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CENTRAL DIVISION

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SUPERIOR COURT
SAN DIEGO COUNTY, CA

FILED
Clerk of the Superior Court

FEB 15 2013

7 Attorneys for Petitioner Friends of the Children's Pool

By: _____ Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10 CENTRAL DIVISION

11 FRIENDS OF THE CHILDREN'S POOL, a
12 California nonprofit public benefit
13 corporation,

14 Petitioner,

15 v.

16 CITY OF SAN DIEGO; and
17 DOES 1 through 50,

18 Respondents.

CASE NO:

PETITION FOR: 37-2013-00034894-CU-WM-CTL

- (1) Writ Of Mandate;
- (2) Preliminary-Equitable Relief; and
- (3) Injunctive & Declaratory Relief.

[FACSIMILE SIGNATURE]

19 INTRODUCTION

20 1. This suit arises from Respondent City of San Diego's violation of the California
 21 Coastal Act (Public Resources Code, § 30000, et seq.), which prohibits development in the
 22 Coastal Zone without first obtaining a valid coastal permit issued by the California Coastal
 23 Commission. After the City failed to obtain a permit for additional development at the La Jolla
 24 Children's Pool, it decided to ignore the law and make the additional development without the
 25 required permits.

26 THE PARTIES

27 2. At all times relevant herein, Petitioner Friends of the Children's Pool was, and
 28 is, a California nonprofit public benefit corporation.

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1 8. The debate involved a colony of harbor seals that has inhabited the beach since
2 the mid-1990s. By 1999, the fecal contamination from over 100 seals rendered the beach a
3 health hazard. People either supported the seal habitat or argued that the seals prevented
4 swimming, diving, and use of the beach. On March 29, 1999, the San Diego City Council
5 voted to install a rope barrier to separate the seals and the public.

6 9. In March 2003, the California Coastal Commission notified the City Council
7 that a coastal permit was required for the rope barrier at the Children's Pool beach.

8 10. In 2004, the City Council removed the rope barrier and adopted a "joint use"
9 policy. Joint use allowed the seals to remain, while members of the public continued to use the
10 beach recreationally. Although the Children's Pool was never intended for use as a seal
11 habitat, the Legislature later amended the trust in 2009 "to include in that list of uses and
12 purposes a marine mammal park for the enjoyment and educational benefit of children."

13 11. In April 2006 and December 2006, the Council passed resolutions directing that
14 a rope barrier be placed at the Children's Pool during seal pupping season (generally accepted
15 to be from December 15 to May 15). Between 2006 and 2009, the City of San Diego Park and
16 Recreation Department applied each year for permits to place the rope barrier during pupping
17 season.

18 12. On December 2, 2009, the City Hearing Officer approved Coastal Development
19 Permit No. 701673 and Site Development Permit No. 701765 (collectively, the "Permit"), for
20 the annual placement of the temporary rope barrier during pupping season. In pertinent part,
21 Permit established the following restrictions on the allowable dimensions of the rope barrier
22 and the lateral access:

23 The installed rope length shall not exceed 130 feet, and a minimum three-foot
24 opening shall be maintained from the post at the easterly most end of the rope to
the nearest obstruction so as to create an opening for beach access.

25 Consistent with these specifications, the map attached as Exhibit A to the Permit
26 identified the maximum 130 foot rope, and the minimum three-foot access corridor to the
27 beach.

28

1 A true and correct copy of Coastal Development Permit No. 701673 and Site
2 Development Permit No. 701675 is attached hereto as Exhibits "1."

3 13. On May 17, 2010, the City Council passed a resolution directing the Mayor to
4 seek an amendment to the Permit to "keep the rope barrier out your round at the Children's
5 Pool." (Res. 305837, [R-2010-794].) The resolution did not direct the Mayor to seek any
6 amendment extending the maximum rope length (130 feet) authorized by the Permit.

7 14. On September 15, 2010, the City Hearing Officer approved two new amended
8 permits pursuant to the City Council's resolution. These permits were identical to those
9 originally granted, except that they now allowed a year round permit.

10 15. The La Jolla Community Planning Association appealed the City Hearing
11 Officer's approval of the year-round permit to the San Diego Planning Commission. Prior to
12 hearing the appeal, the Park and Recreation Department submitted a new staff report to the
13 Planning Commission. Without any prior authorization or direction from the City Council, the
14 Park and Recreation Department unilaterally decided to make an additional change to the
15 proposed, amended permit that would have increased the maximum length of the rope from
16 130 feet to 152 feet.

17 16. Despite the fact that the City Council had approved the 130 foot maximum rope
18 length for the entire six years of the seasonal pupping permit's existence, and had never once
19 authorized a different rope length, the Park and Recreation Department explained the basis for
20 its unilateral modification in the staff report dated August 23, 2012:

21 Earlier this year it was determined that there had been a measurement error
22 regarding the length of the rope installations. While the approved Exhibit A
23 associated with the current permit depicts a three-foot opening from the end of
24 the rope installation to the rock outcropping at the easterly side of the pool, the
25 length of the rope is shown as 130 feet. That is incorrect. The length of rope
26 required to stretch from the seawall to a point that would create a three-foot
27 opening is 152 feet. That error was noticed earlier this year and the installation
28 in the field was shortened to the approved 130 feet. The proposed amendment to
the Site Development Permit for the year-round rope would rectify that error,
modifying the permit and the Exhibit A to reflect 152 feet accordingly.

(August 23, 2012, City Staff Report, at p. 7.)

1 17. On September 27, 2012, the San Diego Planning Commission sustained the La
2 Jolla Community Planning Association's appeal and denied the proposed permit amendment
3 for a year-round, 152 foot rope barrier. The Planning Commission specifically cited the
4 increase to a 152 foot rope barrier as a basis for rejecting the proposed amendment.

5 18. When the 130 foot rope barrier went up again for pupping season, newly elected
6 Mayor Bob Filner held a press conference at the La Jolla Children's Pool on December 15,
7 2012, promising to fight for a year-round permit and vowing to extend the rope barrier to 152
8 feet.

9 19. Six days later, on December 21, 2012, city employees of the Park and
10 Recreation Department replaced the 130 foot rope barrier specified in the Permit, with a longer
11 152 foot rope barrier.

12 20. On December 24, 2012, the City Attorney prepared a memorandum for the
13 Mayor and City Council regarding a Potential Extension of Length of Seasonal Rope at
14 Children's Pool. The memorandum states that the City Attorney had been asked "whether the
15 previously approved 130-foot long seasonal rope at the Children's Pool beach may be extended
16 to 152 feet, without further approvals being obtained, and what the potential consequences
17 could be if such action is taken without further approvals."

18 21. The memorandum advised that the Coastal Commission retains permit
19 jurisdiction over the Children's Pool, and warned that "the City is without jurisdiction to
20 process any amendments to the permit as it pertains to coastal development."

21 22. The memorandum further advised that revisions to a permit under the San
22 Diego Municipal Code require either substantial conformance review or a new application for
23 an amended permit.

24 23. On January 9, 2013, City staff recorded Document No. 2013-0017818, which
25 consisted of amended versions of Coastal Development Permit No. 701673 and Site
26 Development Permit No. 701765 that extended the length of the rope from 130 feet to 152 feet.
27 Neither of these "amended" permits satisfied the mandatory rules and regulations necessary to
28

1 obtain a valid permit.

2 24. On January 22, 2013, Ms. Kanani Brown, a coastal program analyst with the
3 Coastal Commission, wrote a letter addressing these new “amended” permits. Ms. Brown’s
4 letter referred to the “amended” permits as “administratively correcting” the length of the rope
5 barrier specified in the permits approved by the City on a January 21, 2010. Her letter states
6 that “[Coastal] commission staff concurs with the city’s administrative correction and no action
7 is required by the [Coastal] commission.”

8 25. Unaware of the City’s *post hoc* efforts to cover up a flagrant (and perhaps
9 willful) disregard of the permitting procedures, Petitioner wrote to the Coastal Commission
10 and the City complaining about the unauthorized the decision to extend the length of the rope
11 barrier, and demanding that the rope barrier be returned to its prior condition to conform to the
12 clear requirements of the permits.

13 26. On February 4, 2013, Petitioner wrote to the Coastal Commission and objected
14 to Ms. Kanani Brown’s January 22, 2013, letter as an improper and invalid substitute for
15 complying with the Coastal Commission’s permit amendment procedures.

16 FIRST CAUSE OF ACTION

17 (Preliminary Equitable Relief [Pub. Res. Code, § 30803] – Against the City of San Diego)

18 27. Petitioner incorporates by reference as though set forth in full herein each of the
19 preceding allegations of paragraphs 1 through 26 of the Petition.

20 28. Section 30600 of the Coastal Act requires that “any person, as defined in
21 Section 21066, wishing to perform or undertake any development in the coastal zone ... shall
22 obtain a coastal development permit.” (Pub. Res. Code, § 3600, subd. (a).) “Persons” under
23 this section includes cities, like San Diego. (Pub. Res. Code, § 21066.) Thus, the City of San
24 Diego has a mandatory duty to secure a coastal development permit before undertaking any
25 development in a coastal zone.

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29. The "coastal zone" is that land specified on maps identified and set forth in Section 17 of Chapter 1330 of the Statutes of 1975-1976 Regular Session enacting the Coastal Act at Division 20 of the Public Resources Code (Division 20 is hereafter referred to as the "Coastal Act"). In significant estuarine, habitat and recreational areas, it extends inland to the first major ridgeline parallel to the sea or five miles from the mean high tide line of the sea, whichever is less. Here, the Children's Pool is located in the coastal zone.

30. "Development" subject to the permit requirements of the Coastal Act is defined therein at Section 30106 as including the "placement or erection of any solid material or structure..." Here, the development is the installation of 152 foot rope barrier installed at the La Jolla Children's Pool that occurred on December 21, 2012. (Pub. Res. Code, § 30106.)

31. No permit authorizes the placement or erection of a 152 foot rope barrier at the Children's Pool. In fact, the applicable permits specifically limit the rope barrier to a maximum of 130 feet. By installing a 152 foot rope barrier the City has undertaken a development without a valid coastal development permit in violation of Section 30600 of the Coastal Act.

32. Section 30803 provides that "any person may maintain an action for declaratory and equitable relief to restrain any violation" of the Coastal Act. On a prima facie showing of a violation of the Coastal Act, "preliminary equitable relief shall be issued to restrain any further violation of this division." No bond shall be required for an action under this section. (Pub. Res. Code, § 30803.)

33. Because (1) Petitioner is a person entitled to bring an action under Section 30803; and (2) the City violated the Coastal Act by undertaking development, i.e. installation of a 152 foot rope barrier at the Children's Pool, without a Coastal Development Permit, in violation of Section 30600, subdivision (a), of the Coastal Act, than preliminary equitable relief shall be issued to restrain any further violation.

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a. With respect to the coastal development permit, the Coastal Commission retains permit jurisdiction over land, like the Children's Pool, that was granted to the City in trust, and the City is without jurisdiction to process amendments to the Permit. (Pub. Res. Code, § 30519, subd. (b).) Hence, because the Executive Director of the Coastal Commission has made no determination that the proposed amendments were either immaterial or material, and because the public was never given notice and an opportunity to object to the proposed amendments, the proposed amendments fail to satisfy the requirements of Coastal Commission regulations. (Cal. Code Regs. title 14, § 13166.)

b. With respect to the site development permit, the City did not apply for a permit amendment necessary to extend the maximum length of the rope barrier, and no such amendment has been approved. (SDMC § 126.0113.) The City could not make these amendments by resort to the substantial conformance process, because the development required no revisions to comply with the express language of any permit or map. Further, the elements of a valid process two decision were not met because, *inter alia*, the City never mailed Notice of Future Decision as required under San Diego Municipal Code section 112.0302(b), and thus did not allow Petitioner or the public an opportunity to object and be heard on the matter.

40. By circumventing these statutory procedures, the City's unilateral decision to extend the rope barrier destroyed the public's opportunity to be heard. If the City had complied with the procedures for amending these permits, Petitioner and other members of the public could have raised, *inter alia*, the same objections that persuaded the Planning Commission to reject the City's last effort to amend the permit for an extended rope barrier. Instead, the City flouted the rule of law and denied Petitioner and the public the right to prior notice of these amendments, and the opportunity to object and participate in the decision.

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1 the Permit;

2 2. That the Court declare the respective rights and duties of Petitioners and the
3 City, and that by such declaration and judgment, it be declared that the City's act of extending
4 the rope barrier beyond the maximum length authorized by the Permit is illegal and invalid,
5 and that the City acted beyond its powers in making this extension;

6 3. That the Court grant a temporary restraining order and a preliminary injunction
7 directing the City to return the rope barrier to its previous length as authorized by the Permit,
8 and to cease any further development of the Children's Pool, for the duration of this action;

9 4. That the Court grant a permanent injunction directing the City to return the rope
10 barrier to its previous length as authorized by the permit, and to enjoin the City from further
11 developing the Children's Pool in any manner not authorized by a valid permit or permit
12 amendment;

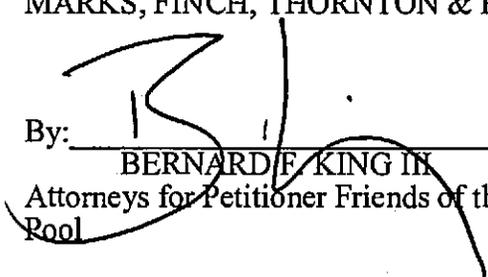
13 5. That the Court grant Petitioner its costs incurred in this litigation and reasonable
14 attorney's fees pursuant to California Code of Civil Procedure section 1021.5, and California
15 Public Resources Code section 30803; and

16 6. For such other relief as the Court deems just and proper.

17 DATED: February 14, 2013

Respectfully submitted,

18 MARKS, FINCH, THORNTON & BAIRD, LLP

19
20 By: 

BERNARDE KING IN

Attorneys for Petitioner Friends of the Children's
21 Pool
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VERIFICATION

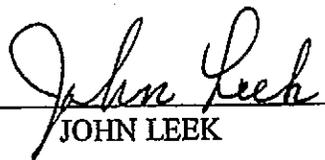
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I, John Leek, am an officer of Friends of the Children's Pool, and have read the foregoing Petition for Writ of Mandate; Preliminary Equitable Relief; and Injunctive & Declaratory Relief and know its contents.

The matters stated in the foregoing document are true of my own knowledge, or based on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in San Diego, California on this 14 th day of February 2013.



JOHN LEEK

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

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON APR 16, 2010
DOCUMENT NUMBER 2010-0189907
DAVID L. BUTLER, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 11:44 AM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 4900

COASTAL DEVELOPMENT PERMIT NO. 701673
SITE DEVELOPMENT PERMIT NO. 701765
La Jolla Children's Pool Rope Barrier PTS No. 194347

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

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to install a rope barrier, annually, during seal pupping season, December 15th, through May 15th as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 21, 2010, on file in the Development Services Department.

The project shall include:

Rope, supporting posts, support post footings and signs;

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

STANDARD REQUIREMENTS:

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



2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

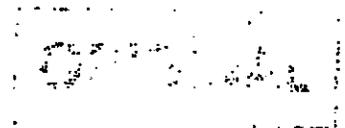
In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right,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



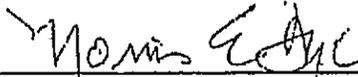
PLANNING/DESIGN REQUIREMENTS:

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

APPROVED by the Planning Commission of the City of San Diego, on January 21, 2010,
Resolution No. 4562-PC.



AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

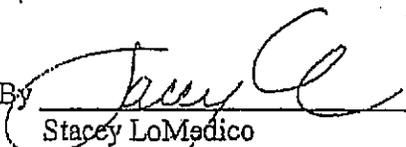


Morris E. Dye
Development Project Manager

NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Park and Recreation Department
City of San Diego
Owner/Permittee

By 

Stacey LoMedico
Director

NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.

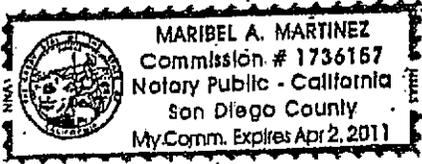
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On April 14, 2010 before me, Maribel A. Martinez Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Stacey DeMedico & Morris E. Dyer
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Maribel A. Martinez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
 Title or Type of Document: Deed, Children's Pool, Popa Bassies, Plt 194347
 Document Date: January 21, 2010 Number of Pages: 4
 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____



Signer's Name: _____
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
 Signer Is Representing: _____



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 PTS No. 194347

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."

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."

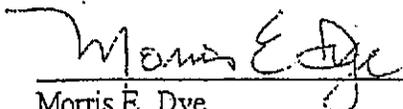
The rope barrier pole foundations would be placed in dry sand above the Mean High Tide Line. As such, the project would not create erosional conditions. Sand removed to hand dig the holes for pole installation would be used to cover the foundations, and therefore, sand would not be removed from the Children's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



David L. Butler

COUNTY OF SAN DIEGO
ASSESSOR/RECORDER/COUNTY CLERK



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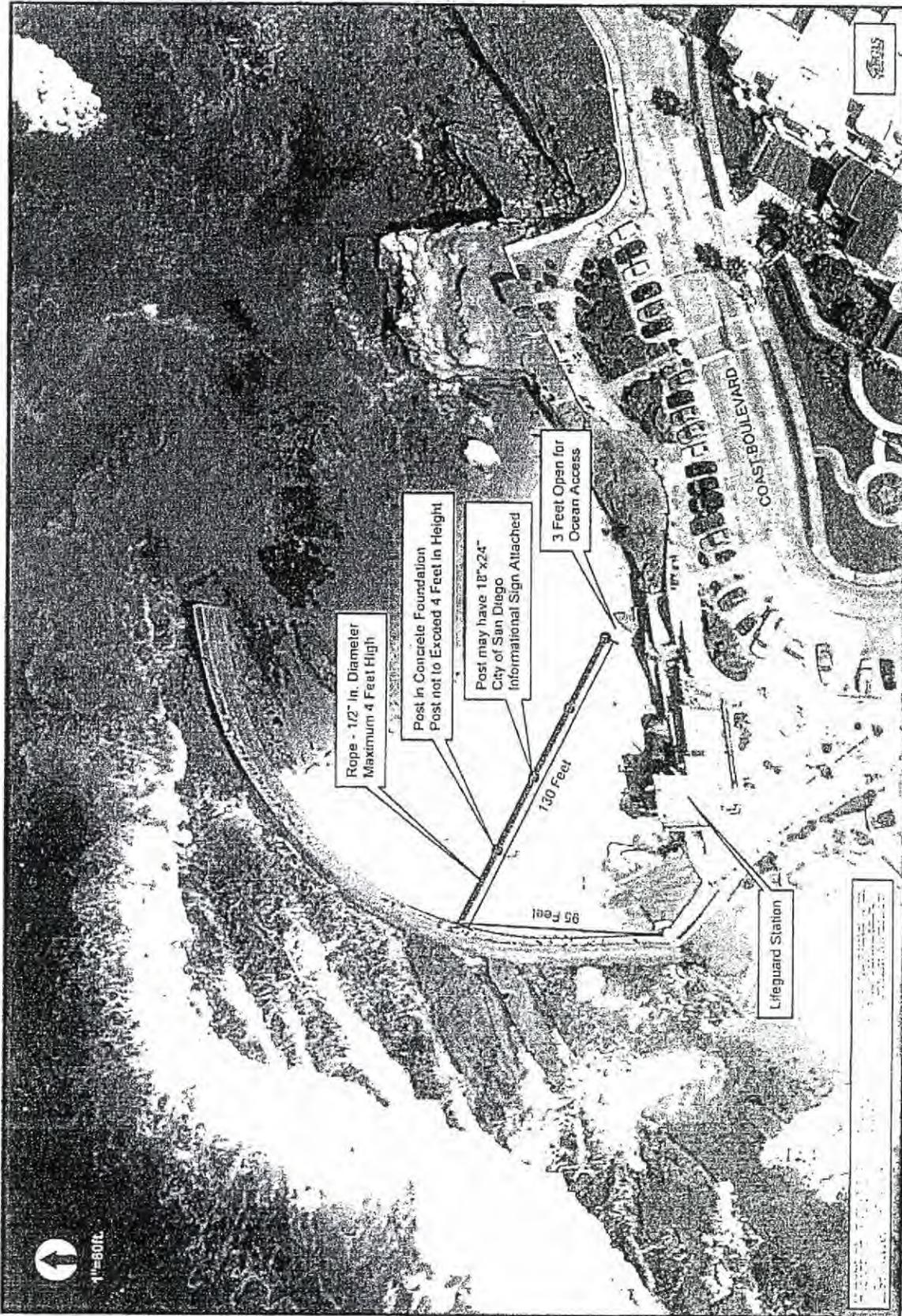


EXHIBIT "A"

CHILDREN'S POOL ROPE BARRIER

2005 Aerial