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OPINION NUMBER 2010-2

DATE: May 27, 2010

SUBJECT: Coastal Development Permits for a Rope Barrier at the Children's Pool

REQUESTED BY: Honorable Mayor Jerry Sanders

PREPARED BY: City Attorney

INTRODUCTION

The City has a Coastal Development Permit ("CDP") for the annual placement of a rope barrier at the La Jolla Children's Pool during the approximate dates of the harbor seal pupping season: December 15 to May 15. On May 17, 2010, the City Council directed the Mayor to apply for an amendment to the current permit which would allow the rope barrier to remain year-around and an emergency Coastal Development Permit that would allow the rope barrier to be reinstated immediately.

The Mayor has requested our advice as to whether there is a sufficient factual basis upon which to apply for an amendment to the CDP through the normal process and whether there exists a basis for issuance of an emergency permit, bypassing the normal process.

QUESTIONS PRESENTED

1. Is there a sufficient factual basis upon which to apply for an amended CDP through the normal process to allow permanent placement of the rope barrier?
2. Is there an "emergency" to allow immediate placement of the rope barrier without following the normal process?

SHORT ANSWERS

1. Yes, there is a sufficient factual basis upon which to apply for a permit through the normal Coastal Development Permit process allowing permanent placement of the rope barrier

2. Under procedural law, the Mayor must independently consider the facts and public comment, exercise discretion and reach his decision. Unless the Mayor can make necessary findings of a “a sudden, unexpected occurrence...that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services”, then the emergency permit should not be issued. In that case, we would recommend that the Mayor request further input on an on-going basis from staff, lifeguards and law enforcement as to any heightened risks at the beach, retaining the discretion to issue an emergency permit should additional information provide a basis.

ANALYSIS

I. Reinstatement of the rope barrier permanently requires a CDP.

A CDP is generally required for “coastal development” within the Coastal Overlay Zone, which includes the Children’s Pool. The Coastal Act defines “development” very broadly:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with California Government Code section 66410), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511). As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

Cal. Pub. Res. Code § 30106.

“The rope barrier at Children’s Pool is coastal development because it places a structure on the beach that changes public access to water.” City Att’y MOL No. 2006-32 (Dec. 15, 2006), Exhibit 1, page 4. The City’s existing CDP was obtained as a seasonal permit that expires on May 15 annually based upon the end of the pupping season. Accordingly, the rope barrier was removed on May 15, 2010. In order to reinstate the rope barrier permanently the City would need to apply for and obtain a new or amended CDP.

II. The findings must be made before a regular CDP is issued for the permanent placement of the rope barrier.

Upon filing of an application, completing necessary environmental review and conducting a public hearing process, a Coastal Development Permit may be granted by a Hearing Officer with appeal to the Planning Commission and, thereafter, to the Coastal Commission. San Diego Municipal Code § 126.0707(b); City Att’y MOL No. 2006-32, (Dec. 15, 2006), Exhibit 1, page 5.

The findings necessary for the issuance of Coastal Development Permits are set forth in San Diego Municipal Code section 126.0708(a). Those are as follows:

- (1) The proposed *coastal development* will not encroach upon any existing physical accessway 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
- (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.
- (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.

SDMC § 126.0708(a).

The Hearing Officer and appellate bodies would need to consider whether maintaining a permanent rope barrier—as opposed to a seasonal rope barrier limited to the pupping season—would be consistent with the necessary findings and Local Coastal Program. The findings made for the seasonal placement of the rope are set forth in the Planning Commission Resolution for the issuance of the City’s current seasonal permit, Exhibit 4. While the findings all refer to the seasonal placement, none of the findings appear to be made specifically because the placement was during the pupping season. Therefore, the same findings could reasonably be made for the permanent placement of the rope barrier.

Facts to support the findings are set forth in a letter from the National Oceanic and Atmospheric Administration (NOAA) to Councilmember Donna Frye dated May 14, 2010, attached as Exhibit 2, and a Report to Council from the Natural Resources and Culture Committee Chair dated May 17, 2010, attached as Exhibit 3.

As pointed out by NOAA, the rope barrier “would allow at least some measure of public awareness and protection to the harbor seals hauled out on the sand.” NOAA’s experience is that “[o]nce informed, most people tend to maintain a greater distance and limit potentially disruptive behaviors.” (2010 NOAA letter, page 3.) The placement of the rope provides a clear indicator to the public of the proper distance. (Report, pg. 3). The rope barrier prevents human-to-human conflict, prevents seal harassment and harm, and allows the lifeguards to focus on protecting swimmers and the police to focus on protecting the public from criminals. (Report, pg. 4). The posted signs are not always effective at preventing harassment. (Report, pg. 5).

In addition, the Report describes the importance of the rope barrier for public education. The Report describes that after the rope barrier was removed on May 15, “once again people were left to determine for themselves the proper behavior for watching wild marine mammals. Immediately upon the rope barrier being removed, despite the signs and some police presence, people were not keeping a safe distance from the seals and their pups.” (Report, pgs. 7-10). The Report also states that the rope reduces conflicts. (Report, pg. 3). NOAA states that the rope barrier allows at least some measure of “public awareness and protection to the harbor seals hauled out on the sand.” 2010 NOAA Letter, pg. 3.

Facts that would support not making the findings are that a permanent rope barrier encroaches on a physical accessway for a longer period of time than a seasonal one, a prohibition on public access is inconsistent with the certified local coastal program, and it is unclear how a rope barrier would enhance and protect public views.¹

¹ In addition, the rope barrier does not act to contain the seals, and therefore may not accomplish the goals stated above as bases for granting the permit to reinstall the rope. While NOAA supports the placement of the rope barrier, it cautions that seals may haul out on the human side of the rope, and a resulting violation of the Marine Mammal Protection Act may occur, regardless of the rope placement. 2010 NOAA Letter, pg. 3, Exhibit 2.

III. Whether to issue an Emergency Permit.

An Emergency CDP may be issued without going through the normal process if the Mayor is able to make the following factual findings:²

- (1) A coastal emergency exists that requires action more quickly than would be permitted by the usual procedures for acquiring a CDP, and that the development will be completed within 30 days (unless otherwise specified in the permit);
- (2) Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible; and
- (3) The proposed emergency work is consistent with the Local Coastal Program.

SDMC § 126.0718(f).

If he cannot make the factual findings, the emergency permit application must be denied, nevertheless, a permit may be applied for under the normal process. According to the Park and Recreation Department, which under San Diego Charter section 55 is charged with the management of the City of San Diego beaches, the facts considered in support of the application are contained in the letter from NOAA dated May 14, 2010 (2010 NOAA Letter) and the Natural Resources and Culture Committee Chair's Report to Council, dated May 17, 2010 (Report), Exhibit 3.

A. Under procedural law, the Mayor must independently consider the facts and public comment, exercise discretion and reach his decision.

As discussed above, it is the Mayor who is empowered to decide whether to issue an emergency permit based upon certain findings that he believes he can make after considering the facts.

A decision on whether to issue an emergency permit must be the result of the Mayor reviewing the facts, public comment and exercising his discretion. If a decision is challenged in court, the judge's inquiry would be limited to whether the City's actions were arbitrary, capricious, or entirely without evidentiary support, and whether it failed to conform to the procedures required by law. *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997, 1004 (2007). An abuse of discretion is subject to review under traditional writ of mandamus. *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997 (2007); *CEB California Civil Writ Practice*, § 2.9.

² The Mayor must also verify the facts in the application, to the extent time allows; this Opinion assumes for the sake of analysis that the verification has occurred. SDMC § 126.0718(d).

A failure of an official to exercise discretion may be challenged. *Sego v. Santa Monica Rent Control*, 57 Cal.App.4th 250, 255 (1997). Thus, the decision must be the result of the Mayor's review of the facts, public comment and exercise of his discretion.

No hearing is required to be held by law prior to a decision on an emergency CDP, although public comment is to be solicited and reviewed to the extent feasible. Cal. Pub. Res. Code § 30600(e); Cal. Code Reg. tit. 14 §§ 13329- 13329.4; SDMC § 126.0718(f). Courts do review regulations and past agency practice to consider whether a hearing was required as a matter of law; however, if the agency retains discretion as to whether to hold a hearing, then no hearing can be said to be required as a matter of law, and this requirement is not satisfied. CEB *California Administrative Mandamus*, §§ 5.8-5.10.

In this instance, the May 17 hearing, the Report and 2010 NOAA letter provides substantial public comment for the Mayor's consideration.

B. Issuance of an Emergency permit requires a "sudden, unexpected occurrence" to justify bypassing the normal process.

As stated above, an Emergency Coastal Development Permit may be issued without going through the normal process if the Mayor is able to make factual findings that there is "a sudden, unexpected occurrence...that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services."(Municipal Code section 126.0718) (emphasis added). If he cannot make a factual finding to that effect, the permit application must follow the normal process.

As explained by the court in *Barrie v. California Coastal Commission* (1987) 196 Cal.App.3d 8, 17:

"The Coastal Act provides for permits without complying with the Coastal Act's procedures when there is an emergency....Issuance of [an emergency permit] circumvents the Act's procedures which are designed to ensure protection of the coastline and input by the public and is justifiable only in the case of an emergency."

In *Barrie v. California Coastal Commission*, a group of homeowners obtained an emergency permit to build a temporary seawall based upon weather reports of especially severe storms and high tides. The court criticized the homeowners use of the emergency process, pointing out that the "emergency" was, in essence, created by the homeowners because they waited until the last minute to build their seawall.

Another court upheld the issuance of special use permits for the construction of a seawall, utilizing the “emergency” exemption in the California Environmental Quality Act (CEQA).³ *Calbeach Advocates v. City of Solana Beach*, 103 Cal.App.4th 529 (2002). The definition of emergency in CEQA is essentially the same as that in the Coastal Act: “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. ‘Emergency’ includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.” Cal. Pub. Res. Code § 21060.3. In upholding the city’s use of the emergency CEQA exemption, the court noted the facts in the records regarding the rapid erosion leading to imminent bluff failure that would place the homes on the bluff in peril as well as the public below the bluffs. *Id.*, at 538.

In our circumstances, the existing permit allows the rope barrier during the pupping season and not beyond. The City will be applying for an extension of that permit to allow the rope barrier throughout the year. The emergency permit would be granted only if the Mayor determines that an emergency exists. In considering whether there is an emergency, the Mayor should take into consideration the risk of damage to life, health, property or essential public services, as well as the timing of the application.

The following are arguments for and against issuance of an emergency permit.

i. Argument for issuance of the permit

According to the Report, upon removal of the rope barrier on May 15, there is evidence “of seals and their pups fleeing from the beach into the water due to human harassment; people not keeping a safe distance from the seals and their pups; people getting too close to the seals and their pups; seal pups being almost fully surrounded by people; people attempting to touch/pet or actually touching/petting seals; people approaching seals that are sick or injured; and people being scared by seals who react to the person being too close.” (Report, page 7).

The Report also cites the conflicts between people who want to protect the seals from harassment and people who want to use the beach. “These conflicts have the potential to turn violent, and regularly involve confrontations and yelling. As conflicts arise between people on either side of the issue and between people and seals, lifeguards and police officers are regularly brought into these situations by members of the public.” (Report, page 9)

The Report states that from February 1, 2009 through January 31, 2010, there were 184 “Designated Runs”, 37 calls for disturbing the Peace and 4 calls for battery. The Report shows

³ A statute that is modeled after another and that shares the same legislative purpose is considered to be about the same topic and the two statutes should be interpreted consistently. 58 Cal.Jur.3d *Statutes* § 123 (2010 Supp.). Therefore, a court may consider an interpretation of the same language as it appears in another statute. *In re Do Kyung K.*, 88 Cal.App.4th, 583 (2001).

the total number of calls has significantly increased from 55 in 2008 to 290 in 2009. (Report, page 9)

The Report concludes that an emergency permit is needed for the following reason:

“Without the rope barrier, there is strong evidence that the public will continue to harass the seals (knowing or unknowingly) as well as each other, which impacts the public safety and creates a situation that could be immediately avoided/significantly lessened if the rope remains. The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup.

The ongoing and immediate potential for more serious confrontations between humans, necessitates the immediate placement of the rope barrier. The rope provides a guideline for the public and most will voluntarily comply with the law. The rope barrier will allow for the privately-funded Park Ranger to provide much needed assistance to the other enforcement agencies and will help reduce human to human and human to seal conflicts.” (Report, page 10)

The Report also points out that the “rope barrier is immediately necessary to allow lifeguards and police officers to focus on protecting members of the public.” (Report, page 8)

ii. Argument against issuance of the permit

Under the law, in order to issue an emergency permit, there must be “a sudden, unexpected occurrence...that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.”. (Municipal Code section 126.0718) (emphasis added).

- a. There was no “sudden, unexpected occurrence”. It was widely known that the existing Coastal Development Permit extended to May 15 and did not allow the rope beyond that date. During the past five years, the rope has gone up in mid-December and has been removed in mid-May.
- b. The risks are the same risks that have accompanied removal of the rope on May 15 annually during the past five years; yet, the City never found an emergency permit necessary.
- c. The City could easily have sought a year round permit earlier this year, but did not do so. The emergency permit bypasses the normal hearing process that enables members of the public to be heard on installation of the rope. As the court

stated in *Barrie v. California Coastal Commission*, an emergency permit should not be used to circumvent the California Coastal Act.

In addition, past Emergency Coastal Permits were issued to install the rope during the pupping season due to greater risks during that period. As discussed in the 2006 Memorandum of Law, between mid-December and mid-May “more mother seals and their pups will need to haul out (rest) on the Children’s Pool beach and for longer periods of time in order to prepare for birth, go through the birthing process, and nurse the seal pups.” City Att’y MOL No. 2006-32 (Dec. 15, 2006), Exhibit 1, page 1

This office pointed out that “mother seals may become more aggressive during pupping season due to their instinct to protect themselves and their baby seals from humans who are getting too close.” This office also cited concern that “the increased sensitivity of the mother and baby seals as the pupping season approaches will likely cause these conflicts between members of the public to occur more often and to become more intense.” City Att’y MOL No. 2006-32 (Dec. 15, 2006), Exhibit 1, page 2

The emergency permits were issued based upon a finding that the normal permitting process would not allow replacement of the rope barrier by commencement of the pupping season. City Att’y MOL No. 2006-32 (Dec. 15, 2006), Exhibit 1, page 7. In each instance, City staff faced unexpected procedural issues that would have prevented obtaining a permit in time for the pupping season.

As stated in the 2006 Memorandum of Law:

“Immediate action is required because a normal [Coastal Development Permit] could only be processed by mid-January with a more realistic date of mid-March or later. By that time, the pupping season would be half, if not completely over, and the City Council’s action to have the rope barrier placed from December 15, 2006 to May 15, 2007 would be rendered moot.” City Att’y MOL No. 2006-32 (Dec. 15, 2006), Exhibit 1, page 6

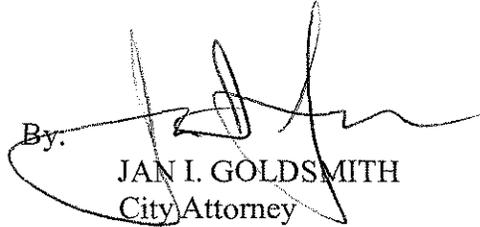
Concerns raised due to the pupping season do not necessarily justify issuance of an Emergency Coastal Permit in this situation because the pupping season is essentially over.

CONCLUSION

Based upon the foregoing, we suggest that the Mayor submit the application for an amended permit through the normal process.

Under procedural law, the Mayor must independently consider the facts and public comment, exercise discretion and reach his decision. Unless the Mayor can make necessary

findings of a “a sudden, unexpected occurrence... that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services”, then the emergency permit should not be issued. In that case, we would recommend that the Mayor request further input on an on-going basis from staff, lifeguards and law enforcement as to any heightened risks at the beach, retaining the discretion to issue an emergency permit should additional information provide a basis.

By: 
JAN I. GOLDSMITH
City Attorney

By: 
Shannon Thomas
Deputy City Attorney

ST:mm
Exhibits
LO-2010-2

Exhibit “1” is a Memorandum of Law dated December 15, 2006 that reflects the applicable law, included as exhibits are correspondence received in 2006 from the California Coastal Commission and NOAA.

Exhibit “2” is a letter from the NOAA to Councilmember Donna Frye dated May 14, 2010.

Exhibit “3” is a Report to Council from the Natural Resources and Culture Committee Chair dated May 17, 2010.

Exhibit “4” is Planning Commission Resolution No. 4562-PC, January 21, 2010, as submitted to the California Coastal Commission.

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Michael J. Aguirre
CITY ATTORNEY

MEMORANDUM OF LAW

DATE: December 15, 2006

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Emergency Authorization to Replace the Rope Barrier at the Children's Pool and Implement City Council's December 5, 2006 Resolution

INTRODUCTION

The City Council at the December 5, 2006 meeting adopted a resolution extending the replacement period of the rope barrier at the Children's Pool from December 15th through May 15th of every year (starting December 15, 2006), and directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement, if any. The City Attorney's Office was directed to make the determination as to whether any permits are necessary, and if so which ones.

There has been a considerable amount of public testimony regarding the rope barrier at the Children's Pool and other related issues both at Natural Resources and Culture Committee meetings and City Council meetings. Through that testimony, it is clear that in order to protect the public health and safety and to prevent damage to life, health, and essential public services that an emergency exception to the permit requirements is appropriate. Specifically, public testimony has revealed that:

- Between mid-December and mid-May, more mother seals and their pups will need to haul out (rest) on the Children's Pool beach and for longer periods of time in order to prepare for birth, go through the birthing process, and nurse the seal pups.
- There are continually and on a regular basis (if not daily) conflicts and encounters between people who want to protect the seals from harassment and people who want to use the beach. These conflicts have the potential to turn violent, and often involve confrontations and yelling. It has been reported from the Park and Recreation Department staff that one member of the public went so far as to urinate on another in one of these confrontations.

- The presence of more seals on the beach and the increased sensitivity of the mother and baby seals as the pupping season approaches will likely cause these conflicts between members of the public to occur more often and to become more intense.
- Additionally, the mother seals may become more aggressive during pupping season due to their instinct to protect themselves and their baby seals from humans who are getting too close. The lives of the seal pups are also at stake because the stress of harassment caused by the mothers being flushed from the beach may cause the pups to be stillborn, among other things.
- As conflicts arise between people on either side of the issue and between people and seals, lifeguards are regularly brought into these situations by the public. Lifeguards are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts over the seals at the Children's Pool, which takes them away from providing essential public services as lifeguards by protecting swimmers from danger and drowning.
- The presence of the rope barrier would reduce the number of conflicts between humans and humans and between humans and seals because it would be a clear indicator to the public the appropriate distance from the seals to avoid harassing them.
- The California Coastal Commission [CCC] has indicated that this is a situation in which an emergency exists such that an Emergency Coastal Development Permit would be appropriate in order to get the rope barrier placed at the Children's Pool by the mid-December date. *See Attachment A.*
- The National Oceanic and Atmospheric Administration [NOAA] has newly indicated that it is urgent to replace the rope barrier at the Children's Pool from mid-December through mid-May of this year. *See Attachment B.*

QUESTIONS PRESENTED

1. Does an emergency exist per the San Diego Municipal Code warranting the placement of a Children's Pool rope barrier by December 15, 2006?
2. Should Emergency Authorization be granted to replace the Children's Pool rope barrier without a Site Development Permit [SDP] by December 15, 2006 to protect public health and safety?
3. Should an Emergency Coastal Development Permit [ECDP] be issued by the City for the replacement of the Children's Pool rope barrier by December 15, 2006 to mitigate the loss of or damage to life, health, and essential public services?

4. Should the Park and Recreation Department apply for an SDP and a regular City Coastal Development Permit [CDP] for the emergency rope replacement and for all future rope barrier replacement periods at the Children's Pool?

SHORT ANSWERS

1. Yes. As demonstrated herein, based upon an analysis of the information known at this time, an emergency exists per the San Diego Municipal Code warranting the placement of a Children's Pool rope barrier by December 15, 2006.
2. Yes. The rope barrier is needed to protect public health and safety by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning.
3. Yes. The rope barrier will mitigate for damage to life, health, and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. In addition, the CCC has stated an ECDP is appropriate, and it would be consistent for the City to issue a local ECDP.
4. Yes. When emergency work is authorized without an SDP and/or with an ECDP, applications for standard City SDP and CDPs must also be submitted for the emergency work. Additionally, a regular CDP and an SDP are required for all future rope replacement periods.

ANALYSIS

A. An Emergency Exists In Order to Protect Public Health and Safety

The Environmentally Sensitive Land Regulations [ESLRs] apply when *development* is proposed on *environmentally sensitive lands*, which include *coastal beaches*. SDMC § 143.0110. As *development* under the SDMC is defined in pertinent part as "the act of...erecting [or] placing...any...structure," the replacement of the rope barrier at the Children's Pool is considered development within the meaning of the code. However, the ESLRs specify that certain uses and activities are allowed on coastal beach areas, including lifeguard towers, public comfort stations, public piers, safety and public information signs, shoreline protective works, public stairs and ramps, and public recreational equipment. SDMC §§ 143.0130(b); 143.0144. Furthermore, development that is necessary to protect the public health and safety may be authorized without prior approval of an SDP or a public hearing. Specifically, the SDMC provides in section 143.0126:

§ 143.0126 Emergency Authorization to Impact Environmentally Sensitive Lands

Whenever *development* activity within *environmentally sensitive lands* is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

- a) If the emergency work involves only temporary impacts to *environmentally sensitive lands*, a Neighborhood Development Permit or Site Development Permit is not required provided the *environmentally sensitive lands* are restored, in a timely manner to their natural state, to the satisfaction of the City Manager. Restoration shall be in accordance with a restoration plan that conforms with the Biology Guidelines and is approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work and work on the approved restoration plan shall be initiated within 90 days of project completion or prior to the beginning of the next rainy season, whichever is greater.
- b) If the emergency work results in permanent impacts to *environmentally sensitive lands*, a subsequent Neighborhood Development Permit or Site Development Permit is required in accordance with all regulations of this division. The application for the Neighborhood Development Permit or Site Development Permit shall be submitted within 60 days of completion of the emergency work.
- c) Within the Coastal Overlay Zone, a Coastal Development Permit is required for any emergency *coastal development* in accordance with Section 126.0718.

The SDMC allows for an emergency authorization for development without an SDP where the development is necessary to protect public health and safety. SDMC § 143.0126. The rope barrier is needed to protect public health and safety by preventing human-to-human conflicts and violence, preventing encounters between mother seals and humans, and allowing lifeguards to focus on their duties protecting swimmers from danger and drowning. In addition, an ECDP is needed.

B. An Emergency Coastal Development Permit Is Warranted to Mitigate For Damage to Life, Health, and Essential Public Services

A Coastal Development Permit is generally required for *coastal development* within the Coastal Overlay Zone, which includes the Children's Pool beach. SDMC § 132.0402, Diagram 132-04A. *Coastal development* in the SDMC has the same meaning

as under the state California Coastal Act, and is defined in pertinent part as "the placement or erection of any solid material or structure [or a] change in the intensity of use of water, or of access thereto. SDMC § 113.0103. An Emergency Coastal Development Permit may be issued on an expedited basis when there is a coastal emergency.

A coastal emergency is a sudden, unexpected occurrence within the Coastal Overlay Zone that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.

SDMC § 126.0718(a).

The purpose of the CDP procedures is to make the City's management and treatment of coastal resources comply and be consistent with those of the California Coastal Act as enforced and implemented by the CCC. Cal Pub Resources Code §§ 30108.6, 30240. Specifically, the SDMC section 126.0701 provides:

The purpose of these procedures is to establish a City review process for *coastal development* that is consistent with the *Local Coastal Program*, the California Coastal Act of 1976 (Public Resources Code section 30000, et seq.) and the California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 17.

Thus, the SDMC Coastal Development Procedures are a local implementation of the state standards under the Coastal Act. Cal Pub Resources Code § 30108.6.

The rope barrier at the Children's Pool is coastal development because it places a structure on the beach that changes public access to water. The City has jurisdiction over CDPs for development proposed above (or landward of) the mean high water line at the Children's Pool beach, and the Coastal Commission has jurisdiction over CDPs for proposed development seaward of the mean high water line. SDMC § 126.0702; *See also* Cal. Pub. Resources Code § 30600. City CDP grants are appealable to the Coastal Commission. SDMC § 126.0710.¹ However, there are no administrative appeal procedures established for City issued ECDPs. The CCC has indicated that generally ECDPs are not appealable to the CCC, but a regular City permit must be applied for at the same time or soon after the emergency work which is appealable to the CCC.

¹ If the rope barrier were erected below the mean high water line, then the Coastal Commission could grant the ECDP. However, as demonstrated by maps of the location of the mean high water line, it appears that the placing of the rope barrier at that level on the beach would provide little protection for the seals. A large area above the mean high water line is currently used for hauling out.

The Park and Recreation Department indicated it was unaware until late November of this year that a CDP was required for the replacement of the rope barrier at the Children's Pool.² Last April, the rope was erected without a permit. Thus, on December 5, 2006 the City Council became newly apprized that no steps had been taken to erect the rope barrier pursuant to the April 2006 resolution. At the same time, the City Council took new action by approving the replacement of the rope barrier at the Children's Pool beginning on December 15, 2006 rather than January 1, 2007. On December 11, 2006, NOAA issued a new letter indicating that the rope barrier needs to be erected by mid-December of this year to protect the seals and the public. As explained in the Introduction to this memorandum, seal harassment leads to conflicts between people and loss of essential lifeguard services to conflict resolution.

Immediate action is required because a normal CDP could only be processed by mid-January with a more realistic date of mid-March or later. By that time, the pupping season would be half, if not completely over, and the City Council's action to have the rope barrier placed from December 15, 2006 to May 15, 2007 would be rendered moot. The CCC has stated that an ECDP is appropriate for the current Children's Pool situation where NOAA provided new direction as to the urgency of the rope barrier.

C. Procedures and Findings for Emergency Development Approval

Notice of the emergency work must be given to the CCC and the public. SDMC § 126.0718(h). The following findings are required under SDMC section 126.0718(f) for an ECDP:

- 1) A coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit and the *development* can and will be completed within 30 days unless otherwise specified in the permit;
- 2) Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible; and
- 3) The proposed emergency work is consistent with the *Local Coastal Program*.

² The CCC's Laurinda Owens provided written confirmation that the an ECDP is appropriate.; however, in a phone conversation, Lee McEachern from the CCC stated that the City should have and did know as early as April of this year that a CDP was required. Lee stated that with further direction from NOAA, the recent unexpected event requirement could be met. NOAA Special Agent in Charge, Don Masters, agreed that the replacement of the rope barrier to protect the seals from this mid-December through mid-May is urgent. His letter is attached hereto as Attachment B.

In addition, the related finding that it is necessary to protect the public health and safety to take emergency action to replace the rope barrier without an SDP is required. SDMC § 143.0126. As explained below, these findings are supported by the facts.

First, there is ample evidence that emergency conditions exist as explained in the Introduction to this memorandum such that the findings can be made for emergency authorizations under SDMC sections 126.0718 and 143.0126. The City Council, the CCC, and NOAA have all newly indicated it is important to get the rope barrier up by December 15, 2006 in order to protect the seals and the public. The regular permitting process will not allow the replacement of the rope barrier by that time. The rope barrier is needed immediately to protect public health and safety and to mitigate for damage to life, health, and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals and humans, and by allowing lifeguards to focus on protecting swimmers from danger and drowning. The rope barrier was previously erected within days of authorization and can be replaced well within the 30 day limit on completion time. It must be erected by December 15, 2006, or as soon as possible, and remain up through May 15, 2007.

Second, the placement of this rope barrier during pupping season and additionally from December 15th through December 31st and from May 1st through May 15th annually has been open for public comment extensively. In the last City Council meeting on December 5, 2006, the Park and Recreation Department presented oral testimony regarding the need to evaluate expedited permitting procedures in order to effectuate the City Council's action. Public comment was received on the issue of the permit. The City Council at the December 5, 2006 meeting directed the Park and Recreation Department staff to make every effort to get the permits required for the rope placement. Now, City Council is in legislative recess, and the December 15th date is rapidly approaching. The California Coastal Commission has indicated that it would be appropriate to take emergency action to replace the rope barrier as was newly directed by NOAA. Thus, it would be appropriate for the City to also deem it necessary to authorize an ECDP.

Third, the replacement of the rope barrier is consistent with the *Local Coastal Program*. The *Local Coastal Program* is an implementation of the California Coastal Act on the local level. The Coastal Act provides that the Coastal Zone is a delicately balanced eco-system and that development needs to be carefully planned to protect the resources. Cal Pub Resources Code § 30001. In addition, the goals of the Coastal Act are to:

- (a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources

conservation principles and constitutionally protected rights of private property owners.

- (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.
- (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

Cal Pub Resources Code § 30001.5. The state legislature declared that where there are conflicts between these goals created by proposed development, such conflicts should be resolved in a way that is "the most protective of significant coastal resources" and "specific wildlife habitat." Cal Pub Resources Code § 30007.5. Thus, it is consistent with the Local Coastal Program to replace the rope barrier because it better protects the seals and their habitat. The public may still access the beach up to the rope barrier, and the rope will only be erected on a seasonal basis so that it allows the maximum appropriate public access consistent with sound conservation principles.

D. Regular Permit Applications are Required after Emergency Work and for Future Rope Barrier Replacements at the Children's Pool

The authorization under an ECDP may only be for "the minimum necessary to stabilize the emergency. In addition, emergency development requires the subsequent processing of a standard Coastal Development Permit application for any work authorized on an emergency basis by these procedures." SDMC § 126.0718(b). This means that the ECDP should only be granted for this December 15, 2006 through May 15, 2007 rope placement. Also, even though the rope may be erected immediately by the December 15, 2006 date, subsequent processing of a regular CDP is required for the emergency placement and in advance of all future placements of the rope barrier. See also SDMC § 126.0718(g) (requiring that the subsequent processing of a regular CDP must be included as a condition on the ECDP).³

Additionally, an emergency exception to the SDP requires that where there are permanent impacts to environmentally sensitive lands [ESL], an application for a regular SDP must be submitted within 60 days of the completion of the emergency work.⁴ SDMC § 143.0126(b). Therefore, where this emergency rope replacement is authorized without an SDP and/or with an ECDP, applications for standard City SDP and CDPs must also be submitted for the emergency replacement. Additionally, a regular CDP and an SDP are required for all future rope replacement periods.

³ All of the procedures contained in the SDMC for the processing of the ECDP must be complied with, even if not specifically addressed herein.

⁴ While the installation of the rope barrier is only replaced from December 15th through May 15th, it will be installed annually on a continuing basis, so it should be assumed for the purposes of the SDP requirement that it will be a permanent impact.

CONCLUSION

Based upon an analysis of the information available at this time, it is clear that an emergency exists within the meaning of the San Diego Municipal Code warranting the placement of a Children's Pool rope barrier by December 15, 2006. Given the existing emergency, no further City council action is needed at this time to proceed, and, therefore, the Mayor is authorized to place the robe barrier at the Children's Pool by December 15, 2006. A standard Coastal Development Permit application must be submitted for the emergency work and be a required condition on the ECDP. Both a CDP and an SDP will be required for all future rope replacement periods, and the regular application processes must be complied with to effectuate the City Council's December 5, 2006 action.

MICHAEL J. AGUIRRE, City Attorney

By 
Nina M. Fain
Deputy City Attorney

NMF:mm:pev

Attachments

cc: April Penera, Park Planning and Development Deputy Director
Samir Mahmalji, Project Officer II

ML-2006-32

ATTACHMENT A



California Coastal Commission

San Diego Coast Area 7575 Metropolitan Drive, Suite 103 San Diego, CA 92108

FAX

Date: December 5, 2006

Number of pages including cover sheet: 1

To: Nina Fain, City Attorney's Office

Phone:

Fax phone: 619/533-5856

CC:

From: Laurinda Owens

Phone: (619) 767-2370

Fax phone: (619) 767-2384

REMARKS: Urgent For your review Reply ASAP Please comment

Dear Ms. Fain,

Per your request, this fax is a summary of the phone conversation we had this morning pertaining to your request as to whether or not the Coastal Commission can issue an emergency permit for the placement of a temporary rope barrier at Children's Pool Beach to protect the seals during the pupping season. In response to your inquiry, this office concurs that an emergency permit would be appropriate either through the City or possibly the Coastal Commission. However, we still need to do a little more research on this matter including how this request was addressed last year. In any case, we are supportive of reinstating the rope barrier as a temporary means of protecting the seals.

I will coordinate with you regarding any permits, if necessary, or any other kind of written authorization from this office as soon as possible. Thank you.

ATTACHMENT B



UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
National Marine Fisheries Service
Office for Law Enforcement
501 W. Ocean Blvd., Suite 4300
Long Beach, CA 90802
(562) 980-4050

December 11, 2006

Nina M. Fain, Deputy City Attorney
1200 Third Ave, Suite 1100
San Diego, CA 92101

Dear Ms. Fain,

I am writing in regard to the marine mammals at La Jolla's Children's Pool and steps we can take to protect them and the people in the community. In the past few months, there have been numerous calls and other communications to NOAA's Office for Law Enforcement (OLE) regarding incidents of marine mammal harassment by the public at the Children's Pool Beach (CPB) in La Jolla, CA. As you know, under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1372 (a)(2)(A), *it is unlawful for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.* Harassment is listed under the definition of 'take.'

Take means to harass, hunt, capture, collect, or kill, or to attempt to... any marine mammal.

Harassment (Level B) means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

The CPB receives numerous visitors each month which increases the potential for seal/human interaction. OLE has placed signs on the landings above the CPB, which warn the public to keep a safe distance from the hauled out seals and sea lions. While the guidelines are useful, they have not prevented actions that could be considered harassment from occurring at the beach, particularly during pupping season. The OLE continues to receive HOTLINE calls reporting alleged marine mammal harassment at the CPB.

Harbor seals haul out at CPB for breeding, nursing, molting, and resting. The pupping season at the CPB is normally from January through April but can start as early as mid December through mid May. Typically, the pup is born and weaned during the late spring. Nursing usually lasts about 3-6 weeks, averaging about 4 weeks until the pup is weaned. Unlike many other seal pups, harbor seals are able to swim at birth, but harbor seal mothers are very protective and the mother/pup bond is very important, particularly during the time immediately following birth.

OLE is concerned that the public will continue to harass marine mammals and continue to be subject to citation under the MMPA at CPB. Therefore, we strongly recommend, that the City close the CPB starting December 15, through May 15 or at a minimum, consider reinstating the CPB rope barrier that was once in



place. Unfortunately, in the past the rope barrier did not deter the "determined" individual(s) from approaching the seals. The rope barrier will provide a clear message for those that have a sincere desire to respect the marine mammals present on the beach, and therefore will provide some level of heightened protection for the adult and newborn seals. The rope barrier will also aid in informing people when they are more likely to be found in violation of the MMPA and potentially cited.

OLE appreciates and looks forward to a continued opportunity to work with you in assisting you with achieving your goals as well as protecting the animals and citizens of our community.

Sincerely,



Donald W. Masters
Special Agent in Charge
NOAA Fisheries/OLE

cc: April Penner, City Manager's Office
Dale Jones, Director, Office for Law Enforcement
Rod McInnis, Regional Administrator, SW Region



EXHIBIT 2

OFFICE OF THE MAYOR

MAY 18 2010

City of San Diego

MEMORANDUM

*Mayor
Jay
Kris
Darrin
Kevin
Ed
Jerry
file*

DATE: May 18, 2010
TO: Honorable Mayor Jerry Sanders
FROM: Councilmember Donna Frye *Donna Frye*
SUBJECT: Letter from NOAA's National Marine Fisheries Service regarding Children's Pool

Attached is a letter I received today from NOAA's National Marine Fisheries Services regarding the management of Children's Pool and their support of the actions taken by the Natural Resources and Culture Committee.

CC: Honorable Councilmembers
Independent Budget Analyst Andrea Tevlin
Honorable City Attorney Jan Goldsmith
Stacey LoMedico, Director of the Park and Recreation Department
Kelly Broughton, Director of Development Services



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

COUNCIL MEMBER
DONNA FRYE

MAY 18 2010

2010/02039:CCF

RECEIVED

May 14, 2010

Donna Frye
Chair, Natural Resources & Culture Committee
San Diego City Council
202 C St. #10
San Diego, California 92101-3860

Dear Councilwoman Frye:

Thank you for contacting NOAA's National Marine Fisheries Service (NMFS), Southwest Regional Office, regarding the San Diego City Council's next steps concerning Children's Pool Beach (CPB), located in La Jolla, California. Following a conference call with my staff in the Protected Resources Division on April 28, 2010, your staff sent, via electronic mail, a copy of your draft report to be presented to the San Diego City Council identifying management options for CPB. Per your request, this letter provides our comments and recommendations regarding the proposed management options. In order to provide some context for these comments, we have added some background (Appendix 1) on the Marine Mammal Protection Act (MMPA), harbor seal biology and life history, and the historical and current use of CPB by harbor seals.

The presence of a harbor seal colony at CPB has been the focus of several lawsuits in the recent past. In 2009, the California State Legislature passed Senate Bill 428, which amended the conditions of the 1931 State trust granting the CPB area tidelands to the City of San Diego. Effective January 1, 2010, the trust was amended to allow for an additional use of the tidelands: a "marine mammal park for the enjoyment and educational benefit of children." While, there is ~~no definition or recognition of the term "marine mammal park" under the MMPA and NMFS'~~ implementing regulations, this amendment of the trust provides the City of San Diego with greater latitude in implementing management actions regarding the harbor seal colony at CPB.

COMMENTS AND RECOMMENDATIONS

My staff and I have reviewed the actions that were proposed by the San Diego City Council Natural Resources and Culture Committee, of which you are the Chair, and offer the following comments and recommendations.

1. **Direction to seek a Local Coastal Program amendment to prohibit the public from entering the beach during pupping season, 24 hours a day from December 15 through May 15.**



Harbor seals (*Phoca vitulina richardii*) at CPB are subject to many potential daily urban disturbances— traffic noise, car alarms, slamming doors, people shouting and laughing. Any of these disturbances may provoke a reaction from a harbor seal on the beach. This may include raising their head, looking around, or moving. The most disruptive of human interactions are those that lead to animals flushing into the water, causing animals to expend energy and prevent them from gaining the benefits of hauling out (e.g., rest or thermoregulation). When pups are on the beach, they can be injured or even killed by stampeding adult seals. Biologists have observed that the presence of people on the beach near the hauled out seals, or at the water's edge typically results in large numbers of seals flushing (Hanan 2004). By preventing the public from entering the beach, flushing can (in most cases) be prevented. Therefore, NMFS supports prohibiting the public from entering the beach.

For the harbor seals hauled out at CPB, the most critical time for protection from disturbance and harassment are during the last months of pregnancy and through pup weaning. The first full-term harbor seal pups are usually born at CPB in January. Based on these dates, implantation occurs no later than August. Therefore, adult females hauled out at CPB after August are likely pregnant. NMFS has received documented reports of abortions and premature parturition occurring in CPB harbor seals in November and December. Therefore, NMFS recommends treating December 1 as the beginning of the pupping season. This date is a conservative start date for pupping season and provides protection from human interference for late term pregnant females hauled out at CPB, and likely reduces the risk of abortion and premature parturition. After birth, pups nurse and are dependent on their mothers for approximately 4-6 weeks until weaning. The last pups of the season (typically born in April) may not wean until the end of May. Therefore, NMFS recommends treating May 30 as the end of the pupping season, as this date ensures that the majority of pups will be weaned.

NMFS has one comment regarding this restriction. The City Council might consider exempting certain categories of people from the general prohibition. For example SeaWorld personnel may need to access CPB if an entangled animal is observed on the beach. We recommend that the City Council consider a mechanism that will allow access in this, or other appropriate situations.

2. Prohibit dogs on the Children's Pool Beach year round, 24 hours a day

~~NMFS supports this action. Dogs may harass seals and cause them to flush into the water. There is also a risk of disease transmission between canines and pinnipeds. Therefore, prohibiting dogs from the beach is protective of the seals and dogs by reducing potential disturbance and preventing potential health issues.~~

3. Seek private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool. Authorize the Park and Recreation Department or Lifeguard Services to create a Volunteer Docent Program led by this Park Ranger or Lifeguard

NMFS supports this action. NMFS recognizes that at least some percentage of harassment of marine mammals is caused by well-meaning members of the public who do not understand the

impact their behavior may have on the animals or lack knowledge of applicable laws. La Jolla's CPB is a destination area for many tourists who may have no experience with wild marine mammals. Once informed, most people tend to maintain a greater distance and limit potentially disruptive behaviors. Therefore, the combination of enforcement and education should greatly help this situation.

While NMFS appreciates the efforts of the private organizations that have provided educational materials at CPB, we believe that the programs would be more organized and messages more consistent if they were maintained by a central group operating under the purview of the local government, such as the program envisioned by this proposal. NMFS would look forward to coordinating closely and assisting with such a program. Additionally, having a dedicated employee with enforcement authority would likely help prevent violation of city ordinances that are protective of seals or limit conflict, including purposeful violation of those city ordinances.

While NMFS has enforcement authority under the MMPA, limited staffing creates a challenge. NMFS has a toll-free hotline (1-800-853-1964) to report violations of marine laws (including the MMPA). In 2009, this number received a total of 154 calls regarding CPB. Although only three of the 154 calls resulted in a full investigation, all of the calls represent a significant investment for the local NMFS enforcement agent.

Under MMPA Section 109(a), no State may enforce a State law or regulation relating to the taking of the species of marine mammal without a transfer of management authority from the Secretary of Commerce. This has not occurred in California. However, States and local governments are free to implement and enforce ordinances, such as the closure of a beach, which may have a side benefit of preventing the harassment of a marine mammal.

4. Seek an emergency amendment to the existing Coastal Development Permit to keep the guideline rope up year round

NMFS supports this action with some reservations, as maintenance of the guideline rope does not ensure that harbor seals will not be harassed. For example, if a harbor seal hauls out on the "human" side of the rope, harassment of that seal may still be considered a violation of the MMPA, even if one is on the "correct" side of the rope. NMFS recommends that the public maintain a distance from any seal, regardless of where they are regarding the guideline rope. For most harbor seal haulout sites along the West Coast of the U.S., NMFS recommends a distance of 100 feet. However, with the relatively small area at CPB, NMFS has recommended that the public maintain a distance of at least 50 feet from any seal, while standing on CPB (as opposed to standing on the breakwater). As this is a viewing guideline and not codified in the regulations, NMFS has the flexibility to modify it to meet the individual circumstances of the geographic area and the natural history of the species. Because viewing distances are guidelines, they do not have the force of law, but harassment is a violation of the MMPA regardless of the distance from which it occurs.

Therefore, NMFS supports establishing the guideline rope year-round, as it would allow at least some measure of public awareness and protection to the harbor seals hauled out on the sand. However, we note that merely abiding by the guideline rope (standing on the "human" side) does

not guarantee that a person will not violate the MMPA. For example, humans approaching CPB from the water while harbor seals are on the beach may present more of a threat to the seals than humans on the beach, which may result in flushing en masse into the water.

CONCLUSION

Thank you for the opportunity to provide input on the proposed actions sent before the City Council of San Diego. We hope that our comments and recommendations will help inform your discussions. If you have any further questions, please do not hesitate to contact Sarah Wilkin at Sarah.Wilkin@noaa.gov or 562-980-3230 or Christina Fahy at Christina.Fahy@noaa.gov or 562-980-4023.

Sincerely,



for Rodney R. McInnis
Regional Administrator

cc: Copy to File: 151422SWR2005PR2267

Appendix I.

BACKGROUND:

Marine Mammal Protection Act

Under the Marine Mammal Protection Act (MMPA), NMFS (exercising the authority of the Secretary of Commerce) is the resource trustee agency for cetaceans and pinnipeds (excluding walrus) in the United States and is responsible for implementing and enforcing the law. The stated goal of the MMPA is to ensure that marine mammal species and stocks do not "diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part" (16 U.S.C. §1361(2)). To implement this goal, the MMPA imposes a general moratorium on the "take" of a marine mammal in U.S. waters. It defines take to mean "to harass, hunt, capture, or kill or attempt to harass, hunt, capture or kill any marine mammal" (16 U.S.C. §1361(13)).

Pacific harbor seals – general biology/life history

Pacific harbor seals (*Phoca vitulina richardii*) are widely distributed throughout the North Pacific. Haulout sites are widely distributed throughout the California mainland and on offshore islands, including beaches, rocky shores, and intertidal sandbars. This subspecies inhabits near-shore coastal and estuarine areas from Baja California, Mexico to Alaska. Their migrations are limited to 300-500 kilometers, occasionally traveling these distances to find food or suitable breeding areas. The timing of harbor seal pupping occurs sequentially along the west coast of North America, with the earlier pupping seasons occurring in Baja California and southern California, and later seasons occurring in the Pacific Northwest and British Columbia, Canada. After birth, pups nurse and are dependent on their mothers for approximately 4-6 weeks until weaning. Harbor seals breed shortly after weaning their pups. Delayed implantation of the fertilized blastocyst occurs 1.5 to 3 months following mating. The gestation period is approximately 9 months.

For any individual or group of individuals in a breeding colony, there are two time periods in a given year when non-lethal disturbance or harassment would be the most harmful to harbor seals. ~~The first is any interference with pregnant females that might result in the loss of young prior to birth (either through abortion of a fetus that cannot survive outside of the womb or the premature birth of a pup that lives a short time before dying).~~ This type of reproductive failure can be harmful to the health of that female and, over time, may result in the collapse of the harbor seal colony. The second critical time period is immediately following birth, when mothers and their pups bond, so they can recognize each other if they become separated. Disruption of the bonding process usually leads to abandonment of the pup and eventual death without human intervention.

Harbor seals at Children's Pool Beach

There have been limited studies focusing on the harbor seals in La Jolla, but the animals likely colonized CPB because it provided suitable habitat. Genetic analyses have not been conducted to determine population structure or the origins of the founding animals for this rookery; however, one reasonable assumption is that they may have originated from some of the offshore islands (e.g., San Clemente Island) in southern California. In addition, there is no evidence that human intervention (via the release of rehabilitated seals) created this colony. Prior to colonization of CPB, some rehabilitated harbor seals were released from multiple La Jolla beaches located near known offshore haulout sites (rocks). However, these releases represent a small number of animals and there is no evidence that those released harbor seals were more likely to haul out on the mainland beaches versus offshore rocks following release. Currently, all harbor seals rehabilitated in San Diego County are released off Point Loma.

Currently, Pacific harbor seals use CPB to haul out year-round, and to give birth and nurse their pups. Harbor seals historically occupied the offshore rocks near La Jolla, but were not consistently observed on the mainland at CPB until the early 1990's. By 1995, harbor seals were using CPB daily (Yochem and Stewart 1998). This time period coincides with an observed increase in the harbor seal population off California. During this time, individual animals could be observed hauling out in areas containing suitable habitat (Hanan 1996), sometimes leading to the establishment of a haulout site or re-colonization of an historical haulout site. With a sloping, sandy beach that is north-facing and generally protected from tidal influence and high wave action, CPB provides suitable habitat for harbor seals.

The first observed pups confirmed born on CPB occurred in the late 1990's. NMFS conducts a statewide harbor seal census survey every few years and includes the animals at CPB. More frequent observations by volunteer groups and project monitoring reports indicate that the number of pups born annually appears to have stabilized at CPB, now averaging between 40-50 pups. Harbor seals, including those at CPB, display site fidelity, with female harbor seals often remaining close to the area they gave birth.

The term "rookery" is not defined in either the MMPA or through its implementing regulations. ~~The American Heritage Science Dictionary (2002) defines a rookery as: "A place where certain birds or animals, such as crows, penguins, and seals, gather to breed."~~ Harbor seals have been observed giving birth at CPB for approximately 10 years, and the timing and numbers of pups born are generally predictable from year to year. Therefore, NMFS considers CPB to be a harbor seal rookery and year-round haulout site.

LITERATURE CITED

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Hanan, D. 2004. Biological letter report and recommendations for construction regarding pinniped surveys at Children's Pool, La Jolla, California. Report submitted to City of San Diego, Public Building and Parks Division, Engineering and Capital Projects Department, Architectural Engineering and Contracts Division. In partial fulfillment of Fixed Fee Agreement C-12438.

Yochem, P. and B. Stewart. 1998. Behavioral ecology and demography of seals and sea lions at Seal Rock Marine Mammal Reserve. HSWRI Technical Report No. 98-282. Submitted to City of San Diego, Seal Rock Marine Mammal Reserve Ad Hoc Committee.



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

EXHIBIT 3

DATE ISSUED: May 17, 2010

REPORT NO:

ATTENTION: Council President and City Council

SUBJECT: Management Plan for Children's Pool

Report to the City Council from the Natural Resources and Culture Committee Chair

RE: Requested Action Item #1

This Report provides information that can be used by the City Council in determining that a coastal emergency exists that warrants the immediate and year around-placement of the rope at Children's Pool; directing the Mayor or his designee from the appropriate city department to apply for an emergency Coastal Development Permit within 10 days of the effective date of this resolution to maintain the rope barrier at Children's Pool year around to protect the public health and safety and to mitigate the loss of or damage to life, health, and essential public services based on the findings contained herein and any other information or actions required to process and obtain an emergency Coastal Development Permit.

The information contained in this report is a compilation of existing public documents contained in the backup material for this item, with the exception of some public news reports, articles and videos describing and showing what has happened at Children's Pool since May 15, 2010 when the rope barrier was removed.

Harbor seals have been hauling out and pupping at the Children's Pool for over a decade. There continues to be public debate as to how the Children's Pool should be managed.

On January 27, 2009, the City Council voted 6-1 in Closed Session to advance to open session the proposal to amend the 1931 Tidelands Trust to Permit Marine Mammals to Inhabit the Children's Pool Beach in La Jolla before expiration of the Legislature's deadline for submission of proposed legislation.

On February 17, 2009, the City Council voted 7 to 1 at a regular City Council meeting to seek Supporting Legislation to Amend State Law to Permit Marine Mammals to Inhabit the Children's Pool Beach in La Jolla, California and Directing the City's Intergovernmental Relations Department to Seek Such Legal Legislation. The City Attorney recommended that the City Council support the resolution R-304668. According to the City Attorney:

"The Legislature has the authority to amend or revoke a public trust. The proposed Resolution would support legislation to amend the 1931 Tidelands Trust to permit the City, as trustee, to allow marine mammals to continue to inhabit the Children's Pool and to preserve the marine mammals' habitat. This proposed amendment to the Trust is consistent with the Trust's original intent that the Children's Pool be a source of recreation for children. It is also consistent with a recent appellate court decision that held protection of undomesticated wildlife is a trustee's obligation under the public trust doctrine. The Resolution mandates that the City's Intergovernmental Relations Department seek such legislation."

On February 26, 2009, State Sen. Christine Kehoe introduced legislation that would amend state law to allow seals at Children's Pool.

In July 2009, the Governor signed into law legislation (Senate Bill 428) drafted by Sen. Christine Kehoe that adds to the Tidelands Trust the additional use of: a *"marine mammal park for the enjoyment and educational benefit of children."*

On September 22, 2009, City staff proposed a Site Development Permit (SDP), CDP, and Environmental Impact Report (EIR) for the removal of approximately 3,000 cubic yards of sand from the Children's Pool, to allow water to circulate, thereby reaching decontamination levels for human use of the beach. The City Council voted 7 to 1 not to certify the EIR.

Effective January 1, 2010, the Trust was amended to list an additional use of the tidelands for: a *"marine mammal park for the enjoyment and educational benefit of children."* California Senate Bill 428.

Based on the above actions by City Council, it is clear that the decision was not to remove the seals.

On March 17, 2010, the Natural Resources and Culture Committee considered several management options for the Children's Pool as presented by various community organizations. Two motions made at this hearing failed to obtain a majority vote of the Committee members.

On April 5, 2010, the Natural Resources and Culture Committee held a special hearing to consider various management options or combination of management options regarding the Children's pool during pupping season, December 15 through May 15 and non-pupping season, May 16 through December 14. The Committee took several actions at this hearing, including obtaining an emergency Coastal Development Permit to keep the rope up year round as one part of the management plan.

Additionally, at least three public meetings were held in La Jolla between April 5, 2010, and April 17, 2010, to discuss the issue of the emergency Coastal Development Permit and management plan and there have been numerous articles and stories in the media.

On May 12, 2010, due to ongoing concern about the removal of the rope barrier prior to the May 17, 2010 City Council meeting, four members of the San Diego City Council sent a memo to Mayor Jerry Sanders stating their concerns and requesting that the rope not be taken down prior to the City Council hearing on May 17, 2010.

On May 15, 2010, the rope barrier was removed.

On May 17, 2010 the City Council held a public hearing in the evening in La Jolla to again hear public testimony on this issue, including the emergency Coastal Development Permit.

It is clearly the intention of the San Diego City Council to protect the public health and safety and to mitigate the loss of or damage to life, health, and essential public services, and as such, it is now the responsibility of the San Diego City Council and Mayor to work together to provide a Management Plan for Children's Pool that establishes clear guidelines. One part of the Management Plan is to determine that a coastal emergency exists that warrants the immediate and year around placement of the rope at Children's Pool; directing the Mayor or his designee from the appropriate city department to apply for an emergency Coastal Development Permit within 10 days of the effective date of this resolution to maintain the rope barrier at Children's Pool year around to protect the public health and safety and to mitigate the loss of or damage to life, health, and essential public services based on the findings contained herein and any other information or actions required to process and obtain an emergency Coastal Development Permit.

The City Council's decision to amend the State Tidelands Trust to allow "*a marine mammal park for the enjoyment and educational benefit of children*" requires a Management Plan that includes the immediate placement of the rope barrier that will provide a clear policy for the public so they know what the laws are, while ensuring that the seals and their pups are not harassed. The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup.

The presence of a rope barrier would reduce the conflicts because it provides a clear indicator to the public the appropriate distance from the seals and their pups to avoid harassing them. The immediate placement of the rope barrier will provide a clear message for those who have a sincere desire to respect the seals and their pups and provide some level of heightened protection for them. The Park Ranger can provide enforcement assistance to the police, lifeguards and NOAA personnel for those members of the public who do not have a sincere desire to respect the seals and their pups and are continually pushing the limits with their behavior.

Absent clear policy and immediate action by the City Council to reinstate the rope, the number of incidents at Children's Pool, both human- to- seal and human- to- human, will likely continue to escalate as they have since the rope barrier was removed on May 15, 2010.

The Natural Resources and Cultural Committee staff person has communicated with the California Coastal Commission (CCC) staff regarding whether the proposed action (seeking an emergency Coastal Development Permit) is the proper process to ensure an immediate extension of time for the rope barrier. Coastal Commission staff concurs that the issuance of an emergency Coastal Development Permit is the appropriate means to authorize an immediate extension of time for the rope barrier should the City find that the grounds for an emergency exists.

The San Diego City Council has heard a considerable amount of public testimony regarding the rope barrier at the Natural Resources and Culture Committee and City Council meetings.

The San Diego City Council has reviewed the documents provided for those public hearings and through public testimony and review of those documents has determined that:

A coastal emergency exists at the Children's Pool that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit;

The rope barrier is needed immediately to protect public health and safety and to mitigate for damage to life, health and essential public services by preventing human-to-human conflicts and violence, by preventing seal harassment and associated harm to seals, their pups and humans and by allowing lifeguards to focus on protecting swimmers from danger and drowning and allowing police to focus on protecting the public from criminal activity;

The rope barrier can be reinstalled immediately and will immediately provide a clear policy for the public as to how to view the seals;

The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup;

The regular permitting process will not allow for the continued use of the rope barrier, since it was taken down on May 15, 2010;

The immediate placement of the rope barrier is the minimum necessary to stabilize the emergency.

There is ample evidence in the record that emergency conditions exist. The seals continue to occupy the Children's Pool year around and the seal pups are still on the beach.

In a March 4, 2010 Addendum from the California Coastal Commission (regarding the last appeal of the rope barrier during pupping season) states that *"According to National Marine Fisheries Service representatives, pup births have been documented as early as November. In addition, pup births have been documented as late as April..."*

According to the same March 4, 2010, Coastal Commission Addendum, *"...there really is not a defined pupping season for seals at Children's Pool..."* and *"The NMFS representatives have stated that the seals benefit greatly from the placement of the rope 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 as keeping them at a safe distance."*

The recent announcement of a privately-funded Park Ranger for Children's Pool will aid in addressing the ongoing issues at Children's Pool, but it does not eliminate the need for the immediate placement of the rope barrier. The very fact that a Park Ranger is needed for the Children's Pool provides further evidence of the volatility of the serious and on-going problems, especially considering the size of the area. Park Rangers usually have responsibility for hundreds

of acres of parkland or beach and are not assigned to just one very small area as appears to be the case here.

Posted signs are not always effective at deterring people from harassing or disturbing the seals and their pups. The rope barrier serves to deter unlawful harassment and disturbance and also serves to reduce conflicts between people about the appropriate distance to keep from the seals and to reduce the chance of aggressive reaction by a seal against a person getting too close. The newly created, privately-funded Park Ranger will be assisted by the placement of the rope barrier in carrying out his/her duties.

Despite public misconceptions expressed most recently at a La Jolla Planning Group meeting that *"the seals have become humanized and know how to coexist"*, and the behavior seen after the rope came down on May 15, 2010, the seals at Children's Pool are wild marine mammals. Pacific harbor seals spend about half their time on land and half in water. While harbor seals swim safely in the surf, they will often curiously watch humans walking on beaches. However, they are wary of people while on land and will rush into the water if approached too closely or disturbed. In fact, if disturbed too often, they have been known to abandon favorite haul-out sites or their pups.

Encounters with people can be stressful to animals and can alter their normal behaviors. Rookeries, such as the Children's Pool, are especially vulnerable to human disturbance. Harbor seals are less mobile and therefore more vulnerable to disturbance or predation while out of the water. Adult seals are more wary and escape to the water more quickly than pups. Females will flee to the water if disturbed or approached and may leave their pups behind. Although the percentage of successful female/pup reunions has not been documented, anecdotal reports indicate that pups have successfully reunited up to 48 hours after separation. A female seal is more likely to return to reclaim her pup once the disturbance near the pup goes away. If activity continues near the pup, the female may eventually give up trying and the pup will be abandoned. A nursing pup that is separated from its mother will not survive.

According to NOAA Fisheries Policy on Human Interactions With Wild Marine Mammals, *"interacting with wild marine mammals should not be attempted and viewing marine mammals must be conducted in a manner that does not harass the animals. NOAA Fisheries does not support, condone, approve, or authorize activities that involve closely approaching, interacting, or attempting to interact with whales, dolphins, porpoises, seals, or sea lions in the wild. This includes attempting to swim with, pet, touch, or elicit a reaction from the animals."*

NOAA California Seal Viewing Guidelines state that, *"Efforts by the general public to closely approach or otherwise interact with the seals can lead to harassment, which is illegal under the Marine Mammal Protection Act. Harassment is defined under the MMPA as an act of pursuit, torment or annoyance which has the potential to injure the animal or cause a disruption of its natural behavior. From a biological and management standpoint the harassment of seals by members of the public continues to be of concern."*

The San Diego Municipal Code section 63.0102 also makes it unlawful to *"...take, kill, disturb, or maltreat"* wild marine mammals.

As has been pointed out by NOAA in their November 30, 2007 letter to the City Attorney's office, "...harbor seals haul out at CPB for breeding, nursing, molting, and resting. The first full-term pups are usually born in early-mid January. Pups wean from their mothers in approximately 4-7 weeks. The last pups of the season may not wean until the end of May." There is also video evidence that pups are still on the beach.

Without the rope barrier, there is strong evidence that the public will continue to harass the seals and their pups (knowingly or unknowingly), creating a situation that could be avoided/significantly lessened if the rope remains.

Under the Marine Mammal Protection Act, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which--(*Level A Harassment*) has the potential to injure a marine mammal or marine mammal stock in the wild; or, (*Level B Harassment*) **has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns**, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

The *Watchable Wildlife Marine Viewing Working Group*, made up of representatives from the National Park Service; NOAA Fisheries, Office of Protected Resources; NOAA National Marine Sanctuaries; The International Ecotourism Society; U. S. Fish and Wildlife Service; Whale and Dolphin Conservation Society; Wildlife Conservation Society; and Watchable Wildlife, Inc. offers the following guidelines for interactions with wild marine mammals:

Keep your distance. Use binoculars, spotting scopes and cameras with zoom lenses to get a closer look. Marine wildlife may be very sensitive to human disturbance, and if cornered, they can harm the viewer or leave the area. If wildlife approaches you, stay calm and slowly back away. When closer encounters occur, do not make sudden moves or obstruct the travel path of the animals; let them have the unhindered "right of way."

Hands off. Never touch, handle or ride marine wildlife. Touching wildlife, or attempting to do so, can injure the animal, put you at risk and may also be illegal for certain species. Remember, wild animals may bite, body slam or even pull you underwater if startled or threatened.

Never chase or harass wildlife. Following a wild animal that is trying to escape is dangerous. Never completely surround the animal, trap an animal between a vessel and shore, block its escape route, or come between mother and young.

Stay away from wildlife that appears abandoned or sick. Some marine animals such as seals, leave the water or are exposed at low tide as part of their natural life cycle -- there may be nothing wrong with them. Young animals that appear to be orphaned may actually be under the watchful eye of a nearby parent. An animal that is sick or injured is already vulnerable and may be more likely to bite. If you think an animal is in trouble, contact the local authorities for advice.

Unfortunately, at Children's Pool, it is an all too common occurrence for some members of the public to ignore the rules for viewing wild marine mammals, most unknowingly, but some on purpose. There is ample evidence of seals and their pups fleeing from the beach into the water due to human harassment; people not keeping a safe distance from the seals and their pups; people getting too close to the seals and their pups; seal pups being almost fully surrounded by people; people attempting to touch/pet or actually touching/petting seals; people approaching seals that are sick or injured; and people being scared by seals who react to the person being too close to them. For example:

One video shows a beachgoer trying to pet a seal and the seal reacting:
<http://video.google.com/videoplay?docid=-5912920645819484351#>

Another video show a man on the beach and the seals flushing to the ocean as he approaches, people trying to touch a seal on the beach, and an unsuspecting beachgoer being scared by a seal:
<http://www.youtube.com/watch?v=bpCHEYSSGqw&feature=channel>

This video shows seals being flushed by people on the beach and a baby seal being surrounded by people:
<http://www.youtube.com/watch?v=xtS44ZthjQ&feature=channel>

This video shows a man - "The Alpha Male" - as he calls himself, intentionally getting close to the seals to find out if the seals will flush to the water:
<http://www.youtube.com/watch?v=PkeKBaVTWXg&feature=related>

On May 15, 2010 the rope barrier was removed and once again people were left to determine for themselves the proper behavior for watching wild marine mammals. Immediately upon the rope barrier being removed, despite the signs and some police presence, people were not keeping a safe distance from the seals and their pups; people were getting too close to the seals and their pups; people were attempting to touch/pet or actually touching/petting seals. This activity increases the likelihood that members of the general public, especially children, could be bitten by a seal through an attempt to interact with a seal or its pup.

According to a May 16, 2010 article in *The San Diego Union-Tribune* there were 44 seal pups born this pupping season. Additionally, the article stated that visitors to the beach had no idea about the seal viewing guidelines.

"Seal supporter Marjane Aalam, who lives a few blocks from the beach in La Jolla, said the seals were already being scared into the water since the rope had been removed. She worries that the removal could lead to danger for humans and seals alike.

At one point, tempers flared when 20-year-old Vick Dogers, who was visiting from Las Vegas, got within a few feet of some of the seals and onlookers began yelling at him to stay away from them.

Dogers said later that he didn't know about local sensitivities over the seals.

"There's no rope, so I went down there," he said."

The removal of the rope also created a public safety issue. According to a Channel 10 news report on May 15, 2010, after the rope came down, *"The Mayor has assigned two full-time officers to patrol the area for 24 hours until the issue is discussed on Monday."*

According to a May 15, 2010, Channel 8 news report a private citizen funds a security guard at night to make sure the seals are not harassed.

<http://www.cbs8.com/Global/story.asp?S=12488411>

A video taken on May 15, 2010, shows adults and children visiting the beach not understanding that seals are wild marine mammals, as they get too close to the seals and their pups and even try touching and petting the seals and their pups. This behavior could easily result in a child being bitten by a seal.

<http://www.youtube.com/watch?v=MbJVghgi7DE>

Clearly, there are still seal pups on the beach. Immediate action is needed to keep the rope barrier up to ensure that:

- Seals and their pups are not continually harassed and disturbed;
- People do not flush the seals and their pups from the beach into the water;
- People keep a safe distance from the seals and their pups;
- People do not get too close to the seals and their pups;
- People do not surround the seal pups;
- People do not attempt to touch/pet or actually touch/pet the seals and their pups;
- People do not approach seals that are sick or injured; and,
- People are not scared by seals who react to people being too close to them.

Members of the general public are not cited for harassment under the Marine Mammal Protection Act:
Members of the public are not bitten by a seal through an attempt to interact with a seal or its pup.

The immediate placement of the rope barrier will provide a clear message for those who have a sincere desire to respect the seals and their pups and provide some level of heightened protection for them. The Park Ranger can provide enforcement assistance to the police, lifeguards and NOAA personnel for those members of the public who do not have a sincere desire to respect the seals and their pups and are continually pushing the limits with their behavior.

The immediate placement of the rope barrier will aid people in complying with the proper and safe viewing guidelines. The rope barrier will also aid in informing people when they are more likely to be found in violation of the Marine Mammal Protection Act and/or the San Diego Municipal Code. It also will provide a clear guideline to prevent any member of the public, especially children, from being bitten.

The rope barrier is immediately necessary to allow lifeguards and police officers to focus on protecting members of the public.

Lifeguards and Police are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts, which take them away from providing essential public services, such as protecting swimmers from danger and/or drowning and the police from responding to more serious calls for service.

In April 2010, the San Diego Police Department provided information regarding Calls for Service at Children's Pool. The report lists the number of Disturbance Calls, including Battery Calls for Service at Children's Pool. It showed that from February 1, 2009 through January 31, 2010, there were 184 Designated Runs, 37 calls for disturbing the Peace and 4 calls for battery incidents. Out of service time for that same time period was approximately 185 hours as compared to 2005 (70 hours); 2006 (95 hours); 2007 (40 hours); 2008 (79 hours). There was also a significant increase in calls for service from 2005 to 2009. According to the Police reports, Total Selected Calls for service at Children's Pool were: 55 (2005); 62 (2006); 26 (2007); 55 (2008) and 290 (2009). The evidence shows that the number of Total Selected Police Calls for Service has escalated significantly from 55 in 2008 to 290 in 2009.

NOAA reports that in 2009, there were 87 calls to the HOTLINE during non-pupping season, or approximately one call every 2-1/2 days. This number of calls and incidents has added to the workload for police, lifeguards and NOAA personnel. All have limited time and resources and cannot always respond to the calls in a timely manner. The City of San Diego also has limited resources to deal with this.

The rope barrier will provide a clear message for those who have a sincere desire to respect the seals and their pups and provide some level of heightened protection for them. The Park Ranger can provide enforcement assistance to the police, lifeguards and NOAA personnel for those members of the public who do not have a sincere desire to respect the seals and their pups.

While one privately-funded Park Ranger will be able to help and over time, can assist in putting a docent program in place, it does not negate the need for the immediate placement of the rope barrier because it is unclear how quickly the Park Ranger can be stationed or how many hours the Ranger will be at Children's Pool. It is not known whether the Park Ranger will be present 7 days a week. With the advent of the summer season and more visitors to the beach, the rope barrier will provide immediate relief in educating the public about proper viewing of wild marine mammals and helping set guidelines for proper and legal behavior.

There are continually and on a regular basis conflicts and encounters between people who want to protect the seals from harassment and people who want to use the beach. These conflicts have the potential to turn violent, and regularly involve confrontations and yelling. As conflicts arise between people on either side of the issue and between people and seals, lifeguards and police officers are regularly brought into these situations by members of the public. Lifeguards and police are authorized to enforce state and local codes; however, they are continually asked to diffuse conflicts, which take them away from providing essential public services, such as protecting swimmers from danger and/or drowning and responding to more serious calls for service.

Without the rope barrier, there is strong evidence that the public will continue to harass the seals (knowingly or unknowingly) as well as each other, which impacts the public safety and creates a situation that could be immediately avoided/significantly lessened if the rope remains. The rope barrier will also prevent members of the general public from being cited for harassment under the Marine Mammal Protection Act, or bitten by a seal through an attempt to interact with a seal or its pup.

The ongoing and immediate potential for more serious confrontations between humans, necessitates the immediate placement of the rope barrier. The rope provides a guideline for the public and most will voluntarily comply with the law. The rope barrier will allow for the privately-funded Park Ranger to provide much needed assistance to the other enforcement agencies and will help reduce human to human and human to seal conflicts.

Despite attempts to manage the situation with no rope barrier during non-pupping season, it has not worked. Signs have not helped because they send a mixed message to the public as to what is acceptable and legal behavior.

Even if the new privately-funded Park Ranger position was staffed today, the rope barrier is immediately necessary to maintain the public safety and prevent the situation from further escalation. Additionally, there is no way of knowing if this position will be permanently funded or how long it will take to establish the volunteer program for docents to assist the public and teach them how to avoid harming the wild marine mammals and each other.

Below are some examples of human-to-human problems at the Children's Pool:

A news report of a woman being body slammed by a male on the beach at Children's Pool:
<http://video.google.com/videoplay?docid=-4269054454668006542#>

This video shows the ongoing debate between people regarding the seals. These debates often escalate, requiring a police response:

<http://www.youtube.com/watch?v=1T2Yb7sG4Xs&feature=related>

At its worst, death threats have been received by people trying to protect the seals, such as the event that occurred in 2007. According to prosecutors, the incident began when a man was with two scuba divers on Sept. 22, 2007, when they were allegedly videotaped walking between two groups of harbor seals at the beach. Officials said the tape shows about 18 of 50 seals entering the water as they were "flushed" from the beach. A volunteer took down the license plate number of the vehicle the divers had arrived in and reported it to the National Oceanic and Atmospheric Administration hot line, authorities said. Federal agents subsequently investigated the incident and charged both divers with violating the Marine Mammal Protection Act. The man who was with the divers and had sent threatening emails pleaded guilty to threatening to retaliate against a federal witness, according to United States Attorney Karen P. Hewitt.

The rope barrier was previously erected within days of authorization and can be replaced immediately. The installation of the rope barrier is the minimum necessary to stabilize the emergency.

A coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a Coastal Development Permit and the *development* can and can be reinstated immediately. In addition, as required by SDMC Section 126.0718, a standard Coastal Development Permit and Site Development Permit will be applied for by the appropriate City department.

Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible.

There have been numerous public hearings including the two most recent hearings in 2010 at the Natural Resources and Culture Committee where public testimony was heard regarding the placement of a year around rope barrier. In addition, members of the environmental community have attended local planning group meetings in La Jolla and throughout the community and presented information requesting a year around rope.

Independent, scientific public polling in San Diego regarding the seals continued presence has consistently shown the majority of the public supports allowing the seals at Children's Pool and enjoys watching them.

This issue has been litigated, appealed, debated and discussed in public for years. All points of view on this issue have been heard and duly considered at public meetings. Through that testimony, it is clear and the evidence supports that in order to protect the public health and safety and to prevent damage to life, health, and essential public services that an emergency exception to the permit requirements is appropriate. The presence of the rope barrier year around would help to reduce the number of conflicts between humans and humans and between humans and seals because it would be a clear indicator to the public of the appropriate distance from the seals to avoid harassing them.

Included in this finding is a short timeline of public involvement and the ability of the public to comment on this issue:

On September 14, 2004, a City Council majority (5 yes, 3 no and District 4 vacant) directed staff to implement a policy at the Children's Pool that included removing the rope barriers and signs and adding new signs indicating that public access is permitted but that seal harassment is a violation of the Marine Mammal Protection Act. See San Diego Resolution R-299646

In April 2006 and December 2006, the City Council resolved that a rope barrier be placed at the Children's Pool during pupping season. A rope barrier was installed, authorized by an emergency Coastal Development Permit (CDP). In each subsequent year, the rope barrier was installed for at least a portion of pupping season, as authorized by an emergency CDP. In 2006-2007, emergencies were declared by the City of San Diego at the Children's Pool and, based on those declarations, the rope barrier was installed under an Emergency Coastal Development Permit.

On September 22, 2009, staff proposed a Site Development Permit (SDP), CDP, and Environmental Impact Report (EIR) for the removal of approximately 3,000 cubic yards of sand

from the Children's Pool, to allow water to circulate, thereby reaching decontamination levels for human use of the beach. The City Council voted at a public hearing not to certify the EIR.

On December 2, 2009, a Hearing Officer approved the annual placement of a rope barrier at the Children's Pool from December 15 to May 15. On December 16, 2009, the Park and Recreation Department placed the rope at Children's Pool as a temporary safety measure. This action was appealed to the Planning Commission and California Coastal Commission; the appeal was denied by both bodies.

Effective January 1, 2010, the Trust was amended to list an additional use of the tidelands: a "*marine mammal park for the enjoyment and educational benefit of children.*" (California Senate Bill 428.)

On March 17, 2010, the Natural Resources and Culture Committee considered several management options for the Children's Pool as presented by various community organizations. Two motions made at this hearing failed to obtain a majority vote of the Committee members.

On April 5, 2010, the Natural Resources and Culture Committee held a special hearing to consider various management options or combination of management options regarding the Children's pool during pupping season, December 15 through May 15 and non-pupping season, May 16 through December 14. The Committee took several actions at this hearing, including obtaining an emergency Coastal Development Permit to keep the rope up year round.

Additionally at least three public meetings were held in La Jolla between April 5, 2010, and April 17, 2010, to discuss the issue and there have been numerous articles and stories in the media.

On May 17, 2010 the City Council held a public hearing in the evening in La Jolla to again hear public testimony on this issue, including the emergency Coastal Development Permit.

Clearly, public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible.

The proposed emergency work is consistent with the Local Coastal Program. The development is consistent with all applicable provisions/development standards of the certified Local Coastal Program as well as the public access and recreation policies of the California Coastal Act. The project is for a rope barrier to provide a buffer between the people using the beach and seals during non-pupping season. The rope 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, their pups and the public. Also, signage is provided to make sure the public is aware the beach and ocean are available for public use. It is also anticipated that there will be a privately funded Park Ranger to further increase public awareness.

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 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 large numbers of people to this coastal area from around the world. Thus, the seals encourage public access by attracting the public to the shore.

The proposed project is for placement of a rope barrier to act as a buffer between harbor seals on the beach and people using the beach during non-pupping season. While the 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. The issues raised by this project are unique and only occur at this one beach in all of San Diego County.

The Local Coastal Program is an implementation of the California Coastal Act on the local level. The Coastal Act provides that the Coastal Zone is a delicately balanced ecosystem and that development needs to be carefully planned to protect the resources. In addition, the goals of the Coastal Act include assuring an orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state and encouraging state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The City of San Diego sought legislation from the state in 2009 to add new language to the list of existing uses for the Children's Pool, specifically a "*marine mammal park for the enjoyment and educational benefit of children.*" The rope barrier is consistent with the Local Coastal Program because it better protects the seals, their pups and their habitat and still allows the public access the beach. Additionally, it provides a clear line so that people visiting the beach know the rules.

The Coastal Act provides that the Coastal Zone is a delicately balanced eco-system and that development needs to be carefully planned to protect the resources. (Cal Pub Resources Code § 30001.) In addition, the goals of the Coastal Act are to: (a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources. (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners. (d) Assure priority for coastal-dependent and coastal-related development over other development on the coast. (e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone. Cal Pub Resources Code § 30001.5.

The state legislature declared that where there are conflicts between these goals created by proposed development, such conflicts should be resolved in a way that is "*the most protective of significant coastal resources*" and "*specific wildlife habitat.*" Cal Pub Resources Code § 30007.5. Thus, it is consistent with the Local Coastal Program to maintain the rope barrier

because it better protects the seals and their habitat while allowing the maximum appropriate public access consistent with sound conservation principles.

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

1. **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."

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| 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-10-00

Appeals

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