department.

Section 7. It shall be unlawful for any person, firm or corporation to leave, discard, deposit or throw away any glass container, tin can, waste food, wood, papers or any other refuse or rubbish upon any beach area in The City of San Diego.

All waste materials shall be deposited in trash cans provided for that purpose. It shall be unlawful for any person, firm or corporation to move, molest, turn over, remove, deface or knock down any trash can or receptacle placed in any beach area by the Park and Recreation Department.

All fires are to be extinguished, the ashes shall not be covered and the unburned wood, refuse or rubbish to be removed

or placed in trash cans provided for that purpose, so that the beach is left in a clean, sanitary and presentable condition.

In those beach areas where fire circles have been provided by the Park and Recreation Department, all fires in that area must be confined to said fire circles.

Section 8. It shall be unlawful for any person, firm or corporation to build any fire or leave any waste materials in the following described beach areas, which areas are hereby designated as primarily BATHING AND SWIMMING AREAS:

(a) Between the westerly extension of the south line of Newport Avenue and the westerly extension of the north line of Capistrano Avenue;

(b) Between the westerly extension of a line parallel to the south line of San Fernando Place, which line shall be fixed at a point 400 feet south of the intersection of the life-guard station located in the Mission Beach Life-Guard Station and the westerly extension of the south line of Ventura Place;

(c) Between the westerly extension of the south line of Juniper Street and the westerly extension of the north line of Solon Court;

(d) Between the westerly extension of the north line of Grand Avenue and the westerly extension of the south line of Silver Street;

(e) Between the westerly extension of the south line of Diamond Street and the westerly extension of the north line of Lew Street;

(f) Between the westerly extension of the south line of Palomar Street and the westerly extension of the north line of Belvedere Street;

(g) That area known as the Shark de Marine Pool and being on the inside of the breakwater established at said point;

(h) That area being known and designated as the La Jolla Cove;

(i) Between the westerly extension of the South line of Vallecitos Avenue and the westerly extension of the north line of Escocote Avenue;

(j) Between the westerly extension of a line 100 yards south of the life-guard station at Torrey Pines Beach, and the westerly extension of the north line of a line 100 yards north of the said life-guard station.

Section 9. It shall be unlawful for any person, firm or corporation to row, canoe, sailboat and/or operate a power boat or other device in the vicinity of and within 100 feet of any bathers or swimmer in the above designated beach areas known primarily as bathing and swimming areas, except for the purpose of making a rescue, or for launching or beaching a boat in the area described in section 11 of this Ordinance.

Section 10. It shall be unlawful for any person, firm or corporation to ride a surfboard or other device in or near the vicinity of the above designated beach areas known primarily as bathing and swimming areas, except that it shall be lawful to surfboard ride in that area between the westerly extension of the south line of Palomar Street and the westerly extension of the north line of Belvedere Street, as set aside and marked by the Park and Recreation Department for the use of SURFBOARD RIDING exclusively.

Section 11. It shall be unlawful for any person, firm or corporation to drive or cause to be driven any motor vehicle, including motorcycles and motor-bikes and bicycles upon any beach in the City of San Diego excepting such motor vehicles as are on official business on behalf of The City of San Diego, and further excepting such motor vehicles as are being driven for the purpose of launching or beaching a boat upon that portion of the beach of The City of San Diego described as follows:

(e) Between the westerly extension of the south line of Avenida de la Playa and the westerly extension of the south line of Velocitos Street, for the purpose of either beaching or launching boats:

Section 12. It shall be unlawful for any person, firm or corporation to build any fire or leave any waste materials in the area described in paragraph (a) of section 11 of this ordinance.

Section 13. It shall be unlawful for any person, firm or corporation to camp, lodge, sleep or tarry overnight, or to erect, maintain, use or occupy upon any public beach in this city any tent, lodge, shelter or structure, unless the same shall have two sides thereof open and unless there shall be an unobstructed view into such lodge, structure, shelter or tent from the outside on at least two sides thereof.

Section 14. It shall be unlawful for any person, firm or corporation to bring, leave, turn loose or allow to go, any horse, cow, ox, sheep, goat, pig, swine, dog or fowl of any kind in or upon any beach area in The City of San Diego, provided that this section shall not apply to dogs when fastened, or led by a chain or line not more than eight feet in length of suitable strength.

And further provided that in those beach areas designated primarily as bathing and swimming areas in section 8 hereof, no dogs shall be allowed.

Section 15. It shall be unlawful for any person, firm or corporation within the limits of any beach areas of The City of San Diego to do any act or acts contrary to the rules established by the Park and Recreation Department, as approved by the City Manager for the use of said beach, provided however, that said rules shall be conspicuously posted in said beach area.

Section 16. Nothing in this ordinance shall be construed to prevent any employee of the Park and Recreation Department from doing anything that in the opinion of the City Manager or

of the Park and Recreation Director may be thought necessary and proper for the maintenance, improvement or betterment of said beach area, and further, that nothing herein contained shall be construed to prevent any employee or agent of The City of San Diego from doing any thing that in the opinion of the City Council may be thought necessary, proper for the best interests of The City of San Diego.

Section 17. That Ordinance No. 233 (New Series), adopted May 8, 1933; Ordinance No. 1786 (New Series), adopted March 12, 1940, and Ordinance No. 2655 (New Series), adopted May 11, 1943, be, and the same are hereby repealed.

Section 18. If any section, sub-section, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance. The City Council of The City of San Diego hereby declares that if would have passed the ordinance and each section, sub-section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases thereof, be declared invalid or unconstitutional.

Section 19. Any person, firm or corporation violating any provisions of this ordinance shall be guilty of a misdemeanor and shall be punishable by fine of not more than \$500.00 or by imprisonment in the city jail for a period of not more than six months or by both such fine and imprisonment.

Section 20. This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

Presented by J. F. DuPaul

APPROVED as  
to form by J. F. DuPAUL, City Attorney

By Wm. H. King  
Deputy City Attorney.

I HEREBY CERTIFY that the money required for the appropriation made and/or indebtedness and/or obligation incurred by reason of the provisions of the foregoing ordinance is in the Treasury, and that it is otherwise unencumbered.

Dated \_\_\_\_\_

Auditor and Comptroller of The City of San Diego, California.

By \_\_\_\_\_ Deputy.

Passed and adopted by the Council of the City of San Diego, California, this \_\_\_\_\_ & th \_\_\_\_\_ day of

May, 1948 \_\_\_\_\_, by the following vote, to-wit:

YEAS—Councilmen: Crary, Wincoats, Bless, Dorman, Dail, Godfrey

NAYS—Council men: None

ABSENT—~~Councilmen~~: Mayor Knox

(ATTEST):

Vice

FRED W. SICK

City Clerk of The City of San Diego, California.

(SEAL)

By Helen M. Willyg Deputy.

I HEREBY CERTIFY that as to the foregoing ordinance, the provisions of Section 18 of the Charter of the City of San Diego requiring the reading of ordinances on two separate calendar days prior to passage by a vote of not less than five members of the Council, dispensed with and that said ordinance was by a vote of not less than five members of the Council put on its final passage at its first reading on the \_\_\_\_\_ day of May, 1948.

I FURTHER CERTIFY that the final reading of such ordinance was in full.

I FURTHER CERTIFY that, prior to the final reading of such ordinance, a written or printed copy thereof was furnished to each member of the Council.

FRED W. SICK

City Clerk of The City of San Diego, California.

By Helen M. Willyg Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until it had been read on two separate calendar days of the Council, to-wit: on the \_\_\_\_\_ day of \_\_\_\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_.

I FURTHER CERTIFY that the final reading of such ordinance was in full.

I FURTHER CERTIFY that, prior to the final reading of such ordinance, a written or printed copy thereof was furnished to each member of the Council.

City Clerk of The City of San Diego, California.

By \_\_\_\_\_ Deputy.

MAY 10 2 5 PM '48

(11-2001)

**§63.20 Beach Areas — Authority and Control**

- (a) The Park and Recreation Department of The City of San Diego shall have jurisdiction and control over all beaches owned or controlled by The City of San Diego and all waters abutting or adjacent thereto within the limits of The City of San Diego, and of all lands heretofore and hereafter owned or controlled by the City, adjoining the waterfront of the Pacific Ocean and the waters of Mission Bay, and it shall be responsible for the control and management of said beaches and lands, and waters abutting or adjacent thereto, and of the recreational activities thereon and therein.
- (b) In the following sections dealing with the same subject, wherever the context thereof shall permit, the term "beach area" shall mean any beach or land and the waters abutting or adjacent thereto under the jurisdiction and control of the Park and Recreation Department, as set forth in paragraph (a) of this section.  
*(Retitled to "Beach Areas— Authority and Control" on 5-31-1994 by O-18073 N.S.)*

**§63.20.1 Authority to Enforce Provisions**

It is the duty of the Park and Recreation Director, as the City Manager's designee, to enforce the provisions of these sections; and all employees of the Park and Recreation Department charged with the duty of maintaining peace, order and safety in beach areas are empowered to assist the police officers of The City of San Diego in the enforcement of the provisions of these sections including the power to make arrests for the violation hereof.

Whenever a power is granted to, or a duty is imposed upon the Director, the power may be exercised, or the duty may be performed by the Park and Recreation Director, or any person the Director may designate for the enforcement of these regulations.  
*(Amended 5-31-1994 by O-18073 N.S.)*

**§63.20.2 Water Activity Zones Established**

- (a) It is the intent and purpose of the Council of The City in enacting this Section, 63.20.2, to regulate recreational water activities such as swimming, board surfing, and boat launching in and upon the waters and lands of all beach areas.
- (b) There are hereby established, in and upon the waters and beaches under the jurisdiction and control of the Park and Recreation Department, six (6) activity zones. Unless otherwise defined and with the exception of Closed

I, CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk  
By *Charles G. Abdelnour*, Deputy

(11-2001)

Zones, all activity zones shall extend one thousand (1,000) feet seaward from the mean high tide line. Boat Launch Zones shall also include the adjacent beach area. The six activity zones are as follows:

SWIMMING ZONE  
BOARD SURFING ZONE  
CONTROL ZONE  
NO BOARD SURFING ZONE  
CLOSED ZONE  
BOAT LAUNCH ZONE

The boundaries of each zone are designated from time to time by resolution of the Council of The City of San Diego. These boundaries notwithstanding, City of San Diego lifeguards may, due to weather, crowd conditions, special events, or other factors, alter the boundaries on any given day; and persons shall be notified of any change by signs, signals, verbal warnings or other means. A checkered flag may be posted on the boundary line between two activity zones and when so posted shall constitute due notification of said boundary whether it is the regular boundary fixed by resolution of the Council or a temporary change in the boundary made by lifeguards. Nothing in this Section, 63.20.2, empowers lifeguards to permanently change existing boundaries.

(c) Definitions:

- (1) "Bathing and swimming" shall mean all bathing and swimming activities conducted in water except those activities which involve board surfing or those which involve the possession, control or use of a surfboard.
- (2) "Surfboard" shall mean any noninflated device upon which or with the use or aid of which a person can ride waves or be carried along or propelled by the action of the waves.
- (3) "Board surfing" shall mean any activity which involves riding waves with the use or aid of a surfboard, or being carried along or being propelled by the action of the waves with the use or aid of a surfboard. To "board surf" shall mean to do or engage in board surfing.

- (d) Only bathing and swimming are permitted in a SWIMMING ZONE, and it is unlawful for any person to board surf in, or to possess, control, release, place,

(11-2001)

carry, throw, or discharge a surfboard into, or to permit a surfboard to float, drift or be carried into, a SWIMMING ZONE.

- (e) Only board surfing is permitted in a BOARD SURFING ZONE, and it is unlawful for any person to engage in bathing and swimming activities, except as may be incidental to board surfing, in a BOARD SURFING ZONE.
- (f) The following regulations shall be in effect in any area designated as a CONTROL ZONE beginning on the second Saturday in June and extending through the first Sunday after Labor Day of each year:
  - (1) It is unlawful for any person to wade, bathe, swim, surfmat, or engage in any activities incidental to bathing or swimming activities, except those incidental to board surfing in a CONTROL ZONE, prior to eleven (11:00) o'clock a.m. and after six (6:00) o'clock p.m. daily.
  - (2) It is unlawful for any person to board surf in, to possess, control, release, place, carry, throw, or discharge a surfboard into, or to permit a surfboard to float, drift, or be carried into a CONTROL ZONE during the hours between eleven (11:00) o'clock a.m. and six (6:00) o'clock p.m. daily.
- (g) It is unlawful for any person to board surf in a NO BOARD SURFING ZONE or to ride or attempt to ride waves with the use of aid of any other object, except swim fins.
- (h) It is unlawful for any person to board surf in, or to possess, control, use or permit a surfboard to float, drift or be carried into, or to engage in bathing and swimming activities in, a CLOSED ZONE or BOAT LAUNCH ZONE.

*(Amended 5-31-1994 by O-18073 N.S.)*

### §63.20.3 Warning Signals

- (a) It is unlawful for any person to bathe, swim, surfboard ride, row, canoe, or operate a sailboat or power boat or other device on or upon water when warning signals have been placed on or upon said water or the adjacent beach area except for the purpose of making a rescue.

(7-2002)

- (b) It is unlawful for any person to operate a vessel, as defined in the California Harbors and Navigation Code, or a windsurfer, sailboard, or similar device within a swimming area which has been marked by means of buoys or to operate same within one hundred (100) feet of such area at a speed in excess of five (5) miles per hour.

*(Retitled to "Warning Signals" and amended 5-31-1994 by O-18073 N.S.)*

#### §63.20.4 Compliance

It is unlawful for any person to refuse to follow or comply with any lawful order, signal, or other direction of a lifeguard, or to knowingly provide false information to a lifeguard, or for any person without lawful authority to deface, injure, knock down or remove any sign or warning placed for the purpose of enforcing the provisions of Chapter VI, Article 3.

*(Retitled to "Compliance" and amended 5-31-1994 by O-18073 N.S.)*

#### §63.20.5 Waste, Refuse, Fires

- (a) It is unlawful for any person to leave, discard, deposit, or throw away any glass container, tin can, waste food, papers, or any refuse or rubbish upon any beach area in the City of San Diego. All waste materials shall be deposited in trash cans or receptacles provided for that purpose.
- (b) It is unlawful for any person to move, rummage through, turn over, remove, deface, or knock down any trash can or receptacle placed in any beach area by the City.
- (c) It is unlawful for any person to build, maintain, use, or be within ten (10) feet of a fire on any public beach that is not in a City-provided fire container. Fires may be built using fire materials limited to charcoal, clean wood, or paper products, none of which contains landscape debris, paint, stain, sealer, wood preservative, cloth, rubber, metal (including nails and other hardware), asphalt, foam rubber, plastic, or any similar matter or material producing noxious fumes, odors, smoke, or leaving any type of solid residue other than ash. Fire materials shall not exceed a height of more than twelve (12) inches above the upper edge of the fire container and must be wholly contained within the inside edge of the fire container. It is permissible to build a fire on a public beach in a portable barbecue or other similar device using fuel material authorized in Section 63.20.5(c). Coals from any portable barbecue or similar device shall either be removed from the beach area or be deposited in a City-provided fire container or designated hot coal container provided on the



RESOLUTION NO. 180140

RESOLUTION DESIGNATING THE BOUNDARIES  
OF THE WATER ACTIVITY ZONES.

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

That, pursuant to Section 63.20.2(b) of the San Diego  
Municipal Code, the boundaries of the water activity zones are  
designated as follows:

1. BATHING AND SWIMMING ZONE:

- (a) The waters of the beach area between the westerly extension of the northerly line of Santa Monica Avenue and the westerly extension of the southerly line of Brighton Avenue.
- (b) The waters of the beach area between the westerly extension of the southerly line of San Gabriel Place and the westerly extension of a line parallel to and 200 feet south of the westerly extension of the southerly line of Ventura Place.
- (c) The waters of the beach area between the westerly extension of the southerly line of Niantic Court and the westerly extension of the southerly line of Redondo Court.
- (d) The waters of the beach area between the westerly extension of the northerly line of Oliver Avenue and the westerly extension of the northerly line of Hornblend Street.
- (e) The waters of the beach area between the westerly extension of the southerly line of Palomar Street and the westerly extension of the southerly line of Playa del Sur.
- (f) The waters of that area known as Childrens Pool and being on the inside of the breakwater established at said point.

- (g) The waters of that area known and designated as La Jolla Cove.
- (h) The waters of the beach area between the westerly extension of the southerly line of Vallecitos Avenue and the La Jolla Shores lifeguard station.

2. BOARD SURFING ZONE:

- (a) The waters of the beach area between the westerly extension of the southerly line of Niagara Avenue and the westerly extension of the southerly line of Santa Monica Avenue.
- (b) The waters of the beach area between the westerly extension of the northerly line of Brighton Avenue and the jetty separating the Mission Bay Channel entrance from the San Diego River Flood Control Channel.
- (c) The waters of the beach area between the north jetty of the Mission Bay Channel entrance and the westerly extension of the southerly line of Avalon Court.
- (d) The waters of the beach area between the westerly extension of a line parallel to and 100 feet south of the westerly extension of the southerly line of Ventura Place and the westerly extension of the southerly line of Jamaica Court.
- (e) The waters of the beach area between the westerly extension of the southerly line of Zanzibar Court and the westerly extension of the southerly line of Oliver Avenue.
- (f) The waters of the beach area between the westerly extension of the southerly line of Law Street and a point 1000 feet northerly of the Tourmaline Canyon storm drain.
- (g) The waters of the beach area between the westerly

extension of the northerly line of Playa del Sur and the westerly extension of the southerly line of Westbourne Street.

- (h) The waters of the beach area between a point 100 feet northerly of the La Jolla Shores lifeguard station and the northerly end of the sea wall near Calle Opima.

3. CONTROL ZONE:

- (a) The waters of the beach area between the westerly extension of the southerly line of Avalon Court and the westerly extension of the southerly line of San Gabriel Place.

- (b) The waters of the beach area between the westerly extension of the southerly line of Jamaica Court and the westerly extension of the southerly line of Niantia Court.

- (c) The waters of the beach area between the westerly extension of the southerly line of Redondo Court and the westerly extension of the southerly line of Zanzibar Court.

- (d) The waters of the beach area between the westerly extension of the southerly line of Felápar Street and the westerly extension of the southerly line of Law Street.

4. NO BOARD SURFING ZONE:

- (a) The waters of the beach area between Childrens Pool and Goldfish Point, excepting therefrom the waters of La Jolla Cove, which are a BATHING AND SWIMMING ZONE.

5. CLOSED ZONE:

- (a) The waters of the beach area between the westerly extension of the southerly line of Santa Monica Avenue and the westerly extension of the northerly

line of Santa Monica Avenue.

- (b) The waters of the beach area between the westerly extension of the southerly line of Brighton Avenue and the westerly extension of the northerly line of Brighton Avenue.

- (c) The waters of the beach area between the westerly extension of a line parallel to and 200 feet south of the westerly extension of the southerly line of Ventura Place, and the westerly extension of a line parallel to and 100 feet south of the westerly extension of the southerly line of Ventura Place.

- (d) The waters of the beach area between the westerly extension of the southerly line of Oliver Avenue and the westerly extension of the northerly line of Oliver Avenue.

- (e) The waters of the beach area between the westerly extension of the northerly line of Hornblend Street and the westerly extension of the southerly line of Felápar Street.

- (f) The waters of the beach area between the westerly extension of the southerly line of Playa del Sur and the westerly extension of the northerly line of Playa del Sur.

- (g) The waters of the westerly extension of that area 100 feet wide extending northerly from the north side of the La Jolla Shores lifeguard station.

Presented by J. M. Butler

APPROVED: EDWARD T. BUTLER, City Attorney

By Robert S. Teaze  
Robert S. Teaze, Chief Deputy

RST:rit  
5/22/64  
Rev. 5/27/64

180140

180140

Passed and adopted by the Council of The City of San Diego on MAY 28 1964,  
by the following vote:

Councilman	Yeas	Nays	Excused	Absent
Helen R. Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon de Kirby	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Harry P. Scheffle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hinch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Horn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jack Walsh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mayor Frank E. Chiles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AUTHENTICATED BY:

*Leon de Kirby*

Deputy Mayor of The City of San Diego, California

PHILIP ACKER

City Clerk of The City of San Diego, California

By *W. H. ...* Deputy

(Seal)

RECEIVED  
 CITY CLERK'S OFFICE  
 MAY 28 1964  
 SAN DIEGO, CALIFORNIA

Office of the City Clerk, San Diego, California	
672103	File JUN 15 1964
Resolution 180140	Adopted MAY 28 1964
Recorded on microfilm roll number: _____	

FORM CC-1276 (11-62)

CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk

By *V. H. ...* Deputy

Dated 3-11-64

ORDINANCE NUMBER O-18973 (NEW SERIES)

ADOPTED ON MAY 31 1994

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 63.15.1, 63.15.2, 63.15.3, 63.15.4, 63.15.5, 63.15.6, 63.15.7, 63.15.8, 63.15.9, 63.15.10, 63.15.11, 63.15.12, 63.15.13, 63.15.14, 63.15.15., 63.15.16, 63.15.17, 63.15.18, 63.15.19, 63.15.20, 63.15.21, 63.15.22, 63.15.23, 63.15.24, 63.15.25, 63.15.26, 63.15.27, 63.15.28, 63.15.29, 63.15.30, 63.15.31, 63.15.32, 63.15.33, 63.15.34, 63.15.35, 63.15.36, 63.15.37, 63.15.38, 63.15.39, 63.15.40, 63.15.41, 63.15.42, 63.15.43, 63.15.44, 63.15.45, 63.15.46, 63.15.47, 63.15.48, 63.15.49, 63.15.50, 63.15.51, 63.15.52, 63.15.53, 63.15.54, 63.15.55, 63.15.56, 63.15.57, 63.15.58, 63.15.59, 63.15.60, 63.15.61, 63.15.62, 63.15.63, 63.15.64, 63.15.65, 63.15.66, 63.15.67, 63.15.68, 63.15.69, 63.15.70, 63.17, 63.17.1, 63.17.2, 63.17.3, 63.17.4, 63.17.5, 63.17.6, 63.17.7, 63.17.8, 63.17.9, 63.17.10, 63.17.11, 63.17.12, 63.17.13, 63.17.14, 63.17.15, 63.17.16, 63.18, 63.20.25, 63.20.27, 63.25.8, 63.25.9, 63.25.10, 63.25.15, 63.25.16, 63.25.21, 63.25.23, 63.25.27, 63.25.32, 63.25.33, 63.25.34, 63.25.35, 63.25.36, 63.25.37, 63.25.38, 63.25.39, 63.25.40, 63.25.41, 63.25.44, 63.25.46, 63.25.48, 63.25.49, 63.25.60, 63.25.63, 63.25.64, 63.25.65, 63.25.66 AND 63.25.69; BY AMENDING SECTIONS 63.20, 63.20.1, 63.20.2, 63.20.3, 63.20.4, 63.20.5, 63.20.6 AND 63.20.7; BY RETITLING SECTION 63.20.8; BY AMENDING SECTIONS 63.20.9, 63.20.10, AND 63.20.11; BY RETITLING SECTION 63.20.12; BY AMENDING SECTIONS 63.20.13, 63.20.14, 63.20.15, 63.20.18, 63.20.19, 63.20.20, 63.20.21; 63.20.22 AND 63.20.23; BY ADDING SECTION 63.20.24; BY AMENDING SECTIONS 63.25, 63.25.1 AND 63.25.2; BY RETITLING SECTION 63.25.3; BY AMENDING SECTIONS 63.25.4, 63.25.5, 63.25.6, 63.25.7, 63.25.11, 63.25.12, 63.25.13, 63.25.14 AND 63.25.17; BY RETITLING SECTION 63.25.18; BY AMENDING SECTIONS 63.25.19, 63.25.20, 63.25.22, 63.25.24, 63.25.25, 63.25.26, 63.25.28, 63.25.29, 63.25.30, 63.25.31 AND 63.25.43; BY RETITLING SECTION 63.25.45; BY AMENDING SECTION 63.25.47; BY RETITLING SECTIONS 63.25.50, 63.25.51 AND 63.25.52; BY AMENDING SECTIONS 63.25.53 AND 63.25.54; BY RETITLING SECTION 63.25.55; AND BY AMENDING SECTIONS 63.25.56, 63.25.57, 63.25.58, 63.25.59, 63.25.61, 63.25.62, 63.25.67, 63.25.68, 63.25.71, 63.25.72 AND 63.25.73; ALL RELATING TO MUNICIPAL RECREATION FACILITIES.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Corrected 5/26/94

Section 1. That Chapter VI, Article 3, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 63.15.1, Section 63.15.2, Section 63.15.3, Section 63.15.4, Section 63.15.5, Section 63.15.6, Section 63.15.7, Section 63.15.8, Section 63.15.9, Section 63.15.10, Section 63.15.11, Section 63.15.12, Section 63.15.13, Section 63.15.14, Section 63.15.15, Section 63.15.16, Section 63.15.17, Section 63.15.18, Section 63.15.19, Section 63.15.20, Section 63.15.21, Section 63.15.22, Section 63.15.23, Section 63.15.24, Section 63.15.25, Section 63.15.26, Section 63.15.27, Section 63.15.28, Section 63.15.29, Section 63.15.30, Section 63.15.31, Section 63.15.32, Section 63.15.33, Section 63.15.34, Section 63.15.35, Section 63.15.36, Section 63.15.37, Section 63.15.38, Section 63.15.39, Section 63.15.40, Section 63.15.41, Section 63.15.42, Section 63.15.43, Section 63.15.44, Section 63.15.45, Section 63.15.46, Section 63.15.47, Section 63.15.48, Section 63.15.49, Section 63.15.50, Section 63.15.51, Section 63.15.52, Section 63.15.53, Section 63.15.54, Section 63.15.55, 63.15.56, Section 63.15.57, Section 63.15.58, Section 63.15.59, Section 63.15.60, Section 63.15.61, Section 63.15.62, Section 63.15.63, Section 63.15.64, Section 63.15.65, Section 63.15.66, Section 63.15.67, Section 63.15.68, Section 63.15.69, Section 63.15.70, Section 63.17, Section 63.17.1, Section 63.17.2, Section 63.17.3, Section 63.17.4, Section 63.17.5, Section 63.17.6, Section 63.17.7, Section 63.17.8, Section 63.17.9, Section 63.17.10, Section 63.17.11, Section 63.17.12, Section 63.17.13, Section 63.17.14, Section 63.17.15, Section 63.17.16, Section 63.18, Section 63.20.25, Section 63.20.27, Section 63.25.8, Section 63.25.9, Section 63.25.10, Section 63.25.15, Section 63.25.16,

Section 63.25.21, Section 63.25.23, Section 63.25.27, Section 63.25.32, Section 63.25.33, Section 63.25.34, Section 63.25.35, Section 63.25.36, Section 63.25.37, Section 63.25.38, Section 63.25.39, Section 63.25.40, Section 63.25.41, Section 63.25.44, Section 63.25.46, Section 63.25.48, Section 63.25.49, Section 63.25.60, Section 63.25.63, Section 63.25.64, Section 63.25.65, Section 63.25.66, and Section 63.25.69.

Section 2. That Chapter VI, Article 3, of the San Diego Municipal Code is hereby amended to read as follows:

**SEC. 63.20 BEACH AREAS -- AUTHORITY AND CONTROL**

(a) The Park and Recreation Department of The City of San Diego shall have jurisdiction and control over all beaches owned or controlled by The City of San Diego and all waters abutting or adjacent thereto within the limits of The City of San Diego, and of all lands heretofore and hereafter owned or controlled by the City, adjoining the waterfront of the Pacific Ocean and the waters of Mission Bay, and it shall be responsible for the control and management of said beaches and lands, and waters abutting or adjacent thereto, and of the recreational activities thereon and therein.

(b) In the following sections dealing with the same subject, wherever the context thereof shall permit, the term "beach area" shall mean any beach or land and the waters abutting or adjacent thereto under the jurisdiction and control of the Park and Recreation Department as set forth in paragraph (a) of this section.

**SEC. 63.20.1 AUTHORITY TO ENFORCE PROVISIONS**

It is the duty of the Park and Recreation Director, as the City Manager's designee, to enforce the provisions of these sections; and all employees of the Park and Recreation Department charged with the duty of maintaining peace, order and safety in beach areas are empowered to assist the police officers of The City of San Diego in the enforcement of the provisions of these sections including the power to make arrests for the violation hereof. Whenever a power is granted to, or a duty is imposed upon the Director, the power may be exercised, or the duty may be performed by the Park and Recreation Director, or any person the Director may designate for the enforcement of these regulations.

**SEC. 63.20.2 WATER ACTIVITY ZONES ESTABLISHED**

(a) It is the intent and purpose of the Council of The City in enacting this Section, 63.20.2, to regulate recreational water activities such as swimming, board surfing, and boat launching in and upon the waters and lands of all beach areas.

(b) There are hereby established, in and upon the waters and beaches under the jurisdiction and control of the Park and Recreation Department, six (6) activity zones. Unless otherwise defined and with the exception of Closed Zones, all activity zones shall extend one thousand (1,000) feet seaward from the mean high tide line. Boat Launch Zones shall also include the adjacent beach area. The six activity zones are as follows:

SWIMMING ZONE

BOARD SURFING ZONE

CONTROL ZONE

NO BOARD SURFING ZONE

CLOSED ZONE

BOAT LAUNCH ZONE

The boundaries of each zone are designated from time to time by resolution of the Council of The City of San Diego. These boundaries notwithstanding, City of San Diego lifeguards may, due to weather, crowd conditions, special events, or other factors, alter the boundaries on any given day; and persons shall be notified of any change by signs, signals, verbal warnings or other means. A checkered flag may be posted on the boundary line between two activity zones and when so posted shall constitute due notification of said boundary whether it is the regular boundary fixed by resolution of the Council or a temporary change in the boundary made by lifeguards. Nothing in this Section, 63.20.2, empowers lifeguards to permanently change existing boundaries.

(c) Definitions:

(1) "Bathing and Swimming" shall mean all bathing and swimming activities conducted in water except those activities which involve board surfing or those which involve the possession, control or use of a surfboard.

(2) "Surfboard" shall mean any noninflated device upon which or with the use or aid of which a

person can ride waves or be carried along or propelled by the action of the waves.

(3) "Board surfing" shall mean any activity which involves riding waves with the use or aid of a surfboard, or being carried along or being propelled by the action of the waves with the use or aid of a surfboard. To "board surf" shall mean to do or engage in board surfing.

(d) Only bathing and swimming are permitted in a SWIMMING ZONE, and it is unlawful for any person to board surf in, or to possess, control, release, place, carry, throw, or discharge a surfboard into, or to permit a surfboard to float, drift or be carried into, a SWIMMING ZONE.

(e) Only board surfing is permitted in a BOARD SURFING ZONE, and it is unlawful for any person to engage in bathing and swimming activities, except as may be incidental to board surfing, in a BOARD SURFING ZONE.

(f) The following regulations shall be in effect in any area designated as a CONTROL ZONE beginning on the second Saturday in June and extending through the first Sunday after Labor Day of each year:

(1) It is unlawful for any person to wade, bathe, swim, surfmat, or engage in any activities incidental to bathing or swimming activities, except those incidental to board surfing in a CONTROL ZONE, prior to eleven (11:00) o'clock a.m. and after six (6:00) o'clock p.m. daily.

(2) It is unlawful for any person to board surf in, to possess, control, release, place, carry, throw or discharge a surfboard into, or to permit a surfboard to float, drift, or be carried into a CONTROL ZONE during the hours between eleven (11:00) o'clock a.m. and six (6:00) o'clock p.m. daily.

(g) It is unlawful for any person to board surf in a NO BOARD SURFING ZONE or to ride or attempt to ride waves with the use or aid of any other object, except swim fins.

(h) It is unlawful for any person to board surf in, or to possess, control, use or permit a surfboard to float, drift or be carried into, or to engage in bathing and swimming activities in, a CLOSED ZONE or BOAT LAUNCH ZONE.

#### SEC. 63.20.3 WARNING SIGNALS

(a) It is unlawful for any person to bathe, swim, surfboard ride, row, canoe, or operate a sailboat or powerboat or other device on or upon water when warning signals have been placed on or upon said water or the adjacent beach area except for the purpose of making a rescue.

(b) It is unlawful for any person to operate a vessel, as defined in the California Harbors and Navigation Code, or a windsurfer, sailboard, or similar device within a swimming area which has been marked by means of buoys or to operate same within one hundred (100) feet of such area at a speed in excess of five (5) miles per hour.

#### SEC. 63.20.4 COMPLIANCE

It is unlawful for any person to refuse to follow or comply with any lawful order, signal, or other direction of a lifeguard, or to knowingly provide false information to a lifeguard, or for any person without lawful authority to deface, injure, knock down, or remove any sign or warning placed for the purpose of enforcing the provisions of Chapter VI, Article 3.

#### SEC. 63.20.5 WASTE, REFUSE, FIRES

(a) It is unlawful for any person to leave, discard, deposit, or throw away any glass container, tin can, waste food, papers, or any refuse or rubbish upon any beach area in the City of San Diego. All waste materials shall be deposited in trash cans or receptacles provided for that purpose.

(b) It is unlawful for any person to move, rummage through, turn over, remove, deface, or knock down any trash can or receptacle placed in any beach area by the City.

(c) It is unlawful for any person to build, maintain, use, or be within ten (10) feet of a fire on any public beach that is not in a City-provided fire container. Fires may be built using fire materials limited to charcoal, wood, or paper products, none of which contains landscape debris, cloth, rubber, metal, asphalt, foam rubber, plastic, or any similar matter or material producing noxious fumes, odors, smoke, or leaving any type of solid residue other than ash.

Fire materials shall not exceed a height of more than twelve (12) inches above the upper edge of the fire container and must be wholly contained within the inside edge of the fire container. It is permissible to build a fire on a public beach in a portable barbecue or other similar device using fuel material authorized in Section 63.20.5(c). Coals from any portable barbecue or similar device shall either be removed from the beach area or be deposited in a City-provided fire container or designated hot coal container provided on the beach for such purposes.

(d) It is unlawful to use a City-provided fire container for any purpose other than the building of fires for cooking or warmth or for the deposit of coals.

(e) It is unlawful for any person to possess or use any container made of glass upon any beach or adjacent sidewalk area in the City of San Diego.

(f) It is unlawful for any person who has built, maintained, used, or been within ten (10) feet of a fire on the beach, to abandon the fire until all ignited fire fuel material has been exhausted or extinguished. Sand, dirt, or similar material shall not be employed as an extinguishing material. Extinguished ashes shall not be covered but may be left in fire containers. All unused fire material must be removed from the beach and the adjacent public areas of the beach or park. All refuse or rubbish adjacent to the fire container must be

removed from the beach or placed in trash receptacles provided for such purpose, so that the beach is left in a clean, sanitary, and presentable condition.

**SEC. 63.20.6 CERTAIN LIFEGUARDS DESIGNATED HARBOR POLICE**

(a) Purpose and Intent. It is the purpose and intent of the City Council in enacting Section 63.20.6 that certain City lifeguards who are regularly employed and paid for duties performed in Mission Bay which are commonly performed by Harbor Police, be designated by the City as Boating Safety Unit members. "Boating Safety Unit" means a unit of the lifeguard service, which, in addition to regular lifeguard functions, is responsible for functions similar to those performed by Harbor Police.

(b) Those lifeguards designated as Boating Safety Unit members, who enforce laws of The State of California and The City of San Diego which pertain to boating, are designated as Harbor Police; are declared to be regularly employed and paid as such; and are authorized and empowered to act as Harbor Police while on duty in the beach area.

(c) Those lifeguards designated as Harbor Police are peace officers as defined in Section 830.33 of the California Penal Code; however, they are not peace officers for the purposes of California Penal Code sections 171c, 171d or 12027 which deal with the possession of firearms.



**SEC. 63.20.7 DRIVING VEHICLES ON BEACH PROHIBITED;  
EXCEPTIONS; SPEED LIMIT ON BEACH**

(a) Except as permitted by the Director and except as specifically permitted on Fiesta Island in Mission Bay, no person may drive or cause to be driven any motor vehicle as defined in the California Vehicle Code on any beach, any sidewalk or turf adjacent thereto; provided, however, that motor vehicles which are being actively used for the launching or beaching of a boat may be operated across a beach area designated as a boat launch zone.

(b) The driver of any vehicle operated under the authority of this Section, 63.20.7, shall use extraordinary care and shall at all times limit the speed of the vehicle to five (5) miles per hour or less.

(c) This Section, 63.20.7, does not apply to vehicles operated by governmental employees in the discharge of official duties.

**SEC. 63.20.8 LIFEGUARDS AUTHORIZED TO ENFORCE  
STATE AND LOCAL CODES -- ARRESTS  
AND CITATIONS**

[No change to text.]

**SEC. 63.20.9 BOAT BEACHING AREAS AND BOAT  
LAUNCHING ZONES, BEACHING PROHIBITED  
ELSEWHERE**

The Director may designate any beach area or portion thereof as an area which may be used for the purpose of beaching or launching boats, and may establish and collect fees for the use of such boat beaching or launching areas, subject to the approval of the City Council.

Such provisions shall be effective when signs are posted in such areas giving notice of such designation and fees. No boat or vessel, excepting inflatable boats which are not propelled by machinery, may be launched or retrieved from any beach area in the City except in a designated boat beaching area or boat launch zone. Boats or vessels in distress are exempted from the foregoing provided there is a verifiable emergency immediately threatening persons or property and provided the boat or vessel can reach the shore without further threatening the safety of other persons or property. The burden of proof that an emergency exists or existed rests with the owner and pilot or person in command of the boat or vessel.

**SEC. 63.20.10 REGULATIONS FOR USE OF BOAT LAUNCH AREAS**

(a) Boat launch zones are intended exclusively for the purpose of the expeditious launching and retrieval of boats and vessels. It is unlawful for any person to remain in or to interfere with the lawful launching or retrieval of boats and vessels in boat launch zones. Legally registered vehicles, including trailers, used for launching or retrieving boats or vessels shall not be obstructed. Vehicles shall not be left unattended in a boat launch zone and shall not be parked for periods in excess of five (5) minutes.

(b) It is unlawful for any person to allow a vessel to be anchored, parked or left in a boat launch zone for any period in excess of fifteen (15) consecutive minutes and a total of (30) thirty minutes on any given day.

(c) Repeated beaching and launching which would tend to obstruct beaching or launching by others is prohibited. In enforcing this Section, 63.20.10, enforcement personnel shall consider the attendance level at the time of the violation and shall not issue a notice of violation until a verbal warning has been issued and there has been lack of compliance.

**SEC. 63.20.11 CAMPING, SLEEPING OVERNIGHT PROHIBITED**

Unless specifically authorized by license or lease from the City, it is unlawful for any person, to remain overnight, or to erect, maintain, use, or occupy any tent, lodge, shelter, or structure on any public beach in this City, unless the tent, lodge, shelter, or structure has two sides open and there is an unobstructed view of the interior from the outside on at least two sides.

**SEC. 63.20.12 DOGS PROHIBITED**

[No changes in text.]

**SEC. 63.20.13 RULES TO BE FOLLOWED; POSTING**

It is unlawful for any person, firm or corporation within the limits of any beach areas of The City of San Diego to do any act or acts contrary to the rules established by the Director for the use of the beach area, provided, however, that the rules shall be conspicuously posted in the beach area.

**SEC. 63.20.14 EMPLOYEE EXCEPTIONS**

[No changes in text.]

**SEC. 63.20.15 VESSEL SPEED**

It is unlawful for any person in command of any vessel to use it or permit it to be used at a speed in excess of five (5) miles per hour within one thousand (1,000) feet of the mean high tide line of the Pacific Ocean adjacent to the shoreline on the City of San Diego, with the following exceptions:

(a) Vessels using a marked channel or boat launch area, designated by the City, the State, or the Federal Government, may travel at the speed designated for that area.

(b) Persons licensed by the State of California for commercial fishing may travel within one thousand (1,000) feet of shore at speeds in excess of five (5) miles per hour while actively engaged in commercial fishing, provided, however, said persons must use extraordinary care to avoid injury to persons or property when operating a vessel at such speed in that area.

(c) Surfboards with sails attached, commonly known as sailboards, may exceed five (5) miles per hour while using areas designated for surfing, pursuant to the relevant sections of the San Diego Municipal Code.

(d) Employees of governmental agencies are exempt from this Section, 63.20.15, while acting in the course of their official duties.

(e) This Section, 63.20.15, shall not apply to Mission Bay or San Diego Bay.

**SEC. 63.20.18 FISHING SPEARS REGULATED**

It is unlawful for any person to carry a fishing spear gun in a cocked or armed position on any public swimming area or within fifty (50) feet of a swimmer in the water or in any area where swimmers are present. All spears, barbs, prongs, and similar implements shall be sheathed, covered, or removed. A spear gun or similar instrument shall be deemed cocked or armed unless it shall be in a harmless condition and incapable of projecting spears, barbs, or prongs.

**SEC. 63.20.19 WEAPONS, FIREARMS PROHIBITED**

It is unlawful for any unauthorized person to carry, display, or fire any weapon, gun, or firearm on any beach or waters adjacent thereto or in Mission Bay Park.

**SEC. 63.20.20 SALE OR RENTAL OF MERCHANDISE, GOODS, PROPERTY, ETC. PROHIBITED; EXCEPTIONS**

It is unlawful for any person, firm or corporation to attempt to carry on or to carry on any commercial operation, to rent or sell merchandise of any kind, or to beach or moor any vessel for the purpose of displaying it for rental or sale, in any beach area, as defined in Section 63.20, including Mission Bay Park, unless licensed or otherwise specifically permitted to do so by the Director. This is specifically intended to include a commercial operation which involves delivering merchandise, a rental item, or a service to a beach area whether or not a financial transaction takes place within the beach area. Lessees and others who carry on a

commercial operation under the terms of a formal agreement with the City are exempt from this section. Commercial fishers are permitted to use beach areas provided that their activity does not interfere with recreation.

If advertising of any kind, other than incidental advertising permanently affixed to the side of a vehicle, is displayed in the beach area, it shall constitute prima facie evidence that the actions of the person or persons, firm or corporation responsible for introducing said advertising within the beach area violate this section.

Persons convicted of this offense shall be punished by the following minimum fines:

First offense -- \$50.00

Second offense -- \$300.00

Third and future offenses -- \$700.00

**SEC. 63.20.21 TAMPERING WITH BOATS OR OTHER PROPERTY PROHIBITED**

It is unlawful for any unauthorized person to mar, destroy, or move any boat or public or private property on any beach or waters adjacent thereto or in Mission Bay Park.

**SEC. 63.20.22 ABANDONING BOATS AND OTHER PROPERTY PROHIBITED, MOORING AND ANCHORAGE REGULATED**

(a) Except as otherwise permitted by this Code and except as may be permitted by the Director, it is unlawful:

(1) To allow vessels, boats, vehicles, or trailers to remain unattended in any beach area, including the waters thereof and Mission Bay Park.

(2) To moor or anchor any vessel, or for the owner thereof to allow it to be moored or anchored, whether occupied or unoccupied, between the hours of ten (10:00) o'clock p.m. and seven (7:00) o'clock a.m. in any area of Mission Bay Park.

(b) Any vessel, boat, vehicle or trailer left in violation of Section 63.20.22(a) may be removed by the Director without notice and any cost of removal and storage of said property may be recovered by The City of San Diego from the owner or any other person responsible for a violation of this Section, 63.20.22. Nothing herein shall prevent impounding of a vessel as may be authorized by the California Harbors and Navigation Code or by this Code.

(c) Upon impounding a boat or vessel under the authority of Subsection 63.20.22(b), the Director shall, within ten (10) days of the impounding, send a registered letter to the owner of record advising of the impounding and what actions the owner may take to reclaim the property. If inadequate identifying information is available on the impounded property, no notification is required. If the owner of the property fails to appear within ninety (90) days of the impounding of the property and pay all fees, the property shall be subject to removal, destruction, sale, or other disposal by the

Director at the expense of the owner or owners and without any liability for any damage to any property of the owner or owners.

(d) Any sunken or abandoned rafts, wharves, buildings, or other obstructions found upon any beach area, including the waters thereof and Mission Bay Park, may be removed, destroyed, sold, or otherwise disposed of by the Director at the expense of the owner or owners and without any liability for any damage to any property of the owner or owners.

**SEC. 63.20.23 JUMPING INTO PACIFIC OCEAN OR MISSION BAY**

It is unlawful to jump or dive or attempt to jump or dive into the Pacific Ocean or Mission Bay from either a natural or human-made point connected to land which is greater than five (5) feet above the mean level of the sea or water at the time of the jump or dive or attempted jump or dive. Upon the first conviction, a violator of this Section, 63.20.23, shall be guilty of an infraction. Upon any subsequent conviction the violator shall be guilty of a misdemeanor. Persons convicted of this offense shall be punished by the following minimum fines:

First offense -- \$50.00

Second offense -- \$150.00

Third and future offenses -- \$300.00

**SEC. 63.20.24 FLOATS PROHIBITED IN LA JOLLA COVE**

Except for the purpose of effecting a rescue, it is unlawful for any person to introduce into or upon the waters of La Jolla Cove any floating object, such as a

body board, foam object, ball, life preserver or other similar device, which is used or could be used to assist in the floatation of a person. This Section, 63.20.24, does not prohibit scuba divers from using wetsuits, swim fins or inflatable devices.

**SEC. 63.25 MISSION BAY REGULATIONS -- POWER TO DESIGNATE OFFICIALS**

Whenever a power is granted to, or a duty is imposed upon the Park and Recreation Director, the power may be exercised, or the duty may be performed by the Director or individual or individuals whom he or she may designate for the enforcement of these regulations.

**SEC. 63.25.1 SAME -- DEFINITIONS**

"Commercial Vessel" includes any vessel which is licensed as a commercial vessel, is offered or used for charter parties, for hire, or for any commercial purpose whatever or for the use or enjoyment of which a fee is exacted by the owner or person in control thereof, during the calendar year in which the use or event occurred as above described; provided, however that the Director or designee may change such classification if the Director has good cause to believe that the vessel is to be used in the future for purely recreational purposes.

"Designated Anchorage Areas" includes the areas more particularly described in Sections 63.25.14 and 63.25.15 or established pursuant to Sections 63.25.2 and 63.25.3 and shall include every mooring, pier, float, wharf, dock, or landing within such areas and the shoreline thereof together with the approaches thereto.

"Float" includes wharf, pier, quay, or landing.

"Mission Bay Park" includes all waters of Mission Bay together with channels of ingress and egress and all beaches and City-owned land fronting on said waters. Mission Bay and the waters of Mission Bay for purposes of Chapter VI, Article 3, are defined to be all water areas within the limits of Mission Bay Park.

"Mooring" includes any weight, chain, rope, float, structure and/or appliance used by a vessel for anchoring purposes, and which is not carried aboard such vessel as part of its regular equipment.

"Personal Watercraft" means a motorboat, as defined in the California Harbors and Navigation Code, powered by a jet drive, which is under thirteen (13) feet in length, designed by the manufacturer to be capable of speeds in excess of fifteen (15) miles per hour, and designed to be operated by a person sitting, standing, or kneeling on, or being towed behind, the device, rather than the conventional manner of sitting or standing inside the vessel.

"Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water.

**SEC. 63.25.2 AUTHORITY TO PARK AND RECREATION DEPARTMENT; HARBORMASTER DESIGNATED**

The Park and Recreation Department shall be the City's supervising agency for the regulation and supervision of Mission Bay Park and of the vessels using Mission Bay; and the Park and Recreation Department

shall, through its Director, be responsible for the regulation of commercial and recreational use of Mission Bay by vessels and for the enforcement of Chapter VI, Article 3. The person in charge of the Lifeguard Services Division of the Park and Recreation Department is hereby designated as the Mission Bay Harbormaster.

**SEC. 63.25.3 POWER AND AUTHORITY OF PARK AND RECREATION DIRECTOR**

[No change in text.]

**SEC. 63.25.4 VESSEL SPEED**

(a) It is unlawful to operate a vessel upon Mission Bay at a speed greater than five (5) nautical miles per hour between sunset and sunrise.

(b) In order to assure greater safety for all citizens using the Mission Bay recreational facilities, the Director may establish prima facie speed limits for any area or areas of Mission Bay by posting such limits in or at the entrances to such areas. When areas are so posted, the speed limits shall be as fully effective as if specified herein.

(c) The speed limit shall be five (5) nautical miles per hour in the following areas:

(1) Within one-hundred (100) feet of the shoreline of Mission Bay; provided, however, that this subsection, 63.25.4(c), shall not apply in water areas designated for a single, special use including areas designated for the exclusive use of personal watercraft, water skiing, a special event or areas designated for water ski take-off and landing.

(2) Within one-hundred (100) feet of another vessel, a swimming flat or platform, or a lifeline.

(3) Under bridges.

(d) The speed of any vessel in excess of the limits specified in the preceding subsection, 63.25.4(c), or limits established and posted pursuant to the preceding subsection, 63.25.4(b), is unlawful and a violation of this Section, 63.25.4, unless the operator establishes by competent evidence that any speed in excess of said limits did not constitute a violation of the basic speed rule declared in the California Code of Regulations, Title 14, Section 6615 at the time, place and under the conditions then existing.

(e) These regulations shall not apply to City-owned, operated, or commandeered vessels; and the basic speed law, but not the speed limits, shall apply to vessels contending in a race pursuant to Section 63.25.11 when such vessel is being operated within the scope of the permit for said race.

**SEC. 63.25.5 JUMPING FROM BRIDGES, SWIMMING IN CHANNEL, OBSTRUCTING NAVIGATION**

Within the limits of Mission Bay Park, it is unlawful for any person to:

(a) Jump or dive from any bridge, or cause another person to jump or dive from any bridge, or to climb upon or under any bridge except in places specifically designated for pedestrian traffic; or dive or swim in the waters under or within seventy-five (75) feet of any bridge;

(b) Fish by hand line, rod or spear from any bridge, within any marked water ski landing or take-off area, or within any marked swimming area;

(c) Swim, dive or play in the Mission Bay ocean channel, the turning basin or on or from breakwaters adjacent to the channel or on or from any traffic structure, bridge construction equipment, or appurtenance not specifically provided for such activities or in any water ski take-off or landing area.

(d) Swim, dive or play in any waters not specifically designated for these activities in a manner which might tend to hinder the safe navigation of any vessel.

(e) Swim, dive or fish in any water area designated by the Park and Recreation Department for exclusive use of personal watercraft or water skiing, so long as the area is marked by signs, buoys or both signs and buoys.

#### SEC. 63.25.6 WATER SKIING

(a) No water skier, aquaplaner, free-boarder, or other person being towed behind a vessel and the towing vessel therefor may operate within one hundred (100) feet of another boat, canoe, paddleboard, float, swimmer, person fishing, or the beach except when taking off or landing in prescribed areas posted for this purpose.

(b) In areas prescribed for water skiing, all motorized vessels shall adhere strictly to a counterclockwise pattern regardless of the number of vessels in the area, and shall be subject to the control and supervision of the authorized representative of the City.

(c) It is unlawful for the operator of any vessel, with the exception of a vessel actively engaged in water skiing, to allow the vessel to enter within two hundred (200) feet of the shoreline of a designated water ski landing or take-off area.

(d) It is unlawful for any person to operate any vessel or device which tows a water skier and which is operated or controlled by the water skier.

#### SEC. 63.25.7 SIRENS AND MUFFLERS

(a) It is unlawful to sound or operate or cause to be sounded or operated a siren on a vessel within the limits of Mission Bay Park. This provision shall not apply to City-owned, operated, or commandeered vessels. This section, 63.25.7, shall not preclude vessels from being provided with sound-producing devices as required by the appropriate Coast Guard regulations.

(b) Except as provided in Section 63.25.11, every watercraft equipped with an internal combustion engine operated on Mission Bay shall at all times be equipped with an adequate muffler, in constant operation and properly maintained to prevent any excessive or unusual noise, and no such muffler or exhaust system shall be equipped with a cutout, bypass, or similar device.

#### SEC. 63.25.11 RACES

It is unlawful for any person to conduct or take part in any race, demonstration, or exhibit of any kind that interferes with the free use of the Mission Bay area, unless a written permit for such event designating

the prescribed area to be used has first been procured from the Park and Recreation Department.

The Director may grant special permits to hold a boat race in the course of which unmuffled engines may be used by the contestants upon the waters of Mission Bay along and over certain courses situated in the waters of Mission Bay; and provided further that any such special permit of the Director shall be for a period of time not exceeding ten (10) days in all of any calendar year hereafter, and shall not exceed eight (8) hours of any calendar day, the entire period of time for which such special permit is granted to fall between the hours of eight o'clock (8:00) a.m. and eight o'clock (8:00) p.m.

In addition to the aforementioned 10 day permit, the Director may issue a permit for unlimited hydroplane racing, provided such permit shall be for a period of time not exceeding four (4) additional days in any calendar year, and shall not exceed eight (8) hours of any calendar day, the entire period of time for which the permit is granted, to fall between eight o'clock (8:00) a.m. and eight o'clock (8:00) p.m., and provided further that the racing is approved in all other respects by reviewing authorities. In the event the additional four (4) days are not used for unmuffled hydroplane racing, they may not be utilized for any other unmuffled boat racing activity. Such hydroplane racing shall take place only during the four-day period designated by the Director.

**SEC. 63.25.12 LAUNCHING AND REMOVAL OF VESSELS**

It is unlawful to launch or remove from the waters of Mission Bay any vessel over any seawall, sidewalk, street end, public or private property, except at such locations designated for that purpose, or at such locations making a regular business of launching and hauling vessels and having the necessary equipment to do such work, without first obtaining permission from the Director.

**SEC. 63.25.13 DISPLAY OF VESSELS FOR SALE**

Within the limits of Mission Bay Park, it is unlawful to beach, moor, or dock any vessel, or to park any trailer carrying a vessel for the purpose of displaying such vessel for sale, unless a permit to do so has first been obtained from the Park and Recreation Department. A sign or other marking on any such vessel indicating that it is for sale shall be prima facie evidence that the vessel was so placed for the purpose of displaying it for sale.

**SEC. 63.25.14 ANCHORAGE, BEACHING AND MOORING AREAS**

(a) The anchorage or mooring areas designated exclusively for recreational vessels are as follows:

(1) The area commonly know as San Juan Cove, located on the west side of Mission Bay, between Santa Clara Point and El Carmel Point.

(2) The area commonly known as Santa Barbara Cove, located on the west side of Mission Bay, between El Carmel Point and Gleason Point (also known as Bahia



Point).

(3) The area commonly know as De Anza Cove, located at the northeast corner of Mission Bay north of De Anza Point.

(b) The anchorage or mooring area designated for recreational or small commercial vessels is in the area commonly known as Mariner's Basin, located on the southwest side of Mission Bay, just north of the Mission Bay ocean channel.

(c) The beaching areas designated exclusively for recreational vessels are the beaches adjacent to:

(1) The area commonly known as Santa Clara Cove, located on the northwest side of Mission Bay;

(2) The area commonly known as San Juan Cove, located on the west side of Mission Bay;

(3) The area commonly known as Santa Barbara Cove, located on the west side of Mission Bay;

(4) The area commonly known as Mariner's Basin, located on the southwest side of Mission Bay;

(5) The area commonly known as Sail Bay at the point that Fanuel Street ends at Sail Bay;

(6) The area commonly known as Riviera Shores at the point that Moorland Drive ends at Riviera Shores.

(d) Notwithstanding any other provisions of this Code, the Director has the authority to determine and establish rules and regulations specifying the size and type of vessels using the anchorage, beaching and mooring areas.

#### SEC. 63.25.17 ANCHORAGE AND MOORING LOCATION

It is unlawful for any person having charge of any vessel to moor or anchor the same in Mission Bay except within the areas and at the place or places designated by the Director. Any vessel which is moored or anchored in Mission Bay at a place not designated for such vessel by the Director shall, upon the demand of the Director, be forthwith moved to a designated area. In the designation of areas and places for the mooring or anchoring of vessels, the Director shall consider the needs of commerce, the utilization of turning basins for the turning of vessels, the use of channels for the moving and navigation of vessels, and the economy of space. No vessel shall be moored and anchored in any part of any turning basin or channel unless it is securely moored, both fore and aft. Every vessel moored or anchored in any part of Mission Bay outside of any turning basin or channel shall be moored or anchored to prevent it from swinging or drifting into any turning basin or channel.

#### SEC. 63.25.18 CHANGE OF MOORING

[No change in text.]

#### SEC. 63.25.19 MAKING FAST A MOORED VESSEL

It is unlawful to make fast or tie any vessel to a mooring occupied by another vessel, or to make fast or tie to a vessel already occupying a mooring; provided, however, that rowboats and yacht tenders regularly used

by vessels for transportation of persons or property to or from shore may be tied to any such mooring or vessel.

**SEC. 63.25.20 OBSTRUCTION OF PASSAGE**

It is unlawful to tie up or anchor a vessel in Mission Bay in such a manner as to prevent or obstruct the passage of other vessels or to voluntarily or carelessly sink or cause to be sunk any vessel in any channel or to float loose timbers, logs, or piles in any channel in such a manner as to obstruct, impede, or injure navigation; whenever a vessel is wrecked or sunk in Mission Bay, accidentally or otherwise, it is the duty of the owner to immediately mark it by a buoy during the day and by a lighted lantern at night and to maintain such markings until the sunken vessel or obstruction is removed; the neglect or failure of the owner to do so is unlawful. The owner shall immediately commence the removal of the obstruction and prosecute the removal diligently to completion, and any failure to do so shall constitute an abandonment of the vessel. Whenever the navigation of any navigable water within Mission Bay Park is obstructed or endangered by any vessel or other obstruction, which has existed for a period longer than ten (10) days, or whenever the abandonment of a vessel or other obstruction can be legally established in a shorter period of time, the vessel or other obstruction is subject to be removed, sold, or otherwise disposed of by the City Manager at his or her discretion without liability for any damages to the owners.

Any costs incurred by the City in the removal of any vessel or other obstruction, may be recovered by the City from the owner of such vessel or the person causing or responsible for the obstruction, in any court of competent jurisdiction.

**SEC. 63.25.22 MOORING PERMIT REQUIRED**

It is unlawful to place, erect, construct, or install moorings in Mission Bay Park without a permit issued by the Director. Moorings must conform to the requirements and specifications set forth by the Director.

**SEC. 63.25.24 CANCELLATION OR REVOCATION OF MOORING PERMIT**

Any mooring permit issued by the Director shall provide that the permit may be canceled at any time by the Director by giving five (5) days written notice by mail sent to the person to whom the permit was issued at the address listed on the permit; and upon the permit being canceled, it is the duty of the owner of the mooring to immediately remove it. If the owner should fail to collect or refuse to move the mooring within ten (10) days, it may be removed by the Director at the expense of the person to whom the permit was issued, and the cost may be collected in any court of competent jurisdiction. Any impounded mooring not claimed by the owner within thirty (30) days becomes the property of The City of San Diego. The permit shall further provide that the Director has the discretion to permit any vessel to use an unoccupied mooring on a temporary basis; and that any mooring not used by the owner for a period of

six (6) consecutive months out of any twelve (12) months becomes the property of the City and may be removed, used, rented, or sold by the Director with or without notice at the Director's option, and the Director may then cancel or revoke the permit.

**SEC. 63.25.25 MOORING PERMIT FEES**

The owner of every vessel in the designated anchorage areas having a mooring shall pay the City an initial permit fee payable upon issuance of a permit, and thereafter shall pay the City a yearly fee to be paid on the first business day of March of each year, to be effective for the following twelve month period. The permit shall specify that it is the responsibility of the recipient of the permit to pay the annual fee if the recipient wishes to renew the permit and the City shall not be required to send a reminder notice to that effect.

The mooring permit shall further provide that if the owner fails to renew on the annual date specified and is in arrears for a period of seven (7) days, the Director shall, unless extraordinary circumstances exist, impound the mooring and make the space available, using normal procedures, to any other person who qualifies for a permit. The owner of an impounded mooring who wishes to claim it shall be charged a fee for the removal and storage of the mooring. If the owner fails to claim the mooring within a thirty (30) day period, the title to that mooring shall pass to The City of San Diego.

The amount of the fees herein required shall be established by the City Manager upon the recommendation of the Director.

**SEC. 63.25.26 UNUSED MOORINGS**

The Director may assign unused moorings to visiting vessels for a rental fee established by the City Manager upon the recommendation of the Director.

**SEC. 63.25.28 TAXES ON MOORED VESSELS**

Any applicant for a permit shall acknowledge that the vessel to be anchored or moored within the designated mooring areas shall be assessed in The City of San Diego and that the applicant shall pay all taxes on the vessel to The City during the time that the mooring is maintained in The City of San Diego.

**SEC. 63.25.29 CONTENTS OF PERMIT**

(a) Owners of vessels using private moorings in Mission Bay Park must first obtain a permit from the Park and Recreation Department, shall be limited to the designated anchorage and mooring areas established by the City, and shall conform to the rules and specifications established for such areas.

(b) Permits for moorings will be issued to an individual person for a period of one year, on a renewable basis. Neither the permit nor the space for which the permit is granted is transferrable.

(c) Any permit issued under the terms of this Section shall be personally signed by the applicant, and shall contain the rules and specifications established by the Director.

(d) The fees for any services provided for in the rules and specifications shall be established by the City Manager upon the recommendation of the Director.

**SEC. 63.25.30 INSTALLATION OF PRIVATELY-OWNED MOORINGS**

Upon request of the owner and at the discretion of the Director, privately-owned moorings may be installed by City forces at a rate established by the City Manager upon the recommendation of the Director.

**SEC. 63.25.31 USE OF MOORINGS**

(a) It is unlawful for any vessel other than that described in the mooring permit to use any private mooring in Mission Bay; and the vessel must be owned, in whole or in part, by the person to whom the permit was issued.

(b) It is unlawful for any person, other than the Director, to give permission for any non-permitted vessel to use a private mooring.

**SEC. 63.25.43 CONSTRUCTION AND RENTAL OF HARBOR FACILITIES AUTHORIZED**

The City may construct or cause to be constructed such floats wharves, piers, and other harbor facilities in Mission Bay Park as may be required by the public interest, and the City may rent or lease in whole or in part such floats, wharves, piers, and other harbor facilities to individuals, nonprofit associations, and such other organizations as it may determine. The City may further establish by resolution a schedule setting forth the charges for the use of said floats, wharves,

piers, and other harbor facilities, which use shall be governed by the terms of the rental or lease agreement executed by the City, and any applicable provisions of this Code.

**SEC. 63.25.45 INFORMATION REQUIRED FOR BERTHING SPACE**

[No changes in text.]

**SEC. 63.25.47 USE OF HARBOR FACILITIES**

(a) It is unlawful for any owner or any person having charge of any vessel to make such vessel fast, whether directly or indirectly, to any float, wharf, pier, or other harbor facility with the exception of those specifically designated for use by the general public, without the consent of the lessee, agent or person in charge of the float, wharf, pier, or harbor facility.

(b) It is unlawful for any owner or any person having charge of any vessel to permit it to remain fastened to any float, wharf, pier, or dock in Mission Bay Park, or to remain moored immediately in front thereof, after the user or users of the vessel have finished loading or unloading at such float, wharf, pier, or dock, without obtaining the consent of the owner, agent or person in charge of the float, wharf, pier, or dock.

**SEC. 63.25.50 HEAD AND STERN LINES, CHAFING GEAR REQUIRED**

[No changes in text.]

**SEC. 63.25.51 HANDLING EXPLOSIVES; PERMIT REQUIRED**

[No changes in text.]

**SEC. 63.25.52 PETROLEUM PRODUCTS REGULATED**

[No changes in text.]

**SEC. 63.25.53 CONTAINERS FOR INFLAMMABLE PRODUCTS REGULATED**

It is unlawful for any person to cause empty drums, tanks, barrels, or other containers used for the storage or transportation of gasoline, distillate, kerosene, or other inflammable products to remain on any float, wharf, pier, or other harbor facility, or the shoreline, roadways, parkways, or any property in Mission Bay Park.

**SEC. 63.25.54 DONKEY ENGINE; SPARK ARRESTER REQUIRED**

It is unlawful for any person to use any donkey engine or other stream engine for any reason on any wharf, dock, pier, or vessel in Mission Bay without a bonnet or spark arrester attached to the smoke stack of such engine so as to prevent sparks from coming in contact with wharf or vessel.

**SEC. 63.25.55 PUBLIC PIERS AUTHORIZED**

[No changes in text.]

**SEC. 63.25.56 OBSTRUCTION OF PUBLIC PIER OR FACILITY PROHIBITED**

It is unlawful for any person to obstruct the free and easy access to and departure from any portion of any public float, wharf, pier, or other harbor facility at any time; and it is unlawful to obstruct the land site of any public facility with automobiles or any other vehicle or gear; and the Director shall cause to be impounded at the expense of the owner any automobile or any other vehicle or gear which shall obstruct such public

facilities.

**SEC. 63.25.57 WASTE MATERIALS UPON SHORELINE PROHIBITED; PENALTY**

It is unlawful to allow any materials, including but not limited to garbage, refuse, timbers, or waste matter of any description, to remain upon the shorelines of Mission Bay Park; and the Director may remove same with or without notice, and any cost of removal may be recovered by the City against any person responsible therefor in any court of competent jurisdiction.

Violations of this provision is a misdemeanor.

**SEC. 63.25.58 CONSTRUCTION OF PRIVATE PIERS**

It is unlawful for any person, firm, corporation, or association to build, or cause to be built or extended, any public or privately-owned float, wharf, pier, landing bulkhead, seawall, or structure, of any sort whatever, or make, or cause to be made, any filling of any description in Mission Bay Park. It is also unlawful for any person to dredge or excavate within Mission Bay Park for the benefit or use of any private person, firm, corporation, or association unless plans showing the proposed work have been approved by the City Manager, and a permit issued therefor.

**SEC. 63.25.59 PRIVATE PIERS OR WHARVES -- DEFECTIVE CONDITION**

If the Director learns that any wharf, dock, or pier on Mission Bay is in such a defective or dangerous condition that life or property is endangered thereby, the Director shall immediately notify in writing the

owner thereof, or the agent, lessee, or any other person or persons having charge of the same, of the defective and dangerous condition, and shall require such person or persons to immediately repair the same, or to erect fences or other barriers to prevent persons from using or going upon the wharf, dock, or pier. If the person or persons having charge of the wharves, docks, or piers fails or neglects to repair it or to erect fences or other barriers, then the Director may erect fences or other such barriers as may be deemed necessary for the protection of the public, and charge the expense to the person or persons having charge of the wharf, dock, or pier. It is unlawful for any person or persons to interfere whatsoever with any fence or barrier erected to prevent the use of the defective wharf, dock, or pier.

If any wharf, any portion thereof, or any material on such wharf, falls into the waters of Mission Bay, it is the duty of the owner, agent, or lessee of the wharf to forthwith remove such material from the waters of Mission Bay, and, if they fail to do so, the Director may remove or cause the material to be removed; and the cost of the removal is recoverable from the owner, agent, or lessee by the City.

**SEC. 63.25.61 DISCHARGE OF INFLAMMABLE MATERIAL**

It is unlawful for any vessel to pump, discharge, or dump into the waters of Mission Bay, oil, spirits, gasoline, distillate, or any other petroleum products, or any inflammable material whatsoever, or to deposit

any refuse matter, rubbish, or articles of any offensive nature upon any float, wharf, pier, or upon any shoreline roadway or parkway.

**SEC. 63.25.62 DISCHARGE OF PETROLEUM PRODUCTS**

It is unlawful to discharge, deposit, or cause or allow to be discharged, deposited, to pass in or into the waters of Mission Bay, any coal tar, refuse or residuary products of coal, petroleum, asphalt, bitumen, or any other carbonaceous material or substance.

**SEC. 63.25.67 ENTERING WATERCRAFT WITHOUT PERMISSION OF OWNER**

It is unlawful to enter or climb into or upon any boat, vessel, yacht, or water craft moored, tied, or anchored in Mission Bay, without the consent of the owner or operator of said vessel.

**SEC. 63.25.68 TAMPERING WITH MOORINGS PROHIBITED**

It is unlawful to tamper with, or in any way interfere with the moorings or anchorages of any boats, vessels, yachts, or other water craft in Mission Bay.

**SEC. 63.25.71 LIVING ON BOARD VESSELS, OVERNIGHT ANCHORAGE REGULATED**

(a) It is unlawful for any person to remain overnight on board any vessel in Mission Bay Park unless the vessel has a functional, self-contained toilet on board that does not discharge into the waters of the Bay. It is unlawful for any owner of any vessel to occupy it or allow it to be occupied overnight in Mission Bay Park for a period of more than ninety (90) days, whether successive or cumulative, during any one calendar year.

A vessel is presumed to be occupied overnight when there are one or more persons on board after midnight. The lessees of land in Mission Bay Park are primarily responsible for the enforcement of this subsection, 63.25.71(a), on the water abutting their leased lands.

(b) It is unlawful for any owner or person in command of any vessel to allow it to be left anchored or moored overnight upon the waters of Mission Bay unless the owner or person in command has received permission from the Director or, in the case of property within a leasehold, from a lessee under the terms and conditions of the lease. In the area of Mariners Basin, a vessel may be permitted to remain moored or anchored for a period not to exceed seventy-two (72) hours during any seven (7) consecutive days, provided that the owner or person in command of such vessel has first received permission from the Director and provided that at least one person of eighteen years or older remains on board from dusk to dawn. Permission to moor or anchor in Mariners Basin will be partially based on capacity of the area.

(c) The Director may without notice remove any vessel, boat or trailer stored or left in violation of subsection 63.25.71(b), and the cost of removal and storage may be recovered by the City against any person responsible therefor through collection processes or proceedings in any court of competent jurisdiction and in any case prior to release of the impounded vessel to the registered owner or the authorized agent thereof.

**SEC. 63.25.72 REGULATION OF PARA-SAILS AND SIMILAR DEVICES**

(a) It is unlawful for any person to use a hang glider, para-sail, ski-kite, or similar device which may be used to lift a person from the water or land in Mission Bay Park except by special permit issued by the Director.

(b) For purposes of this section, 63.25.72, the following definitions apply:

"Hang glider" means any delta-wing kite used as an air foil to elevate a person by a tow line.

"Para-sail" means any multi-vented sail used to elevate a person by a tow line.

"Ski kite" means any kite used to elevate a person by a tow line.

**SEC. 63.25.73 OVERNIGHT STORAGE OF VESSELS, BOATS, AND TRAILERS PROHIBITED**

(a) It is unlawful to store or leave any vessel, boat, or trailer on the beach on the west, north, and east shoreline of Mission Bay Park between Santa Clara Point and the Ingraham Street Bridge between the hours of 10:00 p.m. to 7:00 a.m., except where permitted by the Director at an authorized beach mooring bar or facility. This prohibition shall not apply between 10:00 p.m. Friday night through 7:00 a.m. Sunday morning, nor from 10:00 p.m. of the night preceding an official holiday of the City through 7:00 a.m. on the day of the holiday.

(b) The Director may without notice remove any vessel, boat, or trailer stored or left in violation of

Section 63.25.73(a), and the cost of removal and storage may be recovered by the City against any person responsible therefor through collection processes or proceedings in any court of competent jurisdiction.

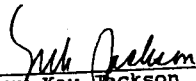
(c) Persons using vessels in designated beaching areas, established and posted as such by the City, must first obtain a permit from the Park and Recreation Department, and shall conform to the rules and specifications established for such areas by the Department.

(d) Permits for using designated beaching areas will be issued for a period of one (1) year, on a renewable basis, and are nontransferable. The permit shall provide that it may be canceled at any time by the Director by giving five (5) days written notice by mail to the person at the address registered on such permit; and upon said permit being canceled, it shall be the duty of the owner of the vessel to immediately remove it, and if the owner should fail to collect or refuse to remove the vessel within ten (10) days, it may be removed or impounded by the Director.

(e) The owner of every vessel having a permit to use a designated beaching area shall pay the City of San Diego an initial permit fee payable upon issuance, and a yearly fee thereafter, to be paid on the first business day of March each year. The fees specified herein shall be established by the City Manager upon the recommendation of the Director.

Section 3. This ordinance shall take effect and be in force on the thirtieth day after its passage by the Council of The City of San Diego.

APPROVED: JOHN W. WITT, City Attorney

By   
Mary Kay Jackson  
Deputy City Attorney

MKJ:mb  
04/28/94  
Or.Dept:Pk&Rec  
0-94-105  
Form=0+t

I, CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

CHARLES G. ABDELNOUR, City Clerk  
By V. HAVIN, Deputy

Dated 3-4-04



MAY 31 1994

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_  
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Harry Mathis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Christine Kehoe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Warden	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juan Vargas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By *Charles G. Abdelnour*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAY 09 1994

MAY 31 1994

, and on \_\_\_\_\_

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

CHARLES G. ABDELNOUR, Clerk of the City of San Diego, California, hereby certify that this is a true copy of papers on file and of record in the office of the Clerk of said City.

By *Charles G. Abdelnour*, Deputy.

ABDELNOUR, City Clerk

By \_\_\_\_\_ Deputy

Dated \_\_\_\_\_

Office of the City Clerk, San Diego, California

Ordinance Number 0-18073 Adopted MAY 31 1994

DECLARATION OF WILLIAM OWEN

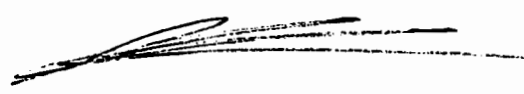
I, William Owen, declare as follows:

1. I am a resident of San Diego, California.
2. The statements contained in this declaration are based on my personal knowledge, and if called as a witness I could and would testify competently thereto.
3. From 1967 through 1988 I was employed by the City of San Diego as a sergeant in the lifeguard division. My area of responsibility included the La Jolla Shores beach and swim area. In this capacity my responsibilities included patrol of the public swimming area, designated by the City of San Diego, which was located adjacent to the ocean beach in front of the La Jolla Beach & Tennis Club. Throughout this period of employment I was in a position to and did observe on a regular basis the features of that swimming area.
4. Every year since 1959 and in each year during my employment as a lifeguard at La Jolla Shores, swimming area buoys marking the City-designated swim area in front of the Beach Club were installed just before Memorial Day and removed just after Labor Day, and were maintained in place continuously during these summer months. The swim buoys were always placed in approximately the same configuration. During the summer of 2002, I visited the swimming area. The swimming area buoys were placed in approximately the same configuration and location that they occupied during the years I served as a lifeguard at this area.
5. My fellow lifeguards and I relied on these swim buoys to help us meet our swim area management responsibilities for public safety. Particularly because of the close proximity of the public boat launch the buoys assisted us in keeping recreational boaters and surfers out of the City designated swim area.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct.

Executed on March 12, 2004, at San Diego, California.

  
 \_\_\_\_\_  
 William Owen

<b>EXHIBIT NO. 5</b>
<b>APPLICATION NO.</b>
<b>VRC-04-36</b>
Declarations submitted by City as evidence of placement of buoys during summer since 1962

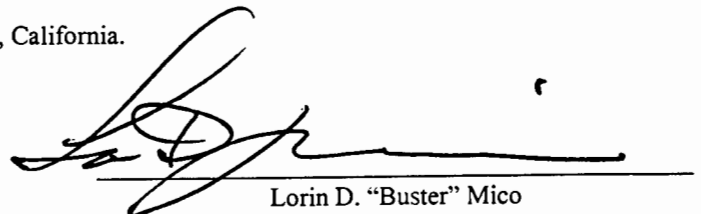
DECLARATION OF LORIN D. "BUSTER" MICO

I, Buster Mico, declare as follows:

1. I am a resident of San Diego, California.
2. The statements contained in this declaration are based on my personal knowledge, and if called as a witness I could and would testify competently thereto.
3. From 1956 through 1988 I was employed by the City of San Diego in the Marine Safety Division. When I was promoted to lieutenant lifeguard, I supervised ocean beaches and swimming areas. My area of responsibilities included the La Jolla Shores beach and swim areas as well as other San Diego beaches. In this capacity my responsibilities included patrol of the public swimming area, designated by the City of San Diego, one of which was located adjacent to the ocean beach in front of the La Jolla Beach & Tennis Club. Throughout this period of employment I was in a position to and did observe on a regular basis the features of that swimming area.
4. Every year during my employment as a lifeguard in the La Jolla Shores beach and swim areas, swimming area buoys marking the City-designated swim area in front of the Beach Club were installed just before Memorial Day and removed just after Labor Day, and were maintained in place continuously during these summer months. The swim buoys were always placed in approximately the same configuration. During the summer of 2002, I visited the swimming area. The swimming area buoys were placed in approximately the same configuration and location that they occupied during the years I served as a lifeguard at this area.
5. My fellow lifeguards and I relied on these swim buoys to help us meet our swim area management responsibilities for public safety. They assisted us in keeping recreational boaters and surfers out of the designated swim area in accordance with the City's rules applicable to designated swim areas.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2004, at San Diego, California.

  
Lorin D. "Buster" Mico

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DECLARATION OF LT. JOHN GREENHALGH

I, LT. JOHN GREENHALGH, declare as follows:

1. I am a resident of San Diego, California.

2. The statements contained in this declaration are based on my own personal knowledge, and if called as a witness I could and would testify competently thereto.

3. I am currently employed by the City of San Diego Fire and Life Safety Services as a Lifeguard Lieutenant. I have worked as a lifeguard for over 24 years. My current duties include supervising the La Jolla District, which involves handling the district budget, personnel and equipment, among many other City-wide duties.

4. In this capacity as Lifeguard Lieutenant, my responsibilities include patrol of the public swimming areas, designated by the City of San Diego, one of which was located adjacent to the ocean beach in front of the La Jolla Beach & Tennis Club. Throughout this period of employment, I was in a position to and did observe on a regular basis the features of that swimming area.

5. Every year during my employment as a lifeguard in the La Jolla Shores beach and swim areas, swimming area buoys marking the City-designated swim area in front of the Beach Club were installed just before Memorial Day and removed just after Labor Day, and were maintained in place continuously during these summer months. The swim buoys were always placed in approximately the same configuration. For safety purposes, these buoys have been placed by the La Jolla Beach and Tennis Club with the approval and consent of the San Diego Lifeguards. During the summer of 2002, I visited the swimming area. The swimming area buoys were placed in approximately the same configuration and location that they occupied during the years I served as a lifeguard at this area.

6. My fellow lifeguards and I relied on these swim buoys to help us meet our swim area management responsibilities for public safety. They assisted us in keeping recreational boaters, kayakers, and surfers out of the designated swim area in accordance with the City's rules applicable to designated swim areas.

1           7.       I have reviewed the City Resolution regarding the La Jolla Shores swim zone,  
2 which is contained in City of San Diego Resolution No. 186513. The Resolution states it amends  
3 Resolution No. 180140 by adding a paragraph which defines the bathing and swimming zone.  
4 The Resolution defines the Bathing and Swimming Zone as "the waters of the beach area  
5 between the westerly extension of a point approximately 45 feet north of the northerly line of  
6 Roseland Drive and the westerly extension of the southerly line of Avenida de la Playa". I have  
7 compared the Resolution with the actual buoy placement that I observed in the La Jolla Shores  
8 swim zone now and in the past. The buoy placement at the La Jolla Shores swim zone is  
9 consistent with the description in the Resolution.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July   , 2004 at San Diego, California.

  
LT. JOHN GREENHALGH

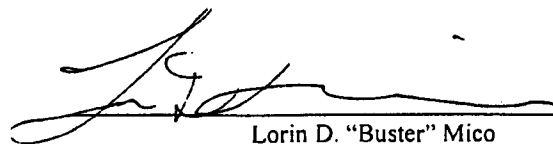
DECLARATION OF LORIN D. "BUSTER" MICO

I, Buster Mico, declare as follows:

1. I am a resident of San Diego, California.
2. The statements contained in this declaration are based on my personal knowledge, and if called as a witness I could and would testify competently thereto.
3. From 1956 through 1988 I was employed by the City of San Diego as a lieutenant lifeguard on ocean beaches and swimming areas. My area of responsibilities included the La Jolla Shores beach and swim areas as well as other San Diego beaches. In this capacity my responsibilities included patrol of the public swimming area, designated by the City, one of which was located adjacent to the ocean beach in front of the La Jolla Beach & Tennis Club. Throughout this period of employment I was in a position to and did observe on a regular basis the features of that swimming area.
4. During my employment as a lifeguard in the La Jolla Shores beach and swim areas, buoys marking the swim area designated by the City in 1966 in front of the Beach Club were installed just before Memorial Day and removed just after Labor Day, and were maintained in place continuously during these summer months. The swim buoys were always placed in approximately the same configuration.
5. Prior to 1973, I frequently consulted with Beach Club member William Scripps Kellogg and Beach Club employee Fritz Fehrenson on a range of beach management issues, including the placement of the buoys demarking the City-designated public swimming area in front of the Beach Club. From 1973 to 1979, I continued to consult with the Beach Club in the same manner with William Crowe Kellogg and his son, Robert Penfield Kellogg. After 1979 and until my retirement in 1988, I continued to interact on these issues with William J. Kellogg and the Beach Club's General Manager, Mac Brewer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 2, 2004, at San Diego, California.

  
Lorin D. "Buster" Mico

DECLARATION OF WILLIAM J. KELLOGG

I, William J. Kellogg, declare as follows:

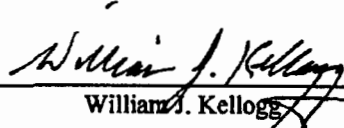
1. I am a resident of San Diego, California.
2. The statements contained in this declaration are based on my personal knowledge, and if called as a witness I could and would testify competently thereto.
3. From 1989 through to the present date, I have served as the President of the La Jolla Beach and Tennis Club, Inc., General Manager of La Jolla Beach & Tennis Club Partners L.P. In this capacity, I am responsible to the Club's Board of Directors for all Beach Club management issues. I was preceded in this capacity from 1987 to 1989 by my father, William Crowe Kellogg. From 1973 to 1987 my father served as the Managing Trustee of two trusts (the entities that preceded La Jolla Beach & Tennis Club Partners L.P.) that owned and operated the La Jolla Beach & Tennis Club. From 1940 to 1973, my grandfather, William Scripps Kellogg, served as the Managing Trustee of the trusts. My brother, Robert Penfield Kellogg, an employee of the La Jolla Beach & Tennis Club, assisted my father with beach management from 1974 to 1994. I also assisted my father and brother with beach management from 1979 to 1989 as an employee of the La Jolla Beach & Tennis Club.
4. Based on my personal experience and conversations with my brother, father, and grandfather listed in the previous paragraph, I am informed and believe that swimming area buoys marking the City-designated swim area in front of the Beach Club were installed for the summer beach season every year since at least 1966, with the exception of 2003 when the City of San Diego and the Beach Club were under order by the California Coastal Commission not to place the swim buoys. The swim buoy lines and their anchors were usually placed by Beach Club employees, although City Lifeguards occasionally assisted by supplying the boats needed to float the anchors out to their usual drop spots.
5. Since at least 1966, the swim buoy markers were placed with the knowledge and consent of the City of San Diego Lifeguards. City Lifeguard Lieutenant Loren T. Mico was the Beach Club's principal point of contact from the 1960's through Lt. Mico's retirement in 1988. Since then, other City Lifeguards have worked with me and Beach Club employees John Campbell and Bud Stevens in the

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same manner. Most recently, the Beach Club's principal point of contact has been City Lifeguard  
Lt. John Greenhalgh.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and  
correct.

Executed on September 2, 2004, at San Diego, California.

  
\_\_\_\_\_  
William J. Kellogg



CHAPTER 688.

*An act granting certain tidelands and submerged lands of the State of California to the city of San Diego upon certain trusts and conditions.*

[Approved by the Governor June 5, 1933. In effect August 21, 1933.]

*The people of the State of California do enact as follows:*

SECTION 1. There is hereby granted to the city of San Diego, a municipal corporation of the State of California, and to its successors, all of the right, title and interest of the State of California, held by said State by virtue of its sovereignty, in and to all tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said city, not already granted to said city or to the United States government, or to the county of San Diego, in said State, and situated below the line of mean high tide of the Pacific Ocean, which border upon and are in front of the upland now within the boundaries of said city, to be forever held by said city, and by its successors. Nothing in this act shall be deemed or construed to grant any of the tidelands of Mission Bay or of its entrance, or to in any way affect the act of June 15, 1929, providing for a State park on Mission Bay.

Grant to city of San Diego of certain State lands.

Reservation.

(a) Said lands shall be used by said city and by its successors solely for the establishment, improvement and conduct of harbors and for the establishment and construction of bulkheads or breakwaters for the protection of lands within its boundaries, or for the protection of its harbors, and for the construction, maintenance and operation thereon of wharves, structures and appliances necessary or convenient for the protection or accommodation of commerce, navigation and fisheries, and for the establishment and maintenance of playgrounds, bathhouses, recreation piers and facilities necessary or convenient for the inhabitants of said city; and said city or its successors shall not at any time grant, convey, give or alien said lands or any part thereof to any individual, firm or corporation for any purpose whatsoever; provided, that said city or its successors may grant franchises thereon for limited periods, but in no event exceeding fifty years, for wharves and other public uses and purposes, and may lease said lands or any part thereof for limited periods, but in no event exceeding fifty years, for purposes consistent with the trust upon which said lands are held by the State of California and with the requirements of commerce, navigation or fisheries.

Trusts and conditions.

(b) That said harbors and tidelands shall be improved by said city without expense to the State and shall always remain public harbors and public tidelands for all purposes of commerce, navigation and fisheries; and the State of California shall have at all times the right to use without charge all wharves, docks, piers and other improvements constructed on said lands or any part thereof for any vessel or other water craft or railroad owned or operated by the State of California.

(c) That in the management, conduct or operation of said harbors and tidelands or of any of the utilities, structures or appliances mentioned in paragraph (a), no discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors.

(d) There is hereby reserved, however, in the people of the State of California the absolute right to the public use of said tidelands and to fish in the waters thereof, with the right of access to said waters over said tidelands for said purpose.

EXHIBIT NO. 6
APPLICATION NO.
<b>VRC-04-36</b>
State Tidelands Grant (Chapter 939)
 California Coastal Commission

RECEIVED

CALIFORNIA STATE LANDS COMMISSION  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

OCT 25 2004



PAUL D. THAYER, Executive Officer  
(916) 574-1800 FAX (916) 574-1810  
Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-0234  
Contact FAX: (916) 574-1955

October 21, 2004

File Ref: G10-07

Mr. Lee McEachern  
California Coastal Commission  
7575 Metropolitan Drive, Ste. 103  
San Diego, CA 92108-4402

Dear Mr. McEachern:

It has come to our attention that the city of San Diego has submitted a vested rights application to the California Coastal Commission for the placement of certain buoys, waterward of the mean high tide line, adjacent to the La Jolla Beach and Tennis Club (Club), in order to designate a swimming area. It is our understanding that the Club places these buoys in the water, approximately one week prior to Memorial Day and removes these buoys approximately one week following Labor Day.

As stated in our letter, dated September 20, 2001, to the city of San Diego (copy attached), these buoys are located on tidelands granted in trust by the Legislature to the city of San Diego pursuant to Chapter 937, Statutes of 1931, as amended. Title to these tidelands, and the revenues derived therefrom, are held by the city of San Diego in trust for the benefit of the citizens of California. As the Legislature's delegated trustee of these tidelands, the City has the primary responsibility and authority to manage these lands on a day-to-day basis. The city of San Diego should not allow installation of improvements on trust lands, without formal City approval. This could be accomplished through the issuance of a lease or permit for the placement of buoys. Therefore, we believe that before there could be any vested rights claim, the City must have taken formal action to authorize the placement of these buoys.

If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

Jennifer Lucchesi  
Public Land Management Specialist

<b>EXHIBIT NO. 7</b>
<b>APPLICATION NO.</b>
<b>VRC-04-36</b>
Letters from State Lands Commission dated 10/21/04 & 9/20/01
California Coastal Commission

October 21, 2004  
Page 2

cc: Casey Gwinn, City Attorney, City of San Diego  
Curtis Fossum, Senior Staff Counsel

**CALIFORNIA STATE LANDS COMMISSION**

100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



**PAUL D. THAYER, Executive Officer**

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Contact Phone: (916) 574-0234

Contact FAX: (916) 574-1955

September 20, 2001

File Ref: G10-07

Mr. Tom Rothans  
Real Estate Division  
1200 3rd Avenue, Suite 1700  
San Diego, CA 92101

Mr. Ted Medina  
Coastal Parks Division  
202 C Street, MS 9B  
San Diego, CA 92101-3864

RE: La Jolla Beach and Tennis Club

Dear Mr. Rothans and Mr. Medina:

It has come to the attention of CSLC staff that certain buoys placed waterward of the mean high tide line, adjacent to the La Jolla Beach and Tennis Club, to designate a swimming area, are located on tidelands granted by the Legislature to the City of San Diego pursuant to Chapter 937, Statutes of 1931, as amended. We are informed that these buoys are placed in the water, by the Club, approximately one week prior to Memorial Day and removed approximately one week following Labor Day.

Title to these tidelands, and the revenues derived therefrom, are held by the City of San Diego in trust for the benefit of the citizens of California. As the Legislature's delegated trustee of these tidelands, the City has the primary responsibility and authority to manage these lands. Therefore, active management of the certain lands mentioned above, such as a lease or permit for the placement of the buoys, would be beneficial to the City of San Diego. Please inform us as to what arrangements the City has with the Club for operation of these buoys.

If you have any questions or concerns please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Lucchesi".

Jennifer Lucchesi  
Public Land Management Specialist