

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



Click here to go to  
original staff report

# Th13a

## Addendum

August 13, 2014

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item Th13a**, Coastal Commission Permit Application  
**#6-14-0691 (Children's Pool)**, for the Commission Meeting of August 14,  
2014

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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. All references to the applicant shall be corrected from "Parks and Recreation" to "Park and Recreation."
2. On Page 3 of the staff report, in the first paragraph, the fifth sentence shall be revised as follows:

In the other seven non-pupping season months of the year, ~~there would be no public access restrictions and no regulations against~~ 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 with an opening providing access to the water.

3. On Page 10 of the staff report, in the first paragraph, the last sentence shall be revised as follows:

The beach area would have ~~unrestricted~~ restored public access along with the existing guidelines including continuation of the year-round rope barrier with an opening providing access to the water from May 16 to December 14 of each year, during which time the "Beach Closed" signs would be stored off-site.

4. On Page 17 of the staff report, at the end of the last 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.

NFMS 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.

5. On Page 19 of the staff report, before the first complete paragraph, the following paragraph shall be inserted:

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 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.

6. On Page 23 of the staff report, after the first paragraph, the following paragraph shall be inserted:

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.

7. On Page 27 of the staff report, the first complete paragraph shall be revised as follows:

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 particular 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. In such cases, 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.

8. On Page 28 of the staff report, in the third paragraph, the first sentence shall be revised as follows:

In the other seven non-pupping season months of the year, ~~there would be no public access restrictions and no regulations against~~ 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 with an opening providing access to the water.

9. On Page 29 of the staff report, the first complete paragraph shall be revised as follows:

There have been assertions by members of the public that the proposed project 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 many San Diego beaches that not only have Health Department approved water quality but also are easily accessible to beach goers with disabilities. While Children's Pool Beach does have an "access ramp," it is a gated, unimproved emergency vehicle access ramp that was it is not constructed for ADA compliance compliant and is only allowed for use by emergency personnel. The La Jolla certified LUP indicates two other concrete ramps designated for shoreline access aside from the ramp at Children's Pool: just north of Scripps Pier with beach access at the end of Discovery Way, and at Ellen Scripps Park with access to Boomer Beach. These beach access ramps are located approximately less than two miles and less than a half mile north of Children's Pool Beach, respectively. 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. 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 wheelchairs for disabled visitors and is a flat, accessible beach. Beach wheelchairs ~~These beach chairs~~ 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 have any impact on public access from any existing ADA accessible facilities.

10. On Page 30 of the staff report, the first sentence of the first complete paragraph shall be revised as follows:

As noted in Sections ~~30212 and~~ 30214 of the Coastal Act cited above, in implementing the public access policies of the Act, the Commission must take into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case.

August 2014

## DISCLOSURE OF EX PARTE COMMUNICATIONS

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**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*

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JUL 28 2014  
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SAN DIEGO COAST DISTRICT

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Blank**



# SEAL CONSERVANCY OF SAN DIEGO

P.O. Box 2016 • La Jolla, CA 92038  
(858) 349-0613 • SealConservancy.org

August 11, 2014

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

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AUG 11 2014

Dear Coastal Commissioners:

The Seal Conservancy of San Diego encourages the California Coastal Commission to vote in favor of Harbor Seal Pupping Season Closure of Casa Beach in La Jolla annually from December 15 through May 15. There are many compelling reasons to support pupping season closure including:

1. Casa Beach is used by harbor seals in winter for birthing, nursing, and raising their pups while use by humans is reduced due to colder weather conditions
2. Human harassment during pupping season has been shown to cause premature births, abandoned pups, increased pup mortality, and mother and pup malnutrition
3. Many California mainland coast beaches are closed to the public to protect harbor seals during pupping season

We encourage the Coastal Commission to join the Mayor of San Diego, the San Diego City Council, the San Diego Planning Commission and thousands of individuals and numerous organizations in supporting Harbor Seal Pupping Season Closure of Casa Beach in La Jolla annually from December 15 through May 15.

Sincerely,

*Ellen M. Shively*

Lt. Col. Ellen Shively (Ret.)  
President

*Carol Archibald*

Carol Archibald, Ph.D.  
Vice President

*Jane Reldan, M.D.*

Jane Reldan, M.D.  
Treasurer

*Armando Flores*

Armando Flores  
Secretary

*Deborah Saracini*

Deborah Saracini, M.A.  
Docent Coordinator

*Adrian Kwiatkowski*

Adrian Kwiatkowski  
Executive Director

Letters of Support 13



# SEAL CONSERVANCY OF SAN DIEGO

P.O. Box 2016 • La Jolla, CA 92038  
(858) 349-0613 • SealConservancy.org

August 11, 2014

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

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AUG 11 2014

Dear Ms. Laver:

Enclosed you will find a flash drive containing two presentations that are already part of the public record that our organization has been utilizing during meetings with Coastal Commissioners.

1. Seal Conservancy of San Diego presentation to San Diego City Council on February 24, 2014
2. Dr. Jane Reldan presentation to San Diego City Council on February 24, 2014

If you have any questions about the presentations or any ex parte communications, please feel free to contact me directly at (619) 704-0180.

Sincerely,

Adrian Kwiatkowski  
Executive Director

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CALIFORNIA  
COASTAL COMMISSION  
SANDIEGO COAST DISTRICT OFFICE

LCP/ CDP Item No: Th12c/ Th 13a

Application No: LCP-6-LJS-14-0607-1/ 6-14-0691

IN FAVOR: Anthony A. Ciani  
220 Walnut Street  
Pacific Grove, CA 93950

August 5, 2014

California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4421

RE: LCP-6-LJS-14-0607-1/ 6-14-0691

Dear Chairman Kinsey and Members of the Commission:

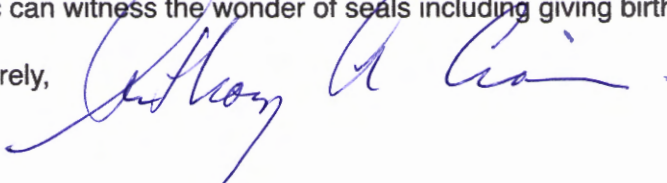
I strongly urge you to approve the staff recommendation to grant the amendments to the subject Land Use plan in order to secure and protect the public's enjoyment of this particular Harbor Seal habitat. The proposed amendment successfully addresses the need to balance public access and protection of fragile coastal resources (CA Section 30212.a)

I lived in La Jolla for nearly 60 years, and was the senior lifeguard stationed at the Children's Pool in the early 1960s. During all of those years I observed, first hand, the Harbor Seals use of the beach, rocks and sometimes the Sea Wall to haul out and rest. I also observed the public's access and use to the shoreline and ocean. The increase in urban population and corresponding redevelopment to accommodate the intensification of use of the beaches over that time has lead for competition for use of the beaches which are a limited resource. It is clear, and there is no doubt, that the public's use and enjoyment of the Children's Pool has increased exponentially due to the wonderful natural event of the Harbor Seal Habitat and Rockery, compared to that of sunbathing, swimming and skin diving at this small beach. Similar to the small beach at Hopkins Marine Lab here in Pacific Grove where the seals are protect year round, visitors from all over the world seek out this beach to observe the seals natural behavior in a natural setting ... all for free, not in a zoo or aquarium, but part of the Pacific Ocean.

As a long standing proponent for public access to and along the shoreline, I must strongly disagree with those who consider the asphalt ramp as a safe beach access. To the contrary, it is far too steep, as well as, normally covered with sandy deposits that act like ball bearings, to be safe even for sure footed persons. As the head guard in the early 60s, we had to caution folks to be careful using the steep ramp and/or provide first aid for those who slipped, especially the children!

There is ample pocket beaches nearby that provide for comparable access for sunbathing, swimming and diving. There are miles of other beaches north and south of this relatively tiny beach for all sorts of public use and enjoyment. It is only at the Children's Pool the general public can witness the wonder of seals including giving birth to a new generation.

Sincerely,



Anthony A. Ciani, Architect

15

NANCY LEE  
1972-B Felspar Street  
San Diego, CA 92109  
858-270-2012

August 4, 2014

California Coastal Commission  
San Diego District Office  
Brittney Laver, Coastal Program Analyst  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108

RE: Children's Pool Closure for the Harbor Seals Pupping Season 2015  
LCP-6LJS-14-0607-1 / 6-14-0691

To Whom It May Concern:

I am requesting that Children's Pool Beach be closed to public access only during Harbor seal pupping season, December 15 to May 15, of each year.

I would like the California Coastal Commission to know that I am a disabled person and do not see the need for disabled access for Children's Pool. There are many other beaches, which have disabled access and even provide beach wheelchairs. Additionally, during the pupping season, I have seen crowds of people come specifically to view a live harbor seal birth and they are delighted at the baby seals. We have visitors from all over the world that express disappointment and anger that the seal pups are not protected. I visit Children's Pool about 4-5 times a week and support the closure of Children's Pool during the pupping season.

This closure of the beach during the pupping season to public access is necessary because **Shared Use doesn't work**. These photos are from the pupping season this year.

Once visitors cross the rope the seals are frightened off the beach. Mothers will leave their newborn pups in fear. Frequently a pup is abandoned by the mother and since it is not weaned, it will starve to death



Abandoned pup becoming thinner every day. The mother never returned.

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SAN DIEGO COAST DISTRICT



These people crossed the rope and frightened the seals off the beach. Mothers cannot nurse their newborn pups with human interference. All it takes is one person to cross the rope and the seals are frightened and flush.





Even one small child entering the water can flush every seal off the beach.



During winter high tides the seals will come right up to the edge of the rope and even cross over it. This is a pup left by itself while the mother goes off to fish. I witnessed people touching this pup.



Here's another incidence when the seals crossed the rope and a person is touching a wild animal to get a photo. One evening I witness women in their early 20s lying on their backs next to a seal and pretending they were a seal to get a photo. The seal became stressed and tried to bite the young woman who then backed away and laughed and laughed. These people do not step away even after being told the seals are wild animals and will bite. The visitors ignore the lifeguards telling them the same thing. They act as if it is a petting zoo. I believe that we have an obligation to educate people about wild life and to protect it at the same time.



This photo clearly taken on another day shows how many seals crossed the rope due to high tide. Note the young person getting ready to lie down next to the seal and reaching out to touch it.



Here's yet another photo taken on a different day with a mother and pup on the other side of the rope. I personally spent several hours trying to keep the crowd back from the seals. There are always people who will curse at me and tell me I have no right to keep them from getting close to the seals or touching the seals. Referring people to the sign is not helpful because the sign states the viewing distance is 50 feet. When the seals cross the rope, they have zero protection even from people who will stay behind the rope. The rope becomes useless. The pups are stressed and so are the mothers.



Seals behind the rope after dark can be stepped on by visitors. There is no restriction of people going down to the beach in the dark. If visitors frighten the seals and they flush, a pup will be left behind for people to harass it intentionally or step on it.





People seem to have no fear about walking very close next to a wild harbor seal. Requesting people to not go down to the beach when the harbor seals have crossed the rope does not work, because they will not listen. Even if the lifeguards try to tell people what they are doing is dangerous, the people will not listen. Calling the San Diego Police Department doesn't help either because as long as people have the right to public access, there is nothing that can be done to protect the seals. The only answer is to close the beach during pupping season.



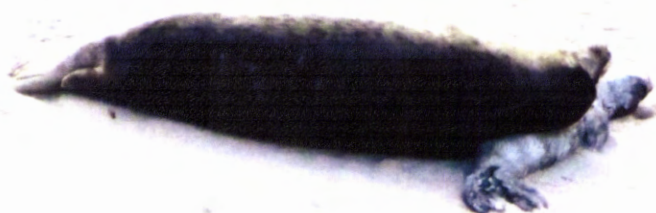
I have photo after photo after photo of people touching and even kicking the seals. During the pupping season this is especially harmful to the pregnant and nursing seal mothers and their vulnerable pups that need to nurse.



This very pregnant seal is using her flipper to try to tell this young man to move away from her. This Pro-Public Access young man frequents the beach on a regular basis and loves to "perform" for the tourists who take his photo. He refuses to understand that this causes the pregnant seal stress and that she can miscarry her baby. Some of the worst offenders against the seals during the pupping season are still the Pro-Public Access group.



This woman sat as close as she could get to the seal. When I try to explain to people that this causes the seals stress and frightens them, I am told "I'm not doing anything to the seals" and they refuse to move away. As you can see, these seals are across the rope.



Harbor seals are mammals just like us. This year I saw 2 pups that died. The harbor seal mothers did not abandon their deceased pups, but stayed with them to grieve. One mother stayed with her pup for days and days and days. It is heartbreaking to see this. We need to close the beach only during the pupping season so these pregnant mothers can carry their pregnancy to term, give birth to a healthy pup and nurse the pup in peace until it is weaned.



This is a harbor seal pup that has just been born. These pups deserve and need protection.

The City of San Diego has approved this closure. I request that the California Coastal Commission take this action, too.

Sincerely,

*Nancy Lee*  
Nancy Lee



RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

August 3, 2014

Dear Commissioners:

I am writing to express my support for closing Casa Beach in La Jolla during the critical months of harbor seal pupping season from December 15 through May 15. This is a balanced compromise that protects seals during the 5 critical months of pupping season (and months of diminished human use due to the colder weather) and also allows people access to the beach for the other 7 months of the year.

As a professor of Geography at San Diego State University, I study human-environment interactions. The conflict between human use and seal use at Casa Beach certainly presents a challenge. In spite of guide ropes and notifications regarding the requirements of the Marine Mammal Protection Act (MMPA), people continue to disturb seals during their pupping season. This constitutes harassment under the MMPA, as the presence of humans on the beach causes behavior disruption, which, under the MMPA, includes disrupting "breathing, nursing, breeding, feeding, or sheltering." Harassment at the beach can be intentional (as has been videotaped recently), or unintentional (in the case of people approaching seals to touch them or take photos, which flushes seals into the water and can separate nursing mothers from their pups).

Ideally, people would respect guide ropes, would be educated enough not to approach or harass seals (intentionally or unintentionally), and would comply with the regulations of the MMPA. But this has not happened after many years of conflict, and the city does not have adequate resources to enforce full time ranger presence to ensure that people behave responsibly. Given the history of conflict in the area, and the failure of a guide rope to stop people from harassing seals, beach closure is a necessary compromise. It allows people to maintain access for part of the year, but ensures that seals will not be harassed during their pupping season.

Ellen Browning Scripps created the Children's Pool for the enjoyment of children. My own children, and others I have observed, love to see the seals at Casa Beach. This is a unique opportunity for them to safely observe a phenomenon of nature, seals with their pups, which they cannot see elsewhere. This experience is much more valuable to children than a few months of swimming access, during a season when they are less likely to swim in cold waters, and in an area which has many other excellent swimming beaches within walking distance.

Closing Casa Beach during the pupping season provides a compromise that allows continued use by both people and seals. Please support this decision.

Sincerely,



Dr. Arielle Levine

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COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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PLEASE PROTECT THE SEALS!



Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

*Naomi Dar*  
(please sign and date here)

Naomi Dar  
PO Abox 7483  
San Diego, CA 92167

PLEASE PROTECT THE SEALS!



Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you, *Steven Hunter*  
*sorry it's late, hope it still helps!*  
(please sign and date here)

Steve Hunter  
3536 1st Ave Apt 8  
San Diego, CA 92103-4866

PLEASE PROTECT THE SEALS!



Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

*George Lee Liddle III* August 2, 2014  
(please sign and date here)

George Liddle  
4944 Cass St Unit 501  
San Diego, CA 92109-2042

PLEASE PROTECT THE SEALS!



Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

*Kelly Nordstrom* 08/05/14  
(please sign and date here)

Kelly Nordstrom  
3021 Dove St  
San Diego, CA 92103-5544



RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

August 5, 2014

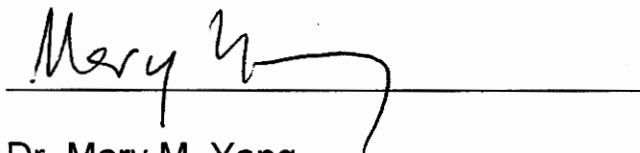
Dear Commissioners:

I support closing Casa Beach in La Jolla.

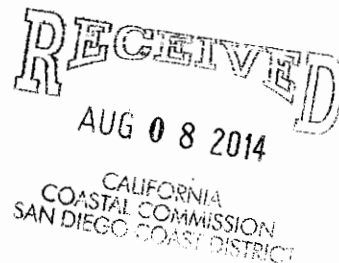
My partner lives in La Jolla and so the two of us frequently walk down to Casa Beach to see the seals. We have been witness to some atrocious acts. We have seen people chase the seals, kick sand at them and in so many ways spoil the idyllic scene that the majority of us enjoy watching from the walkways at a distance. There are few places where people can still view animals in their natural habitat. My personal preference is that the beach be closed to humans and a rope kept up at all times. However, as a compromise, I will support the closing of Casa Beach during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

Some of the scenes that we have witnessed against a mother and it's young have been heart wrenching and unconscionable. Beach closure will help prevent premature births, abandoned pups, pup mortality and mom and pup malnutrition. Please support the closing of Casa Beach, especially during such a critical and vulnerable period.

Sincerely,



Dr. Mary M. Yang  
807 N. Rios Ave.  
Solana Beach, CA 92075



August 8, 2014

AGENDA 13A  
IN FAVOR  
Tana L. Paget

Re: LCP-6-LJS-14-0607-1/6-14-0691

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AUG 11 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners,

I grew up in La Jolla, and live in La Jolla,  
and enjoyed the Children's Pool as a child.

Now, my family and I enjoy having this  
wonderful harbor seal rookery there, and  
the opportunity to observe them. We support  
the Harbor Seal Rookery, and support La Jolla  
and the Coastal Commission for setting this  
area aside for these wonderful creatures.

Thank you,

Tana Lucic Paget  
7839 Prospect Pl.  
La Jolla, CA 92037

Tana Lucic Paget

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CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Dr., Suite 103  
San Diego, CA 92108-4402  
August 5, 2014

Re: LCP-6-LJS-14-0607-1/ 6-14-0691 Agenda 13 **IN FAVOR**

Dear Commissioners:

I am in favor of keeping the Harbor Seal Rookery at Children's Pool Beach in La Jolla.

Please support this valuable resource and keep the beach open for the seals during the rookery season.

I'm a native La Jollan, appreciating the experience and wonderment of the seals in a natural habitat at the Children's Pool. Visitors and locals are blessed to see the seals and enjoy wildlife in full bloom.

It would be a huge loss to take this experience away from the visitors and locals.

La Jolla is enhanced by this annual event of nature on our shoreline. I urge you to vote to retain the seal rookery at the Children's Pool.

Thank for your interest in preserving the precious natural resource.

Sincerely,



Gayle Tejada  
7328 Fay Avenue  
La Jolla, CA. 92037

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RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

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CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COUNTY OFFICE

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

A handwritten signature in black ink, appearing to read "Brittney Laver", written over a circular stamp.

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

AUG 11 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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Sincerely,

Heli Sajaniemi  
Finland

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

AUG 11 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

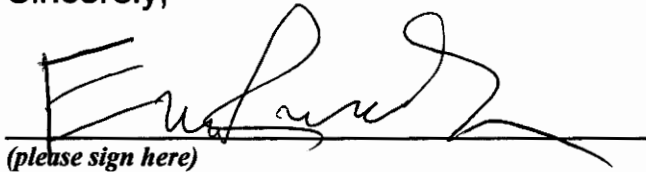
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Sincerely,



(please sign here)

Eric Rauscher  
1958 Pacific Beach Drive, #2  
San Diego, CA 92109

28

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

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AUG 11 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

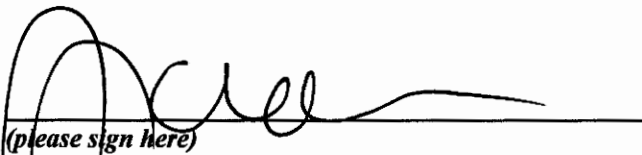
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This is a win-win proposal for both nature and people. Please support it!

Sincerely,



(please sign here)

Tamara Cross  
4020 Kendall Street  
San Diego, CA 92109

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

AUG 11 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

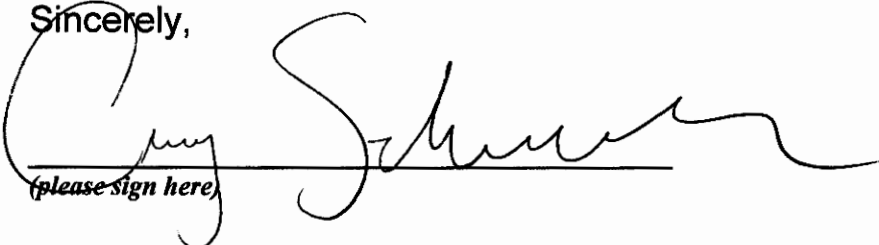
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This is a win-win proposal for both nature and people. Please support it!

Sincerely,

  
(please sign here)

Craig Schreiber  
3170 Fourth Avenue, Suite 200  
San Diego, CA 92103

30

The first place we  
take our visitors.

Our children are  
fortunate enough  
to have so many  
beautiful beaches.

Please keep this  
one piece of beach  
for NATURE - we  
would be so  
appreciative.

Thank you.

Sincerely,

Lynna + Mike Bunker

9883 LAJOLLA FARMS RD  
LAJOLLA, 92037

Dear Ms. Laver,

My husband & I  
have become aware of  
pupping season  
at The Children's Pool.

We hope that  
you will consider  
protecting the pups  
by having the rope  
put up. We walk  
the sea wall three  
times a week & so  
enjoy watching the  
seals - they are  
(858) 457 5077.

# Denise Hudson

3767 Tracy Street  
Los Angeles, CA 90027

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

July 24, 2014

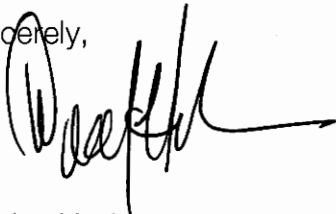
Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year. Humans have access to so many beaches and seals need this one area for pupping.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,



Denise Hudson

RECEIVED  
AUG 08 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



HARRISON-VAN HORN  
1515 N. BONNIE BEACH PLACE, LOS ANGELES, CA 90063-1602  
323-263-7495 FAX 323 263-7498  
[www.harrisonvanhorn.com](http://www.harrisonvanhorn.com)

7/25/2014

RE: File 6-14-0691

Attn:

Brittney Laver, Coastal Analyst California Coastal Commission  
7575 Metropolitan Dr.  
Ste. 103  
San Diego, CA 92108-4402

Dear Ms. Laver and Members of the California Coastal Commission:

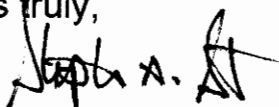
This letter is regarding the San Diego City Council's proposal to prohibit public access to Casa Beach from mid-December to mid-May in order to protect harbor seals from harm and/or harassment during their pupping season.

Everyone is aware of the history of this yearly event. These Seals have been the subject of harassment and cruelty for a long time, but the so-called "protective" barriers have not helped protect them.

As a businessman and a long time activist against any cruelty towards all life, I have long felt that we at the top rung on the phylogenetic scale have an obligation and responsibility to protect our lower relatives when they are defenseless and in peril, especially when they are the most vulnerable.

I truly hope that you all will do the right thing here and accept and endorse the City Council's proposal.

Yours truly,

  
Stephen A. Stone

RECEIVED  
AUG 08 2014

COASTAL COMMISSION  
SAN DIEGO, CALIF.

33

4479 Silverberry Court  
Concord, CA 94521

August 1, 2014

California Coastal Commission  
7575 Metropolitan Dr., Ste. 103  
San Diego, CA 92108-4402

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst

Dear Ms. Laver and Members of the California Coastal Commission:

I am writing with regard to the San Diego City Council's proposal to prohibit public access to Casa Beach from mid-December to mid-May in order to protect harbor seals from harm and/or harassment during their pupping season. Seals have been the target of cruelty for many years, and protective barriers have not remedied concerns.

I own several properties in San Diego County and intend to come back to live in San Diego when I retire. I am very concerned about protection of wildlife and hope you will take the right and compassionate action to protect these sentient beings.

I fully support the council's proposal and respectfully ask that the commission approve it.

Sincerely,

*Barbara Lafaver Gleason*

Barbara Lafaver Gleason

RECEIVED  
AUG 08 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COUNTY OFFICE

34

RE: File 6-14-0691

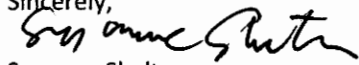
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Dr., Ste. 103  
San Diego, CA 92108-4402

Dear Ms. Laver and Members of the California Coastal Commission:

I am writing with regard to the San Diego City Council's proposal to prohibit public access to Casa Beach from mid-December to mid-May in order to protect harbor seals from harm and/or harassment during their pupping season. Seals have been the target of cruelty for many years, and protective barriers have not remedied concerns.

I fully support the council's proposal and respectfully ask that the commission approve it.

Sincerely,



Suzanne Shelton  
796 Platinum Lane  
West Sacramento, CA 95691

RECEIVED  
AUG 08 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO OFFICE

35

California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Dr., Suite 103  
San Diego, CA 92108-4402

Agenda 13a In favor  
Linda Lyerly

August 5, 2014

Re: LCP-6-LJS-14-0607-1/ 6-14-0691

Dear Commissioners:

I whole - heartedly support the Harbor Seal Rookery at Children's Pool Beach in La Jolla. I grew up in La Jolla and swim at the Cove 4 days a week.

It has been a joy to witness these graceful beings in close proximity and to see the excitement of the children as well as adults who come in droves to see our coastal wildlife. A docent program would be a natural progression to this preservation opportunity. My wish would be to make it closed all year.

As humans we have taken so much from the natural world for our use and abuse, that I applaud La Jolla and the Coastal Commission for setting aside this special place for our Harbor Seals who need this safe haven as so many beaches/places are now lost to them.

Thank you for your consideration on this matter.

Sincerely, Linda Lyerly  
825 Munevar Rd.  
Cardiff by the Sea, CA 92007



RECEIVED  
AUG 08 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

36

**From:** Lyndee  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Tuesday, July 29, 2014 6:24:44 PM

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Th 13a

Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because . . . Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE. PLEASE DON'T CLOSE IT DOWN!!!! Respectully, Lyndee Logan

Letters of Opposition  
37

July 30, 2014

RECEIVED

JUL 31 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Brittney Laver, Coastal Program Analyst  
C/O California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

Dear Friends:

Please DO NOT Close the Children's Pool. It is a beautiful spot and should be enjoyed by the people of San Diego, and NOT given over to the seals. The pressure from a few individuals to protect the wild animals there has made it difficult for the majority to use this beautiful swimming area.

Please read this letter to the commission.

Thank you,



c. keller

[clkeller@gmail.com](mailto:clkeller@gmail.com)

ps. many who feel this way cannot attend  
as we are working.

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

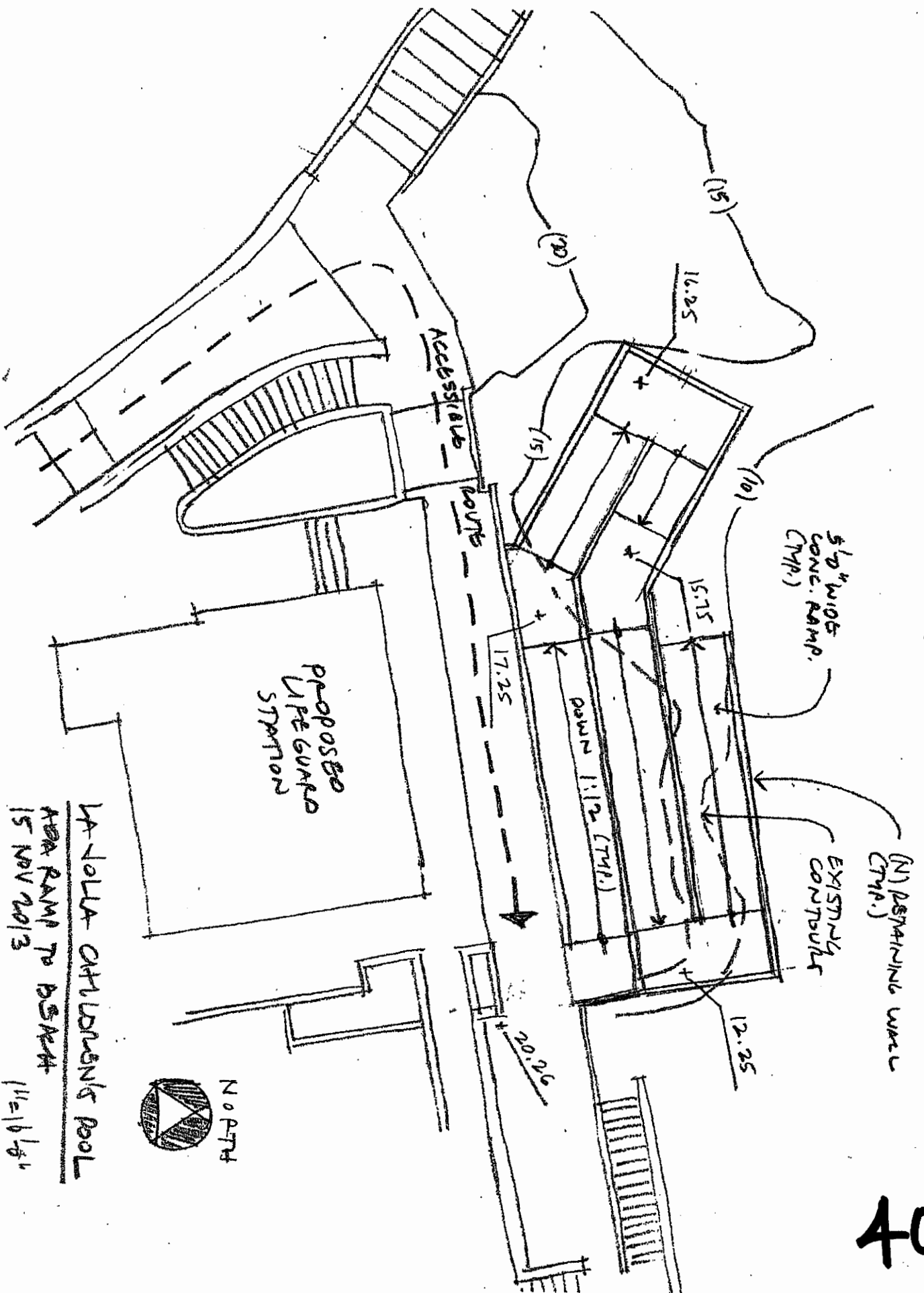
LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the CCC, before erasing public access safeguards from any LCP

The Commission should understand that legal opinions offered by the City are not unbiased legal assessments because the City Attorney created a conflict of interest. When the City Council approved seeking the 5 month forever beach closure (5/18/2010), the City Attorney had himself appointed to administer the job.

1. From the Council record of May 17, 2010
  - 3) **DIRECT THE CITY ATTORNEY'S OFFICE TO DRAFT AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 63.0102 TO PROHIBIT ANY PERSON TO BE ON THE BEACH DURING PUPPING SEASON, DECEMBER 15 TO MAY 15, AND TO COME BACK TO THE NATURAL RESOURCES AND CULTURE COMMITTEE AS AN INFORMATIONAL ITEM, NO LATER THAN JUNE 30, 2010;** 4) DETERMINE IF THE PROPOSED YEAR-ROUND ROPE BARRIER PLACEMENT AT CHILDREN'S POOL AND MUNICIPAL CODE AMENDMENTS SECTION 63.0102 ARE CONSISTENT WITH THE LOCAL COASTAL PROGRAM AND CALIFORNIA COASTAL ACT, AND ONLY IF REQUIRED, DIRECT THE MAYOR OR HIS DESIGNEE TO AMEND THE LOCAL COASTAL PROGRAM ACCORDINGLY; AND...
2. The City Attorney had introduced a notion the City did not have to live up to the law the previous year. He had introduced a maneuver to have the legislature amend the Children's Pool land grant trust to avoid a court order to remove entrapped sand from behind the seawall and make the water safe from bacteria caused by seals.
3. The original task was to get an emergency permit for the closure, but he had to tell the Mayor the findings needed for an emergency permit could not be made and emergency permits are only good for 60 days anyway. Just a setback. For four years.
4. The arguments he gave for the trust amendment were about not spending City money and resources any more. Seals were not mentioned. It worked mostly, though the trust amendment did not come out as the City Council requested and the money kept flowing.
5. The City Attorney's hallmark legislation has yet to be the panacea he promised, but this closure could finally achieve his goal. To make the problem go away. But understand, any City legal statement on this issue is not an unbiased legal assessment, but a public statement by a lawyer on behalf of the goals of his client and himself.
6. If the staff has not cleared issues with the Commission legal staff, then the action recommended not only will not end the problem, but make it worse. This is a civil rights issue, and you need to be on the right side, for the people, against the closure.

Bob Ewing, formerly from San Diego and saw it all



LA VOLLA CHILDREN'S POOL  
 RAMP TO BSAH  
 15 NOV 2013  
 11:16:11



**From:** Scott  
**To:** Laver, Brittney@Coastal; Lilly, Diana@Coastal  
**Subject:** Opposing beach closure  
**Date:** Tuesday, July 29, 2014 3:40:54 PM

---

To:  
California Coastal Commission c/o  
[brittney.laver@coastal.ca.gov](mailto:brittney.laver@coastal.ca.gov), [Diana.Lilly@coastal.ca.gov](mailto:Diana.Lilly@coastal.ca.gov)  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

On October 25, 2013, the San Diego CCC local staff wrote and published to San Diego a generic plan to close beaches that would not require any proof or justification. The City had already planned to elegantly eliminate conflict with the LCP by removing public access protection from that beach in its LCP. Local staff dissuaded San Diego from using an ESHA declaration and proposed the more effective and less specific simple declaration of "economic or biological significance" for closing a tideland that had become expensive and troublesome to maintain open to the public. The exact wording of the CDP application and ordinance proposal was dropped into place verbatim.

The application text avoided the word "marine mammal" to skirt provisions of the Marine Mammal Protection Act, even though the clear intent remains to impose a statute that usurps federal authority specifically noted in a previous letter to the City Council from the National Oceanographic and Atmospheric Administration. This made the CDP a product of the Coastal Commission itself. For example, when the City Council needed to ratify the declaration of this method allowing closure of convenience, the City Council member Marti Emerald made the motion and then refused to consider any suggested amendment or compromise wording, stating "If we change one word it might no longer be what the Coastal Commission wants".

If the Commission at large goes along with this, it will be accepting a new loophole in the Coastal Act applicable to any tideland that a municipality finds expensive or otherwise inconvenient to maintain open. The closure plan already had support from statewide special interest groups that wanted the Commission to disavow unconditional public access in California and set about designating tidelands to be available at the discretion of special interests on a case by case basis.

Unfortunately, unlike the year round rope barrier that was not a barrier, this closure cannot be treated as a local issue contained to a single beach. It is well known there is another tideland next door that has also been a seal rookery for years. I see no way this beach will not follow the path of Children's Pool.

Scott Anderson

Opposed to weakening the public access policies of the Coastal Commission.  
Sent from my iPhone

July 31, 2014

Honorable Steve Kinsey  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-060

RECEIVED  
AUG 04 2014  
CALIFORNIA COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioner:

I am writing to request that you REJECT your staff recommendation to seasonally close the Children's Pool. The report is based on an inaccurate assumption that the seals at the Children's Pool need "protection." The fact that the recommendation includes a caveat that the California Coastal Commission be held harmless is a clear indication that the author knows that approval will generate legitimate litigation that will only waste scarce taxpayer resources that eventually will reverse your decision. Let me summarize a couple of key points:

1. People were there first – not the seals. Your staff report calls the Children's Pool "their habitat." Indeed, the beach is man-made and was specifically built for children in 1931. Seals started appearing at the beach six decades later.
2. A man-made retaining wall paid for by a donation by Ellen Browning Scripps created an artificial beach. Upon acceptance of this gift, the City of San Diego promised to keep it in good repair so that the public, especially children, could safely learn to swim. The City has failed in its promise to maintain the wall.
3. Seals do not need "protection," as your staff report claims. There is no proof that shared has negatively affected the population growth of seals. Seals by nature are transient and are not listed as endangered. Indeed, their numbers along the entire California coastline have increased to near the carrying capacity of the present ecosystem.
4. "Harassment" incidents of seals have been rare, and as long as there are ignorant individuals who ignore signs, a rope barrier will not prevent people from walking onto the beach and getting inappropriately close for a "photo op".
5. The City has not performed any due diligence as to the economic value of the seals, yet it claims the seals are an economic tourist attraction. Ever since La Jolla became a vacation destination, tourists have come to the area to swim in the ocean – not to be blocked by a rope with seals basking in their own waste.
6. Restricting access to the only beach where disabled individuals, including disabled combat veterans, can enter the ocean safely is a direct violation of the Americans with Disabilities Act, which specifies that persons with disabilities be given the same opportunities as able-bodied individuals. Your staff report erroneously states that there are other safe entry points into the ocean for the disabled.

In common sense, I respectfully request that you reject your staff recommendation.

Sincerely,

*Maxine Baker*

42

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

To the CCC Local Staff,

Your recommendation to approve the City of San Diego Parks and Recreation Departments proposal to restrict public access at Children's Pool beach in the La Jolla community of San Diego, is unwarranted, wrong, and will only add to the already long and costly controversy regarding the use of this site.

I find it sadly laughable that Staff could somehow find favor in restricting access at this site in spite of so many rights, prior rulings and judgments that the record clearly shows to be in support of maintaining this site for public access on a year around basis, *in perpetuity*.

My layman's understanding of the critical factors that are to be weighed and balanced against the public's rights to freely access this site 24/7 are whether or not certain marine mammals, mostly seals in this matter, need extraordinary protection due to their very existence being endangered and that they (also) are of economic benefit to various nearby business interests.

When we are talking about depriving the public citizenry of their right under the California Constitution to freely access our ocean must only be "approved" when balancing competing interests clearly favors one side over another.

This is *clearly* not the case in this matter.

The general seal population is no longer in danger of disappearing, and is now stabile and even flourishing, as was intended by passage of certain environmental laws such as the Marine Mammal Protection Act.

As to the local economic benefit(s) that may flow from the current population levels of marine mammals, namely seals, I know of no data or other evidence that can actually link their presence to any such local economic benefits either positively or negatively.

And, in either case, any evidence in support of restricting the public's rights to ocean access must be substantial and direct. To find such conditions exist that would allow for restricting beach access would be an incredible reach into a fantasy world that does not exist.

And, seals, in general, are not tormented nor abused by the general public while they are on or near this site.

The "controversy" now in place is between citizens who are willing to share with the seals and those who would not let the seals share with people. There are admittedly people who regret the presence of the seals because it has led to ordinary citizens being run off public land for no reason. Those people have no voice though because nobody wants to harm the seals, and certainly not hassle them to disperse to other beaches.

Some of the very controversies you and the City seek to quell by force were actually caused by the Coastal Commission. The approval of the rope barrier created a line in the sand to battle over while the seals blithely ignored it and us. That rope barrier was specified by the Commission to NOT be intended to diminish beach access, and signs were required by the commission on the sidewalk and rope posts stating the beach was open. What happened next should not have surprised anyone.

Before you strengthen the barrier to cover the entire beach and replace it with lock and chain and police power, you could consider undoing some of your damage and see if peaceful sharing could be restored through public education and attention to the local advisory groups that have never wanted our beach taken from us but have been disregarded.

Just do this: Tell San Diego to take their CDP back because it is a drastic overkill for a local problem not worthy of endangering beaches all over California. Let San Diego go back and solve its problems locally, within the confines of existing laws. If the public access requirements of California present too onerous a burden for San Diego then it should petition the Legislature for relief, not seek to have the Coastal Commission rewrite the Coastal Act in invisible ink.

Thank you.

Charles R. Barringer  
La Jolla area resident since 1975

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

The Coastal Commission needs to read the closure application as embodied on in the staff report very carefully, with red pencil in hand.

1. A major rationalization throughout is the Marine Mammal Protection Act (MMPA). It is not a function of the Coastal Commission to give federal enforcement permits, however.
2. Ten years ago and again this year, the National Oceanographic and Atmospheric Administration (NOAA) took the trouble to inform the City that closing our beach is not needed and Children's Pool is not necessary to the well being of the seals.
3. The federal statute in question (MMPA) was also shown to make enforcement of any marine mammal protection law outside the Department of Commerce to be a violation of the Act. All references to the MMPA in the staff report may be crossed out.
4. References to scientific papers purported to support hard closure can also be deleted as they were all done on grants from NOAA, and so cannot have been intended to justify a violation of the MMPA.
5. All references to seals as a fragile coastal resource must also be discarded. Substitute flies, fleas, beetles, beach hoppers, and marine mammal parasites such as hookworms.
6. Unfortunately without an imperative to assume the function of marine mammal protection for the federal government, the CDP loses any reason be limited to 5 months. That can also be struck. The good news would be this closure issue would not have to be revisited later for the inevitable expansion to all year.
7. The desired global effect would be achieved. To make it official that public access is not a primary concern of the Commission, but a secondary one to any other resource. The reduction in work load will be sizable.
8. Another effect would be any California beach could be cordoned off with advisory rope barriers "to protect beach wrack and in habitants". But without enforcement, only the power of suggestion and intimidation which has worked so well in La Jolla for years.

Dan Byrnes: Beach goer and supporter of public access.

45

To:

California Coastal Commission c/o [brittney.laver@coastal.ca.gov](mailto:brittney.laver@coastal.ca.gov), [Diana.Lilly@coastal.ca.gov](mailto:Diana.Lilly@coastal.ca.gov)  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

The CDP approval would carry with it a dangerous precedent endangering any tideland that would benefit a municipality to close. In the short term it would promise to end the constant escalation of San Diego CDP's that do not solve the problem of human trespass on a difficult and expensive beach. The year round rope barrier, had that promise, and so was reluctantly granted 2 years ago. At the very same time the Commissioners were dismayed to hear that San Diego was preparing the closure measure.

San Diego now holds out the promise it can finally end. But there is no mention of the other seal rookeries in San Diego and how they will inevitably be required to close, Nor is there mention of how the City can ignore what it claims to be uncontrollable human and seal interaction on the other 7 months. By San Diego's own claims, the rope "does not work" as a handful of people have discovered it is not enforced.

In the short term, this closure and the ease of future closures will diminish the work load of the local staff. A good thing, except it will create duplications in every other locality. Why else has this little beach attracted the energy of several statewide organizations that spend resources trying to have the last word in Coastal Commission policies? Humane society, Sierra Club, PETA, Surfriders, Wan Conservancy, etc. These seals make a perfect poster child for an end to Coastal Commission unflinching support for public access in California for all citizens, the unconnected and unrepresented as well.

Dan Byrnes Beach goer and supporter of public access.

46



**From:** William Canning  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Friday, August 01, 2014 12:13:44 PM

---

Dear Coastal Commissioners,

I am opposed to closing Children's Pool Beach because . . .

Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast.

There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers.

The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well.

The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

**From:** Cary Gmail  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Friday, August 01, 2014 11:37:15 AM

---

Dear Coastal Commissioners,

I am opposed to closing Children's Pool Beach because . . .

Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast.

There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers.

The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well.

The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

~Cary

**From:** Nancy Shields  
**Sent:** Sunday, August 02, 2009 4:47 PM  
**To:** MLPAComments  
**Subject:** La Jolla Seals

I know you have been getting lots of e-mails from the Seal proponents who prevent citizens from accessing the Children's Pool (it is not Casa Beach, a name invented to make the seal takeover from the children more palatable). Many La Jolla citizens want the beach returned to the children, but as usual it is the rude, aggressive, and loud individuals who sway our politicians. The seals have fouled the water and the beaches so it is unusable for humans. Lately seals have appeared on the rocks at the edge of La Jolla Cove so it appears only a matter of time before they invade that beach. The Seal proponents choose to disregard the smell, health hazards (large retirement home across street from the Children's Pool, seal dangers (article in Forbes Traveler on beaches with shark attacks mentions the Solana Beach death as well as one in Marin County--Stimson Beach, and in both cases seals were mentioned as causes), ethics of breaking the Scripps Trust, fact that there are thousands of places for seals along the coast, but the Children's Pool breakwater was built for kids, not seals. A recent article in the San Diego Union-Tr. pointed out the devastation on our endangered fish and sea life by the ravenous appetites of all those seals. Your regulations to protect various species from fishermen is a joke since the seals consume many times what even a group of fisherman would catch. I would think your department would be one of the first groups to want to have a clean beach, clean water, and protect endangered sea life. I hope that is true.

*Typed La Jolla Light Article  
Copy attached*

February 9 1984 La Jolla Light.

Funds for Improvements to Children's Pool OK's by Joe Nabbefeld

The Children's Pool should get a "façade lift" soon.

The San Diego City Counsel recently approved allocating 15,000 for replacing 210 feet of railing along the sidewalk next to the bluffs and 90 feet of railings along the stairway to the beach south of the lifeguard station, as well as putting in several steps and a sidewalk just north of the lifeguard house.

The money for this comes from the 1983 Transient Occupancy Tax (T.O.T.) fund, which is not a traditional source for beach related repairs according to Hucko Chairman of the Parks and Beaches Committee of the Jolla Town Counsel.

The T.O.T. is generated from a 6% tax on hotels and is earmarked for improving tourism according to an aid to 6<sup>th</sup> City District City Councilman Mike Gotch. The tax raised approximately 314 million in 1983, Gotch's aide said. But Hucko said, "No pennies have ever been spent from the T.O.T. for beach repairs comma, even though beaches are probably San Diego's #1 tourist attraction. Gotch had been looking last fall for money from other funds for the repairs in response to requests by the parks and beaches Committee when he learned that roughly 300 thousand dollars of the T.O.T was still unallocated, the Gotch aide said,

Finding the available T.O.T. funds speeded up funding the repairs by six months to a year, according to a release from Gotch's office.

On Dec. 15, the La Jolla Town Counsel and I submitted the original 1984 Grant application which would not have been heard by the City Town Counsel until July of this year.

Since money was available from the 1983 revenues, the Town Counsel's request was moved forward by six to twelve -months. "Gotch said.

Hucko said the Committee won't forget the T.O.T. It intends to tap this source again for Beach improvements, he said, "We've discovered a new source,"

The next project for the Children's Pool is to replace the eroded sand access ramp to the Children's Beach with a cement ramp" That's something we are going after, Hucko said.

Gotch has asked the City manager Ray Blair to look into funding a cement ramp from the City General Fund as a capital improvements project for fiscal year 1984-1985 according to Gotch's aide.

"This ramp will replace the existing ramp, which is both a safety hazard and eye sore", Gotch said "With in the next week I will receive a report outline available funding sources and share this with the La Jolla Town Counsel,"

"If the capital improvement project fails to generate funding, Gotch's aide said the T.O.T. is an alternative, though it's still a tough fund to get hold of."

"The new railings and cement work will now go out bid, the aid said.

"Gotch said, I feel certain this project will add to the beauty of this La Jolla landmark. Construction should be completed by late Spring and ready for summer enjoyment"

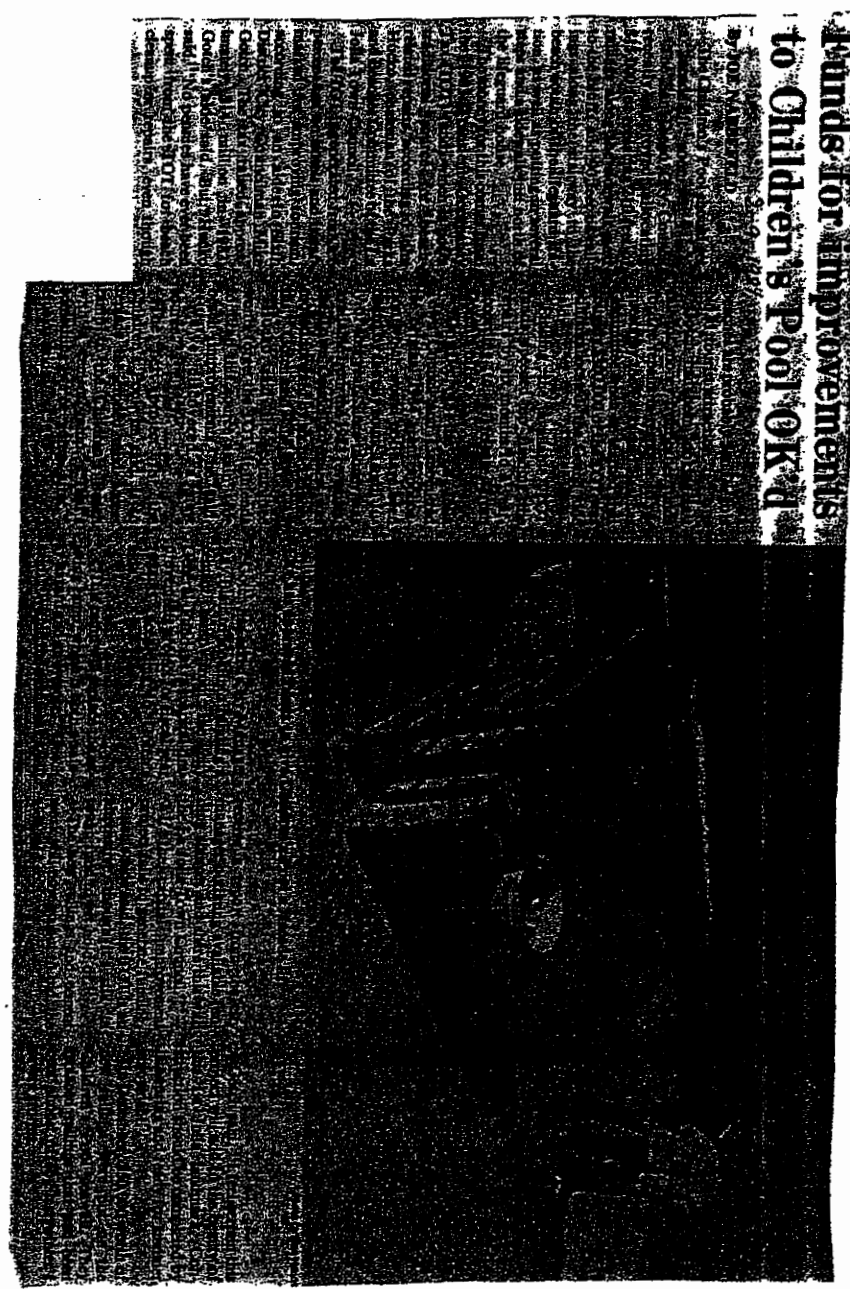
In December 350 thousand worth of new railings were put on the Children's Pool Seawall. They replaced railing that had been bent almost off by last winter's severe storms.

*for the ramp.*

*Please do not say the ramp was not there.  
Please do not say it was never "ADA" that is  
your fault and the city's. Obviously the city knew to update  
the ramp as you can plainly read ↑. The C.I.P. was  
approved and funded. So what happened?  
Sea World Did!*

2-9-1984

Funds for improvements  
to Children's Pool OK'd



2-9-1984

→ Ramp - no gate.  
graded, asphalted  
wheel chair friendly

funding a concrete escape ramp

Children's Pool Ramp Eroding: 9/1/1988 by Bobbie Joe Lee La Jolla Light

violation  
Codes were  
not followed.

The La Jolla Town Council parks and beach voted unanimously to ask the city for a study of a variety of solutions to the problem of the declining state of the Children's Pool Access Ramp

The issue hinges on aesthetic and safety, but area lifeguards say the environment of the beach itself is slowing bearing negative impacts from the ramp.

Life Guard Joe Barnett told the Aug. 24 Committee Meeting the problems began in 1982, after giant swells washed out the existing mostly asphalt ramp. The ramp was then covered with "ten to fifteen truck loads of hard base red clay". And a top layer of decomposed granite. - illegal - not to code  
He said the continual beat of the ocean then "mulched with that red clay and turned it into a hard, gelatinous type of fluid and made the red clay kind of sneak out toward the beach further.....bubbling up like a strange kind oil into a muddy insidious kind of sand.

"The problem is the Children's Pool Beach is now being slowly, completely destroyed because we have an amoeba-like red clay that is forever creeping toward the beach and taking it over ...." Then Barnett told a recent committee meeting attended by several City Officials. "Now it's becoming part of the sand." Barnett said the solution would be to remove the ramp, and this is the issue. Some area residents and lifeguard want the ramp removed, others want it replaced to something akin to concrete. The Committee Voted unto have the issue extensively studied. Much of the Committees' Discussion urged the City to hire "expert consultants" but Terri Carroll, head of the City Parks and Rec. Departments Coastal Division, said the City has talked to various persons about this issue and may consider only 'an in-house' look at the problem.

Committee members spoke of health hazards to the public because the ramp is unsafe. The gelatinous access make cause bathers to slip and and wheelchairs to over turn, but Carroll, other City Officials and a representatives from City Attorney John Witt's office stopped short of promising an answer.

They asked how the City crews could access the beach for removing kelp and emergency teams..... (illegible wording) Ward off personal injury lawsuits caused by removing the well-used access and leaving behind the steeper natural bluff?

"There are so many issues; there is no easy answer," Said Bill Corbett, Witt's supervising litigation investigator, who added he did consult with "National Expert," Dan Gillian, formerly of the CA. Parks and Recreation Department. He says Gillian share his concern. My First reaction was to just let it erode, Corbett said, people will get used to having a steeper gradient there. If you take it away immediately, you are going to have people mistakenly thought, "Well, we went down here before." You're going to wind up with a problem. Our concern is a safe, positive recreational experience for everyone.' In reference to current wheelchair access problems Corbett asked, "What is the problem of having a lifeguard help them?"

the ramp served wheelchairs for decades.

He also mentioned the necessity for emergency access. But Barnett lifeguard, Mike O'Hara and area Activist. Tony Ciarla all said emergency teams would not need to physically bring their transportation on the beach.

the beach was cleaned all the time

And the ever-growing kelp beds?

Barnett said; "The lifeguards could easily rake the kelp into piles on a periodic basis, a solution City Officials and long time Children's Pool protector Dolly Bray argued against. Instead they said, a smaller access ramp could be constructed for City Removal.

Others such as Ciani and Committee chair woman Gayle Pate suggested "Unplugging the barriers now in place in the pool's seawall. The holes in the base originally allowed self-cleaning of the beach, despite the barrier period they were plugged for safety reason and erosion of the ramp.

incorrect

The sluiceway  
feasibility studies are  
complete. Open them.

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① RAMP ERODING, HARMING BEACH L.J.LIGHT 9-1-88

## Children's Pool ramp eroding; harming beach

By ROBERT JO LEE  
Light Staff Writer 9-1-88

The La Jolla Town Council's Parks and Beaches Committee voted unanimously to ask the city for a study of a variety of solutions to the problem of the declining state of the Children's Pool access ramp.

The issue hinges on aesthetics and safety, but area lifeguards say the environment of the beach itself is slowly bearing negative impacts from the ramp.

Lifeguard Joe Barnett told the Aug. 24 committee meeting the

problems began in 1982, after giant swells washed out the existing, mostly asphalt ramp. The ramp was then covered with "10 to 15 truckloads of hard-core red clay" and a top layer of decomposed granite.

He said the continual beat of the ocean then "unleashed" that red clay and turned it into a hard, gelatinous type of field made the red clay kind of wash out toward the beach further... bubbling up like a volcano.

Please see RAMP, A2

discussing "current wheelchair access"

### RAMP

Continued from A1  
kind of oil into a muddy insidious kind of sand."

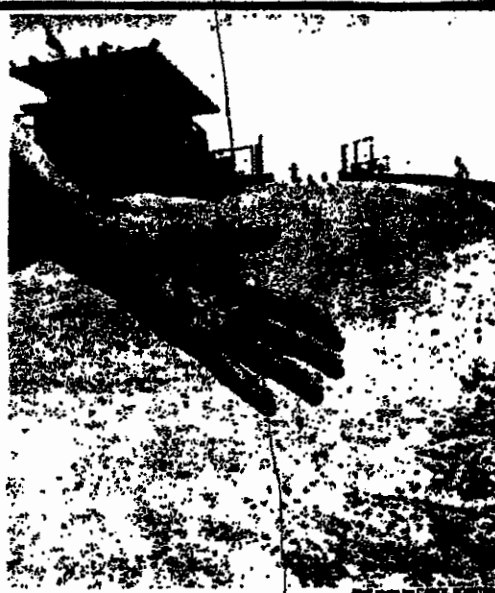
"The problem is the Children's Pool beach is now being slowly, completely destroyed because we have an amoeba-like red clay that is forever creeping toward the beach and taking it over," Barnett told a recent committee meeting, attended by several city officials. "Now it's becoming part of the sand."

Barnett said the solution would be to remove the ramp, and this is the issue. Some area residents and lifeguards want the ramp removed, others want it replaced with something akin to concrete. The committee voted unanimously to have the issue extensively studied.

Much of the committee's discussion urged the city to hire "expert consultants." But Terri Carroll, head of the city Parks and Recreation Department's Coastal Division, said the city has talked to various persons about the issue and may consider only an "in-house" look at the problem.

Committee members spoke of health hazards to the public because the ramp is an "unsafe." The gelatinous access may cause bathers to slip and wheelchairs to overturn. But Carroll, other city officials and a representative from City Attorney John Witt's office, stopped short of promising the committee an answer.

They asked how city crews could access the beach for removal



The ramp at the Children's Pool is decaying.

ward off personal-injury lawsuits caused by removing the well-used access and leaving behind a steeper, natural bluff?

"There are so many issues; there is no easy answer to this one," said Bill Corbett, Witt's supervising litigation investigator, who added he did consult with "national expert," Dan Gilliam, formerly of the California Parks and Recreation Department. He said Gilliam shares his

let it erode," Corbett said. "People will get used to having a steeper gradient there. If you take it away immediately, you are going to have people who mistakenly thought, 'Well, we went down here before.' You're going to wind up with a problem. Our concern is a safe, positive recreational experience for everyone."

In reference to current wheelchair-access problems, Corbett asked, "What is the problem

### The Fables



He also mentioned the necessity for emergency access. But Barnett, lifeguard Mike O'Hare and area activist Todd Ciani all said emergency teams would not need to physically bring their transportation onto the beach itself.

And the ever-growing, kelp beds?

Barnett said the lifeguards could easily rake the kelp into piles on a periodic basis. A solution city officials and longtime Children's Pool protector Dolly Bray argued against. Instead, they said, a smaller access ramp could be constructed for city removal.

Others, such as Ciani and committee chairwoman Gayle Pace suggested "unplugging" the barriers now in place in the pool's sea wall. The holes in the base of the wall originally allowed self-cleaning of the beach, despite the barrier. They were plugged for safety reasons and to prevent

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The Children's Pool is legally by definition:  
A sand-bottom-Pool - not a Beach at all.  
These are some of the many codes currently being  
U.S. Department of Justice Violated.

Civil Rights Division  
Disability Rights Section



ADA Requirements: Accessible Pools - Updated May 24, 2012



## Accessible Pools Means of Entry and Exit

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design ("2010 Standards").

### Overview

Providing equal opportunity to people with disabilities is the fundamental principle of the Americans with Disabilities Act. This publication is designed to help title II and title III entities understand how new requirements for swimming pools, especially existing pools, apply to them.

RECEIVED

AUG 05 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

People with disabilities were, for too long, excluded from participating in many recreational activities, including swimming. The revised 2010 Standards change that. For the first time, the 2010 Standards set minimum requirements for making swimming pools, wading pools, and spas (pools) accessible. Newly constructed and altered pools must meet these requirements. Public entities and public accommodations also have obligations with respect to existing pools. State and local governments must make recreational programs and services, including swimming pool programs, accessible to people with disabilities. Public accommodations must bring existing pools into compliance with the 2010 Standards to the extent that it is readily achievable to do so.

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The requirements for newly constructed and existing pools will ensure that, going forward, people with disabilities can enjoy the same activities—a community swim meet; private swim lessons; a hotel pool—at the same locations and with the same independence, ease, and convenience as everyone else.

The 2010 Standards establish two categories of pools: large pools with more than 300 linear feet of pool wall and smaller pools with less than 300 linear feet of wall. Large pools must have two accessible means of entry, with at least one being a pool lift or sloped entry; smaller pools are only required to have one accessible means of entry, provided that it is either a pool lift or a sloped entry.

There are a limited number of exceptions to the requirements. One applies to multiple spas provided in a cluster. A second applies to wave pools, lazy rivers, sand bottom pools, and other pools that have only one point of entry. For more information on the specific requirements and exceptions, see sections 242 and 1009 of the 2010 Standards.

## Existing Pools

### Title II Program Accessibility

Individuals with disabilities cannot be excluded from or denied participation in State and local government programs, services, or activities because a facility is inaccessible or unusable. This means that all programs, services, and activities, when viewed in their entirety, must be accessible to individuals with disabilities unless doing so results in a fundamental alteration in the nature of the program or in an undue financial and administrative burden. This requirement is known as "program accessibility."

Program accessibility applies to all pool-related programs, services, and activities (swimming programs). Program accessibility does not typically require that every pool be made accessible. However, if a public entity has only one existing pool, it must take steps to ensure that its swimming program at that pool is accessible.

A public entity determines which method it will use for meeting its program accessibility obligations. When structural changes are made to existing pools, including installation of a fixed pool lift, the changes must comply with the 2010 Standards. If a public entity chooses to acquire equipment (e.g., a portable lift) to provide program accessibility, the entity should select equipment that includes features required by the 2010 Standards, including independent operation by individuals with disabilities. Sharing accessible equipment between pools is not permitted, unless it would result in undue burdens to provide equipment at each one. Accessible pool features must be available whenever the facility is open to the public. When choosing to purchase equipment or to make structural changes, the public entity should factor in staff and financial resources required to maintain

SS

program accessibility.

Over time, a public entity will need to reassess its compliance with program accessibility, and it may become necessary to acquire new accessible equipment or make structural modifications. For more information about program accessibility, see the title II regulations at Section 35.150.

**To determine which pools must be made accessible, public entities should consider the following factors:**

- How to provide swimming programs in the most integrated setting appropriate;
- The ways in which people participate in the programs (e.g., individually, in families, in youth groups);
- Locations where the programs are offered;
- What programs are offered at each pool and to which constituencies (e.g., family swims, children's swimming lessons, older adult exercise classes, high school swim meets);
- Which pools are accessible and to what extent; and
- Level of dispersion of the accessible locations and convenience to reach them (e.g., one pool in each quadrant of the town, all on accessible mass transit).

### **Title III Readily Achievable Barrier Removal**

Title III of the ADA requires that places of public accommodation (e.g., hotels, resorts, swim clubs, and sites of events open to the public) remove physical barriers in existing pools to the extent that it is readily achievable to do so (i.e., easily accomplishable and able to be carried out without much difficulty or expense).

Determining what is readily achievable will vary from business to business and sometimes from one year to the next. Changing economic conditions can be taken into consideration in determining what is readily achievable.

For an existing pool, removing barriers may involve installation of a fixed pool lift with independent operation by the user or other accessible means of entry that complies with the 2010 Standards to the extent that it is readily achievable to do so. If installation of a fixed lift is not readily achievable, the public accommodation may then consider alternatives such as use of a portable pool lift that complies with the 2010 Standards. It is important to note that the barrier removal obligation is a continuing one, and it is expected that a business will take steps to improve accessibility over time.

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When selecting equipment, the public accommodation should factor in the staff and financial resources needed to keep the pool equipment available and in working condition at poolside. For more information about barrier removal, see the title III regulations at Section 36.304.

If you have purchased a non-fixed lift before March 15<sup>th</sup> that otherwise complies with the requirements in the 2010 Standards for pool lifts (such as seat size, etc.), you may use it, as long as you keep it in position for use at the pool and operational during all times that the pool is open to guests. Because of a misunderstanding by some pool owners regarding whether the use of portable pool lifts would comply with barrier removal obligations, the Department, as a matter of prosecutorial discretion, will not enforce the fixed elements of the 2010 Standards against those owners or operators of existing pools who purchased portable lifts prior to March 15, 2012 and who keep the portable lifts in position for use at the pool and operational during all times that the pool is open to guests so long as those lifts otherwise comply with the requirements of the 2010 Standards. Generally, lifts purchased after March 15, 2012 must be fixed if it is readily achievable to do so.

**To determine which pools must be made accessible, public accommodations should consider the following factors:**

- The nature and cost of the action;
- Overall resources of the site or sites involved;
- The geographic separateness and relationship of the site(s) to any parent corporation or entity;
- The overall resources of any parent corporation or entity, if applicable; and
- The type of operation or operations of any parent corporation or entity, if applicable.

## **New Construction and Alterations**

### **New Construction**

The 2010 Standards, which set requirements for fixed elements and spaces, require that all new pool facilities built by State and local governments, public accommodations, and commercial facilities must be accessible to and usable by persons with disabilities.

### **Alterations**

A physical change to a swimming pool which affects or could affect the usability of the pool is considered to be an alteration. When pools are altered, the alterations must comply with the 2010 Standards, to the maximum extent feasible. Changes to the mechanical and electrical systems, such as filtration and chlorination systems, are not alterations. Entities must ensure that an alteration does

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not decrease accessibility below the requirements for new construction. For example, if a hotel installs a fixed pool lift powered by water pressure, it must ensure that the hose connecting to the lift does not create a barrier across the accessible route to the pool.

### Compliance Dates

#### On or after March 15, 2012

All newly constructed or altered facilities of public entities and public accommodations, including pools, must comply with the 2010 Standards.

#### On or after March 15, 2012

All existing facilities of public entities and public accommodations, **except** pools, must comply with the 2010 Standards to the extent required under title II program accessibility or title III readily achievable barrier removal requirements.

#### On or after January 31, 2013

Subject to other provisions of this guidance, all existing pools of public entities and public accommodations must comply with the 2010 Standards to the extent required under title II program accessibility or title III readily achievable barrier removal requirements.

For more information on effective dates, see the Department's publication called ADA 2010 Revised Requirements: Effective Date and Compliance Date and the 2010 Standards for Accessible Design.

### Maintenance of Accessible Features

Accessible pool features must be maintained in operable, working condition so that persons with disabilities have access to the pool whenever the pool is open to others. For example, a portable pool lift may be stored when the pool is closed but it must be at poolside and fully operational during all open pool hours.

An entity should recognize that certain types of equipment may require more staff support and maintenance than others (e.g. ensuring there are enough batteries for a pool lift to maintain a continued charge during pool hours). Entities should plan for these issues and modify operational policies as needed to provide accessible means of entry while the pool is open.

### Staff Training

Ongoing staff training is essential to ensure that accessible equipment (particularly pool lifts) and pool facilities are available whenever a pool is open. Staff training should include instruction on what accessible features are available, how to operate and maintain them, and any necessary safety considerations.



## Tax Credits and Deductions

Title III entities may be able to take advantage of federal tax credits for small businesses (Internal Revenue Code section 44) or deductions (Internal Revenue Code section 190) for barrier removal costs or alterations to improve accessibility regardless of the size of the business. See the IRS website [www.irs.gov](http://www.irs.gov) for more information.

**For more information  
about the ADA,  
please visit our website  
or call our toll-free number.**

**ADA Website: [www.ADA.gov](http://www.ADA.gov)**

**ADA Information Line**

800-514-0301 (Voice) and

800-514-0383 (TTY)

24 hours a day to order

publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m.,

Th 12:30 p.m. – 5:30 p.m. (Eastern Time)

to speak with an ADA Specialist.

All calls are confidential.

For persons with disabilities,  
this publication  
is available in alternate formats.

**Duplication of this document  
is encouraged.**

May 2012

ADA Requirements: Accessible Pools - Updated May 24, 2012

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**PDF Version of this Document**

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8/4/14

**Children's Pool Beach Closure Project CDP # 6-14-0691,  
LCP-6LJS-14-0607-1 in**

The situation at Children's Pool is a complicated one, that cannot be understood in the absence of understanding of its history. The history from its 1931 creation until the 1990s is very murky, but better documented since then. I was dismayed in the extent that the California Coastal Commission staff recommendation (of approval with several qualifications) seems to have swallowed so much of the misinformation propagated by the city, namely:

1. No mention of the (dozens to hundreds? At least from 1992 to 2005) of harbor seals released by sea world, that bear witness to the total artificiality of the seal population. With this omission, they imply that it was a natural process of seal population increase by birthing. I don't see this point has been brought to their attention in correspondence they have included in the public record attached. It seems to me the cc doesn't recognize how far the city has gone, it creating the situation. The Friends of the Seals can be seen to have been artificially creating this situation in collusion with the city, from the first establishment of the temporary Seal Rock reserve, through the mysterious rerouting of released harbor seals, and disgraced former mayor Filner's "emergency" closure and citations, and present year round rope. This visual closure cannot be denied effectively by signs stating the pool is open- at least to the casual observer that constitutes the majority of visitors. As long as the rope exists, seals will haul out and multiply until the Marine Protected Areas are exhausted of seal food, and seal predators will thrive, and accidentally assault human ocean goers. A Solana Beach dentist died of blood loss after a great white shark bit his leg while he was swimming there, with a group of fellow triathletes, a couple years ago. A pair of seals was noted refusing to leave the beach there. He was probably the only shark bite fatality in the SD area since the forties. While the woman's body that disappeared off Ocean Beach not so long ago had a large shark bite noted, but I believe it was decided that it had occurred post mortem. Also witness the current record number of adult great white sharks, related to the increase in harbor and gray seals in the vicinity of Cape Cod, Massachusetts in recent years.

2. Page 2 of the staff report regurgitates the city's position that seals began hauling out in greater numbers in the 1990s, without regard to point 1 above, implying that the rope was strung to prevent the public from the mistaken idea that NOAA law requires a 50' separation. This concept was denied by Chris Yates, representing the National Marine Fisheries component of NOAA. He categorically stated in a Jun 13th, 2014 letter to Ken, that shared use was their preferred option, no specific distance exists, and specifically denied that the City has authority to enforce laws or regulations pertaining to marine mammals. Mr. Yates, in his capacity of Assistant Regional Administrator for Protected Resources at NMF, repeating a Jan 2nd, 2014 letter to Todd Gloria and the City Council, (cc-ed to K. Brown at the California Coastal Commission), informed them that the law does not require set separation distances, or beach closures. Emphasizing again the importance of education, and reminding the City they have no authority to enforce federal marine mammal regulations, even if they exist.

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3. One of the most reliable histories of the pool must be the court finding presented in the O'sullivan vs SD case, statement of decision by superior court judge William Pate in August 2005. According to that document, on pP6, "there was no evidence of any concern about or discussion of seals in the Children's Pool area until July 1992, when Jim Antrim of Sea World discussed creation of a seal reserve in the vicinity of the rock off Shell beach (in front of 939 Coast Blvd)", with Barbara Bamburger of the Friends of the Seals organization". The reserve (beginning 200' east of the seaward entrance to children's pool) passed city council unanimously Feb. 1993 (including the compromise area that goes practically to the beach, presented by Barbara). The staff report assumes as fact that because seal rock was so called in the 1930s, and CP was built on "seal rock point", seals were hauling out there prior to the pool. There is no evidence for that, except for descriptions of "seals barking"(only sea lions bark) on a second seal rock, currently underwater, then at least awash at low tide. See "Myth of Seal Rock" reference. Seals being the timid animals they are, may have seldom or never hauled out on what little beach existed at the site of the pool then, being limited, as I noted during my first dives there in the late 1970s, to offshore rocks. I never saw seals on the beach then. On pP11, the NMFS informed the city that a small number of seals were hauling out on seal rock in 1994, and none hauling out on cp beach. The point was merely so named due to the proximity of the seal rocks. The first count referenced by Judge Pate was in 1996, max 62 on the presently above water seal rock in April, while max 120 were counted on the cp beach. Perhaps they preferred the cp beach, sheltered from the prevailing NW winds as it is, to the rocks totally exposed to swell and wind. The first mention of barriers on the beach was in the City's Manager's report to the Natural Resources and Culture Committee (October 1997), stating that lifeguard had been maintaining "barriers" between the public and seals for a year and a half (since 1996). pP16 of the court findings, "to protect the public from being bitten (no evidence exists of that consequence), or being fined for disturbing the seals". This is on pP10. Unstated was that it made the lifeguard's job a little easier. **The factor undoubtedly drawing the seal to the beach was the presence of the barriers, reassuring the seals of their security on the beach, not the presence of the beach!**

4. The staff report states on pP 17 that NMFS data describes Children's Pool as the only rookery in San Diego and LA counties, with a protected rookery at Pt Mugu and Carpinteria. Reference to another protected haulout that has seen pupping is in one of the letters submitted. I have seen numbers of harbor seals hauled out in the multiple pocket coves off Pt Loma, and the Coronado Islands. Ms.Linder's master thesis on harbor seal populations describes the computer enhanced photo id based population estimate nearing 600, and describes the likelihood of individuals travel between haul outs on the Mexican Coronado islands, Children's Pool, and the Channel islands. NMFS harbor seal information indicates harbor seals are known to travel hundreds of kilometers between feeding and pupping sites, and states an unspecified number of rookeries exist in the Channel Islands. I believe that pupping occurs at whatever haul out the nomadic seal happens to be on when birth is about to occur. The Children's Pool doesn't have a resident population, it's population consists of individuals transitory among haul out sites/rookeries throughout at least the southern part of California, and at least northern Mexico.

5. The staff report emphasizes that the City has determined that shared use has been ineffective in preventing harassment mostly in the form of flushing, implying that if the public is allowed on the beach, it will lead to pup abandonment. It states that pup abandonment has occurred there, but doesn't document it. No mention is made of the precocious nature of harbor seal pups, able to swim at birth, and breathhold dive for up to two minutes within 2-3 days of birth, according to NMFS published information.

6. The staff report makes no mention that **City actions have historically been as little, late and inexpensive as possible.** The trust requires the pool be used for a protected children's pool. Judge Pate found the city (pP21) in breach of the Scripps 1931 trust, on multiple counts.

a. The pool has been choked with sand, to the point it no longer protects bathers. The small amount of water still present is now in dangerous proximity to a semi-permanent rip. Lifeguard

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rescues had increased, until the point in time point c (itemized below) occurred. The City has made no attempt to correct the situation, by ever either removing the built up sand, or opening the previously existing sluiceways, or recommended by it's staff on numerous occasions.

b. The City violated the right of the public to access the beach by roping of the beach to the public from 1999 to 2005, according to Judge Pate's decision (pP27). A rope across the beach at mean high tide point has convinced many of the public (especially the visiting tourists, unacquainted with cp history) that the beach is closed. The visual barrier psychologically overwhelms the signage. The year round "advisory rope" continues into the present.

c. The City erected barriers have lead to seal haul out and presence that has allowed fecal possibly pathogenic bacteria from them to accumulate until the bacteria level has increased to the point that the county has declared the pool under an advisory status. The county today classifies Children's Pool as polluted 24/7 from 1997 to the present (pP23). State Law AB411 passed in 2003 changed the status from "Closed", to "Advisory", as the bacteria were not due to a human sewage spill. The second most polluted area in the county ocean is the Tijuana River Slough, polluted an average of 149 days a year. In August 1998, the Center for Disease Control advised the city that seals can transmit disease to humans. Some carry tuberculosis and giardia. Fecal contaminant bacteria and viruses are also of concern. A danger to seals themselves exists. Two outbreaks of disease in the Point Reyes National Seashore resulted in the deaths of 90 pinnipeds in one documented case.

d. On September 14th, 2004 James Lecky of the NMFS advised the city council that harbor seals are a healthy species, whose population is growing, and not in any way endangered or threatened, causing problems up and down the coast, invading harbors, causing property damage and limiting beach access. They can be moved out of an area if either presenting a public nuisance, or a public health hazard. He suggested the seals were a local issue for the City to resolve. Judge Pate made these observations on pP 19, noting the City had taken no meaningful steps to return CP to a safe, unpolluted or usable state since that meeting.

The Superior court would have forced the City to rectify the above 3 conditions, except that the City prevailed upon the California Legislature to pass SB 428. The substantive addition consists of the 11 bold words below:

"That said lands shall be devoted exclusively to public park, **marine park for the enjoyment and educational benefit for children**, bathing pool for children, parkway, highway, playground and recreational purposed, and to such other uses as may be incident to or convenient to the enjoyment of such purposes."

I find this city and legislative action incredibly cynical. To escape their legal obligations, the City does not think twice of maintaining it's dangerous status quo. Surely the Coastal Commission cannot seriously consider rubberstamping this, denying the beach to the public for 5 of seven months, to maintain a situation the City has manufactured by denying citizens the beach access the state constitution guarantees, by the coastal commission, whose job it is to uphold beach access rights.

7. There exists the crumbling remains of a cement ramp, that goes through the currently locked gate next to the landward end of the seawall, down to the high tide line, which up until the 1940s provided wheeled vehicle access, from trucks to wheelchairs. What remains of it is now covered with a badly eroded clay ramp built in the late 1980s. Had San Diego been maintaining the pool, opening the sluices, removing the sand, and maintaining the ramp, the Pool would be the only shining example of disabled American direct easy access to the real ocean, in southern California. With our large disabled military population crying for the saltwater therapy and scuba access, and in the light of the currently shockingly inadequate veterans medical care facilities, it is inexcusable that our city repeatedly attempts to escape it's responsibility to it's citizens, in order to establish a poorly thought out seal colony in this unique gift setting. Children's Pool allows direct access to 15' deep ocean, through a channel at the end of the wall where waves predominately do not break, in close proximity to a sheltered gradually sloping

sand beach. Do not allow the handicapped to continue to be laboriously carried in their wheelchairs down the two flights of many steep steps that is currently the only access to Children's Pool. This has to occur within an environment so often comprised of the ill-informed (or misinformed by seal activists) public, shouting harassment, that a City Ranger has had to be stationed there for several years now. San Diego is already famous for its large homeless veteran population. Should it now continue to neglect its handicapped veterans, in favor an artificially encouraged pinniped population, feeding in our finally established neighboring Marine Protected Areas, with its attendant pollution, smell, and predator problems?

8. According to the Richard Belesky, ranger at cp, in his 5/18/2014 email he observed 54 pups born on Children's Pool beach, + 13 in an alcove on Pt Loma, + 8 stillbirths, + 1 pup found in the cove = 76 pups born in 2014. He goes on to say about 30 of the 76 were born on South Casa Beach. **The Friends of the Seals**, part of the **pro-seal activist group** that Valerie O'sullivan alleged in her suit (decided in 2005 by Judge Pate, who agreed "certain individuals have engaged in uncivil and occasionally illegal conduct" that "conducted themselves in a manner that effectively denies access to users of the pool, beach and adjoining areas") **are on public record as having as their goal, the closure of all SD beaches, on which seals haul out.** This is an influential group, with some wealthy and influential members. They were on good terms with former mayor Bob Filner, and were involved with supplying the web cam that recorded a widely published episode of two girls harassing harbor seals at the pool one night. That episode (widely suspected of being staged) lead directly to an "emergency closure" of Children's Pool, every night for months. I and others fear that this measure under coastal commission consideration now, is just a stepping stone on the way to closure of many of the other San Diego beaches and coastal areas on which pinniped have been observed to haul out and give birth, including the Cove. The political actors have changed, but City policy seems to persist. Their machinations resulted in a 10 year seal sanctuary on seal rock, but that was abandoned, in favor of taking over Children's Pool. Shared use by humans and seals worked well until the barriers of 1992 or so. San Diego thinks it can save money by closing Children's Pool, at the same time it does its best to discourage and relocate another pinniped (California Sea Lion) population at the La Jolla Cove, less than a mile away. Just as has been done at the cove, the barriers must come down. We cannot enter the slippery slope closing any but the remote Pt. Loma coves already barred from land access, and heretofore utilized extensively by pinnipeds. The cost of a seal sanctuary you can walk to after dinner is too high, for these populations, their prey, predators, and the public. The National Marine Fisheries arm of the Federal National Ocean and Atmospheric Administration has repeatedly pronounced these populations are in no way endangered or threatened. They claim exclusive right to enforce their regulations. They deny that closing beaches is necessary for the good of the Harbor Seal species. The motivations for the actions San Diego is taking are obscure, but clearly not motivated by public good, for either the citizens, or the pinniped.

The City of San Diego needs to do its homework before declaring any of the beach closed to the public. I have shown above, that City sanctioned barriers, the aborted seal rock reserve, and have resulted in the haul outs and pupping at the Pool. A complete closure will doubtless lead to a further increase at not only the Pool, but also the neighboring beaches of South Casa, Wipeout, Shell, and the LJ Cove. The city has not even defined the meaning of the "Marine Park" its state legislative bailout describes, has not grasped the effect of increased seal haul out and population increase will have on the marine resources of the Protected areas, or the effect on the already congested parking and traffic in La Jolla, let alone made any sort of plans to deal with it. La Jolla is a suburb

that has only two major entry and exit roads. Mission / La Jolla Blvd representing one, has been choked from a four lane to a two lane road by the multiple traffic circles the City recently imposed. A change of beach use and access of this requires a complete Environmental Impact Report AND mitigation plan before implementation. You, the California Coastal Commission, exist for and is the last resort, to require the adequate situational analysis and the planning this project requires.

All of the facts I have stated above can be substantiated, as most are documented. A few I have observed, and so noted. I have nothing against pinnipeds, do not want to drive them from our shores, and enjoy their company in the water. I only wish to return to the shared use situation that existed prior to the human meddling in the form of barriers that occurred during and after the 1990s.

Philip Miller, Former Scuba Instructor, Registered Nurse  
San Diego Resident (>45years)  
6317 Brooklyn Ave.  
San Diego, CA 92114



**From:** David P. Donahue  
**To:** Laver, Brittney@Coastal  
**Subject:** Former SDCOD President-Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Tuesday, July 29, 2014 2:09:48 PM

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Brittney Laver,

As a diver and former President of the San Diego Council of Divers I am opposed to closing Children's Pool Beach.

Some of my post memorable diving experience was doing my first open water dive at Children's pool and I cannot tell you have many I've enjoyed there. It would be tragic if this beach had restrictions accessing the beach at anytime of year.

I agree that there is no scientific evidence of harm to the animals that willingly share this beach with their human admirers and have witnessed this both on the beach and in the water personally.

The seal colony is growing rapidly!!

The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort.

I also believe it will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

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Thank you!

David Donahue, DL1238185

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Porter Ranch, CA 91326

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**From:** Thomas Engelhardt  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Thursday, July 31, 2014 9:41:03 AM

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Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because . I grew up in San Diego and as a kid visited Children's Pool very often. Now i have 2 children that love the beach as much as i did and taking then t Childrens Pool has been a let down. The seals have ruined it for the children, it stinks of seal waste, the fish are gone. when i grew up there the seals were rarely seen there. The seals could calmly be removed from there. Lets give it back to the Children, Ellen B. Scripps would of wanted it that way. . Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE. Thank You. Thomas Engelhardt

To:  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

Dear Coastal Commission,

The CDP to allow San Diego's closure of the Children's Pool as crafted will lower the bar all over California for municipalities to deny access on flimsy pretext instead of rigorous demonstration of need.

1. The Commission will be agreeing an LCP does NOT have to conform to state and local laws, but can stand alone as either a means to carry out the Coastal Act and its policies, or to bypass them by deleting inconvenient provisions.
2. The Commission will be agreeing a CDP for outlawing public access in a place can be justified without even stating whether the "significance" of the targeted tideland is biological or economic or require any quantification thereof.
3. Trying to resolve controversy should not be done by compromising coastal access protections in the Coastal Act. The Commission can only end this by no longer rewarding San Diego with every new encroachment.
4. This CDP is so drastic it needs an emergency permit in order to contain it as an isolated happening and not a new clarification of standard CCC policy and practice.
5. Nobody could fault the Commission for requiring an emergency permit to introduce the closure. San Diego is asking for a local exception to the Public Trust Doctrine based on anecdotal convictions a population of animals is at risk of ending by injury and death.

Bob Ewing

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**FRIENDS OF THE CHILDREN'S POOL**  
***Protecting an 80 year old San Diego heritage.***



July 28, 2014

**RECEIVED**

**JUL 29 2014**

Children's Pool Project CDP # 6-14-0691, LCP-6LJS-14-0607-1

**CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT**

Dear Coastal Commissioners,

Friends of the Children's Pool offer this presentation of reference information to assist you in making your decision about Children's Pool beach closure. We ask you to uphold the founding principles of the Coastal Act and stop this needless beach closure. A copy of this presentation was provided to every Commissioner and the San Diego office of the Coastal Commission.

Blocking public access to the coast is not to be taken lightly. Please consider this information carefully. Your decision about Children's Pool could change the status of beach access in all of California as it starts a series of unintended consequences.

If San Diego's method of beach closure is adopted by the Commission by carving out a drastic exception to its own LCP, it will start the certain reversal of the coastal access protections in the Coastal Act. Other beach communities in California will surely follow on the slightest justification looking for an easy way out of difficult beach management decisions.

San Diego City Officials are attempting to close Children's Pool without justification and documented harm to the animal they claim they are out to protect. The fact is, the wildlife has shared this beach for decades with their human admirers without harm to either.

Beach closure advocates have made false claims that the natural seal mortality rate is somehow caused by human interaction with the animals. They do so without providing any documentation or evidence. The rapid growth of the Harbor Seal colony at Children's Pool and surrounding beaches is evidence to indicate just the opposite. This population of seals is thriving so drastic curtailment of human access cannot be justified.

The City of San Diego issued itself a self-serving Negative Declaration in minimal compliance with CEQA mandates. The history of the City's myopic insistence on beach closure since 2010, demands that any environmental review be done by an independent analyst. The staff at the City is not independent. They have systemic motivation to approve this project and to dismiss and overlook the environmental impacts. This project originated from a mostly termed out City Council from 2010.

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

I am including the written objections to the Draft Negative Declaration from our organization on this presentation. The environmental review was based on a declaration that Children's Pool Beach was an Environmentally Sensitive Habitat Area (ESHA). The local CCC staff urgently warned against the ESHA designation knowing it was completely inappropriate to the Children's Pool Beach. At the last minute, that scheme was discarded by the City. The City's response was to strikeout any reference to ESHA in their Negative Declaration and substitute in its place, Coastal Act section 30230 hoping that would replace the significance and impact of ESHA designation. It does not.

This clearly is a shortcut end-around to the requirements of CEQA. It also shows the inadequacy of the City's analysis of the known and foreseeable impacts to the local environment. Closing Children's Pool Beach is a significant change in the use of the beach and will create foreseeable impacts that must be known and mitigated.

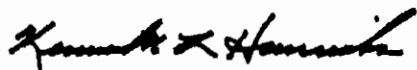
Blocking beach access will cause significant environmental changes as well as impacts to the community and the local residents. Protections for coastal access in our State Constitution will have to be ignored to let this slip through. The City is unwilling to conduct any meaningful study beyond the automatic dismissal of known or likely impacts from their project. The Coastal Commission should require a full environmental study be conducted by an independent organization before this project proceeds. There is too much at stake to rely on the City's continued mismanagement of Children's Pool.

This presentation was created to bring together our Key Issues we have been advocating for over the last ten years. Always our goal has been to promote the restoration and maintenance of the Children's Pool so that the intended beneficiaries of Miss Ellen Browning Scripps' gift could receive benefit from her gift.

We are asking you to reject the City of San Diego's application for a permit to close Children's Pool Beach and the associated LCP amendment.

Children's Pool is not just another beach; it is the true Jewel of La Jolla as the demonstration of our community's continuing respect for human life, planned public safety and environmental stewardship

Sincerely,



Kenneth L. Hunrichs  
President, Friends of the Children's Pool  
kenhunrichs@cox.net  
619 787-3372

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.



**From:** [Ken Hunrichs](#)  
**To:** [Laver\\_Brittney@Coastal](mailto:Laver_Brittney@Coastal)  
**Subject:** Stop the presses. The CCC staff report is misquoting NMFS/NOAA policy for LCP-6LJS-14-0607-1, CDP # 6-14-0691  
**Date:** Wednesday, July 30, 2014 12:00:31 PM  
**Attachments:** [june 13 yates letter on behalf of stelle.pdf](#)  
[NOAA NMFS letter to the San Diego City Council about MMPA January 2014.pdf](#)  
[letter to CCC about missing Yates letter in CCC staff report July 30, 2014.pdf](#)

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Hi Brittney,

After a review of the staff report for the Children's Pool closure project, LCP-6LJS-14-0607-1, CDP # 6-14-0691, I found a glaring omission you must be made aware of. There were two letters from Chris Yates explaining the current policy of NMFS/NOAA in applying the MMPA and the attempt to close Children's Pool. Mr Yates is the Assistant Regional Administrator for Protected Resources.

The first letter was on January 2, 2014 addressed to Mayor Gloria and the San Diego City Council and was copied to the Coastal Commission. The letter advised it was unnecessary to impose drastic access restrictions at Children's Pool to maintain compliance with the MMPA.

Mr. Yates was kind enough to follow up to me directly on June 13, 2014 to restate his agency's policies and actually strengthen his warning about MMPA sec 109(a) regarding enforcement jurisdiction reserved to the Federal Government in marine mammal management. Unfortunately the City of San Diego did not heed that advice and still is attempting to apply their interpretation of the MMPA when seeking closure of Children's Pool. I have included the two letters from Mr. Yates.

The beach closure proposal from the City of San Diego falls directly in violation of MMPA sec 109(a) as it is attempting to manage the Harbor Seal colony at Children's Pool. This is a function clearly reserved to specific agencies of the Federal government. If the "Standard of Review" done by your staff is limited to compliance with the Coastal Act, why is it that references are made to outdated interpretations of the MMPA? Why isn't the most recent interpretation from NOAA/NMFS from Mr Yates included in your analysis? Could it be the City is attempting to cherry pick misleading policy statements to support their limited scope of review in their project application hoping you would not notice?

The CCC staff report has a reference to incorrect statements made by Rodney McInnis in 2010, provided by the applicant, about the proposed year round rope barrier. The latest clarification from NOAA/NMFS from Mr Yates clearly

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states there is not a requirement to remain any certain distance from seals. The McInnis statement claiming a fixed boundary to enforce an imaginary distance from constantly moving animals is not supported in regulations in the MMPA. The rope barrier, and now a total closure of Children's Pool beach are entirely based on that false premise.

The purpose of MMPA sec 109(a) was to prevent hundreds of different agencies and coastal city municipalities with marine mammal issues, from interpreting and enforcing their own version of the MMPA. It is easy to see how that variety of interpretations would be inconsistent between those jurisdictions and not in keeping with the policies of NOAA/NMFS. There needs to be consistency or the entire process is driven by political motivations. Politics, and not legal or scientific analysis, has been motivating San Diego's officials in their fifteen year failed attempt at managing the Children's Pool. The reason for MMPA sec 109(a) was to prevent mismanagement by the whims of political correctness.

This policy should be immediately reviewed by your staff to clarify this point in the staff report and recommendations.

August 2, 2014

California Coastal Commission  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

This material has been sent to all Coastal  
Commissioners and the San Diego  
Coastal Commission office for LCP-6-LJS-14-0607-  
1, CDP No. 6-14-0691

**RECEIVED**  
AUG 08 2014

Ref: CDP # 6-14-0691, LCP-6LJS-14-0607-1, Children's Pool

Dear Coastal Commissioners,

COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

The staff report for Application No.6-14-0691, Th13a for the Children's Pool beach closure project lacks critical analysis of conflicting values contained in the Coastal Act and other statutes. This report has been carefully crafted to diminish the value of all other attributes of public safety, ease of coastal access, community traditions and legal considerations outside the Coastal Act for this project. The very narrow "standard of review" focusing primarily on sec. 30230 casually dismisses too many relevant access sections in the Coastal Act. The report does a disservice to Commissioners who are unfamiliar with the issues at Children's Pool. You depend on accurate information on which to make an informed decision. The basis for our objections, to statements in the staff report that are contradictory or misleading, generally fall in these categories:

- *Conflicts within the Coastal Act* [page 1]
- *Conflicts with the California Constitution and other State statutes* [page 5]
- *Conflicts with Federal law* [page 7]
- *Diminished Public Safety* [page 9]
- *Seal Biology and Community Impacts* [page 10]

### ***Conflicts within the Coastal Act***

The Coastal Commission staff repeated warned the City of San Diego to not attempt to use an unjustified ESHA designation as the tool to close Children's Pool Beach. Only at the very last minute did the City staff finally accept that recommendation. That started a process to find something equally weighty and significant to justify beach closure to use as justification. The result was the Commission staff recommending section 30230 as a substitute for the weight and applicability of ESHA. However, this new designation is a general statement of policy lacking the significance of ESHA and does not compel the action proposed in the subject beach closure plan. And yet, the City's desired beach closure plan has been clumsily and incorrectly justified by this one section. This is a mischaracterization of the relationship and significance of this one resource section compared to all other access sections of the Coastal Act.

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Page 1 of 12



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

The reasons cited by the Commission staff to reject ESHA designation also apply to the misapplication of the even less significant section in 30230. These reasons still exist at Children's Pool and repetition of the claim of applicability does not make it any more relevant to the conditions at the Pool.

The reasons both ESHA designation and sec. 30230 are a bad fit to justify beach closure are:

Close proximity to urban setting  
Current joint use management strategy  
Beach is easily accessible to the public  
Beach has a dedicated user group

Claims are repeated from the applicant throughout this report with little supporting evidence. The author has simply repeated the claim over and over without critical analysis or verification. This is especially important when the basis of the claim is harm that will continue unless all other conflicting values protected in the Coastal Act are dismissed as being without significance and are set aside. The staff's recommendation to accept the City's absolute reliance on Coastal Act sec 30230 demands that supporting evidence is provided. This report is lacking that supporting evidence. Repetition of a claim is not evidence and cannot be relied on to support the project.

A brief reference is made in the staff report about the Harris/Lifeguard Plan. The comments demonstrate the staff's lack of understanding of the proposal put forward by the Lifeguard Union. The claim made that "people could continue to disobey partitioning" completely misses the key element of the plan. The area reserved for exclusive use by seals would be backed up with an ordinance prohibiting human entry into that area. In as much as any municipal ordinance is complied with, the supporting ordinance for partitioning sections of the beach at Children's Pool would be as well. The boundary would be clearly defined with any barrier device that could be anything from large boulders or traffic cones or the rope barrier now stretched across the entire beach. The actual barrier material is not important and nothing would be constructed that would "corral" seals or limit their use of the beach. It would be a device that is easily understood by visitors as being the limit to their entry into the seal area. The seals would remain under the protection of the MMPA wherever they were including the "human" side of the boundary.

If this plan were adopted the barrier would be turned perpendicular to the shore to clearly define the off limit area for people to easily understand. This adaptive plan would be seasonally adjusted to reflect the changing presence of seals and the increased demand for space for people during the summer. In simple terms, 75 percent of the beach for seals in winter, 25 percent for people including access to the water. In summer, that ratio is reversed protecting an area along the seawall exclusively for seals. This is a plan the City has never given full consideration before resorting to the full closure option before you. The lifeguard plan has been embraced by the community is the only plan that has any chance of success because of the community acceptance.

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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.

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Comments in the staff report make an absurd claim that viewing the coast is equivalent to actually going to the coast. This makes denial of coastal access by providing a view of the coast compliant with the Coastal Act. If this standard were applied uniformly, nearly all actual coastal access through private property easements would be unnecessary. "Look at the beach but don't touch" appears to be the concept of mitigation for the loss of true coastal access. Parents at Children's Pool will have to explain, "Sorry children, you can look at your beach but can no longer use your beach". This staff report endorses policies to "protect" the California coast from the citizens of California instead of for the citizens of California.

Repeatedly saying that Coastal Act section 30230 will enhance the protected status of harbor seals is like saying your car will last much longer if you never drive it. This analogy seems obvious but is similar to the baseless argument throughout this staff report to adopt section 30230 as justification for this project. If there were no other conflicting coastal access considerations, this assertion might have merit. However, there are a dozen conflicting sections in the Coastal Act that demand a thorough analysis of the weight and significance they have. It was not done in this report.

The obvious is repeated when the staff report claims closing the beach will reduce seal/human interaction on the beach and will provide more effective "protection" for seals. But where in nature is an animal provided unimpeded protection except where they are artificially sheltered? This condition doesn't exist in nature. It is a major flaw in the City's plan to continue treating wild animals as if they cannot survive without the hand of man protecting them somehow.

Therefore, the City has proposed to seasonally restrict public access at Children's Pool Beach to provide the seals with unimpeded protection during the five vulnerable pupping season months. In comparison to the existing conditions, the proposed project 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 (**Exhibit 4**) requires the public to stay farther away from the seals. The clear

Pg 21

Only if you believe the convenience of animals (and their human admirers watching from afar) is more significant than human safety could you possibly think closing the safest beach in San Diego would have any merit. The protection of human life should be the highest standard for review of any project.

Page 3 of 12



The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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Public safety is trivialized in this report that fosters a contrived sense of urgency to "protect" seals.

The Local Coastal Program Amendment No. LCP-6-LJS-14-0607-1 for La Jolla is being concurrently amended to add policy language to the La Jolla Community Plan. The proposed amendment goes against everything in the current LCP. Only by carving out a contrary exception to that LCP can a beach closure ever be considered. It completely reverses the will expressed in the La Jolla Community Plan written by the residents of La Jolla. The amendment proposes to take away a cherished local swimming beach. It completely undermines the process to allow local decisions on local issues and discourages citizen involvement when outside entities disregard the expressed desires of the community. The following quote is from the La Jolla Community Plan/Local Coastal Program:

*"Enhance existing public access to La Jolla's beaches and coastline areas (for example La Jolla Shores Beach and Children's Pool areas) in order to facilitate greater public use and enjoyment of these and other coastal resources."*

The State Legislature recognized potential conflicts and requires the most significant resource be protected by balancing all the uses; not just the most fashionable, trendy or politically correct. Conflicting sections of the Coastal Act must be evaluated under section 30007.5 and balanced for significance. The safe ocean pool is the most significant coastal resource when protecting human life is considered in the discussion. A broader evaluation of the meaning of all policies of the Coastal Act would provide the guidance needed to reject the use of sec. 30230 when evaluating the City's plan for Children's Pool.

Coastal Act Sections 30210 through 30214, as well as Sections 30220 and 30221 specifically protect public access and recreation.

- 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: requires that "Development shall not interfere with the public's right of access to the sea..."
- Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects
- Section 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.



- Section 30214: Implementation of public access policies; legislative intent  
(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.
- 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.

### ***Conflicts with the California Constitution and other State statutes***

The pertinent text of the Children's Pool Trust is copied here. There has been a limited reference to this statute in this staff report. It appears to be an unintended casualty to the limited "Standard of Review" in this report. This limitation prevents a full discussion of this legally defective beach closure project. The park at Children's Pool is a creation of this tidelands land grant to the City of San Diego by the State Legislature. It was intended to be in place forever . . . or as long as the breakwater wall stood. The City of San Diego was found to be in breach of their obligation to the Trust in the O'Sullivan v. City of San Diego lawsuit. The City was ordered to restore the Pool to a condition safe for human use. The amendment to the Trust in 2010 only added a use. It did not authorize the City to pick and choose what in the statute they would comply with. The City has a clear duty to uphold the all terms of the Trust or return management authority back to the State if they are unwilling or unable to do so.

#### **Children's Pool Trust**

*. . . to be forever held by said City of San Diego and its successors in trust for the uses and purposes and upon the express conditions following, to wit:*

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



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

The City wayward experiment to removing human access to Children's Pool has been tried before. Several years ago, the City attempted to establish a seal reserve at Seal Rock near Children's Pool. In doing so they circumvented the authority of the State and the Federal government to create a reserve in the tidelands. The 1931 Children's Pool Trust prevented that reserve from being extended into Children's Pool. The City was given two, five year trials but the project was so full of flaws it was abandoned when the truth about the City's lack of jurisdiction to create a seal reserve were called into question by the State Lands Commission, Department of Fish and Game and the State Attorney General. San Diego doesn't have the authority to create reserves in coastal tidelands. They should not be trying to do this again at Children's Pool. The Coastal Commission should not provide cover by issuing a CDP to repeat the failed Seal Rock Reserve project. Children's Pool has an even stronger tidelands trust than the area of Seal Rock Reserve.

The Children's Pool Trust clearly defines acceptable uses and all enumerated uses must be allowed at all times. Beach closure is not an option. The absolute right to fish with convenient access to the waters of Children's Pool is clearly a protected right in the plain language of the Trust. A right guaranteed in Article 1, section 25 of the California Constitution that was completely ignored in the staff analysis.

This report ignores constitutionally guaranteed coastal access for fishing. In fact, the Constitution is mentioned only once where the "maximum access" of section 4, article X of the Constitution is incorporated into the many sections in the Coastal Act. The report continues on to ignore the protections in the Constitution. This is a glaring example of the analytical shortcomings in this report.

*Section 30210 of the Coastal Act states:*

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

If the Coastal Commission relies on limiting the "Standard of Review" to the Coastal Act, it creates the danger a project will be approved that is not compliant with all applicable law. This staff report is a clear example of that limitation. This project conflicts with a host of State Constitutional and Federal preemption issues the Coastal Commission would be wise to consider.

The City's negative declaration is not in compliance with CEQA law because the City fails to account for the impacts known to have occurred already though previous seal protection measures. Baseline data ignoring those prior impacts skews the analysis to provide for a finding of "no significant impact". A full Environmental Study is needed through an independent analysis.



California Environmental Quality Act, CEQA

Article 20. Definitions:

15358. EFFECTS

(a)(2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

The staff report quotes: "Terms and conditions run with the land." That is, except when a term or condition gets in the way of a desired outcome. The tidelands land grant for Children's Pool is the perfect example of not letting inconvenient statutes get in the way. It should not be standard practice of the Coastal Commission staff to simply ignore laws outside the Coastal Act or discount their legal effect until you are later called to account. This is the failure of the Commission's "Standard of Review" that allow projects to proceed with known legal defects.

The current state of water quality at the Pool should cause enough concern to compel the City to address the problem. A few halfhearted attempts to address the problem were made including reopening the sluiceways built into the breakwater wall. None were followed through to completion and the issue has never been corrected. The City is seeking to put even more seals in this confined area without a plan to restore water quality for the time when people will be using the Pool. Sluiceway opening studies reveal the likely success of the project in allowing continuous tidal cleaning of the beach. This will help reduce the buildup of animal waste. The City failed to act on the engineering report and never made a serious attempt to correct the seal waste pollution. Instead they are proposing a plan that will impact the water quality to a greater extent and create a greater hazard to human health. Their self-serving Negative Declaration may be minimally CEQA compliant but the known effects of closing the beach should not be ignored without a full Environmental Impact Report. The City's history of mismanagement demands an independent review of known and foreseeable impacts.

**Conflicts with Federal law**

If the claimed harm to seals actually occurred at the frequency and level of a MMPA violation, NOAA/NMFS would have stepped in long ago and dealt with the issue. NOAA/NMFS receives the same information from the seal activists and knows the occasional inadvertent disturbances are not significant enough to bring about a drastic beach closure. Many years ago, NOAA warned the City to discourage a growing seal colony in the Children's Pool. Unfortunately the City ignored the advice and pursued policies that had just the opposite effect. I have personally seen and counted upwards of 300 seals hauled out on the beach in the winter. The carrying capacity of this small beach was exceeded long ago to the detriment of the seals and people who use the beach. City policies have failed and there is no reason to allow the City to continue mis-managing the beach by closing it.

MMPA section 109(a) makes Federal preemption clear as the City continues dabbling in seal protections schemes in violation of sec. 109(a). The cover the City seeks from the Coastal Commission will not change the fact that the City will be in violation the moment they close the beach to "protect"

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

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seals. [See *UFO Chuting, Inc. v. State of Hawaii*, Civ. No. 03-00651 SOM/BMK] The Coastal Commission will be a party to this violation if a Coastal Development Permit is approved for this City project.

The artificial sheltering has had its effect resulting in too many seals in too small a space. Instead of managing the problem the City chooses to make it worse and they continue to follow the same failed policies as evidenced by this project proposal. The obligations of the 1931 and 1933 tidelands land grants to the City have been trashed by the City's past policies in La Jolla. Coastal access has been proposed to be illegally restricted by the actions called for in the City plan for Children's Pool. Why would any responsible agency provide the means for the City of San Diego to continue on this failed course of action?

The intent of the Marine Mammal Protection Act is misapplied when some imaginary fixed distance from seals is mandated by the City. This mandate can't apply to constantly moving seals when a fixed barrier is used to enforce the City imaginary distance. Federal law does not specify a set distance from seals. The agency responsible for MMPA enforcement advised against beach closure pointing out the MMPA can be complied with without closing the beach. (NMFS, Yates letters, Jan 2, 2014 and June 13, 2014)

A curious dilemma has resulted for the City of San Diego from the installation of the "seal viewing guideline" rope barrier. The designation and placement of that rope barrier, approved in a CDP from the Coastal Commission, triggers the requirement to comply with Federal law in the Americans with Disabilities Act (ADA) generally described in § 35.149 Discrimination prohibited.

*§ 35.149 Discrimination prohibited: Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.*

The staff report references ADA accessibility with a completely erroneous reference to ADA ramps claimed to be in the vicinity of Children's Pool at Scripps Park and La Jolla Shores. Neither location has ADA ramps. Since the Coastal Commission does not enforce Federal ADA law, this erroneous reference can only be described as attempting to cover for the City's lack of compliance with ADA law at Children's Pool and deflect attention from the City's refusal to re-open the beach access ramp.

A lawsuit has been filed against the City in Federal Court to compel the City to provide access to the beach at Children's Pool. [Robertson v. City of San Diego] This lawsuit provides underlying motivation to the City to close the beach year round and thus avoid liability for beach access at the subject site. The staff report never mentions this related component of the motivation to close the beach by the City but does go so far as to attempt to fabricate ADA access somewhere else to excuse the City from its obligation to provide that access at Children's Pool. This is one more relevant component of this project outside the "Standard of Review".



## ***Diminished Public Safety***

The staff report has a discussion of the access to the ocean on both sides of Children's Pool. The discussion leads a reader to believe that one beach is just like another and using any beach would be the same as using Children's Pool. Unfortunately, the report author reveals a lack of understanding of local conditions at the proposed alternate beaches. Both beaches mentioned, Shell Beach to the north and South Casa Beach to the south are well known for recurring rip currents and are posted to warn visitors of those conditions. Both beaches are heavily guarded by lifeguards to prevent accidents and drowning. Both beaches are known for a pounding shore break that can be very dangerous when the swell height is over three feet which is most days in winter.

La Jolla Cove is often mentioned as a substitute beach entry site to Children's Pool. The Cove has been surrounded by a long standing underwater park that was recently expanded into a State Marine Protected Area (MPA). La Jolla is known for the active diving community that depends on safe ocean access. The modern sport of spearfishing started in La Jolla in the 1930's with the Bottom Scratcher's dive club. Modern spearfishing equipment was developed by club members. Those early pioneers of the sport had access to waters now in the MPA through the La Jolla Cove. Because of updated fishing regulations today's spear fishermen can no longer use the La Jolla Cove to enter or exit the ocean. This makes access to the ocean through Children's Pool even more significant.

Entering and exiting the ocean through Children's Pool provides an extra level of safety not available anywhere else. Closing Children's Pool will force swimmers and divers into those more dangerous beaches especially during the most dangerous season in the winter. Human lives are endangered when the safest beach in San Diego is closed. Any monitoring plan to determine the full impact of beach closure must include the records of water rescues and recoveries of beachgoers, swimmers and divers forced out of the safety of Children's Pool to nearby beaches.

Children's Pool has been dedicated park land since 1931 when a grateful San Diego accepted the gift from Ellen Browning Scripps. Problems arose when the City chose to ignore their duty under the Trust and tried to bar the use of the Pool by the intended recipients of Miss Scripps gift. Conflicts began when the City began interfering with the balance between humans and seals from the creation of a seal reserve near Children's Pool. The problem was compounded when seals were secretly released from Sea World's rehab program just offshore from Children's Pool. The City has proven it is incapable of fixing this problem with the current proposals. It is the City's problem to deal with under existing law. They cannot be allowed to circumvent the law.

Children's Pool has a beach access ramp to the beach which is identified on the LCP. It was added a few years after the construction of the stairway. The City has tried to redefine the ramp and recently has begun calling it an "emergency vehicle" access ramp. Calling a well-traveled beach access ramp something that it isn't doesn't make it so. The ramp has been gated and closed by the City for the past 15 years. In so doing they are in violation of the Coastal Act when a historically established access to the beach is blocked. The emergency ramp label never was applied until it became expedient for the City to do so. The City now finds this beach access ramp inconvenient to their closure plan.



## **Seal Biology and Community Impacts**

Comments in the staff report only touch on the origin of the seal colony at Children's Pool. A strong argument can be made that Sea Worlds' rescue and release program was the major cause of colonization of this beach. The secret program of concentrating rehabilitated seals just offshore from Children's Pool was done concurrently with the failed Seal Rock Reserve project. Animals raised in Sea World rehab facility by human caretakers were accustomed to human contact and simply chose a sheltered location at Children's Pool among their human admirers. This policy was only revealed in the testimony of the O'Sullivan v. City of San Diego lawsuit. The release of habituated seals to the La Jolla coast was stopped immediately after it was revealed during the O'Sullivan lawsuit. The releases went on for eleven years and after nearly one hundred Harbor Seals were released.

The common myth of "Seal Rock" being the home of an original or "ancestral" seal colony is without merit. The claim is based on a map in a real estate sales brochure from the earliest days of La Jolla. The rock feature called Seal Rock on the sales brochure was 100 yards west of the Children's Pool breakwater wall and is now completely submerged due to years of erosion. There may have been some feature of the rock that resembled a seal thus attracting a common landmark name. More likely it was the occasional presence of Sea Lions. But to say the reference on a sales brochure is the basis for claims that seals "most likely utilized the area as a natural haul out" is completely without substantiation and proves nothing about the current seal species at Children's Pool. It is at best, speculation and at worst, a deliberate attempt to mislead the analysis without context. You only need to look at the pounding by winter waves to this area to know this was an unlikely pupping site before the breakwater wall was built.

The City has declared an economic and biological value to the seals at Children's Pool without defining or quantifying what that value is. Children's Pool is not the only seal rookery in San Diego or Los Angeles County as there is an established rookery in Point Loma. Hidden from view, this rookery provides all the seclusion a seal could need without the demand to block human access to a popular public beach. It is contrary to sound wildlife management principles to artificially protect fully capable, non-endangered animals on a man-made beach designed to protect human lives. There are many areas in San Diego available to seals that are far more suitable for a seal colony.

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. It is the only mainland rookery in San Diego and Los Angeles counties and has become a destination for visitors, residents,

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There is absolutely no justification to manage seal populations to become dependent on human intervention. On balance, the safe access to the ocean is the most significant resource at Children's Pool that must be recognized under Coastal Act section 30007.5. Human safety must be paramount in any discussion of beach closure.





The effect of the rope barrier is the subject of a preliminary report by the City Park Ranger. In that report a small number (30) of disturbance incidents occurred from human activity in the 2013-14 pupping season. Considering the number of visitors claimed by the City, and repeated in the staff report of one to 2.6 million visitors coming to see seals, it is an insignificant rate of disturbance for an urban location so heavily visited. The first year data for inadvertent disturbance does not support the most extreme remedy of closing the beach. There is no evidence the habituated seals at Children's Pool will abandon the site or suffer harm because of infrequent disturbances. Likewise, the ranger's count of abandoned or deceased pups does not attribute a cause to any human activity. The natural mortality rate is significantly less at Children's Pool than populations in more "wild" remote locations.

The staff report has used seal disturbance counts collected by the Friends of Seals now known as Seal Conservancy. This data is wildly different from the count taken by the City's ranger. This leads to the question of why the unsubstantiated count from this unverified source with a clear bias would appear in the staff report. The answer of course is the CCC staff is not in any way impartial. They appear to have crossed the line for advocacy to a position instead of presenting factual data to assist Commissioners to make informed decisions. The inclusion of Seal Conservancy counts should cause Commissioners to question the validity of other information in this flawed report. There certainly is more than enough evidence for the Commission to vote against the staff recommendation for this project and not allow themselves to be misled into a bad decision.

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. Whether done ignorantly or intentionally, any form of

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The ranger has begun monitoring the other seal rookery at Point Loma near the City wastewater treatment plant. Newborn pups have been observed at that location for many years but because of the remote location, a witnessed seal birth has not been recorded. The often repeated myth of Children's Pool being the only Southern California mainland rookery is just that; a myth. There are dozens of likely haul out sites hidden along our local coast at Bird Rock, La Jolla and Point Loma. Marine Biologist Dr. Doyle Hanan has recorded Torrey Pines and Point Loma as actively used sites.

The City was found to be in breach of their duty to the beneficiaries of the Children's Pool Trust in the O'Sullivan lawsuit. The court order still obligates the City to restore the Pool to a condition suitable for human use. That requires the City to address ongoing pollution problems that will be increased if the beach is closed. Seal management is the responsibility of the Federal Government; not the City of San Diego and not the State of California.

This staff report recounts the long history of the City's attempt to manage the Pool without actually discussing the true source of conflicts at the site. Claims are incorrectly made of conflicts between seals and people. In fact the conflicts have always been between lawful beach goers and the seal activists bent on stopping them. Those activists decided they were entitled to make the rules and enforce those rules themselves. This lawlessness continues today with the vigilante actions driving lawful users away from the Pool. Citizen's requests for intervention from the City and the Coastal Commission were futile. The City claimed the agitators had "Free Speech" rights to harass and intimidate anyone they wished. The City neglected its responsibility to maintain order at the Pool and vigilantes ruled the day. Only the most egregious criminal acts by seal activists, such as stun gun

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The specific purpose of this corporation is to educate the public as to the use of the Children's Pool in accord with Miss Ellen Scripps' charitable intent in 1931 in order to protect La Jolla Children's Pool surroundings as a public park, a bathing pool for children, and public recreational usage in accordance with chapter 937 of the deed of trust between Miss Ellen Browning Scripps, the State of California, and the City of San Diego, county of San Diego. Publicize the return of Children's Pool to public recreational use. Promote water quality and safety. Facilitate cleaning the beach and adjacent areas to make it attractive and convenient for public use.

assaults, thefts, battery and spitting ever were investigated and prosecuted. Intimidation of families and children became standard practice under the indifferent watch of City officials.

The conclusions offered in the staff report focus solely on one outcome; to close Children's Pool Beach. This outcome, no matter the cost, no matter the increased danger to human lives, no matter the conclusion is based on false premises about the value and unique nature of an animal as common as ground squirrels and pigeons. The lack of full discussion for closure alternatives makes this report incomplete. The referenced Lifeguard plan is clearly misunderstood by the report author. The Commission staff appears to be unwilling to seek information outside of the applicants narrowly focused justification.

For all this discussion it must be noted that Children's Pool is a special place in the lives of hundreds of thousands of past and current San Diegans who know and love this unique place. Friends of the Children's Pool are committed to preserving and restoring the Pool for current and future generations and for the intended use. Nothing like this cherished pool will ever be built again. The value of the gift of ocean safety from Ellen Browning Scripps must be honored and protected. Preservation of human lives must be given priority over the convenience of animals. To approve any proposal that knowingly endangers human lives would be irresponsible.

Sincerely,



Kenneth L. Hunrichs  
President, FoCP  
[kenhunrichs@cox.net](mailto:kenhunrichs@cox.net)

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**From:** Steve Ford  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Tuesday, July 29, 2014 2:24:12 PM

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Dear Coastal Commissioners,

I am opposed to closing Children's Pool Beach because . . .

Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast.

There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers.

The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well.

The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it.

Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

Please allow my family, friends and others to enjoy a beautiful attraction that was intended for such enjoyment.

Sincerely, Stephen Ford

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To: California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

Re: LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the CCC local staff,

I am a local spearfisherman and familiar with the offshore life and biology of La Jolla. The Children's Pool was specifically accepted by the City of San Diego under a trust that specified, as still is found in the State Constitution that the right to fish over the land and waters of California tidelands is guaranteed to the people. It is alarming to see the disdain for these fundamentals shown by the local Commission office. In reading 6-14-091 any thoughtful person is struck by the lack of critical analysis or scientific references.

In fact the "analysis" is little more than parroting the assertions of the applicant as if gospel. This leaves the Commissioners without access to facts they need.

1. We have watched the seal population increase faster at the Children's Pool than in the wild, yet Staff readily buys the contention that the choices on the table are only end Public Access or no seals any more.
2. Page 7 calls for a monitoring plan exactly duplicating the monitoring plan to justify the year round rope permit of 2012. And again, there is no control background, no criteria for success or failure, no requirement for analysis except for the applicant's assessment of its own program. Just a requirement for a pile of numbers and a self assessment. The data for the rope program came to the staff in June and no analysis of the data was performed, only the City's summary report was sufficient. Bad science.
3. Page 9, the staff refers to the hard closure by lock and chain as a "restriction of public access". Such a euphemism is irresponsible. Complete denial of access should be called what it really is.
4. Page 10, the staff reveals "Children's Pool Beach is designated as "Parks, Open Space" in the City's certified Land Use Plan". Good that they made that official as the City Attorney had tried to deny it was so designated by the 1931 trust whose language is unequivocal. His denial was because section 55 of the City Charter states *"All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose."* Therefore the City cannot use the beach at any time for anything but a public park without that special election.
5. Page 10, staff asserts an opinion from the mapping department defines jurisdiction for the Commission to be the historic high tide line of 1930. But that was 45 years before the CCC existed. Where in the Coastal Act did the legislature declare any tidelands that

existed at any point in time before the Commission did fall under present day jurisdiction? At one time all of San Diego was under water. The claim to jurisdiction cannot stand as it is absurd. People were complaining in 1955 that entrapped sand had filled the Pool.

6. Page 11 the report swallows a local myth that any local skindiver or local waterman could have explained. I have included a scaled map showing the old "seal rock" was NOT where the sea wall stands today. There was indeed that old map showing a rock about 100 yards west offshore call Seal Rock. It is today only the high end of a reef still causing visible wave action but perpetually submerged.
7. Page 12. County Health did not deem the water unsafe. They posted an advisory, because seal e coli tripped their tests. County Health has not tested the water there in over 8 years. Nobody knows if any human pathogens exist there. The City's story is carefully misleading and would fool the casual observer.
8. Page 12. *"The City then issued an emergency permit for the temporary rope barrier and the barrier was installed."* The City Attorney granted the permit which was a violation in the face of an ongoing appeal. The violation was forgiven by the staff.
9. There has never been effective public education at the Pool or most of the alleged problems would never have happened. The signs installed said the beach was open and the ranger stopped going on the beach at all because people would ask him If the beach was open and he could not lie.
10. Pointing out the deficiencies in this simple rephrasing of the City's position by the staff would be beyond the scope of a simple letter. There are another 148 pages to go. Nobody expected anything less than a whitewash here. The local staff rewrote the CDP proposal for the City and gave it the text to insert verbatim on October 25, 2013. The Commissioners have the freedom to stand aside and let San Diego flaunt all the laws it wants. The only issue at question is whether they will choose expediency or integrity.

*Sincerely,*

*Ryan Sweeney*

*San Diego Freedivers - President*

Raoul Harpin

1251 Rhoda Drive

La Jolla, CA 92037-5222

July 22, 2014

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JUL 28 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

California Coastal Commission

San Diego Coast District Office

7575 Metropolitan Drive, Ste 103

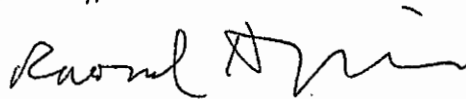
San Diego, CA 92108-4402

Re: Children's Pool Closure Project

CDP # 6-14-0691, LCP-6LJS-14-0607-1

Dear People, I am writing to request that you not act to close the Children's Pool to children. The Pool is the only beach in the Village of La Jolla that is safe for small children to play on. It is the only beach in the Village that is free of rip currents, undertows, and sharp drop-offs. That it is why it was originally created through the compassionate bequest of Ellen B. Scripps. When my children were young I took them to The Children's Pool almost every day to play in the sand and in the water and tide pools. Never once was there a safety problem. At the other Village beaches I could never let them in the water because the conditions were so dangerous. I want to be able to take my grandchildren to The Children's Pool for the very same reasons. Please do not close The Children's Pool to our children.

Sincerely,



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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

JUN 13 2014

Kenneth L. Hunrichs  
President, Friends of the Children's Pool  
3090 Admiral Avenue  
San Diego, CA 92123

RECEIVED

JUL 24 2014

CAL  
COASTAL & WATERS  
SAN DIEGO DISTRICT

Dear Mr. Hunrichs,

Thanks you for your letter to Mr. William Stelle dated April 21, 2014, expressing your concerns regarding actions at Children's Pool Beach in La Jolla. Mr. Stelle has asked me to reply to your letter on his behalf.

As you noted in your letter, on January 2, 2014, I sent a letter to the City of San Diego explaining my perspectives regarding alternatives they were considering at Children's Pool. It remains my opinion that the most preferable outcome is one of shared use – where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users.

As I stated, the MMPA does not require that beaches be closed, or that people maintain any specific distance from the animals. Rather, the MMPA generally prohibits the harassment, hunting, capturing, or killing of marine mammals. As these terms relate to the pinnipeds at Children's Pool, the primary concern is the harassment of these animals that could occur as a result of human activities. Harassment would be acts of pursuit, torment, or annoyance that have the potential to injure the animal(s) or disrupt natural behavior patterns. I clarified that I do believe that pupping season is a particularly important time for ensuring that harbor seals are not impacted by human activities, but do not believe that complete closure of the beach is the only way of achieving that protection.

I also recommend the City, in making decisions to addresses the conflicts at Children's Pool Beach, review the pre-emption provisions of MMPA Section 109 (a), 16 U.S. Code Section 1379(a). In general terms, Section 109 (a) prohibits enforcement of laws or regulations relating to the taking of marine mammals except by a state to which the Secretary of Commerce or the Secretary of the Interior has transferred authority for the conservation and management of the species. That authority has not been transferred to the City.

Sincerely,

Chris E. Yates  
Assistant Regional Administrator  
for Protected Resources

cc: Administrative File: 151410WCR2014PR00135

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To:

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

*Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations.*

The California Coastal Commission (CCC) has the opportunity to present its consideration on the removal of public access to the La Jolla Children's Pool, or Casa Cove. The closure of the Children's Pool sets a dangerous precedent with no tangible benefits but to appease the tyranny of a majority swayed by a marine mammal that has the fortunate looks of humanity's closest friend. Members of the CCC, please remember your mission, and find the considerations below to show that closure of the beach is not in the best interest of the local community, the broader city, the environment, and California's mission to protect and conserve our coastal resources while maintaining our constitutional right to coastal access.

1. The state has no contractual obligation to close the beach short of instruction from NOAA on the authority of the MPAA, or a public health and safety concern.
  - a. The amended trust uses the vague and undefined term of 'marine mammal park' with respect to the Children's Pool which typically is the result of a commercial enterprise. The language of the trust offers no guidance on the treatment of pinnipeds and other marine mammals within the vicinity of the pool. To claim otherwise would be to project one interpretation on an otherwise undefined term.
  - b. In fact, beach closure would set aside many key provisions of the California Coastal Act for the one provision in Article 4 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.*
  - c. Section 30230 is violated however, because beach closure disrupts the balance of **all species** in the La Jolla Coastal region because of favoritism towards a single species without regard for what that species impact is on the local environment.
  - d. Disregard for these considerations undermines the commitment of the City of San Diego and California towards a healthy environment in this locale, from a public health standpoint, a conservation standpoint, and from a business standpoint. Disregard for these considerations is in violation of the mission of the CCC.

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- e. In addition, the language within the LCP follows the same principles as Section 20230, and are violated in much the same way. However one might contend that the Pacific Harbor Seal, being protected only by the MPAA and of the conservation status of Least Concern, is not a 'sensitive resource'. In fact, the strength of the Children's Pool Colony is causing ecological pressure on the local environment above and below the water.
- 2. Closure of the Children's Pool sets dangerous precedent due to the nature of established Harbor Seal colonies and ongoing public health concerns
  - a. The CCC staff recommendation suggests a 5 year sunset clause on the closure to evaluate the condition of 'least possible restriction necessary'
    - i. The recommended closure would likely expand after the 5 year evaluation period with the expansion of the current seal colony. Temporary closure of the Children's Pool would likely result in a permanent closure of the beach in perpetuity.
  - b. The CCC staff recommendation refers to other colonies with restricted access
    - i. Many of the listed colonies are designated at marine reserves, which the Children's Pool is not and thus does not carry the considerations that a reserve requires.
    - ii. Closure of the Children's Pool would set precedent to close other regions of California Coastline where pinnipeds and humans interact regardless of the pinniped conservation status or the status of the region in question. This represents a broad overreach of governance by the state and city into the resources of a locale such as La Jolla.
  - c. The CCC has no jurisdiction to exercise the authority of the MMPA
    - i. Closure of the Children's Pool is overreach by the City of San Diego and the CCC
    - ii. NOAA has already weighed in on this matter and has determined that closure is not necessary and has expressed opposition to closure as well as concern over a shared use policy.
      - 1. In fact, NOAA's statement expresses no concern to the altered behavior of the seals, but the use of the MMPA to harass members of the general public!
  - d. Periods of closure would lead to significant degradation in water quality in the Children's Pool
    - i. This would lead to further closure
    - ii. The City has reneged on its obligation to clean water at the pool, instead opting to amend the trust with the undefined term of 'marine mammal park'. The term 'marine mammal park' might suggest still that the resource is managed and the water cleaned!
  - e. The Children's Pool is the only protected coastal region within La Jolla that has a ramp installed. Scripps Beach and Boomer Beach, which also have ramps does not offer safe water access for the disabled due to surf exposure. With the inclusion of a man-made wall, the Children's Pool is the only location in the

vicinity that would offer safe ADA access. Closure of the Children's Pool would crush the development of safe access to coastal waters for the disabled.

The closure of the Children's Pool represents gross overreach by the City of San Diego and the CCC into the constitutional rights of the California Citizens and exceeding the authority of the MMPA. In broader terms, the closure of the Children's Pool represents the tyranny of resources outside the locale of La Jolla, and forces this community to cope with the decision of the city and the state. Local businesses and constituents must already contend with the public nuisance that the seals have become with regard to public health, with little economic improvement. Closure of the Children's Pool would offer only negative economic consequence as public health would deteriorate, without offering any additional benefit as an educational resource. Ultimately, the CCC must weigh the cost of environmentally sustainable and prudent use of the coast against the conservation of a marine mammal species that has, in its current status, no need for conservation, no tangible positive economic impact, and negative public health impact. Furthermore, favoritism towards this single marine mammal species negatively impacts the local marine environment which is not easily seen above the surface, and undermines the purpose of the nearby marine protected areas.

With the considerations above, please protect the safe and responsible use of the Children's Pool and reject the Children's Pool Closure as requested by the City of San Diego

Christopher K. Huynh  
Electrical Engineer and Scuba Diver  
5343 Conrad Ave.  
San Diego, CA 92117

**From:** [ddttj@dslextrreme.com](mailto:ddttj@dslextrreme.com)  
**To:** [Laver.Brittney@Coastal](mailto:Laver.Brittney@Coastal)  
**Subject:** CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Tuesday, July 29, 2014 3:15:46 PM

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California Coastal Commission  
c/o [brittney.laver@coastal.ca.gov](mailto:brittney.laver@coastal.ca.gov), [Diana.Lilly@coastal.ca.gov](mailto:Diana.Lilly@coastal.ca.gov)  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

The proposed ordinance to forbid citizen access to a beach that may or may not have a seal on it would be illegal on municipal, state and federal levels. The Commission can go ahead and grant the closure permit with no immediate consequences by the proposed tactic, claiming a permit does not create any obligation or responsibility except to allow the City to proceed without interference from the Coastal Commission. On the face of it, the Coastal Commission would have no responsibility for the application of the permit and be blameless for not considering the liabilities the City would incur.

Getting the City to pay the legal fees for the expected civil complications for the Commission may not be all that is needed however.

It is not true that there is never liability for a party which only advocates an illegality but does one actually perpetrate one. For instance, the ordinance the City wants the Commission to approve makes it unlawful for any person to be on the beach or cause any person to be on the beach. The Commission's approval of that will be agreement with the concept of collective guilt extending to the enabler of a violation.

David Johnson,

Founder of The Other La Jolla Swim Club  
Long time beach user of the Children's Pool

**Lilly, Diana@Coastal**

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**Subject:** FW: Hazardous, not true advise.

**From:** Melinda Merryweather [<mailto:mbeherenow@sbcglobal.net>]

**Sent:** Thursday, August 07, 2014 10:37 AM

**To:** Sarb, Sherilyn@Coastal; Dan Allen; Daniel Daneri; Ken Hunrichs; Cheri Aspenleiter

**Subject:** Hazardous, not true advise.

Sherilyn, My name is Melinda Merryweather and I was so concerned when I saw these disabled beach accesses you created out of thin air, I went and took pictures and drove them down to you at your office, I am quite sure you have never been to these places as if someone took your advise they would be badly hurt! this is a SAFTEY issue.

The access you suggest as the photo shows at Boomer Beach is a set of narrow 2 and one half foot wide stairs that dump out on the rocks!

How could you suggest that to someone in a wheelchair??

The other one is just north of Scripps Pier, it is a truck ramp used by Scripps that all of a sudden drops off way way to steep for a chair. I spoke to the people in the building next to the ramp and they said no way was that a ramp for a wheelchair ( to steep) and if they saw someone on the ramp in a chair they would tell them to leave.

So I believe this information should be removed from the report, I helped write the beach accesses for our community plan and they do NOT exist.

The only wheelchair access we have ever had is in La Jolla is at the Children's Pool, till the access became in bad repair due to the city not being able to do the maintenance ( due to funding) and locked the gate to the Beach Access Ramp, that IS in our community plan.

All Best Melinda Merryweather La Jolla

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JUL 29 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

July 26, 2014

California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

David T. Johnson  
4222 Wightman Street  
San Diego, CA 92105-2618

Reference: The Children's Pool Beach Closure Project  
CDP # 6-14-0691, LCP-6LJS-14-0607-1

There is no question that the City of San Diego has mismanaged the operation of the Children's Pool (CP). There is a question that only you, the Coastal Commission can answer and that is, "Why are you rewarding the city for its decades of mismanagement?" and a second related question, "Why are you considering to reverse your 2001 ruling against creating a permanent seal reserve?"

The facts and history are clear. The city broke both state trust law and the CP wall mechanisms by cementing closed the sluice gates that were designed to maintain the pool and keep the land side reef protected and healthy. The result we can see today is a polluted man made beach, a buried reef, a collection of apex predators and a ravaged marine life eco system.

If you reverse this 2001 ruling, while there is an ongoing federal law suit against the city for ignoring ADA law, it sets you up to be a supporter of a violator of both state and federal ADA law. Why would you go against the wishes of the local representatives and close the only LCP access site for the disabled to the ocean? The CP was created for "those handicapped in life's game". The city has gone against the wishes of the local representatives for over a decade, since they locked the gate leading to the primary CP access.

The local city council member, Sherri Lightner, presented well spelled out reasons against the CP closure in her plea to the city council. The CP is in her district. Two other council members voted with her against the closure. The only council member, Marty Emerald, who spoke up for closure prior to the vote, did not address the many points brought out by the Council member Lightner. Her only point was that it was time this issue was brought to rest.

To conclude, the city did not provide proof that closure will not do harm. The closure has for all intents and purposes been in effect ever since the city allowed hundreds of seals to reside upon the CP beach breaking federal law and providing an alteration of nature and creating animal dependence on a human supplied shelter. This decade of ongoing damage and the request for an 'official' closure should include a study that can document the harm already done to the environment and the effects to the citizens by preventing ADA and other public access to the only protected coastal access site.

Thank you for your time and consideration.

Sincerely,



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July 30, 2014  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

There is an important section of the Marine Mammal Protection Act that this office was advised of last January. It would appear no copy was given to you, until recently. Or of a second stronger letter, which you also have now received.

The first letter was Jan 2 to the City of San Diego City and your office from the Director of Protected Resources for National Oceanographic and Atmospheric Administration (NOAA) West Coast. Since the Marine Mammal Protection Act is not mentioned in the LCP, perhaps one would expect such a factor to be ignored, but I notice in the report Th13a-8-2014-1, discussions cover history and legal actions back to 1931 and NOAA rulings are cited 10 times.

The letter was sent after Mr. Yates came down to visit Children's Pool at my invitation with Scott Anderson, then President of the San Diego Council of Divers. We had notified him of signs placed by the City at Children's Pool and South Casa Beach defining less than 50' from a seal or swimming near seals to be a violation and requesting citizens report such "violations" to NOAA. He subsequently had the signs removed and sent his January 2<sup>nd</sup> letter. In that letter he noted City officials should pay attention to section 109(a) of the Marine Mammal Protection Act, (MMPA) but did not explain it, expecting officials would investigate.

As the City ignored his letter and its implications, my friend Ken Hunrichs wrote to him and received back a second letter, explaining the first and spelling out the text of that Section 109(a). Ken tried to show it to Park and Rec, but they had their marching orders from 2010. I recently wrote one more time to Mr Yates and he sent me the federal case of UFO vs Hawaii which is definitive case law of the clearest kind.

I am attaching only the first 2 pages and the last page which contain the gist of the ruling, and I will get you a hard print of all 24 pages for your study and the file. With a ruling this strong, I fear if the City enacts your recommended ordinance, many people will be unafraid to cross onto the beach anyway because a quick reference to this federal case law will dismiss any citation. The City may fruitlessly appeal anyway, as they typically do to punish defiant citizens and grandstand against any infringement on their actions. This will leave the Coastal Commission in the curious position of co-litigant in action to deny public access. On the wrong side.

San Diego has a history of nurturing civil action and confrontations on this beach in order to claim it has an intractable problem that can only be solved by harsh action, not compromise or working with its own communities. The Commission should not fall prey to such things.

John Leek 3090 Admiral Ave San Diego, CA 92123

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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

JAN -2 2014

In response refer to:  
151410SWR2013PR00014:CEY

Todd Gloria  
Interim Mayor

Councilmembers  
City of San Diego  
202 C Street  
San Diego, CA 92101

Dear Mayor Gloria and City of San Diego Councilmembers:

This letter provides comments from the West Coast Region of the National Marine Fisheries Service (NMFS) on the City of San Diego's (City) proposal to prohibit the public from entering the sandy area of Children's Pool Beach in La Jolla during harbor seal pupping season from December 15<sup>th</sup> through May 15<sup>th</sup>.

NMFS has communicated with the City for many years regarding pinnipeds at Children's Pool Beach, and has attempted to provide helpful guidance and scientific expertise to both the City and the various stakeholders. In this arena, our principle responsibility is to implement the Marine Mammal Protection Act (MMPA) and promote the conservation of marine mammal populations.

Unfortunately, our efforts to provide guidance on complying with the MMPA has not helped to diminish the human conflict that persists between various groups at Children's Pool Beach. It is unfortunate that the human conflicts overshadow what is a MMPA conservation success story that all should enjoy -- the population growth of harbor seals along our West coast. The ideal solution to this type of conflict is one of shared use -- where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users.

Therefore, we want to clarify that we do not believe that complete closure of Children's Pool Beach is necessary to protect the harbor seals from violations of the MMPA. The MMPA does not require that beaches be closed, or that people maintain any specific distance from the animals. Rather, the MMPA generally prohibits the harassment, hunting, capturing, or killing of marine mammals. As these terms relate to the pinnipeds at Children's Pool, the primary concern is the harassment of these animals that could occur as a result of human activities. Harassment would be acts of pursuit, torment, or annoyance that have the potential to injure the animal(s) or disrupt natural behavior patterns.

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AUG 04 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



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Our attempts to reduce the likelihood of harassment of marine mammals by providing distance recommendations and other guidance have been interpreted by various interests as requiring or prohibiting certain actions, such as requiring people maintain set distances while observing the animals or swimming in the vicinity of the animals. In fact, the law does not mandate set distances. We do believe that pupping season is a particularly important time for ensuring that harbor seals are not impacted by human activities, but do not believe that complete closure of the beach is the only way of achieving that protection.

Our advice is that all individuals, communities, and governments be made aware of the prohibitions of the MMPA and take steps to reduce the possibility of harassing marine mammals wherever they are encountered in the wild. We encourage efforts to reach out to the public and affected communities to educate them about these animals and foster respect for the animals through responsible and safe viewing practices.

Also, we recommend the City review the pre-emption provisions of MMPA Section 109 (a), 16 U.S. Code Section 1379(a), as it makes decisions to address the conflicts at Children's Pool Beach.

If you have any questions, please contact me at 562-980-4007.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris E. Yates", with a long horizontal flourish extending to the right.

Chris E. Yates  
Assistant Regional Administrator for  
Protected Resources

cc: California Coastal Commission Attn: Kanani Brown, Coastal Program Analyst

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UFO CHUTING OF HAWAII, INC., )	Civ. No. 03-00651 SOM/BMK
a Hawaii corporation and )	
K.M.B.S., INC., a Hawaii )	
Corporation, d.b.a. Kaanapali )	ORDER GRANTING PLAINTIFFS'
Tours, )	MOTION FOR SUMMARY JUDGMENT
)	AND DENYING DEFENDANTS'
Plaintiffs, )	MOTION FOR SUMMARY JUDGMENT
)	
vs. )	
)	
PETER T. YOUNG, in his )	
capacity as Chair of the )	
Board of Land and Natural )	
Resources, State of Hawaii; )	
STEPHEN THOMPSON, in his )	
capacity as Acting )	
Administrator, Division of )	
Boating and Ocean Recreation, )	
Department of Land and )	
Natural Resources, State of )	
Hawaii, )	
)	
Defendants. )	
)	

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND  
DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION.

Plaintiffs UFO Chuting of Hawaii, Inc., and K.M.B.S., Inc. (collectively, "UFO"), are parasail operators who challenge the validity of a Hawaii law that bans parasailing in the navigable waters surrounding the west and south shores of Maui from December 15 to May 15. UFO argues that the state law is preempted by federal law and therefore violates the Supremacy Clause. UFO and the State of Hawaii have filed cross-motions for summary judgment. The court agrees with UFO that the State's

seasonal parasailing ban is expressly preempted by the Marine Mammal Protection Act ("MMPA") and actually conflicts with federal law.<sup>1</sup>

II. BACKGROUND FACTS.

UFO operates a parasailing business along the navigable waters between Lahaina and Kaanapali on the coast of Maui. The navigable waters between Lahaina and Kaanapali are within the Hawaiian Islands Humpback Whale National Marine Sanctuary. UFO's two vessels have been inspected and licensed by the Coast Guard to carry up to twelve passengers in coastwise trade. UFO also holds permits issued by the State Division of Boating and Ocean Recreation, Department of Land and Natural Resources ("DOBOR"), authorizing the use of its vessels for parasailing between Lahaina and Kaanapali from May 16 to December 14, 2003. From December 15, 2003, to May 15, 2004, the permits issued by DOBOR forbid parasailing and certain other forms of recreational activity, but allow the use of the vessels for other purposes. The DOBOR restriction was adopted pursuant to Haw. Rev. Stat. § 200-37(I), which states, "Between December 15 and May 15 of each year, no person shall engage in parasailing . . . or operate

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<sup>1</sup> As this ruling is dispositive of the entire case except the prayer for a permanent injunction, discussed later in this order, the court does not address other arguments or claims raised by UFO.

Because parasailing is authorized, any state law prohibiting parasailing more than 100 yards from a whale is in actual conflict with the federal authorization to approach within 100 yards and is preempted.<sup>9</sup>

The court recognizes the Hawaii Legislature's laudable goal in passing the seasonal parasailing ban. Clearly, the State was seeking to increase protections for an endangered species in Hawaiian waters. Unfortunately, the State employed an unconstitutional method of achieving its goal. There is no evidence in the record that the federal government has

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feet of the whale sanctuary). No party here argues that a parasail should be deemed an aircraft and therefore prohibited from coming within 1000 feet of the whale sanctuary. But see United States v. Red Frame Parasail, 160 F. Supp. 2d 1048, 1055 (D. Ariz. 2001) (holding that a parasail is considered an "aircraft" under the provisions of the Airborne Hunting Act).

<sup>9</sup> Though section 17 amended the MMPA, it was placed as a note to 16 U.S.C. § 1538, see Pub. L. No. 103-238, 1994 Stat. 1636, which is part of the ESA, not the MMPA. Even if the provision allowing an approach within 100 yards is part of both the ESA and the MMPA, the analysis above does not change. See 15 C.F.R. § 922.184(a)(1) (deeming the prohibition on approaching within 100 yards as deriving from the MMPA and the ESA). Though the ESA, unlike the MMPA, allows states to supplement federal environmental regulations, even under the ESA a state may not prohibit what is expressly authorized by the ESA. 16 U.S.C. § 1535(f). Therefore, once Congress says that one can lawfully approach no closer than 100 yards from a whale, a state cannot pass, even under the ESA, a regulation proscribing such activity. While 15 C.F.R. § 922.183(a) says that "All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction," the parasailing regulation is not validly imposed because it conflicts with substantive federal law.

transferred authority to the State with respect to how far from humpback whales boats must stay. The seasonal parasailing ban imposed by state law therefore actually conflicts with federal law and is preempted.

V. CONCLUSION.

UFO's motion for summary judgment is granted, and the State's motion for summary judgment is denied. Section 200-37(I) of Hawaii Revised Statutes and all rules and regulations derived from that statute are declared unconstitutional.<sup>10</sup>

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 9, 2004.

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SUSAN OKI MOLLWAY  
UNITED STATES DISTRICT JUDGE

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<sup>10</sup> The only issue remaining in this case is the request in UFO's pleadings for a permanent injunction. A permanent injunction may be a foregone conclusion based on the present order, but UFO has not yet moved for a permanent injunction. Therefore, the court does not issue an injunction at this time, and the case file remains open.

UFO Chuting of Hawaii, Inc. v. Peter T. Young, Civ. No. 03-00651  
SOM/LEK; ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.



July 30<sup>th</sup>, 2014  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

For LCP-6LJS-14-0607-1, CDP # 6-14-0691

Before the Commissioners are lied to, the facts on a false accusation,

I went to Children's Pool for a swim one day and found there was little room to get by seals by the water's edge. Rather than disturb a seal, I thought I should be able to set a good example and go out on the sea wall, hop the railing, and climb down the side where I could reach the water well away from seals. That worked until I had to put on my swim fins and proceed. One fin stepped on the other and I lost my balance. I plummeted headfirst to the water, twisting to avoid the rock wall. No lasting injury, but seals on the shore had never seen something like that and flushed.

I wondered why I had seals all around me, but I am used to them playing with me in the water. My fall was captured on video. When I went to the City Council hearing later on the closure proposition, that video was shown, claiming I had purposely done a "cannonball" to roust the seals. To press the advantage, Council member Emerald took up the accusation and railed for the camera about my doing this cannonball move, though she knew nothing about it.

The local activist lawyer said he would turn me in to NOAA, on this pretext. I contacted the local NOAA agent for law enforcement and explained what had happened and that she would be getting the video delivered. We traded a couple more emails and I heard nothing more.

So if this video is trotted out and you are told in advance what to see, use your own eyes to see what you see, and not what you are told to see. If people are forced off the safest beach in San Diego, there can be unforeseen results.

John Leek  
3090 Admiral Avenue  
San Diego, CA 92123.

July 30<sup>th</sup>, 2014  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

For LCP-6LJS-14-0607-1, CDP # 6-14-0691

A personal investigation into the origin of our seal colony

It is well documented that seals did not come up on the sand at the Children's Pool until the early 90's when they seemed to mysteriously lose instinctive fear of humans. Eventually seals that had normally hauled out on Seal Rock to the north left there and joined the newcomers on Children's Pool beach, leaving scientists and officials mystified.

Passages in the court records of the famous O'Sullivan case (2005) caught my eye.

**Page 22:**

*Plaintiff cites to the fact that since at least 1997, Hubbs-SeaWorld has been engaged in a rescue, rehabilitation and release program under the aegis of the National Oceanographic and Atmospheric Administration or its sub-agency, NMFS, [Exh. 245.] That program consists of retrieving injured or diseased animals, rehabilitating them at SeaWorld in San Diego, and, upon return to health, and after tagging, releasing them in Pacific waters. The release of harbor seals is accomplished generally in the kelp beds immediately outside the Children's Pool. Tagged harbor seals are routinely observed hauling-out at the Children's Pool. Once it was determined that the released seals were impacting the use of the Children's Pool, the City took no steps to protect the Pool from becoming a haul-out for such seals.*

**Page 27:**

*The City knew of the release of harbor seals near the Children's Pool by Hubbs-SeaWorld and did nothing about the build-up of seals at the Pool. The City violated the right of the public to have access to the beach by roping off the beach to the public. The City kept the rope in place from 1999 until late 2004.*

**Page 30:**

*The substantial increase in the number of seals using the Children's Pool seems to have some relationship to the actions or inactions of the City. The creation of the Reserve in close proximity to the Children's Pool and the release by Sea World of rehabilitated harbor seals in the kelp beds off-shore of the Pool, seem to have contributed to an increasing number of seals using portions of the Children's Pool in the mid-1990's. The City's decision to separate the seals from humans and then closing off the Pool to humans, likewise appears to have encouraged the seals to occupy more and more of the beach with ever increasing numbers.*

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I wrote a Freedom of Information Act request to NOAA asking for release data for rehabilitated rescued seals in San Diego County 1989-2006. Sea World is the only organization allowed to do this, under NOAA supervision.

I received a spreadsheet which I have attached. However, I added 3 columns with "1's" to denote released in La Jolla off Children's Pool. A sudden change was evidenced in 1993 as harbor seal releases were mostly diverted to offshore La Jolla. By October 2005, of 72 releases from '93 to '05 happened, 58 were right off Children's Pool (81%). Other FOIA's gave me actual release records and points of capture as well. They had been captured from all over the county. Many times more sea lions were released, but they all took a different ride down past Point Loma.

Using the release coordinates I was able to map the concentration of releases off La Jolla on overlay maps and place those on the internet at [4 maps of San Diego](#). After the conclusion of the O'Sullivan case with the release of testimony, the harbor seal releases of La Jolla stopped and did not resume.

This letter is the only way a Commissioner might learn of this, as the information is not in the La Jolla Local Coastal Plan and so is not subject for review for this hearing.

John Leek  
3090 Admiral Avenue  
San Diego, CA 92123.

	A	B	C	D	E	F	G	H	I
1	HARBOR SEAL RELEASES BY SEAWORLD (SAN DIEGO COUNTY, 1989 - 2006)								
2	Freedom of Information Act Request 2008-00188								
3	3 columns of 1's added for sum computations								
4	REDATE	RCITY	RLOC	RLAT	RLONG	released	released	93 to 2008	DDD.MM.mmm
5	12-Oct-89	SAN DIEGO	8 MILES SOUTH OF POINT LOMA						1
6	12-Oct-89	SAN DIEGO	8 MILES SOUTH OF POINT LOMA						1
7	12-Oct-89	SAN DIEGO	8 MILES SOUTH OF POINT LOMA						1
8	07-Mar-90	LA JOLLA	KELP BED OFFSHORE LA JOLLA POINT						1
9	07-Mar-90	LA JOLLA	KELP BED OFFSHORE LA JOLLA POINT						1
10	28-Jun-90	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
11	28-Jun-90	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
12	28-Jun-90	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
13	21-Sep-90	SAN DIEGO	15 MILES SOUTHWEST OF POINT LOMA						1
14	05-Dec-90	LA JOLLA	1 MILE WEST OF POINT LA JOLLA			1			1
15	01-Apr-91	LA JOLLA	OFF SEAL ROCK			1			1
16	23-May-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
17	23-May-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
18	23-May-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
19	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
20	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
21	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
22	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
23	21-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
24	21-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
25	11-Jul-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
26	11-Jul-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
27	05-Sep-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA						1
28	20-May-92	SAN DIEGO	MISSION BEACH						1
29	20-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
30	27-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
31	27-May-92	LA JOLLA	FEW MILES WEST OF LA JOLLA SHORES						1
32	27-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
33	27-May-92	LA JOLLA	2 MILES WEST OF LA JOLLA SHORES			1			1
34	03-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
35	03-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
36	29-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
37	29-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
38	29-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
39	03-Jul-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
40	20-Aug-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
41	20-Aug-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
42	08-Oct-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1
43	10-Feb-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY						1

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	A	B	C	D	E	F	G	H	I
44	10-Feb-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
45	10-Feb-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
46	21-May-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
47	21-May-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
48	21-May-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
49	17-Jun-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
50	17-Jun-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
51	08-Jul-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
52	08-Jul-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BEACH				1		
53	25-Sep-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
54	25-Sep-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
55	20-Dec-93	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	(<1 mile from CP)
56	20-Dec-93	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	
57	29-Sep-94	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	
58	29-Sep-94	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	
59	13-Jan-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
60	31-Mar-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
61	28-Jun-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
62	28-Jun-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
63	28-Jun-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
64	28-Jun-95	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1	1	
65	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
66	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
67	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
68	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
69	19-Jul-96	LA JOLLA	OFF LA JOLLA COAST			1	1	1	
70	19-Jul-96	LA JOLLA	OFF LA JOLLA COAST			1	1	1	
71	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
72	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
73	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
74	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
75	28-Sep-96	LA JOLLA	OFF LA JOLLA			1	1	1	
76	30-Jul-97	LA JOLLA	SHELL BEACH			1	1	1	
77	30-Jul-97	LA JOLLA	SHELL BEACH			1	1	1	
78	03-Nov-97	LA JOLLA	SHELL BEACH			1	1	1	
79	03-Nov-97	LA JOLLA	SHELL BEACH			1	1	1	
80	13-Jan-98	LA JOLLA	SHELL BEACH			1	1	1	
81	22-Apr-98	LA JOLLA	BETWEEN CHILDREN'S POOL & LA JOLLA COVE			1	1	1	
82	22-Apr-98	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
83	02-Jun-98	LA JOLLA	1 MILE WEST OF CHILDREN'S POOL			1	1	1	
84	02-Jun-98	LA JOLLA	1 MILE WEST OF CHILDREN'S POOL			1	1	1	
85	02-Jun-98	LA JOLLA	1 MILE WEST OF CHILDREN'S POOL			1	1	1	
86	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
87	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
88	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
89	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
90	05-Aug-98	LA JOLLA	7 MILES WEST OF LA JOLLA			1	1	1	
91	05-Aug-98	LA JOLLA	7 MILES WEST OF LA JOLLA			1	1	1	
92	05-Aug-98	SAN DIEGO	7 MILES WEST OF LA JOLLA			1	1	1	
93	01-Oct-98	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	

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	A	B	C	D	E	F	G	H	I
94	01-Oct-98	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
95	01-Oct-98	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
96	02-Nov-98	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
97	02-Nov-98	LA JOLLA	10 MILES WEST OF LA JOLLA			1	1	1	
98	02-Nov-98	LA JOLLA	10 MILES WEST OF LA JOLLA			1	1	1	
99	26-May-99	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
100	18-May-00	LA JOLLA	1 MILE WEST OF LA JOLLA (OFF CHILDREN'S POOL)			1	1	1	
101	28-Jun-00	LA JOLLA	3 MILES WEST OF CHILDREN'S POOL			1	1	1	
102	28-Jun-00	LA JOLLA	3 MILES WEST OF CHILDREN'S POOL			1	1	1	
103	28-Jun-00	LA JOLLA	3 MILES WEST OF CHILDREN'S POOL			1	1	1	
104	30-Jul-00	LA JOLLA	4 MILES WEST OF CHILDREN'S POOL			1	1	1	
105	21-May-01	LA JOLLA	2 MILES NORTHWEST OF SEAL ROCK			1	1	1	
106	29-Jun-01	LA JOLLA	3 MILES OFFSHORE BETWEEN SCRIPPS PIER AND CHILDREN'S POOL	3251	11717	1	1	1	(This GPS value is <1mile dead west of CP)
107	03-Aug-01	LA JOLLA	2 MILES WEST OF CHILDREN'S POOL			1	1	1	
108	22-Aug-01	LA JOLLA	2 MILES WEST OF CHILDREN'S POOL			1	1	1	
109	10-Sep-01	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
110	21-Nov-01	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
111	23-Jul-02	SAN DIEGO	KELP BEDS OFF LA JOLLA COVE	3251	11717	1	1	1	(GPS is <1mile dead west of CP)
112	19-May-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
113	19-May-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
114	25-Jul-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
115	25-Jul-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
116	12-May-04	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
117	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
118	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
119	25-May-05	SAN DIEGO	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
120	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
121	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
122	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
123	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
124	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
125	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
126	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
127	05-Jun-06	SAN DIEGO	LOCALITY NOT RECORDED	32.42348	117.1656		1	1	(3 miles south of Mission Bay Jetty)
128	16-Jun-06	SAN DIEGO	LOCALITY NOT RECORDED	32.42348	117.1655		1	1	
129	19-Jul-06	SAN DIEGO	POINT LOMA KELP BEDS	32.43758	117.1594		1	1	
130	05-Oct-06	SAN DIEGO	LOCALITY NOT RECORDED	11720	3253		1	1	(4 miles W. Black's Beach)
131			TOTAL SEALS RELEASED OFF CHILDREN'S			61			
132			TOTAL SEALS in 17 YEARS				126		
133			TOTAL SEALS DEC '93 TO JULY '05					72	
134			TOTAL RELEASED AT LA JOLLA DEC '93 TO JULY '05			58	equals	81%	Of all harbor seal releases in 11 years
135									
136									

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**Laver, Brittney@Coastal**

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**From:** John Leek <jleek001@san.rr.com>  
**Sent:** Tuesday, July 29, 2014 11:12 AM  
**To:** Laver, Brittney@Coastal  
**Subject:** Fwd: Re: There is a lingering problem in San Diego

Please add this communication to the file

CDP # 6-14-0691, LCP-6LJS-14-0607-1

You may not have seen a copy of his Jan 2 letter, or know he is the head of the Office of Protected Resources for the U. S. West Coast at NOAA.

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

**Subject:**Re: There is a lingering problem in San Diego

**Date:**Tue, 29 Jul 2014 09:52:39 -0700

**From:**Chris Yates - NOAA Federal <[chris.yates@noaa.gov](mailto:chris.yates@noaa.gov)>

**To:**John Leek <[jleek001@san.rr.com](mailto:jleek001@san.rr.com)>

**CC:**Penny Ruvelas - NOAA Federal <[penny.ruvelas@noaa.gov](mailto:penny.ruvelas@noaa.gov)>, Chris Yates - NOAA Federal <[chris.yates@noaa.gov](mailto:chris.yates@noaa.gov)>

Hi John, thanks for the letter. I won't be able to attend the Coastal Commission meeting as I will be on the East Coast that week in August. I included the Coastal Commission on my January letter to the City of San Diego spelling out my position, which I am aware has broad distribution.

I have seen the lifeguard plan - when we visited you explained that proposal to us. I don't intend to advocate for a specific plan, but that plan does include the concept of shared use which I believe is worth striving for if the protections of the MMPA can be realized without unnecessary restrictions to beach access. Chris

On Tue, Jul 22, 2014 at 11:07 PM, John Leek <[jleek001@san.rr.com](mailto:jleek001@san.rr.com)> wrote:

I have attached a letter and a couple of corroborating documents. Sorry to bother you again, but I think you would want to know what is happening.



This email is free from viruses and malware because [avast! Antivirus](#) protection is active.



Harry L Mathis  
5640 Sandburg Avenue  
San Diego, CA 92122

Item 12c Children's Pool  
August 14, 2014 Meeting

July 29, 2014

RECEIVED

JUL 31 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Chairman Kinsey and Commissioners  
California Coastal Commission

Re: Item #12c, August 14, 2014 Meeting: La Jolla's Children's Pool

Dear Commissioners:

I regret that I will be out of town and unable to speak in opposition to this request by the City of San Diego to close the Children's Pool beach to public access during the pupping season.

The polluted and odiferous abomination that exists today at Children's Pool cannot be fixed by closing it during the pupping season as proposed by the City of San Diego, with the apparent intent to ultimately turn it into a year round preserve for the seals. The existing Seal Rock Preserve originally chosen by the seals is a more appropriate habitat because the rocks are self-cleansing from the wave action, and create positive physical challenges to the colony, which help them to survive, instead of becoming "couch potatoes" lying in their own filth in a zoo-like environment under the gaze of hordes of spectators.

By way of introduction, I was a San Diego City Councilmember representing District One, which includes La Jolla, 1993-2000. It was during that period that seals began to leave their normal habitat on nearby Seal Rock, and haul up in growing numbers on the breakwater protected expanse of sand known as Children's Pool. Prior to that time, there were limited incursions at Children's Pool because the seals were reluctant to mix with the significant numbers of bathers that frequented it.

Children's Pool has been treasured by local residents and visitors for more than a century as a place of recreation for families to enjoy. It was this purpose that prompted Ellen Browning Scripps to bestow an endowment to make it safe for children to learn to swim there by protecting it with a breakwater in 1931.

The breakwater was originally designed with sluiceways to allow the action of the ocean to prevent the build up of sand in the cove-like setting. Early photos show that the sluices were effective in limiting the beach to a small area with a large pool suitable for swimming behind the breakwater. I understand that many years ago, a daring but foolish youth attempted to make his way through one of the sluices, got stuck and drowned. Unfortunately, the reaction by the authorities to this tragic accident was to wall up the sluices. Thereafter, the area behind the breakwater gradually filled in with sand to create an expansive beach with little room for a pool in the protected area, thus creating an attractive hauling up place for the seals.

During my time in office, we devised a plan to resolve the increasing seal encroachment problem without harm to the seals by restoring the original configuration of the beach through sand removal, thus reducing the desirability of the location for hauling out, and allowing it to return to its original recreational purpose. We had the funds and the support of State and Federal agencies as long as it was done without seals being harmed. I believe this is consistent with one of the principal mandates of the Coastal Commission to protect the coastal resources for the recreational enjoyment of the public.

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4-2-80  
Regrettably, the plan was controversial because some were determined that the seals had more right to the area than people. My view was that the area because of its artificial nature was not the natural habitat of the seals, and that not taking action to discourage them from using it, would reduce them to a sideshow tourist attraction and alter their natural behavior. I wanted to restore the pre-existing historical working balance between seals and people. Regrettably, the City Council by a narrow margin failed to reach a consensus on the plan because of the intensity and combativeness of the advocates on both sides of the issue.

The legacy of inaction to remove the seals has been an endless and bitter controversy characterized by legal wrangling, the stench from the seals' fecal matter, unacceptable and unhealthy pollution of the beach and pool, tourists overwhelming the available parking, distractions for the lifeguards, confrontations between opposing factions, instances of deplorable behavior by individuals, and so on.

I continue to believe that the recreation opportunities afforded by the gem of a protected cove provided by Ellen Browning Scripps' generosity at Children's Pool 83 years ago can be restored by recreating the original configuration of the beach and pool which kept the interests of seals and people in a delicate balance for so many decades. It is a relatively simple matter of removing some sand, and reopening the sluiceways with an appropriate means of preventing efforts to traverse them.

I respectfully urge you to look to a long-range solution, which I have outlined, rather than settle for a perpetuation of the current contentious, unhealthy and unsatisfactory situation.

Sincerely,



Harry Mathis

cc Councilmember Sherri Lightner, District One

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Harry Mathis  
5640 Sandburg Avenue  
San Diego, CA 92122-4132  
hmathis1@san.rr.com

June 22, 2004

Chairman Jim Madaffer & Members of the  
Natural Resources and Culture Committee  
San Diego City Council  
City Administration Building  
202 C Street  
San Diego, CA 92101

Re: NRC Agenda of June 23, 2004, Item #1: La Jolla Children's Pool Joint Use

Dear Chairman Madaffer & NRC Committee Members:

I regret that I cannot appear because of a previous commitment. However, I wanted to communicate my feelings on this matter to you:

Back in 1997, as District One Representative, I championed a measure to dredge Children's Pool back to its original configuration. Its intent was to preserve the use of Children's Pool for its endowed purpose as a recreation resource for children in a safe salt water environment in the face of a growing encroachment by the seals from neighboring Seal Rock. While we could not prevent the seals from hauling up, I wanted to maintain a human presence to act as a deterrent by significantly decreasing the size of the beach thereby densifying its use by people, and increase the volume of the water behind the breakwater to help deal with the potential contamination problems. I also knew that the Children's Pool was not a natural environment for the seals because of the breakwater, and I wanted to discourage the seals from moving into an area which would bring them into closer contact with people. I wanted to restore the natural balance between people and seals that had existed over the years since Children's Pool was first created.

Since the measure failed on a 5-4 vote largely because of misguided sympathy for the seals by a number of well-intentioned people, my worst fears for Children's Pool have been realized. Its denial to the public and the subsequent accelerated growth of the seal colony and the resultant contamination have perpetuated the controversy to this day. I wish this could have been avoided in 1997, but now the Council has an opportunity to take an action which will help restore the legacy of Children's Pool to its rightful place as a recreation resource rather than as an unnatural sideshow for seals.

This was never about the survival of the seals. Their natural habitat is a thousand miles of coastline. Their existence is not threatened here by any measure you take to restore Children's

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Pool to public use. Rather, the man-made environment behind the breakwater has artificially generated a local seal population explosion which threatens to spill over into other areas of our beaches, and threatens the viability of the seal population itself in terms of the available food supply. In effect, our past abandonment of the beach to the seals has upset the balance of nature which will only become worse if some action is not taken to restore the competition for space between humans and seals at Children's Pool.

It is tragic that the Council failed to take action in 1997 when it could have been done much more readily, at much less expense, with available funds. A mistake was made then. It is time long overdue to correct it. Despite the greater challenges which exist today, I urge you to take corrective action to dredge Children's Pool and make it once more available for use as it was intended when the breakwater was built.

Thank you.

Sincerely,

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

**Subject:** Fw:

**From:** Melinda Merryweather (mbeherenow@sbcglobal.net)

**To:** Mbeherenow@sbcglobal.net; kenhunrichs@cox.net;

**Date:** Friday, August 1, 2014 1:25 PM

*Ref to Childrens Pool CDP #6-14-0691, LCP-6 LJS-14-0607-1*

To all California Coastal Commissioners

In response to report → on Children's Pool

To who it may concern:

Fact #1 No ONE has ever been convicted for a violation at the Children's Pool.

Fact # 2 No seal has ever been hurt.

Fact # 3 It is my constitutional RIGHT in California to enter the ocean.

Fact # 4 I am entitled to a CLEAN beach free of seal poop.

Fact # 5 We are all entitled to CLEAN water.

Fact # 6 The seals have NEVER needed the pool.

Fact #7 The Children, Handicapped and divers DO need the beach.

Fact # 8 We are in the process of building a 4 MILLION Dollar Lifeguard tower at the pool.

Fact # 9 The project is not consistent with the coastal act with NO Beach Access.

Fact# 10 There is only ONE handicap access to the ocean in La Jolla and it is at the Children's Pool.

Fact # 11 The change in the Trust ONLY added seals it did NOT take out swimmers and divers, and fishermen.

Please stand up for who YOU are, it is YOUR job to protect Beach Access and Clean Water WE in La Jolla need you to stand with us on asking for both. Please do not take them away,

I do not believe any of you would ever what this to happen to your beach!!

Sincerely Melinda Merryweather 522 Weatbourne st La Jolla 92037 858 454 5939

*Melinda Merryweather*  
**RECEIVED**

AUG 04 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

114

July 31, 2014

"CHILDREN'S POOL"

BRITTNEY Laver: LCP-6-LIS-14-0607-1/TH12C  
CDP 6-14-0691/TH13A

To Whom It May Concern,

During my tenure lifeguarding at the Children's Pool from 1969 to 1989, the City of San Diego's beach cleaning team and the San Diego Lifeguard Service had cooperative relationship to ensure that the beaches were safe and clean for the public.

The beach cleaning procedure was performed each Friday at the Children's Pool on a regular basis and also on an 'as-called' basis when the Lifeguards requested additional services. The Baja Road, (road leading to the beach), was maintained diligently by the City of San Diego beach cleaning crew for two different purposes: 1) for heavy machinery to access the beach for the purposes of removing kelp and sand; and 2) for making it safer and easier for people with disabilities to get onto the Children's Pool beach.

At one instance, the City removed tons of sand from the Children's Pool Beach and placed it on the ocean side of the Children's Pool wall in an attempt to maintain the water depth in the Children's Pool for purposes of safe swimming.

The above statement is a true and honest recollection of the reality of events between 1969 and 1989 at the Children's Pool.

Sincerely,

Joseph Barnett

RECEIVED

AUG 04 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Brittney : This is the proof that you showing the beach access at the Children's Pool is NOT a emergency access which you say over and over again in the report it was used by people by disabled and to take out seaweed. Please add to the report Thank you Melinda Merryweather

Melinda Merryweather

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4-1-31

p

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58

825 Union Street

July 11, 1930

Mr. J. C. Harger, Attorney in Fact,  
For Miss Ellen Browning Scripps,  
La Jolla, California.

Dear Sir:

Replying further to your communication of June 21 requesting permission for the construction of a concrete breakwater in the Pacific Ocean at La Jolla, beg to advise that we have been advised by the City Attorney that inasmuch as this recreational improvement proposed by you does not affect any property under the control of the Playground Commission, the said Commission has no jurisdiction whatsoever over same.

However, the Board of Playground Commissioners will be glad if you will express to Miss Scripps our sincere appreciation of this proposed addition to the recreational facilities in La Jolla, and that the Board will be happy to cooperate in any and every way possible by placing our superintendent at the disposal of your engineer and the contractors before and during construction of the bathing area, and also to cooperate with you in the maintenance and construction of same after it is completed, in so far as our jurisdiction will permit.

Respectfully yours,

J. B. Pendleton (Signature)  
President  
Board of Playground Commissioners

Copy to Mr. H. I. Savage

*Promise to maintain*

116



FILE COPY

CITY of SAN DIEGO  
MEMORANDUM

RECEIVED

JAN 24 1984

COASTAL DIV.

FILE NO. :  
DATE : January 20, 1984  
TO : Wilbur Smith  
FROM : Vince Marchetti  
SUBJECT: Children's Pool Ramp

On January 19, 1984, I visited the Children's Pool in La Jolla and observed the ramp area noted in the December 20, 1983 memo from Councilman Gotch and Councilman Mitchell.

The ramp, which is constructed of decomposed granite did not appear to be in a state of disrepair at the time of my inspection. According to Coastal Division, the ramp which is primarily a service ramp for vehicles was recently reconstructed and poses no urgent problems.

Construction of an "all purpose ramp" as suggested in the December 20 memo would be a significant project requiring adherence to current codes for pedestrian as well as vehicular access for safety and service vehicles. A project of this nature constructed of concrete with associated retaining walls, cutoff walls and handrails could conceivably cost in the neighborhood of \$75,000.

There are really many improvements to be made in that area, which appear to me to be just as necessary, if not more so. The asphalt walks and the deteriorating railings along the bluff top should all be replaced.

I would suggest initiating a project to do all of the beautification work in this area, including a ramp if funding can be made available through the normal CIP Processes. A project budget of some \$150,000 to \$200,000 should be considered.

*Vince Marchetti*  
Vince Marchetti

VM:ms

Serviceing the beach

CITY of SAN DIEGO  
MEMORANDUM

FILE NO.:

DATE : January 18, 1984

TO : Deputy Director - Park & Recreation Department/Park Development & Open Space

FROM : Deputy Director - Park & Recreation Department/Coastal

SUBJECT: *file* CHILDREN'S POOL RAMP

Attached is a copy of a memorandum dated December 20, 1983 from Councilmen Gotch and Mitchell to the City Manager regarding a proposed Capital Improvement Project.

You and I discussed the contents of this memorandum on Thursday, December 29, 1983. You informed me that you would pursue the capital project in your division and would respond to the memorandum. This division has no objection to improving the ramp at Children's Pool. If you require input to the memorandum from this division, please feel free to contact either Bill Norton, Lifeguard Captain or myself.

*Jack Krasovich*  
Jack Krasovich

*to code this time*

JK:al

cc: Assistant Park and Recreation Director  
Bill Norton

CITY OF SAN DIEGO  
MEMORANDUM

RECEIVED

DEC 23 1983

CITY MANAGER

FILE NO.:

DATE : December 20, 1983

TO : City Manager Ray Blair

FROM : Deputy Mayor Mike Leitch and Councilman Bill Mitchell

SUBJECT: CHILDREN'S POOL RAMP

For many years the Children's Pool area in La Jolla has been the gathering place for tourists and residents alike. Recently, however, the area has received strong criticism from members of the La Jolla Town Council regarding its appearance.

Specifically, we would like to bring your attention to the condition of the access ramp that services the beach. Several months ago, staff was required to install a dirt ramp in order to provide beach maintenance and lifeguard services. As you may recall, a permanent cement ramp is present but due to erosion and severe weathering, the ramp needed special treatment, therefore a dirt-clay ramp was installed.

Now that the winter months are upon us, we find the dirt ramp being washed away on a daily basis. This action is not only causing the sandy area to harden, but is also creating a serious safety hazard that needs to be eliminated. With this in mind we would like to request that you direct staff to review the existing problems at Children's Pool, and develop a CIP for the construction of a cement, all-purpose ramp. Our hope is to have the project placed in the 1984-85 CIP budget. This would include estimates on construction, engineering and other costs associated with a project of this magnitude.

We would appreciate a response regarding this matter and a prospective year when you plan to place the CIP in the budget.

MG/ms

To BRITNEY. LAVER

7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

California Coastal Commission

LCP-6LJS-14-0607-1, CDP # 6-14-0691

RECEIVED

JUL 31 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

To the Coastal Commission, San Diego,

I have watched in disbelief as the Commission granted one unwarranted dispensation after another to allow San Diego to slowly steal a public beach from its own children. Do you know why it is called the Children's Pool? Did your father ever take you to the beach so you could stand on the sidewalk and look at it?

The effect of letting San Diego create its own local exception to the Coastal Act will change California history. You would make public access secondary in significance to unsubstantiated claims by a dysfunctional municipality guided by money.

I have long been involved in La Jolla community actions and note that La Jolla is the only San Diego district with a viable secessionist movement. I watched every local advisory group try to save our beach access, only to be ignored by City Hall; aided by the Coastal Commission of all people. What splendid irony.

I found the CCC\_Final\_StrategicPlan and of the three core Commission policy concerns, #1 was Maximize Public Access and Recreation. That is very clear. Below that was to Protect Coastal Resources. It does not say Protect Coastal Resources from public access.

Artificially creating a sub-culture in an animal stock that depends on human intervention for shelter is not preservation of a resource, it is fooling with Mother Nature. Decisions about wildlife and people on our coast are supposed to be based on good science. There is none to validate the claims from our City government, especially that local mismanagement should be solved by the Commission on the back of Public Access principles. That would be an abuse of power.

This closure scheme will be contagious. Any beach in California is of economic and biological significance. All a city has to do is fib a bit to misuse 30230.

If the Commission feels strongly that seals must be protected from their own poor judgment, then tell Sea World to collect them up and take them somewhere safe.

Melinda Merryweather, lifelong la Jolla resident

Melinda Merryweather  
858-454-5939

120

Aug 01 14 11:58a

Melinda Merryweather

8584545939

p. 1

**Subject:** [No Subject]

**From:** Melinda Merryweather (mbeherenow@sbcglobal.net)

**To:** Mbeherenow@sbcglobal.net;

**Date:** Thursday, July 31, 2014 9:47 PM

**RECEIVED**

AUG 01 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

*Faxed to 619-762-2384*

To Calif. Coastal Commission

re; Item # LCP-6-LJS-14-0607-1/Th12c

CDP# 6-14-0691/TH13a

Childrens Pool in La Jolla To ALL the Coastal Commissioners

To who it may concern I have read the report, and found some mistakes you should be aware of they are statement told over and over that are NOT the facts or the truth.

This was said on page 29,31,9, and 16 perhaps more.

The report says that the Beach Access Ramp at the Children's Pool is a Emergency ramp IT IS NOT! it is a ramp that people have used for years to get to the beach! I used it to get small children and food to the beach in a little red wagon, and back up again, the stairs were to steep and we could not lift all that down the stairs for years we used the ramp it was NOT A EMERGENCY it was just getting to the beach like we always did.

The other people that used it were people with strollers, wheelchairs, baby buggies, coolers, divers and fisherman with their stuff, hardly any one used the stairs, they were to steep.

The facts: I helped write our Community Plan and my part was the beach access so I know what I am talking about.

I have given you a copy of our community plan and as you can see it is a BEACH ACCESS RAMP!!

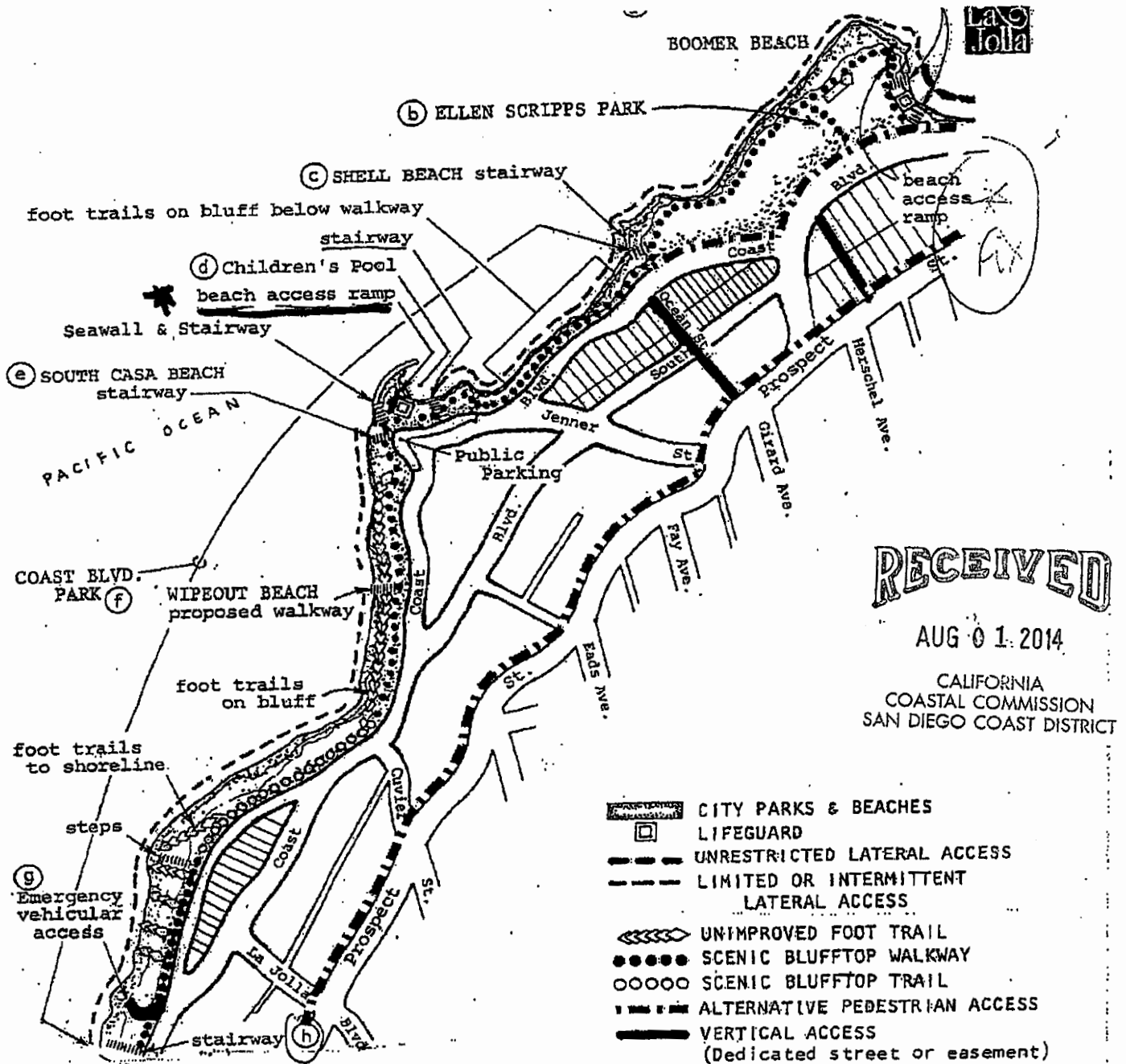
Just because the city stopped taking care of it did NOT change what it is. It is our BEACH ACCESS RAMP also used to take the seaweed off the beach by the city.

**WORDS DO NOT CHANGE THE FACTS!**

Sincerely Melinda Merryweather 522 Westbourne st La Jolla 858 454 5939

*Page 1 of 2 (#1)*

*121*



#2

## Subarea E: Coast Boulevard - Physical Access



La Jolla Community Plan  
City of San Diego • Planning Department

Figure E

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**Subject:** Wheelchair access in La Jolla

**From:** Melinda Merryweather (mbeherenow@sbcglobal.net)

**To:** brittney.lover@coastal.ca.gov; Mbeherenow@sbcglobal.net;

**Date:** Tuesday, July 29, 2014 2:26 PM

**RECEIVED**

JUL 30 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

To Brittney Lover and all the Costal Commissers In your report you called out 2 wheelchair access that do not exist, I helped write all the beach accesses in La Jolla for our Community Plan and you are completely misinformed!

# The access at Boomer Beach is a 3 and a half foot wide short ramp that runs in to a set of 2 and one half foot wide stairs, that goes on to the rocks!! This is NOT a wheelchair access!

Perhaps it would be good to send some one out to the places and look at them before making these statements.

#The access at Scripps by the pier is also NOT a wheelchair access, is a wide ramp for cars then it turns left and is very steep drop to the beach it is for their trucks you could never try to get a wheelchair down it, and the people at the building on site the Center for Coastal Studies said they would stop any one from using it for a wheelchair access, one of the girls that works there has a mother in a chair and would never ever try and push her down there. This is NOT a wheelchair access.

# The shores is almost a insult to people in a chair, pushing people in a chair in to waves is NOT a good idea, that is why the Children's pool is so great! no waves that is why Ellen Scripps said about the pool this my gift to those handicapped in life. God knows we have all those soldiers coming home with no legs what could be better for them?

The lifeguard at the shores agreed with me it could be very dangerous to push a chair in to waves.

I grew up in La Jolla and saw Wheelchairs use the ramp I pulled a wagon full of kids down it trucks used it to take the seaweed off the beach, I have a photo from a year ago with a wheelchair on it.

The Children's Pool has been and should still be for handicap access, there is no better beach as it is a man made pool, no waves.

You should remove you statements about wheelchair access from the report as they are not true.

Sincerely Melinda Merryweather

619-767 2384

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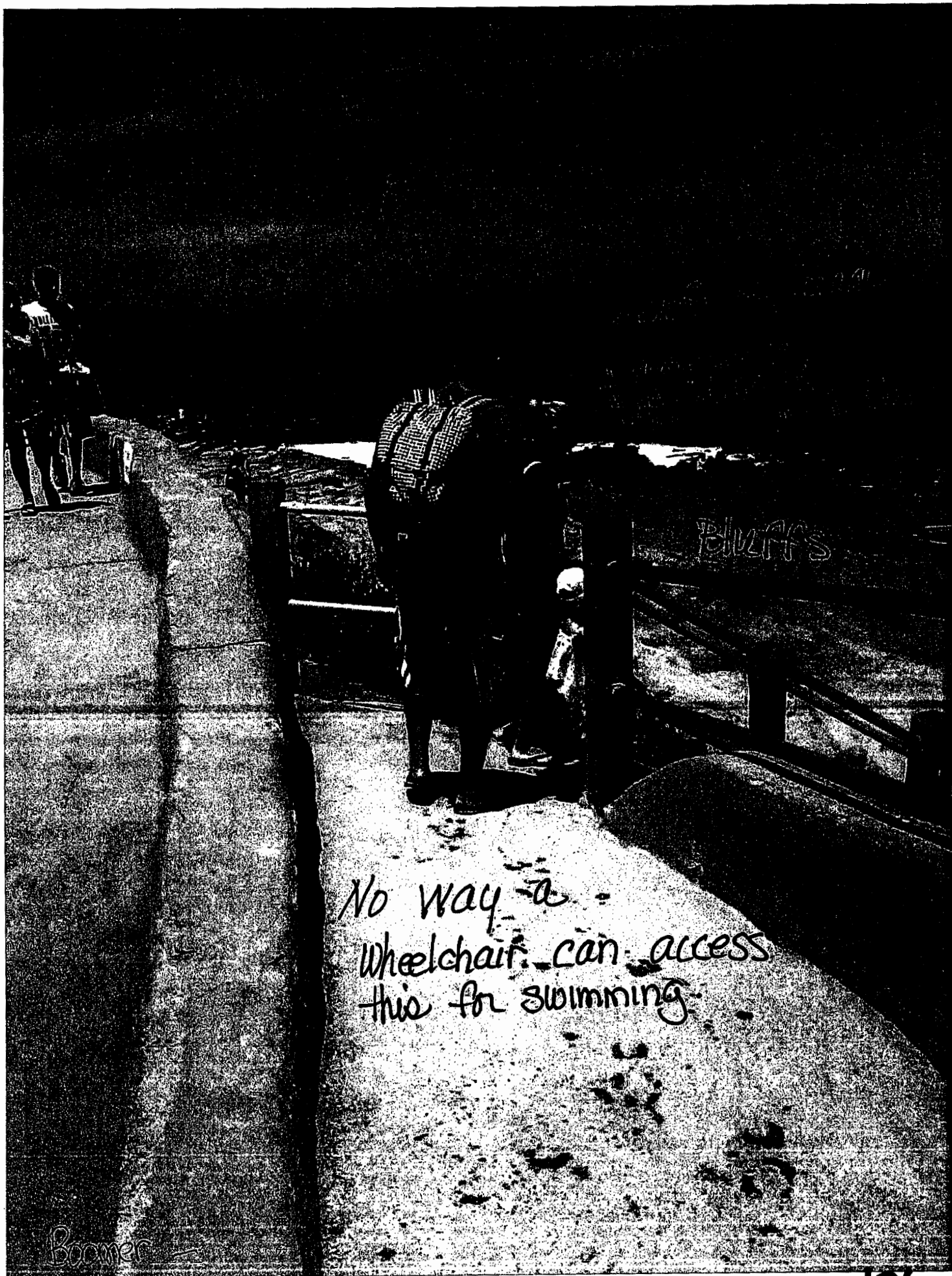


Very steep  
NOT ADA

Truck ramp @ Scripps - Very steep  
No wheelchair and it goes to

SURF

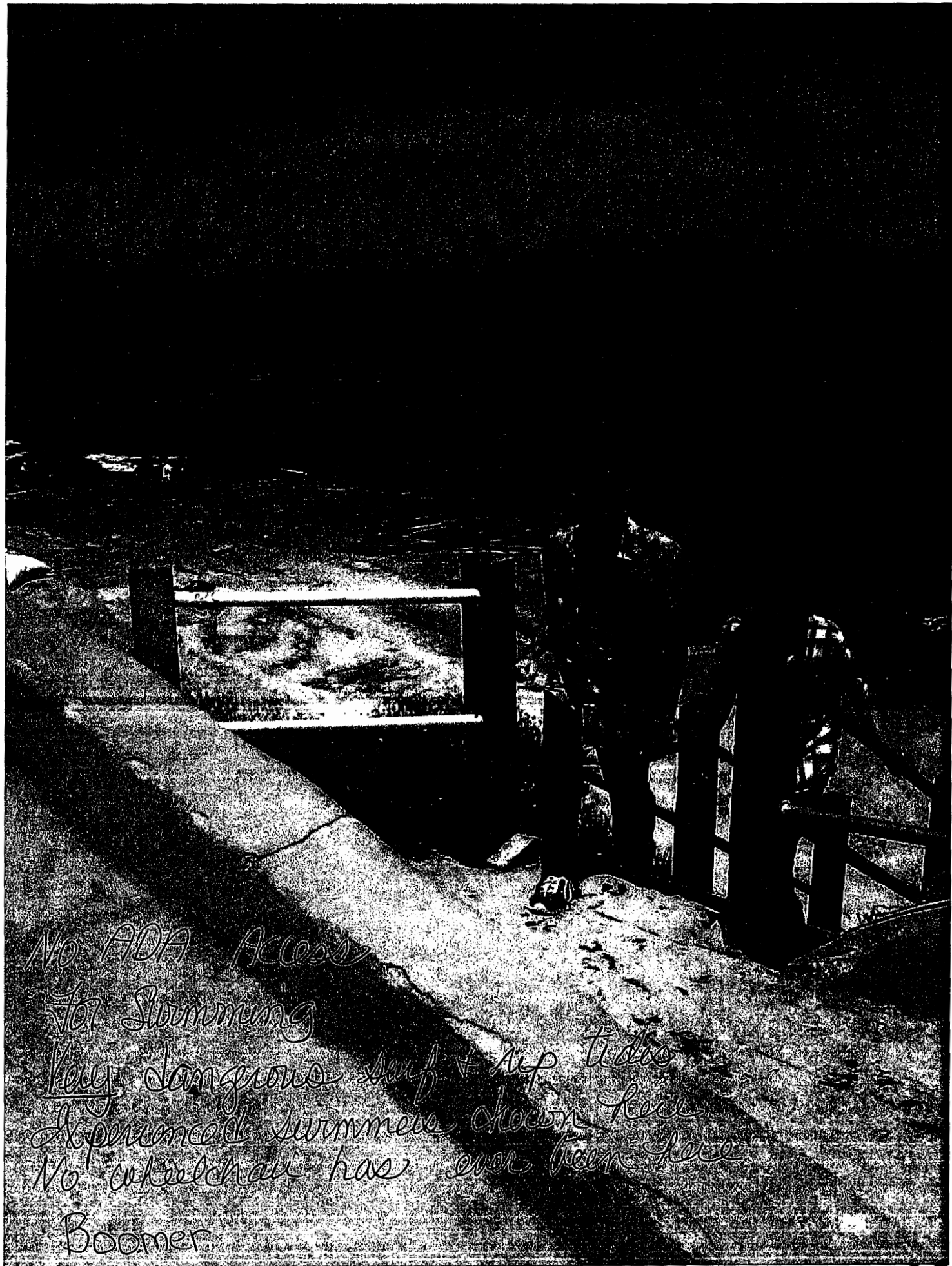
Pool, No surf



No way a  
wheelchair can access  
this for swimming.

Boomer





No ADA Access

For Swimming

Very dangerous surf & rip tides

Experienced swimmers chosen here

No wheelchair has ever been here

Boomer

Miss Miller, Executive Secretary of the California Coastal Commission Headquarters San Francisco  
August 8 2014

Dear Miss Miller,

Thank you for your message and instructions. Off topic of the Children's Pool it seems to me that perhaps a discussion of updating the communications opportunity to the people of California to be able to use email is in order. If the Commissioner and staff are using emails in their everyday business and you are, then the public has the right to communicate with the Commission this way as well. Every single government agency from the President of the United States to the Mayor has allowed this. There is a link on their websites to email them. As a disabled woman it is very difficult for me to communicate any other way. Many people do not have landlines any longer and faxes are not that common for people to own. The Commissioners are all over the state. I traveled hours to a meeting in Huntington Beach and waited lying on ice for 10 hours to have 3 minutes to speak. Not many disabled people can do this; it was difficult for me. The disabled community is ignored terribly and the CA Coastal Commission needs to please think about us. I appreciated the opportunity to send emails with attachments. In this day and age of computer technology it is possible for each commissioner to have their own sub website. It can give a profile for each commissioner, and list the current projects and have a *button to link to that project to send information*. It is easy to create and would streamline communications and allow the public the same mode of communications that you all use everyday. It would make it easier for the commissioners and also cut down on paper waste. Each commissioner can file the information in the correct project file and be able to send it to another commissioner for discussion and networking. It should save time if done right.

The young analyst Britney Lavere recently stated to me that the California Coastal Commission does not have any oversight. Think about the arrogance of that statement to me, a disabled California Taxpayer. The United States of America is founded upon a democratic system of checks and balances. When a government body does not have to answer to anyone it creates more of a dictatorship board that acts on its own accord regardless of the public's input. Regardless of the facts and regardless of codes and laws as well it seems. I know this is a pretty serious statement. Disability laws and codes have been in effect since the 1940's. Codes and laws are important and they have been and are being violated at our only ocean pool. But as important are the values behind those laws. Even if there were no laws common decency and moral compassion should prevail. Greed is prevailing and ignorance because the Commissioners already have an agenda and it does not matter what facts are brought before them. It seems that input and hearings are just going through the motions. What guarantee do the taxpayers have that our input is being considered? None. In fact my triangulated facts of information so diligently research and reported were treated as lies. This is insulting to me. There is no other safe ramped access into a safe calm ocean swimming area or ocean pool on the coast. And Commissioner Sarb lists two accesses that are impossible for a paralyzed swimmer to access. Impossible and very dangerous. Paralyzed people can not negotiate wide soft sand beaches or surf or stairs and boulders and cliffs.. La Jolla Shores is not ADA accessible for swimming, and Boomer is too dangerous for the best of swimmers, the entry is to wait for a wave and jump in it off a cliff into rocks. Swimming is not allowed, only experience body surfers can go there. I do not mention it as a part of the C.P. discussion but to point out that Commissioner Sarb is totally ignorant of her own San Diego Coastline! Her intentional disrespect for disabled veterans laying all over the city and country who need access is tantamount to treason in my opinion. She insults the disabled, our Veterans, and the one in five disabled Americans, and the potential of the only ocean pool we have. That the pool is not restored and perfect and filled with disabled people healing on a daily basis is criminal literally. That the ocean at this location is now a DEAD ZONE void of fish, crustaceans; Tide Pool Creatures is an insult to the Ocean for which the Commission is also responsible.

This has been my first experience dealing with the Commission as a concerned disabled California tax payer. I report here and now that I feel the Commission needs to reorganize and make your organization a democratic one, as it is not.

I can not close with out inquiring if Britney Lavere the staff writer of the recommendation to close my only ocean therapy pool is a dues paying member of the organizations financing the closure? Sierra Club and Surf Riders, Friends of the Seals, APRL? This is an ethical issue. If she just came from a meeting rallying the closure the night before she cannot be anything but biased when writing the report. Her dues if she is a member, is paying for the effort to close the pool; a financial conflict of interest clearly. When I met with Britney she made it very clear she does not care for the rights of the disabled and she made it very clear that the pollution problem is best solved by closure of the human bathing pool protected by a Trust that stood the test of court. All this has been ignored: a human health ruling in 2004 prompted by the Centers for Disease Control to remove the filthy bacteria ridden sand to discourage the seals from birthing in their own feces and urine still stands. If the Children's Pool IS closed this will cause the pollution concentration to increase. T.B. and E.coli can be present in seal waste & airborne. This too ignored by the Commission. My point is that the impression I got is that the Commission picks and chooses the facts to consider depending if they support the agenda they have. All facts are of course needed. The Commission is really required to obey the human health ruling, of course. This is what I mean, a human health ruling ignored? Based upon the Centers for Disease Control? Really? This is the point of my message. It is wrong on every level to ignore a human health ruling and for the Commission to ignore such a ruling to serve special interest groups is unethical and does not serve the greater good in any stretch of the imagination. So to the old and new commissioners I ask for your moral commitment to do the right thing. Know the laws of the project and obey them. Judge Pate ruled and it still stands. The Commission is ignoring it thereby potentially putting people and seals in harm's way. This is wrong; I hope you can begin to understand. Or perhaps you are so far gone on agenda power trips that my words fall on blocked minds? By the time you lay your heads to sleep tonight about 22 young severely disabled veterans will have chosen suicide over facing the terrors of their wounds. They should have every chance to rehabilitate when they return and they do not. The Commission is ignoring them; preventing them from being able to experience the real Pacific Ocean and get out their wheelchair confinement supported in the healing calm waters of the only ocean pool for them. This is morally wrong. And of course is breaking every disability code ever written since 1948 when the primary access ramp was to code. This is a fact that the Commission is calling me a liar about. This is wrong and adds insult to injury and is disrespectful and as far from a democratic system as one can get. It is reminiscent of Hitler's system. He picked and chose the facts to consider, human civil rights ignored as they are by the Commission and the City of San Diego. The behaviors of the people preventing access at my pool remind me of the SS, seriously. Spy cameras that honed in on women, in the showers too, noting license plate numbers, grabbing people, and intimidating disabled people. Videoing beach goers and swimmers up close and personal for long lengths of time. All this has been promoted by the City of San Diego and supported by the Commission. Why?

Cheryl Jacobs Aspenleiter  
Disabled Ocean Swimmer  
858 568 1257

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**Subject:** Fw: childrens pool  
**From:** christopher oldstone (christop.oldstone@sbcglobal.net)  
**To:** mbeherenow@sbcglobal.net;  
**Date:** Friday, August 1, 2014 11:39 AM

On Friday, August 1, 2014 11:22 AM, christopher oldstone <christop.oldstone@sbcglobal.net> wrote:

To whom it may concern,  
my name is Christopher Oldstone and for all but the first six months of my life I lived in La Jolla. I learned how to swim and spent countless days at the Children's Pool swimming, playing and fishing off the Wall. I saw city employees who's office so to speak was a small room that was behind the bathrooms at the cove remove kelp and other items that washed up on the beach at the Children's pool all the time. They not only did this during the summer but also in the winter months it was done year round. These city employees worked for the city for many years and because I grew up bodysurfing Boomer beach and seeing them all the time developed a friendship with them as well.

Any questions I am more than happy to speak with you.

Chris Oldstone 760 212 6166



**Subject:** Re: Heavy equipment on Children's Pool beach, LA Jolla, CA

**From:** Leslie Shoots <leslieshoots@yahoo.com>

**Date:** 8/21/2012 1:50 PM

**To:** Marie Hunrichs <mariehunrichs@cox.net>

I was first there in 83 and 84 while in the Navy. I took my wife and I there August of 89 on our honeymoon. We stayed at the The Shell Beach Apts. where I watched a yellow bulldozer cleaning the Childrens Pool from our room. Later in August of 95 we took our two toddlers to the Childrens Pool and remember having to wait before we could go down to the beach while the same type of equipment finished cleaning the beach. I remember it exiting the beach up the sandstone ramp. It had a bucket type scoop which he was using to pick up sea weed, kelp. ect.. You might enjoy this 1970 Dodge Commercial that was filmed on the beach there at the Childrens Pool.  
<http://www.youtube.com/watch?v=R5IM5YaCVII>

**From:** Hannu Mikkonen  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Tuesday, July 29, 2014 3:50:22 PM

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Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because . . . Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

I had the privilege, as a young immigrant from Finland, to enjoy Children's Pool or Casa Cove when my parents brought me there in the 60's. I learned to swim there, learned to skin dive there and also was able play on all of the rocks and go through the caves. I traversed all of the beach and rocks from Hospital Beach to Boomer beach. I body surfed at Boomer and dove for abalone there, at Shell beach and also outside the breakwall. Casa Cove-Children's Pool was where my sister's families(5 sisters) came to bring their children to swim whenever they visited us from Canada. My mother picked mussels off of the breakwall, then cooked and ate them. I jumped off of the breakwall when I was a kid(at high tide). I lived for the beach when ever mom would take me and my brother there. My older brother, Henry Velli Risto Mikkonen, taught me how to dive for abalone there and how to spearfish.

We continued to go there as a family and brought the neighbor kids. We

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played and went from rock to rock, jumping or diving in. From Hospital Beach to Casa to Shell beach, to Boomer and La Jolla Cove, that was our playground. The seals, the few that there were, lounged on the large rock in Shell beach and really, there were hardly any. I dove from that rock into the water all of the time, never had an issue with seals. Fast forward to 1998, when I was able to show my daughter the wonders of the Ocean looking from a skin diving mask. She was 8 years old and had the opportunity to see firsthand, a school of fish under the water at The Children's Pool, right next to the rock in a 3-4 foot deep area. That was my duty, honor and privilege to pass on what I had been privy to as a youngster at Casa Cove-Children's Pool. We (the Public) had access to Casa Cove in the 60's, 70's, 80's and the 90's. There was never any issue sharing the beach with the few seals that came around. They usually stayed on the rock at Shell Beach and came around when they wanted to. Now, something has happened to the Beach I so loved and it has been ruined. The Life Guard Tower and Bathrooms are in a state of ruin and the beach has been taken over by activists. Never in my life would I have imagined that the people would do such a thing because of a seal. Taking away a Family Beach for the sake of seals is unconscionable. They used to have their pups on the rocks and it was warm for the pup. They could go to a sandy beach if they wanted to or needed to have seclusion. But to take away a gift from a wonderful Lady and the Children that are supposed to enjoy it in perpetuity for the sake of the few is a crime. I am sure that the motive behind all of this is \$. Shame on you for stealing the gift of life and a wonderful Beach from the Children it was gifted to. Hannu Arvo Mikkonen

**change.org**

## R.A.M.P. Committee to Restore Access to Many People

Recipient: RAMP Committee, Mayor Kevin Faulconer, California Coastal Commission, and  
Director of Civil Rights Joseph Hairston

Letter: Greetings,

Please note this support to update the access to ADA codes at the Children's Pool  
built especially for 'those handicapped in life's game" ( E.Scripps 1932)  
Sincerely, Cheri Jacobs Aspenleiter disabled swimmer RAMP chairperson

# Comments

Name	Location	Date	Comment
Richard D. Jacobs	St. Louis, MO	2014-05-07	To me it represents a last ditch effort of the people being heard over special interests.(There is too many special interests in the country today even affecting as high a level as the Supreme Court.
John Leek	San Diego, CA	2014-05-08	I have had to carry a friend in a wheelchair down the stair there and ask strangers to help carry his wheelchair back up. I saw a one-legged woman crawl across the beach to reach the water, I swam with a paraplegic who needed 6 people to help him scuba dive there because he had to be carried down the stairs.
David Johnson	San Diego, CA	2014-05-08	It was built for children and the handicapped and the City of San Diego broke trust with the purpose from the beginning and remains against children and the handicapped to this very day.
jeffrey lyons	san diego, CA	2014-05-08	i am disabled
brian vackers	la quinta, CA	2014-05-08	to keep this open to disabled and children for which it was made for. it was not intended for a seal sanctuary
Davidq Ambrose	Poway., CA	2014-05-08	Children's Pool is on of the few safe entry and exit points in that section of coast. We need to preserve human access.
Joe Wulff	Escondido, CA	2014-05-08	So that all people can enjoy what was created for all of us.
Ken Hunrichs	San Diego, CA	2014-05-08	The safe access to the ocean at Children's Pool is the most significant resource that must be protected for the uses it was intended for. This pool was built for all the people of San Diego and is the only tidal pool of its kind in the US. The City of San Diego's plans to close Children's Pool must be stopped. Sign the petition and contact the Coastal Commission to demand they uphold coastal access laws in the California Coastal Act.
Hayley Cluff	Brooklyn, CA	2014-05-09	I grew up in San Diego and went to La Jolla almost every weekend growing up, for me it was another home and meant a lot to me, I feel others should be able to experience it as well.
Philip Miller	San Diego, CA	2014-05-11	The city of San Diego has arrogantly closed Children's Pool after several years of it's having been neglected to the point of condemnation. It refuses to replace the ramp that will again allow disabled access to the only protected ocean pool/diver access in San Diego (and the West Coast), in the face of a statement of non-necessity from NOAA and clear recent evidence in Cape Cod, Mass. that increased seal populations increase shark presence. The artificially increased seal population is also decimating the nearby Marine Protected Life Areas.
Jim Peterson	San Diego, CA	2014-05-14	Human access to CP is equitable and legal.... the incompetence of the judicial system is so rampant in our society.... CP is another example of such. The fall of america..... let it end at CP....! Free CP as E. Scripps would want....!
lynda manganelli	san diego, CA	2014-05-14	Beach access is very important for all San Diego citizens to enjoy one of our finest resources.
debra david	san diego, CA	2014-05-14	I learned to swim here, and so did my 4 children. This beach should be designated as the 'children's pool' as it was bequeathed in the will of Ellen Scripps
Mia Malvestuto	san diego, CA	2014-05-14	Grew up on the beach as a child!
cherie ontiveros	oceanside, CA	2014-05-14	I learned to swim in the ocean as a child here. I am saddened that animals have taken away our human historical legacy.

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Name	Location	Date	Comment
David Traylor	La Jolla, CA	2014-05-14	grew up in La Jolla Beach is for children (people)
Darlene Spriggs	La Mesa, CA	2014-05-14	as a child my family would go through out the summer and when I had children they spent many wonderful days in the pools water
phyllis minick	La Jolla, CA	2014-05-15	I am an 85-year-old with a steel replacement femur in my right leg. Only with ramp access can I reach the healing waters of the Children's Pool.
Maxine Baker	San Diego, CA	2014-05-15	This beach was meant for children to learn to swim in a safe environment. It has now become the ONLY safe and accessible entry point for disabled individuals to swim in the ocean in the San Diego area.
Doris White	La Jolla, CA	2014-05-16	this ara was meant for acxcess by everyone particularly children and elderly
Ian Bengson	san diego, CA	2014-05-16	I hate seeing a historical treasure crumble
Will Schussel	San Diego, CA	2014-05-16	sea animals have the rest of the coast and ocean to use - let them move to new quarters and let the humans back where it is safe
Sally Reddick	Saint Charles, MO	2014-05-17	For several reasons. First and foremost, a persons will or trust should never be allowed to be broken by the anyone! Secondly, when I visit, this is an area I'd like to be able to swim without worry of the surf.
Cheryl Aspenleiter	San Diego, CA	2014-05-17	Dear Signers. This is RAMP Committee here trying to master this website that is not user friendly for me at least. There was a way to send all signers a motivational email, that button has disapeared from view. So I ask that each of you please send the petition on to your contacts . I think we can get 1000 signatures easy. One in every five Americans are disabled. So this closure affects everyone. Please join me in my efforts to have access restored at this pool and thank you for your time to to this. Many disabled are unaware and are so in pain that they can not 'get involved' even in this to help themselves. That is why we have ADA laws to make sure access occurs especially at this pool built for them in mind. Thank you, The RAMP Committee
melinda merryweather	La Jolla, CA	2014-05-17	We must help others when ever we can.
Theresa Lutzker	Riddle, OR	2014-05-18	My profession as a nurse, I pledge to do whatever I can to make a person's life safe, healthy, and enriched. I've witnessed many disabled people go without the needed water therapy because of not being able to access safely from their wheel chair. This ramp will not only provide increased safety but also give them freedom of autonomy to access water by themselves; something for which many (who are not disabled) take for granted. Please restore the ramp!
ALEDA MARSHALL	FT. MYERS, FL	2014-05-18	It is very difficult for the disabled to maneuver successfully without rams
CHRIS KOKEAS	SAN DIEGO, CA	2014-05-18	FEW PLACES ACCESS THE OCEAN AS THE CHILDREN'S POOL.
Clement Hoffman	La Jolla, CA	2014-05-19	Unique resource for persons with physical disabilities

Name	Location	Date	Comment
Cheryl Aspenleiter	San Diego, CA	2014-06-07	<p>Please leave a comment for your reason for signing if you will please. The reasons for signing include one in five Americans are disabled, and the Children's Pool is the only one of its kind in our Country. The ecosystem is devoured and decimated seriously. With Marine Agencies surrounding this area you'd think one of them would do an EIR and help our undersea ecology. Nope! The Sierra Club, the Coast Keepers and even the Humane Society are just ignorant of the total conspiracy to close this pool. Remember Valorie O'Sullivan sued San Diego for violation of Ellen Scripps Trust for allowing seals to haul out on sand that should not be there, and pollute the area that can not wash clean because of the breakwater. And all Ocean Agencies and the Center for Disease Controls agreed it was not healthy for the seals to haul out and birth in their own waste, and the bacteria can potentially be transmitted to the humans watching above and the retirees across the street. Check out how our MPA and Children's Pool area could look like. Seals can take birth control just like we do. Easy solution to being the balance back. Children's Pool Restored would make a great sea-star sanctuary and give a disabled person the chance to snorkel in safety and see one! Please donate \$10 to our petition and change, or will send it to 50 more people.</p> <p>I will be traveling to Huntington Beach for the CA Coastal Commission Meeting and have my three minutes to speak for the Disabled and for the Ocean Ecology. This ramp is the only one on the La Jolla Coastal Plan. And the Mission Statement for the CCC is to Enforce Access of LCP's, not remove the only access ramp on this LCP. Thank you for your Continued Support.</p> <p>Imagine not having the use of your legs and wanting to snorkel. Sincerely, Cheri Disabled Mermaid RAMP Committee</p>
ray berry	san diego, CA	2014-06-14	therapeutic
Paul Schreiber	Washougal, WA	2014-06-14	It is very important to me to take care of our disabled children and veterans.
Marvin Manes	Ariel, WA	2014-06-14	A friend of mine is disabled, lives in San diagonal and would like to be able to use the pool again
Kay Stafford	La Jolla, CA	2014-06-14	I was built for children and disabled. The seals are not being harmed. They choose proximity to people. They have other more appropriate sites for those who don't wish proximity to people. It is a precedent that will change California beach enjoyment forever.
Ken Gardiner	Cardiff By The Sea, CA	2014-06-14	Because as a wheelchair bound active person there are few options for access to public areas like this. I pay a heavier tax burden than most in the area and have substantially fewer services provided. Not to mention the incredible cost paid by our returning veterans not just in races but in lost body parts and crippling injuries. From a standpoint of fairness in distribution of public services, the disabled are incredibly underrepresented and ignored.
Ryan Sweeney	San Diego, CA	2014-06-16	The city has stood strong behind its decision NOT to uphold its obligations to maintain this beach in a safe manner for the community and within the boundaries of the Trust they agreed to uphold and the State Constitution. Shared use has been working for many years and actual well thought out shared use plans have not been truly explored. The city refuses to do what's right and instead continues to try and flip the script by using reasons for the closure that were created by and perpetuated from their very own negligence. Sorry city of San Diego... it should not be OK for you to restrict beach access because simply because you don't want to.
Bernadette Gore	San Diego, CA	2014-06-16	I work with a lot of spinal cord injury survivors and they need access to enjoy everything as much as able bodied individuals do.
Andrew Hippert	San Diego, CA	2014-06-17	I am in a wheelchair



Name	Location	Date	Comment
Kalli Hippert	San Diego, CA	2014-06-17	Support for access to all.
Paula Donovan	San Diego, CA	2014-06-17	My Son is in a wheelchair
John Grande	Escondido, CA	2014-06-19	Because I care about the welfare of handicapped people.
betts cruz	kaunakakai, HI	2014-06-20	My Mom at 93 lives at Casa De Manana, my sis had Lou gehrigs
Mary Prat	La Jolla, CA	2014-06-20	I support restoring access to the disabled to the ocean at the Children's Pool in La Jolla, California. Disabled persons and children used to share the Children Pool and today, disabled persons and children are forbidden from using the Children's Pool a California public beach. Enough!
pattie buchanan	S D, CA	2014-06-20	Restoring access to the disabled
Dolly Casco	La Jolla, CA	2014-06-20	All of us have the Right to have access to this beautiful beach
Jennifer Rushall	El Cajon, CA	2014-06-22	I remember a time when I use to be able to use the beach because the ramp was there. It was in disrepair but it was THERE! I currently use a wheelchair part time and fore arm crutches the rest of the time. I miss being able to access this part of the beach.
Robert Thompkins	San Diego, CA	2014-06-23	I'm in a wheelchair
ernie casco	la jolla, CA	2014-06-23	I Live in La jolloa
Peggy Davis	La Jolla, CA	2014-06-23	I also have a disability due to an accident. La Jolla needs to consider the needs of disabled residents and visitors in many locations of La Jolla.
Mike Sanchez	San Diego, CA	2014-06-23	My son uses a wheelchair
Judy Halter	La Jolla, CA	2014-06-25	I think it is critical that disabled citizens have the opportunity to swim in the ocean and enjoy a wonderful experience
Bonita Knapp	La Jolla, CA	2014-06-29	I am disabled and I loved the Children's Pool Beach since 1974 when it was clean and easy to get to for old and young-no pollution and magical place then
Anne Schofield	La Jolla, CA	2014-06-29	I am a senior with total bilateral hip replacement due to a birth defect. Swimming is my best exercise, and is not weight bearing because of the water. I cannot afford a pool membership. Also, let us respect Ellen Scripps legacy. Scripps Oceanographic Institute as-well-as many other benefactors do, and are thriving. There are thousands of miles of coastline on earth, and seals can survive anywhere. They do not pay state or federal taxes but humans do.
chandra sakti	san diego, CA	2014-07-10	because im disabled person that want to enjoy the beach that have easy access and with little help i can still do my own thing.
Michael Conroy	San Diego, CA	2014-07-10	The City must provide access for all in its programs and services. This protected area is unique and would be safer to use than many beaches, unprotected from breaking ocean waves.
Sami Cucuini	arlington, VA	2014-07-11	we visit san diego often hope to take our future children here
Jing YY	san diego, CA	2014-07-11	This is very important to me because disabled people have every right to share the ocean like normal people. I am willing to help them all I can. This place is occupied by seals now, but it was originally built for human especially for kids and people who don't have a lifeguard body type. The seals have the whole ocean to live, but san diego residents only have this one pool in the ocean which is safe. I support this place to be modified for better access to disabled people and children.
Yolanda Zaldivar	San Diego, CA	2014-07-12	I love the beach and to be able to go in the water would be AWESOME! H2O is very therapeutic.

Name	Location	Date	Comment
Eriberto Garcia	San Ysidro, CA	2014-07-13	Ramp access to the ocean for wounded warriors and people in wheel chairs.
Michael LaForge	San Diego, CA	2014-07-14	Disabled Vets are a large part of San Diego community and access to the ocean gives disabled people a way to get out of there chairs.
Daniel Hunsaker	Santa Ana, CA	2014-07-17	Safe beach access for all
Donna GOOKIN	San Diego, CA	2014-07-17	I have osteo arthritis and it is extremely difficult to enter water elsewhere (stairs or sand expanses) and have friends who would like to swim and are very disabled.
David Aspenleiter	El Cajon, CA	2014-07-20	This is a historic part of San Diego, created for children and people with disabilities to have a safe swimming environment in the ocean. It should remain that way.
mike SANDERS	SAN DIEGO, CA	2014-07-26	so i can play with my kids instead of stay on the sidewalk

**From:** Philip Miller  
**To:** Laver, Brittney@Coastal  
**Subject:** LCP-6LJS-14-0607-1, CDP # 6-14-0691  
**Date:** Sunday, August 03, 2014 9:29:50 AM  
**Attachments:** CCCProtest2-8-3-14.pdf  
CCCProtest8-3-14.doc

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August 3, 2014  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

San Diego has learned from its animal rights activists that you can get away with anything if you have an animal in front of you. The City has been working on a complete theft of Children's Pool for a decade, with cooperation from the Coastal Commission. It has every confidence now it can ban the public from trusted tidelands.

San Diego offers the Commission a "final solution" that is anything but, and now we will find out if the Commission can ever go back to its roots. Slow constant encroachment seems to have the Commission backed into a corner, guaranteeing capitulation.

1. Sept 1997, the City had closed the Pool to the public for fecal contamination. Lifeguards had put barriers on the beach the previous year. No permits.
2. March 2003, the CCC noticed the City closed off most of the beach 4 years before and it appeared to be permanent and really should have a CDP. A change in California law no longer allowed closure for animal coliform.
3. Sept 2004, the City posted new signs on the rope barrier explaining it was a guideline and swimming was "not recommended".
4. Aug 2005, a court required San Diego to carry out its own plan from 1999 to remove the accumulated entrapment of sand behind the sea wall which had buried the Pool and to make the water clean enough for public swimming again, per the state trust. The Coastal Commission had never thought to do that.
5. The rope barrier was installed in 2006 on an emergency CDP, while the City appealed the court order. The permit stated "...not intended to prevent access..."
6. By 2007 the City had delayed living up to the court order and wanted to install its rope barrier again on a one-year basis.
7. Jan 2008, San Diego applied to install its rope barrier for another year. A citizen appealed and held up the process. The City Attorney had the rope barrier installed on a self-proclaimed emergency had the Superior Court had denied it. (Attached) The CCC rejected the appeal months later in Santa Barbara where no citizens were present. It was noted the City Attorney putting up the project with a pending appeal had been a violation, but he was forgiven.
8. Also in 2008 a complaint was filed that the City had closed the former access ramp without a coastal permit a decade before, and submitted proof it was still used when the City wanted to provide an alternate route for tourists during construction. The investigation was quashed in the local office.
9. May 2010, the City Council decides on the "pupping season" closure, and year round rope barrier, giving the City Attorney the task of carrying it out. The measure is to be done on an emergency permit. The findings needed for an emergency closure cannot be made and the City settles in for

the long haul. Community opposition holds up the forever rope barrier permit for 2 years.

10. July 2012, the Coastal Commission reluctantly grants the year round rope, only to find out the 5 month closure is already in the works. It will not end there after all.

The staff report had written up the year round rope as a flawless action and still "not intended to prevent beach access".

11. Dec 24th 2013, the City Attorney warned the Mayor not to extend the rope barrier past the length specified in the coastal permit. He did it anyway. Local staff submitted a permit to allow it after the fact. A judge ruled the Mayor had broken the law, but it was moot because of the swift action by the CCC.

12. March 21st, the Mayor closes the beach after dark on a self-written emergency permit. March 29th, Sherilyn Sarb creates an after the fact emergency permit that protects the Mayor. It is accepted as a de minimus waiver on April 10th, in Santa Barbara.

13. May 14th, the Mayor posts a memo requiring citations for persons on the seaward side of the rope when a seal moves. Several citations result.

14. Today, the staff report on the hard closure by law is presented as flawless. The closure is described as "limited access". No consideration of violations of state or federal statutes is considered, as they are not part of the Coastal Act or the LCP, which will be changed to ensure there is no conflict.

15. Just in case this is not legal, as with the 2012 year round rope barrier, any costs of litigation to the Commission will be borne by San Diego, though not all the blame.

The future: The staff report recommending the closure in winter also mentions the rope is inadequate in the summer. The permit fails to mention South Casa Beach next door has been a growing rookery since 2010.

Two blocks north, at La Jolla Cove, the City encourages the public to go through a fence to drive sea lions off the rocks with their presence. A number of dead sea lion pups have been recorded there.

16.

I have attached a copy of this letter, and a supporting document to this email.

Philip Miller  
6317 Brooklyn Ave  
San Diego, CA 92114

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## BIG INJUSTICE AT A VERY SMALL POOL

The injustice I address here is the attempt to establish so-called "limited" access at the Children's Pool Beach. This unnecessary permit would illegally modify San Diego's community plan by restricting/prohibiting beach access during the lengthy harbor seal pupping season. "Limited" in this permit means complete closure of our public beach to be accomplished by placing a locked chain across the access stairs.

The action is unjust because (1) animal excrement is not the name for a sensitive habitat area, (2) harbor seal pinnipeds are not an endangered species on any authoritative list (see NOAA, Sea World/Hubbs). (3) To seek a Coastal Development Permit (CDP) banning access to the Children's Pool Beach annually from December 15 – May 15 unjustly defies The Federal Interagency Ocean Policy of the U.S. government, the State of California Constitution, Article 10, the California Coastal Act Sections 30210 through 30213, Sections 30220, 30221 and San Diego's Local Coastal Program.

*Now, even as the City of San Diego is building a \$3 1/2 million lifeguard/restroom/shower complex at the Children's Pool, which confirms the City's long-term intent to preserve human life and health at that site, you are being asked to unjustly close the very beach which that facility serves.*

The foul, toxic odors from the excrement of an overpopulation of seals, sea lions and birds is documented repeatedly in our national press, warning tourists to stay away. However, no documentation supports the false City claim that an amendment to the La Jolla Local Coastal Program is necessary to limit access. The local population and organizations have repeatedly voted against any beach closure. Our City Council member vigorously opposes such closure.

*THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY*

*Federal law on this issue is summarized in the following excerpt: July 19, 2010*

**THE WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY**

**National Ocean Policy** for the sustainable use our oceans signed into law by President George Bush based on the recommendations of the Ocean Policy Task Force.(p.3)

It is the Policy of the United States of America to:

- Protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- Improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;
- Bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- Use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;
- Support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;
- Respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;
- Exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;
- Increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;
- Improve our understanding and awareness of changing environmental

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conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and

- Foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.

Questions about the long-term outcome of seals overtaking our shoreline, under auspices of the proposed permit, remain valid. How will the City's plan for a marine mammal park at the Children's Pool affect other beaches now that the increasing seal population inhabits them? Plans exist to close those beaches to people too. We have seen the danger of sharks due to the increased seal population. The saddest effect is that seals and sea lions are dying from starvation and possible contamination from their own feces. The tidepools are empty of sealife now consumed by seals. Most garibaldi, the California State fish, are gone. The former flourishing and diverse sea life no longer exists. *These injustices constitute a severe, negative environmental impact.*

To preserve a balance of nature, the Tidelands Trust must be honored and co-existence of people, seals, and a range of sealife at Children's Pool must continue in a way that works for everyone. Realistically, the seals are healthier and better off in sustainable numbers and in the wild. People are better off when they know and use their oceans. The Children's Pool is an international treasure that can effectively support shared use by all.

I urge you to forbid its closure or limited use. I plead for human justice.

Sincerely,



Stan Minick  
La Jolla resident  
July 30, 2014

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# MARINE MAMMAL COMMISSION

14 November 2012

Nicole R. Le Boeuf, Chief  
Marine Mammal and Sea Turtle Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3226

Dear Ms. Le Boeuf:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the draft 2012 stock assessment reports for marine mammals occurring in U.S. waters. These reports provide valuable information needed to understand and resolve important marine mammal conservation issues. The Commission appreciates the Service's work on the reports, as well as the opportunity to review them, provide comments, and recommend improvements.

Unfortunately, the available stock assessment information often is not sufficient to meet the requirements of the Marine Mammal Protection Act. Many stock assessments lack even the most basic information such as up-to-date minimum abundance estimates, which are necessary to calculate the stocks' potential biological removal (PBR) levels. Estimates of serious injury and mortality rates are lacking for even more stocks. In the absence of such information, managers cannot confidently determine the status of these stocks, the significance of human effects on them, and the effectiveness of management measures intended to protect them. In the end, the lack of information means that managers are likely to err by over- or under-protecting marine mammal species, either of which can be unnecessarily costly.

## RECOMMENDATIONS

To improve stock assessment efforts generally, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- convene a workshop or series of workshops to explore novel ideas for detecting entanglements and ship strikes, improving information on their frequency and trends, reducing the bias in estimates of large whale mortality and serious injury caused by these interactions, and considering possible options for addressing these risk factors;
- in conjunction with the Fish and Wildlife Service, more completely assess human effects on marine mammals by (1) developing a framework for describing the full effects, both direct and indirect, of all human activities that may cause serious injury or mortality of marine mammals and then (2) incorporating that framework into stock assessment reports so that decision-makers are informed not only about the known information on a stock, but also about the degree of uncertainty regarding the other risk factors that may be affecting the stock's status and what would be required to reduce that uncertainty;

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- consider the feasibility and advisability of providing explicit technical guidance on trend analysis and, for each stock assessment with no trend analysis, require an explicit explanation for why such an analysis could not be completed; and
- establish an internal review process to standardize the updating of the SARs within and across regions, and consider using a copy editor to check for completeness, errors, and consistency.

To improve stock assessment efforts in the Atlantic and Gulf of Mexico, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- expand Table 2 in the North Atlantic right whale report to include right whale #3903 as a serious injury and the unidentified dead right whale seen on 18 May 2006 as an entanglement-related mortality, and recalculate the five-year average of entanglement-related mortality and serious injury;
- expand the section of the report on right whale fishery-related mortality and serious injury to include the total number of entanglements between 2006 and 2012;
- expand the report for the Gulf of Maine harbor porpoise either to include a trend analysis and explanation, or to describe the reasons that the analysis and explanation cannot be provided. If the latter, then the Service also should explain how it plans to rectify the problem(s);
- contact Canadian officials to (1) determine the feasibility of an analysis of port catch levels to estimate the number of harbor porpoises caught in the Canadian Bay of Fundy sink gillnet fishery since 2002 and (2) pursue the development of a reliable means for estimating harbor porpoise bycatch in the Canadian Bay of Fundy; and
- conduct the required surveys of the western North Atlantic harbor and gray seal stocks, incorporate the results into the stock assessment reports, and use that information in its management of those stocks and the risk factors affecting them.

To improve stock assessment efforts in the Alaska region, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- meet with the Commission to discuss the impending changes in the Arctic and consider the development of (a) a long-term assessment strategy to characterize population abundance, stock status, and ecological and human interactions as climate disruption continues and (b) a long-term management strategy that anticipates the risks to ice seals and develops pro-active measures to avoid or minimize those risks;
- continue its efforts to (1) collaborate with the Alaska Native community to monitor the abundance and distribution of ice seals and (2) use seals taken in the subsistence harvest to obtain data on demography, ecology, life history, behavior, health status, and other pertinent topics; among other things, subsistence harvests provide opportunities to collect valuable data on ice seal populations in many parts of their ranges while minimizing the logistical requirements and costs;
- revise its stock assessments for the north Kodiak, south Kodiak, and Cook Inlet harbor seal stocks by (1) reducing the recovery factor to be consistent with the Service's 2005 guidelines,

- (2) recalculating their PBR values, (3) updating the stock assessment reports accordingly, including changing the status of the north Kodiak stock, and (4) working with Native communities to ensure that harvest numbers, when combined with other human-related serious injuries and deaths, do not exceed the PBR for the north Kodiak stock;
- conduct the research needed to (1) analyze and describe the risks to North Pacific right whales associated with increasing shipping traffic in the Bering Sea and North Pacific, paying particular attention to Unimak Pass, and of entanglement in fishing gear and (2) use that information to design management measures that will minimize the risk of ship strikes and entanglement, and that it ensure its activities do not significantly increase the risk faced by the whales;
  - make every effort to expedite the analysis of all passive acoustic, satellite telemetry, and other data available for North Pacific right whales, update the stock assessment report accordingly, and use those data to develop protective measures for this population; and
  - revise the stock assessment report for the North Pacific right whale stock to indicate that based on knowledge of migratory patterns of similar species, Hawaii and Mexico could be low latitude habitats used more regularly by North Pacific right whales than currently recognized.

To improve stock assessment efforts in the Pacific, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- first verify that compliance with the measures of the 1997 take reduction plan for sperm whales remains at a high level and monitor any changes in fishery effort that might systematically affect entanglement risk, and then reconvene the take reduction team only if either of those efforts reveal deficiencies;
- continue to plan and request funding for the necessary surveys to estimate abundance of Pacific Coast harbor seals but also consider alternative assessment approaches to update stock assessment reports for harbor seals along the Pacific coast; and
- review all available information on stock structure for Pacific Island stocks of melon-headed whales, pantropical spotted dolphins, and rough-toothed dolphins and update the stock assessment reports accordingly.

## RATIONALE

### GENERAL COMMENTS

#### Large whale mortality and serious injury from entanglement and ship strikes

Entanglement in fishing gear and ship strikes are important causes of mortality and serious injury for some whale species. Entanglement was determined to be the cause of death for 36 percent (31 of 87) of North Atlantic right whales necropsied between 1970s and 2009 (van der Hoop et al. 2012). In addition, photographs of whales with scars indicate that the rate of entanglement is increasing: 57 percent of individuals photographed through 1989 showed evidence of entanglement (Krauss 1990), 62 percent through 1996 (Hamilton et al. 1998), 73 percent through 2002 (Knowlton et al. 2005), and 83 percent through 2009 (Knowlton et al. 2012). This trend suggests that actions taken in recent decades to reduce the frequency and severity of entanglements have not been

## PACIFIC

### Sperm whales

Following the 1997 implementation of a Pacific Offshore Cetacean Take Reduction Plan, which included skipper education workshops and required the use of pingers and minimum 6-fathom extenders, overall cetacean entanglement rates in the drift gillnet fishery off the Pacific West Coast dropped considerably (Barlow and Cameron 2003). Sperm whales have been entangled only 10 times in over 8,000 observed drift gillnet sets since 1990. Six entanglements occurred prior to the use of pingers in this fishery. Two entanglements (1996 and 1998) occurred in sets that did not use a full complement of pingers, and two animals were entangled in 2010 in a single net where a full complement of 40 pingers was used (Carretta and Enriquez 2012). However, because of the low estimated abundance of sperm whales (751) the two entanglements in 2010 result in estimated annual fisheries mortality of 3.8 individuals, which exceeds the PBR (1.5) of the California/Oregon/Washington sperm whale stock. Exceeding the PBR usually would lead the Commission to recommend that the Service reconvene the take reduction team. However, sperm whale entanglements in the California drift gillnet swordfish fishery are infrequent and the coefficient of variation for the mortality estimate is relatively high (0.95), which indicates the take estimate has considerable variability. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service first verify that compliance with the measures of the 1997 take reduction plan for sperm whales remains at a high level and monitor any changes in fishery effort that might systematically affect entanglement risk, and then reconvene the take reduction team only if either of those efforts reveal deficiencies.

### Harbor seals

Abundance estimates for harbor seals along the Oregon and Washington coasts and in Washington inland waters currently are more than eight years old and are considered outdated based on standards that the Service has set and the Commission supports. Those harbor seals are taken in both gillnet and trawl fisheries, and new aerial surveys to estimate abundance are needed to evaluate the significance of such takes. The Commission understands that the Service has planned and requested funding for both harbor seal and harbor porpoise surveys in this region in recent years but the surveys were not funded. The Marine Mammal Commission commends the National Marine Fisheries Service for recognizing the need for these surveys and recommends that the Service continue to plan and request funding for the necessary aerial surveys to estimate abundance of Pacific Coast harbor seals, but also consider alternative assessment approaches (e.g., boat- or land-based surveys, use of index sites) to update stock assessment reports for harbor seals along the Pacific coast.


### Pacific Islands cetaceans

The Commission acknowledges the efforts of the Service to survey and generate abundance estimates for many of the cetaceans in the Hawaiian Archipelago and Palmyra Atoll. Still, much more remains to be done to meet the objectives of the Marine Mammal Protection Act, particularly to assess cetacean stock structure around remote Pacific island groups such as American Samoa, Guam, the Northern Marianas, and Wake Island. Information on the stock structure of three

species—melon-headed whales, pantropical spotted dolphins, and rough-toothed dolphins—has been published recently or has been presented at recent meetings of the Pacific Scientific Review Group. All three species face threats from anthropogenic interactions, including fisheries interactions and shooting, and management efforts are more likely to be effective if stock structure is accurately described. Therefore the Marine Mammal Commission recommends that the National Marine Fisheries Service review all available information on stock structure for Pacific Islands stocks of melon-headed whales, pantropical spotted dolphins, and rough-toothed dolphins and update the stock assessment reports accordingly.

Please contact me if the Commission can support in any way the Service's efforts to improve these important stock assessments.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director

cc: Shannon Bettridge

#### References

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To: File **LCP-6LJS-14-0607-1, CDP # 6-14-0691**

From: John Leek

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

Dear Coastal Commission,

San Diego bases the harmlessness of closing the Pool on its own negative declaration that there will be no effect. Then why must you do an ineffective thing? The answer given before the Planning Commission was, the rope barrier is hard to enforce and is "only 95% effective".

Since the Coastal Commission already approved that effective rope closure 2 years ago, a final violation of its principles and basic goals might seem relatively harmless, except to its public image and ability to hold other unprofitable beaches open to the public in the future.

In 2012 the Commission required the City to gather data to show the value of the year round rope barrier. First year's rope barrier data was submitted this May to Local Staff, but it was not required to be looked at, only the synopsis published. I obtained a copy containing the raw data and a set of 22 photos with titles. The pictures tell the story. Closure can be deemed harmless because the rope barrier had already effectively closed the beach.

Three of the photos were of a time somebody cut the rope. Cost to the City was not indicated. Four photos showed seals or people or both. Four other were titled "Seals across the rope". Eleven photos were titled "Rope effectiveness". All were rendered here in grayscale, since color often scans badly in reports.

1. Category – photos of people and seals: Title, "No people or seals" 6/24/2013



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2. Category – photos of people and seals: Title, "People and seals" 6/22/2013



3. Category – photos of people and seals: Title, "People and seals" 6/22/2013



4. Category – photos of people and seals: Title, "People no seals" 6/29/2013



5. Category Seals across rope: Title, "seal across rope" 12/08/2013

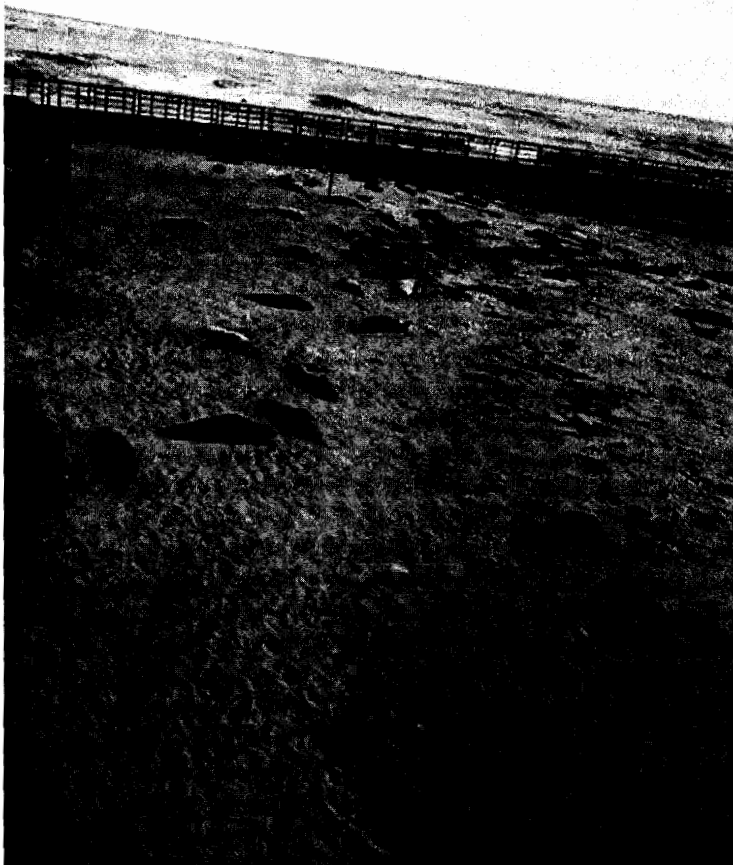




6. Category Seals across rope: Title, "seals across rope" 3/2/2014



7. Category Seals across rope: Title, "seals across rope" 4/27/2014



8. Category Rope Effectiveness: Title, Rope effectiveness 1-21-2014



9. Category Rope Effectiveness: Title, Rope effectiveness 2-2-2014



10. Category Rope Effectiveness: Title, Rope effectiveness 3-16-2014-1 (Shell Beach)



11. Category Rope Effectiveness: Title, Rope effectiveness 3-16-2014-2



12. Category Rope Effectiveness: Title, Rope effectiveness 3-16-2014-3 (South Casa Beach)



13. Category Rope Effectiveness: Title, Rope effectiveness 9-2-2013-1 (Shell Beach)



14. Category Rope Effectiveness: Title, Rope effectiveness 9-2-2013-2



15. Category Rope Effectiveness: Title, Rope effectiveness 9-2-2013-3 (South Casa Beach)



16. Category Rope Effectiveness: Title, Rope effectiveness 9-29-2013-1 (Shell Beach)



17. Category Rope Effectiveness: Title, Rope effectiveness 9-29-2013-3



The research shows in the pictures – the rope barrier effectively limits the access to standing behind a rope and so people wanting to reach the shoreline crowd onto other beaches. These pictures are what the researcher chose to submit to show effectiveness.



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GRAY DAVIS, Governor

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST/DIST.

Tue 12e

*Go Boaltt  
459-7010*

Filed: 1/3/01  
49th Day: 2/21/01  
180th Day: 7/2/01  
Staff: LRO-SD  
Staff Report: 3/1/01  
Hearing Date: 3/12-16/01

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-00-126

Applicant: City of San Diego, Park and  
Recreation Department

Agent: Robin Stribley

Description: Establishment of the "Seal Rock Marine Mammal Reserve" on a permanent basis over 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; and, installation of signage for identification purposes and for public education and information.

Site: West of Coast Boulevard, between Children's Pool to the south and Shell Beach to the north and northwest, La Jolla, San Diego, San Diego County.

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed marine mammal reserve with a number of special conditions. The proposed project raises the issue of conflicts between public access to the ocean and protection of the harbor seals that use the area as a haul-out location. As proposed, establishment of Seal Rock as a permanent marine mammal reserve will prohibit public access (swimming, scuba diving, tidepooling, etc.) in the water for a large area surrounding the rock and it has not been documented that establishing the area around the rock as a reserve will afford any more protection to the seals than signage and a good docent program. In addition, establishing Seal Rock as a permanent marine mammal reserve would be inconsistent with the state tidelands grant (Chapter 688) which specifically calls for the absolute right of access to the water. Thus, the Commission cannot approve this area as a permanent marine mammal reserve. According to State Lands Commission staff, it is not possible to make this area a permanent reserve without first amending the tidelands grants.

(over)

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are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Permit Limitations. The permitted marine mammal reserve shall expire five years from the date of Commission action. Any future proposal to continue the area as a reserve shall require another coastal development permit.

2. Interpretive/Identification Signage. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director final plans for the proposed identification, information and education signage related to the proposed marine mammal reserve. The proposed signage shall consist monument signs or wall signs, not to exceed eight signs total. ~~No freestanding signs shall be placed on sandy beach at Children's Pool Beach. No tall, free-standing pole or roof signs shall be allowed.~~ Said plans shall be subject to the review and written approval of the Executive Director.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Revised Boundaries for Marine Mammal Reserve. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a revised site plan which includes revisions to the boundaries of the proposed reserve such that the reserve shall extend 100 feet to the east and south of Seal Rock, as identified in Exhibit No. 2 (Site Plan/Revised Boundaries of Seal Rock Marine Mammal Reserve Pursuant to Special Condition No. 3).

The permittee shall undertake the development in accordance with the approved site plan. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the site plan shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

To:  
California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

I have read the recommendations of local staff allow closing a world recognized public beach. It goes against every purpose and goal of the Coastal Commission.

1. Public access is not a resource of secondary significance below building a tourist attraction by altering the natural behavior of harbor seals, no matter how well meaning.
2. Public safety is not a resource of secondary significance below solving local self-inflicted management problems for San Diego.
3. An Act of the Legislature to entrust a tidelands to safe ocean swimming by children is not a resource of secondary significance below any non-emergency created by San Diego's incompetence, real or feigned.
4. There is no biological value in concentrating a colony of semi-domesticated carnivores between 2 state Marine Protected Areas. Quite the contrary.
5. If the commission gives indication that public beaches can be picked off one by one by nationally based special interest groups packing the house at hearings, then such will become the Commission's new way of doing business.
6. If the Commission feels a set of seals is making the wrong choice about the stress of living among pesky people, it should fund moving them to some safe place, like Northern California. But don't ask the locals up there first.

Kay Stafford

La Jolla resident

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To:

California Coastal Commission c/o [brittney.laver@coastal.ca.gov](mailto:brittney.laver@coastal.ca.gov), [Diana.Lilly@coastal.ca.gov](mailto:Diana.Lilly@coastal.ca.gov)  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-6LJS-14-0607-1

Dear Ms Laver,

I am president of the San Diego Freedivers, a large dive club devoted to spearfishing in San Diego. I and our board are very concerned about the advocated closure of Children's Pool for a large part of the year, encouraging the City to make it unlawful to set foot on the safest ocean entry and exit beach in San Diego. This is based on unsubstantiated "danger" to a fairly recent colony of harbor seals on an artificial beach created by sand entrapment behind a sea wall. That is contrary to Commission purposes, policies and intents.

1. The seal colony is a fairly recent (20 years old) implacement of rehabilitated harbor seals on an artificial beach created by sand entrapment behind a sea wall.
2. The alleged danger to these animals is unsubstantiated by any scientific studies and is belied by their increasing numbers every year.
3. No consideration is given to the violation of sections of the State Constitution.
4. Unlike the previous abandoned Seal Rock Reserve, no exception is given for fishermen demonstrably pursuing the right to access and fish in those trusted waters.
5. No exception is given in the proposed law for emergency exits.
6. The right to fish and access for that purpose is also clearly called out in the 1931 land grant trust.
7. The text of the permit would find public access and public safety to be resources of secondary significance, compared to the value to California of enhancing seal colonies on whatever beach seals end up on.
8. The population of seals is at record levels, estimated in a recent federal survey as possibly about to exceed the carrying capacity of their environment. That will mean they will spread. They have learned that people don't eat seals. That is all they need to know. We taught them that and now must suffer for it?

Ryan Sweeney

San Diego Freedivers - President

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LCP-6LJS-14-0607-1, CDP # 6-14-0691

Bad science and census by the federal government have mislead everybody, about our seal population. The Commission does not have enough information to proceed.

National Marine Fisheries Service (NMFS) is charged with keeping track of marine mammal populations but has withheld attention to common animals like seals and sea lions. I have attached a letter from the Marine Mammal Commission to National Marine Fisheries criticizing the 2012 Stock Assessment Report (SAR).

The Commission looked at harbor seal data but only found numbers for Oregon and Washington.

Quote:

*"Abundance estimates for harbor seals along the Oregon and Washington coasts and in Washington inland waters currently are more than eight years old and are considered outdated based on standards that the Service has set and the Commission supports."*

The heading of the letter was scathing.

Quote:

*"Unfortunately, stock assessment information often is not sufficient to meet the requirements of the Marine Mammal Protection Act. Many stock assessments lack even the most basic information such as up-to-date minimum abundance estimates, which are necessary to calculate the stocks' potential biological removal (PBR) levels."*

*Estimates of serious injury and mortality rates are lacking for even more stocks. In the absence of such information, managers cannot confidently determine the status of these stocks, the extent of impacts from human interactions, and whether management measures intended to protect them are effective."*

*In the end, the lack of information means that managers are more likely to err by over- or under-protecting marine mammal species, either of which can be unnecessarily costly."*

That was the exact same introduction in a similar letter of November, 2011. Nothing had changed.

Real counts in California for harbor seals are also old, but the numbers are rehashed to look new. An aerial survey probably was last done in 2005, but not in Southern California. Look at the results of census prior to 2005.

An amazing success story.

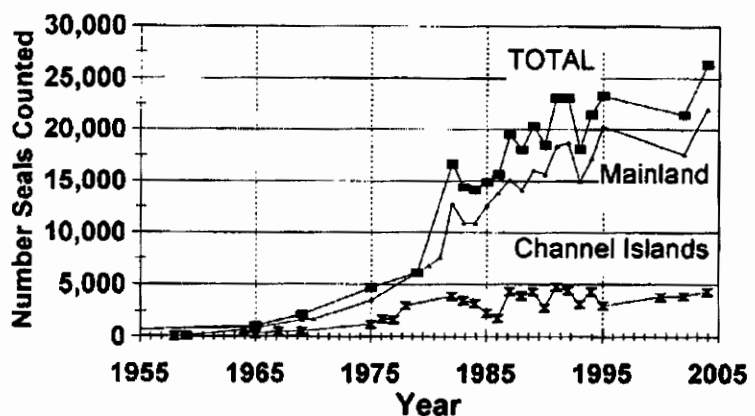


Figure 2. Harbor seal haulout counts in California during May/June (Hanan 1996; R. Read, CDFG unpubl. data; NMFS unpubl. data from 2002 and 2004 surveys).

Now look at SAR for 2010. But note SARs for 2012, 2012, 2010 all cite "unpubl. data; Lowry et al. 2008, NMFS unpubl. data from 2009 surveys".

Unpublished data? Wasn't it any good? Since the trend data is all derived from mathematical regressions of old data, it is pretty flat.

Seemingly from 2004 to 2010, we lost 7000 seals but no alarm was sounded. (Because it was just math)

The SARs of 2008 on harbor seals does not mention real field data either, only Hanan's last aerial count in 1995. The flat population trend was explained in the 2005 SARs and was included in every SAR thereafter "The population appears to be stabilizing at what may be its carrying capacity and the fishery mortality is declining. There are no known habitat issues that are of particular concern. When data previous to 2008 was discarded, previous rapid growth of harbor seal population was hidden, making it appear California harbor seals now have a growth trend of zero.

You have to go all the way back to SAR 2000 to find mention of an actual count.

"An aerial survey in May/June 2000 was successful in obtaining a new haul-out estimate for the Channel Islands in southern California (Fig. 2), but weather and other factors precluded a complete survey of the entire state".

So in 2000, the number of harbor seals in the Channel Islands was counted, but for the mainland the data entry was ZERO. To this day, the absurd idea lingers that there are no harbor seals on the Southern California mainland but they are all in the Channel Islands, except at Children's Pool where you don't need an aerial survey to make a count.

Without aerial surveys, counts are made from fishing boat observers. They spot seals in the islands, they don't go close enough to shore to spot seals on beaches. ZERO counted on the mainland.

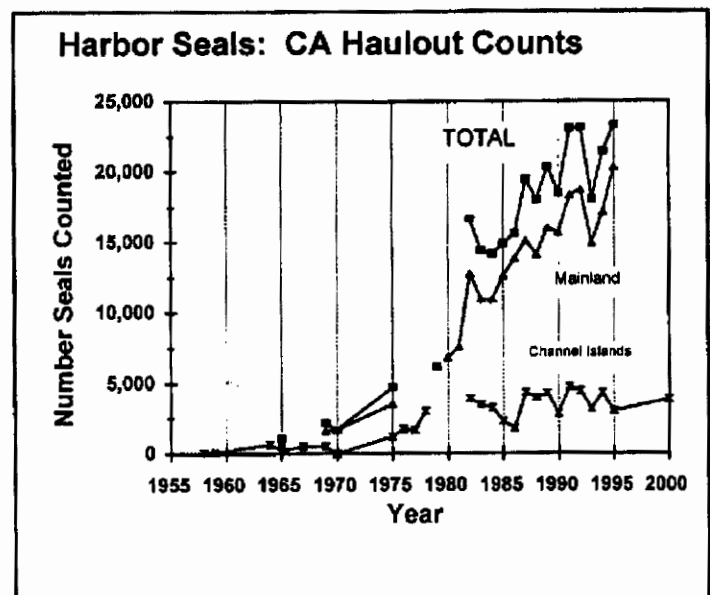
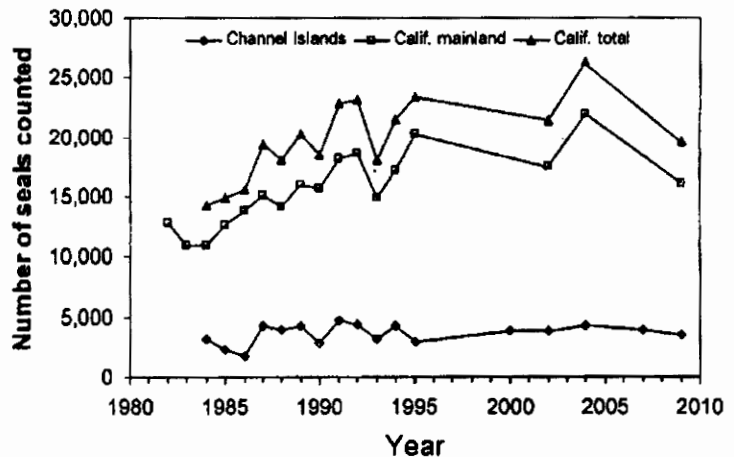
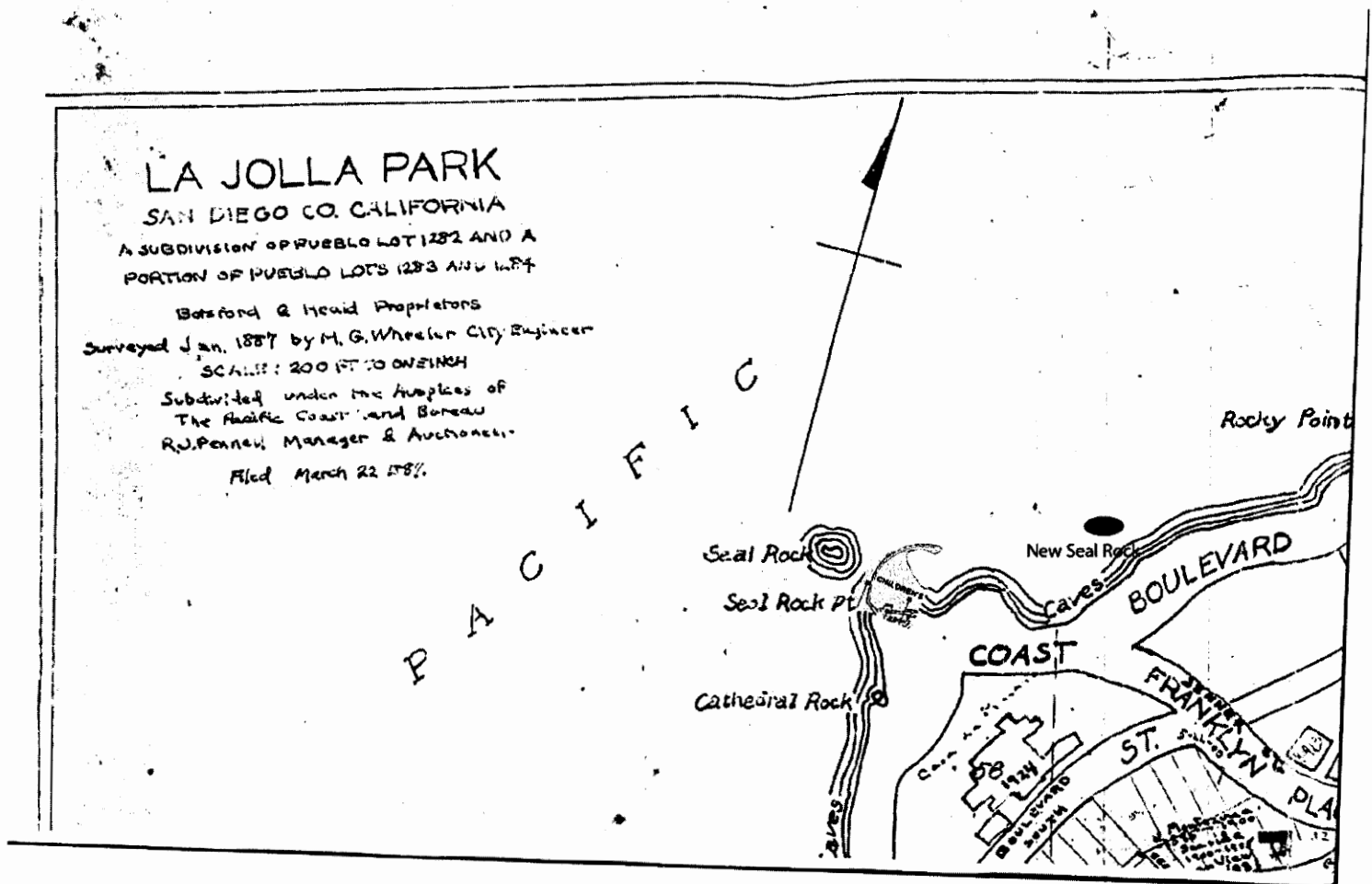


Figure 2. Harbor seal haulout counts in California during May/June (Hanan 1996; R. Read, CDFG unpubl. data).

# The Myth of Seal Rock

To illustrate the difficulty separating truth from urban myth at Children's Pool, we cite the claim that the Children's Pool sea wall was built over an ancient seal habitat called "Seal Rock" and the seals have come home from their diaspora. Below is the 1982 geodetic map from the La Jolla Historical Society museum, with an insert from a 1989 City map. Note when the sea wall is shown to scale, this old Seal Rock is way outside the Children's Pool, but where was it?

Divers know – the end of the reef behind the sea wall is high at its westmost point, and anyone can see surf break out there at low tide. 100 years ago it was above the surface.



Back then it was mentioned the locals could hear seals barking all the way to shore. Harbor seals don't bark. Those were sea lions.

**From:** Portia S. Wadsworth  
**To:** Laver, Brittney@Coastal  
**Subject:** Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1  
**Date:** Tuesday, July 29, 2014 2:25:04 PM

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Dear Brittney,

My comment is simple, but heartfelt, against any closure of our treasured Children's Pool.

Let hearts be open and and let the area known as Children's Pool be open as well. The seals will find wild waters more to their native way of life, and their young will appreciate growing up in waters not 'protected' by humans. After 50 years in La Jolla with my children enjoying the pool, searching for cave creatures, snorkeling, etc.; now my grandchildren are unhappy to see the area blocked off to them.

The seals are becoming a nuisance and do not add anything that cannot be found at Sea World, TV, internet, etc. The fish are disappearing as we speak, and sharks are finding tasty treats near the CP. Of course, the waters are becoming a health issue, and the amounts of 'pups' being born will not help solve any of the above problems.

Please consider the personal sides of those opposing the closure and open our hearts and let the pool be open as well as our 'au natural' coastline.

Thanks for your consideration,

Portia S. Wadsworth

Dear Coastal Commissioners, I am opposed to closing Children's Pool Beach because . . . Children's Pool is a man made human recreation area donated and protected by State Law to provide safe and convenient access to our coast. There is no scientific evidence of harm to the animals that willingly share this beach with their human admirers. The seal colony is growing rapidly. The colony has spread to surrounding beaches endangering beach access there as well. The City of San Diego has a fifteen year track record of mis-managing the Children's Pool. This closure plan continues that failing effort. It will have grave consequences for human safety when the safest ocean beach in San Diego is closed to the people who actually enter the water and not just stand by and look at it. Please deny the City's application to close the beach and the associated Local Coastal Program amendment because it goes against everything the Coastal Act was intended to protect. COASTAL ACCESS is a significant resource that must be defended from all threats from public and private development. At Children's Pool access to the safety of this sheltered cove is THE MOST SIGNIFICANT RESOURCE.

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**Laver, Brittney@Coastal**

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**From:** jimleek <jim@roadq.com>  
**Sent:** Wednesday, August 06, 2014 4:48 PM  
**To:** Laver, Brittney@Coastal  
**Subject:** LCP-6LJS-14-0607-1, CDP # 6-14-0691

TO: California Coastal Commission

7575 Metropolitan Drive Ste 103

San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

There will be movies at the hearing. They are a favorite way to substitute emotional misrepresentations out of context to replace science or documentation. We can only ask that you remember if a human is told they are going to see something, they will see it. It is human nature, we are all prey to it. You must, instead of seeking to "get it", view video evidence with your eyes and rational mind alone.

The favorite is the product of the Wan Conservancy which filmed the beach 24/7 until it could catch something to try to make a mini-Blackfish out of.

The lurid description is found in the staff report is as follows: Page 13 and repeated on Page 20.

*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.*

Especially here, please look carefully with your own eyes. A couple of drunken women clearly do approach and annoy seals. The seals tolerate proximity of a yard or so, as our acclimated seals do. At no time is a seal touched. When at last, one tries to get a picture standing over one, so their camera would give the illusion the woman was astride the beast, he finally shuffles off to the water. Why didn't he bite her? Apparently it was not that big a deal to him.

In the staff report, San Diego's account claims this happened over several nights. The same women returning in the same state of inebriation, the camera monitors never thinking to call police until the suspects had safely left the scene? This story is clearly false, yet it was put in the staff report with no reservations attached. It is an insult to anyone's intelligence.

And the eventual result of this device that stampeded our officials? It worked on our former Mayor, but when two hapless women were hauled into court, they proved they were not the suspects, and the case was dismissed "for lack of evidence". The Wan Conservancy had spent \$45,000 on the camera expecting to sell it to San Diego and recoup its costs. They have been disappointed.

You will see other film clips introduced as proof of abuse – so look closely. Do they not show animals sleeping with people all around? Does it not show earned trust? Remember, you not only are being asked to impose punishment on all of San Diego for unsubstantiated "crimes", but on every community that will lose beaches this way when they could have found ways to share.

This closure proposition is in no shape to be brought before a State level deliberative body. A history of mismanagement of one beach must not translate into an emergency for all California. The tools have been there for San Diego to solve its problems within the law for 10 years. The CCC is an inappropriate venue for a dodge around state laws. Just say no, "take it back and fix it yourself".

Jim Leek Chico, California [jim@roadq.com](mailto:jim@roadq.com)

## **Laver, Brittney@Coastal**

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**From:** ddtjj @dslextreme.com <ddtjj@dslextreme.com>  
**Sent:** Wednesday, August 06, 2014 4:52 PM  
**To:** Laver, Brittney@Coastal  
**Subject:** Fwd: Closure of the CP: LCP-6LJS-14-0607-1, CDP # 6-14-0691  
**Attachments:** MMC letter 2012.pdf; Request for Information on Pinnipeds in California.pdf

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the Commissioners:

There is not enough accurate or truthful information for the Commission to proceed. The CDP sets a dangerous precedent, yet is based on flimsy evidence, and no documentation of the claims San Diego is making. This project would have widespread and permanent effects on the Commission's ability to maintain even present levels of public access.

San Diego has seized on a weakness in federal pinniped census caused by neglect of duty in the National Atmospheric and Oceanographic Administration (NOAA). San Diego rests its urgency on claims there are no other seals in Southern California that matter except for those in La Jolla. If you allow the city to make this premature decision, the decision will come back to you both due to its negative repercussions locally but also due to others using this decision inappropriately elsewhere along the coast. Just as we are warning you about this increase, NOAA has been notified concerning the increase in pinnipeds by the scientific oversight group, the Marine Mammal Commission (see accompanied files).

The facts are that the Harbor Seal population has increased from the low double digits to the mid triple digits in the last ten years. This is reflected in what scientists are observing up and down the West as well as East coasts.

NOAA scientists have been baffled by hordes of starving sea lions all this year. This increase in sea lions has been noted only one half mile north of the Children's Pool. The City of San Diego has implemented a policy due to this tremendous parallel increase in Sea Lion population (along with the Harbor Seals). They put in a gate along the cliffs so that people are now able to walk down to where large numbers of Sea Lions have moved in and caused a very irritating odor. This odor has had a negative effect on patrons visiting the nearby restaurants.

It is only a matter of time when the effects of the increased Harbor Seals at the Children's Pool will affect the community and bring out similar ire and similar demands. The Commission will hasten that day by closing down the Children's Pool. The fence which the City built along the La Jolla Cove cliffs essentially closed the cliffs to people and it was that restriction to public access that drew the Sea Lions onto the cliffs where they had previously not made access due to the presence of people along the cliffs. The same holds true at the Children's Pool. With the Cities' closing off of the popular access ramp, allowing extremists to harass users of the CP and the rope giving the appearance of a closed beach, the Harbor Seals have in like manner become attracted to the mostly unused beach.

### **CONCLUSION:**

The Commission needs to recognize the Children's Pool closure scheme is a radical solution to one town's

social and economic self-inflicted wounds and send it back to San Diego, for them to solve their problems locally, within the confines of existing law.

Just before this call for data NOAA made its stand on the matter of Children's Pool.

FROM COURT RECORDS:

On September 14, 2004, the City Council once again held hearings on the Children's Pool. Addressing the Council that day was James Lecky of the NMFS. He advised the Council that harbor seals are a healthy species which are growing in population and not in any way endangered or threatened as a species. In fact, as the population of harbor seals expands "[t]hey are causing problems ... up. and down the coast in terms of invading harbors, causing property damage and limiting access to beaches that are important for other " public uses." He then told the Council: "The tools that are available to the City and other local governments agencies really reside in [Marine Mammal Protection Act] §109(h)." He said "animals can be moved out of an area if they are either presenting a public nuisance or they're causing a public health hazard." It was his position that the seals at Children's Pool were a local issue for the City to resolve. [Exh 129.]

At the end of the meeting, the Council voted "to design and permit the sand removal project and open the pool for year-round use. Direct that the opening of the sluiceways in the Children's Pool be evaluated as an alternative method to obtain the sand removal and tidal flushing as part of this effort. Direct that the rope barriers and sign posts be immediately removed to restore public access to the area and that new signs be placed."

That is a curious way for the head of Protected Resources for NOAA Southwest to talk if there were really only one harbor seal colony in Southern California. But then, he had access to inside information. The alternatives to solve the problem the City Council agreed on in 2004 were abandoned later and now San Diego comes crying to the Coastal Commission to let it take what looks like an easy way out, though it will re-ignite and exacerbate the root problems in the long run. But then it can be attributed to the Coastal Commission. SEND IT BACK. The higher courts do that all the time when a case comes before them prematurely.

David Johnson  
4222 Wightman Street  
San Diego, CA 92105

August 5, 2014

California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Drive Suite 103  
San Diego, CA 92108-4402

**LCPA #LCP-6-LJS-14-0607-1 Children's Pool**

Dear Commissioners,

The City of San Diego plans to close the Children's Pool in La Jolla between December 15 and May 15 in order to address what they call "conflicts between people and seals". The City must amend the certified Land Use Plan (La Jolla Community Plan) in order to stop beach access at Children's Pool Beach during this time period. Please do not approve the amendments to the LUP based on the following:

The proposed modifications to the LCP are illegal. The local CCC staff report regarding **LCP-6-LJS-14-0607-1** is very similar to the local CCC staff report, regarding application **CDP 6-14-0691**. Neither the State nor the City is authorized to enforce federal laws regarding marine mammal protection under the MMPA 109(a):

**Section 109. Federal Cooperation With States 16 U.S.C. 1379**

**Sec. 109. (a) [STATE ENFORCEMENT OF STATE LAWS OR REGULATIONS PROHIBITED WITHOUT TRANSFER TO STATE OF MANAGEMENT AUTHORITY BY SECRETARY.] —** No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1).

Also the CA state Constitution guarantees access. The local CCC staff is supporting the City's misguided plan of seasonal closure forgetting that it violates **Section 4 of Article X of the California Constitution**:

**CALIFORNIA CONSTITUTION  
ARTICLE 10 WATER**

**SEC. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for**

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COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

The CCC report relies on the validity of the City Negative Declaration. The ND report should have been done by an independent agency. The ND does not address transportation impacts such as parking or "cumulative impacts" to the environment.

Based on my above rebuttal to the local CCC staff report, I respectfully ask that the CA Coastal Commissioners DO NOT APPROVE Amendment No. LCP-6LJS-14-0607-1.

Thank you for taking the time to read this rebuttal letter. Beach access is not to be taken lightly as you know and it affects many people. Children's Pool is a special place for many generations of San Diegans. Please do not surrender it to special interest groups.

Sincerely,

*Marie Hunrichs*

Marie Hunrichs

mariehunrichs@cox.net

8/4/14

Brittney Laver  
Coastal Program Analyst  
Ca Coastal Commission

Children's Pool Beach Closure Project CDP # 6-14-0691,  
LCP-6LJS-14-0607-1 in

The situation at Children's Pool is a complicated one, that cannot be understood in the absence of understanding of its history. The history from its 1931 creation until the 1990s is very murky, but better documented since then. I was dismayed in the extent that the California Coastal Commission staff recommendation (of approval with several qualifications) seems to have swallowed so much of the misinformation propagated by the city, namely:

1. No mention of the (dozens to hundreds? At least from 1992 to 2005) of harbor seals released by sea world, that bear witness to the total artificiality of the seal population. With this omission, they imply that it was a natural process of seal population increase by birthing. I don't see this point has been brought to their attention in correspondence they have included in the public record attached. It seems to me the cc doesn't recognize how far the city has gone, it creating the situation. The Friends of the Seals can be seen to have been artificially creating this situation in collusion with the city, from the first establishment of the temporary Seal Rock reserve, through the mysterious rerouting of released harbor seals, and disgraced former mayor Filner's "emergency" closure and citations, and present year round rope. This visual closure cannot be denied effectively by signs stating the pool is open- at least to the casual observer that constitutes the majority of visitors. As long as the rope exists, seals will haul out and multiply until the Marine Protected Areas are exhausted of seal food, and seal predators will thrive, and accidentally assault human ocean goers. A Solana Beach dentist died of blood loss after a great white shark bit his leg while he was swimming there, with a group of fellow triathletes, a couple years ago. A pair of seals was noted refusing to leave the beach there. He was probably the only shark bite fatality in the SD area since the forties. While the woman's body that disappeared off Ocean Beach not so long ago had a large shark bite noted, but I believe it was decided that it had occurred post mortem. Also witness the current record number of adult great white sharks, related to the increase in harbor and gray seals in the vicinity of Cape Cod, Massachusetts in recent years.

2. Page 2 of the staff report regurgitates the city's position that seals began hauling out in greater numbers in the 1990s, without regard to point 1 above, implying that the rope was strung to prevent the public from the mistaken idea that NOAA law requires a 50' separation. This concept was denied by Chris Yates, representing the National Marine Fisheries component of NOAA. He categorically stated in a Jun 13th, 2014 letter to Ken, that shared use was their preferred option, no specific distance exists, and specifically denied that the City has authority to enforce laws or regulations pertaining to marine mammals. Mr. Yates, in his capacity of Assistant Regional Administrator for Protected Resources at NMF, repeating a Jan 2nd, 2014 letter to Todd Gloria and the City Council, (cc-ed to K. Brown at the California Coastal Commission), informed them that the law does not require set separation distances, or beach closures. Emphasizing again the importance of education, and reminding the City they have no authority to enforce federal marine mammal regulations, even if they exist.

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3. One of the most reliable histories of the pool must be the court finding presented in the O'sullivan vs SD case, statement of decision by superior court judge William Pate in August 2005. According to that document, on pP6, "there was no evidence of any concern about or discussion of seals in the Children's Pool area until July 1992, when Jim Antrim of Sea World discussed creation of a seal reserve in the vicinity of the rock off Shell beach (in front of 939 Coast Blvd)", with Barbara Bamburger of the Friends of the Seals organization". The reserve (beginning 200' east of the seaward entrance to children's pool) passed city council unanimously Feb. 1993 (including the compromise area that goes practically to the beach, presented by Barbara). The staff report assumes as fact that because seal rock was so called in the 1930s, and CP was built on "seal rock point", seals were hauling out there prior to the pool. There is no evidence for that, except for descriptions of "seals barking"(only sea lions bark) on a second seal rock, currently underwater, then at least awash at low tide. See "Myth of Seal Rock" reference. Seals being the timid animals they are, may have seldom or never hauled out on what little beach existed at the site of the pool then, being limited, as I noted during my first dives there in the late 1970s, to offshore rocks. I never saw seals on the beach then. On pP11, the NMFS informed the city that a small number of seals were hauling out on seal rock in 1994, and none hauling out on cp beach. The point was merely so named due to the proximity of the seal rocks. The first count referenced by Judge Pate was in 1996, max 62 on the presently above water seal rock in April, while max 120 were counted on the cp beach. Perhaps they preferred the cp beach, sheltered from the prevailing NW winds as it is, to the rocks totally exposed to swell and wind. The first mention of barriers on the beach was in the City's Manager's report to the Natural Resources and Culture Committee (October 1997), stating that lifeguard had been maintaining "barriers" between the public and seals for a year and a half (since 1996). pP16 of the court findings, "to protect the public from being bitten (no evidence exists of that consequence), or being fined for disturbing the seals". This is on pP10. Unstated was that it made the lifeguard's job a little easier. **The factor undoubtedly drawing the seal to the beach was the presence of the barriers**, reassuring the seals of their security on the beach, **not the presence of the beach!**

4. The staff report states on pP 17 that NMFS data describes Children's Pool as the only rookery in San Diego and LA counties, with a protected rookery at Pt Mugu and Carpinteria. Reference to another protected haulout that has seen pupping is in one of the letters submitted. I have seen numbers of harbor seals hauled out in the multiple pocket coves off Pt Loma, and the Coronado Islands. Ms.Linder's master thesis on harbor seal populations describes the computer enhanced photo id based population estimate nearing 600, and describes the likelihood of individuals travel between haul outs on the Mexican Coronado islands, Children's Pool, and the Channel islands.

NMFS harbor seal information indicates harbor seals are known to travel hundreds of kilometers between feeding and pupping sites, and states an unspecified number of rookeries exist in the Channel Islands. I believe that pupping occurs at whatever haul out the nomadic seal happens to be on when birth is about to occur. The Children's Pool doesn't have a resident population, it's population consists of individuals transitory among haul out sites/rookeries throughout at least the southern part of California, and at least northern Mexico.

5. The staff report emphasizes that the City has determined that shared use has been ineffective in preventing harassment mostly in the form of flushing, implying that if the public is allowed on the beach, it will lead to pup abandonment. It states that pup abandonment has occurred there, but doesn't document it. No mention is made of the precocious nature of harbor seal pups, able to swim at birth, and breathhold dive for up to two minutes within 2-3 days of birth, according to NMFS published information.

6. The staff report makes no mention that **City actions have historically been as little, late and inexpensive as possible**. The trust requires the pool be used for a protected children's pool. Judge Pate found the city (pP21) in breach of the Scripps 1931 trust, on multiple counts.

a. The pool has been choked with sand, to the point it no longer protects bathers. The small amount of water still present is now in dangerous proximity to a semi-permanent rip. Lifeguard

rescues had increased, until the point in time point c (itemized below) occurred. The City has made no attempt to correct the situation, by ever either removing the built up sand, or opening the previously existing sluiceways, or recommended by it's staff on numerous occasions.

b. The City violated the right of the public to access the beach by roping of the beach to the public from 1999 to 2005, according to Judge Pate's decision (pP27). A rope across the beach at mean high tide point has convinced many of the public (especially the visiting tourists, unacquainted with cp history) that the beach is closed. The visual barrier psychologically overwhelms the signage. The year round "advisory rope" continues into the present.

c. The City erected barriers have lead to seal haul out and presence that has allowed fecal possibly pathogenic bacteria from them to accumulate until the bacteria level has increased to the point that the county has declared the pool under an advisory status. The county today classifies Children's Pool as polluted 24/7 from 1997 to the present (pP23). State Law AB411 passed in 2003 changed the status from "Closed", to "Advisory", as the bacteria were not due to a human sewage spill. The second most polluted area in the county ocean is the Tijuana River Slough, polluted an average of 149 days a year. In August 1998, the Center for Disease Control advised the city that seals can transmit disease to humans. Some carry tuberculosis and giardia. Fecal contaminant bacteria and viruses are also of concern. A danger to seals themselves exists. Two outbreaks of disease in the Point Reyes National Seashore resulted in the deaths of 90 pinnipeds in one documented case.

d. On September 14th, 2004 James Lecky of the NMFS advised the city council that harbor seals are a healthy species, whose population is growing, and not in any way endangered or threatened, causing problems up and down the coast, invading harbors, causing property damage and limiting beach access. They can be moved out of an area if either presenting a public nuisance, or a public health hazard. He suggested the seals were a local issue for the City to resolve. Judge Pate made these observations on pP 19, noting the City had taken no meaningful steps to return CP to a safe, unpolluted or usable state since that meeting.

The Superior court would have forced the City to rectify the above 3 conditions, except that the City prevailed upon the California Legislature to pass SB 428. The substantive addition consists of the 11 bold words below:

"That said lands shall be devoted exclusively to public park, **marine park for the enjoyment and educational benefit for children**, bathing pool for children, parkway, highway, playground and recreational purposed, and to such other uses as may be incident to or convenient to the enjoyment of such purposes."

I find this city and legislative action incredibly cynical. To escape their legal obligations, the City does not think twice of maintaining it's dangerous status quo. Surely the Coastal Commission cannot seriously consider rubberstamping this, denying the beach to the public for 5 of seven months, to maintain a situation the City has manufactured by denying citizens the beach access the state constitution guarantees, by the coastal commission, whose job it is to uphold beach access rights.

7. There exists the crumbling remains of a cement ramp, that goes through the currently locked gate next to the landward end of the seawall, down to the high tide line, which up until the 1940s provided wheeled vehicle access, from trucks to wheelchairs. What remains of it is now covered with a badly eroded clay ramp built in the late 1980s. Had San Diego been maintaining the pool, opening the sluices, removing the sand, and maintaining the ramp, the Pool would be the only shining example of disabled American direct easy access to the real ocean, in southern California. With our large disabled military population crying for the saltwater therapy and scuba access, and in the light of the currently shockingly inadequate veterans medical care facilities, it is inexcusable that our city repeatedly attempts to escape it's responsibility to it's citizens, in order to establish a poorly thought out seal colony in this unique gift setting. Children's Pool allows direct access to 15' deep ocean, through a channel at the end of the wall where waves predominately do not break, in close proximity to a sheltered gradually sloping

sand beach. Do not allow the handicapped to continue to be laboriously carried in their wheelchairs down the two flights of many steep steps that is currently the only access to Children's Pool. This has to occur within an environment so often comprised of the ill-informed (or misinformed by seal activists) public, shouting harassment, that a City Ranger has had to be stationed there for several years now. San Diego is already famous for it's large homeless veteran population. Should it now continue to neglect it's handicapped veterans, in favor an artificially encouraged pinniped population, feeding in our finally established neighboring Marine Protected Areas, with it's attendant pollution, smell, and predator problems?

8. According to the Richard Belesky, ranger at cp, in his 5/18/2014 email he observed 54 pups born on Children's Pool beach, + 13 in an alcove on Pt Loma, + 8 stillbirths, + 1 pup found in the cove = 76 pups born in 2014. He goes on to say about 30 of the 76 were born on South Casa Beach. **The Friends of the Seals**, part of the **pro-seal activist group** that Valerie O'sullivan alleged in her suit (decided in 2005 by Judge Pate, who agreed " certain individuals have engaged in uncivil and occasionally illegal conduct" that "conducted themselves in a manner that effectively denies access to users of the pool, beach and adjoining areas") **are on public record as having as their goal, the closure of all SD beaches, on which seals haul out.** This is an influential group, with some wealthy and influential members. They were on good terms with former mayor Bob Filner, and were involved with supplying the web cam that recorded a widely published episode of two girls harassing harbor seals at the pool one night. That episode (widely suspected of being staged) lead directly to an "emergency closure" of Children's Pool, every night for months. I and others fear that this measure under coastal commission consideration now, is just a stepping stone on the way to closure of many of the other San Diego beaches and coastal areas on which pinniped have been observed to haul out and give birth, including the Cove. The political actors have changed, but City policy seems to persist. Their machinations resulted in a 10 year seal sanctuary on seal rock, but that was abandoned, in favor of taking over Children's Pool. Shared use by humans and seals worked well until the barriers of 1992 or so. San Diego thinks it can save money by closing Children's Pool, at the same time it does it's best to discourage and relocate another pinniped (California Sea Lion) population at the La Jolla Cove, less than a mile away. Just as has been done at the cove, the barriers must come down. We cannot enter the slippery slope closing any but the remote Pt. Loma coves already barred from land access, and heretofore utilized extensively by pinnipeds. The cost of a seal sanctuary you can walk to after dinner is too high, for these populations, their prey, predators, and the public. The National Marine Fisheries arm of the Federal National Ocean and Atmospheric Administration has repeatedly pronounced these populations are in no way endangered or threatened. They claim exclusive right to enforce their regulations. They deny that closing beaches is necessary for the good of the Harbor Seal species. The motivations for the actions San Diego is taking are obscure, but clearly not motivated by public good, for either the citizens, or the pinniped.

The City of San Diego needs to do its homework before declaring any of the beach closed to the public. I have shown above, that City sanctioned barriers, the aborted seal rock reserve, and have resulted in the haul outs and pupping at the Pool. A complete closure will doubtless lead to a further increase at not only the Pool, but also the neighboring beaches of South Casa, Wipeout, Shell, and the LJ Cove. The city has not even defined the meaning of the "Marine Park" it's state legislative bailout describes, has not grasped the effect of increased seal haul out and population increase will have on the marine resources of the Protected areas, or the effect on the already congested parking and traffic in La Jolla, let alone made any sort of plans to deal with it. La Jolla is a suburb

that has only two major entry and exit roads. Mission / La Jolla Blvd representing one, has been choked from a four lane to a two lane road by the multiple traffic circles the City recently imposed. A change of beach use and access of this requires a complete Environmental Impact Report AND mitigation plan before implementation. You, the California Coastal Commission, exist for and is the last resort, to require the adequate situational analysis and the planning this project requires.

All of the facts I have stated above can be substantiated, as most are documented. A few I have observed, and so noted. I have nothing against pinnipeds, do not want to drive them from our shores, and enjoy their company in the water. I only wish to return to the shared use situation that existed prior to the human meddling in the form of barriers that occurred during and after the 1990s.

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August 1, 2014

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PROJECT CDP # 6-14-0691, LCP-6LJS-14-0607-1

The City of San Diego plans to close the Children's Pool in La Jolla between December 15 and May 15 in order to address what they call "conflicts between people and seals". The City must amend the certified Land Use Plan (La Jolla Community Plan) in order to stop beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year through a Coastal Development Permit (CDP) application. Unfortunately the San Diego staff of the California Coastal Commission (CCC) recommends approval of the City of San Diego's amendment to the certified Land Use Plan and approval of the CDP for seasonal closure with 4 conditions. However, there are many inconsistencies, fallacies or exaggerations written in the staff recommendation:

*CCC staff report p. 11:*

*"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."*

One of those maps was a rendering and the other was a rough sketch on a real estate sales brochure. Seal Rock is actually about 100 yards offshore and is now a submerged reef. It is more likely that sea lions used the area since they bark and people heard barking in that time period. Just as people today interchangeably call seals sea lions and vice versa, people back then likely did the same. It does not mean the reef was actually inhabited solely by seals. If one looks at any winter photos of waves breaking on the reef at Children's Pool, one will know that the Children's Pool area was never a seal pupping area. Besides that, there is an area called Alligator Point, aka La Jolla Point. Does that mean there were alligators in that area?

*P. 11 continued:*

*"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."*

This paragraph is true but it neglects to point out that in the year 2000, CA Fish and Game (now Wildlife) advised the City that they had no authority to create a seal reserve on public trust tidelands. Reasons included were; violation of the State Constitution, preemption by Federal law and violation of the 1933 Land Grant Trust. Although attempts were made to put Children's Pool in the Reserve, the protections of the Children's Pool Trust prevented its inclusion.

*CCC staff report p.12:*

*"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 withdrawn CDP Application No. 6-05-098). 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."*

The court order to dredge the pool was not vacated contrary to the opinion of the City Attorney. A "marine mammal park" was never defined but there is no reason it cannot have clean water and clean sand for both seal and human benefit. What was stopped was the option to disperse the seals.

*CCC staff report p. 13:*

*"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, (continued on p. 14) harassing, kicking, and sitting on the seals. These egregious harassment events prompted the 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 jurisdictional boundary assumed at the time, the City's emergency permit was adequate to close the stairs leading to the beach but required Coastal Commission approval to close the actual beach. 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 Commission 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."*

The former City Mayor Bob Filner was approached by seal activists Jane Reldan and former CCC Commissioner Sara Wan to install a seal cam for seal research. The report states there were several nights of people "breaching" (whatever that implies) the rope barrier and intentionally harassing, kicking, and sitting on the seals. In fact there was only one occurrence of those women harassing seals which has been seen widely on YouTube. However, if you study the video closely, you will see that the claim of "kicking or sitting" on seals was exaggerated. The two women were hauled into court and the case was dismissed due to lack of evidence. Please see: <http://www.10news.com/news/first-people-to-stand-trial-in-a-seal-harrassment-case-in-san-diego-found-not-guilty-04022014>

*CCC staff report p. 14:*

*"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."*

Children's Pool has been historically accessed by human ocean users since 1931 when it was built and dedicated for human use. In a perfect world no harassment would occur but the incidents at Children's Pool are primarily incidental and rarely intentional. No seal at Children's Pool has been harmed from these incidents. People break highway laws daily, sometimes resulting in accidental human death. Should we ban people from roads? Sea World's secret seal release program helped stock this artificial colony by changing their rehabilitated seal releases to the Children's Pool area instead of the Coronado Islands and Point Loma.

*p. 14 continued:*

*"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 project is intended to eliminate the potential for harassment of the seals by the public during the vulnerable pupping season, and subsequently eliminate the adverse impacts that can result from such harassment events."*

The City is promoting unnatural habitat conditions by trying to remove reactions to sounds or visual stimuli from nearby human activities at the Children's Pool beach area. Seals were unlikely to establish rookeries at Children's Pool because of native people hunting or land



based predators. There was no beach suitable for a harbor seal rookery at this location prior to the building of the artificial breakwater. Instead, the local CCC staff is promoting the hysteria of possible pup mortality despite the fact it is exceptionally low at Children's Pool. Where is the data for seal mortality resulting from human use of Children's Pool? The CCC mapping unit confirmed the historic high tide line was at the base of the bluffs and only after construction of the breakwater was a beach formed at this location of the "Seal Rock Point".

CCC staff report p. 15:

### **C. MARINE RESOURCES**

*"Section 30230 of the Coastal Act states:*

*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."*

There are no current studies to support that this project "...will maintain healthy populations of all species of marine organisms..." Also an unnatural concentration of one species (seals), encouraged by the breakwater, will have a detrimental effect on all other marine organisms.

*p. 15 continued:*

*"In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contain policies regarding the protection of marine resources which include the following:*

*The City should limit public access in open space areas that contain sensitive resources to scientific or educational use. Access should be confined to designated trails or paths and no access should be approved which would result in the disruption of habitat areas. "*

The City should not be limiting access to a Park. This is a rewrite of history to avoid conflicts of City Charter Section 55 which protects dedicated park land. It is not "open space" in spite of what the City claims. It is a dedicated park, a playground and a bathing pool for children. This was confirmed by an act of the State Legislature in 1931. It is also now a marine mammal park.

*p. 15 continued:*

*"The City shall ensure the preservation of portions of public and private property that are partially or wholly designated as open space to the maximum extent feasible. Development potential on open space*

*lands shown on Figure 7 shall be limited to preserve the Park, recreation, scenic, habitat and/or open space values of these lands, and to protect public health and safety... "*

Again, this area is a Park not open space. The City states "Development... shall be limited to preserve the Park, recreation... and to protect public health and safety..." Children's Pool is a safe place to exit for any ocean users caught by changing ocean conditions. Lifeguards make rescues and depend on the protection of the breakwater to bring them into Children's Pool during rough ocean conditions.

*p. 15 continued:*

*"The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline..."*

The above paragraph states the City should also maximize physical access to and along the shoreline.

*CCC staff report p. 16:*

*"The project site is Children's Pool Beach, a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931. Children's Pool Beach is designated as "Parks, Open Space" in the City's certified Land Use Plan. Children's Pool Beach provides recreational and educational opportunities for swimmers, divers, tourists, scientists, 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, restrooms, pedestrian walkway atop the seawall, and a closed, gated emergency beach access ramp. The City has indicated that this ramp was installed for emergency purposes, including for Parks & 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)."*

There are City memorandums and citizen statements which show the "ramp" was historically used by children, elderly, the disabled and anyone with baby strollers or wagons since the 1940's. Only in the last few years has the City claimed the ramp is only for emergency use. This new label for the ramp came about when it became inconvenient for the City's plan to close the Children's Pool beach. The ramp is designated in the LCP as a beach access ramp.

*CCC staff report p. 17:*

*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 this 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 this 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 publically 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."*

Indeed NOAA/NMFS is responsible "for enforcement of the MMPA". The City has no business trying to enforce the MMPA through regulation of "take" at Children's Pool. NOAA has not yet recognized the haul-out/rookery below the Point Loma Sewage Treatment Plant. The City is having the Ranger do counts there to verify presence of newborn pups. Federal funds are likely necessary to have an observer check on pup births to identify a rookery and to do aerial counts of seals which have not been done in several years. Seal lions haul out at the La Jolla Cove but only this year did NOAA change their website to call the area a haul-out. Does that mean we could not identify the Cove area as a sea lion haul-out before this year? In all the above cited rookeries or haul-outs, not one is protected by a legally enforceable Land Grant Trust like the 1931 Trust for Children's Pool.

*p. 17 continued:*

*"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])."*

No one person has been issued a "take" permit but the City did obtain an Incidental Harassment Authorization (IHA) permit, RIN 0648-XC498, so it can construct a new Lifeguard Tower at Children's Pool. The City has the IHA as well as approved extensions. This is contrary to the assertions made in the CCC's staff report of no option for intentional take permits.

*p. 17 continued:*

*"While the Commission does not regulate the taking of marine mammals, the statutory framework provided in the MMPA on this issue provides the Commission with a platform from which it can evaluate whether or not a proposed development is consistent (continued on p.18) with section 30230 of the Coastal Act. In other words, if the Commission finds that if 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. Even if there were authorization from NMFS to incidentally take seals at Children's Pool, depending on the authorized activity, such authorization might not be consistent with Chapter 3 of the Coastal Act."*

The CCC staff has misinterpreted Section 30230 of Chapter 3 policies. The CCC is not accounting for other significant sections of Chapter 3. For example, Section **30200**, Policies as standards; resolution of policy conflicts; (b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section **30007.5** shall be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts:

**Section 30007.5** Legislative findings and declarations; resolution of policy conflicts; The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

The term "significant coastal resources" applies to the safety provided by the breakwater to children, disabled and other ocean users at Children's Pool. The CCC report erroneously states that even if NMFS gives authorization to "take" seals that it may not be consistent with Chapter 3 of the Coastal Act. Even if this is how it is written, it means nothing because Federal law trumps State law. After all, the current Lifeguard Tower at Children's Pool is being built with an IHA permit. The Coastal Commission knowing this permit had been issued

had an opportunity to weigh in and object to the IHA based on 30230 but they did not. In other words, the State Coastal Commission is randomly and selectively enforcing the Coastal Act.

CCC staff report p. 18:

*"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."*

As the CCC report reiterates, the seal haul out area at Children's Pool is at a "...location in an urban setting that is easily accessible to the public." Yes indeed that was the intent of the gift by Ellen B. Scripps to create an area safe for ocean use in an urban area made for people especially children and "those handicapped in life's game". CCC local staff further comments on the 50' distance from seals recommendation given by McInnis. After a letter of clarification, written on January 2<sup>nd</sup> 2014 by Chris Yates from NOAA/NMFS and sent to City officials, those signs were removed last year by City staff. The City Ranger can verify removal of the signs.

CCC staff report p. 20:

*"However, 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. The video camera captured footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals. These harassment events prompted the issuance of emergency CDP No. 6-13-014-G for the closure of Children's Pool Beach from sunset to sunrise through the remainder of the 2013 pupping season. Even with these protective measures, the Children's Pool Park Ranger's first annual monitoring report for Special Condition 4 of CDP No. 6-11-078 recorded about 30 harassment incidents that resulted in flushing of the seals between June 22, 2013 and May 14, 2014, half of which occurred during the 2013-2014 pupping season, which resulted in the flushing of 662 seals total (Exhibit 9). 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. 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."*

The CCC local staff states that the Seal Cam "captured footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals." This statement wrongfully implies that this happened many times when in fact it happened once. The two women suspects were taken to court and the case was dropped due to lack of evidence. Jane Reldan was so upset that she told the marine biologist witness to "F... off". Please see: <http://www.10news.com/news/first-people-to-stand-trial-in-a-seal-harrassment-case-in-san-diego-found-not-guilty-04022014>

This is the same woman who changed the La Jolla Friends of Seals to Seal Conservancy perhaps to try to start a clean image. Reldan and some others in her group are certainly biased and their recorded number of 269 flushing incidents cannot be trusted and should never have appeared in this report.

The statement "any form of harassment poses a serious threat to the survival of the seals and their pups" is a hysterical claim by someone who has chooses be dramatic and misinterpret the facts. After all, where is the data to show that harassment at Children's Pool has resulted in harm to pups? Where are the citations or prosecutions from seal harassment? Intentional harassment is not condoned but please remember, Children's Pool was built as a safe human recreation site. Section 30230 is being misapplied to a highly modified urban recreation area which has attracted large dedicated ocean user groups.

*CCC staff report p. 21*

*"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."*

The above paragraph from the CCC staff report just proves the lack of will by the City to explore alternatives to hard beach closure. Common sense says that if people go into the designated seal area beyond boulders and explanatory signs, then that could be intentional harassment. People could be cited and prosecuted by the Federal government.

*"The 'no project' alternative would clearly 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 is harassment and thus an illegal taking under the MMPA. Unfortunately, for as long as the rope barrier has been in place, a relatively small but persistent number of people have continued to deliberately bother the seals, rendering the shared use concept unsuccessful."*

This report continually repeats the theme of a "small but persistent number of people have continued to deliberately bother the seals, rendering the shared use concept unsuccessful." Where are the Federal prosecutions of these people whom the City and the CCC seemingly have identified? How can shared use be unsuccessful when every year produces a record year of seal births? If these incidents are so detrimental and illegal as the report constantly repeats, why does the State not take back jurisdiction?

CCC staff report p. 22:

*"Access and Recreation. However, as previously mentioned, there are multiple locations across the state where the Commission has approved CDPs, LCPAs, or Federal Consistency Determinations that require limiting public access in order to protect marine resources. The following provides several significant examples. The Commission established a Marine Mammal Reserve as Seal Rock, just north of Children's Pool, prohibiting all public access except for permitted commercial fishing, emergency access, and fishing consistent with the MMPA within the designated 1.35-acre reserve boundary from 1994-1999 with CDP #6-93-26, and from 2001-2006 with CDP #6-00-126. Similar to the subject proposal, the applicant for those permits (the City of San Diego Parks and Recreation Department) proposed to establish the marine mammal reserve in perpetuity, but the Commission approved each CDP with a five-year permit limit to provide protection for marine resources while maintaining limited types of public access. Earlier this year, the Commission approved CDP #3-13-1175-W for installation of minimal, 'symbolic' fencing and educational signage at various locations along the Pacific Grove shoreline in Monterey County to temporarily reduce public use of the beach and shoreline and prevent harassment of the local harbor seals for the 2014 pupping season."*



In the year 2000, CA Fish and Game (now Wildlife), advised the City that they City had no authority to create a seal reserve on public trust tidelands. Reasons included were; violation of the State Constitution, preemption by Federal law and violation of the 1933 trust. The "symbolic" fencing at the Pacific Grove shoreline in central California is likely unnecessary and probably should be challenged. After all, how many seal deaths can be attributed to harassing seal pups? The Pacific Grove shoreline is not held in trust as is Children's Pool. In fact none of these areas mentioned in this report enjoy the protections and safeguards of the Children's Pool Trust. Conditions are much different in La Jolla than in Pacific Grove. "Federal Consistencies Determinations" would certainly consider the recent policy statements from Chris Yates, NOAA/NMFS. He states "The ideal solution to this type of conflict is one of shared use – where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users. Therefore we want to clarify that we do not believe that complete closure of Children's Pool Beach is necessary to protect the harbor seals from violations of the MMPA."

p. 22 continued:

*"Aside from harbor seals, the federally threatened western snowy plover and endangered California least tern have been the subject of many Commission actions involving partial or total beach closures to provide habitat and population protection. In November 2001, the Commission approved CDP #4-01-139 for year-round symbolic fencing and associated signage creating a restricted roost area near the mouth of the Devereux Slough near UC Santa Barbara, Ventura County, to protect the local snowy plover population. This permit was approved with a two-year permit term, with permission for a one-year extension for good cause, due to the project's impacts on public access and to allow time to collect and analyze data from the required monitoring plan. The same project was proposed with CDP #4-08-007 and approved by the Commission in June 2008 with a five-year permit term and permission for a one-year extension for good cause. In February 2014, the Commission approved CDP #2-13-1020 for year-round and seasonal fencing at Pacifica State Beach, San Mateo County, for protection of and public access restriction from a section of the backbeach sand dunes that provide snowy plover habitat. The year-round fencing was approved in perpetuity, while the seasonal fencing is authorized for a five-year period with permission for an additional five years with Executive Director approval. In December 2002, the Commission approved CDP amendment #5-87-847-A1 to increase an existing 4-acre restricted least tern nesting area by five additional acres with protective fencing, limiting public access in the designated restricted areas at Venice Beach and Dockweiler State Beach, Los Angeles County. In an act of much broader marine resource protection, the Commission approved CDP #2-00-005 in August 2000 for prohibition of personal motorized watercraft within all shoreline waters and estuaries of Marin County to eliminate adverse impacts to the diverse and sensitive marine resources found in said shoreline waters and estuaries."*

Above paragraph discusses federally threatened and endangered birds; of course they should be protected. Harbor seals at Children's Pool are not endangered and even if they

were to abandon the site it would not affect the population as a whole. None of these locations mentioned above have the protections of the Children's Pool Trust.

p. 22 continued:

*"In each of these cases, the Commission placed limits on public access in areas that require special protection due to the sensitive species and marine resources. The subject project 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 (continued on p. 23) 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. It 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 seasonal beach closure would help maintain a healthy seal population for long-term recreational, scientific, and educational purposes."*

The CCC staff states there is access to the water of both sides of Children's Pool. The report neglects to state that the south side is called S. Casa Beach and it has a rip tide most days of the year. Last year 19 seal pups were born on that beach so it is also a rookery. North of Children's Pool the beach is called Shell Beach and it has the worst rip tides of the La Jolla area with many deaths attributed to it. Since when is the elimination of seal disturbance more important than human safety? An attempt to apply ESHA standards is evident in the statement *"the haul out site at Children's Pool Beach provides habitat of biological and economic significance."* This area does not qualify for ESHA status by the local CCC staff's determination.

CCC staff report p. 27

*"As discussed previously, the City has considered and implemented measures that are less restrictive on public access. The rope barrier should have been sufficient to means of protecting the seals while maintaining limited but sufficient 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, a small but insistent number of 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 that the 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 diffuse 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. Additionally, in April 2010, the San Diego Police Department provided information regarding the number of calls for service at Children's Pool Beach. The report showed that from February 1, 2009 through January 31, 2010, there were 184 designated runs, 37 calls for disturbing the peace, and 4 calls for battery incidents. Out of service time for that same period was approximately 185 hours as compared to 2005 (70 hours); 2006 (95 hours); 2007 (40 hours); and 2008 (79 hours). This is a significant increase in calls for service at Children's Pool Beach from 2005 to 2009 which takes police time away from more important public safety issues."

The CCC report calls out "Even under supervision of a lifeguard or park ranger, a small but insistent number of people have refused to adhere to the shared use informational signs..." This comment is 2<sup>nd</sup> guessing the in-actions of onsite law enforcement personnel. In fact the majority of the incidents are caused by a constantly changing group of new unaware visitors in their attempts to photograph seals. The CCC reports statistics of police calls but it does not provide the outcome of the investigations. The seal activists have an agenda to phone in unfounded complaints. Calls were made to NOAA by animal activists to complain about people legally using the beach. If this is even significant where is the current data of police complaints? The City created the Children's Pool problem by encouraging the seals to get a significant foothold in the Children's Pool area. This also encouraged animal rights organizations to carry out vigilante action.

CCC staff report p. 28:

"In the other seven non-pupping season months of the year, there would be no public access restrictions and no regulations against public use of the sandy beach or the water. 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."

The CCC report states there will be seven months of unrestricted public access. This does not account for animal rights activists harassing beach users the other seven months of the year regardless if there are seals on the beach. I have personal knowledge of years of human harassment by seal activists, most recent of which three incidents occurred in July of this year. The sand on the beach is feces ridden and the ocean water quality is poor from that accumulated seal pollution. Although the beach may be legally open, these conditions discourage the use Children's Pool contrary to what the CCC staff report claims. Still, this remains an ideal location for safe water access.

CCC staff report p. 29:

*"There have been assertions by members of the public that the proposed project would severely affect the ability of disabled people to access the shoreline. However, 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. While Children's Pool Beach does have an "access ramp," it is a gated, unimproved emergency vehicle access ramp that was not constructed for ADA compliance and is only allowed for use by emergency personnel. The La Jolla certified LUP indicates two other concrete ramps designated for shoreline access aside from the ramp at Children's Pool: just north of Scripps Pier with beach access at the end of Discovery Way, and at Ellen Scripps Park with access to Boomer Beach. These beach access ramps are located approximately less than two miles and less than a half-mile north of Children's Pool Beach, respectively. La Jolla Shores, approximately two miles north of Children's Pool Beach, provides free power beach wheelchairs for disabled visitors. These beach chairs can also be found, free of charge, at Ocean Beach, Mission Beach, Coronado Beach, and Imperial Beach. 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 CCC staff report states there are "many beaches... easily accessible to beach-goers with disabilities." Where are these beaches? The report cites two other shoreline access ramps at Discovery Way and Boomer Beach. Discovery Way is a steep concrete ramp unfit for ADA access. There is no ramp at Boomer Beach. It is a dangerous beach and there is no way someone in a wheel chair could access that shoreline. This area appeals to bodysurfers because of large pounding waves breaking over barely concealed rocks. The water is cleaner but the waves are dangerous. Only recently during the last few years has the City been claiming that the beach access ramp at Children's Pool is for emergency use only. It was constructed during the 1940's to provide beach access for everyone including families with children and the disabled including those in wheelchairs. Unfortunately the City locked the gate 15 years ago and since then has allowed the ramp to deteriorate.

p. 29 continued:

*"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."*

The CCC report states that Children's Pool is major tourist attraction but provides no verifiable statistics for the claimed seal tourism. Seals come on their own schedule making predictable seal viewing unreliable. The statistics of 2.6 million people is not co related to any data to show what percentage of those visitors comes to see seals. Therefore any claim of economic, scenic or lower cost visitor amenity cannot be made. Also there is no data to prove that any visitor coming to La Jolla spends any money in La Jolla as a result of their visit to view seals. Use of Children's Pool beach has declined during the past 10 years because of the harassment by the animal activists and the prominently posted water quality warning signs. Those visitors discouraged from Children's Pool have created a greater impact on nearby beaches and visitor facilities and can be verified by the Ranger's monitoring report. La Jolla Cove is the most significant of that fact. The year round rope makes people think the beach is closed so that also deters ocean users. The City refuses to clean the beach or open the sluice ways which also would help clean the beach from seal poop after pupping season. The filthy beach condition also discourages beach access.

CCC staff report p. 30:

*"In conclusion, while the proposed project will impact public access from December 15 to May 15 of each year, this is not only necessary but also the least 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 project 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 for a limited permit term of five years to ensure the seals and their pupping habitat are effectively protected. There is clear evidence that the seals will continue to be subject to harassment and endangerment if the beach is not closed off during pupping season. The seasonal beach closure will improve the protection and enhancement of the harbor seal population, while maintaining public access*

to all but a small area of beach. Therefore, the proposal as conditioned is consistent with Sections 30212 and 30214 of the Coastal Act. "

The Coastal Commission was established by CA citizens wanting more public access to their coast. Public access is at the core of the Coastal Commission's mission. The City encouraged seal colonization on this beach intended for children and those "handicapped in life's game". The CCC staff report states, "... while maintaining public access to all but a small area of beach." This is not a small area, this is the entire beach.

The CCC staff report goes on to claim compliance with Section 30214 which is qualified to include in the subsection (b) which says in part "Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under **Section 4 of Article X of the California Constitution.**" The report also claims compliance with Section 30212 which includes subsection (c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by **Section 4 of Article X of the California Constitution.**" Section 4 of Article X of the constitution requires beach access. Therefore, it is inconsistent with the Coastal access requirement provided in sections 30214 and 30212 if this project were to be approved. The highest standard of coastal access is provided in the CA Constitution.

p. 30 continued:

*"As provided for in Sections 30210, 30212, and 30214 of the Coastal Act cited above, public access shall be provided for all people consistent with public safety needs and the need to protect 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 must be balanced with the protection of fragile coastal resources at the subject site. The proposed seasonal beach closure, as conditioned, is consistent with Sections 30210, 30212, and 30214 of the Coastal Act because it maintains public access to the beach for seven months of the year while providing protection of the haul out site, or natural resource area, from overuse by people for the other five months of the year."*

The overriding standard of 30210, 30212 and 30214 is **Section 4 of Article X of the California Constitution:**

#### **CALIFORNIA CONSTITUTION ARTICLE 10 WATER**

**SEC. 4. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted**

to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

This proposed seasonal beach closure project is not consistent with the Coastal Act as conditioned by these three sections which rely on the CA Constitution, Section 4 of Article X.

The CCC report states that Children's Pool provides a "natural" haul out site for seals. This area is described as an artificial embayment by Dr. Dixon, the CCC's own staff ecologist. The rocky reef just outside the breakwater provides an opportunity to view seals in their natural environment. The constitutional protection does not permit seasonal beach closure for any amount of time.

CCC staff report p. 33:

*"The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Pursuant to the City's own obligations under CEQA as the lead agency, the City approved and adopted Negative Declaration 225045. As the proposed project would provide increased protection of marine resources, the Commission finds that it is unlikely that any significant adverse effects on the environment would occur. Mitigation measures, including conditions addressing assumption of risk, a final sign program, and a monitoring plan to effectively record and monitor the effectiveness of the seasonal beach closure in preventing seal harassment, will minimize or prevent all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA."*

As the CCC report states, the City approved their own Negative Declaration (ND) 225045. However this ND was biased and did not address transportation impacts such as parking or "cumulative impacts".

Contrary to the staff report, the proposed project is not consistent with all Ch. 3 policies of Coastal Act:

#### **Section 30001 Legislative Findings and declarations; ecological balance, letter (c)**

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.



Public safety is not promoted if this beach were to be closed. Instead of protecting the ecological balance, this project creates additional imbalance to the coastal marine environment.

**Section 30001.5 Legislative findings and declarations; goals, letters (b) & (c),**

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

Children's Pool has been a gathering place for 80 years for the residents of La Jolla. It is a historical landmark of La Jolla and it has drawn tourism as a sheltered beach since 1931. It has contributed to the economic well-being of the local community. Generations of San Diegans have learned to swim in the ocean at Children's Pool and that is the area where modern spearfishing began. The climate is conducive to year round ocean use.

**Section 30001.5**

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Maximum public access is year round and not seven months as claimed in the CCC staff report. The seasonal cycle of seal viewing occurs year round.

**Section 30007.5, Legislative findings and declarations; resolution of policy conflicts**

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

The "significant coastal resource" is the unique, sheltered ocean pool at Children's Pool. It is a result of a gift to the people of San Diego from Ellen Browning Scripps which provides safe harbor. The legislature enacted a statute to protect its defined uses in perpetuity. Wildlife viewing is not the most significant resource because it can be done in many other places including Point Loma.

**Section 30200 Policy Conflicts, letter (b)**

Section 30200 Policies as standards; resolution of policy conflicts

(b) Where the commission or any local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall be utilized to resolve the

conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of identified policy conflicts.

Section 30007.5 requires a finding of "significant coastal resources". At this location, access to the unique resource which Children's Pool provides is the most significant coastal resource.

**Section 30211 Development not to Interfere w/Access.**

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.

The Children's Pool beach constructed in 1931 has been used almost continuously for over 80 years for its intended uses. The Legislature adopted a statute to enable creation and protection of children's bathing pool in perpetuity.

A claim is made by the CCC staff report, that mitigation measures such as signs and monitoring should prevent environmental impacts. Impacts will occur to the fish and crustaceans and other marine organism in the vicinity of Children's Pool from an ever growing population of seals encouraged to concentrate at Children's Pool. No amount of signs and monitoring will reduce that impact. Once the impacts are discovered it will be too late.

*CCC staff report includes Dr. Dixon, comments on p. 52:*

*"In a 2012 memorandum to Kanani Brown, CCC staff analyst, Dr. Dixon, CCC staff ecologist concludes the following:"*

**"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."**

Due to this continued harassment of seals by a minority of beach visitors<sup>1</sup>, 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.

Dr. Dixon states that it is unlikely that there will be "population consequences" regardless of what action is taken at Children's Pool. However he further states steps should be taken to prevent seal harassment. The steps that have already been taken are signage, a City Ranger and a year round rope which discourages any access to the ocean at Children's Pool. It is strictly the job of NOAA/NMFS to enforce Federal law regarding pinniped harassment. However the City is trying to create laws relating to the "take" of seals at Children's Pool and now the CCC staff report is reinforcing this usurping of the Federal government authority.

Based on my above rebuttal to the local CCC staff report, I respectfully ask that the CA Coastal Commissioners DO NOT APPROVE THE FOLLOWING:

**City of San Diego LCP Amendment No. LCP-6-LJS-14-0607-1 (Children's Pool).** Please do not approve the request by the City of San Diego to amend the certified Land Use Plan (La Jolla Community Plan) to incorporate additions and changes to the marine resource protection and public access policies to limit beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

**Application No. 6-14-0691 (City of San Diego Parks and Recreation Department, Children's Pool Seasonal Closure).** Please do not approve the application of the City of San Diego Parks and Recreation Department to limit beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

Thank you for taking the time to read this rebuttal letter. Beach access is not to be taken lightly as you know and it affects many people. Children's Pool is a special place for many generations of San Diegans. Please do not surrender it to special interest groups.

Sincerely,

*Marie Hunrichs*

Marie Hunrichs

mariehunrichs@cox.net

RECEIVED

AUG 11 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



**COUNCILMEMBER SHERRI S. LIGHTNER**

FIRST DISTRICT  
CITY OF SAN DIEGO

August 8, 2014

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Re: LCP Amendment No. LCP-6-LJS-14-0607

Dear Commissioners:

As the San Diego City Councilmember who represents La Jolla and has followed the Children's Pool issue closely for over a decade, I respectfully request that you grant the community's request to deny the La Jolla Community Plan/Local Coastal Program amendment to incorporate additions and changes to the marine resource protection and public access policies to eliminate public physical beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

La Jolla community organizations, including the La Jolla Community Planning Association, La Jolla Town Council and La Jolla Parks and Beaches Committee, have all formally opposed this closure because they believe that shared use of this beach between people and seals is the preferred alternative for the community of La Jolla.

I am deeply concerned that this action sets a dangerous precedent, eliminating public physical access guaranteed by the California Coastal Act of 1976. The Children's Pool has provided public physical access to the ocean for nearly a century. Page 170 of the La Jolla Community Plan describes the Children's Pool as a "small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized."

This area has been used for physical access in the La Jolla Community Plan/Local Coastal Program since it was written. It is premature to permanently close the physical access and the beach, given that the effects of the year round rope required by the existing Coastal Development Permit have not been evaluated. The permit requires the placement of a year round rope and detailed monitoring of the seals by the City.

The California harbor seal populations have increased statewide over the past 20 years. This increase has also been evident at Children's Pool regardless of the past shared use of the beach.

It is important to note that this species is not listed as "endangered" or "threatened" under the Endangered Species Act. It is also not considered "depleted" under the Marine Mammal

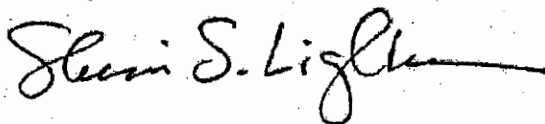
197

Protection Act (MMPA). The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) most recent stock assessment states that the California harbor seal "would not be considered as 'strategic' under the MMPA." According to the MMPA, if a species is not considered "strategic," then it is not likely that human impacts will reduce the stock below its optimum sustainable population.

The proposed permanent, seasonal beach closure and precedent setting elimination of a long-standing public physical access is unwarranted and is regulatory overkill. The continued shared use policy can better achieve all the goals of the Coastal Act in providing public access to the beach and ocean while also keeping both seals and people safe.

Please contact me at (619) 236-6611 or [sherrilightner@sandiego.gov](mailto:sherrilightner@sandiego.gov) if I may provide additional information.

Sincerely,



Sherri S. Lightner

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**MARK KERSEY**  
COUNCILMAN, FIFTH DISTRICT

August 7, 2014

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108

RECEIVED

AUG 11 2014

Re: LCP Amendment No. LCP-6-LJS-14-0607

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners:

I respectfully request that you deny the La Jolla Community Plan/Local Coastal Program amendment that would eliminate public access to Children's Pool Beach from December 15 to May 15 of each year. Shared use of the beach by people and seals is a better solution.

Approving this amendment would set a dangerous precedent, eliminating public physical access guaranteed by the California Coastal Act of 1976. The Children's Pool has provided public physical access to the ocean for nearly a century and has been used for physical access in the La Jolla Community Plan/Local Coastal Program since it was written.

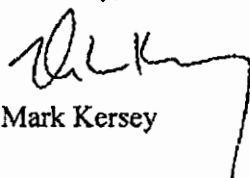
It is premature to permanently close the beach before the effects of the year-round rope required by the existing CCC Permit have been evaluated. In addition to the rope, the permit requires detailed monitoring of the seals by the City.

The harbor seal population has increased statewide over the past twenty years. This species is not listed as "endangered" or "threatened" under the Endangered Species Act, nor is it considered "depleted" under the Marine Mammal Protection Act (MMPA). The most recent stock assessment by the National Oceanic and Atmospheric Administration states that the California harbor seal "would not be considered as 'strategic' under the MMPA," meaning it is not likely that human impacts will reduce the stock below its optimum sustainable population.

The proposed beach closure and precedent-setting elimination of long-standing public physical access is unwarranted. Shared use can better achieve the goals of the Coastal Act in providing public access to the beach and ocean while also keeping both seals and people safe.

Please contact me at (619) 236-6655 or [markkersey@sandiego.gov](mailto:markkersey@sandiego.gov) with any questions.

Sincerely,



Mark Kersey

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To: File LCP-6LJS-14-0607-1, CDP # 6-14-0691

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

At the end of page 15 of the staff report there is one change to the LCP shown.  
Many more LCP changes are needed. (additions in bold type)

*La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved... **except at Children's Pool.***

*The City should preserve and protect the coastal bluffs, beaches and shoreline area of La Jolla assuring development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline... **except at Children's Pool.***

*The City should ensure that new development does not restrict or prevent lateral, vertical or visual access to the beach on property that lies between the shoreline and first public roadway... **except at Children's Pool.***

*New development should not prevent or unduly restrict access to beaches or other recreational areas... **except at Children's Pool.***

*Construction, grading, or improvements of any sort, except those mentioned in this plan, should be discouraged at beach areas. Public access to the shoreline should be increased (or improved) wherever possible... **except at Children's Pool.***

*The need to increase public awareness of beach and coastal access points within the community through appropriate signage **except at Children's Pool..***

*Enhance existing public access to the ocean, beach and park areas such as Ellen B. Scripps Park and Kellogg Park along the shoreline in order to be of greatest benefit to neighborhood residents and visitors to the community **except at Children's Pool.***

*to protect and enhance beach access, both visually and physically; **except at Children's Pool..***

*Further intentions of this overlay zone are to maximize public access to and along the shoreline consistent with sound resource conservation principles and the rights of property owners but **minimize access at Children's Pool.***

*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 **except at Children's Pool.***

*The policies and recommendations contained in this plan are intended to balance the rights of individual property owners with the public's right of access **except at Children's Pool.***



*A comprehensive sign program is needed throughout La Jolla to identify existing but underutilized access points, **except at Children's Pool.***

*Enhance existing public access to La Jolla's beaches and coastline areas (for example La Jolla Shores Beach ~~and Children's Pool areas~~) in order to facilitate greater public use **except at Children's Pool.***

*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.*

*Public coastal access should be considered when evaluating redevelopment along the coast **except at Children's Pool.***

*The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways and railings along the shoreline to preserve vertical access (to the beach and coast), to allow lateral access (along the shore), and to increase public safety at the beach and shoreline areas **except at Children's Pool.***

*Maintain, and, where feasible, enhance and restore existing facilities including streets, public easements, stairways, pathways and parking areas in order to provide adequate public access to the shoreline **except at Children's Pool.***

*Maintain, and, where feasible, enhance and restore all existing steps and paved access ramps to beach and shoreline parks, **except at Children's Pool.***

*Children's Pool. Small (.7-acre) artificial pocket beach held in place by seawall.  
Lifeguard facilities. Stairway access down bluff **much of the time.** Heavily utilized in Summer.*

NOTE: To save typing in the future, a more generic term could be used, like  
"**except at beaches deemed biologically or economically significant**".



## Request for Information on Pinnipeds in California

Dear Colleagues:

NOAA's National Marine Fisheries Service (NMFS) Southwest Regional Office (SWR) is requesting assistance to collect information on pinniped haulout sites in California.

Documenting the location and seasonal use of pinniped haulout sites is important for managing activities that may impact pinnipeds and also for prioritizing research needs. NMFS-SWR, in collaboration with NMFS-Southwest Fisheries Science Center, has created an interactive GIS database that will provide a comprehensive inventory of pinniped haulout sites in California, based primarily from an extensive review of literature and from contributions from fellow researchers.

We are requesting assistance from pinniped researchers and others who are willing to share their information on pinniped haulout information in California. We understand the sensitivity of sharing data, but we want to make sure that the database incorporates both historical and current information on pinnipeds in California. Many pinniped surveys are conducted at the end of the breeding season when the majority of the animals are hauled out. Much can be inferred about dispersal of pinnipeds by comparing movement between the breeding and non-breeding seasons. However, less is known about dispersal within the breeding and particularly, during the non-breeding season. Thus, we hope that with your assistance, we will be able to compile year-round information on pinniped haulout sites in California. Primarily, we are interested in information (past and present) on: 1) species; 2) location (e.g., name of area and/or latitude/longitude); 3) counts; 4) date and time observed; 5) whether the area was/is used as a rookery or non-rookery; and 6) age class. Any other additional information would also be greatly appreciated. We also request that you include reference information, so that this may be included in the database as well.

Presently, the database will only be accessible to NMFS-SWR staff as we continue to develop this database and collect information. The information in the database will be evaluated and updated on an annual basis. In the future, we may want to make a restricted version of this database available to the public (likely to include the GIS map, species and location), but we will notify participating researchers prior to publicizing.

If you have information on pinniped haulout sites in California, but are unsure about disseminating data, please feel free to contact me so that we may discuss alternatives.

Please contact me with any questions.

Thank you in advance for your time.

Cheers,  
Monica DeAngelis

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This material has been sent to all Coastal  
Commissioners and the San Diego  
Coastal Commission office for  
LCP-6-LJS-14-0607-1, CDP No. 6-14-0691

David W. Valentine, Ph.D.  
7305 Monte Vista Avenue  
La Jolla, CA 92037

TO: California Coastal Commission  
All Commissioners and alternates and local staff  
Information needed for Aug 14 hearing

Re: LCP-6LJS-14-0607-1, CDP # 6-14-0691

Dear Commissioners,

This cover letter only clarifies that the slide show draft enclosed meets all ex parte conditions and you need only read it, if you would.

We are trying to speak for the locals and dedicated user groups that are supposed to be protected under the Coastal Act and other laws against being barred from our own land.

For that we have always depended on the Coastal Commission.

Allowing this new way for a town to remove Constitutional guarantees of public access from an LCP would be a dangerous precedent.

David Valentine.

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AUG 08 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

203

## LA JOLLA CHILDREN'S POOL



COASTAL COMMISSION - August 14, 2014

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA COASTAL ACT, Section 30230 states
  - Special protection shall be given to areas . . . of special . . . economic significance....
- Congressman Scott Peters polled La Jolla business owners: do harbor seals at the CP pool increase your business: 90% said "NO"
- Promote La Jolla, an association of 1,200 business owners, wrote that there was no measureable financial benefit of having harbor seals at the CP... some visitors even expressed displeasure at not being able to swim at the CP

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA COASTAL ACT, Section 30230 states
  - Special protection shall be given to areas and species of special biological or economic significance
- Mr. James Lecky, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service in testimony before San Diego City Council on 14 September 2004  
 "The Children's Pool harbor seals are not necessary for maintaining a healthy seal population"
- Mr. Chris Yates, ABA for PR, NMFS in an open letter to San Diego's Mayor and City Council members dated 2 January 2014  
 "[we] do not believe that complete closure of Children's Pool Beach is necessary to protect the harbor seals from violations of the MMPA"
- Dr. John Dixon, CCC staff Ecologist, memo dated 27 June 2014.  
 "...there are unlikely to be population consequences regardless of what actions are taken at the Children's Pool..."

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA CONSTITUTION, ARTICLE 1, Section 25
  - The people shall have the right to fish upon and from the public lands.... and no law shall ever be passed making it a crime for the people to enter upon the public lands
- The proposed City action violates this section of the State Constitution

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA CONSTITUTION, Article 10, Section 4
  - No [one]...possessing the frontage of tidal lands...shall be permitted to exclude the right of way to such.... the Legislature shall enact such laws as will give the most liberal construction... so that access to the navigable waters of this State shall be always attainable for the people thereof

The proposed City action violates this section of the State Constitution

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- AMERICANS WITH DISABILITIES ACT
    - State and local governments must follow the ADA requirements of the 2010 Standards, including both the Title II regulations at 28 CFR 35.151; and the 2004 ADAAG at 36 CFR part 1191, appendices B and D
- The proposed City action violates this section of Federal law



THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- AMERICANS WITH DISABILITIES ACT, 2010 ADA Title II requirements for government facilities
  - (4) Path of travel. An alteration that affects the access to an area readily accessible to individuals with disabilities.
    - (ii) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the area may be approached, entered, and exited
    - (A) An accessible path of travel may consist of walks and sidewalks, curb ramps and pedestrian ramps
- The proposed City action violates this section of Federal law

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- MARINE MAMMAL PROTECTION ACT, 109(a) Prohibition of state level enforcement of marine mammal protection.
- In a letter from NOAA Office of Protected Resources 6/3/14:
- "Section 109 (a) prohibits enforcement of laws or regulations relating to the taking of marine mammals except by a state to which the Secretary of Commerce or the Secretary of the Interior has transferred authority for the conservation and management of the species. That authority has not been transferred to the City."
- The proposed City action violates this section of Federal law

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CHILDREN'S POOL TRUST, Section 1(a) of Chapter 937 of 1931 as modified (aka Children's Pool Trust)
  - That said lands shall be devoted exclusively to public park, marine mammal park for the enjoyment and educational benefit of children, bathing pool for children, parkway, highway, playground and recreational purposes...

The City has always controlled implementation of the Trust. There is no indication that the City treats all uses equally

- The City must honor ALL trust uses

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- O'SULLIVAN V CITY OF SAN DIEGO, also known as the Pate decision of 2005 (August 25)
  - .... To protect the rights of the people of California to the full use and enjoyment of a unique asset, the Children's Pool.... The City is ordered ... to restore the Pool to its 1941 condition by removing the sand build-up and further to reduce the level of water contamination in the pool to levels certified...as being safe for humans

The Pate decision is still in force. Changing the Trust to allow for 'enjoyment of seals' did not relieve the City of its responsibility to provide a safe place for children to swim. And that includes protecting beach access

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CHILDREN'S POOL TRUST, Section 1(b) of Chapter 937 of 1931 as modified (aka Children's Pool Trust)
  - The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands with the right of convenient access...is hereby reserved to the people of the State of California

The City and state are obligated to honor this portion of the trust and allow fishermen complete access over Children's Pool tidelands

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### MORAL REASONS TO MAINTAIN BEACH ACCESS

It is oxymoronic for the City, on one hand, to severely restrict access to the Children's Pool to protect harbor seals and encourage people to 'fake' sea lions at and around the La Jolla Cove. The City is cherry picking portions of the law they wish to enforce... The La Jolla Cove and the Children's Pool are 2000 feet apart.



THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

## **Laver, Brittney@Coastal**

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**To:** Parker, Holly@Coastal  
**Subject:** RE: Rebuttle to CCC Staff Report for Children's Pool Closure

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**From:** Miller, Vanessa@Coastal  
**Sent:** Wednesday, July 30, 2014 2:23 PM  
**To:** Sarb, Sherilyn@Coastal; Lee, Deborah@Coastal  
**Cc:** Parker, Holly@Coastal  
**Subject:** FW: Rebuttle to CCC Staff Report for Children's Pool Closure

**From:** Cheri Aspenleiter [<mailto:cheriaspen@gmail.com>]  
**Sent:** Wednesday, July 30, 2014 1:13 PM  
**To:** Miller, Vanessa@Coastal  
**Subject:** Rebuttle to CCC Staff Report for Children's Pool Closure

Date: July 30, 2014

TO: Britney Lavern, Greg Murphy, Greg Cox and All other Coastal Commissioners of the CA Coastal Commission

RE: Staff Report specifically about ADA access for swimming.

I wish to correct the staff report. The Children's Pool IS the only safe access with a dedicated vertical easement ramp to the high water mark on the La Jolla Coastal Plan. This LCP is the issue. You need to please get very clear on the truth about the disability access.

1. La Jolla Shores: Is not accessible or safe for disabled ocean swimming. The facility has one beach chair that can 'get splashed' that has to be reserved far in advance. Disabled people especially paraplegic and quadriplegics can not crawl out through the surf with out the use of their limbs. This is an impossibility.

2. La Jolla Cove, Also under facility remodel and also ignoring and not providing access for disabled swimming, no ramp to the water.

3. Boomer: Cliffs, dangerous rocks, rips and large surf.

4. Shell Beach, Dangerous stairway, surf & the worse rip tide in Southern California

5. All along Coast Blvd.: Stairways and cliffs, surf

6. North P.B. Stairs and dangerous surf

Surf Beaches all the way to Mexico.

7. Children's POOL; Safe calm water, dedicated ramp to the high water mark, built especially for the disabled, In a Tidelands Trust that has withstood the test of the Courts to be maintained only as a Children's Pool with out seal feces pollution. See the 2004 Human Health Ruling by Superior Court Judge Pate.

If the Children's Pool is closed for any time of the year, The CA Coastal Commission will be continuing the disability violations there and not honoring their main mission of ACCESS for ALL , & To honor the recreational facility of our only safe harbor and ocean pool that did serve wheelchairs for over half a century. The City of San Diego and The CA Coastal Commission is terribly guilty of promoting the violations of all disability codes. The ramp at the Children's Pool WAS to the current disability codes in 1948. By law



every time that ramp was touched it had to be brought up to the then current codes. As the codes progressed and codified the ramp needed to be kept to code and then *would be* ADA compliant once those laws were enacted. The City of San Diego and The CA Coastal Commission is in violation. This disrespectful Staff Report proves the violations.

I have sent to you all the history of the ramp, that proves beyond a shadow of a doubt the legal uses of this ocean pool. You are aware that this is the only safe ocean access for disabled people and you are acutely aware that your actions will continue to block the disabled from their rightful access. I suggest that you begin to follow your dictates of recreation and access for all and enforce the La Jolla Local Community Plan and restore the Access Ramp with the Best ADA Ramp in the World. And give back to the Disabled who have fought for your rights to be in the positions you do hold.

Britney told me specifically that the CA Coastal Commission Staff and Commissioners do not have any 'Over-Sight'. I want to remind her and all of you that I am your oversight, all of the people are. The disabled many times can not speak for themselves that is why we have laws to protect us, and that is why Ellen Browning Scripps had this bathing therapy pool built to be a 'clean' 'safe' human swimming pool. This was and is held up in Superior Court, that the CCC is disrespecting our Civil Rights and the Human Health Codes and Human Health Ruling to restore the pool, is really disgraceful for an American Body whose mission is to provide accessible recreation. Since this is our only Ocean Pool you can not legally close it and should take away the rope on the legal playground it is also dangerous to children at their Pool.

I have sent you enough prove that the only right thing to do is to order an Environmental Impact Report in relation to the pollution and the devastation to the undersea ecosystem as a result of the serious overpopulation of pinnepeds along the La Jolla Coastline .

I further need to advise you that if Britney or any other staff member is connected personally with the Surf Riders or the Sierra Club then their membership dues are financing the closure along with the ignorance of the truth. And therefore any CCC Staff or Commissioners that are dues paying members are hereby on notice of a serious ethical conflict of interest.

The Disabled and the Ocean Ecosystem is at stake.

Attached you will find for your records photos of La Jolla Shores surf beach, with not one wheelchair out of thousands of people. La Jolla Shores is a surf beach and surf is too dangerous for wheelchair swimmers. There are no safe access areas for a wheelchair swimmer except the Children's Pool engineered for this purpose.

Cheryl K. Aspenleiter  
Disabled Ocean Swimmer.



LA JOLLA SHORES NOT ACCESSIBLE FOR A PARAPLEGIC SWIMMER \_ ONLY CHILDREN'S POOL IS 2-  
Large.m4v

--  
Cheri

**From:** Sarb, Sherilyn@Coastal  
**To:** Laver, Brittney@Coastal  
**Cc:** Lee, Deborah@Coastal; Lilly, Diana@Coastal  
**Subject:** FW: Children's Pool Beach Closure Project  
**Date:** Wednesday, July 30, 2014 9:28:09 PM

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for the file

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**From:** Cheri Aspenleiter [cheriaspen@gmail.com]  
**Sent:** Wednesday, July 30, 2014 7:04 PM  
**To:** Sarb, Sherilyn@Coastal  
**Subject:** Children's Pool Beach Closure Project

Dear Ms. Sherilyn Sarb of the California Coastal Commission,

I am writing to you today to 'talk turkey' so-to-speak. You may not be aware that we have over 185,000 amputations in our country each year. We have more disabled American Military Veterans with severe disabilities here in San Diego than any other city. Water therapy is unsurpassed for people missing limbs, as the water is supportive and allows one to be out of the wheelchair, a rare and wonderful experience. The Children's Pool was especially designed and built for us disabled people and for small children to be safe swimming and floating doing water therapy. Your staff report did not respect Americans with Disabilities. I need not remind you that access for all is the specific mission for the Coastal Commission. The Staff Report stated that there was no issues that will affect anyone by closing the Children's Pool. The Staff Report appears to be written by a young person with out the proper experience to be able to understand the Mission of Access and Recreation and instead very obviously had a mind set for closure prior to receiving and reading any information submitted by the public. I suspect that there are serious conflicts of interest especially if she or any member is also a member of the groups financing this illegal and unconstitutional closure.

In all the politics about our only ocean pool, people or marine mammal park? (definition=Sea World) the real reason for the existence of the Children's Pool was totally forgotten and deliberately so. The reason it was built is for " children and especially for those handicapped in life's game", these are Ellen Scripps words as well as those of Engineer Savage who took ten years of his life for this purpose. Miss Scripps Tidelands trust did stand the test of a lawsuit. Superior Court Judge Pate issued a Human Health ruling to remove the filthy sand and ordered the sluiceway reopening feasibility studies completed, they are. All marine agencies testified they agreed. The Centers for Disease Control concurred. These rulings still stand and the pollution is now worse. It was totally agreed and ruled that by removing the sand the seals would be encouraged to return to Seal Rock, S. Casa where they go now and thousands of other natural less human populated haul outs. Sand is not necessary nor natural for birthing pups, and to birth in their own feces is unhealthy for the seals and the environment.

What you need to know is that your Staff Report is very incorrect, as to remove the only dedicated easement to the high water mark into the only Ocean pool will be to further the Disability Violations that the Commission in colusion with the City of San Diego has promoted by ignoring the Disability Codes for decades.

I have come before you, I have met with you and I have sent in all the documents proving with out a doubt the above. As you can see the ramp is on the map into the pool there is no dispute. The Conspiracy to close the Children's Pool is has been very successful, to the exact

definition of the word.


Please be aware of the following facts:


1. The Children's Pool is the only safe Pacific Ocean Access for a paraplegic or quadraplegic ocean bather.
2. The Children's Pool ramp was to code in 1948.
3. The Children's Pool ramp served wheelchairs for over half a century, was paved and was the PRIMARY access into the pool.
4. The Children's Pool inner wall was also the primary access into the pool, with 'stadium style seating that doubled as stairs into the pool. The CCC & the City of San Diego has allowed this huge access avenue to deteriorate to ruin.
5. La Jolla Shores is a surf beach and it not possible for a wheelchair swimmer to negotiate the surf.
6. La Jolla Cove is also under facility remodel and Americans With Disabilities is not being honored there either, no ramp to the water, only to a viewing level. That is terribly mean and just plain criminal.
7. Boomer is a cliff, and very dangerous waves.
8. Shell Beach is dangerous stairs and the worse rip tide in Southern CA, next to the safe harbor of Children's Pool very needed for rescues caused by this adjoining beach's extreme danger. This is also the site of Seal Rock a better natural place for seals, as the rip tide keeps people away. Seals love rip tides being excellent swimmers.
8. South Casa is a natural seal haul out and has a dangerous rip tide as well as sharp reefs and very steep stairs.
9. All other beaches down Coast Blvd. have cliffs and steep stairs that lead to surf.
10. North Bird Rock, very steep stairs to cliffs and rip tides.
11. All the way to Mexico: Surf

12. Children's Pool: A pool as opposed to a surf beach. Ramped access and many ADA designs fit very well. A 2004 Human Health Ruling ordered the sand to be removed and the sluice way studies completed to be reopened for sand control and water circulation.


Wheelchairs could roll in and a paraplegic can transition from a wheelchair into the POOL water ( no surf) with out any assistance. Children's Pool is a one of a kind safe access for wheelchair swimmers. There is no other safe ocean access pool on the West Coast, or in the Continental United States.


I am a disabled snorkeler with a Snorkel Swimming Club, many members are disabled. Bus loads of people are over crowding other beaches that are much more dangerous for small children to snorkel than the Children's Pool which lays vacant of seals and of people because of the Conspiracy supported by our government catering to opportunist profiting from the view of seals.


 DSCF2164.AVI


 DSCF2165.JPG


 DSCF2166.JPG


 DSCF2173.JPG


 **DSCF2179.JPG**


 **DSCF2180.JPG**


 **DSCF2181.JPG**

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 **DSCF2191.JPG**

Totally illogical. The seals have for sure , no argument far exceeded the carrying capacity of the local underwater environment and have seriously polluted the sand and the Tide Pools killing ALL Tide Pool Creatures. This is why an environmental impact report is way overdue. Seal World did drop off those seals with out an EIR to ascertain if the sea could support so many new marine mammals NEVER there before in such populations or their subsequent huge birth rates. Each creature needing 8000 calories / 50 lbs of bio-mass each day. Thousands of seals and sea lions=DEAD ZONE. Seriously.

Also within the Mission Statement of the CCC: Healthy fish stocks, now G.O.N.E.!

Gone are the CA Black Mussels a Tide Pool Staple. I am a Tide Pool interpreter at Birch Aquarium, and I know that the areas of S. Casa. Children's Pool, Seal Rock and Shell Beach are fast becoming dead zones directly because of the overpopulation of seals. You will be promoting the dead zone, starvation of the seals, fecal pollution to the point of the bacteria including T.B. and e.coli being airborne and the stench is already so powerful that the residents of Casa De Manana have to close their windows to the horrible smell and fear of illness .

This is what your staff report is supporting. Pollution and disability Code Violations, that have continued unabated for decades. The CCC is a puppet for the Seal Opportunist Groups who have used our government as political puppets with lies and total ignorance of the truth.

They care not for the seals as the seals are birthing in their own feces and becoming ill and dying. This is not educational for anyone to watch. I am a retired teacher of 30 years and

have taught Earth Sciences. I also hold a degree in Early Human Development, and I would not want students to view what is going on at the Children's Pool. It is a filthy unnatural environment manned by Nazi Style Opportunists frightening disabled bathers daily. The Ranger, the Police and the LifeGuards have been successfully controlled for the purposes of fund raising for a seals for financial gain, Large financial gain. The Children's Pool is nothing more than a Sea World created pool, only filthy, blocking the only access for a wheelchair swimmer, decimated, dead zone, and hungry seals having to go out further and further to find food. Biologist Michael Costello stated that they are devouring the dolphins fish stocks now. He explained that birth control for the seals and sea lions is effective. The balance of the ocean is at stake. If you do not wise up and really learn the truth and close the Children's Pool, you will be directly responsible for continuing the dead zone, the pollution and the hunger of the seals, and for blocking wheelchair swimmers continuing the serious prolonged disability violations. Please be on notice. This is the most despicable behavior of any American government body I have ever had the displeasure of dealing with. I was patronized, called a liar and told that the California Coastal Commission does not have any oversight, when I respectfully asked. This by Miss Britney Lavern. No oversight in a democratic nation? No checks and balances? Special interest votes rule? Shameful.

Extremely difficult to contact, email addresses are not available for all members. The California Coastal Commission is not user friendly. And to ignore our disabled people is so immoral that I can not help but tell you that I feel the Commission needs to really take notice of this Sea Wall. This Sea Wall is a wall of a sand bottom human bathing pool, one that is needed more now than ever before. And I request that each member of the Commission imagine bringing home a sister or friend from the hospital, who just had two legs and one arm blown off. Who used to snorkel and swim in the real ocean, who wants to again, to have that magic of experiencing the ocean gives. Where would you roll her into? The Children's Pool of course! This will put San Diego on the ADA map of the World, This is exactly what the CA Coastal Commission IS for, Access for all and Recreation. Please image the facility if restored as per Judge Pate's 2004 Human Health ruling that, by the way still stands today.

Please have the courage to see the truth. And yes even go snorkeling with me at the Children's Pool this week. Come experience the safety and fun and magic. Know exactly what it is you are deciding upon. The water is not polluted as it goes in and out twice a day with the tides. The sand up around the rope is deadly, that is where they want people to stand. A rope is dangerous on a Children's Playground, which is legally what it still is. In 2004 the sand was to be removed, the seals would be discouraged from hauling out and polluting and birthing in their own large piles of feces, spats of urine, and afterbirth pieces that accumulate and never wash clean ever. Image closing this pit and how the stench and filth will build up and up and up until someone dies from it. Seals will for sure, they get ill from their own filth. When just over the wall at South Casa where the sand is to be conveyed the seals filth washes clean and they are happy there just fine.

Please stop the disability violations, by understanding that you are now informed that there is no other safe entry for a wheelchair swimmer, especially not La Jolla Shores. You can confer with Melinda Merryweather who is the Access Chairwoman for the La Jolla Parks And Beaches.

Please reply that you now understand that the Children's Pool is the only safe access with dedicated ramp on the map for a wheelchair swimmer and that La Jolla Shores is too dangerous. Go to these places and see for yourself, please. And when you get to Miss Scripps's Ocean Pool imagine the ramp I will attach and have sent. If you knew the research and the excellent triangulation that I have been especially careful with you would totally be on board with Restoring our only Pacific Ocean Pool. Are you aware that the Children's Pool

also does qualify as a Registered State and National Historic Site? I am disabled, I am a teacher, I am a docent teaching ocean ecology and marine mammal migration educator, ( via Scripps onboard the Whale watching excursions). I snorkel using the old ramp at the Children's Pool, I see the dead zone, I have to walk through piles of feces, but the swimming is safe, and the water washes clean. The seals are part of the therapy and are my pals, I can tell you wonderful stories about these very tame seals. One mother brought her pup to my lap when I was sitting far away over by the cave. One full moon night trying to catch a lobster at Children's Pool two years ago, my dive buddy got an immediate ear ache and did not go in. I went alone, full moon, like a lake, low tide, very shallow. Immediately a seal bushed my body and looked right in my face , and he followed me for over an hour, loving my dive light, and I even turned it off and we swam together in the safe shallows of the Children's Pool in the moon light. Popping Season is lobster hunting season. I got 28 zeros. That means I tried 28 times with no luck. But what fun and only at the Children's Pool is it safe. Great night swimming there .

Judge Pate's entire court case; all testimony is still valid right now. All conditions are exactly the same only the pollution and the population is much worse and larger. Balance is key in the Sea and there is no balance any longer. It is a decimated filthy dead zone.

Wounded warriors are committing suicide to the tune of 22 each day rather than face the terrors of their wounds. They come home not to a heros welcome but to depression and exclusion. At least allow them the healing magic of the Pacific Ocean Bathing Pool. I am fighting to stay out of a wheelchair, and if you close my therapy pool I will not have any where else to go. Please go to the new website to educate yourself with triangulated information. [restorechildrenspool.org](http://restorechildrenspool.org)

Cheryl K. Aspenleiter  
Disabled Pacific Ocean Swimmer.  
858 568 1257

--

 **LA JOLLA SHORES NOT ACCESSIBLE FOR A PARAPLE...**

**From:** [Parker, Holly@Coastal](mailto:Parker.Holly@Coastal)  
**To:** [Laver, Brittney@Coastal](mailto:Laver.Brittney@Coastal)  
**Subject:** FW: Children's Pool LCP-6-lis-14-0607-1/ath12c, Staff Report Correction  
**Date:** Monday, August 04, 2014 8:21:31 AM  
**Attachments:** [Petition Comments July 31 .pdf](#)  
[JUDGE PATE RULING FOR C.O PAGE 30 \(1\).pdf](#)

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**From:** Miller, Vanessa@Coastal  
**Sent:** Friday, August 01, 2014 9:24 AM  
**To:** Sarb, Sherilyn@Coastal; Lee, Deborah@Coastal  
**Cc:** Parker, Holly@Coastal  
**Subject:** FW: Children's Pool LCP-6-lis-14-0607-1/ath12c, Staff Report Correction

**From:** Cheri Aspenleiter [<mailto:cheriaspen@gmail.com>]  
**Sent:** Thursday, July 31, 2014 4:26 PM  
**To:** Miller, Vanessa@Coastal  
**Subject:** Children's Pool LCP-6-lis-14-0607-1/ath12c, Staff Report Correction

To All CA Coastal Commissioners vis Ms. Miller Administrative Secretary as a disability accommodation. Please send to each commissioner and San Diego Staff Members. This is very important **corrections to the recent Staff Report. :**

The attached statements from disabled people describing themselves using the ramp to access the bathing pool, and the healing need for the violations to be corrected so the recreational facility can be used by all people for the purposes protected in the Tidelands Trust upheld in Superior Court.

P.S. The Children's Pool is the only safe ocean access for wheelchair swimmers built especially for this purpose. The Staff Reporter Author did not consider the evidence before her, especially the La Jolla Community Plan that clearly shows the Children's Pool ramp as the only dedicated vertical easement ramp to the high water mark on the map. La Jolla Shores is a surf beach and I have already sent you a slide show of it and all the other access sites into the ocean. Only the Children's Pool has the safe surf-free access. Only Children's Pool has the easement ramp and the perfect location and space for a great ADA ramp that curves along the contours of the wall into the calm waters of the pool, by La Jolla Architect Mark Bucon. The Drawing of this ADA ramp and two others have been submitted to you.

The CA Coastal Commission's Mission is ACCESS and RECREATION. This was specifically built for both.

Plus your report did not address pollution levels and how they would increase dramatically if the pool is allowed to close and fill up with seals birthing in their own feces. Judge Pate in 2004 via the Centers for Disease Control's testimony and all marine agencies issued a strict human health order to restore the Children's Pool and remove the filthy sand. The CCC is on notice that this commission is in direct violation of their mandates by not maintaining the Children's Pool Disability Access and indeed by promoting and supporting the illegal removal of the access ramp that served wheelchairs for decades.

The CA Coastal Commission's Mission is also healthy fish stocks. The Children's Pool is a dead zone, there are not healthy fish stocks the seals have devoured them. An immediate environmental impact report is in order and decades overdue. Britney herself admitted the



pollution and stated she would not swim there. The pollution needs to be prevented not increased by closure. The bacteria may be airborne to humans and to the retirement community who now has to close their windows to the stench.

Ellen Browning Scripps Trust held up in Superior Court and the order to restore the pool still stands.

I hereby state that if the Commission should vote to close the only safe entry and exit into the only ocean pool then the Commission will be furthering their own collusion of dishonoring Americans with Disabilities. It will go against the whole philosophy of the Coastal Commission. Please have the courage to bow away from the special interest groups who were not even aware that a ramp was ever there, that is how good the conspiracy is to the true definition of the word. It is horrific and mean to use the seals for profit, and to dupe the Commission and some of the City into being total puppets for their seal viewing business.

Children's Pool's problems were begun by Sea World and without any responsibility for the ecosystem sustainability and pollution. You close the pool and you are responsible for the continued pollution and dangerous bacteria that affects the seals, the environment and people adversely as well as the ever increasing hunger of the seals and starving sea lions, tide pools totally dead.

If you don't think an immediate EIR is warranted then you are guilty of what is tantamount to treason, both for the continued ruination of the undersea ecosystem and for blocking disabled American Veterans and all other disabled people, and Children. It is only a 200 foot pool for peats sake. People without limbs need it!!!

Cheryl K. Aspenleiter  
Coastal Ocean Access & Sustainability Team

1. attached proof via many comments from real people whose access ramp was blocked, and who will tell you there is no other safe ocean access pool for them. The ramp was used as the primary access for decades. A ramp that you & the City of San Diego needed to make sure was excellent and kept to code every time it was touched for maintenance, and it was not. Severe violations exist and it is your job to stop them by initiating a Restoration Project to Restore Access To the Disabled for Whom the Children's Pool was built. This is an fact that can not be disputed. Many ADA ramp designs fit well there.
2. attached is Judge Pate's Human Health ruling disallowing the build up of seal feces by ordering the sand removed & the sluiceway studies completed.
3. attached photo of increasing the percentage of shark attacks by not decreasing the seal population to be in balance with their environment, very poor marine mammal management; Sea World.

PLEASE REJECT THE STAFF REPORT AS IT CAN NOT BE TRIANGULATED, IS NOT BACKED BY SCIENCE, AND I HEREIN IS PROOF OF THE DISABILITY ISSUE.

4. I direct you to the educational website :

<http://www.restorechildrenspool.org/> to learn the actual truth that is thoroughly researched and the information triangulated unless otherwise stated.

Our goal is inclusion to the sport of ocean swimming for all people, this is the Commission's Goal as well. You have forgotten us disable people and we ask that you please remember us here at the only safe ocean access pool we have. Please

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## **Parker, Holly@Coastal**

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**From:** Miller, Vanessa@Coastal  
**Sent:** Monday, August 04, 2014 1:00 PM  
**To:** Sarb, Sherilyn@Coastal; Lee, Deborah@Coastal  
**Cc:** Parker, Holly@Coastal  
**Subject:** FW: Children's Pool Closure Project  
**Attachments:** Ken's comments about the Coastal Commision staff report on the closure plan for Children's Pool.pdf; Wheelchair man at La Jolla Cove May 2014.jpg; 1983 Gotch, Blair Ramp letter to repair.pdf; Board of Playgdn Comm. Pendleton to Barger Ellen's Attorney accepting the maintenance. (1).pdf; disabled\_vets.jpg; NOAH OK to dredge sand , ok for the seals to do this U.S. Dept of Commerce.pdf

**From:** Cheri Aspenleiter [mailto:cheriaspen@gmail.com]  
**Sent:** Saturday, August 02, 2014 3:07 PM  
**To:** Miller, Vanessa@Coastal  
**Subject:** Children's Pool Closure Project

RECEIVED  
AUG 04 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Ms. Miller, Thank You for sending this message to all Coastal Commissioners:

Dear California Coastal Commissioners: I direct you to please read the information in the following website to become more aware of the situation at the Children's Pool. If you have not been in the water there it will be difficult to make an informed decision. I doubt that any of the commissioners has been swimming in the pool? I would like to suggest that a swim in the Children's Pool be a part of your research. I fail to understand how you can close a pool you know very little about. I know if I were in your positions I would go there and snorkel swim and really understand the situation. And look up at the unfinished hillside construction and imagine a good ADA ramp with wheelchairs rolling in on their own. There simply is no other place for this to occur. This is a human built sand bottom swimming pool for humans. A with all the disabled people our country has, one in five, we sure need it for healing and for inclusion.

Please use this website as part of your much needed research: <http://www.restorechildrenspool.org/>  
Please do not use the staff report written by Ms. Laverne as she failed terribly with reporting the significant and vital information that was before her. We have disabled American Veterans laying all over this City without limbs who could and should have access to the healing waters of the Children's Pool and the Commission is failing in its Mission of Access for All. And The Commission Staff Report actually promotes the under sea dead zones that are rapidly occurring as a direct result of the over population of seals and sea lions and absolutely no marine mammal management occurring to prevent their starvation. This has gone on long enough; the very balance of the undersea ecosystem is gone and disabled people have been excluded long enough from the only ocean pool built especially for them. ENOUGH. Please see the forest through the trees, and just follow your mission of Access for all and Recreation at the proper locations as this definitely is. The Commission's lack of proper decisions and the the deliberate violations of every Disability Law enacted are the issue at this pool that boasts the Grandfather of Disability Ramps into an Pacific Ocean Swimming Pool. This is serious and this is a direct complaint that the CA Coastal Commission Staff writer Brtney Laverne is biased and therefore has a conflict of interest. The report was not professional and she needs to be relieved of her duties with relation to the Children's Pool. I understand that The Sierra Club and the Surf Riders Organization are directly financing the closure of this our human bathing pool. I would like to know if Mr. Laverne is a member of either of these organizations? If so then I request that she excuse herself and that the Staff Report be rewritten. Her dues are helping to finance the special interests of the group fighting to close the pool. That is a serious conflict of interest. I am appalled at her lack of respect to the disability codes and the facts before her

that the ramp is the only one on the map into the only safe pool. She is an poor excuse for an American. As are any of you who vote to close the only ocean pool available to our thousands of limbless wounded veterans, men and women, most very young. Many are committing suicide each day, the suicide rate exceeds the death tolls of the wars they fought in, Iraq and Afghanistan.

Over 185,000 amputations in our country alone each year, not to mention the thousands of disabled tourists that come.

I suggest that you each think about this and do what you know is right, disregard the totally biased staff report. Please have the courage to see through the greed of the seal opportunists using marine mammals for fund raising while the seals over populate and totally devastate their own environment. Why would anyone want to watch seals birth in their own feces and urine? This is not a natural lesson in seals at all, it is a lesson in using them for greed. And literal Nazi style control of the City of San Diego and you the Coastal Commission. Please see the marine science truth and triangulate the information via an immediate Environmental Impact Report.

Furthermore please consider the Children's Pool Restoration a Commission Project for the Future and really put San Diego on the ADA Map of the World and help out our Veterans and your own terrible image. I was told that the CA Coastal Commission is the enemy. An Enemy of the Disabled! That is a very bad reputation to have ladies and gentlemen. Please have the courage to turn it around and restore this wonderful seawall and the pool. It is not one of those sea walls you all seem to hate, this one collects sand that can be taken to South Case to cushion the seal haul out there. Access for all, all year at the only Pacific Ocean Pool with ramp on the map.

Thank you for you time ,

RAMP Committee

Cheri Jacobs Aspenleiter, Disabled Ocean Swimmer

858 568 1257

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HUFF  
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David Wood

david.wood@huffingtonpost.com

## U.S. Wounded In Iraq, Afghanistan Includes More Than 1,500 Amputees

Posted: 11/07/2012 5:38 pm EST Updated: 11/08/2012 4:14 am EST

According to new data released Wednesday, more than 1,500 Americans have lost a leg or arm in combat in Iraq or Afghanistan, and hundreds have suffered the amputation of multiple limbs.

The Huffington Post reported Oct. 25 that the number of American battle wounded has passed 50,000, a grim milestone of more than a decade of war and a reminder of the war's enduring human cost. On Wednesday, the wounded toll stood at 50,159, according to Defense Department data.

Since 2001, when the war in Afghanistan was launched in response to the 9/11 terrorist attacks, 5,225 American military personnel have been killed in action in Afghanistan or Iraq.

The casualty statistics only begin to suggest the suffering of the injured and of the families of those killed or injured. Because so many of the wounded are in their early 20s, they and their families face a lifetime during which the medical care required may be costly, intense and constant. Amputees, for example, must be fitted for new prosthetics every few years.

The roster of wounded, including those with physical and psychological wounds, explains why the Department of Veterans Affairs is rushing to expand its medical and mental health services for the new generation of veterans.

According to a 10-month investigation by The Huffington Post, more than 16,000 Americans have been taken from the battlefield with severe, disabling wounds.

The new casualty data, released by the U.S. Army Surgeon General's Office in response to a request by The Huffington Post, shows a dismaying range of injuries. Overall, 253,330 servicemen and women have suffered traumatic brain injury on the battlefield or elsewhere, including 3,949 with penetrating head wounds and 44,610 with severe or moderate brain injury.

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In the Army alone, 73,674 soldiers have been diagnosed with post-traumatic stress disorder as a result of their combat experience. The Army also has diagnosed 30,480 soldiers who returned from combat with traumatic brain injury, often caused by one or more severe blows to the head or exposure to a concussive blast.

Among the combat wounded from all the military services are 1,572 patients with major limb amputations, including 486 wounded troops with multiple amputations. These numbers do not include those who suffered the loss of fingers or toes.

Most of the amputees, 83 percent, have lost one or both legs, mostly from the blast of improvised explosive devices. These deadly homemade bombs are also the cause of most of the genital wounds suffered by 1,410 U.S. troops.

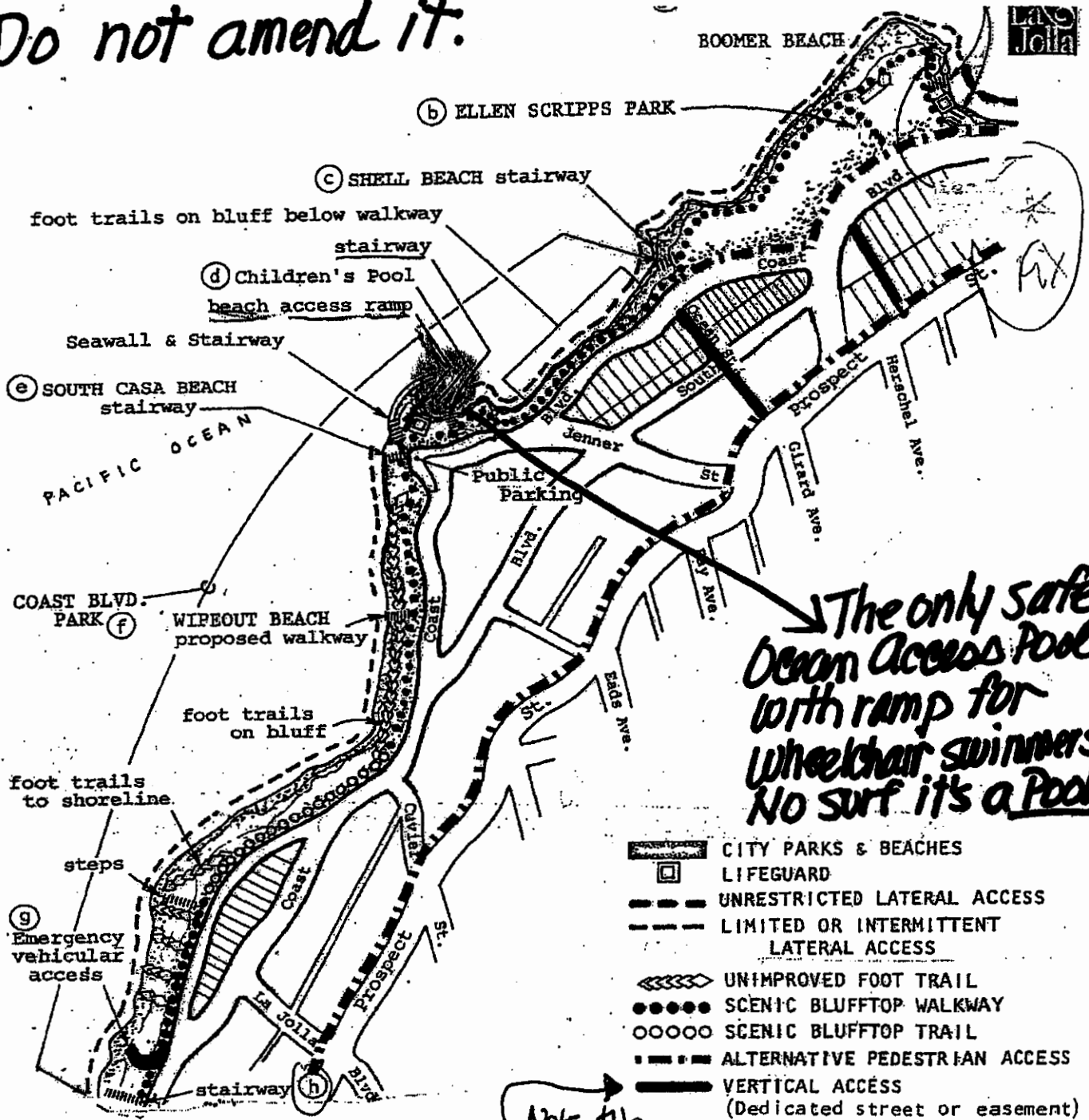
The data released Wednesday indicates that 2,542 servicemen and women have suffered traumatic burns; 142 have lost at least one eye, and five lost both eyes in combat.

The financial cost of caring for the wounded is dwarfed by the emotional cost, of course. But in 2008, Harvard economist Linda Bilmes has estimated the lifetime cost of caring for the war wounded to be between \$600 billion and \$900 billion. Since then, the data she has gathered indicate that the cost will rise, she told The Huffington Post Wednesday.

*Please allow our wounded limbless  
Vietnam the healing waters of the  
Children's pool. Safe supportive  
protected year around rehab pool.*

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En force this Plan  
Do not amend it.



The only safe Ocean Access Pool with ramp for wheelchair swimmers. No surf it's a Pool.

Note they used this as well

Cheri  
This is out of our Community Plan they would have to change it to take  
Subarea E: Coast Boulevard - Physical Access



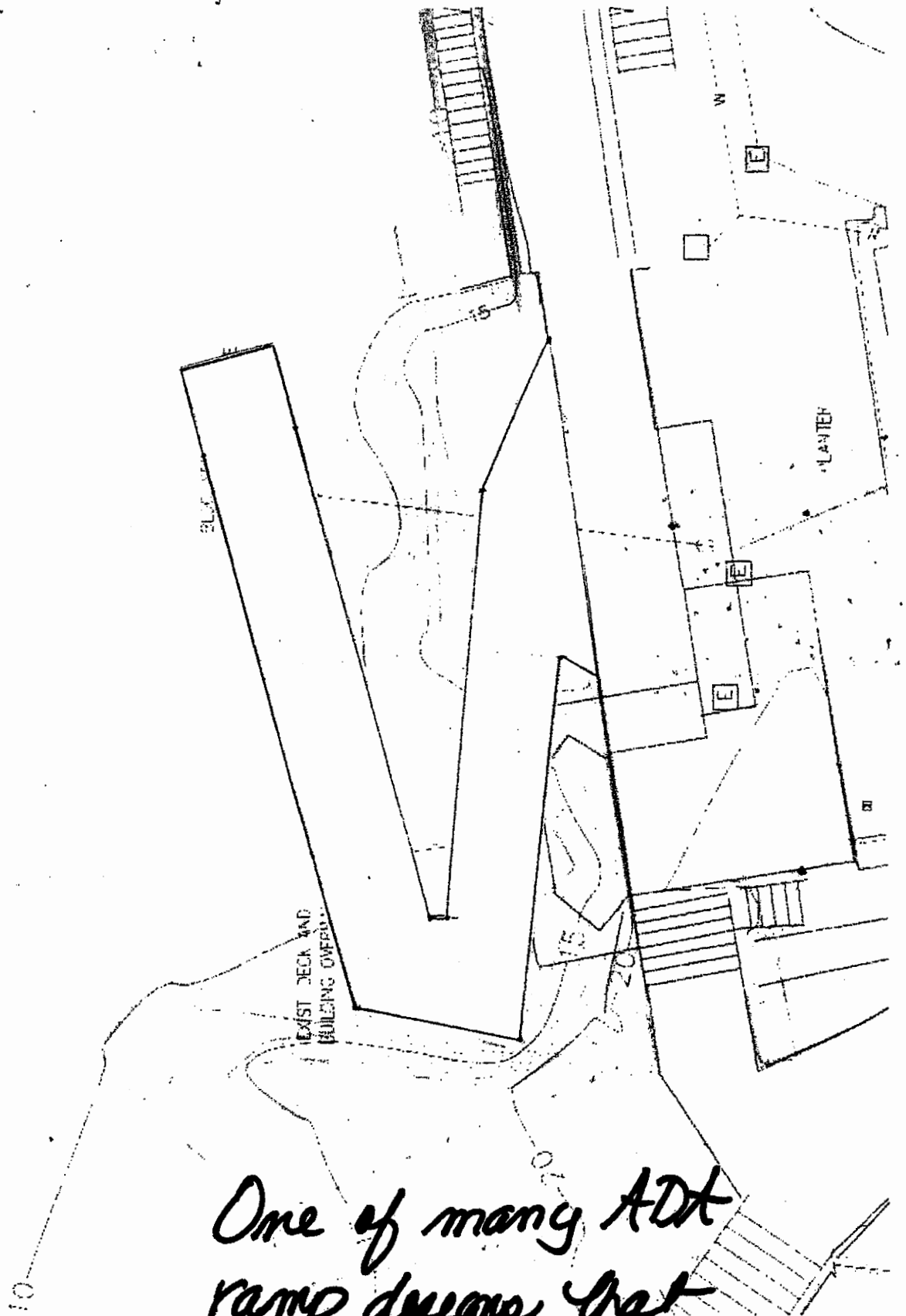
La Jolla Community Plan  
City of San Diego - Planning Department

Figure E

The "Beach across Ramp" off the map the Community Plan is Law

An ADH Ramp fits well of course.  
Ocean Therapy Pool for the Disabled.

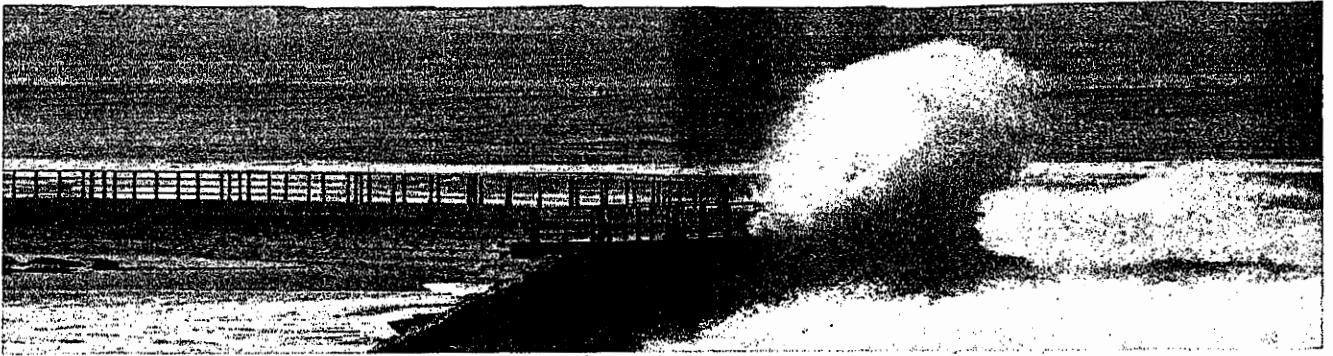
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One of many ADH  
ramp designs that  
fit perfectly at our only  
Pacific Ocean Pool here. 226



# Who Needs the Protection ?



Harbor Seals have many adaptations, which make them good at swimming and diving. They have specialized fore flippers that help them to steer. Their hind flippers can be moved from side to side to move forward. They can swim upside down. Harbor seals can swim as fast as 12 m.p.h.



You can have the pool we don't need it & it is getting stinky anyway. Open those sluice ways and get the water flowing clean. We like the reef better & will always be your swimming buddies! Humans without legs need the pool, and little humans who are not strong. We understand.



**The Children's Pool was especially engineered and constructed for disabled people. It could and should be an incredible ADA Ocean Rehab Pool. The ramp was the primary access & served wheelchairs for decades. This is the only Pacific Ocean Access. The Pool is protected & safe from surf & obstacles & perfect for disabled people. Water therapy here is very healing physically, mentally & spiritually. The City of San Diego would be wise to Restore this Pool & put S.D. on the ADA map of the World. The seals are healthier hauling out on the natural reef behind the wall that washes clean. Seals are they are part of the therapy & there is space for all mammals.**



TO WHOM IT MAY CONCERN:

THE GREAT MAJORITY OF THE PEOPLE IN LA JOLLA DO NOT WANT THE CHILDREN'S POOL STOLEN FROM OUR CHILDREN. THE SEAL ACTIVISTS HAVE WITH NO CONSCIENCE WASTED TAXPAYER MONEY FOR TEN YEARS NOW TO ACCOMPLISH THIS THEFT, AND TO CRIMINALLY DISHONOR THE SPECIFIC INTENTION OF THE DOCUMENT WHICH MADE IT CRYSTAL CLEAR THAT THE BEACH WAS BEING FINANCED AND BUILT FOR THE PURPOSE OF PROVIDING A BEACH FOR OUR CHILDREN.

AT LEAST THREE TIMES OR MORE THE LA JOLLA TOWN COUNCIL HAS VOTED TO KEEP THE BEACH FOR THE CHILDREN. JUDGES AND COURTS HAVE UPHOLD THE INTENTION OF THE DONOR.

BUT THE MEAN-SPIRITED ACTIVISTS WHO CARE NOTHING FOR ETHICS OR CHILDREN HAVE CONTINUED THEIR BATTLE TO CHASE AWAY CHILDREN AND REPLACE THEM WITH WITH SEALS, AND THEIR WASTE WHICH DIRTIES THE BEACH AND WATERS. ATTRACTS DANGEROUS SHARKS TO OUR SHORES, AND CREATES A FOUL ODER THAT PERMEATES THE AREA.

THE SENIORS WHOI CAME TO CASA DE MANANA WO LIVE OUT THEIR LIVES BY THE SEA CAN NO LONGER STEP OUTSIDE WITHOUT SUFFERING THE FOUL ODER AND COMPLAIN BITTERLY ABOUT WHAT THESE NON-CARING ACTIVISTS HAS DONE TO THEIR LIVES.

THE MANY PROBLEMS CAUSED AND MONEIES WASTED BY THE ACTIVISTS IS ALL THE MORE COMPLETELY RIDICULOUS IN THAT THE SEALS HAVE ALWAYS HAD A COMPLETELY GOVERNMENT PROTECTED AREA JUST AN EXTREMELY SHORT DISTANCE AWAY FROM CHILDREN'S POOL. ON SEAL ROCK, WHERE NATIVES AND TOURISTS HAVE ALWAYS HAD THE OPPORTUNITY TO WATCH THEM UP CLOSE AND ENJOY THEM. THERE WAS NEVER ANY NEED FOR ANY OF THIS COMPLETE WASTE OF THE PEOPLE'S MONEY AND THE BITTERNESS CAUSED.

THIS PAST FOURTH OF JULY CHILDREN'S BEACH WAS FILLED WITH HAPPY CHILDREN ENJOYING

IT. THEY SHARED THE WATERS WITH SOME SEALS AND SNOKELERS. AND THEY WERE ALL

HAPPY, EXCEPT FOR THE EVIL ACTIVISTS AND SOME GREEDY BUISINESS PEOPLE WHO THINK THEY WILL MAKE A FEW MORE DOLLARS IF THEY CAN KICK THE CHILDREN OFF THEIR BEACH.

MAKE NO MISTAKE - THE GOOD PEOPLE OF LA JOLLA WANT THE CHILDREN TO KEEP THEIR BEACH.

ADELE MEYERS  
LA JOLLA  
PUBLIC SCHOOL TEACHER

Fixed

Att. DAN DANERI

From Melinda

Sep 28th

### Recollections regarding Children's Pool beach maintenance

Mark S. Brown, SD Lifeguard II from Feb 1975 to Oct 1979, left to become a paramedic in the City of San Diego.

I was assigned to Children's Pool as a LG II during 1978-79.

When I was a Permanent lifeguard stationed at the Children's Pool I do not recall any regularly scheduled beach maintenance. In my experience, Children's Pool beach maintenance occurred more on an "as needed" basis. Seaweed was occasionally cleaned off the beach by a skip loader that used the manmade berm ramp as access. This ramp was called the "Baja Road" because it lead to the beach below the tower. I have no knowledge of any records that were kept of beach cleaning at the Children's Pool.

I have a strong recollection of an attempt at sand excavation from the Children's Pool that went on for several months in 1977 and then was stopped out of pure futility. Turned out there was way too much sand that would take years to move using the skip loader. I recall the crews just dumping the sand onto the South Casa beach after trudging slowly and carefully up the ramp. This aborted attempt at returning the Children's Pool to its original size of course left a huge hole in the middle of the beach that became filled with quickly stagnant seawater after ensuing high tides. The smelly, unsightly mess only disappeared months later after huge winter swells finally swept even into the protected area of the Children's Pool and leveled the beach once again.

During the six months I was stationed at the Children's Pool in 1978, the ramp gate was rarely locked. I don't know when it became SOP to lock it.

More information could be forthcoming from the other Permanent Staff with whom I worked in the North Area. These include LG IIs Steve Wood, Joe Barnett, Tom Thayer, Jeff Koch, Dan Jurman,

Tom Redlinger. My supervisors were Sgt. Mike O'Hare, Lt. Buster Mico, and Captain Bob Shea.

Mark B

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The La Jolla Town Council parks and beach voted unanimously to ask the city for a study of a variety of solutions to the problem of the declining state of the Children's Pool Access Ramp

The issue hinges on aesthetic and safety, but area lifeguards say the environment of the beach itself is slowing bearing negative impacts from the ramp.

Life Guard Joe Barnett told the Aug. 24 Committee Meeting the problems began in 1982, after giant swells washed out the existing mostly asphalt ramp. The ramp was then covered with "ten to fifteen truck loads of hard base red clay". And a top layer of decomposed granite.

He said the continual beat of the ocean then "mulched with that red clay and turned it into a hard, gelatinous type of fluid and made the red clay kind of sneak out toward the beach further.....bubbling up like a strange kind oil into a muddy insidious kind of sand.

"The problem is the Children's Pool Beach is now being slowly, completely destroyed because we have an amoeba-like red clay that is forever creeping toward the beach and taking it over ...." Then Barnett told a recent committee meeting attended by several City Officials. "Now it's becoming part of the sand."

Barnett said the solution would be to remove the ramp, and this is the issue. Some area residents and lifeguard want the ramp removed, others want it replaced to something akin to concrete. The Committee Voted unto have the issue extensively studied. Much of the Committees' Discussion urged the City to hire "expert consultants" but Terri Carroll, head of the City Parks and Rec. Departments Coastal Division, said the City has talked to various persons about this issue and may consider only 'an in-house' look at the problem.

Committee members spoke of health hazards to the public because the ramp is unsafe. The gelatinous access make cause bathers to slip and and wheelchairs to over turn, but Carroll, other City Officials and a representatives from City Attorney John Witt's office stopped short of promising an answer.

They asked how the City crews could access the beach for removing kelp and emergency teams..... (illegible wording) Ward off personal injury lawsuits caused by removing the well-used access and leaving behind the steeper natural bluff?

"There are so many issues; there is no easy answer," Said Bill Corbett, Witt's supervising litigation investigator, who added he did consult with "National Expert," Dan Gillian, formerly of the CA. Parks and Recreation Department. He says Gillian share his concern. My First reaction was to just let it erode, Corbett said, people will get used to having a steeper gradient there. If you take it away immediately, you are going to have people mistakenly thought, "Well, we went down here before." You're going to wind up with a problem. Our concern is a safe, positive recreational experience for everyone.' In reference to current wheelchair access problems Corbett asked, "What is the problem of having a lifeguard help them?"

He also mentioned the necessity for emergency access. But Barnett lifeguard, Mike O'Hara and area Activist. Tony Ciarra all said emergency teams would not need to physically bring their transportation on the beach.

And the ever-growing kelp beds?

Barnett said;" The lifeguards could easily rake the kelp into piles on a periodic basis, a solution City Officials and long time Children's Pool protector Dolly Bray argued against. Instead they said, a smaller access ramp could be constructed for City Removal.

Others such as Ciani and Committee chair woman Gayle Pate suggested "Unplugging the barriers now in place in the pool's seawall. The holes in the base originally allowed self-cleaning of the beach, despite the barrier period they were plugged for safety reason and erosion of the ramp.

HANSHA - This shows the pool was cleaned  
and wheelchairs used the ramp Melinda 224



## Request for Information on Pinnipeds in California

Dear Colleagues:

NOAA's National Marine Fisheries Service (NMFS) Southwest Regional Office (SWR) is requesting assistance to collect information on pinniped haulout sites in California.

Documenting the location and seasonal use of pinniped haulout sites is important for managing activities that may impact pinnipeds and also for prioritizing research needs. NMFS-SWR, in collaboration with NMFS-Southwest Fisheries Science Center, has created an interactive GIS database that will provide a comprehensive inventory of pinniped haulout sites in California, based primarily from an extensive review of literature and from contributions from fellow researchers.

We are requesting assistance from pinniped researchers and others who are willing to share their information on pinniped haulout information in California. We understand the sensitivity of sharing data, but we want to make sure that the database incorporates both historical and current information on pinnipeds in California. Many pinniped surveys are conducted at the end of the breeding season when the majority of the animals are hauled out. Much can be inferred about dispersal of pinnipeds by comparing movement between the breeding and non-breeding seasons. However, less is known about dispersal within the breeding and particularly, during the non-breeding season. Thus, we hope that with your assistance, we will be able to compile year-round information on pinniped haulout sites in California. Primarily, we are interested in information (past and present) on: 1) species; 2) location (e.g., name of area and/or latitude/longitude); 3) counts; 4) date and time observed; 5) whether the area was/is used as a rookery or non-rookery; and 6) age class. Any other additional information would also be greatly appreciated. We also request that you include reference information, so that this may be included in the database as well.

Presently, the database will only be accessible to NMFS-SWR staff as we continue to develop this database and collect information. The information in the database will be evaluated and updated on an annual basis. In the future, we may want to make a restricted version of this database available to the public (likely to include the GIS map, species and location), but we will notify participating researchers prior to publicizing.

If you have information on pinniped haulout sites in California, but are unsure about disseminating data, please feel free to contact me so that we may discuss alternatives.

Please contact me with any questions.

Thank you in advance for your time.

Cheers,  
Monica DeAngelis

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## COUNCILMEMBER SHERRI S. LIGHTNER

FIRST DISTRICT  
CITY OF SAN DIEGO

August 8, 2014

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Re: LCP Amendment No. LCP-6-LJS-14-0607

Dear Commissioners:

As the San Diego City Councilmember who represents La Jolla and has followed the Children's Pool issue closely for over a decade, I respectfully request that you grant the community's request to deny the La Jolla Community Plan/Local Coastal Program amendment to incorporate additions and changes to the marine resource protection and public access policies to eliminate public physical beach access at Children's Pool Beach during Harbor Seal pupping season from December 15 to May 15 of each year.

La Jolla community organizations, including the La Jolla Community Planning Association, La Jolla Town Council and La Jolla Parks and Beaches Committee, have all formally opposed this closure because they believe that shared use of this beach between people and seals is the preferred alternative for the community of La Jolla.

I am deeply concerned that this action sets a dangerous precedent, eliminating public physical access guaranteed by the California Coastal Act of 1976. The Children's Pool has provided public physical access to the ocean for nearly a century. Page 170 of the La Jolla Community Plan describes the Children's Pool as a "small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized."

This area has been used for physical access in the La Jolla Community Plan/Local Coastal Program since it was written. It is premature to permanently close the physical access and the beach, given that the effects of the year round rope required by the existing Coastal Development Permit have not been evaluated. The permit requires the placement of a year round rope and detailed monitoring of the seals by the City.

The California harbor seal populations have increased statewide over the past 20 years. This increase has also been evident at Children's Pool regardless of the past shared use of the beach.

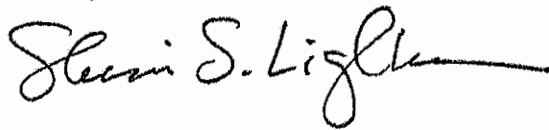
It is important to note that this species is not listed as "endangered" or "threatened" under the Endangered Species Act. It is also not considered "depleted" under the Marine Mammal

Protection Act (MMPA). The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) most recent stock assessment states that the California harbor seal "would not be considered as 'strategic' under the MMPA." According to the MMPA, if a species is not considered "strategic," then it is not likely that human impacts will reduce the stock below its optimum sustainable population.

The proposed permanent, seasonal beach closure and precedent setting elimination of a long-standing public physical access is unwarranted and is regulatory overkill. The continued shared use policy can better achieve all the goals of the Coastal Act in providing public access to the beach and ocean while also keeping both seals and people safe.

Please contact me at (619) 236-6611 or [sherrilightner@sandiego.gov](mailto:sherrilightner@sandiego.gov) if I may provide additional information.

Sincerely,

A handwritten signature in black ink, reading "Sherri S. Lightner". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Sherri S. Lightner

**Laver, Brittney@Coastal**

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**To:** Lee, Deborah@Coastal  
**Subject:** RE: Closure of the CP: LCP-6LJS-14-0607-1, CDP # 6-14-0691

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

From: dtj@reagan.com [mailto:dtj@reagan.com]  
Sent: Wednesday, August 06, 2014 2:50 PM  
To: Lee, Deborah@Coastal  
Subject: Closure of the CP: LCP-6LJS-14-0607-1, CDP # 6-14-0691

California Coastal Commission  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

LCP-6LJS-14-0607-1, CDP # 6-14-0691

To the Commissioners:

There is not enough accurate or truthful information for the Commission to proceed. The CDP sets a dangerous precedent, yet is based on flimsy evidence, and no documentation of the claims San Diego is making. This project would have widespread and permanent effects on the Commission's ability to maintain even present levels of public access.

San Diego has seized on a weakness in federal pinniped census caused by neglect of duty in the National Atmospheric and Oceanographic Administration (NOAA). San Diego rests its urgency on claims there are no other seals in Southern California that matter except for those in La Jolla. If you allow the city to make this premature decision, the decision will come back to you both due to its negative repercussions locally but also due to others using this decision inappropriately elsewhere along the coast. Just as we are warning you about this increase, NOAA has been notified concerning the increase in pinnipeds by the scientific oversight group, the Marine Mammal Commission (see accompanied files).

The facts are that the Harbor Seal population has increased from the low double digits to the mid triple digits in the last ten years at the Children's Pool. Scientists have noticed an increase up and down both the west and east coasts as well.

NOAA scientists have been baffled by hordes of starving sea lions all this year. This increase in sea lions has been noted only one half mile north of the Children's Pool. The City of San Diego has implemented a policy due to this tremendous parallel increase in Sea Lion population (along with the Harbor Seals). They put in a gate along the cliffs so that people are now able to walk down to where large numbers of Sea Lions have moved in and caused a very irritating odor. This odor has had a negative effect on patrons visiting the nearby restaurants.

It is only a matter of time when the effects of the increased Harbor Seals at the Children's Pool will affect the community and bring out similar ire and similar demands. The Commission will hasten that day by closing down the Children's Pool. The fence which the City built along the La Jolla Cove cliffs essentially closed the cliffs to people and it was that restriction to public access that drew the Sea Lions onto the cliffs where they had previously not made access due to the presence of people along the cliffs.

The same holds true at the Children's Pool. With the Cities' closing off of the popular access ramp, allowing extremists to harass users of the CP and the rope giving the appearance of a closed beach, the Harbor Seals have in like manner become attracted to the mostly unused beach.



CONCLUSION:

The Commission needs to recognize the Children's Pool closure scheme is a radical solution to one town's social and economic self-inflicted wounds and send it back to San Diego, for them to solve their problems locally, within the confines of existing law.

Just before this call for data NOAA made its stand on the matter of Children's Pool.

FROM COURT RECORDS:

On September 14, 2004, the City Council once again held hearings on the Children's Pool. Addressing the Council that day was James Lecky of the NMFS. He advised the Council that harbor seals are a healthy species which are growing in population and not in any way endangered or threatened as a species. In fact, as the population of harbor seals expands "[t]hey are causing problems ... up. and down the coast in terms of invading harbors, causing property damage and limiting access to beaches that are important for other " public uses."

He then told the Council: "The tools that are available to the City and other local governments agencies really reside in [Marine Mammal Protection Act] §109(h)." He said "animals can be moved out of an area if they are either presenting a public nuisance or they're causing a public health hazard." It was his position that the seals at Children's Pool were a local issue for the City to resolve. [Exh 129.] At the end of the meeting, the Council voted "to design and permit the sand removal project and open the pool for year-round use. Direct that the opening of the sluiceways in the Children's Pool be evaluated as an alternative method to obtain the sand removal and tidal flushing as part of this effort. Direct that the rope barriers and sign posts be immediately removed to restore public access to the area and that new signs be placed."

That is a curious way for the head of Protected Resources for NOAA Southwest to talk if there were really only one harbor seal colony in

Southern California. But then, he had access to inside information. The alternatives to solve the problem the City Council agreed on in 2004 were abandoned later and now San Diego comes crying to the Coastal Commission to let it take what looks like an easy way out, though it will re-ignite and exacerbate the root problems in the long run. But then it can be attributed to the Coastal Commission.

SEND IT BACK. The higher courts do that all the time when a case comes before them prematurely.

David Johnson  
4222 Wightman Street  
San Diego, CA 92105

TO: California Coastal Commission  
c/o Local Staff Office  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

8/5/2014

Re: CDP # 6-14-0691, Th13a-8-2014-1

Staff report Th13a-8-2014-2 was filed in May, extolling the benefits to the public of being denied access to historic tidelands they thought were theirs. Th13a-8-2014-1 has just appeared, dated Aug 1.

A notable difference was the local director took credit (responsibility) for authorship. It still contains solely the San Diego City version of what they would have you believe, absent investigation, critical thought, data, legal analysis fact checking. It also lack any hint of the years of struggle by community leaders and advisory groups to stop the theft of access to a coastal heritage from their citizens and their heirs.

In touting needed and beneficial effects of beach closure to end nettlesome mismanagement problems, it further dashed any hope that closure can stop here. The clever new way the Staff gave the City to rip a hole in its LCP has no one-time limit. You will be accepting that any excuse will serve a City to terminate public access by force. The concept can be used anywhere. It lowers the bar to allow any municipality unable or unwilling to stand up to special interest groups. The Coastal Commission would cede the most precious resource the Commission is called on to guard for the people of California – the right to visit the ocean, in peace, unthreatened.

San Diego has spent years inventing its sales pitch, and I can only quickly hit the most obvious documented falsehoods in Th13a-8-2014-1, as they appear.

1. The City has committed to restoring the access ramp to the beach, “for emergency access only”; so called, to avoid having to install federally mandated ADA access which it ended twenty years ago by locking the ramp gate without a coastal permit. With Commission approval San Diego can have its needed ramp to let machinery finish the tower construction and then slam the gate on the disabled.
2. However, the rope barrier was controversial, and the City continued to examine options for addressing use conflicts between seals and the public. Conflict has not been between people and seals or the seals would have left. The conflict is between the public and anti-access bullies from all over the state.
3. accidental and intentional harassing of the seals by the public has been continuously observed and recorded Where is the proof? Ask the Ranger how many times he has seen somebody hurt a seal. How many times has he seen seals dash into the water for no reason? Has he proved that the seals will abandon the beach if it is not closed?

4. How can the Staff continually refer to total closure as "limiting access"?
5. The public will still be able to enjoy walking, fishing, and viewing the seals on the breakwater. That places people 10-15' directly above the seals. They make noise, even scream and drop things. The seals park directly under them to stay cool. Clearly the City is not worried about human proximity or seal trauma. This is just cheap crowd control but keeping the exploitation of the seals for a tourist attraction. Hypocrites.
6. Unrestricted access to the many nearby beaches would remain, And there it is, public access is not a public right, but is to be selectively allotted, and considered intact as long as there is some beach people can find somewhere.
7. the public at Children's Pool to observe seals close up has become a significant tourist draw and natural attraction This is the "economic significance" that justifies closure under 30230, the tourist money the City wants to keep while cutting overhead to zero.
8. months of the year, there would be no public access restrictions and no regulations against public use of the sandy beach or the water Yet the Ranger's data submitted into this file shows the summertime rope is very effective at curtailing public access. And he says there are seals on the beach year round. The year round closure is inevitable because the City purposely invites the public to make mistakes in summer.
9. respectful distance from the seals, as mandated by the MMPA. There is no legal distance from a seal. Ask the Ranger.
10. this is not only necessary but also the least possible restriction necessary. So what is next? If closure is the least possible restriction, what have we yet in store? There can be no excuse for not applying the "least possible restriction necessary" to the other beaches that are becoming habitats for sea lions and seals. Sorry, but we cannot trust the City trustees or a staff that endorses their every subterfuge.
11. to prevent a small but significant number of people from harassing the seals. Who? Name them. Turn them over to NOAA. How significant are they? This beach is under constant surveillance. Spare us the mysterious boogymen and make sense.
12. seasonal beach closure will benefit the seal population. Not according to the City's Negative Declaration which states it will do nothing. The real research is being funded by real scientists to justify the rebuilding of the lifeguard tower. They found that a nice reasonable 12,000 harassments in a season would have no harmful effect on the seal population and so the construction got federal approval.

It is clear I cannot continue. I have only reviewed 2 ½ pages of 160. May you keep your head while others around you are losing theirs. The future of California public access is in your hands. Inconvenient as it may be to one dysfunctional town.

Michelle Anderson San Diego, CA

**Laver, Brittney@Coastal**

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**To:** Miller, Vanessa@Coastal  
**Subject:** RE: Children's Pool Closure Project

**From:** Cheri Aspenleiter [<mailto:cheriaspen@gmail.com>]

**Sent:** Friday, August 08, 2014 11:15 AM

**To:** Miller, Vanessa@Coastal

**Subject:** Re: Children's Pool Closure Project

Dear Miss Miller,

Thank you for your message and instructions. Off topic of the Children's Pool it seems to me that perhaps a discussion of updating the communications opportunity to the people of California to be able to use email is in order. If the Commissioner and staff are using emails in their everyday business and you are, then the public has the right to communicate with the Commission this way as well. Every single government agency from the President of the United States to the Mayor has allowed this. There is a link on their websites to email them. As a disabled woman it is very difficult for me to communicate any other way. Many people do not have land lines any longer and faxes are not that common for people to own. The Commissioners are all over the state. I traveled hours to a meeting in Huntington Beach and waited laying on ice for 10 hours to have 3 minutes to speak.

Not many disabled people can do this, it was difficult for me. The disabled community is ignored terribly and the CA Coastal Commission needs to please think about us. I appreciated the opportunity to send emails with attachments. In this day and age of computer technology it is possible for each commissioner to have their own sub website. It can give a profile for each commissioner, and list the current projects and have a button to link to that project to send information. It is easy to create and would streamline communications and allow the public the same mode of communications that you all use everyday.

The young analyst Britney Laverre recently stated to me that the California Coastal Commission does not have any oversight. Think about the arrogance of that statement to me, a disabled California Taxpayer. The United States of America is founded upon a democratic system of checks and balances. When a government body does not have to answer to anyone it creates more of a dictatorship board that acts on its own accord regardless of the public's input. Regardless of the facts and regardless of codes and laws as well it seems. I know this is a pretty serious statement. Disability laws and codes have been in effect since the 1940's. Codes and laws are important and they have been and are being violated at our only ocean pool. But as important are the values behind those laws. Even if there were no laws common decency and moral compassion should prevail. Greed is prevailing and ignorance because the Commissioners already have an agenda and it does not matter what fact are brought before them. It seems that input and hearings are just going through the motions. What guarantee do the taxpayers have that our input is being considered? None. In fact my triangulated facts of information so diligently research and reported were treated as lies. This is insulting to me. There is no other safe ramped access into a safe calm ocean swimming area or ocean pool on the coast. And Commissioner Sarb lists two accesses that are impossible for a paralyzed swimmer to access. Impossible and very dangerous. Paralyzed people can not negotiate wide soft sand beaches or surf or stairs and boulders and cliffs.. La Jolla Shores is not ADA accessible for swimming, and Boomer is too dangerous for the best of swimmers, the entry is to wait for a wave and jump in it. Swimming is not allowed, only experience body borders can go there. I do not mention it as a part of the C.P. discussion but to point out that Commissioner Sarb is totally ignorant of her own San Diego Coastline! Her intentional disrespect for disabled veterans laying all over the city and country who need access is tantamount to treason in my opinion. She insults the disabled, our Veterans, and the one in five disabled Americans, and the potential of the only ocean pool we have. That the pool is not restored and perfect and filled with disabled people healing on a daily basis is criminal literally. That the ocean at this location is now a

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DEAD ZONE void of fish, crustaceans, Tide Pool Creatures is an insult to the Ocean for which the Commission is also responsible.

This has been my first experience dealing with the Commission as a concerned disabled California tax payer. I report here and now that I feel the Commission needs to reorganize and make your organization a democratic one as it is not.

I can not close with out inquiring if Britney Laverre the staff writer of the recommendation to close my only ocean therapy pool is a dues paying member of the organizations financing the closure? Sierra Club and Surf Riders, Friends of the Seals APRL? This is an ethical issue. If she just came from a meeting rallying the closure the night before she can not be anything but biased when writing the report. Her dues if she is a member are paying for the effort to close the pool, that is a financial conflict of interest clearly. When I met with Britney she made it very clear she does not care for the rights of the disabled and she made it very clear that the pollution problem is best solved by closure of the human bathing pool protected by a Trust that stood the test of court. All this has been ignored: a human health ruling in 2004 prompted by the Centers for Disease Control to remove the filthy bacteria ridden sand to discourage the seals from birthing in their own feces and urine still stands. If the Children's Pool IS closed this will cause the pollution concentration to increase. T.B. and E.coli can be present in seal waste & airborne. This too ignored by the Commission. My point is that the impression I got is that the Commission picks and chooses the facts to consider depending if they support the agenda they have. All facts are of course needed. The Commission is really required to obey the human health ruling, of course. This is what I mean, a human health ruling ignored? Based upon the Centers for Disease Control? Really? This is the point of my message. It is wrong on every level to ignore a human health ruling and for the Commission to ignore such a ruling to serve special interest groups is unethical and does not serve the greater good in any stretch of the imagination. So to the old and new commissioners I ask for your moral commitment to do the right thing. Know the laws of the project and obey them. Judge Pate ruled and it still stands. The Commission is ignoring it thereby potentially putting people in harm's way. This is wrong, I hope you can begin to understand. Or perhaps you are so far gone on agenda power-trips that my words fall on blocked minds? By the time you lay your heads to sleep tonight about 22 young severely disabled veterans will have chosen suicide over facing the terrors of their wounds. They should have every chance to rehabilitate when they return and they do not. The Commission is ignoring them; preventing them from being able to experience the real Pacific Ocean and get out their wheelchair confinement supported in the healing calm waters of the only ocean pool for them. This is morally wrong. And of course is breaking every disability code ever written since 1948 when the primary access ramp was to code. This is a fact that the Commission is calling be a liar about. This is wrong and adds insult to injury and is disrespectful and as far from a democratic system as one can get. It is reminiscent of Hitler's system. He picked and chose the facts to consider, human civil rights ignored as they are by the Commission.

Cheryl Jacobs Aspenleiter  
Disabled Ocean Swimmer, Environmentalist  
858 568 1257

On Mon, Aug 4, 2014 at 2:30 PM, Miller, Vanessa@Coastal <[Vanessa.Miller@coastal.ca.gov](mailto:Vanessa.Miller@coastal.ca.gov)> wrote:

Ms. Aspenleiter,

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We want the public to be able to send information to the Commissioners and we thank you for your interest in this matter. However, we are not able to continue forwarding these messages to Commissioners due to the number and volume of these attachments. Some Commissioners do not have the capacity to receive that much data and they get bounced back to me. As I've

previously mentioned to you, these messages are using a lot space in my inbox as well. To accommodate you and to ensure that the Commissioners will receive all of your attachments, we are no longer forwarding these messages to the Commissioners, but will include them in the addendum that every Commissioner will receive prior to the hearing. Again thank you for your interest in this matter.

All the best,

*Vanessa Miller*

Executive Division

California Coastal Commission

45 Fremont St., Ste. 2000

San Francisco, CA 94105

415-904-5201

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Cheri

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This material has been sent to all Coastal  
Commissioners and the San Diego  
Coastal Commission office for  
LCP-6-LJS-14-0607-1, CDP No. 6-14-0691

David W. Valentine, Ph.D.  
7305 Monte Vista Avenue  
La Jolla, CA 92037

TO: California Coastal Commission  
All Commissioners and alternates and local staff  
Information needed for Aug 14 hearing

Re: LCP-6LJS-14-0607-1, CDP # 6-14-0691

Dear Commissioners,

This cover letter only clarifies that the slide show draft enclosed meets all ex parte conditions and you need only read it, if you would.

We are trying to speak for the locals and dedicated user groups that are supposed to be protected under the Coastal Act and other laws against being barred from our own land.

For that we have always depended on the Coastal Commission.

Allowing this new way for a town to remove Constitutional guarantees of public access from an LCP would be a dangerous precedent.

David Valentine.

RECEIVED  
AUG 12 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

BS



## LA JOLLA CHILDREN'S POOL



COASTAL COMMISSION - August 14, 2014

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA COASTAL ACT, Section 30230 states
  - Special protection shall be given to areas . . . of special . . . economic significance....
- Congressman Scott Peters polled La Jolla business owners: do harbor seals at the CP pool increase your business: 90% said "NO"
- Promote La Jolla, an association of 1,200 business owners, wrote that there was no measureable financial benefit of having harbor seals at the CP... some visitors even expressed displeasure at not being able to swim at the CP

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA COASTAL ACT, Section 30230 states
  - Special protection shall be given to areas and species of special biological or economic significance
- Mr. James Lecky, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service in testimony before San Diego City Council on 14 September 2004  
"The Children's Pool harbor seals are not necessary for maintaining a healthy seal population"
- Mr. Chris Yates, ARA for PR, NMFS in an open letter to San Diego's Mayor and City Council members dated 2 January 2014  
"I do not believe that complete closure of Children's Pool Beach is necessary to protect the harbor seals from violations of the NMMPA"
- Dr. John Dixon, CCC staff Ecologist, memo dated 27 June 2014.  
"...there are unlikely to be population consequences regardless of what actions are taken at the Children's Pool..."

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA CONSTITUTION, ARTICLE 1, Section 25
  - The people shall have the right to fish upon and from the public lands.... and no law shall ever be passed making it a crime for the people to enter upon the public lands

The proposed City action violates this section of the State Constitution

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

## LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CALIFORNIA CONSTITUTION, Article 10, Section 4
  - No [one]...possessing the frontage of tidal lands...shall be permitted to exclude the right of way to such.... the Legislature shall enact such laws as will give the most liberal construction... so that access to the navigable waters of this State shall be always attainable for the people thereof

The proposed City action violates this section of the State Constitution

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

## LEGAL REASONS TO MAINTAIN BEACH ACCESS

- AMERICANS WITH DISABILITIES ACT
    - State and local governments must follow the ADA requirements of the 2010 Standards, including both the Title II regulations at 28 CFR 35.151; and the 2004 ADAAG at 36 CFR part 1191, appendices B and D
- The proposed City action violates this section of Federal law



THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

## LEGAL REASONS TO MAINTAIN BEACH ACCESS

- AMERICANS WITH DISABILITIES ACT, 2010 ADA Title II requirements for government facilities
  - (4) Path of travel. An alteration that affects the access to an area readily accessible to individuals with disabilities.
    - (ii) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the area may be approached, entered, and exited
    - (A) An accessible path of travel may consist of walks and sidewalks, curb ramps and pedestrian ramps
- The proposed City action violates this section of Federal law

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

## LEGAL REASONS TO MAINTAIN BEACH ACCESS

- MARINE MAMMAL PROTECTION ACT, 109(a) Prohibition of state level enforcement of marine mammal protection.
- In a letter from NOAA Office of Protected Resources 6/3/14:
- "Section 109 (a) prohibits enforcement of laws or regulations relating to the taking of marine mammals except by a state to which the Secretary of Commerce or the Secretary of the Interior has transferred authority for the conservation and management of the species. That authority has not been transferred to the City."
- The proposed City action violates this section of Federal law

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CHILDREN'S POOL TRUST, Section 1(a) of Chapter 937 of 1931 as modified (aka Children's Pool Trust)
  - That said lands shall be devoted exclusively to *public park*, marine mammal park for the enjoyment and educational benefit of children, *bathing pool for children*, parkway, highway, playground and recreational purposes...

The City has always controlled implementation of the Trust. There is no indication that the City treats all uses equally

- The City *must* honor *ALL* trust uses

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- O'SULLIVAN V CITY OF SAN DIEGO, also known as the Pate decision of 2005 (August 25)
  - .... To protect the rights of the people of California to the full use and enjoyment of a unique asset, the Children's Pool.... The City is ordered ... to restore the Pool to its 1941 condition by removing the sand build-up and further to reduce the level of water contamination in the pool to levels certified...as being safe for humans

The Pate decision is still in force. Changing the Trust to allow for 'enjoyment of seals' did not relieve the City of its responsibility to provide a safe place for children to swim. And that includes protecting beach access

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### LEGAL REASONS TO MAINTAIN BEACH ACCESS

- CHILDREN'S POOL TRUST, Section 1(b) of Chapter 937 of 1931 as modified (aka Children's Pool Trust)
  - The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands with the right of convenient access...is hereby reserved to the people of the State of California

The City and state are obligated to honor *this* portion of the trust and allow fishermen complete access over Children's Pool tidelands

THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

### MORAL REASONS TO MAINTAIN BEACH ACCESS

It is *oxymoronic* for the City, on one hand, to severely restrict access to the Children's Pool to protect harbor seals and encourage people to 'take' sea lions at and around the La Jolla Cove. The City is cherry picking portions of the law they wish to enforce.. The La Jolla Cove and the Children's Pool are 2000 feet apart.



THE CHILDREN'S POOL WAS CREATED FOR CHILDREN

8/4/14

Maricela Morales

**Children's Pool Beach Closure Project CDP # 6-14-0691,  
LCP-6LJS-14-0607-1 in**

The situation at Children's Pool is a complicated one, that cannot be understood in the absence of understanding of its history. The history from its 1931 creation until the 1990s is very murky, but better documented since then. I was dismayed in the extent that the California Coastal Commission staff recommendation (of approval with several qualifications) seems to have swallowed so much of the misinformation propagated by the city, namely:

1. No mention of the (dozens to hundreds? At least from 1992 to 2005) of harbor seals released by sea world, that bear witness to the total artificiality of the seal population. With this omission, they imply that it was a natural process of seal population increase by birthing. I don't see this point has been brought to their attention in correspondence they have included in the public record attached. It seems to me the cc doesn't recognize how far the city has gone, it creating the situation. The Friends of the Seals can be seen to have been artificially creating this situation in collusion with the city, from the first establishment of the temporary Seal Rock reserve, through the mysterious rerouting of released harbor seals, and disgraced former mayor Filner's "emergency" closure and citations, and present year round rope. This visual closure cannot be denied effectively by signs stating the pool is open- at least to the casual observer that constitutes the majority of visitors. As long as the rope exists, seals will haul out and multiply until the Marine Protected Areas are exhausted of seal food, and seal predators will thrive, and accidentally assault human ocean goers. A Solana Beach dentist died of blood loss after a great white shark bit his leg while he was swimming there, with a group of fellow triatheletes, a couple years ago. A pair of seals was noted refusing to leave the beach there. He was probably the only shark bite fatality in the SD area since the forties. While the woman's body that disappeared off Ocean Beach not so long ago had a large shark bite noted, but I believe it was decided that it had occurred post mortem. Also witness the current record number of adult great white sharks, related to the increase in harbor and gray seals in the vicinity of Cape Cod, Massachusetts in recent years.

2. Page 2 of the staff report regurgitates the city's position that seals began hauling out in greater numbers in the 1990s, without regard to point 1 above, implying that the rope was strung to prevent the public from the mistaken idea that NOAA law requires a 50' separation. This concept was denied by Chris Yates, representing the National Marine Fisheries component of NOAA. He categorically stated in a Jun 13th, 2014 letter to Ken, that shared use was their preferred option, no specific distance exists, and specifically denied that the City has authority to enforce laws or regulations pertaining to marine mammals. Mr. Yates, in his capacity of Assistant Regional Administrator for Protected Resources at NMF, repeating a Jan 2nd, 2014 letter to Todd Gloria and the City Council, (cc-ed to K. Brown at the California Coastal Commission), informed them that the law does not require set separation distances, or beach closures. Emphasizing again the importance of education, and reminding the City they have no authority to enforce federal marine mammal regulations, even if they exist.

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SAN DIEGO COAST DISTRICT

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3. One of the most reliable histories of the pool must be the court finding presented in the O'sullivan vs SD case, statement of decision by superior court judge William Pate in August 2005. According to that document, on pP6, "there was no evidence of any concern about or discussion of seals in the Children's Pool area until July 1992, when Jim Antrim of Sea World discussed creation of a seal reserve in the vicinity of the rock off Shell beach (in front of 939 Coast Blvd)", with Barbara Bamburger of the Friends of the Seals organization". The reserve (beginning 200' east of the seaward entrance to children's pool) passed city council unanimously Feb. 1993 (including the compromise area that goes practically to the beach, presented by Barbara). The staff report assumes as fact that because seal rock was so called in the 1930s, and CP was built on "seal rock point", seals were hauling out there prior to the pool. There is no evidence for that, except for descriptions of "seals barking"(only sea lions bark) on a second seal rock, currently underwater, then at least awash at low tide. See "Myth of Seal Rock" reference. Seals being the timid animals they are, may have seldom or never hauled out on what little beach existed at the site of the pool then, being limited, as I noted during my first dives there in the late 1970s, to offshore rocks. I never saw seals on the beach then. On pP11, the NMFS informed the city that a small number of seals were hauling out on seal rock in 1994, and none hauling out on cp beach. The point was merely so named due to the proximity of the seal rocks. The first count referenced by Judge Pate was in 1996, max 62 on the presently above water seal rock in April, while max 120 were counted on the cp beach. Perhaps they preferred the cp beach, sheltered from the prevailing NW winds as it is, to the rocks totally exposed to swell and wind. The first mention of barriers on the beach was in the City's Manager's report to the Natural Resources and Culture Committee (October 1997), stating that lifeguard had been maintaining "barriers" between the public and seals for a year and a half (since 1996). pP16 of the court findings, "to protect the public from being bitten (no evidence exists of that consequence), or being fined for disturbing the seals". This is on pP10. Unstated was that it made the lifeguard's job a little easier. The **factor undoubtedly drawing the seal to the beach was the presence of the barriers**, reassuring the seals of their security on the beach, **not the presence of the beach!**

4. The staff report states on pP 17 that NMFS data describes Children's Pool as the only rookery in San Diego and LA counties, with a protected rookery at Pt Mugu and Carpinteria. Reference to another protected haulout that has seen pupping is in one of the letters submitted. I have seen numbers of harbor seals hauled out in the multiple pocket coves off Pt Loma, and the Coronado Islands. Ms.Linder's master thesis on harbor seal populations describes the computer enhanced photo id based population estimate nearing 600, and describes the likelihood of individuals travel between haul outs on the Mexican Coronado islands, Children's Pool, and the Channel islands. NMFS harbor seal information indicates harbor seals are known to travel hundreds of kilometers between feeding and pupping sites, and states an unspecified number of rookeries exist in the Channel Islands. I believe that pupping occurs at whatever haul out the nomadic seal happens to be on when birth is about to occur. The Children's Pool doesn't have a resident population, it's population consists of individuals transitory among haul out sites/rookeries throughout at least the southern part of California, and at least northern Mexico.

5. The staff report emphasizes that the City has determined that shared use has been ineffective in preventing harassment mostly in the form of flushing, implying that if the public is allowed on the beach, it will lead to pup abandonment. It states that pup abandonment has occurred there, but doesn't document it. No mention is made of the precocious nature of harbor seal pups, able to swim at birth, and breathhold dive for up to two minutes within 2-3 days of birth, according to NMFS published information.

6. The staff report makes no mention that **City actions have historically been as little, late and inexpensive as possible**. The trust requires the pool be used for a protected children's pool. Judge Pate found the city (pP21) in breach of the Scripps 1931 trust, on multiple counts.

a. The pool has been choked with sand, to the point it no longer protects bathers. The small amount of water still present is now in dangerous proximity to a semi-permanent rip. Lifeguard

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rescues had increased, until the point in time point c (itemized below) occurred. The City has made no attempt to correct the situation, by ever either removing the built up sand, or opening the previously existing sluiceways, or recommended by it's staff on numerous occasions.

b. The City violated the right of the public to access the beach by roping of the beach to the public from 1999 to 2005, according to Judge Pate's decision (pP27). A rope across the beach at mean high tide point has convinced many of the public (especially the visiting tourists, unacquainted with cp history) that the beach is closed. The visual barrier psychologically overwhelms the signage. The year round "advisory rope" continues into the present.

c. The City erected barriers have lead to seal haul out and presence that has allowed fecal possibly pathogenic bacteria from them to accumulate until the bacteria level has increased to the point that the county has declared the pool under an advisory status. The county today classifies Children's Pool as polluted 24/7 from 1997 to the present (pP23). State Law AB411 passed in 2003 changed the status from "Closed", to "Advisory", as the bacteria were not due to a human sewage spill. The second most polluted area in the county ocean is the Tijuana River Slough, polluted an average of 149 days a year. In August 1998, the Center for Disease Control advised the city that seals can transmit disease to humans. Some carry tuberculosis and giardia. Fecal contaminant bacteria and viruses are also of concern. A danger to seals themselves exists. Two outbreaks of disease in the Point Reyes National Seashore resulted in the deaths of 90 pinnipeds in one documented case.

d. On September 14th, 2004 James Lecky of the NMFS advised the city council that harbor seals are a healthy species, whose population is growing, and not in any way endangered or threatened, causing problems up and down the coast, invading harbors, causing property damage and limiting beach access. They can be moved out of an area if either presenting a public nuisance, or a public health hazard. He suggested the seals were a local issue for the City to resolve. Judge Pate made these observations on pP 19, noting the City had taken no meaningful steps to return CP to a safe, unpolluted or usable state since that meeting.

The Superior court would have forced the City to rectify the above 3 conditions, except that the City prevailed upon the California Legislature to pass SB 428. The substantive addition consists of the 11 bold words below:

"That said lands shall be devoted exclusively to public park, **marine park for the enjoyment and educational benefit for children**, bathing pool for children, parkway, highway, playground and recreational purposed, and to such other uses as may be incident to or convenient to the enjoyment of such purposes."

I find this city and legislative action incredibly cynical. To escape their legal obligations, the City does not think twice of maintaining it's dangerous status quo. Surely the Coastal Commission cannot seriously consider rubberstamping this, denying the beach to the public for 5 of seven months, to maintain a situation the City has manufactured by denying citizens the beach access the state constitution guarantees, by the coastal commission, whose job it is to uphold beach access rights.

7. There exists the crumbling remains of a cement ramp, that goes through the currently locked gate next to the landward end of the seawall, down to the high tide line, which up until the 1940s provided wheeled vehicle access, from trucks to wheelchairs. What remains of it is now covered with a badly eroded clay ramp built in the late 1980s. Had San Diego been maintaining the pool, opening the sluices, removing the sand, and maintaining the ramp, the Pool would be the only shining example of disabled American direct easy access to the real ocean, in southern California. With our large disabled military population crying for the saltwater therapy and scuba access, and in the light of the currently shockingly inadequate veterans medical care facilities, it is inexcusable that our city repeatedly attempts to escape it's responsibility to it's citizens, in order to establish a poorly thought out seal colony in this unique gift setting. Children's Pool allows direct access to 15' deep ocean, through a channel at the end of the wall where waves predominately do not break, in close proximity to a sheltered gradually sloping



sand beach. Do not allow the handicapped to continue to be laboriously carried in their wheelchairs down the two flights of many steep steps that is currently the only access to Children's Pool. This has to occur within an environment so often comprised of the ill-informed (or misinformed by seal activists) public, shouting harassment, that a City Ranger has had to be stationed there for several years now. San Diego is already famous for it's large homeless veteran population. Should it now continue to neglect it's handicapped veterans, in favor an artificially encouraged pinniped population, feeding in our finally established neighboring Marine Protected Areas, with it's attendant pollution, smell, and predator problems?

8. According to the Richard Belesky, ranger at cp, in his 5/18/2014 email he observed 54 pups born on Children's Pool beach, + 13 in an alcove on Pt Loma, + 8 stillbirths, + 1 pup found in the cove = 76 pups born in 2014. He goes on to say about 30 of the 76 were born on South Casa Beach. **The Friends of the Seals**, part of the **pro-seal activist group** that Valerie O'sullivan alleged in her suit (decided in 2005 by Judge Pate, who agreed " certain individuals have engaged in uncivil and occasionally illegal conduct" that "conducted themselves in a manner that effectively denies access to users of the pool, beach and adjoining areas") **are on public record as having as their goal, the closure of all SD beaches, on which seals haul out.** This is an influential group, with some wealthy and influential members. They were on good terms with former mayor Bob Filner, and were involved with supplying the web cam that recorded a widely published episode of two girls harassing harbor seals at the pool one night. That episode (widely suspected of being staged) lead directly to an "emergency closure" of Children's Pool, every night for months. I and others fear that this measure under coastal commission consideration now, is just a stepping stone on the way to closure of many of the other San Diego beaches and coastal areas on which pinniped have been observed to haul out and give birth, including the Cove. The political actors have changed, but City policy seems to persist. Their machinations resulted in a 10 year seal sanctuary on seal rock, but that was abandoned, in favor of taking over Children's Pool. Shared use by humans and seals worked well until the barriers of 1992 or so. San Diego thinks it can save money by closing Children's Pool, at the same time it does it's best to discourage and relocate another pinniped (California Sea Lion) population at the La Jolla Cove, less than a mile away. Just as has been done at the cove, the barriers must come down. We cannot enter the slippery slope closing any but the remote Pt. Loma coves already barred from land access, and heretofore utilized extensively by pinnipeds. The cost of a seal sanctuary you can walk to after dinner is too high, for these populations, their prey, predators, and the public. The National Marine Fisheries arm of the Federal National Ocean and Atmospheric Administration has repeatedly pronounced these populations are in no way endangered or threatened. They claim exclusive right to enforce their regulations. They deny that closing beaches is necessary for the good of the Harbor Seal species. The motivations for the actions San Diego is taking are obscure, but clearly not motivated by public good, for either the citizens, or the pinniped.

The City of San Diego needs to do its homework before declaring any of the beach closed to the public. I have shown above, that City sanctioned barriers, the aborted seal rock reserve, and have resulted in the haul outs and pupping at the Pool. A complete closure will doubtless lead to a further increase at not only the Pool, but also the neighboring beaches of South Casa, Wipeout, Shell, and the LJ Cove. The city has not even defined the meaning of the "Marine Park" it's state legislative bailout describes, has not grasped the effect of increased seal haul out and population increase will have on the marine resources of the Protected areas, or the effect on the already congested parking and traffic in La Jolla, let alone made any sort of plans to deal with it. La Jolla is a suburb



that has only two major entry and exit roads. Mission / La Jolla Blvd representing one, has been choked from a four lane to a two lane road by the multiple traffic circles the City recently imposed. A change of beach use and access of this requires a complete Environmental Impact Report AND mitigation plan before implementation. You, the California Coastal Commission, exist for and is the last resort, to require the adequate situational analysis and the planning this project requires.

All of the facts I have stated above can be substantiated, as most are documented. A few I have observed, and so noted. I have nothing against pinnipeds, do not want to drive them from our shores, and enjoy their company in the water. I only wish to return to the shared use situation that existed prior to the human meddling in the form of barriers that occurred during and after the 1990s.

Philip Miller, Former Scuba Instructor, Registered Nurse  
San Diego Resident (>45years)  
6317 Brooklyn Ave.  
San Diego, CA 92114

**CALIFORNIA COASTAL COMMISSION**

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# Th13a

Filed: 5/12/14  
180th Day: 11/7/14  
Staff: B. Laver-SD  
Staff Report: 7/24/14  
Hearing Date: 8/13-15/14

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-14-0691

**Applicant:** City of San Diego Parks and Recreation Department

**Agent:** Daniel Daneri

**Location:** Children's Pool Beach, west of Coast Boulevard, southwest of Jenner Street, La Jolla, San Diego, San Diego County.

**Project Description:** Closure of Children's Pool beach to all public access during Harbor Seal pupping season, December 15 to May 15, of each year. Installation of "Area Closed" signage on barrier chain at the top of the lower staircase leading to the beach from the second landing area and on the western emergency access gate adjacent to the seawall.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

Staff is recommending **approval** of the proposed project with special conditions to minimize long-term impacts to public access and marine resources.

The City of San Diego Parks and Recreation Department proposes to restrict public access at Children's Pool beach in the La Jolla community of the City of San Diego each year in perpetuity from December 15 to May 15 in order to protect the harbor seals from harassment and disturbance during their pupping season. The proposed "Area Closed" signs would be placed on the western emergency access gate adjacent to the seawall, which is closed except for emergency personnel, and on a barrier chain at the top of the lower staircase on the second landing to seasonally prevent public access to the sandy beach area where the seals haul out and give birth (**Exhibits 3 and 4**).

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 (**Exhibit 5**), 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 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, 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, there would be no public access restrictions and no regulations against public use of the sandy beach or the water. Visitors will continue to be encouraged to maintain a safe and respectful distance from the seals, as mandated by the MMPA. While the proposed project will impact public access from December 15 to May 15 of each year, this is not only necessary but also the least possible restriction 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 every reason to expect that the seals will continue to be subject to harassment and endangerment if the beach is not closed off during pupping season. The seasonal beach closure will improve the protection and enhancement of the harbor seal population, while maintaining public access to all but a small area of beach. The Commission's staff ecologist has reviewed the proposed project and concurs with the staff recommendation that the seasonal beach closure will benefit the seal population and provide enhanced marine resource protection (**Exhibit 8**).

Staff is recommending approval of the project with several minor modifications. Rather than maintain the closure in perpetuity as proposed by the City, **Special Condition #1** limits the duration of the proposed seasonal beach closure to a period not to exceed five years. **Special Condition #2** requires the City to prepare a monitoring plan and submit annual monitoring reports for throughout the five-year permit term that measure the level of use by seals of the haul-out site and the effectiveness of the public access restrictions on reducing or eliminating harassment of the seals. With these two conditions, the City will be required to monitor the site to determine the seasonal beach closure's effectiveness and then, based on the monitoring results, come back to the Commission in five years to extend and/or modify the permit. Commission staff is also recommending **Special Condition #3**, requiring the City to submit a comprehensive Sign Program with clear signage to alert the public of the seasonal access restrictions at Children's Pool Beach. **Special Condition #4** requires the applicant to accept liability for costs and attorney fees that the Coastal Commission may incur in defending its action should there be litigation challenging its approval of this permit.

A jurisdictional boundary determination conducted by the Commission's mapping department determined that the the entire sandy beach area 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 7**). The proposed project spans both jurisdictions. Section 30601.3 of the Coastal Act provides that when a project

requires a coastal development permit (CDP) from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, who in this case is the local government, Commission staff has agreed to process the subject permit as a consolidated CDP. Thus, the standard of review for the proposed project is the Chapter Three policies of the Coastal Act. However, because the City's certified LCP is used for guidance in this area, the subject Coastal Development Permit is being concurrently processed with Local Coastal Program Amendment No. LCP-6-LJS-14-0607-1. This amendment will add policy language to the La Jolla Community Plan (the certified Land Use Plan) and a new ordinance to the San Diego Municipal Code to protect the seals by restricting access to Children's Pool beach during pupping season each year (**Exhibit 6**). As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act and with the Local Coastal Program as proposed to be amended.

Commission staff recommends **approval** of coastal development permit application 6-14-0691 as conditioned.

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## APPENDICES

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## EXHIBITS

[Exhibit 1 – Vicinity Map](#)

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[Exhibit 3 – Proposed Signage](#)

[Exhibit 4 – Proposed Sign Locations](#)

[Exhibit 5 – Existing Signage and Rope Barrier](#)

[Exhibit 6 – La Jolla Land Use Plan Amendments](#)

[Exhibit 7 – Jurisdiction Map](#)

[Exhibit 8 – Staff Ecologist Memorandum](#)

[Exhibit 9 – CDP #6-11-078 First Annual Monitoring Report](#)

[Exhibit 10 – Ex Parte Disclosures](#)

[Exhibit 11 – General Comment Letters](#)

[Exhibit 12 – Letters of Support](#)

[Exhibit 13 – Letters of Opposition](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-14-0691 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby approves coastal development permit 6-14-0691 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.



4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Permit Term.**
  - A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of five (5) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-14-0691, after which time the authorization for continuation and/or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of seasonal beach closure and associated signage at Children's Pool Beach will require the issuance of a new coastal development permit or an amendment to this coastal development permit.
  - B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue implementation of seasonal beach closure and installation of associated signage at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease implementation of the seasonal beach closure.
  - C. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.
2. **Monitoring Plan.**
  - A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a Monitoring Plan for the management and monitoring of the seasonal beach closure at Children's Pool Beach. The plan shall include, but not be limited to, the following criteria:
    1. A physical description and exhibit delineating the precise location of the public access restrictions and associated signage at Children's Pool;

2. A discussion of the goals and objectives of the plan, which shall include the method by which the applicant will assess the level of use by seals of the haul out site at Children's Pool Beach throughout the year and the method of determining the effectiveness of the seasonal beach closure at minimizing harassment of hauled out seals with both methods employing, at a minimum, the procedures described in section 3 and 4, below, of this special condition;
3. Upon implementation of the seasonal beach closure, a qualified biologist, environmental resources specialist, park ranger, lifeguard, and/or City-trained volunteer shall record the number of seals hauled out at Children's Pool Beach, the number of people present on the beach, the number of people present in the water from the tip of the breakwater across to the point of rock directly below the green gazebo, the number of harassment instances, the number of citations and warnings issued, the outcomes of issued citations and warnings if available, the tide, the weather (including water and air temperature), and the date at least 16 days per month (to include weekends and holidays). Monitoring shall be conducted a minimum of 16 days per month and measurements shall be recorded a minimum of 3 times per day, to include 10 AM, 1 PM, and 4 PM;
4. Provisions for taking measurements of the number of harassment instances, including what activities would qualify as harassment consistent with relevant regulatory definitions of harassment (e.g. seals flushing into water) under the MMPA.

B. The City shall submit, for the review and approval of the Executive Director, on an annual basis, a written monitoring report from a qualified biologist or other qualified experts, as necessary to comply with the requirements of the monitoring report. Each monitoring report shall contain the following:

1. All records of measurements, analyses and conclusions created in conformance with the approved Monitoring Plan;
2. Recommendations for repair, maintenance, modifications, or other work to the development; and
3. Photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the condition, performance, and/or effectiveness of the seasonal beach closure and associated signage.

If a monitoring report contains recommendations for repair, maintenance, modifications, or other work, the permittee shall contact the San Diego Coastal Commission Office to determine whether such work requires an amendment or new coastal development permit.

C. The permittee shall undertake development in accordance with the approved final Monitoring Plan. No changes to the approved final Monitoring Plan shall occur without a Commission amendment to this coastal development

permit unless the Executive Director determines that no amendment is legally required.

3. **Sign Program. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, a final comprehensive sign program in substantial conformance with the plans submitted by the applicant with the subject application on April 29, 2014 and as shown in Exhibits 3 and 4. As part of the sign program, signs shall not exceed 36 inches wide by 30 inches tall and a maximum of two (2) signs may be posted on the beach, one on a barrier chain at the top of the lower staircase leading to beach from the second landing area and one on the western emergency access gate adjacent to the seawall.

The applicant shall undertake the development in accordance with the approved program. Any proposed changes to the approved program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit, unless the Executive Director determines that non amendment is legally required.

4. **Liability for Costs and Attorney Fees.**

By acceptance of this coastal development permit, the Applicants/Permittees agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorney's fees that the Coastal Commission may be required by a court to pay that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT AND AREA DESCRIPTION**

The City of San Diego Parks and Recreation Department proposes to restrict public access at Children's Pool beach in the La Jolla community of the City of San Diego each year in perpetuity from December 15 to May 15 in order to protect the harbor seals from human interference and harassment during pupping season. The "Area Closed" signs would be placed on the western emergency access gate adjacent to the seawall, which is only open for emergency vehicle access, and on a barrier chain at the top of the lower staircase on the second landing to prevent public access to the sandy beach area (**Exhibit 4**). The sign on the gate would be 24 inches wide by 18 inches tall, and the sign on the barrier chain would be 36 inches wide by 30 inches tall. The signage would clearly state that no beach access is allowed during the harbor seal pupping season from December 15

to May 15, and include the Coastal Commission permit number and action date as well as the City Council resolution number and action date (**Exhibit 3**).

The purpose of the proposed beach closure is to provide the seals with an undisturbed rookery during pupping seasons so they can properly care for their newborn pups. The breakwater, which includes a public path/viewing area with excellent views of the ocean, cove, and seals would remain open and available to the public for seal viewing year-round as currently so, as well as the area landward of the barrier chain at the lower staircase that includes the upper staircase and the walkway adjacent to the lifeguard station that is currently under construction (**Exhibit 4**), and the pedestrian path along Coast Boulevard above the sandy beach area. The beach area would have unrestricted public access from May 16 to December 14 of each year, during which time the “Beach Closed” signs would be stored off-site.

The project site is located at Children’s Pool Beach (also known as Casa Beach), west of Coast Boulevard and southwest of Jenner Street in the La Jolla community of the City of San Diego (**Exhibits 1 and 2**). Children’s Pool Beach is a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931. 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 an emergency vehicle beach access ramp that has remained closed by the City via a gate. It is bounded on the north and west by the Pacific Ocean; on the east by Coast Boulevard and Casa de Manana Retirement Community; and on the south by South Casa Beach. In addition, an adjacent haul out site (Seal Rock) is located approximately 500 feet northeast of Children’s Pool Beach. Several beaches are located adjacent to or in close proximity to Children’s Pool, including La Jolla Shores, Marine Street Beach, La Jolla Cove, Whispering Sands Beach, Shell Beach, South Casa Beach, Ravina, Boomer Beach, and Windansea.

It was initially unclear whether the Children’s Pool area was in the City or the Commission’s coastal permit jurisdiction; thus in the past several permits were issued by the City and reviewed by the Commission on appeal. However, a jurisdictional boundary determination conducted by the Commission’s mapping department determined that the the entire sandy beach area 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 7**). The proposed project spans both jurisdictions. Section 30601.3 of the Coastal Act provides that when a project requires a coastal development permit (CDP) from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, who in this case is the local government, Commission staff has agreed to process the subject permit as a consolidated CDP. Therefore, the standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified La Jolla Community Plan and Local Coastal Program Land Use Plan (LUP), as proposed to be amended, serve as guidance. Because the City’s certified LCP is used for

guidance in this area, the subject Coastal Development Permit is being concurrently processed with Local Coastal Program Amendment No. LCP-6-LJS-14-0607-1. This amendment will add policy language to the La Jolla Community Plan (the certified Land Use Plan) and a new ordinance to the San Diego Municipal Code to protect the seals by restricting access to Children's Pool beach during pupping season each year (**Exhibit 6**).

## **B. PROJECT 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 "The absolute right to fish in the waters of the Pacific Ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California." 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 withdrawn CDP Application No. 6-05-098). 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 the need to protect the seals from human disturbance by 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 Mean High Tide Line (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 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 Acton 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 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) amend the Local Coastal Program (LCP) to prohibit public access to the beach during pupping season; 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) establish clear signage explaining the rules to the public. 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 in service 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 Parks and Recreation Department applied for CDP No. 6-11-078 for the installation and maintenance of a year-round rope barrier 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.

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 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 jurisdictional boundary assumed at the time, the City's emergency permit was adequate to close the stairs leading to the beach but required Coastal Commission approval to close the actual beach. 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 Commission 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 9**). 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 project is intended to eliminate the potential for harassment of the seals by the public during the vulnerable pupping season, and subsequently eliminate the adverse impacts that can result from such harassment events.

Although the subject site is within the CCC's jurisdiction, the City's LCP is used by the Commission for guidance in this area, and the City wanted to ensure that the subject project is consistent with the LCP policies regarding the protection of marine resources and public access and recreation. Therefore, on March 12, 2014, the City adopted Resolution No. R-308759 approving an amendment to the La Jolla Community Plan (certified Land Use Plan) for the seasonal closure of Children's Pool Beach. The City submitted the proposal for this LUP amendment to the Commission concurrently with the subject CDP application. As proposed to be amended, the La Jolla Community Plan would revise its public access and marine resource protection policies to facilitate prohibition of public access on Children's Pool Beach during the Harbor Seal pupping season. 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 6**). In addition, Ordinance No. O-20360 was passed on April 3, 2014 approving an amendment to the San Diego Municipal Code making it unlawful for any person to be upon or cause any person to be upon the beach of Children's Pool during pupping season from December 15 to May 15 of each year.

The subject CDP and associated LCPA are being taken into consideration for action at the same Commission hearing per the request of the applicant so the seals will be protected during the 2014-2015 pupping season.

## C. MARINE RESOURCES

Section 30230 of the Coastal Act states:

*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.*

In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contain policies regarding the protection of marine resources which include the following:

*The City should limit public access in open space areas that contain sensitive resources to scientific or educational use. Access should be confined to designated trails or paths and no access should be approved which would result in the disruption of habitat areas.*

*The City shall ensure the preservation of portions of public and private property that are partially or wholly designated as open space to the maximum extent feasible. Development potential on open space lands shown on Figure 7 shall be limited to preserve the Park, recreation, scenic, habitat and/or open space values of these lands, and to protect public health and safety...*

*The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline...*

As proposed to be amended, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan would contain language regarding the specific marine resources protection of Children's Pool during pupping season, including the following (proposed language is underlined):

### *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.

The project site is Children's Pool Beach, a 0.7-acre artificial pocket beach held in place by a seawall/breakwater constructed in 1931. Children's Pool Beach is designated as "Parks, Open Space" in the City's certified Land Use Plan. Children's Pool Beach provides recreational and educational opportunities for swimmers, divers, tourists, scientists, 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, restrooms, pedestrian walkway atop the seawall, and a closed, gated emergency beach access ramp. The City has indicated that this ramp was installed for emergency purposes, including for Parks & 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).

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 on 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.<sup>1</sup> 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. 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.

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<sup>1</sup> NOAA's National Marine Fisheries Service Southwest Regional Office. *California Pinniped Rookeries and Haul-out Sites*. <http://www.arcgis.com/home/webmap/viewer.html?webmap=2ff3fabe20cf4c83959cae1597500b09>. May 30, 2012.

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.<sup>2</sup> 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 this 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 this 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 publically 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 MMPA on this issue provides the Commission with a platform from which it can evaluate whether or not a proposed development is consistent

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

with section 30230 of the Coastal Act. In other words, if the Commission finds that if 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. Even if there were authorization from NMFS to incidentally take seals at Children’s Pool, depending on the authorized activity, such authorization might not be consistent with Chapter 3 of the Coastal Act.

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.<sup>3</sup> 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 that warrant protection under Section 30230. Harbor seals may use rocks, reefs, beaches, intertidal sandbars, and drifting glacial ice as haul out and pupping

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<sup>3</sup> Yochem P. 2005. Summary of conclusions regarding the harbor seal rookery at Children’s Pool Beach, La Jolla, CA. La Jolla Cove Wall Replacement and Bluff Improvements Project (Sept 21, 2004 – Jan 1, 2005). March 25, 2005. Hubbs-SeaWorld Research Institute Paper.

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.<sup>4</sup> 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.<sup>5 6</sup>

The potential adverse impacts of disturbance to hauled out seals are particularly significant 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.<sup>7</sup> 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, per 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.<sup>8</sup> 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

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> Terhune, J.M. and M. Almon. 1983. Variability of Harbour Seal Numbers on Haul-Out Sites. *Aquatic Mammals* 10(3):71-78.

<sup>7</sup> NOAA's National Marine Fisheries Service Southwest Regional Office. *California Seal and Sea Lion Viewing Guidelines*. <http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>. May 30, 2012.

<sup>8</sup> NOAA's National Marine Fisheries Service Southwest Regional Office. *California Seal and Sea Lion Viewing Guidelines*. <http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>. May 30, 2012.

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 does have the potential to 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 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 have been considered and implemented. The City has installed a rope barrier with an opening for the duration of the seal pupping season annually since 2006. In 2010, the City established the Shared Use Policy at the beach consisting of several adaptive management strategies to provide the public with guidelines on proper marine mammal protection and to provide the seals with protective measures to prevent harassment and disturbance. With CDP No. 6-11-078, the City asserted that the installation of a rope barrier on the beach on a year-round basis would extend the protection offered by the existing permit (CDP No. 701673) and provide a necessary visual barrier between the public utilizing the sandy beach and accessing the ocean at Children's Pool Beach, and the seals that haul out on the sand on a year-round basis to enhance the public's awareness that the seals deserve particular treatment and special protection under the MMPA and the Coastal Act.

However, 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. The video camera captured footage of people breaching the rope barrier at night and intentionally harassing, kicking, and sitting on the seals. These harassment events prompted the issuance of emergency CDP No. 6-13-014-G for the closure of Children's Pool Beach from sunset to sunrise through the remainder of the 2013 pupping season. Even with these protective measures, the Children's Pool Park Ranger's first annual monitoring report for Special Condition 4 of CDP No. 6-11-078 recorded about 30 harassment incidents that resulted in flushing of the seals between June 22, 2013 and May 14, 2014, half of which occurred during the 2013-2014 pupping season, which resulted in the flushing of 662 seals total (**Exhibit 9**). 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. 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.

The “no project” alternative would clearly 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 is harassment and thus an illegal taking under the MMPA. Unfortunately, for as long as the rope barrier has been in place, a relatively small but persistent number of people have continued to deliberately bother the seals, rendering the shared use concept unsuccessful.

Therefore, the City has proposed to seasonally restrict public access at Children’s Pool Beach to provide the seals with unimpeded protection during the five vulnerable pupping season months. In comparison to the existing conditions, the proposed project 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 (**Exhibit 4**) 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, 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 all potential for human interference during the pupping season. The Commission’s staff ecologist, Dr. John Dixon, has reviewed the proposed project and concurs with the staff recommendation that the seasonal beach closure will benefit the seal population and provide enhanced marine resource protection (**Exhibit 8**).

Any development that results in restrictions on public access, even on a seasonal basis raises concerns, as discussed in detail below in this staff report under section D. Public



Access and Recreation. However, as previously mentioned, there are multiple locations across the state where the Commission has approved CDPs, LCPAs, or Federal Consistency Determinations that require limiting public access in order to protect marine resources. The following provides several significant examples. The Commission established a Marine Mammal Reserve at Seal Rock, just north of Children's Pool, prohibiting all public access except for permitted commercial fishing, emergency access, and fishing consistent with the MMPA within the designated 1.35-acre reserve boundary from 1994-1999 with CDP #6-93-26, and from 2001-2006 with CDP #6-00-126. Similar to the subject proposal, the applicant for those permits (the City of San Diego Parks and Recreation Department) proposed to establish the marine mammal reserve in perpetuity, but the Commission approved each CDP with a five-year permit limit to provide protection for marine resources while maintaining limited types of public access. Earlier this year, the Commission approved CDP #3-13-1175-W for installation of minimal, "symbolic" fencing and educational signage at various locations along the Pacific Grove shoreline in Monterey County to temporarily reduce public use of the beach and shoreline and prevent harassment of the local harbor seals for the 2014 pupping season.

Aside from harbor seals, the federally threatened western snowy plover and endangered California least tern have been the subject of many Commission actions involving partial or total beach closures to provide habitat and population protection. In November 2001, the Commission approved CDP #4-01-139 for year-round symbolic fencing and associated signage creating a restricted roost area near the mouth of the Devereux Slough near UC Santa Barbara, Ventura County, to protect the local snowy plover population. This permit was approved with a two-year permit term, with permission for a one-year extension for good cause, due to the project's impacts on public access and to allow time to collect and analyze data from the required monitoring plan. The same project was proposed with CDP #4-08-007 and approved by the Commission in June 2008 with a five-year permit term and permission for a one-year extension for good cause. In February 2014, the Commission approved CDP #2-13-1020 for year-round and seasonal fencing at Pacifica State Beach, San Mateo County, for protection of and public access restriction from a section of the backbeach sand dunes that provide snowy plover habitat. The year-round fencing was approved in perpetuity, while the seasonal fencing is authorized for a five-year period with permission for an additional five years with Executive Director approval. In December 2002, the Commission approved CDP amendment #5-87-847-A1 to increase an existing 4-acre restricted least tern nesting area by five additional acres with protective fencing, limiting public access in the designated restricted areas at Venice Beach and Dockweiler State Beach, Los Angeles County. In an act of much broader marine resource protection, the Commission approved CDP #2-00-005 in August 2000 for prohibition of personal motorized watercraft within all shoreline waters and estuaries of Marin County to eliminate adverse impacts to the diverse and sensitive marine resources found in said shoreline waters and estuaries.

In each of these cases, the Commission placed limits on public access in areas that require special protection due to the sensitive species and marine resources. The subject project 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. It 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 seasonal beach closure would help maintain a healthy seal population for long-term recreational, scientific, and educational purposes.

Over the last decade, the City has tried various alternative means of protecting the seals without resorting to a seasonal closure of the beach. Unfortunately, as described, the rope barriers have proved ineffective. The proposed project will provide a much clearer, more enforceable line between public access restrictions and seal protection at Children's Pool than the current rope barrier and shared use guidelines, and is expected to eliminate or significantly reduce the seal harassment and disturbance by the public. The seasonal beach closure will improve the protection and enhancement of the harbor seal population, consistent with Coastal Act Section 30230.

However, it is possible that changed circumstances at Children's Pool may negate the need for perpetual seasonal public access restrictions in the future. For that reason, the Commission imposes **Special Condition #1** to limit the permit term to five (5) years and require the City to apply for an amendment or new coastal development permit to continue authorization of the public access restrictions. While the proposed seasonal beach closure is the minimum necessary at the current time for marine resource protection, the five-year permit term will allow the Commission to revisit the issue at a later date to confirm both that the project is adequately protecting the seals, and review any changed circumstances that might suggest revisions to the restrictions are necessary. In order for the Commission to have the opportunity to review the circumstances at Children's Pool and determine if any significant changes have occurred, it is necessary to assess the effectiveness of the seasonal beach closure.

Therefore, the Commission imposes **Special Condition #2** requiring the preparation, submission to the Executive Director for review and approval, and implementation of a monitoring plan. The monitoring plan will help the City and the Commission assess a) the level of use by seals of the haul out site at Children's Pool Beach, and b) the effectiveness of the seasonal beach closure at eliminating harassment of hauled out seals. A qualified biologist, environmental resources specialist, park ranger, lifeguard, or City-trained volunteer shall record the number of seals hauled out at Children's Pool Beach, the number of people present on the beach, the number of people present in the water, the number of violations of the beach closure and harassment instances, the number of citations and warnings given to violators and the outcomes of these violations if applicable and possible, the tide, the weather (including water and air temperature), and

the date, a minimum of three times per day, 16 days per month. This data may be used for comparison against baseline data collected per Special Condition No. 4 of CDP #6-11-078 for the year-round rope barrier to help determine the effectiveness of the seasonal beach closure and identify any changes in conditions at Children's Pool Beach.

In conclusion, the Coastal Act policies regarding marine resources require 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/behavioral patterns, including rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, nursing and weaning pups. 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 or eliminate the existing periodic harassment of the seals. Therefore, the Commission hereby finds that the proposed permit application, as conditioned, is consistent with the applicable Coastal Act policies regarding protection of marine resources, as well as with the La Jolla Community Plan and Local Coastal Program Land Use Plan as proposed to be amended.

#### **D. PUBLIC ACCESS AND RECREATION**

Section 30604(c) of the Coastal Act states:

*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)*

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*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) of the Coastal Act states, in part:

*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 of the Coastal Act states, in part:

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

Section 30214(a) of the Coastal Act states, in part:

*(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:*

*(1) Topographic and geologic site characteristics.*

*(2) The capacity of the site to sustain sue and at what level of intensity.*

*(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 and the proximity of the access area to adjacent residential uses.*

Section 30220 of the Coastal Act states:

*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 of the Coastal Act states:

*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.*

Upon reliance of these policies of the Coastal Act, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contains policies to protect public access as well, which include the following:

*La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved...*

*The City should preserve and protect the coastal bluffs, beaches and shoreline area of La Jolla assuring development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline...*

*The City should ensure that new development does not restrict or prevent lateral, vertical or visual access to the beach on property that lies between the shoreline and first public roadway...*

*New development should not prevent or unduly restrict access to beaches or other recreational areas...*

*The City's beach and parkland along the shoreline should be expanded wherever possible...*

*Construction, grading, or improvements of any sort, except those mentioned in this plan, should be discouraged at beach areas. Public access to the shoreline should be increased (or improved) wherever possible...*

As proposed to be amended, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan would contain language regarding the restricted public access to Children's Pool during pupping season, including the following:

*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.*

As proposed to be amended, the City of San Diego Municipal Code would add the following to Section 63.0102, Use of Public Parks and Beaches Regulated:

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

In order to protect the harbor seals during pupping season, the City of San Diego Parks and Recreation Department proposes to restrict public access at Children's Pool each year in perpetuity from December 15 to May 15. The proposed "Area Closed" signs would be placed on the western emergency-access-only gate adjacent to the seawall and on a barrier chain at the top of the lower staircase on the second landing to prevent public

access to the sandy beach area (**Exhibit 4**). The existing public access viewing point on the seawall would remain open to public access year-round; only public access to the sandy beach during the five months of pupping season each year would be prohibited.

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. In such cases, the Commission requires that alternatives be considered, and that any restrictions be the minimum necessary to achieve the goal.

As discussed previously, the City has considered and implemented measures that are less restrictive on public access. The rope barrier should have been sufficient to means of protecting the seals while maintaining limited but sufficient 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, a small but insistent number of 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 that the 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 diffuse 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. Additionally, in April 2010, the San Diego Police Department provided information regarding the number of calls for service at Children's Pool Beach. The report showed that from February 1, 2009 through January 31, 2010, there were 184 designated runs, 37 calls for disturbing the peace, and 4 calls for battery incidents. Out of service time for that same period was approximately 185 hours as compared to 2005 (70 hours); 2006 (95 hours); 2007 (40 hours); and 2008 (79 hours). This is a significant increase in calls for service at Children's Pool Beach from 2005 to 2009 which takes police time away from more important public safety issues.

The proposed seasonal beach closure and adopted City ordinance would provide a much clearer, more enforceable line between public access restrictions and seal protection at Children's Pool. Currently there is a lifeguard on duty from 9:00 am to 8:00 pm during the summer and a park ranger specifically assigned to Children's Pool who is at the site Saturday through Wednesday for six hours year-round. As described above, the park

ranger and other enforcement personnel are regularly required to intervene in situations where the public does not adhere to the guidelines provided by the Shared Use Policy measures implemented to date, particularly the rope barrier. The issue of seal harassment is exacerbated by the fact that the rope barrier and informational signage are guidelines that rely on the respect and compliance of the public, and lack a strict threshold between what is viewing the seals from a distance that does not disturb them and what is harassment and thus an illegal taking under the MMPA. In contrast, the proposed project will provide this threshold by prohibiting all public access beyond the “Area Closed” signs at the lower staircase and the emergency access gate (**Exhibit 4**), effectively eliminating any gray area in interpretation of where the public is allowed at Children’s Pool Beach. 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. If violations do occur during the five months of public access restrictions, the City has indicated that the lifeguards and park rangers will cite violators at their discretion and that police will assist and enforce as needed.

As proposed, 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, there would be no public access restrictions and no regulations against public use of the sandy beach or the water. 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, Boomer Beach, and Windansea. Many of these beaches are within walking distance of or a short drive from Children’s Pool Beach and offer public amenities such as permanent restrooms, showers, additional parking, and lifeguard

facilities. 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 public's ability to access or recreate at La Jolla's beaches.

There have been assertions by members of the public that the proposed project would severely affect the ability of disabled people to access the shoreline. However, 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. While Children's Pool Beach does have an "access ramp," it is a gated, unimproved emergency vehicle access ramp that was not constructed for ADA compliance and is only allowed for use by emergency personnel. The La Jolla certified LUP indicates two other concrete ramps designated for shoreline access aside from the ramp at Children's Pool: just north of Scripps Pier with beach access at the end of Discovery Way, and at Ellen Scripps Park with access to Boomer Beach. These beach access ramps are located approximately less than two miles and less than a half-mile north of Children's Pool Beach, respectively. La Jolla Shores, approximately two miles north of Children's Pool Beach, provides free power beach wheelchairs for disabled visitors. These beach chairs can also be found, free of charge, at Ocean Beach, Mission Beach, Coronado Beach, and Imperial Beach. 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.

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.

**Special Condition #3** requires the City to submit, for review and approval of the Executive Director, a comprehensive Sign Program with clear signage to alert the public of the seasonal beach closure at Children's Pool Beach. The existing signs are to remain



at the entrance to the beach on the access stairway so that visitors understand the shared use guidelines that apply to the majority of the year that prohibit seal harassment, as well as the advisory warning against water contact. The proposed additional signage, to be stored off-site during non-pupping season, will inform visitors that public access is restricted from December 15 to May 15 (**Exhibit 3**).

As noted in Sections 30212 and 30214 of the Coastal Act cited above, in implementing the public access policies of the Act, the Commission must take into account the need to 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 and in the Marine Resources section, support the need for seasonal beach closure as the public has repeatedly ignored the beach's shared use guidelines and intentionally harassed the seals and their pups. The public will still be able to access the beach and ocean at Children's Pool Beach for seven months of the year, and the breakwater year-round.

In conclusion, while the proposed project will impact public access from December 15 to May 15 of each year, this is not only necessary but also the least 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 project 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 for a limited permit term of five years to ensure the seals and their pupping habitat are effectively protected. There is clear evidence that the seals will continue to be subject to harassment and endangerment if the beach is not closed off during pupping season. The seasonal beach closure will improve the protection and enhancement of the harbor seal population, while maintaining public access to all but a small area of beach. Therefore, the proposal as conditioned is consistent with Sections 30212 and 30214 of the Coastal Act.

As provided for in Sections 30210, 30212, and 30214 of the Coastal Act cited above, public access shall be provided for all people consistent with public safety needs and the need to protect 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 must be balanced with the protection of fragile coastal resources at the subject site. The proposed seasonal beach closure, as conditioned, is consistent with Sections 30210, 30212, and 30214 of the Coastal Act because it maintains public access to the beach for seven months of the year while providing protection of the haul out site, or natural resource area, from overuse by people for the other five months of the year.

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

## E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

*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.*

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 project would not result in any adverse impacts to visual resources. The proposed "Area Closed" signs would be placed on the western emergency access gate adjacent to the seawall and on a barrier chain at the top of the lower staircase on the second landing to prevent public access to the sandy beach area (**Exhibits 3 and 4**). As proposed, the sign on the gate would be 24 inches wide by 18 inches tall, and the sign on the barrier chain would be 36 inches wide by 30 inches tall. Given these dimensions and locations of the proposed signs and barrier chain, there would be no obstruction of any public views from Coast Boulevard or Jenner Street as identified in the La Jolla Community Plan and Local Coastal Program Land Use Plan.

The applicant proposes to install the "Area Closed" signs on the emergency gate and on a barrier chain at the top of the lower staircase to alert the public of the prohibited area during pupping season. Currently there is existing signage regarding the prohibition of dogs on the beach, water contamination warnings, and shared use advisories on the emergency gate and the walls of the staircase; however, it is essential that the barrier chain and "Area Closed" signs be placed where proposed so the public access restrictions are made clear to visitors. In order to avoid any adverse impacts to visual resources, the Commission imposes **Special Condition #3** requiring the City to submit, for review and approval of the Executive Director, a Final Sign Program. As part of the Sign Program, the City shall limit the height of signs posted to 36 inches wide by 30 inches tall. Additionally, the number of signs posted on the beach shall be restricted to a maximum of two (2) signs.

As discussed above, the Commission hereby finds that the proposed project, as conditioned, is consistent with all applicable policies of the Coastal Act regarding Visual Resources.

## **F. REIMBURSEMENT IN CASE OF CHALLENGE**

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition #4** requiring reimbursement for any costs and attorneys fees that the Commission incurs in connection with the defense of any action brought by a party other than the applicant challenging the approval or issuance of this permit.

## **G. LOCAL COASTAL PLANNING**

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The proposed project is located within the City of San Diego, which has a certified Local Coastal Program; however, based on a jurisdictional boundary determination conducted on August 19, 2011 by the Commission's Mapping Department, the sandy beach area Children's Pool Beach is located in an area where the Coastal Commission has retained permit jurisdiction, and the City's jurisdiction begins at the bottom of the lower stairs (**Exhibit 7**). The proposed project spans both jurisdictions. Section 30601.3 of the Coastal Act provides that when a project requires a coastal development permit (CDP) from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, who in this case is the local government, Commission staff has agreed to process the subject permit as a consolidated CDP. The Commission's permit jurisdiction is based on the existence of tidelands, submerged lands, and public trust lands. According to the Commission's Coastal Zone Boundary Determination No. 14-2011, the subject site, including the sandy beach, is located on tidelands submerged land and land that is potentially subject to the public trust. Thus, the standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified City of San Diego Land Use Plan (specifically the La Jolla Community Plan and Local Coastal Program Land Use Plan) serve as guidance. As described above, as conditioned, the proposed project is consistent with the certified LCP as proposed to be amended and all applicable Chapter Three policies of the Coastal Act and will not prejudice the ability of the City of San Diego to continue to implement its LCP for the La Jolla area.

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a

proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Pursuant to the City's own obligations under CEQA as the lead agency, the City approved and adopted Negative Declaration 225045. As the proposed project would provide increased protection of marine resources, the Commission finds that it is unlikely that any significant adverse effects on the environment would occur. Mitigation measures, including conditions addressing assumption of risk, a final sign program, and a monitoring plan to effectively record and monitor the effectiveness of the seasonal beach closure in preventing seal harassment, will minimize or prevent all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

(G:\Reports\2014\6-14-0691 Children's Pool stf rpt.docx)

## **APPENDIX A: SUBSTANTIVE FILE DOCUMENTS**

La Jolla Community Plan and Local Coastal Program Land Use Plan; 1931 Tidelands Trust; Senate Bill 428 effective as of January 1, 2010; CDP #6-93-026; CDP #6-00-126; CDP #6-05-098; CDP #545642; CDP Appeal No. A-6-LJS-08-065; CDP #701673; CDP Appeal No. A-6-LJS-10-009; CDP #6-11-078; CDP #6-13-014-G; CDP #3-13-1175-W; CDP #4-01-139; CDP #4-08-007; CDP #5-87-847-A1; City of San Diego Resolution R-305837 passed by the City Council on May 17, 2010; City of San Diego Resolution R-308759 passed by the City Council on March 12, 2014; Spring 2012 Harbor Seal Counts conducted by Park Ranger Richard Belesky; Historic Maps circa 1887 and 1894; Marine Mammal Protection Act of 1972; Heal the Bay's 2014 Beach Report Card; First Annual Monitoring Report (May 2013 to May 2014) pursuant to Special Condition No. 4 of CDP #6-11-078; LCP Amendment No. LCP-6-LJS-14-0607-1

# Subject Site

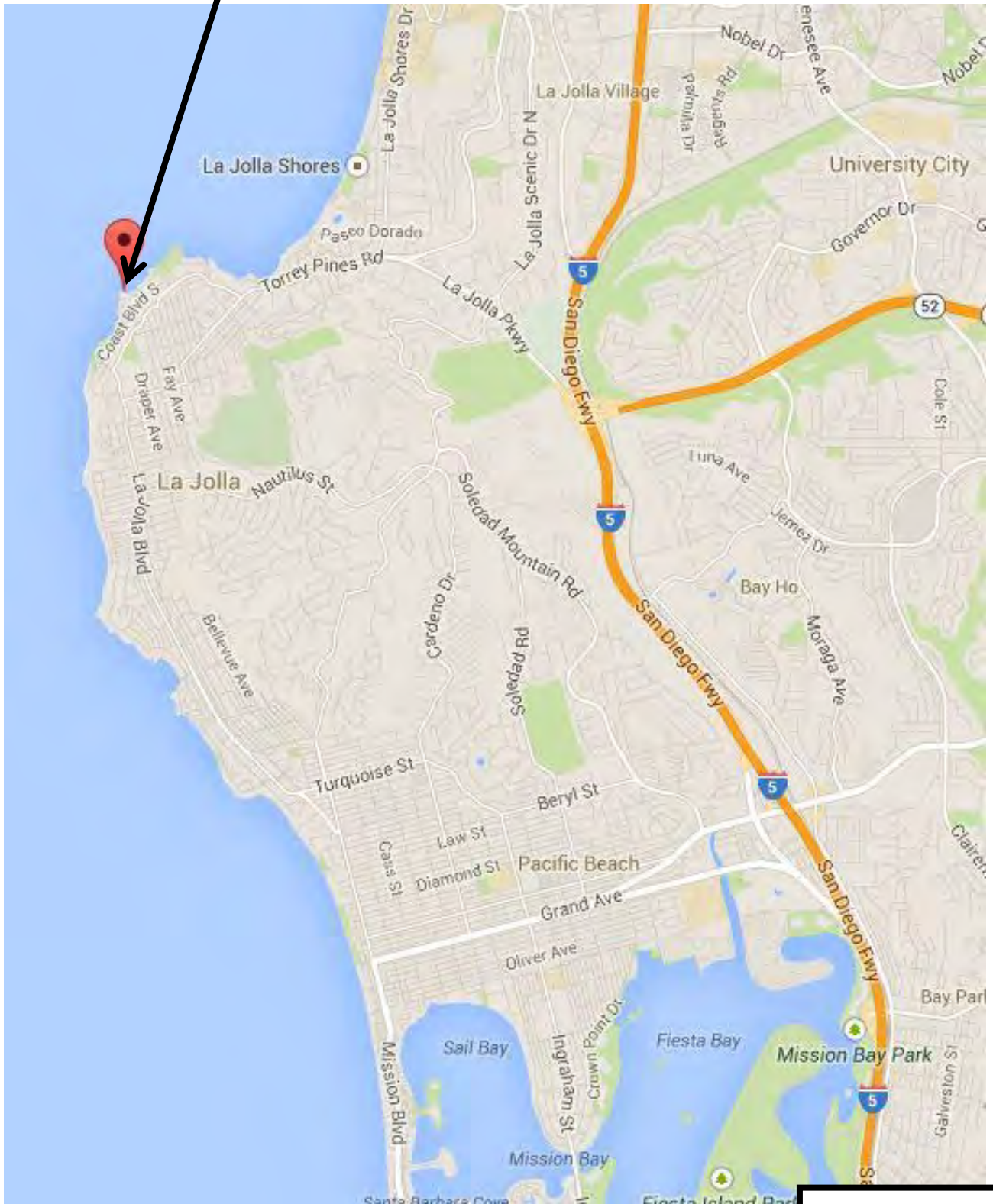


EXHIBIT NO. 1

APPLICATION NO.

**6-14-0691**

Vicinity Map

California Coastal Commission



## Subject Site



EXHIBIT NO. 2

APPLICATION NO.

**6-14-0691**

Aerial View

California Coastal Commission

Draft Signage



THE CITY OF SAN DIEGO

# **BEACH CLOSED**

NO BEACH ACCESS ALLOWED  
DURING HARBOR SEAL PUPPING SEASON  
DECEMBER 15 TO MAY 15

(THIS SECTION WILL PROVIDE FOR THE CA COASTAL COMMISSION AND THE CITY COUNCIL  
RESOLUTION NUMBER AND DATE FOR THE CLOSURE.)

EXHIBIT NO. 3

APPLICATION NO.

**6-14-0691**

Proposed Signage

California Coastal Commission



Site Plan: Proposed Sign Location

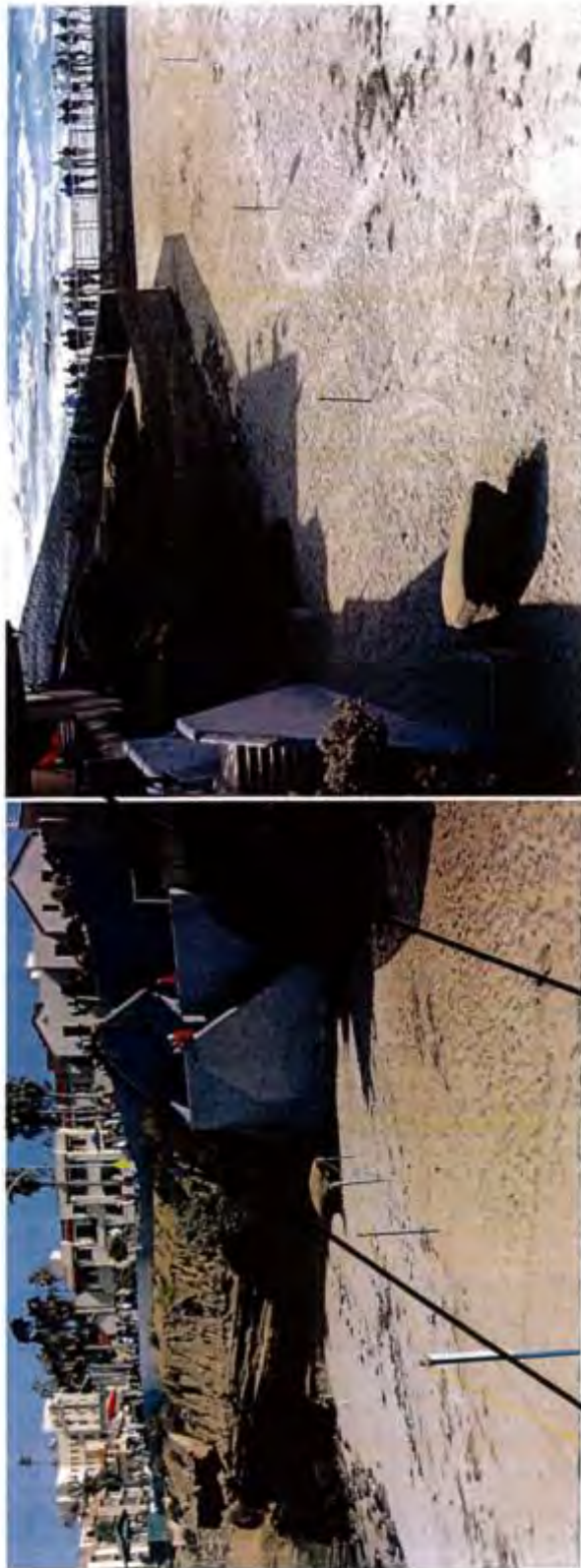


EXHIBIT NO. 4

APPLICATION NO.

**6-14-0691**

Proposed Sign

Locations

California Coastal Commission

**Site Plan: Proposed Sign Location**

New sign with information regarding beach closure. Gate already closed to preclude access from this point.







EXHIBIT NO. 5

APPLICATION NO.

**6-14-0691**

Existing Signage

And Rope Barrier

California Coastal Commission





**WELCOME TO THE CHILDREN'S POOL**  
Be respectful of the seals in this area

**SHARE THE BEACH WITH THE SEALS but keep a safe distance.**  
The beach and waters are open for public enjoyment. This is also a home and resting place for Harbor Seals. Seals at the water's edge may want to come ashore. Give them a chance by moving back from the water's edge.

**STAY BACK**  
Wild animals can be unpredictable and may bite. Get too close and you may frighten the seals.

**MOVE SLOWLY**  
Sudden movements may cause seals to "flush" into the water. This could cause pups to be abandoned.

**Harassing, disturbing, or flushing seals violates Federal and Local Law and may lead to a citation.**

**WARNING ADVISORY**  
Contact with water may cause illness as bacteria levels exceed California State health standards. Call the San Diego County Department of Environmental Health @ (619) 338-2073 for more information.

**WARNING!**  
BEACH SAFETY  
SEALED OFF AREA  
DO NOT ENTER  
AVISO!





The City of San Diego

**WELCOME TO THE CHILDREN'S POOL**  
Be respectful of the seals in this area  
**SHARE THE BEACH WITH THE SEALS** but keep a safe distance.

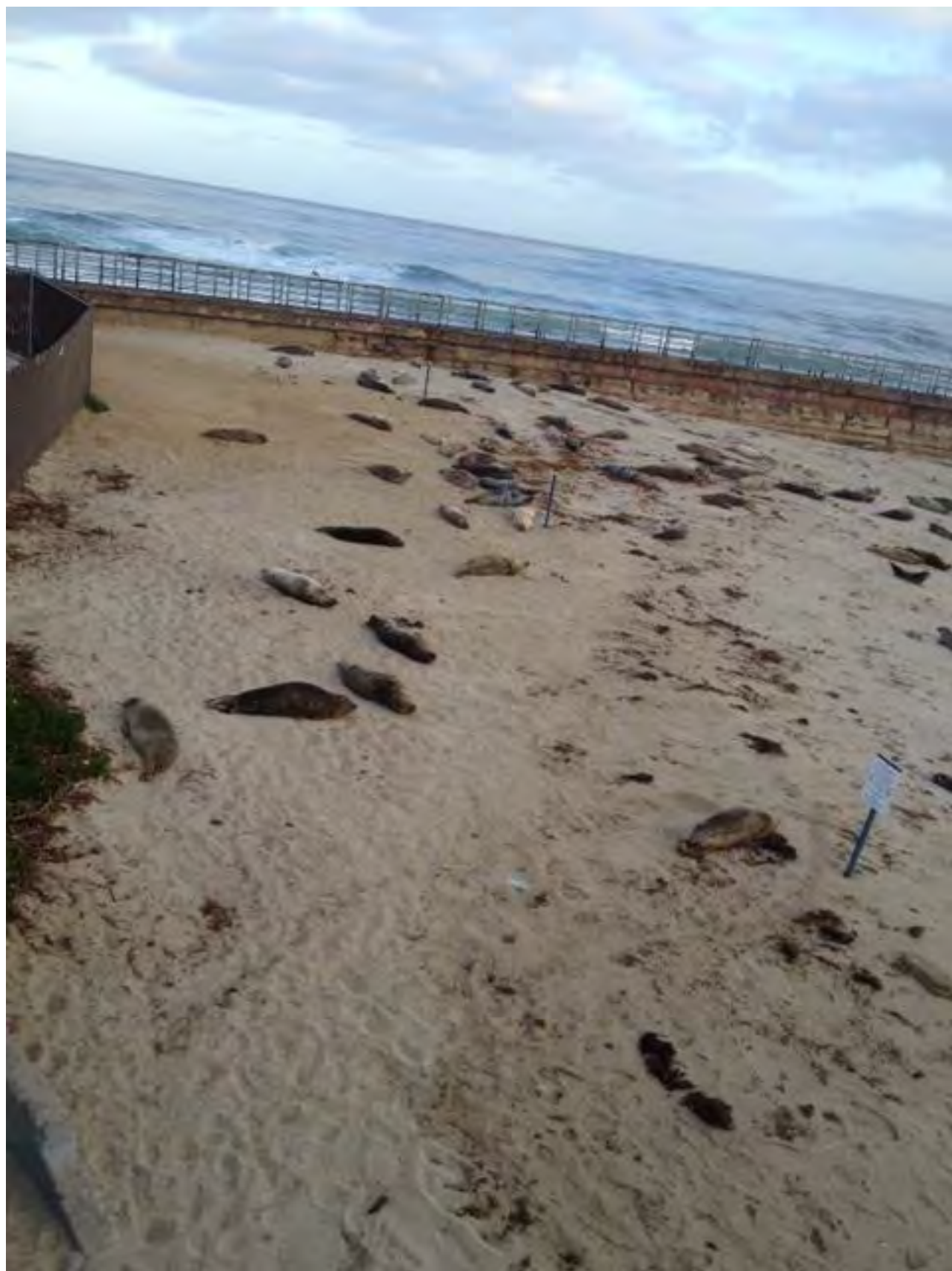
The beach and waters are open for public enjoyment.  
Please view seals from behind the rope guidelines.  
50 feet is the minimum recommended viewing distance.

 **STAY BACK - MOVE SLOWLY**  
Wild animals are unpredictable and may bite.  
Get too close and you may frighten the seals.  
This could cause pups to be abandoned.

 **STAY BACK - MOVE SLOWLY**  
Wild animals are unpredictable and may bite.  
Get too close and you may frighten the seals.  
This could cause pups to be abandoned.

Harassing, disturbing, or causing seals to flush is a violation of Federal and  
Local Law and may lead to a citation.

**WARNING/ADVISORY**  
Contact with water may cause illness as bacteria levels exceed California  
State health standards. Call the San Diego County Department of  
Environmental Health @ 619.688.2073 for more information.





*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.

-i-

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

EXHIBIT NO. 6

APPLICATION NO.

**6-14-0691**

La Jolla LUP

Amendments

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.

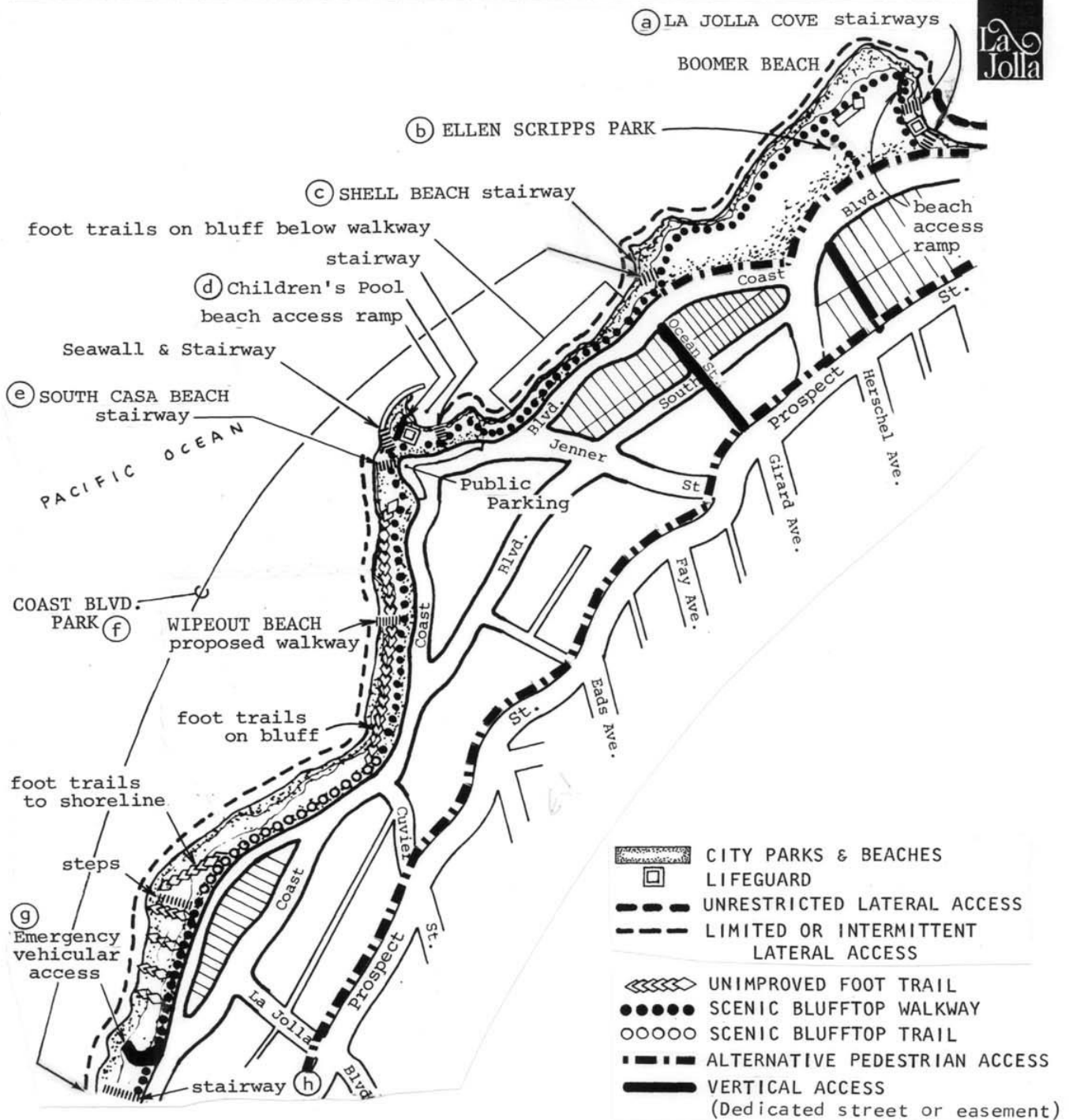
\* On June 8, 2010, the City of San Diego City Council, via Resolution R-303837, directed the City Attorney "to draft an ordinance amending the Municipal Code...to prohibit public access to the Children's Pool beach during harbor seal pupping season, from December 15 to May 15" and directed the Mayor 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 15<sup>th</sup> through May 15<sup>th</sup>." 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.*



0 400 FEET

## Subarea E: Coast Boulevard - Physical Access



**La Jolla Community Plan**  
City of San Diego • Planning Department

**Figure E**





**Coastal Commission Permit Jurisdiction**  
**For illustrative purposes only.**



EXHIBIT NO. 7  
APPLICATION NO.  
**6-14-0691**

Jurisdiction Map

**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. 8**

APPLICATION NO.

**6-14-0691****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 visitors<sup>1</sup>, 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.

---

<sup>1</sup> 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. 9

APPLICATION NO.

**6-14-0691**

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 peak 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 3:50 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 Grooth

**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: June 7, 2014

Signature of Commissioner: Carole Grooth

EXHIBIT NO. 10

APPLICATION NO.

**6-14-0691**

Ex Parte Disclosures

Page 1 of 5

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."

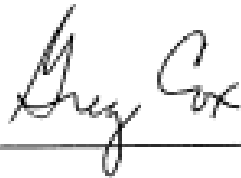
Cheri Jacobs Aspenleiter, on behalf of Restore Access to Many People (RAMP), added:

"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 Commisssioner: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Greg Cox", is written over a horizontal line.

cc: DL

RECEIVED

July 7, 2014

JUL 11 2014

Subject: City of San Diego Children's Pool CDP and LCPA

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Ms. Lee,

I am writing to express my concern on possible passage of the subject agenda item. The item involves imposing a ban on use of the Children's Pool from December 15 to May 15 each year. My concern is not on the seasonal ban itself, but that several individuals and organizations may use the ban as a stepping stone to a permanent ban on public use of the Children's Pool. I passed the Children's Pool yesterday, on my way to swim at La Jolla Cove. Even though it is now July, there was still a rope barrier on the beach, which, at least psychologically, limits access. There was also someone standing at the top of the stairs who seemed to be there to discourage people from walking down to the beach. The water temperature yesterday was 74°F and the air temperature was close to 80°F. Despite the hot weather, and it being Fourth of July Weekend, there was no one on the beach or in the water. There were no seals on the beach, but there were a couple of seals on a rock in the water a few feet off the beach. Many people were gathered on the breakwater to look at the seals.

The Children's Pool seems to be rapidly becoming a place for people to merely watch seals, rather than to use the beach and water. This is a very serious matter. It involves the potential loss of a beach that has been used by children and adults for close to 100 years. I have been swimming and SCUBA diving in La Jolla, at both the Cove and the Children's Pool, off and on, for over 40 years. Until about 15 years ago, people used the Children's Pool and the seals used the "Seal Rocks", a short distance from the Children's Pool. Now it seems that it is socially unacceptable to even suggest that people use the Children's Pool, any time of the year. At least one group has changed the name of the Children's Pool to "Casa Beach" in their literature, in an attempt to remove the human reference from the beach name.

Swimming in the Children's Pool is much safer and fun for children than swimming at La Jove Cove. This is because there is generally much less surge, there is a much more gradual drop-off, and because "floats" are allowed in the Children's Pool, whereas they are not allowed at the Cove.

Whether the subject agenda item passes or not, I strongly urge the California Coastal Commission to take aggressive steps to ensure that the Children's Pool remains open to the public, for at least the seven months of the year outside of the proposed ban period.

These steps could include:

- Requiring the City of San Diego to post signs stating the dates that the Children's Pool is open for public use and stating that it is open for public use 24/7 during that period,
- Requiring the City of San Diego to remove all barriers (rope and other) from the beach during periods that public use is allowed,
- Requiring the City of San Diego to report on levels of beach use during the periods of allowed public use and
- working with the City of San Diego to make the public aware that the beach is open during the open period.

I believe these steps will help ensure that the "Shared Use" of the Children's Pool is achieved.

Thank you for your consideration.

*David J. Burgess*

David J. Burgess, Cell phone: 619-804-3972

EXHIBIT NO. 11

APPLICATION NO.

6-14-0691

Comment Letters

Page 1 of 2

California Coastal Commission

SCOTT H. PETERS  
State Director, California

2410 RANDELMAN HOUSE DRIVE, BUILDING  
WASHINGTON, DC 20515  
(202) 226-0552

COMMITTEE ON  
ARMED SERVICES

COMMITTEE ON  
SCIENCE, SPACE, AND TECHNOLOGY

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0552**

June 2, 2014

California Coastal Commission  
Attn: Steve Kinsey, Chair  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Dear Chairman Kinsey and Commissioners,

I understand that the subject of beach closure at Children's Pool in La Jolla will come to you for consideration in August of 2014. As a resident of La Jolla, former City Councilmember, and current representative for this area in the United States Congress, I have heard the arguments both for and against turning this historic landmark into a wildlife reserve. In order to best serve the community, I request the Coastal Commission give full and equal consideration to the concerns of my constituents who live in La Jolla, the input from the City of San Diego and its staff, and the recommendations of the agencies that have oversight on this issue within the federal government.

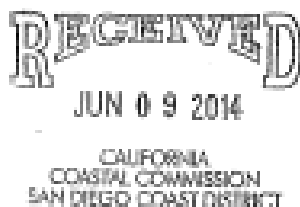
As a former member of the Coastal Commission, I know that balancing competing coastal interests is difficult and trust that your final decision will be designed to protect our treasured coastline, address the concerns of all parties involved, provide public access, and take into account the appropriate rules and regulations. Thank you for your service to our community.

Sincerely,



Scott Peters

SP/sc



**PLEASE PROTECT THE SEALS!**




Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

 6-27-14  
(please sign and date here)

Aileen Fricks  
7960 Via Capri  
La Jolla, CA 92037-4042

EXHIBIT NO. 11

APPLICATION NO.

**6-14-0691**

Letters of Support

Page 1 of 43

California Coastal Commission



Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and allows people access to the beach for the other 7 months.

This is a win-win proposal for both nature and people. Please support it!

Thank you,

June 12, 2014

Jane Roldan, MD

7946 Ivanhoe Ave #312

La Jolla, CA 92037

RECEIVED

JUN 13 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

*Dear Ms. Laver and members of the California Coastal Commission:*

*I am writing in regards to the San Diego City Council's proposal to prohibit public access to Casa Beach from mid-December to mid-May, in order to protect harbor seals from harm and/or harassment during their pupping season. Seals have been the targets of cruelty for many years, and protective barriers have not remedied concerns.*

*I fully support the Council's decision and respectfully ask that the Commission approve it.*

*Yours truly,*

*Wandy Mendoza*

*12522 Roscoe Blvd Apt 3*

*Sun Valley CA 91352*

**RECEIVED**

**JUL 07 2014**

**CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT**





SCANNED by the City Council.

**\*Page 1 of over 100 pages of signatures**

301 S. Angelena Ave.  
AZUSA, CA 91702

RE: FILE 6-14-0691

June 28, 2014

RECEIVED

Brittney Laver, Coastal Analyst and  
Members of the California Coastal Commission

JUL 01 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

The San Diego City Council has proposed to prohibit public access to CASA BEACH from mid-December to mid-May in order to protect harbor seals during their pupping season. Unfortunately there are people who would harass and even harm these gentle creatures, and protective barriers have not proven effective. The surest way to protect the seals is doing what the City Council has suggested.

I respectfully request that the Commission approve the City Council's decision to prohibit public access to CASA BEACH during seal pupping season.

Thank you.

Sincerely,

(MRS.) Martha Ansoorge

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUL 15 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners:

I support winter closure annually at Casa Beach from December 15 to May 15 during the harbor seal pupping season.

This is the most vulnerable period for the seals when they give birth and nurse their pups on this small beach. Each pup requires 6 to 8 weeks of nursing and bonding with their mother. If a pup is separated from its mother due to human disturbance, it may be abandoned and perish. If a pup is driven off the beach by people, it cannot rest and develop a blubber layer to withstand the cold water and fend for itself.

Accessibility to Casa Beach is critical to the seals during pupping season. The nearest mainland rookery is 160 miles to the north in Ventura County.

Visitors come from all over the world to see the mothers and pups in this natural setting. If you are at the beach for even an hour, you will meet people from at least ten different countries. It is one of the main reasons people come to San Diego. It is an amazing sight!

As you know, the San Diego City Council voted 6-3 on February 24, 2014 in favor of winter beach closure (12/15 to 5/15) to protect the La Jolla seals. This time period is when the ocean is cold, rough, and dangerous for swimming.

If you do not approve this motion, seal harassment will continue unabated and innocent seals will suffer during their most vulnerable time.

I urge you to support the City and approve the 5-month winter beach closure! It is the right thing to do.

*Carol Archibald*

Carol Archibald, PhD, MPH  
3146 Ibsen Street  
San Diego, CA 92106  
(619) 225-9076

6/18/2014

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUN 20 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15. In the past seals have been harassed which can stress the seals and lead to premature births, as well as pup abandonment.

This is a balanced compromise that protects the seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year. In addition, during the winter months few people use Casa Beach. Plus there are other beaches on either side of Casa Beach that provide easy beach access.

Numerous communities in California close their beaches during pupping season such as the City of Carpinteria and Marin County. Casa Beach is the only mainland California Seal pup birthing area south of Ventura County. It is a special place to see animals in their natural habitat.

This is a win-win proposal for both nature and people. Please support it!

Sincerely,

Cynthia L. Benner  
3737 Kingsley St.  
San Diego CA 92106-1109

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUL 21 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

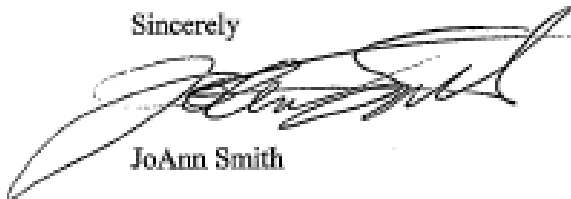
This is a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

I have personally seen many acts by people harassing the seals during the whole year but it is especially bad at pupping season. These moms and pups need their rest and time to nurse and bond. The colony is such a blessing for the hundreds of thousands of visitors from around the world that get to experience such a joyful event of nature from the walkways. It's time to protect these moms and pups.

I have also included a petition with 58 other signatures of people who also support closure of the beach during pupping season.

This is a win-win proposal for both nature and people. Please support it!

Sincerely

A handwritten signature in black ink, appearing to read 'JoAnn Smith', written over a horizontal line.

JoAnn Smith

RECEIVED

JUL 21 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

June 28, 2014  
Re: File: 6-14-0691

Attn: Brittney Laver

I was furious to read that your agency must approve the protection of Harbor seals at San Diego's Casa Beach. This has already been approved already by the San Diego City Council. Your agency is in charge of protecting our coast and its creatures. This protection should extend year-round. Also those who abuse the seals should be prosecuted to the fullest extent of the law. Pass the protection measure for the seals at Casa Beach.

Thank you.

Mimi Sanchez  
19811 Covina Hills Rd.  
Covina, CA 91724

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst

California Coastal Commission

7575 Metropolitan Drive, Suite 103

San Diego, CA 92108-4402

RECEIVED

JUL 01 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

*Dear Ms. Laver and members of the California Coastal Commission:*

*I am writing in regards to the San Diego City Council's proposal to prohibit public access to Casa Beach from mid-December to mid-May, in order to protect harbor seals from harm and/or harassment during their pupping season. Seals have been the targets of cruelty for many years, and protective barriers have not remedied concerns. I recently watched a horrific video of two women who were kicking and forcing pregnant seals back into the ocean. There truly is nothing more immoral and depraved than those who do not protect those who can't protect themselves, so I ask you respectfully and kindly to do what is right and protect these beautiful creatures. They bring beauty to this world and need protection. There are plenty of beaches and other areas residents or visitors can go to for swimming or sunning. Visitors from around the globe come to see these magnificent creatures, so please continue to support this and continue to fight for compassion in this world. Compassion starts in our community and I applaud the Council's support thus far.*

*I fully support the Council's decision and respectfully ask that the Commission approve it.*

*My daughter and her friend have also written a letter. When I told them about this, they asked what we could do as they have goodness in their hearts to protect animals from harm and to help keep them safe.*

*Yours truly,*

Corrie Blough



10778 Heather Ridge Drive, San Diego, CA 92130

[cblough@nuvasave.com](mailto:cblough@nuvasave.com)



July 17, 2014

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUL 22 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners,

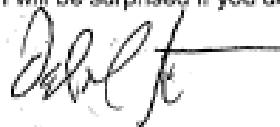
I am a retired high school Civics teacher. I am also deeply concerned with the state of the world's oceans and the creatures that live within them. Specifically, I am active in the conservation and protection of marine mammals worldwide, in particular harbor seals. As an educator of young citizens, as a defender of animals who cannot speak for themselves, and as a believer in our system of laws, I am proud that the United States has a Marine Mammal Protection Act which stands as a model for other countries.

How that law is enforced is the crux of the matter, of course, and unless it is actually carried out in practical application in specific circumstances, it is worthless. The situation at Children's Pool/Casa Beach is a perfect example. Either the harbor seals using that beach as a pupping area are protected from disturbance by unsympathetic people or they are not. It's that simple.

The Coastal Commission has the great responsibility of balancing the legitimate recreational and commercial interests at any given site with the obligation to fulfill the mandate of the MMPA. Where the two interests - the local and the national - are in direct conflict, the federal law should take precedence. This principle is true in regard to fisheries, marine sanctuaries, and national security. So, too, with marine mammal protection, whether on public land or private.

The City Council of San Diego has determined that in this case the two interests are in fact aligned, that this beach should be closed to the public - not just delineated with a guidance rope - during the pupping season. For the Coastal Commission to overrule that decision, to favor those who would commit continued acts of "taking" as directly forbidden by the MMPA without a permit, would be a shame to our nation, our state, and to the Commission itself.

I will be surprised if you do not decide for the closure.



Daniel Leite  
77 Willow Avenue  
Walnut Creek,  
CA 94595

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUL 22 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

July 14, 2014

Dear Commissioners:

I am writing to you as an informed citizen. I have been committed to seal conservation since the 1990's. For many years I volunteered as a docent/educator at the Marine Mammal Center in Sausalito, CA. I volunteered for Seal Watch in Sonoma County when the program first began. I have also volunteered for a citizen science program through the NPS which maintains records during pupping season as well as records of harassment during this period in the SF Bay Area and Pt. Reyes. I am familiar with the natural history of harbor seals and the stipulations of the Marine Mammal Protection Act. I am also familiar with the issues involved in protecting harbor seal populations and meeting the public needs for recreation.

For example, when I first began counting seals at Pt. Bonita in the Golden Gate National Recreation Area there were only a few pups born at that site and the colony was small. It is a treacherous and difficult climb to the surf but people went down to the rocks to fish and groups of school children were guided down to survey the shoreline. Boats pulled in too close to rocky haul out spots along the shore. Harassment was the norm there.

After it was determined through counts like my own that this section of coast might indeed be a significant pupping area, a decision was made to close it to public use. Since then and with my own eyes I have seen the colony more than quadruple and many pups are born there each pupping season. It is a draw for the GGNRA and informational signs provide explanations of what tourists from all over the world are seeing. It is a boost for tourism and a boost for the seals. They are finally protected and being allowed to live normal lives.

When I was young growing up in Southern CA I didn't know that harbor seals existed. I am 68 years old. Despite the fact that I spent a summer at Malibu Beach as a child and frequented beaches during my entire childhood and adolescence I never saw one. I was very familiar with sea lions which you might see swimming beside a pier but never an animal hauled out on the beach resting or pupping.

San Diego County is lucky to have the seal colony at Casa Beach in La Jolla. It is lucky to have a place where children and visitors can see wild ocean animals deliver and care for young. It should be considered a great blessing for tourism outlets and locals alike. I urge you to finalize the seasonal closure of Casa Beach during pupping season. And as a seasonal closure it will allow ordinary uses of the beach during seven months of the year and provide adequate protection for the seals that live there.

Sincerely,

*Elizabeth Leite*

Elizabeth Leite  
77 Willow Avenue  
Walnut Creek CA 94595

Ms. Irene Lopez  
4986 Fidd St.  
San Diego  
CA 92110

RECEIVED

JUL 22 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Dr. Hester, Please be humane  
and side with our City Council  
by keeping the Casa Beach  
closed for Seal Pupping Season!  
People are so cruel the things  
they do to these innocent little  
Seals is appalling! after all  
it's their beach & home! everyone  
loves to see and hear them -  
and it's great for people who  
come to La Jolla on holiday  
and have never seen a seal  
in its natural habitat! I would  
be so very grateful and would appreciate  
a kind reply. Sincerely Irene.

RECEIVED

JUN 30 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of harbor seal pupping season from December 15 through May 15.

I have seen first-hand what can happen when the seals are not protected. Last year in Pacific Grove, CA we lost over 40 pups when people frightened harbor seals into the water and they did not return to their nursing pups. The city came through with adequate protection this year and only one pup was lost to human harassment.

We must protect these gentle and defenseless animals, and the Marine Mammal Protection Act demands that we do so. This is a win-win proposal for both nature and people. Please support it!

Sincerely,

*Marjorie Brigadier*  
Marjorie Brigadier  
931 Maple Street  
Pacific Grove, CA 93950

Re: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Dr. Ste. 103  
San Diego, CA 92108

Dear Commissioners,

When you review the facts of this case, I hope you will decide in favor of closing the Casa Beach in La Jolla during the critical months of harbor seal pupping season (Dec. 15 - May 15). This balanced compromise protects the seals during their crucial pupping season and also allows people access to the beach the other 7 months of the year.

This beach is one of the last remaining areas that the seals can use for pupping. Humans have many options for the

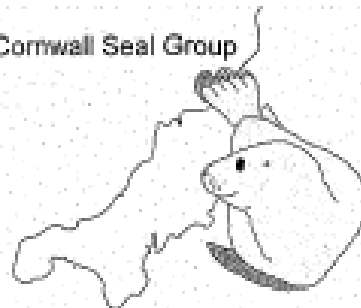
RECEIVED

Debbie Chaddock

JUN 19 2014

Debbie Chaddock  
4478 Campus Ave  
San Diego, CA 92116

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



Identifying and monitoring local seals  
Giving seals a voice

RECEIVED

JUL 14 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

06/07/14

## Casa Beach La Jolla: closure for seals

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Dear Commissioners:

Cornwall Seal Group are a non-governmental organisation in the United Kingdom conducting seal research and using what is learned to give seals a voice in our human world. As such we have been following developments at Casa Beach La Jolla with interest and some concern.

Some of the press coverage last year was shocking in the extreme and should not be repeated. As you will know this news travels globally and rightly or wrongly affects the reputation of San Diego.

The research that Cornwall Seal Group has done (on grey seals) has demonstrated just how picky seals are about the sites they use, appearing to ignore what appears to be perfectly suitable habitat adjacent to their chosen haul outs and pupping grounds. There is so much more we need to learn. We understand that grey seals are much bigger movers than harbour seals, but both species rely on a network of interconnected habitat. Removing one node in that network can have potentially huge unintentional consequences that are currently understudied.

As a result Cornwall Seal Group, though far away from you, would strongly support a decision to close Casa Beach in La Jolla during the critical months of harbour seal pupping season from December 15 through to May 15.

This would balance the needs of seals and humans and avoid the negative global press coverage that occurred for several months last year. The seals would be protected during the five critical months of pupping season, whilst people would have access to the beach for the other seven months of the year.

Your sincerely,

Sue Sayer : Chair

Kate Hockley : Treasurer

Dan Jarvis : Secretary

Sue Sayer, Copperleaf Cottage, Phillack Hill, Phillack, Hayle, Cornwall, TR27 5AD  
01736 754562 : [sue@cornwallsealgroup.co.uk](mailto:sue@cornwallsealgroup.co.uk) : [www.cornwallsealgroup.co.uk](http://www.cornwallsealgroup.co.uk)

RECEIVED

JUL 01 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Friday, June 28, 2014

Dear Ms. Laver and members of the California Coastal Commission:

I urge you to support the San Diego City Council's decision to prohibit public access to Casa Beach during the harbor seals' pupping season. I have personally seen unauthorized people approach the seals in an attempt to get as close as possible, thus scaring them so badly the seals were forced to scatter. I have also read reports of seals that have been targeted for cruelty. Barriers have done nothing to protect seals from this behavior so I believe we need the strong protections that the Council is aiming for by prohibiting public access to Casa Beach. The public has miles of accessible beach to enjoy year long, so please protect this one small area for harbor seals from mid-December to mid-May.

I fully support the Council's decision and respectfully ask that the Commission approve it.

Sincerely,



Victoria Cyphard  
207 N. Acacia Avenue  
Solana Beach, CA 92075



RECEIVED

106 Alamo Square Drive  
Alamo, CA 94507  
July 2, 2014

JUL 07 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Re: File 6-14-0691

Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 94108-4402

Please close La Jolla's Casa Beach from December 15 to May 15 to protect Pacific Harbor Seals during pupping season. These beautiful marine mammals are California's treasures in a world where our wildlife is disappearing. If we are going to continue to enjoy them, they need our protection.

I have done rehab work at The Marine Mammal Center and surveyed Gaza Creek Beach on the San Mateo County Coast for NOAA for many years. I've seen the stress that our seals have been under from rough seas, human interference, fish shortages, algae blooms and so many other things. But I've also seen some amazing programs and procedures put in place to try to protect our wildlife.

I hope that the 5-month beach closure at Casa Beach will be one more things that we do right.

Thank you,



Connie Diernisse

RECEIVED

JUN 13 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

To: Brittney Laver, Coastal Analyst  
File 6-14-0691  
California Coastal Commission  
7575 Metropolitan Drive, STE. 103  
San Diego, CA 92108-4421

Re: Children's Pool/Casa Beach Pupping Season Closure

I am aware of the San Diego City Council's decision in favor of the closure of Children's Pool/Casa Beach each year during the harbor seal pupping season from December 15 to May 15.

I fully support their action, and respectfully urge the Commission to approve it.

Thank you,

Karin Douglas  
(full name)

1550 Alki Ave SW #402

Seattle, Washington

98116  
(address)

I work as a volunteer with Seal Sitters in Seattle and know how important it is to the seal population to protect seal pups. Please do whatever you can to contribute to this endeavor.

Michelle ~  
2 Kent Way  
Mill Valley, CA  
94941

Friday, June 27, 2014

Dear Ms. Laver ~

I read that the California Coastal Commission will soon consider an issue pertaining to seals in San Diego.

I understand that the San Diego City Council passed an ordinance that would prohibit public access to Casa Beach when harbor seals are giving birth to their pups & raising them, usually from mid-December to mid-May. And now, the issue is being considered by the California Coastal Commission.

I strongly urge the Commission to support this local measure to protect the harbor seals. It's wonderful to know that a local government is trying to provide a safe haven for these animals during pupping season. While the public is required to stay off the beach at this time, folks can still have a wonderful experience by viewing the seals from a safe distance. Thanks so much  
Michelle Egan

# HOUSE CALLS

BRUCE MAX FELDMANN, D.V.M.

1518 California

Berkeley, California 94703

510 919-5175

1 July 2014

RECEIVED

JUL 07 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Brittney Laver, Coastal Analyst  
California Coastal Commission

Dear Ms. Laver:

I have been a veterinarian for 52 years (UCD '62). I have been in both academia and private practice. I have served three times overseas as a veterinarian.

I am writing to respectfully urge the Coastal Commission to vote to prohibit public access to Casa Beach (San Diego) from mid-December to mid-May (harbor seal pupping season).

Please protect our harbor seals from harassment and abuse. They are sentient beings. Their presence helps make California a great state in which to live or visit.

I respectfully ask that the Coastal Commission show compassion toward these defenseless creatures.



Bruce Max Feldmann, D.V.M.

James M. Fitzgerald  
6942 Via Estrada  
La Jolla, CA 92037  
858-453-6255  
[jimfitz1@pacbell.net](mailto:jimfitz1@pacbell.net)

RECEIVED

JUN 20 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

June 15, 2014

California Coastal Commission  
Attn: Brittney Laver, Coastal Analyst  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Honorable Members of the Coastal Commission:

RE: File 6-14-0891: Closing of Children's Pool Beach in La Jolla during Seal Pupping Season

My name is James Fitzgerald. I am a 25-year resident of La Jolla and, until March of 2014, I was an elected-Trustee of the La Jolla Community Planning Association. I am writing the Coastal Commission today as a private citizen and I am urging you in the strongest terms to support the project before you today to close Children's Pool Beach to the public during seal pupping season (Dec 15<sup>th</sup>-May 15<sup>th</sup>).

It is unfortunate that the Commission has to again deal with this issue.

The seals at the Children's Pool are a unique and valuable resource that continue to bring enjoyment and education year-after-year to literally millions of people. These seals are protected by the Marine Mammal Protection Act (MMPA) and cannot be disturbed or harassed in any way—which has been recognized and reaffirmed by a series of jurisdictions, including NOAA, the California Coastal Commission, the Courts, the San Diego Planning Commission, and the San Diego City Council.

Within the extremely-confined space at the Childrer's Pool, I was sincerely hopeful that the visual cue of the extended rope guideline that this Commission and the San Diego City Council approved previously would be sufficient to discourage and to prevent inappropriate behavior towards the seals and their pups while maintaining public access to the beach.

Regrettably, as evidenced by the most-recent eyewitness testimony and videos presented to the San Diego City Council (which also will be submitted to the Coastal Commission for their August, 2014 hearing on this matter), the results have been extremely disappointing. The seals and seal pups continue to be disturbed and harassed during the pupping season—sometimes out of ignorance and, unfortunately, sometimes out of outright malice.

That is why I am writing to the Commission today.

Experience has made it clear that the seals and their pups need additional protection—and now. You, the members of the Coastal Commission, are their last, best, and only line of defense. So please do your duty today and approve closing Children's Pool Beach during the critical pupping season.

Thank you for your consideration.

Respectfully yours,



James M. Fitzgerald  
6942 Via Estrada  
La Jolla, CA 92037

6.14.14

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JUN 20 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



Lydia Garvey  
429 S 24th St  
Clinton OK 73601-3713

Dear Commissioners

I strongly urge you to close Casa Beach  
into Jolla during Harbor Seal pupping season  
Dec. 15<sup>th</sup> - May 15<sup>th</sup>

This is vital for ecosystem balance.  
Your attention to this most urgent matter  
would be much appreciated by all  
present & future generations of all  
species.

Thank you,

Lydia Garvey

Public Health Nurse

06-30-2014  
Nicola Grobe and  
Paul Norup  
1043 R Street  
Crescent City, CA 95531-2710  
707 954 2517

TO  
Brittney Laver  
Coastal Analyst  
California Coastal  
Commission  
7575 Metropolitan Drive  
Suite 103  
San Diego, CA 92108-4402

Dear Brittney Laver,  
People are harassing the  
seals who are resting at  
Casa Beach.

The harassment can result  
in high stress states and  
reproductive impairment  
in the seals' systems.

please approve the closing  
of Casa Beach.

Thank you, Sincerely,

LGM + Paul Norup



Re: File 6-14-0691

Attn: Brittney Laves, Coastal Analyst  
Dear Ms. Laves,

440 Adobe Place  
Palo Alto, CA 94306

RECEIVED

(650-867-6986)

JUN 28 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Although you see a Palo Alto address, my husband is working in La Jolla and living down here for several months, and I have been commuting to spend time with him. During our stay here I have become a fan of your lovely coastline and amenities it has to offer. My husband is an avid kayaker and we both have enjoyed exploring the water here.

As I'm sure you are aware, the marine wildlife is a great part of what makes our California coasts so wonderful- the birds, the fish and the marine mammals. Since these creatures cannot speak for themselves, we must protect them. The seasonal closure of Casa Beach during harbour seal pupping season allows this species the grace period, if you will, to reproduce and continue to bring joy to locals and tourists alike. Please support this protection for our seals. Pacific Grove, CA, where we love to kayak and rent vacation property, has had great success this year in closing off harbour seal pupping areas. I would urge La Jolla to follow this good example and protect its marine mammals.

Thank you, Michèle Holler Michèle Holler



**THE HUMANE SOCIETY  
OF THE UNITED STATES**

**RECEIVED**

**JUL 15 2014**

**CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT**

**TRACY BENTLEY, Esq.**  
Chair of the Board

**Jeffrey Longenecker, M.D., DVM, MSW**  
Vice Chair

**Kathleen M. Ueberall, Esq.**  
Board President

**Wayne Squatella**  
President & CEO

**Michael Madigan**  
Chief Counsel & Policy Officer

**Laura Maloney**  
Chief Operating Officer

**K. Thomas Wake**  
Director of CFO

**Anthony G. Rosen, Ph.D.**  
Chief Scientific Officer  
& Chief Scientist Officer

**Roger A. Kander**  
General Counsel  
for Philanthropy & O

**Joey D. Feltz**  
Secretary

**DEPT. OF ANIMALS**

**Jeffrey L. Anderson**  
Director, Department of  
Animal Care & Welfare, 1000 N. 10th St.  
San Diego, CA 92101

**John G. Gault**  
Assistant Director, Animal Care & Welfare, 1000 N. 10th St.  
San Diego, CA 92101

**John G. Gault**  
Assistant Director, Animal Care & Welfare, 1000 N. 10th St.  
San Diego, CA 92101

**Jeffrey Longenecker, M.D., DVM, MSW**  
Vice Chair, Board of Directors, 1000 N. 10th St.  
San Diego, CA 92101

**Wayne Squatella**  
President & CEO, 1000 N. 10th St.  
San Diego, CA 92101

**Michael Madigan**  
Chief Counsel & Policy Officer, 1000 N. 10th St.  
San Diego, CA 92101

**Laura Maloney**  
Chief Operating Officer, 1000 N. 10th St.  
San Diego, CA 92101

**K. Thomas Wake**  
Director of CFO, 1000 N. 10th St.  
San Diego, CA 92101

**Anthony G. Rosen, Ph.D.**  
Chief Scientific Officer & Chief Scientist Officer, 1000 N. 10th St.  
San Diego, CA 92101

**Brittney Laver, Coastal Program Analyst**  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

**July 10, 2014**

**RE: File 6-14-0691 LaJolla Children's Pool Seasonal Restriction**

**Commission Members,**

On behalf of the members and constituents of The Humane Society of the United States (The HSUS) and, in particular, our members in the greater San Diego area I am writing to support a permanent seasonal closure of Casa Beach in La Jolla during the five months of harbor seal pupping season between December 15 and May 15. As we understand it, this requires revisions to the certified La Jolla Community Plan and adoption of a new ordinance to limit beach access at Children's Pool Beach, in La Jolla.

This beach has been a key pupping area for harbor seals for close to two decades and their year-round use of this area as is widely appreciated by the public which flocks there year after year to view seals resting along the shore. The seals and their young on Casa Beach provide a unique opportunity for the public to learn about these fascinating animals and to develop a respect for California's coastal wildlife. The HSUS is a strong supporter of allowing the public to view wildlife in their natural habitats in a responsible manner.

In the wake of the passage of SB 428 that allowed establishment of a marine park "for the education and enjoyment of children," the City Council passed a 2012 resolution that established a seasonal rope barrier to discourage visitors from approaching and disturbing seals. While this has been useful, the erection of a rope guideline has not stopped well-documented instances of individuals harassing mothers and pups. This poses a risk to the animals (e.g., injury, abandonment of pups, effects on thermoregulation of inadequate and undisturbed haulout time) and to visitors who approach too closely and may provoke a defensive response. Further, these interactions subject onlookers to the sight of others poking, prodding and harassing animals in a manner that undermines the effort to inculcate responsible attitudes toward wildlife. I have visited the beach and have myself observed harassment by well-meaning visitors who prod seals who are close to the rope barrier with their feet or bend closely to snap photos, within range of the head (and teeth) of adult seals. There

**Celebrating Animals | Confronting Cruelty**

2100 L Street, NW Washington, DC 20037 | 202.253.1000 | 202.778.6132 | [info@hsus.org](mailto:info@hsus.org)

are also numerous videos on YouTube documenting harassment, including visitors walking dogs on the beach around the seals, playing games with balls and Frisbees and making loud noises to provoke a flight response. The harassment, some of it with apparent intent to harm, created a furor among the public in 2013 with the airing of video footage from the “seal cam” that depicted women coming at night and intentionally striking animals.

Even in the absence of overt actions intended to provoke a response by the seals, continual noise and foot traffic in and around the seals can have a detrimental effect. A recent study in Denmark found that seals were often disturbed by pedestrian traffic and recommended that reserve boundaries should prevent approaches of closer than 425 meters from the haul out area. While disturbance caused flight in any season, harbor seals were most likely to flee from disturbance when they did not have pups with them who could not as easily flee the disturbance as the adults.<sup>1</sup> This tendency to remain with vulnerable pups may make it appear that they are not disturbed even though the authors found that they are in fact adversely impacted even when they do not flee. This study reinforces the need for protection of crucial resting times in La Jolla, particularly when pups are present.

Marine Mammal Protection Act expressly prohibits harassment which is defined as an action that “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...” [16 U.S.C. 1362 §3 (18)(A)(2)]. There is no question in my mind, or that of most observers, that disturbing their rest is harassment.

While it may be that a vocal minority wishes to have unfettered access to the beach, there are many nearby beaches and ocean access areas that can serve the same recreational purposes; however, the same cannot be said for the seals. This rookery serves a key biological need, allowing them to rest and warm themselves after time spent foraging in the nearby waters of San Diego. The Children’s Pool Beach is the furthest south of any harbor seal natal rookery, with no other mainland coastal areas serving as harbor seal rookeries south of Carpinteria. It is vital to protect this area for the seals. Of the 17 mainland seal rookeries in California, Casa Beach is one of only two in the state that lack access restrictions during pupping season.

The opportunity to watch mothers and their newborns nursing, resting and playing is well served by allowing the public to use the adjacent breakwater and sidewalks above the beach. These areas are sufficient for providing the unique opportunity to observe this vulnerable and special time in the life of the dependent pups. The city has exhausted all reasonable measures to protect seals short of a seasonal closure: signs have been erected, rangers and volunteers have attempted to educate the public on proper conduct, a rope guideline was erected as an attempt to maintain separation—and even this has proven ineffective in preventing incursions and harassment. An enforceable seasonal closure of the beach is the only viable means remaining for preventing harassment of the seals and encounters that can endanger both the animals and the public.

---

<sup>1</sup> Andersen, S.M. 2011. Harbour seals and human interactions in Danish waters, PhD thesis, Institute of Biology, University of Southern Denmark and Department of Bioscience, Aarhus University, Denmark. 130 pp. Available at: [http://www2.dmu.dk/pub/sls\\_phd\\_web.pdf](http://www2.dmu.dk/pub/sls_phd_web.pdf)

We urge you to support keeping the beach closed to the public for at least the five months period when mothers give birth to and nurse pups. Please vote to support and allow a seasonal closure of the Children's Pool Beach in LaJolla.

Sincerely,



Sharon B. Young  
Marine Issues Field Director  
The Humane Society of the United States  
syoung@humaneociety.org

cc. Kevin Faulconer, mayor-elect  
Kenani Brown, CCC

11717 North Drive  
Tampa, FL 33617  
June 15, 2014

RECEIVED

JUN 23 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Dear Commissioners:

Although I am a Florida resident I felt obliged to write in support of the closure of Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15. Apparently many other beach communities in California have already adopted this seal survival tactic, and it seems quite reasonable to extend the protection to Casa Beach.

This sounds like a balanced compromise that protects the Seals during the 5 critical months of pupping season and also allows people access to the beach for the other 7 months of the year.

In Florida almost all of our beaches are used by sea turtles to lay their eggs. The nests must remain undisturbed until the baby turtles have hatched, and made their way to the sea. This requires keeping the shore area dark so the hatchlings are not confused; they look for the moon's reflection on the water as a direction finder. Everyone I have met here, especially near the beaches, takes this responsibility very seriously, and douses the lights. I would think that most coastal Californians feel that same protective sense about the Harbor Seal pups near their communities.

This is a win-win proposal for both nature and people. Please support it, and give the seal pups their best chance to a healthy life. I look forward to seeing the pups when I do my Hwy 1 tour in 2years (working my way west each fall).

Sincerely,



Nancy Lowell

RECEIVED

JUN 19 2014

Attn: Brittany Lalver, Coastal Analyst  
Calif. Coastal Commission

June 15, 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RE: File 6-14-0691

Dear Ms. Laver:

I support closing the Casa Pool Beach in La Jolla, Calif. (actually all year) but especially during the critical Pupping Season of the Harbor Seals who have established a rookery there. This season is from December through May.

I have been told from Life Guards that this is the most dangerous place to swim as there are 3 substantial rip currents that run out from the area. I grew up in La Jolla. I never liked going to the Casa Pool as a child and never as an adult. It was small and always loaded with seaweed. Besides there were so many other better beaches nearby to go to. I now swim 4 days a week at the Cove and understand shared use, which is fine for the Sea Lions but not for the more vulnerable, shy Harbor Seals who must haul out on flat surfaces.

I whole - heartedly support the Harbor Seal Rookery. It has been a joy to witness these awkward yet graceful beings in close proximity and to see the excitement of the children who come in droves to see our natural wildlife. As humans we have taken so much from the natural world for our use and abuse, that I applaud La Jolla and the Coastal Commission for setting aside this special place for our Harbor Seals who need this safe haven as so many beaches/places are now lost to them.

Thank you for your consideration on this matter.

Sincerely, Linda Lyerly  
825 Muner Rd.  
Cardiff by the Sea, CA 92007



RECEIVED

JUL 07 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RE: File 6-14-0691  
Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Dear Commissioners:

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

I regularly visit San Diego and each time I do, I always go to see how the seals are doing. I am also regularly astonished by the behavior of supposedly thinking human beings. I have seen people, mostly adults, who encourage their children to harass the seals by kicking, touching, pushing the seals to see them react, especially when the rope was up.

I have also observed that it is mostly defiant adults who swim there and allow their children to play or swim in what is, of record, polluted water. This to me was unbelievable. What true adult would let his child play in highly polluted water: water which is okay for the seals but very unhealthful for humans.

I like the fact that this action is a balanced compromise that protects the seals during the five critical months of pupping season and allows people access to the beach for the other seven months of the year (a badly chosen area for swimming at any time of the year in my opinion).

This action defined above is a win-win proposal for both nature and people. Please support it!

Sincerely,

Neva L. McMullin  
Neva L. McMullin

Neva L. McMullin  
845 Northwoods Drive West  
Woodland Park, CO 80863

15 June 2014

File 6-14-0691

Ms Britney Laver

Coastal Analyst

California Coastal Commission

7575 Metropolitan Drive

Suite 103

San Diego

CA 92108-4402

Clare McQueen

2997 rue Edmond

Kirkland

Quebec

CANADA

H9H 5K5

RECEIVED

JUN 20 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO OFFICE

Dear ms Laver + Commissioners

I write today to offer my support to the closing of Casa Beach in La Jolla during the Harbor Seal Pupping Season that runs from Dec 15 to May 15.

The first 5 months of a pups life are critical to their survival. The beach is their home and this needs protecting. The people of La Jolla have access during the summer months and this is a balanced compromise.

This proposal is a 50/50 situation for Human + Nature. Please Support it.

Thank You. Clare McQueen



## Gregcoastal

---

From: Tom Richardson <tomrichardson24@hotmail.com>  
Sent: Monday, July 14, 2014 7:34 PM  
To: Gregcoastal  
Subject: FW: August Agenda Item: La Jolla Children's Pool

Hi Greg,

Babs was just my realtor and cc'd me this email to you by mistake. Although I have not been involved in this debate prior to now, I do feel the need to voice my opinion which I and many of my friends share. If you have the time, please read my response to Babs below. Hopefully we can keep this special attraction, special.

Kind regards,  
Tom Richardson

---

From: [tomrichardson24@hotmail.com](mailto:tomrichardson24@hotmail.com)  
To: [buyfrombabs@gmail.com](mailto:buyfrombabs@gmail.com)  
Subject: RE: August Agenda Item: La Jolla Children's Pool  
Date: Mon, 14 Jul 2014 19:28:32 -0700

Hi Babs,

It looks like you cc'd me by mistake. However, after reading this letter I feel the need to point out that much of what is being argued as justification for keeping children's pool open to the public is kind of contradictory. Upon first glance, the effect the seals are having on the marine life seems like the only sound argument for not encouraging the growth of the "urban" seal population and thus not closing the pool to the public. However, this is in complete contradiction to earlier claims that human interaction with the seals has caused no ill effects to the seals, or there growth in numbers which has slowed due to their "carrying capacity." With regards to the seals being a tourist attraction, I feel it is unfair to dispute this claim on the basis that no one has shelled enough money to fund a study "proving" that the seals are of economic value to the city. I can tell you first hand that I have taken a number of visiting friends to la jolla to see the seals which inevitably leads to a walk down prospect to visit the many shops and restaurants. However, the last time I took visiting friends to Children's Pool, we were all very disappointed to get there and realize for the most part we had come to watch people hanging out on a beach. What was once a wonderful experience that I enjoyed sharing with others had lost its magic. Anyways, I know this letter wasn't intended for me, though I hope you pass this letter on to others in your group as I know it is easy to get trapped in a bubble with like minded people. Additionally, I'm curious how many of 2,300 members of power scuba share this perspective. In closing, I'm glad I had an opportunity to learn what arguments are being made for not allowing the seals to have the beach to themselves for a portion of the year are, and to be honest, I respectfully disagree.

Regards,  
Tom

---

From: [buyfrombabs@gmail.com](mailto:buyfrombabs@gmail.com)  
Date: Mon, 14 Jul 2014 18:15:34 -0700  
Subject: August Agenda Item: La Jolla Children's Pool  
To: [gregcoastal@sdcounty.ca.gov](mailto:gregcoastal@sdcounty.ca.gov)  
CC: [maxinebaker@earthlink.net](mailto:maxinebaker@earthlink.net); [tomrichardson24@hotmail.com](mailto:tomrichardson24@hotmail.com); [powerscuba1@gmail.com](mailto:powerscuba1@gmail.com)

RECEIVED  
JUL 21 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Hi Greg,

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

JUL 01 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Ms. Laver and Members of the California Coastal Commission:

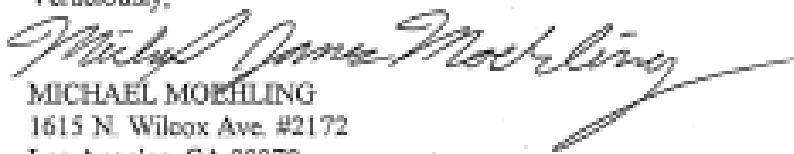
Many people move to Southern California for the beach life. On most beaches it is rare to see a seal, but when they do show up they are a show stopper. The overwhelming majority of people love to see them. Most adults run for their cameras and most children light up like Christmas trees with excitement. Seals feel like a wonderful part of Southern California.

Unfortunately, all this excitement makes it almost impossible for the seals to get plenty of sleep (people always get superclose for selfie-pictures with a seal trying to sleep and of course it wakes them up and they in turn have health issues (just as a human would if someone woke them up every few minutes)). The seals really need to have large floating (anchored) areas for the seals to sleep in peace maybe thirty yards off the coast, than they can come to shore for the photoshoot with the tourists and locals when they are awake and in a good mood. They should have these anchored rafts (maybe wooden) all over California's coastline.

I have been to the Galapagos Islands where every tourist walks away with a grin from ear to ear because when you walk the islands, the seals are so happy and don't mind if you get close because there is plenty of room for them to sleep without harm. Could you imagine if California could duplicate this happiness on a much bigger scale? The floating peers for seals is a win win for everyone.

Before enough politicians get the courage to find a way to build and financially afford these relatively cheap sleeping areas for the seals (there is a restaurant in San Francisco that overlooks such floating devices (seals love them but they are too tiny)), at least prohibit public access to Casa Beach from mid-December to mid-May, in order to protect harbor seals from harm and/or harassment during their pupping season. A few bad humans have made terrible examples of mostly good humans who really care about seals.

Veraciously,

  
MICHAEL MOEHLING  
1615 N. Wilcox Ave. #2172  
Los Angeles, CA 90078

PS- Maybe you politicians can be the brave ones to start building these safety-floating-sleeping-areas for seals and be true heroes for goodness!!!!

June 15, '14

Dear Brittney Laver,

Please close Casa Beach, Dec-May,  
during harbor seal pupping  
season. Thank you.

Sincerely,

Caryl Pearson  
Caryl Pearson  
General Delivery  
Santa Cruz, CA  
95060

831 915 0427  
wolfcayotedeereelka  
yahoo.com

P.S. I did a harbor seal behavior  
study at Casa Beach from Jan-Dec '10.  
There were many disturbances to  
the seals during that time, despite  
the dedicated efforts of the pro-  
seal activists.

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JUN 20 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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JUL 08 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Lords Commissioners:

Please, be aware of leave animals alone. Like all humans, the animals are sentient beings.

I ask that they do the right thing in that, it is believed a policy to avoid disrespect the rights of the animals, because they need the freedom to live in habitats.

I support closing House Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

This is a balanced compromise that protects the Seals during the critical months of pupping season and also allows people access to the beach for the other 10 months of the year.

Acts against nature only mean horrific suffering for the animals.

I feel enough outrage to use animals for profit economically.

Knowing that, currently, it is fighting hard for the welfare and rights of animals, don't do the opposite.

Peace and well-being for the animal beings!

I appreciate your attention.

Sincerely,



---

JORGE ALEX VALDERRAMA POMÉ  
Jirón Ilave N° 346  
Puno  
Republic of PERU

*CNemoGlobal, NGO Environmental Watchdog*



@cnemoglobal



@cpkcc07

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JUL 01 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7576 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

June 30, 2014

Re: File 6-14-0691

Dear Ms. Laver,

CNemoGlobal is an NGO environmental watchdog. As its founder and as a resident of San Diego, I write to support the City of San Diego's application to close Casa Beach, aka La Jolla Childrens Pool ("LJCP"), during the 5-month pupping season of the Harbor Seals that haul out there each December through May. The City's intent is based on resource protection, as it has been amply demonstrated from video documentation that such protection is warranted during seal pupping season.

It is our understanding that under the California Coastal Act, § 30230, the CCC may grant special protection to "areas and species of special biological or economic significance." That designation could address the seal rookery and allow broader public access outside of each pupping season:

*§3.2.9.1 Resource Protection Standards in the Coastal Zone*

*The protection standards for marine resources are defined in Sections 30230 and 30231 as follows:*

*§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.*

In 1931, local philanthropist Ellen Browning Scripps donated the LJCP to the City of San Diego as a place where children could play and swim. However, in 1931 there were no Environmental Impact Assessments; 80 years ago neither Miss Scripps nor the Governor foresaw the environmental changes and hazards to marine life which we recognize on a global level today, promulgating updated legislative acts, i.e., the *Marine Mammal Protection Act of 1972*.

Miss Scripps donated the bulk of her fortune to many scientific and civic institutions, some of which include the Scripps Institution of Oceanography (aka Birch Aquarium), Torrey Pines State Natural Reserve, the San Diego Zoo, the La Jolla Children's Pool, Scripps Research Clinic, etc. We believe that special protection of the seals during pupping season is in line with Miss Scripps' concern for Nature and education, and will help prevent future harassment of the seals at La Jolla Childrens Pool. We advocate in favor of the City's application.

Thank you for your consideration.

C. Price  
Founder, CNemoGlobal, NGO Environmental Watchdog

cc: San Diego City Council

6/28/14

RECEIVED

JUL 01 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RE: File 8-14-0891

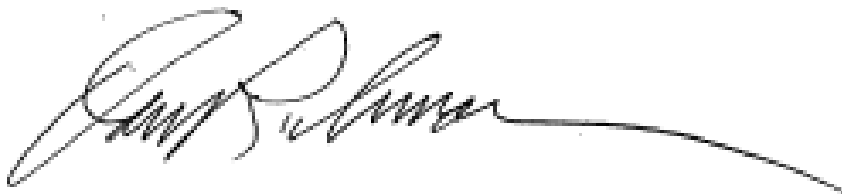
Dan Richman  
4229 21<sup>st</sup> St  
San Francisco, CA 94114

ATTN: Brittney Laver  
California Coastal Commission

Hello:

Please create real protection for the pupping seals on Casa Beach in San Diego. Please keep people and dogs out. The critical time-period for these animals is short. It would not represent a great sacrifice on the part of the human race, but it would mean a great deal to the survival of this species and the health of our beleaguered ocean.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'Dan Richman', followed by a long horizontal flourish line.

Dan Richman  
Conservation Committee  
Golden Gate Audubon Society  
San Francisco, CA

633 LIPPINCOTT AV  
RIVERTON, N.J. 08077  
JUNE 16, 2014

BRITTNEY LAVER, COASTAL ANALYST  
CALIFORNIA COASTAL COMMISSION  
7575 METROPOLITAN DR. SUITE 103  
SAN DIEGO, CALIFORNIA 92108

DEAR MS. LAVER,

PLEASE CLOSE CASA BEACH IN LA JOLLA  
DURING THE MONTHS OF HARBOR SEAL  
PUPPING (DEC 15<sup>TH</sup> thru MAY 15<sup>TH</sup>).

PEOPLE MUST LEARN TO LIVE IN HARMONY  
WITH NATURE, WHICH WILL BENEFIT BOTH  
PEOPLE AND ANIMALS.

THANK YOU,

Mary Rivas  
MARY RIVAS

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JUN 20 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RECEIVED

JUL 15 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

File # CPB 6-14-0691 (In Favor)

July 14, 2014

Dear California Coastal Commissioners:

The decision whether or not to support the City of San Diego's recent decision to close Casa Beach (aka Children's Pool Beach) will be heard during the August 13-15 meeting in San Diego. To reach this point, many meetings have been held at the local level. This meeting should be the final determinant.

I urge you to stand behind the City Council's determination.

"Shared use" has been loosely interpreted as one of unrestricted use by those wishing the harbor seal colony to be ousted. This has included the time during the pupping season when the new pups and their mothers are closely bonding. The mothers nurse frequently and must teach the young essential survival skills before the short nursing time is over and the pups are weaned and on their own.

There is much precedent for making this decision. Of the beaches designated as rookeries in California, most close the beach at this time. The city municipal code, State Fish and Wildlife law and the federal MMPA all favor better protections for these animals. Even the Public Trust Doctrine which usually gives merit for beach access, includes provisions for restrictions on sensitive habitat.

Please help us end this endless round of study, examination, debate and prejudicial stalemates and allow these marine mammals the space they need to carry out for their life cycles. The many bonuses for the public include wildlife observation, protection of the environment, enhanced publicity for San Diego and a rare example of generosity of sharing as it should be done.

Sincerely,



Ellen Shively  
6011 Cumberland St.  
San Diego, Ca 92139-3116  
619-479-3412



Date June 17, 2014

RE: FILE 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission

7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUN 27 2014

Dear Commissioners:


CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

I support closing Casa Beach in La Jolla during the critical months of Harbor Seal Pupping Season from December 15 through May 15.

I truly hope you have the compassion to protect the seals during the pupping season. We must strive for a balanced intellectual and spiritual world in which both nature and people are respected.

I truly hope you respect this proposal and support it for everyone's benefit.

With sincerest regards,

  
Poonam Kaur Sihota

RECEIVED

JUN 17 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

To: Brittney Laver, Coastal Analyst

File 6-14-0691

California Coastal Commission

7575 Metropolitan Drive, STE. 103

San Diego, CA 92108-4421

6/13/14

Re: Children's Pool/Casa Beach Pupping Season Closure

I am aware of the San Diego City Council's decision in favor of the closure of Children's Pool/Casa Beach each year during the harbor seal pupping season from December 15 to May 15.

I fully support their action, and respectfully urge the Commission to approve it.

I also think that to make sure this policy is enforced, there should be a monitor of some kind during all daylight hours- whether it is a park officer, or a dedicated group of volunteers. Without reinforcement, it is unlikely that people will respect the Marine Mammal Protection Act to stay 100 feet away from marine mammals.

Thank you so much for your attention to this important matter!

Dana Varon



Sealsitter Volunteer,

Seattle, Washington

Sealsitters.org

June 18, 2014

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

RECEIVED

JUN 26 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners:

I am a frequent visitor to San Diego. We visited Casa Beach a few years ago and were horrified to find picnickers and children chasing and tormenting the seals. It was all I could do to restrain myself from throwing the people off the beach myself.

California has many wonderful beautiful beaches for people, but where is there any protection in the La Jolla area for wildlife? The very reason I took my daughter to La Jolla for a day of shopping and dining was first to walk the top of the cliff and view the seals.

**Know this: I have not, and will never, return to spend one cent in La Jolla while this beach is not closed to humans.** There is no reason for it. The only people who are in favour are old and ignorant. So what if they took swimming lessons there in the 1940s when they were five years old. Times have changed, attitudes have changed. People are educated: they do not want to patronize Sea World, Zoos and Circuses. They want to provide for wildlife. You should look at the seal protected area as a tourist attraction and dollars in the local economy's pocket.

Shame on all of you. You must know how bad this looks to the rest of the world.

I support closing Casa Beach in La Jolla to humans ALL YEAR ROUND!!!



Jeannine William  
6269 Norwest Bay Road  
Sechelt, BC, Canada  
V0N 3A7  
604 865 1414

RECEIVED

JUN 16 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

To: Brittney Laver, Coastal Analyst  
File 6-14-0691  
California Coastal Commission  
7575 Metropolitan Drive, STE. 103  
San Diego, CA 92108-4421

Re: Children's Pool/Casa Beach Pupping Season Closure

I am aware of the San Diego City Council's decision in favor of the closure of Children's Pool/Casa Beach each year during the harbor seal pupping season from December 15 to May 15.

I fully support their action, and respectfully urge the Commission to approve it.

Please grant this small sanctuary for marine mammals in La Jolla, while providing an unparalleled educational experience with an unobstructed view from the beach above. Even better, I support access down to the small beach be entirely restricted during the fragile pupping season to ensure that the seal colony is not harassed or put in danger. All marine mammals are protected from harassment by the Marine Mammal Protection Act.

Thank you,  
Christina S. Witwer  
4018 California Ave SW, Apt 2  
Seattle WA 98116

RE: File 6-14-0691

Attn: Brittney Laver, Coastal Analyst  
California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

June 16, 2014

**RECEIVED**

JUN 19 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Attorney Laver,

Although I've been a member of the Sierra Club for almost 35 years  
I am **TOTALLY OPPOSED** to closing the Children's Pool.

As you undoubtedly know, Mrs Ellen Scripps had the surrounding breakwater built specifically to create a safe place for small children to enjoy the sand and water without fear of being overwhelmed by large waves.

My parents brought me as a child to the Children's Pool. The Children's Pool, NOT the seals' pool.

Very disingenuously, the Sierra Club and other seal supporters want to call it Casa Beach, probably hoping that most people are new comers and dont understand the original intention.

For heaven's sake, let us honor Mrs. Scripps and her desire to construct a safe place for little children to play.

The seals used to inhabit nearby rocks and areas unsuitable for most swimmers. There was never any problem. Then one day a seal must have plopped itself up on the beach. . . .

Get those seals out of the Children's Pool. They are a menace, fouling the water and providing potential tasty snacks for a wandering shark. And sharks have "compatriots". What will happen when one of them snaps off someone's leg or worse?

Seals are fine in their place. There place is NOT in the Children's Pool.

Thank you for your attention. Please do not let animal political correctness rule the day.

Very respectfully,

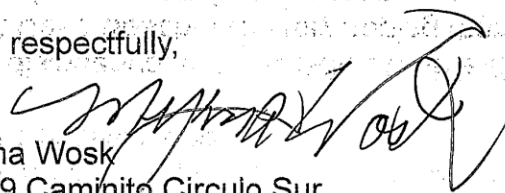
  
Myrna Wosk  
2059 Caminito Circulo Sur  
La Jolla, CA 92037

EXHIBIT NO. 12

APPLICATION NO.

**6-14-0691**

Letters of Opposition

Page 1 of 53

California Coastal Commission

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

From: James Wasser [<mailto:jwasser@gmail.com>]

Sent: Tuesday, May 06, 2014 11:46 AM

Subject: La Jolla Childrens pool closed by San Diego City Council-vote against

A copy of this message has been provided to California Coastal Commission Staff by email in accordance with the requirements of Public Resources Code, Sections 30319-30324. This message is being sent to email addresses on the California Coastal Commission public website.

California Coastal Commission: I would like to request that you vote against closing the Children's Pool La Jolla beach and water access from May to December each year. The San Diego City Council voted to close the La Jolla Children's Pool and beach from May to December each year.

The vote violates the California constitution guaranteeing access to the ocean for fishing and other purposes. It violates the 1931 trust where Ellen Browning Scripps donated the beach access to the public forever.

Closing the beach creates a precedent to close the La Jolla beaches to the South and North of Children's Pool where seals and or sea lions congregate. That includes La Jolla Cove, one of the the most visited beach destinations in Southern California.

The vote was done without the proper environmental studies.

A very sensible alternative has been proposed that would partition the beach into a seal side and people side. That proposal was rejected.

Please vote to keep the La Jolla Children's pool open to people year round.

Thank you.

✦ LA JOLLA PARKS AND BEACHES, INC. ✦

www.lajollaparksandbeaches.org

02 June 2014

RECEIVED

JUN 03 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

California Coastal Commission  
San Diego Area  
c/o Ms. Brittney Laver  
7575 Metropolitan Drive, Suite 103  
San Diego CA 92108 4421

Subj.: City of San Diego, LCP-6-LJS-14-0607-1  
Children's Pool Seasonal Closure

Dear Commissioners:

La Jolla Parks and Beaches is a citizen advisory group, designated to provide public input and make recommendations to the City of San Diego's Park and Recreation Department. We are made up of users of La Jolla area parks and representative members of the La Jolla community.

La Jolla Parks and Beaches continues to support the present condition of shared use of Children's Pool by humans and marine animals.

Our organization therefore opposes the subject action that would result in seasonal closure of the beach to the public.

This position was voted on at our April 2010 meeting unanimously.

Yours sincerely,



Dan Allen, President, LJP&B

---

La Jolla Parks and Beaches, Inc., P. O. Box 185, La Jolla, California 92038

[lajollaparksandbeaches@gmail.com](mailto:lajollaparksandbeaches@gmail.com)

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

David W. Valentine, Ph.D.  
7305 Monte Vista Avenue  
La Jolla, CA 92037  
dave\_valentine\_92037@yahoo.com

8 July 2014

Council Members  
City of San Diego  
202 C Street  
San Diego, CA 92101

Subject: Closure of the Children's Pool

Council Members:

The San Diego office of the Coast Commission will soon make a recommendation to the full Commission on how to act upon a request from the City to permanently close the Children's Pool. There are two central reasons for this closure, both of which are akin to an 'urban legend'.

*First, the site is essential to the health and welfare of the southern California harbor seal population.*

Mr. Chris Yates, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service specifically addressed this issue in a letter to all Council members on 2 January 2014. The salient feature of this letter is

"{we} do not believe that complete closure of Children's Pool Beach is necessary to protect the harbor seals from violations of the MMPA"

*Second, the presence of harbor seals at the Children's Pool adds significantly to the financial health of La Jolla.*

Scott Peters, when he was a San Diego City Council Member, addressed this issue when he took a poll of business owners in downtown La Jolla. *Fully 90% said the presence of tourist viewing the harbor seals had no impact on their business*

Most beach goers have no problem sharing the pool with seals. So, year round closure is not warranted nor is even partial closure during pupping season.

Yours truly,



David W. Valentine



## **Testimony from San Diego City Council President pro tem Sherry Lightner:**

*transcript Council website 2/24/14*

I got involved in community activism over 20 years ago because of my passion for supporting neighborhoods and **assuring physical public access**. The balance between people and marine mammals has been going on in our community for 2 decades. ▼ The **la jolla** planning group and la jolla parks and beaches have **never** been **supportive of** a seasonal beach **closure** and believe there are better ways to **balance** the needs of humans and marine mammals **through shared use**. We are already addressing the situation at the Children's Pool with the year-round rope and a ranger program. In 1931, 83 years ago, this one-of-a-kind man-made pool was funded, built and entrusted to the city of San Diego by Ellen-Browning Scripps with the condition that the city maintain it. I ▼ **can't imagine that** anyone believed seals would eventually occupy the area and **people would not be allowed to use it**. I can't imagine that in 1976 when the ▼ **Coastal Act** was put into place to protect public access to our beaches that it **would** be interpreted to **eliminate our long-time access to the beach**. With this beach closure, I ▼ **cannot imagine how many seals would be there in 5 years much less 83 years** from now. This is especially true given that we've seen an ▼ **exploding population of seals, sea lions and birds** along the California coastline in recent years. ▼ **Seals are not an endangered or even threatened species**. In fact their ▼ **population growth may affect other marine resources** in our area. The negative declaration does not adequately address the ▼ **impact of this beach closure on other marine resources** in the immediate vicinity. And I cannot justify certifying it. It ▼ **does not provide adequate information** to meet the criteria of California **Coastal Act section 30230** which says "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 the coastal waters and **will maintain healthy populations of all species of marine organisms adequate for long-term commercial, ▼ recreational, scientific and educational purposes**. There has been no evaluation of the impact on other marine resources and marine environments related to the marine protected areas and special reserve. That's why this [ordinance] is inadequate and can't be certified. I'm concerned we are drawing a line on the sand we do not need. I ▼ **shudder to think of the precedent** the suggested action steps and the effect it will have on public physical access guaranteed by the coastal act. In its recent letter to the city, ▼ **NOAA is clear. They prefer education and do not want to see the beach closed to people**. The elimination of a long-standing public physical access is unwarranted and is regulatory over kill. To more effectively address the issues we face along our entire San Diego coastline, I have ▼ **requested budget funding and development of a citywide comprehensive coastal management plan** to address our shore lines, our areas of special biological significance, our marine protected areas and ecological preserve. This coastal management plan can help the city more effectively address the explosion in our marine mammal populations which is causing a flood of health and public safety issues ranging from foul odors to shark sightings and human conflict and blocked access to our public beaches. Meanwhile, we should be already half-way through the **Coastal Commission's required 3-year study** at the year-round children's pool. ▼ **Let's look at the results and look at the objective facts to determine how we are going to proceed with the balanced needs of the people and marine mammal and coastal sea life.**

What we don't want are unnecessarily and rules and restrictions and narrowly targeting piece meal community plan amendments such as before you today. With that, I **move to reject staff recommendations and continue with the city's collection of data for the existing 3-year coastal development permit for the year-round rope barrier**. I note, if we need additional staff, let's hear about it at budget. Please provide for the enforcement.

Dear California Coastal Commissioners

July 2014

Please note that this correspondence is being sent via your Administrative Secretary to all California Coastal Commissioners at the same time as per your rules of exparte and communication.

I am writing to you from my viewpoint as a disabled ocean swimmer for therapy and I am also a teacher and researcher for COAST Coastal Ocean Access & Sustainability Team . Our Mission is to educate you and all other government and oceanographic institutes and organizations of the importance of keeping the Children's Pool open. If you vote close the Children's Pool you will be in collusion with causing the devastation of the local underwater environment because of the OVER POPULATION OF PENNIPEDS, SEALS AND SEA LIONS . Dropped off by the very Sea World who continues to profit off the rehab and release of these creatures starving by their placement initially by Sea World! Here is yet another year of starvation. The seals and sea lions have far exceeded the carrying capacity of the undersea ecosystem. Their populations can be humanely controlled to stop them from starving and decimating the under sea environment. Remember sharks have been hunted to the tune of 80 -100 million for over a decade. The law of supply and demand is strong in the Sea. Closing the Children's Pool which is already filthy with potential deadly Airborne bacteria ( see the report by the Centers for Disease submitted as exhibit 165 in the O'Sullivan case and Judge Pate's 2004 Human Health Ruling) further violates and adds to the decades of Disability Code Violations and exacerbates the deadly bacteria that can be airborne, exacerbates the starvation of the seals, exacerbates the decimation of the local undersea environment.

He is yet another article of starvation occurring : <http://online.wsj.com/articles/sick-sea-lions-flood-shelters-in-california-1402093448>

The Coastal Act includes specific policies ( see Division 20 of the Public Resources Code ) that address issues such as shoreline public access and recreation, lower cost visitor accommodations, terrestrial and marine habitat protection, visual resources , landform alteration, commercial fisheries , industrial uses and water quality"

The Dedicated Vertical Easement ramp on the La Jolla Coastal Plan is the only one on the Plan! Your mission is to protect access for all people, including the Disabled. The USDOJ is now underway in a Federal Investigation into decades of Americans With Disabilities Act Code Violations at the Children's Pool that was especially engineered for "those handicapped in Life's Game" By Ellen Scripps and Hiram Savage who spent ten years to construct our only ocean pool and the safest and only ramp to the only ocean pool on the LCP for La Jolla CA U.S.A. One in five people in our country are disabled ladies and gentlemen and we are counting on you to enforce this one dedicated easement ramp to our therapy bathing pool on our LCP . I understand your mission is to protect and enforce this LCP

Please check out this Facebook page about amputees and put yourself in their shoes, or in many cases in their prosthetics. Children's Pool was built for them. Please Enforce their only ACCESS ramp on the La Jolla Coastal Plan not remove it.

[https://www.facebook.com/AmputeeUSA/photos\\_stream](https://www.facebook.com/AmputeeUSA/photos_stream)

There are 185 thousand amputations in the United States each year. That breaks down to 4.9 people out of every 1000 who need access to this Children's Ocean Safe pool access for water therapy and fun with their families. Where else can they access the real ocean if you close their pool?

The views of seals birthing in their own fecal waste & decimating the Garibaldi, the mussels and other creatures is certainly not educational for the public. Being In the water as the pool was created and to look under the water is educational and is exactly what the Children's Pool is for & is your mission to protect this incredible gift of the only ocean pool we have in La Jolla . Please support Disabled American Veterans, please support disability laws that protect them and have been violated here.

19 25  
Attached please find the comments from the ADA petition for this pool. Please do not further violate the ADA, please realize the incredible opportunity and facility the Children's Pool could be once again for the disabled, as per design. This is not one of the hated sea walls, that prevent sand from eroding. This pool collects sand, and this pool is concrete and is proof that concrete erodes. The access steps into the pool have eroded completely away.

It is fine if you have legs, imagine not having them and wanting to go for a swim in the Pacific Ocean with your family of toddlers. There is no other safe ocean pool at all, the Children's Pool is it. Please have the ethic and responsibility to the disabled, and to the ecology to order an EIR and to restore the ramp and keep this safe harbor open all year long. Clean it up and restore it for the millions of disabled people who would love to use it.

Cheryl K. Aspenleiter  
RAMP Committee To Restore Access To Many People  
Supporting a Balance Ocean Ecology.  
858 568 1257

Dear California Coastal Commissioners,

The Children's Pool was especially constructed to protect humans from the surf of the Pacific Ocean in La Jolla. Ellen Browning Scripps paid to have it built by Hiram Savage hydro-engineer. It took 10 years to complete. It is a Historical Treasure being allowed to crumble to ruin. Not only is it the only one of its kind in our country and perhaps the world, its function is the value to the disabled and small children for whom the surf is dangerous. This is a sand bottom concrete manmade Pool that had a ramp in service for over half a century to wheelchairs, walkers, the elderly, toddlers. This ramp was the primary access ramp down into the pool water. We have 16000 new limbless American Veterans, and the most here in the military town of San Diego that could heal in the waters of the Children's pool. An ADA ramp fits well there and needs to be included in the current Children's Pool beach facility remodel. This would put San Diego on the ADA Map of the World and give our Challenged Athletes a perfect venue for their events, perhaps hosting the Disabled Olympics. A paraplegic ocean swimmer can transition from his wheelchair into the ocean unassisted because there is no surf, it is a pool by design for safety. It is also the only safe harbor in La Jolla the beaches on both sides have dangerous rip currents; this pool is safe. We need this ADA access now, to serve the many disabled including children and Wounded Warriors and the Elderly. It is the only one we have and it must stay open all year long with an ADA Ramp. The photo is one of a Vision Painting and is a concept painting to show the intended purpose of the pool by design and that an ADA ramp does fit there; many designs could work. It is also important to restore the undersea environment to a healthy ecological balance so tide pool creatures may return and be seen in safety by people who otherwise would not have the opportunity without this ocean pool. Please watch YouTube Video Children's Pool-SAFETY (4)<https://www.youtube.com/watch?v=hV-d8f7W-eY> email contact to volunteer with RAMP: [restorechildrenspool@gmail.com](mailto:restorechildrenspool@gmail.com)

Please keep this access open all year and restore the disability ramp.

This request is from all the signers of the petition for same, via [change.org](http://change.org) and can be verified at that site. Attached are all the signatures as of June 24, 2014, as well as the comments posted when each person signed. Please honor the disabled. Thank you.



# Supporters to Restore the Disability RAMP at the Children's Pool La Jolla, California, United States of America ( 6/24/14)

## Reasons for signing

1. Ernie Casco LA JOLLA, CA: I Live in La Jolla
2. Robert Thompkins SAN DIEGO, CA: I'm in a wheelchair
3. Jennifer Rushall EL CAJON, CA: I remember a time when I use to be able to use the beach because the ramp was there. It was in disrepair but it was THERE! I currently use a wheelchair part time and fore arm crutches the rest of the time. I miss being able to access this part of the beach.
4. Dolly Casco LA JOLLA, CA: All of us have the Right to have access to this beautiful beach
5. Pattie Buchanan S.D., CA : Restoring access to the disabled
6. Mary Prat LA JOLLA, CA: I support restoring access to the disabled to the ocean at the Children's Pool in La Jolla, California. Disabled persons and children used to share the Children Pool and today, disabled persons and children are forbidden from using the Children's Pool a California public beach. Enough!
7. Betts Cruz KAUNAKAKAI, HI: My Mom at 93 lives at Casa De Manana, my sis had Lou Gehrig's.
8. John Grande ESCONDIDO, CA: Because I care about the welfare of handicapped people.
9. Paula Donovan SAN DIEGO, CA: My Son is in a wheelchair
10. Kalli Hinnert SAN DIEGO, CA: Support for access to all.
11. Andrew Hinnert SAN DIEGO, CA: I am in a wheelchair
12. Bernadette Gore SAN DIEGO, CA: I work with a lot of spinal cord injury survivors and they need access to enjoy everything as much as able bodied individuals do.
13. Ryan Sweeney SAN DIEGO, CA: The city has stood strong behind it's decision NOT to uphold it's obligations to maintain this beach in a safe manner for the community and within the boundaries of the Trust they agreed to uphold and the State Constitution. Shared use has been working for many years and actual well thought out shared use plans have not been truly explored. The city refuses to do what's right and instead continues to try and flip the script by using reasons for the closure that were created by and perpetuated from their very own negligence. Sorry city of San Diego... it should not be OK for you to restrict beach access because simply because you don't want to.
14. Ken Gardiner CARDIFF BY THE SEA, CA

Because as a wheelchair bound active person there are few options for access to public areas like this. I pay a heavier tax burden than most in the area and have substantially fewer services provided. Not to mention the incredible cost paid by our returning veterans not just in races but in lost body parts and crippling injuries. From a standpoint of fairness in distribution of public services, the disabled are incredibly underrepresented and ignored.

- 15. Kay Stafford LA JOLLA, CA

It was built for children and disabled. The seals are not being harmed. They choose proximity to people. They have other more appropriate sites for those who don't wish proximity to people. It is a precedent that will change California beach enjoyment forever.

- 16. Marvin Manes ARIEL, WA

A friend of mine is disabled, lives in San Diego and would like to be able to use the pool again

- 17. Paul Schreiber WASHOUGAL, WA.: It is very important to me to take care of our disabled children and veterans.
- 18. Ray Berry SAN DIEGO, CA: therapeutic
- 19. Robert Thompkins SAN DIEGO, CA: I'm in a wheelchair
- 20. Jennifer Rushall EL CAJON, CA: I remember a time when I use to be able to use the beach because the ramp was there. It was in disrepair but it was THERE! I currently use a wheelchair part time and fore arm crutches the rest of the time. I miss being able to access this part of the beach.
- 21. Dolly Casco LA JOLLA, CA: All of us have the Right to have access to this beautiful beach
- 22. Paula Donovan SAN DIEGO, CA: My Son is in a wheelchair
- 23. Kalli Hippert SAN DIEGO, CA: Support for access to all.
- 24. Andrew Hippert SAN DIEGO, CA: I am in a wheelchair.
- 25. Ken Gardiner CARDIFF BY THE SEA, CA

Because as a wheelchair bound active person there are few options for access to public areas like this. I pay a heavier tax burden than most in the area and have substantially fewer services provided. Not to mention the incredible cost paid by our returning veterans not just in races but in lost body parts and crippling injuries. From a standpoint of fairness in distribution of public services, the disabled are incredibly underrepresented and ignored.

- 26. Clement Hoffman LA JOLLA, CA: Unique resource for persons with physical disabilities
- 27. CHRIS KOKEAS SAN DIEGO, CA
- FEW PLACES ACCESS THE OCEAN AS THE CHILDREN'S POOL.
- 28. ALEDA MARSHALL FT. MYERS, FL: It is very difficult for the disabled to maneuver successfully without ramps.
- 29. Theresa Lutzker RIDDLE, OR:

My profession as a nurse, I pledge to do whatever I can to make a person's life safe, healthy, and enriched. I've witnessed many disabled people go without the needed water therapy because of not being able to access safely from their wheel chair. This ramp will not only provide increased safety but also give them freedom of autonomy to access water by themselves; something for which many (who are not disabled) take for granted. Please restore the ramp!

- 30. Melinda Merryweather LA JOLLA, CA: We must help others when ever we can.



- 31. Sally Reddick SAINT CHARLES, MO: For several reasons. First and foremost, a persons will or trust should never be allowed to be broken by the anyone! Secondly, when I visit, this is an area I'd like to be able to swim without worry of the surf.
- 32. Will Schussel SAN DIEGO, CA

Sea animals have the rest of the coast and ocean to use - let them move to new quarters and let the humans back where it is safe.

- 33. Ian Bengson SAN DIEGO, CA: I hate seeing a historical treasure crumble.

- 34. Doris White LA JOLLA, CA: This area was meant for access by everyone particularly children and elderly.
- 35. Mike Sanchez SAN DIEGO, CA: My son uses a wheelchair
- 36. Peggy Davis LA JOLLA, CA: I also have a disability due to an accident. La Jolla needs to consider the needs of disabled residents and visitors in many locations of La Jolla.
- 37. Maxine Baker SAN DIEGO, CA:

This beach was meant for children to learn to swim in a safe environment. It has now become the ONLY safe and accessible entry point for disabled individuals to swim in the ocean in the San Diego area.

- 38. Phyllis Minick LA JOLLA, CA:

I am an 85-year-old with a steel replacement femur in my right leg. Only with ramp access can I reach the healing waters of the Children's Pool.

- 39. Darlene Spriggs LA MESA, CA:

As a child my family would go through out the summer and when I had children they spent many wonderful days in the pools water

- 40. David Traylor LA JOLLA, CA: I grew up in La Jolla Beach is for children (people)

- Latest
- 41. Mike Sanchez SAN DIEGO, CA: My son uses a wheelchair

- 42. Peggy Davis LA JOLLA, CA:

I also have a disability due to an accident. La Jolla needs to consider the needs of disabled residents and visitors in many locations of La Jolla. I remember a time when I use to be able to use the beach because the ramp was there. It was in disrepair but it was THERE! I currently use a wheelchair part time and fore arm crutches the rest of the time. I miss being able to access this part of the beach.

.This petition is ongoing dear leaders. What will it take to prove to you that this particular breakwater is NOT a terrible seawall? It is a National Treasure because of the Function to provide a safe Pacific Ocean swimming experience as per the design and the Trust that is still very Much in effect. Please support the La Jolla LCP and

enforce the only ramp to the only safe ocean pool and harbor we have on it. Please do not be against our disabled, we have suffered enough. Please support us and the ecology at our Ocean Therapy Bathing Pool and Children' s Playground.

This petition is signed for Kevin Faulkner, the Mayor of San Diego, NOAA' s Civil Rights Department , and to all the California Coastal Commissions as per their exparte rules of Communication.

And to the RAMP Committee dedicated to Restoring Access To Many People and supporting a balanced ocean environment.

[restorechildrenspool@gmail.com](mailto:restorechildrenspool@gmail.com)

Cheryl Jacobs Aspenleiter Chairlady

1231 1/2 Hornblend Street, San Diego, CA 92109

858 568 1257



RAMP COMMITTEE TO RESTORE ACCESS TO MANY PEOPLE  
AT THE CHILDREN'S POOL LA JOLLA CA U.S.A.  
DATE: 6/29/14

ADDITIONAL PETITION COMMENTS TO THE CALIFORNIA COASTAL COMMISSION  
IN REQUEST TO PLEASE KEEP THE CHILDREN'S POOL OPEN FOR AS IT IS THE ONLY DEDICATED  
VERTICAL EASEMENT RAMP ON THE LA JOLLA LCP TO SERVE WHEELCHAIR SWIMMERS. THE  
UNDERSIGNED REQUEST THAT THE CCC HONOR AMERICANS WITH DISABILITIES CIVIL RIGHTS TO  
SWIM IN AN OCEAN POOL BUILT WITH THE DISABLED IN MIND THAT BOASTS A RAMP THAT SERVED  
WHEELCHAIRS FOR DECADES AND WAS IN CODE THE DISABILITY LAWS BEGINNING IN 1948. THERE IS  
NO OTHER OCEAN POOL AVAILABLE TO THE DISABLED THEREFORE COMMON DECENCY AND OUR  
DISABILITY LAWS PRECLUDE CLOSING THIS POOL EVER. FURTHERMORE WE REQUEST THAT THE  
RAMP BE BROUGHT TO CODE IN THE CURRENT BEACH FACILITY REMODEL. SENT TO ALL  
COMMISSIONERS VIA MISS MILLER IN THE ADMINISTRATION OFFICE.

- Anne Schofield LA JOLLA, CA:

I am a senior with total bilateral hip replacement due to a birth defect. Swimming is my best exercise, and is not weight bearing because of the water. I cannot afford a pool membership. Also, let us respect Ellen Scripps legacy. Scripps Oceanographic Institute as-well-as many other benefactors do, and are thriving. There are thousands of miles of coastline on earth, and seals can survive anywhere. They do not pay state or federal taxes but humans do.

- Bonita Knapp LA JOLLA, CA: I am disabled and I loved the Children's Pool Beach since 1974

when it was clean and easy to get to for old and young-no pollution and magical place then.

- Judy Halter LA JOLLA, CA: I think it is critical that disabled citizens have the opportunity to swim in the ocean and enjoy a wonderful experience

**From:** Miller, Vanessa@Coastal  
**Sent:** Monday, July 07, 2014 8:57 AM  
**To:** Sarb, Sherilyn@Coastal  
**Cc:** Parker, Holly@Coastal  
**Subject:** FW: Children's Pool Closure  
**Attachments:** PETITION COMMENTS UPDATED JULY 2.docx

RECEIVED  
JUL 07 2014  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DIV

**From:** Cheri Aspenleiter [mailto:cheriaspen@gmail.com]  
**Sent:** Saturday, July 05, 2014 12:54 PM  
**To:** Lightner, Councilmember Sherri  
**Subject:** Children's Pool Closure

Dear Sherri and Staff,

I am writing to request you to please write a letter to Greg Murphy with the CCC ( San Diego ) at your earliest convenience to request that the Children's Pool stay open and that the Americans with Disabilities Act be honored there with a restored ramp. The CCC's mission is access not to prevent wheelchair swimmers from accessing a pool built for them. They have no over-site and are ignorant of the truth.

I arrived at C.P. on the Fourth for a MeetUp with my snorkelers, the Snorkel Swimming Club of San Diego. There were about 6 seals in the middle of the beach at the water's edge. I set up my chair and umbrella far away from them. One has to set up close to the water as well to be able to find a square inch of sand not polluted with huge labrador dog size feces and splots of urine soaked sand and afterbirth particles. This is what the City of San Diego wants? The few seals eventually entered the water on their own accord. The sand gets too hot for them. And they are starving so must travel further and further away to find fish stocks, as they have totally depleted the fish stocks at the Children's Pool, South Casa and Shell Beach, Seal Rock areas. We average a count of 5 Garibaldi each snorkel from C.P to Shell Rock and back. It is fast becoming a dead zone. Fish stocks can not reproduce fast enough. I have only seen two juvenile Garibaldi all year. When before the Garibaldi and their beautiful blue spotted young were uncountable!

Many of my snorkel club members, some disabled will not go there because of the nazi-style beach control going on there. Seriously I do not exaggerate. This has been my impression for the past four years since I first went there upon moving to San Diego. Nazis. A camera following me and other women into the showers, honing in on bikini clad teen bodies, honing in on license plates, using the police as pawns and forcing people to stand, sit and play in feces, literally. Did not Judge Pate ruled that this fecal pollution could not be allowed to continue? It was human health ruling. The Centers for Disease Control reported in exhibit 165 of the case. How can the City of San Diego allow the pollution to continue and even promote it? The City is promoting pollution. And so is the CCC. The City of San Diego has been and is a puppet to special interest groups posing as environmental groups. When in fact they are all **totally ignorant** of the true situation at the Children's Pool, the devastation of the underwater ecology due to the over population of seals. They are now starving and stressed. The seals have to travel out further and further to find fish stocks, very possibly decimating the dolphin's fish stocks and on and on. Why San Diego can not learn from Cape Cod whose seal populations are into the thousands and fish stocks will never recover and from the fine example of Sydney Australia who boasts dozens of clean ocean pools some older than our one. They too love marine mammals but do not allow them in their ocean pools to pollute with potential dangerous bacteria. Australia also brings home the most Olympic Swimming Medals. It is time for someone to really take a stand. Will you please?

I noticed that you have not yet signed our ADA Petition for the Children's Pool. I invite you to please sign and send it to your contacts. The Seal Opportunists have one going and since they are more organized, not disabled, and have endless dollars for their takeover they have twice the signatures.

On the Fourth of July the Children's Pool was packed with families that finally came down after I and a friend passed over the rope on the children's playground. Otherwise the rope and the seal-ops effectively close the access entirely. Many days of each week as other dangerous beaches are over populated. What should have been a clean beach for our Nation's birthday was polluted and families played and sat in and on fresh feces and urine. Disgusting. How can it be allowed? Right at dusk before the wonderful fireworks display, a woman came running down the stairs and started yelling and screaming at the families that it was 'illegal' to be across the damn rope. Sorry but that is what it is. A rope is dangerous on a legal Children's Playground. I could see people becoming very alarmed and afraid, and I and another got up and asked her to leave and stop harassing people. I told her that she was wrong and that the seals are starving and the ocean decimated and wheelchairs blocked. She yelled for about 8 minutes and finally left. I think people became quickly aware that she was not in her right mind.

Furthermore I witnessed the following: A family with two small children were going to come down and enjoy the pool that was packed with families swimming in the safe water, and stopped to ask the lifeguard if floaties for the kids were allowed, instead of answering the mother's question he stated:

"The beach and water is polluted" They left to go to a dangerous beach, as all the others were yesterday. I witnessed a lifeguard steering toddlers away from the very pool built for them, and the safest place for them to be.

Judge Pate's Superior Court Ruling stopped this, or should have. A Marine Mammal park by legal definition is Sea World, and that is what we have here, created by Sea World, only starving, decimated and polluted. Never fed or cleaned up.

RAMP Committee and COAST Coastal Access & Sustainability Team contacted I Love A Clean San Diego to request adoption of the Children's Pool. We were actually going to try and clean up the beach, cleaning feces in dangerous bacteria the best we could. The Director called me to explain that they will not sponsor Children's Pool beach for clean up because "the seal people have been in my office threatening my staff and threatening law suits if we sponsor the clean up."

San Diego has quite literally allowed our city to be literal puppets in a deadly game of seal politics, that is breaking the CA Constitution, ADA, and devastating the ocean. This is insane. Will it take yet another law suit? Basically a duplicate of the O'Sullivan Case? To appeal the unlawful marine mammal park amendment? No poop in the pool was the ruling, a human health danger ruling that no legal authority should have the power to over rule!

Shell Beach was so dangerous on the Fourth that two lifeguards had to be on their surfboards floating just offshore keeping people from coming out any further. It is the worse rip tide in So.CA. The tide was high and bathers had to hug the cliffs. I am certain that drownings were imminent with out the guards preventing further entry into the rip current. Shell Beach is also a shorebreak and sneaker waves that drown people are common there. I almost drowned there trying to exit there when Filner closed the pool for the staged seal abuse video. Ten years ago when the City closed the pool for some amount of years for pollution instead of preventing it a diver did drown, pupping/lobster/storm season. Drowning, starvation, depletion, pollution, stench, ADA violations what will it take Sherri?

Children's Pool was built for safety and is the only safe harbor on our coast in La Jolla. It is the only dedicated vertical easement ramp on the LCP. Please fight to enforce the LCP and not allow it to be changed.

We have 185,000 amputations in the United States and the most here in San Diego a military town graduating soldiers many of whom come back maimed for life. They too deserve to enjoy the ocean experience. And we are so lucky to have such a ocean pool for them. Why have they been forgotten for so long? Seal Opportunist groups, who care nothing for the seals or they would care for their home. Our undersea ocean environment is not even being studied at the Children's Pool area! Why not? How in the world did Sea World get away with not doing an EIR prior to dumping so many seals in an area previously void of such populations? And now that the area is devastated, do you not realize that to close our ocean pool will exacerbate this environmental disaster? All you have to do is jump in the ocean with a mask and look. At nothing.

Our ecosystem can again be abundant with proper marine mammal control measures such as birth control to create a balance and give our urban ocean a chance to recover.

Sea Stars are gone, many creatures that were once abundant in this area are severely depleted including but not limited to Garibaldi, Opal Eye Perch, CA Black Mussel, Sea Cucumbers, Sea Hares, Lobster, Crabs, abalone, urchins and anemones. A full EIR is certainly warranted prior to closing our only ocean pool in Trust to the Children and the Disabled of the World. Please demand an EIR.

I am fighting for my life to stay out of a wheelchair Sherry, this pool is life for me and should be for thousands more. Please help. It is shameful for San Diego to be in violation of the American With Disabilities Act and to deny Challenged Athletes the dignity of their own ramp.

I'd say that who- ever does not stand up and take some action with powers to do so are in collusion with these violations. It is time for someone to speak for the disabled, and I am trying but I need your help please.

Thank you for all your time to read this. I trust you will have the courage to sign our petition and to please make a great effort to restore the Children's Pool and Access to put San Diego on the ADA map of the World with such a unique facility. Please. Attached please find the comments so far from our petition on [change.org](http://change.org).

Cheri Jacobs Aspenleiter  
Disabled Ocean Swimmer  
858- 568- 1257

RAMP Committee to Restore Access To Many People  
COAST, Coastal Ocean Access & Sustainability Team  
Children's Ocean Therapy Pool

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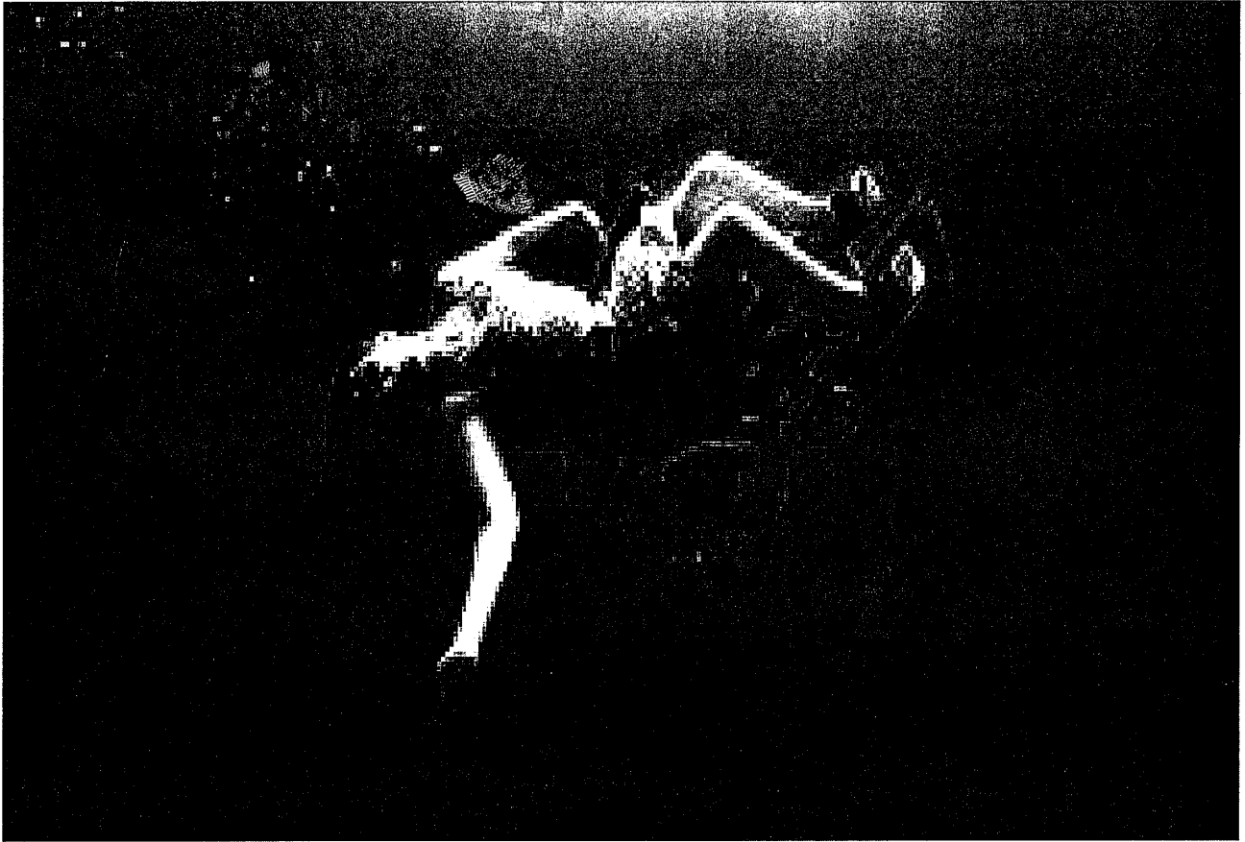
1. Where on the La Jolla Local Community Plan can a paraplegic access the Pacific Ocean without surf?
2. Are you aware that the Children's Pool was engineered and constructed especially for the disabled?
3. Are you aware that the Children's Pool ramp is the only dedicated vertical easement ramp on the LCP into the only ocean pool? There is no other on the West Coast.
4. Are you aware that San Diego has the most Wounded Warriors than any other city in our country? And that water therapy is the best modality for therapy for them?  
*If you had a good friend who was disabled, you'd be like a mother.*
5. Are you aware that the United States Department of Justice is investigating decades of violations to the federal disability codes presently?
6. Why has the CA Coastal Commission not honored Americans with Disabilities for the last many decades at this ocean pool and grandfather of disability ramps? To close this pool for anytime of the year will be to further the violatons.
7. Are you aware that the ramp was to the current disability codes in 1948?
8. Are you aware that the seals are starving ?
9. Are you aware that the undersea environment is fast becoming a total dead zone at the Children's Pool and surrounding beaches of South Casa, including Seal Rock and Shell Beach? Are you aware that the CA Mussel population is decimated? And that they are an important indicator species? Are you aware that the seals have far exceeded the carrying capacity of the undersea ecosystem? Are you aware that an EIR is long overdue with relation to the over population of seals and the impacts on the undersea ecosystems. Are you aware that fecal contamination has killed off the tide pool creatures that were once abundant?
10. Are you aware that the seals are birthing in their own feces and urine and this causes illness for them and death?
11. Are you aware that in 2004 Superior Court Judge Pate issued a Human Health Ruling for the Children's Pool that the seals should not be hauling out there because of the serious pollution as reported by the Centers for Disease Control and the sand was ordered to be dredged out? Are you aware that the fecal pollution is actually promoted here still to this day?

12. Are you aware that the Children's Pool is legally a playground and a human bathing pool? Are you aware that human bathing pools are not to be polluted with animal feces? Are you aware that the bacteria can be airborne that included T.B. and E.coli?
13. Are you aware that Sea World released the seals beginning in 1992 without doing an EIR to ascertain IF our local urban undersea ecosystem could sustain so many new marine mammals. And many years later we have lost many species and the fish stocks are depleted and the seals are having to go further and further out to find fish stocks potentially depriving the dolphin's fish stocks. Again an E.I.R. is long overdue, and the only responsible way to proceed to protect the seal's home, our Pacific Ocean.

R.A.M.P. Committee to Restore Access To Many People

C.O.A.S.T. Coastal Ocean Access & Sustainability Team

Supporting year around access and the updating of the ramp into the pool for wheelchair swimmers. Ellen Browning Scripps stated that she was building this pool for "



PLEASE HELP MAKE THE POSSIBILITIES A  
REALITY FOR OUR ONLY OCEAN POOL.  
PLEASE HONOR THE SPORT OF SWIMMING  
IN THE OCEAN: THE BEST THERAPY IN THE  
WORLD!

Susan Austin's Scuba Chair



From: Coastal Ocean Access & Sustainability Team( C.O.A.S.T.) 6/16/14

[Restorechildrenspool@gmail.com](mailto:Restorechildrenspool@gmail.com)

858- 368 1257 1231 1/2 Hornblend St. Pacific Beach, CA 92109

Environmental Issues at the Children's Pool, South Casa, Shell Beach and Surrounding Coastal Ocean Snorkeling Areas.

To: All California Coastal Commissioners via staff RE: Children's Pool Closure

Fish Stocks are visibly & severely declining along the La Jolla Coastal Plan lateral access areas due largely to the over population of seals and sea lions. "Garibaldi have several natural predators including larger fish, some sharks, seals and sea lions and, on Santa Catalina Island, Bald Eagles." These fish are protected in California. The over population of seals and sea lions in La Jolla have devoured Garibaldi populations to decline especially at the Children's Pool, Shell Beach and South Casa Coastal Areas. Once easily visible from the sidewalk above our bright Garibaldi have disappeared from sight. CA Black Mussels, an important food base have been devoured by the seals and are mostly gone, their brittle shells crumbling. Soon there will be no trace that mussels lived at the Children's Pool and surrounding beaches. Mussels feed Tide Pool Creatures, so they too are gone, and the Tide Pools polluted from years of seal feces. The bacteria is harmful to the seals when they birth in their own feces.



Garibaldi protected California State Marine Fish. Once plentiful and very visible from the walkway are now Devoured. I watched with mask & snorkel as 4 seals chased one medium sized fish. He escaped into a hole. Seals must consume 8000 calories, about 45 lbs. of fish each day. Hundreds of pinnipeds = thousands of lbs. Of fish hunted each day= decimation of fish stocks and species loss of fish stocks including Garibaldi, Tide Pool Creatures, that should be abundant and can be again.

**THE LAW OF SUPPLY & DEMAND IS STRONG IN THE SEA. SHARKS HAVE BEEN SLAUGHTERED TO THE TUNE OF 80-100 MILLION A YEAR FOR OVER A DECADE. WHAT DO SHARKS EAT? SEALS AND SEA**



Mussels are a very important indicator species and have been seriously depleted at South Casa Beach Children's Pool, to Seal Rock, Shell Beach and beyond in the lateral access along the coast where people can are able to snorkel to. I snorkel here frequently all year long & I can not find any live attached mussels. The shells are brittle and crumble, and they too are almost gone. Seriously. Mussels feed Tide Pool creatures. Gone too are many Tide Pool Creatures.



LIONS. BIRTH CONTROL MAY BE AN OPTION TO RESTORE THE BALANCE OF THE ECOSYSTEM. AN ENVIRONMENTAL IMPACT REPORT (E.I.R.) IS LONG OVERDUE FOR THIS LA JOLLA LCP AREA. TO CLOSE THE CHILDREN'S POOL WILL EXACERRATE THE UNDERSEA DEVISTATION EVEN FURTHER



The lateral easement on the La Jolla LC Plan is ripe for shark attacks. The Children's Pool and La Jolla Cove should be as protected as possible. Most shark attacks occur in less than five feet of water. A Restored Children's Pool would give protection to all swimmers, as per the design and purpose.



Can you tell which man is paralyzed? No? This is the point of The Children's Pool. Calm safe water in a POOL. Now what is to stop that shark in the above photo from mistaking these swimmers as food? This is an important reason to control the populations of pinnipeds away from a Children's Pool as per Superior Court Judge Pate's Human Health Ruling in 2004 that seals would be better off not to haul out in a human pool and ordered the pool to be restored, sand dredged out and sluiceway studies completed to have the water clean and circulating on a controlled basis as needed. The studies show how easy it would be to re-open those sluiceways, & advised. Currently: no longer abundant reef, void of mussels, and barnacles and sea stars, urchins. Devoured & polluted. We must achieve balance and replant mussels here. Time for some birth control for pinnipeds.



Our reefs were once abundant with many species of Tide Pool Creatures



The Reefs along La Jolla were abundant in sea life. Photos like this can no longer be taken @ Children's Pool Reef, S.Casa Reef, or Seal Rock Shell Beach Reef. With proper marine mammal management and restoration actions we can restore the balance to our undersea ecosystems along our urban shoreline within the lateral easement in the ocean water. The home of all marine life is at stake here and balance is vital to the preservation of species. The Children's Pool would make an excellent Sea Star sanctuary & spawn to help restore them to this area and give disabled people a chance to snorkel swim/float and see one in the real ocean such as can be done no where else. To Restore the Ocean Pool and Disability Access would ironically begin to help the undersea ecology restore as well. A Win-Win Situation.

If our government chooses to close our only ocean pool you will be causing the direct acerbation of the pollution and decimation of the undersea ecology. An Environmental Impact Report is long overdue. Please initiate one immediately and prior to any decisions to close this pool that will make it worse. Seals are starving and birthing in their own feces and urine saturated sand. How in good conscious can you allow what is going on to our ocean ecology and to our thousands of disabled people in our country? Many of whom have fought for your freedoms. We owe them big time. Please support the ocean balance and our disabled!





David S. H.

With Swim Fins to Boost Speed, a Quirky Take Off in a Boring Start from a La Jolla Breakwater  
 areas of other water sports facilities design taking the fun in the water's serious, athletic, (Hawaii, North, and American) houses (darkwood) within the 20  
 La Jolla is named in the list of the Ocean Institute of Oceanography.

The Breakwater bleacher seats served as access into the pool. The seats and therefore this major access  
 has been allowed to crumble to ruin. This is only concrete and rebar and sand, not a skyscraper. These  
 bleacher seats would enhance the recreational enjoyment as per design as access.



ADA Ramp Design by Mark Buzon La Jolla Architect contours the wall fits well, slopes into the water.

**A Children's Playground and Bathing Pool can not also be a Marine Mammal Park, Inconsistent  
uses.**



Seals block the way to get to the calm pool waters for therapy year around. A Developmental Use Permit was required for this rope installation. The Disability Codes for this permit were ignored as they have for decades here. As the seals pollute, deplete their home & go hungry they also block the access into the pool for the Disabled. This is the only ocean pool and the only dedicated easement to the safe harbor for limbless people to be safe. This is not a natural environment for seals. Their own fecal bacterium is harmful to them. No mammal gives birth in it's own feces like is being allowed and promoted at this human pool, that cannot wash clean ever. The sand behind the rope is a concentration of two decades of



seal feces, this is where people and children are forced to stand and play, in feces. If this pool is allowed to close this build up will exacerbate. The bacteria can contain e. Coli and even T.B. which has come back in our country as well. These bacteria can potentially be airborne to visitors and the neighborhood. The stench is already bad; if the pool closes it will be retching. Casa Manana is the exclusive retirement community directly across the street. These folks would benefit from a good ramp to the water very much and deserve to have clean ocean air blow through their windows not fecal stench.



This man used to teach scuba here at the Children's Pool and would like to dive here again. The historical access into this pool built especially for the disabled was blocked around the time Sea World dropped off the rehabbed seals in 1992. He was interviewed on Channel 10 news. The disabled need the protection of the breakwater wall. Harbor seals do not. The sand was to be dredged and conveyed to another beach that needs the sand. This sand at the C.P is filthy and the stench is getting worse.



Two disabled people enjoy the healing therapeutic water in the calm and safe Children's Pool. A ramp should be included to go along with the ADA showers going in at the Children's Pool Facility Remodel. This man is a paraplegic, and is able to be safe out of his wheelchair to swim in this pool designed especially for the disabled and children. It is the only safe ocean pool we have with a breakwater. San Diego is a military town graduating soldiers to come home maimed. Many were surfers and ocean swimmers, now without legs the Children's Pool can offer therapy in the real ocean with family again.



This is a Breakwater as opposed to the hated sea walls going in to protect homes from falling off cliffs. I learned in the CCC Mtg. that the Coastal Commission despises sea walls. This is not one of those: this actually accumulates sand not preventing it from forming as the sea walls that protect homes may. This is the only such pool in the United States and was built to protect weaker humans from the surf, so they too can access the real ocean. Why has our CCC, NOAA and the City ignored the Disability Codes at the Children's Pool for decades? The mission is to protect and improve such access for *all* people. This is a human pool not a natural beach. To close the pool will be to cause further environmental damage to the local undersea ecology. And to close this pool will be to further deny disabled people the access to the safest place to enter the real ocean for them. We have the largest population of military wounded of any city in the United States. The Children's Pool is perfect for the Challenged Athletes Events and Wounded Warriors. Please reopen our access so us disabled too, can swim in the sea in La Jolla, CA U.S.A. Notice those lines in the wall above. Those are meant to be and were the **access** bleacher stairs and seats for the Children's Pool. Concrete does erode as you can see. You have allowed these unique access steps and seats to erode away entirely. Allowing this Historical Wall to crumble to ruin is really a crime folks. Please take the time to acquaint yourself with its history. The value of this Protected Ocean Pool is the safety and the **RAMP** into the water, it's function. It served wheelchairs for over half a century & was



funded to be upgraded in 1988. Vince Marchetti San Diego's in-house engineer advised the city that the ramp needed to be brought up to code.



This is low tide when the pool was recently finished. Notice the bleacher seats that were also steps into the pool. These bleacher seats need to be replaced for swimmers and access. Notice that there are no seals visible. Seals do not appear in photos until after 1992 after Sea World dropped them off without doing an EIR to ascertain if the local underwater ecosystem could sustain so many new marine mammals previously never there in such numbers ever. That was an irresponsible act and based upon seal rehab profits and jobs for Sea World, a for profit powerful organization. Seals lived in the ocean and were in balance and harmony, not in clusters and haul outs that pollute themselves and the environment and bring sharks in close to shore. This is not good marine mammal management from NOAA and a total lack of responsibility for all agencies. An EIR to Study the Over Population of Pinnipeds and their impact on the undersea environment is warranted and long overdue.

You must realize that sharks have been slaughtered to the tune of 80-100 million in our World's oceans. They eat Seals and sea lions. The law of supply and demand is strong in the sea. Then we have Sea Worlds and like organizations making money from the rescues, releases and rehabs of an ocean creature that is considered of least concern on the Red List devouring the CA State Garibaldi a protected species faster than they can reproduce. Seals have far exceeded the carrying capacity of the local under water ecology in La Jolla. Each seal must consume 8000 calories or 45 lbs. of fish and biomass per day. With over 650 creatures, we are facing serious fish stock and species depletion along with the fecal pollution. Seals and seal lions are starving as a result of this. They too can be administered birth control, same as humans. It is humane and will help to balance out the populations to be in harmony with their environment and not decimate it and starve. Does this make sense to you? I sure hope so as this is all included in your mission statement objectives. I don't understand why you have allowed this to go on for so long though? If you love seals you must in turn love their home, the ocean. And the way they are being housed in their own filth is a filthy Sea World Pool, only starving and depleted. This is what Children's Pool has become. Please see this clearly.



You can see the ramp clearly. The ramp was the primary access into the Children's Pool. No seals present. South Casa could take the sand, conveyed from the Children's Pool to Restore it as Per Judge Pate's human health ruling to restore the pool. The seals are already hauling out at this adjacent beach to the South of Children's Pool known as South Casa Beach. **This is a healthier haul out site as it washes clean with the surf. This is true and wise shared use, and still views of seals.**

I hope you have a better idea about the Children's Pool now. Ellen Browning Scripps left it in a Trust or Will to be maintained as a pool, and the City accepted this responsibility. For the sake of our disabled please restore this historical disabled access into a pool built for this purpose. Thank you.

COAST, Coastal Ocean Access & Sustainability Team

[Restorechildrenspool@gmail.com](mailto:Restorechildrenspool@gmail.com)

Cheryl K. Aspenleiter

1231 1/4 Hornblend Street, San Diego, CA 92109







Ironically to Restore the Children's Pool will also help to begin to restore the undersea ecology. It would make a great sea star and abalone sanctuary and give the disabled a chance to see these amazing creatures like at no other place in San Diego. Safe snorkeling, perfect water therapy, restored ecology, this makes sense for all. This is what the community of La Jolla wants for the pool built and donated by their benefactor Ellen Browning Scripps.



The ramp was the primary access into the Children's Pool for decades serving wheelchairs. It was to code in 1948 which was a watershed year for disability codes. Please bring it to code again for us. Thank you.

Clement P. Hoffman, MD

5503 Calumet Ave

La Jolla, CA 92037

Deborah Lee, District Manager  
California Coastal Commission  
San Diego Coast District Office  
7575 Metropolitan Drive Ste 103

San Diego, CA 92108-4402

Reference: Children's Pool Beach Closure Project **CDP # 6-14-0691, LCP-6LJS-14-0607-1**

July 13, 2014

Dear Ms. Lee,

I have been a continuous resident of La Jolla since 1972. My family and I have enjoyed the unique protected ocean access to the Children's Pool for all of that time.

I strongly believe that the City of San Diego's long-standing efforts to close Children's Pool to public use in favor of harboring seal colony is very misguided. I urge the Coastal Commission to honor its historic mission to protect public access to California's coastline.

Allowing the City to close the Children's Pool to people in favor of a marine sanctuary would set a terrible precedent for future public closures up and down our coast.

Thanks for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Hoffman', with a long horizontal flourish extending to the right.

Clement P. Hoffman, MD

**RECEIVED**

JUL 17 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

July 18, 2014

California Coastal Commission  
7575 Metropolitan Drive, Suite 103  
San Diego, CA 92108-4402

Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1

RE: Foreseeable Danger [Attractive Nuisance] aspects of the Children's Pool Closure Plan related to public health, safety and welfare.



To: The California Coastal Commission

The proposed action by the City of San Diego to close Children's Pool will change the character of the public park and beach at this historic location. This unwarranted closure is designed to create artificial habitat and shelter for a thriving animal species by forcing human abandonment of the beach. The apparent objective is to draw even more Harbor Seals to this tiny beach already overpopulated with seals. Harbor Seals are spreading to surrounding beaches in record numbers and the water quality problems already occurring at Children's Pool are spreading to surrounding beaches. The City would be creating and maintaining a dangerous condition from a known hazard to public health, safety and welfare.

***Attractive Nuisance Doctrine:** a legal doctrine which makes a person negligent for leaving a piece of equipment or other condition on property which would be both attractive and dangerous. Some jurisdictions have abolished the attractive nuisance doctrine and replaced it with specific conditions that would make property owners liable by applying rules of Foreseeable Danger.*

While only a few shark attacks have been fatal since the year 2000, the steady increase in shark bite attacks can be linked to the re-establishment of pinnipeds populations near the site of those attacks. The population of Harbor Seals has reached its optimal sustained population (OSP) and are near historic levels in all of their range including the San Diego coast. The risk to ocean users from sharks is directly increased by the presence of seals. The City of San Diego should not be causing conditions to attract a greater number of pinnipeds to the swimming areas of La Jolla. This condition would be verified if a proper environmental study were done on all impacts of this proposed project.



In the O'Sullivan v. City of San Diego lawsuit, well known human hazards directly caused by the City's actions and negligence, were cited by Judge Pate. The City had breached its obligation to maintain the park in a condition suitable for human use. Those hazards included the presence of wild animals on a man-made beach (an artificial embayment per the CCC Ecologist) created for human use. The increased seal population, encouraged by the forced abandonment of Children's Pool from the City of San Diego's closure plan, will bring more seals and seal waste as noted in the O'Sullivan case.



Also foreseeable is the risk that sharks will associate the growing seal colony at Children's Pool as a reliable source of pinniped prey species and congregate in greater numbers in search of food. Even though the overall shark populations worldwide are changing for various reasons, shark sightings are on the rise in the waters off Southern California and in La Jolla. Beaches in San Diego were closed and warning posted several times the past three years because of shark sightings near shore. Artificially

creating conditions that provide a defacto seal sanctuary or reserve at Children's Pool will increase the population of seals near established swimming areas and significantly increase the danger of shark attacks on humans. This action is contrary to responsible public safety policies by governmental officials with a duty to promote public safety and the protection of human life.

The City's Negative Declaration for this project uses a false premise for evaluating baseline data. The City's data ignores City actions before 2012 in its analysis. Seal protection measures, implemented by the City of San Diego, started decades ago with the result we see today; Harbor Seal Colonization of a popular, artificial urban beach in La Jolla. This began with the creation of a seal reserve on and around Seal Rock just offshore from Children's Pool in the 1980's. Because the fictitious baseline data for their analysis, the true impact of the City's continued meddling with nature in the marine environment in and around Children's Pool has skewed the results of the City's cursory environmental study in their self-serving Negative Declaration.

Common sense requires that, for any development project, the proposed project will not cause an increased hazard to public health, safety and welfare. This beach closure project is intended to create a beach void of people, for the exclusive use by Harbor Seals on a man-made beach intended for use by children. This can only lead to the undesirable result of a greater presence of a food source for several species of large sharks known to attack humans. This condition created by the City's policies will increase the risk to swimmer, divers and bathers for many miles along the La Jolla coast. Closing the safest public ocean beach in San Diego County is unwise. Don't let the City pass its liability for endangering public safety for a project that requires approval by the Coastal Commission. Require that a full environmental

study (EIR) be done first before it is too late. Before the foreseeable tragedy occurs off our coast.

The following table documents the known shark attack incidents along the Pacific Coast from 2000 to present. This list is from the West Coast shark expert, Ralph Collier who has warned about the dangers of the presence of pinnipeds near human swimming areas in La Jolla.

#### **Annotated List of Shark Attacks along the Pacific Coast: 2000 - Present**

<b>Date</b>	<b>Victim</b>	<b>Activity</b>	<b>Location</b>	<b>Outcome</b>
29 Sep 2000	P. E.	Surfing	Mavericks, Half Moon Bay, CA	Survived
4 Nov 2000	C. S.	Surfing	Bunkers, Humboldt Bay, CA	Survived
31 May 2002	L. F.	Surfing	Stinson Beach, CA	Survived
21 Sep 2002	R. R.	Surfing	Moonstone Beach, CA	Survived
23 Sep 2002	G. T.	Surfing	Cape Kiwanda, OR	Survived
28 Nov 2002	M. C.	Surfing	Salmon Creek, CA	Survived
19 Aug 2003	D. F.	Swimming	Avila, CA	Fatal
28 May 2004	B. C.	Surfing	Salmon Creek, CA	Survived
26 Jun 2004	K. F.	Surfing	San Onofre State Beach, Trail 1, CA	Survived
15 Aug 2004	R. F.	Diving	Ten Mile River Beach, Ft. Bragg, CA	Fatal
20 Aug 2004	S. L.	Surfing	204s, San Clemente, CA	Survived
20 Sep 2004	S. M.	Surfing	Gold Beach, OR	Survived
1 Oct 2004	C. W.	Surfing	Lifeguard Tower 16, Huntington Beach, CA	Survived
2 Oct 2004	B. I.	Surfing	Pismo Beach, CA	Survived
10 Oct 2004	P. DJ.	Surfing	Limantour Beach, Point Reyes, CA	Survived
11 Nov 2004	B. K.	Surfing	"Bunkers," North Jetty, Humboldt Bay, CA	Survived
24 Aug 2005	T. S.	Surfing	Scripps Pier, La Jolla Shores, CA	Survived
19 Oct 2005	M. H.	Surfing	Salmon Creek, CA	Survived
21 Oct 2005	C. R.	Surfing	Mouth of the Klamath River, CA	Survived
2 Nov 2005	J. D.	Surfing	Ocean Beach, San Francisco, CA	Survived
3 Nov 2005	T. W.	Surfing	Pillar Point, Mavericks, Half Moon Bay, CA	Survived
24 Dec 2005	B. A.	Surfing	First Point, Tillamook Head, OR	Survived
18 Jan 2006	M. L.	Surfing	Second Bowl, 'The Hook,' Santa Cruz, CA	Survived
17 Jun 2006	J. P.	Diving	Monterey Plaza Hotel Beach, CA	Survived
31 Jul 2006	R. M.	Surfing	Short Sands Beach, Oswald State Park, OR	Survived
29 Aug 2006	T. L.	Surfing	South Jetty, Siuslaw River, Florence, OR	Survived
31 Oct 2006	T. P.	Surfing	Siletz River, Lincoln City, OR	Survived
10 Dec 2006	R. F.	Surfing	Dillon Beach, CA	Survived
30 Jun 2007	K. Z.	Swimming	Will Rogers State Beach, CA	Survived
17 Jul 2007	S. L.	Swimming	Faria Beach, CA	Survived
21 Jul 2007	"Dan"	Kayaking	Bean Hollow Beach, Pigeon Point, CA	Survived



22 Jul 2007	V. C.	Paddleboard	Malibu, CA	Survived
28 Jul 2007	J. S.	Surfing	Imperial Beach, CA	Survived
28 Aug 2007	T. E.	Surfing	Marina State Beach, CA	Survived
27 Sep 2007	S. S.	Surfing	Moonstone Beach, Humboldt County, CA	Survived
30 Sep 2007	A. S.	Surfing	Santa Monica Beach, CA	Survived
7 Oct 2007	S. B.	Surfing	Venice Beach, CA	Survived
7 Mar 2008	T. L.	Surfing	Dog Beach, Huntington Beach, CA	Survived
25 Apr 2008	D. M.	Swimming	Fletcher Cove, Solana Beach, CA	Fatal
21 Jun 2008	B.P.	Kayaking	West Cove, Catalina Island, CA	Survived
8 Sep 2008	K. K.	Surfing	Surf Beach, Santa Barbara County, CA	Survived
20 Dec 2008	T. J.	Kayaking	Dillon Beach, CA	Survived
6 Apr 2009	R. A.	Diving	La Jolla, CA	Survived
11 Jul 2009	B. H.	Paddleboard	San Onofre State Beach, CA	Survived
25 Aug 2009	B. E.	Swimming	Terramar Beach, Carlsbad, CA	Survived
30 Aug 2009	C. H.	Surfing	Huntington Beach, CA	Survived
24 Oct 2009	S. B.	Surfing	San Onofre State Beach, Trail 5, CA	Survived
5 Nov 2009	E. G.	Surfing	Lagunas, Santa Cruz, CA	Survived
16 Nov 2009	J. W.	Fishing	Loch Lomond, San Rafael, CA	Survived
2 Jul 2010	D. C.	Surfing	Silver Shoals at Shell Beach (Pismo Beach), CA	Survived
2 Jul 2010	D. B.	Paddleboard	Dog Patch, San Onofre State Beach, CA	Survived
2 Aug 2010	D. S.	Kayaking	5 Nautical Miles off Gaviota State Beach, CA	Survived
14 Aug 2010	A. C.	Kayaking	Bean Hollow Beach, Pigeon Point, CA	Survived
27 Sep 2010	D. L.	Surfing	South Jetty, Umpqua River, Winchester Bay, OR	Survived
22 Oct 2010	L. R.	Boogie Brdg	Surf Beach , Vandenberg AFB, CA	Fatal
28 Oct 2010	S. M.	Surfing	North Jetty, Siuslaw River, Florence, OR	Survived
6 Jun 2011	J. S.	Diving	Reef near Children's Pool, La Jolla, CA	Survived
24 Jun 2011	D. G.	Surfing	San Onofre State Beach, 'Four Doors', CA	Survived
11 Sep 2011	B. R.	Surfing	Samoa Beach, Eureka, CA	Survived
10 Oct 2011	D. N.	Surfing	'The Cove', Seaside, OR	Survived
20 Oct 2011	B. G.	Surfing	South Beach State Park, Newport, OR	Survived
29 Oct 2011	E. T.	Surfing	Marina State Beach, Marina, CA	Survived
22 Nov 2011	H. P.	Kayaking	Pigeon Point, CA	Survived
6 Dec 2011	?	Surfing	Seaside Cove, Seaside, OR	Survived
13 Jan 2012	S. H.	Surfing	Nelscott Reef, Lincoln City, OR	Survived
6 May 2012	?	Paddleboard	near Avalon, Catalina Island, CA	Survived
12 May 2012	J. N.	Kayaking	North of Leffingwell Landing, Cambria, CA	Survived
7 Jul 2012	M. C.	Kayaking	Pleasure Point, Santa Cruz, CA	Survived
31 Jul 2012	J. T.	Surfing	Topanga State Beach, CA	Survived
7 Oct 2012	G. P.	Windsurfing	Davenport Landing, CA	Survived
23 Oct 2012	F. S.	Surfing	Surf Beach near Ocean Park Beach, CA	Fatal
30 Oct 2012	S. S.	Surfing	"Bunkers" North Jetty, Humboldt Bay, CA	Survived

25 Jun 2013	M. F.	Kayaking	Linda Mar Beach, CA	Survived
17 Aug 2013	W. Z.	Surfing	Pillar Point, Half Moon Bay, CA	Survived
31 Aug 2013	N. K.	Swimming	Butterfly Beach, Santa Barbara, CA	Survived
8 Oct 2013	J. S.	Surfing	"Bunkers" North Jetty, Humboldt Bay, CA	Survived
22 Nov 2013	A. G.	Surfing	Gleneden Beach, OR	Survived
5 Jul 2014	R. J.	Surfing	Oceano Dunes State Beach, Morro Bay, CA	Survived

Statistics compiled by Ralph Collier, Shark Research Committee  
<http://www.sharkresearchcommittee.com/2000.htm>

Please consider the foreseeable hazard this beach closure project at Children's Pool will create in La Jolla and deny approval of this project. Require the City of San Diego to reconsider its beach management policies when they attempt to close public land for the exclusive use by seals that attract increasing numbers of sharks. The Children's Pool can be managed in ways that do not endanger human lives.

Sincerely,




Kenneth L. Hunrichs

San Diego, CA



# **Petition to the California Coastal Commission and San Diego City Council: Preserve human access and enjoyment of the Children's Pool in La Jolla, CA**

 <p><b>Petition summary and background</b></p>	<p>Eco-groups and "friends of the seals" have orchestrated a campaign of harassment and intimidation against divers, fishermen and the beach-going public for over a decade now. Actions such as throwing rocks, spitting, stealing, vandalizing, punching, shoving, yelling profanity and even assaults with a stun gun perpetrated by animal-extremists against beach-goers and tourists are commonplace and often ignored by the police and the City of San Diego. Additionally, despite court orders and in violation of state law, the City of San Diego has continuously ignored its obligations to the citizens of the State of California and residents of San Diego. These obligations are set-out in the so-called Children's Pool Trust and the State Constitution. Among these obligations is the guaranteed right of "convenient access" to the Children's Pool beach for fishermen. Despite this constitutional right to access, the City has, in the past, closed this beach and continues to post rope barriers and warnings across the beach. The City has even sought to outright close the beach and pool for part of the year in violation of State law and the Constitution.</p> <p>Unfortunately, what was once recognized as a true San Diego treasure and originally built primarily for a Children's bathing pool and playground has been neglected and virtually destroyed. Hollywood once shot movies there. Detroit shot a car commercial at the Children's Pool. The first permanent San Diego Lifeguard Station was constructed there. National Geographic once wrote of the Children's Pool: "Even Alice, fresh from Wonderland, would have gasped at the landscape spread below me". However, we have a lifeguard station which has been condemned. We have "port-a-potties" on the sidewalk. The sea wall and stairs are literally crumbling. The cliff-side has collapsed onto the beach and undermined the sidewalk. Extremists populate the sidewalk shouting obscenities at anyone with the temerity to step foot on the beach. The City Police Department has a special "policy" not to enforce many City codes and ordinances at the Children's Pool. The sand is polluted with seal feces. This San Diego treasure has nearly been lost.</p> <p>A proposal to either close the beach and/or further encroach on public access is before the Coastal Commission and San Diego City Council.</p>		
<p><b>Action petitioned for</b></p>	<p><b>We respectfully petition that the rights of the citizens of the State of California be recognized and the Children's Pool beach remain open and be quickly restored to its original condition. Please do not allow this treasure entrusted to us from previous generations to be destroyed and sold to environmental activists. Keep the Children's Pool open! Do not approve any proposal to close or limit access at the Children's Pool beach.</b></p>		
<p align="center"><b>NOTICE TO THE PUBLIC THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.</b></p>			
<p>Printed Name 1. Amy Guinn</p> <p>Signature <i>Amy Guinn</i></p>	<p>Residence Address Only 3998 Ramblwood Dr.</p> <p>City <i>Murietta</i> State <i>CA</i></p>	<p>Official Use Only</p>	
<p>Printed Name 2. Seth Spaul</p> <p>Signature <i>Seth Spaul</i></p>	<p>Residence Address Only 7546 La Jolla Blvd</p> <p>City <i>La Jolla</i> State <i>CA</i></p>	<p>Official Use Only</p>	
<p>Printed Name 3. Carol G. Lurmo</p> <p>Signature <i>Carol G. Lurmo</i></p>	<p>Residence Address Only</p> <p>City State</p>	<p>Official Use Only</p>	
<p>Printed Name 4. RACHEL WELSH</p> <p>Signature <i>Rachel Welsh</i></p>	<p>Residence Address Only 7777 Lookout Dr</p> <p>City <i>La Jolla</i> State <i>Ca</i></p>	<p>Official Use Only</p>	
<p>Printed Name 5. Barbara Wheeler</p> <p>Signature <i>B. Wheeler</i></p>	<p>Residence Address Only 7660 Fay Ave # H-186</p> <p>City <i>La Jolla</i> State <i>Ca</i> 92037</p>	<p>Official Use Only</p>	
<p><b>DECLARATION OF CIRCULATOR</b></p> <p><i>SAN DIEGO</i> I, <u>DAVID PIERRE</u> (print name) declare that my residence address is in _____ County California, and I am a registered voter in <u>San Diego</u> County, and I personally circulated this initiative petition for signing, and I further state that I witnessed each of the appended signatures on this initiative petition being signed, and to my best information and belief, each of the signatures on this initiative petition were obtained by the State (City/County) circulator.</p>			

Re: CDP #6-14-0691

LCP-GLJS-14-0607

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JUL 21 2014

What I will miss if Childrens Pool is closed.

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

The seabed just to the north of Childrens Pool (just past Seal Rocks) is a jumble of boulders and huge rock blocks broken from the adjacent cliffs. These rocks are covered with a wide variety of marine growths accompanied by a multitude of vertebrate and invertebrate life (at least, before the proliferation of seals in the Childrens Pool area). This chaotic and picturesque area was easily accessible from the Childrens Pool and did not involve a dangerous put-in from rocky Boomers Beach or combat the swirling currents just south of the Childrens Pool or an arduous swim from the Cove. I believe there is no other underwater scenic area that is this beautiful with an easy access elsewhere on the San Diego coast.

Edwin Hookin

Edwin Hookin  
5946 Wenrich Drive  
San Diego CA 92120

July 15, 2014

Coastal Commission

7575 Metropolitan Drive Suite 103

Shemlyn Sarp Deputy Director

RECEIVED

JUL 21 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Re: Childrens' Pool

C DP # 6-14-0691 LCP-6LJS-14-0607

Was I lucky or unlucky since I know the difference between  
now and then?!

In the early 40ys I got my first chance at swimming and exploring this beautiful beach. It was spectacular with translucent green water complete with an ecosystem that was phenomenal. It included large pink and green anenomes, many species of star fish, octopi, crabs to follow and examine. (I was enthralled with those hermit crabs that looked like walking shells) and an occasional passing small seal. I wasn't a snorkler yet so I and the other kids chased around peering into pools at the plants and baby fish. We were learning to swim even as we often faked it by putting our hands on the bottom and kicking our feet.

Later when I had become a swimmer/snorkler I could enjoy colorful sea plants and algae and multitudes of baby fish, some colorful and others like silvery drops of rain sparkling in the water. There were innumerable species of fish to watch and enjoy. Swimmers and divers came from afar to enjoy the sights. San Diego and La Jolla specifically was on the map for beauty and for a place to be active. Obesity would certainly be encouraged if spectator sports were to become the preferred way to enjoy the seal

Now the seals have become a force with which to be reckoned! They are hungry, consuming approximately 15% of their body weight in fish per day and leave their excrement to pollute the once clear water. Not only are people left high and dry but all the fish of the area are being wiped out! It reminds me of people feeding squirrels and having to poison them. Let nature take care of the biodiversity balance that is so fragile at our "childrens' pool".

*Please keep access for people including disabled via the ramp.*

Sincerely,  
Donna M. Gookin  
(San Diego native)

**From:** [John Miller](#)  
**To:** [Laven, Brittney@coastal](#)  
**Subject:** Background Info - CCC hearing on Children's Pool Closure Attempt  
**Date:** Thursday, July 24, 2014 7:28:07 AM

---

Brittney: I submit the following recital of fact, for the edification of the CCC members involved in this issue. I also attach a copy of this Word 2000 document, for your convenience. Thank you for your attention.

7/23/2014

To:  
California Coastal Commission c/o brittney.laven@coastal.ca.gov,  
Diana.Lilly@coastal.ca.gov  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

CDP # 6-14-0691, LCP-BLIS-14-0607-1

Honorable Commissioners:

Children's Pool was formed by the construction of a seawall on an existing rock reef on the northwest corner of La Jolla, a suburb of San Diego generally recognized locally as one of the wealthiest, least polluted, and most scenic of San Diego. It was constructed at the behest of Ellen Browning Scripps, in the early 1930s, adjacent or on her property at that time. It was left in trust to the people of San Diego, on the condition it be maintained for it's primary purpose, a bathing pool sheltered from the swells of the very exposed coast from La Jolla Cove to it's north, all the way south to Pacific Beach. Even La Jolla Cove, sheltered by it's orientation, is not as safe a haven for children, in the case of a swell, which may wrap around Boomer Beach to it's south, and break directly into the Cove. I have seen 6 to 8 foot swell breaking in the Cove. My primary interest in the Children's Pool is it's security as an entry /exit point for shore diving the many pocket reefs scattered around it, as well as the extensive Casa reef upon which the wall is built. I have been an independent scuba instructor, teaching in the San Diego YMCAs for more than 25 years. Children's Pool has been widely regarded as the go to entry/exit point in the area, because, in addition to physical safety, the only showers and restrooms from the cove to pacific beach are located here. Additionally, as a currently handicapped victim of degenerative joint disease, Children's Pool offers the easiest entry/exit point to a placid section of water inside the wall, in spite of the extensive stairs there. A very small investment in refurbishing the ramp that used to be maintained there would restore the best ocean access point that exists in San Diego. This is also important to what is often thought to be the largest collection of handicapped military veterans that exists in the United States. Children's pool alone could also support a significant industry catering to the large disabled persons population, who desire ocean access.

Unfortunately, the City of San Diego has done it's best to renege on it's responsibilities to Children's Pool, and the children and disabled of San Diego. Apparently at some point during the tenure of Mayor Susan Golding, in the 1960s, someone in authority had decided that perhaps the merchants and restaurateurs of La Jolla were more deserving of support. A

plan was conceived to create a harbor seal colony on the near offshore rocks commonly referred to as seal rocks, slightly north of Children's Pool, off Shell Beach, the next semi developed and totally exposed beach. The city sidewalks were rebuilt, to afford a widened observation area there. Sea World, who had been releasing the seals brought to them for rehabilitation off Point Loma, where another generally unrecognized rookery was thriving, started to release harbor seals off the Children's Pool/seal rock area. Tourists strolling off their dinners at nearby downtown La Jolla were entranced. A provisional seal refuge was granted for several years at seal rocks. Groups such as "Friends of the Seals" found it lucrative to set up their fund raising tables on the sidewalks overlooking the rocks and pool. In what I hope was a genuine effort to enhance public safety, the lifeguards started roping off a big chunk of Children's Pool. I believe nearly 15 years of these activities greatly enhanced the number of seals at Children's Pool. I believe the current population of seals to exceed 300. The trial period of a Seal Rock Mammal Reserve was allowed to expire without attempt to make it permanent. I believe the Friends of the Seals group then had their eyes on a larger prize. Their stated goal is to close all beaches on which seals/sea lions haul out. Children's Pool, the Cove, and South Casa are their next targets.

The only Marine Protected Area in San Diego has been for years from the left side of the Cove, extending north toward the Scripps Pier. It had been for years considered too small. Recently, almost 10 years after it passed the California legislature, a marine protected area was established from Palomar St. (blocks south of C.P.), to Pacific Beach. These two marine protected areas are the only ones in San Diego. They were established to try and reestablish the ravaged marine environment. Where do you think our children's pool seals and their Sea Lion buddies now feed?

As if this is not more than enough, California Sea Lions, a larger plinniped, seems to have been encouraged by the harbor seal population nearby, and started both hauling out and pupping at the bird refuge at the Cove, and on the peninsula north of that (In front of the Cave Store), as it was less frequented by people. This is because the whole peninsula, popularly known as the "Clam", was undercut by a large sea cave, and threatening to collapse. The city response here was quite different. As the upscale eateries and hotels above started losing money due to the stink attendant to these sea lion haul outs, the same city eager to close children's Pool to the public, now sought to placate outraged nearby merchants, by encouraging public access to the formerly fenced off areas of the bird sanctuary, in order to reduce the smell, and encourage public return to the tourist traps above. I believe an effort has been made to clean the rocks there, also. No doubt at taxpayer expense. I guess the only proximate neighbors to Children's Pool, an old folks home across the street, have not been vocal enough, as it is equally rank downwind of Children's Pool. The State, when they bother to test the water off the end of the wall at the pool, have on previous occasions closed that area to water contact, due to bacteria exceeding state health standards. Those bacteria have been shown through genetic testing, to emit from harbor seal alimentary tracts.

San Diego has done it's best over the years, to neglect it's responsibility to maintain Children's Pool under the terms of the trust by which they received it. Decay due to neglect at the former lifeguard tower/restroom/shower complex there, (which maintains visual contact and responsibility for the stretch of Beach from Boomer in the north to what is locally known as Hospital Point in the south, including Shell, South Casa, and Wipeout beaches), forced lifeguard surveillance for several years to occur only from an elevated tower and temporary buildings that occupied almost all the formerly public space above Children's Pool, and next to the



inadequate for seal viewing crowds parking flanking it. No effort, by the way, has been made to improve driving access to, or parking at the Pool. A series of court challenges failed to reinforce the city position, and they had to resort to a state legislature bill to escape living up to the terms of the trust, insofar as maintaining the Pool and it's infrastructure. That bill only added the function of marine mammal viewing area to the existing uses of beach access, fishing, and protected children's water access. It is only the city that seeks to close the beach to all but marine mammal viewing. NOAA has issued a statement denying San Diego need close any beach to protect any pinnepeds. San Diego has made no attempt to research any other alternative solutions. A "lifeguard plan" proposed by those closest to the beach has been ignored. An "environmentally sensitive area" declaration has failed. The city has refused to fund an environmental impact report. Court orders have been bypassed with a Legislative end run. The restrooms currently consist of street level portapotties, and two if not all three of the formerly functioning showers do not now function. With Children's Pool closed, there would be less reason to ever reopen them. If San Diego is allowed to close Children's Pool for pupping season (which they claim to be longer than many recognized authorities state), the rest of the year, and neighboring beaches will be next. Other cash strapped California cities may see closing beaches as an answer to their various problems, if you set this dangerous precedent.

Harbor seals are naturally timid animals. Neither they nor seal lions, nor any other pinniped are even threatened anywhere on the West Coast. Their populations have exploded and created many similar situations in San Francisco, Monterey, LA county, and elsewhere in California. It is only because ropes, signs, and intimidation of the public has occurred at Children's Pool, along with the nearby marine protected area's source of food, and artificially releasing people habituated animals for years that we inherit the current situation. I believe intimidation of divers has reached the point at the pool where divers forgo the safety of exiting large surf conditions during our winter months of lobster season solely due to perceived harassment from the uninformed and misled people that often surround the pool. I have been jeered at and acoustically harassed at midnight there. Lobster diving frequently occurs at night, as they are out of their hiding places to scavenge. Please deny San Diego's attempt to manipulate the situation for the benefit of the few, and to the detriment of the many, before the next logical, predictable event occurs. When a population of animals swells, the next population to swell will be those that prey on them. We San Diego divers never used to observe sevengill sharks, and only juvenile, fish eating great white sharks commonly inhabit our waters. The adult, seal eating great whites have confined themselves to the seal rich areas off San Francisco. Seven gills are now common here. Normally docile, they have been observed in Oregon aquaria to bite in half 5 foot leopard sharks. We have documented a few adult great whites off San Diego. An artificially inflated population of their prey can only lead to the leading area of shark attacks in the world moving a little south. The situation at the pool has been bad for years, closure will only make it worse.

All of the statements I have made above are verified facts, which I can substantiate. I have left off footnotes to simplify your understanding of the situation. I attended a meeting with your staff in San Diego recently. The questions we asked them made it clear they did not have a good grasp of the facts then. Please read the public input, and listen carefully to the comments that will be made August 13th, in Pacific Beach. Consider the source. The backers of San Diego's closure greatly outnumber, are better financed, and organized than my fellow opponents. An unbiased review of the facts will lead to only one conclusion. Thank you for your attention.

Philip Miller, RN  
6317 Brooklyn Ave  
San Diego, CA 92114  
(619) 266-9504

California Coastal Commission  
San Diego Coast District Office  
Sherilyn Sarb, Deputy Director  
Deborah Lee, District Manager

7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402

RECEIVED

JUL 24 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Coastal Commissioners,

Please accept the following on behalf of the San Diego Freedivers 150+ members and long history of ocean stewardship in our local areas. We trust you will give great consideration to the deep reaching implications regarding the upcoming vote to close the Children's Pool in La Jolla. These decisions will have a drastic effect on the lifestyles and deep rooted traditions held by our diving community. La Jolla is the global birth place of modern diving and this legacy deserves to be honored alongside the wide variety of other reasons why beach access is important to many different user groups living in and visiting La Jolla each year.

Please remind the city of San Diego that these closure tactics are not appropriate and will not be supported. San Diego has created this crisis by its own mismanagement and feigned incompetence to force the CCC into a corner, and the Commission need not tolerate it. San Diego must be told: *"Go back and talk to your community advisors and local groups and stake holders and ocean users. Try alternatives. Solve your problems yourself within the confines of existing State laws. If that is truly impossible then go to the legislature. If we have an emergency then bring it to us as such with the evidence.* Despite what you may have heard, there is no effort to make our seals leave. Seal presence is protected by State and Federal law and we like them. The only authorized agency allowed to protect seals has endorsed shared use on our beach. (See attached letter from NOAA)

San Diego wants to create a new loophole in the Local Coastal Plan system to allow singular removals of historic guardianship of public tidelands access. The Coastal Commission needs to protect itself and the people of California in August. San Diego's problems are self-inflicted and no emergency requires the CCC to intervene. The Harbor seals that have taken up residence in La Jolla have been there since the 1990's.

Below are 9 reasons to disallow piecemeal removal of constitutional access guarantees on a California public tideland.

(1). San Diego officials are asking the CCC to approve violations of the 1931 Children's Pool land grant trust, the Marine Mammal Protection Act (109a – see attached) and key sections of the Coastal Act and the California State Constitution. [Art 1, Sec 25] –

"California Constitution Article I Declaration of Rights Section 25.

The people shall have the right to fish upon and from the public lands of the State and in the waters thereof, excepting upon lands set aside for fish hatcheries, and no land owned by the State shall ever be sold or transferred without reserving in the people the absolute right to fish thereupon; and no law shall ever be passed making it a crime for the people to enter upon the public lands within this State for the



purpose of fishing in any water containing fish that have been planted therein by the State; provided, that the legislature may by statute, provide for the season when and the conditions under which the different species of fish may be taken."

(2). The Coastal Commission must consider the balancing section of the Coastal Act under 30007.5 when evaluating a most significant resource: human safety and public access.

(3). Without an Environmental Impact Report (EIR), foreseeable and cumulative ecological consequences have been ignored. This violates CEQA and NEPA policies.

(4). Scientific data requiring or even supporting closure does not exist. NOAA/NMFS rejected any need to close the Children's Pool Beach to comply with the MMPA. Scientific studies, from the City's own consultants, cited "minimal disturbance of harbor seals at Children's Pool from typical human activity without harm"

(5). Allowing a City to strip a public tideland of access protection in its LCP removes CCC jurisdiction with no way to get it back. This sets a new, lowered standard for beach closure for all of California.

(6). This City plan misuses Coastal Act Section 30230 as if an artificial urban beach were an ESHA. A man-made beach formed behind a protective concrete seawall is not a natural habitat and alters nature to create animal dependence on human supplied shelter. Harbor Seals are not depleted, threatened, or endangered, or under State jurisdiction.

(7). Less drastic alternatives should be tried before beach closure. San Diego has ignored known alternatives and striven to fail at shared use, to create a useful crisis. Check the Lifeguard Plan, which the City has ignored for 2 years.

(8). A beach closure would reverse the 2001 Commission's ruling against any permanent seal reserve in application 6-00-126 for a permanent seal reserve in La Jolla on trust protected public recreational tidelands. (See attached - Regular Calendar Staff Report & Preliminary Recommendation).

(9). City politicians presented this latest beach closure plan as the next step in a series without revealing the obvious next steps. Seals are pupping on other public beaches in San Diego. Will those beaches be closed next?

Please don't allow the closure of the Children's Pool beach in La Jolla. That would be against every ounce of why it was created in the first place and is not necessary for the health of the eco-system.

Sincerely,



Ryan Sweeney

San Diego Freedivers - President

Subject: [No Subject]

From: Melinda Merryweather (mbeherenow@sboglobal.net)

To: Mbeherenow@sboglobal.net; kenhurrichs@cox.net; brittney.laver@coastal.ca.gov;

Date: Sunday, July 20, 2014 1:12 PM

RECEIVED

JUL 21 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

AttnBrittney Laver: And to All Commissioners

This has to do with CPD#6-14-0691, LCP-6LJS-14-0607-1

I am writing to ask you NOT to close our Childrens Pool in La Jolla.

The Pool is part of our history and fabric in La Jolla, my grandmother swam in the pool so did my Mother, I taught my son to swim there, and now is the time for my grandchildren.

The community of La Jolla has asked for over 15 YEARS to give our pool BACK to the CHILDREN.

If you chose to close the pool YOU will CHANGE the HISTORY OF CALIFORNIA. Any one at any time can say a seal was born on any beach, and you will HAVE to close that beach because you did it in La Jolla.

You will forever be responsible for this very BAD decision.

ALL of you are on the Commission to PROTECT public access NOT to take it away!

Respectively submitted Melinda Merryweather.

Please Make SURE Every  
Commissioner get A Copy —  
Thank you.

Melinda Merryweather  
858-454-5939

**July 21, 2014**

California Coastal Commission, San Diego Coast District Office  
7575 Metropolitan Drive Ste 103  
San Diego, CA 92108-4402  
Attn: Brittney Laver & Diana Lilly

**RECEIVED**

**JUL 22 2014**

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Commissioners and Staff,

Now in your hands is honoring the very heart of the California Coastal Commission's mission: to "Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. This letter is a plea to retain an open beach at the Children's Pool, fully accessible to man and beast in the best interests and health of both.

This letter disputes the agenda presented to your local staff by the City of San Diego in their request for a permit to close La Jolla's Children's Pool for part of every year – permanently!

Remarkably, the City's reason's for requesting this closure has absolutely no basis in fact.

**UNPROVEN ASSERTIONS FOR CLOSING THE CHILDREN'S POOL TO HUMANS**

Seals need the Children's Pool beach for pupping – FALSE.

**FACT—SEALS PROCREATE & BIRTH IN THE WATER, HAUL OUT ROUTINELY ON ROCKS.**

Seal population at Children's Pool will self-regulate at 250 animals. – FALSE.

**FACT—A MIGRATORY POPULATION OF 600 SEALS AT CP IS DOCUMENTED BY SCRIPPS SCIENTISTS. SEALS & SEA LIONS ARE STARVING AFTER CONSUMING MULTIPLE SPECIES.**

Humans on the beach cause premature seal births. – FALSE.

**FACT—NOAA PUTS NATURAL INFANT SEAL MORTALITY AT NEARLY 50%.**

Seals bring tourists and improve San Diego's economy. – FALSE. (undocumented!)

**FACT—SAN DIEGO'S CLIMATE, OCEAN ACCESS, SCIENCE CENTERS, THEATERS & ACTIVITIES DREW GLOBAL TOURISM LONG BEFORE SEALS ARRIVED.**

Coastal beaches other than CP are safe for child & handicapped swimming. – FALSE.

**FACT—CP'S SEAWALL ENSURES COASTAL SAFETY BY BLOCKING RIP CURRENTS & WAVES.**

Shared beach use by humans & seals is unworkable. – FALSE. WHY?

**FACT—ALTERNATIVES TO CP CLOSURE EXIST! 1) SHARED USE. 2) THE LIFEGUARD PLAN FOR MOVABLE SEAL BOUNDARIES. 3) Sherry LIGHTNER PLAN FOR COMPREHENSIVE COASTAL MANAGEMENT. Please see the accurate truths presented on the next page.**

The effort to block beach & ocean access defies the coastal plan (Section 30230), intrudes on the Commission's authority to protect State's rights and is a dangerous, irreversible precedent. Traditional use and law protect ocean access.

Other planned beach closures will follow unless a CCC ruling ends it now!

**CALIFORNIA'S THREE ORGANIZATIONS THAT ENSURE COASTAL ACCESS**

**California Coastal Conservancy:** protect, restore, and enhance coastal resources and provides access to the shore.

**California Coastal Trail:** public trails for walkers, bikers, equestrians, wheelchair riders and others along the 1200-mile California coastline ... for preservation and responsible access. **California Coastal Commission:**

Protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean.

## COMMUNITY OPINION IN SUPPORT OF OPEN BEACH ACCESS AT THE CHILDREN'S POOL

Rejection of the Coastal Commission's staff recommendation for Children's Pool closure

- Three local organizations are designated to provide the City of San Diego with oversight of local issues. These organizations are 1) La Jolla Community Planning Association, 2) La Jolla Parks and Beaches, Inc., and 3) La Jolla Town Council. Officers and Directors of all three organizations have rejected seasonal closure of the Children's Pool beach and a majority has voted in favor of shared used by humans and marine mammals.
- Local residents care so deeply about Coast Boulevard at the Children's Pool site and beyond, they have instituted and are privately funding three rebuilding and repair projects to improve those sites. The projects are 1) the Cove Pavilion, a rest area construction at La Jolla Cove, 2) Children's Pool Walk, a sidewalk safety and view expansion project, 3) Whale Watch Point, an eight-part coastal access and environmental improvement development.

The local news publication, *La Jolla Light*, published a write-in poll of this issue, and a majority of respondents voted in favor of open beach access for all.

United States Senator Scott Peters has written to advocate your "protection of our treasured coastline, . . . provide public access, and take into account appropriate rules and regulations."

NOAA "prefers education and does not want to see the beach closed to people."

The local RAMP/COAST organization, which advocates for the handicapped, says, "the Children's Pool, our only safe ocean pool into the real ocean, is great for toddlers and families, the elderly, and wheelchairs! Calm water, the only dedicated ramp on the La Jolla Community Plan. Our Challenged Athletes can roll right in and swim; Wounded Warriors can heal, disabled children can snorkel and see a real sea star like at no other place on the Coast, the elderly love the ramp into the calm ocean pool and healing water therapy.

**HARMONY CANNOT BE LEGISLATED, BUT  
THE LAW AND TRADITIONAL LAND USE  
ARE IN YOUR HANDS TO HONOR.**

*With hope for your careful attention and support for access.*

*Ruehlis Minick*

Regarding Billings Park Access to all families  
To All Our Great Community - Cale

Please save C.P. -  
because people with  
broken legs need a  
ramp. I can not swim  
in surf. It is for  
children and me!

Thank you,  
Cale Aspenleiter  
5 years old

7/18/14

JUL 22 2014

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

B6

U-T SAN DIEGO | EARLY WEEKEND | SUNDAY • JULY 20, 2014

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Letters to the editor: [letters@utsandiego.com](mailto:letters@utsandiego.com)

## On Children's Pool: Remember disabled

The Coastal Commission will meet in San Diego in August to decide whether to close the Children's Pool during seal pupping season. The pros and cons, along with the facts and fiction of both sides, are well documented.

I have my own opinion, but it doesn't matter. What does matter is that if the Commissioners vote to support seasonal closing, it will be the worst example of discrimination they can show against persons with disabilities. Seals are not endangered. They freely roam California's coastline. But there are thousands of disabled individuals who cannot swim in the ocean because there is no safe and easy access point. The Children's Pool is that single access.

The City of San Diego is spending millions of dollars to upgrade the lifeguard towers at the La Jolla Cove and Children's Pool. As required by law, there will be handicapped facilities. This means a person in a wheelchair can go to the bathroom, but can only watch from afar able-bodied persons swimming in the ocean. This is a direct violation of the Americans with Disabilities Act, which specifies that persons with disabilities must be given the same opportunities as able-bodied individuals. To close the Children's Pool would be a slap in the face to citizens with disabilities, especially Wounded Warriors, who would benefit from the therapy of floating in the ocean, forgetting for a few moments that they no longer have arms or legs.

**Maxine Baker**  
San Diego

*Maxine Baker*



Power Scuba

12546 Heatherton Court #41

San Diego, CA 92128

powerscuba1@gmail.com

858-345-0078

PowerScuba.org

June 29, 2014

California Coastal Commission

RE: August Meeting Agenda Item LA JOLLA CHILDREN'S POOL

RECEIVED

JUL 17 2014

NOTE: This document has been sent to the Staff of the California Coastal Commission

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Honorable Commissioner and Chairman Steve Kinsey:

I am writing to you in my capacity as President of Power Scuba, a scuba diving organization with over 2300 members.

This letter is in reference to the proposal by the City of San Diego to close citizen access on a seasonal basis to the beach area known as the "Children's Pool" in La Jolla, California.

The intent of this letter is to voice strong opposition to the said proposed closure of the Children's Pool. As will be discussed, such an extreme measure would be based on no peer-reviewed scientific studies, no sound marine management planning, and an incorrect interpretation of applicable law and regulations. Furthermore, acceding to the City's request would have serious consequences for ocean users and the disabled.

There is no scientific basis to assert, as advocates of Closure have done, that the harbor seals found at the Children's Pool are adversely affected by their proximity to urban civilization and interactions with humans. Like the Northern Right Whale Population off New England, the Children's Pool Harbor Seals may be considered to be "Urban Seals" that have adapted rather well to the noise and inevitable disturbances inherent to their location. There is no doubt that these seals would probably be more successful as a population if they lived far removed from modern cities, but there is no scientific evidence that human interactions have caused observable harm.

To be sure, there have been cases of reported harassment, but this is a matter of a few uninformed or immature individuals, and is easily preventable with adequate law enforcement. Closure of the facility would have little to no effect on the behavior of a handful of such persons. It should be borne in mind that if the City wishes to promote the seals as a tourist attraction, such incidents are unavoidable without proper enforcement, which is currently lacking.



Harbor seal populations in California have been steadily growing since the 1940's. Official estimates now put the total California population at approximately 34,000 individuals. Advocates of Closure often point out that growth rates of the population have been decreasing, but this is perfectly normal, in that species' populations in nature grow according to a logistic growth curve, in which growth rates level off as populations near the so-called "carrying capacity" of their environment, which seems to be the case for this species. It may be that prior to the presence of Europeans on the California coast, the carrying capacity was greater, but consistent with the concept of shifting baselines, the present environment along the California coast sadly does not support a return to such historical levels.

The City of San Diego has been advised by your Staff that closure cannot be based upon the designation of the Children's Pool as an ESHA, but that Closure could be based upon a finding that the Children's Pool seal population constitutes a "special" population, either in terms of its unique importance to the species, or to its great economic significance to the community. Any such finding would be grossly mistaken: at present, NMFS estimates suggest that there are between 400-600 harbor seal haul-out sites in California. Many are much larger than that at the Children's Pool. Although the migratory nature of this species makes it difficult to assess the size of any "resident" population, the most reasonable estimate is that there are less than 100 residents seals at the Children's Pool. It is a small colony, and it is not in any way unique: there are multiple nearby haul-out sites at both the Coronados Islands just below the Mexican border, and many more at the California Channel islands. Seals found at the latter locations are often observed "visiting" at the Children's Pool, (which often leads to vast overestimates of the resident population), and it is believed that Children's Pool residents often travel to other haul out sites.

Nor can it be concluded that the harbor seals of the Children's Pool have significant value to the local economy. Though the City likes to promote the seals as a tourist "attraction" there is no data to support the assertion that they represent clear and significant value. Tourists come to San Diego for many reasons, but the seals are at best a tertiary motivation. Most tourists learn about the seals only after arrival in San Diego, perhaps at Sea World, or from their hotel or tourist bureaus. To close off the Children's Pool to citizens based upon a belief in the value of the seals to the local economy would be risible. Thus, Closure on either of these grounds would be an incorrect application of law and state regulations.

From the standpoint of marine management, the presence of the seals, especially when large numbers of "visiting" seals arrive, is clearly problematic. Seals forage locally and have likely played a major role in the depletion of coastal reef fishes. Moreover, their waste products have fouled local waters with large bacterial and viral outbreaks, at times forcing closures of beaches as a matter of public health. Such unhealthy waters have caused great mortality to the benthic invertebrate community as well. Harbor seals are prey to Great White Sharks. The connection between a harbor seal colony at the Children's Pool and shark predators is unclear, but sightings of White Sharks, though still uncommon, appear to have become more frequent. Attacks upon humans by these predators are considered to be a case of mistaking the person for a seal, but any such incidents would drastically reduce the appeal of our coast for tourists and residents alike.

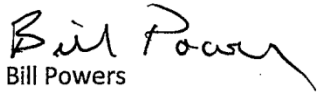
Finally, the Commission should carefully consider certain consequences of the proposed Closure. The land and structure at the Children's Pool was deeded to the City for the express use of humans, as a place where children and others might safely enjoy the ocean. Though the City has engaged in various legal maneuvers, (as well as defying court orders to avoid its responsibility for maintaining the property in satisfactory condition) in order to alter the trust, the Commission should not be party to such a violation of the original terms under which the property became public property. Furthermore, the Children's Pool has for many decades been a safe haven for those finding themselves in suddenly dangerous sea conditions. Many swimmers and divers have found themselves confronted with large and unexpected surf, and have used the Children's Pool as a place to safely exit without serious injury. Closure would deprive all ocean users of this safe harbor. Finally, the Children's Pool is unique as a human facility in that it alone affords access to the ocean for disabled Americans, including many veterans of foreign wars. Wounded Warriors who have lost limbs can reach the water and swim in a therapeutic environment if access to the Children's Pool is encouraged, and the facility renovated. Closure might well be found to be a violation of the Americans with Disabilities Act. At a time of scandal within the Veterans'

Administration, it would be horrific if the California Coastal Commission, breaching the traditional constitutional rights of all Californians to beach access, were to slam the door in the face of those who have faithfully served their country.

Closure of the Children's Pool would be an extreme measure inconsistent with California law and tradition; it therefore must be justified by clear and present need in the interest of the public. But, no such need exists.

I therefore urge you to reject the proposal to close public access to this historic, but also very contemporary, public resource.

Sincerely,

A handwritten signature in black ink that reads "Bill Powers". The signature is written in a cursive, slightly slanted style.

Bill Powers  
President  
Power Scuba

July 12, 2014

RECEIVED

JUL 18 2014

Dear Commissioner Chairman Kinsey:

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Please vote to keep the Children's Pool open year-round for these reasons:

- 1 Following through with the San Diego City Council's recommendation to close beach access to the Children's Pool during seal pupping season sets a dangerous precedent for future public beach closings along the entire California coastline.
- 2 Closure would violate California's constitution that says all beaches must be free and open to the public.
- 3 Closure would violate the trust in which Ellen Browning Scripps provided money to build a retaining wall to create a safe place for children to learn to swim.
- 4 People were there first. The beach was created by the retaining wall paid for by Mrs. Scripps. The City Council is turning a public beach that was specifically built for children into a seal rookery.
- 5 There is no proof that the public is endangering the mortality of seals by being on the beach at the same time.
- 6 Seals are polluting the beach with feces and after-birth and making it unsafe for humans to swim in the ocean.
- 7 The City Council has not conducted an Environmental Impact Report that examines the presence of seals on the nearby marine environment.
- 8 Seals can live on any of the more than 400-600 other seal haul-out sites along the California coast, while this is the ONLY safe beach for persons with disabilities to enter and exit the ocean safely.
- 9 Accepting the City Council's recommendation would clearly be an act of discrimination and a violation of the Americans with Disabilities Act because it restricts people with disabilities from the same opportunity of an able-bodied person --- and that is to swim in the Pacific Ocean.
- 10 The City of San Diego is spending millions of dollars to remodel lifeguard stations and restroom facilities at the La Jolla Cove and the Children's Pool, including providing disability access. It is ironic that disabled individuals can go to the bathroom but they can only watch from afar able-bodied people swim in the ocean.
- 11 Hundreds of military personnel are returning to San Diego's Veterans Hospital for rehabilitation for severed limbs. The Children's Pool is an ideal place for rehabilitation.

Please keep this public beach open to people year-round.

Sincerely,  
Maxine Yee Baker  
San Diego

**Children's Pool Beach Closure Project CDP # 6-14-0691, LCP-6LJS-14-0607-1**

Portia S Wadsworth [portia@sbcbglobal.net]

Sent: Monday, July 14, 2014 11:35 PM

To: Laver, Brittney@Coastal

Dear Brittney

I oppose deleting public access protection from Children's Pool Beach because . . .it is a public beach #1....Children's Pool was designed for

our children, then and now #2.....it is time for the seals to move to the open, wild ocean, where they belong and where they long to be #3....the exponential number of seal pups continues and adds to the excrement and danger of sharks #4....La Jollans who pay property taxes should have a heavy decision in this ongoing travesty (we want our beach back) #5....the seals have used CP for too many years (rent free); it is time to restore this natural pool with the breakwater back to the people #6....

Warm regards,

Portia S. Wadsworth