

NEGATIVE DECLARATION

Project No. 225045
I.O. No. 21002681
SCH No. 2013041059

SUBJECT: Children's Pool Closure. The proposal is a request for an AMENDMENT TO THE LA JOLLA COMMUNITY PLAN AND LOCAL COASTAL PROGRAM to establish an Environmentally Sensitive Habitat Area (ESHA) and buffer area for the Children's Pool Beach. The amendment will also include modification to community plan policies related to beach access to prohibit access to the ESHA during harbor seal pupping season to contribute to the protection of a sensitive habitat area for breeding pinnipeds, a COASTAL DEVELOPMENT PERMIT (CDP), to prohibit access to the Children's Pool beach annually from December 15-May 15. Implementation of the project will require the installation of two signs, one approximately 36" by 30" and one 24" by 18" on the existing wall and gate, respectively, and a chain barrier at the second landing of the lower stairs of the existing set of stairs that provided access to and from the beach area, and an AMENDMENT TO THE SAN DIEGO MUNICIPAL CODE (SDMC) to add a Section 63.0102(e)(2) that would state: *It is unlawful for any person to be upon or cause any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach, beginning with the second landing, from December 15 to May 15.* The project is located at 888 Coast Boulevard in the La Jolla Planned District Zone -5 within the La Jolla Community Plan area. (Legal Description: Being a Portion of La Jolla Park, in the City of San Diego, State of California, according to Map thereof no. 352, filed in the office of the County Recorder of San Diego County on March 22, 1887 of Official Records. Applicant: City of San Diego Park and Recreation Department.

August 2013 Update: Minor edits were made to Initial Study Section IV.(d) Biological Resources to clarify how human disturbance can result in individual seals flushing, and to Section XVII Utilities and Service Systems to correct the Project Description. These revisions have been incorporated into the final document, and are shown in ~~strikeout~~/underline format. These revisions do not affect the environmental analysis or conclusions of the document. In accordance with CEQA Guidelines Section 15073.5 (c)(4, the revised environmental document does not require recirculation.

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego has conducted an Initial Study and determined that the proposed project will not have a significant environmental effect and the preparation of an Environmental Impact Report will not be required.

- IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

- V. MITIGATION, MONITORING AND REPORTING PROGRAM:

NONE REQUIRED

- VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Negative Declaration were distributed to:

US Government

Department of Interior, Fish and Wildlife Service
US Dept of Commerce National Marine Fisheries

State of California

State Clearinghouse

City of San Diego

Mayor Filner
Allen Jones
Councilmember Lightner, District 1
Councilmember Faulconer, District 2
Councilmember Todd Gloria, District 3
Council District 4
Councilmember Mark Kersey, District 5
Councilmember Lori Zapf, District 6
Councilmember Scott Sherman, District 7
Councilmember David Alvarez, District 8
Councilmember Marti Emerald, District 9

City Attorney

Shannon Thomas

Development Services

Kelly Broughton, (former) Department Director
Cecilia Gallardo, (former) Deputy Director

Cathy Winterrowd, Asst Deputy Director (now Interim Deputy Director)
Morris Dye, DPM
Chris Larson, Senior Planner/Land Development Review
Sara Osborn, Senior Planner/Community Planning

Park and Recreation

Stacey LoMedico, Director
Chris Zirkle, Deputy Director

Library

Central Library
La Jolla Riford Branch Library

Other

California State Coastal Conservancy
San Diego Audubon Society
San Diego Coast and Baykeeper
San Diego Council of Divers
Sierra Club
La Jolla Community Planning Association
La Jolla Cove Swim Club
La Jolla Friends of the Seals
La Jolla Historical Society
La Jolla Light
La Jolla Parks and Beaches
La Jolla Shores Association
La Jolla Shores PDO Advisory Board
La Jolla Town Council
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Carol Archibald
Louise Arnold
Jeanette Arrigo
Cheryl Aspenleiter
Beth Avner
Earl Balch
Jim Bell
Heleen Bennett
Brian Bowers
Roger Boyce
Liza Boyer
Justin Brent
Lynn and Michael Bruser
Luciene Cantarelli
Todd Cardiff

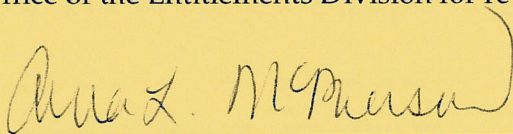
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Pam Thomas
Brittany Titus
Cindy Trubovitz
Julia Trubovitz
Wendy Tsien
David Valentine
Rose Van Oss
Sara Wan
Merritt Warren
Lynn Wilson
Joanna Wisniewska
Myrna Wosk

VII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the draft Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- (x) Comments addressing the findings of the draft Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Negative Declaration and any Initial Study material are available in the office of the Entitlements Division for review, or for purchase at the cost of reproduction.



Anna L. McPherson, AICP, Senior Planner
Development Services Department

April 15, 2013

Date of Draft Report

August 27, 2013

Date of Final Report

Analyst: A. McPherson

Response to Comments

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LETTER

Letter A – Miller, P

McPherson, Anna

From: Philip Miller [pamil@cox.net]
Sent: Monday, May 27, 2013 9:06 AM
To: McPherson, Anna
Cc: Dye, Morris

May 26th, 2013

Anna McPherson
 Environmental Planner
 City of San Diego Development Services Center
 1222 First Avenue, MS 501
 San Diego, CA 92101
 PROJECT: CHILDREN'S POOL CLOSURE PROJECT NO., 225045 Dear Ms. McPherson,

A-1 My name is Philip Miller. I am a U.S. Navy veteran, residing in San Diego, principally, since the 1970s. I have taught scuba diving independently since the early 1980s, and raised 3 children here. As someone intimately familiar with the Children's Pool area of La Jolla, I comment as follows, on the current typically reckless and poorly thought out San Diego City Draft Negative Declaration referenced above:

A-2 I have carefully considered the claims made in the Draft Negative Declaration and object to this project proceeding without a true evaluation of the impacts of this project. There is a deep sense of community stewardship in this landmark location developed over the 82 years since its construction that must be honored and protected. The relatively recent arrival of Harbor Seals does not change the community's desire to protect the pool for the intended human uses. I strongly disagree with the City's claim there are no significant negative impacts, that this area will be negatively and widely impacted by amending the Local Coastal Plan and the La Jolla Community Plan to apply an ESHA designation to this beach. This is a misdirected shortcut to the creation of a display zoo in a children's playground through beach closure.

A-3 The City cannot create an Environmentally Sensitive Habitat Area [ESHA] where none exists. The landforms and tidelands of Children's Pool underwent extensive modification and degradation by the construction and creation of the seawall and pool in 1930 and 1931. A bathhouse and lifeguard tower has been built in the succeeding years. A beach access ramp was graded into the original bluff to create an additional access to the beach for people who have difficulty using stairs. The beach was maintained in pristine condition for most of its existence by the City of San Diego policy to make a safe place for children. The environmental impact and degradation has now been followed by the unintended accumulation of excess sand in the pool because the seawall sluiceways were permanently closed and the City's neglect of regular beach maintenance. The area is ineligible for designation as an Environmentally Sensitive Habitat Area [ESHA] simply because of the use by Harbor Seals. The natural tidal flushing of animal waste has been prevented by the closed sluiceways and the waste overload by an ever increasing population of Harbor Seals. The area cannot be considered a natural habitat for animals even though they have occupied the area since Sea World engaged in a program of relocating captive, human habituated Harbor Seals to the Children's Pool area from 1993 to 2004. To further create an unbalanced ecosystem through the artificial protection and forced beach abandonment would compound the environmental impact started through the concentration of Harbor Seals in La Jolla. It is time to unwind the damage done to the marine resources of the area and stop artificially encouraging the overpopulation of one species to the degradation of others. Let us promote the return to environmental balance, which is nature's default condition, without further human interference. The people of the State of California have devoted enormous resources and energy into creating Marine Protected Areas to assure the recovery of fisheries in the San

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RESPONSE

A-1. Comment noted.

A-2. Comment noted. The project was reviewed in accordance with the California Environmental Quality Act (CEQA) and the City of San Diego's CEQA Significance Determination Thresholds as part of the Preliminary Review pursuant to CEQA Guidelines Section 15060. The conclusions of this review are disclosed in the Initial Study which determined that a Negative Declaration is the appropriate document for the project because there is no substantial evidence that the project may have a significant effect on the environment. CEQA Guidelines Section 15064 requires the preparation of an EIR only if there is substantial evidence that a project may have a significant effect on the environment.

A-3. This comment does not address the project's potential significant effects on the environment and does not address the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-4. This comment suggests that the project would result in an increased seal population. The baseline condition includes a sub-regional harbor seal population of approximately 600 seals (Dr. Doyle Hanan, 2012 and Traci A. Linder, 2011) from which a maximum of 250 will haul out on Children's Pool Beach at one time due to spatial limitations on the beach (Hanan, 2012). As this comment notes, the number has been increasing over the years without the project. The existing condition also includes people on the beach during pupping season, some of whom harass seals (i.e., cause human-induced seal behavior modifications). Park Ranger field data conducted during the 2013 pupping season indicate that over 200 seals were present on the beach on 10 different days, with 265 counted on April 30; therefore, it can reasonably be concluded that the existing condition is close to the maximum number of seals that will haul out at one time on Children's Pool Beach. The project, therefore, would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom.

A-5. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e). However, according to the California Department of Fish and Wildlife's "[Amended] Statement of Reasons for Regulatory Action" and the Addendum thereto Children's Pool was excluded from consideration because of other reasons.

LETTER

Diego County area. Two such MPA's are located on half mile north and one mile south of the Children's Pool. During the extensive deliberations about the size and boundaries of the MPA's, Children's Pool was specifically excluded from consideration because of the protected status as a human use beach.

- A-6** There are no provisions for monitoring and managing the artificially created habitat values if this project were to be undertaken. Unknown native and non-native species potentially could diminish the protections intended in the nearby Marine Protected Areas established to enhance the marine environment. This likely impact has not been addressed or potentially mitigated in the City's Draft Negative Declaration. A full environmental study should be initiated to determine the impact of this proposed marine mammal reserve so close to the Marine Protected Areas.
- A-7** Children's Pool State Tidelands Trust, recently restated in Senate Bill 428, signed into law effective January 1, 2010 requires protection and accommodation to all the uses enumerated in the Trust. Recreational use and marine mammal uses of the beach are given equal weight in the administration of the obligations to the terms of the Trust. The City of San Diego, by attempting to convert parkland, playgrounds and a bathing pool dedicated to use by children into a seal reserve is once again attempting to breach its fiduciary obligation to administer the Trust for the intended beneficiaries of that Trust. The deliberate exclusion of the marine environment around Children's Pool when the MPA's were considered was intended to protect the designated use as a shared use beach for human and seal viewing activities. No other conclusion about the intended uses of the area can be reached with the plain language of SB428.
- A-9** If an endangered or threatened species were to begin nesting or colonize the beach area during the forced abandonment period, it would undoubtedly further complicate the City beach management problems. Such species of shorebirds are known to occur in the La Jolla area and will likely colonize any abandoned beach. A conflict could occur between a federally protected marine mammal and the endangered or threatened bird species that both use sandy beach areas. The likelihood of use and occupation by threatened or endangered species has not been examined or even mentioned in the City's Draft Negative Declaration. Currently, the City is struggling to resolve a major human health and safety issue resulting from bird colonization of the closed areas of the bluffs around the La Jolla Cove. It is an unintended consequence of blocking human access to the coastal bluffs and shoreline resulting in an accumulation of bird and Sea Lion waste. It has been over a year since the City was made aware of the potential health impacts of birds on Goldfish Point. As of today, the City has not resolved the issue and the risk to the health and welfare of human residents continues. Coastal development was undertaken to build fences and barriers to human access without required permits and environmental studies to determine the environmental impacts to the area surround the Cove and Goldfish Point. This mistake should not be repeated at Children's Pool.
- A-10** Environmental, historical, cultural and scenic values of Children's Pool closure have not been fully evaluated as required under CEQA Statutes and Guidelines Chapter 2.6 §21084.1. This evaluation process requires an environmental impact study and has not been done. The California Coastal Act addresses the impact of overuse of any coastal area in the following section:
- A-11** Section 30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.
- Children's Pool is a unique resource in California. It was dedicated and entrusted to San Diego for a Children's Bathing Pool through a State Tidelands Trust. As California's human population increases, demand is increasing for recreational access to the coast even while large areas are being closed as Marine Protected Areas (MPA's). This project further reduces access to suitable lands and coastline for human use and is contrary to the intended use of

RESPONSE

- A-6.** Please refer to Response No. A.2 and A.4. CEQA requires that project impacts be assessed by comparing the baseline, existing physical conditions on the ground at the time that the environmental review is commenced, with post-project conditions. It would be inconsistent with CEQA to conduct an impact analysis based upon a comparison of the baseline condition to a speculative future scenario, as is suggested by the commenter, where the seals are absent from the beach.
- A-7.** This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-8.** Please refer to Response No. A.5.
- A-9.** Comment noted. Sensitive shorebirds that nest and/or colonize on southern California beaches are limited to Least terns and Snowy plovers and their nesting activities have resulted in beach closures elsewhere.
- Powell (2002) noted that most plover nests were initiated between early April and mid-June and Powell (2001) noted that least terns do not initiate nesting until 45-60 days after the plovers. The project would prohibit access to the Children's Pool Beach annually from May 15-December 15. Thus, people would be on the beach at the time least terns begin nesting even with project implementation. Powell (2002) also found that flooding was responsible for up to 10% of plover nest failure and Powell (2001) documented that the distances of nests to water average 53.5 +/- 2.4 meters, therefore, there is not enough beach depth for plovers to nest at Children's Pool.
- A-10.** Comment noted. The shorebirds which have colonized the bluffs around La Jolla Cove are the Brown Pelican and Brandt's Cormorant. Accumulation of guano on the coastal bluffs has resulted in odors; however, staff has been unable to find any examples of guano accumulating on sandy beaches. This is possibly due to the relative instability of sand to function as a foundation for guano accumulation as compared to solid materials (e.g., rocks, wood), the porosity of sand facilitating the drainage of guano down through it and seawater moisture up through it, and/or the abrasiveness of wind-blown sand which could break up the guano.
- A-11.** The referenced section of the Public Resources Code prohibits the exemption of certain project types from CEQA. The results of the Preliminary Review conducted pursuant to CEQA Guidelines Section 15060 determined a Negative Declaration was the appropriate document for this project; therefore, the referenced section is inapplicable.
- A-12.** Comment noted. The commenter is referring to one section from the California Coastal Act, a section in Article 3, "Recreation" of the Act. Articles 4 and 5 describe the Act's environmental resource considerations. The Act specifies that Section 3007.5 is to be used to resolve policy conflicts that arise between implementing the various articles.
- This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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this small beach. In both sections of the Coastal Act cited above, the resource is protected by the words "shall be protected" because of the limited resources suitable for this use and the unique nature of Children's Pool.

The basis for protecting coastal access in the California Coastal Act comes from the California Constitution in the following controlling section:

A-13 ARTICLE 1, DECLARATION OF RIGHTS

Section 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.

A-14 Judge Pate in his August 25th, 2005 decision in the O'Sullivan v. City of San Diego case (partially quoted below and re-affirmed by Judge Hofmann's ruling) cites several reasons why the Children's Pool must be returned to human use. The imposition of a "marine mammal park" to the amended Trust does not relieve the City of San Diego to act on behalf of the intended beneficiaries of the 1931 Trust or the amended Trust. The people of San Diego still have a place at the Children's Pool in despite all the City's attempts to ignore its legal obligations to maintain this public park and bathing pool.

A-15 1. Children's Pool is not a "natural" condition. It is a man-made, artificial condition, which was entrusted to the City for specific uses and purposes. The City has knowingly declined to remove sand from the Pool, even though the sand has reached the point where the Pool in reality cannot be used for its intended purpose. Although the City has approved requests to study the removal of the sand, even as recently as September of 2004, it has consistently failed to remove the sand that has been building-up for the last 70 years.

A-16 2. The presence of unhealthy levels of bacteria from seal feces in the pool water has been consistently left un-addressed by the City. The substantial increase in the number of seals using the Children's Pool seems to have some relationship to the actions or inactions of the City. The creation of the Reserve in close proximity to the Children's Pool and the release by Sea World of rehabilitated harbor seals in the kelp beds off-shore of the Pool, seem to have contributed to an increasing number of seals using portions of the Children's Pool in the mid-1990's. The City's decision to separate the seals from humans and then closing off the Pool to humans, likewise appears to have encouraged the seals to occupy more and more of the beach with ever increasing numbers.

A-17 3. The occupation of the Children's Pool does not seem to be a "natural" phenomenon. According to the evidence at trial, Children's Pool is the only public beach in California that has been taken over by seals. The City was warned in 1997 that if it did not discourage the seals from hauling-out at the Children's Pool, the number of seals present at the Pool would greatly increase. In response to the situation, the City put up barriers to keep the public out of the Pool area. To date, the City has taken no steps to reduce the level of pollution at Children's Pool.

A-18 It is worth repeating one of the significant findings in the O'Sullivan Case here:

"The next biggest cause of actual or constructive closure of the Children's Pool was the City's decision to erect a rope barrier cutting off public access to the Pool. On March 29, 1999, the City Council rejected the City Manager's recommendation to dredge the Pool and restore the Pool to the uses set forth in the Grant, and instead voted to rope off the Pool. In doing so, the City breached its obligations under the Trust, as trustee of the Children's Pool. Instead of returning the Pool to its original and safer configuration and also

RESPONSE

A-13. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-14. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-15. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-16. Comment noted. Refer to Response No. A.4. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-17. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-18. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

rectifying the unhealthy condition of the water and sand at the Pool, the City barred the use of the Children's Pool as a "public park, bathing pool for children... and [use for] playground and recreational purposes," as expressly required by the 1931 Trust."

That same requirement remains today, even after modification of the Trust in 2010.

A-19 San Diego City Charter Section 55 requires a citywide public vote to convert parkland to any another use. The proposed seal habitat designation creates a reserve not authorized in the City Charter without such a vote.

A-20 The La Jolla Community Plan and certified Local Coastal Plan were carefully crafted by the community to protect coastal resources, including recreational use of the shoreline. No action or regulation was ever contemplated to block human access to any part of the shore in La Jolla no matter the circumstance. The wholesale overturning of the community plan, to create an ESHA where it doesn't exist, would violate every concept of community stewardship to coastal resources. It forces the abandonment of a public beach at Children's Pool created explicitly for human use and enjoyment without justification or research to back up the claimed need. The proposed amendment to the La Jolla Community Plan and LCP is not a minor adjustment but is completely contrary to its intent. Children's Pool is repeatedly mentioned as one of several beaches where coastal access must be enhanced. Beach access is not enhanced by closure.

A-21 This project has "Potentially Significant Impact" to cultural values. Children's Pool was featured in 1949 National Geographic article highlighting the sport of goggle fishing (spearfishing) which originated in the United States at Children's Pool in La Jolla. Historic use by families, fishermen and children for whom the pool was built, will be denied without consideration or mitigation. Closing this historic beach and causing traditional uses to be done elsewhere will have significant impacts to the Children's Pool site itself and the limited surrounding areas suitable for that use. The misleading rope barrier at Children's Pool strongly conveys the illusion of closure of the Children's Pool.

A-22 The City seeks to continue this encroachment year round without scientific justification or basis in fact. Harbor Seal pupping season at this latitude has a well-defined but limited date range and yet it has been extended to year round status with no scientific study by the imposition of a rope barrier placed year round. The placement of the rope barrier has already heavily impacted nearby parkland at Scripps Park and the La Jolla Cove even during the low beach use season in winter and spring. The impact will be even greater during the summer and fall months.

Swimmers and divers have traditionally used Children's Pool as a safe location for ocean access for decades. They have been forced to use the La Jolla Cove instead as the only other protected and safe ocean access. This shift has impacted the La Jolla Cove negatively as the facilities there are overrun. Fishermen have been excluded from the La Jolla Cove for decades after the creation of an ecological preserve in La Jolla Bay. That leaves the one remaining sheltered ocean access point at Children's Pool. If the Children's Pool were to be closed it would cause a significant impairment to fishing rights and public safety when spear fishermen are not allowed through the safe access at Children's Pool. A thorough environmental impact study, would confirm this negative and potentially significant impact on the La Jolla Cove. The City's Draft Negative Declaration does not address the foreseeable impacts created at the cove. The following quote from the City of San Diego's 2009 Beach Dredging Environmental Impact Report for DSD Project 71362 is telling. The environmental study recognized the impact of beach closure by considering the impact to recreational use at the Children's Pool. Although the closure never occurred, the impact was determined to be "potentially significant" in the conclusions of that study. Now, under the current Draft Negative Declaration, the change of status to close the beach is excused as having no significant impact. It cannot be both. The City's own EIR declared significant impacts of beach closure in the 2009 beach dredging EIR.

RESPONSE

A-19. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e). However, the referenced Charter Section is inapplicable since the site is not dedicated park land.

A-20. Comment noted. Section X Land Use and Planning of the Negative Declaration includes the analysis to address the project's consistency with the General and Community Plan. The document concludes that the plan amendment balances competing habitat protection policies with public access policies, and therefore the project would not result in a land use impact.

A-21. Comment noted. CEQA Guidelines Section 15064.5(b)(1), "Determining the Significance of Impacts to Archaeological and Historical Resources" reads as follows:

Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

"Materially impaired" is defined in Section 15064(b)(2) as a demolition or material alteration which alter the physical characteristics of the resource which account for its inclusion in a register or that convey its historical significance.

The project would not physically alter the site; therefore, no significant impacts would result.

A-22. Comment noted. Refer to Response No. B.3 for an accurate Project Description .

A-23. Comment noted. As the commenter notes, the City of San Diego prepared EIR No. 71362/SCH No. 1999011060, for a separate project which included Beach dredging. Refer to Response No. B.3 for a description of the project that is the subject of this Negative Declaration. The Negative Declaration evaluates recreational impacts based on direct, observational counts of people recreating on the beach, *Department of Park and Recreation "Children's Pool Park Ranger Observational Counts – Children's Pool Use Survey, February 29 May 15, 2012"* and describes the analysis and conclusions in Section XIV iv Public Services - Parks. The analysis of this data, and the fact that the closure of Children's Pool beach for this project is an annual temporal one occurring December 15-May 15, led to a conclusion of a less than significant impact regarding Parks and Recreation, in that "the project would not significantly increase the demand on existing neighborhood or regional parks or other recreational facilities over that which presently exists." Further, as noted by the California Coastal Commission in 2011, as part of their review of the year round rope barrier, "There are several beaches located adjacent to or in close proximity to the subject site including La Jolla Shores, Marine Street Beach, La Jolla Cove, Whispering Sands Beach, Shell Beach, South Casa Beach, and Windansea. Many of these beaches are within walking distance of or a short drive from Children's Pool Beach and offer public amenities such as permanent restrooms, showers, additional parking, and lifeguard facilities."

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- A-24** It is generally accepted that the California Sea Lion population has increased to historic levels and Pacific Harbor Seals are also nearing that level of recovery throughout their range. Increases in the local pinniped population should be reexamined, before creating a reserve to bring even more impacts on the local fisheries. The kelp beds off La Jolla are a productive and popular commercial and recreational fishing area. The creation of a Harbor Seal reserve nearby will have an undetermined but likely substantial impact. The attempt to bypass required environmental impact studies by the City of San Diego clearly shows the City wishes to ignore obvious and documented impacts on fisheries by encouraging an ever increasing number of seals on Children's Pool Beach.
- A-25** Since passage of the MMPA, seals and sea lions have been afforded protection from disturbance, harassment, and killing, thereby allowing them to occupy areas from which they would have been removed in the past. The result has been direct conflict between pinniped and human use at public and private beaches, public marinas, and private docks, and involves landowners, vessel operators, and Pinniped interactions with humans also have expanded into the freshwater environment as pinniped occurrence in bays and upriver has increased. California sea lions have been observed more than 145 miles up the Columbia River at the Bonneville Dam and have interacted with sportfishers throughout the river. In the Willamette River, California sea lions haul-out on docks in the Portland, Oregon metropolitan area and prey on spring chinook and steelhead at the fishway at the Willamette Falls. Reports of California sea lions occurring far inland from the ocean are increasing in other areas such as the Nisqually River and Chehalis River in Washington and up the San Francisco Bay Delta as far inland as Antioch. California, reports of problems with sea lions and harbor seals have been received from harbors in Humboldt Bay, Moyo River, San Francisco Bay, Santa Cruz, Monterey Bay, Redondo Beach, and San Diego. In Washington and Oregon, problems with California sea lions are commonly reported in harbors in Puget Sound, Washington, and in Astoria and Yaquina Bay, Oregon. Most problems reported are caused by California sea lions hauling-out on docks and boats. California sea lions have prevented owners from accessing their boats, boats have been fouled, and the weight of animals has damaged docks and small boats. Some small boats reportedly have sunk from the weight of the animals. Fishers at Cape Arago in Oregon frequently report California sea lions jumping onto their vessels and stealing bait. Sea lions also have been reported to have bitten people carrying fish and taken fish laid out on docks. The number of California sea lions hauled-out on Pier 39 in San Francisco increased from 6 to nearly 500 between 1990 and 1994, with a high of 627 in 1991. The City of San Francisco finally "gave up" the pier to the sea lions, as animals reacted aggressively when humans attempted to remove them.
- A-26**
- A-27** Another indirect effect of increasing pinniped populations on human safety is the possibility of an increase in the number of large sharks that prey on pinnipeds. Although there have been a number of media reports that increased attacks on humans by the great white shark (*Carcharodon carcharias*) are related to an increase in the shark populations caused by increased numbers of pinnipeds in coastal areas. In north SD county we experienced the 1st white shark fatality in more than 60 years, a couple years ago. We divers now see so many 7 gill sharks, unobserved prior to 2009, there now exists a web site devoted to recording their may local sightings. These are animals that have been observed biting a 5' leopard shark in half, in one of the Oregon State Aquarium exhibits. In reserve areas off Santa Cruz Island, where Pinnipeds are plentiful, I have witnessed several dead and decapitated sea lion bodies. Similar evidence of shark attack have been recorded among the Harbor Seal population at Children's Pool.
- A-28** The La Jolla Community Plan and LCP recognize the importance of the coastal dependent resources as water based sports and recreation. Access to the water is required for many forms of coastal dependent recreation and as such, the access component to the shoreline at Children's Pool is given a high value. Taking that away that value through a process to declare an artificially protected beach created by a man-made seawall structure is not

- A-24.** Comment noted. Refer to Response No. A.4 for a discussion regarding the baseline condition. The project would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom. Fisheries which serve as prey to the seals, therefore, would not be affected by project implementation. Refer also to Response No. A.2 regarding the City's determination of Negative Declaration for the Project.
- A-25.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-26.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-27.** Comment noted. Refer to Response No. A.4. for a discussion regarding the baseline condition. The project, therefore, would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom.
- A-28.** Comment noted. Refer to Response Nos. B.31, A.23, and M.38.

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considering the value to the community. Public safety was the driving force to cause Ellen Browning Scripps to undertake the ten year process to design and construct the seawall to provide safety to less experienced swimmers and children in particular. Nothing has changed. The rough conditions found in La Jolla were tamed somewhat by the construction of the seawall. Public safety still requires the presence of lifeguards to protect human life. For too long, the consideration of human safety has taken a back seat to the emotional appeal of cute Harbor Seals at Children's Pool. Seals don't need the protection of the seawall nor do they need lifeguards to thrive. People do need those protections however and that should be the first priority of the City of San Diego to protect human life. Far too many City officials have failed to recognize the role of the seawall in promoting and protecting human safety as part of the primary duty of government in managing coastal resources like Children's Pool.

A-29 It is a myth that coastal access is maintained during any time of the year when a "guideline" rope is stretched across the Children's Pool beach. Coastal access is significantly impacted by any logical interpretation of the intent and effect of the rope barrier. That barrier effectively closes the beach to people who see a rope barrier across an entire beach. That rope is there for a reason and allowing coastal access past a rope barrier is not one of the reasons. The rope barrier, backed up with a full time Ranger telling people to stand behind the rope, completes the illusion of a closed beach. The placement of the rope barrier and the actions of a Ranger, demanding compliance with the beach access restrictions by the City of San Diego, are improper and contrary to coastal access laws found in the Coastal Act and State Constitution. The pupping season rope is now in place year round to finally attempt to extinguish the people's right to ocean access all year long at Children's Pool. The all-out effort by the City to create an ESHA where it doesn't exist is illogical and contrary to the intent of ESHA designation. ESHA designation is intended to protect existing ESHA values and not to create those values where they do not exist. It is even more fictitious to claim the need to designate an ESHA at Children's Pool to protect a resource that needs no additional protection. An EIR would confirm the lack of CEQA review compliance and ESHA status.

A-30 "Of the 85 rookeries on and off the California coast, only two with historic human/pinniped interaction issues (Bollinas lagoon and Children's Pool), have no existing access restrictions."City of San Diego presentation to the La Jolla CPA, May 2, 2013.

A-31 The City claims Children's Pool is one of two historic pinniped interaction areas in the State of California lacking ESHA designation. The major issue the City overlooked is the protected recreational uses in an established Tidelands Trust area, The Children's Pool Trust allows a man-made artificial seawall to form a beach and protected swimming area dedicated for use by children as a park and playground. All the other areas with ESHA designation cited by the City are wild coastal areas far from close proximity to urban setting. This is not the case at Children's Pool where it is an artificial embayment created to protect human recreational activities. An undefined and undeclared Marine Mammal Park, added to the existing allowed uses at Children's Pool, doesn't create a sensitive habitat for the purpose of ESHA designation. No amount of desire to create sensitive habitat causes it to actually be so. ESHA designation is unwarranted because of the unique history and nature of Children's Pool. There is only one Children's Pool.

A-32 There are no other man made intertidal coastal pools anywhere in the continental United States created specifically for a children's park and playground. In other locations where man made tidal pools have been created, primarily in Hawaii and Australia, they are protected and managed for the intended use as a human recreational resource. As such, the Children's Pool has a great value as a coastal resource which no amount of hope and wishing and emotional investment in seals can change. Children's Pool is forever linked to the generous nature of Ellen Browning Scripps as a major figure in San Diego history. Her legacy is unique and special for the residents of San Diego. Scripps intent for the use of the Children's Pool are protected in State Law. The seawall structure and Children's Pool qualifies for State and Federal historical landmark designation by the undeniable association to Ellen Browning

A-29. Comment Noted. Refer to Response No. B.17.

A-30. Comment noted. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-31. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

A-32. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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- A-33** Scripps. The California Coastal Commission staff recently stated there is a dedicated user group (actual beach and ocean users as opposed to those visitors who just look at the ocean and beach) at the Children's Pool and advised the City to not use ESHA designation to try to close the beach. They apparently recognize the incorrect application of ESHA to the beach at Children's Pool. The City should accept the advice or produce a study which shows otherwise.
- A-34** They have not done so. Harbor Seals on the other hand are distributed throughout California and in San Diego, are known to haulout at two other local sites on a regular basis. Throughout California there are hundreds of sites they are known to haul out and give birth. Nearby offshore islands provide a natural haul out and birthing sites where they are permitted to live undisturbed due to the remote locations far from urban development. While the presence of seals at Children's Pool is interesting and enjoyable, they are not dependent on the Children's Pool site to continue to thrive. They are not particularly valuable or rare as is required for ESHA designation. Minor disruptions to the seals have not been proven to cause any significant impact on their natural lifecycle. Noted Marine Biologist and Harbor Seal expert, Doyle Hanan, stated this fact in a declaration to the Superior Court in *O' Sullivan v. City of San Diego* that the individual animal or the species as a whole are not dependent on the continued use of Children's Pool. Harbor Seals are at or very near their Optimum Sustained Population (OSP) levels throughout their range. At Children's Pool they have reproduced beyond their resource base and are spreading to nearby beaches. Any claim they are significantly impacted by human interaction that occurs at Children's Pool, is demonstrably untrue. Their increasing number of successful births is telling. Every year many more seals born there than the year before. The mortality rate of Harbor Seals at Children's Pool is significantly lower than what is expected in the wild likely because of the artificial protection of the beach behind a man made seawall. The claimed harm to the seal colony is fictitious and unsupported by facts.

- A-35** The City of San Diego has obtained authorization to begin demolition and reconstruction of the lifeguard tower at Children's Pool. The Incidental Harassment Authorization [IHA] documents the lack of significant impact on Harbor Seals due to the construction noise/activity. Considering the high and unusual tolerance of these seals to human activity the December to May beach closure appears to be unnecessary since there has continued to be increasing numbers of Harbor Seal births at Children's Pool. The IHA goes on to state the following about the habituation of seals at this site:

Potential Effects on Marine Mammals
Behavioral disturbance may potentially occur as well incidental to the visual presence of humans and demolition/construction activities; however, pinnipeds at this site have likely adapted or become habituated to human presence at this site. Large numbers of people come to the site to view the pinnipeds at all hours and they perform many activities that can disturb pinnipeds at other sites, but this often does not occur at Children's Pool as they seem to have habituated to human presence and associated noises (Hanan & Associates, 2004; 2011).
Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California.
<https://www.federalregister.gov/articles/2013/05/03/2013-10529/takes-of-marine-mammals-incidental-to-specified-activities-demolition-and-construction-activities-of-h-16>

- A-36** A common claim is made that the seals at Children's Pool attract "a million visitors a year" yet, nowhere is that claim supported by fact. The original estimate was based on lifeguard estimates of the number of people within their purview as they watched over the waters and general area in and around Children's Pool. Those estimated included visitors from Scripps Park to the north and to near Hospital Point to the south. Those estimates have never been verified. Nor were they correlated to the number of visitors seen in the area of Children's Pool or the actual number of people who were there to see seals. There is no data

RESPONSE

- A-33.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-34.** Comment noted. Refer to Response No. A.4. for a discussion regarding the baseline condition. It is acknowledged that the project would not substantially affect the existing conditions in terms of the seal population, seal population trends.
- A-35.** Comment noted. Refer to Response No. A.4. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-36.** The Negative Declaration does not claim that the seals at Children's Pool attract a million visitors a year nor does it claim that the seals are associated with economic value to the tourism industry. The number of seal viewers referenced in the Negative Declaration was determined by direct, observational counts maintained by the Children's Pool Park Ranger.

LETTER

to make the claim of any specific number of visitors at Children's Pool to view seals. Economic value to the tourism industry by seal tourists therefore cannot be verified and any claim of such value must be disregarded until fully verified through an EIR.

- A-37** Are the seals an incidental attraction to a visit to La Jolla with another purpose? That is unknown because there never has been an attempt to scientifically verify the claim. La Jolla has been a tourist destination for over a hundred years. The number of visitors has steadily increased as the ease of travel and quality of accommodations has improved. The true seal visitor has yet to be identified by survey and study. To claim most visitors to La Jolla are seal tourists is unrealistic and unverified. What is commonly understood is the demand for water related activities will increase with an increased human population in San Diego.
- A-38** Children's Pool Beach closure will cause significant negative impacts to current and future demand. No traffic, transportation, parking or public safety demands were considered to alleviate the likely negative impacts of creating a seal reserve in an urban setting. An environmental study might give some credibility to any claim of economic benefit from seals only tourism. Since there has been only unsupported claims to a benefit, any claim of economic impact must be disregarded and never be used as a basis to convert one established land use to another without the proper study.
- A-40** "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources".
[City of San Diego presentation to the La Jolla CPA May 2, 2013]
- A-41** The harbor seals present are only an additional resource but not the exclusive and preemptory resource they are made out to be. All uses at the Children's Pool, enumerated in the State Trust and protected in the State Constitution must be accommodated. The significant coastal resource at Children's Pool is the unique and historic resource of the seawall itself which created safe conditions for human use at the pool.
with proper management.
- The City claims conflict with the policies of the "division"(Coastal Act) which preclude the use of Children's Pool for human recreation. There is no conflict. The thriving Harbor Seal population at Children's Pool verifies the minor and temporary nature of human impacts to the seal colony.
- Beach closure is a thoughtless shortcut; not proper resource management.
- A-42** Please reconsider the Draft Negative Declaration and conduct a full Environmental Impact Study to determine the true impacts of closing Children's Pool beach.

Respectfully, Philip Miller
6317 Brooklyn Ave. San Diego, CA 92114

RESPONSE

- A-37.** The Negative Declaration does not include statements regarding why visitors may choose to visit the Children's Pool. The document restates the Children's Pool Park Ranger observational counts regarding whether or not visitors went onto the beach. The Negative Declaration did not quantify the number of La Jolla/San Diego visitors or tourists who came solely to view seals at the Children's Pool. Quantification of such a population group would be speculative and in conflict with CEQA Guidelines Section 15145 *Speculation*.
- A-38.** Comment noted. It is acknowledged that human population will increase in San Diego; however, it would not be as a result of the project. Additionally, the project would not result in a change or expansion of use of Children's Pool Beach. Therefore, the Negative Declaration did not determine that the project would result in an increase in the number of auto trips to or from Children's Pool beach or a net demand increase for parking. Nor would the project result in an increase of public safety demands that would result in a physical effect on the environment.
- A-39.** Comment noted. Consistent with CEQA, the Negative Declaration does not assess the economic impact of the project. The Negative Declaration provides a neutral assessment of the environmental impacts of the Project; it neither supports nor discourages Project approval.
- A-40.** Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-41.** Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- A-42.** Comment noted. Refer to Response No. A.2.

LETTER

RESPONSE

Letter B – Aspenleiter, C

Date: MAY 31, 2013

TO: ANNA MCPHERSON
CITY OF SAN DIEGO

PROJECT: CHILDREN'S POOL CLOSURE
225045

Dear Ms. McMcpherson;

In its draft negative declaration of the Children's Pool Closure Project, the City of San Diego has declared there to be no significant negative impacts by the creation of a seal mammal fecal pit.

I represent a Committee called R.A.M.P (Restore Access To Many People) A committee who's mission it is to restore the Children's Pool for the Disabled for whom it was especially engineered and built for by Ellen Browning Scripps, and the Hydraulic Engineer Edward Savage. See the attached History.

We strongly disagree with the City's claim there are no significant negative impacts and provide the following information to support the fact The Children's Pool and surrounding areas of reef will be severely negatively impacted by amending the Local Coastal Plan and the La Jolla Community Plan to apply ESHA designation to this public Swimming Pool and Beach closure. Please do note that this is not only a beach but an actual concrete swimming pool for "those handicapped in life's game". The ramp that is currently at the Children's Pool is 'grandfathered ' in as it served the disabled and the public for generations prior to the creation of ADA Codes with rules of slopes and angles. The Ramp must by both Federal And State ADA Laws be updated. A Ramp to the shoreline must be remodeled immediately as per code for the current developmental use permit the City has pulled for the current development of the rope to keep people from swimming at the pool/getting close to seals. The ADA Codes for this current development rope have been completely ignored.

It will be helpful to please review the following information which compel a full environmental study of the human swimming pool and beach closure for an over population of defecating/polluting seals into what is currently a legal human 'bathing' pool.

I am sorry that the City is wasting the time and money trying to close the only ocean swimming pool built for the disabled in the United States, when the city has failed to maintain it as is the responsibility of the City. If they had there would be no sand for the seals to haul out on and this would be mute.

Thank you,

Cheryl K. Aspenleiter
Disabled Resident of the City of San Diego, CA, U.S.A.
May, 2013.

B-0. Comments noted. Refer to Response No. A.2. Comments regarding Federal and State ADA laws do not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e)

LETTER

RESPONSE

B-1

| | |
|---|--|
| From: | |
| Cheryl K. Aspenleiter 1231 ½ Hornblend St. San Diego, CA 92109 | |
| Phone: 858-568-1257, Email: cheriaspen@gmail.com | |
| To: The City of San Diego, Development Services Department | |
| RESPONSE TO THE 's DRAFT NEGATIVE DECLARATION I.O.21002681. Children's Pool Project # 225045 | |
| I am a resident of San Diego and a natural born citizen of the U.S. | |
| I am responding to the proposed closure of the Children's Ocean Swimming Pool in La Jolla , CA: | |
| B-2 | <ul style="list-style-type: none"> The Children's Pool should not be closed. The Children's Pool should not be used for a marine mammal park. To do this will have a negative effect on the environment of the underwater ecosystems. |
| B-3 | <ul style="list-style-type: none"> The La Jolla Community Plan should not be changed to allow the Children's Pool to become a marine mammal park as the Children's Pool is a Children's Ocean Swimming Pool and Pool for the Disabled, <i>the only one</i>. The City of San Diego is negligent with regards to the Commitment to the Trust of Ellen Browning Scripps and can not legally defy it and close the human swimming pool she bequeathed to the City. The City of San Diego committed in writing in 1932 to maintain the Children's Pool as human ocean swimming pool, therefore this pool cannot be a Marine Mammal Park. The seals have over populated the Children's Pool and decimated and unbalanced the underwater ecosystems. To close the Children's Pool will cause further potentially permanent damage to the environment. The seals in La Jolla are not endangered. They are over populated. |

B-1. Comment noted.

B-2. Comment noted.

B-3. The project is an amendment to the La Jolla Community Plan and Local Coastal Program to establish and Environmentally Sensitive Habitat Area at Children's Pool beach, a Coastal Development Permit to prohibit access to the beach area annually from December 15-May 15 and an amendment to SDMC 63.0102(e)(2) to make it unlawful to access the beach are during that same time. The project would require the installation of two signs at the existing wall and gate and a chain barrier at the second landing of the lower stairs of the existing set of stairs that provide access to the beach from December 15-May 15. As noted in Response A.2, the City determined that the project would not result in physical impacts and prepared a Negative Declaration consistent with CEQA.

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B-4

There is no need to create an ESHA for seals who are not a 'sensitive species'. Their numbers need to be reduced not increased. To create an ESHA for the seals will harm them, and will harm the environment not protect it.

- To allow pinnipeds to breed and pup on the Children's Pool sand will create a human & marine creature health hazard of fecal bacteria.
- THE PROPOSED PROJECT WILL HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT. AND AT LEAST ONE EFFECT HAS BEEN ADEQUATELY ANALYZED IN AN EARLIER DOCUMENT PRUSUANT TO APPLICABLE LEGAL STANDARDS, AND HAS BEEN ADDRESSED BY MITIGATION MEASUES BASED ON THE EARLIER ANALYSIS AS DESCRIBED ON ATTACHED SHEETS: SEE EXHIBITS ATTACHED

B-5

1a: AESTHETICS: TO CLOSE THE CHILDREN'S POOL WILL HAVE A SIGNIFICANT EFFECT ON THE AESTHETICS. TO VIEW SEALS DEFICATING AND POTENTIALLY STARVING TO DEATH IN A DETERIOATED CONCRETE POOL IS A NEGATIVE VISUAL IMPACT.

B-6

1b: POTENTIAL DAMAGE TO HISTORIC STRUCTURES:

The Children's Pool is a Historic Ocean seawall designed to protect human beings and if the pool is closed to people it will continue to deteriorate until it is condemned and crumbling. As a Historical Structure the City has failed to maintain it as promised:

1c. Watching seals have sex, pup and defecate and potentially starve to death is not educational. The visual character of watching families teach children to swim and learn about the sea and play at this legal playground and wading swimming pool is. As proof of this, please see the La Jolla Light May 2013 issue with an article about the starvation and a photo of dead pinnipeds that have starved to death while tourists watch on. This is proof positive of starvation. This is not good for children to view starving and dead pinnipeds wallowing in their own feces. It is much more educational for children to learn to swim in the protected breakwater of the Childrens Pool and learn to appreciate the delicate underwater balance. To learn to swim can save their lives

2

B-4. Comment noted. Please refer to Response No.A.4. The project does not exceed the City's Significance Thresholds for Visual Effect and Neighborhood Character.

B-5. The project will prohibit access to the Children's Pool beach area annually from December 15-May 15. Full access to the beach will be permitted from May 16-December 14. Additionally, the seawall will remain open for public access. Further, time-of-year construction limitations are already in place (e.g., for the Lifeguard Tower project) due to the Marine Mammal Protection Act. Time-of-year construction limitations are already in place (e.g., for the Lifeguard Tower project) due to the Marine Mammal Protection Act.

B-6. Comment noted. Refer to response No.B.4. The remainder of the comment does not address the project's potential significant effects on the environment and does not address the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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later on. Swimming is the educational part of Children's Pool not starving bacteria ridden seals.

1d. No impact

II . Agricultural and Forest Resources

a,b,c,d,e,: No Impact

III..AIR QUALITY

- a. There is a definite conflict with the air quality plan as the bacteria and fecal contamination may exceed air quality standards for particulates. **Particulates** are solid particles, such as ash, dust and fecal matter. In addition, particulate matter can contribute to asthma, heart disease, and some types of cancers. Studies must be done and this swimming pool must not close to become a seal poop pit. Therefore a potentially significant impact.
- b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation: See Response IIIa above, To add to this response is the fact that the neighbors across the street are already complaining about the stench from the fecal matter on the beach. Dead seals also create bacteria and stench. Therefore a significant impact and studies must be conducted. And there is significant impact on the air quality and the health and welfare of the neighbors.
- c. To close the Children's Pool would result in a cumulatively considerable net increase of the criteria pollutant of fecal matter therefore; to close Children's Pool creates a potentially significant Impact. See the report by the Center for Disease Control that seals can transmit diseases to humans: "some seals can carry tuberculosis and Giardia. Fecal contaminant bacteria and viruses would also be a potential concern." Also see the reports based on scientific findings in the minutes and records of the San Diego City Counsel (September 14, 2004) in hearings. It was recommended to dredge out the sand and open the sluiceways to clear away and prevent fecal bacteria buildup and to prevent the seals from hauling out as it was determined to be unhealthy. Nothing has changed. It is still unhealthy to breath fecal contaminated air. There are more seals now therefore; the potential is worse than in 2004 as the population of seals has increased significantly.

B-7

B-7. Comment noted. Refer to Response No. A.4. The project would not substantially affect the existing conditions in terms of the seal population and seal population trends in that, the elimination of people on the beach during pupping season does not result in an increase in the seal population on and around Children's Pool Beach; therefore, the project would not result in an impact to Air Quality.

LETTER

B-7

d. Issue: Expose sensitive receptors to substantial pollutant concentrations? Yes there are substantial pollutant concentrations that will affect sensitive receptors. Bacteria have affected, and will continue to affect the delicate balance of the underwater environment. Bacteria pollution kills anemones and shellfish and other sensitive receptors.

B-8

e. Issue: Create objectionable odors affecting a substantial number of people: Yes there is a potentially significant impact already from the odor of the fecal matter as a result of the over population of seals on an unnatural man made ocean swimming pool sand bottom. The residents of Casa Manana retirement center are already complaining about the seal stench. Many restaurants including the Herringbone located in La Jolla are complaining about the seal stench. To close Children's Pool to people will create an even more foul and potentially dangerous odor. Businesses could be adversely affected similar to the stench caused by the birds and starving and dead sea lions in La Jolla Cove.

IV BIOLOGICAL RESOURCES

B-9

- a. Yes the project does have a significant impact directly affecting marine species in the locale. Abalone is a sensitive special status species and is on the endangered list. Seals eat abalone and they do not have a chance to recover enough to grow into colonies. To close Children's Pool would be to further advance the all ready over populated numbers of Seals. The seals have run out of food in the children's pool area, from Children's Pool to Seal Rock, on the back reef and at S. Casa. The result of this over population has and will continue to have adverse affects on the following local species: lobster, abalone (a sensitive & protected species), Garibaldi (a sensitive & protected species), opal -eye perch, sea stars- all varieties, giant limpets, decorator crabs, kelp crabs, mussels (an indicator species). Mussels are wiped out from the seals devouring them. A mussel is a very important indicator species and is the food source for all tide pool species. The seals are beginning to starve following the trend of the sea lions, as they decimate all food sources and have to travel further out to sea to find food.
- b. Yes there is a significant impact and adverse affect on riparian habitat and other communities, as explained in the above IV a.

4

RESPONSE

B-8.

With respect to seal odor duration, it would not result from an increase in the seal population but instead from an increase in the number of seals hauled out at any one time. As previously noted in the Response to B.4, due to space restrictions, there is a maximum number of seals that will haul out on the beach at one time (250); however, it is conceivable that an access restriction could increase the frequency of haul outs, the number of seals hauled out, and/or the period of time it will take for the seals to regularly haul out at the maximum (250) number that will eventually occur (with or without the project).

An analysis of harassment events and seal counts during roughly the 2012-2013 seal pupping season was conducted to evaluate the impact of people on the beach to the number of seals on the beach. Between November 6, 2012 and May 15, 2013, the Ranger described 81 instances of human-induced flushing, capturing the time of day and the number of seals on the beach before and after the flush. In addition, the Ranger counted the number of seals and people on the beach at regular intervals during the day. Due to his scheduled end of his daily work schedule, the Ranger made a seal count subsequent to a flushing event for only 63 of the 81 harassment incidents. These are the 63 incidents which were considered for this evaluation.

Seals returned to the beach the same day in numbers equal to or greater than the number on the beach before the flush 41 out of 63 times (65%). When the seals returned to the beach in numbers equal to or greater than the number on the beach, they did so in an average of 3 hours. This average may overstate the amount of time required for the seal population on the beach to rebound because the data collected did not include the duration of the harassment and because post-flush counts were taken at more or less fixed times rather than immediately upon re-haul to pre-flush levels; however, the data underestimates the time that seals spent off the beach due to flushing because the Ranger was not present to document all flushes. The total time that seals were apparently not on the beach due to flushing during these recorded events is 124 hours and 20 minutes, which represents 3% of the 4,320 hours during the pupping season. In the 41 instances where seals returned to pre-flush levels by the last seal count of the day, the number of people on the beach numbered between 10 and 45; therefore, the data shows that the number of people on the beach did not necessarily affect the seals' tendency to re-haul to pre-flush levels after a flush (note however, again, that the post-flush count was not likely taken at the same moment that the seals re-hauled to the pre-flush number). Nor does this data take into consideration flushes that could have occurred in the absence of the Park Ranger, prior to the work shift beginning. Therefore, the Project would not result in an increase in odor.

B-9.

Please refer to Response No. A.4. The project would not substantially affect the existing conditions in terms of the seal population and seal population trends in that, the elimination of people on the beach during pupping season does not result in an increase in the seal population on and around Children's Pool Beach; therefore, the project would not result in an impact to Biological Resources. Further, the project would establish and protect a sensitive habitat area for breeding pinnipeds.

LETTER

RESPONSE

B-9

The seals have exceeded the carrying capacity of the local underwater environment creating a barren wasteland underwater, and potentially causing other species to be endangered. Also seals carry diseases. <http://www.slideshare.net/justaperson05/common-parasites-of-pinnipeds#> They may become sick from being penned in the concrete swimming pool and wallowing in their own bacteria and feces and afterbirth. This does not get washed away because the swimming pool wall prevents the surf from washing the beach clean. Diseases may prevail and affect other species including humans.

B-10

Another community that is affected is the 19 Native American Nations that have specific access rights to the Children's Pool. Children's Pool cannot ever close to these Native Peoples by virtue of their National Rights.

c. Issue: No Impact.

B-11

d. Yes there is a potentially significant impact as the over population of seals at the Children's Pool does interfere with movement of the native Garibaldi, the opal eye perch, abalone, mussels, sea-stars, crabs and lobsters and others. Research must be conducted and should have been on going since SeaWorld released the seals years ago. The seals have been doubling or tripling in numbers and have eaten and will continue to eat any species in site until there is no more. Then starvation of the seals may occur as are the sea lions. Please reference Valerie O'Sullivan vs.

e. No impact

B-12

f. Issue: Yes there is a significant impact on approved local plans for the Children's Pool is a human ocean swimming pool for 'those handicapped in life's game' (Ellen Browning Scripps) The Children's Pool was especially built for the children, especially disabled children. This was approved long ago as the specific reason for the breakwater wall to create a human ocean swimming pool. Also the abalone, lobster and Garibaldi are all protected and therefore part of habitat conservation plans. Removing humans from the human swimming pool will cause the pool to stagnate in feces and afterbirth and stench.

V Cultural Resources

B-13

a. Yes there is a significant adverse impact on the historical significance of the Children's Pool Trust and use as a Children's safe swimming pool and pool for the disabled. There is the 100-year historical use of the Children's Pool, even before the breakwater wall was built, it

*See attached historical documents...
Very important...*

5

B-10. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-11. Please refer to Response No. A.4. The project would not substantially affect the existing conditions in terms of the seal population and seal population trends in that, the elimination of people on the beach during pupping season does not result in an increase in the seal population on and around Children's Pool Beach; therefore, the project would not interfere with the movement of migratory fish or migratory wildlife corridors. Further, the project would establish and protect an ESHA and would enhance the use of the site as a wildlife nursery.

B-12. Comment noted. Please refer to Response A.4.

B-13. Comment noted. CEQA Guidelines Section 15064.5(b)(1), "Determining the Significance of Impacts to Archaeological and Historical Resources" reads as follows:

Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

"Materially impaired" is defined in Section 15064(b)(2) as a demolition or material alteration which alter the physical characteristics of the resource which account for its inclusion in a register or that convey its historical significance..

The project would not physically alter the site; therefore, no significant impacts would result.

LETTER

RESPONSE

B-13

go to link

was a natural deep ocean pool protected by the reef. Swimmers, including disabled swimmers have been using the Children's Pool for over 100 years as a safe exit from the ocean. The La Jolla Swim Club has disabled swimmers with- out the use of their legs that use Children's Pool as it was designed as a safe exit from the ocean and safe entry into the ocean. This is the reason for the breakwater wall. If the pool is closed to humans, there is the very real potential of causing people to drown swimming long distances from the Cove, as people have been doing and will continue to do. The beach just before Children's Pool coming from the Cove to the South is Shell Beach with the most dangerous rip tide in Southern California, (Mark Brown, retired lifeguard and Rocks, Rips and Reefs instructor). To try and exit Shell Beach is dangerous and life threatening. Children's Pool is a safe haven historically. And the natural currents push people into the safe haven the breakwater is designed to provide (see the Rocks Rips, and Reefs 2012 Shell Beach Video on YouTube; <http://www.youtube.com/watch?v=-Kt7js4msB4> especially the last clips where the lifeguards point out the dangerous rip tide and shows tired swimmers having to exit at the Children's Pool or risk drowning) *Safe harbor!*

B-14

V a. continued: Also there is significant impact on the 19 Native American Tribes who have specific & undeniable access rights to the Children's Pool. The City of San Diego will have to obtain permission from the 19 Tribes before closing the Children's Pool. Also it is a long standing fishing culture that is being wiped out by the closures. The seals have eaten and will continue to consume mass quantities of bio mass and many historical species such as mussels and giant limpets and abalone and other protected and sensitive species such as lobster will continue to be wiped out by the voracious pinnipeds.

B-15

This is a significant reason to keep Children's Pool open year around, 24 hours a day. The Children's Pool is indeed a cultural and historical breakwater wall. To close Children's Pool is obliterate the cultural significance of the 80-year-old Trust, which in itself is a Cultural Historical Treasure. To close the Children's Pool will eliminate the historical and cultural important reason for the pool. Safety. Children and the Disabled. All will be displaced by the closure of this human ocean swimming pool. This is the only ocean swimming pool in the Continental United States, and as such is a Historical and National Treasure. The Children's Pool is equipped with one of the very first ramps to the high water mark for disabled people,

6

B-14. Comment noted. Please refer to Responses A.4.

B-15. Recreational impacts to all people are discussed in the Negative Declaration under XIV *Public Services* and XV *Recreation*. The document concludes that, based upon Park Ranger observational counts, the majority of visitors come to view the beach from the sidewalk or breakwater. The project would not impact that access. Visitors who come to use the sandy beach area and access the water at Children's Pool would be required to find access at another location from December 15 to May 15. The effect on other beach resources would be negligible and temporal in nature. All beach users can fully access the beach from May 16 to December 14. The comment on legal ADA compliance does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

B-15

B-16

ADA LAWS... Federal & State...

including crippled children, for whom the breakwater wall was built. The ramp was open and usable for decades. Much local memory and albums of photos exist to prove this. It is the ONLY human ocean swimming pool with a ramp. To close the only ocean swimming pool that has been used for decades by the disabled is to break every ADA law for swimming pools and for beach access.

Children's Pool is a Swimming Pool - FIRST to a beach sand.
The Children's Pool is a physical therapy pool for paralyzed swimmers historically. Ellen Browning Scripps stated that the pool was especially designed "for those handicapped in life's game". *The Ramp there IS the 1st RAMP for the DISABLED to the high water mark. The Gate is locked now. Please OPEN it Again.*

To summarize this affect: To Close the Children's Pool to human use it's to completely obliterate the legal and recorded and accepted historical trust left by Ellen Browning Scripps.

To add the use of Marine Mammal Park is not legal, was not legal and to close the pool will be breaking the Trust and wiping out the purposes for which the wall was specifically designed for: To Create a safe Human Ocean Swimming Pool. This is illegal on many levels.

And is a serious insult to the La Jolla residents many of whom are disabled and could swim there if the ADA laws were not being broken. If the ADA laws were honored and if the Trust was honored, and the pool was restored as was promised by the City when it accepted the Trust, the Children's Pool could again be the best ADA ocean swimming pool in the United States. This is the Historical Use and Priority for this Historical Treasure. Furthermore the breakwater wall needs to be restored to its original condition, the sand dredged out and the sluiceways opened to keep the pool clean as it was designed to be. Otherwise the best thing would be to demolish the wall back to reef. The sand would then be washed away and there would be just a natural reef pool and the seals would haul out elsewhere. The wall is beginning to crumble and its shameful that this historic breakwater was not honored and maintained as promised by the City of San Diego when Ms. Scripps built and donated it to the City. It will very soon be too dangerous to walk upon this historic breakwater, as it has not been maintained and is crumbling. It is already dangerous to walk upon it as the surface has deteriorated and is very sharp. The City has not honored this gift and the only safe place for disabled people to swim in the ocean.

V.b. No impact .

7

B-16. Comment noted. This comment, including the ADA and Trust legal issues, does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

B-17

V.c. No impact

V.d. No impact

VI. a i) No impact

a ii) No impact

VI.b. No impact

VI.c. Less than significant impact.

VI.d. Significant impact. The rope has already falling down and been found around the neck of a seal on the beach. Ropes are dangerous to have on a beach in general, and studies need to be completed to determine if the rope poses a danger itself.

V.I.e. No impact

VII Greenhouse gas emissions, either directly or indirectly, that may have a significant impact n the environment?

B-18

a. Generate greenhouse gases: This is potentially a significant impact:

Unmanaged manure contributes nutrients, disease-causing microorganisms, and oxygen-demanding organics to the Nation's waters. Nonpoint source pollution is recognized as the primary category of water pollution that is not yet controlled, and unmanaged animal manures contribute to nonpoint source pollution. Seal feces at the Children's Pool do not wash away and builds up each day on the beach. Ammonia and methane emissions will create odors to the residential area across the street. Methane has been identified as one of the primary contributors to the group of greenhouse gases linked to global climate change. Hundreds of seals penned in a concrete structure defecating all over the beach constantly are a source of greenhouse gases and pollution of the air and beach sand.

B-19

VII.b.: potentially significant impact: Having hundreds of seals in a very small penned in area adding rotting feces to the environment 24 hours a day may have a significant impact on the environment.

8

B-17. Comment noted. The project is an amendment to the La Jolla Community Plan and Local Coastal Program to establish and Environmentally Sensitive Habitat Area at Children's Pool beach, a Coastal Development Permit to prohibit access to the beach area annually from December 15-May 15 and an amendment to SDMC 63.0102(e)(2) to make it unlawful to access the beach are during that same time. The project would require the installation of two signs at the existing wall and gate and a chain barrier at the second landing of the lower stairs of the existing set of stairs that provide access to the beach from December 15-May 15. The project does not include installation of a rope barrier.

B-18. Comment noted. The project would not substantially affect the existing conditions in terms of the seal population and seal population trends in that, the elimination of people on the beach during pupping season does not result in an increase in the seal population on and around Children's Pool Beach and project installation would not involve construction; therefore, the Negative Declaration concluded that potential impacts from project related Greenhouse Gas Emissions (GHG) would be less than significant.

B-19. Comment noted. This section of the Negative Declaration discusses whether a project would conflict with an applicable plan, policy and/or regulation adopted to reduce GHG. The project would not conflict with the General Plan Conservation Element or any of the other General Plan policies related to GHG reductions; therefore no impact would occur.

LETTER

RESPONSE

VIII. Hazards and Hazardous Materials

VIII.a. No impact

B-20

VIII.b. There is a potential significant impact by the release of fecal bacteria into the sand, the soil and airborne via stench and bad odors. There is a retirement community just a few feet away and the residents are very elderly and infirm. Their immune systems may be weakened due to disabilities and may be more susceptible to illness from the bacteria. Just the odor can make them sick. Many of these residents are already 'upset' because of the smell into their beautiful La Jolla retirement homes. And this has led to the testimony of further 'upset-ness'

that the beach they raised their own children at is ruined. I have spoken with several of these residents; to have to endure the results of this pollution is insulting to them, and very disrespectful of these V.I.P's. They deserve to live across the street from the Children's Pool with children playing there, to enjoy their memories, to be able to stroll on the breakwater that should be restored and safe. This is the reason there should not be pollution of Children's Pool and it should remain open and be completely restored. This is their right. These are our Nation's Elders. This is an exclusive subdivision in the Jewel of La Jolla. Children's Pool should be restored to its Grandeur. Then there will be no pollution only laughter and learning and sea stars and abalone.

B-21

VIII.c : There is a potentially significant impact and bacterial hazard to the public from an over population of seals, in a closed in concrete swimming pool who's sluiceways are broken. The sluiceways were designed to keep the water clean. See answer for VIIIB. There is a church with a Sunday School ½ mile away. I don't know how you came up with criteria of ¼ mile, as the stench is already traveling with the wind. There is a retirement center less than a block from the Children's Pool that is already suffering the noxious fecal odors.

VIII.d.: No impact

VIII.e.: No impact

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B-20. Regarding odor, please refer to Response No. B 8. Regarding the term *upset*, this section of the Negative Declaration is referring to Hazards and Hazardous Materials. Issues analyzed within this section include those associated with the routine transport, use, storage, or disposal of hazardous materials; the potential release of hazardous materials into the environment; the potential to emit hazardous emissions or handle hazardous materials within one-quarter mile of a school; the location of a project on a hazardous materials site; and interference with an emergency evacuation plan.

Hazardous materials include petroleum products (including oil and gasoline), automotive fluids (antifreeze, hydraulic fluid), paint, cleaners (dry cleaning solvents, cleaning fluids), and pesticides from agricultural uses (if in significant concentrations). Byproducts generated as a result of activities using hazardous materials (such as dry cleaning solvents, oil, and gasoline) are considered hazardous waste. Contamination usually takes the form of a hazardous materials or waste spill in soil. Such contamination can penetrate soils into the groundwater table, resulting in the pollution of a local water supply.

The project site does not contain hazardous materials as described above and the project would not pose a risk of upset, which is the potential release of hazardous materials into the environment.

B-21. Please refer to Response No. A.4. The ¼ mile distance reference is from the CEQA Guidelines, Appendix G Environmental Checklist form.

LETTER

RESPONSE

VIII.f.: No impact

B-22

VIII.g.: Closing the Children's Pool will have a significant, and potentially significant impact on the adopted emergency response plan for swimmers including disabled swimmers to exit at the Children's Pool to save their lives. An emergency exit has been adopted and used by swimmers, and lifeguards for more than 80 years at this specific site. It was the reason for the design and the construction of the Children's Pool. Safety. This is a very common destination for Swim Clubs, such as "The Other Law Jolla Swim Club", The La Jolla Swim Club, The Snorkel-Swimming Club of San Diego, and others. Many people swim from La Jolla Cove into the safety of the Children's Pool. People entering at Shell Beach to the South of Seal Rock many times find their selves in a very dangerous rip tide and are unable make it back to exit at Shell Beach, and have to exit at the Children's Pool as it is a safe haven. To close Children's Pool to swimmers is to potentially cause them to drown trying to get in at Shell Beach. This is a very important reason that Children's Pool MUST stay open to swimmers. **Safety.**

VIII.h.: No impact

IX. HYDROLOGY AND WATER QUALITY

IX.A.: Violate any water quality standards or waste discharge requirements?

B-23

There will be a significant impact on water quality standards and discharge requirements as the fecal contamination from the over population and density of seals is causing now. To close Children's Pool will cause the pollution to increase dramatically. There are already signs at the Children's Pool warning of fecal bacteria contamination from the seals. This is very wrong. The seals should not be allowed to haul out at Children's Pool. It has caused the beach to be polluted. And the seals are beginning to become ill from their own filth. And now are beginning to die as well adding to the contamination. Their carcasses are sinking in the eelgrass and are bait to sharks. Rotting seal bodies add to the bacteria pollution as the populations have been allowed and even encouraged to increase to the point causing the Children's Pool to be polluted. The bacteria are not healthy for mammals, marine or human. Please refer to the Journal of

B-24

10

B-22. Comment noted. It is unlikely that someone would allow themselves to drown rather than risk coming ashore at a closed beach. Nor would City Life Guard personnel allow a swimmer to drown. Refer also to response No. M.38.

B-23. Please refer to Response A.4. The project would not substantially affect the existing conditions in terms of the seal population and seal population trends in that, the elimination of people on the beach during pupping season does not result in an increase in the seal population on and around Children's Pool Beach.

B-24. Please refer to Response A.4. The project would not substantially affect the existing conditions in terms of the seal population and seal population trends in that, the elimination of people on the beach during pupping season does not result in an increase in the seal population on and around Children's Pool Beach.

LETTER

RESPONSE

B-24

Wildlife Diseases, 24(3), 1989, pp. 319-328 that explains that the reason for death in a situation of over population is starvation & bacteria infections. The bacteria *Proteus* sp. A and *Escherichia coli* were the most common of nine species of harmful bacteria. The seals die from the combination of these two reasons. This is not a healthy environment for the seals. The bacteria cause many baby seals to be born prematurely. The water quality standards will continue to become worse if the Children's Pool is no more and becomes The Seal Poop Pit. Has the City not learned from the same issues at the Cove? The Cove is the best example I can give: People used to frequent the cliffs and ridges to picnic and sun. For centuries. Groups calling themselves environmentalists try to control the natural environment and make a change. Indigenous peoples lived and frequented these very same cliffs and ridges. Then the cliffs and ridges are closed to people, to protect the sea lions. The birds move in, and more sea lions move in. Now? There is a serious over population of both and stench and businesses closing. Why do the same thing at Children's Pool? Learn from the mistake! Fecal bacteria is pollution, any fecal bacteria, seal or human and detrimental to both.

IX.b.: No impact

IX.c.: No impact

IX.d.: No impact

B-25

IX.e.: There will be a potentially significant impact to the run-off water from the Children's Pool beach sand into the ocean water and especially pollute the shallow water and the sand bottom. This pollution kills many species of tide pool creatures. When it rains this pollution washes from the upper part of the sand where the seal and gull feces and seal after-birth and bacteria has been allowed to accumulate for months on end and it runs off into the Pacific Ocean, polluting it. This mixes with the run off from the street and really makes for a noxious toxic potential. This is unhealthy for all mammals, for all life.

The Solution is to open the sluiceways and dredge out the sand.

11

B-25. Comment noted. Please refer also to Response No. A. 4.

LETTER

RESPONSE

B-26

For studies done with relation to excrement bacterial pollution on the Children's Pool and solutions as ordered by the City, approved by NOAA and researched by Scripps Institute of Oceanography please refer to the Superior Court Case, County of San Diego Case number: 826918 Statement of Decision, AKA: "The O'Sullivan Case". All the studies relating to the exact same issues were conducted and completed and the decision based upon the conclusive findings were that the beach is polluted due to an over population of seals and the sand was ordered to be dredged out and the sluiceways opened. This order was never obeyed and now the problems are the very same only much worse. To close a beach and cause severe pollution is not logical. To deny disabled people the only ocean pool for them is mean and is wrong. It is not healthy for mammals to wallow in their own excrement. This is not good stewardship of these marine mammals or respectful of this Nation's ADA laws at the **only ocean swimming pool safe for wheelchair swimmers!!!!!!!!!!!!!!!!!!!!!!**

IX.f. Same answer as I.X.e.

IX.g.: No impact

IX.h.: No impact

IX.i.: No Impact

IX.j.: No impact

X.LAND USE AND PLANNING

B-27

X.a.: Yes the project will physically divide an established community therefore; there is a potentially significant impact. 19 Native American Nations would be divided from their homeland and native shoreline. These 19 Tribes have access rights that predate the state and have priority legally. Please see the minutes of the La Jolla Planning Association Meeting. The La Jolla Swim Club, the Snorkel Swimming Club of San Diego, The San Diego Free Divers, and many other organizations will be divided as Children's Pool is the safe entry and exit to prevent drowning's. People have been swimming into the Children's Pool even before the wall was built. It is a

B-28

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B-26. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-27. The project is an amendment to the La Jolla Community Plan and Local Coastal Program to establish and Environmentally Sensitive Habitat Area at Children's Pool beach, a Coastal Development Permit to prohibit access to the beach area annually from December 15-May 15 and an amendment to SDMC 63.0102(e)(2) to make it unlawful to access the beach are during that same time. The project would require the installation of two signs at the existing wall and gate and a chain barrier at the second landing of the lower stairs of the existing set of stairs that provide access to the beach from December 15-May 15. As such, it would not result in a physical division of an established community.

B-28. Comment noted. Refer to Response No. B.22.

LETTER

RESPONSE

B-28

safe harbor to prevent drowning's, the current brings people into this area. People will potentially drown if this beach is closed.

B-29

X.b.: Seals are not endangered and they have over populated to the point of causing underwater devastation to other species by devouring tons of bio fuel I. The seals themselves are threatening other sensitive species such as Garibaldi, abalone and lobster. Studies must be conducted over a period of time and the seals must be relocated and managed to protect the underwater ecology. I request that studies be done regarding the overpopulation of the seals and the impact of same on the ecology of the underwater environment, and also with regards to the continued pollution from the feces are urine and afterbirth and the resulting airborne bacteria.

B-30

This project conflicts with the Trust of Ellen Browning Scripps and the subsequent promise of the City of San Diego to maintain for all time The Children's Pool as a Children's Bathing pool and playground. You cannot add a use to a trusted land that obliterates the original and therefore priority uses. In this case this land use cannot change from a safe and clean swimming pool for children and the disabled. This is the law. It was never legal to amend the trust to add a use that does away with the intent of the trust. This MUST be revisited and I do hereby accuse the City of San Diego negligent in its duties as Trustee of the Trust of Ellen Browning Scripps. And therefore request a thorough re-examination of the O'Sullivan Case and the Justice of same. I think that it may not have been legal to change a dead woman's Trust. Please see the letter from J.B. Pendleton, Board of Playground Commissioners, and City of San Diego dated July 11, 1930. This is a legal document from the City to Ms. Scripps' attorney with a commitment for maintenance of the Children's Pool as a bathing pool for Children. This is a Pool that was built especially for the disabled, "For those handicapped in life's game' and if this pool is closed you will be breaking the ADA Laws that state there must be access to the high water mark every ½ mile of coast line. This pool is the only safe pool for the disabled and has a ramp already that has been used for decades for the disabled. It is wrong to prevent people in wheelchairs from swimming.

In reply and with regards to the General Plan

13

B-29. Comment noted. Refer to Response No. A.4. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-30. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Land Use Element:

- B-31** E. Planning for Coastal Resources: This project is not consistent with LU-E.1. If the Children's Pool is closed it will greatly impact the following policies:
- B-32** 1. Biological resources: The fecal contamination and pollution of the beach/sand and tide pools
- B-33** 2. Public access: Children's pool was designed & constructed for the public, to close the pool will deny public access to a human ocean swimming pool for the disabled. This will displace all the disabled swimmers, as there is no other ocean swimming pool for them to go and be safe entering and exiting the water. If you force them to into the surf they may drown. This is very serious. Try swimming with out the use of your legs. You are in the position to right a wrong, this is a pool for crippled children, please allow them to keep it and restore it for them.
- B-34** 3. Recreational opportunities: The Department of Fish & Wildlife needs to be a part of this decision, and before you close a public fishing beach you need to have their input and studies done. This is the only safe place for children to fish with their parents. People have been fishing here for years. Swimming: This is the only ocean swimming pool in our Continental U.S. and as such is unique in that it affords a safe place to experience the sea for small children and their families. When one learns to love the ocean, one becomes a steward of the ocean; this was the vision and intent of Ms. Scripps when she hired an engineering firm to construct the breakwater to create a swimming pool over a reef and around a natural ocean pool. To close the pool dishonors the Trust of La Jolla's Benefactor, The Scripps Family. This is the only safe place for disabled people and children to learn how to snorkel, and scuba dive. Even quadriplegics scuba dive at the Children's Pool, please see this video:
<http://www.youtube.com/watch?v=TNwpoOd-Jbk>
- B-35** If you close The Children's Pool, this man, Mark will not be able to scuba dive there and there is no other safe place in the real ocean for him close enough to his home in San Diego. If the pool is closed it will remove any

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- B-31.** Comment noted. LU-E.1 states "Incorporate community-specific policies into Coastal Zone community plans during community plan updates and/or amendments to address the Coastal Act policies direction regarding biological resources and geologic stability, circulation, parking, beach impact area, public access, recreational opportunities, visitor-serving, and visual resources. " Section X Land Use Planning of the Negative Declaration discusses the project's consistency with this and many other General Plan and La Jolla Community Plan policies. The document concludes that the project is consistent with and implements General Plan and community plan policies.
- B-32.** Comment noted. Please refer to Response Nos. A.4.
- B-33.** Comment noted. Please refer to Response No. B.15.
- B-34.** Comment noted. The Negative Declaration was sent to the State Clearinghouse for distribution to state agencies, including the California Fish and Wildlife Department. The City did not receive any comment letters from state agencies. Refer to Response No. U.1.
- B-35.** Comment noted. It does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

B-35

chance of recreation at all. The Children's Pool by definition is a Children's Playground and as such children should be allowed to play beach ball, beach volleyball, build sand castles, explore the cave there, wade in the water and run and play and laugh and scream with delight. This cannot occur and add the use of marine mammal park. Feces cannot be in a children's bathing pool and pool for the infirm, which Children's POOL is!

General Plan

Recreation Element:

Preservation

B-36

RE-C.4: If the Children's Pool is closed it will not preserve the beach for the public. The seals are not endangered and therefore cannot be considered a sensitive habitat species. The seals are drawn to the beach because SeaWorld released them, and the seals born on this beach have tripled each year with people there, therefore people do not need to be prohibited. People have not have any negative affects on the seals. The opposite is in fact true. Seals are defecating and polluting a bathing pool and playground. This is only 200 feet of public ocean swimming pool beach, there are hundreds of miles of beaches for the seals to haul out on. This ocean swimming pool should be restored as the Court order

B-37

RE-D.7: To close the beach will not be in alignment with providing public access to this beach for recreational purposes. To close the beach will prevent access to the public, to the Disabled, to the Elderly and to Children and Families.

b. This project is not consistent with the Conservation Element.

B-38

This violates the Conservation Element, Chapter one, #3 :Prevention and Control of the pollution of streams and other waters. The ocean will be polluted, especially the tide pool shallows from the fecal build up and subsequent bacteria to the detriment of humans and seals, and other tide

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B-36. General Plan policy RE-C.4 reads, "Preserve all beaches for public-only purposes, including the protection of sensitive habitat and species."

While the commenter is correct that harbor seals are not a sensitive species, this does not result in a project conflict with the cited General Plan policy. Please refer to Response No. B.15.

The clarifying revision to the Environmental Setting section in the Negative Declaration notes that the baseline condition includes the fact that individual seals are experiencing a certain level of physiological impact due to human harassment.

B-37. General Plan policy RE-D.7 reads in its entirety: "Provide new and preserve and enhance existing public beach access, where appropriate". The phrase "where appropriate" allows the City to limit access as described in the Negative Declaration without amending the General Plan. Please refer also to Response No. B15.

B-38. Please refer to Response No. A. 4.

pool creatures. Note: The mussel population, the food source to most tide pool creatures is already depleted in and around the Children's Pool. Please have studies completed regarding this elimination of mussels and what that means to the other tide pool creatures, such as sea-stars, abalone, lobster, and Garibaldi. Please have Garibaldi studies conducted as well, and compare them to the studies that you must have already for this area for Garibaldi. On recent dive I counted 5 Garibaldi where normally I could count at least 30. Their numbers are reducing quickly. Normally one can actually see the beautiful orange protected CA State Ocean Fish from above looking down in the sea in several locations, and now this is not evident. It is the age-old law of Supply and Demand. The sharks have been seriously over hunted:

By JoAnn Adkins

03/01/2013

B-39

The world's shark population is experiencing significant decline with perhaps 100 million or more sharks being lost every year, according to a study published this week in *Marine Policy*.

While sharks are one of the oldest vertebrate groups on the planet, the population decline is causing global concern.

In the recently published paper, "Global Catches, Exploitation Rates and Rebuilding Options for Sharks," researchers from Dalhousie University and University of Windsor in Canada, as well as Stony Brook University in New York, FIU and the University of Miami calculate total shark mortality and outline possible solutions to protect the world's shark population.

"This is a big concern because the loss of sharks can affect the wider ecosystem," said Mike Heithaus, executive director of FIU's School of Environment, Arts and Society and co-author of the paper. "In working with tiger sharks, we've seen that if we don't have enough of these predators around, it causes cascading changes in the ecosystem, that trickle all the way down to marine plants."

With a hundred million sharks being hunted for years on end, this reduced the populations of the world's sharks drastically. Sharks eat seals and sea lions. Their populations went up since they were not being hunted as much. (supply and demand) Sea World and other rescue organizations rescue lots of pinnipeds that would otherwise be part of the food chain and the natural circle of

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B-39. Please refer to Response No. A.4. The project would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom (e.g. shark populations and shark population trends). CEQA requires that project impacts be assessed by comparing the baseline, existing physical conditions on the ground at the time that the environmental review is commenced, with post-project conditions. It would be inconsistent with CEQA to conduct an impact analysis based upon a comparison of the baseline condition to a speculative future scenario.

LETTER

RESPONSE

life in the sea. They make lots of money doing this. The very same mammals are sometimes rescued over and over. It's more of a racket and it only exacerbates the population explosion. We all love seals therefore we must love their home, the ocean. It's all about balance. And there is a serious lack of balance at the Children's Pool and up and down the coast of La Jolla. Please have this studied. It may be prudent to relocate the seals to the Channel Islands where the environment may be able to support their large populations. Give our seashores a break from the onslaught of voracious pinnipeds and maybe they can recover. Close the pool and you will only exacerbate this already disastrous situation.
http://www.malibutimes.com/news/article_48007dce-9970-11e2-ad51-001a4bcf887a.html

B-40 c. Provide new, and preserve and enhance existing public beach access, where appropriate. This project will not enhance existing public beach access; it will remove all access from recreational children's park and bathing pool. This project is contrary to enhancement of the beach.

F. Open Space Lands and Resource-Based Parks.

B-41 RE-F.2 This project will not develop sensitive recreation; this project removes all recreation from the beach and swimming pool. Passive viewing will be what is left at this playground and human ocean swimming pool. And do we really want to be view what could very well be the seals starving. The sea lions a block away are starving now in front of the tourists. <http://www.lajollalight.com/2013/04/09/city-must-consult-federal-agency-when-removing-dead-sea-lions-at-la-jolla-cove/> Its stands to reason that the seals will be next. 60+ pups were born at the Children's Pool! Those pups will be weaned soon, many are already (5/17/13) and they will be in the competition for the remaining food sources, which are depleted as in the case of mussels, or dwindling as in the case of Garibaldi. This is from my own research, this is from my honest observations from the last three years of constant diving and observing. They are beginning to starve now and I believe they will continue to. The politics of the Children's Pool has caused the City to stop the maintenance of the Pool and has allowed it to deteriorate. The pool is crumbling and soon it could be condemned if not restored. This was an engineering feat, Please take the time to read this:

http://www.sandiegohistory.org/journal/v51-3/pdf/v51-3_pool.pdf

B-43 This pool was very well engineered, and built to last for more than 100 years if properly maintained. The City of San Diego accepted the responsibility to do this and then never did! Please right this wrong. This is where the ball dropped. So it is

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B-40. Please refer to Response Nos. B.15 and B.37.

B-41. General Plan policy RE-F.2 does not apply to beaches; however, similar to other policies, this policy suggests that decisions on developing recreational uses balance recreational needs with natural resource impacts. Please refer to Response Nos. B.3 and B.15.

B-42. Comment noted. Please refer to Response No. A.4.

B-43. Comment noted. It does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

still logical to honor the trust, restore the pool, and make this the beautiful Jewel of La Jolla it once was. A clean and balanced place; with Children including disabled Children. They can be safe and learn to swim in the real ocean, like no other place in our area. And the seals would not haul out there they; should be discouraged from doing so. Please again refer to the O'Sullivan Case, where Marine Mammal Experts recommended this action, that it was safe to 'harass the seals by dredging out the sand, they would just go a football field away to Seal Rock and all the other beaches.

RE-F.2

B-44

c. This project will not maintain 'open lands' this project will close the lands. And will close this beach to fishing/ spearfishing and disallow the site characteristics as per the State Trust for The Children's Pool. " That said land shall be devoted exclusively to public park, bathing pool for Children, parkway, highway, and recreational purposes...with absolute right to fish.

Conservation Element:

B. Open Space and Landform Preservation

B-45

CE_B.1 Due to the ever-increasing population of the harbor seals there is a need to buffer them from the ecosystem that they are devastating. There is a need to dredge out the sand so the pool is restored and clean, and the seals will then have a pool as the buffer between them and humans. They will simple swim to Seal Rock and the rip tide there is the natural buffer, as people do not frequent the rip tide for swimming. To close the pool will eliminate recreational opportunities. People have been swimming into the Children's Pool as a safe haven to prevent drowning for decades.

B-46

C. Coastal resources CE-C.5 No limitation of public use is necessary at the Children's Pool. Children's Pool is an active learning lab where the students participate in the environment by learning how to swim! That is what this human ocean swimming pool was built for. The seals continue to use the pool with humans there.

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B-44.

Comment noted. It is assumed that this comment refers to General Plan policy RE-F.2.b: "Design and maintain open space lands to preserve or enhance topographic and other natural site characteristics. This policy does not apply to beaches; however, similar to other policies, this policy suggests that decisions on designing and maintaining park lands should balance recreational needs with natural resource impacts. Access restrictions would only be effective during the harbor seal pupping season.

B-45.

The referenced General Plan policy CE-B.1 explains the multiple reasons for the preservation of open space areas and refers primarily to land based open space areas. The project is not inconsistent with this policy. Please also refer to Response Nos. B. 15 and B.22.

B-46.

Comment noted. General Plan policy CE-C.5 reads: "Limit the use of beaches and shorelines to appropriate coastal-dependent and ocean -oriented recreational/educational uses as identified in the local coastal/community plans". The project is not in conflict with this General Plan policy. Please refer to Response No. B.31 regarding project consistency with the General Plan and La Jolla Community Plan and Local Coastal Program.

LETTER

RESPONSE

- B-47** CE-C8: The rope is visual clutter, and negatively affects the public's reasonable use and enjoyment of the resource.
- B-48** CE-C12: To close the beach any time of the year goes against the policy to ensure that all City beaches and shorelines are accessible and available for appropriate public use for all users, especially the disabled.
- La Jolla Community Plan and Local Coastal Program.
- B-49** The plan stresses balance with protection and use and closure of the beach is not consistent with this plan. The goal includes the protection of wildlife. The over population of the seals has exceeded the carrying capacity of the underwater eco-systems. Closure of this swimming pool will exacerbate and create further imbalance of the underwater life in the sea. This closure will be adverse to the policy of protecting wildlife (aquatic).
- B-50** The Children's Pool is a human ocean swimming pool made from concrete. It is not logical to consider the seal population as sensitive. They are not endangered. Their populations have increased substantially each year. The truly sensitive resource is the 'balance' of the eco-system at this location, which is disrupted by mismanagement. A park is by definition a managed site therefore Children's Pool cannot be logically be a preserve and still be a Recreational area.

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- B-47.** Comment noted. Please also refer to B.17. The project would not change the baseline condition (i.e., rope in place) outside of the pupping season.
- B-48.** Comment noted. The project is not inconsistent with this General Plan policy. Refer to Response Nos. B.15 and B.31.
- B-49.** Comment noted. Refer to Response Nos. A.4.
- B-50.** Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Natural Resources and Open Space Systems Element

Goals:

- B-51** Closure of the Children's Pool does not enhance public access to La Jolla Beaches. To close the beach will eliminate the experiences of snorkeling, swimming, playing, and spear fishing, and learning to swim in the ocean.

Policy:

Open Space Preservation and Natural Resource Preservation:

- B-52** b. Seals are not a sensitive resource since they are not an endangered species. The sensitive resource is the eco-system made up of the creatures that the seals feed upon. The sensitive resource, the aquatic life can be protected by a managed park not a mismanaged seal preserve. The seals have not been disrupted by human use of the Children's Pool. The proof of this being the over population.

Issue:

- B-53** c. Conflict with any applicable habitat conservation plan or natural community conservation plan? There would be a significant impact on the populations of mussels, abalone, lobster, and giant limpets. Abalone are protected, as are the Garibaldi, the over population of the seals is decimating these sensitive resources/species. Closure of the Children's Pool will cause the seals to over populate even further. This conflicts with the purpose of the Marine Life Protection Act, which is to increase diversity and abundance of marine life.

XI. Mineral Resources

20

- B-51.** Comment noted. Refer to Response Nos. B.15 and B.31.

- B-52.** Comment noted. Please also refer to Response No. A.4.

- B-53.** Comment noted. Refer to Response No. A.4.

a. No impact

b. No impact

XII Noise

a. No impact

b. No impact

c. No impact

d. No impact

e. No impact

f. No impact

XIII. Population and Housing

a. No impact

b. No impact

c. No impact

XIV: Public Services

i) Fire Protection: No impact on fire.

ii) Police Protection: No impact

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LETTER

RESPONSE

- iii) Schools: No impact
- B-54** iv) Parks: Closure of the Children's Pool will limit and prevent use at this park. The rope on the beach is a clear indicator that the beach can be assessed.
- B-55** Response to the City's report that people are not using the beach and instead are only looking at it. For over a decade people have been discouraged from using the beach by verbal and physical harassment. This along with the presence of a rope over 90% of the beach has resulted in a reduced use of the Children's Swimming Pool. People are afraid of getting in trouble there. The need for this beach has not been reduced. The public including disabled people does not have a beach or ocean pool of equal quality and safety to go to. This is the only ocean swimming pool with a protective breakwater sea wall. The seals do not need the protection, disabled people do. People do use this beach when they are not discouraged from doing so. People have been yelled at with bullhorns, children threatened, people spit on, tires slashed, death threats all in the name of seals. Your counts are biased and useless as they are based upon counts done on days when seal opportunists have been there telling people not to go onto the beach. Take the people away and the seals away and watch the children and families come. Open up the normal access ramp there for years for most of society, children, the disabled and the elderly. The first time I went there to swim women with bullhorns accosted me and I was told not to go onto the beach. This is the only reason why people are not going there all year. There are plenty of days in the winter for going to the beach with kids and I snorkel swim all year long for therapy. To read about the history of 80 years that you will be wiping out if you close this pool please go to: http://www.sandiegohistory.org/journal/v51-3/pdf/v51-3_pool.pdf
- B-56** Please read the following research report about Garibaldi. The seals have devoured the food that they eat. Please have research divers confirm this. The Garibaldi are protected in CA and it is the City of San Diego's job not to cause an over population of seals to devour them. Proper Marine Mammal Management to another location that can support their populations is necessary. The Children's Pool CANNOT support the seals any longer. Please save the garibaldi and bring back the sea stars and the lobster and the abalone. Children's Pool could be restored and planted with sea stars and abalone and be a no take zone for these two species. Imagine how beautiful that would be. Too many of any one species creates an imbalance especially seals who eat lots of food each day.

22

- B-54.** Comment noted. Refer to Response Nos. B.15 and B.17.
- B-55.** Comment noted. It does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- B-56.** Comment noted. Refer to Response Nos. A.4 and A.6. The project would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom (e.g. Garibaldi populations and Garibaldi population trends).

LETTER

RESPONSE

B-57

Please do not pen in the seals to starve in their own feces: They are beginning to in this unnatural concrete human swimming pool. Here is just one of hundreds of reports:

Report to view please:

<http://www.sanluisobispo.com/2013/03/30/2451082/seals-in-crisis-along-the-central.html>

Some of the history of the Children's' Pool as a human ocean swimming pool:

See attached: "Until Kingdom Come"...
Swim and Swimming...

http://www.sandiegohistory.org/journal/v51-3/pdf/v51-3_pool.pdf There is much history here and generations of memories of learning to swim here at this ocean pool. There is no other safe ocean pool for little children or for crippled children. To close this beach removes this historical priority and right of way.

B-58

B-59

c. There is potentially very significant impact cumulatively considerable if the Children's Pool is closed for any length of time. I fear this will open the door and make it easy to close other beaches in the near future, such as the La Jolla Cove which is already in a MPA and therefore easier to close. It will set a precedent. It will displace 19 Native American Nations fishing rights, it will prevent Wounded Warriors and other disabled groups from their projects and functions at their ocean therapy pool.

B-60

d. There will be a potentially significant impact on human beings directly and indirectly if this Ocean swimming pool is closed. Disabled people will be displaced as there is no other safe ocean pool with a breakwater in the San Diego Area or in the State of CA. for the disabled to be able to swim in the real ocean as they have a right to. The Children's Pool was especially designed and built for Children and 'those handicapped in life's game'. To close the pool will take from these groups any opportunity to learn to swim in the ocean in safety. The other beaches in the area do not have a ramp as this one historically does, they have shore breaks, and kayaks and surf boards and rip tide and surge such a La Jolla

23

B-57. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-58. Comment noted. This comment does not address the project's potential significant effects on the environment; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-59. Comment noted. The project does not result in cumulatively considerable impacts. Refer to Response No. A.2.

B-60. Comment noted. The ramp to which the commenter refers does not currently provide public access - this is the baseline condition. The project would not cause lack of access to the ramp. Refer to Response Nos. B.15.

LETTER

RESPONSE

Shores. This ocean pool has none of these and is protected. A Wheelchair swimmer can use this pool with relative ease compared to any other beach in San Diego.

<http://www.youtube.com/watch?v=TNwpoOd-Jbk>

B-61

Another very important adverse effect on humans is the potential of drowning from not being able to swim into the children's pool if the beach is closed to swimmers as it was built for. The Children's Pool is a safe harbor, literally. The other beaches are very dangerous and have shore breaks and rip tides to contend with. The Children's Pool has been a safe harbor for 80+ years even before the construction of the breakwater wall. It is a regular route for people to swim into the Children's Pool from La Jolla Cove. This would cause swimmers to have to try and get in at Shell Beach with a very dangerous Shore Break and rip time. Please watch this video of the lifeguard and the Rocks Rips and Reefs Program put on for free each year. One session is also at the Children's Pool, and this is a very important program that saves lives. Especially at the end of the video you will see exactly why Children's Pool is vital for life saving in the ocean there. To close it could cause swimmers to drown. Some are swimming without the use of their legs as well. ADA is important at the Children's Pool.

<http://www.youtube.com/watch?v=-Kt7js4msB4>

Of all the videos to watch this one perhaps tells the story the best from the mouths of long time lifeguards. Please be sure to watch this or you will not fully understand the importance of the Children's Pool to the safety of many divers, and swimmers. Please listen to the lifeguard explain the safe harbor of the Pool. Very important to this entire issue:

~ SAFETY ~

B-61. Comment noted. Refer to Response No. B.22.

LETTER

RESPONSE

B-62

v. Other public facilities. No Impact

XV. Recreation

a. La Jolla Shores and the Cove and other beaches will be impacted with higher density with out the resource of the safety of the Children's Pool. The chances of drowning and injury are increased at other beaches.

b. No impact

XVI Transportation and Traffic

B-63

a. There will be a potentially significant impact on the already burdened traffic and parking problems. This is not the intent of the Children's Pool by design. By design as per the Trust this Children's Pool is to be a local ocean swimming pool. This is a place for young humans to learn how to swim so that they are safe.

b. The roads are already impacted, and therefore a potentially significant impact exists. There is currently not enough ADA parking places as well.

c. No impact

25

B-62. Comment noted. Refer to Response No. B.15.

B-63. Refer to Response Nos. A.4. The commenter, when referring to "already burdened traffic and parking problems", is describing the baseline condition. The project would not result in a change or expansion of use that would cause an increase in the number of auto trips to or from Children's Pool beach or a net demand increase for parking.

LETTER

RESPONSE

B-64

d. No impact

e. There will be a significant impact and this project will result in inadequate emergency access to the Children's Pool area. The Children's Pool is a safe haven for long distance swimmers. Even prior to the Construction of the sea wall swimmers, including disabled swimmers have been swimming into the Children's Pool as a destination. The topography of the ocean with the rip currents and tides make The Children's Pool a safe harbor for tired swimmers, especially disabled swimmers. There is not another safe exit between the La Jolla Cove and the Children's Pool and the beach just to the south, Shell Beach with Seal Rock is very dangerous because of a bad rip tide and a shore break. If Children's Pool is closed it will increase the potential of drowning.

f. No impact

XVII. Utilities and Service Systems

B-65

a. There is a potentially significant impact with regards to the fecal contamination that will be surface washed from the beach into the tide pools when it rains. The building up of fecal material and afterbirth and live bacteria is ongoing since the trust was not honored and the beach is not maintained. The Water Quality Control Board needs to be included in the studies of run off water from the feces.

b. No impact

*Children's Bathing Pool ~~is~~ fecal
- see Sullivan case.*

B-66

c. No known Impact, studies may prove differently in relation to the erosion there.

d. No known impact.

e. XVIII MANDATORY FINDINGS OF SIGNIFICANCE

B-67

a. This project does have significant impact as to degrade the quality of the environment, substantially reduce the habitat of a fish (opal eye perch,

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B-64. Comment noted. Refer to Response No. B.22.

B-65. Comment noted. Refer to Response Nos. A.4 and B.34.

B-66. Comment noted. Refer to Response Nos. A.4.

B-67. Comment noted. Refer to Response Nos. A.4.

LETTER

RESPONSE

B-68

Garibaldi, lobster, abalone, all species of sea-star including but not limited to Knobby Sea Stars, Orcra Sea Stars, Bat Stars, Spiny Sea Stars, Giant limpets, kelp crabs, sea cucumbers, sea hares, mussels, perch. To further encourage the over population of seals is to cause further serious imbalance of the other ocean species, as the seals must each large quantites of bio mass each day. 60+ pups will soon be added to the competition for food, and could starve as the seal lions and some seals are up and down the coast. The mussel population is already wiped out at this location and will have a long hard time to recover if the seal populations are not managed. This I can see with my own eyes as I have been diving there for years.

This will certainly eliminate the very important example of California History, as this Children's Pool is very Historical as a Children's Bathing Pool and Pool for the 'infirm'. - (see Unit Kingdom Come - attached.)

B-69

- b. This project to close the beach will have a **significant impact** on the following projects:

Past projects:

- 1) . The most enduring project is the ocean pool. It will impact this project by eliminating swimming, especially for disabled swimmers. - see enclosed video of Jack Robertson, paraplegic ocean swimmer.
- 2) It will negate the projects that are defined in the Trust, recreation and fishing.

Current projects:

- 1.) Recreational use of the beach and pool.
- 2.) Native American fishing rights and access.

Future projects:

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B-68. Comment noted. Refer to Response No. B.13.

B-69. This question and response in the Negative Declaration to which the commenter refers is included pursuant to CEQA section 15065. Mandatory Findings of Significance. The commenter seems to be making a reference to the analysis conducted to determine if a project is cumulatively considerable. Pursuant to CEQA, "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. The projects as listed by the commenter refer to general activities instead of specific public or private development activities. Please refer to Response Nos. A.2 and A.3.

LETTER

RESPONSE

1) ADA Access

2) Fishing

XVIII. This project will have significant impact and cause substantial adverse effects on human beings both directly and indirectly:

- B-70** 1. Education: This pool was designed to allow Children to be able to learn to swim by actually doing it. To close the pool prevents this. It will cause a child to only be a spectator/observer and not a participate of the learning process as the pool was intended. *There is no other ocean swimming pool. The Children's Pool is safe when ALL other beaches are not.*
- B-71** 2. This is the only safe ocean swimming pool with a ramp. This will adversely affect the disabled from access to the only safe ocean pool.
- B-72** 3. 19 Native American Nations including : The Cahuilla, The Paufa, The La Jolla Tribe, The Pala Tribe, The Rincon Tribe, San Pasqual, The Mesa Grande Tribe, The Santa Isabel Tribe, The Inajua-Cosmit, The Baron, The Vijas Tribe, The Sycayun, The Jamul Tribe, The Campo Tribe, The La Posta, The Manzanita Tribe, The Ewiiapaayp Tribe, The Los Coyotes Tribe, The Cheme Huevi Tribe and others will be displaced from their fishing and hunting rights at The Children's Pool.
- B-73** 4. To close the Children's Pool will affect families as they will not be able to recreate and play in the safely of the pool designed especially for Children and 'those handicapped in life's game". Wounded Warriors and other Disabled Groups will be excluded from swimming here. These are men and women who have given parts of their bodies for our country , for the Right to Swim on our beaches. Please do not deny them this right. A very detailed and serious Environmental Impact Report is necessary of course. Californians are very serious about protecting the environment and closing this pool will harm the environment and humans. It is a very unwise and seriously illogical
- B-74**

28

B-70. Comment noted. Refer to Response No. B.15.

B-71. Comment noted. The ramp to which the commenter refers does not currently provide public access - this is the baseline condition. The project would not cause lack of access to the ramp and would not result in an adverse effect.

B-72. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-73. Comment noted. Refer to Response No. B.15.

B-74. Comment noted. Refer to Response No. A.2.

B-75

project. It is disgraceful as well, for San Diego not to honor The Trust of Ellen Browning Scripps who did so very much for so many.

5. The Children's Pool does have the potential to serve a majority of the population of our society. Children, The Disabled, many of whom are also children, and our elderly, our Senior Citizens, many of whom live there right at their Children's Pool. Many of those Senior Citizens did teach their children how to swim at Children's Pool, and they have memories of what the pool was meant to be and still is meant to be. We have many more Wounded Warriors now with the wars our kids are being sent to. Many are coming home without major body parts. And many may not be able to ever swim at a regular beach again. Please help to right the wrong done in 1999 when the State finagled the Trust of the deceased Ellen Browning Scripps to add a use that obliterates the original uses. A Marine Mammal Park is NOT compatible with a Children's Bathing Pool and Pool for the infirm. Judge William C. Pate had just ruled this. It appears at that point in time an illogical and unjust action occurred, to over rule a Superior Court Judge who had just ruled that "The City has failed to preserve and protect the tidelands subject to the 1931 grant. "The public interest in the San Diego Tidelands---Which the City holds in trust for the people of the State of California---necessarily includes their protection and preservation."(State of California exrel.CA State Lands Comm'nv.City of Long Beach (2005) 125 Cal. App.4th 767,779.) It stands to reason, that something is wrong with this. It would not be logical for the ruling of a superior court judge who just stood court over an entire court hearing, in the O'Sullivan Case to be dis-honored. That case proved the need to restore the pool to 1941 Conditions, All the Marine Mammal Studies were completed, all Environment Impact Reports Conducted, and so ordered. What happened? Something fishy, something underhanded and something not quite legal in my opinion. To change a dead woman's trust to obliterate it cannot be legal. And it's just wrong. You must be able to see that by now. The seals will always share the Children's Pool of course. They will just not be as likely to haul out there if it was restored, as the sand beach would be pool. They'd go to Seal Rock and be protected from much human interaction by the rip tides, they'd hang out on the reef behind the breakwater, and they would be at South Casa Beach, and all the

29

- B-75. Comments noted. These comments do not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

B-75

other beaches. People would experience both. From the wall, they would see seals to the left and people swimming to the right, with a few seals choosing to swim as well. The pool should be restored before it crumbles and has to be condemned. This I feel is the political goal of this group of radical seal/environmental opportunists. They have the mayor truly duped into believing its best to close this human ocean swimming pool and let it become even more populated with seals. It already stinks badly, and there is poop everywhere. Restore the pool, and open the sluiceways as the Judge ordered from the trial and all the studies and all the agencies decided on August 24, 2005. (see the O'Sullivan Case). And this legacy, this engineering feat will last another 100 years. And the disabled will come to know of it again and be able to experience the wonder of the sea. And children will learn in the safety of the breakwater and learn to become safe swimmers and stewards of the ocean. They then may go across the way to Scripps Institute of Oceanography, Ellen Scripps other creation and really make a difference in saving those species that need saving. The seal population is healthy and over populated. This was Ellen's Vision, that the Children's Pool in La Jolla California U.S.A. would last 'Until Kingdom Comes" She must be turning over in her grave to be so dishonored, to allow the breakwater wall to deteriorate and fall to ruin, and to allow the pool to become a seal feces toilet that stinks.

B-76

6. Long distance swimmers may drown . The Children's Pool is the only safe harbor for a tired swimmer to exit safely when swimming from La Jolla Cove. The beach just to the North has a very dangerous rip tide and shore break. It is too difficult to swim behind the wall in a rough sea, it is a dangerous reef. South Casa is also solid reef with a rip tide and it is dangerous to exit there as well. The safe harbor of Children's Pool has been saving lives even before the wall was built. To close the pool is to endanger swimmers. Please again refer to the two lifeguards statements on the Rocks Rips and Reefs Program Video of the 2012 Shell Beach Training event where Mark Brown explains all this to the students, and the video actually shows tired swimmers

B-76. Comment noted. Refer to Response No. B.22

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needing the safe harbor to exit at Children's Pool. It saved them as usual. Children's Pool= SAFETY.

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References

*Historical ~ 80 Years!
"Until Kingdom Come"*

B-77

The Design and Construction of La Jolla's Children's Pool

Jeremy Hollins

Winner of the Marc Tarasuck Award

The Children's Pool, located along the rocky bluffs of the Pacific Ocean below the Casa de Mañana, is one of La Jolla's best known structures. Built in 1930, it was one of the many gifts that philanthropist Ellen Browning Scripps gave to the community of La Jolla. Originally heralded a "wonderful improvement" by the press, the concrete breakwater became the setting for controversial debate sixty years after its completion.¹



Swimmers in the La Jolla Children's Pool, July 12, 1953. ©SDHS, UT 84:29642-1, Union Tribune Photograph Collection.

The debate involved a colony of harbor seals that has inhabited the beach since the mid-1990s. In 1999, one hundred seals rested at the beach, causing San Diego Parks and Recreation to install a rope barrier. The barrier gave the seal habitat a boundary and protected the seals from people. People either supported the seal habitat or argued that the seals prevented swimming, diving, and use of

Jeremy Hollins is an architectural historian who has worked for the La Jolla Historical Society, IS Architecture, and URS Corporation. He received an M.A. in history from the University of San Diego and resides in Del Mar, California. He enjoys studying historic structures and vernacular buildings.

*You have a chance to be ethical + courageous.
Save this pool for crippled children, please!*

*1st
Ramp for
disabled.
on a CA-
State Beach.*

*Seals
released them.
not a natural beach*

B-77. The commenter attached this set of references to the May 31, 2013 comment letter. Their submittal is noted.

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the beach.² Topics discussed in La Jolla and San Diego newspapers included the possibility of removing the breakwater and returning the beach to its natural state, ways to improve water quality by eliminating seal waste, and plans to enforce the Marine Mammal Protection Act to restrict the public's contact with the seals. Meanwhile, advocacy groups like "Save Our Seals" educated the public about the seal colony at the Children's Pool.³

In 2004, the city removed the rope barrier and adopted a "joint use" policy. Joint use allowed members of the public to use the beach recreationally but prevented them from harassing the seals. Volunteers created the "Rake-A-Line" program in order to dissuade the public from crossing a line raked in the sand. That same year, a swimmer filed a lawsuit, claiming that the city violated the terms of a 1931 trust between the State of California and the City of San Diego. The trust required use of the beach as a public park and bathing pool. In August 2005, Superior Court Judge William C. Pate ruled in the lawsuit. He ordered the excavation of the pool and a "return to its pre-seal condition in six months." He intended to lower the beach's bacteria level, which had exceeded state standards since 1997, and to deter the seals from using the site. In September 2005, the city council voted to appeal Judge Pate's ruling. Council members such as Donna Frye felt that the judge had overstepped his authority by ignoring the environmental review process. The city expected it to take a year to complete the environmental studies and obtain permits.⁴

While the controversy has brought increased attention to the Children's Pool, few San Diegans know the origins of the breakwater. Construction of the Children's Pool was an intensive effort that took nearly a decade to complete. Spearheaded by city hydraulic engineer Hiram Newton Savage, architect William Templeton Johnson, and contractor W. M. Ledbetter and Company, the breakwater and pool's lasting design were feats of modern engineering. This study examines the planning, design, construction, and early history of La Jolla's Children's Pool.

"For the Health and Happiness of Children"

Beginning in the 1870s, San Diegans and tourists traveled to La Jolla's coastline for picnics, sunbathing, and afternoons of leisure. Hotels like the Horton House organized day trips to La Jolla, bringing guests and San Diego residents to La Jolla along the dusty, fourteen-mile road. However, many of La Jolla's beaches remained unsafe for swimmers due to the "rapid cross current" that swept through the shore. By 1921, the "Old Ocean" had "taken toll of human life" numerous times and swimming during high tide was prohibited. Signs warned swimmers of the dangers but few people obeyed or even heeded the warnings.⁵

Ellen Browning Scripps (1836-1932), a community resident since 1897, sought a solution to the dangers posed to young swimmers. Scripps devoted much of her time to the welfare and safety of La Jolla's children. An investor and consultant in the newspaper empire run by her brother,



Ellen Browning Scripps devoted much of her time to the welfare and safety of La Jolla's children. ©SDHS, #OP 12423-455-3.

Ellen
Scripps

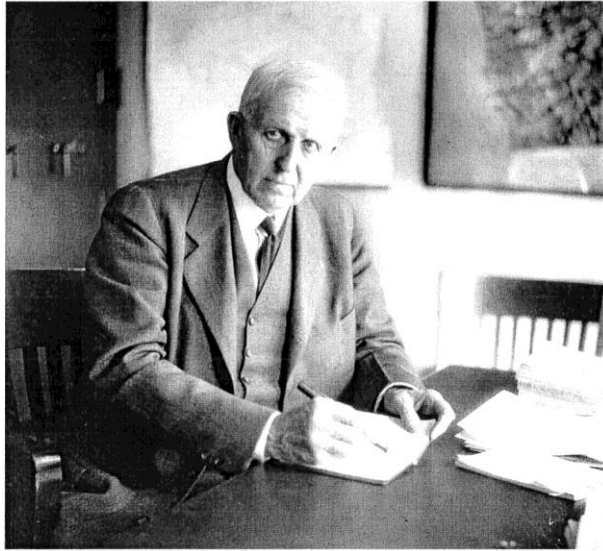
Shirley
Temple

hot
seals
a/though
we love them.

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Until Kingdom Come



*Engineer Hiram Newton Savage played an important role in San Diego's water resource development, January 30, 1930.
©SDHS, UT 4759, Union Tribune Photograph Collection.*

E. W. Scripps, she amassed a considerable fortune before 1890. She founded the Scripps Institution of Oceanography, Scripps College, Scripps Hospital, and Scripps Clinic. She built the La Jolla Women's Club and the La Jolla Public Library. She purchased the pueblo lots that became Torrey Pines State Reserve for use as a public park. She donated money to the San Diego Zoo, provided scholarships to the Bishop's School, and helped to build the Children's Playground and Recreation Center. Scripps explained, "I have always had an innate interest in children, particularly those handicapped in life's game." While the creation of a breakwater would ultimately benefit all visitors to La Jolla's beaches, she wanted "the children to have a primary claim" to such a structure.⁶

In 1921, Scripps contracted Hiram Newton Savage (1861-1934) to conduct preliminary surveys for the breakwater and to "work out the issue with Old Ocean."⁷ Savage was a hydraulic engineer with a reputation as a tireless worker. Ed Fletcher described him as "positive in his convictions, and would not yield an inch, under any conditions."⁸ He had worked on numerous projects, including the Rio Grande Water Company, before graduating with a degree in civil engineering from Dartmouth College in 1891. In San Diego, he served as Chief Engineer in charge of

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construction and maintenance of the Sweetwater Dam. Between 1903 and 1916 he served as Consulting Engineer in the United States Reclamation Service, working on dam and irrigation projects in Montana, North Dakota, and Wyoming. He returned to San Diego to reconstruct and enlarge the Sweetwater Dam, which had been damaged by the record flood of 1916. In 1917, he became Hydraulic Engineer for the City of San Diego. He supervised the design and construction of the Barrett Dam and new Lower Otay Dam, the enlargement of the Morena Dam and extensions to the city's rapid sand filtration plants. Most important, he planned San Diego's future water development, creating detailed plans and estimates for the dams, reservoirs, carrying systems, and purification plants. Scripps hired him for his expertise in water management; she also knew that he had engineered the Zuniga Jetty in San Diego Harbor."

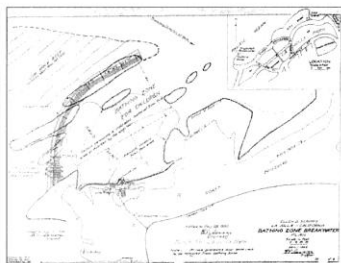
Savage submitted his preliminary findings on March 22, 1923. The preliminary survey looked at the "feasibility, practicability, and estimated cost" of the potential project. His report examined some of the world's "most important breakwaters," including ones in Alaska, Florida, and California.¹⁰ He also made careful notes / regarding the geology of the region. His top priority was designing a breakwater that was "durable" and "economical." He was forthright in telling Scripps and the people of La Jolla that he intended to build a structure that was "likely to endure" and remain a lasting edifice on La Jolla's coastline.¹¹

The preliminary survey recommended a site and contained design drawings. Savage chose the crescent-shaped beach area immediately in front of Block 56 of the La Jolla Park subdivision. His drawings predate the construction and design of Coast Boulevard's Casa de Mañana Hotel, completed in 1924. He wanted to build the breakwater in this location for two reasons. First, this beach was "a

favorite bathing place, especially for the women and children of the town." Despite the dangerous

crosscurrent and undertow, many swimmers felt safe here and children enjoyed playing at this location. Second, the natural geology and contour of the site was conducive to building a breakwater. Savage's drawings noted the beach had a "natural barrier reef curving seaward from a bluff." The sandstone reef extended in a series of "parallel ribs almost continuously in a general arc." The proposed breakwater would follow this shape, offering protection from "the prevailing" northwestern waves. The breakwater would be approximately 300.6 feet long with an arc length of 177.8 feet. This was nearly the same length and arc as the barrier reef.¹²

The breakwater embodied several principles of organic architecture. It was harmonious to the environment's natural features and it complimented the existing conditions of the site. The 300-foot arcing breakwater would be composed



Hydraulic engineer Hiram Newton Savage's site plans for the Children's Pool, sketched in December 1922 and modified on May 28, 1930. Note the placement of the breakwater over the natural sandstone reef and the geological contours of the site. Courtesy of the La Jolla Historical Society.

To "endure
for children?"

Natural bathine
Pool Prior to
the wall
no sand ..
no beach.

Until Kingdom Come

of reinforced concrete. As it extended seaward, 79 percent of the structure would be ten feet high while 21 percent would be sixteen feet high. This created a gradual incline that was devoid of sharp, jagged lines. He planned for "the ocean side having a slope of 10 on 6 to a point 6 feet below the top and an 8 foot radius curved upper portion design to turn the wave back on itself." The pool side of the structure would have a set of steps eighteen inches high and wide. The steps ran the entire length of the pool and their purpose was "to facilitate the children in climbing around...and to also serve as seats." At three evenly spaced points along the pool, he designed pilasters fitted with wrought iron ladder steps. The ladder steps provided access to a four-foot wide walkway on top. The top would also have a set of parallel railings, composed of two-inch galvanized pipes, three-feet high, and supported by vertical posts spaced every eight feet. By unifying the structure's form and function, Savage made sure that the breakwater would not detract from La Jolla's attractive scenery.¹³

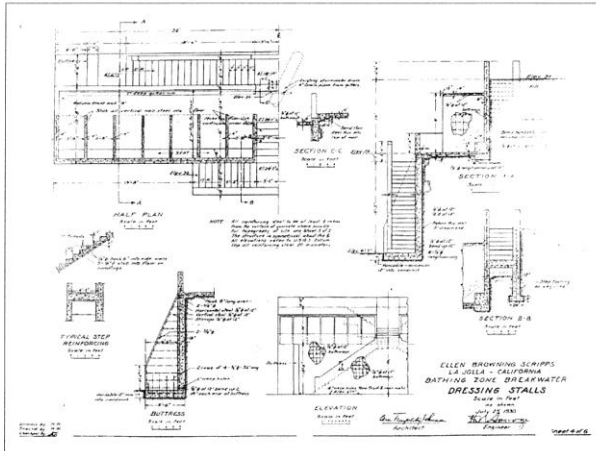
Savage's design was unlike any structure in San Diego. It materialized from the extensive research he conducted and his vast experience in hydrology. To assist the natural removal of sand from the pool's bottom, Savage included plans for four sluiceways, four feet wide by six feet high. The sluiceways were "built thru the shore end of the breakwater." Additionally, Savage proposed building a new sewage drain and catch basins along the Coast Boulevard elevation. The drain and catch basins would "eliminate the ugly washes which have occurred where the drainage has found its way down the bluff toward the beach." Access to the breakwater and walkway would be through a multi-leveled stairway structure set into the face of the bluff. The stairway structure would have a symmetrical rectangular form, with the stairways centered, and angular concrete piers flanked at the sides.¹⁴

"Go Forward With It"

Scripps approved the preliminary survey in 1923 but she did not pursue the project for nearly seven years. The *La Jolla Journal* claimed that other "projects crowded in," and distracted her from the project. In fact, the delay was caused by Savage's disappearance from San Diego after a highly publicized dispute with San Diego officials in 1923. The dispute concerned construction of the Barrett Dam. City officials discharged Savage from the project after "men who wanted to run things clashed with the engineer when he failed to bend his engineering opinion in their views."¹⁵ Savage spent the next several years traveling the world, performing engineering research for private parties. He visited over thirty foreign countries, including Italy, Egypt, the Sudan, Java, the Philippine Islands, China, and Japan, inspecting irrigation and hydroelectric projects and often reporting to President Calvin Coolidge on their technical requirements. In an attempt to find Savage and bring him back to San Diego, "cablegrams and messages raced around the world." In 1928, they caught up with him in Paris. He agreed to return to his post as engineer "only on condition that he would be free from political interference." Once Savage took "hold of the water helm," projects like the Children's Pool could begin to take shape.¹⁶

In May 1930, Scripps commissioned Savage to reexamine the project and to produce updated drawings, revised topographic and geological surveys, and a

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In December 1930, Hiram Newton Savage sketched a more detailed site plan of the Children's Pool which included many of the project's final features. The plan shows walkways, vegetation and landscape elements, specifications for parking, lifeguard buoy shelter boxes, and plans for the breakwater's parapet walls. Courtesy of the La Jolla Historical Society.

new budget. Savage then expected the project to cost \$50,000 although he did not recommend any structural changes from the first surveys he conducted in 1923.¹⁷ Still, Scripps was determined to finish the project. She even had several codicils inserted into her Last Will and Testament: "Plans have been prepared for developing the Pool near my home...if the work is not accomplished during my lifetime, I request...to go forward with it."¹⁸

Scripps retained architect William Templeton Johnson to design the breakwater's parapet walls and dressing stalls. Johnson was a nationally known architect who designed a number of buildings in San Diego, including the private Francis W. Parker School (1912), the La Jolla Public Library (1921), the Fine Arts Gallery (San Diego Museum of Art) (1927), San Diego Trust & Savings Bank (1928), the Junípero Serra Museum (1929), San Diego Natural History Museum (1932) and the United States Post Office on E Street (1932).¹⁹ He favored the "smooth simple lines" of Mission Revival and Spanish Eclectic architecture. Not surprisingly, his proposed design for the Children's Pool was utilitarian, unobtrusive, and consistent with the organic principals found in the breakwater's design. His drawings, dated July 1930, show a horizontal, twenty-five foot, one-story structure that was perpendicular to the pool's two symmetrical stairwells. The dressing stalls, like the breakwater and steps, were made of reinforced concrete and set "below the level of the adjacent street [Coast Boulevard]."²⁰ It had a rectangular footprint, simple in form and shape. The project would not be Johnson's most stylized or ornamented work, but his input on its aesthetic elements was

Very Well
Engineering
maintenance
required...
+ committed
never honored
but City left
to disrepair
laws / trust
broken...
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Built to bland w/ environment... maint. needed.....

indispensable to Savage.

Before completion of the updated survey, Savage had begun obtaining the necessary permits and authority for the work. On June 26, 1930, Johnson mailed applications and formal letters to San Diego's City Council, the Department of Public Works, the Board of Playground Commission, the Board of Park Commission, the U.S. War Department, and the State of California. The City of San Diego and the Department of Public Works jointly approved the project within four days of receipt of the letter through Resolution Number 54177.

On July 11, 1930, J. B. Pendleton of the Playground Commission approved the project, and was "happy to cooperate in any and every way possible," including "during construction," and with "maintenance...after it is completed." The Park Commissioners sent Savage an approval letter on July 22, 1930, which showed their support for the project.²¹

The War Department and the State took the longest to sanction the project. Before the War Department would consider the breakwater, Savage had to meet with Major W. H. Lanagan, the district engineer for the U.S. War Department, in Los Angeles. At the meeting, Savage discussed the project goals, the need for the structure, aspects of its construction, and ownership rights. It went well and a month later, on July 22, 1930, William Templeton Johnson invited Colonel Bennett and Major Borden of the U.S. Engineer Office to review the drawings at the site. They were pleased with the design and the "Engineer Officers concluded and announced that provided the breakwater was constructed as designed, it would stay until Kingdom Come." Although the officers supported the project, they also planned to "hold the application in suspense" until the State approved the project. On August 30, 1930, Thomas M. Robins of the U.S. Engineer Office sent Scripps a formal letter telling her that his office would offer support under the following conditions: first, the Engineer Office reserved the right to suspend work at any point. Second, the project had to avoid injury to "the navigable channels or the banks of the waterway." The Engineer Office also reserved "full and free use of all navigable waterways adjacent to the project." Another condition gave the U.S. the authority to alter the position or to remove the structure at Scripps' expense "during future operations." They wanted the "permittee" to notify the office after the commencement of the work. Finally, if construction did not start before December 31, 1933, the permit would be "null and void."²² Most of the letter's body came from the War Department's Standard Form Number 96, and was dependent on the State's decision.

On September 2, 1930, Savage finally received formal approval from the State. U.S. Attorney General Webb told Savage that although the project still needed an Act of Legislature, "no action would be taken by the State to prevent the progress of the work prior to...legislative action." Accordingly, Webb told Savage to "go forward with the project" without the Act, and he applauded the "public spirit and splendid ambition of Mrs. Scripps."²³ As Savage had anticipated in July 1930, construction of the breakwater would proceed without legislative authority.

On April 23, 1931, Gov. James Rolph, Jr. finally approved Senate Bill Number 422, *An Act Granting Certain Tide and Submerged Lands of the State of California to the City of San Diego*, which "officially" authorized the project.²⁴ The Senate Bill passed seven months after Savage received approval to begin construction from Webb.

Savage began seeking general contractors in September 1930 while awaiting

Promise to maintain the Ch. 1100 Pool (never honored laws broke for years!

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approval from the State. He sent an informal "invitation to bid" to four contractors who had "experience with this type of marine work": Merritt-Chapman and Scott Corporation of San Pedro, Healy-Tibbitts Construction Company of San Francisco, W. M. Ledbetter and Company of Los Angeles, and Charles Steffgan of San Diego. Savage spent "considerable time" with representatives from each company. He chose the Ledbetter Company, who came in with the lowest bid of \$55,215, despite the fact that they were "not heard from" when invited to meet in San Diego. The bids were due in Savage's office on September 10 and he promised a decision on September 15, 1930. The Ledbetter Company previously constructed the Scripps Institution Pier at La Jolla Shores and a similar breakwater in Newport, California, "under very difficult [and similar] conditions" caused by the "adverse ocean currents." Additionally, the company had erected "falsework causeways" and "concrete piles" for the Mission Bay Bridge in San Diego earlier that year.²⁵

Ledbetter provided Savage with a multi-phased construction plan, and a detailed list of supplies and equipment. On September 16, 1930, Savage issued Ledbetter surety bonds worth \$50,000 and "labor and material man's bonds" worth \$25,000, through the Indemnity Insurance Company.²⁶ After finalizing the contract, construction was finally ready.

"Through the Tides": Construction and Difficulties

On September 17, 1930, "after long discussions and investigations," the way was "clear at last" to begin preliminary construction of the breakwater. Ledbetter



View of La Jolla showing the Children's Pool under construction, ca. 1931. ©SDHS, #90:18138-444-

note of no sand - no beach
no seals

under construction on the natural reef pool

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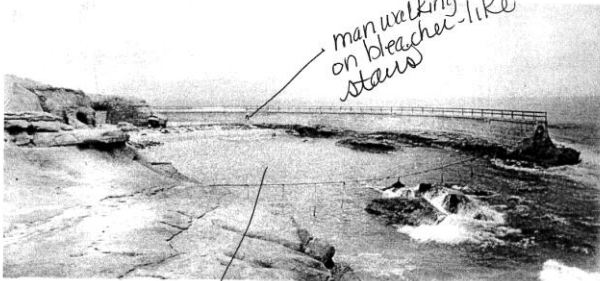
Until Kingdom Come

organized a crew of "twelve men, including [a] carpenter, foreman Sam Neary, and superintendent Carl Gadesburg." The crew brought equipment to the site and erected a "temporary building to house [an] office, blacksmith shop, and tools." Ledbetter laid a water line and fenced off the site. The *La Jolla Journal* recorded the momentous day and excited the public over "this wonderful and valuable improvement."²⁷

The first phase of construction involved the assembly of a timber trestle used as a platform for the workers, construction of a cofferdam, assembly of a pile driver, excavation of a cutoff trench, and the drilling of holes for structural support rails. The workers constructed the trestle outward from the bluff and over the reef. It was the length of the proposed breakwater. After the trestle's construction, the workers next assembled the pile driver. The pile driver was nearly twenty-feet high, and many La Jolla residents found themselves "bewildered by the complex and towering apparatus." The crew drilled twenty-one piles into the bluff and began assembling a cofferdam to protect their work from the shifting sand and rough current. The cofferdam was a massive wooden structure composed of air and watertight timbers that sat below the workers' trestle. On October 9, 1930, they lowered the cofferdam into place at the channel between the bluff and the reef. With the cofferdam and trestle assembled, the crew started excavation of a cutoff trench for the foundation, nicknamed "the Toe."²⁸

Savage recalled, "cutting the cutoff trench was the most interesting and important single thing about the entire project." They placed the cutoff trench in an existing natural trench "previously out in the reef." To assist the excavation of the trench, the workers used a fifty horsepower centrifugal pump to remove the sand through suction. They created the Toe with a pile driver and a twenty-inch drill bit. "The bit pulverized the rock in the trench and the sea removed about half of the muck in the resulting trench." The crew then used pneumatic spades to trim the jagged rocks left in the trench and to break up large boulders. Once the Toe's depth reached ten feet and 328 feet long, the workers smoothed the surface with hand excavations. Then workers washed the trench clean and began drilling holes for the metal upright rails that would support the concrete.²⁹

The digging of the trench took much longer than the anticipated seventy-five



A panoramic view of the Children's Pool taken during its dedication to the children of La Jolla. Courtesy of the La Jolla Historical Society.

man walking
on bleacher-like
stairs

Pool
not much beach,
Remember it's
a natural ocean pool.
no seals.

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days. Workers dug from October 16 to November 24, 1930. Consequently, the four weeks spent in the Toe was a setback to the schedule. The men lost several "hours through the tides," and drilling the holes for the upright rails could only occur at low tide. Due to the "capricious" ocean, water frequently filled the uprights' holes. Workers had to set wooden plugs wrapped in burlap sacks into the holes to protect them. The men had to drill 1,304.5 feet of holes and, when drilling slowed to a dismal sixty-two feet per eight-hour day, Savage tried to make up time through several measures. First, he had Ledbetter increase the size of the crew from twelve to sixteen men. During preparations for the trench, he had realized the proposed number would not be enough. He quickly learned that a sixteen-man crew was still insufficient for the trench and holes, and he had Ledbetter increase the crew to twenty-five men. To overcome the problems caused by the high tides, the twenty-five-person crew split into two teams and worked night shifts during low tide. Second, Savage ordered Ledbetter to begin laying the concrete and installing the upright railings while the crew simultaneously dug the trench and drilled the holes. The original plans had the concrete and railings installed after completion of the trench. Ledbetter ordered 3,125.5 barrels of Riverside Concrete, which arrived by railroad cars at Pacific Beach siding, and thirty-one tons of rail arrived from Los Angeles by the Shannahan Brothers Company.³⁰

While washing the Toe in late October 1930, the crew placed temporary concrete bulkheads along the channels of the reef to prevent water from reaching the cofferdam. Then they started laying concrete and installed the railings in "section one and two" of the trench (up to the opening of the sluiceways) and finished the two sections before completion of the trench. The workers would construct the breakwater in eight sections, and maintaining steady progress was crucial to the project. By early December, the workers were ready for the next phase of construction, which involved concreting the rest of the breakwater and inserting the railings into the upright holes.

On December 8, 1930, the crew finished concreting and inserting railings in all of section three, and started the foundation work for section four and five. At this point, they were fifty-two percent finished with the concreting. However, "heavy ground swells" and rough seas temporarily stopped their work in late December 1930. On December 11, the "newly poured concrete of section four was badly washed and the inside step forms were demolished, also the outside curved form for section three were demolished." On December 16, "the lower portions of steps of section four were damaged." The workers had to "cut away to a uniform level" and pour a new top to the damaged steps. Water seeped under two of concrete panels on December 23, which ruined the freshly poured concrete. After these events, Ledbetter requested "an extension of time of completion" until January 29, 1931. They expected to finish the breakwater two months later than the date they originally planned.³¹

The difficulty in creating the breakwater caused further deviations from the original plan. Scripps decided to eliminate the dressing stalls after consulting with both Savage and her lawyer. But she continued to employ architect Johnson to advise Savage and Ledbetter on the overall visual quality of the project. He would also design the stairway structure and parapet walls.³²

On December 24, 1930, the workers finally finished installing and grouting the upright railings and the concreting of the eight sections. In addition, they

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completed the four sluiceway holes and were ready to start building the grillages and gates for them. The breakwater began taking shape, and Savage, Ledbetter, and the crew became excited over the promise of the next phase.

The New Year began with the disassembly of the trestle. Workers started the excavation of the stairway structure. Additionally, the crew took advantage of favorable low tides by removing the remaining large boulders that lined the pool's bottom. The site also had two small caves along the south beach and two caves entering into the bluff from the pool side. Phase III of construction required the workers to concrete and seal the caves "to protect the adjacent structures." They used Riverside reinforced concrete and built three eighteen-inch steps into the face of the south beach caves "to facilitate access" to the sand.³³ Once again, Savage had the workers use the site's natural features to enhance the functionality of the breakwater. The use of the concreted caves as small access steps reflected the organic ideas that dominated the plan and design.

As the project seemed to be gaining speed, a significant setback disrupted work for several days on January 2, 1931. The dragline, used to remove the large boulders, fell while being moved into position. It "went off the bluff and landed on its side on the south beach opposite [the] caves." Ledbetter replaced the dragline with a "larger Northwest shovel," and actually used it to salvage the "old dragline." Work did not resume for several days, and Savage's crew felt they "fell short of accomplishment due to...the accident to the dragline."³⁴

On January 13, 1931, Johnson and Savage submitted to Scripps several design modifications to the parapet walls. After they poured the breakwater's walls, the men decided to "change the height and taper the top elevation."³⁵ Johnson and Savage wanted the parapet walls to be eight inches high on either side. They



Visitors walking along the breakwater, 1930s. ©SDHS #OP 6069.

Swimming Pool — not a beach

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suggested the change purely for aesthetic value, to accentuate the smooth lines of the breakwater.

By January 19, the workers finished the concretion of the caves and the excavation of the stairway structure. The blacksmith continued assembling the grillages for the sluiceways. During this time, they poured ten feet of concrete for the stairway structure and retaining wall. Still, the workers were quite far from their projected completion date. On January 28, Ledbetter asked Scripps for another extension of time, believing it was "was impossible to complete the work within the allocated time." Scripps agreed and granted Ledbetter another extension until March 15, 1931.³⁶ With the time extension, the workers prepared themselves for the final phase, which involved grouting the walkway's railings, completing the stairway and steps, finishing the parapet walls, and preparing the site for public use.

"Beautiful, Beautiful Lines"

Phase IV of construction was the culmination of a project that began nearly a decade earlier. Work on the last phase commenced the first week of February 1931. The workers began grouting the parallel railings on top of the breakwater and completed them shortly before February 19. After their installation, crewmembers cleaned and painted the railings with two coats of "Hermastic paint." Next, Ledbetter's men completed the stairway structure. They built the stairway structure to an elevation of twenty-eight and one-quarter feet, and concreted the lower landings and steps.³⁷ The following week, the crew finished concreting the eight-inch east and west parapet walls. The only construction work left was the paving and curbing of the parking lot adjacent to Coast Blvd.

After the completion of construction in early March 1931, Savage invited representatives of Scripps to the breakwater to examine the structure. On March 4, the representatives met with Johnson at the site and offered some criticism. They felt the lines in the terrace area were distracting and they criticized the "angularity" of the stairway structure. Additionally, they recommended reducing the height of the parapet walls further and creating an additional step and extending the railing at the first section of the breakwater. The purpose of the step and railing were to provide an easier way for "nurses and those in charge of small children...to get from the walkway" to the "sunny steps."³⁸

Following the meeting, Johnson and Savage began making changes. To fix the distracting lines, Johnson suggested coloring the breakwater's walls. He told Scripps' representatives "he would be glad to get in touch with a man in Los Angeles who is able to tint the concrete walls." Tinting the walls would give it the same appearance as the surrounding soil's color and would "relieve the stark appearance of this section." This would also enhance the organic design of the structure. On March 25, Johnson had Arthur Raitt of Lamens Process Company color the walls, which created a natural algae visual effect and "beautiful, beautiful lines."³⁹

To relieve the "angularity" of the stairway structure, Savage and Johnson added a balustrade along the upper portion of the first flight of stairs. It was a practical addition, since it aided "elderly people" in accessing the beach from the street. Work on reducing the parapet walls several inches began on March 12 and the

Could be restored!

for swimming- not a Seat Poop Pit.

VIP¹³⁴ = Elderly People - Infirm
Disabled

Until Kingdom Come



La Jolla residents sat on the grass in front of the Casa de Mañana for the May 31, 1931, dedication and ceremonial opening of the Children's Pool. Courtesy of the La Jolla Historical Society.

workers finished before April 4. Design alterations caused the project to go over deadline and over budget by approximately \$4,000. However, the cosmetic changes clearly added to the visual appeal and safety of the breakwater.⁴⁰

Outside of these slight modifications, Savage encountered only one obstacle during the final phase of construction. He noticed that the sand level of the pool constantly fluctuated with the ebb and flow of the tide. "A strong suction pull caused by the water running into the sluiceways and then receding" made it difficult for the pool to have an even sandbar. To remedy this problem, he decided



Children and adults enjoying a summer day at the Children's Pool in the 1930s. Courtesy of the La Jolla Historical Society.

to close the four wooden grillages. This prevented the sand in the pool from moving west through the sluiceways. On March 27, workers sealed the grillages. The pool's floor immediately lowered one and a half feet. Three days later, a sand beach formed at "the corner between the bluff and the inside of the breakwater,"

Lead road in - CRUCIAL

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which Savage saw as beneficial "for children bathing in the pool." If it ever seemed desirable to reopen the gates, Savage proposed hand excavating the sluiceways at low tide and raising the frames and gates at low tide. After dealing with these obstacles, work was finally finished on the Children's Pool and it was ready for the public's use.⁴¹

"A Wonderful Improvement"

After extensive planning, a tedious permit/approval process, and construction filled with numerous delays and obstacles, Savage, Johnson, and Ledbetter eventually completed the Children's Pool on April 4, 1931. From the initial survey and design to the final work done by the contractor, the entire project took ten years.

On May 31, a celebration occurred at the breakwater to celebrate the accomplishment. Scripps was too ill to attend the celebration but Savage spoke in her place, reminding the audience of the difficulties involved in constructing the structure and the importance of the breakwater to the people of La Jolla. The ceremony featured speeches, a pantomime performance by La Jolla school children, and a concert by the San Diego Y.M.C.A. band.

The breakwater received tremendous support from members of the community. Judge John Kean described the project as "the most valuable of all Miss Scripps' benefits to La Jolla." Samuel Fox, representative to Mayor Walter Austin, believed that the breakwater would allow children "to enjoy without danger, the Ocean." The community's weekly paper, *La Jolla Journal*, called the idea a "wonderful and valuable improvement," and "a great asset to the community."⁴²

The breakwater reflects the philanthropic legacy of Scripps and the dedication and work ethic of Savage. Its construction was an intensive undertaking that created a safer bathing area for children. It remains a durable and lasting structure on La Jolla's coast.

NOTES

1. The author thanks Dr. Molly McClain and the La Jolla Historical Society for their research assistance. "Work on Children's Swimming Bathing Pool in La Jolla Started," *La Jolla Journal*, September 18, 1930, 1.

2. Terry Rodgers, "Is Their Fate Sealed?" *San Diego Union Tribune*, October 22, 2005. In past years, seals came to the Children's Pool to birth and nurse pups between February and March. Recently, the number of seals has increased and inhabited the beach for longer periods of time. Environmental advocacy groups like the San Diego Sierra Club opposed the removal of the seals from the beach. For more information, see Kristina Hancock, "Turf Wars: The Seals of La Jolla, Public Trust Land and Animal Law," *San Diego Lawyer* (March/April 2006): 22-29; Hany Elwany, Reinhard Flick, Jean Nichols, and Anne-Lise Lindquist, "La Jolla Children's Pool: Beach Management and Water Quality Improvement Project," August 27, 1998, Scripps Institution of Oceanography Technical Report, <http://repositories.cdlib.org/sio/techreport/20/> (accessed March 26, 2006).

3. Jeff Galyardt, letter to the editor, "Seals, Not Humans, Invaded the Children's Pool," *San Diego Union Tribune*, February 1, 2006; Alicia Booth, letter to the editor, "...And An Awful Stench," *San Diego Union Tribune*, March 2, 2006; Rebecca Stanger, letter to the editor, "Pool is for Seals, Not Bratty Adults," *San Diego Union Tribune*, December 8, 2005.

4. Rodgers, "City Council to Appeal Children's Pool Ruling," *San Diego Union Tribune*, September 28, 2005; Rodgers, "Children's Pool Ruling is Delayed," *San Diego Union Tribune*, November 9, 2005;

This IS the one and only safe ocean pool for Disabled kids + all kids. The seals don't need the breakwater: they CAN swim already - .

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Until Kingdom Come

Please research the following:

Rodgers, "Is Their Fate Sealed?"; Rodgers, "Rope Barrier is Sought for Seals at Children's Pool," *San Diego Union Tribune*, January 25, 2006.

5. *San Diego Union*, February 3, 1875; April 15, 1881, 1; "Young Woman's Presence of Mind Saves Her Life," *La Jolla Journal*, June 18, 1920, 1.

6. "Work on Children's Swimming Bathing Pool in La Jolla Started," 1; "Children's Pool Given to the City," *La Jolla Journal*, 4 June 1931, 1. For more information on Ellen Browning Scripps, see Patricia A. Schaelchlin, *The Newspaper Barons: A Biography of the Scripps Family* (Carlsbad: Kales Press, 2003); Abraham J. Shragge and Kay Dietze, "Character, Vision and Creativity: The Extraordinary Confluence of Forces that Gave Rise to the Scripps Institution of Oceanography," *The Journal of San Diego History* (JSDH) 49, no. 2 (2003): 71-86; Bruce Kamerling, "How Ellen Browning Scripps Brought Ancient Egypt to San Diego," *JSDH* 38, no. 2 (1992); Bruce Kamerling, "Anna and Albert Valentien: The Arts and Crafts Movement in San Diego," *JSDH* 24, no. 3 (1978): 343-366; Frances Parnell (Keating) Hepner, *Ellen Browning Scripps: Her Life and Times* (San Diego: Friends of the Library, San Diego State College, 1966); Albert Britt, *Ellen Browning Scripps: Journalist and Idealist* (Oxford: Printed for Scripps College at the University Press, 1960); Edward Dessau Clarkson, *Ellen Browning Scripps: A Biography* (La Jolla: private printing, 1958); Robert J. Bernard, "Ellen Browning Scripps, Woman of Vision," *Scripps College Bulletin* 34, no. 1 (1959); Carl H. Heilbron, ed., *History of San Diego County* (San Diego: San Diego Press Club, 1936).

7. "Children's Pool Given to the City," 1.

8. Fletcher wrote about Savage in his memoir, noting that "he entered into my life, touching on so many important problems, in opposition so many times, I could not write my memoirs with any degree of accuracy without bringing him into the picture." Savage had the backing of Melville Klauber, for many years President and Chairman of the Water Committee of the San Diego Chamber of Commerce, and Harry Jones, manager of Byllesby Company, which owned San Diego Gas & Electric Company. He also had the backing of the Spreckels interests. According to Fletcher, "it was that backing that brought Savage to San Diego as San Diego's Hydraulic Engineer." He wrote, "Savage was the most expensive hydraulic engineer San Diego ever had. Savage had a coterie of friends backing him up. He was a big, husky chap who scarcely ever smiled and, when you doubted his judgment and tried to argue, Savage sulked." Ed Fletcher, *Memoirs of Ed Fletcher* (San Diego: private printing, 1952), 389; Henry Love, "H. N. Savage, City Dam Builder, Dies on Duty in San Diego Service," *San Diego Union*, June 25, 1934, 1.

9. Savage served as consulting engineer to the Southern California Mountain Water Company in connection to the Morena, Upper Otay, and Lower Otay Dams (1895). He also worked with the San Diego and Cuyamaca Railway Company, the Coronado Beach Railway Company, the San Diego and La Jolla Railway Company, and the Cuyamaca Water Company (1898-1903). A multi-volume set of papers collected by Savage documents the history of construction of dams at Barrett, El Capitan, Lower Otay, Morena Reservoir and the San Dieguito Project. It is available for consultation in the California Room of the San Diego Public Library and in the Water Resources Center Archives, University of California, Berkeley. Mary Alley, "Local History Materials in the California Room of the San Diego Public Library," *JSDH* 37, no. 3 (1991): 224-225; "Finding Aid to the Hiram Newton Savage Photographs, 1905-1933," Water Resources Center Archives, University of California, Berkeley, <http://www.oac.cdlib.org/findaid/ark:/13030/kt6m3nc11c> (accessed March 26, 2006).

10. Hiram Newton Savage, *Ellen Browning Scripps Bathing Pool for Children at La Jolla, California: Feature History, March 1931* (San Diego, 1931), 7. Savage included copies of letters, plans, estimates, and other materials in this bound typescript, located at the La Jolla Historical Society. Another copy of this document can be found in the Water Resources Center Archives, University of California, Berkeley. The archive also contains nearly fifty photographs of the Children's Pool, WRCA MS 76/16, box 4, folders 80-81.

11. Hiram Newton Savage to Ellen Browning Scripps, September 15, 1930, La Jolla Historical Society (LJHS); "Children's Pool Given to the City."

12. "Work on Children's Swimming Bathing Pool in La Jolla Started," 1; Savage, *Ellen Browning Scripps Bathing Pool*, 5-6, 8, 196.

13. *Ibid.*, 5-6, 202.

14. *Ibid.*, 6; "Scripps Bathing Pool for Children at La Jolla," June 15, 1931, Children's Pool File, LJHS.

15. Love, "H. N. Savage, City Dam Builder, Dies on Duty in San Diego Service," 1.

"Friends of the Seals" is a \$ organization during the politicians & accepting high \$ donations. The seals do not need this 200 \$ man made ocean pool. The kids do. The disabled do.

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Please research the following

16. "Finding Aid to the Hiram Newton Savage Photographs, 1905-1933," Water Resources Center Archives, University of California, Berkeley, <http://www.oac.cdlib.org/findaid/ark:/13030/kt6m3nc11c> (accessed March 26, 2006). "Children's Pool Given to the City," 1; Love, "H. N. Savage," 1, 3.
17. Savage, *Ellen Browning Scripps Bathing Pool*, 7, 11.
18. Curtis Hillyer and J.C. Harper, *Last Will and Testament of Ellen Browning Scripps* (San Diego: privately printed, 21 October 1922 to 11 August 1932), 30-31, 80, 84-85. Scripps' legal team added and revised three codicils in April 1924, April 1930, and December 1930.
19. See Sarah J. Shaffer, "A Civic Architect for San Diego: The Work of William Templeton Johnson," *JSDH* 45, no. 3 (1999): 166-187; Martin E. Petersen, "William Templeton Johnson: San Diego Architect, 1877-1957," *JSDH* 17, no. 4 (1971): 21-30; Gregg R. Hennessey, "Creating a Monument, Re-Creating History: Junipero Serra Museum and Presidio Park," *JSDH* 45, no. 3 (1999): 137-160. See also the interactive CD-Rom produced by the San Diego Historical Society entitled "From Blueprints to Buildings: San Diego Architecture."
20. "W. T. Johnson Dies, Noted Architect," *San Diego Union*, October 15, 1957, 2-3; Savage, *Ellen Browning Scripps Bathing Pool*, 9, 199; *San Diego Evening Tribune*, September 13, 1930, 1.
21. Savage, *Ellen Browning Scripps Bathing Pool*, 9, 11-18.
22. *Ibid.*, 20-21, 64, 66, 72.
23. *Ibid.*, 23, 77.
24. *Ibid.*, 26.
25. *Ibid.*, 27-28, 33-34, 77; "Work on Children's Swimming Bathing Pool in La Jolla Started"; Charles Steffgen came in at \$57,749.70. Merritt-Chapman and Scott came in at \$79,877.60. Healy-Tibbitts made an offer to "Turnish equipment and do work at cost plus fifteen percent."
26. "Breakwater in La Jolla," *San Diego Evening Tribune*, September 13, 1930, 1.
27. "Work on Children's Swimming Bathing Pool in La Jolla Started," *La Jolla Journal*, September 18, 1930, 1; Savage, *Ellen Browning Scripps Bathing Pool*, 78.
28. "False Work Built at Bathing Pool," *La Jolla Journal*, October 2, 1930, 1; Savage, *Ellen Browning Scripps Bathing Pool*, 42, 81; "Drilling the 'Toe' at Bathing Pool," *La Jolla Journal*, November 13, 1930, 1.
29. Savage, *Ellen Browning Scripps Bathing Pool*, 45-46.
30. "Old Ocean Favors Pool Improvement," *La Jolla Journal*, 30 October 1930, 1; Savage, *Ellen Browning Scripps Bathing Pool*, 30, 46-47, 82-83.
31. Savage, *Ellen Browning Scripps Bathing Pool*, 52, 82-83, 87, 131, 137.
32. *Ibid.*, 88, 129.
33. *Ibid.*, 54-55, 93.
34. *Ibid.*, 93.
35. *Ibid.*, 129.
36. *Ibid.*, 131-133.
37. *Ibid.*, 98, 131.
38. *Ibid.*, 100, 124-125.
39. *Ibid.*, 104, 124-125.
40. *Ibid.*, 105, 124.
41. *Ibid.*, 116-119.
42. "Children's Pool Given to the City," 1; "Work on Children's Swimming Bathing Pool in La Jolla Started," 1.

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La Jolla Seals



La Jolla Seal Controversy Legal Documents Prey / Predator Relationships Ellen Browning Scripps Trust Public Health

Historical significance:

MISSION / HOME

PHOTO GALLERY

SEAL REHABILITATION

HISTORY

WATER SAFETY

WITH RESPECT TO THE

ENVIRONMENT & SEALS

SCIENTIFIC STUDIES

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REPORTS & LETTERS

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WHAT DO SEALS THINK

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HOW SEALS CAME TO

CHILDREN'S POOL

TIMELINE

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This is a timeline of the activities surrounding the Children's Pool in La Jolla.

1922

1922

Ms. Scripps and Harper invited Savage to determine the "practicality and feasibility of the accomplishment of a bathing pool for children in the Ocean at La Jolla, California."

1923

March 22, 1923

Mr. Savage submitted a report to Ms. Scripps. The report contained recommendations for constructing a bathing pool in the ocean in front of the location of the Casa de Mañana Hotel.

1930

May 1930

Ms. Scripps' representatives invited Mr. Savage's "cooperation in the accomplishment of the projected splendid gratuity-bathing pool for children at La Jolla."

June 20, 1930

Ms. Scripps authorized construction of the pool as a gift to children. Savage's services on the project were also a gratuity to children. The next day, formal application was made to the War Department requesting permission to construct the breakwater feature of the pool.

June 21, 1930

Ellen Browning Scripps, through her Attorney in Pact, Dr. J. C. Harper wrote the Mayor and City Council of San Diego for permission to construct a "concrete breakwater in the Pacific Ocean at La Jolla." The stated purpose for the breakwater was to "create a Bathing Zone adjacent to the City of San Diego's La Jolla Park and City Streets."

June 26, 1930

Hydraulic engineer H. N. Savage (hereinafter, "Savage") also wrote the City (of San Diego (hereinafter "the City") on behalf of Ms. Scripps requesting permission to construct the breakwater. He enclosed with his letter plan drawings of the proposed breakwater. In this letter, Savage states the purpose of the breakwater "is to create a bathing pool" and the cost would be "in the vicinity of \$50,000."

June 30, 1930

www.friendsofthechildrenspool.com/timeline.htm#1980

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Permission from the City was granted. The City Park Department approved the construction on July 22, 1930. The War Department issued a construction permit on September 2, 1930.

September 15, 1930

With actual or tacit approvals in hand, Ms. Scripps awarded the construction contract to W.M. Ledbetter & Company. Two days later, equipment arrived on site and construction commenced. According to Savage, "[t]he purpose of the project was to create a safe bathing pool for children, sheltered from the ocean surf and winds." "The park area on the bluff adjoining the pool was improved by grading and the construction of parapet walls, and curbs. Shrubs have been planted and benches provided."

1931

June 1, 1931

Ms. Scripps gave the Children's Pool to the City of San Diego.

June 11, 1931

The Common Council of the City adopted Resolution 56609 whereby it "express[ed] to this generous friend of humanity its most cordial thanks, on behalf of the children and citizens generally of the City of San Diego, for the unprecedented tidal bathing pool for the younger generation which has recently been constructed in ocean water on the shores of La Jolla,"

June 15, 1931

Governor of California signed Statute No. 937 of the laws of 1931, which granted to "the city of San Diego, ... all right, title and interest of the State of California, ... in and to all that portion of the tide and submerged lands bordering upon and situated below the ordinary high water mark of the Pacific ocean to be forever held by the city of San Diego and its successors in trust for the uses and purposes and upon the express conditions following, to wit:

(a) That said lands shall be devoted, exclusively to public park, bathing pool for children, parkway, highway, playground, and recreational purposes, and to such other uses as may be incident to, or convenient for the full enjoyment of, such purposes;

(b) The absolute right to fish in the waters of the Pacific ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California."

November 21, 1931

Operating Department of the City prepared a map depicting the land granted to the City by the State of California "for a swimming pool."

1933

1933

The Legislature passed and the Governor signed Statute No. 688 of the laws of 1933, that conveyed in trust all of the tidelands of the state bordering the City of San Diego. The more general grant of land described *permissive* uses of the tidelands, as contrasted with the 1931 grant, which provides for *exclusive* uses of the tidelands within the grant. Thereafter, for over sixty years, the Children's Pool remained open for the use and enjoyment of the people of San Diego and others.

1980

1980 and 1983

City of San Diego contracted for repairs to the Children's Pool breakwater. These repairs included replacing the handrail, improving lifeguard facilities and repairing the breakwater itself.

There is no evidence of any concern about or discussion of seals in the Children's Pool area until July, 1992. A representative of Sea World, Jim Antrim, discussed with Barbara Bamburger, a representative of "Friends of the Seals," the creation of a seal reserve in the vicinity of "the rock off Shell Beach (in front of 939 Coast Blvd)" as it was the "focal point of harbor seal activity concentrated between the months of January and, May."

1983

1980 and 1983

City of San Diego contracted for repairs to the Children's Pool breakwater. These repairs included replacing the handrail, improving lifeguard facilities and repairing the breakwater itself.

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La Jolla Seals

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1992

November 25, 1992

A recommendation by the City Manager to essentially adopt the Park and Recreation Board recommendations, with the exception that the Reserve be established for a five-year period. The City Manager's recommendations were adopted. The water and land within the reserve would be "off-limits to human and pet intrusion." In making these recommendations, the City recognized that marine mammal populations in the area of Seal Rock, and harbor seals in particular, had increased during the prior ten years.

1993

February 1, 1993

City Attorney approved a request recommending a reserve with a fixed boundary beginning 200 feet east of the seaward entrance to the Children's Pool. It passed unanimously after an amendment that extended the boundaries "to include the compromise area that goes practically to the beach that was presented by Barbara Bamburger. This discreet area shall be in effect for five years on a trial basis and is off limits to swimmers, divers and tourists. Access to the riptide is not affected because the divers can come in and go out through the Children's Pool."

October 25, 1993

Jane Sekelsky, Chief, Division of Land Management, State Lands Commission (hereinafter "SLC"), sent a letter to Carl Lind, a private citizen, copied to Robin Stribley, Natural Resources Manager, Park and Recreation District, City of San Diego. The letter concerned the creation of a marine mammal preserve within an area encompassed within a statutory trust grant. The SLC, on behalf of the State of California, expressed its concern that the Reserve may prohibit activities specifically reserved to the people of the State of California. Such activities include "the absolute right to the public use of said tidelands and to fish in the waters thereof, with the right of access to said waters over tidelands for said purpose." The Legislature has vested in the SLC: "All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made," and has given the commission exclusive administration and control of such lands. (Pub. Resources Code § 6301.)

November 15, 1993

SLC sends a clarifying letter addressed to Ms. Stribley and Barbara Bamburger. In which SLC more thoroughly advised the City of its rights and obligations in regard to lands over which it is the trustee. The State stated that "[t]he proposed ordinance is clearly inconsistent with the provisions of Chapter 937, Statutes of 1931. To ban public recreational uses as proposed would violate the specific provisions of the statute and the City's responsibility as Trustee." The court recognizes that the Reserve is situated within the broader tidelands grant of 1933 and not the much more narrowly and specifically worded grant of 1931.

That letter from the SLC placed the City on notice, as of November 1993, of its legal obligations under the 1931 statutory grant of public trust land.

November 18, 1993

California Coastal Commission approved the establishment of the Reserve in the vicinity of Seal Rock. The approval was conditioned on the City obtaining approval of the SLC and the boundaries of the Reserve not including any "sandy beach area."

1994

March 30, 1994

Fish and Game cautioned the City about interfering with "the public's right to fish in State waters."

July 25, 1994

City Council amended the ordinance establishing the Reserve to comply with the requirements of the Coastal Commission and to permit fishing pursuant to the request of Fish and Game.

1997

February 1997

City Manager updated Natural Resources on the Children's Pool closure. The report confirmed that the contamination was the result of "a seal excrement overload for Children's Pool." For fifteen years before 1994, the water quality in the Children's Pool met safe standards except on rare occasions. The report seemed to

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reasonably reject scaring away the seals from the beach or Pool, releasing them or physically preventing their entering Children's Pool. The "action plan" proposed was to discontinue placing barricades on the beach in the hope the seals will use the beach less if there were more human interaction and to hire a consultant to develop a plan for opening the sluiceways in the breakwater. It was believed the open sluiceways would increase the amount of water in the Pool and reduce the size of the beach. The increase in water would further dilute the concentration of feces in the water and a smaller beach might discourage some of the seals from hauling out at Children's Pool and thereby reduce the number of seals at the Pool. The Committee approved the Report recommending the hiring of a consultant in regard to re-opening the sluiceways.

October 1, 1997

Natural Resources and Culture Committee (hereinafter "Natural Resources") received an informational report from the City Manager about the "Closure of Children's Pool." The report noted that the Pool had been closed to "water contact since September 4, 1997 due to continuously high fecal coliform counts." Obvious forms of contamination had been ruled out and it was believed that the source was harbor seal feces. This had not yet been confirmed, but laboratory tests were being conducted.

The City Manager then discussed the City's lack of understanding of the reasons for "this unusual contamination level." The City did know that "[h]arbor seal populations have steadily increased off the west coast over recent years. This is evidenced at Children's Pool by an increased number of seals using the area." The City noted that a potential cause of the increase in the number of harbor seals at the Children's Pool was the nearby Reserve, which was three years into its five-year trial. Another potential cause was that "for the last year and a half, [City] lifeguards have erected barriers between seals hauled-out on the sand at Children's pool and the public." The barrier was to protect the public "from being bitten by a wild animal" or being fined for disturbing the seals.

The City Manager took the position that "[i]f the high contamination level both proves to be due to seals, and continues, it is the City's intent to find a solution which allows the peaceful co-existence of humans and seals at Children's Pool, to the extent the public health can be protected." He also recognized "[s]ince public health is potentially at risk, the federal Marine Mammal Act allows the City to take non-injurious actions which would reduce or eliminate seal usage of Children's Pool."

December 10, 1997

NMFS, an agency of the United States Department of Commerce, advised the City that "[w]hen Seal Rock was designated as a temporary reserve in 1994, a small number of harbor seals were utilizing the rock as a haul-out, while no animals were hauling out at Children's Pool Beach (CPB). According to [a] report, in 1996 the maximum number (62) of animals observed hauling out, on the rock occurred in April, while the maximum number (120) of animals observed hauling out at CPB occurred in June. Based on these data it appears that animals are preferring CPB over Seal Rock as their major haul-out site. This trend will most likely continue into the near future as the local seal population continues to increase in size."

NMFS also concluded that the seals at Children's Pool appear to be acclimating to humans and the effectiveness of the Reserve as a seal sanctuary is questionable. "Because, the harbor seal population both locally and statewide is healthy and increasing," removing Seal Rock as a Reserve will have no adverse effect on the seals.

1998

January 1998

Hubbs-Sea World Research Institute published a report of seal activity at the Reserve and Children's Pool. The report was based on photographs taken of each location every 30 minutes from November 1995 through September 1997. In most months, the peak count was significantly higher for the Children's Pool than the Reserve.

May 6, 1998

Natural Resources meets, with another report from the City Manager.

This time the City Manager recommended returning the barricades to separate the seals from the public. The removal of the barricades did not have the desired effect of reducing the seal population at the Pool. Also, complaints by public members of interactions between humans and seals were distracting the lifeguards from their public safety duties. For these reasons, the City Manager recommended the barricades be returned to the Pool. The report also concludes that re-opening the sluiceways was feasible, but three-quarters of the sand on the beach would need to be removed, in order to return the beach to its 1931 configuration. The City Manager recommended the sand removal. [Id.] The Committee's action was to recommend that the City Council direct the City Manager to apply for a Coastal Development Permit to remove the sand and re-open the sluiceways.

August, 1998

The City was advised by the Center for Disease Control that seals can transmit diseases to humans. "Some seals can carry tuberculosis and Giardia. Fecal contaminant bacteria and viruses would also be a potential concern."

December 22, 1998

The City requested authorization from the NMFS to remove sand from the beach. Dredging sand from the beach

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could constitute an "incidental harassment" of the seals. In justifying its request, the City represented that the breakwater was constructed to provide a sheltered swimming area for children; that the Pool has consistently been a popular attraction with a broad range of users who have come to rely on the Pool for beach recreation and water access, that skin and SCUBA divers depend on the Pool in order to safely enter and exit the water; that the beach behind the breakwater has gradually widened as sand accumulated in the Pool. By 1988, the shoreline at the Pool had advanced to near the end of the breakwater, at the mouth of the Pool. This resulted in very little protected area for recreational swimming. In addition, the swimming area had moved to within a close proximity to dangerous rip currents and their attendant safety concerns. Lifeguard rescues had increased because of this dangerous condition.

The City stated that it could restore the Pool as "a safe swimming area and [achieve] acceptable water quality [at] the Pool by reducing the beach width." The requested excavation would return the Pool to its early 1940's condition, with an enlarged area "available for recreational swimming and a safe region for the public to enjoy away from the dangerous rip currents."

1999

March 29, 1999

The recommendation of Natural Resources to remove sand from the Children's Pool came before the City Council which voted "to not dredge, not shoot the seals, instead put up a barrier to protect the humans from the seals and the seals from the humans and send it back to the Natural Resources Committee for an indepth (sic) review of all the issues including the legality and how it was left in the will." ¹ Following the vote, the City withdrew its request for a coastal development permit from the California Coastal Commission. The next day, the rope barrier went up

August 4, 1999

Natural Resources considered the issue of letting the Reserve designation lapse. The City Manager, in his July 26 report, recommended letting the Reserve lapse as of its sunset date of September 16, 1999.

In his report, the City Manager discussed the potential impact on Children's Pool. He noted that the NMFS was considering whether to declare Children's Pool a "natural haul-out and rookery." Such a designation would impose a no-human-interference policy at the Children's Pool beach. NMFS had held off on such a designation because the City was pursuing a "shared-use-by-people-and-seals policy" and was working on a proposal to "address the pollution at the Pool by reducing the size of the beach and thus the available haul-out space for the seals." Since the City had "abandoned the shared use concept and did not pursue the project to address the pollution, (NMFS) assumes the City plans to maintain Children's Pool beach as a seals-only beach. Therefore, the Service believes the next logical step would be to manage Children's Pool beach as a permanent harbor seal haul-out and rookery." The net effect would be that the public could not use the beach set aside for the seals, nor could fishing occur in that area.

Natural Resources rejected the City Manager's recommendation and voted to recommend the Reserve be continued for another five-year term. On November 1, 1999, the City Council voted to make the Reserve permanent with a five-year review.

October 19, 1999

NMFS advised the City that it did not favor public beaches being closed to the general public due to harbor seals expanding their range and colonizing mainland beaches. Further, NMFS did not agree with a shared-use of Children's Pool by humans and seals. NMFS believed the City should decide if the Children's Pool is to be used by humans or seals, not both.

November 4, 1999

City Attorney wrote the SLC inquiring whether the SLC considered the closure of the Children's Pool, or usage of the Pool for viewing seals, a violation of the 1931 Grant of Public Trust over the area of the Children's Pool.

2000

February 2000

NMFS notified the City that it had decided to manage the Children's Pool as a harbor seal natural haulout and rookery. NMFS based this decision on their understanding that harbor seals first began hauling-out at Children's Pool in 1995, with ever increasing numbers and the fact that in 1999, for the first time, seal pup births were documented at the Pool.

March 15, 2000

Fish and Game advised the City that the City did not have the authority to create a seal reserve on public trust tidelands. Fish and Game cited several bases for this opinion, including violation of the State Constitution, preemption by Federal law and State law, and violation of the 1933 trust itself.

August 15, 2000

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SLC responded to the City's request for an opinion. The SLC stood by its 1994 opinion that a small temporary seal reserve would not violate the 1933 trust and urged the City "to exercise its responsibilities in a flexible, balanced and thoughtful manner." However, the SLC did not address the City's inquiry concerning seals at the Children's Pool.

2003

February 11, 2003

NMFS advised the City that it could not intentionally harass the seals at Children's Pool in order to remove them. However, it could undertake activities that might temporarily displace the seals. An example would be a dredging project intended to improve the water quality at Children's Pool.

March 13, 2003

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

March 21, 2003

County of San Diego informed the City that with the adoption of AB 411 by the Legislature, the status of the Children's Pool had changed from "closed" to "advisory", since the water contamination was not due to a sewage spill.

April 1, 2003

The City Council considered the request of the Coastal Commission to modify the permanent status of the Reserve. The City Manager recommended that the City accept the permit with the special conditions. The City Council declined to follow the recommendation and did not accept the coastal permit with its special conditions. The Council directed that the signage and the docent program continue and further directed the City Manager to make a presentation before California's Marine Life Protection Working Group, seeking advice on the "appropriate status for the area." Also, the City Manager was directed to once again return to Natural Resources with a report on "how, in compliance with federal law, to reduce pollution levels and to return the Children's Pool to recreational use for children."

July 29, 2003

The Children's Pool Technical Advisory Committee met to discuss ways to Accomplish the directive of the City Council, for an unpolluted Children's Pool and a joint use of the beach at the Pool. The members of the Committee included, representatives from the NMFS, Coastal Commission, Fish and Game, County Environmental Health, Hubbs-Sea World, Park and Recreation, lifeguards and other City representatives. They went over most of the proposed "solutions" that had been enumerated over the years. They concluded the most viable options were "1. Dredge the beach in conjunction with floating platforms; 2. Close beach to public use; and 3. Create a new Children's Pool and leave current Children's Pool for seal use."

2004

June 17, 2004

City Manager provided Natural Resources with another report on seals at Children's Pool. This report laid out a comprehensive plan for restoring the Children's Pool to an unpolluted and safe condition. The plan was centered on dredging a substantial portion of the sand at the Pool. It was believed this would restore the water quality in the Pool to an acceptable level and relocate the water in the Pool further into the breakwater area away from the open sea and dangerous rip currents. The estimated cost of dredging the Pool ranged from \$250,000 to \$500,000. Another \$50,000 would need to be budgeted annually to pay for anticipated dredging every three to five years.

June 23, 2004

Natural Resources considered the recommendations of the City Manager. The Committee voted to refer the matter to the full City Council "with no recommendation."

On or about August 13, 2004

The City posted new signs at the Pool explaining that the rope was a "guideline to avoid disturbing the seals" and that swimming was "not recommended" because of excessive bacteria levels.

September 14, 2004

City Council once again held hearings on the Children's Pool. Addressing the Council that day was James Lecky of the NMFS. He advised the Council that harbor seals are a healthy species which are growing in population and not in anyway endangered or threatened as a species. In fact, as the population of harbor seals expands "[t]hey are causing problems... up and down the coast in terms of invading harbors, causing property damage and limiting access to beaches that are important for other "public uses." He then told the Council: "The tools that are available to the City and other local governments agencies really reside in [Marine Mammal Protection Act] §109(h)." He said "animals can be moved out of an area if they are either presenting a public nuisance or they're

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causing a public health hazard." It was his position that the seals at Children's Pool were a local issue for the City to resolve. At the end of the meeting, the Council voted "to design and permit the sand removal project and open the pool for year-round use. Direct that the opening of the sluiceways in the Children's Pool be evaluated as an alternative method to obtain the sand removal and tidal flushing as part of this effort. Direct that the rope barriers and sign posts be immediately removed to restore public access to the area and that new signs be placed."

2005

Aug 25, 2005

Superior Court William C. Pate rules against the city in a lawsuit brought by a private citizen contending the City had abandoned its fiduciary duties regarding the trust by which it received Children's pool and the breakwater. The city is directed to carry out the dredging of accumulated sand and restore the area to match photos of its condition in 1941, the earliest photos available.

http://www.friendsofthechildrenspool.com/legal_la_jolla_seals/Childrens_082505.pdf

The City mounts an appeal and the order is stayed.

2007

Sept 10, 2007

A 3 judge appeal panel unanimously rejected every argument the City Attorney had presented, and let stand the original decision.

cpfriends@san.rr.com

www.friendsofthechildrenspool.com/timeline.htm#1980

77

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4
 5
 6
 7
 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF SAN DIEGO**

| | | | |
|----|--|---|--------------------------------------|
| 10 | VALERIE O'SULLIVAN, |) | Case No: GIC 826918 |
| 11 | |) | |
| 12 | Plaintiff, |) | MEMORANDUM OF POINTS AND |
| 13 | v. |) | AUTHORITIES IN RESPONSE TO |
| 14 | |) | REPORT RE: FINAL STATEMENT OF |
| 15 | CITY OF SAN DIEGO, a municipal entity; |) | DECISION |
| 16 | STATE OF CALIFORNIA; and FOES 1 |) | DATE: October 27, 2005 |
| 17 | through 500, inclusive, |) | TIME: 2:00 p.m. |
| 18 | Defendants. |) | DEPT: 60 |
| 19 | |) | JUDGE: William C. Pate |
| 20 | |) | COMPLAINT |
| 21 | |) | FILED: March 12, 2004 |
| 22 | |) | TRIAL: July 26, 2005 |

23 **INTRODUCTION**

24 Plaintiff Valerie O'Sullivan ("plaintiff"), in her representative capacity as a private
 25 attorney general, submits the following in response to "Report Re: Final Statement of Decision"
 26 submitted by the City of San Diego ("City").

27 The judgment provides that "The City is directed to file a report with this court, no later
 28 than sixty (60) days following entry of this order, setting forth what steps it has undertaken and
 intends to undertake to comply with this order." The City's report, in purported compliance with
 this direction, is really a masquerade for a motion, seeking an amendment to the judgment by
 delay of its enforcement against the City. As such, it is unsupported by admissible evidence, is

1 formally incorrect and is unmeritorious and should be denied.

2 Seen as a summary of its efforts to comply, the report is an empty recitation of no more
3 than ritualistic meetings, culminating in nothing. The report glaringly lacks a discussion of the
4 most pressing compliance issues and is internally inconsistent. The report should be rejected and
5 the City required to report back within two weeks on specific and definite requirements at the
6 core of its mandated compliance with the judgment.

7
8 **I. THE REPORT AS MOTION**

9 **The City's Report is a Motion in Disguise.**

10 The court in its judgment required the City to submit to a report within 60 days of
11 August 26, 2005, and set this hearing for October 27, 2005. The papers filed by the City, styling
12 themselves the required interim report, really amount to a motion in disguise.

13 Rather than stating its plan to implement this court's judgment, the City recites alleged
14 efforts to comply with the judgment, ending, in its conclusion (page 7),¹ with the "request[s] that
15 the Court modify its Judgment and Final Statement of Decision and require City compliance by
16 January 2007." This is no more and no less than a motion to amend the judgment.

17 The judgment in this case is final. It was signed by the court on August 26, 2005; it was
18 filed October 4, 2005; notice of its entry was served on October 12, 2005 (see Exhibit A to
19 accompanying Notice of Lodgment [NOL]). The City has filed a Notice of Appeal of the
20 judgment (Exhibit B to NOL). Appeals lie only from judgments that are final. (CCP § 904.1;
21 see also *Laraway v. Pasadena*, (2002) 98 Cal. App. 4th 579.)

22 The City has not filed a motion for judgment notwithstanding the verdict (CCP § 629), a new
23 trial (CCP § 659), or any other relief that would entitle it, in effect, to vacation, reconsideration,
24 alteration or amendment of the judgment (e.g., CCP § 663). The City has signaled its
25 recognition of the judgment's finality by its appeal of it. There is no provision in the law for this
26 unilateral and unsupported attempt to modify the final judgment. Hence, the City's request for a
27

28 ¹ References are to City's Report.

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1 continuance to allow altered compliance with the judgment should be summarily denied.

2 Nor is the request properly viewed as a motion for a stay. No writ of supersedeas has
3 been filed, the proper remedy to invoke a stay of an injunction (CCP § 923), and the City is
4 behaving as if it must go forward. In Mr. Aguirre's words, "We are free to disagree but not to
5 disobey." (October 22, 2005 San Diego *Union Tribune*.)

6
7 **The Report, as a Motion, Fails to Comply With the Law.**

8 Even if a request for amendment of the judgment were theoretically permissible without
9 more, the City has completely failed to comply with the statutory requirements for a noticed
10 motion, including a memorandum of points and authorities and supporting evidence properly
11 authenticated. Its papers are replete with unsupported documentary and testimonial evidence.
12 For example, the statement on page 6 of the report, "Mr. Durham also informed the City that the
13 Corps was not subject to this court's judgment; therefore, compliance with the judgment was not
14 a concern of the Corps," is unauthenticated hearsay and unfounded opinion. There are
15 references throughout the report to requirements of law that are nowhere supported by citations
16 or discussion: "If there is a significant issue, then an Environmental Impact Study will be
17 required," (page 5). There are no minutes attached of the seven meetings alleged to have been
18 held by City personnel on the indicated dates. For these and a multitude of other reasons,
19 plaintiff Valerie O'Sullivan will be denied due process of law if the court were to entertain the
20 request to amend the judgment as the City has proposed, or at all.

21
22 **The Relief Sought Should be Denied.**

23 Even if the judgment could be amended and the proper procedural mechanisms for a
24 motion had been observed, which they were not, the City's attempt to amend the judgment is
25 unmeritorious.

26 The report starts out by informing the court that the city had in effect anticipated the
27 court's judgment and had begun compliance with it as early as September 14, 2004. (The court
28 will recall that it was on this date the City passed the dredging proposal that came to naught and

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1 had not been implemented as of the start of trial on July 26, 2005.) The City's papers state
 2 (page 2) that even at that time it was anticipated that the project would likely start no sooner than
 3 September of 2006. This is because there is to be no construction between January and May or
 4 June, and then again none between Memorial Day and Labor Day. Memorial Day is typically at
 5 the end of May. Hence, the City proposes that nothing be done from January through September
 6 of any given year. The City proposes that this is to be the case for January 2006 through
 7 September 2006 as well. That is in wholesale violation, if not defiance, of this court's judgment
 8 which, by the comments of the court and the terms of the statement of decision, required the
 9 City's attention to this matter immediately.²

10 The City's papers then state (page 3) that on May 26, 2005, two months before trial in
 11 this matter commenced, "the City's Park and Rec department submitted a project package to the
 12 City's Development Services Department for analysis." (If that occurred, the plaintiff herein
 13 was not provided a copy of that documentation pursuant to permissible pretrial requests in this
 14 case; and such a package was never part of the evidence supplied to this court.)

15 The City next claims to have been working on the permit process starting in September,
 16 2004, up to August, 2005 (page 4). In that time the City apparently obtained no permits. The
 17 City does not tell us what it actually had done during that period, but only that "the process
 18 includes, but is not limited to," the following:

- 19 • finalizing grading plans.

20 Where are they?

- 21 • finalizing a biology report.

22 What is a biology report? Where is it?

- 23 • finalizing alternative reports.

24 Alternatives to what? What are they? Where are they?

- 25 • finalizing geological reconnaissance report.

26 For what? What is it? Where is it? Why is it needed?

27
 28 ² Indeed the "pupping-season" delay (January through May or June) is not in order at all
 because (see *infra*) NOAA urges the City to deter the seals by early November, five days from now.

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1 • finalizing traffic plans.
 2 Is this a man with a sign?
 3 • finalizing a best management practice plan.
 4 What, why, where?
 5 • finalizing a schedule.
 6 Where? Is this anything other than what appears on pp. 2-3 of the report?
 7 • finalizing the methods and means of the construction operation
 8 and addressing the seals.
 9 What does this mean? What is it? Where is it?

10 Nothing was produced during this period so far as the papers show.

11 Then the papers jump (page 4) to what has occurred since the court's judgment of
 12 August 26, 2005. Several meetings were held at which time various issues were discussed. No
 13 minutes have been produced.

14 The principal impediment to implementation of the judgment, according to the City's
 15 report, would appear to be delays caused by positions of the California Coastal Commission and
 16 by the Army Corps of Engineers. Interestingly, when the dredging proposal was first birthed in
 17 March 1999 at a City Council meeting, permits from these very same agencies were also
 18 required. The City Council Minutes of the meeting of March 29, 1999, however, report that the
 19 City Manager had begun the permit application process and the dredging work would be
 20 "completed by the start of the summer season," a period of just 2-3 months. (Exhibit C to NOL.)
 21 The dredging work itself, the City estimated in the April 29, 1998 Manager's Report, would take
 22 some 15 days. (Exhibit D to NOL.)

23 Furthermore, and very importantly, the dredging proposal and cleaning up the waters by
 24 getting rid of the seals are independent efforts. They can and should be pursued independently.

25 On October 17, 2005 (Exhibit E to NOL), Rodney R. McInnis, Regional Administrator of
 26 NOAA, wrote the City indicating, in substance, that the City could avail itself of the 109(h)
 27 exceptions to the Marine Mammal Protection Act, and if it were to do so, it should get rid of the
 28 seals by November 2005, in order that they might find an acceptable alternative location before

1 pupping season started after the first of the year. Here it is October 27th, and there is no sign of
2 any effort by the City to achieve relocation of the seals which the federal government itself is
3 plumping for.

4 5 CONCLUSION I

6 Thus, on all counts, the City's feet should be held to the fire. This court, in blisteringly
7 unadorned language upon delivering its judgment, scolded the City that it had studied the
8 problem for years and had done nothing to correct it. Now the City comes to the court hat-in-
9 hand, impermissibly seeking an amendment to a judgment that is final, by papers that are out-of-
10 order, and on grounds that simply do not stand the light of even a casual examination. If the City
11 truly is unable to comply with the court's judgment, then it may have a defense later when it is
12 attempted to be held in contempt of this court. But on these papers, there is no valid and
13 admissible evidence that it cannot comply if it puts its shoulder to the wheel. These papers are
14 full of the kinds of excuses, misstatements, misreadings of the law, and pleas for mercy from a
15 City which the court has found was willfully and knowingly in breach of its fiduciary duty to its
16 citizens. The court should give the City no quarter, here or otherwise, from its mandate to
17 comply with the judgment.

18 19 II. THE REPORT AS STATUS SUMMARY

20 The report also purports to summarize, in the words of the judgment, "what steps it [City]
21 has undertaken and intends to undertake to comply with this order." What the report tells us on
22 that score is that the City has held seven meetings and, ultimately coming up empty-handed,
23 wants the court to delay enforcement of the judgment for another year-and-a-half.

24 The report, as a summary of the City's efforts to get rid of the seals and dredge the beach,
25 is glaringly insufficient:

26 1. The report does not say whether the City means to get rid of the seals and, if so,
27 how it plans to do so. Is the City going to have a Park and Rec employee on the beach shoosing
28 the seals away? Is it going to use a dog to do so, as Jim Antrim and Sarah Allen, the leading

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1 harbor-seal experts on the west coast, have recommended? In short, how does the City plan to
2 get rid of the seals? The need for an answer is immediately pressing since NOAA has
3 recommended they be gotten rid of within four days, i.e., by November 2005, in order to
4 acclimate the seals to a new habitat before the pupping season. (See Exhibit E to NOL.)

5 2. What is the funding source for the project? This was a big question in connection
6 with the September 2004 dredging proposal, and at one point resort was to be had to
7 contributions from the community to accomplish the work. Does the City have a funding source
8 for the project and, if so, what is it and how much money does it amount to; and, if not, where is
9 it going to get the money to comply with the court's order?

10 3. Has the City told Hubbs Sea World not to release rehabilitated seals in the kelp
11 beds off the Children's Pool?

12 4. The City completely fails to address what is perhaps, after all, the most pressing
13 issue of all: the efforts by the seal activists to continue their takeover of the beach, barring all
14 human use of it. While the court in its judgment declined to order the City to enforce its laws
15 and ordinances more strenuously, since the judgment seal activists have continued to gin up their
16 efforts to bar human use of the beach. Exhibit F to the NOL is a compilation of pictures taken on
17 October 22, 2005, by Mr. Don Perry, a witness at trial, showing the presence of signs on the
18 beach, the absence of people there, and the fact that what was once a line in the sand has now
19 become a ditch across the beach, effectively barring people from use of it. This matter is
20 becoming increasingly more serious. This is not a First Amendment exercise by people who
21 simply are voicing their views, it is a matter of deadly serious animal activists who are intent on
22 taking over possession of the beach for the use of the seals which the court has ruled must leave
23 the beach. The City's spokespeople, like its City Attorney, have made great efforts to appease
24 this activist interest, saying, for example, that the City will not shoo the seals from the beach,
25 that the dredging will not interfere with them, and the like. The City's report completely
26 overlooks, or rather omits pointedly to discuss, this impediment to its compliance with the
27 court's judgment and order.

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1 5. The City's report further omits to discuss any contact it has had with the County
2 Health Department personnel who test the water. The whole object of this judgment is to clean
3 up the water at the Children's Pool so it is safely useable by humans. Yet the City has apparently
4 not contacted County Health Department personnel who test the waters to resume testing.
5 Plaintiff has a right to know when it is expected, with the seals' departure, that the waters will
6 return to a point of health and safety for beach users, when the signs warning people not to use
7 the beach will be removed, and the like. None of these matters are discussed in the City's report.

8 6. The City has kept the plaintiff completely in the dark as to its efforts. The plaintiff
9 has not been included in any meetings or asked to participate by way of input or commentary in any
10 of the steps that the City purports to have taken. The plaintiff should be permitted to do so and
11 should be kept in the loop of the City's efforts to comply with the judgment. This is not the case of a
12 private trustee of private funds whose ways may remain shielded from its beneficiaries so long as the
13 outcome is honest and correct. The City is a public entity; the plaintiff is one of its citizens. That
14 public entity holds the plaintiff's property in trust. The plaintiff should be able to ascertain fully by
15 way of on-hand observation and participation what is going on to protect her and her fellow citizens'
16 publicly trusted property. Thus, the City should be required to keep plaintiff and her counsel
17 apprised of all efforts in the direction of complying with the court's judgment and order and the
18 plaintiff and her counsel should be able to offer suggestions to the City and participate in the
19 processes leading to its compliance with the judgment.

CONCLUSION II

22 The City's report can be seen only as more excuses and malingering in order to avoid
23 compliance with its legal obligation under the 1931 Trust and with this court's judgment. While of
24 course all judiciousness is essential to the treatment of this problem, like any other, it would be
25 hardly untoward if the court's patience were showing a bit thin with the City's marginal and
26 barely camouflaged gestures, not serious efforts at all, to comply with the judgment.

27 Plaintiff would suggest that the City be required to return to court within two weeks and
28 report upon the following points, for example:

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1 1. Has the City gotten rid of the seals? If not, when will it do so and by what means?

2 2. Has the City found funds to do the dredging project? Has the contract been let?

3 Where will the funds derive from? Are they segregated in the event of the City's bankruptcy in
4 order to accomplish this project?

5 3. What has the City done to deter Hubbs Sea World from releasing seals at the kelp
6 beds?

7 4. What has the City done, and what does it intend to do, to restore the beach to
8 beach users and take it back from seal activists who have barred all human use of it by their
9 ditches and lines in the sand, and their physical presence with signs telling people to stay away?

10 5. What is the status of the County Health Department's resumption of testing?
11 When will the signs come down?

12 Seen as a summary of the City's efforts to comply with the court's judgment, this report is
13 shamefully deficient. It should be rejected. The City should be required to return to court within
14 two weeks to answer the inquiries, and perhaps others of the court, recited above. In the
15 plaintiff's view of life, the City, despite the withering judgment delivered against it, despite its
16 having been found in willful and knowing breach of its fiduciary duties, continues to play fast
17 and loose with the court, apparently thinking it is not subject to the court's power to remedy this
18 wrong. In this, as in other currently notorious public issues, the City still has not learned it must
19 obey the law.

20 Respectfully submitted,

21

22 **KENNERSON & GRANT, LLP**

23

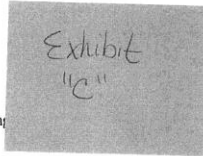
24 Dated: October 25, 2005

25 By: _____
26 Paul Kennerson
27 Attorney for Plaintiff VALERIE O'SULLIVAN
28

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Minutes of the Council of the City of San Diego for the Regular Meeting of Monday, March 29, 1999



ITEM-211: In the matter of "Sufficient Assurances" concerning

FILE LOCATION: MEET (64)

COUNCIL ACTION: (Tape location: D306-G148.)

MOTION BY STALLINGS TO ACCEPT STAFF'S REPORT. Second by Kehoe.
Passed by the following vote: Mathis-yea, Wear-yea, Kehoe-yea, Stevens-yea,
Warden-yea, Stallings-not present, McCarty-yea, Vargas-yea, Mayor Golding-yea.

ITEM-S400: Two actions related to La Jolla Children's Pool Beach Management and Water
Quality Improvement Project and Certifying Mitigated Negative Declaration
LDR-98-0671.

(Continued by Common Consent from the meeting of March 22, 1999, Item 151,
due to lack of five affirmative votes.)

(See City Manager Reports CMR-98-99 and CMR-98-29. La Jolla and La Jolla
Shores Community Areas. District-1.)

TODAY'S ACTION ARE: REFERRED TO NATURAL RESOURCES AND
CULTURE COMMITTEE AND DIRECTIONS TO CITY
MANAGER

Adoption of the following resolutions:

Subitem-A: (R-99-958 Cor. Copy)

Authorizing the City Manager to proceed with the project to restore the beach
width in La Jolla Children's Pool to that present in 1941 by removing
approximately 3,000 cubic yards of sand for disposal at either Marine Street or
north La Jolla Shores beach;

Authorizing the City Auditor and Comptroller to expend an amount not to exceed
\$40,000 from General Fund 100, Department 442, Park and Recreation Coastal
Division.

Court's Ex. 114
Case # GIC926918
Rec'd 5-6-05
Dept 60 Clk

Minutes of the Council of the City of San Diego
for the Regular Meeting of Monday, March 29, 1999

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Subitem-B: (R-99-962 Cor. Copy)

Certifying that the information contained in Mitigated Negative Declaration LDR-98-0671, La Jolla Children's Pool Dredging (Project), has been completed in compliance with the California Environmental Quality Act of 1970, as amended, and State guidelines, and that said declaration reflects the independent judgement of the City, and that said report has been reviewed and considered by the Council.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 5/6/98, NR&C voted 4-1 to approve directing the City Manager to apply for a Coastal Development Permit to remove sand and open the sluiceways at the Children's Pool beach, and to deposit the sand at La Jolla Shores beach. (Councilmembers Mathis, Wear, Kehoe, Warden voted yea. Councilmember Stallings voted nay.)

CITY MANAGER SUPPORTING INFORMATION:

On May 6, 1998, the Natural Resources and Culture Committee considered City Manager's Report No. 98-88 and voted 4:1 to recommend the City Council approve directing the City Manager to apply for a Coastal development permit to remove sand and open the sluiceways at Children's Pool beach, and to deposit the sand at La Jolla Shores beach. Subsequently, environmental analyses have been conducted and a final Mitigated Negative Declaration prepared. The objective of this action is to restore the shared use of Children's Pool by people and harbor seals. Approximately three thousand cubic yards of sand will be removed from Children's Pool beach and deposited either on Marine Street beach or on north La Jolla Shores. This will restore the Children's Pool beach width to its design configuration consisting of a large "pool" of water. The water entry point for public use will be set back from a rip current located at the end of the breakwater making the use of Children's Pool by swimmers safer. The reduced beach width will also increase competition for space between humans and harbor seals which may decrease the number of seals hauling out on Children's Pool beach which could result in sufficiently reducing fecal coliform counts to the point that the prohibition on human contact with the pool waters can be lifted. Consistent with Committee direction, permit applications are in process with the California Coastal Commission, Army Corps of Engineers, and the National Marine Fisheries Service. Work is targeted to be completed by the start of the summer season.

Aud. Cert. 9900942.

FILE LOCATION: MEET

GIC826918

LETTER

RESPONSE



THE CITY OF SAN DIEGO MANAGER'S REPORT

Seal
FIVE

Exhibit
"D"

DATE ISSUED: April 29, 1998

ATTENTION: Natural Resources and Culture Committee,
Agenda of May 6, 1998

SUBJECT: CHILDREN'S POOL: SEALS, POLLUTION AND REMOVAL OF
SAND TO REDUCE BEACH WIDTH

REFERENCE: Manager's Report No. 98-29 Issued February 11, 1998
Manager's Report No. 97-176 Issued September 29, 1997

SUMMARY

Issues -

1. Shall the Committee accept this status report on Children's Pool seals and pollution, including the City Manager's plan to replace barricades on the beach between people and seals?
2. Shall the City Manager be directed to apply for a Coastal Development Permit to remove up to 3,000 cubic yards of sand from Children's Pool beach in La Jolla in order to reduce beach width on a trial basis to evaluate impacts on water safety, pollution, and seals?

Manager's Recommendations -

1. Accept this status report and endorse the City Manager's plan to replace barricades on the beach between people and seals.
2. Recommend to the City Council that the City Manager be directed to apply for a Coastal Development Permit, and subsequently proceed to remove sand from Children's Pool beach on a trial basis.

Court's Ex. 112
Case # GIC826918
Rec'd 8-1-05
Dept. 6 Clk

ENV000854

1 Paul R. Kennerson [SB #45430]
2 John K. Grant [SB #149318]
3 **KENNERSON & GRANT, LLP**
4 101 West Broadway, Suite 1150
5 San Diego, California 92101
6 Telephone: (619) 236-8555
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8 Attorneys for Plaintiff VALERIE O'SULLIVAN

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 VALERIE O'SULLIVAN,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, a municipal entity,
15 and FOES 1 through 500, inclusive,

16 Defendants.

) Case No:

17 **COMPLAINT**

- 18 **1. PRIVATE ATTORNEY GENERAL**
19 **2. BREACH OF TRUST AND**
20 **FIDUCIARY DUTIES**
21 **3. DECLARATORY RELIEF**

22 **I. BACKGROUND**

23 1. This lawsuit is brought as a private attorney general by VALERIE O'SULLIVAN,
24 who at all times herein mentioned was and now is a resident of the village of La Jolla,
25 California, located in and part of the City of San Diego, County of San Diego, State of
26 California.

27 2. The lawsuit involves a portion of a beach area on the Pacific Ocean generally
28 located at the intersection of Coast Boulevard and Jenner Street in the village of La Jolla, City of
San Diego, County of San Diego, State of California. In 1931 the State of California deeded
certain property in that location, the metes and bounds of which are described in Exhibit A to
this Complaint, in trust to the City of San Diego for the purposes stated in the grant, to-wit, for

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1 exclusive use as a public park and pool for children and other uses incident thereto, all as more
2 particularly described by the terms and conditions of the grant in trust contained in Exhibit A.
3 3. Essentially contemporaneously with the grant in trust from the State of California
4 to the City of San Diego Ellen Browning Scripps, now deceased, a great benefactress of the City
5 of San Diego, donated money to the City for the construction of a breakwater in order to form
6 what became known, and remains known to this day, as the "Children's Pool." Pursuant to the
7 grant of the aforesaid property in trust, the metes and bounds of which generally coincide with
8 the area of the sea and beach demarcated by the sea wall, the Children's Pool has--since its
9 inception up to approximately 1994, and ending on September 4, 1997--been used as a public
10 facility for swimming and bathing by its intended beneficiaries, and particularly by children as a
11 children's pool.

12 4. In or about 1994, marine mammals (principally harbor seals, sometimes hereafter
13 "seals" or obvious variants) which had previously hauled out at Seal Rock, a rock in the water to
14 the immediate north-northeast of Children's Pool, or elsewhere, began steadily to haul out upon
15 and occupy the Children's Pool. In connection with their occupancy of its waters and the beach
16 adjoining it, the Children's Pool came increasingly to be off-limits to human use or occupation,
17 such that, over time, the City of San Diego, by signage, barriers and otherwise, prohibited or
18 discouraged public use of the Children's Pool by the beneficiaries of the aforesaid trust,
19 including children who were residents of or visitors to the City of San Diego.

20 5. The marine mammals, and in particular the harbor seals, which have occupied the
21 Children's Pool, enjoy certain protections under the United States Marine Mammal Protection
22 Act 16 U.S.C. § 1661, et seq. ("MMPA"). The act provides, *inter alia*, that "taking" of marine
23 mammals is prohibited under the act. "Taking" consists, in one form, of harassment of a marine
24 mammal, which requires an act of pursuit, torment or annoyance that has the potential to injure a
25 marine mammal in the wild or significantly disrupt its behavioral patterns. The MMPA, by its
26 terms, defines its jurisdiction, and does not apply to Children's Pool. Furthermore, the MMPA

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1 contains certain provisions by which seals can be “deterred” from an area where they are causing
 2 damage to public or private property or are endangering personal safety and can be taken for the
 3 protection of the public health and welfare or for the nonlethal removal of “nuisance animals” (as
 4 that term is used in the act). In particular, the MMPA permits a private person or government
 5 employee to deter seals that are damaging public or private property, respectively, or
 6 endangering personal safety and--in the case of a government official acting within his or her
 7 official duties--allows the humane taking of “nuisance animals” by nonlethal measures or marine
 8 mammals endangering the public health and welfare.

9 6. Starting in 1994, and especially after September 4, 1997, to and including the
 10 present time, the occupancy of Children’s Pool by seals has damaged public and private
 11 property. During that time the seals have become “nuisance animals” from the standpoint of the
 12 legislated trust purpose of the Children’s Pool.

13 7. In addition, seal occupancy of the waters and the adjoining beach eventually
 14 resulted in contamination of the waters and beach at the Children’s Pool, such that the Children’s
 15 Pool was polluted beyond the safe or reasonable tolerance by humans, and especially children,
 16 was closed to public use on September 4, 1997, and remained so until April 1, 2003, when the
 17 City of San Diego purported to permit joint human and seal use of the Children’s Pool.

18 The announced ambition of joint use was an arrant fiction, conjured up by the
 19 trustee City of San Diego for unknown reasons, since people using the pool on those purported
 20 terms, such as Plaintiff herein, were charged as violators of the MMPA in so doing and thus
 21 swam only at risk of federal prosecution. Moreover, contamination of the Children’s Pool by
 22 marine mammals made it effectively unavailable for any human use, especially by children. And
 23 the trustee City of San Diego, by signs and barriers across its entire accessible side, cordoned off
 24 and thus in effect closed down the Children’s Pool to use by its intended beneficiaries. These
 25 conditions remain the visible status of the trustee’s so-called joint-use policy at the Children’s
 26 Pool.

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1 8. Starting in 1994, and especially after September 4, 1997, to and including the
2 present time, fecal coloform and other contaminants from harbor seals in the waters and beach at
3 the Children's Pool have constituted a hazard to personal safety and have endangered the public
4 health and welfare.

5 9. Plaintiff is informed and believes, and thereon alleges, that on or about October
6 15, 2003, public studies and tests for contamination of some 448 California beaches showed that
7 Children's Pool was one of the most contaminated beaches in the state.

8 10. Starting in 1994, and especially after September 4, 1997, the marine mammals
9 occupying Children's Pool have caused, and continue to cause, damage to public and private
10 property, in particular the trust property that is the Children's Pool, have become "nuisance
11 animals," and have constituted, and continue to constitute, a danger to the personal safety and
12 the health and welfare of intended beneficial users of the pool. The trustee City of San Diego
13 has failed and refused, and continues to fail and refuse, to take any effective action whatsoever,
14 including measures permitted under the MMPA, to deter the marine mammals from the damage
15 they cause and the hazards they constitute. This is so despite offers from MMPA enforcement
16 authorities of the United States to assist the trustee City of San Diego in deterring marine
17 mammals from the Children's Pool.

18 11. Furthermore, the MMPA contains provisions by which application can be made to
19 the United States Secretary of Commerce for an exemption from the moratorium on taking under
20 certain terms and conditions set forth in the act. Part of the relief sought in this action, among
21 other desired relief, is to compel the trustee City of San Diego to apply to the Secretary for any
22 necessary exemption for the Children's Pool, one of the most contaminated beaches in the State
23 of California, in order to deter the marine mammals occupying it from further damaging it and
24 to stop the "nuisance" and the hazards to personal safety and the public health and welfare they
25 continue to pose.

26 12. At various times during the occupancy by the marine mammals of Children's Pool
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1 the City Council of the City of San Diego has discussed the problem and has called for legal
2 opinions from the City of San Diego City Attorney. In particular, and without limitation, on or
3 about March 29, 1999, upon motion of Councilman Juan Vargas, passed by the then-current City
4 Council, the City Council voted to examine the entire background of the Children's Pool
5 including "the legality, and how it was left in the will," presumably referring to the will of Ellen
6 Browning Scripps. (It was commonly thought, in error, that the will of Ellen Browning Scripps
7 had bequeathed the land to the City of San Diego, whereas the truth appears in paragraphs two
8 and three above, i.e., that the State of California had given the property in trust to the City of San
9 Diego and Ellen Browning Scripps had donated the money to build the breakwater.) Despite a
10 passed motion to that effect, the City of San Diego has failed and refused, and continues to fail
11 and refuse, to explore the legalities of the background of the trust, its current status, or the status
12 of the MMPA as it applies to the Children's Pool trust. Moreover, the City of San Diego has
13 failed and refused, and continues to fail and refuse, to explore or take available exemptions from
14 the moratorium on taking or legal measures to stop the continuing damage to public and private
15 property, the ongoing "nuisance" and the hazards to personal safety and the public health and
16 welfare caused by the seals in occupancy at the Children's Pool.

17 13. It is estimated, and will be proved at the time of trial, that as many as 1,000,000
18 beneficiaries of the trust have been unable to use the Children's Pool who would otherwise have
19 used it during the period of its practically or legally prohibited use, which has caused damage in
20 an amount unspecified but which will be proved at trial. Beneficiaries of the trust will continue
21 to be damaged in the same manner in the future unless the trustee City of San Diego is
22 compelled to perform its duty by making use of available remedies to deter marine mammals
23 from the trust property.

24 14. It is the prayer of this action, brought under a private attorney general theory, as
25 follows:

26 a. To compel the City of San Diego to observe the terms of the trust by, *inter*

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LETTER

RESPONSE

1 *alia*, taking lawful measures (1) to deter marine mammals from causing and continuing to cause
2 damage to public and private property at Children's Pool in La Jolla; (2) to stop them from
3 endangering personal safety and the public health and welfare; and (3) to abate the "nuisance"
4 there, all or any by way of a mandatory injunction;

5 b. A declaration by the court or the trier of fact that the City of San Diego has
6 breached the terms of the trust and continues to be in breach of its trust obligations and its
7 fiduciary duties under the grant by the State of California, is knowingly in breach of such
8 obligations and duties, and is responsible, by way of surcharge or otherwise, for all damages
9 which flow from its breaches;

10

11 c. For attorneys fees in this action, including on a continuing basis in order to
12 permit careful, proper, appropriate and thorough prosecution of the action;

13 d. For costs of suit; and

14 e. Such other and further relief as the court deems just and proper.

15

16 **II. FIRST CAUSE OF ACTION**

17 15. Plaintiff incorporates all the foregoing allegations as part of the First Cause of
18 Action.

19 16. Plaintiff sues FOES 1 through 500 herein and will substitute their true names and
20 capacities when that information is ascertained. Plaintiff is informed and believes and thereon
21 alleges that FOES sued herein as 1 through 500 are responsible in some fashion for the events
22 and happenings herein referred to, and upon the theories hereinafter expressed, are thereby liable
23 under those theories in the fashion aforesaid. Plaintiff further believes and thereon alleges that
24 Defendants sued herein as FOES 1 through 500 are the agents, servants and employees of each
25 other, or are independent contractors or joint venturers with certain other defendants, and thus, if
26 not directly involved in the activities hereinbefore mentioned, are responsible in some

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1 representative or agency capacity, or otherwise, for the events and happenings referred to upon
2 the theories expressed herein.

3 17. Defendants are in breach of their trust obligations pursuant to the grant of the
4 Children's Pool property, as set forth in Exhibit A hereto, and the law.

5 18. This action is appropriate to be brought under a private attorney general theory
6 because it seeks enforcement of an important right affecting the public interest and the result of
7 this lawsuit will inure to the benefit of members of the public, as beneficiaries of the trust,
8 deprived of a trust asset by the negligence and otherwise wrongful conduct of the trustee City of
9 San Diego and FOES 1 through 500.

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13 **III. SECOND CAUSE OF ACTION**

14 19. Plaintiff incorporates all the foregoing allegations as part of the Second Cause of
15 Action.

16 20. Defendants are in breach of their fiduciary obligations under the trust agreement
17 as contained in Exhibit A hereto and the law. As such, they are liable to Plaintiff as hereinbefore
18 set forth.

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IV. THIRD CAUSE OF ACTION

21 21. Plaintiff incorporates all the foregoing allegations as part of the Third Cause of
22 Action.

23 22. Defendants had notice of the legal status of the Children's Pool from its inception
24 in 1931 upon the grant of the land in trust to the City of San Diego. Evidenced by the events as
25 set forth above, the City of San Diego at all times knew, or should have known, of its obligation
26 as a trustee to prevent "nuisance," to safeguard the property from damage and to eliminate

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1 hazards to personal safety and to the public health and welfare by reasonable measures that could
2 have been, and can continue to be, taken under the MMPA to stop the "nuisance," to deter the
3 seals from causing such continuing damage and hazards to personal safety and to protect the
4 public health and welfare.

5 23. Despite such knowledge and awareness, the City of San Diego has failed and
6 refused, and continues to fail and refuse, to take the indicated and appropriate action under the
7 law to stop marine mammals from causing such damage or endangering such personal and public
8 rights.

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V. FOURTH CAUSE OF ACTION

11 24. Plaintiff incorporates all the foregoing allegations as part of the Fourth Cause of
12 Action.

13 25. A controversy has arisen and a dispute exists as between Plaintiff and other
14 members of the public and Defendants as to the obligations imposed by Exhibit A and the law
15 and the consequent obligations incumbent upon said defendants; the nature, extent and duration
16 of their trust obligations thereunder; the nature, extent and duration of their fiduciary duties
17 thereunder; their breach thereof; whether, and to what extent, Defendants, and each of them,
18 knowingly violated their trust obligations or fiduciary duties; and the damages caused by the
19 foregoing.

20 WHEREFORE, Plaintiff herein as a private attorney general seeks the relief as stated
21 above in paragraph 14 against the City of San Diego and FOES 1 through 500.

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KENNERSON & GRANT, LLP

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26 Dated: March 12, 2004

By: _____
Paul Kennerson

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28

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COMPLAINT

LETTER

RESPONSE

McPherson, Anna

From: Cheri Aspenleiter [cheriaspen@gmail.com]
Sent: Thursday, May 02, 2013 12:07 AM
To: DSD EAS
Cc: Cheri Aspenleiter; cheri Jacobs; Cheri Aspenleiter
Subject: Children's Pool Closure

To the City of San Diego, CA Draft Negative Declaration :
 Regarding the closure of the human ocean swimming pool left in Trust for maintenance to the City of San Diego,

Children's Pool should not be closed ,

- B-78** 1. It should not be a Marine Mammal habitat as the fecal matter, afterbirth and bacteria are a marine mammal hazard as it is unhealthy for the seals to live in their own feces. The bacteria makes them ill. An environmental study and testing of the shore sand and the water shallows and an in depth study of the consequences of such over populations of seals in one pinned in concrete structure. Illness, bacteria, and death are likely for seals and for airborne illness to the public. To encourage the populations to grow in a small area is now causing the seals to starve and many are being found laying dead in the eel grass. Environmental Studies need to be done about the current starvation and devastation of the fish, abalone and mussel and sea star and lobster populations.
- B-79** 2. The bacteria build up is a public health hazard and closing the pool will make this worse and cause illness to humans;
- B-80** 3 The odor from the feces and the afterbirth and the dead carcasses is interfering with the health and enjoyment of the surrounding residential areas, especially Casa Manana Retirement Center across the street. They are already complaining. To close off an over population of seals will cause more stench to an already filthy bacteria ridden polluted beach. A concrete pen is not a natural environment for seals and because of the protection of the breakwater does not have enough surf and surge to clean the beach as would a natural beach. This is a human health hazard, and can not be allowed by health codes.
- B-81** 3. A California State Beach can not legally be closed for any length of time, nor can its uses be changed from the enjoyment of the residents without major environmental studies and the vote of the La Jolla Community/ This is a Gift from Ellen Browning Scripps and accepted by the City and the people of La Jolla . It was especially designed for humans and it is not legal to change this use for any length of time. To add a use to a Dead Woman's Will that would obliterate the Original Deeded Uses was not legal and I challenge the authority of this. This is a human swimming pool that has been allowed to degrade and fill in with sand the sand needs to be dredged out immediately and the sluiceways opened to keep the pool clean. The seals will migrate just to Seal Rock and be protected from humans by the dangerous rip tide. This is a healthier place with currents that keep the area clean as is natural. Swimmers and seals sharing the three beach area, S.Casa, Children's Pool and Shell Beach with Seal Rock. This is wisdom. And the vision of Ellen Scripps and the promise of the City.
- B-82** 4. An ADA Study must be thoroughly conducted. The Children's Pool was especially designed by Hiram Savage to give protection to the Disabled, especially disabled Children. There is no other breakwater wall with a circular design to protect a natural ocean pool from the dangers of the ocean. The ramp that is there was the first ramp for the disabled to the high water mark on a CA State Beach prior to the creation of ADA Codes. This Ramp at Children's Pool is the Grandfather Disabled Ramp to the sea. This Ramp set the precedent for all other beach access. The Children's Pool needs to be remodeled and the sand dredged out and the sluiceways opened to keep the pool clean and clear of bacteria, so it is safe for all mammals. This is as per the agreement by the city . This agreement by the City in record with the City. The Children's Pool is the ONLY ocean

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B-78. Comment noted. See Response to A.4.

B-79. Comment noted. See Response No. A.2.

B-80. Comment noted. Refer to Response No. B.8 regarding the comment regarding odor.

B-81. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

B-82. Comment noted. The existing ramp does not provide public access. The project would not affect this existing condition. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

pool for the disabled in the State of California or in the Continental U.S. It could once again be the Best ADA Ocean Swimming Pool in the United States.

Federal Law states that there must be an ADA accessible beach access every 1.5 miles. This is the . only safe area with a breakwater pool and is perfect for wheelchairs. Both paraplegic and quadriplegic swimmers use Children's Pool now and have for years. It is not lawful to remove their rights to swim in this pool year around. They will have no where else to swim. They have the priority of rights in this situation. The Seals can go to thousands of places. The disabled only have the Children's Pool.(La Jolla Shores is not safe for people without the use of their limbs.)

5. Studies must be done on the underwater ecology and demands on the eco systems. Be on notice: The mussel population is now depleted, expect for a few stubborn ones mixed with barnacles the mussels are gone. Mussels are an indicator species. Everything in the sea and in tide pools eats them. Local divers have conducted their own studies via diving in the locale and it is clear that the following species are depleted or in a state of emergency of being wiped out:

B-83

1. mussels
2. Fish including Garibaldi
3. Giant limpets.
4. Crabs
5. Lobsters
6. Sea Stars

The seals have devoured everything in sight. Soon sixty pups will be weaned and in competition for any remaining food sources.

The over population of seals is causing the local underwater environment to be void of normal species, to become a barren wasteland. The Garibaldi are down about 80% or more. Studies should have been ongoing with the release of the dozens of seals by Sea World years ago. Their populations have doubled and tripled each year. This year tipped the scales environmentally and now they are beginning to starve, as the sea lions have been doing. Starving to death. To close Children's Pool and encourage further populations of seals in the unnatural environment is to further the problem of depletion of the sea , Improper Marine Managment and the over hunting of sharks has created an over population of pinnipeds up and down the coast.. Man's interventions , all.

If the Children's Pool is closed,you will see starving seals, they are already beginning to starve. Cacasses are sinking in the eel grass. Sharks are closing in.

B-84

6. To Close Children's Pool and change its use from that of the Trust of Ellen Browning Scripps, La Jolla's benefactor is not lawful. I challenge the lawfulness of this action that was attempted but never ratified. This is a children's swimming pool and pool for the disabled. That is the first priority. Seal feces can not be in a children's pool, the sand needs to be dredged out as was approved in 1999!

B-85

7. Sharks. Sharks are protected now and are making a comeback. There has been several local sightings recently. And dismembered seals are sinking in the eel grass. If Children's Pool is closed, it will attract sharks to the other beaches as well by providing a lunch box of seal dinners. You will be baiting and luring sharks to the La Jolla coastline. a thorough shark study must be conducted for the safety and welfare of the public.

B-83. Comment noted. Refer to Response A.4. The project would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom.

B-84. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

B-85. Comment noted. See Responses to A.4 and B.39. The project would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom.

LETTER

RESPONSE

B-86

There are many reasons why Children's Pool should not be closed ever. The most important is it is the only ocean pool safe for the Disabled. We have a lot of wounded warriors coming home who deserve to be able to still swim in the ocean. Imagine trying to swim through the surf without legs. Children's Pool is perfect for them. Imagine the freedom of getting out of the wheel chair.

B-87

Please keep Children's Pool open and remove the barriers to disabled people, open the ramp, fix it for crippled kids, dredge out the sand and we can plant it with sea starts and abalone. Kids can snorkel and see them.

Please.

Thank you.

Cheryl K. Aspenleiter

Restore Access to Many People

B-86.

Comment noted. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

B-87.

Comment noted.

LETTER

From: Cheri Aspenleiter [mailto:cheriaspen@gmail.com]
Sent: Sunday, April 28, 2013 9:29 AM
To: Howser, Yoshie
Subject: Re: Childrens Therapy Pool

Dear Yoshie,

When I said 'floater ' in my last message, I meant there was a dead seal amongst the live ones, and the live ones ate the dead seal. In front of the tourists , you may confirm this with the Ranger, who explained that he could not tell the dead seal from the live one. Another seal was obviously ill yesterday and barely able to move, dying from starvation and illness from living in their own feces. Very poor Marine Mammal Management and very poor beach management as well to allow this. Why is this beach not maintained please? In the Middle of La Jolla, filth and stench and dying seals and condemned buildings and people who claim to care for the seals when in fact they are making lots of money from their demise. Amazing state of affairs and really stupid.

Fecal bacteria, stench, dead seals, signs warning people to stay off the beach and now a closure that prevents safe exit for swimmers making the swim from the Cove to The Children's Pool as people have been doing for 100 years or more, and now may drown because the beach is closed at 7. The only other exit is at Seal Rock/Shell Beach at the site of the 'worse rip tide in S.C.A., very dangerous, I almost drowned there because C.P. was closed.

Something is very wrong with this picture. The City is making this a dangerous shoreline that could cause death.

Please forward my emails to the appropriate people. People keep 'passing the buck' about Children's Pool instead of doing the right thing by the Trust left by Ellen Scripps and honoring the disabled swimmers who have no where else to swim safely as this is the only breakwater pool .

Thanks again,
Cheri Aspenleiter

On Sun, Apr 28, 2013 at 9:16 AM, Cheri Aspenleiter <cheriaspen@gmail.com> wrote:
Hello again from the disabled lady trying to save Children's Pool for the purpose it was built. Please check out this link:

<https://airviewonline.com/gallery/search?search=sydney's-tidal-swimming-pools&sort=relevance&dir=desc>

Sydney has the right idea, obviously they value their ocean pools, as we should since we only have the one here, there is one other in Hawaii operating properly. http://www.lotsafunmaps.com/Oahu/Waikiki_Beach_Ocean_Swimming_Pool.html

Children's Pool could be as nice and should be today if the City had maintained it as they agreed to in 1932. Clean water, ADA Ramp and plant sea stars and abalone in the pool area and declare it a no take zone for them and imagine how beautiful it could be. A destination spot especially for the disabled, and San Diego would be proud to host such a pool, as Sydney does with all theirs. Right now the seals are beginning to starve in their own feces, there was a floater yesterday and the seals are so hungry they ate it. Not good viewing for tourists, and the stench is overpowering. Large clumps of seal feces and afterbirth strew the beach that is legally a Children's Playground. There should be Children playing with beach balls and exploring their cave there and having fun with their parents, and wheel chair swimming , as it is perfect for them like no where else sir. Please see the wisdom and have the courage to promote the Restoration of The Children's Pool .

Standing by for your reply.

Thank you,

Cheri Aspenleiter

RESPONSE

B-88. Comment noted. Refer to Response Nos. B.22 and M.38. It does not address the project's potential significant effects on the environment or the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

B-89. Comments were forwarded to the environmental analyst.

B-90. Comment noted. These comments do not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

On Fri, Apr 19, 2013 at 2:27 AM, Cheri Aspenleiter <cheriaspen@gmail.com> wrote:
Dear Yoshie Howser,

B-91

I am a disabled California resident. I have been swimming Childrens pool for many years. The Children's Pool boasts the first ramp to the high water mark on a California State Beach. This ramp had been in use for decades. I have friends who are paralysed and this is the one and only ocean swimming pool for them in the Continental U.S. It was especially designed with a breakwater for safety, for human swimmers. The seals are polluting the beach and the stench is over powering the retirement community across the street. The sea lions are now starving in La Jolla and up and down the coast seals and sea lions have over populated due to the decline in the shark population. They have far exceeded the carrying capacity of the underwater environment and have devoured all the sealife. The abalone are to be protected and they are not. The abalone and the lobster will never make a comeback as the seals have devoured them all. I search the three beach area there for live mussels, and besides some stubborn ones mixed with barnacles on the back of the sea wall, could only find one live one. Mussels are an indicator species, and they are just about gone. No sea stars, no schools of fish, no limpets, rare to find a lobster there. To pen in pinnipeds in their own fecal bacteria is not healthy for them.

B-92

When the 60+ seal pups are weaned they will add to the competition for the remaining food sources and by July those seals will be starving. So you will have created a pit of bacteria ridden starving seals. The stench is already reaching the retirement community across the street. It is a health hazard for all mammals, marine or otherwise. This is certainly an ADA Issue as there is not another ocean swimming pool in the State for

B-93

wheelchair swimmers. No other beaches in San Diego have a breakwater for protection from the surf, surge and kayaks and surfboards. This is IT. Please take a moment to view this video of my friend.

B-94

<http://www.youtube.com/watch?v=TNwpoOd-Jbk>

It is your responsibility to be the voice of the disabled, the elderly and the children, all who have no voice, but represent a majority in our population at large. Please do not take this lightly. This pool is designed for

B-95

humans, not for seals, and it is not healthy for seals now. You can not be well informed Yoshie, or educated with the facts of the situation at Children's Pool. if you are actually a part and parcel to the closure of this incredible gift to the City of San Diego by a woman who started Scripps Inst. of Oceanography, Ellen Scripps. It was her vision that Children and 'those handicapped in life's game would have this pool "until kingdom comes" Do you realize how wonderfully freeing it would be to get out of a wheelchair. Childrens Pool is the ONLY place for them. Go ahead and google and research ocean pools, there is one in Hawaii operating properly. No others in the world. San Diego could be proud to host the one and only and the best ADA Ocean Swimming Pool in the World. Disabled people, especially crippled children would make it a destination, and not just a side trip as the seals are now. Please have the courage to do the right and logical thing and please save Children's Pool for the Crippled Children, the Wounded Warriors coming home without legs, this is their right, this ocean safe therapy pool.
Please do not pass the buck, please stop this closure.

Thank you,
Cheri K. Aspenleiter
Pacific Beach,
[858-568-1257](tel:858-568-1257)

B-91. Comment noted. Refer to Response No. A.4.

B-92. Comment noted.

B-93. Comment noted. Refer to Response No. B.8.

B-94. Comment noted. The project would not impact existing ADA access to the beach.

B-95. Comment noted. These comments do not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Letter C – La Jolla Community Planning Association

McPherson, Anna

From: INFO [info@lajollacpa.org]
Sent: Wednesday, May 22, 2013 3:47 PM
To: McPherson, Anna
Cc: Dye, Morris; Lightner, Councilmember Sherri; Tony Crisafi; jlacava@san.rr.com
Subject: Children's Pool Closure Negative Declaration
Attachments: Children's Pool_LJCPA Letter.pdf

Dear Anna,

C-1 Please find attached meeting minutes from the May 2013 regular La Jolla Community Planning Association public meeting and would like to refer you to item #15 and the Trustee Actions taken in regards to the permanent closure of the Children's Pool and the draft Environmental Document. As the extension for comments closes before our next regular scheduled meeting, I am submitting these minutes as comment. Please note the trustee action to require that a full EIR be prepared on the proposed permanent closure. Furthermore, please note that Trustee discussion will be on the regularly scheduled June 6th La Jolla Community Planning Association meeting.

Thank you,



Tony Crisafi, President
 La Jolla Community Planning Association

C-1. Comment noted. The public review period was extended to the extent provided for in the San Diego Municipal Code Section 128.0307. Trustee action is acknowledged. Refer to Response No. A.2. This response addresses the attached letter from the La Jolla Community Planning Association and attached minutes dated May 22, 2013 and May 2, 2013, respectively.

**La Jolla Community Planning Association**

May 22, 2013

Anna McPherson
Senior Planner
Environmental Analysis Section
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101-4155

Dear Anna,

C-1

Please find attached meeting minutes from the May 2013 regular La Jolla Community Planning Association public meeting and would like to refer you to item #15 and the Trustee Actions taken in regards to the permanent closure of the Children's Pool and the draft Environmental Document. As the extension for comments closes before our next regular scheduled meeting, I am submitting these minutes as comment. Please note the trustee action to require that a full EIR be prepared on the proposed permanent closure. Furthermore, please note that Trustee discussion will be on the regularly scheduled June 6th LJCPA meeting.

Thank you,

A handwritten signature in blue ink, appearing to read "Tony Crisafi".

Tony Crisafi, President
La Jolla Community Planning Association

cc: Council President ProTem, Sherri Lightner
City of San Diego Project Manager, Morris Dye

PO Box 889, La Jolla, CA 92038 ♦ 458.456.7900 ♦ <http://www.LaJollaCPA.org> ♦ info@LaJollaCPA.org

LETTER

RESPONSE



PO Box 889, La Jolla, CA 92038
<http://www.LaJollaCPA.org>
 Voicemail: 858.456.7900
info@LaJollaCPA.org

President: Tony Crisafi
 Vice President: Joe LaCava
 Treasurer: Jim Fitzgerald
 Secretary: Helen Boyden

La Jolla Community Planning Association

Regular Meetings: 1st Thursday of the Month
 La Jolla Recreation Center, 615 Prospect Street

Thursday, 2 May 2013

DRAFT MINUTES

C-1

Trustees Present: Patrick Ahern, Cynthia Bond, Helen Boyden, Tom Brady, Bob Collins, Dan Courtney, Tony Crisafi, Janie Emerson, Gail Forbes, Joe LaCava, Nancy Manno, Phil Merten, Myrna Naegle, Bob Steck, Ray Weiss, Frances O'Neill Zimmerman.
 Absent: Jim Fitzgerald.

1. **Welcome and Call To Order:** Tony Crisafi, President, at 6:12 PM

2. **Adopt the Agenda**

Failed Motion: To amend agenda to add discussion of Deputy Director (DSD) Cecilia Gallardo's response to Bob Whitney correspondence re: LICPA appeal policy. (Little, Weiss, 3-9-2)

In favor: Ahern, Little, Weiss.

Opposed: Bond, Boyden, Brady, Collins, Emerson, Forbes, LaCava, Manno, Merten

Abstain: Crisafi, Naegle.

Approved Motion: To adopt the posted Agenda with date in Item 3 corrected to read 4 April 2013 (LaCava/Manno, 13-1-1).

In favor: Ahern, Bond, Boyden, Brady, Collins, Emerson, Forbes, LaCava, Manno, Merten, Naegle, Steck, Weiss.

Oppose: Little.

Abstain: Crisafi.

3. **Meeting Minutes Review and Approval – 4 April 2013**

Approved Motion: To approve the Minutes of 4 April (Manno, Weiss, 14-0-1)

In favor: Ahern, Bond, Boyden, Brady, Collins, Emerson, Forbes, LaCava, Little, Manno, Merten, Naegle, Weiss.

Abstain: Crisafi.

4. **Elected Officials Report - Information Only**

A. **Council District 1 – City Council President Pro Tem Sherri Lightner**

Rep: Erin Demorest, 619.236.7762, edemorest@sandiego.gov

City Budget Process is underway. There will be increases for Lifeguards, Police Academy and Arts and Cultural and other items. Community input is sought and Council members will be preparing lists of their priorities which are due by May 31. The historic status of the Wall Street Post Office will be reviewed at the next meeting of the Historic Resources Board, Thursday May 23 at 1 PM. Construction of the La Jolla Shores Life Guard tower is moving along. There will need to be asbestos removal for the old tower. The large vehicle parking ordinance went before the Land Use and Housing Committee soon and will be heard at the City Council in the next few months. A project at 910 Turquoise in Pacific Beach is in a mixed use area and will have to be redesigned. Parking requirement in mixed use areas must be adhered to. A State attorney said that the Mayor could not veto Council appointments of Port Commissioners. Therefore Marshall Merrifield and Rafael Castellanos have been seated on the Port Commission.

5. **Non-Agenda Public Comment** - Issues not on the agenda and within LICPA jurisdiction, two (2) minutes or less.

A. **UCSD - Planner:** Anu Delouri, adelouri@ucsd.edu, <http://physicalplanning.ucsd.edu>

LETTER

RESPONSE

Draft Minutes of the La Jolla Community Planning Association, Regular Meeting, 2 May 2013
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There are five construction projects due to be finished by late 2013. The student enrollment for the Spring Quarter is 26,999 of which 21,072 are undergraduates with approximately 6000 graduate students. This is approximately 1000 less than in 2008.

B. General Public Comment -

John Leek: There are now only two factions with respect to the Children's Pool—Those who want to share the beach with the seals and those who want to close the beach. Achieved by concerted efforts of the Friends of the Children's Pool and the Council of Divers.

Cheryl K Aspenleiter (RAMP -Restore Access to Many People - restorechildren'spool@gmail.com) advocating for full wheelchair access to the beach.

Jane Reldan - in response to **Ms. Aspenleiter's list of motorized vehicle beach access beaches.**

James Hudnall stating that the current rope is effective

6. Non-Agenda Items for Trustee Discussion - Issues not on the agenda and within LJCPA jurisdiction, two (2) minutes or less.

Trustee Little quoted from **Ms. Gallardo's** (see Item 2) stating that there was no requirement for the LJCPA trustees to vote on an appeal. He also presented a diagram of the property at 750 Nautilus and criticized the City interpretation of the height of the building. (See President's Report -8D.)

Trustee Courtney asked for more information on the progress of the Torrey Pines Corridor project. Council Rep. Demorest responded that the Project Manager will be making a presentation to the LJCPA in the future.

7. Officers' Reports

A. Secretary

Trustee Boyden stated that if you want your attendance recorded today, you should sign in at the back of the room. There are two sign-in lists: one for LJCPA members and a yellow one for guests.

LJCPA is a membership organization open to La Jolla residents, property owners and local business owners at least 18 years of age. By providing proof of attendance members maintain their membership status and become eligible for election as a Trustee. Eligible visitors wishing to join the LJCPA need to submit an application, copies of which are available at the sign-in table or on-line at the LJCPA website: www.lajollacpa.org/ We encourage you to join so that you can vote in the Trustee elections and at the annual meeting in March.

You are entitled to attend without signing in, but only by providing proof of attendance can you maintain membership or become a trustee. If you want to have your attendance recorded without signing in at the back, then hand to the Secretary before the end of the meeting a piece of paper with your printed full name, signature and a statement that you want your attendance recorded.

Please note that members who failed to attend a meeting between March of 2012 and February 2013 (and similar for all time periods) have let their membership lapse and will need to submit another application to be reinstated.

Trustee LaCava announced that a volunteer was needed to staff the sign-in table each month and collect and submit the sign in sheets and membership applications.

B. Treasurer

Trustee Boyden presented the financial report prepared by **Trustee Fitzgerald:** April Beginning Balance: \$358.79 plus income from donations and CD Sales of \$150.00 less Expenses of \$108.03 leaving a balance on 30 April of \$400.76.

Trustee Boyden reminded Trustees, Members and guests: LJCPA is a non-profit organization and must rely solely on the generosity of the community and the Trustees to sustain its operations. All donations are in cash to preserve anonymity.

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8. President's Report – Action Items where indicated

President Crisafi swore in new Trustee Bob Steck.

- A. LJCPA Committee Appointments - Committee Appointments by other groups to be ratified next month. . Bob Whitney commented on lack of diversity of the LJA appointments to the PRC. President Crisafi stated that he had several potential volunteers for listed vacancies.

Approved Motion: To ratify the following LJCPA appointments to the various joint committees and boards: Development Permit Review: Paul Benton, Bob Collins, Mike Costello, Lynn Hayes, Phil Merten. La Jolla Shores Permit Review: Phil Merten, Laura DuCharme Conboy, (one seat to be appointed); La Jolla Planned District Ordinance Committee: David Little, (two seats to be appointed). Traffic and Transportation Board: Dan Courtney, Tom Brady. Coastal Access & Parking Board: Tom Brady, Dan Allen, Ray Weiss. Community Planner's Committee: Representative: Joe LaCava; Alternate: Tony Crisafi. **(La Cava/Manno, 16-0-1)**

In favor: Ahern, Bond, Boyden, Brady, Collins, Courtney, Emerson, Forbes, LaCava, Little, Manno, Merten, Naegle, Steck, Weiss, Zimmerman.
 Abstain: Crisafi

- B. Bernate Ticino CEQA appeal hearing – June 3rd @ 2p, City Council Chambers

Rescheduled by City Council President- City response letter in file.

- C. C.O.W. Training - All new Trustees required to take online Community Orientation Workshop or attend training Sat, May 18 (RSVP to SDPlanningGroups@sandiego.gov). Please send your certificates to info@lajollacpa.org for record keeping. New trustees must requalify.
- D. 705 Nautilus - building inspector confirmed this home is under the 30 ft height limit and is in compliance with the permits. The property is zoned to allow for a rental unit, but it doesn't have the off-street parking to accommodate one. DSD made contact with the owners and informed them they cannot have a rental unit because they don't meet the parking requirements. The ad for the rental unit has been taken down. Trustees Zimmerman, Manno and Little commented on the need for enforcement. President Crisafi will verify plans at DSD accompanied by Trustee Little.
- E. Code Enforcement Volunteer Program – reactivation of the community volunteer program to inspect properties from the street with the goal of reducing visual blight in neighborhoods, training required. Contact Mr. Dauphin at 619-533-6145. Training will be offered at the end of May. President Crisafi will arrange to e-blast letter from City.
- F. Bird Rock Mixed Use – Draft Negative Declaration Report out 4/24/13, comments due 5/14/13. LJCPA approved 13-2-1 in August 2012. See link [here](#) for draft report. President Crisafi will contact the Project Manager to verify that there have been no changes to the project.

9. Consent Agenda – Ratify or Reconsider Committee Action

Consent Agenda allows the Trustees to ratify actions of our joint committees and boards in a single vote with no presentation or debate. The public may comment on consent items. Anyone may request that a consent item be pulled for reconsideration and full discussion. Items pulled from this Consent Agenda are automatically trailed to the next LJCPA meeting.

PDO – Planned District Ordinance Committee, Chair Ione Stiegler, 2nd Mon, 4pm
 DPR – Development Permit Review Committee, Chair Paul Benton, 2nd & 3rd Tues, 4pm
 PRC – LJ Shores Permit Review Committee, Chair Helen Boyden, 4th Tues, 4pm
 T&T – Traffic & Transportation Board, Chair Todd Lesser, 4th Thurs, 4pm

PRC – No Action this month

T&T – No meeting this month

- A. Tree Removal- 7850 Ivanhoe Street – pulled by Trustee Courtney to assure for right reasons

PDO ACTION: To recommend removal of the tree 5/2/0

Removal of a tree located at 7850 Ivanhoe Street that has caused damage to the sidewalk and continues to do so.

- B. Goodwill

PDO Action: Proposed awning complies with the PDO 7/0/0

7631 Girard Ave. Awning re-cover for an existing awning. The awning frame will not change. Only fabric.

- C. Adoption of DPR Committee Exhibit Requirements – pulled by Trustee LaCava to edit language

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DPR Action: To approve the Exhibit Requirements and continue refinements 6/0/0

Draft dated December 19, 2012, Benton's Document, Island Architects Statistics Sheet, see attachment.

D. Huckins Residence – pulled by Jean Wickersham

DPR ACTION: Findings can be made for a Coastal Development Permit to construct a 3,818 sq ft, two-story, above basement, single family residence on a 7,000 sq ft vacant lot located at 1545 Virginia Way. 7-0-1

1545 Virginia Way - Sustainable Expedite Program (process 2) Coastal Development Permit to construct a 3,818 sq ft, two-story, above basement, single family residence on a 7,000 sq ft vacant lot.

Approved Motion: **To accept the recommendation of the Planned District Ordinance Committee (B) 7631 Girard Avenue, Proposed awning complies with the PDO, and forward the recommendation to the City.** (Emerson/Zimmerman, 16-0-1)

In favor: Ahern, Bond, Boyden, Brady, Collins, Courtney, Emerson, Forbes, LaCava, Little, Manno, Merten, Naegle, Steck, Weiss, Zimmerman.

Abstain: Crisafi.

10. Reports from Other Advisory Committees - Information only

A. Coastal Access and Parking Board - Meets 1st Tues, 5pm, La Jolla Recreation Center.

B. Community Planners Committee – Meets 4th Tues, 7pm, 9192 Topaz Way, San Diego. **Trustee LaCava** reported that 12 of the 225 Capital Improvement Projects recommended by Community Planning Groups would be funded in the coming fiscal year. A change is proposed to the SDMC that to reduce processing time, all Capital Improvement Projects will either be Process Two or go directly to the City Council as Process Five.

11. Costebelle Residence SDP Amendment– Action Item

Whether to Ratify the April 4th, 2013 appeal of CEQA Exemption (April 4th, 2013 appeal deadline)

Appeal was filed on April 4, 2013; a non-agendized vote was taken on April 4th, 2013. Trustees were asked to discuss and vote on the appeal.

Approved Motion: **To ratify the appeal (Manno, Naegle,13-1-3)**

In favor: Ahern, Bond, Boyden, Brady, Collins, Courtney, Emerson, Little, Manno, Merten, Naegle, Steck, Weiss, Zimmerman.

Opposed: Forbes,

Abstain: Crisafi, LaCava.

12. Visin Duplex Project No. 280069- Action Item

Appeal Deadline: May 6th, 2013

Whether to appeal Development Services Staff decision to approve an application for a Process Two Coastal Development Permit (CDP) to demolish an existing duplex and construct a 3,273 square foot duplex on a 0.04 acre site due to incomplete LJCPA process. The proposed project will conform to the Council Policy 900-14 criteria by generating 50% or more of the projected total energy consumption on site through renewable energy resources (i.e. photovoltaic). Property is located at 337 Playa Del Sur Street in the RM-3-7 Zone.

DPR member Mike Costello commented that the DPR had obtained agreement for the applicant to return to the DPR.

Owner **Karen Visin** commented and made allegations of improper lobbying against the project. **Dolores Donovan** also spoke. **Trustees LaCava, Crisafi, Boyden and Merten** spoke with **Trustee LaCava** asking that the allegations be investigated. President Crisafi acknowledged the request and stated that the City notices with respect to the project will be posted on the LJCPA website.

Approved Motion: **Appeal the DSD staff decision to approve the project in order for the Planning Commission to consider all historical issues concerning the demolition of the existing buildings. (Merten, Brady, 13-2-2)**

In favor: Bond, Boyden, Brady, Collins, Courtney, Emerson, Little, Manno, Merten, Naegle, Steck, Weiss, Zimmerman.

Opposed: Ahern, Forbes.

Abstain: Crisafi, LaCava.

13. Morreale Residence - Action Item – pulled by Dan Allen

1644 Crespo Dr. - A Coastal Development Permit to construct a 700 square-foot, detached guest quarters, on a 0.20-acre site.

DPR Action (March 2013): Findings can be made for a Coastal Development Permit to construct a 700 square foot detached guest quarters, on a 0.20-acre site containing a single-family residence located at 1644 Crespo Drive. 7-0-1

Applicant: Brook Papier, Conrado Gallardo

Neighbors **Tom Liu** and **Dan Allen** commented, stating that the street address (front) of this house is on Crespo, but the guest house would abut on Kearsage. They alleged the property had not been posted, nor had mailed notices been received.

Approved Motion: To continue the item so that the applicant can appear (LaCava, Emerson, 15-0-2)

In favor: Ahern, Bond, Boyden, Brady, Courtney, Emerson, Forbes, LaCava, Little, Manno, Merten, Naegle, Steck, Weiss, Zimmerman.

Abstain: Collins, Crisafi,

14. La Jolla Children's Pool Lifeguard Station - Information only

The new La Jolla Children's Pool Lifeguard Station Project to demolish the existing condemned structure and construct a new facility with public restroom, public plaza with hardscape and landscape, accessible ramp to the public restroom and a new lifeguard tower. The proposed tower will include public restrooms, male/female locker rooms for lifeguards, second observation area, Administration work area, first aid room, and main observation tower.

This project has already received the community's approval, applicant presenting an update to the trustees on the project schedule, duration, features and colors.

Applicant: Jihad Sleiman, PM, City of San Diego. Also presenting were: Patrick Walls, of Stronghold Engineering, and Jay W. Janda and Robb M. Walker of KMA Architecture and Engineering.

Mr. Seiman stressed the prior approval of the project and that all changes had been approved by the California Coastal Commission. The City has a live web page devoted to the project. They had received a waiver for the summer moratorium. Nearby residents will be notified of the time of construction start.

Members of the public (**Sally Miller, Patrick Hord, Carol Archibald, Tim Lucas, James Hudnall, Cheryl Aspenleiter, Mary Coakley Munk, Mike Costello, John Leek, Bill Robbins, Deborah Cohen, Phyllis Minick**) received information that the color palette was the same as was approved; noise levels will be mitigated for the seals; even though Children's Pool may no longer be a factor, this lifeguard station serves five nearby beaches with a 270 degree view as desired by the lifeguards; NOAA will be posting for public comment as early as next week; the installation adheres to ADA standards; some people wanted more and some people wanted fewer or no showers; 4 teams had bid on the project-the winning bid was \$2,707,127 with about \$500,000 in early costs; the viewer corridor over the tower is less than what exists, but more than the earlier three story design; the tower lifeguards can provide emergency services to pedestrians and residents of nearby senior residences.

Trustees **Weiss, Forbes, Zimmerman** expressed desires that the colors be moderated to be more like the rendering and that there be more showers/toilets.

15. Children's Pool Beach Closure - Action Item

A. Proposed amendment to the La Jolla Community Plan and Local Coastal Program to establish an Environmentally Sensitive Habitat Area (ESHA) and buffer area for the Children's Pool Beach. The amendment will also include modification to community plan policies related to beach access to prohibit access to the ESHA during harbor seal pupping season to contribute to the protection of sensitive habitat area for breeding pinnipeds, a Coastal Development Permit to prohibit access to the Children's Pool Beach annually from Dec. 15th to May 15th which would require installation of two signs & a chain barrier and an amendment to the SD Municipal Code to add a Section 63.0102(e)(2) that would state: "It is unlawful for any person to be upon or cause any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach, beginning with the second landing, from Dec. 15 to May 15th."

B. Notice of Draft Negative Declaration "The recommended finding that the project will not have a significant effect on the environment is based on an Initial Study." Comments due May 18, 2013.

LETTER

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LJCPA Action (July 2012): Approved Motion: To reaffirm LJCPA opposition to a year-round "Rope Barrier" at Children's Pool beach and supports LP&B action of June 2012 to give the community six months to come forth with feasible mitigation alternative for people and seals to share the beach, (Courtney/Brady, 12-3-1).
LJ PARKS & BEACHES ACTION (June 2012): A motion was made to deny CDP Application No. 6-11-078 to install a year-round rope and to give to the community six months to come forth with feasible mitigation alternative for people and seals to share the beach. 15-0-0

Exhibits:

1. Proposed text changes to La Jolla Community Plan (see attached)
2. Notice of Negative Declaration -

http://docs.sandiego.gov/citybulletin_publicnotices/CEQA/PN1300%2520%2523225045%2520Draft%2520ND%25204-18-13.pdf

Applicant: Chris Zirkle, Deputy Director, Parks & Rec Open Space Division
Dan Daneri, District Manager, Shoreline Parks and Mechanized Beach Maint., Parks & Rec

Mr. Zirkle reviewed the changes to the SDMC and the La Jolla Community Plan cited above and included in the agenda packet. He gave the rationale of conformance with recently approved state legislation and existing federal law and gave examples of other cities with equivalent policies relevant to ESHA. **Mr. Morris Dye**, the project manager expressed the desire that the LJCPA deal with the requested changes to the LJCP and the SDMC as well as the Draft Negative Declaration

Members of the public speaking in favor of the City proposal: **Carol Archibald, Robert Mead, Deborah Saracini, Roberta Wolff, Nancy Lee, Ellen Shively, Lisa McDermott, Kathe Myrick, Jane Reldan, Jhon Jacobelli, Cary Jack, Jennifer Regge, Renee Owens, and Trustee Fitzgerald** with letter on file. Members of the public speaking against the City proposal: **Michael Morton, John Leek, Dan Allen (President, La Jolla Parks & Beaches) Melinda Merryweather, Michael Costello, Stanley Minick, Cheryl Aspenleiter, Patrick Lee Hord, Tim Lucas, Ken Hunrichs, Marie Hunrichs, Sally Miller, Mary Coakley Munk, Kilma Lattin.**
Trustees Ahern, Boyden, Brady, Emerson, Forbes, LaCava, Little, Merten, Weiss and Zimmerman spoke to the issue.

Approved Motion: To reject the Draft Negative Declaration and request the City process an Environmental Impact Report. (Ahern, Manno, 8-5-1)

In favor: Ahern, Boyden, Brady, Forbes, Little, Manno, Merten, Steck.
 Opposed: Bond, Emerson, LaCava, Weiss, Zimmerman.
 Abstain: Crisafi

Approved Motion: To request the City extend the deadline for responses to the Draft Negative Declaration so that the LJCPA can develop responses at its June 6, regular meeting (Merten, Little, 10-2-1)

In favor: Ahern, Boyden, Brady, Emerson, Forbes, Little, Manno, Merten, Weiss.
 Opposed: LaCava, Zimmerman.
 Abstain: Crisafi

Tabled Motion: To reject the proposed amendment to the La Jolla Community Plan (Little, Brady, no vote)

Approved Motion: To table the previous motion (Emerson, Brady, 9-4-0)

In favor: Ahern, Boyden, Brady, Crisafi, Emerson, Forbes, Manno, Merten.
 Opposed: LaCava, Little, Weiss, Zimmerman.

16. Adjourn at 9:24 PM- Next Regular Monthly Meeting, June 6, 2013, 6:00 pm.

LETTER

Letter D – Korevaar, E

McPherson, Anna

From: Eric Korevaar [eric@thescienceartist.com]
Sent: Friday, May 17, 2013 1:54 PM
To: DSD EAS
Subject: Project No. 225045

- D-1** I am providing public comment on the Negative Declaration for the proposed La Jolla Children's Pool pupping season closure. I believe the checklist is incomplete because it only considers Recreational Impacts which increase recreational use rather than those which decrease recreational use.
- D-2** Californians have fought long and hard to establish their right of access to the public shoreline below the Mean High Tide Line. The proposed Children's Beach closure as proposed would take away a vertical public access to the shoreline, and would set a terrible precedent. Furthermore, enforcement of regulations indicating that people could not be on the beach below the Mean High Tide Line may be in violation of the California Coastal Act which guarantees horizontal public access to that area.
- D-3** I believe that issues related to preserving legal coastal access could be mitigated (even if most of the beach were closed to human access) by roping off a 4 foot wide corridor from the bottom of the stairs to the ocean (running east at the base of the south wall on the beach), and requiring that no one could remain stationary in the roped off coastal access corridor, but could only use it to access the ocean and the adjacent sea cave. Furthermore, any signage relating to the beach closure should be specific that only the beach above the Mean High Tide Line is closed (while also emphasizing that it is illegal to harass marine mammals such as harbor seals).

I hope you will consider making this change to preserve coastal access while providing adequate protection for the harbor seals during pupping season.

Sincerely,

Eric Korevaar
 1720 Torrey Pines Road
 La Jolla, CA 92037

RESPONSE

- D-1.** Comment noted. The project was analyzed pursuant to the questions asked in the City of San Diego's Initial Study/Checklist template (prepared consistent with CEQA Appendix G). The Negative Declaration evaluates recreational impacts based on direct, observational counts of people recreating on the beach, *Department of Park and Recreation "Children's Pool Park Ranger Observational Counts – Children's Pool Use Survey, February 29 May 15, 2012"* and describes the analysis and conclusions in Section XIV iv Public Services - Parks. The analysis of this data, and the fact that the closure of Children's Pool beach for this project is an annual temporal one occurring December 15-May 15, led to a conclusion of a less than significant impact regarding Parks and Recreation, in that" the project would not significantly increase the demand on existing neighborhood or regional parks or other recreational facilities over that which presently exists." See also Response No. A.23.
- D-2.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- D-3.** Comment noted.

LETTER

RESPONSE

Letter E – La Jolla Parks and Beaches



02 May 2013

Anna McPherson
City of San Diego Development Services
1222 First Avenue, MS 501
San Diego CA 92101

Ref.: Draft Negative Declaration, Children's Pool Closure, Project No. 225045

Dear Ms. McPherson:

E-1 La Jolla Parks and Beaches has taken a position (April 2010) in opposition to the seasonal closure of the Children's Pool such as the Project proposes. We have and continue to support shared use of the Children's Pool beach year round. I believe we are supported in this by the majority of the La Jolla community.

A negative environmental declaration cannot be justified, and an environmental report is clearly necessary. We offer the following points:

E-2 1. One of the purposes of an Environmental Impact Report (EIR) is to provide decision makers in government with evaluation of appropriate alternatives. We have encouraged the consideration of alternatives, specifically the "Lifeguards' alternative" (September 2012), which has yet to receive serious consideration. This and other alternatives should be compared to the Project in an EIR.

E-3 2. The Project could have environmental effects in the categories of Land Use/Planning, Cultural Resources, Hydrology/Water Quality, Air Quality and Traffic/Transportation. The Draft Negative Declaration is wrong to not recognize these as significant.

E-4 3. Land Use/Planning – The complete closing of the beach no matter for what period of time is a restriction on public use against the principles embodied the California Constitution, the Coastal Act, the city General Plan, the existing La Jolla Community Plan and the unmodified Local Coastal Program. Furthermore, Coastal Commission staff has taken a position (August 2012) against full closure of the beach. Any beach closure at Children's Pool may impact surrounding facilities and beaches that are already heavily used. The Draft Negative Declaration is wrong to say there is no impact on land use and planning.

E-5 4. Cultural Resources
a. Access to the sea at Children's Pool beach for SCUBA diving and spearfishing is a cultural and historical recreational resource, and we must emphasize its uniqueness. In addition, Children's Pool was built as a playground for children, and its dedication came with the absolute right of access for fishing. These uses were re-affirmed in the State Tidelands Trust by the Legislature in Senate Bill SB 428 in 2009. It is imperative that analysis be conducted of the impact of denial of that access at the site and also of indirect

La Jolla Parks and Beaches, Inc., P. O. Box 185, La Jolla, California 92038
lajollaparksandbeaches@gmail.com

Regular Meetings: 4th Monday of the Month
La Jolla Recreation Center - 615 Prospect Street, La Jolla

E-1. Comment noted.

E-2. Comment noted. See Response No. A 2.

E-3. Comment noted. Responses to these comments are provided below where the commenter provides more detail on each one.

E-4. Comment noted. Refer to Response No. B.31 regarding the project's consistency with the General Plan and La Jolla Community Plan and Local Coastal Program. Refer also to Response No. A.23 regarding the Park and Recreation impact analysis.

E-5. Comment noted. Refer to Response No. B.13 regarding the cultural and historic resource impact analysis.

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LA JOLLA PARKS AND BEACHES, INC.

impacts – in La Jolla and elsewhere in California. Recognition and potential mitigation of the loss of this recreational resource is required.

- E-6** b. The walkway along the seawall at Children's Pool provides vantage points for the public to view the seals when they are present. This provides enjoyment and education for adults and children visiting Children's Pool. However, access to the sand allows even better vantage points, and under the present scheme of management this is allowed and seems to have no effect on the seals particularly given that the demarcation of the rope barrier is observed. This is the essence of the present shared use of the Children's Pool beach which we support. The Project would eliminate this educational opportunity, and this should be recognized.
- E-7** c. A feature of Children's Pool is that the beach is man-made and designed to shelter swimmers. There is no opportunity elsewhere to enter the sea protected from heavy surf almost all year-round. This is important to the less able of our fellow citizens – young, old and handicapped. Without regard to the strict interpretations of laws and regulations (i.e. - ADA), this should be recognized as a resource of significant benefit to the public.
- E-8** The Draft Negative Declaration is wrong to say there is no impact on cultural resources.
- E-9** 5. Hydrology/Water Quality – The San Diego County Department of Environmental Health has already recognized the chronic status due to ongoing sources of contamination at Children's Pool beach. The closure of the beach to humans will result axiomatically in greater use of the beach by harbor seals and conceivably by other marine mammals. This is a foreseeable incremental increase in the already problematical pollution at Children's Pool beach. The Draft Negative Declaration is wrong to say there is no impact on water quality.
- E-10** 6. Air Quality – The emanation of odor from marine life is a current issue in the La Jolla community in several areas close to the shore. We are told this is principally the result of inordinate increases in marine mammal and bird populations. It should be obvious to anyone that creating a greater area dedicated to harbor seals will enhance their population, and this will have a potentially significant impact on the odor issue. The Draft Negative Declaration is wrong to say there is no impact on air quality.
- E-11** 7. Transportation/Traffic – Greater use of the beach by harbor seals will unquestionably lead to greater numbers of visitors to the Children's Pool, and most will arrive by automobile seeking a proximate parking location. This will surely result in an increase in local traffic. This is a foreseeable incremental increase with cumulative effects over a large portion of La Jolla. This increase is potentially significant, and should be assessed. The Draft Negative Declaration is wrong to say there is no impact on traffic.
- E-12** I hope these comments will be viewed as helpful in the City's ultimate comprehensive evaluation of the Project's environmental impacts.

Yours sincerely,



Dan Allen, President, LJP&B

- E-6.** Comment noted. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- E-7.** Comment noted. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- E-8.** Refer to Response No. B.13.
- E-9.** The commenter is referring to the existing baseline condition. Refer to Response No. A.4.
- E-10.** Comment noted. Refer to Responses No. A.4 and B.8.
- E-11.** Comment noted. Refer to Response No. B.63.
- E-12.** Comment noted.

LETTER

RESPONSE

Letter F – Sweeney, R

McPherson, Anna

From: Ryan sweeney [ryansweeney@operationexpansion.com]
Sent: Monday, May 06, 2013 2:09 PM
To: DSD EAS
Subject: Opposition to Project No. 225045 - Children's Pool Closure

Hello,

- F-1** I'm writing this letter in strong opposition to Project No. 225045 proposing to close the Children's Pool Beach in La Jolla, CA. This debacle has gone on for more than 20 years. The City of San Diego has consistently acted in opposition to upholding their responsibilities to maintain a safe beach in an urban community. This attempt to close the beach is just another example of them trying to avoid responsibility to the community and further more, actually will perpetuate the problem of a growing seal population in an urban environment. Here are some important facts that must be considered before making this decision...
- F-2** According to the California Court of Appeals in O'Sullivan v. City of San Diego, "The (Children's Pool) State Tidelands Trust was intended to convey to the City an artificial ocean water pool suitable for the use of children. As the recipient of the Trust and the Pool, it became the obligation of the City to maintain the Trust property in a manner suitable for its intended uses and purposes". Put in plain language; the pool was created and protected in Trust for use by humans, especially children.
- F-3** Article X, Section 4 and Article I, Section 25 of the State Constitution guarantee the right to access the Children's Pool. The State Constitution says, "No individual... shall be permitted to exclude the right of way to such water whenever it is required for any public purpose...so that access to the navigable waters of this State shall be always attainable for the people thereof".
- F-4** One of the most frustrating elements involved in this entire topic is how the city has paid no attention to other opportunities of dealing with this problem besides beach closure. The Lifeguard Union introduced a shared use plan that addresses both the safety of the seals during pupping season and the rest of the year for that matter. It also addressed beach access for the community and the CP's original intent in a well balanced manner. This plan received a lot of community support and positive media attention... It just didn't align with the cities stance of their preferred closure. Shared use can and does work if the City is held to integrity with it's responsibilities.
- F-5** The Mayor closed the beach at night in response to a staged seal abuse event though it looked exactly like a classic PETA stunt. He empowered animal rights activists to implement a 24 hr. video camera at the beach that is run by private environmental groups. Their permit clearly states that it is to be used for seal research yet it's use tends to include more content of human use on and off of the beach. He issued himself a new emergency permit to close the beach and told the Coastal Commission (CCC) afterward he could do it because the CP is under local jurisdiction. (It is not) And the local CCC office ignored the violation. He has seized the power to do anything to any coastal tideland. Because he did it on State trusted tidelands, if he gets away with it, no beach will have Coastal Commission protection. **The beach legally still remains open public land as it has been since 2004.**
- F-6** The rope extension alone was so blatant the City Attorney had sent out a Memorandum of Law advising of the perils of legal liability. He was ignored. The Coastal Commission chose not to protect the public or itself, so it was "do or die" for Coastal Beach Access. The Coastal Commission had stipulated earlier CP was under its

- F-1.** Comment noted. Refer to Response A.4.
- F-2.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- F-3.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- F-4.** Comment noted. This comment does not address the project's potential significant effects on the environment and environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- F-5.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- F-6.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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exclusive jurisdiction. La Jolla Cove will be easy to set aside next for a sea lion reserve. South Casa beach is a seal rookery now, where seals bear and bring their pups to be with people, showing their trust. The beach closure issue will continue on other beaches if the Children's Pool is closed.

F-7 Anybody can still go anywhere on CP beach that does not disturb a seal, regardless of any rope across it. The public is intimidated by a sham. The Planning Commission has been sued a second time for doing its job analyzing the rope correctly as an illegal impact on public access. This time the City Attorney abandoned them completely. It would nullify safeguards in place for all San Diego coastal land developments. That office announced it would present no evidence or argument to defend them.

F-8 The Coastal Commission met on Wed, 7/11 about San Diego's plan to cordon off Children's Pool beach every day forever. Meeting in Chula Vista (item 10.d) and allowed it, contingent on local approval. The City had to take the matter back to the Planning Commission, planning to use the conditional approval of the concept of a year round rope by the Coastal Commission to force the Planning Commission to reverse its rejection of the permit 2 years ago. Instead, the Planning Commission stood up for the law, and again unanimously sent the City back to the drawing board. La Jolla Children's Pool Rope Barrier
The Commission only had to document its reasoning. And it made a clear, unanimous decision. "No Year Round Rope".

F-9 **Despite what you may have heard, there is no plan to make our seals leave. Their presence is protected by State and Federal law and we like them.**
San Diego decided in 1999 to keep the seals by instituting Shared Use rather than make them leave. That's ok, except animal rights activists with control issues have a goal of beach closure. They have bullied people off the beach and bullied our City Government with punitive lawsuits.

F-10 There is a historic alternate route to the beach. The ramp that was closed 17 years ago. We found that ramp to be shown in the Local Coastal Plan as Historic Access and demanded it be unlocked. It had been unlocked and used in August 2011 and then a shroud welded over the lock to make it more impenetrable than ever. There has never been a coastal permit for that action. It is now further barricaded because a paraplegic swimmer was slid under the gate so he could access the beach, showing ADA access by the ramp was feasible and so required. But chain link is cheaper than repaving 50 of historic access ramp. The City is always thinking. (Of money)

F-11 There is a controversy at Children's Pool beach, but not about seals. Despite what you may have heard, there is nobody with a plan to repatriate our seals to the wild. Their presence is protected by State and federal law and we like them. Everybody likes them. There was an effort to restore the Pool to condition required by the trust by which San Diego had the sea wall built. It would have disturbed the seals and probably decreased their use of the area. Support for that effort was not about a dislike for seals but a hope without their money-making presence, the spiteful cheerleaders that drive the public off the beach would go away. The City fought the court order and finally legally was able to dodge its legal obligation and the expense of restoration. To ensure the help of the animal rights radicals in the battle to defeat the trust the City gave over control of the sidewalk above the beach to the supposed "environmental" that harass and intimidate the public.

I sincerely hope you see the true nature of the slippery slope this issue has undergone in the past 20 years. This "seal issue" is a manufactured problem in a man made urban environment that will perpetuate for eternity causing the closure of more beaches in La Jolla until someone decides to find a true shared use solution. Please do not vote to close the Children's Pool Beach in La Jolla.

Ryan Sweeney
1514 Glenwood Dr.
San Diego, CA 92103
T: 562.797.6424

F-7. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

F-8. Comment noted. These comments do not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

F-9. Comment noted. These comments do not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

F-10. Comment noted. These comments do not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

F-11. Comment noted. These comments do not address the project's potential significant effects on the environment or adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Letter G – Boyce, R

McPherson, Anna

From: rlb8712@yahoo.com
Sent: Friday, May 10, 2013 2:59 PM
To: DSD EAS
Subject: Project:Childrens Pool Closure Project No. 225045

Dear Anna McPherson

G-1 I've lived in La Jolla for 18 years and am very surprised to hear of a possible closing of the Childrens Pool beach. I'm informed the reasons for closure is:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments".

The seal population at the Childrens Pool is not rare. A few hundred of the estimated 40,000 seals in southern California haul out at the CP. Nor are they especially valuable to the ecosystem, if anything they are destroying it by consuming large amounts of sea life in the region. If humans have disturbed or degraded the seals at the CP it sure is not showing up in the numbers. The humanized seals dumped there by Sea World and their unnaturally human acclimated offspring have grown in number in the last 20 years, the CP already seems to be at a saturation point which could lead to other beaches becoming their home. If there was real concern about the welfare of the seals then there would be an effort to move them to a better habitat where human interaction is not a problem.

Please don't close the CP at anytime of the day or year. This is a very bad precedent to set for San Diego.

Thank you,

Roger Boyce
 715 Arenas Street
 La Jolla, CA 92037

G-1. Comment noted. It does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

Letter H – Crisafi, T

McPherson, Anna

From: Tony [info@lajollacpa.org]
Sent: Tuesday, May 14, 2013 4:46 PM
To: McPherson, Anna
Subject: FW: Children's Pool Closure Negative Declaration

From: Tony [mailto:info@lajollacpa.org]
Sent: Tuesday, May 14, 2013 3:01 PM
To: Dye, Morris (MDye@sanidiego.gov); 'Amcpherson@sanidiego.gov'
Subject: Children's Pool Closure Negative Declaration

Ms. McPherson and Mr. Dye,

H-1 On behalf of the Community I request a 20 day extension of the comment period for the above referenced document. As you are aware there was extensive public comment on both sides of the issue at the May LJCPA meeting and the trustee discussion was continued until our regularly scheduled June 5, 2013 meeting. A 20 day extension will provide time for the Secretary to draft and forward the Trustee comment action. Thank you for considering our request and in advance for your timely response.

Tony Crisafi
 President LJCPA

RESPONSE

H-1. Pursuant to **SDMC Section 128.0307 Requests for Additional Public Review Time on the Draft Environmental Document**, the public review period was extended for 14 calendar days.

LETTER

RESPONSE

Letter I – Leek, J.

May 27, 2013

Anna McPherson DSEAS@sanidiego.gov
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

PROJECT: CHILDREN'S POOL CLOSURE, PROJECT NO. 225045

Public Input regarding Negative Declaration for ESHA on public trusted public tidelands

Dear Ms. McPherson,

- I-1** The conclusions the City made in its favor were based on avoiding the obvious problems, writing at length about non-issues and disregarding effects on the area at large. Many statements of No Impact do not have adequate scope or data or long range considerations. The findings in this Draft ND do not meet CEQA requirements and a full EIR is still required.
- I-2** A. The ND as submitted is premature, as it conflicts with local land use procedures and intent to change laws later does not allow implementation now. If the Local Coastal laws can be changed to no longer conflict with this ND then that must happen first.
- I-3** Allowing an applicant to adopt prospective mitigation measures which are to be recommended in a future study, but which are not incorporated into the project before the proposed Negative Declaration is released for public review, is not allowed (*Sundstrom v. County of Mendocino*, supra).
- I-4** B. The public hearing on 5/2 went awry. The La Jolla CPA Associates had not had copies of the Draft ND. Emails went out instead of printed materials and should have gone to every voting member. One email went to somebody, without instruction to the recipient to reproduce the materials for all members. Worse, the City presented additional materials unlike the Draft ND without even time allotted for the Association to see it all. Copies of the "Slide Show" were never made available. Of course the LJCPA could not make an informed decision and had to reschedule. At that point, the public comment window should have been widened to allow public comment on the actual resulting LJCPA decision, as it may turn out to be, with whatever amendments and conditions might be added.
- I-5** Proper and complete notice to all interested parties should be done and the 30 days begin after the June LJCPA meeting in order for this hearing procedure to be valid under CEQA and local land permit procedures.
- I-6** C. Throughout, the Draft ND considered only on-site mechanical effects of the proposed closure with no regard to the environment and community life that could be affected.

- I-1.** Comment noted. Refer to Response No. A.2
- I-2.** Comment noted. Refer to Response Nos. A.2 and B.3.
- I-3.** Comment noted. Refer to Response No. M.62.
- I-4.** Comment noted. Refer to Response No. S.3.
- I-5.** Comment noted. Refer to Response No. H.1.
- I-6.** Comment noted. Refer to Response Nos. A.23 and B.15.

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| <p>Studies are lacking, science is lacking, data is lacking. Just assertions or "No Impact" do not meet CEQA standards. Beginning divers and the lame and infirm depend on the sheltered Pool for safe practice entries to the ocean. The City is not providing any increased alternate services and access.</p> <p>I-7 D. No analysis of future result is given. How many seals will die if this is not done? How many seals can this environment support? How much is the expected increase in tourist money the City expects. How many tourists can this environment support? CEQA requires evaluation of secondary as well as primary effects and an analysis of precedent setting. This ND does not have merit just based on its lack of research data on the most important aspects of impacts.</p> <p>I-8</p> <p>I-9 E. The Draft ND measures lack scope to solve purported problems. It will have to be redone right away to allow South Casa Beach to be declared a seal rookery, which it has been for 3 years. The change to the LCP has to be general enough to allow closure anywhere marine mammals find a public beach comfortable.</p> <p>I-10 F. If protection for seals requires people be kept 50 to 150 feet away, as a closure will do, then the sea wall must be closed during the same interval. The seals prefer the sand next to the sea wall, but then people are hovering 10' above making noise, dropping things, and smelling like people. That resulting stress can only be curtailed with the same closure season for the seawall as the beach for consistency enough to meet CEQA standards.</p> <p>I-11 G. The research cited is insufficient. Not even references from the source list are found. A major source listed is an EIR done in 2009, but that EIR concluded No Significant Impact to the proposition of dredging the whole pool out, even if the seals never came back. That EIR does not support findings in this Draft ND.</p> <p>I-12 H. No examination of the impact on public safety. The Lifeguard tower being built overlooks 3 beaches to the north; Shell Beach, Rocky Point and Boomer. All 3 can be tricky and in an emergency a lifeguard will have to find the key to a chain lock before he can start down the stairs to the quickest water route, the Children's Pool Beach.</p> <p>Initial Study Checklist Item 10: Other public Agencies whose approval is required Besides the Coastal Commission the Department of Fish and Wildlife retains jurisdiction over fishing areas and fishing ground access, which the Children's Pool always has been. It is written into the State Landgrant Trust governing the beach. Yet DFW was not even notified. Nor was the State Lands Commission. That is fatal. In 2001 the City had a temporary Seal Reserve 120 yards north of Children's Pool coming to the end of its 5 year permit and asked the Coastal Commission for a permanent permit. The Coastal Commission refused to grant a permanent permit stating: <i>"In addition, establishing Seal Rock as a <u>permanent</u> marine mammal reserve would be</i></p> | <p>I-7. Comment noted. Refer to Response No. B. 3 for a complete Project Description. Refer to Response No. A.4 with regard to the effects of the project on the seal population on and around Children's Pool Beach.</p> <p>I-8. Comment noted. Refer to Response Nos. A.36 and A.37.</p> <p>I-9. Comment noted. Refer to Response No. B.3 for a project description. The project does not include the closure of adjacent beaches.</p> <p>I-10. Comment noted. Refer to Response No. B.3 for a project description. The project does not propose closure of the seawall. However, Coastal Commission Ecologist John Dixon, in a June, 2012 memo to Kanani Brown, noted how the seals at Children's Pool react unusually, specifically, more indifferently to the presence of people, compared to other populations. In a letter dated May 14, 2010 from the National Marine Fisheries Service to Donna Frye, NMFS recommended closure of the beach, not closure of the seawall.</p> <p>I-11. Comment noted. The City disagrees that the EIR No. 71362/SCH No. 19990110602009 is an irrelevant reference and incompatible with the proposed ESHA declaration. The commenter does not explain the basis of this contention.</p> <p>I-12. Comment noted. Lifeguard Chief Rick Wurts (personal communication with Deputy Director of Open Space, July 23, 2013) indicated that lifeguards would either climb over or slide underneath the chain-suspended sign, regardless of whether or not the chain was padlocked to access Children's Pool Beach in an emergency. Refer also to Response No. M.38.</p> <p>I-13. Comment noted. Refer to Response No. B.34 and U.1.</p> <p>I-14. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).</p> |
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I-14

inconsistent with the state tidelands grant Chapter 688) which specifically calls for the absolute right of access to the water. Thus, the Commission cannot approve this area as a permanent marine mammal reserve. According to State Lands Commission staff, it is not possible to make this area a permanent reserve without first amending the tidelands grants."
The Coastal Commission went on to state:
DFG staff indicated that the City has no authority to create a seal reserve from granted tidelands that would generally prohibit public access across its boundaries. SLC staff expressed concerns with regard to the area being closed to public access and its conflicts with the legislative land grants.

*In discussions with these agencies, it was stated that the City's proposal to make the area into a permanent reserve would be inconsistent with the legislative land grants. There are two land grants in the subject area. One is applicable only to Children's Pool (Chapter 937) which was granted in 1931 granting tide and submerged lands to the City of San Diego. And in the final statement: the Coastal Commission included:
"Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions."*

You may be told the Trust was modified in 2010 to take care of all that, but no.

There was only added the discretion to implement "a marine mammal park "(According the City Attorney). The other requirements for recreational use remained. That "marine mammal park" has never been implemented, declared or defined. Goldsmith, who included that statement in a report to the City was not copied here. A deputy was copied, who probably did not have hours or ability to do the research needed for this project, but Goldsmith would have known the facts personally.

No evidence was given of contact with the Lifeguard service whose ability to respond to emergencies to the North of the tower will be impaired. In fact, the Lifeguard Union is opposed to closure and has proposed its own shared use plan which has been ignored in this Draft ND.

The critical agencies were not contacted, the proper people were obviously not asked. This Draft ND is not adequate to meet CEQA requirements.

EVALUATION OF ENVIRONMENTAL IMPACTS. Draft ND starting Page 13 of 53:
Initial Evaluations must find no environmental factors even potentially affected.

I Aesthetics -

(a) Chain blockading the only vertical access to the shore is an ugly assertion of power by our municipal government to make a children's beach into a fortified animal pen. The fact glare was the only question answered shows the City was avoiding the obvious. The City's history is entwined with references to the recreational value of this breakwater created beach such as National Geographic features in 1949 and 1962. It should be a historic resource preserved as it

I-15

I-15. Comment noted. See Response No. A.2.

I-16

I-16. Comment noted. The project does not meet the City of San Diego's Significance Determination Thresholds for Visual Effects and Neighborhood Character; therefore no aesthetic impacts would result. The Negative Declaration notes that signage and chain barrier will be placed on the existing set of stairs; they will not exceed its height and width. The proposed beach closure would be in effect between December 15 and May 15; cleanup efforts would be able to occur on the beach the remainder of the year.

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| <p>was in 1931. Closure to the public will only accelerate its deterioration when repairs and cleaning by community groups are disallowed.</p> <p>There is also a view from underneath the water people in San Diego are known to enjoy. Closing the beach deprives people of access to the underwater realm and deprives them of the view of the other world. The negative finding cannot be supported.</p> <p>I-17 (c) No prediction estimated where ocean access will shift to and its effect. Beaches on each side are posted for dangerous constant rip currents. Beach usage impact should be a major consideration. But there is no threshold or mitigation because it was ignored. A project must not be broken into smaller parts, each of which alone might qualify for a Negative Declaration, in an attempt to avoid preparing an EIR (<i>Association for Sensible Development of Bishop Area v. County of Inyo</i> (1985) 172 Cal.App.3d 151).</p> <p>I-18 III Air Quality – The stench of animal waste in the summer is a familiar complaint. Volunteer groups regularly clean the beach then, to benefit both people and seals. That will be forbidden, with unmeasured consequences. The City has no predicting the bad results of no cleaning at all for either people or for seals. E. coli at that beach is proven to be seal, but nobody gets sick, so the bacteria are only pathogenic to seals, and being spread among them like cholera in a crowded refugee camp. It is assumed elimination of people will result in a higher concentration of seals but no estimates have been made of how much and how this will change the environment for people or seals. CEQA requires evaluation of both short term and long term impacts.</p> <p>I-19 IV Biological Resources – (a) A negative conclusion was made with no consideration for where the unnatural concentration of animals at 2 urban beaches gets its food. No studies have been made of the change in surviving species in the area. No consultation with Fish and Wildlife is mentioned. Seals are “opportunistic feeders”. The best guess is obvious. The La Jolla Underwater Reserve. Twenty years of protection have built a food supply there likely better than anywhere else. That explains why they habituated to an urban beach with people in it. Plundering a reserve next door makes it a good deal. Yet no consideration was given to checking the depletion accompanying encouraging a concentration of predators by a reserve. That reserve is no longer City, but State, under Fish and Wildlife but no information from Fish and Wildlife is cited. The City has no data to justify the unnatural imbalance it has created and wants to augment. Simply filling out an initial study checklist without citing supporting information is insufficient to show the absence of significant effects (<i>Sundstrom v. County of Mendocino</i> (1988) 202 Cal.App.3d 296)</p> <p>I-20 (b) Seals in low concentration have value to the environment as whole. The value as any predators removing the excess, the lame, the unfit. But only if they are in balance with an</p> | <p>I-17. Comment noted. Refer to Response Nos. A.2, B.15, and A.23.</p> <p>I-18. Comment noted. Refer to Response Nos. A.4 and I.16.</p> <p>I-19. Comment noted. Refer to Response No. A.4.</p> <p>I-20. Comment noted. Refer to Response No. A.4.</p> |
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- I-20** ecosystem. They are an indicator that prey is abundant so a few are good to see. But this beach the City wants to finish filling with seals are like finding 17 coyotes in one City park. Natural selection and balance are being tilted somehow when you see that. California seals and sea lions are described by NOAA in their recent population studies as “approaching the carrying capacity of their environment”.
- San Diego has never estimated the value of seals except as a tourist attraction. That is exploitation of an animal and since the City feels seals = money, it avoids any indication of drawback in an unnatural welcome mat to make sure seals lose their natural instincts to avoid populated areas.
- I-21** In 2005 the greatest harbor seal scientist in California testified under oath about Children’s Pool. [DECLARATION OF DOYLE A. HANAN, PH.D. IN OPPOSITION TO PLAINTIFFS’ MOTION FOR A TEMPORARY RESTRAINING ORDER](#) His closing statement was “In my professional opinion, the continued use of Children’s Pool is not critical for the survival of the harbor seals present at Children’s Pool or the harbor seal population as a whole””and “The presence of the advisory rope is not critical to the survival of the harbor seals present at Children’s Pool or the harbor seal population as a whole”. The omission of scientific evidence such as this indicates more than just wishful thinking by the City but a whitewash by a body claiming to be taken for an honest broker. This is where there should be statements from regulatory bodies praising this move and there are none. The decision to prepare a mitigated Negative Declaration (and a Negative Declaration for that matter) must be grounded in an objective, good faith effort on the part of the Lead Agency to review the project’s potential for significant impacts (*Sundstrom v. County of Mendocino*, supra).
- I-22** (e) The City openly admits conflict with the local policies and ordinances, and intent of the City to try to change those laws to make it right after the fact is useless conjecture. A new law must be in place provisionally at least, before a negative declaration is possible. It was not mentioned that the City made Joint Use at Children’s Pool a City Policy in 2004. In 2010 the City Attorney reminded the Natural Resources and Culture Committee that a closure would require rescinding that City Policy.
- I-23** (f) The closure intent conflicts with the Children’s Pool Landgrant Trust, both sections. Although the trust was modified to allow the existence of a “marine mammal park” that would not conflict with the other provisions of the trust, the City Attorney advised the Natural Resources and Culture Committee in 2010 that the City had never declared one and would have a hard time doing it because “the term is not defined in the statute”. Closure also conflicts with the Coastal Act. The Coastal Commission only allowed the City its “advisory” rope barrier because the text contained the claim it was “not intended to impact beach usage” and Parks and Recreation described the rope as having a 3’ opening “for divers and swimmers to reach the water”. Closure is a violation of several existing laws.
- I-24** Chapter 55 of the City Charter requires conversion of any parkland to another purpose can only

I-21. Comment noted. Refer to Response No. A.4.

I-22. Comment noted. Refer to Response No. B.34. CEQA Guidelines Section 15204 describes how comments provided by public agencies on CEQA documents focus upon: “the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated”. No comments from public agencies were received. Refer also to Response No. U.1.

I-23. Comment noted. Refer to Responses A.2.

I-24. Comment noted. Refer to Response No. B.17. This comment does not address the project’s potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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RESPONSE

be allowed by a 2/3 majority of the electorate. Converting a Children's bathing pool to an animal pen by banning all citizens from the area is a blatant conversion of recreational parkland to an unusable artifact.

V Cultural Resources

- I-25** (a) The facts of the historic and cultural significance of the Children's Pool is accurately discussed here and the conclusion of no impact completely contradicts those facts. There is contained here the most cynical denial of the obvious here, by claiming barring this and future generations from entry to a historical gift to them has no impact because there will be no physical harm to wall bricks and beach they will not touch. The wall and bricks will not be adversely impacted, only the Children. It would be well to know that the City councilmembers who deliberated on this denial of access on 5/17/10 spoke only of money and liability and did not waste one word on children or seals. The video record is in the City archives as will be this cynical excuse making. The no-impact claim is without merit.

VI Geology and Soils -

- I-26** (a) This section belies the claim the City should be arbiter of its own responsibility to the Public Doctrine. The comment that chains and signs to bar access of its citizens to public land are a "minor physical improvement" is absurd. If that reasoning is allowed to stand, then closure of any beach is an improvement, not a denial of service to its taxpayers. The improvement the City seeks it the savings in cost maintaining a beach open for recreational use. CEQA is supposed to enhance constitutional duty of the State to preserve the tidelands for the people of California, not from the people of California.

IX Hydrology and Water Quality-

- I-27** (f) The purpose of forbidding the public from visiting its own land is not to halt a decline in seal population but is driven by an unsubstantiated hope of increasing it. The water quality in the Pool has been outside County Health standards for e. coli for over a decade because of the City's livestock. County Health stopped testing there 7 years ago because the water always flunked. This has been a long standing violation of the Clean Water Act as noted in the Superior Court case of O'Sullivan vs San Diego. If a closure does increase the seal population, which already spills over onto the adjacent beach, it will be a willful choice to make the matter worse. This closure only forbids the small amount of cleaning the beach has been getting in the Summer time by I Love a Clean San Diego volunteers. The important note is the City again has no clue what will happen but strives to make it worse. No data has been analyzed here.

X Land Use and Planning -

- I-28** (b) The facts here are just as in 'Biological Resources (f).
The closure intent conflicts with the Children's Pool Landgrant Trust, both sections, the General Plan, La Jolla Community Plan and Local Coastal Program and the State Constitution.

- I-25.** Comment noted. Refer to Response No. B.13.

- I-26.** Comment noted. The basic purposes of CEQA are listed in Section 15002(a) of the State CEQA guidelines. Enhancing the constitutional duty of the State is not a listed purpose.

- I-27.** Comment noted. The Negative Declaration explains that "The Project proposes an Amendment to the La Jolla Community Plan and Local Coastal Program to establish an ESHA at Children's Pool Beach and modify community plan policies related to beach access to prohibit access to the ESHA during harbor seal pupping season to contribute to the protection of a sensitive habitat area for breeding pinnipeds. . .". Refer to Response A.4 regarding the effects of the project on the seal population and seal population trends. The comment regarding water quality reflects the existing baseline condition. The proposed beach closure would be in effect between December 15 and May 15; cleanup efforts would be able to occur on the beach the remainder of the year.

- I-28.** Comment noted. Refer to Response B.3 and B.31. Approval by the State Coastal Commission is required before the Project can be implemented.

LETTER

RESPONSE

I-28

The laws must be changed first, at least contingently, before a negative declaration can be made. CEQA procedures do not allow for granting on future expectations of actions out of the control of the self-granting party. It is claimed the City can be granted this self-granting oversight because the beach is currently open the rest of the year with only a rope across the beach and a ranger and staff of vigilantes to prevent people from crossing it.

I-29

Also ignored is Chapter 55 of the City Charter. A forbidden and fortified animal pen is not a public recreational facility. A playground is not something you just look at. Chapter 55 requires all parkland set aside for recreational purposes cannot be used for any other purpose unless ratified by a 2/3 vote of the electorate. The Children's Pool Landgrant Trust is State Legislature specifying dedication to park and playground. This Draft ND cannot whitewash these facts away. A full EIR is required because the Draft ND did not consider enough facts to meet minimal CEQA requirements.

I-30

In 2001, the City had a seal reserve north of Children's Pool on a 5 year permit. The City went back and asked to make it permanent. The Coastal Commission would not allow it because they had talked to Fish and Game which advised neither had jurisdiction to make a permanent seal reserve on a trusted beach, denying available access for fishing. Note this Draft ND did not include California Fish and Wildlife on the notice distribution. That is a fatal flaw. The "Less Than Significant Impact" findings here cannot be made.

I-31

The conflict with the General Plan, La Jolla Community Plan and Local Coastal Program are readily admitted and even listed. Then pieces are cherry picked to tout closure for conservation, but this project is not conservation, it is building an increasing herd of animals for the expressed purpose of attracting tourists. If the City feared seals were fragile or endangered, it would make the tourists go away, or build a fence so the seals would not see people from the sidewalk. Instead, the City maintains a walkway for the curious right to the center of their favorite gathering place. The inconsistency points up conflict with the claim there is a fragile habitat here to conserve. The Draft ND especially lacks merit on this point.

I-32

The new lifeguard tower project is to be started next month, but it must meet the terms of a federal Incidental Harassment Authorization, which states the beach and sidewalk will be left open to the public. The construction and so the IHA could last 2 or more years. No attempt has been made going in to resolve this conflict with the terms of the City's desired agreement with the National Oceanographic and Atmospheric Administration. Anyone could sue if the City violates that permit by closing the beach while the IHA is in effect. Impacts of the lifeguard project need to be considered in combination with this ND. Therefore, all of the impacts from the rope barrier, beach closure and lifeguard tower should be evaluated together and it is improper to segment and ignore the impacts from each of these projects.

I-29.

Comment noted. The Charter Section cited in this comment applies only to dedicated park land. Children's Pool Beach is not dedicated park land. Refer also to Response to A.2.

I-30.

Comment noted. Refer to Response Nos. B.34 and U.1 regarding distribution to the California Department of Fish and Wildlife. The remainder of the comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

I-31.

Comment noted. Refer to Response B.31.

I-32.

Comment noted. Refer to Response No. B.3 regarding the Project Description. The Incidental Harassment Authorization for construction of the Children's Pool Lifeguard Station is dated June 28, 2012, approximately one month after this commenter's letter was written. It does not contain a provision similar to that referenced in this comment.

LETTER

RESPONSE

| | |
|---|--|
| <p>I-33</p> <p>XII Noise It's not the seals. They don't even bark. The uncalculated future effect defines success. If the City can build the seal colony ever more, it expects to have paying tourists in hotels as a result. What it really gets is impossible parking in a constricted area. The City expects more seals and so more tourist money but there is no cost-benefit study to verify it's worth. Meanwhile quality of life suffers for the locals because this declaration was done without regard for local concerns.</p> | <p>I-33. Comment noted. Refer to Response Nos. A.36 and A.37.</p> |
| <p>XIV Public Services (iv) Parks This is banning people from land set aside in a public trust as "park, playground and bathing pool for children". Its nature is denial of public services. It is contrary not only to the laws of the community, but State laws all the way to the State Constitution. They do not allow for the changes to the Local Coastal Plan the City envisions would make the actions planned in the Draft ND legal after the fact. An excuse for this is given; "let people go somewhere else, it won't hurt them". And "All beach users would be able to fully use the Children's Pool between May 16 and Dec 14". Fully? The City is cordoning off 80% of the beach the rest of the year now. But effective as the rope barrier is, it does not bar public access by law, only intimidation. CEQA requires cumulative effects of impacts be considered.</p> | <p>I-34. Comment noted. Refer to Response No. A15 and A.23.</p> |
| <p>XV Recreation (See XIV above) I-35 The Children's Pool was built for children, and the infirm, and just telling people to go elsewhere does not consider the dangerous conditions in all the other beaches around there which was the reason the Children's Pool was built in the first place. Closure of that unique facility forcing the most vulnerable to go elsewhere means either the overburdened la Jolla Cove or la Jolla Shores or face the treacherous ocean away from lifeguards, public restrooms, showers, and stairs to a calm entry. This closure causes a reasonably foreseeable liability ridden hazard that was not only uninvestigated, but casually dismissed. No evidence of consultation with lifeguards is given.</p> | <p>I-35. Comment noted. Refer to Response Nos A.15 and A.23.</p> |
| <p>XVI Transportation/Traffic I-36 No numbers are offered, just the declaration building up the seal colony and forcing all the visitors off the beach onto the sidewalk will have No Impact. No parking studies, not even mention of what effects are being disregarded. This is nowhere near adequate for an ND under CEQA rules. The only result of protecting a thriving set of animals more than before has to be further increase in their numbers with hoped for increase in visiting tourists. There is no cost-benefit tradeoff offered, only that more seals must be good. A full EIR is needed because this Draft ND is so inadequate on every issue.</p> | <p>I-36. Comment noted. The comment makes reference to the existing baseline condition. Refer also to Response Nos. A.36, A.37, and B.63.</p> |

LETTER

RESPONSE

The only access to the out flow of the dangerous rip current at Shell Beach is down the stairs, requiring lifeguards to first find the key and make use of it. That is just one resulting inadequate emergency access.

XVIII MANDATORY FINDINGS OF SIGNIFICANCE. The Children's Pool

I-37

Here is the worst part of this. This will degrade the environment and continue to setback for conservation efforts in the La Jolla Shores reserve for decades. The seals have been welcome for 20 years – long enough to convince them they can never be harmed here. And they never have been. They have lost vital protective instincts. They are encouraged to concentrate here on the edge of 2 MPA reserves and will happily plunder them until they have depleted the food supply and then be forced to migrate. This is the opposite of bio-diversity. No mention is made of determining the kinds of diseases these animals can suffer if concentrated in one place. (Hookworm is rampant in Marine Mammals) Nowhere is there a hint of a management plan or any projection of future impacts. This ND is a model of ignored “cumulatively considerable” problems.

The City wants its free tourist attraction so it continues to exploit the easy nature of these animals but knows nothing about them except “you can’t have too many seals”. No knowledge is given of what harbor seals eat or how much there is in the La Jolla reserve for them or what the carrying capacity of this environment is. San Diego is charged with analyzing the facts behind a Negative Declaration but has nothing. The findings for a Negative Declaration cannot be made.

Conclusions not warranted.

I-38

If a fair argument can be raised on the basis of “substantial evidence” in the record that the project may have a significant adverse environmental impact - even if evidence also exists to the contrary - then an EIR is required. Pursuant to Section 21080, substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” We have that here.

John Leek, 3090 Admiral Ave, San Diego, CA 92123. ----- 858-610-4724

Secretary, San Diego Council of Divers

40 year resident of San Diego. Certified scuba diver for 50 years.

I-37. Comment noted. Refer to Response No. A.4.

I-38. Comment noted. Refer to Response No. A.2.

LETTER

McPherson, Anna

From: John Leek [jleek001@san.rr.com]
Sent: Saturday, May 25, 2013 2:28 PM
To: DSD EAS
Subject: Project 225045 Draft ND attn: Anna McPherson
Attachments: no impact report 1999.pdf

- I-39** Listed in the sparse set of references in the initial study checklist, was an EIR in 2009 for restoring the Children's Pool for public recreation. That EIR did not provide any justification for this proposed closure of public tidelands access; quite the opposite. The result was a green light to dredge the sand out Children's Pool, with the likely result most of the seals would never come back.
- I-40** Since said reference is not only irrelevant, but incompatible with this proposed ESHA declaration, the only relevant references cited are the Local Coastal Plan and Community Plan which were only researched to enumerate the many violations that would have to be fixed by changing the law, not mitigating the plan. This does not support a Negative Declaration but requires the laws be changed first, to be legal going in. CEQA standards not support the City's direction of "Let's do it anyway and see if we can change the law later".
- I-41** Did anyone take time to consult with the City Attorney directly? It is not his job to come running because of an email notice of questionable intentions. Part of the process is to actively obtain legal opinions on every issue.
- I-42** There was another historic EIR that was not referenced. Again verifying the seals could find somewhere else to be and there would be no negative environmental impact. That is attached.

John Leek
 3090 Admiral Ave
 San Diego, CA 92123

RESPONSE

- I-39.** Comment noted. The purpose of the inclusion of EIR No. 71362/SCH No. 19990110602009 in the Reference Section of the Negative Declaration was to disclose that the document relied upon some of the EIR's technical analysis related to cultural and biological resources and the environmental setting. It was not to provide justification for the current project.
- I-40.** Comment noted. The City disagrees that the EIR No. 71362/SCH No. 19990110602009 is an irrelevant reference and incompatible with the proposed ESHA declaration. The commenter does not explain the basis of this contention.
- I-41.** Comment noted. Refer to Response No. B.3. the remainder of the comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- I-42.** Comment noted. The commenter attached 1999 LDR No. 98-0671 Mitigated Negative Declaration that was prepared for a previous project that would have dredged Children's Pool Beach. Mitigation measures were incorporated into that document to ensure that significant effects would not result.

I-43

Thursday, January 28, 1999

Study says dredging won't harm pool

By PATRICK HEALD
Village News

A plan to haul out 3,000 cubic yards of sand from Children's Pool, and deposit it at Marine Street, will "not have a significant effect on the environment," according to an environmental study done by the city and released Jan. 21.

The city hopes removing the sand will allow humans and harbor seals to share the pool.

Since the seals have taken up residence at the pool, the resulting level of seal feces has caused a jump in the fecal coliform count. Now those coliform levels

— 200 organisms per milliliter of water — are considered hazardous to humans, and the popular beach has been closed since September of 1997.

The Mitigated Negative Declaration prepared by the Land Development Review Division for the city doesn't comment on the benefits or disadvantages of taking the sand off the beach. It does focus on what impact the project will have on water quality, plant and animal life.

"The (report) doesn't say whether you should or shouldn't do the project," said Kenneth Teasley, who prepared the report

see Study, page 4

I-43.

Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).



Land Development
Review Division
(619) 236-6460

Mitigated Negative Declaration

LDR No. 98-0671

I-44

SUBJECT: Children's Pool Dredging: CITY COUNCIL APPROVAL to dredge approximately 3,000 cubic yards of sand from the La Jolla Children's Pool, and place the sand on either the beach at Marine Street (La Jolla), or on the beach at La Jolla Shores. The Children's Pool is located adjacent to Coast Boulevard at the intersection with Jenner Street. Applicant: Park and Recreation Department

I. PROJECT DESCRIPTION: See attached Initial Study.

II. ENVIRONMENTAL SETTING: See attached Initial Study.

III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the area of wildlife resources. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION:

The attached Initial Study documents the reasons to support the above Determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

Water Quality

A sand berm shall be constructed to isolate areas to be dredged which are subject to inundation prior to removal of any material from the beach. The berm shall remain in place until all dredging has been completed. The berm shall be breached and the sand recontoured after dark.

Biological Resources

Sand shall not be placed below the mean high tide line to avoid grunion breeding activities.

I-44. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

City of San Diego
Planning and Development Review
LAND DEVELOPMENT REVIEW DIVISION
1222 First Avenue, Mail Station 501
San Diego, CA 92101
(619) 236-6460

INITIAL STUDY
LDR No. 98-0671

SUBJECT: Children's Pool Dredging: CITY COUNCIL APPROVAL to dredge approximately 3,000 cubic yards of sand from the La Jolla Children's Pool, and place the sand on either the beach at Marine Street (La Jolla), or on the beach at La Jolla Shores. The Children's Pool is located adjacent to Coast Boulevard at the intersection with Jenner Street. Applicant: Park and Recreation Department

I. PURPOSE AND MAIN FEATURES:

The project proposes to restore the swimming area and water quality of the La Jolla Children's Pool. The swimming area would be increased to its original size by reducing the beach width through the removal of approximately 3,000 cubic yards of sand. The use of the beach by harbor seals has resulted in high counts of fecal coliform. It is anticipated that by pulling the beach back from the breakwater, the harbor seals would not use the re-configured beach, resulting in an increase in water quality to acceptable levels.

The sand to be excavated is between the run-up line and the back of the pool. The run-up line determines the limits of water washed on the beach by waves. Only dry sand would be excavated. A sand berm (acting as a dam) at the edge of the high tide water line would be created enabling the front-end loaders to operate without impacting the water quality.

Sand would be removed from the beach via an existing ramp that runs from the beach to the street, where it will be deposited in dump trucks. The loader capacity is 3-5 cubic yards, while the dump trucks can carry 8 cubic yards. The loaded trucks would then proceed to one of the two locations identified to receive the sand. The removal of the sand will generate approximately 375 truck trips between the Children's Pool and the recipient beaches.

The excavated sand would be used to replenish the beach next to Marine Street, or the beach at La Jolla Shores. Both beaches have access for the trucks to unload the sand on the beach, and access onto the beaches for the front-end loader to spread the sand. The sand will be placed above the mean high tide line and would add approximately six inches to one foot of additional material on the beach. The placement of sand will show only minor deviations from the existing beach once the inter annual wave climate has reworked the sand. The conclusion that the placement of sand on these beaches would not have a significant visual, biological or hydrological impact (see Section IV) is based studies by Dr. Scott Jenkins, of the Center for Coastal Studies at Scripps Institution of Oceanography for the Marine Street Beach (January, 1999), and Coastal Environments (September, 1998), for the beach at La Jolla Shores.

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Human Health/Public Safety

Prior to the commencement of dredging, sand samples shall be collected and analyzed to ensure that the sand excavated and transported complies with State of California standards.

VI. PUBLIC REVIEW DISTRIBUTION:

Draft copies or notice of this Negative Declaration were distributed to:

U.S. Fish and Wildlife Service
National Marine Fisheries Service
California State Clearinghouse
California Department of Fish and Game
California Park and Recreation Department
California Coastal Commission
California State Coastal Conservancy
California Lobster and Trap Fisherman's Association
City of San Diego:
 Councilmember Mathis, Council District 1
 Park and Recreation Department
 San Diego Lifeguard Services
 Development Services
San Diego Council of Divers, Inc.
San Diego Regional Water Control Board
La Jolla Shores Association
La Jolla Town Council
La Jolla Community Planning Association
La Jolla Parks and Recreation, Inc.
La Jolla Swim Club
La Jolla Village News
La Jolla Light
Golden Triangle News
Sierra Club
Save Everyone's Access (SEA)
Surfrider Foundation
The Diving Locker
Casa de Manana
Carl Lind
Steve Alexander
Chuck Nicklin
Paul Kennerson
Don Riley
Cynthia & Jeff Chasan
Clifford Evans
Christopher Jazak & Mario Zumaga
Edward Coronado
Amy & Alan French
Lisa Stevens

Page 3

Human Health/Public Safety

The use of the beach by harbor seals has resulted in occasional increases in the amount of fecal coliform in the wet sand. This has resulted in the closure of the pool area to bathers since September, 1997. The project proposes to excavate dry sand, which traditionally has not been contaminated, and then pull the wet sand back, creating less beach and a larger pool area. As the sand dries, the fecal coliform dissipates. It is anticipated that the increase in distance between the reconfigured beach and the end of the breakwater would discourage the use of the beach as a haul out area by harbor seals. This, in turn, would reduce the fecal coliform levels in the water and wet sand. The reduction in fecal coliform to within State standards, would be considered a significant improvement to the health and safety of bathers wishing to use the pool area.

The State has a limit of 1,000 MPN (most probable number) for total coliform and 200 MPN for fecal coliform which must be met before the pool area could be open to the public for use. Prior to the excavation and transporting of any sand, samples will be collected and analyzed to ensure that the sand excavated and transported to other sites complies with State standards. See the attached Mitigated Negative Declaration, Section V. Mitigation Monitoring and Reporting Program.

Biological Resources

In April and June, 1998, Coastal Environments completed biological surveys of the ocean areas adjacent to the La Jolla Children's Pool and La Jolla Shores, respectively. The conclusion was that the reef outside of the Children's Pool would not be impacted by dredging, and that no reef or kelp beds exist off of the beach at La Jolla Shores. The January, 1999, survey by Dr Scott Jenkins also indicated that no biological impacts to the reef of the shore from the Marine Street beach would result. The sandy bottom habitat off of each of the proposed receiving beaches would not be impacted by placing dredged sand on the beaches.

Harbor Seals

Harbor seals currently use the beach area of the Children's Pool as a haul out area for resting and sleeping. This has resulted in fecal coliform counts in excess of the maximum levels allowed by State. The proposal to reduce the beach to its original depth, should also eliminate the use of the beach by the seals. While the impact of the proposed project would result in a loss of a haul out area for the seals, they are not considered a sensitive specie and therefore, the impacts would not be considered significant.

California least tern:

The California least tern, an endangered species, nests and forages along the coast during the spring and summer months between April 1 and September 15. The foraging by the terns is done during day light hours. Turbidity due to sand

Page 4

removal during this foraging time would have an impact on the terns ability to forage. The excavation plan for the beach has been designed to confine the work to dry areas on the upper beach. A berm of dry sand would be constructed just above the mean high tide line, not impacting the wet sand and foraging area of the tern. The only work resulting in possible turbidity would be the opening of the berm to allow the sea water into the area that has been graded. The opening of the berm could be completed after dark. Since the least terns feed at night, turbidity resulting from the inflow of water after dark would not impact the species. Therefore, no significant impact to the least tern would result from the grading. For specific mitigation measures, see the attached Mitigated Negative Declaration, Section V, Mitigation Monitoring and Reporting Program.

Grunion:

Periodically, grunion spawn on the beaches at low tide. However, the spawn is regulated by the lunar cycle and is fairly predictable. The project proposes to place all sand above the mean high tide line, which would not directly impact spawning. If any sand is to be spread at or below the mean high tide line, it would be done after the fry (baby fish) return to the sea. For specific mitigation measures, see the attached Mitigated Negative Declaration, Section V, Mitigation Monitoring and Reporting Program.

V. RECOMMENDATION:

On the basis of this initial evaluation:

- ☐ The proposed project would not have a significant effect on the environment, and a NEGATIVE DECLARATION should be prepared.
- ☒ Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described in Section IV above have been added to the project. A MITIGATED NEGATIVE DECLARATION should be prepared.
- ☐ The proposed project MAY have a significant effect on the environment and an ENVIRONMENTAL IMPACT REPORT should be required.

PROJECT ANALYST: Teasley

Attachments: Figure 1 Location Map, Children's Beach
Figure 2 Location Map, La Jolla Shores Beach
Figure 3 Location Map, Marine Street Beach
Initial Study Checklist

LETTER

RESPONSE

Max & Kaia Elliot
 Carolyn DeMoss
 Peter Michetti
 Resident, La Jolla Windigo Condos (Various)
 Resident, La Jolla Windward Shores (Various)
 Resident, El Paseo Grande (Various)
 Resident, Camino del Oro (Various)
 Resident, Vista del Mar (Various)
 Resident, Sea Lane (Various)

VII. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the draft Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- () Comments addressing the findings of the draft Negative Declaration and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft **Mitigated Negative Declaration**, the Mitigation Monitoring and Reporting Program and any Initial Study material are available in the office of the Land Development Review Division for review, or for purchase at the cost of reproduction.


 Chris Zirkle, Senior Planner
 Development Services

January 20, 1999
 Date of Draft Report

 Date of Final Report

Analyst: Teasley

LETTER

RESPONSE

McPherson, Anna

From: Secretary [sdcod@san.rr.com]
Sent: Saturday, May 11, 2013 11:53 AM
To: Dye, Morris
Cc: McPherson, Anna; Council of Divers President
Subject: Need to extend public comment time for Draft Negative Declaration I.O. 21002681

I-45

The Council of Divers was an "interested party" notified on April 18th of a very important hearing. Historic.

Our Council has meetings on second Mondays which had fallen on April 8th. We showed up to the La Jolla Community Planning Association and watched a presentation different than that in the public notice. It was not even finished given the time constraints of the hearing.

Besides the negative declaration, the City had bundled the approval of amending the Local Coastal Plan and the creating an ordinance to make it illegal to set foot on a trusted public beach and

to start a project to get Coastal Permits for all this. The proposition had become requesting permission to take actions not allowed by the State Landgrant Trust and the State Constitution, which were not considered in the time allotted. The LJCPA was confused and they ended up rejecting the Negative Declaration but deciding to consider it again at their next meeting. That will be well after the public comment period has ended and the public will not be able to comment to Development Services with knowledge of the status of this proposal in the permit process or how it may have been amended.

Our next Council of Divers meeting will be this Monday, and so allow only a few days to submit an approved statement, a task beyond the LJCPA, we would note. It is not unusual for an important CEQA issue like this to have 60 days public comment time. In fact it is unusual to have as little time as this one was afforded considering the consequences of the decision. The proposed action is sweeping, and alternatives were not presented in the time each member of the public was granted in the hearing. One notable JLCPA associate wanted to propose an alternate plan allowing the complete closure in exchange for leaving other beaches alone. He can present that at the next LJCPA meeting and there will be others, but nobody will be able to support any alternate plans in public comment because it will be closed by then.

We are asking that public comment be held open until after the next meeting of the LJCPA on June 6th. A week after, to June 13th, to allow at least a hurried response to what the final decision may turn out to be, with its possible amendments or alternatives. No action can be taken until then anyway and the process would not be so vulnerable to challenge.

John Leek, Secretary of the San Diego Council of Divers.

I-45. Comment noted. Refer to Response No. H.1.

LETTER

RESPONSE

Letter J – Robbins, C

Page 1 of 1

From: McPherson, Anna
Sent: Monday, April 22, 2013 7:28 AM
To: Zirkle, Chris; Dye, Morris; McPherson, Anna
Subject: FW: 225045 Seals at the Children's Pool

FYI

From: Carl Robbins [mailto:crobbins2@san.rr.com]
Sent: Sunday, April 21, 2013 7:51 AM
To: DSD EAS
Subject: 225045 Seals at the Children's Pool

- J-1** I am AGAINST the project that proposes an amendment to the La Jolla Community Plan and Local Coastal Program to establish an Environmentally Sensitive Habitat Area (ESHA and buffer area for the Children's Pool Beach.
- As a devoted environmentalist I find the practices and procedures of the City of San Diego towards the Harbor Seals at the Children's Pool to be repugnant, self-serving, and inhumane.
- J-2** The City seeks to maintain an artificial rookery solely for the benefit of increased revenues (Tourist Attraction) as it jeopardizes the natural health and well-being of the Harbor Seals. The City's shortsighted and self-serving approach to "protection" is now resulting in decreased fish stocks that have fallen victim to over predation by the Harbor Seals and Sea Lions resulting in malnourished and dead Sea Lion pups and increasing the populations of both 7-gill and White Sharks along our coast.
- By extending special protection to the Harbor Seals the City is "loving a wild animal to death".
- J-3** By extending unnatural protection to the Harbor Seals the City promotes the Harbor seal colony population to exceed the carrying capacity of the local marine ecosystem. Today we are just beginning to see the effects of the overpopulation of coastal pinnipeds as evidenced by the number of starving and dead young Sea Lions that have been abandoned prematurely by their mothers and are washing up along our coast.
- J-4** Stresses on the marine ecosystem near the Children's Pool have resulted in unhealthful conditions to humans through increased bacteria counts as well as polluting the atmosphere with discussing odors that permeate and linger to the point where the entire area reeks as though it were a cesspit.
- J-5** It truly embarrasses me to say that I am a member of this community because of the City's shortsighted view of ecological management. The City violated the environmental teachings, practices, and procedures of the world class organizations located in San Diego such as UCSD, Scripps, San Diego State University, the National Marine Fisheries Service, the California Department of Fish and Game, etc. who are all experts relative to ecosystem management, predator/prey relationships, biomass distribution, carrying capacity and the other attributes of ecosystem understanding. Ignoring the research of population dynamics and predator/prey relationships the City believes that it is helping "Save the Seals" when in actuality the City the City's arrogance and ignorance is condemning the Seals to an unnatural and inhumane death associated with inter and intra species competition as well as the effects of the diseases associated with overpopulation. It is as though the City has no one in its ranks that understands even the slightest concepts of ecosystem management as it applies a "Pet Owner's" mentality to wildlife.
- J-7** Shame on the City for its practices of starvation and disease promotion for one of God's creatures simply so that a tourist attraction can exist.
- Crobbins2@san.rr.com
H (858) 273-1765
C (619) 876-3652

file://H:\Childrens Pool Enclosure\Comment Letters\FW 225045 Seals at the Children's Poo... 7/1/2013

- J-1.** Comment noted.
- J-2.** Comment noted. Refer to Response Nos. A.4, A.36. and A.37.
- J-3.** Comment noted. Refer to Response No. A.4.
- J-4.** Comment noted.
- J-5.** Comment noted.
- J-6.** Comment noted.
- J-7.** Comment noted.

LETTER

RESPONSE

Letter K – Seidl, C

Page 1 of 1

From: McPherson, Anna
Sent: Monday, April 22, 2013 7:27 AM
To: McPherson, Anna; Zirkle, Chris; Dye, Morris
Subject: FW: No on Children's Pool Closure

Hi All,

Just keeping you in the loop with comment emails and letters. I also received a phone call from a disabled activist with multiple objections to the project. I will return the phone call today.

Anna

From: Carissa Seidl [<mailto:carissa@packageyourdeal.com>]
Sent: Friday, April 19, 2013 2:12 PM
To: DSD EAS
Subject: No on Children's Pool Closure

K-1

As I believe closure of The Children's Pool will do more harm than good for the welfare of the seals, ecological system, citizens, and beach-goers equally, I do not support the Closure of the Children's Pool.

Carissa Seidl

Package Your Deal
 2159 Avenida de la Playa
 La Jolla, CA 92037

858.663.4836

K-1. Comment noted.

LETTER

RESPONSE

Letter L – Costello, M

To: Anna McPherson, Environmental Planner
City of San Diego Dev. Services Center
1222 First Ave, MS 501
San Diego, CA 92101
DSDEAS@san-diego.gov

3 June 2013

From: Michael Costello
La Jolla, CA 92037
emsmike@san.rr.com

Subject: Children's Pool Closure, Project Number 225045

Dear Ms McPherson,

Thank you for the opportunity to comment on the DND for the Children's Pool Closure Project # 225045.

L-1 The La Jolla Community Plan and Local Coastal Program Land Use Plan, pg 32, states "The Shoreline of La Jolla provides recreational opportunities of regional and state-wide significance." Indeed, thousands of La Jollans and hundreds of thousands of San Diegans take advantage of our shoreline and coastal ocean recreational opportunities. Tourism for ocean recreation is also a significant part of the local economy. The very limited amount of shoreline and the need to protect access prompted California voters to pass the California Coastal Zone Conservation Act on 7 Nov. 1972. Similarly, the La Jolla Community Plan assures access to the shoreline. Shoreline access is a very important feature of our La Jolla Community and is legally assured.

L-2 The City plan to limit Children's Pool access fails to present a logical need to do so. The present state of the Children's Pool breeding site is that of a population explosion. This increased population certainly does not require enhancement of any sort. For the purposes here, all three local pinniped species (Harbor Seal, Sea Lion, Elephant Seal) are undergoing the same phenomenon, ie expanding populations which spread to occupy adjacent beaches. These expanding populations, with Harbor Seals originally emanating from the Children's Pool, are now causing the same population pressures on South Casa Beach and the La Jolla Cove. Whatever solutions the City seeks for the Children's Pool, such as beach closures, will logically need to be applied to the other beaches as well. All three beaches are identified as "Physical Access Points" by the La Jolla Community Plan.

L-3 The motivation and reasoning for improving the breeding site at the Children's Pool and excluding it from human recreational use is not clear. Even the motivation and reasoning for having this synthetic breeding site in the first place is unclear since there is a local pinniped population explosion, and the Red List status for all three local pinnipeds is "Least Concern" (see next page).

L-1. Comment noted. It does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

L-2. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

L-3. Comment noted. The City has no plans to close additional beaches. Refer to Response to B.3 for an accurate description of the project that is the subject of this Negative Declaration.

LETTER

RESPONSE

The International Union for Conservation of Nature (IUCN) is the world's main authority on the conservation status of species. The **IUCN Red List of Threatened Species**, founded in 1963, is the world's most comprehensive inventory of the global conservation status of biological species.

According to IUCN (1996), the goals of the Red List are:

- (1) to provide scientifically based information on the status of species and subspecies at a global level,
- (2) to draw attention to the magnitude and importance of threatened biodiversity,
- (3) to influence national and international policy and decision-making, and
- (4) to provide information to guide actions to conserve biological diversity.

To that end the IUCN established its famous sliding scale and much quoted terminology. Current pinniped data regarding La Jolla & California are as follows:

L-4

Harbour Seal [Phoca vitulina](#) (La Jolla 500, California 30,000, ref Hannan 2013)
Status: Least Concern



Californian Sea Lion [Zalophus californianus](#) (California 300,000, ref Hannan 2013)
Status: Least Concern



Northern Elephant Seal [Mirounga angustirostris](#) (California 127,000, ref Hannan 2013)
Status: Least Concern



Conclusion: a) California pinniped populations are large, robust, and do not require artificial support.
b) There is no shortage of pinniped haul out and breeding sites on the California coast.

L-4.

Comment noted. The data provided does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

As summarized below, the City has failed to control its current synthetic breeding site at the Children's Pool, therefore it should not be allowed to further limit access, enhance, or improve its synthetic breeding site in any manner. Specific examples of failure include:

1. The City has failed to execute responsible stewardship of the area in question and its immediate surroundings.

2. The City failed to maintain the Children's Pool sand and water in a hygienic state and has allowed seal fecal waste and bacteria to accumulate unabated. The City of San Diego has long recognized the problem but failed to act. Humans, seals and seal pups are all equally susceptible to bacterial septic diseases.

L-5 A. In Sept 1997 the SD Dept. of Environmental Health declared the Children's Pool unsafe for human contact because of high concentrations of E. coli bacteria and the Dept. closed the Pool to the public.

B. As per changes in State policy, in 2003 the Dept of Environmental Health changed the Pool closure to a swimmers health risk advisory. Bacteria levels have remained at 15 times the permitted standard.

C. The City proposed a plan in 2009 to dredge 3,000 cubic yards of sand and cleanse the beach. The Draft Environmental Impact Report, JO: 298725, Project No. 71362, concluded that the Project was feasible, and "no significant unmitigated impacts have been identified". However, the City failed to act on that or any other plan to provide a hygienic environment.

L-6 3. As already mentioned, the City's failure to control the Harbor Seal / pinniped population has resulted in a "population explosion" of pinnipeds. In the 1960s and 1970s a dozen or so Harbor Seals inhabited the La Jolla waters (personal observations), today there are 500 (Hannan, 2013). In the 1960s and 1970s a dozen or so California Sea Lions could be seen around the La Jolla Cave, but not the Cove. Today, about 150 occupy the rocks around the Cove (personal observations of previous and current Calif. Sea Lion populations).

L-5. Comments noted. These comments do not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

L-6. Comment noted. Refer to Response No. A.4 regarding the effect of the project on the seal population and seal population trends.

LETTER

L-7

4. The City's failure to control the harbor seal / pinniped population within the carrying capacity of the environment has caused starvation and die-off of young pinnipeds.



RESPONSE

L-7.

Comment noted. Refer to Response No. A.4 regarding the effect of the project on the seal population and seal population trends.

LETTER

RESPONSE

L-8

5. Failure to control the Harbor Seal population at the Children's Pool has caused a population explosion.



Children's Pool, 17 March 2013 with 60 + Harbor Seals

L-9

6. Failure to control the seal population has caused the over population to now inhabit South Casa Beach, and other sites in the immediate surroundings. The City lacks any plan to limit the Harbor Seal / pinniped population.



South Casa Beach, 17 March 2013. As photo was being prepared the tourists appeared and about 20 additional seals entered the water. Total Harbor Seals about 50 +.

L-8.

Comment noted. Refer to Response No. A.4 regarding the effect of the project on the seal population and seal population trends.

L-9.

Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

7. Failure to control the Harbor Seal / pinniped population has resulted in ever increasing numbers of pinnipeds occupying more coastal sites.



L-10

An other site, near the Children's Pool, an example of many small haul out sites. Harbor Seals, 1 April 2013.



La Jolla Cove, 1 April 2013. Total California Sea Lions, about 150.

L-11

Seals have and will continue to spread to other beaches. Using the same reasoning as for this Application, the City would logically find it necessary to close South Casa Beach, La Jolla Cove, and eventually other beaches as well.

L-10.

Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

L-11.

Comment noted. Refer to Response No. A.4 regarding the effect of the project on the seal population and seal population trends.

LETTER

L-12

8. Failure to control the pinniped population is resulting in the attraction of dangerous sharks. In the study of Ecology there is the axiom that "Predators Follow Prey". This means that as the number of prey animals increases, the number of predators that feed on them increases as well. For decades, the water sports enthusiasts off San Diego have been safe from shark attack. Active human intervention, such as establishing breeding sites over the past two decades, has increased the pinniped population from dozens to many hundreds. Ralph Collier, of the Shark Research Committee, has stated that Great White Sharks are drawn to the area due to the Harbor Seal and Sea Lion population (Collier). Great White Sharks are now commonly observed off San Diego and a human has been killed by one off Solana Beach. Dr. D.M. was killed by a Great White Shark on 25 April 2008 while swimming off Solana Beach. On 6 June 2011 local SCUBA diver, J.S., suffered a non-fatal shark attack while diving off the reef near the Children's Pool (both ref Collier). The City has the responsibility to determine and publish at what pinniped numbers divers, surfers, kayakers, body surfers, and rough water swimmers are at significant risk for shark attack. Before the Children's Pool breeding site can be advanced an Environment Impact Report needs to be prepared and address this very important issue: at what point will there be a significant risk for Great White Shark attack on water sports enthusiasts.

Specific DND items (in black lettering) which this letter is addressing have been cut and pasted in this text to help indicate context and to preserve the original sequence of the DND.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

- | | | |
|---|--|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Population/Housing |
| <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Public Services |
| <input type="checkbox"/> Air Quality | <input type="checkbox"/> Hydrology/Water Quality | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Land Use/Planning | <input type="checkbox"/> Transportation/Traffic |
| <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Utilities/Service System |
| <input type="checkbox"/> Geology/Soils | <input type="checkbox"/> Noise | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (TO BE COMPLETED BY LEAD AGENCY)

On the basis of this initial evaluation:

L-13

- ☒ The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

What should have been checked above is "The project MAY (actually, WILL and currently HAS) a significant effect on the environment, and an EIR is required."

RESPONSE

L-12.

Comment noted. Refer to Response No. A.4. The project would not substantially affect the existing conditions in terms of the seal population, seal population trends or indirect impacts resulting therefrom.

L-13.

Responses to this issue are provided below where more detailed comments are provided.

LETTER

RESPONSE

Issue

Potentially
Significant
Impact

Less Than
Significant
with
Mitigation
Incorporated

Less Than
Significant
Impact

No Impact

IV. BIOLOGICAL RESOURCES

Would the project:

- a. Have substantial adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

☐ ☐ ☐ ☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would contribute to the protection of a sensitive habitat area for breeding pinnipeds. Therefore, no impacts would occur, and no mitigation measures are required.

L-14

This is in error. "Potentially Significant Impact" should be checked. In this immediate area and well within the swimming and feeding range of this breeding site are Marine Reserves and other designated sites. They are listed below.

San Diego - Scripps Coastal State Marine Conservation Area

Matlahuayl State Marine Reserve

South La Jolla State Marine Conservation Area

South La Jolla State Marine Reserve

La Jolla Ecological Preserve

San Diego Marine Life Refuge

(There is some obvious geographic overlap in the above list.)

With a sum of about 650 pinnipeds feeding on the limited Marine animal life (mostly fish), questions arise. What is the effect on the various fish species? Are any of the local fish species in danger of being depleted? What is the effect on fish species diversity? Is there a synergistic effect by Cormorants and Pelicans preying on the same fish species? Casual observations are that the Near-Shore Dolphin Pod (a protected marine mammal) has dropped in numbers by one-third. Is this because of competition for fish? Are any of the invertebrate species in the area at risk of being depleted? If there is over-predation, does it affect the local kelp beds? Before access to this breeding site can be limited, or even continued, an EIR must be prepared.

- L-14.** Comment noted. See Response No. A.4. The project would not affect pinniped population or population trends, and therefore would not result in the suggested indirect impacts.

LETTER

RESPONSE

Issue

Potentially
Significant
Impact

Less Than
Significant
with
Mitigation
Incorporated

Less Than
Significant
Impact

No Impact

IX. HYDROLOGY AND WATER QUALITY

Would the project:

- a. Violate any water quality standards or waste discharge requirements?

☐ ☐ ☐ ☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not violate any water quality standards or waste discharge requirements. Impacts would be less than significant, and no mitigation measures are required.

L-15

This is in error. "Potentially Significant Impact" should be checked. This synthetic breeding site has 15 times the State permissible limit of E. coli bacteria in the water, violating both State and County Standards. The sand is also contaminated by seal feces. (Both references are found in DEIR, Project No. 71362) Before the synthetic breeding site can be pursued an EIR must be prepared to address the current defacto situation and deficiency.

Issue

Potentially
Significant
Impact

Less Than
Significant
with
Mitigation
Incorporated

Less Than
Significant
Impact

No Impact

- f. Otherwise substantially degrade water quality?

☐ ☐ ☐ ☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would result in limited physical improvements and would not substantially degrade water quality. No impacts would occur, and no mitigation measures are required.

L-16

This is in error. "Potentially Significant Impact" should be checked. The sand beach and waters of the Children's Pool accumulate large amounts of feces generated by the Harbor Seals at this synthetic breeding site. Water quality is certainly degraded. Before the synthetic breeding site can be pursued an EIR must be prepared to address the current defacto situation and deficiency.

L-15. Comment noted. See Response No. A.4. The project would not affect pinniped population or population trends, and therefore would not result in the suggested indirect impacts.

L-16. Comment noted. See Response No. A.4. The project would not affect pinniped population or population trends, and therefore would not result in the suggested indirect impacts.

LETTER

RESPONSE

Issue

Potentially
Significant
Impact

Less Than
Significant
with
Mitigation
Incorporated

Less Than
Significant
Impact

No Impact

- b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

☐ ☐ ☒ ☐

General Plan

Land Use Element:

L-17

E. Planning for Coastal Resources

LU-E.1 Incorporate community-specific policies into Coastal Zone community plans during community plan updates and/or amendments to address the Coastal Act policies' direction regarding biological resources and geologic stability, circulation, parking, beach impact area, public access, recreational opportunities, visitor-serving, and visual resources.

Recreation Element

C. Preservation

RE-C.4 Preserve all beaches for public-only purposes, including the protection of sensitive habitat and species.

The Harbor Seals are undergoing a population explosion and therefore can not reasonably be labeled a "sensitive species".

D. Accessibility

RE-D.7 Provide public access to open space for recreational purposes

b. Provide public access at locations consistent with the goals and policies of the Conservation Element.

c. Provide new, and preserve and enhance existing public beach access, where appropriate.

F. Open Space Lands and Resource-Based Parks

L-18

Closing or limiting public access to California coastal areas, including La Jolla's, is inconsistent with the City's Land Use Element, the La Jolla Community Plan, and the State Law. Therefore, the Children's Pool must remain open for recreational uses at all times. Specifically, the La Jolla Community Plan under "Shoreline Access, Physical Access, pg 170-171" lists the Children's Pool, La Jolla Cove, and South Casa Beach as Access Points. It can not be stressed enough that beach access is a critical part of our Community Plan and ocean recreational life.

L-17.

Comment noted. Refer to Response No. B.31 regarding the project's consistency with the La Jolla Community Plan and Local Coastal Program. Refer to Response A.4 regarding the seal population and seal population trends. The General Plan does not define sensitive habitat or species.

The project proposes to establish an ESHA and limit access from December 15 to May 15, to contribute to the protection of a sensitive habitat area for breeding pinnipeds. Further, the Harbor Seal does have protected status pursuant to the Marine Mammal Protection Act (MMPA).

L-18.

Refer to Response B.31 regarding the project's consistency with the La Jolla Community Plan and Local Coastal Program.

LETTER

RESPONSE

Conservation Element:

B. Open Space and Landform Preservation

CE-B.1 Protect and conserve the landforms, canyon lands, and open spaces that: define the City's urban form; provide public views/vistas; serve as core biological areas and wildlife linkages; are wetlands habitats; provide buffers within and between communities; or provide outdoor recreational opportunities.

C. Coastal ResourcesCE-C.5. Limit the use of beaches and shorelines to appropriate coastal dependent and ocean-oriented recreational/educational uses as identified in local coastal/community plans.

CE-C.8. Protect coastal vistas and overlook areas from obstructions and visual clutter where it would negatively affect the public's reasonable use and enjoyment of the resource.

CE-C.12. Ensure that all City beaches and shorelines are accessible and available for appropriate public use for all users.

L-19

The Conservation Element, CE-B.1, states that the City must protect, not limit access to, open spaces that provide outdoor recreational opportunities.

CE-C.5 limits the use of beaches to appropriate coastal dependent and ocean-oriented recreational/educational uses as identified in local coastal/community plans. A seal breeding site or education about seals is not part of the La Jolla Community Plan and therefore is not allowed.

CE-C.12 ensures (as does the State Law) that all City beaches and shorelines are accessible and available for appropriate public use for all users. Any limitation or restriction to CE-C.12 is not allowed.

La Jolla Community Plan and Local Coastal Program

The La Jolla Community Plan provides specific policy direction for open space, public access and preservation of habitat within the community plan area boundaries. The plan contains goals and policy recommendations for enhancing public access while balancing the goals and policies to protect wildlife and natural habitat.

L-19. Refer to Response No. B 3 for a complete Project Description which includes a La Jolla Community and Local Coastal Program amendment. Refer to Response No. B.31 regarding the project's consistency with the La Jolla Community Plan and Local Coastal Program.

LETTER

RESPONSE

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------------|--|------------------------------------|-------------------------------------|
| b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

The Project would not result in cumulatively considerable impacts.

L-20

No Impact is checked in error. There is the potential for considerable cumulative impact. The La Jolla Cove and South Casa Beach are similarly over-populated by pinnipeds and are used for breeding sites. If the case is made to close the Children's Pool a similar case can be made to close the other two beaches, and eventually others could follow. An EIR is needed to address the effect of the cumulative impact pinniped over-population on the La Jolla beaches and expansion to other beaches. "Potentially Significant Impact" should be checked.

Conclusions:

- I. Before this Project can be advanced an Environmental Impact Report needs to be prepared to address the issues raised.
- II. Before this Project can be advanced, issues such as the pinniped population explosion, pinnipeds occupying other neighboring beaches, the increasing risk of Great White Shark attacks, and the un-hygienic condition of the Children's Pool need to be solved.
- III. Before this Project can be advanced, the effect of predation by the 650 La Jolla pinnipeds on the local fish population and its specific species needs to be determined.
- IV. In addition to determining the effect of pinnipeds predation on the fish, the effect on the availability of fish for the local dolphins, another marine mammal, needs to be determined.
- V. Rather than furthering the goal of pinniped breeding, the City must institute a pinniped birth control program.
- VI. Such an amendment to the La Jolla Community Plan and Local Coastal Program is highly inconsistent and incompatible with the requirements and goals of our ocean recreation oriented Community and must not be allowed.

L-20. Comment noted. Refer to Response No. B.3 for the Project Description which includes a seasonal closure of Children's Pool Beach from December 15 to May 15. Full access will be permitted on the project site from May 16 to December 14. The project does not propose the closure of other beaches. To determine whether or not the project could lead to other beach closures in the vicinity, and therefore a cumulative impact, would involve speculation. This would be inconsistent with CEQA Guidelines Section 15145.

L-21. Comments noted. Refer to Responses A.2, A.4 and B.31.

LETTER

RESPONSE

- L-22** VII. Establishing an Environmentally Sensitive Habitat Area and buffer area at the Children's Pool during an ongoing population explosion is unwarranted and inconsistent with the reality of the seal population dynamics.
- L-23** VIII. The unwarranted justifications offered for amending the La Jolla Community Plan for beach closure and establishing an Environmentally Sensitive Habitat Area at the Children's Pool can easily be expanded, with little or no Community input, to the nearby South Casa Beach and the La Jolla Cove.
- L-24** IX. Similarly, with little or no La Jolla Community input, the proposed Environmentally Sensitive Habitat Area at the Children's Pool could easily be extended from the stairs to the oceans edge.
- L-25** X. The Project Subject "Children's Pool Closure" is both open ended and of concern. It does not state "seasonal" or "limited", thereby any closure could easily be extended to a permanent complete closure.
- L-26** XI. Issuing a Coastal Development Permit would be inconsistent with the City's General Plan and the La Jolla Community Plan.
- L-27** XII. An amendment to the Municipal Code is unwarranted.

References:

Application for Incidental Harassment Authorization under the Marine Mammal Protection Act, Doyle Hanan, PhD, March 28, 2013.

Gotelli, Nicholas J. 2008. A Primer of Ecology. Sunderland, Massachusetts: Sinauer Associates, Inc.

The IUCN Red List of Threatened Species, The International Union for Conservation of Nature, May 2013.

La Jolla Children's Pool Project Draft Environmental Impact Report, Project No. 71362, March 2009, JO: 298725.

The La Jolla Community Plan and Local Coastal Program Land Use Plan. Feb. 2004. City of San Diego Planning Dept.

May, Robert and Angela McLean, (Editors). 2007. Theoretical Ecology: Principles and Applications. New York: Oxford University Press.

San Diego Channel 10 News Interview with by Ralph Collier, Shark Research Committee "Children's Pool Could Attract More Sharks"

<http://www.10news.com/news/expert-children-s-pool-could-attract-more-sharks>

Statistics compiled by Ralph Collier, Shark Research Committee

<http://www.sharkresearchcommittee.com/2000.htm>

- L-22.** Comment noted. The comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- L-23.** Comment noted. Refer to Response No. L.20.
- L-24.** The project does propose an ESHA on the entire beach with a buffer provided by an access restriction that begins at the top of the lower staircase. A modification would require a separate, future CEQA review and additional approvals by the City Council and Coastal Commission.
- L-25.** Comment noted. Refer to Response No. B.3 and the Negative Declaration for a full Project Description. The proposed SDMC amendment clearly states the closure dates. A modification would require separate, future CEQA review and additional approvals by the City Council and Coastal Commission.
- L-26.** Comment noted. Refer to Response No. B.31.
- L-27.** Comment noted. The comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Letter M – Hunrichs, M

June 2, 2013

Anna McPherson DSDEAS@sanidiego.gov
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

PROJECT: CHILDREN'S POOL CLOSURE, PROJECT NO. 225045

Dear Ms. McPherson,

The Children's Pool (CP) closure project includes:

- M-1**
1. An amendment to the LJ Community Plan and Local Coastal Program to establish an Environmentally Sensitive Habitat Area (ESHA) and buffer area for the Children's Pool Beach.
 2. The amendment will also include modification to community plan policies related to beach access to prohibit access to the ESHA during harbor seal pupping season to contribute to the protection of a sensitive habitat area for breeding pinnipeds.
 3. Obtaining a Coastal Development Permit (CDP), to prohibit access to the Children's Pool Beach annually from December 15 – May 15.

My comments to #1 and #2:

- M-2**
- Establishing CP as an ESHA would be to trivialize the meaning of an ESHA. CP is a man-made, entrusted beach, adjacent to an urban area and used by families, sunbathers, swimmers, spearfishermen, divers, disabled children and adults. It is **not** an *environmentally sensitive area*. The City of San Diego has adopted a joint/shared use policy to allow use of the CP beach by people and seals. The beach area is **not** needed for the survival of the Harbor seals. This has been stated by recognized marine biologist Doyle Hanan in a court testimony at the 2005, O'Sullivan case in San Diego Superior Court.

- M-3**
16. In my professional opinion, the continued use of Children's Pool by harbor seals is not critical for the survival of the harbor seals present at Children's Pool or the harbor seal population as a whole.

- M-4**
- These seals are not *rare or especially valuable*. Yes they draw tourists but most tourists do not come to visit San Diego with the idea of seals being the number one reason for their visit. The City cites tourist numbers but shows no reports or facts to explain these numbers. Where is this important information that the City uses as its basis for proposing an amendment to the La Jolla Local Coastal Program (LCP) to establish the ESHA at CP?

- M-1.** Comments noted.

- M-2.** Comment noted. The comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

- M-3.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

- M-4.** Comment noted. Refer to Responses A.36 and A.37. The Negative Declaration explains that the project is being proposed to contribute to the protection of a sensitive habitat area for breeding pinnipeds during pupping season.

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The seals have become acclimated to humans and are not easily disturbed by human activities. This is stated in the memorandum regarding CP written by ecologist John Dixon and dated 6/21/12:

loud urban sounds on the street above. However, for the most part, the seals only tend

J. Dixon memorandum to K. Brown re Children's Pool, dated 06-21-12

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to flush when very closely approached and the number of seals present after a significant disturbance has little effect on the numbers present a short time later.

M-5

Also on page 2 of the same memorandum (p. 44 of the CA Coastal Commission local office staff pdf report dated 6/21/12), John Dixon, Ecologist states the following about Harbor seals:

rebounded since the Marine Mammal Protection Act was enacted in 1972. Today, the International Union for Conservation of Nature (IUCN) estimates the worldwide population as being between 350,000 and 500,000. The National Marine Fisheries Service's estimate for the California stock is about 30,000, which is probably approaching the regional carrying capacity. The species is of "least concern" for the IUCN and is considered either stable or growing in California.

On page 13 of the City power point presentation given at the La Jolla Community Planning Association meeting on 5/2/13, (Children's Pool Beach Harbor Seal Rookery Project Description, as part of Implementation of Council Resolution R-305837), it states:

M-6

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

M-7

In reading this, the significant coastal resource is "The Children's Pool, located along the rocky bluffs of the Pacific Ocean below the Casa de Mañana, one of La Jolla's best known structures. Built in 1930, it was one of the many gifts that philanthropist Ellen Browning Scripps gave to the community of La Jolla."

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M-5. Comment noted. This comment does not address the project's potential significant effects on the environment; therefore no response is required pursuant to CEQA Guidelines Section 15204 (e).

M-6. Comment noted.

M-7. Comment noted.

LETTER

RESPONSE

("Until Kingdom Come", *The Design and Construction of La Jolla's Children's Pool* by Jeremy Hollins). http://www.sandiegohistory.org/journal/v51-3/pdf/v51-3_pool.pdf

- M-8** Ellen B. Scripps recognized the need for a safe ocean swimming area. Construction of the breakwater and the resulting CP provided that and more such as a safe ocean entry/exit to the rugged La Jolla (LJ) coastline. These safety needs existed then as they do now. If public safety is not a priority then why do we provide lifeguard towers, lifeguard services and ocean safety classes?
- M-9**
- M-10** CP is significant because of other reasons as well. It was a gift to the City by E.B. Scripps and it is the only manmade ocean pool on the United States continent. It also has the potential to be highly recognized as an ocean pool for the disabled community worldwide. In this day and age, more and more people are becoming disabled due to the current wars and terrorism.
- M-11** Therefore CP is a significant coastal resource and the safe ocean entry and exit it provides are more important than adopting a policy relating to specific wildlife habitat in close proximity to an urban area.
- M-12** There are no fragile coastal resources at CP. If the ESHA is adopted for CP to close the beach seasonally then the beach might as well be closed year round. The same arguments for seasonal closure apply to year round closure. It is analogous to the current rope barrier which used to be seasonally put in place on the beach at CP but has now become year round. The results in time will be no public access to the beach or the ocean.
- M-13** The City Ranger claims observance of at least 67 flushes at CP. However NOAA law enforcement has not cited anyone. Despite the mostly *incidental harassment* to the seals, it is a *negligible impact* because it has not affected the species or stock through effects on annual rates of recruitment or survival. This was also basically stated by John Dixon the ecologist cited above. The seal colony continues to increase in numbers at CP. Last year 45 pups were born, this year 60-65.
- M-14** The LJ Cove area is in a Marine Protected Area (MPA) now called Matlahuayl State Marine Reserve. Sea lions and some seals haul out primarily on rocks but also on the beach. It is a fact that sea lions and probably fewer seals at the LJ cove area are also flushed on a fairly irregular basis, usually unintentionally. I personally have witnessed sea lions flushed by kayakers and snorkelers. Despite these occurrences the sea lions have likely reached an Optimum Sustainable Population (OSP) and pups have been rescued this year at a record rate due to starvation. Management policy of pinnipeds applied to CP must also be applied to the La Jolla Cove area.
- M-15** The CA Coastal Commission notes that unauthorized harassment or incidental taking of marine mammals is not consistent with Chapter 3 policies of the Coastal Act. This is not a perfect world and whether we like it or not flushing, just as speeding on the freeway, occurs probably regularly in CA. The basic intent of most laws is to provide protection or prevent deaths for animals or humans. The MMPA has worked well

- M-8.** Comment noted.
- M-9.** Comment noted. The connection between this comment and the project is not apparent but it does not appear to address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines 15204(e).
- M-10.** Comments noted.
- M-11.** Comment noted.
- M-12.** Comment noted. Refer to Response No. L.20.
- M-13.** Comment noted. See Response No. A.4.
- M-14.** Comment noted. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e). However, the City has not tracked flushes at La Jolla Cove. Further, the comment is referring to the sea_lion population and reported pup starvation.
- M-15.** Comment noted. This comment does not address the project's potential significant effects on the environment or the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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RESPONSE

M-16 to protect seals and now the non-harmful interaction of humans and seals help provide balance. Where is the report to prove seal pups have been abandoned at CP due to harassment?

M-17 The City cites other examples of areas with ESHA protection such as Carpinteria. CP is quite different in that it is in an urban area with many ocean users year round. Granted primary use is in spring, summer and fall but San Diego has great weather many times of the year. During summer like conditions in winter, snorkelers, spearfishermen and some families with children like to use the beach or ocean provided the seals are located at the opposite end of the beach at CP. I would like to know how many ESHA protected beaches were man made for a significant reason but have been now converted to seal habitat?

M-18 There are lifeguard facilities at CP. What happens when a person who is caught in a rip current from Shell Beach is exhausted and cannot exit via CP? Since the CP beach may be closed during pupping season, the lifeguard cannot run through the ESHA to make a rescue so more time is involved as the lifeguard uses some other rescue strategy and meanwhile the potential rescue victim may drown.

The City cites ESHA Tests, 1 & 2 in the power point presentation which are weak. It is true that the ESHA can include marine mammal haul-out areas and rookeries but they are not within 500 feet of people's homes in a residential area. Also Pt. Mugu in Ventura and Catalina Island in Los Angeles both have NOAA recognized rookeries but no ESHA designation in their Local Coastal Program. More appropriate tests are the following from John Dixon, Ecologist, memorandum dated 3/25/03:

M-19 There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

These tests fail when applied to CP and have been explained in the paragraphs above. Even the City's own application for an IHA, prepared by Dr. Hanan, states the seals are not easily disturbed:

There are so many human visitors to this site at all hours of day and night, season, and weather that human scent and visual presence are generally not issues (Hanan 2004, 2011). At this site the harbor seals are most disturbed when people get very close to them on the beach (from Dr. Hanan's personal observations: generally less than 2-3 meters). However, the City

M-20 In the Determination section of the Negative Declaration report, the City has conducted an Initial Study and determined that the proposed project will not have a significant environmental effect and so preparation of an Environmental Impact Report will not be required. I disagree with this assessment and my comments follow.

Initial Study Checklist:

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M-16. Comment noted. While the scientific literature often refers to seal pups being abandoned due to human-induced flushing, the Children's Pool Park Ranger has not compiled data regarding this phenomenon at Children's Pool beach.

M-17. Comment noted. Neither this comment nor this question addresses the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines

M-18. Comment noted. The prohibition of public beach access during pupping season would not impede Lifeguard personnel from performing rescues. Refer also to Response No. M.38.

M-19. Comments noted. These comments do not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e). Refer also to Response No. L.17.

M-20. Comment noted. Refer to Response No. A.2.

LETTER

RESPONSE

M-21

In the list of "environmental factors potentially affected" there are a few which are quite significant: As a general rule, in addressing this checklist, it appears that the City ignores the future impact of encouraging more and more seals through beach closure to inhabit CP.

- ❖ Please note in your report, #2 of the section, EVALUATION OF ENVIRONMENTAL IMPACTS, it states "All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts."

M-22

The signs and chain barrier which facilitate closure, themselves do not constitute a problem other than physically prohibiting beach access which is a violation of the CA Constitution and **CA Coastal Act Section 30210 (maximum access), Section 30211 (public right of access) and Section 30212(a) (access from roadway to shoreline).**

III. AIR QUALITY

e. Create objectionable odors affecting a substantial number of people? The City claims "No Impact".

M-23

- The response to this environmental factor should be "Potentially Significant Impact". The creation of an ESHA and the pupping season beach closure will definitely encourage more seals and birds to use the CP beach and this will lead to the production of more seal feces. Anybody who has passed near the CP during the later months of seal pupping season has experienced the offensive odor. When pupping season is finished, the City does not take any responsibility for cleaning the beach, it is left for the public to do the work.



Seal poop from CP beach, picked up by volunteers and hauled up to the street, coordinated by the San Diego Council of Divers since 2006.

M-21. Comment noted. Refer to Response No. A.4.

M-22. Comment noted. The project that is the subject of the Negative Declaration is fully described in the Subject section of the document. It includes the amendment to the La Jolla Community Plan and Local Coastal Program to establish the ESHA and to modify policies regarding beach access and natural resource protection, the amendment to the SDMC to prohibit access to the beach area during pupping season, and the Coastal Development Permit to permit the physical components of project implementation. The Negative Declaration includes an analysis of all components of the project.

M-23. Comment noted. Refer to Response Nos. A.4 and B.8.

LETTER

RESPONSE

M-24

- There are also dead seal bodies buried in the sand and left to decompose:



Harbor seal flipper.



M-24. Comment noted. Refer to Response A.4.

LETTER

RESPONSE

M-24

- Even Lifeguards have complained about air quality issues at CP. Encouraging an increase in the seal population as well as birds through the establishment of an ESHA will make this problem worse.
<http://www.lajollalight.com/2011/08/17/lifeguards-dealing-with-tough-working-conditions-at-childrens-pool/>
- If the ESHA is adopted, then it is very likely that the area will be managed as a rookery/haulout. According to Joe Cordero, retired from NOAA, seals cannot be rescued and dead ones must be left to rot: (Air quality will definitely be impacted.)

What that means is that SeaWorld is not allowed to remove any sick harbor seals or abandoned harbor seal pups from the beach or surrounding waters. Also, no dead harbor seals may be removed from the beach or surrounding waters.

M-25

- Currently there is a serious problem at the La Jolla cove area. Businesses and customers are complaining about the air quality resulting from primarily bird excrement, sea lion poop and an occasional sea lion carcass.
http://www.voiceofsandiego.org/community/article_3cdaca12-2dc4-11e2-b5c2-0019bb2963f4.html

IV. BIOLOGICAL RESOURCES

a. Have substantial adverse effects, either directly..., on any species identified as a candidate... in local or regional plans, policies, or regulations, or by the CA Department of Fish and Game or U.S. Fish and Wildlife Service? The City claims "No Impact".

M-26

- The response to this environmental factor should be "Potentially Significant Impact" because currently sea lion pups are being rescued due to starvation. Seals and sea lions eat similar food such as squid so seal pups may start starving this summer. If so then these seals will soon be eating anything in sight. Seals eat up to 6 percent of their weight daily which can amount to 1-2 tons of fish per adult per year. I would ask the City, what studies have been done to know what marine life is being impacted by first the starving sea lion pups and next the seal pups?

M-27

- According to research in Washington, seals and other predators can have an effect on sensitive groundfish and other populations. The study abstract states, "The importance of considering increased visitation by marine predators to areas where potential prey are enhanced through restrictions on human extractions should be considered when modeling the efficacy of quotas and reduced access areas, such as marine reserves". Since seals are opportunistic predators, what effect might they have on sensitive populations of abalone, fish, lobster etc...? There have been no foraging studies.

V. CULTURAL RESOURCES

a. Cause a substantial adverse change in the significance of an historical resource as defined is CEQA section 15064.5? The City claims "No Impact".

M-25. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

M-26. Comment noted. Refer to Response A.4.

M-27. Comment noted. Refer to Response A.4.

LETTER

RESPONSE

M-28

- The response to this environmental factor should be "Potentially Significant Impact" based on the City of San Diego criteria for determination of historic significance. One criteria listed in this determination is "...context, association with an important event..."
- The "association" is the historic use by children since 1931. See "Until Kingdom Come" by Jeremy Hollins in the 2005 issue of The Journal of San Diego History. Ellen Browning Scripps once said "I have always had an innate interest in children, particularly those handicapped in life's game." While the creation of a breakwater would ultimately benefit all visitors to La Jolla's beaches, she wanted "the children to have a primary claim" to such a structure.
- In 1921, Scripps contracted Hiram Newton Savage. Spearheaded by city hydraulic engineer Hiram Newton Savage, architect William Templeton Johnson, and contractor W. M. Ledbetter and Company, the breakwater and pool's lasting design were feats of modern engineering. Children's Pool was an intensive effort that took nearly a decade to complete.
- Another "association" is the historic use in the mid-1930's by "goggle fishermen" now known as spearfishermen. The first modern spearfishing club was known as the "Bottom Scratchers" and their primary fishing grounds were in La Jolla centered at the Children's Pool. See: Goggle Fishing in California Waters by David Hellyer and Lamar Boren in the 1949 May issue of The National Geographic Magazine.
- The "important event" is the building of the breakwater. Seasonal closure of the **beach, which only exists because of the historic breakwater**, is an "alteration activity" which will adversely impact the historic use of CP by spearfishermen and the use by children. These two historic uses of the CP area are culturally significant and should not be discounted.
- The movie "The Stunt Man" had various scenes filmed at CP in 1978. A 1970 Dodge Charger car commercial was filmed at CP. <http://www.youtube.com/watch?v=tpVRLS6VHi0>
- The first permanent San Diego lifeguard station was established at CP in 1926.
- The CP is unique, it is located in a historic district, it is identified with historic people and it is a "landmark of La Jolla".
- Please note: **CEQA 21084.1. A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources.** Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in

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M-28. Comments noted. Refer to Response No. B.13.

LETTER

RESPONSE

subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

- CEQA Section 21084.1 is by turns both specific and vague in distinguishing the range of resources which may be considered historic. First, any resource listed in, or eligible for listing in, the California Register of Historical Resources is presumed to be historically or culturally significant. **Section 21084.1 is intended to provide, in the form of CEQA mitigation measures or project alternatives, new protections for historical resources which may be adversely changed by a project. The City states in the DND, "...for the purposeS of this document and analysis, the Children's Pool breakwater is considered to be a California Register-eligible historic resource".** That statement alone mandates an EIR. The breakwater will not be affected by closure but the historic intent, historical use by families, sunbathers, swimmers, spearfishermen, divers, disabled children and adults and the resulting beneficial use of the breakwater will be altered completely.

IX. HYDROLOGY AND WATER QUALITY

a. Violate any water quality standards or waste discharge requirements? The City claims "No Impact".

M-29

- The response to this environmental factor should be "Potentially Significant Impact". The seasonal beach closure will encourage more seals to haul out which will increase seal feces on the beach and in the water. In the 2005, O'Sullivan case it was documented that the Children's Pool beach was closed, September 1997-March 2003. The water contamination was due to accumulated seal feces pollution. Children's Pool can no longer be closed due to AB 411 which allows closure only if there is an untreated sewage release. The City has posted water quality advisory signs at the Children's Pool since 2003. The City sign states the beach is open and swimming is allowed but not recommended due to high levels of bacteria from seal feces. The beach is contaminated with seal feces, which the City refuses to remove, during and after pupping season. This affects water quality at CP and yet the health standards of children or people are secondary to seals. The water quality problem has expanded with the seal colony growth and in September of 2012, a S.D. County "Warning" sign was posted for the first time at the adjacent beach at South Casa. See photo:

M-29. Refer to Response No. A.4.

LETTER

RESPONSE



Signs posted on both sides of stairway leading down to South Casa beach.

e. Create or contribute runoff water, which would ... or provide substantial additional sources of polluted runoff? The City states "No Impact".

M-30

- The response to this environmental factor should be "Potentially Significant Impact". Seasonal closure of CP will result in an accumulation of more seals which will increase seal poop production. Runoff from rain or high tide ocean levels will provide additional sources of polluted runoff into the ocean pool where children play. Rain water or tide immersion of rotting seals buried under the sand will also contribute to this runoff water. The potential for transmission of seal diseases to humans will increase.

f. Otherwise substantially degrade water quality? The City claims "No Impact".

M-31

- The response to this environmental factor should be "Potentially Significant Impact". The establishment of an ESHA and the seasonal beach closure will contribute to an increase in seal population and seal feces thereby degrading ocean water quality. How can the City claim a "shared use policy" at CP when the City refuses to clean the beach resulting in fewer people using the area because of the water advisory sign and the accumulated years' worth of seal feces on the beach?

M-32

M-30. Refer to Response No. A.4.

M-31. Comment noted. Refer to Response No. A.4.

M-32. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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X. LAND USE AND PLANNING

b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, and local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? The City claims "Less Than Significant Impact".

- M-33**
 - The response to this environmental factor should be "Potentially Significant Impact". State constitution guarantees access, 1931 Trust section (b.) fishing. Seals are not endangered and CP is not a natural habitat, it is manmade.
- M-34**
 - The **Recreation Element** of the **General Plan** is being restricted. *D. Accessibility:* specifically RE-D.7(c). Everyone including the disabled will no longer have public beach access or ocean access for 5 months of the year if the ESHA is adopted at CP.
- M-35**
 - The **Conservation Element** of the **General Plan** is being impacted. *C. Coastal Resources:* specifically CE-C.12. The ADA laws have been ignored; no disabled people are encouraged to use CP because the existing ramp/road gate is locked because the City refuses to repair the road. This beach access point is identified in the La Jolla Local Coastal Program. However disabled people still use CP; some crawl under the gate at the ramp or enlist friends and the public to help carry them down the stairs. The La Jolla Shores Beach can be used by the disabled but it is dangerous because there is overuse by kayakers, divers and general ocean users. CP provides quick ocean access, pool like conditions and safety but these benefits will be eliminated if the ESHA is adopted.
- M-36**
 - La Jolla Community Plan and Local Coastal Program.** One of the goals of this plan is to enhance existing public access to the coastline (such as the Children's Pool area) and the City is failing to do this by proposing a closure during pupping season. This area is not a natural habitat because it was manmade and it is not needed for the livelihood of the seal population at CP.
- M-37**
 - CP is not designated as "open space" and there are no sensitive resources for scientific or educational use. Seals at CP can be studied at any time without the pupping season closure especially now with the surveillance cam.

XIV. PUBLIC SERVICES

Would the project result in substantial adverse physical impacts associated with the provisions of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response times or other performance objectives for any of the public services:

i) Fire Protection. The City claims "Less Than Significant Impact".

M-33. Comment noted. Refer to Response No. B.31.

M-34. Comment noted. General Plan Policy RE-D.7 reads: "Provide new, and preserve and enhance existing public beach access, where appropriate. Refer to Response Nos. B.31 and B.37.

M-35. Comment noted. Refer to Response No. B.31.

M-36. Comment noted. The project includes an amendment to the La Jolla Community Plan and Local Coastal Program. Refer also to Response No. B.31.

M-37. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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M-38

- The response to this environmental factor should be "Potentially Significant Impact". In the City of San Diego, the San Diego Lifeguard Department is a division of the San Diego Fire-Rescue Department. Establishing ESHA during harbor seal pupping season would affect rescue of ocean users in distress just outside of CP. If a tired person or persons cannot exit via CP then he or she will have to be rescued. I have documented several rescues by lifeguards during seal pupping season; 1 man on 3/11/2011, 4 teenagers on 3/12/2011, 2 men on 1/22/12 and 3 freedivers on 3/10/13 who were directed by a Lifeguard to come ashore at CP. These rescues can be confirmed by the SD Lifeguard Services. How about other numbers of rescues that have occurred in the CP area?
- The lifeguards normally put their rescue board on the CP beach. This act will discontinue due to prevention of access from the ESHA and require lifeguards to alter their procedures. Has the City consulted with the Lifeguards to determine how the ESHA designation would impact them?



iv) Parks. The City claims "Less Than Significant Impact".

M-39

- The response to this environmental factor should be "Potentially Significant Impact". The Park Ranger's observation counts of people who utilize CP beach for recreational and ocean access is not objective. The Ranger discourages most people from being on the ocean side of the rope, particularly those unfamiliar with CP rules. Also because of the controversy at CP including the rope barrier, seal feces on beach, and seal advocates who try to discourage people from going onto the beach, fewer people go down the stairway or access the ocean.

RESPONSE

M-38. Comment noted. The ESHA designation would not affect emergency responses related to human life or safety situations. This conclusion is further bolstered by recent fire-fighting efforts in the Santa Monica Mountains where thousands of acres of upland vegetation has been designated ESHA. When fires threaten life or property, fire fighters may set back fires and brush hog fire breaks and establish access roads through ESHA for the sole purpose of protecting life and property. While clearly a significant disturbance to ESHA, these techniques were allowed. Lifeguard personnel would be permitted to continue to fulfill all job functions. The presence of the rescue board is part of the existing baseline conditions, does not significantly disrupt the rookery, and would not cease as a result of the project.

M-39. Comment noted. The Ranger counts of people on the beach provide an accurate baseline from which project impacts are assessed under CEQA. The comment does not assert that the counts are inaccurate. It is acknowledged that the factors listed in the comment may have the potential to affect the number of people on the beach; however, the counts do represent the existing baseline condition from which the effects of the project were evaluated. Refer also to Response No. A.23.

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RESPONSE

- M-40**
- The children or adults who currently access CP beach parkland would have to utilize adjacent beaches if CP is an established ESHA and closed seasonally. These people will be at greater risk because of potentially hazardous rip currents. Again, has anyone consulted the Lifeguard Services about this potential impact?
- M-41**
- Section 55 of the City Charter requires a 2/3 public vote to convert parkland to any other use.
- M-42**
- I would venture to say that whoever wrote this report is not an ocean user or has limited knowledge of ocean conditions at La Jolla beaches. Many people use CP because Shell beach to the north has the most dangerous rip current in La Jolla, South Casa to the south has a rip current and also Wipeout beach further south has a potentially dangerous shore break and a big drop off depending on tide conditions.
- M-43**
- The conclusion that "the magnitude of this effect on other public park resources would be negligible and is temporal in nature" is not supported by any evidence. CEQA makes no distinction between temporary or year-round. The City's own form directs, "All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts". In other words, the assertion that an impact "would be negligible and is temporal in nature" must not only be supported with evidence (was any evaluation of impact on off-site facilities completed?) and must acknowledge all impacts. This includes "temporal" impacts. Temporary impacts which occur for six months of every year can be just as impactful as ones that occur year-round. This is particularly the case when other facilities may be closed and/or there are no lifeguards to watch the beach goers. Many La Jolla beaches only have lifeguards during the summer months. Since the closure is during winter months, it will force beach goers to beaches which do not have lifeguard services. Likewise, the increase in beach goers at other beaches could increase traffic and parking congestion. This could also have an effect on maintenance etc.... all of these effects should be quantified and examined for potential impacts. The conclusion must be supported through careful study and consideration.*
- M-44**
- XV. Recreation*
- a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? The City claims "Less Than Significant Impact".
- M-45**
- The response to this environmental factor should be "Potentially Significant Impact". More people would have to use the La Jolla Cove or La Jolla Shores if they are divers. The lawn area next to the restroom at the Cove is damaged from all the use. The La Jolla Shores Association is currently trying to regulate usage by divers because they claim there is high use by divers at that location. By changing the use and forcing users to other beaches without facilities, they are impacting the use of other parks.

- M-40.** The existing baseline condition, as noted in the Negative Declaration based upon the Children's Pool Park Ranger data, is that few people currently swim in the water off Children's Pool beach. The Negative Declaration discloses in Section XIV iv Parks that access would be limited during pupping season. It is speculative to make an assumption about where the existing swimmers might go during seal pupping season if the project is approved, and that would be inconsistent with CEQA Guidelines Section 15145.
- M-41.** Comment noted. The referenced Charter Section is inapplicable since the site is not dedicated park land.
- M-42.** Comment noted. Refer to Response No. M.40.
- M-43.** Comment noted. The intent of this language is to explain that the temporal nature of the access restrictions was taken into account during the impact analysis, not that a temporal impact is inherently not significant. The Negative Declaration concludes that, based upon the fact that the beach will remain open May 16-December 14 and full visual access will remain, the potential impact that results from the project is less than significant.
- M-44.** Comment noted. Access will be prohibited for five months of every year. The impact analysis in the Negative Declaration does take these considerations into account. The Negative Declaration quantifies the potential number of people who would have to access a beach area during pupping season elsewhere if the project is approved. Refer also to Response M.40.
- M-45.** Comment noted.

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- M-46**
- Consumptive divers will be left with no beach with facilities in La Jolla. These divers and casual beach goers will be forced to other parks and beaches with an associated increase in traffic and parking needs. This should be evaluated further. By the City's own counts, up to 100 people per day may be forced to other beaches.
- M-47**
- Further, the parkland outside the ESHA at the Children's Pool could experience a marked increase in use according to the City's own counts. As the City says, "The observational counts appear to document that a majority of visitors come to view the beach from the sidewalk or breakwater" (i.e. park facilities). Also refer to the comment on XIV, iv above.

XVI. TRANSPORTATION/TRAFFIC

Would the project?

a. Conflict with an applicable plan...for the performance of the circulation system...including but not limited to intersections, streets...? The City claims "No Impact".

- M-48**
- The response to this environmental factor should be "Potentially Significant Impact". Seasonally closing CP will encourage a greater population of seals at CP. That coupled with a surveillance cam will attract more and more visitors to the area. These visitors wanting to view seals will increase demands on the existing limited parking area, create more traffic congestion and increase pedestrian traffic as well as bicyclists. Furthermore has the City examined any community plan for transportation/circulation in La Jolla? What about the review of this by the LJCPA?
- M-49**
- According to City counts, up to 100 people per day would be shifted to other areas of La Jolla along with the traffic and parking impacts associated with it.

- M-50**
- b. Conflict with an applicable congestion management program...or other standards...for designated roads or highways? The City claims "No Impact".
- f. Conflict with adopted policies...or otherwise decrease the performance or safety of such facilities? The City claims "No Impact".

- M-51**
- The response to this environmental factor should be "Potentially Significant Impact" regarding letters b. and f. because of the same reasons listed above in "a".
 - The City does not provide any information on "safety of such facilities". As the seal population has grown, I have seen a marked increase in official tour visits to the CP. This includes the Segway scooters on the sidewalk (personal transporters), more bicycles, more pedestrians and more bus traffic. In particular, I have noticed buses and cars often double parked. There is no bus parking nearby but I often see buses in red zones and elsewhere causing a lack of visibility and real safety dangers. These safety impacts should be evaluated.

M-46. Comment noted. Refer to Response No. B.63.

M-47. Comment noted. The observation counts document the existing baseline condition. The comment provides no evidence to support the contention that more visitors would come to use the parkland if the project is approved and implemented.

M-48. Comment noted. Refer to Response No. A.4 regarding the effects of the project on the seal population and population trends at Children's Beach. Refer to Response No. B.63 regarding traffic and parking issues.

M-49. Comment noted. The commenter is referring to the observational counts regarding visitors who access the beach who may choose to access another beach area during pupping season. Determining which beaches and how many visitors would choose to access those beaches would involve speculation and would be inconsistent with CEQA Guidelines Section 15145.

M-50. Comment noted. Refer to Response No. 63.

M-51. This comment is an observation regarding the existing baseline condition. It does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

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XVIII. MANDATORY FINDINGS OF SIGNIFICANCE-

b. Does the project have impacts that are individually limited, but cumulatively considerable?
("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects). The City claims "No Impact".

- M-52**
- The response to this environmental factor should be "Potentially Significant Impact". In the 2005, O'Sullivan case, the City noted that a potential cause of increase in the number of seals was that for about a year and a half the City lifeguards had erected barriers between seals and people at CP. If the seasonal beach closure is enacted, more and more seals will be encouraged to haul out in an urban area. This means more seal excrement and more potential for disease transmission. How about the attraction of Great White Sharks? They are now protected by California's Endangered Species Act, so their numbers will also increase and there will be many seals from CP to consume.

- M-53**
- Cumulative impacts occur from more than one project or population growth. What about the impacts from the MLPA closures, lifeguard tower, nighttime closure etc.... all of these changes affect human access and behavior along the coast and should be looked at on a cumulative basis for potential impacts. Further, the City did not include any projections for future recreational use or wildlife viewing uses at the Children's Pool. As the population increases, the number of beachgoers will necessarily increase and the number of tourists will also increase. Therefore, impacts which might today be "less than significant" could be significant in the future when viewed in combination with other activities (lifeguard tower/MLPA etc...) and population growth.

c. Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly? The City claims "No Impact".

- M-54**
- The response to this environmental factor should be "Potentially Significant Impact". The CP beach closure will encourage more seals to haul out which will increase seal feces on the beach and in the water. In the 2005, O'Sullivan case it was documented that the Children's Pool beach was closed September 1997-March 2003 due to accumulated seal feces pollution. Children's Pool can no longer be closed due to AB 411 which allows closure only if there is an untreated sewage release. The City has posted water quality advisory signs at the Children's Pool since 2003. The City sign states the beach is open and swimming is allowed but not recommended due to high levels of bacteria from seal feces.

- M-55**
- In 2011, officials found 162 dead harbor seals on the east coast in what was then thought to be a pneumonia outbreak. But a new investigation by Columbia University researchers has found that the dead seals had a new mutation of the influenza A virus. The virus started as avian, or bird flu, but the mutations may have created something new altogether. "Once it moves into seals, it

M-52. Comment noted. Refer to Response Nos. A.4 and L.20.

M-53. Comment noted. The project would not result in human population increases.

M-54. Comment noted. Refer to Response No. A.4.

M-55. Comment noted. It does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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becomes seal flu," says Ian Lipkin, director of the Center for Infection & Immunity at Columbia University. The fact that the virus was transferred from a bird to a mammal and the apparently high mortality rate of the seals that were infected raises concerns for humans, Lipkin says. In the seals, the virus mutated to become more transmissible in mammals, a key component for any human outbreak.

<http://www.usnews.com/news/articles/2012/07/31/new-seal-flu-outbreak-could-pose-threat-to-humans>

- M-56**
 - Currently starving sea lions pups are being rescued in record numbers. This event has been labeled an unusual mortality event (UME).
<http://www.wired.com/wiredscience/2013/04/sea-lion-pupupdate/> Seals will likely be next this summer.
- M-57**
 - Sharks are another area of concern since it is well documented that seals are sharks favorite prey animal. CP beach closure will encourage greater numbers of seals to use Children's Pool which will likely attract more sharks. Christopher Lowe, director of the [Shark Lab](#) at California State University-Long Beach, and a longtime white shark researcher, believes the white shark population is actually increasing. This is due, in large part, to protections already in place for white sharks and marine mammals such as seals and sea lions, which are the chief prey of adult white sharks.
<http://www.grindtv.com/outdoor/nature/post/great-white-sharks-get-increased-protection-off-california-for-now/> Another expert Ralph Collier, chairman of the Shark Research Committee, believes that the seal colony at the CP could become a magnet for great white sharks.
<http://www.10news.com/news/expert-children-s-pool-could-attract-more-sharks>
- M-58**
 - The bottom line is that per CEQA, there is a "fair argument" to state that the project would have a **significant effect on the environment** (CEQA Section 15382). The fact is that an increase in seals in the Children's Pool area beginning in the early 1990's, resulted in beach closure in September of 1997 "due to continuously high fecal coliform counts." A report later confirmed that the contamination was the result of "a seal excrement overload for the Children's Pool." These facts came out in the **O'Sullivan v. City of San Diego case initiated in 2004.**
- M-59**
 - As mentioned previously in "HYDROLOGY AND WATER QUALITY" health warnings were posted on other beaches such as South Casa. The problem is not confined to CP.
- M-60**
 - As per **CEQA Section 15064, DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT** (g) After application of the principles set forth above in Section 15064(f)(g), and in marginal case where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency **shall** be guided by the following principle: ***If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.***

M-56. Comment noted. It does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

M-57. Comment noted. Refer to Response No. A.4 and B.39.

M-58. Comment noted. Refer to Response No. A.2.

M-59. Comment noted.

M-60. It is unclear which impact the commenter believes is subject to disagreement among expert opinions. Refer to Response No. A.4 which summarizes the expert opinions to which the commenter refers and the Children's Pool Park Ranger Observational Counts.

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Conclusion:

M-61

1. The Draft Negative Declaration is flawed and should be corrected to address the environmental factors of Air Quality, Biological Resources, Cultural Resources, Hydrology and Water Quality, Land Use and Planning (General Plan: Recreation Element, RE-D.7.(c) and the Conservation Element specifically CE-C.12).

M-62

2. The City also states: Mitigation, Monitoring and Reporting Program (MMRP), "None Required". This is incorrect because as one re-examines the above mentioned environmental factors, one will see that the MMRP is required. For example, to mitigate the increase in ocean rescues of people who have had to use other beaches with more dangerous ocean conditions, the Lifeguard Services might need to hire an additional lifeguard.

M-63

3. Passing an amendment to establish an Environmentally Sensitive Habitat Area for non-endangered seals on a beach within close proximity to homes is not wise and will cost the City more money. Children's Pool Beach closure will potentially endanger the lives of ocean users who use the CP waters and curtail the frequency of use by the disabled community.

Sincerely,

Marie Hunrichs

Marie Hunrichs
mariehunrichs@cox.net

M-61. Comment noted. Refer to Response No. A.2.

M-62. Comment noted. Refer to Response A.2. Preparation of a Negative Declaration does not require the preparation and adoption of an MMRP because the document concludes that the project would not result in impacts and therefore no mitigation is required.

M-63. Comment noted.

LETTER

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Letter N – Tedford, B

Dear Ms. McPherson:

N-1

Here's what I think about the proposal to close the children's pool during the seal's pupping season.

No! Absolutely No. I am really getting tired of the demands of these so called seal advocates. I consider these people to be a bunch of Neurotics. They have slowly worked to remove people from any use of the children's pool at all. The use of our coast is a right for the citizens of this state and I want it to remain that way.

I can see the day in the not too distant future, when the cove will be the next target for these animal rights extremists. Already we have to endure the stink of bird and seal on excrement, with no relief in sight.

The children's pool can be shared by both animal and humane and that's the way it should be.

Sincerely

Bert Tedford

N-1.

Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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RESPONSE

Letter O – Hunrichs, K

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From: Ken Hunrichs [kenhunrichs@friendsofcp.com]
Sent: Friday, May 31, 2013 10:37 AM
To: Dye, Morris; McPherson, Anna; DSD EAS
Subject: CHILDREN'S POOL CLOSURE PROJECT NUMBER 225045
Attachments: DND objections for FoCP by Ken Hunrichs.pdf

Mr Dye and Ms McPherson,

O.0 Attached is a report I prepared for Friends of the Children's Pool responding to the DSD's Draft Negative Declaration for the Children's Pool Beach Closure Project Number 225045. It is our belief that this project will have significant negative effects on environmental and cultural values in the La Jolla area that require further investigation to satisfy the City's land use regulations, CEQA and the National Environmental Policy Act (NEPA).

Friends of the Children's Pool advocates for the Children's Pool in keeping with the intent of the Children's Pool Trust and sound environmental stewardship. We believe alternatives to outright beach closure must be evaluated and given full consideration before the more drastic policy of beach closure is mandated and the potential negative impacts are known.

Please reply to acknowledge receipt of this document. [DND objections for FoCP by Ken Hunrichs, 26 pages, PDF]

Thank you,

Ken Hunrichs
President, FoCP



O-0. Comment noted. Refer to Response No. A.2

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

May 31, 2013

Anna McPherson
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

PROJECT: CHILDREN'S POOL CLOSURE PROJECT NO. 225045

Dear Ms. McPherson,

In its Draft Negative Declaration of the Children's Pool Closure project, the City of San Diego has declared there to be no significant negative impacts by the creation of a defacto seal reserve and closure of a urban public beach. By making this determination, the City has without careful consideration, tried to relieve itself from the independent analysis and determinations required by the SD Municipal Code Section 128.0103(a) & (b) pursuant to the California Environmental Quality Act [CEQA]. This could have major environmental impacts and create a financial liability risk to the City of San Diego.

I am President of the Friends of the Children's Pool (FoCP); a non-profit charitable organization which advocates for the restoration of the Children's Pool to return it to its intended users. Our Board has carefully considered the observations and analysis made in the Draft Negative Declaration and objects to this project proceeding without a comprehensive evaluation of the impacts of beach closure. I have prepared this document for the Friends of the Children's Pool.

O-1 I am a lifelong San Diego resident and have used the ocean for recreation, swimming, diving, snorkeling, bodysurfing and sailing for fifty years. I am a frequently at Children's Pool and have been at the pool nearly every weekend since 2010 and occasionally during the work week. Our organization (FoCP) provides a welcoming information table and volunteers to inform visitors about the history and nature of the pool. I have done extensive research into the legal and historical aspects of the controversy at Children's Pool. I have participated in numerous public hearings and provided testimony to the various reviewing agencies working on finding solutions to the conflicts at the Children's Pool. I have a BA degree in Park & Recreation Management and worked seasonally for California State Parks and the National Park Service. I currently serve as a member of the La Jolla Parks & Beaches, Inc. committee to help advise the City Park & Recreation Dept. on policy issues related to the management of parks in La Jolla. Because of my education and experience, I am qualified to evaluate and comment on conditions at the Children's Pool for Friends of the Children's Pool.

O-2 This popular beach was formed and protected from the rocky La Jolla shoreline as an artificial embayment now known to the world as the Children's Pool. There is a deep sense of community stewardship in this landmark location developed over the 82 years since its construction that must be honored and protected. The relatively recent arrival of Harbor Seals does not change the community's desire to protect the pool for the intended human uses.

O-1. Comment noted. Refer to Response No. A.2

O-2. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

We strongly disagree with the City's claim there are no significant environmental impacts and provide the following information to support our conviction that this area will be negatively and widely impacted by amending the Local Coastal Plan and the La Jolla Community Plan to apply an ESHA designation to this beach. This is a misdirected shortcut to the creation of a display zoo in a children's playground through beach closure and will have significant negative impacts. These are our specific and general observations about the proposed project given the City's obligation to comply with the Municipal Code and CEQA. It may be helpful to review the following sections which compel a comprehensive environmental study on effects of beach closure at Children's Pool.

California Environmental Quality Act

Article 20. Definitions:

15358. EFFECTS

(a)(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

O-3

15382. SIGNIFICANT EFFECT ON THE ENVIRONMENT

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

15384. SUBSTANTIAL EVIDENCE

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.

Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

San Diego Municipal Code Chapter 12: Land Development Reviews

§128.0103 Powers and Duties of the Development Services Director in Implementing Environmental Quality Procedures

The Development Services Director shall be responsible for implementing this article.

(a) The Development Services Director shall have the following powers as required for all projects or activities as defined by CEQA, whether proposed by private applicants, the City, or other public agencies:

O-3. Comments noted. Refer to Response No. A.2.

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1891 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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Comments on the Draft Negative Declaration to Close Children's Pool

O-3

- (1) To conduct environmental reviews including a determination of the information required to perform the review;
- (2) To issue administrative guidelines consistent with CEQA, the State CEQA Guidelines, current case law, and City Council policy;
- (3) To determine environmental significance based on applicable administrative guidelines;
- (4) To determine the type of environmental document required;
- (5) To prepare environmental documents as required by this article, CEQA, and the State CEQA Guidelines;
- (6) To implement any three-party agreement or memorandum of understanding used for preparation of an environmental document and to set standards to help ensure that only qualified environmental consultants prepare these documents;
- (7) To ensure to the maximum extent possible, that before public review, all environmental documents incorporate the latest pertinent technical or scientific information and are factually accurate and consistent; and
- (8) To help ensure that applicants incorporate all required environmental mitigation measures or project alternatives as adopted by the decision makers to minimize, if not preclude, adverse impacts to the environment from the project, consistent with CEQA.

(b) The Development Services Director shall establish and maintain that degree of independence in the performance of these functions and duties as will assure the City Council, the City Manager, the Planning Commission, and the people of the City of San Diego that the review and analysis of the environmental consequences of projects, are in accordance with CEQA, are independent and wholly objective, and are not prepared for the purpose of either supporting or detracting from any project, plan, or position, whether advanced by the City, any other governmental agency, or private interest.

(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

BIOLOGICAL RESOURCES

The City cannot create an Environmentally Sensitive Habitat Area [ESHA] where none exists. The landforms and tidelands of Children's Pool underwent extensive modification and degradation by the construction and creation of the seawall and pool in 1930 and 1931. A bathhouse and lifeguard tower has been built in the succeeding years. A beach access ramp was graded into the original bluff to create an additional access to the beach for people who have difficulty using stairs or have strollers and wagons to bring to the beach.

O-4

The environmental impact and degradation has now been followed by the unintended accumulation of excess sand in the pool because the seawall sluiceways were permanently closed and the City's neglect of regular beach maintenance. The area is ineligible for designation as an Environmentally Sensitive Habitat Area [ESHA] simply because of the use by Harbor Seals. The natural tidal flushing of animal waste has been prevented by the closed sluiceways and the fecal waste overload by an ever increasing population of Harbor Seals. The area cannot be considered a natural habitat for seals even though they have occupied the area since Sea World engaged in a program of relocating captive Harbor Seals to the Children's Pool area from 1993 to 2004. A practice which was stopped after the impact on Children's

O-4.

Comment noted. This comment does not address the project's potential significant effects on the environment; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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Comments on the Draft Negative Declaration to Close Children's Pool

Pool was revealed during the O'Sullivan v. City of San Diego trial. Details of the extensive modification to the natural landforms and tidelands during construction can be found in the Journal of San Diego History, Summer/Fall 2005. Volume 51, about the seawall construction here: "Until Kingdom Come" The Design and Construction of La Jolla's Children's Pool by Jeremy Hollins.

- http://www.sandiegohistory.org/journal/v51-3/pdf/v51-3_pool.pdf

- O.5** If a similar seawall construction project were to be contemplated today, along with the creation of an associated Harbor Seal Reserve, it would be inconsistent with CEQA and ESHA policies and sound marine resource management because of the potential to degrade marine, intertidal and coastal bluff resources. The construction of an artificial seawall and the resulting artificial embayment with the intent to create seal habitat would stop this project before it started. This hypothetical project would create conditions where colonizing harbor seals would create pollutants to coastal waters and the sandy beach which would be unacceptable because of the hazard to human health.
- O.6** In this hypothetical project, just like the current proposed beach closure project, there are no provisions for monitoring and managing the artificially created habitat values if this project were to be undertaken. Unknown native and non-native species potentially could diminish the protections intended for the nearby State Marine Protected Areas established to enhance the marine environment. This likely impact has not been addressed or potentially mitigated in the City's Draft Negative Declaration about the current Children's Pool beach closure plan. A full environmental study should be initiated to determine the impact of this proposed marine mammal reserve so close to the Marine Protected Areas.
- O.7** It is well documented that the catalyst for Harbor Seal colonization at Children's Pool had its origin with the concentration of rehabilitated Harbor Seal releases near Children's Pool from 1993 to 2004 by Sea World. A practice which was only stopped when the releases were revealed in court testimony in the O'Sullivan v. City of San Diego lawsuit. NOAA and Sea World officials testified to their policy of the releases. The court recognized the negative impact on Children's Pool Beach by those animals. What is unknown is the cause of the policy shift of the location of the releases from remote areas far from human activity to the La Jolla area directly offshore from a major coastal recreation area and an established marine reserve. This activity was conducted, probably with the best of intentions, without the proper scientific review to determine the environmental impact of concentrating habituated Harbor Seals into the area. To further create an unbalanced ecosystem through the artificial protection and forced beach abandonment would compound the environmental impact started through the concentration of Harbor Seals in La Jolla. It is time to unwind the damage done to the marine resources of the area and stop artificially encouraging the overpopulation of one species to the degradation of others. Let us promote the return to environmental balance, which is nature's default condition, without further human interference.
- O.8** The people of the State of California have devoted enormous resources and energy into creating Marine Protected Areas to assure the recovery of fisheries in the San Diego County area. Two such MPA's are located 1/2 mile north and 1 1/2 miles south of the Children's Pool. During the extensive deliberations about the size and boundaries of the MPA's, Children's Pool was specifically excluded from consideration because of the protected status as a human use beach in the Tideland Trust. The Children's Pool State Tidelands Trust, recently restated in Senate Bill 428, signed into law effective January 1, 2010 requires protection and accommodation to all the uses enumerated in the Trust.

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

- O-5.** Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).
- O-6.** Comment noted. Refer to Response Nos.B.2 and B.3.
- O-7.** Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines
- O-8.** Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e). However, according to the California Department of Fish and Wildlife's "[Amended] Statement of Reasons for Regulatory Action" and the Addendum thereto (in response to a comment about blocking shore access in La Jolla), "[t]he MPA does not block access, but only restricts activities within that area." In response to another comment that supported a reserve at Children's Pool, the Department wrote, "An SMR at Casa Beach was not included in any of the Alternatives and therefore is outside the scope of this rulemaking. The Commission selected the northern La Jolla MPA complex, which has a southern boundary approximately 0.4 miles north of Casa Beach. This was the existing southern boundary of the existing MPA; an extension of the southern boundary to encompass Casa Beach would have had negatively impacted the recreational and commercial fisheries that operate in that area. Adding a separate MPA at Casa Beach would require a separate rulemaking and associated environmental and socioeconomic analysis". In response to a comment supporting a SMR at South La Jolla, the response was "After taking public testimony on all the alternatives, the Commission adopted the IPA, based on the reasons provided in the Amended Initial Statement of Reasons, and adopted specific sub-options identified in this Final Statement of Reasons for inclusion in the IPA."

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

O.9 Recreational use and marine mammal uses of the beach are given equal weight in the administration of the obligations under the terms of the Trust. The City of San Diego, by attempting to convert parkland, playgrounds and a bathing pool dedicated to use by children into a seal reserve is once again attempting to breach its fiduciary obligation to administer the Trust for the intended beneficiaries of that Trust. The deliberate exclusion of the marine environment around Children's Pool when the MPA's were considered was intended to protect the designated use as a shared use beach for human and seal viewing activities. No other conclusion about the intended uses of the area can be reached with the plain language of SB428.

Beaches in La Jolla provide potential nesting site for many bird species. A closed Children's Pool beach, by forced abandonment, could potentially create an area for colonization of migratory and resident animal and bird species such as the California Least Tern (*Sterna antillarum browni*) and the Western Snowy Plover (*Charadrius alexandrinus nivosus*). The Elegant Tern (*Thalasseus elegans*) which is classified as Near Threatened, NT, was observed and photographed on the Children's Pool Beach in April, 2011. Nesting activity starts in April and continues through June in this area.

O.10 If an endangered or threatened species were to begin nesting or colonize the beach at Children's Pool during the forced abandonment period, it would undoubtedly further complicate the City beach management problems. These three species of shorebirds are known to occur in the La Jolla area and will likely colonize any abandoned beach. A conflict could occur between a federally protected marine mammal and the endangered or threatened bird species that both use sandy beach areas. The likelihood of use and occupation by threatened or endangered species has not been examined or even mentioned in the City's Draft Negative Declaration.

O.11 Currently, the City of San Diego is struggling to resolve a major human health and safety issue resulting from bird colonization of the closed areas of the bluffs around the La Jolla Cove. It is an unintended consequence of blocking human access to the coastal bluffs and shoreline resulting in a significant accumulation of bird and Sea Lion waste. It has been over a year since the City was advised of the potential health impacts of birds on Goldfish Point. A trial remediation costing taxpayers \$50,000 is underway but is likely to be just a down payment on final solution to the ongoing problem. As of today, the City has not resolved the issue and the risk to the health and welfare of human residents continues. Coastal development was undertaken by the City to build fences and barriers to human access without required permits and environmental studies to determine the environmental impacts to the area surround the Cove and Goldfish Point. This mistake should not be repeated at Children's Pool.

- o B. Massey, Breeding Biology of the California least tern, Proceedings Linn. Society, New York 72:1-24 (1974)
- o California Wildlife, Volume II, Birds, ed. by David C. Zeiner, William F. Laudenslayer and Kenneth E. Meyer, published by the California Department of Fish and Game, November 1988.
- o Gary Deghi, C. Michael Hogan et al., Biological Assessment for the Proposed Tijuana/San Diego Joint International Wastewater Treatment Plant, Publication of the United States Environmental Protection Agency Region IX, Earth Metrics Incorporated, Burlingame, CA with Harvey and Stanley, Alviso, CA

LEGAL CONSIDERATIONS

O.12 Environmental, historical, cultural and scenic values of Children's Pool closure have not been fully evaluated as required under CEQA Statutes and Guidelines Chapter 2.6 §21084.1. HISTORICAL



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1913 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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O-9. Comment noted. Refer to Response No.O.8.

O-10. Comment noted. Refer to Response Nos. A.9 and A.10.

O-11. Comment noted. This comment does not address the project's potential significant effects on the environment in excess of the immediately preceding comment; therefore, no additional response is required pursuant to CEQA Guidelines Section 15204(e).

O-12. The referenced section of the Public Resources Code prohibits the exemption of certain project types from CEQA. Refer to Response No. A.2.

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

RESOURCE; SUBSTANTIAL ADVERSE CHANGE. This evaluation process requires an environmental impact study and has not been done. The California Coastal Act addresses the impact of overuse of any coastal area in the following sections:

O-13

Section 30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Children's Pool is a unique resource in California. It was dedicated and entrusted to San Diego for a Children's Bathing Pool through a State Tidelands Trust. The beach was maintained in pristine condition for most of its existence by the City of San Diego to make a safe place for children. J.B. Pendleton, President of the San Diego Board of Playground Commissioners acknowledged the generous gift by Miss Scripps and expressed the full cooperation of the City with the construction and maintenance of the resulting Children's Pool. The intent and purpose of the pool along with the acknowledgement of the City role in maintaining the same was expressed in a simple, one page letter. The commitment was made and codified in State Law in the Children's Pool Trust enacted in 1931.

O-14

825 Union Street

July 11, 1930

Mr. J. D. Harger, Attorney at Law,
For Miss Ellen Browning Scripps,
La Jolla, California.

Dear Sir:

Replying further to your communication of June 21 requesting permission for the construction of a concrete breakwater in the Pacific Ocean at La Jolla, beg to advise that we have been advised by the City Attorney that inasmuch as this recreational improvement proposed by you does not affect any property under the control of the Playground Commission, the said Commission has no jurisdiction whatsoever over same.

However, the Board of Playground Commissioners will be glad if you will express to Miss Scripps our sincere appreciation of this proposed addition to the recreational facilities in La Jolla, and that the Board will be happy to cooperate in any and every way possible by placing our superintendent at the disposal of your engineer and the contractors before and during construction of the bathing area, and also to cooperate with you in the maintenance and construction of same after it is completed, in so far as our jurisdiction will permit.

Respectfully yours,

J. B. Pendleton (Signature)
President
Board of Playground Commissioners

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

O-13. Comment noted. Refer to Response No. A.2. The commenter is quoting one section from the California Coastal Act, a section in Article 3, "Recreation" of the Act. Articles 4 and 5 describe the Act's environmental resource considerations. The Act specifies that Section 3007.5 is to be used to resolve policy conflicts that arise between implementing the various articles.

O-14. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no additional response is required pursuant to CEQA Guidelines Section 15204(e). Refer also to Response No. A.23.

Comments on the Draft Negative Declaration to Close Children's Pool

Children's Pool Tideland Trust [Section 1 of Chapter 937 of the Statutes of 1931]

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 1 of Chapter 937 of the Statutes of 1931.

Section 1. There is hereby granted to the City of San Diego, County of San Diego, all the right, title, and interest of the State of California, held by said state by virtue of its sovereignty, in and to all that portion of the tide and submerged lands bordering upon and situated below the ordinary high water mark of the Pacific Ocean described as follows:

Beginning at the intersection of the ordinary high water mark of the Pacific Ocean with a line bearing S. 87° 40' W. from the monument marking the intersection of Coast Boulevard south Boulevard South with Jenner Street as said monument, said Coast boulevard south Boulevard South, and said Jenner Street are designated and shown on that certain map entitled "Seaside subdivision number 1712" and filed June 23, 1920, in the office of the county recorder of San Diego County, State of California; thence N. 350', thence E. 300', thence S. 185' more or less to the ordinary high water mark of the Pacific ocean, thence in a general southwesterly direction along the ordinary high water mark of the Pacific Ocean to the point of beginning, all in the Pacific ocean, State of California, to be forever held by said City of San Diego and its successors in trust for the uses and purposes and upon the express conditions following, to wit:

(a) That said lands shall be devoted exclusively to public park, parkway, highway, playground and recreational purposes, and to such other uses as may be incident to, or convenient for the full enjoyment of such purposes;

(b) The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California.

(c) That there is excepted and reserved to the State of California all deposits of minerals, including oil and gas, in said land, and to the State of California, or persons authorized by the State of California, the right to prospect.

As California's human population increases, demand is increasing for recreational access to the coast even while large areas are being closed as Marine Protected Areas (MPA's). This project further reduces access to suitable lands and coastline for human use and is contrary to the intended purpose of this small beach. In both sections of the Coastal Act cited above, the resource is protected by the words "shall be protected" because of the limited resources suitable for this use and the unique nature of Children's Pool.

The basis for protecting coastal access in the California Coastal Act comes from the California Constitution in the following two controlling sections.

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

O-15. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no additional response is required pursuant to CEQA Guidelines Section 15204(e). Refer also to Response No. A.23.

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

CALIFORNIA CONSTITUTION

ARTICLE 1, DECLARATION OF RIGHTS

Section 25. The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken.

ARTICLE 10, WATER

Section 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

Judge Pate in his August 25th, 2005 decision in the O'Sullivan v. City of San Diego case (partially quoted below and re-affirmed by Judge Hofmann's ruling) cites several reasons why the Children's Pool must be returned to human use. The imposition of a "marine mammal park" to the amended Trust does not relieve the City of San Diego to act on behalf of the intended beneficiaries of the 1931 Trust or the amended Trust. The people of San Diego still have a place at the Children's Pool in despite all the City's attempts to ignore its legal obligations to maintain this public park and bathing pool.



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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O-16

O-16. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no additional response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

VALERIE O'SULLIVAN, Plaintiff,)
v.)
CITY OF SAN DIEGO, a municipal entity,)
and FOES 1 through 500, inclusive,)
Defendants.)

CASE NO. GIC 826918

TENTATIVE STATEMENT OF DECISION

REMEDIES

O-17

☐ As stated above, the court will not order the City to modify its law enforcement activities at the Children's Pool or remove the surveillance camera located at the Pool. The City argues this court does not have the authority to order it to take any action in regard to the Pool, because such actions would be discretionary. If the Children's Pool were a "natural" beach, as argued by the City, such a position might have merit. This court probably would not order the City to clean up a dirty or contaminated "natural" beach where the City was not the direct cause of the contamination.

☐ However, the Children's Pool is not a "natural" condition. It is a man-made, artificial condition, which was entrusted to the City for specific uses and purposes. The City has knowingly declined to remove sand from the Pool, even though the sand has reached the point where the Pool in reality cannot be used for its intended purpose. Although the City has approved requests to study the removal of the sand, even as recently as September of 2004, it has consistently failed to remove the sand that has been building-up for the last 70 years.

☐ The presence of unhealthy levels of bacteria from seal feces in the pool water has been consistently left un-addressed by the City. The substantial increase in the number of seals using the Children's Pool seems to have some relationship to the actions or inactions of the City. The creation of the Reserve in close proximity to the Children's Pool and the release by Sea World of rehabilitated harbor seals in the kelp beds off-shore of the Pool, seem to have contributed to an increasing number of seals using portions of the Children's Pool in the mid-1990's. The City's decision to separate the seals from humans and then closing off the Pool to humans, likewise appears to have encouraged the seals to occupy more and more of the beach with ever increasing numbers.

☐ The occupation of the Children's Pool does not seem to be a "natural" phenomenon. According to the evidence at trial, Children's Pool is the only public beach in California that has been taken over by seals. The City was warned in 1997 that if it did not discourage the seals from hauling-out at the Children's Pool, the number of seals present at the Pool would greatly increase. In response to the situation, the City put up barriers to keep the public out of the Pool area. To date, the City has taken no steps to reduce the level of pollution at Children's Pool.

☐ Therefore, in order to protect the rights of the people of California to the full use and enjoyment of a unique asset, the Children's Pool, the City, as trustee of the Children's Pool, is hereby ordered to employ all reasonable means to restore the Pool to its 1941 condition by removing the sand build-up

O-17. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no additional response is required pursuant to CEQA Guidelines Section 15204(e).



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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RESPONSE


Comments on the Draft Negative Declaration to Close Children's Pool

and further to reduce the level of water contamination in the Pool to levels certified by the County of San Diego as being safe for humans.

□ Nothing contained in this order shall be construed as requiring the City to violate any law, rule or regulation of any federal, state or county government. The court will maintain jurisdiction to oversee compliance with this order. This order shall be fully complied with no later than six (6) months after the date this order is issued. The City is directed to file a report with this court, no later than sixty (60) days following entry of this order, setting forth what steps it has undertaken and intends to undertake to comply with this order.

IT IS SO ORDERED.

Dated: August 25, 2005


JUDGE WILLIAM C. PATIS
Judge of the Superior Court

O-18

It is worth repeating one of the significant findings in the O'Sullivan Case here:

"The next biggest cause of actual or constructive closure of the Children's Pool was the City's decision to erect a rope barrier cutting off public access to the Pool. On March 29, 1999, the City Council rejected the City Manager's recommendation to dredge the Pool and restore the Pool to the uses set forth in the Grant, and instead voted to rope off the Pool. In doing so, the City breached its obligations under the Trust, as trustee of the Children's Pool. Instead of returning the Pool to its original and safer configuration and also rectifying the unhealthy condition of the water and sand at the Pool, the City barred the use of the Children's Pool as a "public park, bathing pool for children.... and [use for] playground and recreational purposes," as expressly required by the 1931 Trust."

That same requirement remains today even after modification of the Trust in 2010 under SB428.

San Diego City Charter Section 55 requires a citywide public vote to convert parkland to any another use. The proposed seal habitat designation creates a reserve not authorized in the City Charter without such vote.

Section 55. PARK AND RECREATION.

The City Manager shall have the control and management of parks, parkways, plazas, beaches, cemeteries, street trees, landscaping of city-owned property, golf courses, playgrounds, recreation centers, recreation camps and recreation activities held on any city playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City. The City Council shall by ordinance adopt regulations for the proper use and protection of said park property, cemeteries, playgrounds and recreation facilities, and provide penalties for violations thereof. The Manager is charged with the enforcement of such regulations.



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O-18. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore, no additional response is required pursuant to CEQA Guidelines Section 15204(e).

O-19. Comment noted. The referenced Charter is inapplicable since the site is not "dedicated" park land. Regardless, the project does not include a conversion of public parkland to another use.

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.

O-20

However, real property which has been heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes may be used for any public purpose deemed necessary by the Council. Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance or statute for park, recreation and cemetery purposes.
(SD City Charter, Amendment voted 11-04-1975; effective 12-01-1975.)

O-21

The La Jolla Community Plan and certified Local Coastal Plan were carefully crafted by the community to protect coastal resources including recreational use of the shoreline. No action or regulation was ever contemplated to block human access to any part of the shore in La Jolla no matter the circumstance. The wholesale overturning of the community plan, to create an ESHA where it doesn't exist, would violate every concept of community stewardship to coastal resources. It forces the abandonment of a public beach at Children's Pool created explicitly for human use and enjoyment without justification or research to back up the claimed need. The proposed amendment to the La Jolla Community Plan and LCP is not a minor adjustment but is completely contrary to its intent. Children's Pool is repeatedly mentioned as one of several beaches where coastal access must be enhanced. Beach access is not enhanced by this project of beach closure.

CULTURAL RESOURCES

O-22

This project has "Potentially Significant Impact" to cultural values. Children's Pool was featured in 1949 National Geographic article highlighting the sport of goggle fishing (spearfishing) which originated in the United States at Children's Pool in La Jolla. Historic use by families, fishermen and children for whom the pool was built, will be denied without consideration or mitigation. Closing this historic beach and causing traditional uses to be done elsewhere will have significant impacts to the Children's Pool site itself and the limited surrounding areas suitable for that established use.

O-23

The misleading rope barrier at Children's Pool strongly conveys the illusion of closure of the Children's Pool. The City seeks to continue this encroachment year round without scientific justification or basis in fact. Harbor Seal pupping season at this latitude has a well-defined but limited date range and yet it has been extended to a year round restriction with no scientific study by the imposition of a rope barrier placed year round. The placement of the rope barrier has already heavily impacted nearby parkland at Scripps Park, the La Jolla Cove and La Jolla Shores even during the low beach use season in winter and spring. The impact will be even greater during the summer and fall months. The La Jolla Shores



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O-20. Comment noted. Refer to Response No. O.19.

O-21. Comment noted. Refer to Response No. B.31.

O-22. Comment noted. Refer to Response No. B.13.

O-23. Comment noted. Refer to Response No. B.17. The existing rope barrier is a component of the existing baseline condition. The comment also includes an opinion regarding the existing baseline condition.

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

Association is struggling with the impact of ever increasing use by scuba divers. Many of those divers would normally use the Children's Pool but have been driven away by the impacted conditions of the beach.

O-24

Swimmers and divers have traditionally used Children's Pool as a safe location for ocean access. They have been forced to use the La Jolla Cove instead as the only other protected and safe ocean access. This shift has impacted the La Jolla Cove negatively as the facilities there are overrun. Fishermen have been excluded from the La Jolla Cove for decades after the creation of an ecological preserve in La Jolla Bay. That leaves the one remaining sheltered ocean access point at Children's Pool.

If the Children's Pool were to be closed it would cause a significant impairment to public safety and fishing rights when spear divers and spearfishermen are not allowed through the safe access at Children's Pool. A thorough environmental impact study, would confirm this negative and potentially significant impact on the La Jolla beaches. The City's Draft Negative Declaration does not address the foreseeable impacts created at the Cove.

O-25

The following quote from the City of San Diego's 2009 Beach Dredging Environmental Impact Report for DSD Project 71362 is telling. The environmental study recognized the impact of beach closure by considering the impact to recreational use at the Children's Pool if an alternative action of beach closure was carried out. Although the closure never occurred, the impact was determined to be "potentially significant" in the conclusions of that study. Now, under the current Draft Negative Declaration, the change of status to close the beach is excused as having no significant impact. It cannot be both. The City's own EIR declared significant impacts of beach closure in the 2009 beach dredging EIR.

"This finding would apply to the proposed closure since the impact of beach closure is recognized as having a potentially significant impact to recreational resources. Under this option [no beach closure], access to recreational resources would not be barred at the project site. That changes if the beach were to be closed. No mitigating access is considered to be provided at the site."

Environmental Impact Report for DSD Project 71362, 2009, Children's Pool Beach Dredging Project.

O-26

Since the City chooses to ignore the impacts of beach closure in the Draft Negative Declaration, no mention of potential mitigation measures were considered. The recognition of negative impacts will require consideration of mitigation measures to offset complete beach closure impacts if the project is approved and implemented. An impartial environmental impact study would require alternatives to beach closure the City seeks to avoid. The obvious mitigating measure which must be considered would be some version of the San Diego Lifeguard Union beach management plan. That plan calls for a seasonally adjusted, protected haul out areas for Harbor Seals while still allowing for mandated human ocean access. This plan is a far superior option to beach closure because it allows required access but with consideration for seal use based on seasonal conditions. It would truly be a solution to the problems of the City's own making, in trying to create "sensitive" habitat where none exists at Children's Pool.

A "No Project Alternative" would be fully examined during an EIR of the proposed beach closure project. Under that option, the mitigation of potential disturbances to Harbors Seals could be achieved by the presence of Ranger, Lifeguard, Docent and Police resources at no additional cost. All are either

O-24.

Comment noted. To develop a conclusion regarding the likelihood that scuba divers, spear divers, and spear fishermen would intentionally endanger themselves, if the project is approved and beach access is prohibited on a seasonal basis, would involve speculation and would be inconsistent with CEQA pursuant to CEQA Guidelines Section 15145.

O-25.

Comment noted. Refer to Response No. A.23.

O-26.

Refer to Response Nos. A.2 and M.62. CEQA requires the preparation of an Environmental Impact Report (EIR) only when a project would result in significant impacts. CEQA Guidelines Section 15126.6 requires the analysis of a reasonable range of alternatives as part of an EIR to determine if an alternative could satisfy project objectives and reduce project impacts.

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Comments on the Draft Negative Declaration to Close Children's Pool

present now or are being considered to protect the seals from disturbance. This makes the much more environmentally significant option of beach closure less attractive and unnecessary. The Draft Negative Declaration never considers the alternative impact to achieve the desired goal using these City resources already in place to protect the seal colony.

The following excerpts from a Department of Commerce report documents the impacts of pinniped population increases on the West Coast of the United States with data up to the mid 1990's. It is generally accepted that the California Sea Lion population has increased to historic levels and Pacific Harbor Seals are also nearing that level of recovery throughout their range. Impact of the increased pinniped population on human activities is outlined in this report.

The conclusions by the working group studying these impacts should be reexamined in light of the age of the report and increases in the local pinniped population before creating a reserve to bring even more impacts on the local fisheries. The kelp beds off La Jolla are a productive and popular commercial and recreational fishing area. The creation of a Harbor Seal reserve nearby will have an undetermined but likely substantial impact. A reasonable inference can be made from the study quoted below where increasing pinniped populations are impacting fisheries and related activities.

O-27

The attempt to bypass required environmental impact studies by the City of San Diego clearly shows the City wishes to ignore obvious and documented impacts on fisheries by encouraging an ever increasing number of seals on Children's Pool Beach.

Economic Impact of Pinniped predation on Commercial Fisheries

U.S. Dept Commerce/NOAA/NMFS/NWFSC/[Publications](#)

NOAA-NWFSC Tech Memo-28: *Impact of sea lions and seals on Pacific Coast salmonids*

<http://www.nwfsc.noaa.gov/publications/techmemos/tm28/discuss.htm>

DISCUSSION OF ECOSYSTEM IMPACTS

Determining the impact of pinnipeds on the U.S. West Coast ecosystems is a complex assessment involving separating the effects of other predators (including commercial, sport, and tribal fishers), predator and prey population dynamics, disease, and changes in environment. Because California sea lions and harbor seals are opportunistic predators, their food habits change dramatically over areas, seasons, and years in response to changes in abundance and availability of their prey. These ecological interactions are complicated, and at this time there is insufficient information to evaluate whether pinniped predation influences prey populations in most situations. Consumption estimates require information on predators, including an age/sex structured model of seasonal distribution; energetic requirements based on mass and reproductive condition; annual, seasonal, and geographic variation in the percent (by weight) of prey in diet; and average energy density of prey. Statistical models to quantify the impact of pinnipeds on prey have been proposed for the interactions of Cape fur seals and hake in the Benguela Current, gray seals and cod in the North Atlantic, and harp seals and cod and capelin



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O-27. Comments noted. Refer to Response No. A.4.

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in eastern Canada. The problems encountered in these studies which cause bias in consumption estimates include variation in annual and seasonal proportion of prey in diet and changes in energetic costs. It is also difficult to assess the impact of predation on prey dynamics without understanding the interaction of other predators and other sources of natural mortality. Because of these constraints, the Working Group limited consideration of potential ecosystem impacts to annual biomass consumption estimates for harbor seals and sea lions, socioeconomic implications of pinniped interactions with commercial and sport fisheries, and pinniped interactions with other human activities.

Pinniped Interactions with Commercial Fisheries

Harbor seals and California sea lions interact with almost all commercial fisheries on the West Coast. Because pinniped mortalities due to entanglement in fishing gear do not appear to have had any negative effects on the increase in seal or sea lion populations, the principal concerns are damage to catch and gear and potential indirect impacts on the fish stocks. The loss in catch and gear is most severe in salmonid gillnet and salmon troll fisheries (NMFS 1992). Fish caught in gear are removed or damaged by pinnipeds, causing direct loss of income to the fishers. Bait is taken out of traps and off hooks, making the gear ineffective. Fishing gear is damaged, making it "unfishable," especially in the case of California sea lions tearing through salmonid gillnets.

O-28

California Set-Net and Drift Gillnet Fisheries for Halibut, Seabass, and Swordfish/Sharks

In 1980, Miller et al. (1983) reported the highest pinniped depredation rate in the California gillnet fisheries occurred in the California halibut and white seabass set-net fisheries off southern California, where pinnipeds depredated 10% of the catch. In contrast, the white croaker, Pacific bonito, and flying fish gillnet fisheries experienced a depredation rate of less than 2%. Data collected in 1995 by CDFG show nearly the same situation of sea lions and Harbor Seals primarily depredating catch in the California halibut, white seabass, and barracuda gillnet fisheries (Beeson and Hanan 1996). There are also reports of pinniped depredation in gillnet fisheries that target mackerel, Pacific bonito, rockfish, shark, and swordfish.

From July 1990 to July 1994, NMFS observers monitored 60,967 set-net sets (mostly targeting on California halibut). Pinniped depredation was reported in 19% of the observed sets. During the 1993-94 white seabass season, fisher logbooks indicated 20% of the fishing days had "fish lost to pinnipeds" (Beeson and Hanan 1996). In the 1994-95 season, there was a reported loss in this fishery in 12% of the fishing days. Commercial fishers report that pinnipeds can damage 10-30% of the catch daily, a monetary loss of approximately \$50-75 per day, or \$3,000-4,000 for a season (Beeson and Hanan 1996). Because of the implementation of restrictions on the use of set-nets in California waters, fishing effort in the halibut set-net fishery has declined substantially over the past 5 years, from more than 7,000 days of effort and more than 200 boats in 1990 to less than 2,000 days of effort and 40 boats in 1994 (Beeson and Hanan 1996). According to commercial gillnet fishers, depredation rates and gear damage have increased over the past 5 years for boats that remain in the fishery. Many fishers have reported to CDFG that they are being "put out of business" by continual pinniped depredations and related loss of income. Commercial fishers also report that pinniped depredation is more intense during El Niño periods.

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O-28. Comments noted. Refer to Response No. A.4.

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Miller et al. (1983) found that sea lions depredated more than 1% of the swordfish catch in the shark-swordfish gillnet fishery in 1981. From July 1990 to July 1994, NMFS observers in this fishery documented that 250 (2.5%) of the total observed drift gillnet sets (9,892 sets) sustained pinniped depredation. In addition to depredation of catch, sea lions and harbor seals damage gillnet gear. Miller et al. (1983) estimated the total value of fish removed by pinnipeds and gear loss in California gillnet fisheries was \$121,000 in 1980. **Today, fishers claim that individual gear damage and catch loss in gillnet fisheries range from \$1,000 to \$20,000 annually.**

In addition to commercial gillnets, sea lions also depredated CDFG gillnets used for a striped bass tagging study in the Bay-Delta (Dave Kohlhorst, CDFG, 1416 9th St., Sacramento, CA 95814. Pers. commun., April 1996). Sea lions removed 100 striped bass from the gillnets over a 10-day period, as far as 60 miles inland from the San Francisco Bay Bridge.

Pinniped Interactions with Sport and Charterboat Fisheries

In southern California, sport fishing is a \$536-million business (Thompson and Crooke 1991). Since at least 1979, more pinniped interactions in the non-salmonid sport fishery occurred in southern California, especially near **San Diego**, than any other area (Miller et al. 1983, Hanan et al. 1989). Sea lions directly affect charterboat fishing by consuming bait and chum and depredating hooked fish. Miller et al. (1983) found that fewer fish were caught by charterboats when a sea lion was present. Consequently, when sea lions are present, skippers frequently move the boats to other fishing areas, resulting in additional fuel costs and loss of fishing time.

Sea lion interactions with charterboat fisheries and depredation of catch occur throughout the year in southern California (Beeson and Hanan 1996). For the first seven months of 1995, 14% of all non-salmonid trips were depredated by sea lions (1,414 depredated trips out of 10,042 total trips). A depredated trip was defined as a charterboat trip with at least one fish reported taken by sea lions. In comparison, in central/northern California, less than 2% of the non-salmonid trips were depredated by sea lions (55 depredated trips out of 2,939 total trips). The majority of depredations involved California barracuda in near shore coastal waters in the Los Angeles and **San Diego** areas.

In 1979 and 1980, Miller et al. (1983) reported that there were no pinniped interactions with charterboat trips in California north of Avila (San Luis Obispo County), and depredation was rare except in the **San Diego** area. In 1980, the total annual loss from depredation by California sea lions in southern California was estimated at 15,141 non-salmonids that had a fresh-fish market value of \$28,100; Pacific bonito comprised 78% of this loss. Beeson and Hanan (1996) analyzed the charterboat fishing logs, statewide, for January through July 1995, and found that 26,138 non-salmonids were taken by pinnipeds. Of this total, 97% were taken in southern California and had a fresh-fish market value exceeding \$145,200; California barracuda comprised 59% of this loss.

In 1994, the San Diego charter boat fleet experienced sea lion depredations throughout the year, ranging from 7% in February to a high of 38% in April (number of depredated trips relative to the total number of trips). The highest percentage of depredated trips occurred in March through May. California barracuda

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O-29. Comments noted. Refer to Response No. A.4.

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were taken most often by sea lions, although rockfish, mackerel, kelp, and barred sand bass were also taken (Beeson and Hanan 1996).

Hanan et al. (1989) found interaction and depredation rates for charterboat fisheries in the **San Diego** area decreased in spring and early summer, and increased in mid-summer. They attributed this seasonal trend to sea lions congregating in the Channel Islands for the breeding season. Hanan et al. (1989) found that the interaction and depredation rates declined following an El Niño event, and suggested that the reason was a reduced number of available fish.

Contamination of Shellfish Beds

Another potential impact of expanding pinniped populations on the coastal ecosystems is contamination of shellfish beds. In the 1980s, high concentrations of fecal coliform at the Dosewallips River in Hood Canal, Washington, resulted in the closure of commercially and recreationally harvested shellfish beds to protect the health of the public. The contamination was determined to be caused by the feces of large numbers of harbor seals that used the area as a haul-out (Calambokidis et al. 1989, Calambokidis and McLaughlin 1988). To alleviate the contamination problem, a fence was built to prevent seals from hauling-out near shellfish beds, and a raft was built in deeper water as an alternative haul-out site for the seals. At present, the Dosewallips shellfish beds are partially open to commercial and recreational use (K. Anderson, Puget Sound Water Quality Action Team, P.O. Box 40900, Olympia, WA 98504-0900. Pers. commun., July 1995). The partial closure remaining at Dosewallips River is due to contamination from both agriculture and seals.

The Working Group found that only 1 site of the 77 commercial shellfish beds in Washington was closed because of high coliform counts caused by seals. In Quilcene Bay, Henderson Inlet, Belfair State Park, Port Gamble Bay, and other Hood Canal areas, human and domestic animal sewage appears to be a more widespread cause of contamination than harbor seals (Anderson, pers. commun., July 1995). Nevertheless, oyster growers in Grays Harbor, Willapa Bay, and Hood Canal have expressed concern that fecal coliform contamination from increasing pinniped populations may cause future shellfish closures in Washington. Similar pinniped contamination concerns have been raised at commercial oyster aquaculture sites in Tillamook and Yaquina Bays in Oregon, but no studies have addressed the concern.

Pinnipeds in Harbors and Human Safety

Since passage of the MMPA, seals and sea lions have been afforded protection from disturbance, harassment, and killing, thereby allowing them to occupy areas from which they would have been removed in the past. The result has been direct conflict between pinniped and human use at public and private beaches, public marinas, and private docks, and involves landowners, vessel operators, and beachgoers.

Pinniped interactions with humans also have expanded into the freshwater environment as pinniped occurrence in bays and upriver has increased. California sea lions have been observed more than 145 miles up the Columbia River at the Bonneville Dam and have interacted with sport fishers throughout the

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O-30. Comments noted. Refer to Response No. A.4.

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river. In the Willamette River, California sea lions haul-out on docks in the Portland, Oregon metropolitan area and prey on spring chinook and steelhead at the fishway at the Willamette Falls. Reports of California sea lions occurring far inland from the ocean are increasing in other areas such as the Nisqually River and Chehalis River in Washington and up the San Francisco Bay Delta as far inland as Antioch.

The Working Group found that the most frequently reported pinniped conflicts with humans are encounters on docks, marinas, and public beaches. In California, reports of problems with sea lions and harbor seals have been received from harbors in Humboldt Bay, Noyo River, San Francisco Bay, Santa Cruz, Monterey Bay, Redondo Beach, and **San Diego**. In Washington and Oregon, problems with California sea lions are commonly reported in harbors in Puget Sound, Washington, and in Astoria and Yaquina Bay, Oregon. Most problems reported are caused by California sea lions hauling-out on docks and boats. California sea lions have prevented owners from accessing their boats, boats have been fouled, and the weight of animals has damaged docks and small boats. Some small boats reportedly have sunk from the weight of the animals. Fishers at Cape Arago in Oregon frequently report California sea lions jumping onto their vessels and stealing bait. Sea lions also have been reported to have bitten people carrying fish and taken fish laid out on docks. The number of California sea lions hauled-out on Pier 39 in San Francisco increased from 6 to nearly 500 between 1990 and 1994, with a high of 627 in 1991. The City of San Francisco finally "gave up" the pier to the sea lions, as animals reacted aggressively when humans attempted to remove them, and it is now a tourist attraction.

Another indirect effect of increasing pinniped populations on human safety is the possibility of an increase in the number of large sharks that prey on pinnipeds. Although there have been a number of media reports that increased attacks on humans by the great white shark (*Carcharodon carcharias*) are related to an increase in the shark populations caused by increased numbers of pinnipeds in coastal areas, the Working Group found little scientific information on this issue. McCosker and Lea (1996) report that the majority of shark attacks on humans have occurred at or near the surface, near shore, and in the vicinity of pinniped colonies and/or river mouths. Recent information on changes in shark abundance and distribution resulting from the increased populations of pinnipeds comes from studies by Pyle et al. (1996) at the Farallon Islands. At the Farallon Islands, increased attacks on pinnipeds between 1987 and 1993 are attributed to increased numbers of white sharks in the area; prior to that, increased numbers of attacks were attributed to increased populations of elephant seals and sea lions (Pyle et al. 1996).

Although the previously cited study didn't seek to document evidence of the increased risk of sharks near pinniped haul out sites, the following statistics compiled by Ralph Collier at the Shark Research Committee indicates an increasing hazard to human safety because of increasing shark populations. This hazard is a foreseeable Danger [Attractive Nuisance] at Children's Pool and is related to the public health, safety and welfare under SDMC 126.0504 (a) because of the Children's Pool beach closure project.

The proposed action to close Children's Pool Beach to the exclusion of people will change the character of the public parkland and shore. The proposed project is designed to impose an unnatural human abandonment of the beach to be replaced by Harbor Seals. The City would be creating and maintaining a liability to a known hazard to public health, safety and welfare.



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O-31. Comments noted. Refer to Response No. A.4.

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Attractive Nuisance Doctrine: a legal doctrine which makes a person negligent for leaving a piece of equipment or other condition on property which would be both attractive and dangerous. Some jurisdictions have abolished the attractive nuisance doctrine and replaced it with specific conditions that would make property owners liable by applying rules of Foreseeable Danger.

In the O'Sullivan v. City of San Diego lawsuit, well known human hazards were noted in the decision the City had breached its obligation to maintain the park in a condition suitable for human use. Those hazards included the presence of wild animals on a man-made beach created for children's use. Those same animals are the primary food source for many species of large sharks known to be in the La Jolla area. A seal reserve puts out the welcome mat to those sharks and will endanger human lives.

It is foreseeable that sharks will congregate in greater numbers with the increased seal population in and around the Children's Pool. Even though the overall shark population worldwide is declining for various reasons, shark sightings are on the rise in the waters off Southern California and in La Jolla. Several beaches in San Diego were closed several times the past two years because of shark sightings near shore. Other beaches had posted shark advisory warning signs. Artificially creating conditions to increase the number of seals near established swimming areas significantly increases the danger of shark attacks on humans. Beach closure will have the effect of increased shark presence contrary to common sense and SDMC 126.0504 (a) Health, Safety and Welfare and cannot be ignored.

While only a few attacks have been fatal, the steady increase in shark bite attacks can be linked to the re-establishment of pinnipeds populations near the site of those attacks. The population of Harbor Seals has reached its optimal sustained population and is near historic levels. The risk to swimmers has been shown to be directly increased by the presence of seals and sharks. The City of San Diego should not be causing conditions to attract a greater number of pinnipeds to the swimming areas of La Jolla.

Findings must be made under SDMC 126.0504 (a) for any development project that the development will not cause an increased hazard to public health, safety and welfare. This beach closure project is intended to create a beach void of people, for the exclusive use by Harbor Seals. This can only lead to the undesirable result of a greater presence of a food source for several species of large sharks known to attack humans. This condition will increase the risk to swimmer, divers and bathers for many miles along the La Jolla coast and not just near Children's Pool.

The following table documents the known shark attack incidents along the Pacific Coast from 2000 to 2012. This list was compiled by shark expert, Ralph Collier who has warned of the danger to humans with the presence of seals in swimming areas at La Jolla.

Annotated List of Shark Attacks along the Pacific Coast: 2000 - 2012

| Date | Victim | Activity | Location | Outcome |
|-------------|--------|----------|------------------------------|----------|
| 29 Sep 2000 | P. E. | Surfing | Mavericks, Half Moon Bay, CA | Survived |
| 4 Nov 2000 | C. S. | Surfing | Bunkers, Humboldt Bay, CA | Survived |
| 31 May 2002 | L. F. | Surfing | Stinson Beach, CA | Survived |

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O-32. Comments noted. Refer to Response Nos. A.4 and B.39.

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O-33

| | | | | |
|-------------|---------|----------|--|----------|
| 21 Sep 2002 | R. R. | Surfing | Moonstone Beach, CA | Survived |
| 23 Sep 2002 | G. T. | Surfing | Cape Kiwanda, OR | Survived |
| 28 Nov 2002 | M. C. | Surfing | Salmon Creek, CA | Survived |
| 19 Aug 2003 | D. F. | Swimming | Avila, CA | Fatal |
| 28 May 2004 | B. C. | Surfing | Salmon Creek, CA | Survived |
| 26 Jun 2004 | K. F. | Surfing | San Onofre State Beach, Trail 1, CA | Survived |
| 15 Aug 2004 | R. F. | Diving | Ten Mile River Beach, Ft. Bragg, CA | Fatal |
| 20 Aug 2004 | S. L. | Surfing | 204s, San Clemente, CA | Survived |
| 20 Sep 2004 | S. M. | Surfing | Gold Beach, OR | Survived |
| 1 Oct 2004 | C. W. | Surfing | Lifeguard Tower 16, Huntington Beach, CA | Survived |
| 2 Oct 2004 | B. I. | Surfing | Pismo Beach, CA | Survived |
| 10 Oct 2004 | P. D.J. | Surfing | Limantour Beach, Point Reyes, CA | Survived |
| 11 Nov 2004 | B. K. | Surfing | "Bunkers," North Jetty, Humboldt Bay, CA | Survived |
| 24 Aug 2005 | T. S. | Surfing | Scripps Pier, La Jolla Shores, CA | Survived |
| 19 Oct 2005 | M. H. | Surfing | Salmon Creek, CA | Survived |
| 21 Oct 2005 | C. R. | Surfing | Mouth of the Klamath River, CA | Survived |
| 2 Nov 2005 | J. D. | Surfing | Ocean Beach, San Francisco, CA | Survived |
| 3 Nov 2005 | T. W. | Surfing | Pillar Point, Mavericks, Half Moon Bay, CA | Survived |
| 24 Dec 2005 | B. A. | Surfing | First Point, Tillamook Head, OR | Survived |
| 18 Jan 2006 | M. L. | Surfing | Second Bowl, 'The Hook,' Santa Cruz, CA | Survived |
| 17 Jun 2006 | J. P. | Diving | Monterey Plaza Hotel Beach, CA | Survived |
| 31 Jul 2006 | R. M. | Surfing | Short Sands Beach, Oswald State Park, OR | Survived |
| 29 Aug 2006 | T. L. | Surfing | South Jetty, Siuslaw River, Florence, OR | Survived |
| 31 Oct 2006 | T. P. | Surfing | Siletz River, Lincoln City, OR | Survived |
| 10 Dec 2006 | R. F. | Surfing | Dillon Beach, CA | Survived |

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| | | | | |
|-------------|-------|-------------|--|----------|
| 30 Jun 2007 | K. Z. | Swimming | Will Rogers State Beach, CA | Survived |
| 17 Jul 2007 | S. L. | Swimming | Faria Beach, CA | Survived |
| 21 Jul 2007 | "Dan" | Kayaking | Bean Hollow Beach, Pigeon Point, CA | Survived |
| 22 Jul 2007 | V. C. | Paddleboard | Malibu, CA | Survived |
| 28 Jul 2007 | J. S. | Surfing | Imperial Beach, CA | Survived |
| 28 Aug 2007 | T. E. | Surfing | Marina State Beach, CA | Survived |
| 27 Sep 2007 | S. S. | Surfing | Moonstone Beach, Humboldt County, CA | Survived |
| 30 Sep 2007 | A. S. | Surfing | Santa Monica Beach, CA | Survived |
| 7 Oct 2007 | S. B. | Surfing | Venice Beach, CA | Survived |
| 7 Mar 2008 | T. L. | Surfing | Dog Beach, Huntington Beach, CA | Survived |
| 25 Apr 2008 | D. M. | Swimming | Fletcher Cove, Solana Beach, CA | Fatal |
| 21 Jun 2008 | B.P. | Kayaking | West Cove, Catalina Island, CA | Survived |
| 8 Sep 2008 | K. K. | Surfing | Surf Beach, Santa Barbara County, CA | Survived |
| 20 Dec 2008 | T. J. | Kayaking | Dillon Beach, CA | Survived |
| 6 Apr 2009 | R. A. | Diving | La Jolla, CA | Survived |
| 11 Jul 2009 | B. H. | Paddleboard | San Onofre State Beach, CA | Survived |
| 25 Aug 2009 | B. E. | Swimming | Terramar Beach, Carlsbad, CA | Survived |
| 30 Aug 2009 | C. H. | Surfing | Huntington Beach, CA | Survived |
| 24 Oct 2009 | S. B. | Surfing | San Onofre State Beach, Trail 5, CA | Survived |
| 5 Nov 2009 | E. G. | Surfing | Lagunas, Santa Cruz, CA | Survived |
| 16 Nov 2009 | J. W. | Fishing | Loch Lomond, San Rafael, CA | Survived |
| 2 Jul 2010 | D. C. | Surfing | Silver Shoals at Shell Beach (Pismo Beach), CA | Survived |
| 2 Jul 2010 | D. B. | Paddleboard | Dog Patch, San Onofre State Beach, CA | Survived |
| 2 Aug 2010 | D. S. | Kayaking | 5 Nautical Miles off Gaviota State Beach, CA | Survived |
| 14 Aug 2010 | A. C. | Kayaking | Bean Hollow Beach, Pigeon Point, CA | Survived |

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O-34. Comments noted. Comments noted. Refer to Response No. A.4.

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| | | | | |
|--|-------|-------------|---|----------|
| 27 Sep 2010 | D. L. | Surfing | South Jetty, Umpqua River, Winchester Bay, OR | Survived |
| 22 Oct 2010 | L. R. | Boogie Brdg | Surf Beach , Vandenberg AFB, CA | Fatal |
| 28 Oct 2010 | S. M. | Surfing | North Jetty, Siuslaw River, Florence, OR | Survived |
| 6 Jun 2011 | J. S. | Diving | Reef near Children's Pool, La Jolla, CA | Survived |
| 24 Jun 2011 | D. G. | Surfing | San Onofre State Beach, 'Four Doors', CA | Survived |
| 11 Sep 2011 | B. R. | Surfing | Samoa Beach, Eureka, CA | Survived |
| 10 Oct 2011 | D. N. | Surfing | 'The Cove', Seaside, OR | Survived |
| 20 Oct 2011 | B. G. | Surfing | South Beach State Park, Newport, OR | Survived |
| 29 Oct 2011 | E. T. | Surfing | Marina State Beach, Marina, CA | Survived |
| 22 Nov 2011 | H. P. | Kayaking | Pigeon Point, CA | Survived |
| 6 Dec 2011 | ? | Surfing | Seaside Cove, Seaside, OR | Survived |
| 13 Jan 2012 | S. H. | Surfing | Nelscott Reef, Lincoln City, OR | Survived |
| 6 May 2012 | ? | Paddleboard | near Avalon, Catalina Island, CA | Survived |
| 12 May 2012 | J. N. | Kayaking | North of Leffingwell Landing, Cambria, CA | Survived |
| 7 Jul 2012 | M. C. | Kayaking | Pleasure Point, Santa Cruz, CA | Survived |
| 31 Jul 2012 | J. T. | Surfing | Topanga State Beach, CA | Survived |
| 7 Oct 2012 | G. P. | Windsurfing | Davenport Landing, CA | Survived |
| 23 Oct 2012 | F. S. | Surfing | Surf Beach near Ocean Park Beach, CA | Fatal |
| 30 Oct 2012 | S. S. | Surfing | "Bunkers" North Jetty, Humboldt Bay, CA | Survived |
| Statistics compiled by Ralph Collier, Shark Research Committee, http://www.sharkresearchcommittee.com/2000.htm | | | | |

This beach closure project will create a foreseeable hazard in La Jolla. There are alternative plans to better manage the Children's Pool without endangering human lives.



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O-35. Comments noted. Refer to Response No. A.4.

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La Jolla Community Plan

The La Jolla Community Plan/LCP places high value on coastal access and resource protection and the community plan policies are all considered to have equal value. In addition, the Coastal Act recognizes the value of various, competing goals in Section 30001, it also sets out a strategy on how to resolve conflicts between those goals in Section 30007.5.

City of San Diego presentation to the La Jolla CPA, May 2, 2013.

O-36

The La Jolla Community Plan and LCP recognize the importance of the coastal dependent resources such as water based sports and recreation. Access to the water is required for many forms of coastal dependent recreation and as such, the access component to the shoreline at Children's Pool is given a high value. Taking that away that value through a process to declare an artificially protected beach created by a man-made seawall structure is not considering the value to the community. Public safety was the driving force to cause Ellen Browning Scripps to undertake the ten year process to design and construct the seawall to provide safety to less experienced swimmers and children in particular. Nothing has changed.

The rough ocean conditions found in La Jolla were tamed somewhat by the construction of the seawall. Public safety still requires the presence of lifeguards to protect human life. For too long, the consideration of human safety has taken a back seat to the emotional appeal of cute Harbor Seals at Children's Pool. Seals don't need the protection of the seawall nor do they need lifeguards to thrive. People do need those protections however and that should be the first priority of the City of San Diego to protect human life. Far too many City officials have failed to recognize the role of the seawall in promoting and protecting human safety as part of the primary duty of government in managing coastal resources like Children's Pool.

It is a myth that coastal access is maintained during any time of the year when a "guideline" rope is stretched across the Children's Pool Beach. Coastal access is significantly impacted by any logical interpretation of the intent and effect of the rope barrier. That barrier effectively closes the beach to people who see a rope barrier across an entire beach. That rope is there for a reason and allowing coastal access past a rope barrier is not one of the reasons. The rope barrier, backed up with a full time Ranger telling people to stand behind the rope, completes the illusion of a closed beach. The placement of the rope barrier and the actions of a Ranger, demanding compliance with the beach access restrictions by the City of San Diego, are improper and contrary to coastal access laws found in the Coastal Act and State Constitution. The pupping season rope is now in place year round to finally attempt to extinguish the people's right to ocean access all year long at Children's Pool. The all-out effort by the City to create an ESHA where it doesn't exist is illogical and contrary to the intent of ESHA designation. ESHA designation is intended to protect existing ESHA values and not to create those values where they do not exist. It is even more fictitious to claim the need to designate an ESHA at Children's Pool to protect a resource that needs no additional protection. An EIR would confirm the lack of CEQA review compliance and ESHA status.

O-36. Comments noted. Refer to Response Nos. A.2, B.17, and L.17.

LETTER

RESPONSE

Comments on the Draft Negative Declaration to Close Children's Pool

*"Of the 85 rookeries on and off the California coast, only two with historic human/pinniped interaction issues (Bollinas lagoon and Children's Pool), have no existing access restrictions."
City of San Diego presentation to the La Jolla CPA, May 2, 2013.*

The City claims Children's Pool is one of two historic pinniped interaction areas in the State of California lacking ESHA designation. The major issue the City overlooked is the protected recreational uses in an established Tidelands Trust area. The Children's Pool Trust allows a man-made artificial seawall to form a beach and protected swimming area dedicated for use by children as a park and playground. All the other areas with ESHA designation cited by the City are wild coastal areas far from close proximity to urban setting. This is not the case at Children's Pool where it is an artificial embayment created to protect human recreational activities. An undefined and undeclared Marine Mammal Park, added to the existing permissible uses at Children's Pool, doesn't create a sensitive habitat for the purpose of ESHA designation. No amount of desire to declare sensitive habitat causes it to actually be so.

O-37

ESHA designation is unwarranted because of the unique history and nature of Children's Pool. There is only one Children's Pool. There are no other man made intertidal coastal pools anywhere in the continental United States created specifically for a children's park and playground. In other locations where man made tidal pools have been created, primarily in Hawaii and Australia, they are protected and managed for the intended use as a human recreational resource. As such, the Children's Pool has a great value as a coastal resource which no amount of hope and wishing and emotional investment in seals can change.

Children's Pool is forever linked to the generous nature of Ellen Browning Scripps as a major figure in San Diego history. Her legacy is unique and special for the residents of San Diego. Scripps intent for the use of the Children's Pool is protected in State Law. The seawall structure and Children's Pool qualifies for State and Federal historical landmark designation by the undeniable association to Ellen Browning Scripps and the historic landmark she gave to the City.

The California Coastal Commission staff recently stated there is a dedicated user group (actual beach and ocean users as opposed to those visitors who just look at the ocean and beach) at the Children's Pool and advised the City to not use ESHA designation to try to close the beach. They apparently recognize the incorrect application of ESHA to the beach at Children's Pool. The City should accept the advice or produce verifiable scientific evidence which shows otherwise. They have not done so.

Unlike the unique landmark seawall and pool, Harbor Seals are the most common pinniped species and are distributed throughout California and in San Diego. They are known to haul out at two other local sites on a regular basis. Marine Biologist Doyle Hanan, PhD states in an IHA application for the City of San Diego's lifeguard tower project at Children's Pool,

"This is one of three known harbor seal hauling sites in San Diego County (also observed at north end of Torrey Pines beach and in a cave on the exposed ocean side of Point Loma)."

Hanan & Associates, 2012 MMPA IHA application for the Children's Pool Lifeguard Tower (citation link below).

Throughout California there are a thousand sites they are known to haul out and hundreds where they give birth. (Hanan, 2004) Nearby offshore islands provide a natural haul out and birthing sites where they are permitted to live undisturbed due to the remote locations far from urban development. While the



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1911 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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O-37. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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presence of seals at Children's Pool is interesting and enjoyable, they are not dependent on the Children's Pool site to continue to thrive. They are not particularly valuable or rare as is required for ESHA designation. Minor disruptions to the seals have not been proven to cause any significant impact on their natural lifecycle. Noted Marine Biologist and Harbor Seal expert, Dr. Doyle Hanan, stated this fact in a declaration to the Superior Court in *O'Sullivan v. City of San Diego* that the individual animal or the species as a whole are not dependent on the continued use of Children's Pool.

O-38

Harbor Seals are at or very near their Optimum Sustained Population (OSP) levels throughout their range. At Children's Pool they have reproduced beyond their resource base and are spreading to nearby beaches. Any claim they are significantly impacted by human interaction that occurs at Children's Pool, is demonstrably untrue. Their increasing number of successful births is telling. Every year many more seals born there than the year before. The mortality rate of Harbor Seals at Children's Pool is significantly lower than what is observed in the wild likely because of the artificial protection of the beach behind a man made seawall. The claimed harm to the seal colony by human activity is fictitious and unsupported by facts.

The City of San Diego has obtained authorization to begin demolition and reconstruction of the lifeguard tower at Children's Pool. The Incidental Harassment Authorization [IHA] documents the lack of significant impact on Harbor Seals due to the construction noise/activity. There is an unusually high tolerance of these seals to human activity. The December to May beach closure appears to be unnecessary since there has continued to be increasing numbers of Harbor Seal births at Children's Pool. The IHA goes on to state the following about the habituation of seals at this site:

Potential Effects on Marine Mammals

Behavioral disturbance may potentially occur as well incidental to the visual presence of humans and demolition/construction activities; however, pinnipeds at this site have likely adapted or become habituated to human presence at this site. Large numbers of people come to the site to view the pinnipeds at all hours and they perform many activities that can disturb pinnipeds at other sites, but this often does not occur at Children's Pool as they seem to have habituated to human presence and associated noises (Hanan & Associates, 2004; 2011).

Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California. <https://www.federalregister.gov/articles/2013/05/03/2013-10529/takes-of-marine-mammals-incident-to-specified-activities-demolition-and-construction-activities-of-the-16>

In a May, 2004 report, *Biological Letter Report and Recommendations for Construction Regarding Pinniped Surveys at Children's Pool* commenting on the reconstruction of the Lifeguard Tower at Children's Pool, Dr. Hanan made the following observation on the minor impact on Harbor Seal behavior from typical human activity and noise:

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

O-38. Comment noted. This comment does not address the project's potential significant effects on the environment and adequacy of the environmental document; therefore, no response is required pursuant to CEQA Guidelines Section 15204(e).

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Comments on the Draft Negative Declaration to Close Children's Pool

5.0 POTENTIAL FOR DISTURBANCE

O-39

Harbor seal behavior at Children's Pool is very interesting considering the constant presence of people (Table 7) on the sea wall, the upper beach, and the walkways near the street and above the beach at the lifeguard tower. People are present at all hours day and night. Dr. Hanan observed people doing things that would cause harbor seals at most hauling sites to flush into the water. For example: people were observed laughing, shouting, screaming, clapping, stomping, banging on the railings and signs, taking flash pictures, dropping objects from the sea wall, climbing down the sea wall to the rock ledge next to the seals, wading, snorkeling and swimming nearby, entering the water to

- 7 -

Hanan & Associates

SCUBA dive, and from the street above honking horns, slamming car doors, setting of car alarms, and many of the other noises associated with a street. Airplanes and helicopters flew over and boats went by. Whales swam nearby and spouted. Harbor seal reaction to all these actions varied with occasional minor flushing (6-12 seals). Loud startling noises (i.e., banging on signs) sometimes caused a few seals to flush into the water but they returned to the beach shortly. Generally the main stimulus to flush large numbers of these seals was people on the beach near the seals or at the water's edge but total numbers of seals following the disturbance did not seem affected long term.

LAND USE AND PLANNING

O-40

A common claim is made that the seals at Children's Pool attract "a million visitors a year" yet, nowhere is that claim supported by fact. The original estimate was based on lifeguard estimates of the number of people within their purview as they watched over the waters and general area in and around Children's Pool. Those estimates included visitors from Scripps Park to the north and to near Hospital Point to the south. Those estimates have never been verified. Nor were they correlated to the number of visitors seen in the area of Children's Pool or the actual number of people who were there to see seals. There is no data to make the claim of any specific number of visitors at Children's Pool to view seals. Economic value to the tourism industry by seal tourists therefore cannot be verified and any claim of such value must be disregarded until fully verified through an EIR.

O-41

Are the seals an incidental attraction to a visit to La Jolla with another purpose? That is unknown because there never has been an attempt to scientifically verify the claim. La Jolla has been a tourist destination for over a hundred years. The number of visitors has steadily increased as the ease of travel and quality of accommodations has improved. The true "seal tourist" has yet to be identified by survey and study. To claim most visitors to La Jolla are seal tourists is unrealistic and unverified.

What is commonly understood is the demand for water related activities will increase with an increased human population in San Diego. Children's Pool Beach closure will cause significant negative impacts to



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O-39.

Comment noted. See Response No. A.4. which explains that the project will have little effect on the existing harbor seal population or population growth trends. However, as noted in a clarifying revision to the Negative Declaration, in the existing baseline condition individual episodes of harassment do result in significant physiological impacts on individual seals.

O-40.

Comment noted. The Negative Declaration does not include the claim that "the Children's Pool attracts a million visitors a year". This information was not relied upon as part of the project analysis and conclusions regarding environmental impacts.

O-41.

Comment noted.

LETTER

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Comments on the Draft Negative Declaration to Close Children's Pool

current and future demand. No traffic, transportation, parking or public safety demands were considered to alleviate the likely negative impacts of creating a seal reserve in an urban setting.

O-42

An environmental study might give some credibility to any claim of economic benefit from seals only tourism. Since there has been only unsupported claims to a benefit, any claim of economic impact must be disregarded and never be used as a basis to convert one established land use to another without the proper study.

"The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources".

[City of San Diego presentation to the La Jolla CPA May 2, 2013]

The significant coastal resource at Children's Pool is the unique and historic resource of the Children's Pool Seawall itself which created the safe conditions for human use. The Harbor Seals present there are only an additional attraction but not the exclusive and preemptory resource they are made out to be. All uses at the Children's Pool, enumerated in the State Trust and protected in the State Constitution must be accommodated with proper management. The City claims conflict with the policies of the "division" (Coastal Act) which preclude the use of Children's Pool for human recreation. There is no conflict. The thriving Harbor Seal population at Children's Pool verifies the minor and temporary nature of human impacts to the seal colony.

Beach closure is a thoughtless shortcut; not proper resource management.

O-43

Please reconsider the Draft Negative Declaration and conduct a full Environmental Impact Study to determine the true impacts of closing Children's Pool beach.

Respectfully submitted,



Kenneth L. Hunrichs
President, Friends of the Children's Pool
kenhunrichs@friendsofcp.com



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1921 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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O-42. Comment noted. Refer to Response Nos. B.63, L.20, and O.40.

O-43. Comment noted. Refer to Response Nos. A2.

LETTER

RESPONSE

Letter P – Province, S

Page 1 of 1

P-1

Project No. 225045 Children's Pool, La Jolla

I am AGAINST allowing a negative declaration for this project. I am a long time resident of La Jolla and have followed the issue of the Children's Pool over the last several (many) years. What has been lost is the original intent of the children's pool—a pool for children/humans! There are very few safe places along the coastline for this. There is increasing habitat for marine animals along our coastline. The encroachment of the seals and now a complete sealing off of the beach during pupping season will, in fact, make this a marine sanctuary before long. What happened to a people's sanctuary? I am typically pro-environment but this approach does not serve the public.

Sharon Province
556 Arenas St., La Jolla

P-2

Please see above comment
e-mail address published
by La Jolla Light was
apparently incorrect.

P-1. Comment noted.

P-2. Comment noted.

LETTER

RESPONSE

Letter Q – Johnson, D

May 26, 2013

Anna McPherson
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue , MS 501
San Diego, CA 92101

Subject: Project: Children's Pool Closure
Project No. 225045 SCH
Community Plan: La Jolla, CA
Council District: 1

II Air Quality

d. Potential Significant Impact

The Lifeguard Beach report 619 221-8824 often reports the Children's Pool Beach as being polluted. Based upon past management of the Children's Pool, the bodies of dead seals lying about (and then buried on the beach) and the build-up of feces and urine from upwards of three hundred seals will impact the air quality of the area. The microorganisms feeding on the polluted beach and waters will negatively affect both the sand, water and air quality.

IV. Biological Resources

- a. **Potentially Significant Impact.** Have substantial adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species local or regional plan, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Please note the following description of the Children's Pool Beach as it is described in regard pollution from the San Diego Coastkeeper website:



Children's Pool

Q-1

Q-1. Comment noted. Refer to Response A.4.

LETTER

RESPONSE



"... The large seal presence has caused the beach to be in a permanent state of advisory, due to the high fecal bacteria counts ... "

Q-2

Potentially significant Impact. In light of the State's goal to increase marine life biodiversity per the 1999 Marine Life Protection Act (MLPA) and its goal being " to increase its coherence and effectiveness at protecting the state's marine life, habitats, and ecosystems."

(<http://www.dfg.ca.gov/marine/mpa/index.asp>), it is most important to take into account the effect that this ESHA would have on mammals and marine creatures on the beach and affected coastal waters.

b. **Potentially Significant Impact.** Closure of the CP beach will have a substantial adverse effect on any riparian habitat or other community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

Q-3

Refer to the California Marine Life Protection Act and the local Marine Protected Areas (MPA). The City ignores the ecosystem in which the Harbor Seals live and feed upon. It is that aquatic environment which is sensitive and in need of being protected from adding more predators, harbor seals, to the disadvantage of the variety of aquatic life upon which they seals feed.

d. **Potentially Significant Impact.** Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Potentially Significant Impact. Banning humans from the CP will only cause the population of Harbor Seals to increase and that increase will negatively affect the aquatic ecosystem of the local coastal waters. The important fact below is that the Harbor Seals eat whatever is available to it from the local area. There is very little it does not eat. Note the facts below from the Sea World website:

start of copying from SeaWorld site: <http://www.seaworld.org/infobooks/HarborSeal/hsdiet.html>

Q-4

VII. Diet and Eating Habits.

A. Food preferences and resources.

1. Adult harbor seals eat squid; crustaceans; molluscs; and a variety of fish, including rockfish, herring, flounder, salmon, hake, and sand lance.

2. A harbor seal's diet varies seasonally and regionally and often is subject to local prey availability.

B. Food intake.

Adult harbor seals eat 5% to 6% of their body weight per day, about 4.5 to 8.2 kg (10-18 lb.).

end of copying from SeaWorld site: <http://www.seaworld.org/infobooks/HarborSeal/hsdiet.html>

Q-2. Comment noted. Refer to Response A.4.

Q-3. Comment noted. Refer to Response A.4.

Q-4. Comment noted. Refer to Response A.4.

LETTER

RESPONSE

Q-5

e. **Potentially Significant Impact.** Conflict with any local policies or ordinances protecting biological resources, such as tree preservation policy or ordinance?

The City of San Diego has consistently ignored the La Jolla Town Council, and the La Jolla Community Plan and Local Coastal Program. The City states that it intends to "prohibit access to the beach at the Children's Pool during the harbor seal pupping season, December 15 to May 15 of each year". The CP beach has been open to humans for most of the last fifteen years and the seals have increased in numbers from double digits to the triple digits. The seals have not been adversely affected by the presence of humans. The Children's Pool and the other beneficiaries of the State Trust will be negatively impacted.

f. **Potentially Significant Impact.** Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Q-6

The process by which the state Marine Life Protection Act was implemented in forming the Marine Protected Areas, the Children's Pool and the Harbor Seals were specifically not allowed to be part of a protected area due to there being only one specie for which the Children's Pool beach was introduced, The harbor seal being an apex predator of the very marine life the MLPA was created makes the harbor seal and the creation of a protected site specific to the harbor seal to be in conflict with and harmful to the marine life the state has the goal of protecting. The Harbor Seal is a protected marine mammal but it is no longer an endangered species. It is now a well-populated specie which is ravaging the marine life of the local coastal waters.

Q-7

If humans are banned from the beach this will end shared use and open up for possibly upwards of four hundred plus seals to over flow onto local beaches. Multiply the daily intake of marine life by that extra number of seals and there will truly be a negative effect on the local marine ecosystem. Encouraging joint use at its best could cause a stabilizing effect on the harbor seal population and therefore have a positive affect allowing for a more diverse and healthy aquatic ecosystem.

Sincerely,



David Johnson
4222 Wightman Street
San Diego, CA 92105

Q-5.

Comment noted. The section of the Initial Study Checklist to which the comment refers is Section IV Biological Resources. Refer to Response Nos. B9 and B11.

Q-6.

Comment noted. Refer to Response No. O.8.

Q-7.

Comment noted. Refer to Response A.4.

LETTER

RESPONSE

Letter R – Valentine, W

David W. Valentine, Ph.D.
7305 Monte Vista Avenue
La Jolla, CA 92037
Email: dave_valentine_92037@yahoo.com

4 June, 2013

Anna McPherson DSDEAS@sanidiego.gov
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

Subject: Negative Declaration for ESHA on public tidelands
Children's Pool. La Jolla, Project No. 225045

Dear Ms. McPherson:

R-1 I realize a number of other, well qualified, individuals are challenging the Negative Declaration for the Children's Pool based on the thesis that it was prepared in violation of many environmental code sections. The proposed action also requires an inordinate number of changes in local laws, including a change in City of San Diego criminal code making it unlawful for San Diego citizens (and others, as well) to enter public waters as guaranteed by our State Constitution. However, it seems that one central thesis has been ignored, namely that an Environmental Impact Report is to cover all environmental impacts. You have seemingly assumed that the impacts are those of people on seals. You have ignored the impact of your proposed action on people.

R-2 What is being proposed is restricting and/or eliminating access to the water by closing access from City owned and/or controlled property. You are limiting (or eliminating) access of 1.3 million residents of the City of San Diego and the 3.1 million residents of the County of San Diego (2010 census) in favor of 100 or 200 marine animals. Harbor seals have the ability to travel the Pacific coastline from Alaska to lower Baja to haul out, rest, mate, or bear their young. You are equating the importance of allowing harbor seals to appropriate a section of popular beach to the detriment of the estimated 280,000 children in just the City of San Diego. I view this as being a major impact which was summarily dismissed with little thought given to the originally intended purpose of the Children's Pool. It was given to the City by the State to oversee as a pool in which children could safely swim under the watchful eye of lifeguards. This, in and of itself, cries out for a complete environmental assessment, not just a cursory look and dismissal on the grounds of protecting several hundred harbor seals whose natural range extends from the Aleutian Islands to Central America. In federal terms this action is "ripe" for a complete environmental assessment

R-1. Comment noted.

R-2. Comment noted. Refer to Response No. A.2 and B.3, B.15.

LETTER

R-3

You have also ignored the suggestions made by your own professional lifeguards on how to effectively deal with human-pinniped interactions at the Children's Pool. The lifeguards are at the Children's Pool year around. They, among all of the City employees, should know better than any other group precisely what can be done to resolve this conflict. Yet the negative declaration summarily dismissed the opinions of duly sworn peace officers (which all full time lifeguards are) in favor of a furor caused by a very small group of seal advocates.

Yours truly

<<No signature, sent via email>>

David W. Valentine

Certified SCUBA diver

Los Angeles County 1958

University of California 1964 (research diver)

NOAA 1973 (saturation)

La Jolla resident since 1968

Ph.D. from UCSD in marine science in 1972

Experienced professional preparer of EIR's and EIS's since 1973

RESPONSE

R-3.

Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

LETTER

RESPONSE

Letter S – Lucas, T

McPherson, Anna

From: Tim Lucas [ljja.org@gmail.com]
Sent: Thursday, May 23, 2013 3:07 PM
To: McPherson, Anna
Cc: DSD EAS; Dye, Morris
Subject: Re: Project 225045, notification questions regarding Children's Pool ND

Dear Ms. McPherson,

S-1 In my email correspondence with you below I had mentioned that the La Jolla Shores Association had not received a hard copy, CDROM or email notification of the draft Negative Declaration. During our conversation of May 13, you stated that all organizations and persons on the list were mailed a CDROM. I have done further research and contacted other organizations on the Negative Declaration list. CD-1 Sherri Lightner's office did receive the US mail hardcopy/CDROM notification. However, it seems that many of the community groups and persons listed under "Other" on page 3 of the Negative Declaration letter signed by you did not receive any notification or only received an email notification. I have done a small survey of community groups and stakeholders and have found the following:

La Jolla CPA: email notification only
 LJ Shores Association: no notification (same PO Box since the 1970's)
 LJ Town Council: no notification (same PO box since the 1950's)
 San Diego Council of Divers: no notification, but John Leek on the list did receive the email and forwarded it to SDCD

S-2 Given that it is unlikely that the post office lost all the mailed CDROMs to the above groups, I would have to conclude that only email notification was provided, and that in 3 cases above, that email went to an invalid address or was not sent.

S-3 My question for you is, under the noticing requirements of the State and the Municipal Code, does a notification have to be sent via US Mail to all organizations and stakeholders on the list, or does email only meet the requirements?

Sincerely,

Tim Lucas
 La Jolla Shores Association chair

On Tue, May 14, 2013 at 4:37 PM, Audrey Keane <ljja.org@gmail.com> wrote:

Dear Ms. McPherson,

Many thanks for returning my phone call and answering my questions.

S-4 I request that you extend the public comment period for the Draft Negative Declaration to at least 5 days after the next La Jolla Community Planning Association meeting scheduled for June 6. This will allow them to finish their review of the proposal, vote on whatever motions that result, and have their minutes ready for submission with the motions.

S-1. Comment noted. Distribution of the Public Review Draft included USPS delivery of a hard copy, Compact Disc (CD), and delivery of the document via email. The City sent the document to individuals and organizations on the Distribution List via one form of delivery or the other. The document was also posted on the Clerk's webpage of the City of San Diego's Website at

http://google.sannet.gov/search?partialfields=&sort=date%3AD%3A%3Ad1&prox_reload=1&num=100&requiredfields=STARTED:TRUE.ENDED:FALSE.PATH:C&EQA&layout_type=datetitlelink&getfields=DOCUMENT_URL.TITLE.DOC_DATE&output=xml_no_dtd&ie=UTF-8&client=scs_oecd&filter=0&site=documents&config=ceqa.js&proxystylesheet=scs_oecd&q=

S-2. Comment noted. Environmental staff confirmed that the Public Interest List included the correct mailing addresses. Staff also confirmed that the City Community Planning Group Contact List includes the correct email addresses.

S-3. Comment noted. The City provided Public Notice of Availability of the Negative Declaration for public review in compliance with CEQA Guidelines section 15072 and SDMC 128.0305.

S-4. The public comment period was extended for 14 days. Refer to Response No. H.1.

LETTER

RESPONSE

- S-5** This proposal from Development Services involves closing a beach 6 months of the year, amending the La Jolla Community Plan, and amending the local coastal program to establish and ESHA, all of which will have long term affects. This is not an insignificant proposal, and adequate public input is important.
- S-6** The La Jolla Shores Association would be amenable with putting this on our agenda for June 12, if the city wishes input from our group, but feels that the La Jolla Community Planning Association is the best forum for this. They are the recognized community group for community planning and zoning issues. This proposal does however affect the LJSA, in that there are changes to the La Jolla Community Plan, which covers residents and businesses in the La Jolla Shores. I will be keeping our constituents informed of the status of this proposal.
- S-7** As discussed during our phone conversation, the La Jolla Shores Association did not receive any notice of this proposal, and as such did not have it on our May agenda for discussion. I am the one checking our organization's post office box, and I did not receive any notification letter or CD ROM, which you stated were sent out April 18 to all the groups on the public distribution list. I was informed by the San Diego Council of Divers that they received the proposal as a PDF attachment to an email. Likewise, the La Jolla Community Planning Association also received a similar email and attachment, but no written notification or CD ROM. It was my understanding from the Municipal Code that written notifications were the normal means of noticing the affected parties, but emails are certainly more ecological. Per your request, I am furnishing our current contact information below. Our PO Box has been the same for many years now, but our email address changed withing the last 2 years, which would explain why we didn't receive the email. It also points out the dangers of going to an email only distribution system.
- S-8** The LJ CPA was unable to complete their review of this proposal at the May meeting due to the extensive public comment they received. There was simply not enough time to take all the public comment and then hold a trustee discussion and vote on motions, so they continued the item to their June meeting. I have spoken with Tony Crisafi, president of the La Jolla CPA, and informed him of the public input period ending before they can complete their review at the June 6 meeting. I anticipate that he will be contacting you soon to request an extension. We hope that the city will extend the public comment period to allow for their input.

Sincerely,

Tim Lucas, Chair
La Jolla Shores Association

Contact information:

La Jolla Shores Association
PO Box 64
La Jolla, CA 92038

LJSA.org@gmail.com

S-5. Comment noted.

S-6. Comment noted.

S-7. Comment noted.

S-8. Comment noted. Refer to Response No. H.1.

LETTER

RESPONSE

Letter T – Wan, S



Preserving Everyone's Heritage for all Generations

P.O. Box 1041 Malibu, CA 90265 Tel: 323 345-1555 Fax: 310 456-3380

www.wanconservancy.org

May 30, 2013

Anna L. McPherson
Environmental Planner
City of San Diego Development Services

Children's Pool Closure, Project 225045

T-1

We are fully in support of the negative declaration for the LCP Amendment that would declare the beach at Children's pool an ESHA. There would be no negative impacts on the environment. In fact it would enhance the resources and therefore no mitigations are required and there is no basis for a requirement that there be an EIR.

ESHA Designation

The beach at Children's Pool fits within the Section 30107.5 of the Coastal Act's definition of ESHA: "'Environmentally sensitive area' means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments". This beach serves as the only rookery for Pacific Harbor seals for 200 miles, from the Mexican border to Point Mugu in Ventura County. Seals are protected by the MMPA, are especially valuable because they are highly developed marine mammals that are of particular important to the marine ecosystem and are valuable to both the environment and to the more than 500,000 visitors who annually come to the beach to watch and enjoy them. There is no credible scientific evidence that designating the beach ESHA will in any conceivable way cause environmental damage.

Public Access and Park Use

Almost all other haul-out or seal rookeries in the State are already considered ESHA or have access restrictions associated with them.. The access restrictions are in keeping with the provisions of the Coastal Act. Section 10001 States that:

The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

T-1. Comment noted.

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RESPONSE

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.
(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

Section 30001.5 further states that:

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

- (a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources
and
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone **consistent with sound resources conservation principles** and constitutionally protected rights of private property owners.

Further Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, **and natural resource areas from overuse.**

Taken together the Coastal Act is clear on the need to protect coastal resources and protect them from over-use. This beach is a prime example of what the Legislature intended when it approved these sections. Protecting the State's ecological resources is of prime importance and, although public access, is also important it cannot be at the expense of protecting those resources. In the case of Children's Pool Beach, the area has unfortunately experienced continued and deliberate harassment of the colony of Pacific Harbor seals. Almost every weekend a group of individuals come down to the beach, cross the rope and flush the seals by either setting up umbrellas and beach chairs that they move ever closer to the seals or by having divers go directly into the group of seals both on land and in the water. In addition, people go down to the beach during the night time, use their flashlights and cameras and deliberately walk up and down the beach flashing lights into the seals eyes and chasing them from the beach. Many of these incidents are recorded on video from the SealCam that is present and operating 24/7. This is particularly dangerous to pregnant and nursing females. During pregnancy they are most vulnerable but the least likely to flee because the "The most disturbed and vulnerable animals often show no observable response because they can't afford the energy to respond" (L. Weilgart, 2013). We also witnessed, on the SealCam, that this past pupping season, one of these harassment incidents happened almost immediately after birth of a pup. That mother and pup became separated and the pup was abandoned. Harassment during pregnancy can cause premature and still births. During the early stages of birthing it can cause the abandonment of the pup. It is difficult to prevent this from happening. Thus it is

LETTER

critical that these seals be protected during this period. The San Diego police department has indicated that closing the beach is the most straight-forward method of enabling reasonable enforcement.

According to Yokem (2005) during the time period from Nov. 15 - Dec. 30, 2005, humans in the water or on land resulted in 144 flushing events. More recently, 175 instances of flushes were recorded during the period from Dec. 15 2012 - April 2013. The number of flushes was considerably reduced, proportionately, from 2005 for several reasons. Unlike 2005, during this period a rope that is intended to serve as a guideline to people as to where to watch the seals without disturbing them, was in place. This reduced the number of people on the beach who closely approached the seals, but did not prevent everyone from doing so. In addition, the beach was closed at night for the remainder of the pupping season, starting March 21, 2013. This closure, and the elimination of all flushing incidents at night shows the beneficial effects of beach closure.

In summary, not only is the negative declaration appropriate but it is supported by sound science and the California Coastal Act.

Submitted by

A handwritten signature in black ink, appearing to read "Sara Wan", written in a cursive style.

Sara Wan
of behalf of the
Western Alliance for Nature.

RESPONSE

LETTER

RESPONSE

Letter U – State Clearinghouse



Edmund G. Brown Jr.
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Ken Alex
Director

May 20, 2013

Anna L. McPherson
City of San Diego
1222 First Avenue, MS-501
San Diego, CA 92101

Subject: Children's Pool Closure
SCH#: 2013041059

Dear Anna L. McPherson:

U-1

The State Clearinghouse submitted the above named Negative Declaration to selected state agencies for review. The review period closed on May 17, 2013, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
TEL (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

U-1. Comment noted.

LETTER

RESPONSE

**Document Details Report
State Clearinghouse Data Base**

SCH# 2013041059
Project Title Children's Pool Closure
Lead Agency San Diego, City of

Type Neg Negative Declaration

Description The applicant is requesting an amendment to the La Jolla Community Plan and Local Coastal Program to establish an Environmentally Sensitive Habitat Area (ESHA) and buffer area for the Children's Pool Beach. The amendment will also include modification to community plan policies related to beach access to prohibit access to the ESHA during harbor seal pupping season to contribute to the protection of a sensitive habitat area for breeding pinnipeds.

Lead Agency Contact

| | | |
|----------------|---------------------------|----------------------------------|
| Name | Anna L. McPherson | |
| Agency | City of San Diego | |
| Phone | 619 446 5276 | Fax |
| email | | |
| Address | 1222 First Avenue, MS-501 | |
| City | San Diego | State CA Zip 92101 |

Project Location

County San Diego
City
Region
Lat / Long
Cross Streets Citywide
Parcel No.
Township

Range

Section

Base

Proximity to:

Highways
Airports
Railways
Waterways
Schools
Land Use Open Space / La Jolla Planned District Zone 5

Project Issues

Reviewing Agencies Resources Agency; California Coastal Commission; Department of Fish and Wildlife, Region 5; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 11; Regional Water Quality Control Board, Region 9; Native American Heritage Commission; State Lands Commission

Date Received 04/18/2013 **Start of Review** 04/18/2013 **End of Review** 05/17/2013

Note: Blanks in data fields result from insufficient information provided by lead agency.

LETTER

RESPONSE

Letter V – Hoffman, C.

Clement Hoffman, MD
5503 Calumet Ave.
La Jolla, CA 92037

Ms. Anna McPherson
Environmental Planner
City of San Diego Development Services Center
1222 First Ave. MS 501
San Diego, CA 92101

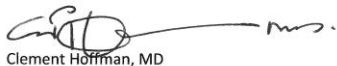
May 20, 2013

Re: Closure of Children's Pool

Dear Ms. McPherson,

- V-1** I am writing to urge the City to obtain a full Environmental Impact Report prior to requesting closure of the beach at Children's Pool.
- V-2** Closure of the beach will in effect create a permanent and increasingly large marine mammal sanctuary. The resultant potential negative impacts on environmental quality include more odors and water pollution, depredation of the food chain (for example the large seal colony consuming fish may be resulting in the very large seal lion pup mortality this Spring), attraction of great white sharks, noise /traffic and parking problems (there is only access by a small residential street) and other perhaps unanticipated environmental problems. This is the whole purpose of the CEQA laws.
- V-3** In addition, such beach closure diminishes public beach access, which goes against the Local Coastal Program.
- Thank you for your consideration.

Sincerely,



Clement Hoffman, MD

- V-1.** Comment noted. Refer to Response No. A.2.
- V-2.** Comment noted. Refer to Response No. A.4
- V-3.** Comment noted. Refer to Response No. B.31.

LETTER

RESPONSE

Letter W – Minick, P

Phyllis Minick 5860 Cactus Way La Jolla CA 92037 858 458 5938 pminick@aol.com

May 31, 2013

Ms. Anna McPherson DSDEAS@sandiego.gov
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

RE: CHILDREN'S POOL CLOSURE, PROJECT NO. 225045

BIG INJUSTICE AT A VERY SMALL POOL

The injustice I address here is the attempt to establish an Environmentally Sensitive Habitat Area (ESHA) at the Children's Pool Beach. This unnecessary permit would illegally modify San Diego's community plan by restricting/prohibiting beach access during the harbor seal pupping season.

W-1 The ESHA is unjust because (1) the Children's Pool is not a sensitive habitat area, (2) harbor seal pinnipeds are not an endangered species on any authoritative list (see NOAA, Sea World/Hubbs). (3) To seek a Coastal Development Permit (CDP) banning access to the Children's Pool Beach annually from December 15 – May 15 unjustly defies The Federal Interagency Ocean Policy of the U.S. government, the State of California Constitution, Article 10, the California Coastal Act Sections 30210 through 30213, Sections 30220, 30221 and San Diego's Local Coastal Program.

Originally, the area in the La Jolla neighborhood of San Diego now called the Children's Pool was nothing but rocks. Then in 1921, a philanthropist entered a City and State agreement to build a sea wall there as a way of blocking the swift currents that threatened swimmers. The sea wall formed an artificial cove, which the donor named four times in her Will, the Children's Pool. Ever since, families, swimmers and boaters have gathered there safely, guarded by the large lifeguard station built by the City.

W-2 *This lifeguard/restroom/shower building confirms the City of San Diego's long-term intent to preserve human life and health at the Children's Pool.*

W-3 Now, this cove is being usurped with the intent frightening beachgoers away and reserving the beach and ocean exclusively for harbor seals. In fact, these seals are not an endangered species. Since they were placed there artificially over many years, their population has tripled. As marine biologist Dr. Doyle Hanan stated in a court testimony at the 2005, "use of the Children's Pool by harbor seals is not critical for [their] survival . . . or for their population as a whole."

W-4 The foul, toxic odors from the overpopulated seals, sea lion and bird excrement are documented repeatedly in our national press, warning tourists to stay away. However, no documentation supports the unwarranted City claim that an amendment to the La Jolla Local Coastal Program is necessary to establish the ESHA at CP.

W-5 Federal law on this issue is summarized in the following excerpt: July 19, 2010

W-1. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

W-2. Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

W-3. Comment noted. Refer to Response No. A.4

W-4. Comment noted. Refer to Response No. B.8.

W-5. Comment noted.

LETTER

RESPONSE

Federal law on this issue is summarized in the following excerpt: July 19, 2010
THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL
QUALITY

National Ocean Policy for the sustainable use of our oceans signed into law by President George Bush based on the recommendations of the Ocean Policy Task Force. (p.3)

W-5

It is the Policy of the United States of America to:

- Protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- Improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;
- Bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- Use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;
- Support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;
- Respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;
- Exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;
- Increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;
- Improve our understanding and awareness of changing environmental conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and
- Foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

W-6

LONG-TERM CONSEQUENCES: Questions about the future outcome of seals overtaking our shoreline, under auspices of the proposed ESHA, remain valid. How will the City's plan for a marine mammal park at the Children's Pool affect other beaches now that the increasing seal population inhabits them? Plans exist to close those beaches to people too. Our shores have seen an influx of killer sharks due to the increased seal population, the white sharks' favored food. The saddest effect is that seals and sea lions are dying from starvation and possible contamination from their own feces. The tidepools are empty of sealife now consumed by seals. Most garibaldi, the California State fish, are gone. The former huge deposits of squid eggs underwater no longer exist. *These injustices constitute a severe, negative environmental impact.*

W-7

To preserve a balance of nature, the Tidelands Trust must be honored and co-existence of people, seals, and a range of sealife at Children's Pool must continue in a way that works for everyone. The Draft Negative Declaration is inaccurate. Realistically, the seals are healthier and better off in sustainable numbers and in the wild. People are better off when they know and use their oceans.

W-8

I urge you to deny establishment of an Environmentally Sensitive Habitat Area (ESHA) at the Children's Pool Beach. Please refuse to ban access to the Children's Pool Beach annually from December 15 – May 15 via a Coastal Development Permit (CDP).



W-6. Comment noted. Refer to Response No. A.4. regarding the effects of the project and B.3 for a Project Description; it does not include closure of adjacent beaches.

W-7. Comment noted.

W-8. Comment noted.

LETTER

RESPONSE

Letter X – Minick, S

Stanley R. Minick
5860 Cactus Way La Jolla CA 92037

June 1, 2013

Ms. Anna McPherson
Environmental Planner
City of San Diego Development Services Center
1222 First Avenue, MS 501
San Diego, CA 92101

RE: CHILDREN'S POOL CLOSURE, PROJECT NO. 225045

- X-1** I address here those named as well as each Commissioner of the San Diego Planning Department, the individuals responsible for protecting our community's land use. I urge that you deny the permit requested for Environmentally Sensitive Habitat Area (ESHA) at the Children's Pool Beach. In fact, you ARE this community's real barrier to misuse of our lands! Right now, today, you have the power to enforce the Federal, State and local laws that guarantee the public's open access to our coastal waters. YOU, ladies and gentlemen can stop limited use of the Children's Pool by those who would end its freedom and seek to close it forever. Only you can promote justice for the multitudes who come there rightfully to benefit from its gifts.
- X-2** No city should have a permit to cordon off public historic trusted tidelands. California is bound by a trust which does not allow changing a playground, park and bathing pool into a restricted animal display concession.
- X-3** The rope is described by the City of San Diego as a "Visual Deterrent", yet citations are issued for those crossing that rope for the purpose of access to the ocean, which is guaranteed by multiple laws. A visual deterrent to vertical access to the shore is inappropriate to a public beach under the jurisdiction of the CCC. It will endanger every beach in California where a town can save money by discouraging ocean access in favor of an animal display. Such a deterrent is a significant *negative environmental impact*.
- X-4** The City states it has not completed any technical studies on the effectiveness of the rope. If it is effective, it is a denial of access. If it is not, then it is a perpetual mistake. People are stung by stingrays at La Jolla Shores, yet there is no rope across that beach to protect their safety. Sea lions are abundant at La Jolla Cove, but no rope is in place on that beach. Why should the Children's Pool be declared a closed site and only those seals an endangered group?
- X-5** According to the State of California Constitution, "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose.
- X-6** California Constitution: ..and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.
- From § 5096.27; Parks under State control: "Such projects shall also be devoted to multiple recreation purposes, as opposed to restrictive, single interest usage".

- X-1.** Comment noted.
- X-2.** Comment noted.
- X-3.** Comment noted. Refer to Response Nos. A.2 and B.17.
- X-4.** Comment noted. Refer to B.17.
- X-5.** Comment noted.
- X-6.** Comment noted.

LETTER

RESPONSE

§ 30210; In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people

X-6 § 30211; Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization....

§ 30212; (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects....

§ 30213; Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

§ 30214; (b) ...Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

§ 30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses. ...(Looking from behind a barrier is not recreation)

§ 30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development...(Looking from behind a barrier is not recreation)

The federal protection for marine mammals does not allow for enforcement on a state level. The Commission must obey the MMPA, but it may not attempt to enforce any aspect of it.

X-7 This year round rope is a new development because it replaces a permit awarded a structure under City rather than CCC jurisdiction. Vertical Access to the Shore, not to 80 feet back, must be provided. But its stated purpose is to serve as a visual deterrent to shore access.

X-8 The CCC is meant to protect access to the coastline FOR the people. It was not intended to protect the coastline FROM access by the people of California.

X-9 Children's Pool Land grant Trust, (b) The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California.

X-10 Deny establishment of an Environmentally Sensitive Habitat Area (ESHA) at the Children's Pool Beach. Refuse to ban access to the Children's Pool Beach annually from December 15 – May 15 via a Coastal Development Permit (CDP).

Sincerely,



X-7. Comment noted.

X-8. Comment noted.

X-9. Comment noted.

X-10. Comment noted.

LETTER

RESPONSE

Letter Y – Sarpotdar, C

McPherson, Anna

From: chelsey sarpotdar [cooking247house@yahoo.com]
Sent: Saturday, May 18, 2013 8:13 AM
To: DSD EAS
Subject: Project No. 225045

To whom it concerns;

Y-1

I am originally from San Diego, it is such a beautiful city, and the character of the City is seen everywhere you go.

My first visit to see the La Jolla Seals was when I went with family. I was amazed at their calm personalities as they were protected by a rope that spanned the whole beach; they were also just enjoying life, lying on the beach safe from any apparent danger.

I continued to go there to take pictures of the scenery, and admire the seals in their natural habitat.

I am writing because I am part of The La Jolla Friends of the Seals Group. Now the seals are threatened by humans who want to use this beach to swim in. The seals are also threatened by their upcoming pupping season, and if humans drive them off they won't have anywhere safe to go. Lastly the Draft Negative Declaration should be supported for its efforts to protect the seals, and also the environment of the natural beach in La Jolla. But with strong efforts of The La Jolla Friends of the Seals group, they are now **protected** with a rope that spans most of the beach.

Y-2

But now as time approaches it is going to be pupping season, and the mothers need to protect their pups, and the pups should feel safe on the beach. I agree with the one point of the Draft of Negative Declaration, that states that The impact on public access is insignificant since there are numerous other beaches available to the public. The whole coast of San Diego is very fortunate to have easy beach access to the public. This is one beach that was used by seals, because humans shouldn't go swimming there. There are many sharp rocks, and the current is far too dangerous for even little kids to be able to swim in the water at La Jolla.

I also agree with another point of the Draft of Negative Declaration it states that **this particular beach is an Environmentally Sensitive Habitat Area under the Coastal Act**. When a particular beach is environmentally Sensitive, that means if humans interfere with the geology of the beach, it could destroy the whole eco system of the beach, and by doing this could potentially hurt the our friendly native seals. Along with the ESHA the Draft of Negative Declaration states that the beach being closed will help protect the seals, and enhance that beach environment. This is a positive for us supporters because we can watch the beach flourish with new pups, and also watch the beach become even more magnificent during this time period, if humans don't interfere.

Y-3

Lastly I want to visit the La Jolla Seals next month, and hope to see many on the beach laying in the sun bathing in its rays. I also want to see many in the water floating and enjoying the tide. I support the Draft of Negative Declaration because I believe that **this beach should be closed from the public to protect the seals during their sensitive time; while some mothers are going to give birth to new pups**. I also know a lot about animals and if humans get in the way of a mother seal and her pup she might hurt the human in defense of the pup. I want humans to witness the beauty of a seal giving birth to a pup, but not get hurt. That's why that retaining wall is there, so humans can watch from a distance. I support the findings of the Draft Negative Declaration as written and agree that Casa Beach

Y-1. Comment noted.

Y-2. The commenter is referring to the Section XIV iv) Parks, in which the document states “Persons who wish to access the sandy beach area and access the water at Children’s Pool would be required to access the beach and water at another location from December 15 to May 15, but the magnitude of this effect on other public park resources would be negligible and is temporal in nature.”

Y-3. Comment noted.

LETTER

RESPONSE

Y-3

should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

In conclusion I want the seals to be protected on this beach that they now call their home, and feel safe. San Diego is my home town, and I feel safe there as well. The seals need a safe haven from the sea, they have found that. Let's not take that away.

Sincerely,
Chelsey

LETTER

RESPONSE

Letter Z – LEE, N

McPherson, Anna

From: Nancy Lee [nancyleedesigns@gmail.com]
Sent: Saturday, May 18, 2013 2:03 PM
To: DSD EAS
Subject: Project No. 225045
Attachments: Trying to bring her pup up to nurse 3-21-2013.jpg; People completely crowded around seal 4-5-2013.jpg; 5-31-2012 - Child Running Into Seal Group.JPG; May 29, 2012 Seal Colony with People.JPG; May 23, 2012 Seal Colony without People.JPG

Anna McPherson, Environmental Planner
 City of San Diego Development Services Department

Subject: Project No. 225045

Dear Ms. McPherson,

Z-1 I am in support of the Draft Negative Declaration for the following reasons:

1. There are no environmental impacts from the proposed Local Community Plan amendment.
2. The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
3. Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
4. The impact on public access is insignificant since there are numerous other beaches available to the public.
5. It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.

I visit Casa Beach daily and have witnessed on a regular basis people crossing rope barrier in order to get close to seals to photograph them. Additionally, some of our visitors do not speak or read English and therefore, do not understand the meaning of the rope to keep them back from the seals. During the pupping season, the mother can abandon her pup due to being frightened away by people who cannot get close enough for a photo. Once these pups are abandoned it is unlikely that the mother will return and they will starve. I would also like to mention that the public is unaware that these seals are wild animals and that they can get bitten. This year I personally witnessed three separate occasions where an adult and child have come very close to getting bitten. Mother seals are very protective of their pups and are in a high-stress environment when people come within a foot or two away from them.

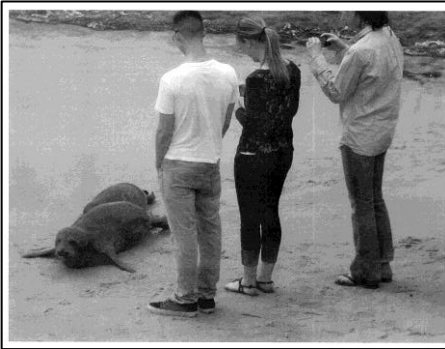
I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Respectfully,
 Nancy Lee
 PO Box 3609
 San Diego, CA 92109

Photos attached

Z-1. Comments (including photographs) noted.

LETTER



RESPONSE

LETTER

RESPONSE

Letter AA – Player, S

McPherson, Anna

From: Shannon Player [player.shannon@gmail.com]
Sent: Saturday, May 18, 2013 6:31 PM
To: DSD EAS
Subject: Fwd: Fw: Project No. 225045
Attachments: Trying to bring her pup up to nurse 3-21-2013.jpg; People completely crowded around seal 4-5-2013.jpg; 5-31-2012 - Child Running Into Seal Group.JPG; May 29, 2012 Seal Colony with People.JPG; May 23, 2012 Seal Colony without People.JPG

Anna McPherson, Environmental Planner
 City of San Diego Development Services Department

Subject: Project No. 225045

Dear Ms. McPherson,

AA-1 I am in support of the Draft Negative Declaration for the following reasons:

1. There are no environmental impacts from the proposed Local Community Plan amendment.
2. The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
3. Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
4. The impact on public access is insignificant since there are numerous other beaches available to the public.
5. It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.

I visit Casa Beach daily and have witnessed on a regular basis people crossing rope barrier in order to get close to seals to photograph them. Additionally, some of our visitors do not speak or read English and therefore, do not understand the meaning of the rope to keep them back from the seals. During the pupping season, the mother can abandon her pup due to being frightened away by people who cannot get close enough for a photo. Once these pups are abandoned it is unlikely that the mother will return and they will starve. I would also like to mention that the public is unaware that these seals are wild animals and that they can get bitten. This year I personally witnessed three separate occasions where an adult and child have come very close to getting bitten. Mother seals are very protective of their pups and are in a high-stress environment when people come within a foot or two away from them.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Respectfully,
 Shannon Player
 337 F Avenue

AA-1. Comment (including photographs) noted.

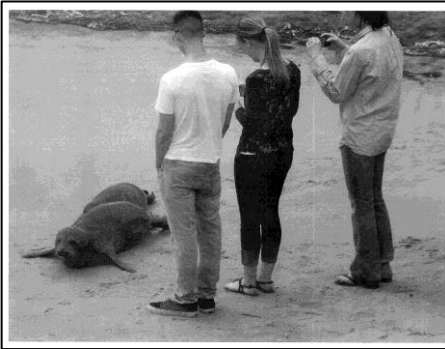
LETTER

RESPONSE

Coronado Ca 92118

Photos attached

LETTER



RESPONSE

LETTER

Letter BB – Keliher, P

McPherson, Anna

From: Patricia Keliher [patcatkeliher@yahoo.com]
Sent: Friday, May 17, 2013 9:51 AM
To: DSD EAS
Subject: Project No. 225045

BB-1 I think the people of San Diego and their visitors enjoy visiting the seals/ I remember going to the Cove and only seeing a few people swimming but I see crowds of people there now. Please save the seals and protect them. Thank you. Pat Keliher

RESPONSE

BB-1. Comment noted.

LETTER

RESPONSE

Letter CC – Huntsman, C

McPherson, Anna

From: Carol Huntsman [chuntsman@san.rr.com]
Sent: Friday, May 17, 2013 9:49 AM
To: DSD EAS
Subject: Project No. 225045

CC-1

Please protect the seals, especially the baby seals during pupping, as they are a community treasure and major tourist attraction. Everyone in my extended family goes to see the seals first every time they visit San Diego.

Carol Huntsman
 2750 Wheatstone St #30
 San Diego 92111
chuntsman@san.rr.com

CC-1. Comment noted.

LETTER

Letter DD – Reldan, J

McPherson, Anna

From: Jane Reldan, M.D. [jreldan@san.rr.com]
Sent: Friday, May 17, 2013 9:47 AM
To: DSD EAS
Subject: Project No. 225045

Anna McPherson:

DD-1 I support the City of San Diego's Negative Draft Declaration for an EIR at Casa Beach during pupping season.

Thank you,

Jane Reldan, M.D.

Jane Reldan, M.D.
7946 Ivanhoe Ave, Ste 312
La Jolla, CA 92037
858.459.6600 phone
858.459.6605 fax
jreldan@san.rr.com

RESPONSE

DD-1. Comment noted.

LETTER

Letter EE – Stuart and Pilar

McPherson, Anna

From: pili [pili5@earthlink.net]
Sent: Sunday, May 12, 2013 4:23 PM
To: DSD EAS
Cc: maxandkaia
Subject: Children's Pool Takeover

EE-1 Even the 6 month closure was unnatural. We can not intervene with nature and have more seal pups dying from lack of available food, or desperately making their way to the street above.

Enough is enough. Seal advocates have tipped nature's scale too much already.

A total year round closure is a total disregard for HUMAN children at the Children's Pool, swimmers, divers, and even the welfare of the seals. More and more sharks are being attracted to our shore.

Thank you for thinking sensibly and please do the right thing for all!

Stuart and Pilar
La jolla residents since the time that there existed no problem whatsoever at The Children's Pool

RESPONSE

EE-1. Comment noted.

LETTER

RESPONSE

Letter FF – Gantzel, K

McPherson, Anna

From: maxandkaia [maxandkaia@san.rr.com]
Sent: Sunday, May 12, 2013 11:58 AM
To: DSD EAS
Subject: vote "no" on 225045 (Public Notice number) "Close Children's Pool beach entirely during pupping season"

FF-1 Subject: Project Number 225045

I vote "no"

regarding whether to "Close Children's Pool beach entirely during pupping season"

This seal "zoo" will bring sharks to La Jolla beaches. (Great White shark at La Jolla Shores beach recent July -- beach evacuated...)

sharkresearchcommittee.com/pacific_coast_shark_news.htm

shark attack stats: flmnh.ufl.edu/fish/Sharks/ISAF/ISAF.htm

Will cause stench like @ La Jolla Cove Area -- result of fencing off cliffs and creating high density bird poop zone.

Why create a "seal enclosure/zoo" with various negative possibilities & many people against it?

The seals found places to be before this imbalance was created by ropes & restrictions.

It's time to remove the ropes & allow the beach to return to a typical town beach.

Thank you.

Kaia Gantzel

Gantzel & Elliott Family

Community members since 1962

FF-1. Comment noted. Refer to Response No. A.4.

LETTER

Letter GG – Maher, P

McPherson, Anna

From: pmaher@salk.edu
Sent: Saturday, May 11, 2013 10:54 AM
To: DSD EAS
Subject: Project No. 225045

To whom it may concern:

GG-1 This email is to voice my opposition to close the Children's Pool during pupping season. The Children's Pool is a man-made beach to provide a place for people uncomfortable with surf to swim. When I came to La Jolla over 30 years ago the seals were on the rocks and the people were on the beach. The seals reproduced successfully under these conditions. It is not at all clear why these conditions cannot be restored. As the seal population continues to expand what is going to stop them from moving to more and more beaches? Is the city going to keep closing beaches until there are none left for people? Before making this decision, the city needs to consider the long-term implications.

Sincerely,

Pamela Maher

RESPONSE

GG-1. Comment noted.

LETTER

RESPONSE

Letter HH – Tsien, W

McPherson, Anna

From: Wendy Tsien [wglobetsien@san.rr.com]
Sent: Friday, May 10, 2013 10:51 PM
To: DSD EAS
Subject: Project No. 225045

HH-1 With reference to the call for public comment regarding Project No. 225045:

My husband and I have lived in La Jolla for almost 24 years and have been astounded by the furor by some members of the community regarding the small colony of mainly female seals who have made their home at Casa Beach.

All along the coasts of America we humans have taken over thousands of miles of beaches and tidelands, are we so heartless and unthinking that we cannot see the wisdom of giving what is only a tiny speck of beach to a companion species in need? We are only one small part of Nature, not its ruler or creator, and we had better be nurturers rather than destroyers if our children, grandchildren, and the generations to come are to have any chance of living healthy lives with the beauty of the natural world all around them.

Let us be wise and compassionate and designate Casa Beach a permanent marine sanctuary for seals, marine animals of all kinds (excluding humans), and for our coastal and oceanic birds. My husband and I cast our votes that designation.

Sincerely,
Wendy and Roger Tsien

HH-1. Comment noted.

LETTER

Letter II – Merryweather, M

McPherson, Anna

From: Melinda Merryweather [mbeherenow@sbcglobal.net]
Sent: Friday, May 10, 2013 1:35 PM
To: DSD EAS
Subject: Childrens Pool

II-1 To who it may concern, I do not believe this man made swimming pool in the ocean should ever be closed this is the only one in the Continental United States and the pride of our community.

I stand for clean water and beach access, if we closed the beach even for a day we would go against, every thing any one who believes in and protects the coast line believes in.

Please leave the Children's Pool alone. Melinda Merryweather La Jolla resident for over 50 years.

RESPONSE

II-1. Comment noted.

LETTER

Letter JJ – Klapper, Z

McPherson, Anna

From: Zelda Klapper [zklapper@yahoo.com]
Sent: Wednesday, May 08, 2013 7:35 PM
To: DSD EAS
Subject: Project No. 225045

JJ-1 Please close the beach at Children's Pool entirely during seal pupping season. Thank you.

Zelda Klapper, La Jolla

RESPONSE

JJ-1. Comment noted.

LETTER

RESPONSE

Letter KK – Feingold, L

McPherson, Anna

From: lilush14@aol.com
Sent: Wednesday, May 08, 2013 12:29 AM
To: DSD EAS
Subject: Project Number 225045

Dear Ms. McPherson,

KK-1 Greetings. After having been out of San Diego for nearly twenty years, I've "repatriated" and am now happily a San Diegan! What a great city.

My favorite activity is to visit the Children's Pool in the late afternoon to watch the harbor seals come in, rest, relax and frolic in the sand. It's the best entertainment in town! I have been following the controversy since I returned to town six weeks ago and I'm confused. I think it's a "no-brainer" that the harbor seals receive the maximum protection during pupping season and throughout the year.

As a resident of La Jolla, I have many beach options. The Children's Cove with the harbor seals is a gift to locals and tourists, and since we have ample beaches, I say, protect the marine life! I encourage "the rope" and the evening closure of the Children's Pool throughout the year. I truly hope that the powers that be decide to offer perpetual protection to the harbor seals, and that the Children's Pool remains a "jewel" for humans (from afar) and seals alike.

Thank you for your consideration.

Sincerely,

Lili M. Feingold
8616 Ruelle Monte Carlo
La Jolla, CA 92037

KK-1. Comment noted.

LETTER

RESPONSE

Letter LL – Avner, B

McPherson, Anna

From: Beth Avner [bavner@sbcglobal.net]
Sent: Monday, May 06, 2013 10:22 PM
To: DSD EAS
Subject: Project No. 225045

LL-1 I am writing to express the negative impact closing the Children's Pool beach would have.

The residents of La Jolla, San Diego, and elsewhere deserve full access to the beach 24/7. The seals and sea lions have the entire coast to haul out. Allowing them to "take over" the Children's Pool has been inappropriate and unnecessary from the beginning.

The Children's Pool beach has the facilities and the sea wall to allow families to introduce their children to the ocean in a safe and controlled manner. It was designed for that purpose and used in that manner.

Reinforcing and expanding the seals / sea lions rights, over people, on this particular beach is unfortunate, misguided, wrong.

I offer my vote to leave this beach open for access for all!
Beth Avner
La Jolla resident

LL-1. Comment noted.

LETTER

RESPONSE

Letter MM – Tayebi, S

McPherson, Anna

From: Sean [seantayebi@gmail.com]
Sent: Tuesday, May 07, 2013 9:44 AM
To: DSD EAS
Subject: Children pool

MM-1 I live in LA Jolla. I think, this is totally unfair to take away children pool. Why don't these people that care so much about seals build another children pool somewhere in the costal area that people don't live there . We can't leave everywhere in the costal area but they can

Why our children shouldn't have a pool that is safe for them and accessible ,pool that was made for them.

Why we can't have a clean beach in the place that we live, we have no choice but seals have choices.

I really think this is an over killed situation to eliminate children from access to their beach or put several sign there to creat guild feeling in them.

Very, very wrong.

Sean Tayebi MD

Sent from my iPad

MM-1. Comment noted.

LETTER

RESPONSE

Letter NN – Albers, M

McPherson, Anna

From: Mark Albers [marka@associatedsalesdp.com]
Sent: Sunday, May 05, 2013 4:18 PM
To: DSD EAS
Subject: Children's Pool

NN-1 To me, the name "Children's Pool" says it all. Having spent the majority of my life in La Jolla it is a travesty to see a group of environmentalists, most of whom have spent a very small part of their lives in La Jolla, take over this jewel. This beautiful spot has been the source of many great memories from my youth. The whole Cove area has given me many great memories. To grow up learning to snorkel and swim in the Children's Pool was very special, just as it was for so many other local children. There were never problems with seals. Somehow we managed to coexist. Somehow the seals managed to have their pups without the use of the Children's Pool. To see what has happened to the entire Cove area over the past decades is disgusting. We can't even clean up the stench that permeates the cliffs for fear of offending a "tree hugger". Since it appears inevitable this gem will have to be shared with seals, at least leave room for people to also enjoy this small carved out retreat. I seriously doubt that Ellen Browning Scripps envisioned this small piece of paradise as a retreat for seals over the children of San Diego.

Regards,

Mark Albers
Associated Sales
Sent from my iPad

NN-1. Comment noted.

LETTER

RESPONSE

Letter OO – Lane, C

McPherson, Anna

From: Christine Lane [christinedanalane@gmail.com]
Sent: Saturday, May 04, 2013 9:33 AM
To: DSD EAS
Subject: 225045

OO-1 To whom it may concern:
Hello, my name is Christine Lane, I am a proudly born and raised San Diegan and I live in La Jolla, California. I have been keeping up with the issue of the seals at Children's Pool, and I urge you to continue doing everything in your power to protect these seals. We humans have taken all the other beaches and environments and Children's Pool is one of the last places the seals have left. There are so many other beaches for humans, this is one of the rare places they can still go to. There have been far too many cases of seal harassment. And most importantly, they were here first, this is their home. I urge you to continue protecting and helping these sweet, gentle, beautiful, highly intelligent animals.
Sincerely,
Christine Lane CNA
[\(760\) 840 0295](tel:7608400295)

OO-1. Comment noted.

LETTER

Letter PP – Warren, M

McPherson, Anna

From: Merritt Warren [pedi.card@att.net]
Sent: Friday, May 03, 2013 6:34 PM
To: DSD EAS
Subject: Project No. 225045

PP-1 I am a La Jolla resident. Closing Children's Pool beach entirely during pupping season is the right thing to do. Merritt Warren, Coast Blvd. La Jolla.

RESPONSE

PP-1. Comment noted.

LETTER

RESPONSE

Letter QQ – Boyer, E

McPherson, Anna

From: Liza Boyer [elizabethmaryboyer@gmail.com]
Sent: Friday, May 03, 2013 3:34 PM
To: DSD EAS
Subject: Project No. 225045

To Whom It May Concern:

QQ-1 I have read the Environmental Impact Report Draft Negative Declaration to close Children's Pool beach entirely during pupping season. I support this proposal completely and entirely, to close Children's Pool beach entirely during pupping season, from December 15 to May 15 each year.

It's the only logical and rational answer to the problems created by human beings at the Children's Pool, who continue to ignore the rope by putting chairs and umbrellas reading "Beach Open" on the ocean or seal side of the rope in defiance of attempts to protect pregnant and nursing mother seals and pups. It sends the wrong message to visitors who do not understand the rope barrier, but instead follow this terrible example, and consequently the seals are harassed at a vulnerable time in their lives when safe haul out spaces are so obviously needed.

If memory serves, the harbor seals have been with us since at least 1991, when I was working for the Museum of Contemporary Art San Diego in La Jolla. We were thrilled when they began to come in to Children's Pool beach, to haul out and rest, and they have brought countless hours of pleasure in observing their behavior from the safe viewing spots above the beach, behind the walls. I walk down to see them from my home three or four times a week. I am continually distressed on the weekends by the antics of the "Beach Open" people.

Closing the beach altogether is the only way to proceed. Thank you for your time and interest.

Sincerely,

Elizabeth M. Boyer
 7132 La Jolla Blvd.
 La Jolla, CA 92037
 858-456-2376

QQ-1. Comment noted.

LETTER

Letter RR – Fisler, J

McPherson, Anna

From: joel [jfisher2@san.rr.com]
Sent: Friday, May 03, 2013 10:30 AM
To: DSD EAS
Subject: project # 225045

RR-1 I fully support closing the Children's Pool during pupping season.
Thanks for standing up to a vocal minority
Joel Fisler

RESPONSE

RR-1. Comment noted.

LETTER

RESPONSE

Letter SS – Feinswog, I

McPherson, Anna

From: Ira Feinswog [isfdvm@pacbell.net]
Sent: Friday, May 03, 2013 8:37 AM
To: DSD EAS
Subject: Project# 225045

Dear Anna McPherson,

SS-1

As a long time property owner and resident of La Jolla, I am outraged by the proposal to close the Childrens Pool during seal pupping season. This protected sea pool was a philanthropic gift to the children of San Diego for the purpose of giving children a protected place to swim and play in the ocean. It is now being taken away from us by the "vocal minority". The seals are not endangered and, in fact, are multiplying and an unsustainable rate for our ecosystem. They do not need a protected area to pup.

I think the City of San Diego should either allow the Childrens Pool to be the safe haven it was intended to be as gifted or remove the sea wall in its entirety and let the area revert to its natural condition.

Respectfully submitted,
 Dr. Ira Feinswog

SS-1. Comment noted.

LETTER

Letter TT – Pretorius, M

McPherson, Anna

From: Mark Pretorius [mark@premanco.com]
Sent: Thursday, May 02, 2013 6:47 PM
To: DSD EAS
Subject: Project No 225045 - Against closely Children's Pool to the public

Dear Ms. McPherson, San Diego Development Services Center.

TT-1 I'm a La Jolla resident and strongly opposed to the closing of Children's Pool to the public for any reason.

Mark Pretorius

RESPONSE

TT-1. Comment noted.

LETTER

RESPONSE

Letter UU – Halpern, S

McPherson, Anna

From: Stewart Halpern [stewartahalpern@yahoo.com]
Sent: Thursday, May 02, 2013 4:00 PM
To: DSD EAS
Subject: Project No 225045

UU-1 I urge you to close Children's Pool beach *entirely* during pupping season!

With the vast nearby beach area for human use, this is a negligible sacrifice for sake of protecting a unique marine resource for the benefit not only of the seals and their role in the marine habitat, but for all San Diegans and the large number of tourists who visit in part to see the seals.

Best,
 SH

Cell: 619-261-4417

<http://www.linkedin.com/in/stewartahalpern>

<https://www.facebook.com/stewart.halpern>

Follow me on Twitter: @stewartahalpern

UU-1. Comment noted.

LETTER

RESPONSE

Letter VV – Saracini, D

McPherson, Anna

From: Deborah Saracini [debsaracini@yahoo.com]
Sent: Friday, May 17, 2013 12:31 PM
To: DSD EAS
Subject: Project No. 225045

TO: Anna McPherson
Environmental Planner, City of San Diego Development Services Department

Hello Anna,

VV-1 I strongly support the Draft Negative Declaration to establish an ESHA at Children's Pool Beach (aka Casa Beach) in La Jolla, and closure of the beach during pupping season.

There are no environmental impacts from the proposed Local Community Plan amendment. The beach complies with the ESHA (Environmentally Sensitive Habitat Area) definition under the Coastal Act, and declaring the beach to be ESHA and closing the beach, will protect and enhance the environment.

The impact to public access is insignificant, in that there are many other beaches in the area for the public to use to engage in beach and water activities. However, the public will still enjoy access via seal watching activities, without disturbing the critical birthing and nursing process during pupping season. The Coastal Act specifies that public access must not allow for "over use" of coastal resources, which this declaration supports in protecting the seals.

Thank you,
Deborah Saracini
Del Mar resident

VV-1. Comment noted.

LETTER

Letter WW – Morrison, D

McPherson, Anna

From: Doug Morrison [dougsgum@yahoo.com]
Sent: Wednesday, May 01, 2013 6:50 PM
To: DSD EAS
Subject: Children's Pool Closure

To whom it may concern:

WW-1

Please stop this move to close off public access to a public beach. All citizens have a right to access, according to the state constitution. No one, including Mayor Filner, has the right to deny access. The seals are managing just fine, they are not endangered. The people pushing for this closure are out of control. Stop this madness now! Thank you, Doug Morrison. Oceanside resident, California native of 61 years.

dougsgum@yahoo.com

760-685-5088

RESPONSE

WW-1. Comment noted.

LETTER

RESPONSE

Letter XX – Harpin, R

McPherson, Anna

From: Ed Harpin [betmeg@msn.com]
Sent: Tuesday, April 30, 2013 4:17 PM
To: DSD EAS
Subject: Children's Pool Closure

XX-1 I am writing to register the strongest disapproval of the proposal to close The Children's Pool in La Jolla from December - May. For young children this is the only safe beach, free of sharp drop-offs, rip currents, and undertows, in the Village. This is most important during the stormier winter months! Please do not turn our most important beach over to the invading, overpopulation of seals that have plenty of other beaches to live on.

Raoul Harpin
La Jolla

XX-1. Comment noted.

LETTER

RESPONSE

Letter YY – Saracini, D

McPherson, Anna

From: Deborah Saracini [debsaracini@yahoo.com]
Sent: Friday, May 17, 2013 12:31 PM
To: DSD EAS
Subject: Project No. 225045

TO: Anna McPherson
Environmental Planner, City of San Diego Development Services Department

Hello Anna,

YY-1

I strongly support the Draft Negative Declaration to establish an ESHA at Children's Pool Beach (aka Casa Beach) in La Jolla, and closure of the beach during pupping season.

There are no environmental impacts from the proposed Local Community Plan amendment. The beach complies with the ESHA (Environmentally Sensitive Habitat Area) definition under the Coastal Act, and declaring the beach to be ESHA and closing the beach, will protect and enhance the environment.

The impact to public access is insignificant, in that there are many other beaches in the area for the public to use to engage in beach and water activities. However, the public will still enjoy access via seal watching activities, without disturbing the critical birthing and nursing process during pupping season. The Coastal Act specifies that public access must not allow for "over use" of coastal resources, which this declaration supports in protecting the seals.

Thank you,
Deborah Saracini
Del Mar resident

YY-1. Comment noted.

LETTER

RESPONSE

Letter ZZ – Wilson, L

McPherson, Anna

From: Lynn Wilson [drlynnwilson@cox.net]
Sent: Friday, May 17, 2013 11:41 AM
To: DSD EAS
Subject: Project No. 225045

Dear Anna McPherson,

ZZ-1 Regarding the Draft Negative Declaration to order to close Casa Beach to the public during pupping season: please take into consideration the following facts, which I'm sure are being brought to your attention by others: it is obvious there are no environmental impacts from the proposed Local Community Plan amendment. Please remember the beach is ESHA (Environmentally Sensitive Habitat Area). Declaring the beach to be ESHA and closing the beach will protect and enhance the environment. The impact on public access is insignificant because there are 70 miles of coastline in San Diego county. It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources. I support the findings of the Draft Negative Declaration as written and strongly agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Sincerely,

Lynn Wilson

<<...>> <<...>> <<...>> <<...>> <<...>> <<...>> Lynn Wilson, PhD
 email: drlynnwilson@cox.net
 cell phone: 619.339.1384
 fax: 619.795.0814

ZZ-1. Comment noted.

LETTER

RESPONSE

Letter AAA – Laumann, L

McPherson, Anna

From: Lynn Laumann [llaumann@yahoo.com]
Sent: Friday, May 17, 2013 11:19 AM
To: DSD EAS
Subject: Project No. 225045

Anna McPherson
 Environmental Planner
 City of San Diego Development Services Department

Dear Anna,

AAA-1 I am a 20-year resident of La Jolla, and an avid supporter of the Harbor Seal habitat at Casa Beach. I believe that the existence of the habitat helps restore balance between the burgeoning human population and the native wildlife of the area. The impact of the closure of Casa Beach on public access is insignificant, because there are many other beaches available to the public.

I support the findings in the Draft Negative declaration as it is written. The installation of informative signs and a chain barrier will not have any environmental impact. The closure of Casa Beach to the public will protect both the public and the La Jolla Harbor Seals.

Thank you for your work,

Lynn Laumann
 La Jolla, CA

AAA-1. Comment noted.

LETTER

RESPONSE

Letter BBB – Chaddock, D

McPherson, Anna

From: DebbChadd [debbchadd@aol.com]
Sent: Friday, May 17, 2013 11:12 AM
To: DSD EAS
Subject: Project No. 225045

To Anna McPherson, Environmental Planner, City of San Diego Development Services Department

Dear Ms. McPherson,

BBB-1 I am writing in support of the findings of the Draft Negative Declaration for closing Casa Beach at La Jolla during the seals' pupping season. The Declaration basically says that:

- The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
- The only environmental change that will result from the beach's closing is that the City will (1) post 2 additional signs, and (2) place one chain across the width of the mid-landing stairs.
- A full Environmental Impact Report (EIR) does not need to be commissioned for the purpose of analyzing the impact to the environment of the 2 signs and the chain.

I believe it is appropriate to accept the Draft Negative Declaration and close Casa Beach during pupping season because:

- There are no environmental impacts from the proposed Local Community Plan amendment.
- Declaring the beach to be ESHA and closing the beach will protect the environment, the seals, and the public.
- There are numerous other beaches available to the public.

Thank you for considering my views.

Sincerely,

Debbie Chaddock
 San Diego, CA 92116

BBB-1. Comment noted

LETTER

RESPONSE

Letter CCC – Wisniewska, J

McPherson, Anna

From: Joanna Rosales [joasiaw@hotmail.com]
Sent: Friday, May 17, 2013 11:08 AM
To: DSD EAS
Subject: Project No. 225045

Dear Anna,

CCC-1 I am writing in regard to the situation at Casa Beach in La Jolla Cove. The seal pupping season is here now and both I and my children love to watch the seals and their babies at the Cove. We love to see the mommy seals nurse their babies and my children (Zuzanna - 9 and Alexander - 6) have an opportunity to view wildlife and learn about nature as well as the respect people should and do have for it - about how we can indeed coexist in harmony and respect. For this reason, I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect the seals as well as the public during the pupping season. Also, the Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment and the beach is an Environmentally Sensitive Habitat Area under the definition of the Coastal Act. While closing the beach will protect and enhance the environment, any negative impact from this action on the public will be insignificant as there are numerous other beaches nearby.

Thank you very much for your consideration,

Joanna Wisniewska
 13278 Deron Ave.
 San Diego CA 92129

CCC-1. Comment noted

LETTER

Letter DDD – McDonald, A

McPherson, Anna

From: Ann McDonald [amcd92119@earthlink.net]
Sent: Friday, May 17, 2013 10:52 AM
To: DSD EAS
Subject: Project No. 225045

To Whom It May Concern:

DDD-1 I am writing you to express my approval and support of placing two additional signs and one chain across the stairs in order to close Casa Beach during the pupping season December 15 to May 15 each year. I am so much in favor of having the seals so accessible to be seen by the public without having to go to Sea World or other commercial facility! To me, having the seals at Casa Beach in La Jolla is a wonderful thing!

Thank you for your consideration.

Ann McDonald
6575 Golfcrest Drive
San Diego, CA 92119
619-464-1937

RESPONSE

DDD-1. Comment noted.

LETTER

RESPONSE

Letter EEE – Shively, E

McPherson, Anna

From: Ellen Shively [ellenshively@sbcglobal.net]
Sent: Friday, May 17, 2013 10:52 AM
To: DSD EAS
Subject: Project No. 225045

TO: Ms Anna McPherson

EEE-1 I fully support adoption of the draft Negative Declaration for the EIR to close the Children's Pool during pupping season annually.

Under the Coastal Act, the beach qualifies as an ESHA candidate. The analysis shows no impacts or very insignificant impacts in every category of environmental considerations.

Given that the location is a designated rookery by NOAA, the closure would be in conformity to several other California rookeries such as 17 Mile Drive, San Francisco Bay National Wildlife Refuge and the beach at Carpinteria.

Thank you for this opportunity to comment on this project.

Ellen Shively
 President
 La Jolla Friends of the Seals

EEE-1. Comment noted.

LETTER

RESPONSE

Letter FFF – Larsen, K

McPherson, Anna

From: Kirsten Larsen [kirtina@yahoo.com]
Sent: Friday, May 17, 2013 10:49 AM
To: DSD EAS
Subject: Project No. 225045

Dear Ms. McPherson,

FFF-1 I am writing with comments in favor of acceptance of the Draft Negative Declaration related to the closing of Casa Beach during the seal pupping season.

The findings of the Draft Negative Declaration are that a full Environmental Impact Report (EIR) does not need to be commissioned for the purpose of analyzing the impact to the environment of the 2 signs and the chain, and I urge the city to accept these findings and proceed with the next steps in this case.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Sincerely,
Kirsten Larsen

Kirsten Larsen
520.495.9354

FFF-1. Comment noted.

LETTER

RESPONSE

Letter GGG – Primeaux, L

McPherson, Anna

From: Linda Primeaux [txgalnow@yahoo.com]
Sent: Friday, May 17, 2013 10:46 AM
To: DSD EAS
Subject: Project No. 225045

Anna McPherson, Environmental Planner,
City of San Diego Development Services Department

Dear Ms. McPherson,

GGG-1 I would like to take this opportunity to introduce myself and to let you know, how excited I am in learning of the support and involvement the City of San Diego is in the La Jolla Seal Project No. 225045.

My husband and I will be moving to Rancho Santa Fe over the course of the next 3 months and plan to be active in several community affairs. One of the reasons we chose Rancho Santa Fe over other communities further north, is for the involvement of the local government. We see from our observations, how the City of San Diego works for the betterment of not only the people but also for the delicate environment.

We have read the The Draft Negative Declaration and feel it is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.

The impact on public access is insignificant since there are numerous other beaches available to the public.

Therefore, we support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

I thank you for your time and we look forward to moving to the San Diego community.

Sincerely,

Linda Primeaux
txgalnow@yahoo.com

Hebrews 11: 1 Now faith is the assurance of things hoped for, the conviction of things not seen.

GGG-1.Comment noted

LETTER

Letter HHH – Offen, P

McPherson, Anna

From: Philomene Offen [philoff@san.rr.com]
Sent: Friday, May 17, 2013 10:43 AM
To: DSD EAS
Subject: Project 225045

HHH-1 I support the findings of the Draft Negative Act as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Philomène Offen
La Jolla

RESPONSE

HHH-1. Comment noted.

LETTER

Letter III – Titus, B

McPherson, Anna

From: Brittany Titus [brittany.titus@gmail.com]
Sent: Friday, May 17, 2013 10:40 AM
To: DSD EAS
Subject: Project No. 225045

III-1 We need to protect these seals this is one small beach area when there are many other areas in la Jolla we can walk down to and go in the water. We are attracted to the cove to see the seals and we don't need to be on the sand to see them with an overlook and a jetty. If we don't give the seals their privacy they may have no where to go. We need to keep the seals on seal beach!

Sent from my iPhone

RESPONSE

III-1. Comment noted.

LETTER

Letter JJJ – Bell, J

McPherson, Anna

From: Jim Bell [jimbellels@cox.net]
Sent: Friday, May 17, 2013 10:34 AM
To: DSD EAS
Subject: Project No. 225045

JJJ-1 Please protect the seals. We should be honored by their presents.
Jim

RESPONSE

JJJ-1. Comment noted.

LETTER

Letter KKK – Bennett, H

McPherson, Anna

From: Heleen Bennett [heleenbennett@sandiego.edu]
Sent: Friday, May 17, 2013 10:15 AM
To: DSD EAS
Subject: Project No. 225045

KKK-1 To whom it may concern,

- The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
- The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
- Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
- The impact on public access is insignificant since there are numerous other beaches available to the public.
- It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
- I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.
- Thank you!
- -Heleen Bennett

RESPONSE

KKK-1. Comment noted.

LETTER

RESPONSE

Letter LLL – Bowers, B

McPherson, Anna

From: Brian Bowers [brianmbowers@gmail.com]
Sent: Friday, May 17, 2013 10:11 AM
To: DSD EAS
Subject: Project No. 225045

Dear Anna McPherson,

LLL-1 I am a San Diego native, a voter, and I spend a lot of time at the beaches in La Jolla, swimming, snorkeling, surfing and enjoying the beaches with my family. There are hundreds of access points for me to enter the ocean and I see no problem with allowing a tiny portion of our coast to be reserved for the seals. Yes, there are other places they could go, but this is the place that they continue to choose and with all of the land we have taken away from the local wildlife this is an opportunity to give a little bit back to nature. .

Thousands of people go to the children's pool each year to view the seals, far more than I ever observed going down to use the beach. The seal's presence have created a huge tourism opportunity for San Diego and the city of La Jolla. Imagine turning the children's pool area into a living museum/marine park which could be used to educate visitors about our coastline and its inhabitants.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

This small concession to nature is an important step in teaching future generations to respect the needs of the creatures who inhabit this world alongside us.

Sincerely,

Brian Bowers
brianmbowers@gmail.com

LLL-1. Comment noted.

LETTER

RESPONSE

Letter MMM – Thomas, P

McPherson, Anna

From: PAMT7413@aol.com
Sent: Friday, May 17, 2013 10:07 AM
To: DSD EAS
Subject: Project No. 225045

Dear Anna McPherson,

MMM-1 Thanks for reading this email. I am a San Diego resident, and I support the findings of the *Draft Negative Declaration* as written and agree that Casa Beach should be closed to the public from December 15 through May 15 each year.

This would protect both the La Jolla Seals and the public during the pupping season.

It is important to note that the impact on public access would be insignificant since there are many other beaches available to the public. Also, there are no environmental impacts from the proposed Local Community Plan amendment.

Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.

Sincerely,
Pam Thomas
619-467-7913

MMM-1.Comment noted.

LETTER

RESPONSE

Letter NNN – Essary, C

McPherson, Anna

From: Cynmik [cynmik@aol.com]
Sent: Friday, May 17, 2013 10:07 AM
To: DSD EAS
Subject: Project No. 225045

To: Anna McPherson, Environmental Planner, City of San Diego Dev.

Dear Ms. McPherson,

NNN-1 I believe the Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Thank you,

Cynthia Essary

3528 Moccasin Ave.
San Diego, CA 92117

NNN-1. Comment noted.

LETTER

Letter 000 – Van Oss, R

McPherson, Anna

From: Rose Van Oss [etvo1@cox.net]
Sent: Friday, May 17, 2013 10:02 AM
To: DSD EAS
Subject: Project No. 225045

000-1

Hi there,
Please approve the Draft Negative Declaration regarding the seals in La Jolla. It would help provide some privacy during pupping season. People love the ocean and we have flocked to it with enthusiasm. Sometimes we forget that when we move in we crowd out the natural life that was there.
Thank you in advance for your consideration.
Cordially,

Rose Van Oss
4609 Seminole Dr.
San Diego, 92115

RESPONSE

000-1.Comment noted.

LETTER

Letter PPP – Herbruck, J

McPherson, Anna

From: janet herbruck [janatraveler@hotmail.com]
Sent: Friday, May 17, 2013 9:58 AM
To: DSD EAS
Subject: Project 225045

Dear Ann,

PPP-1 I urge the city to approve the Draft Negative Declaration to close Casa Beach during pupping season.

Thank you,
Janet Herbruck

RESPONSE

PPP-1. Comment noted.

LETTER

RESPONSE

Letter QQQ – Marsal, J

McPherson, Anna

From: Jill Marsal [Jill@MarsalLyonLiteraryAgency.com]
Sent: Friday, May 17, 2013 12:33 PM
To: DSD EAS
Subject: Project No. 225045

Dear Environmental Planner:

QQQ-1 I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season. The Draft Negative Declaration has no no environmental impacts from the proposed Local Community Plan amendment, and the beach is an Environmentally Sensitive Habitat Area under the definition of the Coastal Act.

Further, the impact on public access is insignificant since there are numerous other beaches available to the public.

Thank you for your consideration.

Best,

Jill Marsal

QQQ-1. Comment noted.

LETTER

RESPONSE

Letter RRR – LaDuke, S

McPherson, Anna

From: Sharon J. LaDuke [sladuke@san.rr.com]
Sent: Saturday, May 18, 2013 12:24 AM
To: DSD EAS
Subject: Project No. 225045

To: Anna McPherson, Environmental Planner
 City of San Diego Development Services Department

RRR-1

- The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
- The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
- Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
- The impact on public access is insignificant since there are numerous other beaches available to the public.
- It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
- I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Thank you very much for your consideration and support of this project.

Sharon J LaDuke

RRR-1. Comment noted.

LETTER

Letter SSS – Hill, C

McPherson, Anna

From: waterloo66@netzero.com
Sent: Friday, May 17, 2013 9:27 PM
To: DSD EAS
Subject: Project No. 225045

SSS-1 The seals in La Jolla are a true treasure and should definately be protected during pupping season actually I think they should be protected from the public all year long. I have been there many times and see the excitement on the peoples faces while watching them. Please protect them.
Carolee Hill
Oceanside , Calif.

RESPONSE

SSS-1. Comment noted.

LETTER

Letter TTT – Stanger, J

McPherson, Anna

From: Janice Stanger [janicekstanger@yahoo.com]
Sent: Friday, May 17, 2013 8:20 PM
To: DSD EAS
Subject: Project No. 225045

Hello,

TTT-1

I am writing to support the Draft Negative Declaration. So many beaches line our San Diego coast. The impact of closing Casa Beach is everything for the seals and insignificant for people. The Coastal Act protects the natural resources of the coast, and that includes the seals.

Thank you,
Janice Stanger, Ph.D.

Author of *The Perfect Formula Diet*
www.perfectformuladiet.com

RESPONSE

TTT-1. Comment noted.

LETTER

RESPONSE

Letter UUU – Archibald, C

McPherson, Anna

From: CAROL ARCHIBALD [carchi7@sbcglobal.net]
Sent: Friday, May 17, 2013 6:24 PM
To: DSD EAS
Subject: Project No. 225045, Attn: Anna McPherson, Environmental Planner

Anna McPherson, Environmental Planner
 City of San Diego Development Services Department.

Re: Project No. 225045

Dear Ms.McPherson:

UUU-1 I have read the Draft Negative Declaration and find it entirely appropriate.

There are absolutely no environmental impacts from the proposed Local Community Plan amendment. In fact, the only change to the environment that will occur as a result of the City closing Casa Beach during pupping season is that the City will post 2 additional signs, and place one chain across the width of the mid-landing stairs. Since these actions will result in no impact on the environment, a full environmental impact report is completely unwarranted and unnecessary.

Under the definition of the Coastal Act, this beach is considered an ESHA (Environmentally Sensitive Habitat Area). Declaring the beach as ESHA and closing the beach will protect and enhance the environment. The Coastal Act even specifies that public access must not allow for "over use" of coastal resources.

Vast numbers of people flock to this beach to see the seals. As such, the seals are continually stressed and harassed by humans. Human interactions have been known to cause stillborn births, premature delivery, and pup mortality.

Since there are numerous other beaches available to the public, the impact on public access is insignificant.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

I vehemently urge you to approve this Draft Negative Declaration and close Casa Beach to the public during pupping season.

Thank you for your consideration.

Carol Archibald, PhD
 3146 Ibsen Street
 San Diego, CA 92106

UUU-1. Comment noted.

LETTER

RESPONSE

Letter VVV – Patt, M

McPherson, Anna

From: Marcia Patt [marciapatt@cox.net]
Sent: Friday, May 17, 2013 6:14 PM
To: DSD EAS
Subject: Comment on Project No. 225045

To: Anna McPherson, Environmental Planner
City of San Diego Development Services Department

VVV-1 I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Why?

The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.

The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.

Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.

The impact on public access is insignificant since there are numerous other beaches available to the public.

It is consistent with the Coastal Act. because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.

As a supporter of protecting the seals at Casa Beach for several years, I am pleased that the City of San Diego is moving in the direction of approving the Draft Negative Declaration in order to close Casa Beach to the public during the pupping season months.

Sincerely,

Marcia Patt, M.S.W.
3511 Park Blvd., #3
San Diego, CA 92103
619-501-1031

VVV-1. Comment noted.

LETTER

RESPONSE

Letter WWW – Strand-Jack, C.M.

McPherson, Anna

From: Cary Marie [cary_marie@yahoo.com]
Sent: Friday, May 17, 2013 4:46 PM
To: DSD EAS
Subject: Project No. 225045

Dear Anna McPherson the Environmental Planner of City of San Diego Development Services Department,

WWW-1 Please consider the following when reviewing project # 225045 for the Draft Negative Declaration that is stating that the only change to the environment that will occur as a result of the City closing Casa Beach during the seals' pupping season, is that the City will post 2 additional signs, and place one chain across the width of the mid-landing stairs. The findings of the Draft Negative Declaration are that a full Environmental Impact Report (EIR) does **not need to be commissioned** for the purpose of analyzing the impact to the environment of the 2 signs and the chain for the following reasons:

- The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
- The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
- Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
- The impact on public access is insignificant since there are numerous other beaches available to the public.
- It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
- I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Thank you,
 Cary Marie Strand-Jack
 3825 Caminito Litoral #213
 San Diego, CA 92107

WWW-1. Comment noted.

LETTER

RESPONSE

Letter XXX – Brent, J

McPherson, Anna

From: justin brent [onehunter69@gmail.com]
Sent: Friday, May 17, 2013 3:21 PM
To: DSD EAS
Subject: Project No. 225045

XXX-1 I support the Draft Negative Declaration. Protect the seals. We have plenty of other beaches for people. Justin Brent

XXX-1. Comment noted.

LETTER

Letter YYY – Cantarelli, L

McPherson, Anna

From: Luciene Cantarelli [abluc@hotmail.com]
Sent: Friday, May 17, 2013 3:02 PM
To: DSD EAS
Subject: Project No. 225045

YYY-1

- The impact on public access is insignificant since there are numerous other beaches available to the public.

Gratefully yours,

Luciene Cantarelli



RESPONSE

YYY-1. Comment noted.

LETTER

RESPONSE

Letter ZZZ – Harris, P

McPherson, Anna

From: Pam Harris [pjr223@yahoo.com]
Sent: Friday, May 17, 2013 2:25 PM
To: DSD EAS
Subject: Project No. 225045

ZZZ-1

Dear Ms. McPherson,
 Please approve the Draft Negative Declaration that find that a full Environmental Impact Report (EIR) does not need to be commissioned for the purpose of analyzing the impact to the environment of the 2 signs and the chain at Casa Beach during the beach closure during pupping season. Declaring the beach to be ESHA and closing the beach will protect and enhance the environment. The impact on public access is insignificant since there are numerous other beaches available to the public. It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources. I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.
 Sincerely,
 Pam Harris
 6401 Mt. Ada Rd.
 San Diego, CA 92111

ZZZ-1. Comment noted.

LETTER

Letter AAAA – Geller, S

McPherson, Anna

From: Suzanne Geller [suejack@san.rr.com]
Sent: Friday, May 17, 2013 2:20 PM
To: DSD EAS
Subject: Project No. 225045

AAAA-1 I think we should process this project as quickly as possible. I t already has taken a ridiculous amount of time and energy. The community has already responded yes- lets go!!- Sue geller

RESPONSE

AAAA-1. Comment noted.

LETTER

RESPONSE

Letter BBBB – Ozanich, K

McPherson, Anna

From: Katherine Ozanich [kazanich1@me.com]
Sent: Friday, May 17, 2013 1:29 PM
To: DSD EAS
Subject: Project No. 225045

To:

Anna McPherson
 Environmental Planner
 City of San Diego Development Services Department

BBBB-1 Re: Draft Negative Declaration Concerning closure of Casa Beach during the seals' pupping season from December 15 to May 15

I am a resident of La Jolla, California

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla seals and the public during the pupping season.

Casa Beach is ESHA (Environmentally Sensitive Habitat Area) under definition of the Coastal Act

The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.

I hope that the City of San Diego will approve the Draft Negative Declaration

Katherine Ozanich M.D.
 6121 Waverley Ave.
 La Jolla, CA 92037
 858.735.2657

BBBB-1. Comment noted.

LETTER

Letter CCCC – Trubovitz, C

McPherson, Anna

From: Cindy Trubovitz [cdtrubo@yahoo.com]
Sent: Friday, May 17, 2013 12:58 PM
To: DSD EAS
Subject: Project No. 225045

Dear Ms. McPherson,

CCCC-1 I'm in complete agreement with Casa Beach as an environmental sensitive area and the closure during the seal pupping season. Safety to the seals and the public is imperative and there are so many other beaches that the public can utilize. I am elated to finally see a positive move for Casa Beach and will enjoy viewing the seals with my family, friends, and visiting guests. Please consider approving the Draft Negative Declaration as it is written.

Sincerely,

Cindy Trubovitz
San Diego resident
cdtrubo@yahoo.com

RESPONSE

CCCC-1. Comment noted.

LETTER

Letter DDDD – Hill, J

McPherson, Anna

From: jovhill@aol.com
Sent: Friday, May 17, 2013 12:53 PM
To: DSD EAS
Subject: Project No. 225045

DDDD-1

I am in favor of the Draft Negative Declaration declaring beach ESHA and closing it will protect the environment.
Joan Hill 1831 Torrance St. San Diego, CA 92103.

RESPONSE

DDDD-1. Comment noted.

LETTER

Letter EEEE – Balch, E

McPherson, Anna

From: Earl Balch [balche@ucsd.edu]
Sent: Friday, May 17, 2013 12:47 PM
To: DSD EAS
Subject: Project No. 225045

EEEE-1 As a San Diego native I have for many years enjoyed the La Jolla seals and want to see them protected.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla seals and the public during the pupping season.

Earl Balch
838 San Luis Rey Pl.
San Diego, CA 92109

RESPONSE

EEEE-1. Comment noted.

LETTER

Letter FFFF – Lewis, S

McPherson, Anna

From: sammarye [sammarye@gmail.com]
Sent: Saturday, May 18, 2013 1:43 AM
To: DSD EAS
Subject: Project No. 225045

FFFF-1

The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
The impact on public access is insignificant since there are numerous other beaches available to the public.
It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.
The world has been watching with dismay and disgust at how these defenseless pregnant mothers and pups have been treated. These animals are protected by cities such as Pacific Grove, and Monterey, where beaches are always closed to public during pupping season. There is no reason to not honor this in your area.
Thanks you,
Sammarye Lewis

RESPONSE

FFFF-1. Comment noted.

LETTER

RESPONSE

Letter GGGG – Pettit, E

McPherson, Anna

From: Emma Pettit [strawberryemma16@gmail.com]
Sent: Saturday, May 18, 2013 6:29 AM
To: DSD EAS
Subject: Project No. 225045

- GGGG-1**
- The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
 - The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
 - Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
 - The impact on public access is insignificant since there are numerous other beaches available to the public.
 - It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
 - I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

GGGG-1. Comment noted.

LETTER

Letter HHHH – Larsen, S

McPherson, Anna

From: Susan Larsen [greatwhite43@yahoo.com]
Sent: Saturday, May 18, 2013 6:18 AM
To: DSD EAS
Subject: Project No. 225045

Dear Ms. McPherson,

HHHH-1 I am writing with comments in favor of acceptance of the Draft Negative Declaration related to the closing of Casa Beach during the seal pupping season.

The findings of the Draft Negative Declaration are that a full Environmental Impact Report (EIR) does not need to be commissioned for the purpose of analyzing the impact to the environment of the 2 signs and the chain, and I urge the city to accept these findings and proceed with the next steps in this case.

I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Sincerely,
Susan Larsen

414-429-5788

RESPONSE

HHHH-1. Comment noted.

LETTER

RESPONSE

Letter III – Ravetti, J

McPherson, Anna

From: Judi Ravetti [judi.ravetti@yahoo.com]
Sent: Saturday, May 18, 2013 9:55 AM
To: DSD EAS
Subject: Project No. 225045

Greetings,

III-1

Would it be possible to find the original docs regarding the sea wall in the first place.
Was it to be in perpetuity?
The donation was made with the joy of children in mind. What a poor legacy it has left
our generation!

I believe the sea wall should be taken down and the coastal area reclaimed as nature had intended.

The seals will go elsewhere; the children have other "no/low" wave beaches to enjoy (with better parking, I might add).
Thousands of dollars and hundreds of hours will be moot.

Regards,
Judi Ravetti
San Diego

III-1. Comment and question noted.

LETTER

RESPONSE

Letter JJJJ – Mays, L

McPherson, Anna

From: Laura Mays [laramays@cox.net]
Sent: Saturday, May 18, 2013 8:24 AM
To: DSD EAS
Subject: Project No. 225045

JJJJ-1

Dear City,
 Please rope off half of Casa Beach during Sea Lion Pupping Season every year. Thank you.
[Laura Mays](#)
laramays@cox.net

JJJJ-1. Comment noted.

LETTER

RESPONSE

Letter KKKK – Jalving, L

McPherson, Anna

From: Linda Jalving [ljalving@san.rr.com]
Sent: Saturday, May 18, 2013 9:10 AM
To: DSD EAS
Subject: Project No. 225045

KKKK-1 Dear Anna – I am hoping that the city approves this Draft Negative Declaration in order to close Casa Beach to the public during the pupping season months.

- The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
- The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
- Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
- The impact on public access is insignificant since there are numerous other beaches available to the public.
- It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
- I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

Getting this Draft Negative Declaration approved is important to me and to the people who enjoy the beauty and educational opportunities that viewing these animals up close, (but from an appropriate distance) provides. I urge you to promote the passing of this draft.

Thank you,

Linda R. Jalving, Owner
 Jewels by the Sea
 1237 Prospect St. #B
 La Jolla, CA 92037

KKKK-1. Comment noted

LETTER

RESPONSE

Letter LLLL – Fox, G

McPherson, Anna

From: Gary Alan Fox [Gary@CoxandFox.com]
Sent: Saturday, May 18, 2013 9:40 AM
To: DSD EAS
Subject: Project No. 225045

LLLL-1 Dear Anna, SD Development Services. This mess has been going on now for how long? Years and Years and no one ever makes the comment of "this part of the coastline belongs to the people of California and Nature. How in the World did this La Jolla women even buy this land and Say " I Will this to the children and families of San Diego. It should never have been hers to begin with.The Seals have probably been using this piece of sand for thousands of years before San Diego was even discovered. Come on, lets have alittle common sense here, and permanently close this stretch of beach to humans forever. Viewing? YES! occupying? NO! San Diego has miles and miles of beaches for people and their kids. Make them go there!! Regards, Gary Fox, gary@coxandfox.com. Thanks for your time.

LLLL-1. Comment noted.

LETTER

RESPONSE

Letter MMMM – Foster, Susan

McPherson, Anna

From: Susan Foster [missgfoster2@yahoo.com]
Sent: Saturday, May 18, 2013 10:30 AM
To: DSD EAS
Subject: Project No. 225045

Dear Ms. McPherson,

MMMM-1 I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should definitely be closed to the public during the Harbor Seals pupping season. This beach should be left for the seals, allowing the public to use one of the many other beaches in San Diego. It is an environmentally sensitive habitat for the seals and it is right to protect them during their pupping season, if not all year long. It is a very minor hardship to ask humans to use another beach so the seals can use this one, unfettered. What a gift to them as well as a gift to all the visitors who come to La Jolla to watch them from the seawall and sidewalk.

Thank you,

Susan Foster

MMMM-1. Comment noted.

LETTER

RESPONSE

Letter NNNN – Foster, Stephen

McPherson, Anna

From: Stephen Foster [wahoo_ss565@me.com]
Sent: Saturday, May 18, 2013 11:23 AM
To: DSD EAS
Subject: Project No. 225045

To Anna McPherson,

NNNN-1

I totally support the Draft Negative Declaration as it is written. I agree that the Casa Beach should be completely closed to humans during the Harbor Seal's pupping season. This beach is an environmentally sensitive area under the definition of the Coastal Act and should be handled as such. Let's protect these seals and close the beach to the public during the pupping season.

Steve Foster

Sent from my iPad

NNNN-1. Comment noted

LETTER

RESPONSE

Letter OOOO – Meldrum, L

McPherson, Anna

From: Laura Meldrum [highseaspb@earthlink.net]
Sent: Saturday, May 18, 2013 7:09 PM
To: DSD EAS
Subject: Project No. 225045

Anna McPherson
 Environmental Planner, City of San Diego Development Services
 RE: Project No. 225045

OOOO-1

Dear Ms. McPherson
 The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.
 The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act.
 Declaring the beach to be ESHA and closing the beach will protect and enhance the environment.
 The impact on public access is insignificant since there are numerous other beaches available to the public.
 It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources.
 I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.
 Thank you,
 Laura Meldrum
highseaspb@earthlink.net
 No trees were harmed in the sending of this message although many electrons were severely inconvenienced.

OOOO-1. Comment noted.

LETTER

RESPONSE

Letter PPPP – Bruser, L and M

McPherson, Anna

From: Lynn Bruser [lpbruser@yahoo.com]
Sent: Saturday, May 18, 2013 9:29 PM
To: DSD EAS
Subject: Project No. 225045

Hello,

PPPP-1 I am not quite sure what a negative declaration is, but I do know that my husband and I walk 5 times a week on the boardwalk and always stop to admire the seals. They are a gift to our community - how lucky we are to have the best of nature at our door. We, who are fortunate enough to live in the JEWEL should take all possible steps to not only protect nature and wildlife, but to make their lives easier. When we read that people have intentionally hurt the seals it is reprehensible-they should be charged with animal cruelty. We have miles of wonderful beaches-please protect the wildlife. People are not endangered, we have just endangered everything else.

Thank you for considering the seals and keeping them SAFE from cruel people with a rope and protection.

Best,
Lynn and Michael Bruser
La Jolla.

PPPP-1. Comment noted.

LETTER

Letter QQQQ – Girsh, F

McPherson, Anna

From: Faye Girsh [fayegirsh@icloud.com]
Sent: Saturday, May 18, 2013 11:11 PM
To: DSD EAS
Subject: Project No. 225045

QQQQ-1 I totally support this proposal so that there is additional protection for the seals. We are fortunate to have this colony so close for our observations and they should be protected.

Faye Girsh
7811 Eads Ave #108
La Jolla CA 92037

RESPONSE

QQQQ-1. Comment noted.

LETTER

RESPONSE

Letter RRRR – Fitzgerald, J

McPherson, Anna

From: Jim Fitzgerald [jimfitz1@pacbell.net]
Sent: Sunday, May 19, 2013 1:15 PM
To: DSD EAS
Subject: Project No. 225045

Anna McPherson
 Environmental Planner
 City of San Diego Development Services Department.

Ms. McPherson:

Re: Draft Negative Declaration for Closing Children's Pool Beach (CPB) to the Public During Seal Pupping Season, December 15th-Mat 15th.

RRRR-1 My name is Jim Fitzgerald. I am a 24-year resident of La Jolla and an elected Trustee of the La Jolla Community Planning Association. I am writing to you as a private citizen, however, to strongly support the draft Negative Declaration for this project as written. I agree that there are no substantive environmental impacts associated with designating the Children's Pool Beach in La Jolla as an Environmentally Sensitive Habitat Area (ESHA) and closing the Beach to the public during pupping season:

- The proposed closing, including the signage, leaves the environment effectively unchanged from the current situation—seals on the Beach with already-limited public access.
- Seals and their pups are most vulnerable to disturbance and harassment during the pupping season—and designating the area as ESHA and the proposed CPB closing fully satisfies both the letter and the spirit of the federal Marine Mammal Protection Act.
- Further restricting public access to the actual CPB itself will have a *de minimus* impact on the environment:
 - The 153' guideline rope is in place year-around at CPB, which already visually and symbolically limits public access to the seals and, as a result, to most of the Beach anyway.
 - If San Diego's beaches were a 100-yard football field, temporarily closing CPB would shorten the playing field by less than 2 inches. By almost any measure, this is an insignificant imposition on the public and: 1) hardly a reason to put both people and seals at heightened and unnecessary risk during pupping season; and 2) hardly a justification to risk violating federal law.
 - Public beaches are public assets for public enjoyment. Since the seals arrived at the Children's Pool about 20 years ago, they have brought tremendous enjoyment and a unique educational experience to literally millions of children and adults—San Diegans and visitors alike. Personally, I cannot think of a better or more desirable use for this beach in terms of widespread public enjoyment and overall public benefit. In this sense, the seals' presence has enhanced the overall environment and the added protections provided by this project will only serve to preserve this enhancement.

For these reasons, I support the draft Negative Declaration for Project No. 225045.

Thank you for your consideration.

Respectfully yours,

Jim Fitzgerald

6942 Via Estrada

La Jolla, CA 92037

858-456-6255

RRRR-1. Comments noted.

LETTER

Letter SSSS – Trubovitz, J

McPherson, Anna

From: Julia Trubovitz [jtrubovitz@ucdavis.edu]
Sent: Sunday, May 19, 2013 2:23 PM
To: DSD EAS
Subject: Project No. 225045

Dear Ms. Pherson,

SSSS-1 I am in complete support of the Draft Negative Declaration so that Casa Beach can be closed during the seal pupping season. The barrier in use now is not sufficient to protect the seals or the public and closing the beach will maintain the environmentally sensitive area. There are numerous other beaches the public can use.

Sincerely,

Julia Trubovitz

RESPONSE

SSSS-1. Comment noted.

LETTER

RESPONSE

Letter TTTT – Arnold, L

McPherson, Anna

From: louise c. arnold [lu22arnold@fastmail.fm]
Sent: Sunday, May 19, 2013 10:44 PM
To: DSD EAS
Subject: Project No. 225045

To DSDEAS@sanidiego.gov:

TTTT-1 I urge you to approve the Draft Negative Declaration closing Casa Beach to the public during pupping season as proposed in Project #225045.

Much as we humans enjoy beach activity, it is not right for us to turn the natural habitants out of their native habitat. We should be able to share the beach with consideration for the seals' needs especially since this is the only recognized haul-out site south of Point Mugu. I think they should have priority during the pupping season when we humans could avail ourselves of other beaches.

Sincerely,

Louise Arnold

TTTT-1. Comment noted.

LETTER

Letter UUUU – Arrigo, J

McPherson, Anna

From: Jeanette Arrigo [cord4quat@yahoo.com]
Sent: Monday, May 20, 2013 6:43 AM
To: DSD EAS
Subject: Project No. 225045

UUUU-1

- The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment.

Sent from my iPhone

RESPONSE

UUUU-1. Comment noted.

LETTER

RESPONSE

Letter VVVV – Kinzel, M

McPherson, Anna

From: kinzelm@cox.net
Sent: Monday, May 20, 2013 7:06 AM
To: DSD EAS
Subject: Project No. 225045

Dear Anna McPherson,

VVVV-1 I am writing about the Draft Negative Declaration regarding the closing of the beach in La Jolla Cove during the pupping season. I strongly encourage you to support the beach closure for the following reasons –

The Draft Negative Declaration is appropriate because there are no environmental impacts from the proposed Local Community Plan amendment. The beach is ESHA (Environmentally Sensitive Habitat Area) under the definition of the Coastal Act. Declaring the beach to be ESHA and closing the beach will protect and enhance the environment. The impact on public access is insignificant since there are numerous other beaches available to the public. It is consistent with the Coastal Act because the Coastal Act specifies that public access must not allow for "over use" of coastal resources. I support the findings of the Draft Negative Declaration as written and agree that Casa Beach should be closed to the public to protect both the La Jolla Seals and the public during the pupping season.

I am a marine biologist and college professor, and I think that having the beach closed does not need to be presented to the public as a 'loss of recreational area' or as a 'taking away of something from humans'. Why can't we support the area as a wildlife habitat, and encourage people to enjoy the opportunity to observe wild animals and their young.

I would bet that if you asked any child on the planet if they would like to watch a mother seal with her newly born baby snuggle on the beach – you would get a YES answer. This area provides an amazing, up-close view of harbor seals. I really don't understand why people are so upset over a small strip of sand! Yes, I do understand the notion of having a 'Children's Beach'. Why can't we have the Children's Beach be a place where human children can meet pinniped children and marvel at the wonder of nature?

Our culture needs to protect wild spaces and wild things, and as a society, we need to let go of the notion that we are entitled to own, manipulate and dominate every square inch of land and water on this planet.

I encourage you to support a message of conservation, respect for wild animals and provide a safe haven to the pupping seals in La Jolla, California.

Thank you,

Michelle Kinzel, M.S. GIScience
kinzelm@cox.net

VVVV-1. Comments noted.

LETTER

Letter WWWW – Wosk, M

McPherson, Anna

From: Myrna [mstarr@znet.com]
Sent: Monday, May 20, 2013 10:31 AM
To: DSD EAS
Subject: Project No. 225045

WWW-1 I actively OPPOSE the Negative Declaration.
Bottom Line: Mrs. Ellen Scripps built the breakwater to protect the children, not for a seal
haven.
Give Childrens' Pool back to the Children.
Myrna Wosk

RESPONSE

WWW-1. Comment noted.

LETTER

RESPONSE

Letter XXXX – Merino, R

McPherson, Anna

From: Richard Merino [merino.r@sbcglobal.net]
Sent: Tuesday, May 21, 2013 5:28 PM
To: DSD EAS
Subject: Project Number 225045 ;Children's Pool

Anna McPherson, Environmental Planner
 City of San Diego Development Services Center
 Project # 225045

I am opposed to the Draft Negative Declaration concerning Children's Pool.

- XXXX-1** 1. The City of San Diego has never obtained an Environmental Impact Report (EIR) on allowing any Rope Barrier to exist on Children's Pool as required by CEQA.
- XXXX-2** 2. The City of San Diego has never obtained an EIR on allowing the "seals" to occupy Children's Pool as required by CEQA. This is light of the fact that the Children's Pool is considered a Public Health Hazard by San Diego Public Health Department because of the "seal fecal contamination.
- XXXX-3** 3. The fact that the Trust at Children's Pool was changed by by California Law AB428, does not exempt the City from complying with California CEQA regulations and the Trust allowing the Public free access to a clean and safe beach.
- XXXX-4** 4. The City denied public input concerning the environmental impact at Children's Pool by its obscure method of notifying the public of its plan to exempt the CDP of an environmental study.
 IN FACT I CHALLENGE MEMBERS OF THE DEVELOPMENT SERVICES TO FIND THE POSTING IN THE CITY WEB SITE EXEMPTING THIS PROJECT OF AN ENVIRONMENTAL REVIEW.
- XXXX-5** 5. It has already been legally established (O'Sullivan vs. The City of San Diego) that a Rope Barrier at Children's Pool denies the Public free access to the beach at Children's Pool, but it also continues to exacerbate the Public Health Hazard from the seal fecal contamination.

Sincerely,
 Richard Merino MD
 40 year resident of La Jolla

XXXX-1. Comment noted. The City conducted CEQA review for the La Jolla Children's Pool Rope Barrier and prepared and issued an exemption on July 8, 2010 pursuant to CEQA Guidelines Sections 15304 (Minor Alterations to Land) and 15333 (Small Habitat Restoration Projects).

XXXX-2. Comment noted.

XXXX-3. Comment noted.

XXXX-4. Comment noted.

XXXX-5. Comment noted.

LETTER

RESPONSE

Letter YYYY – Pyjar, T

McPherson, Anna

From: Toni Pyjar [tpyjar@gmail.com]
Sent: Thursday, May 23, 2013 8:13 PM
To: DSD EAS
Subject: Project No. 225045

Anna McPherson, Environmental Planner
 City of San Diego Development Services

To Whom It May Concern,

YYYY-1 I am a San Diego County resident and enjoy frequent use of the Childrens Pool area public beaches and ocean access. I protest the City's proposal to close the Childrens Pool beach to public access for any amount of time during the year. This proposal infringes on my right to access a public beach.

Thank you for your consideration.
 Toni Pyjar
 3508 Paseo Salamoner
 La Mesa, CA

YYYY-1. Comment noted.

LETTER

RESPONSE

Letter ZZZZ – Davis, C

McPherson, Anna

From: Christopher Davis [oceantendency@gmail.com]
Sent: Thursday, May 30, 2013 1:48 PM
To: DSD EAS
Subject: Project #225045- La Jolla Children's Pool Closure

Dear Anna McPherson and constituents,

ZZZZ-1 hopefully by now you have had enough negative response to reconsider the Unconstitutional attempt to close the LJ Children's Pool. Once again the Trust between the State and Mrs Brown will be directly violated by this proposal. Coastal access will be directly affected and in violation. The cost ramifications to the city will be highly inflated as compared to Brian Pease's lawsuit, if this project is passed and implemented. The amount of lawsuits from private citizens and large Pro-Access, Coastal Commission, and recreational use groups will far exceed the current cost of lawsuits from the FOS. I carfeully urge you to reconsider this as well as take a closer look to the Lifeguards' plan. I profoundly disapprove at this attempt for beach closure and violation of the State Trust as well as violation of Coastal Access Laws. Thank you.

--

Christopher Davis

Chief PET Technologist CNMT, ARRT (N)

UCSD-Center for Molecular Imaging

ZZZZ-1 Comment noted. This comment does not address the project's potential significant effects on the environment and the adequacy of the environmental document; therefore no response is required pursuant to CEQA Guidelines Section 15204(e).

INITIAL STUDY CHECKLIST

1. PROJECT TITLE/PROJECT NUMBER:

La Jolla Children's Pool Enclosure/225045

2. LEAD AGENCY NAME AND ADDRESS:

City of San Diego
1222 First Avenue, MS501
San Diego, CA 92101

3. CONTACT PERSON AND PHONE NUMBER:

A. McPherson/ (619) 446-5276

4. PROJECT LOCATION:

888 Coast Boulevard
San Diego, CA 92037

5. PROJECT APPLICANT/SPONSOR'S NAME AND ADDRESS:

Park and Recreation Department
202 C Street MS 37C
San Diego, CA 92101

6. GENERAL PLAN DESIGNATION:

Open Space

7. ZONING:

La Jolla Planned District Zone 5 (LJPD-5)

8. DESCRIPTION OF PROJECT (DESCRIBE THE WHOLE ACTION INVOLVED, INCLUDING BUT NOT LIMITED TO, LATER PHASES OF THE PROJECT, AND ANY SECONDARY, SUPPORT, OR OFFSITE FEATURES NECESSARY FOR ITS IMPLEMENTATION):

The applicant is requesting an amendment to the La Jolla Community Plan and Local Coastal Program to establish an Environmentally Sensitive Habitat Area (ESHA) and buffer area for the Children's Pool Beach. The amendment will also include modification to community plan policies related to beach access to prohibit access to the

ESHA during harbor seal pupping season to contribute to the protection of a sensitive habitat area for breeding pinnipeds.

The applicant is processing a COASTAL DEVELOPMENT PERMIT (CDP), to prohibit access to the Children's Pool beach annually from December 15-May 15. Implementation of the project will require the installation of two signs, approximately 24" by 36" and 18" by 24" on an existing gate and wall, and a chain barrier at the second landing of the lower stairs.

Further, the applicant is requesting an amendment to the San Diego Municipal Code (SDMC) to add a Section 63.0102(e)(2) that would state:

It is unlawful for any person to be upon or cause any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach, beginning with the second landing, from December 15 to May 15.

9. SURROUNDING LAND USES AND SETTING: BRIEFLY DESCRIBE THE PROJECT'S SURROUNDINGS:

The project is located within the La Jolla Community Plan area. The site consists of the Children's Pool area and Casa Beach. The area is on the seaward side of Coast Boulevard at the base of Jenner Street, south of Shell Beach, north of the Marine Street Beach, and across from and northwest of the Casa de Manana (849 Coast Boulevard). The Children's Pool is protected from the open ocean by the Children's Pool Breakwater which was constructed in 1931 to reduce wave action and create a shallow, calm swimming area for human use. The beach has stair access and the shoreline is composed of sandstone bluffs and rocky outcrops.

Offshore of the proposed project site are diverse marine habitats including sandy areas, rocky reefs, seagrass beds, and southern California kelp forests. The La Jolla Ecological Preserve and the San Diego Marine Life Refuge are located offshore and northwest of the proposed project area. Ellen Browning Scripps Park is on land roughly ¼-mile northwest of the proposed project area.

The community of La Jolla lies to the east of the project site. La Jolla is an urbanized area of mixed commercial and residential uses. In addition; the project site is located immediately adjacent to a developed area currently served by existing public services and utilities.

10. OTHER PUBLIC AGENCIES WHOSE APPROVAL IS REQUIRED (E.G., PERMITS, FINANCING APPROVAL, OR PARTICIPATION AGREEMENT):

California Coastal Commission

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

- | | | |
|--|---|--|
| <input type="checkbox"/> <u>Aesthetics</u> | <input type="checkbox"/> <u>Greenhouse Gas Emissions</u> | <input type="checkbox"/> <u>Population/Housing</u> |
| <input type="checkbox"/> <u>Agriculture and Forestry Resources</u> | <input type="checkbox"/> <u>Hazards & Hazardous Materials</u> | <input type="checkbox"/> <u>Public Services</u> |
| <input type="checkbox"/> <u>Air Quality</u> | <input type="checkbox"/> <u>Hydrology/Water Quality</u> | <input type="checkbox"/> <u>Recreation</u> |
| <input type="checkbox"/> <u>Biological Resources</u> | <input type="checkbox"/> <u>Land Use/Planning</u> | <input type="checkbox"/> <u>Transportation/Traffic</u> |
| <input type="checkbox"/> <u>Cultural Resources</u> | <input type="checkbox"/> <u>Mineral Resources</u> | <input type="checkbox"/> <u>Utilities/Service System</u> |
| <input type="checkbox"/> <u>Geology/Soils</u> | <input type="checkbox"/> <u>Noise</u> | <input type="checkbox"/> <u>Mandatory Findings of Significance</u> |

DETERMINATION: (TO BE COMPLETED BY LEAD AGENCY)

On the basis of this initial evaluation:

- ☒ The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
 - ☐ Although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
 - ☐ The proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
 - ☐ The proposed project MAY have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect (a) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (b) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT (EIR) is required.
 - ☐ Although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or (MITIGATED) NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or
-

(MITIGATED) NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

EVALUATION OF ENVIRONMENTAL IMPACTS

1. A brief explanation is required for all answers except “No Impact” answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
 2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
 3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. “Potentially Significant Impact” is appropriate if there is substantial evidence that an effect may be significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.
 4. “Negative Declaration: Less Than Significant With Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from “Earlier Analyses”, as described in (5) below, may be cross-referenced).
 5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other California Environmental Quality Act (CEQA) process, an effect has been adequately analyzed in an earlier EIR or (mitigated) negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a. Earlier Analysis Used. Identify and state where they are available for review.
 - b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
-

- c. Mitigation Measures. For effects that are “Less Than Significant With Mitigation Measures Incorporated”, describe the mitigation measures that were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
 6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
 7. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
 8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
 9. The explanation of each issue should identify:
 - a. The significance criteria or threshold, if any, used to evaluate each question; and
 - b. The mitigation measure identified, if any, to reduce the impact to less than significant.
-

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

I. AESTHETICS – Would the project:

- a. Have a substantial adverse effect on a scenic vista? ☐ ☐ ☒ ☐

No Impact.

The project results in limited physical development, the placement of two signs, approximately 36" by 30" on the wall and 24" by 18" on the gate, and a chain barrier, on an existing landing on an existing set of stairs down to the beach. These improvements do not result in a substantial adverse impact on a scenic vista as the primary view to the ocean is preserved. As noted, the landing and stairs are an existing structure; the signage and chain barrier will not exceed its height or width. Additionally, the sea wall and bluff top look out areas will remain accessible during pupping season and will remain as areas from which to view the scenic vista. As such, impacts would be less than significant, and no mitigation is required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? ☐ ☐ ☐ ☒

Less than Significant Impact. Refer to I. (a). Impacts are considered less than significant, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Substantially degrade the existing visual character or quality of the site and its surroundings? ☐ ☐ ☒ ☐

Less than Significant Impact. Refer to I. (a), Impacts are considered less than significant, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- d. Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?

☐☐☐☒

No Impact. The placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not create new and/or cause substantial light or glare. No substantial sources of light would be generated during project installation. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

II. AGRICULTURAL AND FOREST RESOURCES

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. – Would the project:

- a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

☐☐☐☒

No Impact. The *La Jolla Community Plan and Local Coastal Program* designate the project site as Parks/Open Space. The Project site is located within an established resource based park, the Coastal Boulevard Park. As such, the site does not contain, and is not adjacent to, any lands identified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency. Therefore, the Project would not result in the conversion of such lands to non-agricultural use. No impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Conflict with existing zoning for agricultural use, or a Williamson Act Contract?

☐☐☐☒

No Impact. Refer to Response to II (a), above. There are no Williamson Act Contract lands on or within the vicinity of the site. No impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 1220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

☐☐☐☒

No Impact. Refer to II (a) above. No designated forest land or timberland occur onsite; therefore, no significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- d. Result in the loss of forest land or conversion of forest land to non-forest use?

☐☐☐☒

No Impact. The Project site has historically been used for park/open space purposes. There is no forest land onsite, and the Project would not contribute to the conversion of any forested land to non-forest use. No impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- e. Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?

☐☐☐☒

No Impact. Refer to Response to II (a) and II (d), above. The Project site does not contain any farmland or forest land. No changes to any such lands would result from Project implementation. No impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

III. AIR QUALITY

Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied on to make the following determinations - Would the project:

- a. Conflict with or obstruct implementation of the applicable air quality plan? ☐ ☐ ☐ ☒

No Impact. The Project site is located in the San Diego Air Basin (SDAB) and is under the jurisdiction of the San Diego Air Pollution Control District (SDAPCD) and the California Air Resources Board (CARB). Both the State of California and the Federal government have established health-based Ambient Air Quality Standards (AAQS) for the following six criteria air pollutants: carbon monoxide (CO); ozone (O₃); nitrogen oxides (NO_x); sulfur oxides (SO_x); particulate matter up to 10 microns in diameter (PM₁₀); and lead (Pb). O₃ (smog) is formed by a photochemical reaction between NO_x and reactive organic compounds (ROCs). Thus, impacts from O₃ are assessed by evaluating impacts from NO_x and ROCs.

The net increase in pollutant emissions determines the impact on regional air quality as a result of a proposed project. The results also allow the local government to determine whether a proposed project would deter the region from achieving the goal of reducing pollutants in accordance with the air quality management plan (AQMP) in order to comply with Federal and State AAQS.

The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not involve land clearing, grading operations, or construction. The Project, therefore, would not conflict with the Air Quality Management Plan (AQMP). No impacts, therefore, would occur and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation? ☐ ☐ ☐ ☒

No Impact. Refer to Response III (a) above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. Refer to Response III (a) above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| d. Expose sensitive receptors to substantial pollutant concentrations? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. Refer to Response III (a) above. The Project site is located in an established resource based park. However, due to the nature of the Project (the placement of two signs and chain barrier to prohibit access to the beach during harbor seal pupping season), it would not result in the exposure of sensitive receptors to substantial pollutant concentrations either during construction or over the long-term. No impacts therefore would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| e. Create objectionable odors affecting a substantial number of people? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not create objectionable odors. No impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

IV. BIOLOGICAL RESOURCES

Would the project:

- a. Have substantial adverse effects, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

☐☐☐☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would contribute to the protection of a sensitive habitat area for breeding pinnipeds. Therefore, no impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Have a substantial adverse effect on any riparian habitat or other community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

☐☐☐☒

No Impact. Refer also to Response to IV(a), above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

☐☐☐☒

No Impact. The Project site is located immediately adjacent to the Mean High Water (MHW) and Mean Lower Low Water (MLLWL) marks, which are within the waters of the US. Activities within these tidal lines are regulated by Section 404 of the Clean Water Act. There are no wetlands on the site, however, and therefore, establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to

prohibit access to the ESHA during harbor seal pupping season, would not result in such impacts. No mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. As noted by the National Oceanic and Atmospheric Administration (NOAA) in a letter to the City of San Diego, dated May 14, 2010, harbor seals at Children's Pool Beach are presently subject to daily urban disturbances such as traffic noise and various types of human interaction. The most disruptive disturbances can lead to the seals flushing into the water. This prevents the animal from gaining the benefits (rest or thermoregulation) of hauling out of the ocean onto the beach. Prohibiting public access would (in most cases) prevent flushing and this would be most beneficial during pupping season. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season and adoption of SDMC 63.0102(e)(2), therefore, would contribute to the protection of a sensitive habitat area for breeding pinnipeds, and would enhance the use of the site as a wildlife nursery. No impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| e. Conflict with any local policies or ordinances protecting biological resources, such as tree preservation policy or ordinance? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. The Project would amend the *La Jolla Community Plan and Local Coastal Program* to establish a marine mammal haul out area at the Children's Pool beach as an ESHA. The amendments would also modify plan goals and policies that require enhanced public access to ocean, beach and park areas to ensure that implementation of such policies would not impact the protection of the ESHA as a significant coastal resource. The Project also includes the adoption of Section 63.0102(e)(2) of the SDMC to prohibit access to the beach at Children's Pool during the harbor seal pupping season, December 15 to May 15 of each year. The Project, therefore, contributes to biological resource protection. No impact, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. The Project site is not within the City's MHPA, and no other adopted conservation plans affect the subject site. Therefore, no impacts would occur, and no mitigation measures are required. Refer to IV (e) above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

V. CULTURAL RESOURCES

Would the project:

| | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Cause a substantial adverse change in the significance of an historical resource as defined in §15064.5? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. The purpose and intent of the Historical Resources Regulations of the Land Development Code (Chapter 14, Division 3, and Article 2) is to protect, preserve and, where damaged restore the historical resources of San Diego. The regulations apply to all proposed development within the City of San Diego when historical resources are present on the premises. The California Environmental Quality Act (CEQA) requires that before approving discretionary projects the Lead Agency must identify and examine the significant adverse environmental effects, which may result from that project. A project that may cause a substantial adverse change in the significance of a historical resource may have a significant effect on the environment (Sections 15064.5(b) and 21084.1). A substantial adverse change is defined as demolition, destruction, relocation, or alteration activities, which would impair historical significance (Sections 15064.5(b)(1)). Any historical resource listed in or eligible to be listed in the California Register of Historical Resources, including archaeological resources, is considered to be historically or culturally significant.

The City of San Diego criteria for determination of historic significance, pursuant to the CEQA, is evaluated based upon age (over 45 years), location, context, association with an important event, uniqueness, or structural integrity of the building. In addition, projects requiring the demolition of structures that are 45 years or older are also reviewed for historic significance in compliance with CEQA. CEQA Section 21084.1 states that "A project that may cause a substantial adverse change in the significance of a historical resource is a project that may cause a significant effect on the environment."

The Children's Pool was dedicated to the City of San Diego by prominent philanthropist, Ellen Browning Scripps, in 1931. The breakwater was designed and constructed by a prominent hydraulic engineer Hiram Savage and architect William Templeton Johnson to protect bathers, especially children, from the dangerous crosscurrent and undertow of the open ocean. Based upon this information, for the purposes of this document and analysis, the Children's Pool breakwater is considered to be a California Register-eligible historic resource.

The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, however, would not result in a long-term operational impact related to adverse physical or aesthetic effects on an architecturally significant building, structure, or object. Therefore, no impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?

☐☐☐☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not require excavation or any ground disturbance. Therefore, no impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

☐☐☐☒

No Impact. According to the Geology of the San Diego Metropolitan Area, California (1975) published by the California Division of Mines and Geology, the project site is underlain by the Cabrillo Formation, which is considered to have a moderate sensitivity for paleontological resources. No grading/excavation is required by the project, therefore, no direct or unique paleontological features could be potentially impacted by the proposed project. Mitigation would not be required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- d. Disturb human remains, including those interred outside of formal cemeteries?

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No Impact: No cemeteries, formal or informal, have been identified onsite or within the Project vicinity. Refer to V(b) above. Therefore, no impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

VI. GEOLOGY AND SOILS

Would the project:

- a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
- i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

☐☐☐☒

No Impact. The project site is assigned a Geologic Hazard Category of 43, Coastal Bluffs which according to the *City of San Diego Safety Seismic Study Maps*, is characterized as generally unstable: with unfavorable jointing and local high erosion. The project, however, proposes minor physical improvements to limit access to Children's Pool during seal pupping season. It would have no discernible effect upon the exposure of persons or structures to potential substantial adverse effects related to rupture of a known earthquake fault. No impacts would result and, therefore, no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

ii) Strong seismic ground shaking?

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No Impact. Please refer to VI (a) (i.).

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

iii) Seismic-related ground failure, including liquefaction?

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No Impact. Liquefaction occurs when loose, unconsolidated, water-laden soils are subject to shaking, causing the soils to lose cohesion. Liquefaction occurs primarily in areas of recently deposited sands and silts and in areas of high groundwater levels. The Project site is located within a beach area, and is expected to be composed of loose sand that is saturated at a shallow depth; therefore, considered susceptible to liquefaction in the event of a significant earthquake in the region. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, however, results in limited physical improvements and would not increase the likelihood of persons or structures being exposed to seismic related ground failure. No impacts would result, therefore, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

iv) Landslides?

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No Impact. No landslides are present on the site. No impacts, therefore, would occur, and mitigation measures are not required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

b. Result in substantial soil erosion or the loss of topsoil?

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No Impact. Project installation would not result in any excavation or ground disturbance. The project would not result in impacts, and therefore, no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

☐ ☐ ☐ ☒

No Impact. Refer to Response VI(a), above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

☐ ☐ ☒ ☐

No Impact. Refer to Response VI(a), above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

☐ ☐ ☐ ☒

No Impact. The Project does not propose a septic system. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

VII. GREENHOUSE GAS EMISSIONS

Would the project:

- a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

☐ ☐ ☐ ☒

No Impact. The City does not currently have adopted thresholds of significance for GHG emissions. The City is therefore utilizing the California Air Pollution Control Officers Association (CAPCOA) report “CEQA & Climate Change” dated January 2008 as an interim screening threshold to determine whether a GHG analysis would be required. A 900 metric ton screening threshold for determining when an air quality analysis is required was chosen based on available guidance from the CAPCOA white paper. The CAPCOA report references the 900 metric ton guideline as a conservative threshold for requiring further analysis and mitigation. This emission level is based on the amount of vehicle trips, the typical energy and water use, and other factors associated with projects. CAPCOA identifies project types that are estimated to emit approximately 900 metric tons of GHG’s annually.

The establishment of an ESHA and buffer area for the Children’s Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not be expected to have a significant impact related to greenhouse gases. Project installation would not involve construction and the project, itself, involves no new operations. It can reasonably be concluded, therefore, that GHG emissions would be well below the 900 metric ton screening criteria established by CAPCOA, and potential impacts from greenhouse gas emissions are considered less than significant. No mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| b. Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. Refer to Response VII(a), above, regarding discussion of Project-related greenhouse gas emissions. The Project would not conflict with any applicable plans, policies, or regulations pertaining to the reduction of greenhouse gases. No impact would occur, and therefore, no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

VIII. HAZARDS AND HAZARDOUS MATERIALS

Would the project:

| | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Create a significant hazard to the public or the environment through routine transport, use, or disposal of hazardous materials? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. The Project is the establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season. Due to the nature of the Project, the routine transport, use, or disposal of hazardous materials on or through the subject site is not anticipated. No impact would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not involve the use of hazardous materials. No impact would occur and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. See VIII(a) and VIII(B), above. The Project site is not located within 0.25 mile of an existing or proposed school. No significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------|--|------------------------------|-------------------------------------|
| d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. The site has been historically used a recreational beach area. The Project site has not been identified as a hazardous materials site pursuant to Government Code Section 65962.5. Therefore, no significant impacts related to this issue were identified, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

| | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. The Project site is not located within any airport land use plan, the airport environs overlay zone, or airport approach overlay zone or within two miles. Therefore, no significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

| | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. Refer to Response to VII(e), above. The Project site is not in close proximity to any private airstrip. Therefore, no significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

| | | | |
|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not interfere with the implementation of or physically interfere with an adopted emergency response plan or evacuation plan. No roadway improvements are proposed that would interfere with circulation or access. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

☐☐☐☒

No Impact. The Project site is located within an urbanized and developed area. There are no wildlands or other areas prone to wildfire within the vicinity of the Project site. No significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

IX. HYDROLOGY AND WATER QUALITY

Would the project:

- a. Violate any water quality standards or waste discharge requirements?

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No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not violate any water quality standards or waste discharge requirements. Impacts would be less than significant, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

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No Impact. The Project site does not require the construction of wells, and the use of groundwater would not be required with the Project installation or operation. As such, no significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?

☐☐☐☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not affect or substantially alter existing drainage patterns or result in substantial erosion. No Impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?

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No Impact. See Response to IX(c), above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- e. Create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

☐☐☐☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would result in limited physical improvements, which would not create or contribute runoff water. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- f. Otherwise substantially degrade water quality? ☐ ☐ ☐ ☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would result in limited physical improvements and would not substantially degrade water quality. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? ☐ ☐ ☐ ☒

No Impact. The Project site is located at Children's Pool Beach; however, the project proposes no housing. No significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- h. Place within a 100-year flood hazard area, structures that would impede or redirect flood flows? ☐ ☐ ☐ ☒

No Impact. The Project site is located within a 100-year flood hazard area, however, the establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not create structures that would impede or redirect flood flows. No significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? ☐ ☐ ☐ ☒

No Impact. See IX (h) above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|---|--------------------------------|--|------------------------------|-------------------------------------|
| j. Inundation by seiche, tsunami, or mudflow? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No impact. As the Project site includes Children's Pool beach, and is immediately adjacent to the Pacific Ocean, it is subject to inundation by seiche or tsunami. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, however, would not increase the likelihood of nor result in an increase in the numbers of persons subject to inundation by a seiche or tsunami. Based upon the location and topography of the site, it is unlikely that it would be inundated by a mudflow.

No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

X. LAND USE AND PLANNING

Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Physically divide an established community? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. The Project site is located in a developed urban community immediately adjacent to the Pacific Ocean. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not physically divide an established community. No significant impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

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|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact.

The General Plan and the La Jolla Community Plan and Local Coastal Program contain goals and policies to enhance and maintain existing public access to beaches and coastline areas and to protect sensitive habitat and wildlife areas. The City is proposing to establish an Environmentally Sensitive Habitat Area (ESHA) at the Children's Pool for seal pupping season from December 15th through May 15th. The creation of an ESHA will restrict public access to the shoreline and create a protective boundary around the seals only during pupping season.

Establishing an ESHA balances competing habitat protection policies with public access policies. The proposed amendment would clearly protect wildlife during the pupping season while maintaining full public access the remainder of the year. The size and location of the signage and chain barrier minimizes any potential visual impacts and preserves coastal views. The sea wall and bluff top look outs will remain accessible to the public throughout the year.

All applicable General Plan and La Jolla Community Plan and Local Coastal Program policies were reviewed and considered with regards to the land use implications the establishment of an ESHA at the Children's Pool and prohibited access during pupping season. The Project is consistent and implements the following policies:

General Plan***Land Use Element:******E. Planning for Coastal Resources***

LU-E.1 Incorporate community-specific policies into Coastal Zone community plans during community plan updates and/or amendments to address the Coastal Act policies' direction regarding biological resources and geologic stability, circulation, parking, beach impact area, public access, recreational opportunities, visitor-serving, and visual resources.

Recreation Element***C. Preservation***

RE-C.4 Preserve all beaches for public-only purposes, including the protection of sensitive habitat and species.

D. Accessibility

RE-D.7 Provide public access to open space for recreational purposes

b. Provide public access at locations consistent with the goals and policies of the Conservation Element.

c. Provide new, and preserve and enhance existing public beach access, where appropriate.

F. Open Space Lands and Resource-Based Parks

RE-F.2 Provide for sensitive development of recreation uses within and adjacent to City-owned open space lands.

b. Design and maintain open space lands to preserve or enhance topographic and other natural site characteristics.

c. Preserve designated public open space view corridors, such as views to the Pacific Ocean, other bodies of water, and significant topographic features.

Conservation Element:

B. Open Space and Landform Preservation

CE-B.1 Protect and conserve the landforms, canyon lands, and open spaces that: define the City's urban form; provide public views/vistas; serve as core biological areas and wildlife linkages; are wetlands habitats; provide buffers within and between communities; or provide outdoor recreational opportunities.

C. Coastal Resources

CE-C.5. Limit the use of beaches and shorelines to appropriate coastal dependent and ocean-oriented recreational/educational uses as identified in local coastal/community plans.

CE-C.8. Protect coastal vistas and overlook areas from obstructions and visual clutter where it would negatively affect the public's reasonable use and enjoyment of the resource.

CE-C.12. Ensure that all City beaches and shorelines are accessible and available for appropriate public use for all users.

La Jolla Community Plan and Local Coastal Program

The La Jolla Community Plan provides specific policy direction for open space, public access and preservation of habitat within the community plan area boundaries. The plan contains goals and policy recommendations for enhancing public access while balancing the goals and policies to protect wildlife and natural habitat.

Natural Resources and Open Space Systems Element

Goals

Enhance existing public access to La Jolla's beaches and coastline areas (for example La Jolla Shores Beach and Children's Pool areas) in order to facilitate greater public use and enjoyment of these and other coastal resources.

Protect the environmentally sensitive resources of La Jolla's open areas including its coastal bluffs, sensitive steep hillside slopes, canyons, native plant life and wildlife habitat linkages.

Policy:

Open Space Preservation and Natural Resource Protection

b. The City should limit public access in open space areas that contain sensitive resources to scientific or educational use. Access should be confined to designated trails or paths and no access should be approved which would result in the disruption of habitat areas.

No significant impacts, therefore, would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Conflict with any applicable habitat conservation plan or natural community conservation plan?

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No Impact. The Project would not conflict with any applicable habitat conservation plan or natural community conservation plan. The Project would not conflict with the City's Multiple Species Conservation Plan (MSCP), and the site is not located within or adjacent to the MHPA. No significant impacts would occur, and no mitigation measures are required. Refer also to IV (e) above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
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XI. MINERAL RESOURCES

Would the project?

- a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

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No Impact. There are no known mineral resources located on the Project site. The urbanized and developed nature of the site and vicinity would preclude the extraction of any such resources. The Project site is not currently being utilized for mineral extraction and does not contain any known mineral resources that would be of value to the region. Therefore, no significant impacts were identified, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

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No Impact. See XI(a), above. The Project area has not been delineated on a local general plan, specific plan, or other land use plan as a locally important mineral resource recovery site, and no such resources would be affected with Project implementation. Therefore, no significant impacts were identified, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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XII. NOISE

Would the project result in:

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|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. Project installation would not result in short-term construction or long-term operational noise impacts. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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|---|--------------------------|--------------------------|-------------------------------------|--------------------------|
| b. Exposure of persons to, or generation of, excessive ground borne vibration or ground borne noise levels? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|-------------------------------------|--------------------------|

No Impact. As described in Response to XII(a) project installation and operation are not anticipated with the establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season. As such, the Project would not result in the exposure of persons to excessive ground borne vibration or noise, and no impacts would occur. No mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. Project installation and operation would not increase long-term noise levels. The Project would not introduce a new land use, or significantly increase the intensity of the existing land use. Post-construction noise levels and traffic would be generally unchanged as compared to noise associated with the existing use. Therefore, no substantial permanent increase in ambient noise levels would occur. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above existing without the project?

☐ ☐ ☐ ☒

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not expose people to a substantial increase in temporary or periodic ambient noise levels. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- e. For a project located within an airport land use plan, or, where such a plan has not been adopted, within two miles of a public airport or public use airport would the project expose people residing or working in the area to excessive noise levels?

☐ ☐ ☐ ☒

No Impact. The Project site is not located within an airport land use plan or within two miles of a public airport or public use airport. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

☐ ☐ ☐ ☒

No Impact. The Project site is not located within the vicinity of a private airstrip. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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XIII. POPULATION AND HOUSING

Would the project:

- a. Induce substantial population growth in an area,

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| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

No Impact. The Project site is located in a developed urban area. The project proposes no new homes or businesses and does not require the extension of roads or any public infrastructure and would not induce any population growth. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

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No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not displace any existing housing. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

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No Impact. See Response to XIII(b), above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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XIV. PUBLIC SERVICES

Would the project result in substantial adverse physical impacts associated with the provisions of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service rations, response times or other performance objectives for any of the public services:

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

i) Fire Protection

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No Impact. The Project site is located in an urbanized and developed area where fire protection services are already provided. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not adversely affect existing levels of fire protection services to the area, and would not require the construction of new or expansion of existing governmental facilities. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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ii) Police Protection

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No Impact. The Project site is located in an urbanized and developed area within the City of San Diego where police protection services are already provided. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not adversely affect existing levels of police protection services or create significant new demand, and would not require the construction of new or expansion of existing governmental facilities. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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iii) Schools

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No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not increase the demand on public schools. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-----------|--------------------------------|--|-------------------------------------|--------------------------|
| iv) Parks | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Less than Significant Impact. Public access points, identified in the La Jolla Community Plan and Local Coastal Program, to recreational resources in the general vicinity of the project site provide recreational opportunities of regional and state-wide significance. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would limit access to public parkland from December 15 through May 15 of each year. Full public access, however, will remain available outside of pupping season. Additionally, views of the shore, visual access, would remain accessible after implementation of the project, from the pedestrian walkway along the bluff top.

Over the past two years, the City of San Diego Park and Recreation Department has maintained observational counts by a Park Ranger to determine the number of people who utilize the Children's Pool beach for recreational and general public access purposes. Based upon these observational counts, visitors located at the sidewalk or breakwater range from a low of 20 to several hundred a day throughout pupping season. Visitors to the actual sandy beach area decrease (especially during poor weather days). The counts indicate that the range is anywhere from 0 to an occasional high of 75-100, but on many days, few people access the beach during this time frame. Even fewer people use the beach to access the water. Counts taken from February 29 through May 15 of 2012 indicate that approximately a total of 130 visitors used the beach to access the water.

The observational counts appear to document that a majority of visitors come to access the beach from the sidewalk or breakwater. The project would not impact that access. Some persons would be required to access the beach and water at another location from December 15 to May 15, but the magnitude of this effect on other public park resources would be negligible and is temporal in nature. The Project would not significantly increase the demand on existing neighborhood or regional parks or other recreational facilities over that which presently exists. As such, impacts related to parks would be less than significant, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|----------------------------|--------------------------------|--|------------------------------|-------------------------------------|
| v) Other public facilities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season would not adversely affect existing levels of public services and would not require the construction or expansion of an existing governmental facility. No impact would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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XV. RECREATION -

- a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

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Less than Significant Impact. See XIV (iv) above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- b. Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?

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No Impact. Refer to XIV (iv) above. The project site includes an existing recreational facility; the project would not require the expansion of a facility. As such, no impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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XVI. TRANSPORTATION/TRAFFIC

Would the project?

- a. Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?

☐ ☐ ☐ ☒

No Impact. The project results in limited physical improvements and would not conflict with any applicable plan, ordinance or policy regarding the transportation system. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- b. Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?

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No Impact. See XVI above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

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No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not result in a change in air traffic patterns. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

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No Impact. The establishment of an ESHA and buffer area for the Children's Pool Beach, which includes the placement of two signs and chain barrier to prohibit access to the ESHA during harbor seal pupping season, would not increase hazards. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- e. Result in inadequate emergency access?

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No Impact. No impacts would occur, and no mitigation measures are required. See Response XVI (d), above.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
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- f. Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?

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No Impact. The Project would not alter the existing conditions of the Project site or adjacent facilities with regard to alternative transportation. No significant impacts related to this issue would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
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XVII. UTILITIES AND SERVICE SYSTEMS

Would the project:

- a. Exceed wastewater treatment requirements of the

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| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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applicable Regional Water Quality Control Board?

No Impact. No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

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No Impact. ~~Construction of the four residential units would not significantly increase the demand for water or wastewater treatment services, and as such, would not trigger the need for new treatment facilities. Adequate services are available to serve the Project. Impacts would be less than significant, and no mitigation measures are required.~~ No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

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No Impact. ~~The volume of new storm water runoff generated by the impervious surface area would not result in substantial quantities requiring new or expanded public storm water treatment facilities, as adequate services are available to serve the four residential units. Therefore, the Project would not require the construction of new public storm water drainage facilities or the expansion of existing facilities. See also IX(c-f). Impacts would be less than significant, and no mitigation measures are required.~~ No impacts would occur, and no mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
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- d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are

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| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
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new or expanded entitlements needed?

No Impact. ~~Impacts would be less than significant, and no mitigation measures are required.~~ The Project does not require water supplies. No mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
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- e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

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No Impact. ~~The Project would result in a minimal increase in the demand for wastewater treatment services over that which currently exists, as the Project would result in construction of four new residential units that would replace the existing onsite residential unit and detached garage. The additional demand for service would not interfere with any wastewater treatment provider's service capacity. The existing residence currently receives wastewater treatment services from the City, and adequate services are available to serve the four single-family units. Impacts would be less than significant, and no mitigation measures are required. The Project would not require additional wastewater treatment capacity. No impacts would occur and no mitigation measures are required.~~

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

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No Impact. ~~Construction debris and waste would be generated from the demolition of the existing residence and detached garage and construction of the four new residences. All solid waste from the Project site would be transported to the Miramar Landfill, which has adequate capacity to accept the limited amount of waste that would be generated by the Project. Long-term operation of the four residential uses is anticipated to generate typical amounts of solid waste associated with single dwelling residential use, which would result in a minimal increase over that currently produced by the existing one residence. Impacts are considered to be less than significant, and no mitigation measures are required. The Project would not result in solid~~

~~waste. No mitigation measures are required.~~ The Project would not require additional landfill capacity and would not result in impacts. No mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
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|-------|--------------------------------|--|------------------------------|-----------|

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|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| g. Comply with federal, state, and local statutes and regulation related to solid waste? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

No Impact. The Project would comply with all federal, state and local statutes and regulation related to solid waste. No mitigation measures are required.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE -

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|

The proposed project does not have the potential to result in any of the above listed impacts.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|-------|--------------------------------|--|------------------------------|-----------|
|-------|--------------------------------|--|------------------------------|-----------|

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable futures projects)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|

The Project would not result in cumulatively considerable impacts.

| Issue | Potentially Significant Impact | Less Than Significant with Mitigation Incorporated | Less Than Significant Impact | No Impact |
|--|--------------------------------------|--|------------------------------------|-------------------------------------|
| c. Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| No Impact. Implementation of the Project would not result in effects that would significantly directly or indirectly impact human beings. | | | | |

INITIAL STUDY CHECKLIST**REFERENCES****I. AESTHETICS / NEIGHBORHOOD CHARACTER**

X City of San Diego General Plan.

X Community Plan.

X Local Coastal Plan.

X Site Specific Report

Final Environmental Impact Report La Jolla Children's Pool, Project No. 71362/SCH No. 1999011060, prepared for City of San Diego Engineering and Capital Projects Department

II. AGRICULTURAL RESOURCES & FOREST RESOURCES

___ City of San Diego General Plan.

___ U.S. Department of Agriculture, Soil Survey - San Diego Area, California, Part I and II, 1973.

___ California Agricultural Land Evaluation and Site Assessment Model (1997)

___ Site Specific Report:

III. AIR QUALITY

___ California Clean Air Act Guidelines (Indirect Source Control Programs) 1990.

___ Regional Air Quality Strategies (RAQS) - APCD.

___ Site Specific Report:

IV. BIOLOGY

___ City of San Diego, Multiple Species Conservation Program (MSCP), Subarea Plan, 1997

___ City of San Diego, MSCP, "Vegetation Communities with Sensitive Species and Vernal Pools" Maps, 1996.

- ___ City of San Diego, MSCP, "Multiple Habitat Planning Area" maps, 1997.
- ___ Community Plan - Resource Element.
- ___ California Department of Fish and Game, California Natural Diversity Database, "State and Federally-listed Endangered, Threatened, and Rare Plants of California," January 2001.
- ___ California Department of Fish & Game, California Natural Diversity Database, "State and Federally-listed Endangered and Threatened Animals of California," January 2001.
- ___ City of San Diego Land Development Code Biology Guidelines.
- X Site Specific Report:
Letter from the National Oceanic and Atmospheric Administration (NOAA) to Councilmember Donna Frye, Chairperson of the Natural Resources and Culture Committee (NR&C) of the San Diego City Council, dated May 14, 2010.

V. CULTURAL RESOURCES (INCLUDES HISTORICAL RESOURCES)

- X City of San Diego Historical Resources Guidelines.
- ___ City of San Diego Archaeology Library.
- ___ Historical Resources Board List.
- ___ Community Historical Survey:
- ___ Site Specific Report:

VI. GEOLOGY/SOILS

- X City of San Diego Seismic Safety Study.
 - ___ U.S. Department of Agriculture Soil Survey - San Diego Area, California, Part I and II, December 1973 and Part III, 1975.
 - ___ Site Specific Report:
-

VII. GREENHOUSE GAS EMISSIONS

___ Site Specific Report:

VIII. HAZARDS AND HAZARDOUS MATERIALS

___ San Diego County Hazardous Materials Environmental Assessment Listing,

___ San Diego County Hazardous Materials Management Division

___ FAA Determination

___ State Assessment and Mitigation, Unauthorized Release Listing, Public Use Authorized.

___ Airport Land Use Compatibility Plan.

___ Site Specific Report:

IX. HYDROLOGY/WATER QUALITY

___ Flood Insurance Rate Map (FIRM).

___ Federal Emergency Management Agency (FEMA), National Flood Insurance Program - Flood Boundary and Floodway Map.

___ Clean Water Act Section 303(b) list, http://www.swrcb.ca.gov/tmdl/303d_lists.html).

___ Site Specific Report:

X. LAND USE AND PLANNING

 X City of San Diego General Plan.

 X Community Plan.

___ Airport Land Use Compatibility Plan

___ City of San Diego Zoning Maps

___ FAA Determination

XI. MINERAL RESOURCES

___ California Department of Conservation - Division of Mines and Geology, Mineral Land Classification.

___ Division of Mines and Geology, Special Report 153 - Significant Resources Maps.

___ Site Specific Report:

XII. NOISE

___ Community Plan

___ San Diego International Airport - Lindbergh Field CNEL Maps.

___ Brown Field Airport Master Plan CNEL Maps.

___ Montgomery Field CNEL Maps.

___ San Diego Association of Governments - San Diego Regional Average Weekday Traffic Volumes.

___ San Diego Metropolitan Area Average Weekday Traffic Volume Maps, SANDAG.

___ City of San Diego General Plan.

___ Site Specific Report:

XIII. PALEONTOLOGICAL RESOURCES

X City of San Diego Paleontological Guidelines.

___ Deméré, Thomas A., and Stephen L. Walsh, "Paleontological Resources City of San Diego," Department of Paleontology San Diego Natural History Museum, 1996.

X Kennedy, Michael P., and Gary L. Peterson, "Geology of the San Diego Metropolitan Area, California. Del Mar, La Jolla, Point Loma, La Mesa, Poway, and SW 1/4 Escondido 7 1/2 Minute Quadrangles," California Division of Mines and Geology Bulletin 200, Sacramento, 1975.

___ Kennedy, Michael P., and Siang S. Tan, "Geology of National City, Imperial Beach and Otay Mesa Quadrangles, Southern San Diego Metropolitan Area, California," Map Sheet 29, 1977.

___ Site Specific Report:

XIV. POPULATION / HOUSING

___ City of San Diego General Plan.

___ Community Plan.

___ Series 11 Population Forecasts, SANDAG.

___ Other:

XV. PUBLIC SERVICES

___ City of San Diego General Plan.

___ Community Plan.

XVI. RECREATIONAL RESOURCES

___ City of San Diego General Plan.

___ Community Plan.

X Site Specific Report

Department of Park and Recreation "Children's Pool Park Ranger Observational Accounts – Children's Pool Use Survey February 29-May 15, 2012."

___ City of San Diego - San Diego Regional Bicycling Map

___ Additional Resources:

XVII. TRANSPORTATION / CIRCULATION

___ City of San Diego General Plan.

___ Community Plan.

___ San Diego Metropolitan Area Average Weekday Traffic Volume Maps, SANDAG.

____ San Diego Region Weekday Traffic Volumes, SANDAG.

____ Site Specific Report:

XVIII. UTILITIES

____ _____.

XIX. WATER CONSERVATION

____ Sunset Magazine, New Western Garden Book. Rev. ed. Menlo Park, CA: Sunset Magazine.

Created March 18, 2010



Project Location Map

La Jolla Children's Pool Enclosure – Project Number 225045

888 Coast Boulevard



FIGURE

1

North



Map data ©2013 Google - Edit in Google Map Maker Report a problem



Aerial Photo

La Jolla Children's Pool Enclosure – Project Number 225045

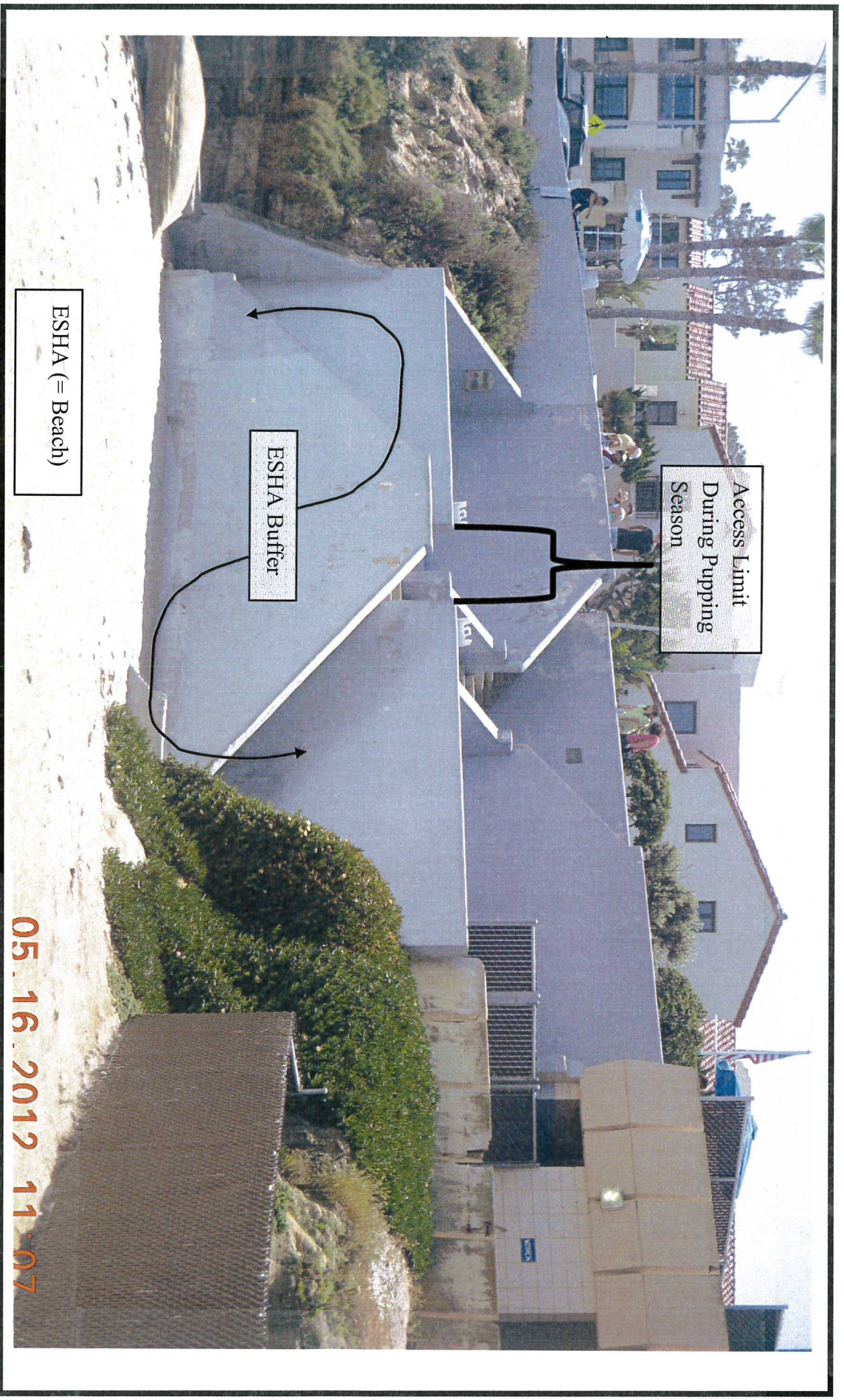
888 Coast Boulevard

FIGURE

2

North





La Jolla Children's Pool Enclosure / Project No. 225045
City of San Diego – Development Services Department

FIGURE
No. 3