

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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original staff report

Th12c

Addendum

August 13, 2014

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th12c**, Coastal Commission Local Coastal Program Amendment Application #**LCP-6-LJS-14-0607-1 (Children's Pool)**, for the Commission Meeting of August 14, 2014

Staff recommends the following changes be made to the above-referenced staff report. Language to be added is underlined and language to be deleted is ~~struck out~~.

1. On Page 16 of the staff report, at the end of the first complete paragraph, the following sentence shall be inserted:

The City currently has Incidental Take Authorization (IHA) from NMFS to take small numbers of marine mammals incidental to construction activities at the Children's Pool Lifeguard Station from June 28, 2014 through June 27, 2015. NMFS found that the construction activities would have negligible impacts on marine mammals and their habitat in this area, and conditioned the IHA to prohibit construction activities during the harbor seal pupping season.

2. On Page 23 of the staff report, the last complete paragraph shall be revised as follows:

While the presence of the seals has affected sunning and swimming at this location, Children's Pool Beach is not the only beach located in La Jolla. 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, Ravina, and Windansea. Many of these beaches are within walking distance or a short drive from Children's Pool Beach and offer public amenities such as permanent restrooms, showers, additional parking, and lifeguard facilities. ~~There are many other ADA beach access ramps located throughout the City of San Diego, at Pacific Beach, south of the main lifeguard tower; Mission Beach, in front of the main lifeguard tower; South Mission Beach, south of the main lifeguard tower; Ocean Beach, in front of the main lifeguard tower; Crown Point, south of the southern comfort station; Bonita Cove, near the southwest parking lot; and at Mission Point Park, at the western end~~

~~of the park.~~ Furthermore, the water quality at these adjacent beaches is significantly better than Children's Pool Beach and the San Diego County Health Department does not have ongoing advisory warnings for water contact at these alternative beaches. La Jolla Shores, La Jolla Cove, South Casa Beach, Ravina, and Windansea were all surveyed for Heal the Bay's 2014 Beach Report Card and were awarded an A or A+ for water quality. Thus, the proposed seasonal restriction on this one cove will not have a significant impact on the general public's ability to access public tidelands or recreate at La Jolla's beaches.

3. On Page 23 of the staff report, the last paragraph that continues on to Page 24 shall be revised as follows:

There have been assertions by members of the public that the seasonal closure would severely affect the ability of disabled people to access the shoreline. The La Jolla Community Plan identifies three locations in La Jolla with beach access ramps: Children's Pool, Boomer Beach, and just north of Scripps Pier. However, currently the facilities at all three of these locations are not designed to provide ADA access to the beach or water. However, there are currently no facilities at Children's Pool that provide ADA access to the beach or water. While Children's Pool Beach does have an "access ramp," it is not ADA compliant ~~and use is only allowed for emergency personnel.~~ The ramp is gated to prevent unauthorized vehicular access, although the wide bar design of the gate does not strictly prevent pedestrian access. The City has asserted that their research into the history of the ramp has not uncovered any evidence that this ramp was used for any purpose other than emergency vehicle access. The history of the gate across the ramp is unknown, and it is not clear whether the gate was part of the original ramp construction or installed at a later date. However, while the existing ramp is not currently ADA accessible, nothing in the proposed project would prevent the City from exploring the potential to create an ADA accessible ramp leading to Children's Pool, either at the existing ramp or another location. Any access improvements approved by the Commission in the future would presumably be subject to the same seasonal restrictions (if any) as those applicable elsewhere at Children's Pool.

4. On Page 24 of the staff report, the second paragraph shall be revised as follows:

Although there are currently no ADA accessible facilities at Children's Pool, there are many San Diego beaches that not only have Health Department-approved water quality but also are easily accessible to beach-goers with disabilities. There are ADA beach access ramps located at Pacific Beach, south of the main lifeguard tower; Mission Beach, in front of the main lifeguard tower; South Mission Beach, south of the main lifeguard tower; Ocean Beach, in front of the main lifeguard tower; Crown Point, south of the southern comfort station; Bonita Cove, near the southwest parking lot; and at Mission Point Park, at the western end of the park. La Jolla Shores, approximately two miles north of Children's Pool Beach, provides one free ~~power~~ beach wheelchair for disabled visitors and is a flat, accessible beach. Beach wheelchairs can also be found, free of charge, at Ocean Beach,

Mission Beach, Pacific Beach, Coronado Beach, and Imperial Beach. The facilities at Crown Point, Bonita Cove, and Mission Point Park allow people to access the calmer waters of Mission Bay. The public will be able to utilize these many clean, accessible beaches during the five months that access would be restricted at Children's Pool. In addition, in conjunction with the reconstruction of the existing lifeguard station at Children's Pool, the City will be renovating the access ramp that leads to the breakwater viewing area to ADA standards. As noted, the proposed project will not close access to the breakwater, or affect this new ADA accessible ramp. The proposed project will not affect public access from any existing ADA accessible facilities.

Th12c

August 2014

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Application by the City of San Diego to amend their Local Coastal Program to allow for partial closure of Children's Pool in La Jolla during seal pupping season.

Date and time of receipt of communication:

July 22, 2014 at 2:00pm

Location of communication:

San Diego

Type of communication:

In person meeting

Person(s) in attendance at time of communication:

Cheri Jacobs Aspenleiter, Wes Johnson

Person(s) receiving communication:

Greg Cox and Greg Murphy

Detailed substantive description of the content of communication:

(Attach a copy of the complete text of any written material received.)

I spoke with two local residents, Cheri Jacobs Aspenleiter and Wes Johnson as representatives of the disabled community in opposition to proposed beach closure at Children's Pool. The two presented a number of historical photos and research regarding the Children's Pool. They also presented letters among city staff that indicate a capital project for a disabled access ramp at the pool was once considered. Cheri has had a couple of accidents that resulted in her handicaps and she believes that the snorkeling therapy at the children's pool has saved her from being in a wheelchair. Through her research, she has met other disabled and veterans who also use the pool for therapeutic benefit.

From their research they cite that Ellen Browning Scripps developed this pool for children and handicapped individuals for safe public access to the ocean. One of their concerns is that closing the beach during the winter creates a dangerous situation by forcing people to enter the ocean from different locations that have dangerous riptides. Another concern is related to access for lobster fishing, and Cheri said she was aware of 19 Native American tribes that should have access to diving and fishing year-round in this area. Instead of closing the pool for periods of time, Cheri presented an alternative solution to open up the sluiceways to refresh the water and keep it clean of the fecal matter from the seals. Cheri and Wes advocate for year-round public access to the pool.

Date:

7/25/14

Signature of Commissioner: _____

Greg Cox

RECEIVED
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COASTAL COMMISSION
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CALIFORNIA COASTAL COMMISSION

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



August 1, 2014

Th12c

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
BRITTNEY LAVER, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LCP AMENDMENT
NO. LCP-6-LJS-14-0607-1 (Children's Pool) for Commission Meeting of August
14, 2014**

SYNOPSIS

The subject Local Coastal Program (LCP) land use plan amendment was submitted and filed as complete on May 13, 2014. The Commission must act on a land use plan amendment within 90 days of filing; a one-year time extension was granted on June 12, 2014. As such, the last date for Commission action on this item is August 11, 2015. This report addresses only one part of the complete submittal which included LCP Amendment No. LCP-6-SAN-14-0605-1 (Medical Marijuana Cooperatives), which was heard and approved as submitted by the Commission on June 12, 2014 and LCP Amendment No. LCP-6-CCP-14-0606-1 (Centre City Industrial Buffer Overlay Zone), which was heard and approved as submitted by the Commission on July 9, 2014. The other item in the submittal package, LCP Amendment No. LCP-6-SAN-0601-1 (Mobile Food Truck Ordinance), was approved for a one-year time extension by the Commission on June 12, 2014; it will be scheduled for Commission review at a later date because the City is working on further revisions to it and wants to amend the submittal.

SUMMARY OF AMENDMENT REQUEST

The City of San Diego is requesting an amendment to revise the public access and marine resource protection policies of the certified La Jolla Community Plan/Land Use Plan (LUP) to allow seasonal closure at Children's Pool Beach during the Harbor Seal pupping season, generally from December 15 to May 15 of every year. The amendment is intended to allow special protection of the Children's Pool harbor seal population during the vulnerable months of their pupping season. The amendment would prohibit all beach access during this time period. However, the breakwater largely encompassing the beach area would remain open throughout the year. Language regarding the seasonal access restrictions would be added to the sections entitled "Planning Context," "Physical Access Points," "Natural Resources and Open Space System," and "Subarea E: Coast Boulevard." Exhibit 2 shows all of the changes that are proposed by the City to the La Jolla Community Plan.

The subject LCP amendment is project-driven and applies only to Children's Pool Beach, also known as Casa Beach—a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931, located west of Coast Boulevard and southwest of Jenner Street in the La Jolla community (**Exhibit 1**). A resolution and ordinance with respect to the subject amendment request have been approved by City Council (**Exhibits 3 and 4**). A jurisdictional boundary determination conducted by the Commission's mapping department determined that the entire sandy beach area of Children's Pool is located in the Commission's original coastal development permit jurisdiction, and the City's jurisdiction begins at the bottom of the lower stairs (**Exhibit 5**). Thus, a consolidated coastal development permit (CDP) was submitted and is being reviewed concurrently with the subject amendment request.

SUMMARY OF STAFF RECOMMENDATION

The proposed revisions to the public access and marine resource protection policies of the certified La Jolla Community Plan would allow for effective, enforceable protection of the harbor seals and their pups that use Children's Pool Beach as a rookery and haul-out site for the duration of their pupping season every year. As proposed in the amended policies, direct, physical access to Children's Pool Beach would be restricted for five months of the year. The breakwater would remain open to public access year-round; only public access to the sandy beach during pupping season each year would be prohibited. The proposed public access restrictions will benefit the protection of the local seal population.

Addressing the conflicts between people and seals at Children's Pool Beach has a long history. In 1930, philanthropist Ellen Browning Scripps provided funding for the construction of a 300-ft. arced concrete breakwater at Children's Pool Beach in order to create a safe bathing pool for children. Since the completion of the breakwater in 1931, the public has used Children's Pool Beach for sunbathing, swimming, fishing, and diving. Controversy arose in the early 1990s when harbor seals began to regularly "haul out," or exit the water to rest, onto Children's Pool Beach, and in greater numbers. As a result of the seals' increased use of Children's Pool Beach as a haul out site, there has been ongoing disagreement on how the seals and their habitat should be protected, how public access can be protected, and whether seals and people can share the beach.

To address this issue, the City first installed a rope barrier with an opening to maintain public access directly upland of the Mean High Tide Line (MHTL) approved through various emergency and regular coastal development permits for the duration of the seal pupping season and eventually year-round beginning in 2006. However, the rope barrier was controversial, and the City continued to examine options for addressing use conflicts between seals and the public. Thus, in 2010, the City adopted a resolution establishing a Seasonal Shared Use Policy consisting of five adaptive management strategies for Children's Pool Beach that, in their collective implementation, were intended to protect the seals by providing a visual buffer and guideline with a year-round rope barrier that continued to allow shared use of the beach by seals and people; eliminating disturbance

from dogs; educating the public on how to respectfully share the beach with the seals with informational signage; providing a qualified expert to specifically oversee further public education and enforcement at Children's Pool; and last, limiting access during pupping season while allowing for public access during non-pupping season. All of the measures have since been implemented, except for the seasonal beach closure at Children's Pool. Unfortunately, despite the Shared Use Policy measures and protective barriers implemented to date, accidental and intentional harassing of the seals by the public has been continuously observed and recorded. Thus, the City determined that the existing rope barrier is not sufficient to provide the seals with undisturbed protection during the five critical months of their pupping season. The City is now proposing to amend the certified LUP to restrict public access during the seal pupping season at Children's Pool Beach to eliminate the potential for and the impacts of human disturbance. This limited closure is the fifth and final directive that would complete the protective measures to provide the seals with an undisturbed habitat during their pupping season as intended by the Seasonal Shared Use Policy.

As proposed in the amended policies, restrictions on public access at Children's Pool Beach would occur for five months of the year. The breakwater would remain open to public access year-round; public access to the sandy beach would only be prohibited during pupping season each year. During these five months, there would be limited impacts on public access and recreation as the public will still be able to enjoy walking, fishing, and viewing the seals on the breakwater. Unrestricted access to the many nearby beaches would remain, including areas where disabled persons may access the beach and ocean. The opportunity afforded the public at Children's Pool to observe seals close up has become a significant tourist draw and natural attraction that provides a form of public recreation and interpretive opportunity that is unique in Southern California. In the other seven non-pupping season months of the year, public use of the sandy beach or the water would be restored along with the existing guidelines including continuation of the year-round rope barrier. Visitors will continue to be encouraged to maintain a safe and respectful distance from the seals, as mandated by the Marine Mammals Protection Act (MMPA). While the proposed LUP policies will impact public access from December 15 to May 15 of each year, this is not only necessary but also represents the least restrictive action necessary, as all lesser means of protecting the seals while still providing continuous public access have failed to prevent a small but significant number of people from harassing the seals during their vulnerable months of pupping season. Given the past actions at this site, there is reason to expect that the seals will continue to be subject to harassment and endangerment if the beach is not closed during pupping season. The seasonal beach closure will improve the protection and enhancement of the harbor seals in this area, while restricting public access to only a small area of beach during the off-peak beach use period, i.e. non-summer months. The Commission's staff ecologist has reviewed the proposed amendment language and concurs with the staff recommendation that the seasonal beach closure will benefit the affected harbor seals and provide enhanced marine resource protection (**Exhibit 6**).

Staff is therefore recommending that the LCP amendment be **approved as submitted** by the City. The appropriate resolution and motion may be found on Page 6. The findings for approval of the Land Use Plan Amendment as submitted begin on Page 7.

BACKGROUND

Over the past two years, there was significant coordination work and consultation between City staff and Commission staff prior to submittal of the subject amendment proposal. The focus of this consultation was the City's initial proposal of establishing Children's Pool Beach as a seasonal Environmentally Sensitive Habitat Area (ESHA). In August 2012, the City requested a preliminary review of the proposed ordinance and LUP (La Jolla Community Plan) amendment. In a response letter to the City dated August 28, 2012, Commission staff advised that, although the proposed ordinance would not be part of the City's certified Implementation Plan (Land Development Code), an LUP amendment was necessary because implementation of the proposed ordinance to prohibit public access during pupping season at Children's Pool would conflict with several existing policies of the certified LUP. Commission staff also advised, in consultation with the Commission's staff ecologist, that the City should not invoke a seasonal ESHA designation at Children's Pool as part of the LUP amendment. A "seasonal" ESHA would not be consistent with the definition of ESHA, which specifies an area rather than a time of year. In addition, within areas designated as ESHA, only resource-dependent uses are allowed which would preclude many access and recreation activities normally associated with the beach. Commission staff instead recommended that the City consider the proposed seasonal restrictions based on the broader protection of sensitive resources and/or marine mammals pursuant to Section 30230 of the Coastal Act.

Following this recommendation, Commission staff provided the City with suggested modifications to the City staff's proposed LUP amendment language in a letter dated October 25, 2013 that addressed the concern with designating Children's Pool as a seasonal ESHA. City staff subsequently rescinded their proposal to establish Children's Pool as a seasonal ESHA and incorporated the recommended staff modifications into the currently proposed amendment language. These exchanges and staff coordination, however, are not binding on the Commission.

ADDITIONAL INFORMATION

Further information on the City of San Diego LUP Amendment #LCP-6-LJS-14-0607-1 may be obtained from Brittney Laver, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988, for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC has been in effect within the City's coastal zone since January 1, 2000.

The La Jolla Community Plan/Local Coastal Program is part of the City of San Diego's certified LCP which contains 12 segments. The Commission approved, with suggested modifications, the La Jolla-La Jolla Shores LCP segment of the City of San Diego's Local Coastal Program in April, 1983. The La Jolla-La Jolla Shores LUP established eight subareas to address physical and visual access; the beach subject to this proposed LUP amendment is designated as part of Subarea E. The two Planned District Ordinances (PDOs) which regulate commercial development in the La Jolla Shores and downtown La Jolla areas were approved by the Commission in 1984 and 1989, respectively. The City proposed to update the La Jolla Community Plan in 1985 which was approved by the Commission, with suggested modifications, at its May 11, 1995 meeting. The La Jolla Community Plan was again comprehensively updated and effectively certified by the Commission in February 2004.

The community of La Jolla is a coastal-oriented neighborhood within the City of San Diego. The majority of the community is located within the Coastal Zone. There are numerous beach and recreational areas within the community which include, from south to north: Tourmaline Surfing Park, Bird Rock, Windansea, Children's Pool, The Cove/Ellen Scripps Park, La Jolla Shores/Kellogg Park, La Jolla Farms, Boomer Beach, Black's Beach and the La Jolla Underwater Park. Commercial areas are primarily

developed in the central core of La Jolla along Prospect and Pearl Streets and Girard Avenue. Other commercial areas include La Jolla Boulevard in the Bird Rock and Windansea areas and Avenida de la Playa in the La Jolla Shores area.

B. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Therefore, the Commission shall take action by a majority vote of the appointed membership of the Commission.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties to the maximum extent possible.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTION

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

- I. MOTION:** *I move that the Commission certify the Land Use Plan Amendment No. LCP-6-LJS-14-0607-1 for the City of San Diego certified LCP as submitted.*

STAFF RECOMMENDATION TO CERTIFY:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Land Use Plan Amendment for the City of San Diego certified LCP as submitted and adopts the findings set forth below on grounds that the land use plan, as amended, will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the land use plan amendment.

PART III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO LAND USE PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City of San Diego is requesting an amendment to its certified LCP to revise the public access and marine resource protection policies of the La Jolla Community Plan to allow restrictions on public access at Children's Pool Beach during the Harbor Seal pupping season, generally from December 15 to May 15 of every year. The subject LCP amendment is project-driven and applies only to Children's Pool Beach, also known as Casa Beach—a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931, located west of Coast Boulevard and southwest of Jenner Street in the La Jolla community of the City of San Diego (**Exhibit 1**). Language regarding the seasonal access restrictions would be added to the sections entitled "Planning Context," "Physical Access Points," "Natural Resources and Open Space System," and "Subarea E: Coast Boulevard" (**Exhibit 2**). Some excerpts of the exact language proposed to be added to the La Jolla Community Plan is underlined as follows:

PLANNING CONTEXT

Environmentally Sensitive Habitat Areas and Marine Resources

*The Natural Resources and Open Space System and Residential Elements
recommend that development be designed to prevent significant impacts upon*

sensitive habitats and identified endangered or threatened plant and animal species. In addition, seasonal access restrictions and a buffer are designated for the Children's Pool Beach in order to protect breeding pinnipeds pursuant to Section 30230 of the California Coastal Act. No public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season.

NATURAL RESOURCES AND OPEN SPACE SYSTEM

Shoreline Areas and Coastal Bluffs

Public access to [La Jolla's shoreline] is limited, particularly along portions of Bird Rock, La Jolla Hermosa and in La Jolla Farms, due to steep slopes, cliff erosion and sensitive rock formations and restricted parking. Beach access is also limited on a seasonal basis at Children's Pool Beach, an area of special biological significance, during the harbor seal pupping season to protect the harbor seal rookery during this most vulnerable period.

The purpose of the proposed LUP amendment is to reduce the conflicts between beach visitors and local harbor seals and to provide the seals with an undisturbed rookery during pupping seasons so they can properly care for their newborn pups. The existing certified LUP does not include provisions specifically for marine resource protection, although Seal Rock was established as a Marine Mammal Reserve from 1994-1999 and 2001-2006 and the 1931 Tidelands Grant, as amended, declares Children's Pool as a "marine mammal park for the enjoyment and educational benefit of children" (Statute of 2009, Chapter 19). However, the LUP does provide that public access should be limited in open space areas that contain sensitive resources and that beaches should be preserved in a manner that protects resources, biodiversity, and habitat. The LUP is also clear that existing public access points to the beaches and coast shall be protected and enhanced where possible. The proposed LUP amendment is intended to maintain, enhance, and restore the marine resources and habitat at Children's Pool as a safe sandy beach area for the seals to birth and care for their pups by reducing potential for human interference during the pupping season, while providing unrestricted public access to the beach during the non-pupping season months aside from the existing guidelines provided by the year-round rope barrier.

B. CONFORMITY OF THE CITY OF SAN DIEGO LAND USE PLAN AMENDMENT WITH CHAPTER 3

The proposed LUP amendment is subject to all of the following applicable Coastal Act policies, in relevant part:

Section 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 consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a)

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby...

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

...

(3)The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area....

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.

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of the setting.

Section 30604(c)

Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200)

1. Subject Site History and Past Commission Action

Addressing the conflicts between people and seals at Children's Pool Beach has a long history. In 1930, philanthropist Ellen Browning Scripps provided funding for the construction of a 300-ft. arced concrete breakwater at Children's Pool Beach in order to create a safe bathing pool for children. In 1931, as a condition of the California Legislature's tide and submerged lands grant, in which the State of California granted Children's Pool area tide and submerged lands to the City of San Diego, the area was to be devoted 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." (Statute of 1931, Chapter 937.) The grant also

provided for “[t]he 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.” Subsequent to this grant, the State of California relinquished its trustee responsibilities over these public trust tide and submerged lands and the City of San Diego became the successor trustee for these tide and submerged lands. Since the completion of the breakwater in 1931, the public has used Children's Pool Beach for sunbathing, swimming, fishing, and diving.

Controversy arose in the early 1990s when harbor seals began to regularly “haul out,” or exit the water to rest, onto Children's Pool Beach, and in greater numbers. Historic maps from 1887 and 1894 show that the sandstone reef and adjacent rocks on which the breakwater was built were originally identified as Seal Rock Point and Seal Rock. These maps demonstrate that seals most likely utilized this area as a natural haul out site prior to the breakwater's construction. As a result of the seals' increased use of Children's Pool Beach as a haul out site, there has been ongoing disagreement on how the seals and their habitat should be protected, how public access should be protected, or whether seals and people can share the beach. The City has been trying to develop a solution to address the issue of competing uses.

Harbor seals have also used a flat-topped, offshore rock that is known as Seal Rock, located between Children's Pool Beach and Shell Beach, as a haul out site. In 1993, the Commission approved the City of San Diego Park and Recreation Department's permit application (CDP No. 6-93-026) to establish Seal Rock Marine Mammal Reserve for five years. In 2001, the Commission approved another five-year permit (CDP No. 6-00-126) to continue the reserve. The reserve protected 1.35 acres of open coastal waters, prohibiting human access within reserve boundaries except for permitted commercial fishing, emergency access and fishing consistent with the Federal Marine Mammal Protection Act. Signs were installed for identification purposes and for public education and information.

Since the seals started using this area more heavily, the water quality of the “pool” has deteriorated to such a point that the San Diego County Health Department has deemed the water unsafe, as it poses a serious health risk. It was determined that due to limited tidal exchange in the pool and use of the area by so many seals, the water has become contaminated with high levels of bacteria that exceed health standards. Since September 1997, a water quality advisory has been posted at Children's Pool Beach advising against water contact.

After a number of legal challenges, the City was ordered to clean the water in the pool and return the beach to its 1941 configuration. As such, the City began the environmental review and permitting process to dredge the pool and return it to its historic configuration (refer to CDP Application No. 6-05-098 which was subsequently withdrawn). Subsequently, Senate Bill 428 was passed by the State Legislature and signed by the Governor into law effective January 1, 2010. This law amended the conditional uses of the 1931 Tidelands Grant of the tide and submerged lands at Children's Pool, giving the

City Council the discretion to allow Children's Pool Beach to be used as a "marine mammal park for the enjoyment and educational benefit of children." (Statute of 2009, Chapter 19.) As a result of this law, the court order to dredge the pool was vacated and the City Council denied the request to dredge the pool to return it to its 1941 configuration.

However, while the City was pursuing the necessary permits for the dredging project, a new issue arose, which was separating the seals from people on the beach during the seal pupping season. To address this issue, the City first installed a rope barrier directly upland of the MHTL. After consultation with Commission staff, the City was informed that installation of the rope barrier constituted development (physical development and change of intensity of access to the water) and thus required review pursuant to a coastal development permit. Subsequently, in 2006 and 2007, the City issued emergency coastal development permits for the temporary installation of the rope barrier during seal pupping season. A subsequent legal challenge prevented the installation of the rope barrier for the 2008 pupping season. However, on March 10, 2008, the Ninth Circuit Court of Appeals stayed the earlier ruling preventing the placement of the rope barrier and allowed the rope to be placed until May 30, 2008. The City then issued an emergency permit for the temporary rope barrier with an opening for public access to the water and the barrier was installed.

Subsequently, the City approved a regular coastal development permit (CDP No. 545642) as a follow-up to the emergency permit for the installation of the rope barrier during the 2008 seal pupping season. On July 7, 2008, the Coastal Commission's San Diego District Office received a Notice of Final Action from the City of San Diego for this after-the-fact coastal development permit and the 10 working day appeal period was opened. On July 15, 2008, an appeal was filed by John Leek (Appeal No. A-6-LJS-08-065). Because this was a follow-up to an emergency permit, and the emergency permit only allowed the rope barrier to remain until May 30, 2008, by the time the follow-up CDP was approved and the Notice of Final Action was received in the Commission's San Diego District Office, the rope barrier had already been removed, making the appeal moot and no longer in need of review by the Commission. The applicant (City of San Diego Park and Recreation Department) had waived the right to a hearing within 49 days and thus, the matter was never brought before the Commission. Because that appeal was for essentially the same development as a subsequent appeal (Appeal No. A-6-LJS-10-009 discussed in the following paragraph), Appeal No. A-6-LJS-08-065 was determined to be moot and no longer in need of review by the Commission.

On December 2, 2009, the City of San Diego approved Coastal Development Permit No. 701673 for the annual placement of a temporary rope barrier with a 3-foot opening at Children's Pool Beach to provide a buffer between people and seals during the seal pupping season (December 15 to May 15). The rope barrier was installed on December 16, 2009. The City's decision on the coastal development permit was appealed to the Planning Commission; however, on January 21, 2010, the Planning Commission upheld the Hearing Officer's decision for the annual placement of the rope barrier. On February 3, 2010, an appeal was filed with the Commission by John Leek (Appeal No. A-6-LJS-

10-009) and on March 10, 2010 the Commission determined that there was no substantial issue with respect to the grounds on which the appeal was filed.

On May 17, 2010, the City Council adopted Resolution No. R-305837 establishing a new Seasonal Shared Use Policy at Children's Pool Beach directing City staff to: 1) acquire a coastal development permit to maintain a year-round rope barrier; 2) establish clear signage explaining the rules to the public; 3) prohibit dogs on the beach year-round; 4) seek grant or private funding for a full-time Park Ranger or Lifeguard position and create a Volunteer Docent Program led by this Park Ranger or Lifeguard; and 5) amend the Local Coastal Program (LCP) to prohibit public access to the beach during pupping season. To carry out this resolution, the City acquired funding for a park ranger assigned specifically to Children's Pool and installed informational signage on how to share the beach by staying a respectful distance from the seals and moving slowly to avoid disturbing them. In May 2011, the City adopted an ordinance amending the Municipal Code to prohibit all dogs except for service dogs on the beach area and the immediate beach areas of Children's Pool, including the breakwater, ramp, and stairways. Subsequently, the City of San Diego Park and Recreation Department applied for CDP No. 6-11-078 for the installation and maintenance of a year-round rope barrier with a 3-foot opening for public access to the water at Children's Pool Beach, submitted on October 19, 2011. The permit was approved on July 11, 2012 with a three-year permit term to expire on July 11, 2015. The rope barrier was put into effect once the City fulfilled their "prior to issuance" conditions on May 14, 2013. The Shared Use Policy was intended to act as a combination of adaptive beach management strategies that in their collective implementation would protect the seals by discouraging access during pupping season while allowing for public access during non-pupping season, providing a visual buffer and guideline with a year-round rope barrier, eliminating disturbance from dogs, educating the public on how to respectfully share the beach with the seals, and providing a qualified expert to specifically oversee further public education and enforcement at Children's Pool. The subject LCP amendment is the fifth and final directive that would complete the protective measures to provide the seals with an undisturbed habitat during their pupping season as intended by the Seasonal Shared Use Policy.

On January 25, 2013, the City installed a "Seal Cam" video camera at the Children's Pool lifeguard station so people could access live video footage of the seals and the birthing process on the Internet at any time. Shortly after installation, the video camera captured several nights of footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals. These egregious harassment events prompted the former mayor to authorize an emergency CDP on March 7, 2013 for the closure of Children's Pool Beach from sunset to sunrise through May 15, 2013-- the remainder of the pupping season. The emergency permit was issued on March 19, 2013; however, due to the Commission determination on the jurisdictional boundary, the City's emergency permit could only address closure of the stairs leading to the beach but Coastal Commission approval was required to close the actual beach to use by the public. Thus, the City applied to the Coastal Commission for emergency CDP No. 6-13-014-G on March 29, 2013, which was subsequently approved by the Executive Director and put

into effect on April 10, 2013. As conditioned, the City was not required to apply for a follow-up coastal development permit with the Commission as the emergency permit was only in effect through May 15, 2013.

There were numerous harassment events observed and recorded by the Park Ranger assigned to Children's Pool throughout the 2013-2014 pupping season as well as outside of the pupping season months, despite the year-round protective rope barrier. Of about 30 recorded harassment incidents that resulted in flushing of the seals between June 22, 2013 and May 14, 2014, half occurred during the 2013-2014 pupping season (**Exhibit 7**). In addition, Dr. Jane Reldan, founder of the Seal Conservancy, along with members of the Seal Conservancy and additional volunteers, observed and recorded a total of 269 flushing incidents from April 9, 2013 to May 15, 2014. Of these flushing incidents, 79 occurred during pupping season. Following reports of seal harassment, as described in greater detail below, the City determined that the rope barrier was not adequately protecting the seals; therefore, a seasonal closure was necessary to provide undisturbed protection during the vulnerable months of their pupping seasons. The proposed LUP amendment language is intended to reduce the potential for harassment of the seals by the public during the vulnerable pupping season, and subsequently mitigate, to the extent possible, the adverse impacts that can result from such harassment events.

In summary, since 2006, there has been a rope barrier on Children's Pool Beach to provide a buffer between people and seals during the pupping season, from December 15 to May 15, and more recently year-round. There is an opening in the existing rope barrier to allow through access to the water's edge; however, even with the guideline of the rope barrier, numerous harassment incidents, done both intentionally and ignorantly, have occurred and pose a serious threat to the survival of the seals and their pups during the vulnerable period of their pupping season. As the barrier rope and the shared use informational signs at Children's Pool Beach have not discouraged these harassment incidents and pursuant to Resolution No. R-305837, the City is proposing the subject LCP amendment and associated CDP for public access restrictions during the harbor seal pupping season to protect sensitive marine resources.

2. Marine Resources

Children's Pool Beach is designated as "Parks, Open Space" in the City's certified Land Use Plan. Children's Pool Beach provides recreational opportunities for swimmers, divers, fisherman, tourists, and the general public through its provision of lifeguard facilities, access stairway from Coast Boulevard, parking along Coast Boulevard, viewing gazebo along Coast Boulevard, benches, portable restrooms, pedestrian walkway atop the breakwater, and a closed, gated emergency beach access ramp. The City has indicated that this ramp was installed for emergency purposes, including for Park & Recreation and lifeguards vehicles, not for public access. In addition to being a public beach, Children's Pool is a "marine mammal park for the enjoyment and educational benefit of children" as declared by the amended 1931 Tidelands Grant (Statute of 2009, Chapter 19). It is bounded on the west by the Pacific Ocean; on the north by the ocean and Shell Beach; on

the east by Coast Boulevard and Casa de Manana Retirement Community; and on the south by South Casa Beach. In addition, Seal Rock is an adjacent haul out site located approximately 500 feet northeast of Children's Pool Beach.

Harbor seals (*Phoca vitulina*) and other pinnipeds used Seal Rock (located approximately 500 feet northeast of Children's Pool) and Children's Pool Beach as haul out sites prior to the construction of the breakwater, but started to haul out in greater numbers in the early 1990s. Historic maps from 1887 and 1894 show that the sandstone reef and adjacent rocks on which the breakwater was built were identified as Seal Rock Point and Seal Rock. These maps demonstrate that seals utilized this area as a natural haul out site prior to the breakwater's construction. In response to the increased use of Seal Rock as a haul out site in the 1990s, the Coastal Commission approved the City of San Diego's request to designate that area as a Marine Mammal Reserve in November 1993 pursuant to CDP No. 6-93-026. As of 1996, when National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) began to regularly survey the number of seals present at Children's Pool Beach, data indicates that haul out numbers ranged from as little as 11 seals on a day in November 1996 to as many as 160 seals on a day in June 1996. More recent data, collected by the Park Ranger in Spring 2012, indicates that it is not unusual for over 200 seals to haul out onto Children's Pool Beach, as demonstrated by counts on March 18, April 2, April 14, April 29, April 30, and May 1, 2012. The first of three annual monitoring reports submitted by the Park Ranger on June 2, 2014 pursuant to Special Condition No. 4 of CDP No. 6-11-078 provides similar data, with peak seal haul out counts reaching into the 200's occurring on April 16, May 28, October 24, December 4, and December 8 of 2013 and on March 1, March 17, April 26, and May 6 of 2014. Although peak haul out numbers have been recorded predominantly during the pupping season (December 15 to May 15), seal count data from a variety of sources (refer to substantive file documents) indicates that seals use Children's Pool Beach as a haul out site on a year-round basis.

Harbor seals are generally non-migratory and are found on both the U.S. east and west coasts. On the west coast, harbor seals are found in near-shore coastal and estuarine waters off Baja California, north to British Columbia, west through the Gulf of Alaska and in the Bering Sea. Since the passage of the Marine Mammal Protection Act (MMPA) of 1972, the California coast stock has begun to stabilize at approximately 34,233 seals. NOAA's National Marine Fisheries Service (NMFS) is the agency that manages the California stock of harbor seals and is responsible for enforcement of the MMPA. The Southwest Region of NMFS has created a map depicting pinniped haul out areas and rookeries (pupping sites) in California. According to NMFS data, the Children's Pool Beach is the only mainland rookery and haul-out site in San Diego and Los Angeles Counties. The next closest mainland rookery is located at Point Mugu Lagoon within the Point Mugu Naval Air Weapons Station. Public access is restricted at that site. The City of Carpinteria is also home to a mainland rookery; this beach is not readily accessible to the public who must walk over half a mile to reach the bluff top overlook. Additionally, the City closes that beach 750 feet to the east and west of the site during pupping season (December 1 through May 31) pursuant to Municipal Code 12.23.090. Offshore, there are harbor seal rookeries located at the Channel Islands. In Northern California, Fitzgerald

Marine Reserve is a very publicly accessible state marine reserve that has been a haul-out site and rookery to harbor seals since the mid-1900's and requires visitors to remain 300 feet away from all marine mammals for their year-round protection.

The Legislature enacted the MMPA to prevent the extinction or depletion of marine mammal stocks as a result of human activity. (Title 16 U.S.C. Section 1361(1); *Natural Resources Defense Council, Inc. v. Evans* (2003) 279 F.Supp.2d 1129, 1141.) In achieving this goal, the MMPA generally prohibits the "taking" of marine mammals, with limited statutory exemptions, with an act of "taking" meaning "to harass, hunt, capture, collect or kill, any marine mammal." (Title 50 C.F.R. section 216.3; Title 16 U.S.C. section 1362(13); see, e.g. *Natural Resources Defense Council, Inc. v. Evans* (2003) 279 F.Supp.2d 1129, 1141.) Harassment, as defined under the MMPA, is "any act of pursuit, torment or annoyance which – (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." (Title 16 U.S.C., section 1362(18).) No person has an authorized incidental take permit from NMFS to incidentally take the seals at Children's Pool, nor is there an option for intentional take permits (See 16 U.S.C. section 1371(5)(A)(i) [procedures related to incidental take permits]).

While the Commission does not regulate the "taking" of marine mammals, the statutory framework provided in the Marine Mammal Protection Act (MMPA) on this issue provides the Commission with a platform from which it can evaluate whether or not a proposed development is consistent with Section 30230 of the Coastal Act. In other words, if the Commission finds there is unauthorized harassment, or incidental "taking", of the seals at the Children's Pool area, then such acts of harassment are not consistent with Chapter 3 policies of the Coastal Act because such activities would not achieve the protections provided under Section 30230. The seal rookery and haul-out site at Children's Pool Beach is unique due to its location in an urban setting that is easily accessible to the public, which has resulted in ongoing disturbance and harassment of the hauled out seals.

Unlike the state's other pinniped haul out areas and rookeries, the seal rookery and haul-out site at Children's Pool Beach is unique due to its location in an urban setting that is easily accessible to the public. As a result, over the years, there has been ongoing disturbance and harassment of the hauled out seals. While a distance of at least 100 yards, or 300 feet, is recommended by NMFS's "Guidelines for Viewing Seals and Sea Lions in California," due to the relatively small sandy beach area available at Children's Pool Beach, NMFS Regional Administrator Rodney McInnis has recommended in a letter to the Coastal Commission dated June 27, 2012 that people maintain a minimum distance of 50 feet for viewing hauled out seals while standing on the sandy beach area at the subject site. McInnis also asserted that although this is a guideline that does not have the force of law, unauthorized harassment is a violation of the MMPA regardless of the distance from which it occurs. Efforts by the public to closely approach or otherwise interact with seals have led to unauthorized harassment of the hauled out seals, which is illegal under the

MMPA. According to observations by the Park Ranger assigned to Children's Pool, although the seals at this location are more acclimated to human presence than other areas of the coast, harassment and flushing of the seals into the water does occur which disturbs the seals' behavior pattern of hauling out so that they can rest, sleep, thermal regulate, maintain skin and molt, socially interact, evade predators, give birth, and nurse and wean pups. However, due to the shared use nature of the beach, NMFS only pursues harassment penalties in cases of extreme or malicious harassment. Activities that have caused hauled out seals to flush into the water, thus disrupting their behavior patterns, include people making loud noises, approaching or surrounding seals to take pictures, pet, feed, chase, follow, throw rocks/sand/seaweed at, and entering and exiting the water. A study conducted at Children's Pool found that disturbances associated with construction activities (for the replacement of the wall and bluff improvements) only caused seals to flush into the water once during the week when demolition and heavy debris removal was conducted; however, humans in the water or on land resulted in 144 flush events. Not only are the seals at risk, but public health and safety are also at risk from defensive seal bites and nips when people attempt to interact too closely with the seals.

Although Harbor seals are neither endangered nor threatened, the haul out sites and pupping sites, otherwise known as rookeries, that they use provide valuable habitat for the seal life cycle and are considered areas of special biological significance that warrant special protection. Harbor seals may use rocks, reefs, beaches, intertidal sandbars, and drifting glacial ice as haul out and pupping sites. Harbor seals can haul out any time of the day or night on a year-round basis; however, the number of seals hauled out at a certain moment may vary dependent upon several factors, including tide height, weather, time of day, season, and level of disturbance.¹ Haul out sites provide essential habitat that seals utilize for a variety of functions including, but not limited to, rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, giving birth during the spring and summer, and nursing and weaning pups.^{2 3}

Nonetheless, the seals at the haul out site at Children's Beach are especially fragile coastal resources. The seals at the haul out site are considered a fragile coastal resource because the seals are more vulnerable to harassment by the public at this site than other haul out sites along the coast. This higher vulnerability is present because there is a very high potential that great numbers of people from the densely populated San Diego Metropolitan Area and beyond will visit the popular downtown La Jolla area and Children's Pool, and attempt to interact with the seals which leads to frequent harassment and flushing of the seals into the water. As proof, staff noted earlier in the report that several people and the Seal Cam have witnessed several incidents of harassment, leading

¹ Watts, P. 1993. Possible Lunar Influence on Hauling-Out Behavior by the Pacific Harbor Seal (*Phoca vitulina richardsi*). *Marine Mammal Science* 9(1):68-76.

² NOAA's National Marine Fisheries Office of Protected Resources. *Species: Harbor Seal*. <http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/harborseal.htm>. Updated April 24, 2012. Accessed May 30, 2012.

³ Terhune, J.M. and M. Almon. 1983. Variability of Harbour Seal Numbers on Haul-Out Sites. *Aquatic Mammals* 10(3):71-78.

to frequent flushing which significantly affects the behavior patterns of the seals. Therefore, the seals at the haul out site are considered a fragile coastal resource because they are highly vulnerable to frequent flushing which significantly affects their well-being.

The hauled-out seals are particularly vulnerable during pupping season when seals haul out and remain on the beach for longer periods of time in order to prepare for birth, go through the birthing process, and nurse the seal pups once they are born. Through the entire range of harbor seals, pupping is typically from January to October; however, pupping season occurs earlier in southern areas such as San Diego.⁴ As determined by the City in consultation with NMFS representatives as part of the permit approval for the annual placement of a rope barrier during seal pupping season, pupping season at Children's Pool Beach is generally from January through April but can start as early as mid-December through mid-May. Pups are typically born and weaned during the late spring, and nursing lasts about 3-6 weeks. Thus, based on the recommendation of the NMFS, it was determined that the seal pupping season at Children's Pool Beach is December 15 to May 15 in order to bracket the general time when vulnerable pups are present. Pups are capable of swimming immediately after birth and they are weaned from their mothers after approximately three to six weeks of nursing.⁵ During that time, seal pups are frequently left on the beach by their mothers, who spend time in the water foraging for food. Additionally, during this period, the mother seals become more aggressive due to their instinct to protect themselves and their pups from people who get too close. Harbor seals will usually return to breed in the same location as they were born, unless frequent disturbances cause them to abandon the site. Further, harassment during the pupping season may cause mothers to abandon their pups. When a disturbance causes the seals to flush quickly into the water, a seal pup may become separated from its mother and abandoned. Additionally, too many disturbances on the beach may prevent a mother from returning from the water to reunite with her pup after hunting. Abandonment severely decreases the pup's chance for survival. At Children's Pool Beach, there have been several cases of seal pup abandonment. Avoiding potential adverse impacts such as seal pup abandonment was the goal of the rope barrier with an opening installed during pupping season.

Although the potential adverse impacts of harassment to hauled-out seals are not as significant during the non-pupping season, disturbance and flushing do have the potential to easily disrupt the natural habitat that seals require for a variety of life cycle functions. As discussed above, as a part of seals' behavior patterns, they use haul out sites on a year-round basis for rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, giving birth during the spring and summer, and nursing and

⁴ NOAA's National Marine Fisheries Service Southwest Regional Office. *California Seal and Sea Lion Viewing Guidelines*. <http://swr.nmfs.noaa.gov/psd/rookeryhauls/CASEALVIEWBROCHURE.pdf>. May 30, 2012.

⁵ NOAA's National Marine Fisheries Service Southwest Regional Office. *California Seal and Sea Lion Viewing Guidelines*. <http://swr.nmfs.noaa.gov/psd/rookeryhauls/CASEALVIEWBROCHURE.pdf>. May 30, 2012.

weaning pups. Therefore, in order to avoid potential adverse impacts from human disturbance such as seal pup abandonment, the City has considered and implemented a variety of alternatives to protect the seals while maintaining public access, as indicated above. However, as described above, after installation of the "Seal Cam" at the Children's Pool lifeguard station in January 2013, it became apparent that the rope barrier was not sufficient for proper protection of the seals and their pups from harassment. Whether done ignorantly or intentionally, any form of harassment poses a serious threat to the survival of the seals and their pups. Furthermore, while these instances may be few relative to the amount of people who visit and use the beach, these harassment events are illegal under the MMPA and inconsistent with Section 30230 of the Coastal Act. Aside from flushing incidents, the rope barrier has been repeatedly ignored and even vandalized by visitors, requiring replacement of the rope on December 19, 2013 after it was found cut down two separate times.

As an alternative to rope barriers, various members of the public have raised the viability of a plan known as the "Harris/Lifeguard Plan," which would partition off approximately 75% of the sandy beach area for the seals with large boulders during pupping season and 25% of the beach for the seals during non-pupping season. However, this would require adjusting the boulders twice a year, removal of polluted sand at the time of the boulder adjustments, and sand disposal. In addition, as Commission staff indicated to the City in a letter dated 12/13/12, the Harris/Lifeguard Plan would likely not be sufficient for improved protection of the seals during pupping season, as all of the same concerns as the existing rope barrier would still exist; the seals would still be free to occupy all beach areas and the on-going enforcement issues would remain since people could continue to disobey the partitioning. In addition, any effort to corral the seals into a bouldered-off area would be inconsistent with the MMPA, and the boulders would create a physical and visual barrier that would impact public access much more than a rope barrier.

The "no project" alternative would be ineffective at providing proper protection for the seals as well. The existing guidelines provided by the rope barrier, informational signage, and stationed park ranger have not deterred or eliminated seal harassment, as described above with the numerous recordings of flushing and harassment incidents. The seals will continue to be subject to harassment and endangerment if the beach is not closed off during pupping season. The issue of seal harassment is exacerbated by the fact that the existing rope barrier is a guideline that relies on the respect and compliance of the public, and lacks a strict threshold between what is viewing the seals from a distance that does not disturb them and what constitutes harassment and thus an illegal "taking" under the MMPA. Unfortunately, for as long as the rope barrier has been in place, some people have continued to deliberately bother the seals, rendering the shared use concept unsuccessful.

Therefore, the City has proposed to amend the LUP public access and marine resource protection policies to seasonally restrict public access at Children's Pool Beach to provide the seals with more substantial protection during the five vulnerable pupping season months. In comparison to the existing conditions, the seasonal closure is expected to provide far more effective protection for the seals, because prohibiting all public

access beyond the "Area Closed" signs at the lower staircase and the emergency access gate requires the public to stay farther away from the seals. The clear demarcation between permitted and restricted areas will eliminate any gray area in interpretation of where the public is allowed at Children's Pool Beach during the pupping season, thus ensuring no accidental encroachment into the seal rookery occurs, and also allowing for more precise enforcement of the restrictions by rangers, lifeguards, and safety officers. Thus the seasonal beach closure will maintain, enhance, and restore the habitat as a safe sandy beach area for the seals to birth and care for their pups by eliminating, to the degree possible, direct human interference during the pupping season. The Commission's staff ecologist has reviewed the proposal and concurs with the staff recommendation that the seasonal beach closure will benefit the individuals of the seal population, especially mothers and pups, and provide enhanced marine resource protection (**Exhibit 6**). Essentially, the seasonal beach closure will improve the protection and enhancement of the harbor seals that haul out at Children's Pool, and not implementing the seasonal beach restriction would be more environmentally damaging of marine resources and inconsistent with Coastal Act Section 30230 than the no project alternative.

Opponents of the proposed seasonal beach closure have suggested that protecting the seals at Children's Pool from on-going harassment could result in an increase in the seal population, resulting in a further deterioration of water quality and putting fish populations at risk. However, the total number of seals that can haul out at Children's Pool is limited by the size of the cove. As noted above, recent counts of seals present at Children's Pool Beach have been observed to reach well over 200 seals in one day. The City's Negative Declaration for the project noted that the sub-regional harbor seal population is approximated at 600 seals, from which a maximum of about 250 seals will haul out at Children's Pool Beach at one time due to the spatial limitations of the beach. Thus, the current amount of seals that haul out at Children's Pool at a time appears to already be at or close to the carrying capacity of the habitat. Therefore, the proposed project is not expected to substantially affect either the regional seal or fish populations, or the current water quality conditions.

Any development that results in restrictions on public access or recreational opportunities, even on a seasonal basis raises concerns, as discussed in detail below under subsection 3. Public Access/Recreation. However, there are multiple locations across the state where the Commission has approved CDPs, LCPAs, or Federal Consistency Determinations that required limiting public access in order to protect marine resources. The following provides several significant LCP examples. The recently-certified City of Solana Beach Land Use Plan and the City of Malibu Land Use Plan include provisions to site, design, and manage access-ways to and along the shoreline to protect marine mammal hauling grounds, seabird nesting and roosting sites, sensitive rocky points and intertidal areas, and coastal dunes. The Implementation Plan for the County of Santa Barbara mandates that marine mammal rookeries shall not be altered or disturbed by recreational, industrial, or any other uses during times of mating, pupping, and pup care. In Monterey County, the Del Monte Forest Land Use Plan includes marine resource protection policies that require protection of the shoreline areas of Cypress Point that are used by harbor seals during pupping season, as well as public access policies that allow

for public access and recreation restrictions in sensitive marine habitats. The Sonoma County Land Use Plan specifically prohibits disturbance of designated areas used for harbor seal and sea lion hauling-out grounds and limitation of recreational activities to passive recreation to insure continued viability of the haul-out habitats.

In each of these cases, the Commission approved limitations on public access in areas that require special protection due to the presence of sensitive species and marine resources. The subject LUP amendment involves seasonal restrictions on a popular beach, but as the subject beach is an area that provides valuable habitat for the seal life cycle, it warrants special protection under Section 30230. Although it is unusual for the Commission to approve access restrictions to state waters, this is also an unusual circumstance because access to the water is available on either side of Children's Pool Beach and will be available at Children's Pool for seven months of the year. As discussed above, the proposed seasonal beach closure would maintain and enhance the seal rookery and haul out site as well as the seal population at Children's Pool Beach, consistent with Section 30230 of the Coastal Act, by minimizing human-seal interaction and eliminating any potential for harassment of the seals during the vital pupping months. Although harbor seals are not an endangered or threatened species, the haul out site at Children's Pool Beach provides habitat of biological and economic significance. According to NOAA's data on pinniped rookeries on and off the California coast, Children's Pool Beach is the only mainland rookery in San Diego and Los Angeles counties and has become a destination for visitors, residents, scientists/researchers, and students to respectfully view and study the seals. The proposed language on seasonal beach closure would serve to protect the harbor seal individuals that utilize the cove and beach, adequate for long-term recreational, scientific, and educational purposes.

In conclusion, the Coastal Act policies regarding Marine Resources ensure protection of the valuable habitat that Children's Pool Beach provides harbor seals in the form of a rookery, for giving birth to pups, and a haul out site that seals use for other important life functions and behavioral patterns. The proposed seasonal beach closure will maintain and enhance the harbor seal habitat, consistent with Section 30230 of the Coastal Act. The seasonal beach closure will ensure that the use of the marine environment, Children's Pool area, will sustain the biological productivity of coastal waters and will assist to maintain healthy populations of the seals, as mandated under Section 30230, because it will significantly reduce the existing periodic harassment of the seals. Therefore, the Commission hereby finds that the proposed LUP amendment is consistent with the applicable Coastal Act policies regarding protection of Marine Resources.

3. Public Access/Recreation

As cited above, the Coastal Act has numerous policies supporting, encouraging, and requiring the protection of public access. Preserving public access to the shoreline and public recreational facilities is one of the primary goals of the Coastal Act. However, as described above, there are occasionally circumstances where the Coastal Act mandate to protect marine resources requires limiting public access, such as the provisions in sections 30212 and 30214, which allow the Commission to restrict access in a certain

time, place and manner if to do so would protect fragile coastal resources.. As noted above in the marine resources section, the seals at the haul out site are considered a fragile coastal resource because they are highly vulnerable to frequent flushing which significantly affects their well-being, particularly during pupping season. When the Commission restricts access to protect fragile coastal resources, it requires that alternatives be considered, and that any restrictions on access be the minimum necessary to achieve the goal of protecting fragile coastal resources.

As discussed previously, the City has considered and implemented measures that are less restrictive on public access. The rope barrier should have been sufficient as a means of protecting the seals while maintaining limited but adequate public access to the water. Unfortunately, the current shared use guidelines and rope barrier at Children's Pool Beach have failed to prevent continual harassment of the seals during their pupping season as well as non-pupping season. Even under supervision of a lifeguard or park ranger, some people have refused to adhere to the shared use informational signs with guidelines that call for maintaining an appropriate distance for safe and respectful viewing of the seals, and acknowledge that seals require further protection from human harassment during the vulnerable months of their pupping season as provided for in Section 30230 of the Coastal Act. The City has indicated that since the seals started hauling out on Children's Pool Beach, there have been ongoing conflicts between people who want to defend the seals and people who want to approach the seals and/or use the beach and ocean at this location without maintaining a reasonable distance from the wildlife. There have been multiple occurrences of people in support of wholly unrestricted public access holding demonstrations on the beach protesting the use of the rope as an enforceable barrier and encouraging others to disregard the intention of the rope guidelines. As these conflicts arise, the park ranger and lifeguards are regularly called to intervene and/or mediate. While lifeguards are asked to defuse conflicts over the seals at Children's Pool Beach, it takes them away from providing essential public services as lifeguards to protect swimmers from danger and drowning.

Consistent with Section 30214 of the Coastal Act, the proposed seasonal beach closure restricting access at Children's Pool in a time, place and manner is the minimum necessary to protect the fragile coastal resources at the site, the hauled out seals. The seasonal closure would provide a much clearer, more enforceable line between public access restrictions and seal protection at Children's Pool. The issue of seal harassment is exacerbated by the fact that the existing rope barrier is a guideline that relies on the respect and compliance of the public, and lacks a strict threshold between what is viewing the seals from a distance that does not disturb them and what constitutes harassment and thus an illegal "taking" under the MMPA. Thus, in order to protect the harbor seals during pupping season, the City proposes to amend the certified LUP policies to restrict public access on the sandy beach area of Children's Pool from December 15 to May 15 of each year during harbor seal pupping season. This will result in less enforcement time for the assigned park ranger and lifeguards and less police involvement, as well as more distinction for the public, as the beach closure and associated signage will make it very clear where and when public access is restricted.

As in the proposed amendment language, the sandy beach area of Children's Pool would be closed only from December 15 to May 15 of each year during harbor seal pupping season, the period during which protection from human harassment is most critical. These five months during the winter and early spring are also outside the peak beach-going summer months between Memorial Day and Labor Day. Even during the restricted period, the breakwater, which provides a unique public area to walk and observe the seals and their pups at a safe distance, will be open to public access without restrictions year-round. The breakwater will continue to provide public recreation opportunities such as fishing, seal viewing, walking, and scientific observation on a year-round basis.

In the other seven non-pupping season months of the year, public use of the sandy beach or the water would be restored along with the existing guidelines including continuation of the year-round rope barrier. Through the existing signage and rope barrier, visitors will continue to be encouraged to maintain a safe and respectful distance from the seals, as mandated by the MMPA, and advised against contact with the water, as the San Diego County Health Department has an ongoing advisory warning due to the water's high bacteria levels in this location. It was determined that due to limited tidal exchange in the pool and use of the area by so many seals, the water has become contaminated with high levels of bacteria that exceed health standards. Since September 1997, a water quality advisory has been posted at Children's Pool Beach advising against water contact as it poses a serious health risk. Thus, even in the absence of the proposed temporary closure, Children's Pool will remain a less-than-ideal location for safe water access.

While the presence of the seals has affected sunning and swimming at this location, Children's Pool Beach is not the only beach located in La Jolla. 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, Ravina, and Windansea. Many of these beaches are within walking distance or a short drive from Children's Pool Beach and offer public amenities such as permanent restrooms, showers, additional parking, and lifeguard facilities. There are many other ADA beach access ramps located throughout the City of San Diego, at Pacific Beach, south of the main lifeguard tower; Mission Beach, in front of the main lifeguard tower; South Mission Beach, south of the main lifeguard tower; Ocean Beach, in front of the main lifeguard tower; Crown Point, south of the southern comfort station; Bonita Cove, near the southwest parking lot; and at Mission Point Park, at the western end of the park. Furthermore, the water quality at these adjacent beaches is significantly better than Children's Pool Beach and the San Diego County Health Department does not have ongoing advisory warnings for water contact at these alternative beaches. La Jolla Shores, La Jolla Cove, South Casa Beach, Ravina, and Windansea were all surveyed for Heal the Bay's 2014 Beach Report Card and were awarded an A or A+ for water quality. Thus, the proposed seasonal restriction on this one cove will not have a significant impact on the general public's ability to access public tidelands or recreate at La Jolla's beaches.

There have been assertions by members of the public that the seasonal closure would severely affect the ability of disabled people to access the shoreline. However, there are currently no facilities at Children's Pool that provide ADA access to the beach or water.

While Children's Pool Beach does have an "access ramp," it is not ADA compliant and use is only allowed for emergency personnel. The ramp is gated to prevent unauthorized vehicular access, although the wide bar design of the gate does not strictly prevent pedestrian access. The City has asserted that their research into the history of the ramp has not uncovered any evidence that this ramp was used for any purpose other than emergency vehicle access. The history of the gate across the ramp is unknown, and it is not clear whether the gate was part of the original ramp construction or installed at a later date. However, while the existing ramp is not currently ADA accessible, nothing in the proposed project would prevent the City from exploring the potential to create an ADA accessible ramp leading to Children's Pool, either at the existing ramp or another location. Any access improvements approved by the Commission in the future would presumably be subject to the same seasonal restrictions (if any) as those applicable elsewhere at Children's Pool.

Although there are currently no ADA accessible facilities at Children's Pool, there are many San Diego beaches that not only have Health Department-approved water quality but also are easily accessible to beach-goers with disabilities. La Jolla Shores, approximately two miles north of Children's Pool Beach, provides one free power beach wheelchair for disabled visitors and is a flat, accessible beach. Beach wheelchairs can also be found, free of charge, at Ocean Beach, Mission Beach, Pacific Beach, Coronado Beach, and Imperial Beach. The facilities at Crown Point, Bonita Cove, and Mission Point Park allow people to access the calmer waters of Mission Bay. The public will be able to utilize these many clean, accessible beaches during the five months that access would be restricted at Children's Pool. The proposed project will not affect public access from any existing ADA accessible facilities.

As noted above, ever since the seals began hauling out on the beach at Children's Pool, they have become a major tourist attraction and a public access and recreation amenity in and of themselves. The ability to closely yet respectfully observe seals in a natural environment from the shoreline and breakwater at Children's Pool is unique to this location, and the seasonal beach closure would protect this passive public access and recreation amenity. Viewing the seals is often the primary purpose of a visit to Children's Pool Beach, and visitors will continue to be able to view the seals from several areas without going onto the sand. These areas include the gazebo along Coast Boulevard, the walkway along Coast Boulevard, the access stairway at the east end of the beach, the access stairway landing, and the breakwater. From the breakwater, visitors can view the seals up close, and due to the breakwater's height above the sand, the seals do not flush as easily when viewed from this location. Viewing the seals has drawn huge numbers of people to this coastal area, both locally and from around the world. According to the San Diego Convention and Visitors Bureau, approximately 2.6 million people visited La Jolla in 2009. This figure includes day visitors, visitors staying overnight in La Jolla, and visitors staying in other parts of San Diego, but visiting La Jolla at some point during their trip. Thus, the seals encourage public access by attracting the public to the shore and providing a lower cost visitor amenity, consistent with Coastal Act Section 30213.

As noted in Section 30214 of the Coastal Act cited above, in implementing the public access policies of the Act, the Commission may regulate the time, place, and manner of public access depending on the facts and circumstances in each case. This is one circumstance where it is appropriate to implement public access restrictions in order to provide marine resource protection during harbor seal pupping season. The facts, as described above, support the need for seasonal beach closure as some members of the public have repeatedly ignored the beach's shared use guidelines and intentionally harassed the seals and their pups. The public will still be able to directly access the beach and ocean at Children's Pool Beach for seven months of the year, and the breakwater year-round. The public will still be able to enjoy all the scenic amenities of the area, viewing the shoreline and ocean, as well as the seals, or participate in nature interpretation as a passive recreational activity.

While the proposed amendment language will impact public access from December 15 to May 15 of each year, this is not only necessary but also the least impact possible to effectively protect the seals from harassment during their vulnerable months of pupping season. Public access protection is one of the Commission's highest priorities, and this proposed LUP amendment will have an impact on public access, but this is the least environmentally damaging alternative and it would result in a limited restriction for a limited time of the year to ensure the seals and their pupping habitat are more effectively protected.

As provided for in Sections 30210, 30212 and 30214 of the Coastal Act cited above, maximum public access shall be provided for all people consistent with public safety, protection of fragile natural resources and the protection of natural resource areas from overuse. Children's Pool Beach provides a natural haul out site for harbor seals and as mandated by the Coastal Act, the provision of public access may be restricted if necessary to protect fragile coastal resources at the subject site. The proposed LUP amendment is consistent with Sections 30210, 30212 and 30214 of the Coastal Act because it maximizes public access to the beach for seven months of the year while providing protection of the haul out site, a fragile coastal resource, and preventing overuse of the resource area by people for the other five months of the year.

Therefore, the Commission finds that the subject LUP amendment is consistent as proposed with all of the applicable Coastal Act policies regarding Public Access and Recreation.

4. Visual Resources

The area above Children's Pool Beach is identified as a viewshed area in the La Jolla Community Plan and Local Coastal Program Land Use Plan; however, the proposed LUP amendment would not result in any adverse impacts to visual resources. Scenic view opportunities of the shoreline and ocean will remain along Coast Boulevard adjacent to Children's Pool and from the breakwater during the pupping season, and from the sandy beach area as well during non-pupping season. Passive recreational opportunities exist year-round through nature interpretation, observation, and education. Signage and

barriers associated with the seasonal closure are minimal, consistent with existing signage at Children's Pool, and will not obstruct public views. Thus, the Commission finds that the subject LUP amendment is consistent as proposed with Section 30251 of the Coastal Act.

In summary, the Commission finds that the proposed amendment to the La Jolla Community Plan (LUP) to authorize a seasonal closure of Children's Pool during the harbor seal pupping season can be found consistent with the marine resource protection policies of the Coastal Act. In addition, given that beach access for the general public access will be restored, along with the continued installation of a rope barrier with an opening, during the remainder of each year, the Commission finds that the LUP amendment can be found consistent with the public access and recreation policies of the Act. This finding is predicated on the visual access and nature interpretation opportunities that are afforded and maintained year-round. With these findings, the Commission finds that the amendment can be approved as submitted.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP or LCP amendment submittal.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, conforms with CEQA provisions, requiring that it will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Pursuant to the City's own obligations under CEQA, the City approved and adopted Negative Declaration 225045. As the proposed amendment would provide increased protection of marine resources, the Commission finds that it is unlikely that any significant adverse effects on the environment would occur. Furthermore, as the public access restrictions are limited and found necessary to provide maximum marine resource protection, the Commission finds there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect on the environment that could occur. Therefore, the Commission finds that the subject LCP land use plan, as amended, conforms to the relevant CEQA provisions.

Subject Site

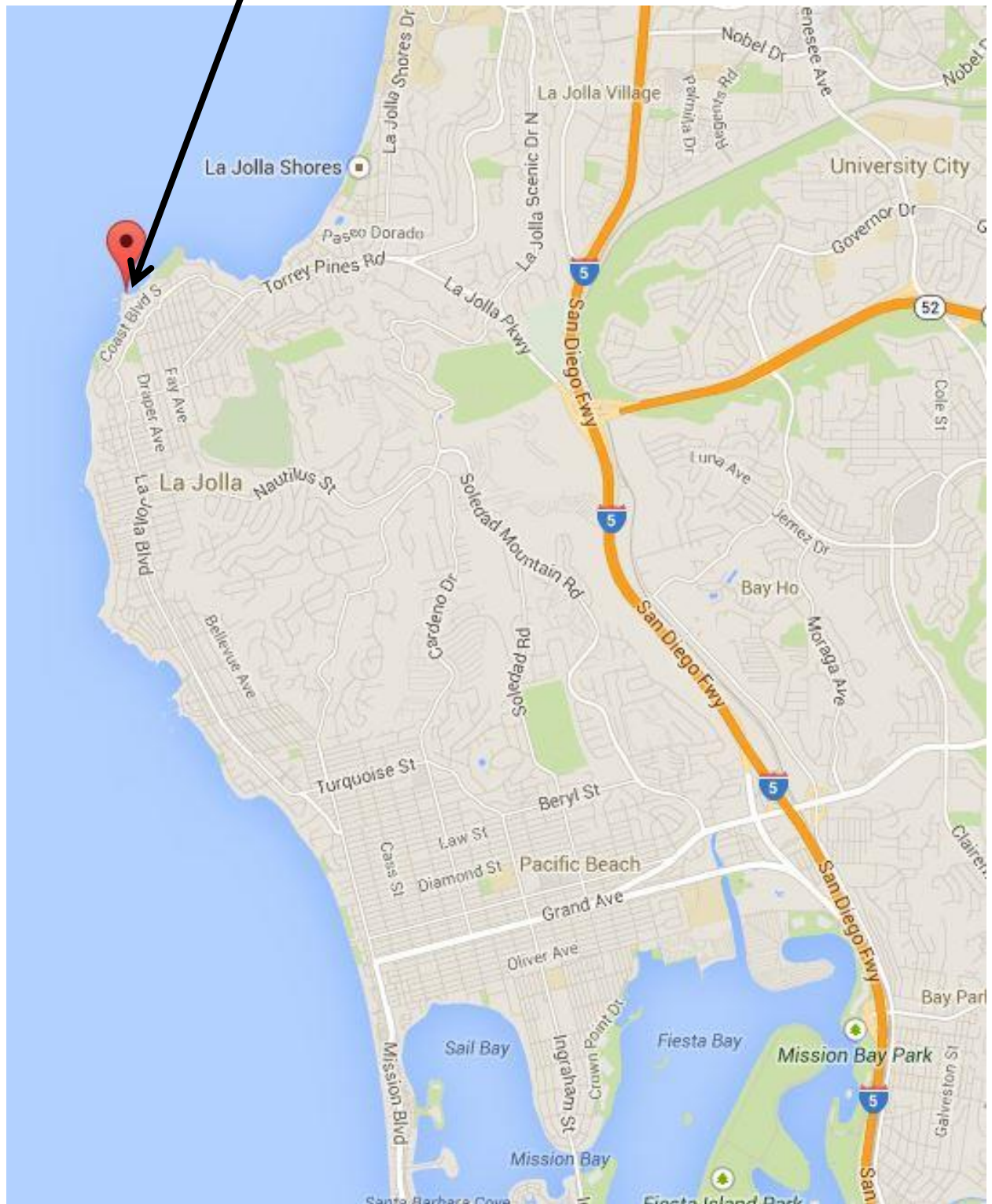


EXHIBIT NO. 1

APPLICATION NO.

LCP-6-LJS-14-0607-1

Children's Pool Beach



California Coastal Commission

Subject Site





*Community Plan and
Local Coastal Program
Land Use Plan*

November 2013 Edits
CP/LCP Amendment for Children's Pool

City of San Diego Planning Department
202 C Street, MS 4A
San Diego, CA 92101



Printed on recycled paper.

This information, or this document (or portions thereof), will be made available in alternative formats upon request.

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DOCUMENT NO. 3087
FILED
FEB 24
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

EXHIBIT NO. 2

APPLICATION NO.

LCP-6-LJS-14-0607-1

Proposed Amendments

Page 1 of 7



California Coastal Commission

This plan presents the coastal issues that have been identified for the community; it proposes policies and recommendations in the various elements of the community plan to address those issues. These issues are summarized below:

- **Public Access to the Beaches and Coastline**

The Natural Resources and Open Space System Element recommends a comprehensive sign program to identify existing locations along the coast where public access to the shoreline exists; Figure 6, 9 and Appendix G identifies the existing coastline access points from La Jolla Farms to Tourmaline Surfing Park; and the Transportation System Element incorporates recommendations for improving bicycle access to Ellen B. Scripps Park and La Jolla Shores Beach and other public shoreline areas of La Jolla.

The plan also states that the City will review new developments for the potential of prescriptive rights of access in accordance with the California Coastal Act and state law.

- **Environmentally Sensitive Habitat Areas and Marine Resources**

The Natural Resources and Open Space System and Residential Elements recommend that development be designed to prevent significant impacts upon sensitive habitats and identified endangered or threatened plant and animal species. In addition, seasonal access restrictions and a buffer are designated for the Children's Pool Beach in order to protect breeding pinnipeds pursuant to Section 30230 of the California Coastal Act. No public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season.

- **Recreation and Visitor Serving Retail Areas**

The Commercial Land Use Element recommends retention of existing hotel, retail and visitor-oriented commercial areas in proximity to the beach and coastline parks in order to maintain a high degree of pedestrian activity and access to coastal resources.

- **Preservation or Conservation of Historic Resources**

The Heritage Resources Element recommends preserving the historical integrity of these community landmarks and archeological sites per the Secretary of Interior's Standards as well as maintaining the existing Cultural Complex within downtown La Jolla in order to retain the distinctive architectural, educational and historic heritage of the community.

- **Provision of Parks and Recreation Areas**

The Community Facilities Element recommends the preservation of existing resource and population-based parks and the identification of additional park and recreation opportunities throughout the community.

- **Provision of Affordable Housing**

PHYSICAL ACCESS POINTS: (*dedicated)

1. Torrey Pines City Beach -U.C.S.D. access road off La Jolla Farms Rd. and trail south of glider port
2. Scripps Institution of Oceanography (public parking & stairs)
3. Kellogg Park-La Jolla Shores Beach*
4. Boat launching ramp at Avenida de la Playa
5. Walk at south end of the Marine Room restaurant
6. Princess Street (emergency access)
7. Scenic overlook from Coast Walk off of Torrey Pines Road (public parking, lateral access)
8. Cave Store access to Goldfish Point
9. La Jolla Cove -Ellen B. Scripps Park *
10. Coast Boulevard Park: Boomer Beach
11. Coast Boulevard Park: Shell Beach
12. Coast Boulevard Park: Children's Pool (For more information regarding the seasonal access restrictions refer to Appendix G-Subarea F)
13. Coast Boulevard Park: South Casa Beach
- 13a. Coast Boulevard Park: Wipe-out Beach
14. Nicholson's Point Park
15. Dedicated walkway at 100 Coast Boulevard South*
16. Stairway at the end of Marine Street (Jones Beach)
17. Paved walk at end of Vista Del Mar; heavily used for beach access*
18. Street at the end of Sea Lane
19. Walk at the end of Vista de la Playa
20. Fern Glen at Neptune Place
21. Windansea Shoreline Park at the west end of Fern Glen, Belvedere, Westbourne, Nautilus & Bonair Streets*
22. La Jolla Strand Shoreline Park at the West End of Gravilla, Kolmar, Rosemont Streets, and Palomar Avenue*
23. Hermosa Terrace Shoreline Park at west end of Palomar Avenue*
24. Paved easement between 6406 and 6424 Camino de la Costa
25. Cortez Place between 6160 and 6204 Camino de la Costa
26. Mira Monte Place between 6040 and 6102 Camino de la Costa -unimproved street
27. Paved stairs and walk at the end of the 5900 block of Camino de la Costa
28. Stairway from Bird Rock Avenue to tide pools
29. Pathway and stairs extending to the shore from Linda Way
30. Tourmaline Park*

wildlife habitats. In addition, the open space designations and zoning protect the hillsides and canyons for their park, recreation, scenic and open space values. The location of the public and private dedicated and designated open space and park areas in La Jolla are shown on Figure 7 and include, but are not limited to, all lands designated as sensitive slopes, viewshed or geologic hazard on City of San Diego Map C-720 dated 12/24/85 (last revision).

Visual Resources

La Jolla is a community of significant visual resources. The ability to observe the scenic vistas of the ocean, bluff and beach areas, hillsides and canyons, from public vantage points as identified in Figure 9 has, in some cases, been adversely affected by the clutter of signs, fences, structures or overhead utility lines that visually intrude on these resources.

Mount Soledad provides magnificent vistas of the coast of San Diego and is a regional landmark and an important visual resource for the community to preserve. Its slopes form a unique visual backdrop of significant scenic value which provides a natural relief from the commercial development that characterizes La Jolla's village area. Moreover, public views to La Jolla's community landmarks such as the San Diego Museum of Contemporary Art, and to historic structures, including the La Jolla Recreation Center and the La Jolla Woman's Club, are to be preserved. Significant public views of the coast are provided from Ellen B. Scripps Park and Kellogg Park. Other identified public vantage points are shown in Figure 9.

Shoreline Areas and Coastal Bluffs

The entire coastline of La Jolla stretching from La Jolla Farms to Tourmaline Surfing Park provides dramatic scenic beauty to the City of San Diego is considered an important sensitive coastal resource and should be protected.

The maximum use and enjoyment of La Jolla's shoreline is dependent upon providing safe and adequate public access to such major and special use recreational areas as La Jolla Shores Beach, Ellen B. Scripps Park, Coast Boulevard Park, Marine Street Park, Coast Walk, Windansea Beach, Calumet Park, Tourmaline Surfing Park and the Bird Rock tidepool areas.

Public access to this resource is limited, particularly along portions of Bird Rock, La Jolla Hermosa and in La Jolla Farms, due to steep slopes, cliff erosion and sensitive rock formations and restricted parking. Beach access is also limited on a seasonal basis at Children's Pool Beach, an area of special biological significance, during the harbor seal pupping season to protect the harbor seal rookery during this most vulnerable period.

This plan identifies two types of physical access: lateral (movement along the shoreline) and vertical (access to the shoreline from a public road). Public access at designated beach and shoreline points has been improved with the addition of stairways or ramps at certain points along the coastline including Tourmaline Surfing Park, Linda Way, Bird Rock Avenue, Windansea Park, La Jolla Strand Park, Jones Beach, Coast Boulevard Park, Shell Beach, Scripps Park, Children's Pool and La Jolla Shores Beach.

SUBAREA E: COAST BOULEVARD

Shoreline Access:

- a. La Jolla Cove. Small (.4-acre) pocket beach at the north end of Ellen B. Scripps Park. Concrete stairways provide access down bluff. Heavily used. The Cove and adjacent bluffs are an important visual and historical resource. Site of the La Jolla Roughwater Swim.
- b. Ellen Scripps Park. Dedicated 5.6-acre bluff top park. The park is a major recreational focal point for visitors to La Jolla. A scenic walkway along the bluff edge provides outstanding coastal views. A ramp down the bluff provides access to Boomer Beach. Heavily utilized. No off-street parking.
- c. Shell Beach. Small pocket beach south of Ellen B. Scripps Park. Stairway has been damaged.
- d. Children's Pool. Small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized. In order to protect breeding Harbor Seals, no public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season. *See discussion below.
- e. South Casa Beach. Small pocket beach accessible by concrete stairway. Part of Coastal Boulevard Park.
- f. Coast Boulevard Park. Dedicated 4.55-acre Shoreline Park between the stairway at Ocean Street and the stairway south of La Jolla Boulevard. Several unimproved trails provide access down gentle bluffs and vegetation dunes. Moderate-to-heavy use. No off-street parking.
- g. Vehicular access. Graded area near intersection of South Coast Boulevard and Coast Boulevard provide beach access for emergency vehicles.
- h. Concrete stairway next to pump station. Provides pedestrian access to adjacent pocket beach and north end of Nicholson's Point Park.

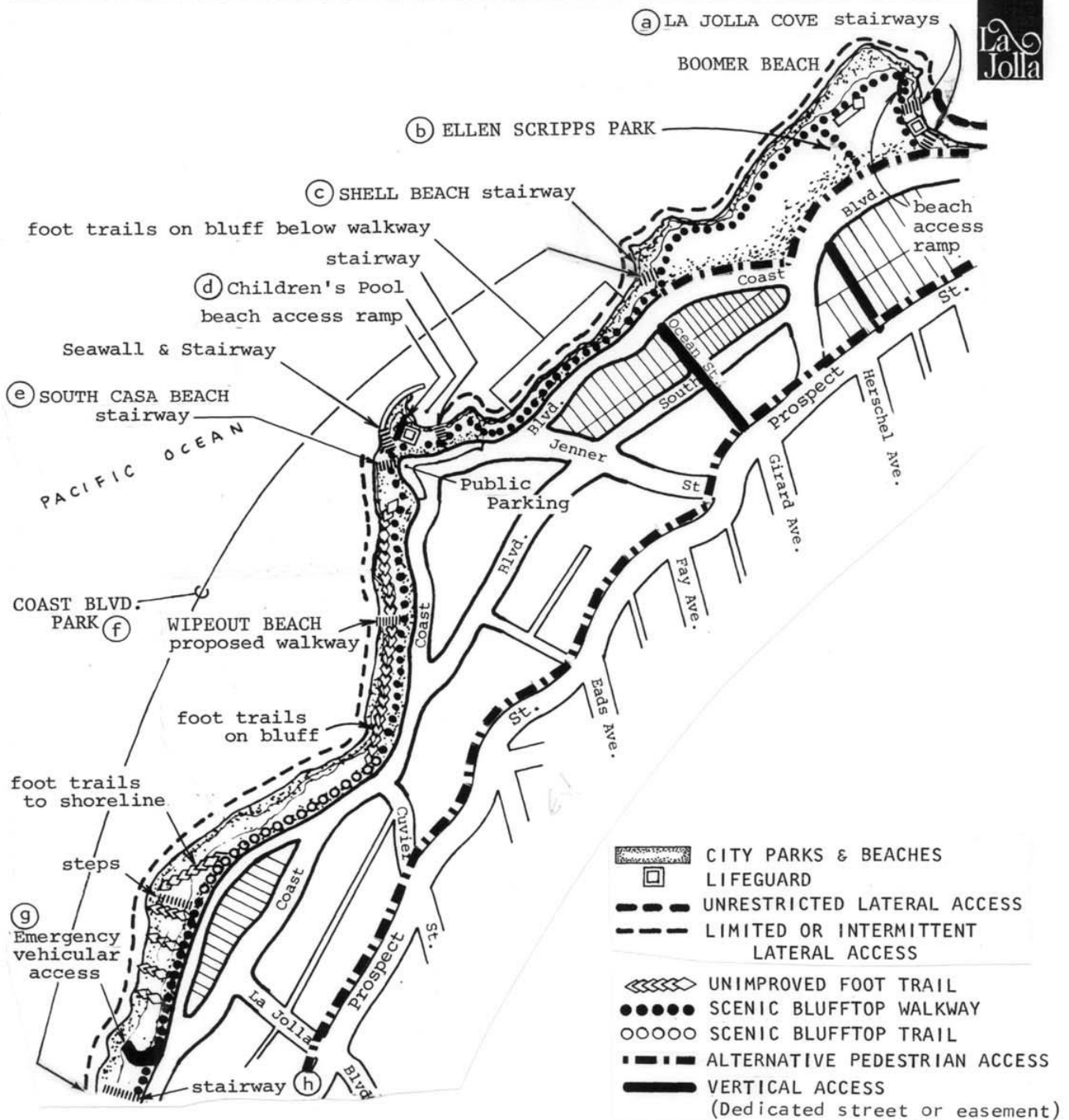
* On June 8, 2010, the City of San Diego City Council, via Resolution R-305837, directed the City Attorney "to draft an ordinance amending the Municipal Code...to prohibit public access to the Children's Pool beach during harbor seal pupping season, from December 15 to May 15" and directed the Mayor or his designee "to amend the Local Coastal Program, only if required, to prohibit the public from entering the beach during harbor seal pupping season from December 15th through May 15th." In order to effect this directive, staff proposed the closure of Children's Pool beach during pupping season in accordance with California Coastal Act Section 30230:

"Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal

waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes."

Therefore, in order for the LCP to be consistent with the Coastal Act, compliance with Section 30230 is required. The seasonal prohibition of public access onto the lower staircase leading down to the sand from the sidewalk and onto the Children's Pool beach during the seal pupping season, generally from December 15th to May 15th, is based on such a prohibition being the most protective of significant marine resources.

In conjunction with the LCP amendment, the City Council also adopted an ordinance by adding a Section 63.0102(e)(2) as follows: *It is unlawful for any person to be upon or to 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.*



Subarea E: Coast Boulevard - Physical Access



La Jolla Community Plan

City of San Diego • Planning Department

RESOLUTION NUMBER R- 308759

DATE OF FINAL PASSAGE MAR 12 2014

ITEM #201
SUB-C
2/24/14

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING AN AMENDMENT TO THE LA
JOLLA COMMUNITY PLAN/LOCAL COASTAL PROGRAM,
RESTRICTING PUBLIC BEACH ACCESS FOR THE
CHILDREN'S POOL BEACH SEASONAL CLOSURE – PROJECT
NO. 225045.

WHEREAS, on FEB 24 2014, the City Council of the City of San Diego held a
public hearing for the purpose of considering an amendment to the General Plan and the La Jolla
Community Plan; and

WHEREAS, the Park and Recreation Department of the City of San Diego, requested an
amendment to the General Plan and the La Jolla Community Plan to close to public access the La
Jolla Children's Pool beach, located at 888 Coast Boulevard, La Jolla, from December 15 to May
15 annually and the site is legally described as 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; and

WHEREAS, the Council of the City of San Diego has considered all maps, exhibits, and
written documents contained in the file for this project on record in the City of San Diego, and
has considered the oral presentations given at the public hearing; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that it adopts the
amendments to the La Jolla Community Plan and Local Coastal Program, a copy of which is on
file in the office of the City Clerk as Document No. RR- 308759.

BE IT FURTHER RESOLVED, that the Council adopts an amendment to the General
Plan for the City of San Diego to incorporate the above amended plan.

RE

A

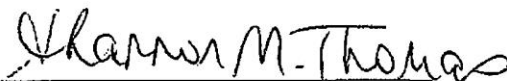
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EXHIBIT NO. 3
APPLICATION NO.
LCP-6-LJS-14-0607-1
City Resolution
Page 1 of 3
California Coastal Commission

BE IT FURTHER RESOLVED, that the La Jolla Community Plan, Local Coastal Program Land Use Plan, and General Plan amendments approved herein are not effective until the La Jolla Community Plan and Local Coastal Program Land Use Plan are unconditionally certified by the California Coastal Commission as a Local Coastal Program amendment.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



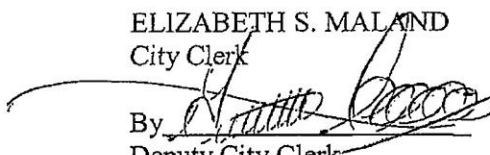
Shannon M. Thomas
Deputy City Attorney

SMT:als
10/09/13
02/19/14 Cor.Copy
Or.Dept:DSD
Doc. No.: 645359_2

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 24 2014.

ELIZABETH S. MALAND
City Clerk

By


Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

Passed by the Council of The City of San Diego on FEB 24 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 12 2014

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT

as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By 

Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-

308759

3/18/14
Item \$500
(O-2014-38)
COR.COPY

ORDINANCE NUMBER O- **20360** (NEW SERIES)

DATE OF FINAL PASSAGE **APR 3 2014**

ITEM # 51

3/11/14

2nd READING

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 3,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 63.0102, RELATING TO THE USE OF
THE LA JOLLA CHILDREN'S POOL.

WHEREAS, on May 17, 2010, the City Council directed the City Attorney's Office to return with a draft ordinance amending the San Diego Municipal Code to prohibit public access to the Children's Pool beach during harbor seal pupping season; and

WHEREAS, the proposed amendment specifies that it is unlawful for any person to be on or upon the La Jolla Children's Pool beach from December 15 to May 15; NOW, THEREFORE,

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

Section 1. That Chapter 6, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 63.0102, to read as follows:

§63.0102 Use of Public Parks and Beaches Regulated

(a) through (d) [No change in text.]

(e) Regulations for the Use of the La Jolla Children's Pool and Beach Areas

(1) [No change in text.]

(2) It is unlawful for any person to be upon or to cause any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach beginning at the second landing, from December 15 to May 15.

R

EXHIBIT NO. 4
APPLICATION NO.
LCP-6-LJS-14-0607-1
City Ordinance
Page 1 of 4
 California Coastal Commission

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall not take effect until a permit for its use is issued by the California Coastal Commission.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
09/18/13
02/27/14 Cor.Copy
Or.Dept:Park & Rec.
Doc. No. 633620_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 18 2014.

ELIZABETH S. MALAND
City Clerk

By Karin C. L.
Deputy City Clerk

Approved: 4/2/14
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAR 18 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 2 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 3 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Karen C. L., Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

FEB 24 2014

APR 3 2014

, and on _____

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

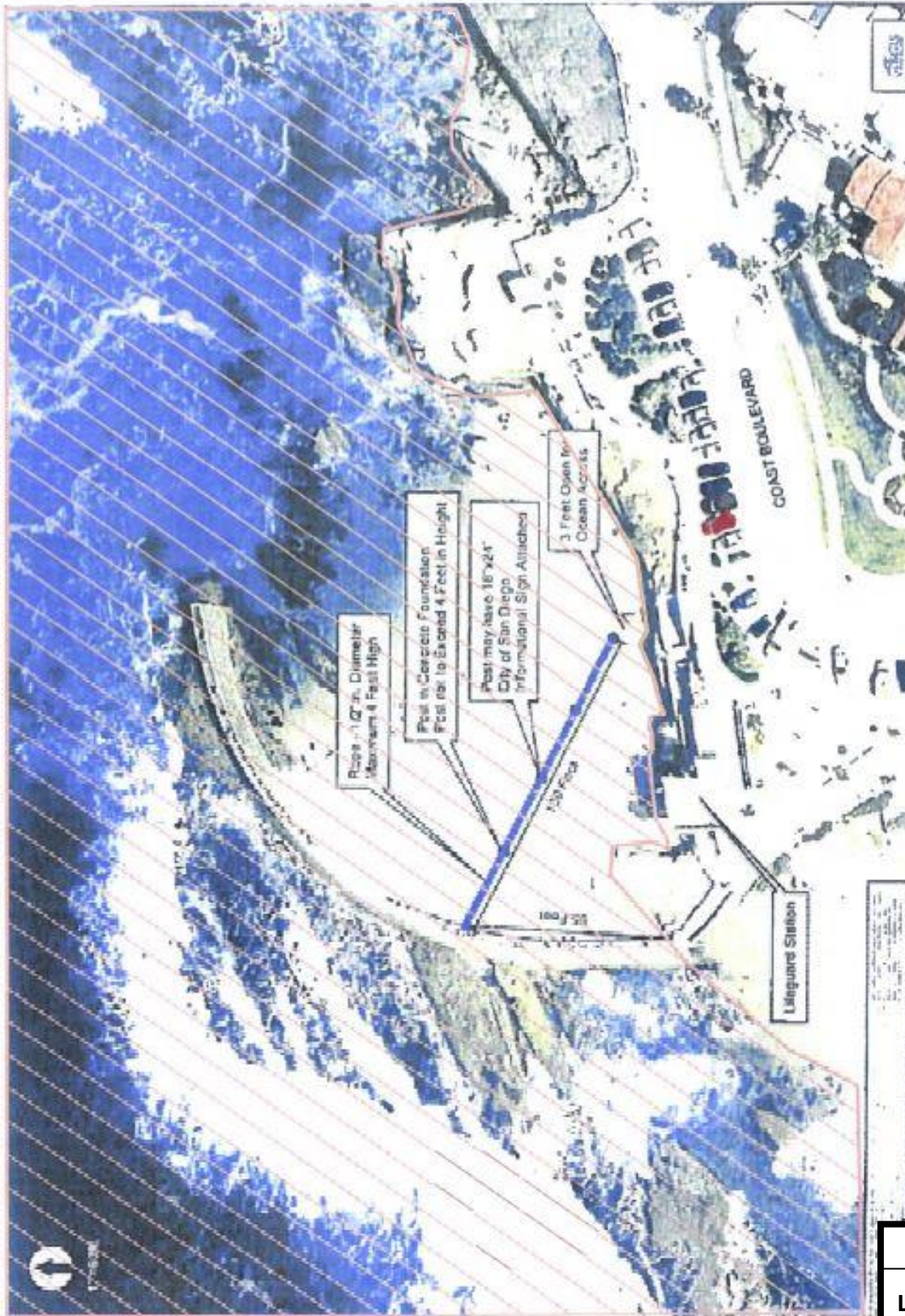
ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Karen C. L., Deputy

Office of the City Clerk, San Diego, California


Ordinance Number O-

20360



Coastal Commission Permit Jurisdiction
For illustrative purposes only.



EXHIBIT NO. 5
APPLICATION NO.
LCP-6-LJS-14-0607-1
Jurisdiction Map
 California Coastal Commission

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT
710 "E" STREET, SUITE 200
EUREKA, CA 95501
(707) 445-7873

**MEMORANDUM**

FROM: John D. Dixon, Ph.D.
Ecologist

TO: Brittney Laver

SUBJECT: San Diego Children's Pool

DATE: June 27, 2014

Documents reviewed:

City of San Diego. 2013-2014. Children's Pool Monitoring Plan Data Collection Forms for the period April 9, 2013 through May 14, 2014, showing number of seals on the beach and number of people on each side of the barrier rope. Attachment 1 to Belesky (2012).

City of San Diego. 2013-2014. Children's Pool Monitoring Plan Harassment Incident Forms for the period June 13, 2013 through May 14, 2014, documenting incidents of people crossing the rope barrier and flushing of seals by beach users and swimmers. Attachment 2 to Belesky (2012).

Dixon, J.D. (CCC) 2012. Memorandum to K. Brown (CCC) dated June 21, 2012 regarding "San Diego Children's Pool."

Belesky, R. (City of San Diego Park Ranger) 2014. Letter report to the Executive Director of the California Coastal Commission dated May 15, 2014 regarding "Childrens Pool Year-round Rope Annual Monitoring Report."

In my 2012 memorandum to Kanani Brown, I briefly reviewed the population status of harbor seals and the history of their use of the sandy beach at the Children's Pool. I concluded that:

"Although there are unlikely to be population consequences regardless of what actions are taken at the Children's Pool, it is nonetheless important that steps be taken to prevent the harassment of individual seals and to avoid forced flushing, especially during the period when dependent pups are present. Due to the fact that the numbers and distribution of seals on the beach varies both seasonally and from day-to-day, an adaptive management plan that could respond to changing circumstances would be most useful. Since a year-round rope barrier at the Children's Pool will have no negative biological impacts and will help protect the harbor seals using the beach, I concur with staff's recommendation to approve the proposed project, as conditioned."

EXHIBIT NO. 6

APPLICATION NO.

LCP-6-LJS-14-0607-1**Staff Ecologist Memo**

Page 1 of 2



California Coastal Commission

We have now received the first annual report (Belesky 2014) of the effectiveness of the rope barrier. In general, the rope has been very effective, greatly reducing seal disturbance. Although the vast majority of visitors respect the rope barrier, there are still incidents of seal harassment. When a ranger was present, 28 incidents that resulted in the flushing of harbor seals were documented. Nine were due to swimmers entering or leaving the water, 11 due to people crossing the rope barrier, and the remainder due to noise or activity in the surrounding area. The report notes that, "Many other seal harassment incidents have been witnessed, photographed, and video recorded by visitors and reported to the Ranger but date and time of those incidents could not be verified and therefore were not documented on the Harassment Incident Form."

Due to this continued harassment of seals by a minority of beach visitors¹, the City has proposed to close the beach at the Children's Pool from December 15 through May 15 each year, which generally brackets the pupping season. Dependent pups are usually present from about March through about June. The closure can only have beneficial effects on the local seal population and I concur with staff's recommendation to approve the proposed project. Monitoring should continue in order to determine whether this seasonal closure has more beneficial effects than the rope barrier.

¹ An egregious example was captured by the web cam at the Children's Pool in 2013 and reported in local news: <http://www.kpbs.org/news/2013/feb/18/webcam-catches-women-harassing-seals-at-childrens/> (accessed 06-26-14).



THE CITY OF SAN DIEGO

Date: May 15, 2014

To: Executive Director, California Coastal Commission

From: Richard Belesky, Assigned Park Ranger, Children's Pool

Subject: Children's Pool Year-round Rope Annual Monitoring Report

First Annual Written Monitoring Report

For the Children's Pool Beach Year-Round Rope

Coastal Development Permit Application No.:6-11-078

Coastal Development Permit Application No.:6-11-078 granted the City of San Diego permission to erect and maintain a year-round guideline rope on the Children's Pool beach to provide a buffer between humans and seals. The permit was accepted by the City on May 14, 2013. Special Condition 4B of the granted permit requires the City of San Diego to submit a written report annually summarizing the condition and performance of the approved structure, make recommendations for modifications, and establish baseline data that will be used to determine the level of use of the beach by seals as a haul out location throughout the year and to also assess the level of effectiveness of the rope at minimizing visitor disturbance of hauled out seals. The following is submitted in fulfillment of that requirement.

Requirement #1: All records of measurements, analyses, and conclusions created in conformance with the approved Monitoring Plan: The data compiled during the past year is entered on the Data Collection Form and is included in digital format as an Excel file on CD as Attachment 1. This is the first year's worth of beach usage by seals data and will be used as a baseline for comparison with subsequent years data. Review of the past year's data does show year-round usage of the beach by seals as a haul-out location but with significantly less usage during the day from mid-June through October 1, 2013. There were 109 consecutive days from June 14, 2013 to October 1, 2013 where less than 100 seals were counted on the beach during daylight hours. From June 16, 2013 to December 14, 2013 data observations recorded 0 seals on the beach or the rocks 217 times. Since December 14, 2013 there have been seals present at every count, with 2 being the least amount and 275 being the maximum counted. The data also shows that on a daily basis the number of seals hauling out tends to increase from morning to afternoon.



Developed Regional Parks Division • Park and Recreation

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

EXHIBIT NO. 7

APPLICATION NO.

LCP-6-LJS-14-0607-1

First Annual Monitoring

Report 6-11-078



California Coastal Commission

Harassment Incident Forms are included in digital format as PDF files on CD as Attachment 2. These documents record seal harassment incidents directly observed by the assigned Park Ranger while on duty at the Children's Pool. The Ranger observed 28 incidents of human activity that resulted in seals flushing in response. Of these incidents, 9 were due to snorkelers, scuba divers, and/or spear fishermen entering or exiting the water, 11 were due to people crossing the rope to get closer to the seals and the remaining incidents were from various causes such as low flying military helicopters, people fishing from the end of the breakwater, a loud noise from the stairway, and a lifeguard rescue boat that entered the pool area while training. Many other seal harassment incidents have been witnessed, photographed, and video recorded by visitors and reported to the Ranger but date and time of those incidents could not be verified and therefore were not documented on the Harassment Incident Form.

Requirement #2: An evaluation of the condition and performance of the approved structure, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the structure: Several repairs to the rope and poles have been performed over the past year. The most common repair has been the need for grounds maintenance personnel to reseal rope pole 1, the pole closest to the rock, deeper into the sand. Children pulling or hanging on the rope cause the base of the pole to loosen and pull up out of the sand and the rope to get excessively slack. Reseating has had to be done about once a month.

The rope was found cut between poles 3 and 4 the morning of December 16. There was enough excess rope coiled at the seawall end to reconnect the rope at pole 3. However, the rope was cut again two nights later. A new rope was installed December 19. There has been no further rope cutting incidents to date.

Very high tides and high surf washed out pole 1 the morning of December 31, 2013 and again March 2, 2014. Grounds maintenance personnel replaced the pole after each washout as soon as practical after the tide receded and hauled out seals moved away.

The rope has performed as expected, greatly reducing seal disturbance by beach visitors. The amount of reduction cannot be statistically measured due to lack of baseline data. Personal observations by the assigned Park Ranger have shown that when seals are hauled out on the Children's Pool beach the vast majority of visitors will automatically view them from behind the rope. There have been instances of the rope being overly effective (see photos). Instances, predominantly in the summer, when there were no seals on the beach as well as no visitors yet Shell beach just to the north and South Casa beach just to the south were crowded with beachgoers. Visitors have reported to the Ranger that they saw the rope on the beach and just assumed that the beach was closed.

The rope is ineffective when certain tidal conditions occur. The rope and poles are installed at the mean high tide line. When high spring tides occur in conjunction with new and full moons seals haul out on the "people" side of the rope. Since there is nothing separating visitors and seals human/seal interaction is much more common. It is interesting to note that the majority of these highest high tides occur at night or early in the morning and not during peaks visitor hours.

Requirement #3: Recommendations for repair, maintenance, modifications, or other work to the device: In order to reduce the number of times pole 1 has to be reseated because of rope pulling and washouts it is recommended that poles 1 and 2 be replaced with longer poles that can be buried deeper into the sand while still maintaining the four foot maximum height above the surface.

Requirement #4: Photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the condition, performance, and/or effectiveness of the structure:

Seven photographs demonstrating the performance and effectiveness of the rope are included on the following pages. Additional photographs are included on the attached CD.

Submitted by:



Richard Belesky
Park Ranger
Shoreline Parks/Developed Regional Parks Division
City of San Diego Park and Recreation Department
2125 Park Boulevard, MS 30M
San Diego, CA 92101

DISCLOSURE OF EX PARTE COMMUNICATIONS

Date and time of receipt of communication:

June 18, 2014 at 3:30 p.m.

Location of communication:

Redwood City

Type of communication:

In person

Person(s) in attendance at time of communication:

Adrian Kwiatkowski, Seal Conservancy of San Diego

Dr. Jane Reldan, Seal Conservancy of San Diego

Person(s) receiving communication:

Carole Groom

Name or description of project:

Seasonal closure of Casa Beach during Harbor Seal pupping season

Detailed substantive description of the content of communication:

The representatives of the Seal Conservancy of San Diego expressed their support for the seasonal closure of Casa Beach during Harbor Seal pupping season from December 15 through May 15. The representatives indicated that there are approximately 200-250 seals that come to Casa Beach during pupping season and that there have been significant human and seal interactions as a result of minimal restrictions at this area. They also indicated that there are three adjacent beaches available and accessible, which are not used by seals during pupping season.

The representatives indicated that the proposal was approved by both the Planning Commission and City Council. They maintained that alternative plans do not adequately address the issue or could have greater impact to beach access.

They showed a powerpoint presentation that was presented to the San Diego City Council and will be provided to Coastal Commission staff.

Date: Jun 7 2014

Signature of Commissioner: Carole Groom

EXHIBIT NO. 8

APPLICATION NO.

LCP-6-LJS-14-0607-1

Ex Parte Disclosures

Page 1 of 6



California Coastal Commission

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

LCP Amendment by the City of San Diego approving a seasonal closure of Children's Pool beach in La Jolla due to the pupping season for Harbor Seals.

Date and time of receipt of communication:

March 20, 2014 4:00pm

Location of communication:

San Diego

Type of communication:

In-person meeting

Person(s) in attendance at time of communication:

Mike Costello, Cheri Aspenleiter, Bob Seegmiller, Marie Hunrichs, Ken Hunrichs, John Leek

Person(s) receiving communication:

Greg Murphy, on behalf of Greg Cox

Detailed substantive description of the content of communication:

(Attach a copy of the complete text of any written material received.)

Greg Murphy on my staff met with representatives of the Friends of the Children's Pool and other organizations who oppose the City of San Diego's action to close the Children's Pool from public access during pupping season, from December to May. The discussion below is taken from their perspective.

The group believes the closure will be an unlawful restriction on protected coastal access. Our State Constitution protects fishing rights along our coast and coastal access protections are the foundation of the California Coastal Act. The City of San Diego's closure plan is a regulatory overreach that cannot be supported by the Coastal Act nor by the actual conditions at the Children's Pool.

This particular beach has been protected since 1931 by a State Tidelands Trust commonly known as the Children's Pool Trust. This State statute protects coastal access for recreational activities and convenient fishing access. Nowhere does the language of the Trust permit the conversion to an animal reserve to the exclusion of all other Trusted uses. Even if the City is successful in gaining approval for amending the LCP to close a public beach contrary to the Coastal Act, the Trust stands to protect the defined uses as a park, playground and bathing pool for children. The amended Trust allows for an additional use as a marine mammal park but that one use cannot supersede all other

defined uses. It must be shared beach at all times per the Trust.

The Friends of the Children's Pool is an organization that has for ten years opposed unnecessary access restriction imposed on people using this public beach. They advocate for shared use of the beach as it is the most logical and balanced use of this protective coastal resource.

The City proposes to amend a longstanding policy of enhancing coastal access in our Local Coastal Program and hopes to prohibit beach access by soliciting validation from the Coastal Commission. This proposal lowers the standards for beach closure, is precedent setting and endangers access to all other beaches where wildlife chooses to share with people. Their fear is that animal rights activists are erroneously trying to protect a seal population when there is no documented danger to the seals or threat of species endangerment. In fact, since the Children's Pool is one of the most regulated beach areas in the entire state due to a combination of the Coastal Act and the Children's Pool Trust, if public access is prohibited for parts of the year here, then the precedent is set for closing beaches in other parts of the state where no such Trust exists. They fear Children's Pool will be the first of many nearby beaches where demands will be made to limit public access because of occupation by an ever expanding population of Sea Lions and Harbor Seals. They prefer a year-round shared use beach management plan developed by the Lifeguards.

Representatives discussed possible ulterior motives for the City's decision to limit public access to the Children's Pool. For one, the city may consider the seals a "tourist attraction" and therefore want to enact policy that encourages their continued existence at Children's Pool. The FoCP thinks this can be achieved through shared-use. Two, the FoCP considers all the focus and attention on harbor seals as a penance for humanity's past sins against marine mammals. The problem with that argument is that seals are not the species in danger, and that shouldn't have an impact on public policy with regards to public access. Third, the Restore Access to Many People (RAMP) organization, as represented by Cheri Aspenleiter, believes the City has an obligation to provide ADA access. Cheri believes the City is out of ADA compliance and therefore has chosen to mitigate their legal risk by closing the ramp and now prohibiting public access to the beach altogether between December and May.

In short, the FoCP wants the Children's Pool Trust and the Coastal Act to be upheld to maintain year-round public access to Children's Pool. The Trust was amended in 2009 to add "marine mammal park" as a use, but not the sole use. "Marine Mammal Park" is not defined by the Trust nor the State. No marine biologist has opined that the Children's Pool seals are in danger. ~~Any~~ One well publicized video that shows the seals being harassed by two young girls ~~was~~ may have been staged or provoked by animal rights activists who want to set a beach closure precedent. The claims made that seals were punched and kicked are false but were continuously repeated without any evidence. Nowhere in that video do those actions appear because that kind of behavior did not happen. The timing of that video is suspicious because of the recent surveillance camera installation and resulted in an emergency beach closure and round the clock

police protection for seals. The video swayed a sympathetic former mayor already in favor of beach closure to overreact and take that most drastic action.

The seal population has ballooned due to Seaworld's seal release program nearby and a series of seal protection measures have limited ~~limitations to~~ human use of Children's Pool Beach causing the seals to congregate there in unnatural numbers. Children's Pool is not a natural habitat; it was specifically designed for human use and is protected by statute.

The group shared links to youtube videos that are part of the public domain and letters and presentations that are part of the public record already through the course of the City's actions. Mike Costello, resident of La Jolla, also shared a 15-page slideshow, which is attached.

John Leek, Secretary for the San Diego Council of Divers added:

"San Diego has consistently failed to consider any solutions but the cheap and simple closure. It is just fiscally preferable. While leaving signs in place telling the public the beach is open but not providing needed public education, San Diego optimized its chances to let transgressions be filmed and to bully the Coastal Commission into a bailout. One effective unpublished remedy was applied last year by a protocol requiring Ranger, Police and Lifeguards to cite persons who were on the beach and could be believed to be of intent to disturb seals. All this on top of the federal oversight already in place. At the same time, San Diego purposefully delayed releasing real data the Coastal Commission required of it for a year round rope permit.

After 20 years of shared use, the seals still show by their actions that San Diego's exploitation of their presence for a "lucrative tourist attraction" (Description from permit recommendation for permanent rope barrier) makes for easier living than in the wild, in spite of people being pesky every so often. To get its way, San Diego has enjoyed support of powerful special interest groups such as Sierra Club, Humane Society, PETA, Wan Conservancy, Coastkeepers, Surfriders, and others chronically discontented with emphasis on public access the Commission has not been willing to shed. They favor the holding of State tidelands in trust for "certain qualified and enlightened" people of the State of California. The greater the seeming emergency here, on the most protected trusted tidelands in California, (first domino) the greater the chance of forcing the Commission to allow a dangerous precedent such that any community can declare a beach to be of special importance (they all are) and remove it from LCP protection and so any CCC jurisdiction.

For these reasons the Council of Divers asks the Commission simply tell San Diego to go back and solve its alleged problems within the framework of the Coastal Act, the Public Trust Doctrine and all relevant State laws and federal laws. San Diego has not demonstrated good faith to try to honor the Coastal Act or Public Trust Doctrine before trying to punch a hole in them. It has instead set aside means it has to maintain its animal display and preserve vertical access.

Those points presented, I hasten to add there are more layers on this onion and I hope we can be afforded the opportunity to present documentation you will need, and help clarify more of the issues. I must also add that divers do NOT want the seals to be discomforted such as to leave. They would only spread to other public beaches."

Cheri Jacobs Aspenleiter, on behalf of Restore Access to Many People (RAMP), added:

"The Children's Pool is the one and only safe Pacific Ocean access pool and without access we have no other safe access to the Pacific Ocean. Also Ellen Browning Scripps specifically said she was building it for "those handicapped in life's game" (1932) So that the very purpose the pool was built was for the disabled and the ramp there was in use for wheelchairs historically and in code in 1948. Also I feel an EIR is needed to ascertain the destruction of the ecosystem due to the over population of pinnepeds, the negative outcome of closing the only safe harbor south of La Jolla Cove, and the ongoing health risks due to seal fecal contamination, potenitally airborne diseases to seal viewers."

Date:

3/27/14

Signature of Commissioner: _____

Greg Cox

August 2014

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Application by the City of San Diego to amend their Local Coastal Program to allow for partial closure of Children's Pool in La Jolla during seal pupping season.

Date and time of receipt of communication:

July 22, 2014 at 2:00pm

Location of communication:

San Diego

Type of communication:

In person meeting

Person(s) in attendance at time of communication:

Cheri Jacobs Aspenleiter, Wes Johnson

Person(s) receiving communication:

Greg Cox and Greg Murphy

Detailed substantive description of the content of communication:

(Attach a copy of the complete text of any written material received.)

I spoke with two local residents, Cheri Jacobs Aspenleiter and Wes Johnson as representatives of the disabled community in opposition to proposed beach closure at Children's Pool. The two presented a number of historical photos and research regarding the Children's Pool. They also presented letters among city staff that indicate a capital project for a disabled access ramp at the pool was once considered. Cheri has had a couple of accidents that resulted in her handicaps and she believes that the snorkeling therapy at the children's pool has saved her from being in a wheelchair. Through her research, she has met other disabled and veterans who also use the pool for therapeutic benefit.

From their research they cite that Ellen Browning Scripps developed this pool for children and handicapped individuals for safe public access to the ocean. One of their concerns is that closing the beach during the winter creates a dangerous situation by forcing people to enter the ocean from different locations that have dangerous riptides. Another concern is related to access for lobster fishing, and Cheri said she was aware of 19 Native American tribes that should have access to diving and fishing year-round in this area. Instead of closing the pool for periods of time, Cheri presented an alternative solution to open up the sluiceways to refresh the water and keep it clean of the fecal matter from the seals. Cheri and Wes advocate for year-round public access to the pool.

Date:


7/25/14

Signature of Commissioner: _____

Greg Cox

RECEIVED
JUL 28 2014
CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

All letters of comment,
support, and opposition can
be found in the permit file
and in Exhibits 11, 12, and
13 of CDP #6-14-0691

EXHIBIT NO. 9
APPLICATION NO. LCP-6-LJS-14-0607-1
Public Comment Letters
 California Coastal Commission