

May 7, 2014

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FRIENDS OF THE CHILDREN'S POOL
LA JOLLA, CALIFORNIA

Kamala D. Harris, California Attorney General
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2014 MAY 13 PM 1:52

MLS

Dear Attorney General Harris,

I am writing to bring to your attention an ongoing violation of the California Coastal Act regarding coastal access and fishing rights at the Children's Pool in La Jolla, California. More importantly, public safety is put at risk when this violation closes the safest ocean beach in San Diego.

In 2010 the City of San Diego issued itself a development permit for the construction of a rope barrier across a public beach at the Children's Pool in La Jolla, California. Since that time, the Coastal Commission has reclaimed jurisdiction over the State Tidelands where Children's Pool is located and in a stunning procedural misstep in 2012, approved the associated Coastal Development Permit for a year round rope barrier across the beach before all required local approvals had been obtained. This clearly had the effect of obliterating the local control of local issues that should have been first heard at a public hearing at the San Diego Planning Commission.

The Planning Commission rejected the rope barrier but because the Coastal Commission had previously approved the permit, the Planning Commission was set up for an opposing lawsuit by animal rights activists seeking to close the beach. The Planning Commission correctly recognized that the rope barrier is a violation of the Coastal Act and denied the Coastal Development Permit because it does interfere with the public's right of access to the sea. To avoid opposing the lawsuit, the San Diego City Attorney then conceded an error by the Planning Commission and the local decision fell back to one local Hearing Officer, an employee of the applicant, City of San Diego, who had approved the plan nearly two years earlier. This is an obfuscation of due process in the way this Coastal Development Permit was approved for roping off a public beach all year long.

Children's Pool beach was created in 1931 when the State of California granted permission to the City of San Diego to allow Ellen Browning Scripps to construct a seawall to create a safe swimming area for children. The beach was deeded to the City of San Diego under a State Tidelands Trust commonly known as the Children's Pool Trust. That Trust defined the permitted uses of this beach and parkland as a recreation area, parkway, bathing pool for children and an unrestricted fishing area. In January 2010, Senate Bill 428 added an additional use as a Marine Mammal Park; leaving all original defined uses intact. The City continues to operate as if the original defined uses had been revoked. In fact they have not been revoked and additionally, fishing rights protected in the Trust are simply a restatement of protected fishing rights in the State Constitution.

In 2009 the City of San Diego applied to itself for a Coastal Development Permit to construct a rope barrier across the Children's Pool Beach. This rope barrier left only three feet available for restricted access to the shoreline. In December, 2011 it was discovered that the rope had been installed exceeding the permitted length leaving the restricted access three feet wide. At times the presence of seals and the installed rope barrier entirely blocks access to the water. The Coastal Commission standard for coastal access is a minimum ten feet at any beach access location. A lawsuit was filed when former Mayor Filner ordered the rope extended beyond the permitted length. The judge in the case recognized the illegal development without proper permits but refused to compel the City to restore the rope barrier to the permitted length. The length of the rope was later modified as an error by the Coastal Commission without a public hearing.

A permit application for the 2009 rope barrier project followed several levels of review at the local level and was ultimately considered on appeal by the California Coastal Commission on March 10, 2010. The appellant was unable to attend the hearing and the Coastal Commission denied the appeal and thereby granted permission to construct this rope barrier at Children's Pool. The Coastal Commission accepted the applicant's erroneous interpretation of "vertical access" as defined by the Coastal Act. The misinterpreted concept regarding "vertical access" was applied when the Commissioners accepted the presence of a stairway at Children's Pool to satisfy

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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.

the required "vertical access" condition. This reference to the stairway was completely incorrect to satisfy required access from the nearest public roadway to the shore as defined by the Coastal Act. There are stairs to access the beach at Children's Pool but the rope barrier does create an encroachment to coastal access. This rope barrier is a violation of these sections of the Coastal Act and the spirit of the Coastal Act requiring **maximum** public access:

- Section 30211: requires that "Development shall not interfere with the public's right of access to the sea..."
- Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

California Coastal Commission, Public Access Action Plan, June 1999

6. Cumulative Impacts

*A variety of actions are causing adverse cumulative impacts upon the public's ability to get to and use the coast. Examples of these actions include: **installation of structures that encroach on beaches and easements; placement of private signs that restrict or inhibit public use**; elimination of on-street public parking through such actions as curb cuts for driveways, red zones and installation of no-parking signs; commitment of public beaches to temporary commercial events; as well as local imposition of beach curfews restricting hours and location of public use. Several recommended actions are identified to address these problems, including:*

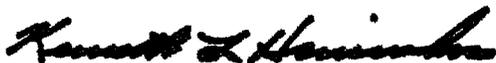
Identifying and removing or canceling non-permitted encroachments, signs, and programs that are inconsistent with Coastal Act policies.

Developing Beach Management Plans, particularly in urban areas, to comprehensively manage the wide range of activities that occur on any given beach.

The City of San Diego has recently approved a plan to close the Children's Pool to all human access for five months every year from December 15 through May 15th by closing the stairway to the beach. The City will seek approval from the Coastal Commission for this action in August, 2014. An alternative access ramp at Children's Pool exists but has been gated and locked to public access for about fifteen years. This ten foot wide access ramp is identified in the La Jolla Local Coastal Plan as providing public beach access. No permit was ever obtained to close this access point and the Coastal Commission refuses to investigate this coastal access violation. Over the years, the ramp surface has been allowed to deteriorate making use hazardous which is part of the City's circular argument to justify the closure of that ramp. The City has an obligation to open the ramp and repair the ramp surface.

The City is playing a shell game when trying to explain who actually closed and locked the gate and why it was taken away from public use. Even when the gate is reopened, the rope barrier still is an encroachment to coastal access because the rope barrier crosses the path to the beach near the ramp.

I am asking that you investigate the repeated Coastal Act and procedural violations by the City of San Diego and the Coastal Commission regarding the management of Children's Pool. Public safety is put at risk when Children's Pool, the safest beach in San Diego is closed to the public.



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Cc: Jennifer Lucchesi, Executive Officer, State Lands Commission
Cc: Sonke Mastrup, Executive Director, California Fish and Game Commission



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