

Watermens Alliance



Michael Sutton, President
California Fish and Game Commission
1416 Ninth Street
Sacramento, CA 95814-2090

5/20/2013

Re: City of San Diego Closure of La Jolla Children's Pool to recreational fishermen.

Dear Mr. Sutton,

The Watermens Alliance requests the California Department of Fish and Wildlife's and the California Fish and Wildlife Commission assistance with limited access for recreational fishermen at Children's Pool in La Jolla imposed unlawfully by the City of San Diego.

The City of San Diego created, and is enforcing a no fishing areas at the Children's pool in La Jolla in disregard for the California Constitution, CDFW code, and public trust doctrine. The right for fishermen to share the beach with seals falls under a special state land grant trust, with a specific clause guaranteeing the absolute right to fish with convenient access to the waters. The City of San Diego is keeping fishermen from the area with ropes, intimidation, San Diego Municipal Code section 63.0102 (b) (10) and emergency beach closures.

- January 2013 The City of San Diego installed a permanent 152 foot rope with a 3 foot opening at open end for access. The rope barrier stated as a temporary advisory structure. January 2013 the rope was extended from 132 feet to 152 feet. The opening does not comply with the Americans with Disabilities Act. ADA regulations require a minimum 4 foot opening and California Coastal Commission typically requires a 10 foot access.
- March 2013 The City of San Diego closed the beach from sunrise to sunset to the public and fishermen from March 19, 2013 to May 15, 2013. Mayor Bob Filner has issued an emergency order closing Children's Pool Beach at night during pupping season to protect nursing seal pups. This closure eliminates recreational fishing from the manmade break wall adjacent to children's pool, surf fishing from the beach, and recreational spearfishermen accessing the ocean.
- April 2013 The City of San Diego submitted a Draft Negative Declaration of an Environmental Impact Report which would reclassify Children's Pool beach from a public beach to an "environmentally sensitive habitat area." The declaration states that implementation of the habitat plan at Children's Pool requires installing two signs on an

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existing wall and gate, as well as a chain barrier at the second landing of the lower stairs. The current night time seawall and beach closure could become a 24-hour closure during pupping season. The amendment to the San Diego Municipal Code would read: "It is unlawful for any person to be upon, or cause any person to be upon, the beach of La Jolla Children's Pool, starting from the lower stairs to the beach, beginning with the second landing, from Dec. 15 to May 15."

- May 2013 Mayor Filner personally directed San Diego Parks and Recreation Ranger Richard Belesky to use San Diego Municipal Code (Section 63.0102(b)(10) to cite anyone when he felt a seal was intentionally or unintentionally disturbed. San Diego Municipal Code (Section 63.0102(b)(10) Mistreatment of Animals; It is unlawful to take, kill, wound, disturb, or maltreat any bird or animal either wild or domesticated, unless the same shall have been declared noxious by the City Manager, and a permit issues for the killing of such noxious animals, provided, however, that Section 63.0102(b)(10) does not apply to any exhibit in the San Diego Zoo of Balboa Park when done by an employee in the course of his or her duties.

The Watermens Alliance requests California fish and wildlife's help with three matters.

- 1) Remind San Diego mayor and city council to uphold the California Constitution and protect recreational fishermen's rights to fish at Children's Pool.
- 2) Request correction to San Diego Municipal Code (Section 63.0102(b)(10), to protect fishermen's constitutional rights.
- 3) Request reopening the closed handicapped ramp and correcting rope length to accommodate disabled recreational fishermen.

Thank you,

Volker Hoehne
Watermens Alliance
619 994 4175
V_hoehne@hotmail.com

See attached;

- 1) Childrens Pool Trust
- 2) Article from La Jolla Light, Mayor Filner Closing Children's Pool at night
- 3) Images of Beach is closed signs
- 4) Images of Childrens Pool rope
- 5) San Diego Municipal Code (Section 63.0102(b)(10)
- 6) Coastal Commission permit to the City of San Diego approving the permanent placement of a year-round rope at La Jolla Children's Pool.
- 7) Email from San Diego Parks and Recreation Ranger Richard Belesky regarding San Diego Municipal Code (Section 63.0102(b)(10)

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- 8) Article La Jolla Light , Mayor orders Children's Pool in La Jolla closed after dark through May 15

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Attachment 1

LEGISLATIVE COUNSEL'S DIGEST

SB 428 Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

Section 1 of Chapter 937 of the Statutes of 1931 is amended to read:

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 with Jenner Street as said monument, said Coast 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, marine mammal park for the enjoyment and educational benefit of children, 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.
- (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 for, mine, and remove such deposits from said land.

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Attachment 2

The City prepares to close the beach to the public



City seeks to close La Jolla's Children's Pool during seal pup season

La Jolla Parks and Beaches group meets to debate closure

By Ashley Mackin

At its April 22 meeting, the La Jolla Parks and Beaches advisory committee (LJP&B), discussed a report from the City of San Diego that requests amendments to the La Jolla Community Plan, the Local Coastal Program, the Community Plan, and the Coastal Development Permit and Municipal Code, that would close Children's Pool beach entirely during pupping season, December to May, each year.

The Draft Negative Declaration of an Environmental Impact Report would reclassify Children's Pool beach from a public beach to an "environmentally sensitive habitat area." The declaration states that implementation of the habitat plan at Children's Pool requires installing two signs on an existing wall and gate, as well as a chain barrier at the second landing of the lower stairs.



The current night time seawall and beach closure could become a 24-hour closure during pupping season. Pat Sherman photo

The amendment to the San Diego Municipal Code would read: "It is unlawful for any person to be upon, or cause any person to be upon, the beach of La Jolla Children's Pool, starting from the lower stairs to the beach, beginning with the second landing, from Dec. 15 to May 15."

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The initial study, conducted by the city, found the project would not have a significant effect on the environment. As a result, the city does not need to write an environmental impact report, and the declaration can be adopted as is, depending on the community input received.

The public comment period ends May 20, (see box above) and those interested in offering their feedback can find the notice and report at sandiego.gov/city-clerk/officialdocs/notices with a search for Project No. 225045.

The Children's Pool beach is currently closed at night until May 15 (the official end of pupping season) and there is also a year-round rope to encourage humans to stay a safe distance from the seals on the beach. Though it is legal to cross that rope, beach-goers must adhere to the Marine Mammal Protection Act, which dictates that humans keep at least 50 yards from pregnant and nursing seals and pups.

Comments both for and against the declaration and subsequent beach closure were made during the meeting with LJP&B Chair Dan Allen assuring that each person had his or her say.

LJP&B member Jane Reldan, a strong advocate for closing the beach, read her prepared statement to the group. "The closure of Casa Beach meets all of the requirements of the Coastal Act and has a positive impact on the environment and the protection of coastal resources," Reldan said.

One of many against the closure, Rebecca Morales said, "The pool was constructed for the use of children ... there are very few places in the world where we find this kind of enclosure. We have an international gem here ... there are places where we already have marine life sanctuaries."

Morales added that people have lost sight of the intended use of Children's Pool, to which LJP&B member Phyllis Minnick replied, "We haven't lost sight, it was taken away from us."

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Attachment 3

Night Beach Closure signs left on the stairs all day



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Attachment 4

Rope installed across Children's Pool Beach



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Attachment 5

San Diego Municipal Code

San Diego Municipal Code Chapter 6: Public Works and Property, Public Improvement and Assessment Proceedings (12-2011) §63.0102 Use of Public Parks and Beaches Regulated

(b) It is unlawful for any person within any public park or plaza or public beach or beach areas within the City of San Diego to do any of the acts enumerated in Section 63.0102(b).

(10) Mistreatment of Animals. It is unlawful to take, kill, wound, disturb, or maltreat any bird or animal, either wild or domesticated, unless the same shall have been declared noxious by the City Manager and a permit issued for the killing of such noxious animals; provided, however, that Section 63.0102(b)(10) does not apply to any exhibits in the San Diego Zoo of Balboa Park when done by any employee in the course of his or her duties.

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Attachment 6



THE CITY OF SAN DIEGO

May 22, 2012

Kanani Brown
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: Coastal Development Permit Application #6-11-078

Dear Ms. Brown:

I am submitting the following information in an effort to assist Commission staff to gain a clear understanding of the scope of this project as requested in your letter dated May 8, 2012.

RECEIVED
MAY 22 2012
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

1. In addition to the substantial amount of documentation already provided as to the City Council's resolution on the year-round rope the City has not completed any technical studies performed on the effectiveness of the rope.

Please see attached photos (Attachment #1 and #2) as taken in April 2012 by City Park Ranger. Attachment #1 is a photo of what the beach will look like on a typical Saturday during this time of the year. Individuals will place banners, umbrellas, and non-official signage on the beach to demonstrate that the beach is open for public use and that the rope is only a guideline, not a legal barrier. This encourages visitors onto the beach without reading the official signage that explains their responsibilities of keeping far enough away so as not to disturb the seals. In contrast to Attachment#1, Attachment #2 photo shows the beach on the following day without the umbrellas, banners and non-official signage. Visitors will observe the large number of seals, from behind the rope, maintaining a safe distance that varied with the tides and also the location of hauled out seals. It has been the observation of the Park Ranger that the rope is an effective visual deterrent from getting too close to the seals on the beach.

2. As a reminder, the rope is a visual deterrent only and as per the City's Site Development Permit (SDP), which you have a copy, is clear that individuals are NOT prohibited from crossing the rope. The only additional assistance to ensure that people adhere to standing behind the rope and not getting too close to the seals is the City Park Ranger who is assigned to the Children's Pool. He works Saturday through Wednesday and is normally on site from 11:00 A.M. to 5:30 P.M. Please note in the ranger's absence due to training, off-site meetings, vacations and other related leave time there is no replacement/back-fill. The position is budgeted in the City's Fiscal Year 2012 budget (current year) as well



Developed Regional Parks Division • Park and Recreation

2125 Park Boulevard • San Diego, CA 92101-4792
Tel (619) 235-1100 Fax (619) 235-1160

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Attachment 7

Email from San Diego Parks and Recreation Ranger Richard Belesky regarding San Diego Municipal Code (Section 63.0102(b)(10))

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RE: A clarification of the law and its application please

Subject: RE: A clarification of the law and its application please
From: "Belesky, Richard" <RBelesky@sandiego.gov>
Date: 5/19/2013 9:49 AM
To: John Leek <jleek001@san.rr.com>
CC: "Daneri, Daniel" <DDaneri@sandiego.gov>

John,

City Policy has been: "...when an individual(s) is expressing their right to occupy the beach and that occupation alone and/or normal beach activity results in any actual or perceived behavioral change in the seals, absent intentional disturbing, harassment or molesting of the seals..." City law has not been broken.

As of May 14th City Policy is now: "Departments...Will enforce Municipal Code 63.0102(b)(10), which makes it illegal to disturb any animal on a City beach and which does not require an intentional act...If someone is engaged in "normal beach activity"-including activities in the water- and that activity results in a disturbance(e.g., flushing of the seals), then the disturbance is unlawful."

There is no grace period. Consider this response to your email an advisement that I must and will enforce this new policy.

Rich

-----Original Message-----

From: John Leek [<mailto:jleek001@san.rr.com>]
Sent: Sunday, May 19, 2013 8:12 AM
To: Belesky, Richard
Subject: A clarification of the law and its application please

I want to stay within the law. I need information from you to do so. I have heard rumors of change but they don't add up. I go by law, and I need to understand it. Fundamentally:

1. Is it true the Mayor directed you to adopt a new enforcement policy on our beach? Yes() No()
2. Is this only about Mistreatment of Animals under municipal §63.0102? Yes() No()
3. Is there a grace period when warnings will end and you will begin issuing citations? If Yes(), then when?

Beyond that, in the absence of new posted signs, I need you to define punishable actions under P&R policy. The statute does not contain enough information. I would not be making this request if it did. There is no guarantee the next time anyone goes for a swim that you will be around to give warning. Please reply to this email.

John Leek

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Attachment 8

Article La Jolla Light , Mayor orders Children's Pool in La Jolla closed after dark through May 15



UPDATED (3/21): Mayor orders Children's Pool in La Jolla closed after dark through May 15



On a recent evening at the Children's Pool, a park ranger alerted visitors by loudspeaker that the beach and seawall would close each night at sunset. Susan DeMaggio

La Jolla Light Staff

San Diego Mayor Bob Filner has closed La Jolla's Children's Pool at nighttime.

The beach and adjacent seawall will now be closed from sunset to sunrise until May 15, the end of the seals' pupping season, the *La Jolla Light* has learned.

A seal camera recently installed allowing the public to view seal births remotely has captured video of people harassing the seals, said the mayor's office. This prompted Filner to swiftly close the beach at night via an emergency coastal development permit, which allows him to close the beach for 60 days while the permit is being processed. The permit application was filed by the city's Park and Recreation Department.

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“I felt it was important to take this step after evidence of individuals seen on video tape, harassing, taunting and causing stress to the seals at the Children’s Pool in La Jolla,” Filner said in a prepared statement.

At 6:45 p.m. Thursday, March 21 about two dozen people walking along the seawall and another two dozen on the sand heard the park ranger announce: “Please folks, come off the seawall. We’re going to be securing the seawall shortly and closing the beach.”

On March 21, City Attorney Jan Goldsmith issued the following statement regarding the closure:

“Although I would have preferred to have been consulted before he took this action, I agree that protecting the seals is important. As such, this office will vigorously defend the Mayor’s action in this matter.

“Seal opponents have notified our office that they will seek an injunction on April 12 as to this order and the Mayor’s prior order to lengthen the guide rope at the beach. We will vigorously defend the City and have already [defeated the plaintiff’s motion](#) for a temporary restraining order.

“I have seen the videos of the seal abuse and I am appalled. Once we receive information as to the identity of these perpetrators, they will be brought to justice.

“I urge everyone to obey the signs on the beach closure, because this office fully intends to enforce the law.”

California Coastal Commission (CCC) staff analyst Kanani Brown told the *Light* the CCC is aware of the city’s emergency permit filing, though she said the city had not yet sent the CCC an official notice of its action.



A scene at Children's Pool in La Jolla last week where visitors are seen close to the pinnipeds.

“The city has the authority to issue an emergency permit in certain instances, such as this, when there’s an emergency — and in this case it’s clear that the seals are at risk,” Brown said.

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However, she noted, because the Children's Pool is located entirely within a coastal zone, it is entirely within the CCC's jurisdiction to issue coastal development permits.

"The city may issue an emergency permit, but it may not be completely effective because the sandy beach areas are within the Coastal Commission's jurisdiction," Brown said. Brown said the CCC could contest the permit, but said it's something the agency "will not pursue, given other priorities and limited staff, as well as the short-term duration of the permit.

"And the intent of the city's action is resource protection," Brown added, noting that it is clear ... from the video documentation that the emergency permit "may be warranted, since this is pupping season and the seals that are hauled out now include pregnant seals and seal pups."

Capt. Brian Ahearn of San Diego Police's Northern Division said he added a police officer to monitor Children's Pool 24 hours a day, seven days per week, once video surfaced of the seals allegedly being kicked and punched.

Ahearn said the plan is to eventually transition to using a private security company to monitor Children's Pool. The security officers would be trained by Park and Recreation staff, in conjunction with SDPD.

"We're waiting to find out who the private security company will be and then begin training with Park and Rec," Ahearn said. "It will be a slow transition. ... We won't carry it out beyond (the pupping season) unless anything changes."

The organization Friends of the Children's Pool, the beach access proponents seeking the April 12 injunction, responded to the mayor's beach closure via a release referencing San Diego Municipal Code, which states that "all emergency Coastal Development Permits shall authorize only the minimum necessary to stabilize the emergency." The group questions why the beach closure is necessary when there is already a police officer stationed at Children's Pool round-the-clock.

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