

## CALIFORNIA COASTAL COMMISSION

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



# Th 24c

## Addendum

February 9, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item Th 24c**, Coastal Commission Permit Application **#6-09-75 (City of San Diego Safety Buoys)**, for the Commission Meeting of February 11, 2010.

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Staff recommends the following changes be made to the above-referenced staff report:

1. On Page 2 of the staff report, Special Condition #1a shall be revised as follows:

**1. Designated Public Swim Area and Public Access Signage. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a signage plan that includes the following:

- a. A minimum of four (4) signs shall be installed in a prominent area and visible to the public. At least one sign shall be installed at each of the following locations:
  1. At the north end of the demarcated swim area at the terminus of Avenida de la Playa;
  2. At the north end of the demarcated swim area on the wooden barricade that extends west from the terminus of Avenida de la Playa, subject to landowner approval;
  3. At the entrance to the Marine Room public beach accessway (near Roseland Drive); and
  4. At the south end of the demarcated swim area on the northern or southern wall of the Marine Room public beach accessway (at eye level), subject to landowner approval.

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**FORM FOR DISCLOSURE OF  
EX-PARTE COMMUNICATIONS**

**Th 24c**

Name or description of the project: Agenda Item **Th.24.c**

**Application No. 6-09-75 (City of San Diego Safety Buoys)** Application of City of San Diego to place buoys in water to demarcate safe swimming area, seaward of La Jolla Beach and Tennis Club, at 2000 Spindrifft Dr., La Jolla, San Diego, San Diego County. (LJM-SD)

Time/Date of communication: Friday, February 5th, 2010, 9:15 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Gabriel Solmer, Penny Elia for Sierra Club

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

Support the staff recommendation for approval with special conditions.

Sierra Club agrees that the proposed signage is adequate.

Date: February 5, 2010

*Signature on file*

Patrick Kruer

FEB 09 2010

San Diego County  
Commissioner

Ex Parte Communication

**73**

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Th 24c

Allen Matkins

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Direct Dial: 415.273.7482 File Number: 224034-00002/SF776937.01

Via Email/US Postal and Fax

February 6, 2010

Bonnie Neely, Chair  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

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

**Re: City of San Diego Application No. 6-09-075  
AGENDA ITEM 24c**

Dear Chair Neely and Commissioners:

On behalf of our client, the La Jolla Beach and Tennis Club ("LJBTC"), we respectfully submit these comments in connection with the City of San Diego's application No. 6-09-075 to allow the placement of buoy markers in the ocean intended to demarcate a safe public swimming area. The subject area is adjacent to LJBTC property.

LJBTC supports the City's application and supports the conditions of approval recommended by Commission staff,<sup>1</sup> with one minor exception. Special Condition 1.a.2 requires the City to post swimming area signage "on the wooden barricade that extends west from the terminus of Avenida de la Playa." Since this wooden barricade is owned by the LJBTC, we request that the following text be added to the end of the sentence: ", subject to landowner approval." This requested text would make this condition consistent with Special Condition 1.a.4. If and when requested by the City, LJBTC intends to grant its request to post the signage recommended by Commission staff for purposes of this permit.

<sup>1</sup> Coastal Commission staff report at <http://documents.coastal.ca.gov/reports/2010/2/Th24c-2-2010.pdf>, last visited on February 6, 2010.

Bonnie Neely, Chair  
Lee McEachern, staff  
February 6, 2010  
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LJBTC objects to any deviation from the staff-recommended conditions of approval, unless LJBTC is given an opportunity by the Commission to address any such deviation, and in so doing, announces its withdrawal of its objection or objections.

LJBTC also objects to some of the Commission staff's statements in its staff report, including, but not limited to, the following:

Page 4, fifth line. The staff report states that north of the City's project site, the "public beach extends north all the way to Black's Beach and south to a point just beyond the restaurant, 'the Marine Room', which is located just south of the LJBTC." This is an incorrect characterization. As noted in several places elsewhere in the staff report, the beach in front of the LJBTC is privately-owned down to the mean high tide line ("MHTL"). The beach north of LJBTC (at least up to Black's Beach) is publicly-owned.

Page 10, lines 4-6. The staff report states that "placement of the buoys in the water is problematic because it has historically been interpreted by the public as demarcating the area as a private beach and swim area." However, staff do not present or cite to any evidence that the public has "historically" interpreted the buoys in this manner. In the seven or so years that this matter has been of interest to Commission staff, including several prior staff reports presented to the Commission, this allegation has never been documented.<sup>2</sup> In fact, the public does swim in front of the LJBTC and uses the public portion of the beach that is seaward of the MHTL. We know that to be true by reference to prior statements that have been made by the City's Lifeguard Services Division, statements in the record made by the LJBTC, and public comments and letters received by the Commission over the last several years.

Page 10, lines 21-26. The staff report states that LJBTC's beach signage is "misleading." We disagree with that characterization. As staff is well aware, LJBTC is required by law to take steps to inform the public of its private property right interest, or it risks losing that interest by prescriptive easement. In 2004, we made this point to Commission staff, let them know that any new LJBTC signage would remain consistent with the City's signage ordinance, and were told that new signage would not require a permit from the Commission. It now appears that Commission staff wish to re-engage on this matter, and we look forward to further discussions on this topic.

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<sup>2</sup> See the following, which are incorporated by reference into this comment letter for all purposes relating to this matter: all substantive file documents, correspondence, public hearing and meeting transcripts, and staff reports for City of San Diego Claim of Vested Rights No. 6-04-36; City of San Diego Application No. 6-05-140; Revised Conditions and Findings for Application No. 6-05-140; City of San Diego Amendment Request Application No. 6-05-140-A1; and City of San Diego Application No. 6-08-124-W.

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Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law

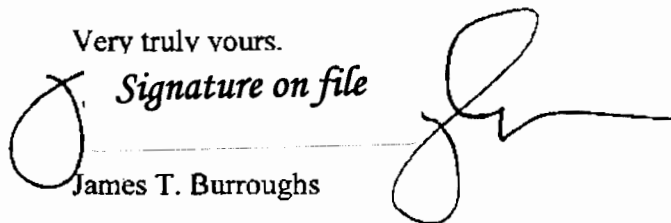
Bonnie Neely, Chair  
Lee McEachern, staff  
February 6, 2010  
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Thank you for your consideration of these comments and recommendations.

Very truly yours.

*Signature on file*

James T. Burroughs

A handwritten signature in black ink, appearing to be 'J. Burroughs', written over a horizontal line. The signature is stylized with a large initial 'J' and a long horizontal stroke at the end.

cc: William J. Kellogg, La Jolla Beach and Tennis Club

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



# Th 24c

Filed: December 14, 2009  
49th Day: February 1, 2010  
180th Day: June 12, 2010  
Staff: L. McEachern-SD  
Staff Report: January 25, 2010  
Hearing Date: February 10-12, 2010

**REGULAR CALENDAR**  
**STAFF REPORT AND PRELIMINARY RECOMMENDATION**

**Application No.:** 6-09-075

**Applicant:** City of San Diego

**Agent:** Glen Spitzer

**Description:** Placement of buoy markers in the ocean to demarcate safe swimming area from April 1<sup>st</sup> to October 31<sup>st</sup> each year.

**Site:** Immediately offshore of La Jolla Beach & Tennis Club (2000 Spindrift Drive), between the western extensions of Paseo Dorado and Avenida de la Playa, La Jolla, San Diego, San Diego County.

**Substantive File Documents:** Claim of Vested Rights #6-04-36-VRC; CDP Nos. 6-05-140, 6-05-140-A1 and 6-08-124-W.

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**STAFF NOTES:**

**Summary of Staff's Preliminary Recommendation:**

Staff is recommending approval of the placement of the buoys in the water subject to special conditions. One of the primary concerns raised by the proposed development is the "perception" that the swim area covered by the proposed buoys is private and not available to the public as the buoys are placed directly offshore a private resort. To address this issue, the City has proposed to install signage that makes it clear to the public that public beach access adjacent to the designated public swim area (and the La Jolla Beach and Tennis Club) is always permitted and that the designated public swim area surrounded by ropes and buoys is open to the public.

**Standard of Review:** Chapter 3 policies of the Coastal Act.

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**I. PRELIMINARY STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following resolution:

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 6-09-075 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

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

**RESOLUTION TO APPROVE THE PERMIT:**

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

**II. Standard Conditions.**

See attached page.

**III. Special Conditions.**

The permit is subject to the following conditions:

**1. Designated Public Swim Area and Public Access Signage. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for review and written approval of the Executive Director, a signage plan that includes the following:

- a. A minimum of four (4) signs shall be installed in a prominent area and visible to the public. At least one sign shall be installed at each of the following locations:
  1. At the north end of the demarcated swim area at the terminus of Avenida de la Playa;
  2. At the north end of the demarcated swim area on the wooden barricade that extends west from the terminus of Avenida de la Playa;

3. At the entrance to the Marine Room public beach accessway (near Roseland Drive); and
  4. At the south end of the demarcated swim area on the northern or southern wall of the Marine Room public beach accessway (at eye level), subject to landowner approval.
- b. The signs shall be a minimum of 2' x 18" in size and include the following language:

### **DESIGNATED PUBLIC SWIM AREA**

All waters between Avenida de la Playa and Roseland Drive are open to the public, including waters protected by ropes and buoys.

### **Public Access Always Permitted**

- c. A written agreement that the signs shall remain and be maintained (and replaced if damaged) for the life of the permit.

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

**2. Location/Timing of Placement of Buoys in the Ocean.** The proposed buoys shall be placed consistent with Exhibit #3 of CDP #6-09-075 and shall not be installed in the ocean prior to April 1<sup>st</sup> and must be removed by October 31<sup>st</sup> each year.

**3. Term of Permit.** The permit approved herein shall be valid for five (5) years from the date of Commission action. The applicant may request an amendment to the permit to allow additional time. Development authorized by this permit may continue beyond the five-year term of the permit until the Commission acts on an application to extend the duration of the permit as long as a complete application for such is filed prior to the end of the five-year term.

## **IV. Findings and Declarations.**

The Commission finds and declares as follows:

**1. Detailed Project Description.** Proposed is the placement of buoy markers in the ocean to demarcate a designated public swim area seaward of the La Jolla Beach and Tennis Club (LJBTC) in the La Jolla community of the City of San Diego. The LJBTC is a private beachfront club/resort situated on an 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 beyond the restaurant, “the Marine Room”, which is located just south of the LJBTC. There is a public boat launch located at the street end of Avenida de la Playa, the street that marks the northern boundary of the LJBTC property. 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 buoys are proposed as a public safety measure to separate the designated swim area from the area used by boats and kayaks. Specifically, the buoys are proposed to be installed April 1<sup>st</sup> and removed by October 31<sup>st</sup> each year, the time when the number of swimmers in the water is the highest and the most potential conflicts occur between swimmers and boaters.

The proposed buoys are plastic coated foam markers that float in the water and will be spaced at approximately 10-foot intervals, connected by nylon rope and anchored with weights. Installation of the buoy markers requires dropping weights at two points (one adjacent to the seaward end of Paseo Dorado and the other adjacent to the seaward end of Avenida de la Playa). From these two points, the buoy marker line is extended seaward approximately 300 ft. where the line is again anchored at each of the two points. The line will then run parallel to the shoreline connecting the two points. To secure the buoy marker line, a battleship anchor line is used with 500 lb. weights at each of the corners and a 750 lb. weight at each mid point. 250 lb. weights will be used to secure the shoreline points. The weights, lines and buoys will be removed at the end of the season (by October 31<sup>st</sup> each year). Signs are also proposed at the north and south ends of the demarcated swim area. The signs will be a minimum of 2’ x 18” in size and will include the following:

### **DESIGNATED PUBLIC SWIM AREA**

All waters between  
Avenida de la Playa and Roseland Drive  
are open to the public, including waters  
protected by ropes and buoys.

### **Public Access Always Permitted**

While the City of San Diego has a certified LCP, the proposed development will occur in an area where the Commission retains jurisdiction. Thus, the standard of review is the Chapter 3 policies of the Coastal Act, with the certified LCP used as guidance.

2. **History.** On January 12, 2005, the Coastal Commission reviewed and approved a claim of vested rights (6-04-36-VRC) by the City of San Diego for placement of buoys in the water in a portion of a designated public swim area seaward of the LJBTC. The claim of vested rights, which was submitted by the City of San Diego Fire-Rescue Department/Lifeguard Services Division, was to: 1) designate a swim area for the general public in the ocean (seaward of the LJBTC) 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 April of 1966. Pursuant to City of San Diego Resolution No. 186513, 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 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 acknowledges that the buoys mark off a much smaller swim area than the public swim area designated by the City in 1966. 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 marked off a much smaller swim area than the designated public swim area and were placed by the private beach club around only 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 at the northern edge of the swim area (at the terminus of Avenida de la Playa). 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. According to the City, the buoy markers have traditionally been placed at the beginning of Memorial Day weekend and removed after Labor Day each year.

Subsequently, the Sierra Club filed a lawsuit against the Commission, the City and the LJBTC, challenging the Commission's decision. A settlement agreement was reached that included several stipulations, one of which provided that the City was to apply for a coastal development permit for placement of the buoys within 30 days of the Court's signing of the stipulated order. The stipulation also permitted the City to place and/or remove the buoys pending the outcome of the coastal development permit as long as the placement of the buoys was consistent with past practice. In compliance with the settlement agreement, the City submitted coastal development permit application #6-05-140, which was reviewed and approved by the Commission on July 13, 2006.

During the review of CDP #6-05-140, the primary concern raised was that the proposed development to place buoys in the water gave the "perception" that the swim area demarcated by the proposed buoys was private and not available to the public as the buoys were placed directly offshore of the private resort. To address this issue, the Commission approved CDP #6-05-140 subject to several conditions, one of which

included the placement of the signage to make it clear to the public that public beach access adjacent to the designated public swim area (and the LJBTC) is permitted and that the designated public swim area surrounded by ropes and buoys is open to the public. At the hearing, there was concern expressed regarding the wording of the signage, public access and beach wrack. The Commission approved the permit with revisions to the proposed special conditions and required a minimum of four signs to be installed in prominent areas and visible to the public along the beach. The language of the signage was to read as follows:

Designated Public Swim Area. All waters between Avenida de la Playa and Roseland Drive are open to the public, including waters protected by ropes and Buoys. Public beach access permitted.

In September 2006, the LJBTC filed suit challenging the Commission's conditions of approval for the beach buoy CDP. Sierra Club intervened in the lawsuit. The lawsuit focused on the wording of the sign. The court dismissed the LJBTC's claims against the Commission with leave to amend. The court, however, allowed LJBTC to proceed with its claims seeking declaratory and injunctive relief to prevent the City from installing the signage.

Subsequently, the parties to the lawsuit (LJBTC, the City, the Sierra Club, the Commission and the State Lands Commission) entered into settlement discussions regarding what portions of the beach in front of the club are open to the public. After extensive negotiations with legal staff and planning staff, an agreement was reached between Commission staff, the City and the LJBTC regarding a way to demonstrate which portions of the beach are open for public use. The agreed-upon revisions to the wording on the signage as well as the placement of a yellow flag on the beach resulted in an amendment request (ref. CDP #6-05-140-A1), which was considered by the Commission at its April 10, 2008 hearing. Due to concerns raised at that hearing, the matter was continued. The amendment request was further revised to address concerns raised at the hearing by the Commission, which included revising the proposed signage language and that the signage include a picture and/or a diagram that depicts the public access area with a yellow line. Also included was to be the placement of a yellow flag on the beach at the center point of the yellow line as shown in the picture. The end points of the yellow line were to be marked by a visible yellow marker such as a yellow paint, yellow flags or other appropriate fixture. At its June 12, 2008 hearing, the Commission denied the amendment request due to concerns with the proposed demarcation of the public vs. private beach areas. Subsequently, CDP #6-05-140 expired on July 13, 2008.

The parties then met again to see if a revised settlement could be reached. Based on those discussions, the City subsequently submitted a new application for the buoy placement on December 31, 2008 with revised signage language. Because of concerns raised relative to new signage posted at the site by the LJBTC, Commission staff began discussions with representatives of the LJBTC to address their signage. However, because the swim season was approaching and no agreement had been reached, the City's application was brought to the Commission as a de minimis waiver for placement of the

buoys for only the 2009 season (reference CDP #6-08-124-W). At the April 2009 hearing, the Commission did not object to the waiver. The City is now requesting a long-term permit for the buoy placement with this application.

**3. Public Access/Safety.** The following policies are applicable to the subject project:

### **Section 30210**

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

### **Section 30211**

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

### **Section 30212**

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or, [...]

### **Section 30221**

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

One of the most important goals of the Coastal Act is to protect, provide and enhance public access opportunities for all persons to and along the coast (Sections 30210-30214, 30221, 30252 of the Coastal Act). Section 30001.5(c) of the Coastal Act requires that public access and public recreational opportunities be maximized, consistent with sound resource conservation principles.

According to the City Lifeguard Service, placement of the proposed buoys is important for public safety. The terminus of Avenida de la Playa is a public boat launch. Nearly

year round, kayaks and other small boats are launched from this location, with the majority of the kayakers making their way south to view caves and other natural features that occur along the La Jolla shoreline. During the colder months, there are not typically any conflicts. However, from approximately April through October, swimmers are in the water within the designated swim area immediately south of the boat launch and as such, conflicts can occur between swimmers and boaters resulting in a safety issue for the swimmers. As such, the City places the buoys in the water to demarcate the safe swimming area such that boats and swimmers are kept separated. Previously, the historical northern boundary of the buoy location was several hundred feet south of Avenida de la Playa. According to the City, the previous alignment created problems with kayakers and surfers in that they would often enter and exit the water in that area between the end of the Avenida de la Playa and the previous northern boundary of the swim buoy line because it gave the appearance of an open zone, not a swim zone. By moving the buoys further north, adjacent to Avenida de la Playa, it makes it clear that this area is part of the swim zone and kayakers and surfers are not to enter that area. With the proposed new alignment immediately adjacent to the boat launch, kayaks and boats are directed west along the buoys directly as they are launched and do not head south until beyond the buoy line.

Although the designated swim zone (described in the “History” section above) actually extends 1,000 feet offshore to the west and further to the south, the City has indicated that placing the buoys at the boundaries of that swim zone could imply a false sense of security in deeper waters. Thus, the City is proposing with this application to extend the buoys approximately 300 ft. west of the MHTL. Relative to placement of the buoys along the southern boundary of the swim zone, the City has indicated this portion of the swim zone consists of a rocky and more dangerous area for swimming. As such, the placement of the buoys does not follow the southern alignment of the previous City designated swim area, but follows an alignment further to the north that the lifeguards have determined is more appropriate for demarcation as a safe swimming area.

The added benefit of this new configuration is that the lifeguards can now focus less on avoiding conflicts between boaters and swimmers and directing boat traffic and instead focus on their primary duties (i.e., dangerous surf conditions, etc.). In addition, the placement of the buoys in a smaller configuration than the designated public swim zone has been found by the lifeguards to improve the safety of the swim zone by providing a guide for kayakers and boaters heading toward the La Jolla Caves area, which is to the south of the swim zone. The buoy configuration guides the boaters to return to this area as they head north from their areas of interest and keeps them out of the swim zone. As stated earlier, the La Jolla Sea Caves to the south are the main attraction for boaters and kayakers in the area. In fact, the City has stated that all of the kayak companies that have been permitted to operate in the area promote trips to the La Jolla Sea Caves. It is rare to see boaters going north. In addition, the City has noted that this area is the only area on the San Diego coast that has a “public” boat launch which requires additional safety precautions. Because the swim zone is next to the public boat launch, it is necessary to install buoys to clearly mark the swim zone in the interest of public safety. Thus, from a safety standpoint, the Commission finds that the revised buoy placement is a significant

improvement over the previous alignment, as it will minimize potentially hazardous interactions between boaters and swimmers.

However, the proposed buoy alignment does raise Coastal Act consistency concerns pertaining to public access. First, it conveys the perception that the area within the buoys is a private swim area associated with the LJBTC and not available to the general public. Another concern relates to the potential that the placement of the buoys hinders or interferes with the public's right to pass and repass along the beach seaward of the mean high tide line in front of the LJBTC as the buoys extend, at certain times, up and onto the beach. This creates a sense of a private beach in this area, even though the ocean and beach below the MHTL are public.

To address these concerns, the City is proposing the installation of signage at the north and south boundaries of the buoys. Specifically, the signage is in the form of wall signage (vs. freestanding signs) on a wooden barricade that extends perpendicular to the beach just south of the terminus of Avenida de la Playa and the public boat launch (also the northern boundary of the designated public swim area) and on the side of a wall near a public accessway at Roseland Drive which marks the southern boundary of the designated public swim area ( ref. Exhibit Nos. 5 and 6). The intent of the signage is to make it clear to the public that the ocean and beach (seaward of the MHTL) is open and available to the public and that the swim area designated by the buoys is not a private swim area for the LJBTC. This was an issue at the previous Commission hearings on the buoy placement and the Commission spent a lot of time discussing the wording of the signs. The signs need to properly reflect the public's right to use this area, but not include language that is confusing or limiting. Because the beach profile in this area can vary dramatically with the seasons and over time, the amount of beach area that is below the mean high tide line is variable. Signage that attempts to explain these complexities would confuse laypersons and likely discourage use of public beach areas. The most appropriate response is to install easily understandable signage that does not discourage public use of public beach areas.

Since the last review by the Commission and expiration of the CDP to allow installation of the buoys, the City, Sierra Club and LJBTC representatives have met and come up with new language to be placed on the signs that has been approved by all three parties. The proposed signs reflect this agreement and will read:

### **DESIGNATED PUBLIC SWIM AREA**

All waters between  
Avenida de la Playa and Roseland Drive  
are open to the public, including waters  
protected by ropes and buoys.

**Public Access Always Permitted**



It is only with such signage that clarifies the public's right to use the designated public swim area (and refers to the buoys in the water that mark the designated public swim area) and that public access is always permitted that the proposed project for placement of buoys can be found acceptable. Without the signage, the placement of the buoys in the water is problematic because it has historically been interpreted by the public as demarcating the area as a private beach and swim area. In other words, the public would not know that the area marked off by buoys is a designated public swim area and that they have the right to swim in the water within the boundaries of the buoys and to walk along the beach in areas that are subject to the public trust. Such an effect is inconsistent with State law as the public has the right to swim and move along the shoreline in these tidelands.<sup>1</sup>

However, for several years the LJBTC has had signage on their premises that heightened the sense of privacy of the beach and waters seaward of it by maintaining "no trespassing signs" on the adjacent LJBTC structures. Due to their location, the statements "Private Property" and "Trespassing Not Allowed" on the signs affixed to the structures adjacent to the LJBTC were often understood as declaring that the beach and area marked by the buoys is "private property" and that anyone walking or swimming in this area was trespassing. That is, in conjunction with the adjacent LJBTC signage, the apparent effect of the buoys demarcating only a smaller subset of the designated swim area in front of the private beach club conveyed the perception that the ocean area marked by the buoys was a private swim area for the adjacent LJBTC. Since the last Commission action, the LJBTC has placed new signage on the property without the benefit of a coastal development permit. The new signage is misleading in that it appears to suggest that the public is only permitted in the water and that the beach is private (ref. Exhibit #4). Since the signage was placed without benefit of a coastal development permit and the LJBTC is not a party to this application, this issue will be pursued as a separate enforcement matter.

With regard to the number of signs and the location for such signage, as earlier stated, presently there are two signs in the vicinity. One sign is on the wooden barricade at the terminus of Avenida de la Playa at the north end of the designated public swim area and the other sign is on the southern wall of the Marine Room coastal accessway. Both of these signs are appropriate locations which will be visible to the public. However, the sign on the southern wall of the Marine Room coastal accessway is too high and not

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<sup>1</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.)

easily visible to the public. The City has agreed to relocate this sign to a lower elevation (eye-level) to make it easier for the public to see. In addition, the Commission also finds that it is important to place a sign at the entrance to this public accessway (on the street side) of the Marine Room and at the terminus of the street end of Avenida de la Playa.

Special Condition #1 requires that the applicant submit a sign program which includes the size, placement, and language of the signs and requires that the City agree in writing to maintain the signs for the life of the permit and that no changes to the location or language of the signage is permitted without further review and approval by the Coastal Commission. Special Condition #2 also requires that the buoys can be installed no earlier than April 1<sup>st</sup> and must be removed by October 31<sup>st</sup> of each year.

In addition, the proposed placement of the buoys themselves will not interfere with public access along the beach during and after the installation because the buoys are proposed to be placed in the water by the use of divers and boats. As such, their placement will not interfere with the public using the sandy beach areas in the vicinity. The presence of the boats and divers will also not interfere with the public's use of the ocean because they will be in deep water and in areas that are not used by surfers or boogie-boarders. Most swimmers stay close to shore in this area. Also, kayakers and the like are not permitted within the boundaries of the designated public swim area and thus, no impacts to their ability to use the surrounding area will be affected either.

The proposed project involves the placement of buoys in the ocean to demarcate a safe public swimming area as a barrier between kayaks/boats and swimmers. The City has adequately identified a public safety issue that can only be addressed by the proposed buoy placement. While the buoy placement is only a subset of the City of San Diego designated swim area, it has been determined that the smaller area demarcated by the buoys is the best alignment to address the identified public safety needs. However, in order to assure that the new alignment for the buoys and the signage function as proposed, and do not result in impacts on public access, Special Condition #3 places a five-year limit on the permit. At that time, if the City wishes to continue placing the buoys in the water each year, the City will need to apply for an amendment to this permit. This gives the Commission the opportunity to reassess the project based on five years of operation and, if necessary, make changes to address any identified problems. This will allow the Commission to review the permit again in five years and determine how well the buoys have worked including the signage and all terms and conditions of the subject permit. In addition, to assure that the buoys are allowed to remain in place while the Commission reviews a future amendment request for placement of the buoys beyond the five-year term of the permit, the condition states that development approved by this permit may continue beyond the five-year term until Commission action on the amendment if a complete amendment application is filed prior to the expiration of the term of the permit.

Finally, Section 30604(c) of the Coastal Act requires that a specific access finding be made in conjunction with the approval of any development to be located between the first public roadway and the sea, indicating that the development is in conformity with the

public access and public recreation policies of Chapter 3. In this case, such a finding can be made. As conditioned to require the installation and maintenance of public access signage to assure the public is informed that the demarcated swim area is open and available to the public, the project will not result in any significant impacts to public access. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with all of the public access and recreation policies of the Coastal Act.

**4. Marine Resources.** Section 30230 of the Coastal Act is applicable to the subject project and states:

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

The proposed placement of the buoys will not result in any impacts to coastal marine resources. The City has conducted a biological analysis of the buoys placement area to identify any potential adverse effects on the marine environment and habitats from placement of the buoys and more specifically, the buoy anchors. Based on this analysis, the project area where the buoy anchors will be placed consists only of sand. While the analysis did identify a number of rocky areas underneath the sandy bottom area that may be exposed at irregular intervals (mostly during the winter months when the buoys are not in place), it was determined that these areas do not support any colonies of marine life (either plant/eelgrass or otherwise). In conclusion, the placement of the buoy anchors would not result in any direct or indirect impacts on the marine environment. Therefore, the proposed placement of the buoys, as conditioned, is consistent with the marine resource protection policies of the Coastal Act.

**5. Local Coastal Planning.** The proposed development will occur in the water adjacent to the La Jolla Beach and Tennis Club. The proposed buoys will be placed within a smaller portion of a public swim area designated by the City of San Diego in 1966. The proposed buoys for public safety are consistent with this public swim area designation. With the special condition requiring the provision of signage that informs the public that they have the right to access along the beach and in the water, it can be assured that the proposal to install buoys in the ocean will not interfere with or impede public access along the shoreline. Furthermore, the signage makes clear that all waters in the designated public swim area are open to the public, including the waters protected by ropes and buoys, as proposed. Therefore, the Commission finds that the subject proposal would not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the La Jolla area of the City of San Diego.

**6. Consistency with the California Environmental Quality Act (CEQA).** Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as

conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing the signage that pertains to public access along the shoreline and the designated public swim area will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

#### **STANDARD CONDITIONS:**

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



SAN DIEGO LA JOLLA UNDERWATER PARK

92037

SCRIPPS INSTITUTION

SUBMERGED LAND AREA

(PRIVATE)

92093

OCEAN

SITE

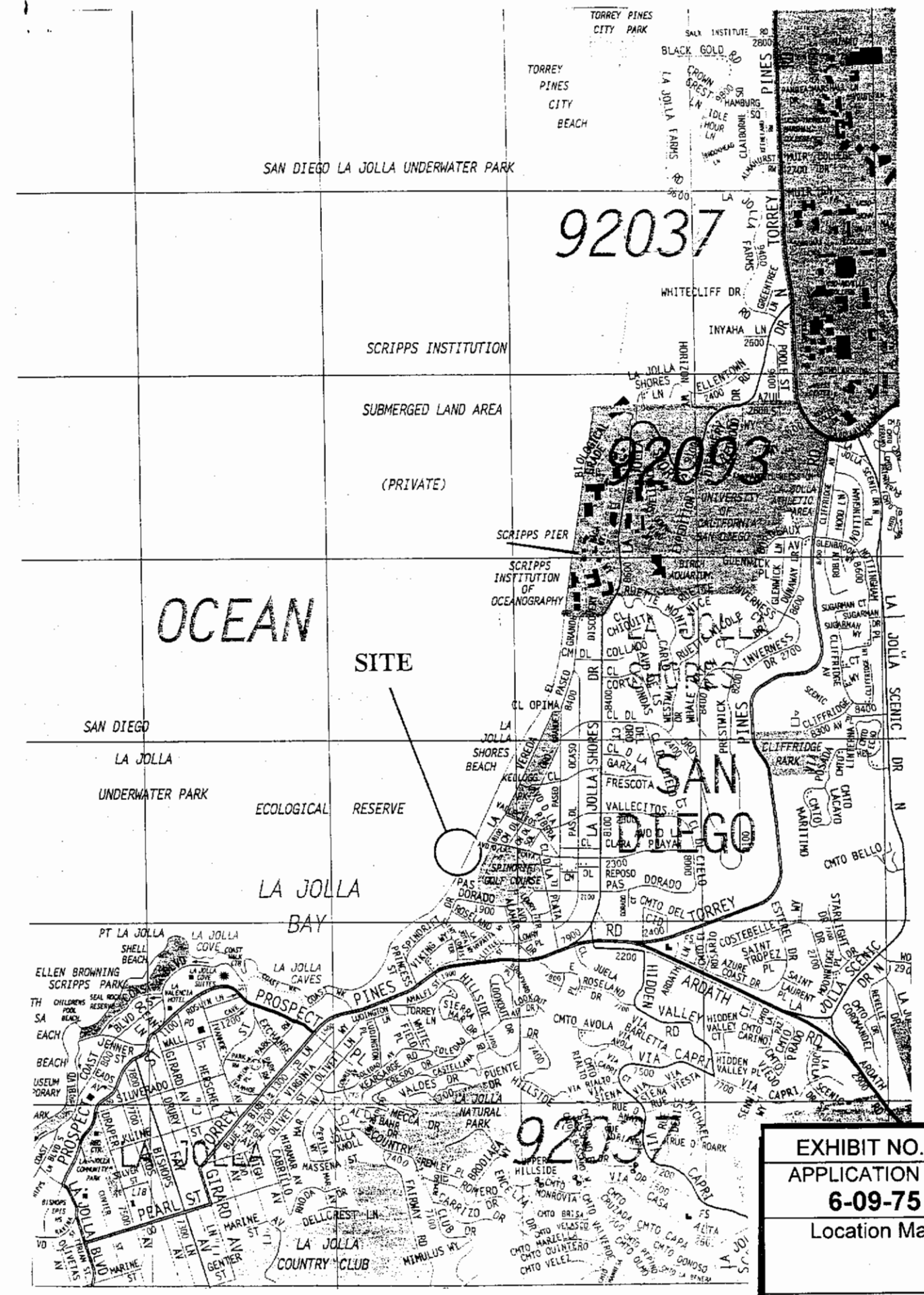
SAN DIEGO

LA JOLLA

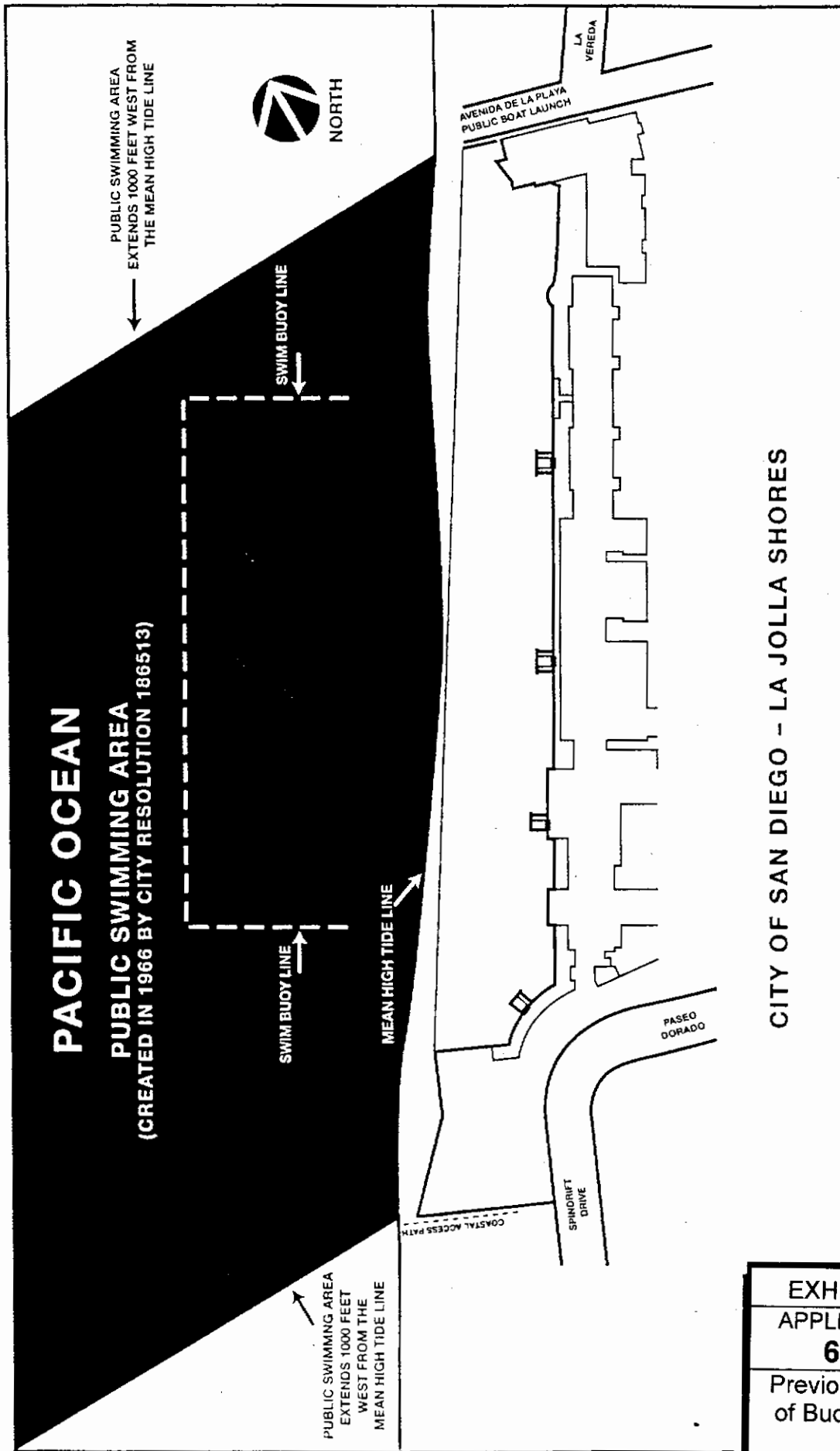
UNDERWATER PARK

ECOLOGICAL RESERVE

LA JOLLA BAY



**EXHIBIT NO. 1**  
**APPLICATION NO.**  
**6-09-75**  
**Location Map**



CITY OF SAN DIEGO - LA JOLLA SHORES

EXHIBIT NO. 2
APPLICATION NO.
<b>6-09-75</b>
Previous Alignment of Buoys in Ocean
California Coastal Commission

# City of San Diego's Application for Coastal Development Permit

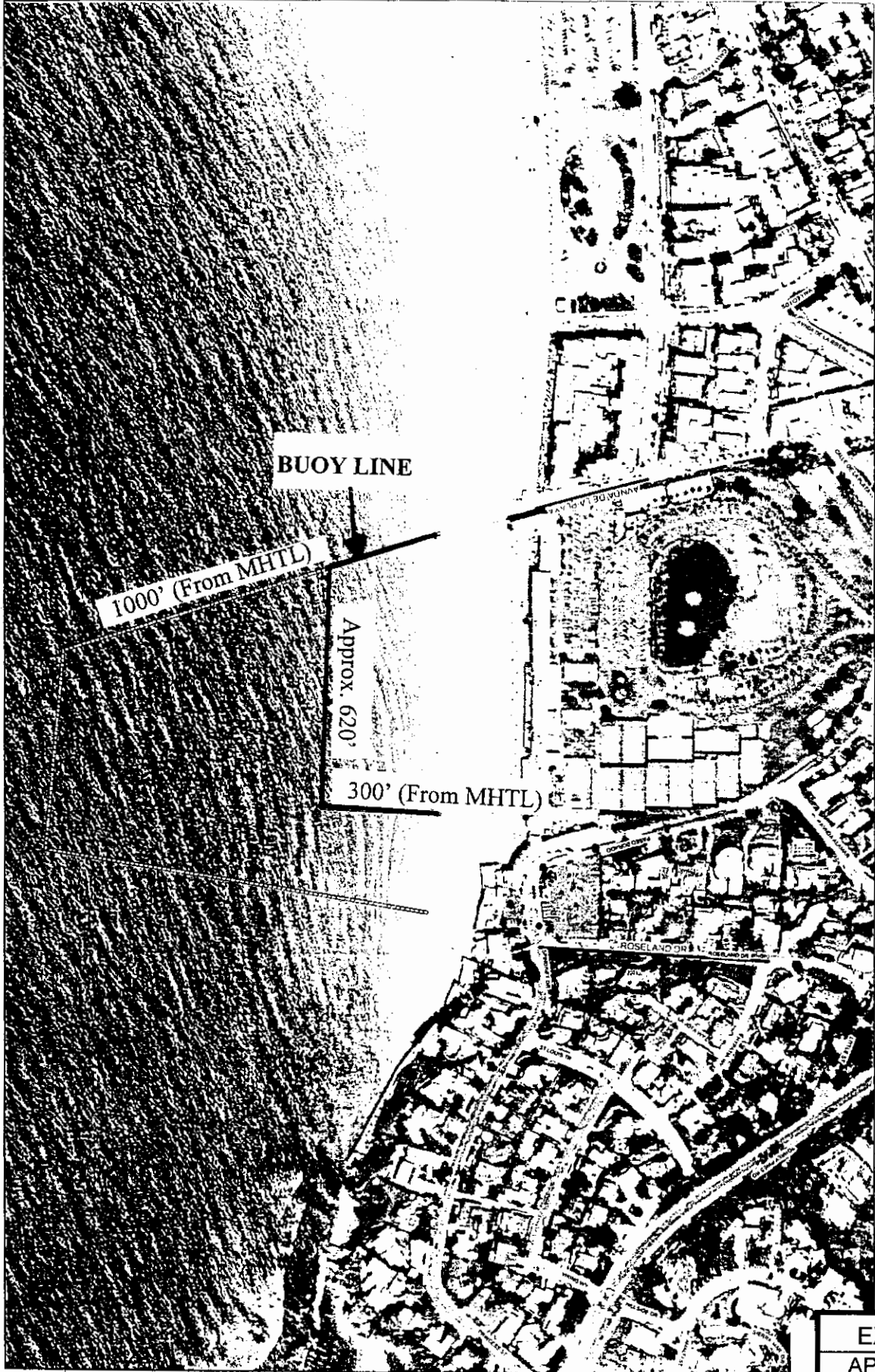

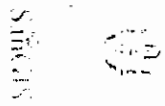


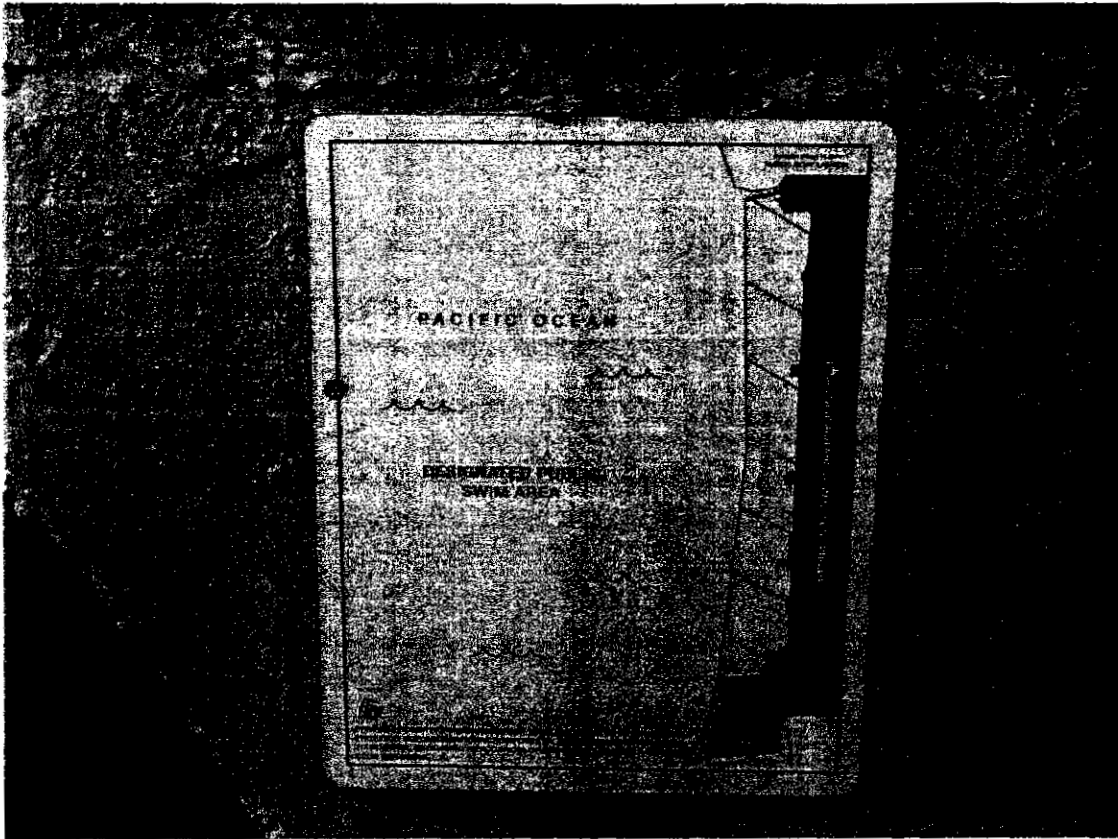


EXHIBIT NO. 3  
APPLICATION NO.  
**6-09-75**  
Proposed Alignment  
of Buoys in Ocean



**Location:** Posted on wall on north side of public beach access walkway at the beach (southernmost wall of the Marine Room.)

**I. Map depicting Designated Public Swim Area and Private Property:** Pacific Ocean; Public Swim Area; Private Property, No Trespassing La Jolla Beach and Tennis Club; Private property to the mean high tide line. Right to enter private property for recreational purposes by permission and subject to control, including revocation of the La Jolla Beach & Tennis Club Partners, L.P.

EXHIBIT NO. 4
APPLICATION NO. <b>6-09-75</b>
Existing Unpermitted La Jolla Beach & Tennis Club Sign
 California Coastal Commission





CITY SIGN ALONG AVENIDA DE LA PLAYA  
(NORTHERN BORDER OF THE DESIGNATED  
SWIM ZONE)

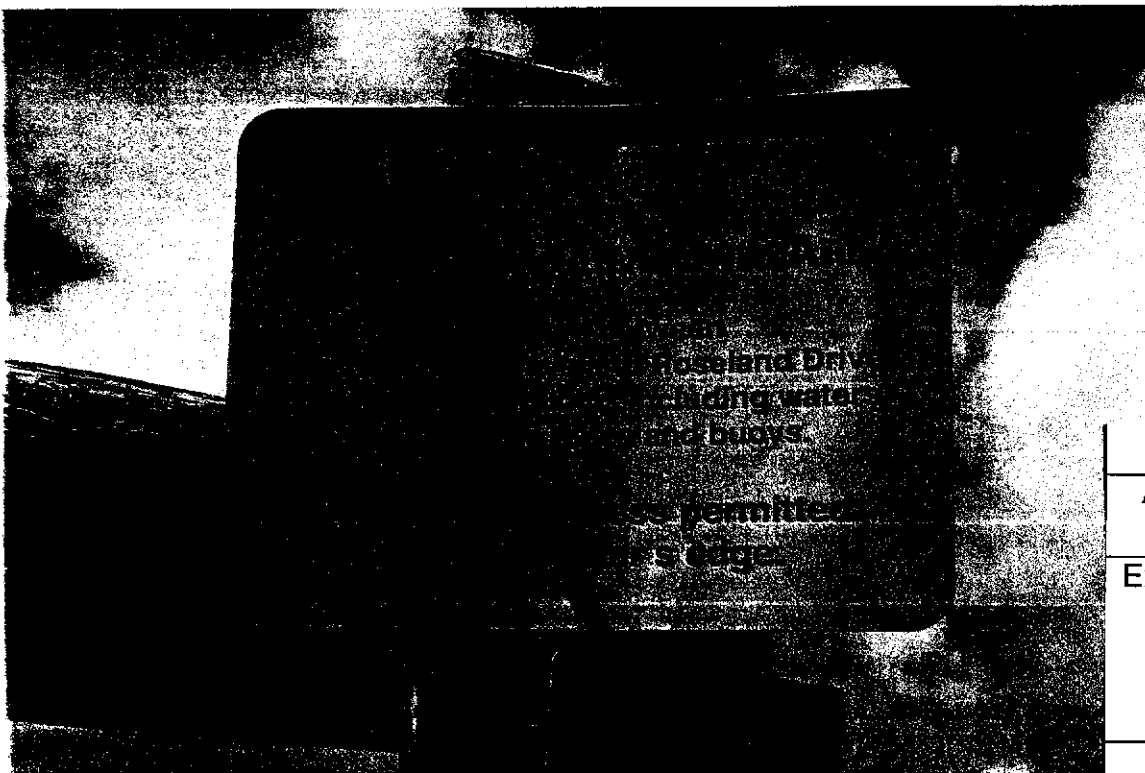

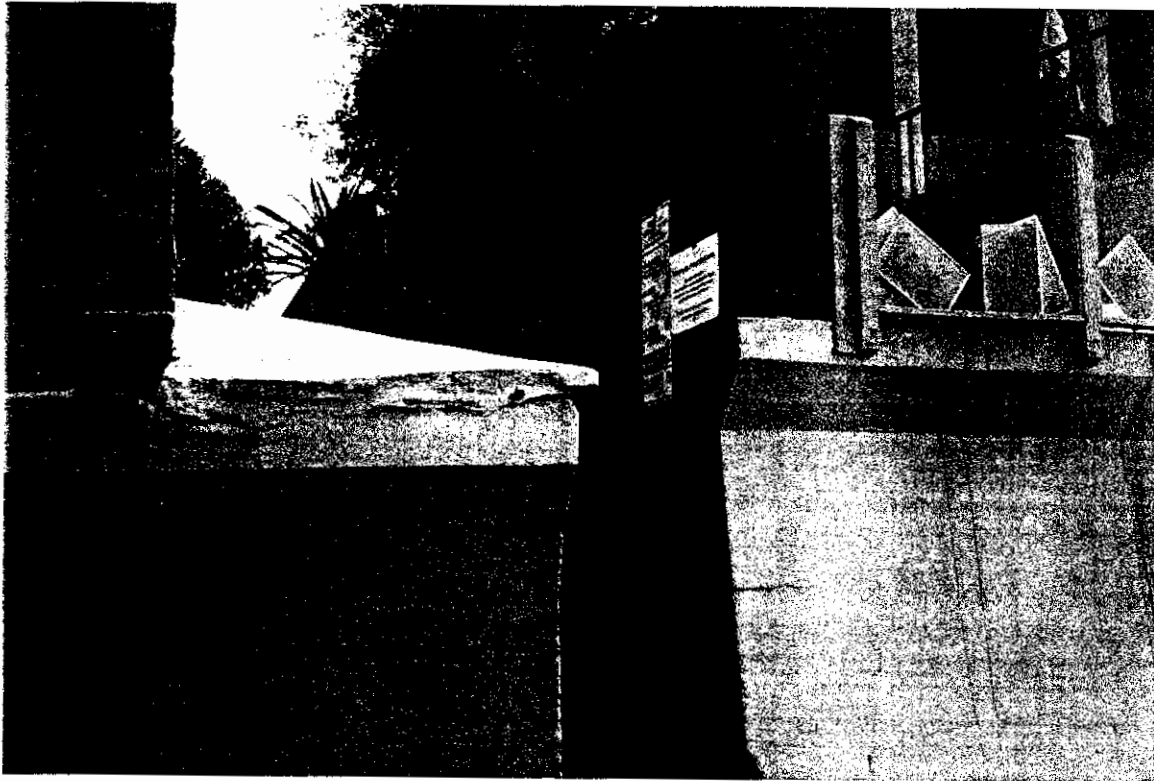


EXHIBIT NO. 5
APPLICATION NO.
<b>6-09-75</b>
Existing City Sign on Barricade Near Avenida de la Playa/Public Boat Launch
 California Coastal Commission



CITY SIGN ALONG ROSELAND DRIVE  
/MARINE ROOM (SOUTHERN BORDER OF THE  
DESIGNATED SWIM ZONE)

