

CALIFORNIA COASTAL COMMISSION

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



Th18a

A-6-LJS-17-0025 (SAN DIEGO LA JOLLA COVE

STAIRWAY GATES)

JULY 13, 2017

EXHIBITS

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Exhibit 6 – May 8, 2017 Appeals





La Jolla Cove

Gate

Gate



EXHIBIT NO. 3

APPLICATION NO.

A-6-LJS-17-0025

Site Photos



California Coastal Commission











Malibu Cove Ocean Club
Remembers
Janet Lamott
1932 - 2014



REGULATIONS

NO SMOKING
NO GLASS BOTTLES



6-LJS-17-0441

Santoro, Kerry

From: Santoro, Kerry
Sent: Wednesday, October 19, 2016 5:13 PM
To: Daneri, Daniel
Subject: RE: Sea Lion Nuisance at the Cove

Hi Daniel, thank you for the clarifying information below and on the proposed gates that will be left completely open during the day and will close but will not be locked during the evening/nighttime, where your sole purpose is to prevent nuisance sea lions from accessing public deck areas and walkways, the lifeguard tower premises and the public street. Based on the information you've provided, Development Services has determined that your project would be exempt from a Coastal Development Permit per San Diego Municipal Code Sections 126.0704 (b) and (f). If you have any questions regarding this determination, or need anything further, please don't hesitate to contact me.

Kerry Santoro

Deputy Director, Land Development Review Division
City of San Diego
Development Services Department

T (619) 446-5121
ksantoro@sanidiego.gov

From: Daneri, Daniel
Sent: Monday, October 17, 2016 9:15 AM
To: Santoro, Kerry
Subject: FW: Sea Lion Nuisance at the Cove

Hi Kerry,

Is the email below from the lifeguards to call the sea lions a public nuisance when they come up the stairs?

Dan Daneri

District Manager
City of San Diego
Park and Recreation Department

619-235-5914
ddaneri@sanidiego.gov

CONFIDENTIAL COMMUNICATION

This electronic mail message and any attachments are intended only for the use of the addressee(s) named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not an intended recipient, or the employee or agent responsible for delivering this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you received this e-mail message in error, please immediately notify the sender by replying to this message or by telephone. Thank you.

From: Stropky, Richard
Sent: Saturday, October 15, 2016 3:42 PM
To: Daneri, Daniel <DDaneri@sanidiego.gov>
Subject: Sea Lion Nuisance at the Cove

EXHIBIT NO. 4

APPLICATION NO.
A-6-LJS-17-0025

City Exemption

Dan,

As we discussed on the phone, the sea lions have posed health and safety problems at the Cove for a couple years. Specifically, they easily travel up the public stairs, making their way to public deck areas and walkways, the lifeguard tower premises and even the public street. They can be aggressive and have bitten and trapped people. The sea lions also leave large amounts of urine and excrement in public areas that expose citizens to associated health risks, as well as horrible odors and visuals. At times, sea lion feces has dripped from the public viewing deck above the lifeguard station, down the wall and into our gallery area.

If we could keep the sea lions from accessing stair areas, the mammals and the public would be much safer.

Regards,

Rich Stropky
Marine Safety Lieutenant
City of San Diego
Fire-Rescue Department

C (619) 980-0834
rstropky@sandiego.gov

The City of
**SAN
DIEGO**
~ A world-class city for all ~

| | |
|--|-----------------------------|
| EXEMPT | |
| DEVELOPMENT SERVICES DEPARTMENT | |
| Land Development Review | |
| PTS No. <u>N/A</u> | |
| From <u>CDP</u> | <u>126-0704(b) and (f)</u> |
| Permit Type | Municipal Code Section |
| By <u>Melroy Santoro</u> | Initials <u>KS</u> |
| Date <u>10/19/2017</u> | Phone <u>(619) 446-5121</u> |
| Any revision to these plans will revoke this exemption | |

RECEIVED

MAY 15 2017

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

May 15, 2017

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

SUBJECT: California Coastal Commission Appeal No. A-6-LJS-17-0025

Dear Mr. Llerandi:

In response to the Commission Appeal No. A-6-LJS-17-0025, I have provided some additional information and attached documentation regarding the Coastal Development Permit (CDP) Exemption determination made by the Development Services Department (DSD) in accordance with our certified Local Coastal Program Implementing Ordinance Section 126.0704 (b) and (f) and in compliance with Public Resources Code Sections 30005(b) and 30610(d).

In regards to the determination of exemption under Section 126.0704 (b), I researched the Public Resources Code (PRC) and relied on the text in 30610(d) that states, "Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter." In my estimation, the addition of an unlockable gates at the middle landings on the stairs met the criteria described in this section of the PRC. I viewed the gates as similar to the installation of handrails, both of which would contribute to the safety of the public in accessing the beach and parkland.

In regards to the determination of exemption under Section 126.0704(f), I relied primarily on the testimony of the City's Lifeguards, who are relied upon to provide safety services in the coastal and aquatic environment for the public, indicating that the situation with the Sea Lions climbing the stairs and entering the developed parkland, and depositing urine and fecal matter on the stairs, public walkways and onto the lifeguard tower had risen to the level of a public nuisance creating a health and safety issue for lifeguard personnel as well as park and beach-goers. Our City Attorney's Office provided clarification on what constitutes a nuisance: "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance."

I was assured by Park and Recreation staff that the gate would not never be locked in the closed position, and that it would in fact be locked open except during large haul out events that

EXHIBIT NO. 5

APPLICATION NO.

A-6-LJS-17-0025

City May 15, 2017

Letter



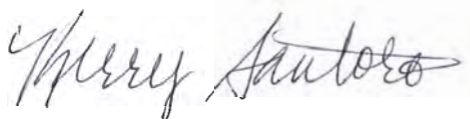
California Coastal Commission

signal the probability of sea lion intrusion beyond the beach and natural cliff areas into the developed public park and lifeguard premises. The gates' design would allow for easy public access through the gate when closed, while discouraging Sea Lion access to the developed park and lifeguard tower.

In response to your request for all relevant documents and materials supporting our determination of exemption pursuant to Sections 126.0704 (b) and (f), the City has attached it's Marine Mammal Management Plan, correspondence from City Lifeguards, numerous photographs documenting the extent of the problems and a summary from NOAA's Marine Mammal Stranding Network database regarding the reports of marine mammals straying from their beach habitat into the developed environment

Please contact me at (619) 446-5121 or ksantoro@sandiego.gov if you have any further questions regarding the material presented in this submittal or DSD's determination. We are confident in our determination and look forward to an expeditious resolution to be able to continue in our efforts to abate the public nuisance and minimize further health and safety risks.

Sincerely,

A handwritten signature in black ink, reading "Kerry Santoro". The signature is fluid and cursive, with the first name "Kerry" and last name "Santoro" clearly distinguishable.

Kerry Santoro
Deputy Director, Land Development Review
Development Services Department

Cc: Herman Parker, Park and Recreation Director
Robert Vacchi, Development Services Director

Attachments: Determination of Exemption
Gate Design Drawings
Marine Coastal Management Plan – La Jolla
Photograph Documentation
Memorandum from Lifeguard Chief
Email from NOAA



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 12, 2017

TO: Herman Parker, Director, Parks and Recreation Department

FROM: Rick Wurts, Lifeguard Chief, Fire-Rescue Department

SUBJECT: Sea Lion Nuisance on Stair Accesses at La Jolla Cove

There is a historic and on-going public safety problem at La Jolla Cove pertaining to sea lions accessing the staircases used by the public and the lifeguards. Sea lions haul out at La Jolla Cove and move up and down the stairs. These staircases are narrow and confined. When a sea lion chooses to occupy the staircase they prevent citizens entering and exiting the beach. Sea lions at the Cove have been known to move aggressively toward people, snap and on rare occasion bite when they feel threatened. I am concerned over the possibility of a sea lion on the stairs being confronted by an unsuspecting citizen. In a confined space like the stairs, with limited ability to escape, the sea lion may feel compelled to charge at and bite someone.

Additionally, Sea lions have been found on the second and third level landings, in the park and in the lifeguard tower landing. These animals defecate on these areas creating slip hazards for citizens. Their feces poses a health hazard to children and adults who are exposed. Finally, the animals themselves are at risk as they have been found in and around the street on Coast Blvd.

Below are several photos for your review.

The Lifeguard Division supports the placement of gates on the stair cases to prevent the nuisance of sea lions accessing the stairs.



Page 2

Herman Parker, Director, Parks and Recreation Department

May 12, 2017



Rick Wurts
Lifeguard Chief

RW/rw

cc: James Gartland, Lifeguard Captain, Fire-Rescue Department
Rich Stropky, Marine Safety Lieutenant, Fire-Rescue Department

Santoro, Kerry

From: Justin Greenman - NOAA Federal <justin.greenman@noaa.gov>
Sent: Thursday, May 11, 2017 3:00 PM
To: Martinez, Bruce
Cc: Justin Viezbicke - NOAA Federal
Subject: Sea Lions and Stairs

Hello Bruce,

Thanks again for meeting with us on Tuesday!

I queried our NOAA Marine Mammal Stranding Network database and found some records related to the stairs at La Jolla Cove. For the 5-year period of 2012-16, we had at least 7 sea lions found above the stairs, in the street, or in the park. We also had an additional ~40 animals that were picked-up while sitting on the stairs, the base of the stairs or within a few feet of the stairs. I'm certain that the lifeguards can also add some anecdotal stories of animals that they have encountered climbing up the stairs as well.

--
Justin

Justin Greenman
Assistant California Stranding Network Coordinator
NOAA / NMFS
West Coast Region - Long Beach Office
501 W. Ocean Blvd
Long Beach, CA 90802
w: 562-980-3264 c: 707-496-7230





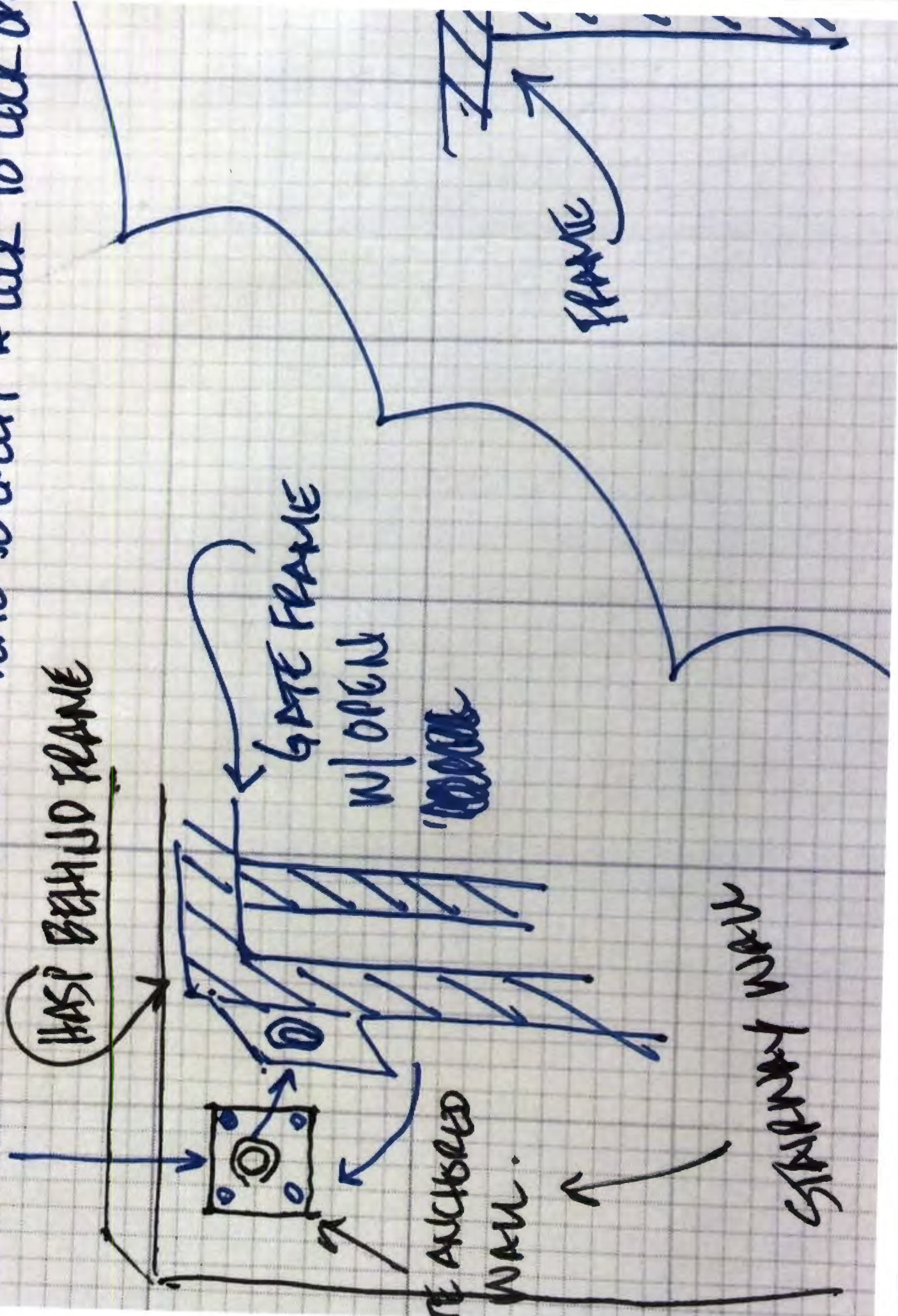




Date _____

[illegible]

LOOP TO TRAVEL THROUGH HOLE ON PLATE TO EXCEPT A LOCK TO LOCK OF



CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

FILE COPY

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

SECTION I. Appellant(s)

Name: Chair Dayna Bochco
Mailing Address: 45 Fremont St, Suite 2000
San Francisco, CA 94105

Phone Number: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Erection of two approximately 4-ft. tall gates on two existing public access stairs at La Jolla Cove.
3. Development's location (street address, assessor's parcel no., cross street, etc.): La Jolla Cove, 1160 Coast Boulevard San Diego, CA 92037
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☐
 - c. Denial: ☐
 - d. Other: ☒ Exemption

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-17-0025

DATE FILED: May 8, 2017

DISTRICT: San Diego

RECEIVED**MAY 08 2017**

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST

EXHIBIT NO. 6

APPLICATION NO.

A-6-LJS-17-0025**May 8, 2017 Appeals**

California Coastal Commission

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

- a. ☒ Planning Director/Zoning Administrator c. ☐ Planning Commission
b. ☐ City Council/Board of Supervisors d. ☐ Other

Date of local government's decision: April 24, 2017

Local government's file number (if any): N/A

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Herman Parker
City of San Diego Parks and Recreation
202 C St, MS 37C
San Diego, CA 92101

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.

SECTION IV. Reasons Supporting This Appeal

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, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT
Page 3

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.)

See Attachment A
dated May 8, 2017

Note: The above description 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.

SECTION V. Certification

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

Signed: J. Belco.
Appellant or Agent

Dated: 5/8/17

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Dated: _____

Attachment A

May 8, 2017

- 1) **The City of San Diego has ordered the installation of development in the form of two gates at existing public access stairs at La Jolla Cove without processing a coastal development permit.**

The City of San Diego (City) has approved the installation of two new approximately 4-ft. tall gates across two existing public access stairs leading down to the beach at La Jolla Cove in the community of La Jolla. The City exempted this development under Sections 126.0704(b) and (f) of the Land Development Code (LDC), which serves as the Implementation Plan (IP) of the City's certified Local Coastal Program (LCP).

Section 113.0103 of the LDC states

"Development means the act, process, or result of dividing a parcel of land into two or more parcels; of erecting, placing, constructing, reconstructing, converting, establishing, altering, maintaining, relocating, demolishing, using, or enlarging any building, structure, improvement, lot, or premises; of clearing, grubbing, excavating, embanking, filling, managing brush, or agricultural clearing on public or private property including the construction of slopes and facilities incidental to such work; or of disturbing any existing vegetation."

Section 126.0702(a) of the LDC states:

- (a) Permits Issued by the City. A Coastal Development Permit issued by the City is required for all coastal development of a premises within the Coastal Overlay Zone described in Chapter 13, Article 2, Division 4, unless exempted by Section 126.0704, or if the proposed project site lies completely within the Coastal Commission Permit Jurisdiction or the Deferred Certification Area as described in Section 126.0702(b).

The City exempted the two gates under Sections 126.0704(b) and (f), which state:

The following coastal development is exempt from the requirement to obtain a Coastal Development Permit.

[...]

- (b) Repair or maintenance activities are exempt except if the repairs or maintenance involve any of the following:

- 1) Repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline

work that involves substantial alteration to the foundation of the protective work including pilings and other surface or subsurface structures; the placement, whether temporary or permanent, of rip rap, artificial berms of sand or other beach materials, or any other forms of solid materials on a beach or in coastal waters, streams, wetlands, estuaries or on a shoreline protective work, unless destroyed by a natural disaster; the replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; the placement, whether temporary or permanent, of mechanized construction equipment on any sand area, coastal bluff, or within 20 feet of coastal waters or streams, except that the use of such equipment solely for routine beach and park maintenance shall not require a Coastal Development Permit.

- 2) Any repair or maintenance to facilities or structures or any work located within a wetland, any sandy beach area, within 50 feet of a coastal bluff edge or wetland, or within 20 feet of any coastal waters or streams that include: the placement or removal, whether temporary or permanent, of rip rap, rocks, sand or other beach materials or any other forms of solid materials or the presence, whether temporary or permanent, of mechanized equipment or construction materials.

[...]

(f) Any action necessary to abate a public nuisance as provided under California Public Resources Code Section 30005(b).

[...]

While the City cites the exemption for repair and maintenance measures, the locally approved gates do not qualify as repair and maintenance because they are a new element being added to the stairs and the City has not identified any existing damage to the stairs that these gates would be repairing.

The City is also states that the installation of the two gates on the public access stairs is exempt as being an action to abate a public nuisance. The public nuisance the City is identifying is the act of the resident sea lions at La Jolla Cove climbing the public access stairs and sleeping on the public viewing deck, defecating on the public viewing deck and stairs, and acting aggressively toward pedestrians. The City states that the defecation poses a health risk to both the visiting public and the life guards operating the life guard station adjacent to the viewing deck, as well as acts as an impediment to the public using the stairs and beach area below.

The City has not furnished evidence of the existence of the claimed nuisance in the form of an incident record, medical reports, an extended photographic or narrative history of incidents, or public complaints, nor does the exemption – in

the form of an e-mail dialog among City staff – contain any photographic or plan drawings of the gates, final location, or their method of operation. While the e-mail granting the exemption references their intent to solely hinder sea lion movement up the stairs and that they will be left open during the day, there are no details or standards with which to hold the actual development to in order to ensure that adverse impacts to public access at this popular coastal destination are avoided to the greatest extent feasible.

Furthermore, if the gates are installed with any type of locking mechanism or without signs to help clarify that the beach remains open for public access, then the gates will likely have an impact on coastal access and recreation that goes beyond the abatement of the nuisance. In this way, the proposed method of abatement, if with a locking mechanism on the gate or without signs to address public access issues, goes beyond the abatement of the nuisance.

Summary:

- Placement of gates on public stairways will act as a deterrent to public access and recreational opportunities at a very popular and well used coastal destination.
- The proposed plans are unclear as to their design of the gates and no signage is being proposed to clarify public rights.
- No documentation of either public safety conflicts or public health hazards has been presented.
- The proposal establishes an adverse precedent for public use restrictions along the shoreline, and
- While not being a basis for the appeal itself, the absence of public notice and permit process precludes consideration of alternatives and public involvement.

CALIFORNIA COASTAL COMMISSION

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



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

FILE COPY

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

SECTION I. Appellant(s)

Name: Commissioner Mary Shallenberger
Mailing Address: P.O. Box 354
Clements, CA 95227

Phone Number: (415) 904-5200

SECTION II. Decision Being Appealed

1. Name of local/port government: City of San Diego
2. Brief description of development being appealed: Erection of two approximately 4-ft. tall gates on two existing public access stairs at La Jolla Cove.
3. Development's location (street address, assessor's parcel no., cross street, etc.): La Jolla Cove, 1160 Coast Boulevard San Diego, CA 92037
4. Description of decision being appealed:
 - a. Approval; no special conditions: ☐
 - b. Approval with special conditions: ☐
 - c. Denial: ☐
 - d. Other: ☒ Exemption

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-17-0025

DATE FILED: May 8, 2017

DISTRICT: San Diego

RECEIVED**MAY 08 2017**

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

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

- a. ☒ Planning Director/Zoning Administrator c. ☐ Planning Commission
- b. ☐ City Council/Board of Supervisors d. ☐ Other

Date of local government's decision: April 24, 2017

Local government's file number (if any): N/A

SECTION III. Identification of Other Interested Persons

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

Name and mailing address of permit applicant:

Herman Parker
City of San Diego Parks and Recreation
202 C St, MS 37C
San Diego, CA 92101

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.

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 3

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.)

See Attachment A
dated May 8, 2017

Note: The above description 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.

SECTION V. Certification

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

Signed: Mary K Shallenburger
Appellant or Agent

Dated: 5/8/17

Agent Authorization: I designate the above identified person(s) to act as my agent in all matters pertaining to this appeal.

Signed: _____

Attachment A

May 8, 2017

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Section 126.0702(a) of the LDC states:

- (a) Permits Issued by the City. A Coastal Development Permit issued by the City is required for all coastal development of a premises within the Coastal Overlay Zone described in Chapter 13, Article 2, Division 4, unless exempted by Section 126.0704, or if the proposed project site lies completely within the Coastal Commission Permit Jurisdiction or the Deferred Certification Area as described in Section 126.0702(b).

The City exempted the two gates under Sections 126.0704(b) and (f), which state:

The following coastal development is exempt from the requirement to obtain a Coastal Development Permit.

[...]

- (b) Repair or maintenance activities are exempt except if the repairs or maintenance involve any of the following:
- 1) Repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline

work that involves substantial alteration to the foundation of the protective work including pilings and other surface or subsurface structures; the placement, whether temporary or permanent, of rip rap, artificial berms of sand or other beach materials, or any other forms of solid materials on a beach or in coastal waters, streams, wetlands, estuaries or on a shoreline protective work, unless destroyed by a natural disaster; the replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; the placement, whether temporary or permanent, of mechanized construction equipment on any sand area, coastal bluff, or within 20 feet of coastal waters or streams, except that the use of such equipment solely for routine beach and park maintenance shall not require a Coastal Development Permit.

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[...]

(f) Any action necessary to abate a public nuisance as provided under California Public Resources Code Section 30005(b).

[...]

While the City cites the exemption for repair and maintenance measures, the locally approved gates do not qualify as repair and maintenance because they are a new element being added to the stairs and the City has not identified any existing damage to the stairs that these gates would be repairing.

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- No documentation of either public safety conflicts or public health hazards has been presented.
- The proposal establishes an adverse precedent for public use restrictions along the shoreline, and
- While not being a basis for the appeal itself, the absence of public notice and permit process precludes consideration of alternatives and public involvement.