THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: January 14, 2010 **REPORT NO. PC- 10-006**

ATTENTION: **Planning Commission, Agenda of January 21, 2010**

SUBJECT: LA JOLLA CHILDREN'SPOOL ROPE BARRIER, PROJECT NO. 194347, PROCESS 3 Appeal

REFERENCE: Hearing Officer Report December 2, 2009

OWNER City of San Diego

APPLICANT: Park and Recreation Department

SUMMARY

Issue(s): Should the Planning Commission approve an appeal of the Hearing Officer's approval to erect a rope barrier, including support posts and foundations, at the La Jolla Children's Pool, located west of Coast Boulevard, near Jenner Street, in the La Jolla Community planning Area?

Staff Recommendation:

DENY the appeal and **APPROVE** Coastal Development Permit No. 701673 and Site Development Permit No. 701765;

Community Planning Group Recommendation: On November 5, 2009, the La Jolla Planning Association voted 7-5-1 to recommend denial of the project.

Environmental Review: This activity is EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) pursuant to: Section 15304 of the State CEQA Guidelines (minor alterations to land), and Section 15333 of the State CEQA Guidelines ("Small habitat restoration projects").

Fiscal Impact Statement: None with this project.

DIVERSITY

Code Enforcement Impact: None with this project.

Housing Impact Statement: None with this project.

BACKGROUND

On December 2, 2009, the Hearing Officer approved the annual placement of a rope barrier at the La Jolla Children's Pool from December 15th to May 15th. On December 16th, 2009, the Park and Recreation Department placed the rope at the Children's Pool as a temporary safety measure pending the outcome of this appeal process. Over the last three years, the rope barrier has been placed at the La Jolla Children's Pool in an effort to create a buffer between humans and seals, and simultaneously allow swimmers access to the ocean. The rope has been strung from the seawall on the western side of the sand beach to a point near the bottom of the coastal bluff (Attachment 5). The rope has been placed during the seal pupping season, generally regarded as approximately December through May.

The project is located in the La Jolla Community Planning area, within the Coastal Zone. The site is in the LJPD-5 zone, and is adjacent to Open Space and Park land use designations in the La Jolla Community Plan (LJCP). Land Development Code (LDC) Section 126.0702 requires a Coastal Development Permit (CDP) because the site is located in the Coastal Overlay Zone and LDC Section 143.0110 requires that the rope barrier project obtain a Site Development Permit for Environmentally Sensitive Lands due to its location within a Coastal Beaches resource.

Prior Rope Permits

In 2006-2007, emergencies were declared by the City of San Diego at the La Jolla Children's Pool and, based on those declarations, the rope barrier was installed under an emergency Coastal Development Permit. Standard follow-up Coastal Development Permits were approved. Last year, no emergency was declared and the San Diego Park and Recreation Department applied for a standard Coastal Development Permit and Site Development Permit to erect the rope barrier at the La Jolla Children's Pool. That application was approved on December 17, 2008, subsequently appealed to the San Diego Planning Commission where the appeal was denied. That decision was appealed to the California Coastal Commission. Given that the rope barrier had been removed by the time this appeal could be heard at the Coastal Commission, the appeal was not heard as the issue was determined to be moot.

Dredging

In 1931, Ellen Browning Scripps donated construction materials and built the Children's Pool breakwater to create a safe swimming zone for children adjacent to La Jolla Park. The breakwater was built on tidelands and the 1931 Tidelands Trust deeded the Children's Pool to the City of San Diego in trust for public use. The City was given right and title to the Children's Pool if the lands were to be devoted exclusively to public park, bathing pool for children,

playground and recreational purposes, and other incidental uses. Following several legal challenges and proceedings, the City of San Diego was ordered to clean the water in the pool and return it to its 1941 configuration. In addition, Senate Bill 428, which was passed by the Legislature and recently signed by the Governor into law amends the 1931 Trust effective January 1, 2010. The legislative amendment to the Trust gives the Council discretion to allow the Children's Pool to be used as a "marine mammal park for the enjoyment and educational benefit of children." On September 22, 2009, the City Council denied a request for a Coastal Development Permit and a Site Development Permit, and did not certify an Environmental Impact Report on a proposal to dredge the Children's Pool and return it to its 1941 configuration. The court order to dredge has since been vacated.

The December 2, 2009 Hearing Officer approval has been appealed by Mr. John Leek (Attachment 1).

DISCUSSION

Appeal Issues

Restricting Access to a Public Beach - *Restricting access to a public beach is against the California Coastal Act. Even restricting or closing off a road leading to an established coastal access point is illegal.*

Staff Response

The proposed rope barrier is intended to serve as a buffer between humans and seals during the annual seal pupping season. Public access to the beach would be maintained at all times through an opening at the easterly end of the rope (see Attachment 5).

Planning Group Votes - *This action has been disapproved by public hearings in the La Jolla Community Planning Association 3 years in a row, including its last meeting.*

Staff Response

The La Jolla Community Planning Association votes are recommendations, not approvals or disapprovals. The group has voted 7-2-1 and 8-3-1 to recommend denial of the rope project in the past and most recently voted 7-5-1.

Court Cases Allowing the Rope - *The previous 2 rope installations were only allowed because of court injunctions that allowed the City to rope off the beach without a permit. Those court cases were dismissed after the fact, showing they never should have been entered. That leaves no precedent for allowing restricting free access to that public beach.*

Staff Response

No precedent is required. The applicant (Park and Recreation Department) has applied for the required permits independent of prior actions or approvals.

Protecting Seals is not the City's Job - *The only reason possible for this outrage is to protect seals, which is not the job of the City and in fact is illegal under federal law which requires NOAA be the only authority to undertake marine mammal protection. The Marine Mammal Protection Act states:*
16 U.S.C. 1379 Section 109(a)
No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).
That removes any authority the City might have to step in place of NOAA.

Staff Response

The City is not enforcing, nor attempting to enforce any State law or regulations to take any species. As previously stated, the purpose and intent of the rope barrier is to create a buffer between seals and humans during the annual seal pupping season while maintaining public access to the beach.

City May Not Proceed Without a Permit - *The City may not proceed without a Coastal Permit, yet it has not begun the process of obtaining a Coastal Permit. The City had applied for a Coastal Permit for its rope project in 2008, but put its own permit request on hold. That permit request needs to be finished, obtained or dropped before another is requested. The proposed permit 701673 under item 2, specifically states the City will submit its action to the Coastal Commission, further, it quotes Municipal Code 126.0718 which requires Coastal Permit.*

Staff Response

The applicant has applied for a Coastal Development Permit. It was approved by a Hearing Officer on December 2, 2009. Regarding the 2008 rope permit, the City has never requested a hold on the process. Given the rope for 2008 was already removed before an appeal could be heard by the California Coastal Commission, the item was not heard. That 2008 application was for placement of the rope barrier from December 2008 to May 2009 and has no bearing on the current application. The City delivered a Notice of Final Action to the Coastal Commission following City approval of the project as required. LDC Section 126.0718 governs the application for an emergency coastal permit.

Premature Start - *This is to be justified by a lifting of one aspect of the O'Sullivan judgment, but the action it is based on does not become law until January. It is premature to start before*

January, which is when true "pupping season" starts anyway. The recent court action only stayed one aspect of the O'Sullivan judgment, and left the rest of the trust intact, so until the City declares its marine mammal park, the previous order against roping off the beach still has merit.

Staff Response

There is no longer in effect an order in the *O'Sullivan* case that prohibits the installation of a rope barrier at the Children's Pool. In the *O'Sullivan* case, the Superior Court clarified that the Court's injunction requiring reconfiguration of the Children's Pool to its 1941 condition also prohibited the installation of a rope barrier. The Superior Court, however, vacated the injunction in its entirety on November 13, 2009. Therefore, the City can comply with Council Resolution 302160, which specifies that a protective rope barrier shall be installed annually by City staff during the harbor seal pupping season (December 15 through May 15).

Public Access Signs - *A guarantee of an opening for 'beach access' is given in the pending permit 701673 but does not use the term "public access". In that document it is stated there will be supporting posts and signs, yet in line 12, it only says an informational sign MAY be attached. This leaves the City free to proclaim the opening for emergency use only.*

Staff Response

Permit 701673 is not pending. The current draft permit contains a permit condition allowing the installation of an 18-inch by 24-inch City of San Diego informational sign on each of four posts holding up the rope. The approved Exhibit "A" depicting a three-foot opening at the east end of the rope guarantees public beach access. The rope must be installed in accordance with the approved Exhibit "A" or be in violation of the permit. The installation of informational signing on the rope support posts is not the mechanism that guarantees public beach access.

Sign Purpose - *Since the signs in the past have been the only way citizens could know what the rope was about, those signs need to be at least the same as in previous years, especially since the activists that have been running their money making concession on the sidewalk above commonly lie to the public about what the rope is for and the City's intent is.*

Staff Response

There is no expectation or intent to change the signs that have been posted at the Children's Pool in past years.

Rope Not Needed - *The rope is a bad idea because it provides protection seals do not need as they are already federally protected. It does however encourage the seals to consider Children's an abandoned beach, which is an alteration of their natural behavior and as such is bad for the seals, bad for the beachgoing public, and an offense under the Marine Mammal Protection Act.*

Staff Response

The proposed rope barrier is intended to serve as a buffer between humans and seals during the annual seal pupping season.

Appellant Suggestions

The appeal also listed five suggestions.

1. *Each rope barrier post should include a sign and the contents of the sign should be regulated by this permit.*

Staff Response – Park and Recreation Department staff would like to maintain the flexibility to post signs on an as-needed basis. Further, conditions may change and the content may need to change to provide better service to the public. Therefore, staff recommends that this not be part of the permit conditions.

2. *The signs should include the City resolution directing that the rope be placed at the Children's Pool.*

Staff Response – Staff sees no direct benefit to this additional information and there would be an associated cost to reprint the signs.

3. *All non-city signs should be removed from the area and the sidewalk above the pool.*

Staff Response – This is a Code Enforcement issue and would depend on available resources.

4. *The permit must address the issue of subsequent colonization of City beaches by seals.*

Staff Response – It would be inappropriate to add permit conditions into the rope permit in an attempt to regulate seal activity on other City beaches.

5. *The permit should not proceed until a year round beach management policy concerning pinniped (seal) colonization is in place.*

Staff Response – This issue is more global in nature and it would be inappropriate to include a condition to that affect in the proposed rope barrier permit.

CONCLUSION

The proposed rope barrier would serve as a buffer between humans and seals during the annual seal pupping season. Public access to the beach would be maintained at all times through an opening at the easterly end of the rope.

The rope is not intended to be a hindrance, but to serve as a guideline in an effort to avoid seal harassment while allowing ocean access.

Given these facts, staff is recommending that the Planning Commission deny the appeal and approve the project.

ALTERNATIVES

1. **Deny** the appeal of Coastal Development Permit No. 701673, and Site Development Permit No. 701765, **with modifications.**

2. **Approve** the appeal and **deny** Coastal Development Permit No. 701673, and Site Development Permit No. 701765.

Respectfully submitted,

Mike Westlake
Program Manager
Development Services Department

Morris E. Dye
Project Manager
Development Services Department

Attachments:

1. Appeal by Mr. Leek
2. Draft permit Resolution with Findings
3. Draft Permit with Conditions
4. Hearing Officer Report No. HO-09-129
5. Exhibit A

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ATTACHMENT 1

City of San Diego
Development Services
1222 First Ave. 3rd Floor
San Diego, CA 92101
(619) 446-5210

THE CITY OF SAN DIEGO

Development Permit/ Environmental Determination Appeal Application

FORM DS-3031
MARCH 2007

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:
- ☐ Process Two Decision - Appeal to Planning Commission
- ☑ Process Three Decision - Appeal to Planning Commission
- ☐ Process Four Decision - Appeal to City Council
- ☐ Environmental Determination - Appeal to City Council
- ☐ Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant *Please check one* ☐ Applicant ☐ Officially recognized Planning Committee ☑ "Interested Person" (Per M.C. Sec. 113.0103)

Name				
John Leek				
Address	**City**	**State**	**Zip Code**	**Telephone**
3090 Admiral Ave	San Diego	CA	92123	858-576-0877

3. Applicant Name *(As shown on the Permit/Approval being appealed). Complete if different from appellant.*

San Diego Park and Recreation

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
Coastal Development Permit 701673	Dec 2, 2009	Morris Dye

Decision (describe the permit/approval decision):

Granted to the Park and Recreation Dept to erect a rope across Children's Pool beach every half year, forever.

5. Grounds for Appeal ***(Please check all that apply)***
- ☑ Factual Error (Process Three and Four decisions only)
- ☑ Conflict with other matters (Process Three and Four decisions only)
- ☑ Findings Not Supported (Process Three and Four decisions only)
- ☑ New Information (Process Three and Four decisions only)
- ☐ City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (*Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.*)

Original grounds presented to the hearing officer are attached and.... PERMIT APPLICATION INCLUDED NO JUSTIFICATION

Also attached is a recent news article showing that nothing can be done affecting the public use of a public beach without a Coastal Permit, though City seems to believe it can get by without one because the rope will be above the mean high tide line.

Until recently, the City was under a court order to NOT erect such a rope. A judge dismissed one part of the ruling, allowing the City to not disperse the whole colony, while stating the other parts of the judgment were correct at the time. That means he has not lifted the court order against roping off the beach or restoring the beach for citizen access. The City has no business proceeding until court challenges are revealed in January when the law will be available for challenge AFTER the City declares the beach to be marine mammal park, whatever that is.

Also attached are the minutes of the La Jolla Community Planning Association which rejected the permit application in its public hearing. Something that violates the remaining terms of the trust like this needs to have a written legal opinion from the City Attorney attached, not his casual remarks.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: John Leek Date: 12-7-09

RECEIVED
DEC 07 2009
DEVELOPMENT SERVICES

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.

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Upon request, this information is available in alternative formats for persons with disabilities.

ATTACHMENT 1

John Leek
3090 Admiral ave
San Diego, CA 92123
11/29/09

Hearing Officer
202 C st
San Diego. CA 92101

Re: Objection to proposed permit 701673 for project 194347 roping off Children's Pool.
Submitted as public input for the public hearing to be on 12/2/2009.

Dear Hearing Officer,

This is in regard to the Project 194347 to rope off public access to the ocean at Children's Pool every half year forever.

1. Restricting access to a public beach is against the California Coastal Act. Even restricting or closing off a road leading to an established coastal access point is illegal.

2. This action has been disapproved by public hearings in the La Jolla Community Planning Association 3 years in a row, including its last meeting.

3. The previous 2 rope installations were only allowed because of court injunctions that allowed the City to rope off the beach without a permit. Those court cases were dismissed after the fact, showing they never should have been entered. That leaves no precedent for allowing restricting free access to that public beach.

4. The only reason possible for this outrage is to protect seals, which is not the job of the City and in fact is illegal under federal law which requires NOAA be the only authority to undertake marine mammal protection. The Marine Mammal Protection Act states:

16 U.S.C 1379 Section 109 (a)

No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).

That renders removes any authority the City might have to step in place of NOAA.

5. The City may not proceed without a Coastal Permit, yet it has not begun the process of obtaining a Coastal Permit. The City had applied for a Coastal Permit for its rope project in 2008, but put its own permit request on hold. That permit request needs to be finished, obtained or dropped before another is requested. The proposed permit 701673 under item 2, specifically states the City will submit its action to the Coastal Commission, further, it quotes Municipal Code 126.0718 which requires said Coastal Permit.

6. This is to be justified by a lifting of one aspect of the O'Sullivan judgment, but the action it is based on does not become law until January. It is premature to prior start to before January, which is when true "pupping season" starts anyway. The recent court action only stayed one aspect of the O'Sullivan judgment, and left the rest of the trust intact, so until the City declares its marine mammal park, the previous order against roping off the beach still has merit.

7. A guarantee of an opening for 'beach access' is given in the pending permit 701673 but does not use the term "public access". In that document it is stated there will be supporting posts and signs, yet in line 12, it only says an informational sign MAY be attached. This leaves the City free to proclaim the opening for emergency use only.

8. Since the signs in the past have been the only way citizens could know what the rope was about, those signs need to be at least the same as in previous years, especially since the activists that have been running their money making concession on the sidewalk above commonly lie to the public about what the rope is for and the City's intent is.

9. The rope is a bad idea because it provides protection seals do not need as they are already federally protected. It does however encourage the seals to consider Children's an abandoned beach, which is an alteration of their natural behavior and such is bad for the seals, bad for the beachgoing public, and an offense under the Marine Mammal Protection Act.

If the City goes ahead with this permit, it should at least be with some amendments.

1. There should be recognized the need for a City sign on each post, and the contents of that sign should be included in the terms of the permit.
2. There needs to be inclusion of the actual City resolution that first put a rope up in 2006 and is the basis for all subsequent rope permits. Please find a copy attached to this document.
3. Since the rope will be doing the job it is to do, all non-City signs should be cleared from the area and sidewalk above the beach so the City intent can be carried out. Non-City signs that contradict or unofficially do not represent City policies should not be tolerated.
4. If the City is to so encourage the growth of the unnatural colony there and produce another generation of specially entitled seals, then it must include means to contain the results. Last year several seals and pups took up residence on South Casa Beach for a couple weeks not caring about the rope-protected Children's Pool. Local activists lost no time in cordoning off half of South Casa, intimidating beachgoers and even barricading the stairs at night. This permit must address the issue of subsequent colonizing of city beaches by seals trained to expect squatter's rights.
5. Per #4 above, this permit should not proceed without a year round management policy for all beaches concerning pinniped colonization. The results must be dealt with in advance, not later.

G. Bird Rock Decorative Street Lighting
T&T Action: To support the proposal as presented, 7-0-0
Addition of decorative street lighting in center median of La Jolla Blvd from Camino de la Costa to Midway Avenue.

H. Remove Valet Parking at 7863 Girard Ave (fka Jack's)
T&T Action: To support the proposal, 7-0-0
With closure of the restaurants the valet parking spaces are no longer being used.

I. Vallecitos & Ave De La Playa - Change Green Curbs to White Curbs
T&T Action: To support the proposal as presented, 6-0-0
Block west of Camino del Oro. Last year curbs were painted to green to increase turnover and for ease of passenger & equipment loading/unloading. White curbs (3 minutes) are expected to be more effective.

9. REPORTS FROM OTHER ADVISORY COMMITTEES
Information only unless otherwise noted

A. LA JOLLA COMMUNITY PARKING DISTRICT ADVISORY BOARD – *Inactive*

B. COASTAL ACCESS AND PARKING BOARD – Meets 1st Tues, 4pm, Rec Center

6:30p **10.**

A. **SEWER GROUP 716**
CPA: Information Only Item at Jan 8 2009 meeting
Returned at request of Councilmember Sherri Lightner and City Council's NRC
Replacements in the Village (Girard, Wall, Kline), residential west of Torrey Pines Road, some in the Shores (Amalfi, Lookout, Hillside). Project was deemed exempt from CEQA. Work may be in area of sensitive archaeological resources.

B. **SEWER GROUP 715** – Information Only
Update on sewer work under construction in the Village.

PREVIOUS REJECTIONS

6:40p **11. CHILDREN'S POOL ROPE BARRIER**
CPA: Jan-08, Findings can not be made, 7-2-1.
CPA: Dec-08, Reaffirm previous motion that findings cannot be made, 8-3-1.
Coastal Development Permit (CDP) to erect temporary rope barrier during seal pupping season, Dec 15 through May 30. Unlike previous requests for the upcoming season, this request is for annual placement in perpetuity.
Discussion will be limited to changes, if any, that would support reconsideration of the CPA's previous recommendation that the CDP findings can not be made.

12. PROSPECT STREET CLOSURE (GIRARD TO HERSCHEL) - JOSE'S COURTROOM EATING CONTEST
T&T Action: To support the proposal as presented, 6-0-0
Dec 6, 8 am to 9 pm. Closure to accommodate outdoor music and food to be followed (post-parade) by Jose's Courtroom Eating Contest. Closure does not interfere with parade route.

13. SAN DIEGO TRIATHLON
T&T Action: To support the proposal as presented, 5-2-0.
Cycling leg will include route up Soledad Road to Soledad Mountain Road to La Jolla Scenic South down Via Capri and Hidden Valley Road up Torrey Pines Road to La Jolla Village. March 21, 7am to 10am. Triathlon and supporting activities with estimated 2000 competitors will be March 19-21 primarily centered on Mission Bay.

From 2006
- TEMPORARY

ATTACHMENT 1

PREVIOUS PROJECT JUSTIFIED BY EMERGENCY

CITY OF SAN DIEGO
RESOLUTION NO.
COASTAL DEVELOPMENT PERMIT NO. 410971
SITE DEVELOPMENT PERMIT NO. 410975
La Jolla Children's Pool 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 temporary rope barrier (including support posts and foundations), during seal pupping season, December 15th, 2006 through May 15th, 2007 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 project is a follow-up to an emergency coastal development permit and emergency authorization to impact environmentally sensitive lands, issued on December 15, 2006, (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 410971 and Site Development Permit No. 410975); 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 24, 2007.

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. On December 15th, 2006 the City Attorney's Office opined in a Memorandum of Law (Attachment 4) that an emergency existed at the La Jolla Children's Pool and that the emergency necessitated the installation of a rope barrier. The project includes the rope barrier supported by poles, with pole foundations buried in the sand, above the Mean High Tide Line. A rope barrier was erected, and stretches 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 was placed at a height not exceeding four feet and not exceeding one half-inch in diameter. Given this height and diameter, the rope does 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 provides a buffer between humans and seals during the annual pupping

season, the beach remains open for public use and swimming is 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) remain unchanged by the project. Given that the sand beach and ocean remain open to the public while the rope is in place and that the rope's location and type of rope used does not block any identified public views at the Children's Pool, the proposed coastal development does 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 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 installation of the rope included 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. The rope does not touch the adjacent Coastal Bluff. Proposed permit conditions require that any debris caused by construction, must be removed from the site and disposed of appropriately. Permit conditions 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 is required to be maintained in location identified on Exhibit "A," during the identified time period. In addition, environmental review was performed and an exemption was prepared for the project per Section 15269, Emergency Projects (Attachment 13). As the project involved digging relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions prohibit any debris or construction materials from entering the ocean, and permit conditions also prohibit the project affecting the adjacent Coastal Bluff, 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.

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 includes the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. The rope barrier stretches 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 rope is placed at a height not exceeding four feet, and not exceeding one half-inch in diameter. Given this height and diameter, the rope does not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the rope barrier provides a buffer between humans and seals during the annual pupping season, the beach remains open for public use and swimming is 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) remains unchanged by the project. Given that the sand beach and ocean remain open to the public while the rope is in place, and that the rope's location and type of rope used does 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.

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 rope barrier 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 current seal pupping season. The rope is not intended to keep the public from reaching either the beach or the sea at the Children's Pool. The public is able to enter the sea at the Children's Pool while the rope is in place. In addition, signage that is posted at the Children's Pool indicates that the beach is open to the public. Therefore, the 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 does not prevent the use of the Children's Pool for recreational activities. The rope is not intended to keep the public from reaching either the beach or the sea at the Children's Pool. The public is able to enter the sea at the Children's Pool, while the rope is in place. 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.

<u>Site Development Permit - Section 126.0504</u>

A. Findings for all Site Development Permits

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

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 rope installation has no significant affect on either of these resources. The rope installation included hand digging holes in the sand (not exceeding 18 inches), placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. Proposed permit conditions 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 is 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 rope is placed at a height not exceeding four feet and does not exceed one half-inch in diameter. Given this height and diameter, the rope does not block any public views. As the project does not have any adverse impacts on the Coastal Beach or the Coastal Bluffs, and the project does not negatively affect any public views, the development does 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 primary objective of the rope installation is to serve as a buffer between humans and seals during the current pupping season. 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 signs also inform users that swimming is allowed, but is not recommended, and that the beach is open for public use. As the project is intended to create a safety buffer between humans and seals, and information is provided to the beach-going public regarding potential health hazards, the project is not detrimental to the public health, safety, and welfare.

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

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 rope installation included digging shallow (not exceeding 18 inches) holes for each post footing and covering them with the sand. Standard, cord (not exceeding one half-inch) was then strung between the posts. Informational signage mounted to the posts provides the public with safety information. In addition, the height of the rope does not exceed four feet, no public views are obstructed, and the project is temporary and removable. As a result, the rope barrier does not disturb the Coastal Beaches or Coastal Bluffs. In addition, environmental review was performed and an exemption was prepared for the project per Section 15269, Emergency Projects (Attachment 13). As such, the proposed development would not create a disturbance of the environmentally sensitive lands, and, therefore, complies 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 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 hand dug holes in the sand, and to cover the post foundations with the sand. Standard, half-inch cord is strung between the posts. Informational signage is mounted to the posts to provide the public with safety information. The installation of the rope barrier at the La Jolla Children's Pool was considered to be the minimum necessary to avert the emergency. The height of the rope does not exceed four feet, and no public views are obstructed. Hand dug holes do not exceed 18 inches, minimizing any effect on the Coastal Beach Resource. The rope barrier does not disturb the

Coastal Beach or Coastal Bluff resources and is temporary and removable. As the site readily accommodates the installation of the rope barrier project with a temporary and minimal change to the Children's Pool beach, and neither the Coastal Beach nor the Coastal Bluff are negatively affected by the project, the site is physically suitable for the design and siting of the proposed development and the development results in a 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 rope installation includes digging shallow holes for each post footing and covering them with the sand. The rope is placed above the Mean High Tide Line and, as such, does not create erosional conditions. No geologic forces are expected to be factors with this type of development, and because no structures are included in the project, no flood or fire hazards are anticipated. Therefore, the development minimizes the alteration of natural landforms and does 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 installation of the rope includes digging small holes in the sand, placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. The rope is 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 require that any debris caused by construction to be removed from the site and disposed of appropriately. Permit conditions also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement is required to be maintained in location identified on Exhibit "A," during the identified time period. . In addition, environmental review was performed and an exemption was prepared for the project per Section 15269, Emergency Projects (Attachment 13). 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 is not located in or near the Multiple Species Conservation Program (MSCP) Subarea. Therefore, the proposed development is 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 rope barrier pole foundations are placed in dry sand above the Mean High Tide Line. As such, the project does not create erosional conditions. Sand removed to hand dig the holes for pole installation, was used to cover the foundations, and therefore, sand was not removed from the Children's Pool Beach as a result of the project. Therefore, the development does 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.**

No mitigation is required of this project. The project is temporary in nature and is removable. 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 Hearing Officer, Coastal Development Permit No. 410971 and Site Development Permit No. 410975 are hereby GRANTED by hearing Officer to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 410971 and Site Development Permit No. 410975 a copy of which is attached hereto and made a part hereof.

_____

Morris E. Dye
Development Project Manager
Development Services

Adopted on: January 24, 2007

Job Order No. 4900

cc: Legislative Recorder, Planning Department

Shared Use Proposal

Children's Pool
La Jolla, California

By: **San Diego Council of Divers**

The goal of this proposal is to retain the Harbor Seals and Scuba Divers use of Children's Pool in a mutually beneficial "Shared Use". The history of the Children's Pool in La Jolla, California started in 1930's and has continued to today with swimmers, children, scuba divers and seals using this small beach area. We are presenting this proposal to maintain this long history of shared use.

The public currently observes these wild Harbor Seals from the safety of the upper areas of the sea wall and sidewalks above the beach. This provides for adequate distance to be maintained from the seals to conform to the Marine Mammal Protection Act (MMPA). Our proposal is presented to allow for continued observation of these creatures from the ocean environment by scuba divers also conforming to the provisions of the MMPA. This provides for a unique condition where these Seals can be observed from both land and ocean. There are many benefits of this:

- Continued use of the Children's Pool by the Seals:
  - An attraction for additional Tourism in the area
  - Safe area for the Seals to haul out away from potential predators
  - Allows the City to maintain it's shared use policy while living up to the terms of the Trust
- Shared Use for non-conflictive additional activities:
  - Scuba diving – Viewing the seals in their natural environment.
  - Swimming/Snorkeling – Viewing the seals in their natural environment.
- Provides for a unique win-win solution for the public, economy, and wild animals.

In order to enact this proposal there will need to be several "rules" or procedures enacted to maintain safe access to the water, most of which are already in place. Based upon the layout of the Children's Pool and the historical use of the beach by the Seals, we propose a "corridor" along the east side of the beach guaranteeing water access for divers, swimmers, and snorkelers. The City of San Diego has provided a rope "advisory" in the past to assist in defining space at the beach between the seals and the public. We would propose to also use this proven technique to define the necessary corridor. This rope advisory would be placed as noted in the "Attachment A"

The City of San Diego has a opportunity here to create a Unique Win-Win solution for the people of San Diego. We believe that our proposal is best for the Children's Pool Harbor Seals, Tourists and People using the Ocean Environment. We hope that we can be instrumental in the creation of this and further the City's Shared Use policy of Children's Pool into the future.

We are available to discuss this proposal and discuss and make modifications as deemed necessary.

Scott Anderson (president@sddivers.com)
President San Diego Council of Divers

Attachment A

Map of Children's Pool

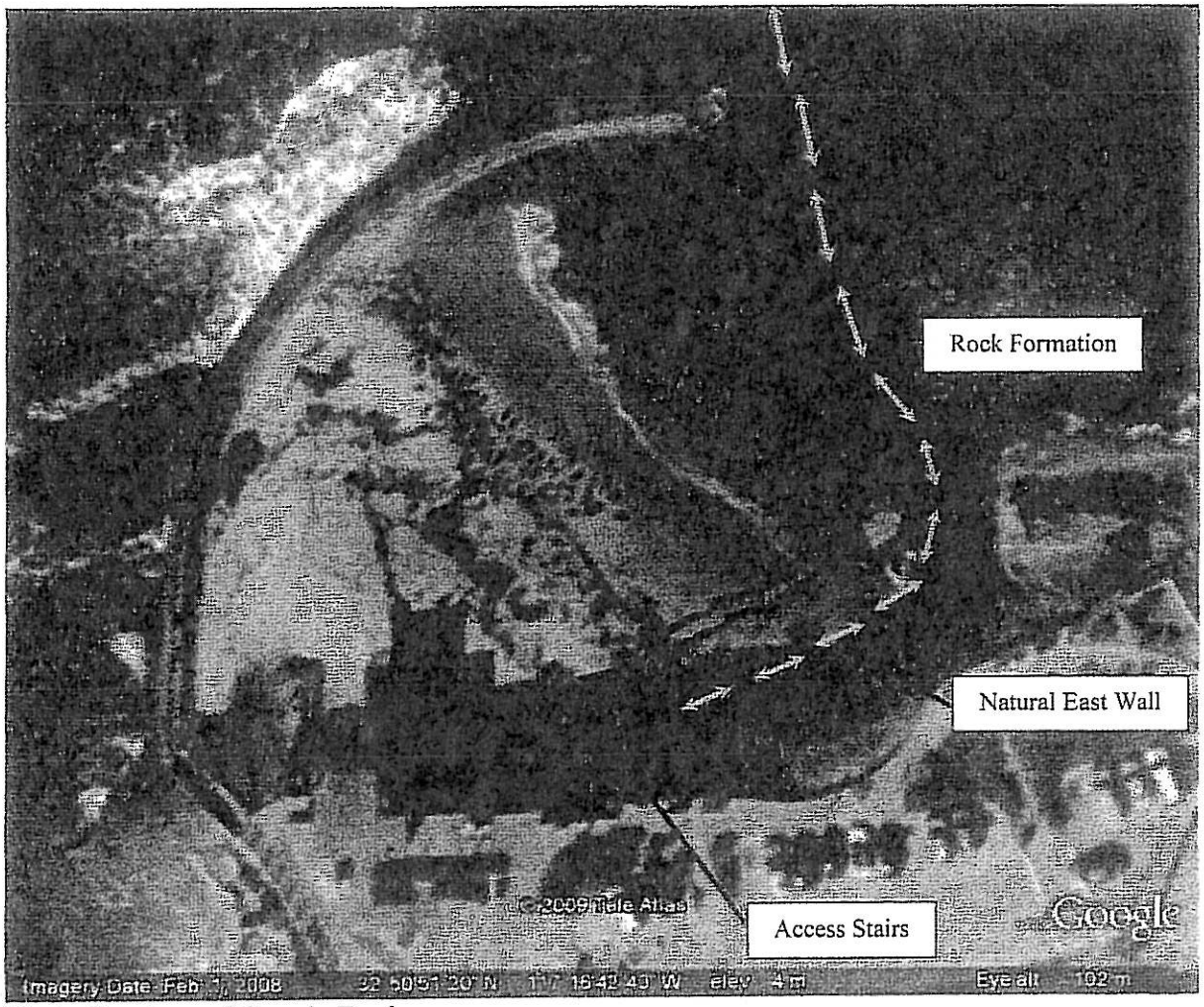

Photo Courtesy of Google Earth

Approximate location of the rope advisory marker. The rope will be placed in the sand from the base of the stairs.

Approximate path of travel for water users (***Scuba Divers and Snorkelers***). This path will conform to the City's shared use policy and the New Terms of the Trust.

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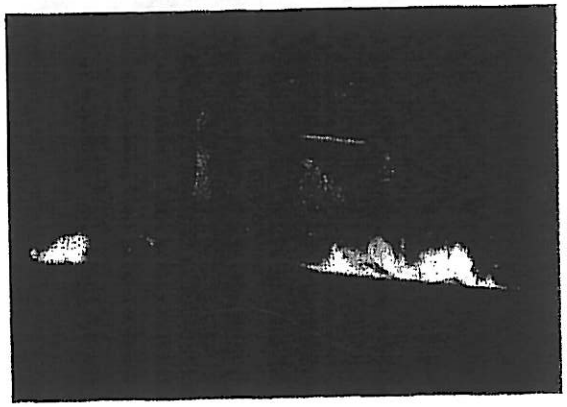
Snuffing fire pits may not be so easy

San Diego's money-saving measure may require state permit

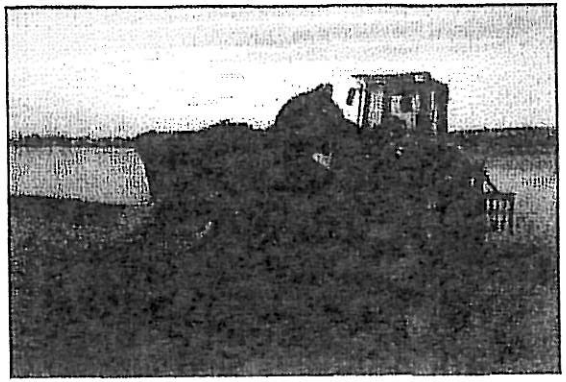
By Helen Gao, UNION-TRIBUNE STAFF WRITER

Thursday, December 3, 2009 at 12:10 a.m.



John R. McCutchen / UNION-TRIBUNE

Chiarra Bone, 18, of Clairemont, Dimitri Hazelton, 19, of Serra Mesa and Sharron Fonseca, 19, of San Diego gathered last night near a fire pit on Fiesta Island. The city plans to remove its 186 shoreline fire rings to save maintenance costs, but the state Coastal Commission is requiring a permit first.



2008 file

Union-Tribune

San Diego park and recreation crews began removing fire rings from Fiesta Island last December.

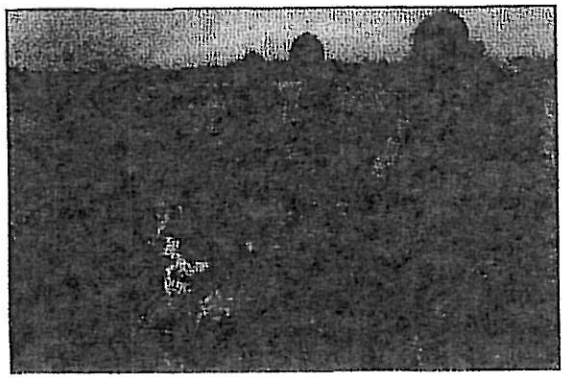


Photo by Peggy Peattie

Nanny Jameylee Nuss (second from right) and the Ross family, including (from left) Shayna, 6, Jack, 9, and Sammy, 4, are regulars at the fire pits on Fiesta Island, where they roast marshmallows, pitch a tent, play horseshoes, and even do their homework beside Mission Bay.

This time, it may not be an anonymous donor who rescues San Diego's shoreline fire pits, which are proposed to be eliminated to help the city close a $179 million deficit.

The last-minute hero that bonfire fans are looking to this time is the California Coastal Commission, the state agency charged with protecting the coast and recreational opportunities there for the public.

The 186 fire pits have been a colorful aspect of the city's growing budget woes since Mayor Jerry Sanders proposed removing them late last year to save on maintenance. The coastal regulator has not previously intervened, even though at one point the city rolled out heavy machinery to start extracting them.

The commission has now informed the city that it will need a state permit before removing the concrete squares that warm marshmallow-roasting families and late-night partyers in Mission Bay, Ocean Beach, Mission Beach, Pacific Beach and La Jolla Shores.

Coastal Commission decisions can become drawn-out, bureaucratic affairs. But city officials said they have involved their lawyers in the belief that no permit will be needed and that, if a permit is necessary, approval will be quick and easy.

Hans Baumgartner, a University Heights resident whose family and friends regularly gather around fire pits on Ski Beach in Mission Bay Park during summer nights, said the city should be required to seek a permit — and he's prepared to rally his loose network of contacts against granting one. More than 3,400 people have joined the Facebook group called "Save the San Diego Fire Pits."

Baumgartner has been going to fire pits for about 20 years, and his wife's family has been going for nearly 50 years.

"We've had a wedding at the fire pits. We've had memorial services at the fire pits. It's a gathering spot for us," he said.

Baumgartner said he doesn't believe the city has sufficiently explored how it could save the pits, such as saving money by limiting maintenance to only certain months or raising money through sponsorships. And he questions the accuracy of the city's cost figures for maintenance.

Advocates also assert that removing the fire pits could create safety hazards because people may set fires illegally on the sand and leave hot ashes behind.

A year ago, an anonymous donor came forward with $259,000 to preserve the popular amenity through next summer. But a fundraising campaign to keep the pits longer raised only $1,210.

Last month, Sanders again suggested removing the enclosures effective July 1 to save the annual maintenance cost, previously estimated to be $173,000. The latest figure indicates it's closer to $120,500, partly because city employees have taken a 6 percent cut in compensation. Two city employees use a front loader and a dump truck to regularly clean out the 5-foot-by-5-foot enclosures, which weigh nearly 2,000 pounds each.

The city only recently learned of the permit issue.

"We received in writing from the Coastal Commission staff that you need a coastal development permit," said Stacey LoMedico, director of park and recreation. "We went back to the City Attorney's Office and asked them to respond to it. We didn't believe it. I don't have a response yet."

Recently, when the Orange County city of Newport Beach raised the possibility of removing fire rings, it was also told by the Coastal Commission that it needed a permit. After a public outcry, the city dropped the idea.

San Diego staffers said their understanding is that even if the city needs a state permit, obtaining one should be a relatively simple and quick process that does not entail extensive public hearings.

Deborah Lee, manager of the San Diego Coast District Office of the Coastal Commission, did not return calls for comment. But Tom Luster, a scientist with the San Francisco office of the Coastal Commission, said San Diego's proposal to remove all its fire pits would likely require review.

"From your description, that extensive of a program would require a permit," Luster said.

The city has more control over the fate of fire pits covered by state-certified "local coastal programs," which give the city permitting authority in certain areas. The city could not immediately say how many fire pits are within these areas. But even there, the public could be entitled to appeal city action to the Coastal Commission, Luster said.

City Council President Ben Hueso — a former member of the Coastal Commission — said he's a big fan of the fire pits, but given the severity of the budget situation, he would be hard-pressed to save the pits while the police and fire departments are facing cuts.

"Fire rings are very important, but if you were to weigh that against police services, most people would agree we want the ability to investigate crimes," Hueso said.

Mike Cully, a Mission Valley resident who loves the beach bonfire tradition, said if the fire pits are taken away, San Diego would lose a piece of its soul.

"It's part of the personality of the city," Cully said. "It's something we've always taken for granted. To me, it's just one of the identifying aspects of San Diego. As trivial as it seems,

it's one of those things that gives the city the character and the personality it has."

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