

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** December 24, 2012

**TO:** Honorable Mayor and City Councilmembers

**FROM:** City Attorney

**SUBJECT:** Potential Extension of Length of Seasonal Rope at Children's Pool

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**INTRODUCTION**

This Office has been asked whether the previously approved 130-foot long seasonal rope at the Children's Pool beach may be extended to 152 feet without further approvals being obtained, and what the potential consequences could be if such action is taken without further approvals.

**BACKGROUND**

The City has a City-issued Coastal Development Permit (701673) and Site Development Permit (701765) (Permit, Attachment 1) for the seasonal installation and maintenance of a rope at the Children's Pool beach. The Permit was approved by the Planning Commission on January 21, 2010, upon appeal from a Hearing Officer decision to approve the Permit. The Permit allows the rope to be installed annually from December 15 to May 15, the estimated dates of the harbor seal pupping season. The Permit states that "the installed rope length shall not exceed 130 feet, and a minimum three-foot opening shall be maintained from the post at the easterlymost end of the rope to the nearest obstruction so as to create an opening for beach access." (Permit, Condition 11.) However, the result of using a 130-foot rope is that the opening is significantly wider than three feet. An opening of three feet would require a rope of approximately 152 feet, which exceeds the length allowed by the Permit.

## ANALYSIS

### EXTENSION OF THE ROPE MAY BE ACCOMPLISHED BY OBTAINING REVISIONS TO THE EXISTING COASTAL DEVELOPMENT PERMIT AND SITE DEVELOPMENT PERMIT IN ACCORDANCE WITH THE LAW

#### A. The California Coastal Commission Must Process and Approve Any Changes to the Coastal Development Permit.

After the Planning Commission's denial of the appeal and granting of the Permit, the California Coastal Commission (CCC) determined that it has permit jurisdiction over the Children's Pool. See Letter from the CCC, Attachment 2. The letter states that "any new application for a year-round rope barrier should be submitted to the Coastal Commission after it has received any necessary local discretionary approvals from the City." However, the reference to "any new application" should not be read to mean that revisions to this existing Permit may be processed by the City. The CCC retains permit jurisdiction over trust lands, even when a local coastal program has been certified for an area. Cal. Pub. Res. Code § 30519(b). The Children's Pool is granted to the City in trust by the State of California. Cal. Stats. 2009, ch. 19 § 1 (Senate Bill 428). Therefore, the City is without jurisdiction to process any amendments to the Permit as it pertains to coastal development.<sup>1</sup> Approvals given or actions taken by an agency that do not conform to the law are generally void under the doctrine of ultra vires ("beyond strength"), or in other words, in excess of the agency's powers. *Trancas Property Owners Ass'n. v. City of Malibu*, 138 Cal. App. 4th 172 (2006) (settlement agreement approving development without compliance with public noticed hearing requirements was void); *Summit Media LLC v City of Los Angeles* (filed December 10, 2012) (settlement agreement allowing billboards in violation of the City of Los Angeles municipal code was void and permits were invalid); *Katsura v City of San Buenaventura*, 155 Cal. App. 4th 104 (2007) (consultant could not obtain payment for extra work that was not approved in accordance with that city's charter).

Proposed amendments to CCC-issued permits may be considered either material or immaterial, depending on whether the proposed amendment has the potential to adversely impact coastal resources. Cal. Code Regs. title 14, § 13166. If the executive director of the CCC determines that the proposed amendments are immaterial, notice of that determination is posted at the project site and mailed to all interested persons. *Id.* If no written objection is made within ten days of the mailed notice, the determination of immateriality is conclusive and the permit is approved. *Id.* If a written objection is received, but does not, in the determination of the executive director, raise

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<sup>1</sup> Coastal Development means "development" as defined in the California Coastal Act of 1976, section 30106 in the Coastal Overlay Zone, and means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes and kelp harvesting. As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. San Diego Municipal Code § 113.0103.

an issue of conformity with the Coastal Act or the certified local coastal program, the objection and determination shall be reported to the CCC at its next regularly scheduled meeting, and shall be referred to the CCC for action upon the request of at least three commissioners. *Id.*

If the executive director determines that the proposed amendment is material, the application shall be referred to the CCC, and shall be approved if the CCC finds that the development conforms to the Coastal Act or the certified local coastal program.

In this case, staff has stated that the Permit's limitation of the rope's length at 130 feet instead of 152 feet was a clerical error. Therefore, a strong argument could be made that any proposed amendment to the previously-issued Coastal Development Permit could be considered immaterial.

**B. A City Decision Maker Must Approve any Revision to the Site Development Permit in accordance with the San Diego Municipal Code.**

The San Diego Municipal Code sets forth two ways in which an issued permit may be revised. A change which is a minor modification may be revised through the substantial conformance process. SDMC § 126.0112. Substantial conformance means "that a revision to a *development* that was approved through a permit or *tentative map* complies with the objectives, standards, guidelines, and conditions for that permit or *tentative map*." SDMC § 113.0103. The Children's Pool is in the Coastal Overlay Zone. SDMC § 132.0102; Permit, p. 1. Therefore, a substantial conformance review for revisions to the Site Development Permit would be subject to a Process Two decision making level.<sup>2</sup>

The other manner in which a permit may be modified is through an amendment. SDMC § 126.0113. An amendment to a development permit is appropriate when the proposed revision would significantly reduce the scope of the development, the revision is not in substantial conformance with the approved permit, or the proposed revision is a change in use from one category to another or a deletion of use within the same category. *Id.* Amendments to development permits are subject to the same process level as a new application for the same permit. SDMC § 126.0113(c). The Permit was a Process Three decision, and an amendment to the Permit would also be a Process Three decision. As stated above, assuming the only modification sought to the Site Development Permit was to correct a clerical error, staff should analyze whether substantial conformance review would be most appropriate.

**C. Development Without a Proper Permit May Subject the City to Litigation, Civil Penalties and Attorney's Fees.**

The Coastal Act sets forth specific remedies that are in addition to any other remedies under the law. Cal. Pub. Res. Code § 30800. Any party may bring a cause of action to restrain violations of the Coastal Act, and would be entitled to attorney fees if successful. Cal. Pub. Res. Code § 30803; *Beach Colony II v. Cal. Coastal Comm'n*, 166 Cal. App. 3d 106 (1985). Preliminary equitable relief may be granted merely upon a prime facie showing of a violation of the Coastal

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<sup>2</sup> A Process Two decision requires that a Notice of Future Decision be provided as set forth and that the decision be made not less than 11 business days after the date on which the notice is mailed. SDMC § 112.0503. A Process Two decision may be appealed to the Planning Commission. SDMC § 112.0504.

Act. *Id.* In addition, civil penalties for development in violation of the Coastal Act may be imposed in superior court in the amounts of not less than \$500 and not more than \$30,000, and an action may be brought by any party. Cal. Pub. Res. Code §§ 30805, 30820.

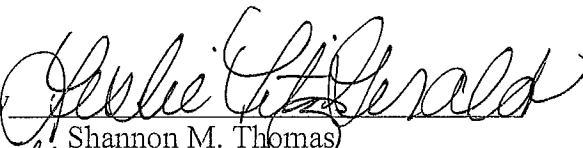
Following notification, the CCC executive director may issue a cease and desist order for any activity that has been undertaken or has been threatened to be undertaken that requires a permit from the CCC for which no permit has been secured or that may be inconsistent with a permit issued by the CCC. Cal. Pub. Res. Code § 30809. Violations of cease and desist orders are subject to penalties not to exceed \$6000 per day for each day that the violation exists. Cal. Pub. Res. Code § 30821.6. Finally, intentional and knowing violations of any provision of the Coastal Act or any order pursuant to the Coastal Act may be subject to civil penalties imposed by the superior court of not less than \$1,000 per day, nor no more than \$15,000 per day of violation, or of exemplary damages in the discretion of the court. Cal. Pub. Res. Code §§ 30820, 30822.

In addition, the City could be subject to a potential lawsuit in San Diego Superior Court seeking to restrict the rope to 130 feet in length until proper approvals are obtained. Attorney's fees also would likely be requested.

### CONCLUSION

Extending the seasonal rope at the Children's Pool from 130 to 152 feet would require amending the existing Coastal Development and Site Development permits. The CCC would amend the Coastal Development Permit, and the City would amend the Site Development Permit. Should the City engage in Coastal Development without the proper permits, it may be subject to causes of action by both private citizens and the CCC, which may include the imposition of civil penalties and attorney's fees.

JAN I. GOLDSMITH, CITY ATTORNEY

By   
for Shannon M. Thomas  
Deputy City Attorney

SMT/LAF:nja

Attachments

cc: Stacey LoMedico  
Kelly Broughton

## Attachment 1

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 4900

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

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

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

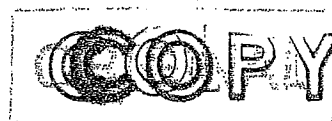
The project shall include:

Rope, supporting posts, support post footings and signs;

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

**STANDARD REQUIREMENTS:**

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



2. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
  - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.
5. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

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



PLANNING/DESIGN REQUIREMENTS:

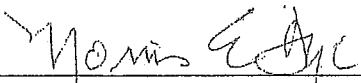
9. All debris caused by construction must be removed from the site and disposed of appropriately.
10. All materials shall be maintained and managed so as to prevent them from entering sensitive areas including the coastal waters. Placement shall be maintained in location identified on Exhibit "A," during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

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



Coastal Development Permit No. 701673, Site Development Permit No. 701765  
January 21, 2010

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

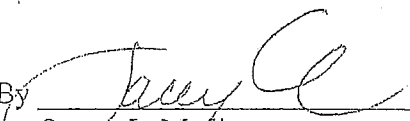
  
\_\_\_\_\_  
Morris E. Dye  
Development Project Manager

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

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

Park and Recreation Department  
City of San Diego  
Owner/Permittee

By   
\_\_\_\_\_  
Stacey LoMedico  
Director

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

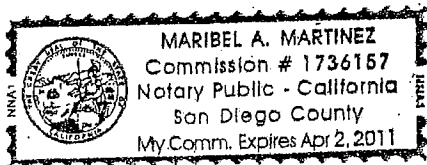
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On April 14, 2010 before me, Maribel A. Martinez Notary Public

personally appeared Stacey De Medico & Morris E. Dye



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

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

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

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

### Description of Attached Document

Title or Type of Document: De Jolla Childrens Prob. Papa Bassies Pk 194347

Document Date: January 21, 2010 Number of Pages: 4

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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CITY OF SAN DIEGO  
RESOLUTION NO. 4562-PC  
COASTAL DEVELOPMENT PERMIT NO. 701673  
SITE DEVELOPMENT PERMIT NO. 701765  
La Jolla Children's Pool Annual Rope Barrier PTS No. 194347

WHEREAS, the City of San Diego Park and Recreation Department, Owner/Permittee, applied to the City of San Diego for a permit to erect a rope barrier (including support posts and foundations), during seal pupping season, each year from December 15<sup>th</sup> to May 15<sup>th</sup>; and

WHEREAS, the project is located at the La Jolla Children's Pool, west of Coast Boulevard, near Jenner Street, La Jolla, within the Coastal Overlay Zone (Coastal Commission Appeal Jurisdiction) and the La Jolla Community Planning Area; and

WHEREAS, the Hearing Officer approved Coastal Development Permit No. 701673 and Site Development Permit No. 701765 on December 2, 2009; and

WHEREAS, the Hearing Officer's approval was appealed to the Planning Commission on December 7, 2009; and

WHEREAS, on January 21, 2010, the Planning Commission considered the appeal the Hearing Officer's approval of Coastal Development Permit No. 701673 and Site Development Permit No. 701765 (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Coastal Development Permit No. 701673 and Site Development Permit No. 701765) pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the City of San Diego as follows:

That the City of San Diego adopts the following written Findings, dated January 21, 2010.

FINDINGS:

Findings for Coastal Development Permit - Section 126.0708

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan; and

The project is located on the sand of the La Jolla Children's Pool west of Coast Boulevard, near Jenner Street, in La Jolla. The project would include the rope barrier supported by poles, with pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding four feet and the rope would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the seal pupping season each year from December 15<sup>th</sup> to May 15<sup>th</sup>, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. The La Jolla Community Plan does not envision the Children's Pool as an improved recreation area, and, therefore, the placement of the rope would not conflict with long range recreation plans for the area. Given that the sand beach and ocean would remain open to the public while the rope would be in place, that the rope's location and type of rope used would not block any identified public views at the Children's Pool, and the placement of the rope would not conflict with future plans for the Children's Pool area, the proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan, and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan.

2. The proposed coastal development will not adversely affect environmentally sensitive lands; and

The adjacent Coastal Beach and Coastal Bluff are the environmentally sensitive resources potentially affected by the project. The proposed installation of the rope includes hand digging small holes (less than 18 inches deep) in the sand, above the Mean High Tide Line, placing the foundation portion of the rope supports in the holes and covering the foundations with sand. This would allow for the rope barrier to be in place during the annual seal pupping season, each year from December 15<sup>th</sup> to May 15<sup>th</sup>. At no time would the rope touch the adjacent Coastal Bluff. Proposed permit conditions would require that any debris caused by construction, must be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the adjacent coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time periods. As the project involves digging relatively shallow holes in the beach sand above the Mean High Tide Line, permit conditions would prohibit any debris or construction materials from entering the ocean, and permit conditions would also prohibit the project affecting the adjacent Coastal Bluff, the proposed coastal development will not adversely affect environmentally sensitive lands.

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program; and

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The area above the Children's Pool is identified as a Viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan. The proposed rope would be placed at a height not exceeding

four feet and would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan. While the proposed rope barrier would provide a buffer between humans and seals during the annual seal pupping season, each year from December 15<sup>th</sup> to May 15<sup>th</sup>, the beach would remain open for public use and swimming would be allowed. Swimming may not be recommended due to bacteria levels possibly exceeding health standards, but the rope is not intended to prevent access to the sand beach or the ocean. In addition, existing vertical access (concrete stairs) would remain unchanged by the project. Given that the sand beach and ocean would remain open to the public while the rope would be in place, and that the rope's location and type of rope used would not block any identified public views at the Children's Pool, the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.

4. **For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.**

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

Section 30211 of the California Coastal Act requires that no development interfere with the public's right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation. The purpose and intent of Section 30211 is ensure that the public can access the sea and its associated rock coastal beaches. The purpose and intent of the proposed rope is to create a buffer between the public utilizing the sand beach and accessing the sea at the Children's Pool, and the seals, as they are hauled out on the sand during the annual seal pupping season from December 15<sup>th</sup> to May 15<sup>th</sup>. The rope is not intended to keep the public from reaching either the beach or the sea at the Children's Pool. The public will be able to enter the sea at the Children's Pool while the rope is installed, due to a three-foot opening that would be maintained by permit condition. In addition, signage that is posted at the Children's Pool indicates that the beach is open to the public. Therefore, the proposed rope would not interfere with the public's right of access to the sea, the use of dry sand and the use of rock coastal beaches up to the first line of terrestrial vegetation as described in Section 30211.

Section 30220 of the California Coastal Act requires that coastal areas suited for water-oriented recreational activities that cannot be provided at inland water areas, be protected for such uses. The rope barrier would not prevent the use of the Children's Pool for recreational activities and no recreational activities are planned for the Children's Pool area. The rope is not intended to keep the public from reaching either the beach or the sea at the Children's Pool. The public would be able to enter the sea at the Children's Pool while the rope has been installed. In addition, signage that is posted at the Children's Pool indicates that the beach is open for public use.

As the project would not block public access and the beach and ocean would remain open for public recreation, the project is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

One of the goals of the Community Facilities, Parks, and Services Element of the LJCP (p. 113) is to, "Ensure that all new and existing public facilities are designed and developed in a manner that will not contribute any adverse impacts to the environmentally sensitive areas of La Jolla." The Children's Pool is located in an area designated as Environmentally Sensitive Lands containing Coastal Beaches and Coastal Bluffs. The proposed rope installation would have no significant affect on either of these resources. The proposed rope installation would include hand digging holes in the sand (not exceeding 18 inches in depth), placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. Proposed permit conditions would require that any debris caused by construction, must be removed from the site and disposed of appropriately, and would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time period. The La Jolla Community Plan also calls for the protection of public views. The proposed rope would be placed at a height not exceeding four feet and would not exceed one half-inch in diameter. Given this height and diameter, the rope would not block any public views. In addition, the La Jolla Community Plan does not envision the Children's Pool as an improved recreation area, and, therefore, the placement of the rope would not conflict the with long range recreation plans for the area. As the project would not have any adverse impacts on the Coastal Beach or the Coastal Bluffs, and the project would not negatively affect any public views or recreation plans for the area, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare; and

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The primary objective of the proposed rope installation is to serve as a buffer between humans and seals during the annual seal pupping season, December 15<sup>th</sup> to May 15<sup>th</sup>. Lifeguards advise beachgoers to avoid unattended seal pups, as a pup's mother may be foraging and conflicts could arise upon a mother's return. Users are also advised not to place themselves between a seal mother and her pup. While the beach is open to public use, and beachgoers may pass the rope to enter the beach, the rope's presence serves as a caution, and allows users to read signage warning them that it is unlawful to harass the seals, and that the water may cause illness due to bacteria levels that may exceed health standards. The sign also informs users that swimming is allowed, but is not recommended, and that the beach is open for public use. As the project would create a safety buffer between humans and seals, and would provide

information to the beach-going public regarding potential health hazards, the project would not be detrimental to the public health, safety, and welfare.

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

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

Land Development Code regulations require that the construction of a project potentially affecting an environmentally sensitive resource, result in minimum disturbance to that resource. The proposed rope installation would include digging shallow holes for each post footing and covering them with the sand. Standard, half-inch cord would then be strung between the posts. Informational signage would be mounted to the posts to provide the public with safety information. In addition, the height of the rope would not exceed four feet, and no public views would be obstructed. None of these activities would significantly disturb the Coastal Beach or Coastal Bluff. As such, the proposed development would result in minimum disturbance of the environmentally sensitive lands, and, therefore, would comply with the Land Development Code.

B. Supplemental Findings--Environmentally Sensitive Lands

1. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The proposed project site is the sand at the Children's Pool beach. There is ample sand at the beach to allow the rope support posts to be placed in holes that would be hand dug in the sand, and to cover up the post foundations with the sand when the installation is complete. The proposed rope installation would include digging shallow holes for each post footing and covering them with the sand. Standard, half-inch cord would then be strung between the posts. Informational signage would be mounted to the posts to provide the public with safety information. In addition, the height of the rope would not exceed four feet, and no public views would be obstructed. None of these activities would significantly disturb the Coastal Beach or Coastal Bluff resources. As the site can readily accommodate the installation of the rope barrier project with minimal disturbance to the Children's Pool beach, and neither the Coastal Beach nor the Coastal Bluff would be negatively affected by the project, the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

2. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The proposed rope installation would include digging shallow holes (not exceeding 18 inches in depth) for each post footing and covering them with the sand. The rope would be placed above the Mean High Tide Line and, as such, would not create erosional conditions. No geologic forces are expected to be factors with this type of development, and because no structures are proposed, no flood or fire hazards are anticipated. Therefore, the proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The proposed installation of the rope would include digging shallow holes (not exceeding 18 inches in depth) in the sand, placing the foundation portion of the rope supports in the holes and covering the foundations up with sand. The rope will be installed in dry sand above the Mean High Tide Line, ensuring the project can be installed and removed with minimal affect on the Coastal Beach and Coastal Bluff. In addition, proposed permit conditions would require that any debris caused by construction to be removed from the site and disposed of appropriately. Permit conditions would also require that all materials shall be maintained and managed so as to prevent them from entering sensitive areas, including the coastal waters. Placement would be required to be maintained in location identified on Exhibit "A," during the identified time period. Therefore, the proposed development would be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan;

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

The project is not located in or near the Multiple Species Conservation Program (MSCP) Subarea. Therefore, the proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan



5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

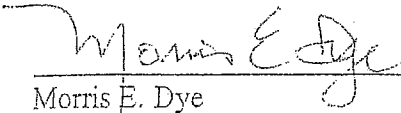
The rope barrier pole foundations would be placed in dry sand above the Mean High Tide Line. As such, the project would not create erosional conditions. Sand removed to hand dig the holes for pole installation would be used to cover the foundations, and therefore, sand would not be removed from the Children's Pool Beach as a result of the project. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

6. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

The project would include the rope barrier supported by poles, with the pole foundations buried in the sand above the Mean High Tide Line. A rope barrier would be erected, and stretch from near the concrete access stairs on the east side of the beach to the sea wall on the west side, as shown on Exhibit "A."

No mitigation is required of this project. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the City of San Diego, Coastal Development Permit No. 701673 and Site Development Permit No. 701765 is hereby GRANTED by the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Coastal Development Permit No. 701673 and Site Development Permit No. 701765, a copy of which is attached hereto and made a part hereof.

  
\_\_\_\_\_  
Morris E. Dye  
Development Project Manager  
Development Services

Adopted on: January 21, 2010

Job Order No. 4900

cc: Legislative Recorder, Planning Department



David L. Butler

COUNTY OF SAN DIEGO  
ASSESSOR/RECORDER/COUNTY CLERK



RECORDER/COUNTY CLERK'S OFFICE

1600 Pacific Highway, Suite 260  
P.O. Box 121750 \* San Diego, CA 92112-1750  
Tel. (619) 238-8158 \* Fax (619) 557-4155

[www.sdarcc.com](http://www.sdarcc.com)

ASSESSOR'S OFFICE

1600 Pacific Highway, Suite 103  
San Diego, CA 92101-2480  
Tel. (619) 236-3771 \* Fax (619) 557-4056

BATCH #: 283131620100416

DOCUMENT #'S: 2010-0189907

RECORDING DATE: APR 16, 2010 11:44 AM

TOTAL DUE: 0.00

SERVICES AVAILABLE AT  
OFFICE LOCATIONS

- \* Tax Bill Address Changes
- \* Records and Certified Copies:
  - Birth/ Marriage/ Death/ Real Estate
- \* Fictitious Business Names (DBAs)
- \* Marriage Licenses and Ceremonies
- \* Assessor Parcel Maps
- \* Property Ownership
- \* Property Records
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- \* Property Sales
- \* On-Line Purchases
  - Assessor Parcel Maps
  - Property Characteristics
  - Recorded Documents

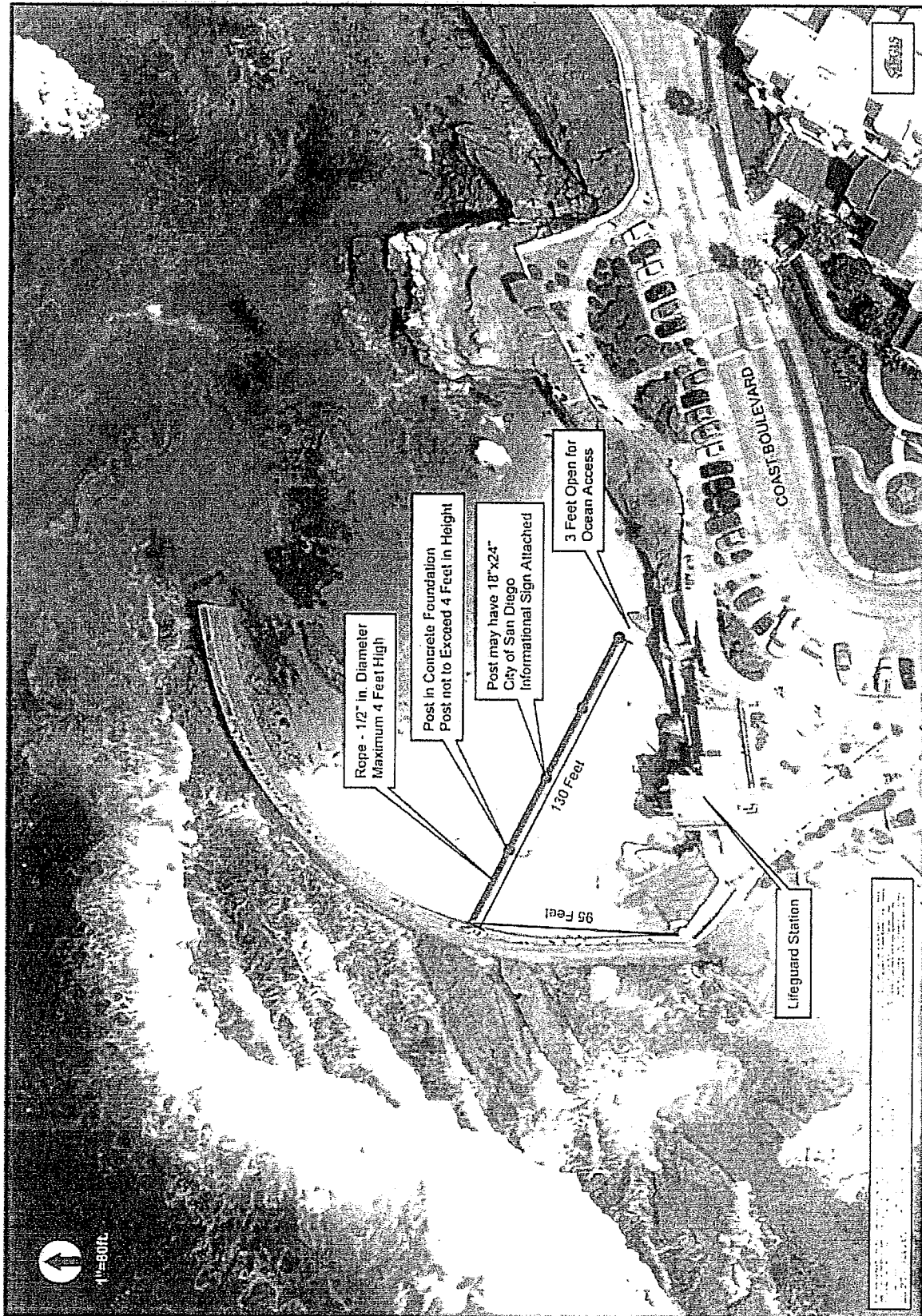


EXHIBIT "A"

CHILDREN'S POOL ROPE BARRIER



## Attachment 2



**CALIFORNIA COASTAL COMMISSION**

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



August 19, 2011

Mr. George Schaefer  
Office of the City Attorney  
1200 Third Ave., Suite 1100  
San Diego, CA 92101-4100

RE: Coastal Development Permit Jurisdiction - Children's Pool La Jolla

Dear Mr. Schaefer,

This letter is in response to your letter of July 26, 2011 to Christina Arndt requesting a determination of coastal development permit jurisdiction for a rope barrier on the beach at the La Jolla Children's Pool. In your letter, you also request acknowledgement of a previous informal determination by Commission staff that a portion of Children's Pool beach is within the City's permit jurisdiction which has led to the City's issuance of a coastal development permits for development at Children's Pool beach in recent past.

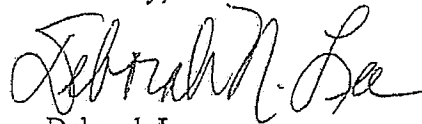
The District staff of the Coastal Commission did previously advise the City that the rope barrier was within the City's permit jurisdiction; however, this determination was incorrectly based on the approximate location of the mean high tide line as it exists today. After consultation with the Commission's Mapping Unit, we realize that we did not take into consideration the fact the beach is located on historic tidelands and submerged lands that have previously been subject to the public trust and, therefore, the entire beach is subject to the Commission's original permit jurisdiction. (Pub. Resources Code § 30519(b), 14 Cal. Code Regs. § 13577(f).) A formal boundary determination is attached for your use.

As a result, any potential new application for a year-round rope barrier should be submitted to the Coastal Commission after it has received any necessary local discretionary approvals from the City. In addition, the current City-issued permit for the annual rope to be installed during pupping season has been reviewed by the Commission on appeal and the Commission found no substantial issue was raised by the City's permit with regard to consistency with the certified LCP and the public access and recreation policies of the Coastal Act.

Mr. George Schaefer  
August 19, 2011  
Page 2

Please advise if you require any additional information regarding this determination.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Lee".

Deborah Lee  
District Manager

cc: Christina Arndt  
Sherilyn Sarb  
Lee McEachern



## CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2 219  
VOICE (415) 904-5 200  
FAX (4 15) 904-5 400  
TDD (415) 597-5885



August 19, 2011

To: Deborah Lee, San Diego Coast District Office Manager

From: Jon Van Coops, GIS/Mapping Program Manager

Cc: Jan I. Goldsmith, City Attorney, City of San Diego, Civil Litigation Division,  
1200 Third Avenue, Suite 1100, San Diego, CA 92101-4100

Subject: Coastal Zone Boundary Determination No. 14-2011, Children's Pool Rope  
Barrier Project, City of San Diego.

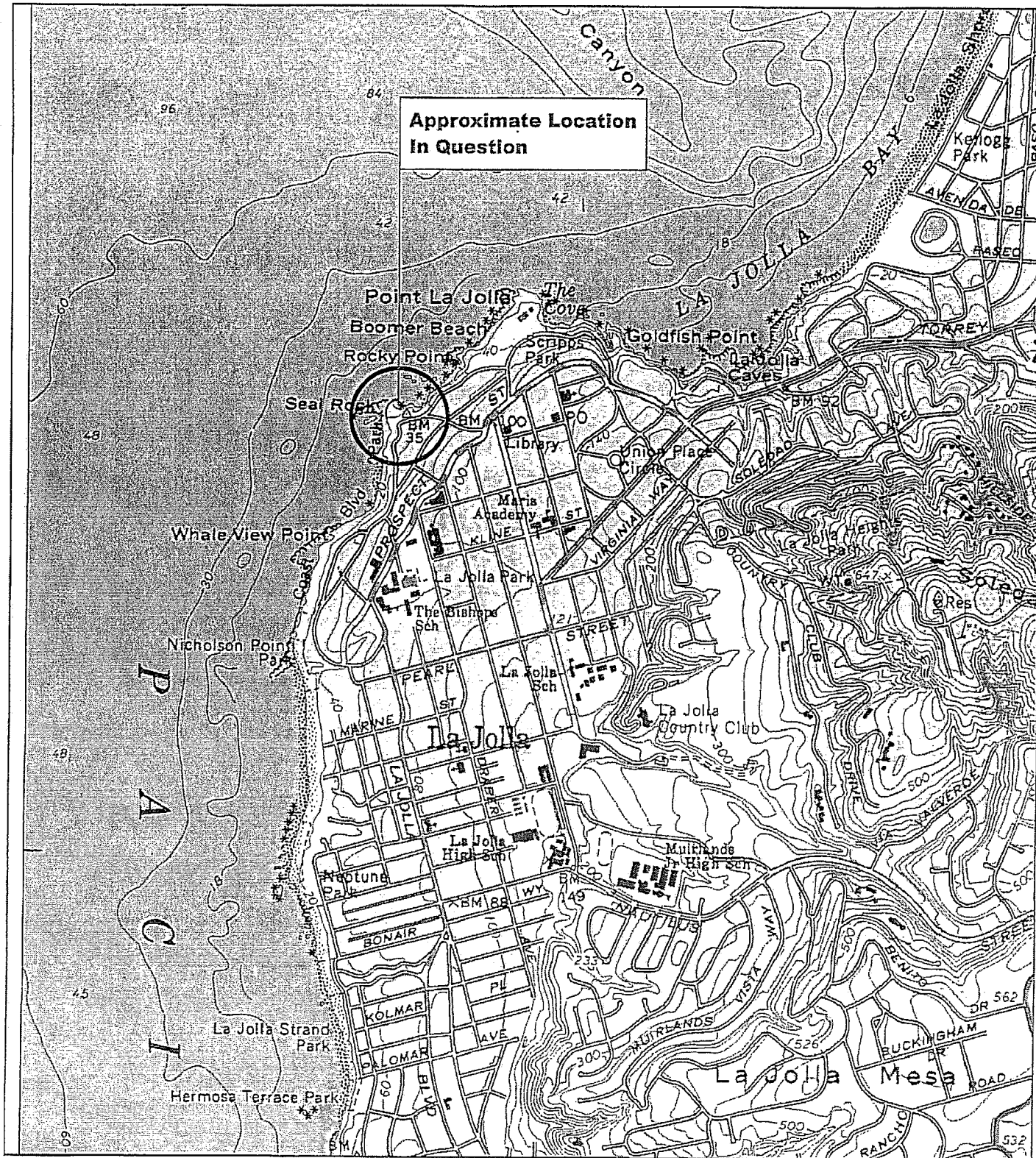
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A jurisdictional boundary determination has been requested for the Rope Barrier project located at Children's Pool, City of San Diego. Enclosed is a copy of a portion of Coastal Zone Boundary Map No. 158 (La Jolla Quadrangle) with the approximate location of the project area indicated. See Exhibit 1. Also included is an Aerial Site Plan exhibit that depicts the Rope Barrier project with the Coastal Commission's permit jurisdiction identified. See Exhibit 2.

Based on the information provided and available in our office, the Children's Pool Rope Barrier project appears to be located entirely within the coastal zone and entirely within the Coastal Commission's retained permit jurisdiction as indicated on Exhibit 2. Any development that is proposed within this area would require coastal development permit authorization from the Coastal Commission. The Coastal Commission's permit jurisdiction is based on the existence of tidelands, submerged lands and public trust lands. The information available indicates that the area in question appears to be located, in part, on tidelands submerged land and land that is potentially subject to the public trust. Based on this information the Coastal Commission is asserting jurisdiction over the entire Children's Pool Rope Barrier project.

Please contact Darryl Rance of my staff at (415) 904-5335 if you have any questions regarding this determination.

Attachments



BD 14-2011  
Children's Pool  
City of San Diego

Portion of Coastal Zone  
Boundary Map No. 158  
(La Jolla Quadrangle)

CALIFORNIA  
COASTAL  
COMMISSION

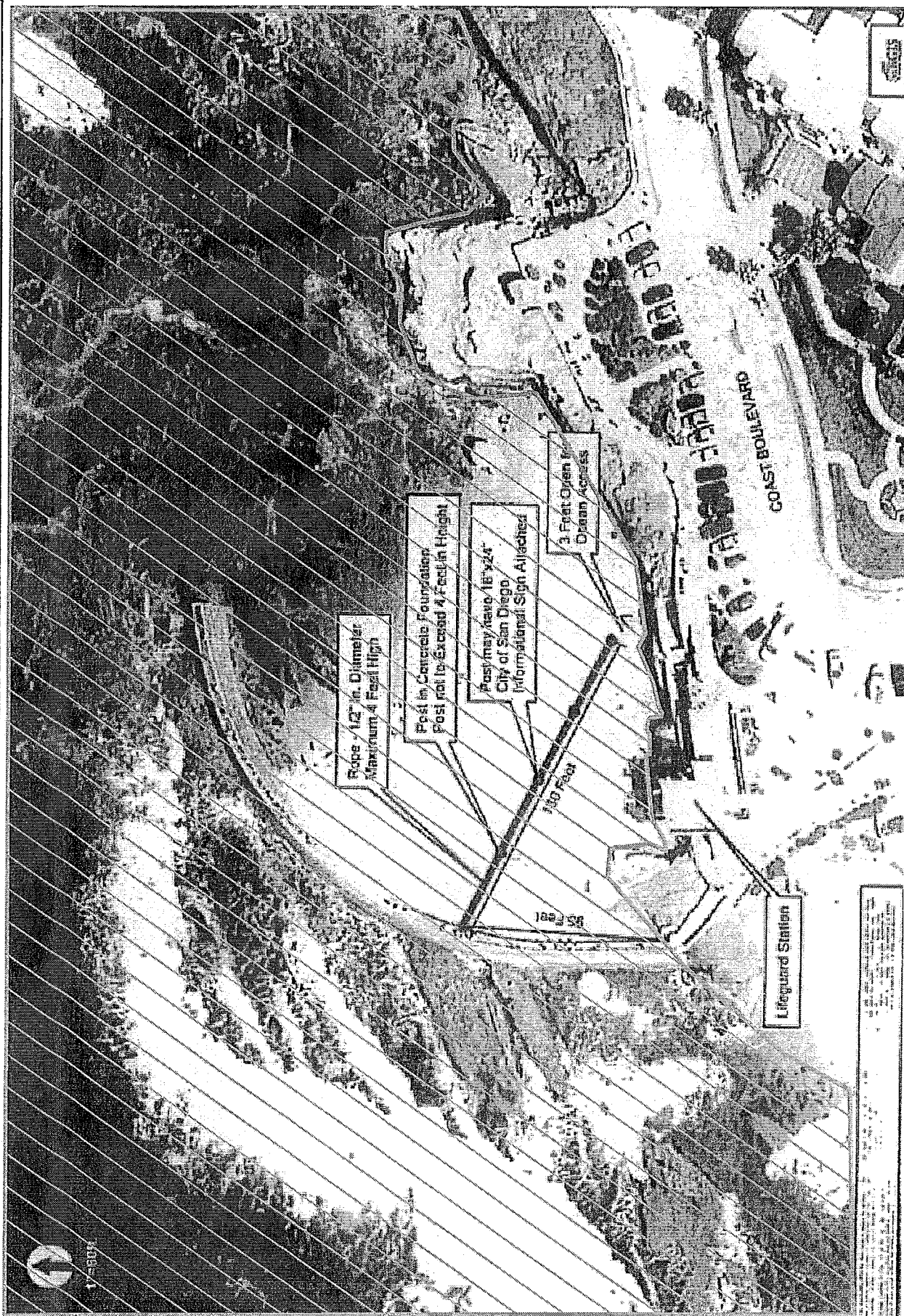
Technical Services Division

For illustrative purposes only.



**Exhibit 1**

DAR 07/2011



BD 14-2011

Children's Pool

City of San Diego

CALIFORNIA  
COASTAL  
COMMISSION

Technical Services Division



Coastal Commission Permit Jurisdiction

For illustrative purposes only.



Exhibit 2

DAR 07/2011

