

CALIFORNIA COASTAL COMMISSION

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



W26b

Addendum

March 4, 2010

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W26b**, Coastal Commission Permit Application #**A-6-LJS-10-009 (San Diego Parks temporary rope barrier)**, for the Commission Meeting of March 10, 2010

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

1. On Page 9 of the staff report, the second paragraph shall be revised as follows:

Relative to the appellants' assertion that the signage is inadequate and misleading, the Commission finds there is no merit. While the signage does include warnings to avoid disturbing the seals and that the water is contaminated, it does specifically state that the beach is open for public use and swimming is allowed, but not recommended (ref. Exhibit #3). In addition, the City has also placed signs up on the stairway leading to the beach that makes it clear that public access on the beach is allowed at all times and that any signs that do not have the official City Seal are not approved nor sanctioned by the City (ref. Exhibit Nos. 7 & 8). Thus, the signage does not result in adverse impacts on public access.

2. On Page 10 of the staff report, the first incomplete paragraph shall be revised as follows:

[...] situation for the protection of both seals and people so that both can utilize this area. As far as whether or not the City has chosen the "actual" pupping season, there is nothing in the City's file that addresses this issue. The appellants suggest that per NOAA, the official dates of pupping season are defined as January to mid-April. However, based on conversations between Commission staff and a representative from the National Marine Fisheries Service (NMFS), the City's proposal to put the rope barrier up in mid-December is conservative, but warranted (personal conversation/Tina Fahey). According to the NMFS representatives, pup births have been documented as early as November. In addition, pup births have been documented as late as April and, with the necessary weaning period, the proposed

mid-May removal date is also conservative. review of various websites, articles and research papers on harbor seals by Commission staff, it appears the pupping season varies with pups being born as early as February and as late as May. It appears the City may have chosen mid-December through mid-May to include a buffer period as well as to cover the breeding period and weaning of the pups. Thus, the City's dates for installation of the temporary rope barrier are conservative and consistent with the time period when seals pups are present on the beach. In any case, while there really is not a defined pupping season for seals at Children's Pool Beach, the Commission finds that placement of the temporary rope barrier on the beach as proposed does not result in adverse impacts on public access. Thus, confining the rope barrier to a specified defined pupping season is not necessary.

The appellants have also suggested that the City is in violation of the Marine Mammal Protection Act by placing the temporary rope barrier as they have not obtained the necessary federal permits for such. Again, in conversations with Commission staff, NMFS representatives have stated that they are in full support of the rope barrier to protect the seals during the pupping season and the City does not need any permits or authorization from them for placement of the rope barrier. The NMFS representatives have stated that the seals benefit greatly from the barrier as a means to assure people do not get too close. In addition, they have stated that mothers protecting their pups can and do get aggressive and have been known to bite or nip if they feel threatened. Thus, the barrier helps protect people from the seals as well by keeping them at a safe distance.

3. The attached pictures shall be added as Exhibit Nos. 7 & 8 to the staff report.

African Ape Study sites: <http://weber.ucsd.edu/~jmoore/apesites/>
Ugalla Primate Project: <http://ugalla.ucsd.edu/>

Report on political censorship of science:
http://ncac.org/science/political_science.pdf

21 Nov 2009, Children's Pool



5

Lee McEachern

From: ellenshively [ellenshively@sbcglobal.net]
Sent: Thursday, March 04, 2010 1:59 PM
To: Lee McEachern
Subject: Fw: Comments to APPEAL No. A-6-LJS-10-009

----- Original Message -----

From: ellenshively
To: ssarb@coastal.ca.gov ; dlee@coastal.ca.gov ; dlilly@coastal.ca.gov
Sent: Thursday, March 04, 2010 1:56 PM
Subject: Comments to APPEAL No. A-6-LJS-10-009

Comments on APPEAL No. A-6-LJS-10-009
San Diego Park's temporary rope barrier at Children's Pool during pupping season.

Dear Members of the California Coastal Commission:

These comments are in support of the motion to find "NO SUBSTANTIVE ISSUE" exists with respect to the grounds on which the appeal mentioned above has been filed.

We found the reasoning to delete further actions on this appeal entirely supported by the facts.

A. Senate Bill 428 has forever changed the approved use of "Children's Pool", or Casa Beach as it is better known. SB 428 inserted the additional usage to be as a marine mammal park for the education and enjoyment of children. To deny unhampered access to this beach by the marine mammals reverts the legislative action inoperative. A fully open beach with no physical barriers fails to acknowledge this provision of the law.

B. We must keep in mind that the Marine Mammal Act of 1973 prevents actions which will cause harm to the animals which are at rest, and thereby vulnerable to frequent human contact. The National Marine Fisheries Service has distance guidelines (sometimes of 100 feet distance) employed more effectively at other rookeries along the Pacific coast. One of the NMFS agents recently committed to a recommendation of keeping at least a fifty foot distance between animals and people in the interests of public safety. She cited that mothers are more predisposed to defending their young before weaning is completed at around 6-7 weeks of age. The rope "barrier" is the least effective type of barrier which could be employed. Total beach closure would be the most effective measure to carry out this Act. This City would be cited world wide as inexcusably cruel and unusually heartless if the rope with a means of enforcing it's restrictive distance was not provided, particularly during pupping season.

Thank You.

Ellen M. Shively
President
La Jolla Friends of the Seals
619-479-3412

6

Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 11:28 AM
To: Lee McEachern
Subject: FW: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010
Attachments: 3413005815_317d1c2909.jpg
FYI, addendum and file-- DNL

From: Nick Chill [mailto:nchill4x4@hotmail.com]
Sent: Wednesday, March 03, 2010 7:37 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

I would hope it's obvious that this is a very bad idea. It really seems as if this appeal has been made out of spite for the seals, and their supporters, in reaction to the recent ruling for the seals. Removing the rope has no benefit for the residents of La Jolla, nor for anyone else. I have personally witnessed what happens when there is no rope and tourists enter the beach. Not realizing the problem they are creating, tourists will walk right up to an injured seal, believing that it's just being friendly. That's exactly what will happen to these small seal pups.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Nicholas Chill
330-518-8018
NickChillPhotography.com

EMAILING FOR THE GREATER GOOD
[Join me](#)

7



Nick Gull

Deborah Lee

From: Joey Racano [joey_racano@yahoo.com]
Sent: Wednesday, March 03, 2010 8:22 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Childrens Pool Appeal

Honorable Commissioners,

Please listen to staff and find no substantial issue with the rope barrier at Casa Beach AKA Childrens Pool, LaJolla.

This is an ongoing saga that won't be solved soon, but the rope allows access while it keeps seals and people apart for safety.

I have been working hard to have the area designated an SMR under the MLPA and I am actually quite hopeful. I have personally appeared before F&G Commission several times over the past two years on this issue and hand delivered over 2,000 letters asking for the SMR.

Hold down the fort, a permanent solution is coming. Then we can get the orcas away from Blackstone Group/AKA seaworld.

love and respect
joey racano Ocean Outfall Group

ps join my Facebook page, Free Tilikum!

www.EarthSourceMedia.com
"Speak truth to youth!"
joey's famous blog:
<http://littleshell.earthsourcemedia.org>

9

Lee McEachern

From: Diana Lilly
Sent: Thursday, March 04, 2010 7:56 AM
To: Lee McEachern
Subject: FW: rope barrier at Casa Beach seal rookery, La Jolla, CA

From: Robin Lindsey [mailto:moondawgs@mac.com]
Sent: Thursday, March 04, 2010 6:05 AM
To: Diana Lilly
Subject: rope barrier at Casa Beach seal rookery, La Jolla, CA

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

I personally have visited this harbor seal rookery twice since 2008 and it has been the destination of my travel from Seattle. The rookery is an unparalleled opportunity for the public to observe marine mammals in the wild, seals giving birth, nursing and teaching their young to swim. I would ask further that in addition to keeping the rope barrier up permanently, that the public is prevented from going down on the beach PERIOD. There are amazing vantage points from the sidewalks and seawall above the beach and no need for the public to be so close as to disturb and put the young pups at risk.

Sincerely,
Robin Lindsey
www.robinlindseyphotography.com
www.sealsitters.org

Lee McEachern

From: Diana Lilly
Sent: Thursday, March 04, 2010 7:57 AM
To: Lee McEachern
Subject: FW: request

From: Janiece Chisholm [mailto:janiecec@cox.net]
Sent: Wednesday, March 03, 2010 7:59 PM
To: Diana Lilly
Subject: request

Please, please leave the rope up to help protect the seal pups.

Thank you.

Janiece Chisholm

janiecec@cox.net



Deborah Lee

From: michelle santurro [michelle-santurro@hotmail.com]
Sent: Wednesday, March 03, 2010 2:01 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

It is an atrocity that this needs to be readdressed. Not only are the seals a tourist attraction, but the amount of land they occupy is so minimal to the state of California's beaches. Nature should have a place in our society without question!

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season.

I support that the rope barrier should be maintained all year long.

Michelle Santurro
ms designs
858 229 6312
7665 mission gorge rd. #181
san diego, ca 92120

Hotmail: Free, trusted and rich email service. [Get it now.](#)

ITEM W26B
A-6-LGS-10-009

3/4/2010

Dear Honorable Coastal Commissioners:

As a lifelong resident of San Diego who earned her open water S.C.U.B.A. Certification at age 40 at La Jolla Shores in January, no less, I am certain of two things in regard to this issue: 1) The underwater experience divers are seeking would not be worth the time and effort if the wildlife were to disappear and 2) There are many places and opportunities for a diver to ^{access} enter the water in San Diego, therefore, by ensuring the seals a small area of beach in which to reproduce in safety and tranquility you will also ensure conservation of the very reason we dive at all.

Please support the City of San Diego and staff at the Coastal Commission in their endeavors to do the right thing.

Sincerely,

One of your biggest fans!
Chula Vista, CA (since 1956)

Deborah Lee

From: mypugsme@gmail.com on behalf of Jennifer Peirson [jennifercsr13245@gmail.com]
Sent: Wednesday, March 03, 2010 12:46 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat. Without the rope barrier, mother seals are startled by people who come too close to take a look at the seals and the baby seals. The sad result is that the frightened mothers flee and the helpless pups are lost or abandoned.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Thank you in advance for your support!

Sincerely,
Jennifer L. Peirson
6131 Rancho Mission Rd, Unit 217
San Diego, CA 92108

A large, bold, handwritten letter 'A' in black ink, located in the bottom right corner of the page.

Deborah Lee

From: Sue Casad [scasad@cox.net]
Sent: Wednesday, March 03, 2010 3:53 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: PLEASE leave the seal pupping rope UP - PLEASE PLEASE PLEASE!!!!

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

PLEASE support the staff's recommendation that the *rope barrier stay up during pupping season* and that *no persons should step over the rope barrier* during pupping season. *

I support that the rope barrier should be maintained all year long.

*

Our family has had many foreign exchange students, and the seals along the La Jolla Beach are one place we always take our students, and "our: students always super enjoy watching the seals, taking pictures of the seals, being able to be so close to the seals, all in the seals' natural habitat. It is not only educational for everyone, but nice to be able to see and share the natural beauty and natural surroundings of these precious mammals!! *

*

Sincerely,

Susan Casad

Deborah Lee

From: Deana Gunn [dgunn00@hotmail.com]

Sent: Tuesday, March 02, 2010 1:51 PM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am a San Diego county resident and my family enjoys and supports the presence of the harbor seals in La Jolla. It is an important ecological treasure and a huge tourist attraction.

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long. Please do not allow a very small and very vocal minority to remove the rope - the residents and visitors of San Diego love these seals and recognize what a unique feature we have here in our city. As residents of the area, we have watched this ridiculous debate go on long enough and waste enough of our taxpayer money. Allow the seals to stay and please allow the rope to remain all year long so that we can all enjoy watching these seals undisturbed on their beach. We have miles of coastline to enjoy - let the seals have their tiny patch of sand.

Sincerely,
Deana Gunn
Encinitas, CA

Hotmail: Trusted email with powerful SPAM protection. [Sign up now.](#)



Deborah Lee

From: Jane Cole [cjanego1946@gmail.com]

Sent: Wednesday, March 03, 2010 8:23 AM

To: Deborah Lee

Subject: Save the Seals

Please save the seals in Southern CA.

Deborah Lee

From: Rachael Phillips [r2rach@yahoo.com]
Sent: Wednesday, March 03, 2010 10:58 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

It is really sad that this issue regarding the seals is still going on. The mothers and pups need to be protected from humans plain and simple. A rope barrier is a simple solution. The anti-seal activists that do not want the seals around need to stop pursuing this. It is wasting a lot of time and money. They don't seem to understand that there are people out there that do want to interact with nature and protect our wildlife.

Thank you for your time,
Rachael Phillips

Deborah Lee

From: Dawn Darling [dawndarling@rocketmail.com]

Sent: Wednesday, March 03, 2010 10:27 AM

To: Deborah Lee

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

This is so important!! I have seen most of these seals grow up in San Diego. We must keep what is left of mother nature's environment preserved. Help San Diego stay it's original habitat.

Thank you,

Dawn Darling
San Diego

Deborah Lee

From: Trista Golike [tristaturtle@gmail.com]

Sent: Wednesday, March 03, 2010 10:20 AM

To: Deborah Lee

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010.

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long. Unfortunately, not all visitors to this cove are local inhabitants who understand and respect the seals' territory.

Regards,
Trista Golike



Lee McEachern

From: Diana Lilly
Sent: Wednesday, March 03, 2010 12:00 PM
To: Lee McEachern
Subject: FW: Please leave the Rope Barrier

From: Melissa Hughes [mailto:gigglestoo@cox.net]
Sent: Wednesday, March 03, 2010 12:00 PM
To: Diana Lilly
Subject: Please leave the Rope Barrier

SUBJECT: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

My primary concern is that the mothers don't abandon the pups if the area feels unsafe to them. They don't deserve to pup in harms way.

Please support the recommendation that the rope barrier stay up during pupping season.

I also support that the rope barrier should be maintained all year long.

Thank you for your consideration,
Melissa Hughes

Deborah Lee

From: June H Kobayashi [jhkobayas18@yahoo.com]

Sent: Wednesday, March 03, 2010 12:12 PM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

The seal population has dwindled considerably over the course of the last couple of decades as I visit them with my family regularly. These pups are precious in maintaining San Diego's image of being America's Finest City and their reputed commitment to wildlife.

Best Regards,

June H. Kobayashi
of Torrance, CA

22

Deborah Lee

From: Melissa Hughes [gigglestoo@cox.net]
Sent: Wednesday, March 03, 2010 12:01 PM
To: Deborah Lee

Subject: Leave the pupping rope/barrier

SUBJECT: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

My primary concern is that the mothers don't abandon the pups if the area feels unsafe to them. They don't deserve to pup in harms way.

Please support the recommendation that the rope barrier stay up during pupping season.

I also support that the rope barrier should be maintained all year long.

Thank you for your consideration,
Melissa Hughes

Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 10:12 AM
To: Lee McEachern
Subject: FW: Please put a sto to this rope removal petition re. Casa Beach!!!!
FYI, addendum and file--DNL

From: Barb S [mailto:babsan99@yahoo.com]
Sent: Wednesday, March 03, 2010 10:05 AM
To: Sherilyn Sarb
Cc: Deborah Lee; Diana Lilly
Subject: Please put a sto to this rope removal petition re. Casa Beach!!!!

Dear California Coastal Commissioners,

It is time to send a clear message to the 'animal anti-activitsts' that do all they can do create trouble for innocent life.

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

I used to live in San Diego, and now live in OC. Just 2 weeks ago I took a visiting Swedish friend (I am Swedish by birth) to see and be amazed by the natural habitat we could watch so closely, including a little pup who was just 1 hour old. Amazing... he was blown away.

Sincerely Barbro Sjutun,
1108 Buckingham Drive, Apt D
Costa Mesa, 92626



Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 10:11 AM
To: Lee McEachern
Subject: FW: pupping rope

FYI and addendum/file-- DNL

-----Original Message-----

From: jennifer blanchard [mailto:jenniferandike@me.com]
Sent: Wednesday, March 03, 2010 10:10 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: pupping rope

Please keep the pupping rope up. This is vital to ensure the pups are safe and the mothers don't get scared off. Please help keep the natural seals healthy and happy.
jennifer blanchard
jenniferandike@me.com



Lee McEachern

From: Diana Lilly
Sent: Wednesday, March 03, 2010 10:21 AM
To: Lee McEachern
Subject: FW: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010.

From: Trista Golike [mailto:tristaturtle@gmail.com]
Sent: Wednesday, March 03, 2010 10:21 AM
To: Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010.

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long. Unfortunately, not all visitors to this cove are local inhabitants who understand and respect the seals' territory.

Regards,
Trista Golike

26

Deborah Lee

From: Heidi Dawn [ediehd@yahoo.com]
Sent: Wednesday, March 03, 2010 7:07 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat. Please support keeping the rope up all year long so that this very special habitat can be maintained for both the seals and their human visitors for years to come!

*~Heidi Dawn
Ocean Beach, San Diego.*

27

Deborah Lee

From: REBECCA FRANKS [rfranks2@mac.com]
Sent: Wednesday, March 03, 2010 7:50 AM
To: Deborah Lee
Subject: Let the Seal Babies keep their home!

Dear California Coastal Commissioners,

I feel Humans should respect Animals and the World we live in! We should not disturb the Baby Seals in La Jolla!!!!!!

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat. Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Rebecca Nan Franks
7642 Palmilla Drive #126
San Diego, CA 92122
(619)888-2094

Deborah Lee

From: sammarye [sammarye@gmail.com]

Sent: Wednesday, March 03, 2010 7:44 AM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

To: California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

The pups are fragile and the mothers are easily frightened. These innocent harbor seals deserve our protection at Casa Beach, just as they are protected in other rookeries along the coastline. The public does not unduly suffer by being separated from the beach rookeries in Pacific Grove, or along the 17-Mile Drive, or near Hopkins Marine Lab, and these are also high use areas. Harbor seal rookeries are protected at Pt. Reyes, another public high-use area.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. Furthermore, I support that the rope barrier should be maintained all year long.

Thank you for making a decision that will affect the survival of a precious species for all our future.

Sincerely,

Sammarye Lewis

San Jose, CA

29

Lee McEachern

From: Deborah Lee
Sent: Tuesday, March 02, 2010 12:29 PM
To: Lee McEachern
Subject: FW: Rope Barrier at the Children's Pool in La Jolla
FYI and print off for addendum and file-- Thanks, DNL

From: Loretta Labianca [mailto:lorettalabianca@sbcglobal.net]
Sent: Monday, March 01, 2010 8:54 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Rope Barrier at the Children's Pool in La Jolla

I hope you will consider a year round rope barrier at Casa Beach in La Jolla to protect this unique colony and rookery of Harbor Seals. Because it is an urban environment, keeping people from getting too close and disturbing and frightening the seals is difficult. With a rope barrier and with proper enforcement of keeping a safe and defined distance, the seals could be protected and the public as well. There is a small group of middle aged men that spend countless hours going down on the beach and scaring the seals thereby causing them to separate from their newborn pups or having them prematurely. This could easily be stopped with proper enforcement of the MMPA and local wildlife laws but enforcement is greatly lacking.

Loretta LaBianca
Sierra Club Volunteer
858-442-1280.



Deborah Lee

From: Tracy Henslin [thenslin@yahoo.com]

Sent: Wednesday, March 03, 2010 9:54 AM

To: Sherilyn Sarb; Deborah Lee; Diana Lilly

Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. Without the rope barrier, mother seals are startled by people who come too close to take a look at the seals and the baby seals. The sad result is that the frightened mothers flee and the helpless pups are lost or abandoned.

I support that the rope barrier should be maintained all year long.

Thank you!
Tracy Henslin



From: Joey Racano [mailto:talkaboutthebay@yahoo.com]
Sent: Wednesday, March 03, 2010 3:54 PM
To: Pat Kruer; kram@contentllc.com; bonnie.neely@co.humboldt.ca.us;
kachadjian@co.slo.ca.us; mreilly@sonoma-county.org; lwan22350@aol.com;
sblank@kandsranch.com; drbburke@aol.com; mary_shallenberger@ppfa.org;
gonzalez@unionyes.org; mvaughn@coastal.ca.gov; jbishop@coastal.ca.gov;
mark.stone@co.santa-cruz.ca.us; esanchez@oceanside.co.ca.us
Subject: La Jolla Seals at Childrens Pool (Rope Barrier Appeal)

Please support staff they made it clear, public still has access to beach and ocean, but rope tends to protect from the seals and people being too dangerously close.

Thanks

joey racano, OOG

EarthSourceMedia
www.EarthSourceMedia.org
'Speak truth to youth!'
joey's famous blog:
Error! Hyperlink reference not valid.

Joey Racano LIVE! at Last Stage West on March 20th 6PM (California time) watch the simulcast at laststagewest.net

32

Deborah Lee

From: Becca Sharp [streetbike_babe@yahoo.com]
Sent: Thursday, March 04, 2010 12:26 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

As a native San Diegan I grew up using the beach and swimming at the Children's Pool. While it was my favorite place to swim as a child, it is also the first place I saw a sea otter. Twenty five years later we still go to see the seals. I currently take my nieces and cousins, and once I have children, will take them to see the seals also. We have an expansive selection of beautiful beaches here, allowing the seals to have a protected area where children can view and learn about them in the wild is valued much more than another place to play in the water.

Thank you for your time,
Rebecca Sharp

Lee McEachern

From: Janiece Chisholm [janiecec@cox.net]

Sent: Wednesday, March 03, 2010 7:58 PM

To: Sherilyn Sarb

Subject: request

Please, please leave the rope up to protect the seal pups.

Thank you

Janiece Chisholm

janiecec@cox.net

34

Deborah Lee

From: Andrea Sanchez [asanchez@fmservicesinc.com]
Sent: Thursday, March 04, 2010 12:36 PM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Protect the Seals!!!!!!!

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. **I support that the rope barrier should be maintained all year long.**

Andrea Sanchez and Chase Hudson

Andrea Sanchez (cell 619-991-1216)
Accountant
(858) 578-2300 (office)
(858) 578-2301 (Fax)



Lee McEachern

From: Deborah Lee
Sent: Wednesday, March 03, 2010 10:14 AM
To: Lee McEachern
Subject: FW: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010
FYI, file and addendum-- DNL

Deborah N. Lee
District Manager
California Coastal Commission
San Diego Coast District
Office: (619)767-2370
Fax: (619) 767-2384
dlee@coastal.ca.gov

From: Jonathan S. Marion [mailto:jsmarion@gmail.com]
Sent: Wednesday, March 03, 2010 9:56 AM
To: Sherilyn Sarb; Deborah Lee; Diana Lilly
Subject: Appeal No. A-6-LJS-10-09, Rope Barrier Appeal Hearing on March 10, 2010

Dear California Coastal Commissioners,

I am writing in support of maintaining the rope barrier at Casa Beach that allows the La Jolla Seals to be undisturbed and separated from the public. By maintaining the rope barrier, the seals are protected, the public is at a safe distance, and residents/tourists/children can enjoy observing these amazing seals in a natural habitat.

Please support the staff's recommendation that the rope barrier stay up during pupping season and that no persons should step over the rope barrier during pupping season. I support that the rope barrier should be maintained all year long.

Sincerely,

Dr. Jonathan S. Marion

--
Jonathan S. Marion, Ph.D. ~ www.jsmarion.com
Adjunct Professor of Cultural Anthropology ~ California State University, San Marcos
Adjunct Professor of Biological Anthropology ~ MiraCosta College
Board of Directors: Society for Visual Anthropology (2008-2011)
Board of Directors: Society for Humanistic Anthropology (2009-2012)





THE CITY OF SAN DIEGO

PUBLIC ACCESS ON THE BEACH IS ALLOWED
AT ALL TIMES.

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

PLEASE NOTE: ANY SIGNS IN THIS AREA THAT DO
NOT HAVE AN OFFICIAL CITY OF SAN DIEGO SEAL
ARE NOT APPROVED NOR SANCTIONED BY THE CITY OF SAN DIEGO. 08.18.2008

11:10

W26b

Californian Coastal Commission
Attendees of the March 10 Santa Cruz meeting
Re: Appeal A-6-LJS-10-009

A "temporary rope barrier annually in perpetuity" across Children's Pool, a public trusted beach in San Diego

This supplementary document to be included with the appeal and local Staff report.

Dear Commissioner,

From the size of the Staff report alone, one can see the issue is important. It will affect beach access all over California in future decades, and the ability of the Coastal Commission to move when local governments act first and ask permission later.

On 1/24/2010, a subcommittee of the City Council is scheduled to consider changing the barrier to year round, and to complete closure December to May. While still in violation with the Coastal Commission, San Diego is making quiet plans to more than double the impact.

I ask that you judge the permit terms as to whether consistent with the Coastal Act. (And Article 10, section 4 of the California Constitution) Local Staff seeks to contain the deliberations to consistency with the Local Coastal Plan, but any violation of the Coastal Act, in letter or spirit, is a violation of an LCP which is supposed to conform to the Coastal Act, by definition.

- 30500 "Each local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided." -

Existence of an LCP never removes authority from the Coastal Commission.

I. What I did contend and what I did not.

1)... *the rope barrier across 96% of the beach is an encroachment on public access that results in a defacto closure of the beach to the public;*

I contended the barrier is a violation by being any unpermitted encroachment at all, which it certainly is. I said what the La Jolla Community Planning Association said, "It violates the LCP public access policies particularly vertical access", which means access from the road to the **shoreline**. I do agree our local packs of animal rights activists have found it a tool to intimidate the public off the beach entirely, and the local Coastal Commission enforcement office should have taken action long ago. The barrier is used as a tool for beach restriction by intimidation. That is all it takes to violate the public's right of access under the Coastal Act.

2) ...*the rope is not for habitat preservation but is actually artificial habitat creation which fosters acclimatization of seals and further beach colonization which is bad for both people and seals;*

RECEIVED

MAR 03 2010

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Letter of Response
from Appellant

I contended the permit conditions are not based on its stated intent or purpose. The placement and duration are not based on science and law, but convenience and input from one special interest group. To show that, see (Attachment A) a memorandum of law the City used to initiate a series of “temporary” rope barriers. It shows the path by which one special interest group was the only input sought. It also shows the City has long intended to change this to barrier placement throughout the year and eventual closure. This month, a proposal is circulating in our City Hall to change this barrier to a complete winter and spring beach closure, with no input from outside San Diego.

The habitat creation issue (Attachment B) is a federal issue under the 109(a) of the Marine Mammal Protection Act, (Attachment E) and if the Commission endorses this rope barrier permit, it will endorse that violation.

3) *...that the City has already installed the rope barrier even though the appeal is pending and the coastal development permit is not effective;*

On 2/27, Lee McEachern told me to my face the City was in violation for proceeding with an appealed project and not submitting a required Emergency Permit. He told me he would tell the Commission the same thing. Hours later, the Staff Report was posted. On page 10, it only says “appellants assert” the installation permit is not effective. The incredible rationale followed that therefore no development has yet taken place – that is, if not in effect, no violation because the project must not exist. Poof. I never contended it was not in effect, I contended it is in effect; illegally. And it is.

4) *...signage proposed next to the rope is inadequate and misleading;*

I did not claim the signage was inadequate to the conditions of the permit, because the conditions are so vague as to allow most anything. Those “conditions” should never have escaped scrutiny. Since the Staff Report includes a picture of a sign, I included (Attachment F) what the signs used to look like when they actually explained themselves. Note the signs today posted 60’ apart direct citizens to call County Health for information, which is a fool’s errand. These City “informational signs” are really County contamination postings with no clear reference to the barrier’s purpose or meaning.

5) *...the project approved by the City does not have a monitoring component to verify its effectiveness, stop verbal harassment or keep animal activists from moving the rope and completely blocking off the beach;*

I did say the City has no monitoring to determine effectiveness or consequences. Its placement is arbitrary in location and dates. Its terms were dictated by a special interest group to a City committee that sought no other public or regulatory input. (Attachment A, memorandum) The permit does not create a project under the Coastal Act that balances the right of public access against some other greater good.

6) *...the proposed dates of placement are not the true pupping season.*

The official dates of pupping season are defined – January to mid April, per NOAA, the only legal agency. In fact, any State agency and the City are forbidden from enforcing legislation concerning seal protection anyway. ***Title 16 USC Chapter 13 Subchapter II Sec. 1379-Transfer of management authority MMPA section 109(a)*** Public access is

being encroached for no reason but convenience to San Diego and a special interest group at the expense of the public, of which the extended dates are small part of the offense.

The previous Appeal the Staff Report did not consider.

I went before the Commission on 3/10 pleading for due process because my appeal of a 2008 rope barrier had been buried for 18 months. Mr. Douglas agreed that was wrong and told the Commission it would be brought up to be addressed. The resulting reburial starts at the bottom of page 5 of the Staff Report.

The Staff asserts this project was the same as the 2010 barrier, therefore the issues are the same and the previous appeal will not be addressed by the Commission. So you the Commissioners will never see the 2008 permit and appeal, and if you approve this new permit, you will also have approved the old one without ever seeing it.

Since it is true, as Mr. McEachern told me, that San Diego has been in violation since Dec 16, 2009 for proceeding with the 2010 appealed project, it has also been in violation since March 2008 when it put up that year's barrier with no permit on public trusted land. If this year's appeal can be scuttled, San Diego is off the hook for 2 years of violation, the local Staff is off the hook for ignoring it, the Commission is bypassed and I am left with the denial of due process I started with.

The Barrier Permit was Different in 2008

The 2008 local permit was a true temporary half year project, but the City violated its own permit terms when it used private security guards and even lifeguards to force the public to stay behind its "advisory reminder rope". It happened to me.

The permit for that rope specifically cited a supposed obligation for the City to use it to enforce the Marine Mammal Protection Act. That in fact was illegal (Attachment A) under section 109(a) of that federal act, and under *Title 16 Chapter 31 subchapter II section 1374 –Permits*. Then, as now, San Diego violated federal law by not having a permit from the Commerce Dept to authorize "public display, or enhancing the survival or recovery of a species or stock".

Because you will not get to see that previous appeal, and because the facts have not been adequately investigated, the Commission could find itself repeating and endorsing San Diego's federal and State Tidelands Trust violations (Attachment C) without knowing it.

Review of issues in my appeal are covered however;

Since the Staff Report has brought forward other assertions to invalidate my appeal, so I am forced to address those misconceptions in subsequent text. Consider the pages following to be an appendix if you will.

V. Findings and Declaration (page 4)

1. Project Description

...seal pupping season described as December 15 to May 15

"Described" is a reasonable term. The barrier is over an arbitrary extension of time outside the scientific definition, which San Diego accepted by hearsay from a political special interest group (Exhibit A) that runs a business on the sidewalk above the beach, exploiting the public fascination with the seals.

Any of the many days public access is encroached by this project while there are not seals behind it are pointless loss of public right of way and violations of its stated intent and its LCP. There is no distance ever ruled to be too close for comfort for a seal. An arrangement that would satisfy some imperative to keep seals comfortable at the expense of the public, "with minimal interference with public access" would involve a barrier that would be moved to keep some distance as seals advanced or retreated, or a municipal ordinance making some distance a misdemeanor. The City is unwilling to make any such effort. Rope is cheap, and San Diego has a history of going ahead knowing forgiveness is easier to get than permission.

2. History

...the water quality of the "pool" has deteriorated to such a point that the County Health Department deemed the water unsafe, as it posed a serious health risk. It was determined that due to limited tidal exchange in the pool and use of the area by so many seals, the water had become contaminated with high levels of bacteria.

In 2003, State law no longer required water contaminated with non-human bacteria to be subject to closure. County Health measurements exceed e.colli limits (strictly seal) but not other bacteria, and these bugs have never been shown to be able to take up residence in humans. I know people who swim there regularly with no problem. The bacteria do not come from the water, but go into the water from where the seals soil the sand. I have virology tests showing the bacteria level is normal in middle of the pool. The City of San Diego never cleans at Children's Pool beach though it regularly cleans sand on its other beaches. Volunteers clean the sand at Children's Pool in the summer because the City does not, ever.

...amended the 1931 Trust to the City giving the City Council the discretion to allow the Children's Pool to be used as a "marine mammal park for the enjoyment and educational benefit of the children."

The amendment added the marine mammal park there, but added no discretion. All the other terms requiring public park, convenient access, playground and bathing pool for children are still there as San Diego's continuing responsibility. The Coastal Act specifically does not supersede the terms of a public trust.

...After consultation with Commission staff, the City was informed that installation of the rope barrier constituted development

Nope. The City knew the rules well before. It had had rope barriers from 1999 to 2003 on temporary permits until the CCC advised it the 2003 rope needed a real permit with conditions. The City withdrew its application as it didn't like the conditions. In Spring 2006, it had set out to grant itself a barrier permit and only that Fall did it find nobody

had taken care of the required California Coastal permit. The emergency behind the emergency permit simply was the City had dropped the ball. I was there.

As explained by the City, the intent of the rope barrier is to provide a buffer between people and seals during the seal pupping season

As explained by me, such a purpose would be illegal under federal law. If the City wants that to happen, it must ask NOAA to do it, or apply for its own permit from the Secretary of Commerce. What the City did not say is this barrier, and the previous 3 are based on a Dec 06 City resolution instructing Park and Recreation to apply for permits "immediately".

Additionally, during this period, the mother seals become more aggressive due to their instinct to protect themselves and their pups from people who are getting too close.

Fake Science. No validity. To justify an emergency permit the City needs a public safety issue, so the mother seals are described as ferocious. No. Harbor seals are stubby. Their striking range is about a foot, and no legless animal picks a fight on land with a terrestrial. They are prey animals and will flee real encounters. They are among us because they trust us. I cannot find any documented account of a harbor seal biting somebody. If they feared us they would be elsewhere. The mothers must get food or she and the pup will starve. In the wild they stash the pups while they forage. At Children's Pool they leave them on the beach for safekeeping. I have a picture of a mother seal who brought her pup across the beach, crossing under the rope to lie down next to me.

When the City and the Animal Rights Coalition want to put up a rope to "benefit" the seals and ensure a healthy tourist attraction, then the mother seals are timid and panicky and will trample their young to escape human proximity, or if pregnant, will react in such terror as to effect a miscarriage on the spot. Equally absurd.

I have searched for any observation of such a thing anywhere in the world. Dr. James T Harvey studied actual wild harbor seals for NOAA (1998) to see how close boats came to seals before disturbing them. A group that was mostly mothers was expected to be more skittish and he tried to measure that. Instead, he found they were more inclined to stay put. Of course, since no mammal reacts to annoyance by abandoning its young, yet this myth is so pervasive he had began with that hypothesis.

...conflicts arise, lifeguards are regularly called to intervene

Absolutely not. Years ago the lifeguards were instructed to keep their eyes on the water. They can call police like anybody else. The City could stop this anytime by enforcing its own municipal codes for soliciting, sales with a permit, signs on public property or by prosecuting zealots who repeatedly call police knowing no crime it being committed.

...the installation of the rope barrier is intended to reduce the number of conflicts between beach visitors and the seals.

There is no number of conflicts between visitor and seals.. Only people conflicting with people. The City cannot make a statement like that and not produce some facts. NOAA is the only body that can prosecute anybody for seal harassment. In the last 6 years they have gotten hundreds of well meaning calls and have not found reason to issue a single citation. (Freedom of information act data)

The rope barrier is a clear indicator to the public to keep an appropriate distance from the seals,

There is no appropriate legal distance. No ruling exists. There is no clear indicator possible of an unpublished distance.

...the public access policies of the Act, the Commission must take into account the need to regulate the time, place, and manner of public access depending on the facts

Then why has it not done so? Where is the independent analysis? The Commission has been misled, as I have had to point out, and must make its own investigations and find its own facts, not go by hearsay assertions by stakeholders defending their turf and enterprises.

The public will still be able to access the beach and ocean at Children's Pool.

Only on paper. The reality is quite different. Only if the Commission actually investigates will it know the facts. The Commission has look at who has something to gain by this land grab and who has something to hide. It cannot find that out if it discards these appeals on biased hearsay and does not consult other regulatory agencies.

...artificial habitat creation which fosters acclimatization of seals.....

whatever reason, the seals have chosen Children's Pool Beach as a haul out location

The reason is known and documented. (Attachment B) For 11 years the City had an arrangement with Sea World to misuse its marine mammal rescue program to purposefully drop harbor seals in La Jolla to get a colony going on a nearby natural haulout named Seal Rock. When it started, the miracle of the seals at Children's Pool began and the City had a better tourist attraction than it had hoped for. I have the release data from a Freedom of Information Act request for NOAA records and the Superior Court decision citing to the fact.

<http://www.friendsofthechildrenspool.com/How%20the%20Seals%20.htm> Since the Staff Report did not do its homework, I have to point you to the true story.

As far as whether or not the City has chosen the "actual" pupping season, there is nothing in the City's file that addresses this issue.

Staff Report now says **by its own words** it is based solely on City input. Of course, there is nothing San Diego offered that it does not want there. In the absence of any investigative input, the Commission has to find its own facts. The fox must not guard the henhouse.

Children's Pool Beach is not the only sandy beach in La Jolla.

I am a diver. "Access" in the Coastal Act and the LCP means to the **shoreline**. Telling a diver to go to a different beach for sand is like telling a Black man how fine the seats in the back of the bus are. How can somebody tell me my access to the ocean is not encroached on since I can just alter my recreational needs and go someplace else. The beaches on each side have known rip currents.

There are 11 public beaches listed on the lifeguard's website in San Diego. Half can access some decent diving. Three are noted as protected enough for beginning and intermediate divers, and one of those 3 is Children's Pool.

Below is from the Visitors Bureau site on La Jolla beaches –It aptly states the existing and very real conditions for swimming and diving for the unaware visitor

“At least half of the coast here is rocky or otherwise unsuitable for swimming. And, with the exception of Marine Street and Windansea, the beaches are all small with submerged rocks offshore. Only La Jolla Cove and Children's Pool offer permanent lifeguard and bathroom facilities. There are no dedicated parking lots offering more than a few spaces, and there is fierce competition for street parking from residents and businesses. From The Cove north to Torrey Pines, ocean fishing, spearfishing and collecting is precluded by an Underwater Ecological Preserve. It is unlawful to harm or harass marine mammals (such as seals) anywhere in U.S. waters. South of Hospitals, it's mainly hardcore locals on the beach and in the lineups. WARNING: Submerged rocks and reefs abound, water depths drop off sharply, powerful shorebreaks, shallow reefbreaks and strong rip currents. Little or no lifeguard supervision at most locations. A great place to admire the ocean, perhaps best done from the shore.”

...seals at Children's Pool Beach have become a public access and recreational amenity in and of themselves... they have become a major tourist attraction

The City talking again. It is very open about the income it estimates from having a seal display that pulls tourists. Tourists just stand on the sidewalk and that is to pass for “recreation”, while divers and swimmers and such that don't call that recreation can go pound sand, and on some other beach.

Shall the Coastal Commission promote one aspect of the ocean for its value for one class of citizen to the detriment of others? The Staff Report said, “*IF the public just wants to view the seals, there are multiple vantage points in and around the Children's Pool Beach.*” Yes, because the seals are there to stay, and tourists can watch divers get in the water too, and also call that “recreation”. But if this barrier serves to augment a public display of marine mammals, then federal permit is required. MMPA 109(a) and 104(c).

The issues raised by this project are unique and only occur at this one beach in all of San Diego County

I have personally seen seals come ashore on an adjacent beach and then I was harassed by zealots who tried to drive me away. Much more than San Diego will be affected by a Coastal Commission decision made without adequate investigation.

The harbor seal population in California (Attachment D) is estimated at 40,000, and sea lions at around ¼ million on our West Coast Population growth is robust. Most natural predators are gone from the coastline. What Children's Pool shows is pinnipeds can be just as adaptable to humans as coyotes are. We anticipate more beaches visited and closure effected by animal rights zealots again, with City apathy to help.

Divers and swimmers never asked for special favors because we need to get to the water instead of sit on sand. Equal protection under the law. To go lawfully on public land without fear. To share beach access to the ocean with our furry dive buddies.

Office of
The City Attorney
City of San Diego

ATTACHMENT A
3 PAGES

MEMORANDUM

DATE: June 14, 2007

TO: Councilmember Donna Frye
Natural Resources and Culture Committee

FROM: City Attorney

SUBJECT: Nighttime Rope Barrier at Children's Pool Beach

INTRODUCTION

On December 5, 2006, the City Council of San Diego adopted a resolution directing the annual placement of a rope barrier at the Children's Pool Beach from December 15th through May 15th. In addition, the Council directed the City Attorney to determine whether any permits would be necessary for the placement of the rope barrier, and if so which ones. The City Attorney determined, as outlined in the Memorandum of Law [MOL] issued on December 15, 2006 (attached hereto as Attachment A), that a Coastal Development Permit [CDP] and a Site Development Permit [SDP] would be required for the annual placement of the rope barrier. The December 15, 2006 MOL also established that based on the specific circumstances present at that time, an emergency existed for the placement of the rope barrier without an SDP and with an emergency CDP.

Currently, the Hearing Officer is scheduled to make a determination on the regular CDP and SDP required for the annual placement of the rope barrier sometime this year, in time for the rope barrier to be placed for the December 15th through May 15th timeframe. However, the Hearing Officer is awaiting a recommendation from the La Jolla Community Planning Group prior to holding a hearing on the permits. Also, Councilmember Donna Frye's Office met with representatives from the Animal Protection and Rescue League [APRL] who presented information to be docketed on the Natural Resources and Culture Committee agenda for June 22, 2007. The APRL information addresses the year-round placement of the rope barrier at Children's Pool Beach at nighttime in order to reduce human conflict over the appropriate distance to remain from the seals, prevent humans from possible seal bites, and to protect the seals from harassment at night. Councilmember Frye requested that the City Attorney's Office prepare a memorandum addressing the legal issues pertaining to the placement of a year-round nighttime rope barrier at the Children's Pool Beach.

QUESTIONS PRESENTED

1. Is it legally advisable to place a year-round nighttime rope barrier at the Children's Pool Beach?
2. What permits are required for the year-round nighttime placement of a rope barrier at the Children's Pool Beach?

SHORT ANSWERS

1. Yes. The rope barrier serves to remind the public when they may be in violation of the Marine Mammal Protection Act [MMPA], which prohibits harassment of harbor seals or the San Diego Municipal Code section 63.0102(b)(10), which prohibits the disturbance of harbor seals on public beach areas.
2. A Site Development Permit is required for the placement of the rope barrier because it is proposed *development on a coastal beach*. In addition, a CDP is required because the rope barrier is considered *coastal development* that would be placed in the Coastal Overlay Zone. The application for the annual placement of the rope barrier could be amended to include the year-round nighttime placement of the same rope. The circumstances at this time are not such that an emergency CDP or emergency work without an SDP would be appropriate.

ANALYSIS

As previously discussed in the City Attorney's November 13, 2006 Memorandum [Memo] (attached hereto as Attachment B) to the Natural Resources and Culture Committee, posted signs are not always effective at deterring people from harassing or disturbing the seals at Children's Pool Beach. The Memo also explains the types of actions that are considered unlawful within the meaning of the MMPA and the San Diego Municipal Code section 63.0102(b)(10). In addition, the Memo explains that the placement of the rope barrier serves to deter unlawful harassment and disturbance, and therefore, the placement of the rope barrier is legally supportable. Moreover, the MOL issued on December 15, 2006, explains that the rope barrier also serves to reduce conflicts between people about the appropriate distance to keep from the seals and to reduce the chance of an aggressive reaction by a seal against a person getting too close. Therefore, the placement of a nighttime rope barrier at Children's Pool Beach would be advisable.

The placement of the nighttime rope barrier on the beach triggers the requirement for a Coastal Development Permit because it is *coastal development* proposed in the Coastal Overlay Zone, and it would trigger the requirement for a Site Development Permit because it is proposed *development on a coastal beach* under the Environmentally Sensitive Lands Regulations of the Municipal Code. See SDMC §§ 126.0702(a), 132.0402, Diagram 132-04A, 126.0502(a)(1), 143.0110(a)(3). These are the same permits required for the annual placement of the rope

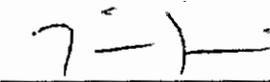
barrier. As those permits have not yet been decided on by the Hearing Officer, it would be possible for the Park and Recreation Department to amend the application for the annual rope barrier to include the placement of the rope barrier year-round at night. Unlike the circumstances that existed when the MOL was issued by the City Attorney's Office in December of 2006, there is no emergency justification for proceeding without the standard SDP or for requesting an emergency CDP. The City has not received new or unexpected information, there has been no new direction from the National Oceanic and Atmospheric Administration, the nighttime rope barrier has no impact on the ability of the City Lifeguards to provide essential public services because they do not watch the water at night, and the critical time of pupping season is now over.

CONCLUSION

The rope barrier serves to remind the public when they may be in violation of the MMPA that prohibits harassment of harbor seals or the San Diego Municipal Code section 63.0102(b)(10) that prohibits the disturbance of harbor seals on public beach areas. A Site Development Permit is required for the placement of the rope barrier because it is proposed *development* on a *coastal beach*. In addition, a CDP is required because the rope barrier is considered *coastal development* that would be placed in the Coastal Overlay Zone. The application for the annual placement of the rope barrier could be amended to include the year-round nighttime placement of the same rope. There is no legal justification for emergency permitting procedures at this time.

MICHAEL J. AGUIRRE, City Attorney

By



Nina M. Fain
Deputy City Attorney

:NMF
Attachments

1 that a prudent person acting in a like capacity would use in the conduct of an
2 enterprise of like character and with like aims to accomplish the purposes of
3 the trust as determined from the trust instrument." (Cal Prob. Code § 16040.)

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

15 The number of seals at the Children's Pool was minimal, if any, at the
16 time of the creation of the breakwater and the Trust grant. Starting in the
17 early 1990's, seals came to reside in the general area of Children's Pool in
18 growing numbers. During that time frame, the City undertook the designation
19 of the ocean and reef immediately adjoining Seal Rock as a reserve in order to
20 accommodate the seals in that area. The Reserve is within a hundred yards or
21 less of the area granted as the Children' Pool. In such close proximity, the
22 seals, based on counts, seem to prefer the Children's Pool to Seal Rock as a
23 haul-out. Over time, the seal population at Children's Pool has grown to where
24 it now exceeds 200 during portions of the year. Photographs show seals on the
25 beach across the entire width of Children's Pool at the edge of the water.
[Exh. 399.]

26 During the 1990's, seal feces came to pollute the beach and adjoining
27 waters. The County of San Diego, Department of Environmental Health,
28 regularly tests the waters along the San Diego coastline. In 1997, the County

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - January 03,2008

ATTACHMENT C

EVENT DATE: 01/04/2008 EVENT TIME: 10:30:00 AM DEPT.: C-60

JUDICIAL OFFICER: Yuri Hofmann

CASE NO.: GIC826918

CASE TITLE: O'SULLIVAN VS CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT Motion - Other, 12/12/2007

/DATE FILED:

Defendant City of San Diego's "Motion to Clarify the Court's Injunction" is DENIED.

The Court is wary of ruling on the instant Motion, as it appears to seek something akin to an advisory opinion before the controverted issue is ripe. On the other hand, the City appears to be asking the Court to re-analyze an issue which has already been addressed and determined by this Court and the Court of Appeal. Specifically, the "rope issue" was discussed in both this Court's and the Court of Appeal's final rulings in favor of Plaintiff and against the City. Ultimately, both Courts found that the placement of a "rope barrier cutting off public access to the Pool," along with other various restrictions, "served to deter the public, beneficiaries of the trust grant, from using the beach," which resulted in the City's breach of its obligations as trustee under the subject Trust. (See Court of Appeal Ruling, pp. 12-13, quoting portions of the Trial Court's Statement of Decision.) More specifically, the Trial Court stated in its lengthy Statement of Decision:

The next biggest cause of actual or constructive closure of the Children's Pool was the City's decision to erect a rope barrier cutting off public access to the Pool. On March 29, 1999, the City Council . . . voted to rope off the Pool. *In doing so, the City breached its obligations under the Trust, as trustee of the Children's Pool.* Instead of returning the Pool to its original and safer configuration and also rectifying the unhealthy condition of the water and sand at the Pool, the City barred the use of the Children's Pool as a "public park, bathing pool for children, . . . and [use for] playground and recreational purposes," as expressly required by the 1931 Trust. The rope remained up from March 1999 until September 17, 2004.

(8/26/05 Statement of Decision, p. 24, ls. 3-14, emphasis added.)

In the instant Motion, the City asks the Court to reconsider the rope issue in the context of new evidence not proffered at trial. The Court declines to do so. As noted above, the relevant issue has been considered and decided, and the Court's directives to the City are clear and unambiguous.

Harbor seals are doing well. From NOAA surveys of California stocks. <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005sehr-ca.pdf>
Best population estimate in 2005 was 34,233. Factor in 3.5% population grow and the estimated population today would be about 40,000.

factor was based on the fraction of seals hauled out over an entire 24-hour day (correction factors for aerial counts should be based on the fraction of seals hauled out at the time of the survey). Hanan (pers. comm.) revised his haul-out correction factor to 1.3 by using only those seals hauled out between 0800 and 1700 hrs which better corresponds to the timing of his surveys. Based on the most recent harbor seal counts (26,333 in May-July 2004; Lowry et al. 2005) and Hanan's revised correction factor, the harbor seal population in California is estimated to number 34,233.

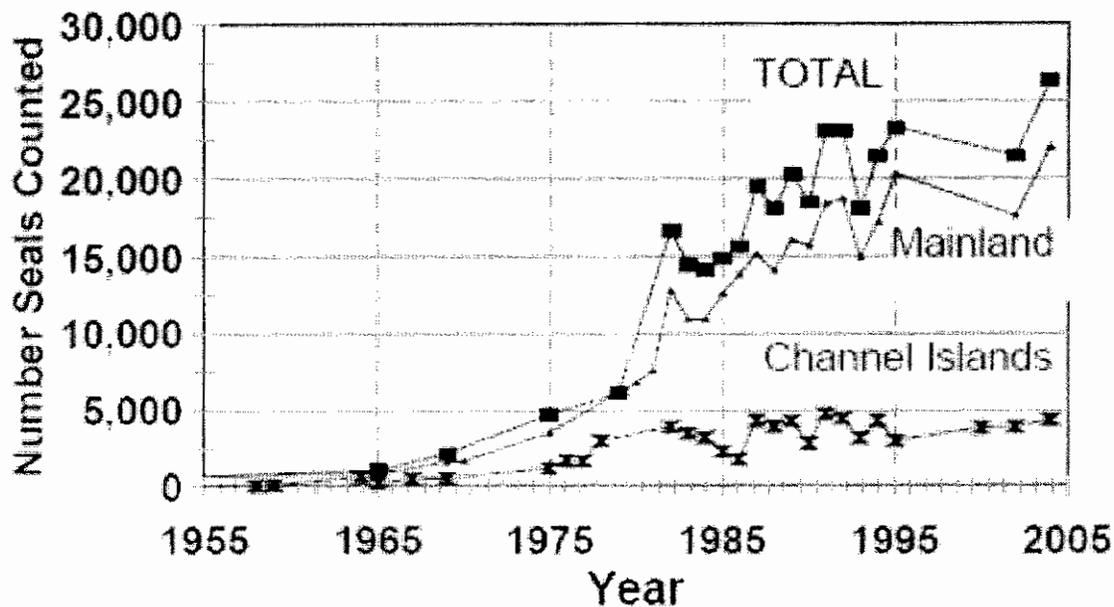


Figure 2. Harbor seal haulout counts in California during May/June (Hanan 1996; R. Read, CDFG unpubl. data; NMFS unpubl. data from 2002 and 2004 surveys).

CURRENT AND MAXIMUM NET PRODUCTIVITY RATES

A realized rate of increase was calculated for the 1982-1995 period (when annual counts were available) by linear regression of the natural logarithm of total count versus year. The slope of this regression line was 0.035 (s.e.=0.007) which gives an annualized growth rate estimate of 3.5%. The current rate of net production is greater than this observed growth rate because fishery mortality takes a fraction of the net production. Annual gillnet mortality may have been as high as 5-10% of the California harbor seal population in the mid-1980s; a kill this large would have depressed population growth rates

Federal Cooperation With States

ATTACHMENT E

16 U.S.C. 1379

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

(b) [FINDINGS PREREQUISITE TO TRANSFER OF AUTHORITY; STATE PROGRAM; IMPLEMENTATION.] —

(1) Subject to paragraph (2) and subsection (f), the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

(A) is consistent with the purposes, policies, and goals of this Act and with international treaty obligations;

(B) requires that all taking of the species be humane;

(C) does not permit the taking of the species unless and until—

(i) the State has determined, under a process consistent with the standards set forth in subsection (c)—

(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as "OSP"), and

(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1), such an agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2)), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research, public display, or enhancing the survival or recovery of a species or stock, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at that level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1); and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

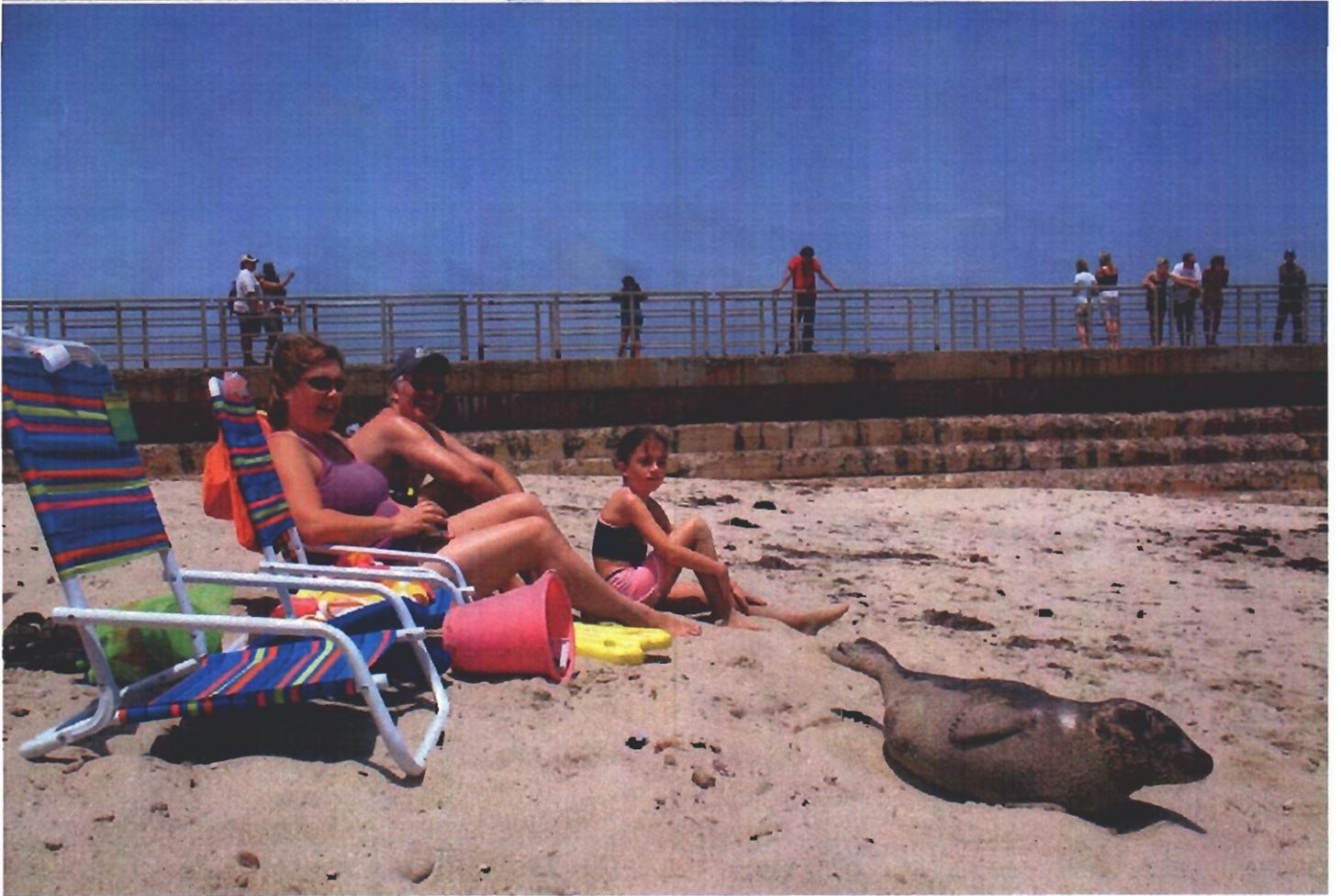


Back in 2004- 2007, when the City of San Diego first started roping of Children's Pool Beach, the permit terms were very specific that the rope was advisory and not an impediment to access.

A sign explained its real purpose right away.

Today, below, the signs have become more ominous, access is indicated after most folks have stopped reading. There is a phone number but it is for County Health.





CALIFORNIA COASTAL COMMISSION

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



W26b

Filed: February 3, 2010
49th Day: March 24, 2010
Staff: L. McEachern-SD
Staff Report: February 24, 2010
Hearing Date: March 10-12, 2010

STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of San Diego

DECISION: Approval with Conditions

APPEAL NO.: A-6-LJS-10-009

APPLICANT: City of San Diego Parks and Recreation Department

PROJECT DESCRIPTION: Installation of a temporary rope barrier (approximately 4 ft. high) and signage, annually, across a portion of public beach to provide a buffer between people and seals during seal pupping season (December 15 to May 15).

PROJECT LOCATION: Children's Pool Beach, west of Coast Boulevard, near Jenner Street, La Jolla, San Diego, San Diego County.

APPELLANTS: John Leek, San Diego Council of Divers, Friends of Children's Pool.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed.

SUBSTANTIVE FILE DOCUMENTS: Certified City of San Diego Local Coastal Program; Appeal by John Leek filed February 3, 2010; Appeal by The Friends of Children's Pool filed February 8, 2010; Appeal by the San Diego Council of Divers filed February 11, 2010; CDP Appeal #A-6-LJS-08-65; CDP #6-05-98.

I. Appellants Contend That: The proposed development is inconsistent with the policies of the certified LCP and the public access and recreation policies of the Coastal Act for the following reasons: 1) the rope barrier across 96% of the beach is an encroachment on public access that results in a defacto closure of the beach to the public; 2) the rope is not for habitat preservation but is actually artificial habitat creation which

fosters acclimatization of seals and further beach colonization which is bad for both people and seals; 3) that the City has already installed the rope barrier even though the appeal is pending and the coastal development permit is not effective; 4) signage proposed next to the rope is inadequate and misleading; 5) the project approved by the City does not have a monitoring component to verify its effectiveness, stop verbal harassment nor to keep animal activists from moving the rope and completely blocking off the beach; and, 6) the proposed dates of placement are not the true pupping season.

II. Local Government Action: On December 2, 2009, the Hearing Officer approved a coastal development permit, with conditions, for the annual placement of a temporary rope barrier at Children's Pool Beach to provide a buffer between people and seals during the seal pupping season (December 15 to May 15). This decision was appealed to the Planning Commission on December 7, 2009. On January 21, 2010, the Planning Commission denied the appeal.

III. Appeal Procedures/Substantial Issue Analysis: After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30604(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-LJS-10-009 raises NO SUBSTANTIAL ISSUE with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. **A-6-LJS-10-009** does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. Findings and Declarations.

1. **Project Description.** The project approved by the City involves the annual placement of a temporary rope barrier on the beach to provide a buffer between people and seals during the seal pupping season described as December 15 to May 15 at Children's Pool Beach in the La Jolla community of the City of San Diego. The rope barrier will be placed upland of the Mean High Tide Line (MHTL). The ½-inch diameter rope will be attached to the seawall/breakwater and extend westward 130 ft., leaving a minimum three-ft. opening at the end for beach access (ref. Exhibit #2). The rope will be strung between a total of four (4) posts, not to exceed four feet in height. The posts, with attached concrete foundations, will be placed in hand dug holes approximately 18-inches in depth and covered with sand. An 18-inch by 24-inch informational sign will be placed on the center post (ref. Exhibit #3).

The City of San Diego has a certified local coastal program and issues permits for the La Jolla community. While the subject development occurs on the public beach, it will be installed inland of the Mean High Tide Line and thus, within the City's coastal development permit jurisdiction. The subject review is an appeal of a City approved coastal development permit. As such, the standard of review is the certified City of San Diego Local Coastal Program. Because the subject site is located between the first public

road and the sea, the standard of review also includes the public access and recreation policies of the Coastal Act.

2. History. Addressing the “conflicts” between people and seals at Children’s Pool Beach has a long history. As a condition of the 1931 Tidelands Trust, which deeded the Children’s Pool to the City of San Diego, the City was given the right and title to the Children’s Pool if the area was devoted to public park, playground and recreational purposes and bathing for children. Since the seals started regularly hauling out on Children’s Pool Beach in the early 1990s, the City has been trying to come up with a solution to address the issue of competing uses. In addition, since the seals started using this area, the water quality of the “pool” has deteriorated to such a point that the County Health Department deemed the water unsafe, as it posed a serious health risk. It was determined that due to limited tidal exchange in the pool and use of the area by so many seals, the water had become contaminated with high levels of bacteria.

After a number of legal challenges, the City was ordered to clean the water in the pool and return the beach to its 1941 configuration. As such, the City began the environmental review and permitting process to dredge the pool and return it to its historic configuration (ref. CDP Application #6-05-98 that has remained unfiled since its submittal on September 28, 2005). Subsequently, Senate Bill 428 was passed by the State Legislature and signed by the Governor into law effective January 1, 2010. This law amended the 1931 Trust to the City giving the City Council the discretion to allow the Children’s Pool to be used as a “marine mammal park for the enjoyment and educational benefit of the children.” As a result of this law, the court order to dredge the pool has been vacated and the City Council denied the request to dredge the pool to return it to its 1941 configuration. As such, Commission staff anticipates that the City will withdraw the CDP application pending before the Commission for the dredging.

However, while the City was pursuing the necessary permits for the dredging, a new issue arose, which was separating the seals from people on the beach during the seal pupping season. To address this issue, the City first installed a rope barrier across the top of the beach. After consultation with Commission staff, the City was informed that installation of the rope barrier constituted development (change of intensity of access to the water and physical development) and thus required review pursuant to a coastal development permit. Subsequently, in 2006 and 2007, the City issued emergency coastal development permits for the temporary installation of the rope barrier during the seal pupping season. A subsequent legal challenge prevented the installation of the rope barrier for the 2008 pupping season. However, on March 10, 2008, the Ninth Circuit Court of appeals stayed the earlier ruling preventing the placement of the rope barrier and allowed the rope to be placed until May 30, 2008. The City then issued an emergency permit for the temporary rope barrier and the barrier was installed.

Subsequently, the City approved a regular coastal development permit as a follow-up to the emergency permit for the installation of the rope barrier. On July 7, 2008, the Coastal Commission’s San Diego District Office received a Notice of Final Action from the City of San Diego for an after-the-fact coastal development permit (appealable) as a follow-up

to an emergency permit issued to erect a temporary rope barrier at Children's Pool Beach during the 2008 pupping season, and the 10 working day appeal period was opened. On July 15, 2008, an appeal was filed by John Leek (ref. Appeal #A-6-LJS-08-065).

Because this was a follow-up to an emergency permit, and the emergency permit only allowed the rope barrier to remain until May 30, 2008, by the time the follow-up CDP was approved and the Notice of Final Action was received in the Commission's San Diego District Office, the rope barrier had already been removed. The applicant (City of San Diego Parks and Recreation Department) subsequently waived the right to a hearing within 49-days and thus, the matter has never been brought before the Commission.

However, because the subject appeal is essentially for the same development, the development approved under the previous appeal was subsequently removed, and, the issues raised by the appellant are essentially the same, the previous appeal is moot and will not be further addressed by the Commission.

On December 2, 2009, the City Hearing Officer approved a coastal development permit for the annual placement of the rope barrier at Children's Pool and the rope barrier was installed on December 16, 2009. The City's decision on the coastal development permit was appealed to the Planning Commission and on January 21, 2010, the Planning Commission upheld the Hearing Officer's decision and approved the coastal development permit for the annual placement of the rope barrier, and that decision is the subject of the current appeal.

3. Public Access/Protection of Marine Resources. Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. The proposed project is located seaward of the first through public road and on the beach. The following Coastal Act sections protect public access and recreation, and state, in part:

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....

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. ...

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

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

Finally, Section 30214 of the Coastal Act is specifically applicable to the proposed project and states, in part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

Upon reliance of these policies of the Coastal Act, the certified La Jolla-La Jolla Shores LCP contains policies to protect public access as well, which include the following:

La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved....

The City should preserve and protect the coastal bluffs, beaches and shoreline area of La Jolla assuring development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline....

The City should ensure that new development does not restrict or prevent lateral, vertical or visual access to the beach on property that lies between the shoreline and first public roadway....

New development should not prevent or unduly restrict access to beaches or other recreational areas....

The City's beach and parkland along the shoreline should be expanded wherever possible....

Construction, grading, or improvements of any sort, except those mentioned in this plan, should be discouraged at beach areas. Public access to the shoreline should be increased (or improved) wherever possible....

The appellants contend that the project to install the rope barrier at Children's Pool Beach will adversely affect public access as the rope barrier will block off access to 96% of the beach, effectively resulting in the closure of the beach. The appellants further contend that the proposed signage is not adequate to assure the public is being advised that public access is permitted. As explained by the City, the intent of the rope barrier is to provide a buffer between people and seals during the seal pupping season. Previously, the City has found that during the period between mid-December and mid-May each year, more mother seals need to haul out and remain on the beach for longer periods of time in order to prepare for birth, go through the birthing process and nurse the seal pups once they are born. Additionally, during this period, the mother seals become more aggressive due to their instinct to protect themselves and their pups from people who are getting too close.

In addition, the City has indicated that since the seals started hauling out on Children's Pool Beach, there have continually been conflicts between people who want to protect the seals and people who want to view the seals up close and/or use the beach. As these conflicts arise, lifeguards are regularly called to intervene. While lifeguards are asked to diffuse conflicts over the seals at Children's Pool, it takes them away from providing essential public services as lifeguards to protect swimmers from danger and drowning.

According to the City, the installation of the rope barrier is intended to reduce the number of conflicts between beach visitors and the seals. The rope barrier is a clear indicator to the public to keep an appropriate distance from the seals, while at the same time allowing the public to access the beach and water. As noted in the project description, the rope barrier extends approximately 130 ft. from the seawall/breakwater, but is left open at the far eastern extent leaving an approximately 3 ft. opening for the public to get around to gain access to the water. In addition, the stairway leading to the beach and the beach upland of the temporary rope will remain open and available to the public. Thus, while the rope barrier would provide a buffer between people and the seals, it is not intended to prevent access to the beach or the ocean. The beach will remain open for public use and swimming is allowed. However, according to the City, swimming is not recommended due to bacteria levels exceeding health standards.

Even though there is a 3 ft. opening in the barrier and signage acknowledges that public access to the beach and ocean is permitted, the appellants assert that the temporary rope barrier placed by the City adversely affects public access in that it blocks most of the beach and the signage is misleading and does not properly inform the public. However, the Commission finds that public access is not adversely affected by the temporary rope barrier. As noted in Sections 30212 and 30214 of the Act cited above, in implementing the public access policies of the Act, the Commission must take into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case. This is one of those circumstances where it is appropriate to rope off a portion of beach in order to provide a buffer between people and seals. Again, the intent of the temporary barrier is not to keep the public from reaching the beach or ocean at Children's Pool, but to provide a buffer to help protect the seals hauled out on the beach during the pupping season and the people using the beach, as mother seals can become more aggressive during this period when they are trying to protect their pups. The public will still be able to access the beach and ocean at Children's Pool. Thus, the appellants have not raised a substantial issue with regard to consistency of the project with the certified LCP and the public access and recreation policies of the Coastal Act.

Relative to the appellants' assertion that the signage is inadequate and misleading, the Commission finds there is no merit. While the signage does include warnings to avoid disturbing the seals and that the water is contaminated, it does specifically state that the beach is open for public use and swimming is allowed, but not recommended (ref. Exhibit #3). Thus, the signage does not result in adverse impacts on public access.

The appellants also assert that the City failed to include any kind of monitoring for the temporary barrier to assure its effectiveness, minimize verbal harassment and assure it is not vandalized. The appellants assert that animal activists verbally harass people accessing the beach and regularly alter the position of the rope to block off the beach completely. Relative to the harassment, one of the reasons for placement of the temporary rope by the City is to reduce these types of issues by directing people to maintain a safe distance from the seals as they access the beach and ocean. While it is correct that the City permit does not include provisions to specifically address these issues, this is an enforcement issue that is beyond the scope of the permit and is more appropriately addressed by local law enforcement and thus, does not raise a substantial issue with respect to consistency of the project with the certified LCP or the public access and recreation policies of the Coastal Act.

The appellants also assert that the rope is not for habitat preservation but is actually artificial habitat creation which fosters acclimatization of seals and further beach colonization which is bad for both the public and the seals. In addition, the appellants assert that mid-December through mid-May is not even the correct pupping season. For whatever reason, the seals have chosen Children's Pool Beach as a haul out location and a place to have their young and have been doing so for years. The temporary rope barrier is merely a management tool used by the City to help buffer the seals from beach visitors and people from the seals for a span of time when the mother seals are more aggressive (pupping season). In other words, it is a temporary measure to manage an existing

situation for the protection of both seals and people so that both can utilize this area. As far as whether or not the City has chosen the “actual” pupping season, there is nothing in the City’s file that addresses this issue. However, based on review of various websites, articles and research papers on harbor seals by Commission staff, it appears the pupping season varies with pups being born as early as February and as late as May. It appears the City may have chosen mid-December through mid-May to include a buffer period as well as to cover the breeding period and weaning of the pups. In any case, while there really is not a defined pupping season for seals at Children’s Pool Beach, the Commission finds that placement of the temporary rope barrier on the beach as proposed does not result in adverse impacts on public access. Thus, confining the rope barrier to a specified defined pupping season is not necessary.

The appellants also assert that the City has already installed the rope barrier even though the appeal is pending and the coastal development permit is not effective. While this is correct, the Commission considers the proposed project as if no development had yet taken place, so this does not affect the analysis of the consistency of the City’s action on the CDP with the certified LCP or the public access and recreation policies of the Coastal Act and thus, does not raise a substantial issue.

4. Conclusion. The development as approved by the City is consistent with all applicable provisions/development standards of the certified LCP as well as the public access and recreation policies of the Coastal Act. The project, as approved by the City, is for a temporary rope barrier to provide a buffer between the people using the beach and seals during the seal pupping season. The temporary barrier is not intended to keep people off the beach or out of the ocean and public access is still available, just more directed so as to provide a safe distance from the seals. This is both for the protection of the seals and the public. Also, signage is provided to make sure the public is aware the beach and ocean are available for public use.

In addition, Children’s Pool Beach is not the only sandy beach in La Jolla. If the public wants to access the beach or ocean, but does not want to get too close to the seals, there are several other sandy beach areas adjacent to and in close proximity to the subject site. Further, if the public just wants to view the seals, there are multiple vantage points in and around the Children’s Pool Beach from which to view the seals at a safe distance.

Further, the Commission finds that the seals at Children’s Pool Beach have become a public access and recreational amenity in and of themselves. Ever since the seals began hauling out on the beach at this location, they have become a major tourist attraction drawing huge numbers of people to this coastal area from around the world. Thus, the seals encourage public access by attracting the public to the shore. Therefore, the Commission finds that the appeal does not raise a substantial issue with regard to the project’s consistency with the certified LCP.

5. Substantial Issue Factors. As discussed above, there is strong factual and legal support for the City’s determination that the proposed development is consistent with the certified LCP. The other factors that the Commission normally considers when

evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. The proposed project is for placement of a temporary rope barrier to act as a buffer between harbor seals on the beach and people using the beach during the seal pupping season. While the temporary rope barrier will be placed across the beach, a 3 ft. opening is provided and signage is included that makes it clear the beach and ocean are open to the public. Thus, no significant coastal resources are impacted by the project as approved by the City. The issues raised by this project are unique and only occur at this one beach in all of San Diego County. Further, the City's decision to approve a permit for the temporary placement of a rope barrier at Children's Pool Beach will not set a precedent for future interpretations of the certified LCP. Therefore, the objections to the project suggested by the appellants do not raise any substantial issues of regional or statewide significance.

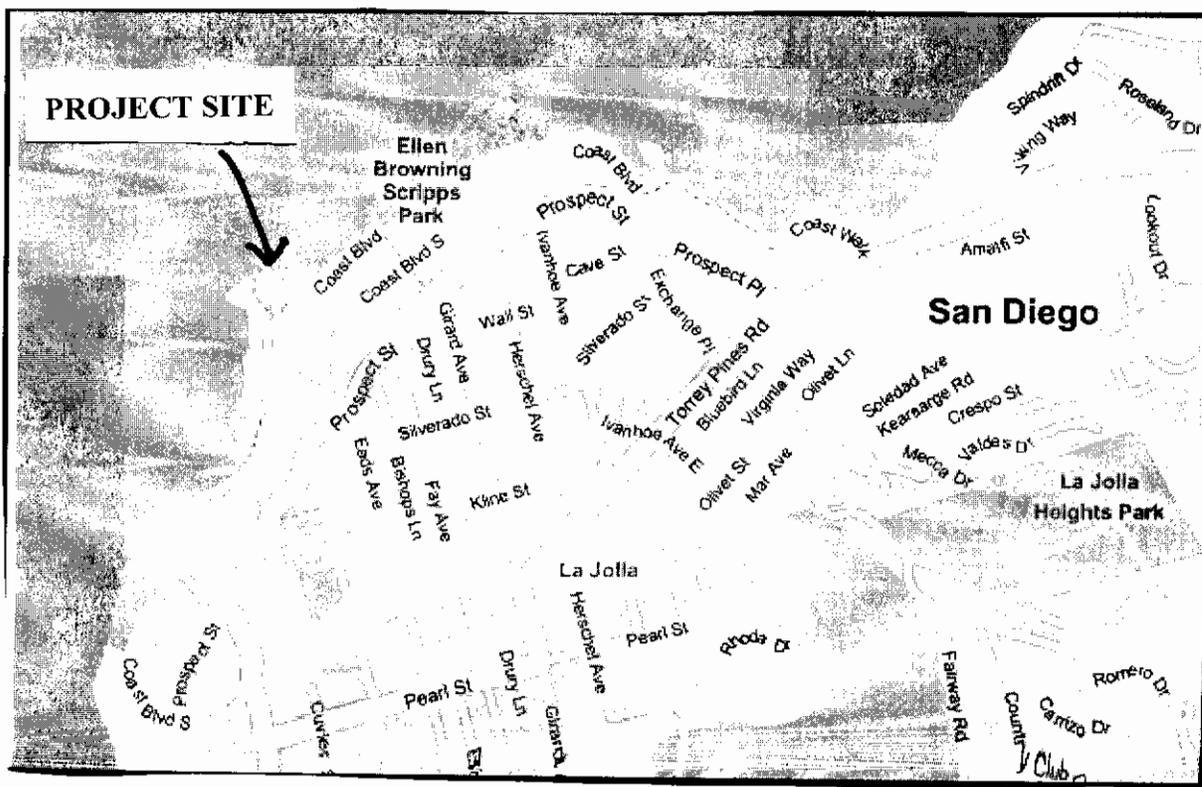
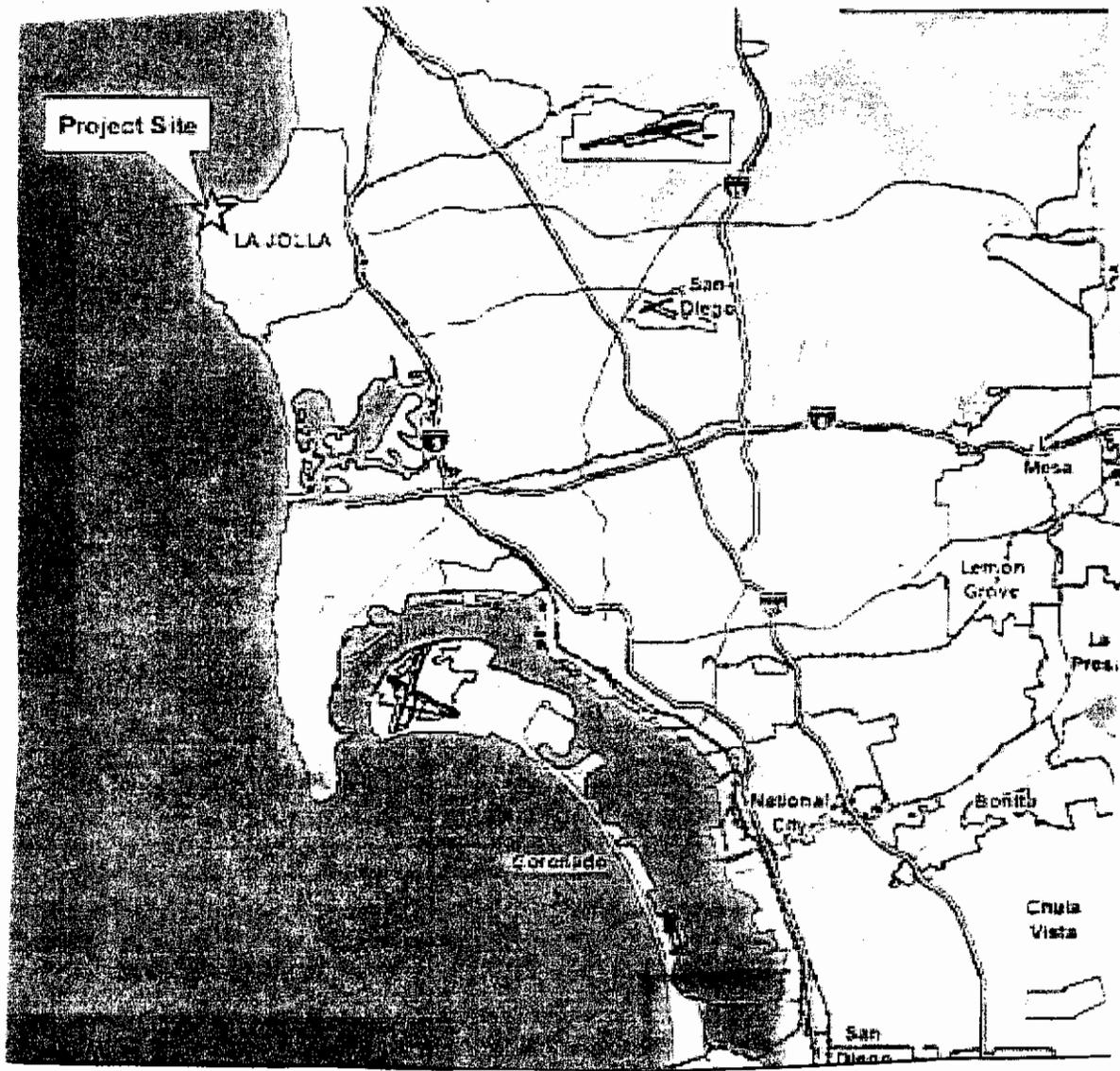
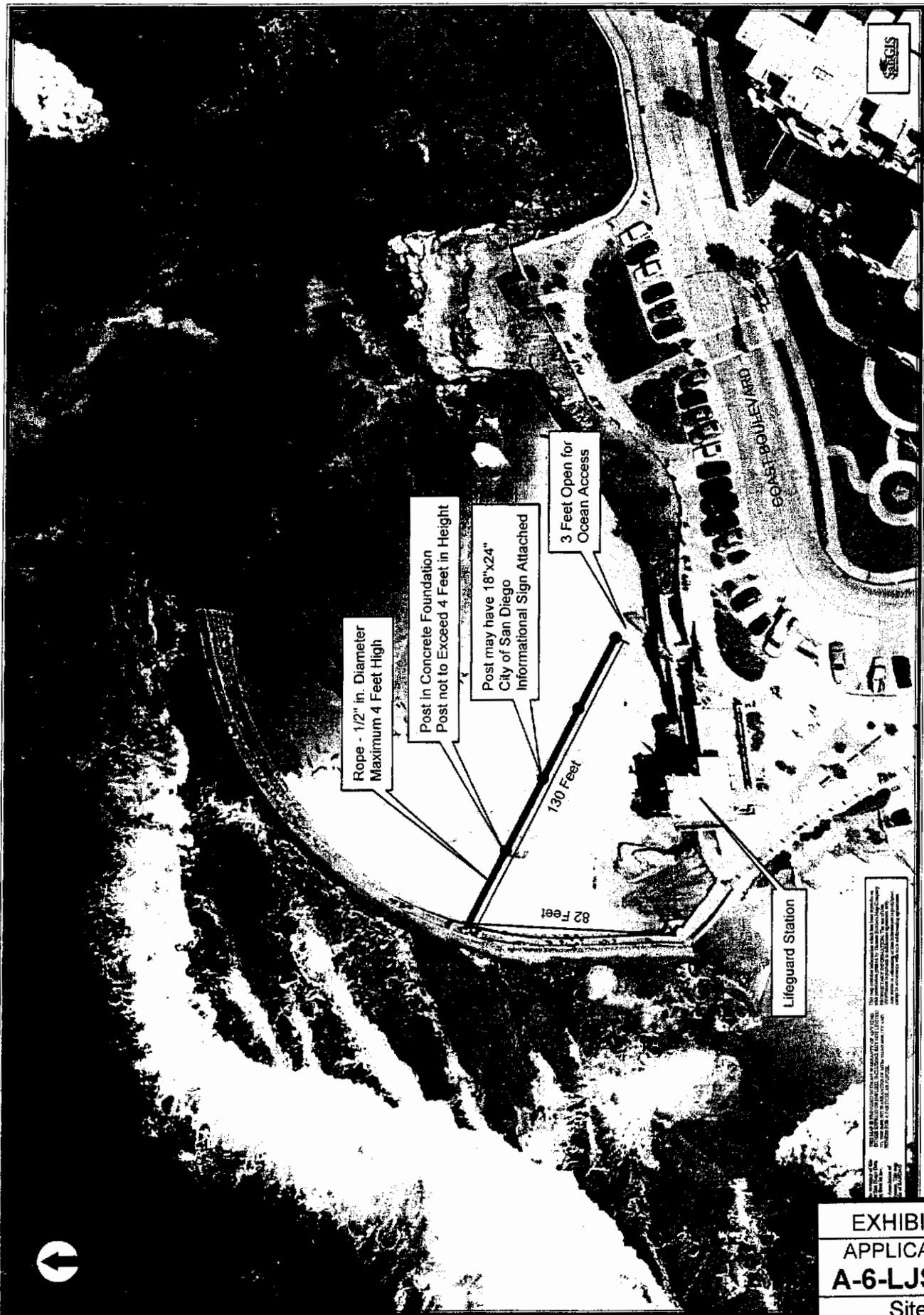


EXHIBIT NO. 1
 APPLICATION NO.
A-6-LJS-10-009
 Location Map



CHILDREN'S POOL ROPE BARRIER

EXHIBIT NO. 2
APPLICATION NO.
A-6-LJS-10-009
Site Plan

THE CITY OF SAN DIEGO

**PLEASE WATCH FROM A DISTANCE
AND AVOID DISTURBING THE SEALS.**

**HARASSMENT OF MARINE MAMMALS
IS AGAINST THE LAW.**

**WARNING! CONTACT WITH THIS
WATER MAY CAUSE SERIOUS ILLNESS.
BACTERIA LEVELS EXCEED HEALTH
STANDARDS.**

**AVISO! EL CONTACTO CON ESTA AGUA
PUEDE CAUSAR ENFERMEDADES.
LA CANTIDAD DE BACTERIAS EXCE
DE LOS NIVELES DE SALUD.**

**THE BEACH IS OPEN FOR PUBLIC USE.
SWIMMING IS ALLOWED, BUT NOT
RECOMMENDED.**

**FOR MORE DETAILED INFORMATION CONTACT
COUNTY HEALTH DEPARTMENT AT: (619) 338-2073**

PARA MAS INFORMACION LLAME AL (619) 338-2073

EXHIBIT NO. 3

APPLICATION NO.

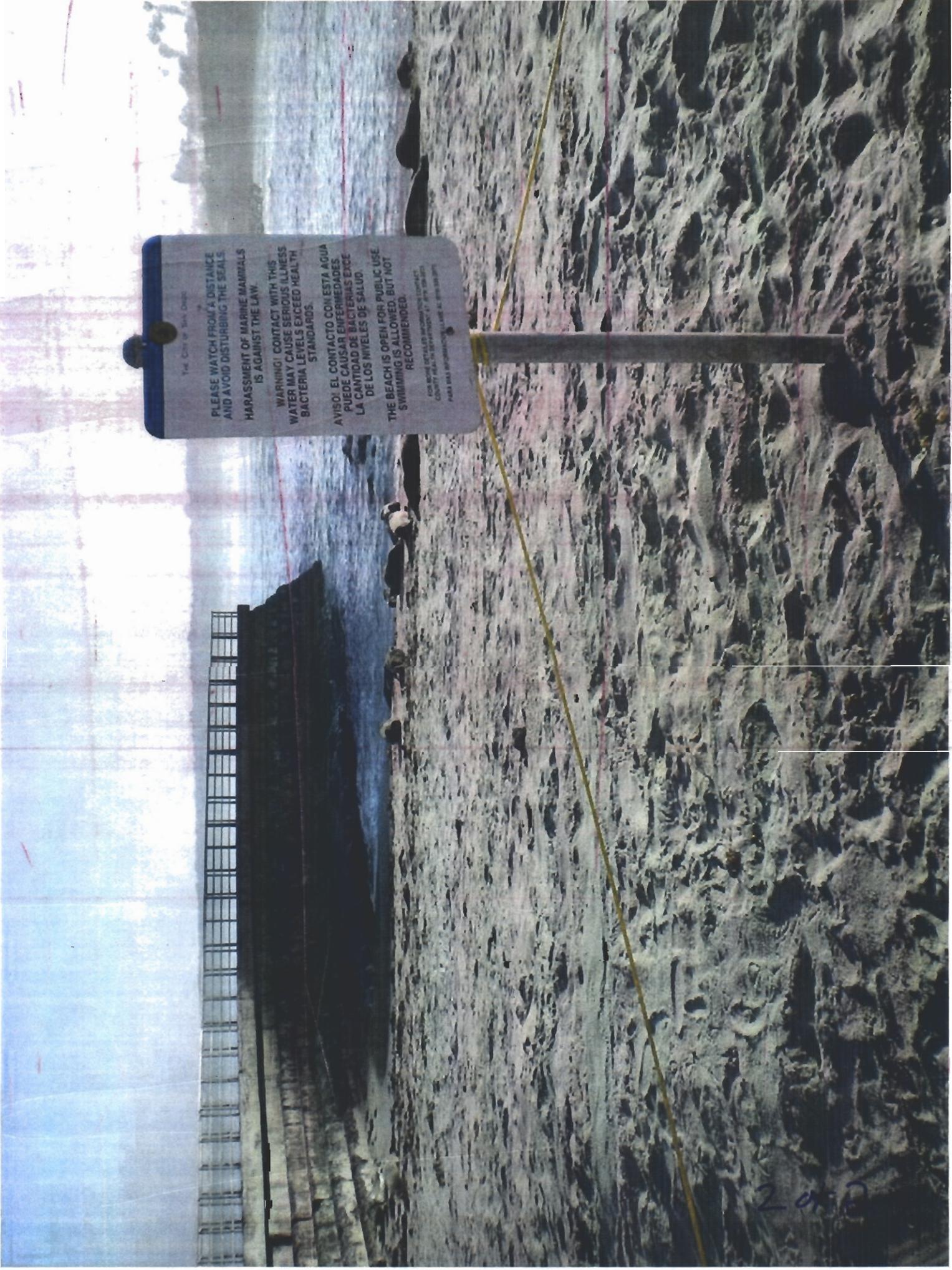
A-6-LJS-10-009

Proposed Signage

1 of 2

 California Coastal Commission

The City of San Diego
PLEASE WATCH FROM A DISTANCE
AND AVOID DISTURBING THE SEALS.
HARASSMENT OF MARINE MAMMALS
IS AGAINST THE LAW.
WARNING! CONTACT WITH THIS
WATER MAY CAUSE SERIOUS ILLNESS
BACTERIA LEVELS EXCEED HEALTH
STANDARDS.
AVISO! EL CONTACTO CON ESTA AGUA
PUEDE CAUSAR ENFERMEDADES
LA CANTIDAD DE BACTERIAS EXCE
DE LOS NIVELES DE SALUD.
THE BEACH IS OPEN FOR PUBLIC USE
SWIMMING IS ALLOWED, BUT NOT
RECOMMENDED.
FOR MORE DETAILS, INFORMATION, CONTACT
COUNTY HEALTH DEPARTMENT AT 619-459-3800
ALBA HALL INFORMATION CENTER AT 619-554-3975



2012

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 4900

COASTAL DEVELOPMENT PERMIT NO. 701673
SITE DEVELOPMENT PERMIT NO. 701765
La Jolla Children's Pool Rope Barrier

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

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install a rope barrier, annually, during seal pupping season, December 15th, through May 15th as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated December 2, 2009, on file in the Development Services Department.

The project shall include:

Rope, supporting posts, support post footings and signs;

All structures shall be maintained in place approximately as shown in exhibits [Exhibit "A"] dated January 21, 2010, on file in the Development Services Department.

STANDARD REQUIREMENTS:

1. This permit must be utilized by May 15th, 2010. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.

EXHIBIT NO. 4
APPLICATION NO. A-6-LJS-10-009
City Permit
Page 1 of 3
 California Coastal Commission

2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

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

PLANNING/DESIGN REQUIREMENTS:

9. All debris caused by construction must be removed from the site and disposed of appropriately.
10. All materials shall be maintained and managed so as to prevent them from entering sensitive areas including the coastal waters. Placement shall be maintained in location identified on Exhibit "A," during the identified time periods.
11. The westernmost end of the rope shall be attached to the seawall not greater than 82 feet from the beginning of the seawall at the base of the stairs leading down from near the lifeguard station. The installed rope length shall not exceed 130 feet, and a minimum three-foot opening shall be maintained from the post at the easterlymost end of the rope to the nearest obstruction so as to create an opening for beach access. The rope shall not be placed below the Mean High Tide Line.
12. The rope installation shall not use more than four posts, and each post shall not exceed four feet in height. The posts may have an 18-inch by 24-inch City of San Diego informational sign attached.
13. Installed rope height shall not exceed four feet.
14. Rope diameter shall not exceed one half inch in diameter.

APPROVED by the Planning Commission of the City of San Diego, on January 21, 2010,
Resolution No.

CITY OF SAN DIEGO
RESOLUTION NO. 4562-PC
COASTAL DEVELOPMENT PERMIT NO. 701673
SITE DEVELOPMENT PERMIT NO. 701765
La Jolla Children's Pool Annual Rope Barrier

WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for a permit to erect a rope barrier (including support posts and foundations), during seal pupping season, each year from December 15th to May 15th; and

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

WHEREAS, the Hearing Officer approved Coastal Development Permit No. 701673 and Site Development Permit No. 701765 on December 2, 2009; and

WHEREAS, the Hearing Officer's approval was appealed to the Planning Commission on December 7, 2009; and

WHEREAS, on January 21, 2010, the Planning Commission considered the appeal the Hearing Officer's approval of Coastal Development Permit No. 701673 and Site Development Permit No. 701765 (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 701673 and Site Development Permit No. 701765) pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

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

That the City of San Diego adopts the following written Findings, dated January 21, 2010.

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

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

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would include the rope barrier supported by poles, with pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

EXHIBIT NO. 5
APPLICATION NO. A-6-LJS-10-009
City Resolution
1 of 7
 California Coastal Commission

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and the rope would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the seal pupping season each year from December 15th to May 15th, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. The La Jolla Community Plan does not envision the Children's Pool as an improved recreation area, and, therefore, the placement of the rope would not conflict with long range recreation plans for the area. Given that the sand beach and ocean would remain open to the public while the rope would be in place, that the rope's location and type of rope used would not block any identified public views at the Children's Pool, and the placement of the rope would not conflict with future plans for the Children's Pool area, the proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan, and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

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

The adjacent Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The proposed installation of the rope includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. This would allow for the rope barrier to be in place during the annual seal pupping season, each year from December 15th to May 15th. At no time would the rope touch the adjacent Coastal Bluff. Proposed permit conditions would require that any debris caused by construction, must be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time periods. As the project involves digging relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions would prohibit any debris or construction materials from entering the ocean, and permit conditions would also prohibit the project affecting the adjacent Coastal Bluff, the proposed coastal development will not adversely affect environmentally sensitive lands.

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding

four feet and would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the annual seal pupping season, each year from December 15th to May 15th, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. Given that the sand beach and ocean would remain open to the public while the rope would be in place, and that the rope's location and type of rope used would not block any identified public views at the Children's Pool, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

Section 30211 of the California Coastal Act requires that no development interfere with the public's right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation. The purpose and intent of Section 30211 is ensure that the public can access the sea and its associated rock coastal beaches. The purpose and intent of the proposed rope is to create a buffer between the public utilizing the sand beach and accessing the sea at the Children's Pool, and the seals, as they are hauled out on the sand during the annual seal pupping season from December 15th to May 15th. The rope is not intended to keep the public from reaching either the beach or the sea at the Children's Pool. The public will be able to enter the sea at the Children's Pool while the rope is installed, due to a three-foot opening that would be maintained by permit condition. In addition, signage that is posted at the Children's Pool indicates that the beach is open to the public. Therefore, the proposed rope would not interfere with the public's right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation as described in Section 30211.

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

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

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The primary objective of the proposed rope installation is to serve as a buffer between humans and seals during the annual seal pupping season, December 15th to May 15th. Lifeguards advise beachgoers to avoid unattended seal pups, as a pup's mother may be foraging and conflicts could arise upon a mother's return. Users are also advised not to place themselves between a seal mother and her pup. While the beach is open to public use, and beachgoers may pass the rope to enter the beach, the rope's presence serves as a caution, and allows users to read signage warning them that it is unlawful to harass the seals, and that the water may cause illness due to bacteria levels that may exceed health standards. The sign also informs users that swimming is allowed, but is not recommended, and that the beach is open for public use. As the project would create a safety buffer between humans and seals, and would provide information to the beach-going public regarding potential health hazards, the project would not be detrimental to the public health, safety, and welfare.

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

B. Supplemental Findings--Environmentally Sensitive Lands

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The rope barrier pole foundations would be placed in dry sand above the Mean High Tide Line. As such, the project would not create erosional conditions. Sand removed to hand dig the holes for pole installation would be used to cover the foundations, and therefore, sand would not be removed from the

Children's Pool Beach as a result of the project. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

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

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City of San Diego, Coastal Development Permit No. 701673 and Site Development Permit No. 701765 is hereby GRANTED by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 701673 and Site Development Permit No. 701765, a copy of which is attached hereto and made a part hereof.

Morris E. Dye
Development Project Manager
Development Services

Adopted on: January 21, 2010

Job Order No. 4900

cc: Legislative Recorder, Planning Department

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
 200 OCEANGATE, 10TH FLOOR
 LONG BEACH, CA 90802-4416
 VOICE (562) 590-5071 FAX (562) 590-5084

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT**

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: John Leek

Mailing Address: 3090 Admiral Ave

City: San Diego

Zip Code: CA

Phone: 92123

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Diego, Park and Recreation

2. Brief description of development being appealed:

Rope Barrier strung across 96% of Children's Pool Beach for 6 months of every year in perpetuity

3. Development's location (street address, assessor's parcel no., cross street, etc.):

850 Coast Blvd, at Jenner st, La Jolla 92038

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

RECEIVED

FEB 03 2010

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-LJS-10-009

DATE FILED: 2/3/10

DISTRICT: San Diego

EXHIBIT NO. 6

APPLICATION NO.

A-6-LJS-10-009

Appeals

1 of 14

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: 1/21/2010

7. Local government's file number (if any): Permit 701673, Project 194347

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

San Diego Development Services, 1222 1st Avenue San Diego, CA 92101-4101
(858) 492-5070

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) John Leek, 3090 Admiral Ave San Diego, CA 92123

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. The San Diego Hearing officer required Public input from the La Jolla Community Planning Association. LJCPA made its 3rd vote against a rope permit in as many years. They found it would "conflict with the public beach vertical access policies of the La Jolla Community Plan and Local Coastal Program", citing Page 41 of the LCP, "This plan identifies two types of physical access: lateral (movement along the shoreline) and vertical (access to the shoreline from a public road)." and Page 52, "The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways and railings along the shoreline to preserve vertical access (to the beach and coast)..." The LCP requires unencroached access to the shoreline.

2. This rope required a CCC permit, yet the City went ahead without it, violating its LCP and its own codes § 126.0702 (b). Now knowing better, it has left the rope up, as if intention to apply for a CCC permit is as good as having one. Where else would the CCC accept that?

3. The City got around its own codes against proceeding with an appealed local permit by claiming an "emergency" but §126.0718(a) clearly does not sustain such a declaration and the City did not follow the rest of that section in applying for a separate emergency permit through the Mayor.

4. From the CCC 1999 Public Access Action Plan: The Coastal Act mandates that development not interfere with the public's right of access to the sea where acquired through use.

This rope is "encroachment" across 96% of the beach.

5. The City has no means of monitoring the effectiveness of this barrier or its consequences. Its placement is not based on any regulation or consideration of seal habits. It is placed for the convenience of installation. The placement dates are not the true pupping season, but were taken solely from suggestion by the head of an organization that operates a profitable concession above the beach, with no other public input.

6. The City applied for a permit under the same terms in 2008 which I also appealed. By time my appeal was entered at the local CCC office, the City had gotten the 6 months of placement it wanted, and took advantage of the CCC by requesting an extension, claiming it had to be linked with an unrelated action it never intends to complete. So for 18 months, San Diego has avoided letting the CCC examine the legitimacy of its previous rope placement. I request the City and the CCC finish its first permit request, or withdraw it. Letting the City avoid consideration of my appeal in this way was denial of due process.

7. The City ignores its own ordinances to allow special interest groups to place signs about the stairs to dissuade the public from lawfully going on that public beach. This rope is a tool of that sort of defacto beach restriction by intimidation.

8. The original permit 701673 clearly states it would not become effective until 10 days after CCC received notice of final action. It was put up on Dec. 16, and notice came to the CCC on Jan 26. San Diego does not deserve autonomy under its LCP from the CCC, for which it has so little regard.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on file

Signature of Appellant(s) or Authorized Agent

Date: 2/2/1010

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize

_____ to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Friends of the Children's Pool

Mailing Address: P.O. Box 342

City:

Zip Code: CA. 92037

Phone:

La
Jolla

RECEIVED

APPEALS SECTION
SOUTH COAST DISTRICT
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Diego Park and Recreation

2. Brief description of development being appealed:

Rope Barrier strung across 96% of Children's Pool Beach for 6 months of every year in perpetuity

3. Development's location (street address, assessor's parcel no., cross street, etc.):

850 Coast Blvd. at Jenner St. La Jolla 92037

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

TO BE COMPLETED BY COMMISSION:

APPEAL NO:

A-6-LSS-10-009

DATE FILED:

2/8/10

DISTRICT:

SAN Diego

6 of 1A

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
200 OCEANGATE, 10TH FLOOR
LONG BEACH, CA 90802-4416
VOICE (562) 590-5071 FAX (562) 590-5084

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
 City Council/Board of Supervisors
 Planning Commission
 Other

6. Date of local government's decision: 1/21/2010

7. Local government's file number (if any): Permit 701673, Project 194347

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

San Diego Development Services, 1222 1st Avenue San Diego, CA 92101-4101
(858) 492-5070

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) It is not required anyone have testified at the City hearing. All appeals have been exhausted and the City charges a fee to file appeals. The president of the Friends of the Children's Pool is:

Dr. John Steel
6357 Cardeno Dr.
La Jolla, CA. 92037

(2) Jean Perry, Anne Cleveland, Charley Barringer, Jim Poirier, David Pierce, David Valentine, Phyllis Minick, J. Otis Benton, Michele Addington, Anthony Porrello, Rich Guarascio, Garnet West

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. The use of the Children's Pool beach as an animal viewing area where humans are excluded from the beach is inconsistent with the California Coastal Act(Section 30210 Access–enclosed). The wording of the permit may indicate access, but the City refuses to acknowledge the rope is being used by animal activists to intimidate and harass the public to stay completely off the beach.
2. Although a construct like this should have had a California Coastal permit before going up, the City has abused the Coastal Commission by ignoring it.
3. A project in a tidal zone like this is not permitted to encroach on public access. How can a barrier across 96% of the beach not be an encroachment? It is what it is named, ie a barrier.
4. Signage next to the rope is inadequate and misleading, allowing animal activists/vigilantes to misinform the public or just demand they leave, which they do. One line on a sign posted by the city says the beach is open, but does not say the **WHOLE** beach is open.
5. This project is part of a long standing policy to put this rope up to protect invasive pinnipeds that need no protection but serves to provide animals with an abandoned beach. This project is not habitat preservation; it is habitat creation to the detriment of citizen rights to ocean access.
6. The Trust that recently was altered by the Legislature(SB 428) to guarantee a place for the seals also guarantees public access but this sort of City action allows barricading a beach against the public for the benefit of a special interest group.
7. The City has put this barrier rope in place with no means to monitor the harassment of citizens by animal activists/vigilantes who alter the position of the rope to completely close off all beach access, which happens regularly.
8. In addition to no monitoring capability, the City has no mitigation measures for loss of public access to fishing, diving, swimming and sunbathing in a suburb that is already deficient in the ratio of usable developed park space per capita.
9. By favoring the concentration of one species(pinnipeds) in this area, the ruling by the City has upset the ecological balance in the area to the detriment of other marine species.
10. The City has allowed the excess concentration of seals to contaminate the water in and around the Children's Pool as well as the beach which has not been cleaned in decades. This has caused a putrid stench in the surrounding area. There is no plan in place to bring the water, sand or air to the standards of safe health codes.

804 14

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on file *MD.*

Signature of Appellant(s) or Authorized Agent

Date: 29 JANUARY 2010

Note: If signed by agent, appellant(s) must also sign below.

John A Steel MD.
3 Feb 2010

Section VI. Agent Authorization

I/We hereby authorize _____

to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
 200 OCEANGATE, 10TH FLOOR
 LONG BEACH, CA 90802-4416
 VOICE (562) 590-5071 FAX (562) 590-5084



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: San Diego Council of Divers

Mailing Address: 5609 Calle SalSiPuedes

City: San Diego

Zip Code: 92139

Phone: 619-339-5695

SECTION II. Decision Being Appealed

1. Name of local/port government:

San Diego Park and Recreation

2. Brief description of development being appealed:

Rope Barrier blocking public access to Children's Pool Beach for 6 months of every year in perpetuity

3. Development's location (street address, assessor's parcel no., cross street, etc.):

850 Coast Blvd, at Jenner st, La Jolla 92037

4. Description of decision being appealed (check one.):

- Approval; no special conditions
 Approval with special conditions:
 Denial

RECEIVED

FEB 11 2010

CALIFORNIA
 COASTAL COMMISSION
 SAN DIEGO COAST DISTRICT

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-G-LIS-10-009

DATE FILED: 2/11/10

DISTRICT: SAN DIEGO

10 of 14

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- Planning Director/Zoning Administrator
- City Council/Board of Supervisors
- Planning Commission
- Other

6. Date of local government's decision: 1/21/2010

7. Local government's file number (if any): Permit 701673, Project 194347

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

San Diego Development Services, 1222 1st Avenue San Diego, CA 92101-4101
(858) 492-5070

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) It is not required anyone have testified at the City appeal hearing. All appeals have been exhausted and the City charges a fee to file appeals.

The president of the San Diego Council of Divers is Scott Anderson
5609 Calle SalSiPuedes, San Diego CA, 92139

(2)

(3)

(4)

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

1. The Council has watched the San Diego work to convert a public beach to a closed tourist attraction for over a decade. Not only ourselves are harmed, but thousands of beneficiaries of the trust the City got amended for the stated purpose of avoiding the cost of restoring the beach to public use. As if that were not enough, the City acts to restrict access to the beach as if it could legally serve as an enforcer of a Federal act, using means more extreme than NOAA ever used.

2. Except for a few individuals during the first lobster weekend, divers have stopped using what was once a major ocean access point. Polling our members we find they overwhelmingly would go there but for the harassment, insults, hassle, threats and abuse they suffer there. San Diego has allowed a special interest group to make its citizens unwelcome on a public beach. The City pretends not to know about the vigilantes, and indeed has avoided looking, though in 2 previous years it had to hire private security guards for the sidewalk to forestall confrontations.

3. The rope is used to lend color of authority to the defacto closure of the beach to the public by a special interest group. They have long been allowed by the City to set up a commercial sales table on the sidewalk, solicit donations and accost people who dare go on the beach. They hire private security guards to stand on the sidewalk at night and dissuade people from visiting the beach and shine lights at them for intimidation.

4. Divers are fine with seals there, but need help from the CCC now after being run off public land for no good reason.

5. This began in 1992 when the City wanted to have a seal reserve on the sometimes visited "Seal Rock" in La Jolla to make it tourist attraction. It was not allowed to include the beach at Children's Pool where seals sometimes hauled out on nearby rocks, but not on the sand. The next year, Sea World began secretly diverting its harbor seal rescue rehabs to La Jolla, right off Children's Pool. The effect was dramatic. Fearless seals came up on the beach to play with people and nobody could understand it. For 11 years Sea World continued to release human imprinted harbor seals nearby to build a colony. Please see attached documentation. Lifeguards set up barriers between seals and the public in 1996. The Seal Rock Reserve was allowed to lapse at the end of 5 years, as most seals had taken up at Children's Pool.

6. In 1997 the City closed the beach for 5 years, citing fecal contamination by seals, during which time seal population greatly increased on what was to them an abandoned beach. In 1998, The City asked for a permit to restore the beach, but did not. In 1999, it elected instead to put the rope back up and withdraw the restoration permit from the Coastal Commission, to rely on "shared use".

7. A rope went up at the same time, On March 13, 2003, the California Coastal Commission advised the City that the rope barrier the City had erected closing off most of the beach at Children's Pool and access to the water at the Pool, needed a Coastal Permit. The Commission was concerned that a supposed temporary situation had been in place for four years and appeared to be permanent.

(items 5, 6 and 7 were taken from Superior Court records - documentation to follow)

12 of 14

8. Per the above history, this rope is not habitat preservation, but part of artificial habitat creation and fosters acclimatization of seals and further beach colonization. This is bad for people and for seals.

9. The City had elected to grant itself a permit to rope off the beach for half of every year forever, then upon appeal, the City Attorney declared an "emergency" to allow it to be placed in spite of the local appeal and in spite of violation of the LCP terms and conditions, such as the requirement for different special emergency permit. The rope has stayed installed for six weeks without the permit meeting its own stipulation it would not be in effect without a CCC permit. The City has abused the trust of the CCC.

10. The Coastal Act does not allow a project in the coastal zone to encroach on public access. How can a barrier across 96% of the beach not be an encroachment? It is what it is named. A barrier, and goes against everything the Coastal Commission stands for.

11. This action follows on the heels of the State amending the trust to declare a marine mammal park there, but this rope violates other conditions still in the trust. By attempting to manage a marine mammal park for the State, San Diego violates the Marine Mammal Protection Act. Sec 109(a).

12. Special Conditions - the permit should not be granted without these conditions:

a. San Diego must resubmit an emergency permit per its municipal code §126.0718 (a)-(h).

b. San Diego must enforce its own Public Right of Way codes (§127.0303(b), §129.0802, §142.1206, §33.1406, §54.0105) because vendors' tables and signs and drawing crowds does create an attractive nuisance and impede the public right of way. Same as rules as for anywhere else.

c. The permit must not be in perpetuity, but provisional for 5 years with annual reports to the CCC on how the rope has fulfilled its stated purpose and provided a greater good to the public than ocean access.

d. The City must report back within 6 months on how it has taken all possible steps to mitigate negative effects on beach access and its conformance with all applicable State and Federal authorities and rules and all the terms of the amended trust.

e. The City must show within 6 months its amended LCP to allow restricting access to this one public beach for a seal display.

f. If a rope is to be run across the beach for some justified separation from people to seals then it must extend across the sea wall too, to prevent people from closing distance by going on the sea wall.

g. The City must re-install the video cameras it has used in the past to temper public confrontations.

h. The City must report back in 1 month with evidence from a survey of citizens standing within view of a City sign, either at stairs midlevel, or by a rope barrier post. From sampling of over 300 persons, as to whether the beach is open, the rope is advisory only, and any person may cross the rope. (City estimates are 3000 visitors per day). If less than 80% of the visitors that close to a City sign do not know these things, the City must provide a plan to the CCC to correct the effectiveness of its signage, and return with results 1 month later.

If the City lacks personnel to do the survey the Council of Divers can do it as a public service..

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature on file

Signature of Appellant(s) or Authorized Agent

Date:

2/11/2010

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date:
