

**CALIFORNIA COASTAL COMMISSION**

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# Th21a & Th21b

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 Staff: M. Lasiter-SD  
 Staff Report: 5/23/19  
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## STAFF REPORT: AMENDMENTS

**Application Nos.:** 6-14-0691-A1 and 6-15-0223-A2

**Applicant:** City of San Diego Parks & Recreation Department

**Agent:** Daniel Daneri

**Location:** Children's Pool Beach, 850 Coast Boulevard, La Jolla, San Diego, San Diego County

**Original Project Descriptions:**

6-14-0691-A1: Closure of Children's Pool beach to all public access during harbor seal pupping season, December 15 to May 15, of each year. Install "Area Closed" signage on the 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.

6-15-0223-A2: Re-authorize use of an existing 4 ft. high, 152 linear ft. guideline rope with 3 ft. opening for beach and ocean access, support posts, foundations and informational signs, on a year-round basis, in perpetuity, to provide a buffer between humans and harbor seals at Children's Pool Beach.

**Proposed Amendment:** Extend the term of both permits for a period of 10 years.

**Staff Recommendation:** Approval with Conditions

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**STAFF NOTES:** Coastal Development Permit (CDP) No. 6-14-0691 authorized the seasonal closure of the Children's Pool annually during harbor seal pupping season, December 15 to May 15. CDP No. 6-15-0223 authorized the installation of a guideline rope at Children's Pool during the remainder of the year. Both permit terms expire on August 14, 2019 and the City is now proposing to amend both permits to extend the terms for a period of 10 years. Commission staff has combined both amendment applications into one staff report since the applicant and project location are the same, and both projects share similar issues. However, because the applications were considered separately by the Commission previously, there is a separate motion and resolution necessary for each amendment (see page 6).

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending **approval** of the proposed projects with special conditions limiting the term of both permits to 10 years to allow for future reassessment of any impacts to public access and marine resources.

The City of San Diego Parks and Recreation Department proposes to continue for a period of 10 years: (1) the closure of Children's Pool Beach in the La Jolla community of the City of San Diego, to all public access during harbor seal pupping season from December 15 to May 15 of each year in order to protect the seals from harassment and disturbance during their pupping season; and (2) use of the guideline rope at Children's Pool Beach outside of pupping season from May 16 to December 14 of each year to provide a buffer between people and seals.

During pupping season, two "Area Closed" signs would remain in their current locations, on a barrier chain at the top of the lower staircase and on the emergency access gate, which is closed except for emergency vehicle access, as previously approved by the Commission, to seasonally prevent public access to the sandy beach area where the seals haul out and give birth ([Exhibit 3](#)). The public would still be able to access the breakwater and surrounding walkways year-round to view the beach and the seals. The monitoring that the City has conducted to fulfill the special conditions required by the Commission indicates that the closure has greatly reduced the number of conflicts between people and seals, as well as the number of conflicts between people. Specifically, in the 2013-2014 pupping season, members of the Seal Conservancy observed and recorded a total of 79 flushing incidents. However, following approval of the seasonal beach closure, the City reported only ten observed flushing incidents during the 2014-2015 pupping season, ten observed flushing incidents during the 2015-2016 pupping season, four observed flushing incidents during the 2016-2017 pupping season, and one observed flushing incident during the 2017-2018 pupping season.

The remainder of the year, the guideline rope is proposed to remain in its current configuration, upland of the mean high tide line, as previously approved by the Commission ([Exhibit 4](#)). The purpose of the guideline rope is to reduce the number of conflicts between beach visitors and seals, while maintaining public access to the beach and ocean via the proposed three-foot opening. The City's monitoring data shows that when there are seals hauled out on the beach, people tend to stay behind the rope; therefore, without such a rope guideline and informational signage, visitors are more likely to approach the seals, which has in the past resulted in seal harassment.

In addition, the rope barrier and closure have reduced the number of human conflicts at Children's Pool Beach. For example, 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. Alternatively, in 2018, the police responded to only 7 calls for disturbing the peace and no calls for battery incidents.

The subject site is unique in its location and characteristics: Children's Pool (also known as Casa Beach) is located in a highly-visited, easily-accessible coastal urban setting; it supports the largest established mainland harbor seal rookery in San Diego and Orange counties and is one of the only mainland rookeries south of Ventura County; and has a 328-ft. long artificial breakwater protecting the beach from wave action. Since construction of the breakwater with funding from philanthropist Ellen Browning Scripps in 1931, Children's Pool has been a popular recreation site for swimmers, divers, fishers, and tourists, as the breakwater provides a public walkway and creates a calmer beach environment. However, these circumstances also created a habitat for harbor seals to haul out, meaning to exit the water onto the sandy beach area for essential biological functions such as rest, thermal regulation, molting, giving birth, and nursing and weaning pups. As a result of the seals' increased use of Children's Pool Beach as a haul-out and pupping site since the early 1990s, there has been ongoing controversy about how the seals and their habitat should be protected, how public access should be preserved, and whether seals and people can share the beach without harm to the people or the animals.

The existing guideline rope was approved by the Commission in July 2012 with a three year permit term expiring in July 2015 (CDP No. 6-11-078), and then again in 2015 with a four year permit term expiring in June 2019 (CDP No. 6-15-0223). In 2014, the City presented evidence to the Commission that the guideline rope was not sufficient to protect the seals from harassment during the sensitive pupping season. Therefore, in August 2014, the Commission approved the annual closure of the subject beach each year from December 15 to May 15, with a five year permit term to expire in August 2019 (CDP No. 6-14-0691). Finally, on February 22, 2019, an immaterial amendment (CDP No. 6-15-0223-A1) was approved to extend the permit expiration date to August 14, 2019, in order to align the expiration dates of both permits and allow the Commission to consider reauthorization of both permits at the same time, which here means both permit amendments are being considered at the June 13, 2019 Commission meeting.

As a response to testimony by opponents of the seasonal beach closure that the seals at Children's Pool impact water quality and that Americans with Disability Act (ADA) compliant access should be provided by the City, the Commission added Special Condition No. 5 to CDP No. 6-14-0691. The condition required the City to conduct a study to address a) the feasibility of providing ADA compliant access to the sandy beach area of Children's Pool Beach; b) analyze the water quality and methods for improving the water quality at Children's Pool Beach, including the feasibility of opening the sluiceways in the breakwater; and c) analyze the sand quality and methods for improving sand quality at Children's Pool Beach, including dredging. These studies have been completed and were included in the permit application for these amendments.

In regards to the feasibility of providing ADA access, the City found that, due to the slope and landing requirements established by the ADA, a ramp connecting the lower level of the lifeguard tower to the beach would extend onto a significant area of the beach and result in a development footprint of approximately 1,500-1,800 sq.ft. (30 ft. wide by 50 to 60 ft. long). Improving the existing emergency ramp would result in a similar footprint. Thus, neither option was deemed feasible without creating further coastal impacts. The City has also indicated that an elevator or lift would not be feasible because the installation of the elevator/lift could damage the bluff and would not have the stability to withstand natural forces and sea erosion; the City is concerned that the elevator/lift would require frequent maintenance due to its location being subject to salt air, water, and sand; and there would be limited benefits since the elevator/lift would likely be closed for frequent maintenance and while the beach is closed for pupping season.

The City has also completed a comprehensive assessment of sand and water quality at Children's Pool by collecting and assessing both sand and water samples from 2015–2018, and water sampling continues under the Bacteria Total Maximum Daily Load (TMDL) program. The Children's Pool Sand Study indicated that all types of fecal indicator bacteria (FIB) were present in the sand and that concentrations were elevated compared with those of a reference beach, although there are no objectives or standards available for evaluation of FIB concentrations in beach sand. However, Children's Pool has been in compliance with water quality Bacteria TMDL numeric targets since 2015, with the exception of a 5% dry weather sample exceedance in 2018, as documented by annual compliance monitoring reports. These results indicate an improvement in water quality at Children's Pool since its inclusion in the Bacteria TMDL. Regardless, animal bacteria do not present the same level of risk that is present in sewage and other anthropogenic sources of bacteria and the samples for bacteria do not differentiate between human and animal sources. The City also evaluated options to improve water quality, including dredging, beach sand replacement, deterrence or removal of wildlife or wildlife scat, and opening the sluiceways to promote water circulation; however, these options would adversely impact public access and marine resources, and were deemed infeasible. Therefore, staff finds the study to be complete and that the City has fulfilled Special Condition No. 5 of CDP No. 6-14-0691.

In conclusion, while the seasonal beach closure will continue to impact public access from December 15 to May 15 of each year, this is not only necessary but also provides the least impacts on access while effectively protecting the seals from harassment during their vulnerable months of pupping season. In addition, the seals 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. During the seven non-pupping season months of the year, the stairway leading to the beach and the beach upland of the rope will be open and available to the public and the beach will be open for swimming. Individuals are not prohibited from crossing the guideline rope, and the rope is not expected, nor is it intended, to keep people off the beach or out of the ocean. Thus, the guideline rope will not have a significant impact on the public's ability to access or recreate at Children's Pool during non-pupping season.

Commission staff recommends **approval** of coastal development permit applications 6-14-0691-A1 and 6-15-0223-A2 as conditioned.

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### EXHIBITS

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[Exhibit 6 – Jurisdictional Map](#)

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[Exhibit 8 – Seasonal Closure Monitoring Reports \(2015-2018\)](#)

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[Exhibit 11 – Feasibility Study - ADA Alternative](#)

[Exhibit 12 – Existing Ramp Photographs](#)

## **I. MOTIONS AND RESOLUTIONS**

### **1. Motion for Seasonal Beach Closure:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-14-0691-A1 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 amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution for Seasonal Beach Closure:**

*The Commission hereby approves coastal development permit amendment 6-14-0691-A1 and adopts the findings set forth below on grounds that the development as amended and 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.*

### **2. Motion for Guideline Rope:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit Application No. 6-15-0223-A2 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 amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution for Guideline Rope:**

*The Commission hereby approves coastal development permit amendment 6-15-0223-A2 and adopts the findings set forth below on grounds that the development as amended and 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. SPECIAL CONDITIONS**

NOTE: Appendix A, attached, includes all standard and special conditions that apply to these permits, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including these amendment nos. 6-14-0691-A1 and 6-15-0223-A2. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment nos. 6-14-0691-A1 and 6-15-0223-A2 are shown in the following sections. Changes to the previously approved special conditions are shown in ~~strikeout~~/underline format. This will result in one set of adopted special conditions for each permit.

### **A. CDP NO. 6-14-0691-A1**

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)~~ ten (10) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-14-0691-~~A1~~, 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.

6-14-0691-A1 and 6-15-0223-A2 (Children's Pool Closure and Rope)

2. [Special Condition No. 2 of CDP No. 6-14-0691 remains unchanged and in effect]
3. [Special Condition No. 3 of CDP No. 6-14-0691 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-14-0691 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-14-0691 remains unchanged and in effect]

**B. CDP NO. 6-15-0223-A2**

This permit is granted subject to the following special conditions:

1. [Special Condition No. 1 of CDP No. 6-15-0223 remains unchanged and in effect]

**2. Permit Term.**

- A. This coastal development permit authorizes development on a temporary basis only. The development is authorized ~~until August 14, 2019~~ for a period of ten (10) years, commencing upon the date of Commission approval of CDP No. 6-15-0223-A2, after which time the authorization for continuation or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of a guideline rope 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 installation and maintenance of a guideline rope at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease use of the guideline rope.

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.

3. [Special Condition No. 3 of CDP No. 6-15-0223 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-15-0223 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-15-0223 remains unchanged and in effect]



### III. FINDINGS AND DECLARATIONS

#### A. PROJECT AND AREA DESCRIPTION

The City of San Diego Parks and Recreation Department proposes to continue for a period of 10 years: (1) the closure of Children's Pool Beach in the La Jolla community of the City of San Diego ([Exhibits 1 and 2](#)) to all public access during harbor seal pupping season from December 15 to May 15 of each year; and (2) use of the guideline rope at Children's Pool Beach to provide a buffer between people and harbor seals outside of pupping season from May 16 to December 14 of each year.

During harbor seal pupping season, the "Area Closed" signs would remain in their current locations, as previously approved by the Commission: on the western emergency access gate adjacent to the breakwater and on a barrier chain at the top of the lower staircase to prevent public access to the sandy beach area where the seals haul out and give birth ([Exhibit 3](#)). The seasonal closure is proposed in order to protect the harbor seals from harassment and disturbance during their pupping season. The public would still be able to access the breakwater and surrounding walkways year-round to view the beach and the seals.

The remainder of the year, the guideline rope is proposed to remain in its current configuration, as previously approved by the Commission: installed directly upland of the mean high tide line (MHTL), with a ½-inch diameter rope strung through four 4-foot tall posts with concrete foundations and attached informational signs extending 152 feet from the breakwater to the inland extent of the beach, with a 3-foot opening for ocean and beach access at the east end near the access stairway ([Exhibit 4](#)). The purpose of the guideline rope is to reduce the number of conflicts between beach visitors and seals, while maintaining public access to the beach and ocean via the proposed three-foot opening. The access stairway leading to the beach and the beach upland of the rope would remain open and available to the public. The ocean would remain open for swimming; however, warning signs are posted that advise against swimming due to bacteria levels in excess of health standards. The guideline rope is not intended to keep people off the beach or out of the ocean, but rather to provide direction to the public on how to keep a safe distance from the hauled-out seals in order to protect the seals and the public. The City contends that without such a rope guideline and informational signage, visitors are more likely to approach the seals, which has in the past resulted in seal harassment. The rope serves only as a rough visual barrier for people, as seals do not always haul out into the area roped off, but sometimes haul out further up the beach, especially during high tide events.

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 breakwater constructed in 1931 ([Exhibit 5](#)). The beach is designated as "Parks, Open Space" in the City's certified Land Use Plan and provides recreational opportunities for swimmers, divers, fishers, 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, 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. 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 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 6](#)). Therefore, the proposed development is entirely within the Commission's original jurisdiction and the standard of review is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified La Jolla Community Plan and Local Coastal Program Land Use Plan serve as guidance.

## **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." (Statutes 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, playing, 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 without harm to the people or the animals. For years, the City has sought to develop a solution to resolve the competing uses in a safe and environmentally-sensitive manner.

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 Parks 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 protects 1.35 acres of open coastal waters, prohibiting human access within reserve boundaries except for permitted commercial fishing, emergency access, and other 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 (ref. 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." (Statutes of 2009, Chapter 19.) As a result of this law, the court order to dredge the pool was vacated and the City Council was no longer required to dredge the pool and 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 guideline rope directly upland of the Mean High Tide Line (MHTL). After consultation with Commission staff, the City was informed that installation of the guideline rope 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 guideline rope during seal pupping season. An ensuing legal challenge prevented the installation of the guideline rope 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 guideline rope and allowed the rope to be placed until May 30, 2008<sup>1</sup>. The City then issued an emergency permit for the temporary guideline rope and the rope 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 guideline rope during the 2008 seal pupping season. On July 7, 2008, the 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

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<sup>1</sup> The 9th Circuit later ruled it lacked federal jurisdiction in the case. (*Animal Prot. & Rescue League v. California* (9th Cir. 2008) 282 F. App'x 637, 638.)

Leek (Appeal No. A-6-LJS-08-065). Because this was a follow-up to an emergency permit, and the emergency permit allowed the guideline rope to remain only 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 guideline rope had already been removed, making the appeal moot and no longer in need of review by the Commission. The applicant (City of San Diego Parks 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 approved CDP No. 701673 for the annual placement of a temporary guideline rope at Children's Pool Beach to provide a buffer between people and seals during the seal pupping season (December 15 to May 15). The guideline rope 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 guideline rope. 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. 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 guideline rope, 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. To carry out this resolution, the City acquired funding for a park ranger assigned specifically to Children's Pool and installed informational signage for visitors 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 vicinity 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 guideline rope at Children's Pool Beach. The permit was approved on July 11, 2012 with a three-year permit term to expire on July 11, 2015. Special Condition No. 3 of the permit required the City to obtain all local discretionary permits prior to issuance of the CDP. The City then approved Site Development

Permit No. 782184 for installation and maintenance of the guideline rope on a year-round basis in perpetuity. The guideline rope was put into effect once the City fulfilled their "prior to issuance" conditions on May 14, 2013.

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 at night and intentionally harassing, kicking, and sitting on the seals. These egregious harassment events and likely violations of the Marine Mammal Protection Act (MMPA) 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 Commission approval to close the actual beach. Thus, the City applied to the 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.

Numerous harassment events were 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 guideline rope. Following continual reports of seal harassment, the City determined that a seasonal closure was necessary to provide undisturbed protection during the vulnerable months of their pupping season. Thus, the City applied for CDP No. 6-14-0691 for a seasonal beach closure at Children's Pool, which was approved by the Commission on August 14, 2014 with a five-year permit term to expire on August 14, 2019.

In 2015, the City applied for CDP No. 6-15-0223 to permanently maintain the year-round guideline rope approved through CDP No. 6-11-078. The Commission approved the CDP on June 10, 2015 with modifications that limited the permit term to a period of four years to expire on June 10, 2019 and required the City to remove the rope from December 15 to May 15 of each year to reduce the visual impact of a rope barrier on the beach during the time when the beach is closed to public access. In 2018, a state appeals court upheld the City's pupping season closure in a lawsuit against the City and the Commission. (*Friends of the Children's Pool v. City of San Diego*, unpub. [2018 WL 2731698].) The court noted public access can be regulated in time, place, and manner, according to the facts and circumstances.

On February 22, 2019, Immaterial Amendment No. 6-15-0223-A1 was approved to extend the permit expiration date from June 10, 2019 to August 14, 2019 in order to align the expiration dates of both permits and to allow the Commission to consider reauthorization of both permits at the same time; at the June 13, 2019 Commission meeting, which is the first scheduled Commission meeting in San Diego in 2019.

## 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.*

Section 30240 of the Coastal Act states, in part:

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contain policies regarding the protection of marine resources:

*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...*

Section 30230 requires that uses of the marine environment be carried out in a manner that will maintain healthy populations of all species of marine organisms and requires that special protection is given to areas and species of special biological significance. In addition, Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas and parks and recreation areas be protected and that development within or adjacent to such areas is designed to prevent impacts which would degrade those areas.

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>2</sup> More recent data, collected by the Park Ranger pursuant to the annual monitoring reports required by Special Condition No. 2 of CDP No. 6-14-0691 and Special Condition No. 3 of CDP No. 6-15-0223, indicates that it is not unusual for over 200 seals to haul out onto Children's Pool Beach during pupping season (December 15 to May 15), as well as outside of pupping season. In 2018, peak haul-out counts reached into the 200s on January 10, April 29, May 1, and May 13. During the 2018 non-pupping season, seal counts reached into the 100s throughout the end of May and on June 10 and December 1. Thus, although peak haul-out numbers have been recorded predominantly during the pupping season, this monitoring data indicates that seals use Children's Pool Beach as a haul-out site on a year-round basis.

Harbor seals are generally non-migratory and are found on both the U.S. east and west coasts. On the west coast, harbor seals are found in near-shore coastal and estuarine waters off Baja California, north to British Columbia, west through the Gulf of Alaska and in the Bering Sea. Since the passage of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. §1361 et seq.), the California coast stock has begun to stabilize and is estimated at approximately 30,968 seals.<sup>3</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 created a map depicting pinniped haul out areas and rookeries (pupping sites) in California that identified the Children's Pool Beach as the only mainland rookery and haul-out site in San Diego and Los Angeles Counties. While that map has not been updated since 2011, NMFS staff has indicated that smaller numbers of harbor seals have also been known to pup at South Casa Beach, adjacent to Children's Pool. The next closest mainland rookery is located at Point Mugu Lagoon within the Point Mugu Naval Air Weapons Station. Public access is restricted at that site. The City of Carpinteria is also home to a mainland rookery; this beach is not readily accessible to the public, as people must walk over half a mile to reach the bluff top overlook. Additionally, the City of Carpinteria closes that beach 750 feet to the east and west of the site during pupping season (December 1 through May 31) pursuant to the City's 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. (See 16 U.S.C. § 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." (50

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<sup>2</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>. Accessed May 3, 2019.

<sup>3</sup> NOAA's National Marine Fisheries Office of Protected Resources. *Harbor Seal: California Stock*. [https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock#pinnipeds---phocids-\(earless-seals-or-true-seals\)](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock#pinnipeds---phocids-(earless-seals-or-true-seals)). Revised July 31, 2015. Accessed May 3, 2019.

C.F.R. § 216.3; 16 U.S.C. § 1362(13); as cited in *Natural Resources Defense Council, Inc. v. Evans*, *supra* 279 F.Supp.2d at 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. (16 U.S.C., § 1362(18)(A).)*

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 (See 16 U.S.C. § 1371(5)(A)(i) [procedures related to permits excluding intentional take]).

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 with Section 30230 of the Coastal Act. In other words, if the Commission finds that 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 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, prior to the Commission's approval of the seasonal closure and guideline rope, there had 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 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 ([Exhibit 7](#)). 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. However, due to the shared use nature of the beach, NMFS has historically pursued harassment penalties only in cases of extreme or malicious harassment. Activities that have caused hauled-out seals to flush into the water, disrupting their behavior patterns, include people making loud noises, approaching or surrounding seals to take pictures, pet, feed, chase, follow, throw rocks/sand/seaweed, 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>4</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 under federal or state laws, the haul out sites and pupping sites that they use, otherwise known as rookeries, 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 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>5</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>6 7</sup>

The seals at the haul out site at Children's Pool are especially fragile coastal resources because they 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 large 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 noted, the Park Ranger and the Seal Cam have witnessed several incidents of harassment prior to approval of the subject permits, 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.

As the Commission found in its August 2014 action on CDP No. 6-14-0691, 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. Thus, the Commission approved a seasonal beach closure to protect the seals during their most vulnerable time of the year. 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>8</sup> As determined by the City in consultation with NMFS representatives as part of the permit approval

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<sup>4</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.

<sup>5</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>6</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>7</sup> Terhune, J.M. and M. Almon. 1983. Variability of Harbour Seal Numbers on Haul-Out Sites. *Aquatic Mammals* 10(3):71-78.

<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.

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 and ends as late as 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>9</sup> During that time, seal pups are frequently left on the beach by their mothers, which spend time in the water foraging for food. Additionally, during this period, the mother seals become more aggressive due to their instinct to protect themselves and their pups from people who get too close. Harbor seals will usually return to breed in the same location as they were born, unless frequent disturbances cause them to abandon the site. Further, harassment during the pupping season may cause mothers to abandon their pups. When a disturbance causes the seals to flush quickly into the water, a seal pup may become separated from its mother and abandoned. Additionally, too many disturbances on the beach may prevent a mother from returning from the water to reunite with her pup after hunting. Abandonment severely decreases the pup's chance for survival. According to the City and volunteer docents, there have been several cases of seal pup abandonment at Children's Pool. Avoiding potential adverse impacts such as seal pup abandonment is the goal of the seasonal closure during pupping season.

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. 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 previous 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 No. 4 of CDP No. 6-11-078 recorded about 30 harassment incidents that

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<sup>9</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.

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. In addition, Dr. Jane Reldan, founder of the Seal Conservancy, a non-profit that advocates for protection of the harbor seal colony at Children's Pool, 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.

Fortunately, the City has indicated that the first annual beach closure during the 2014-2015 pupping season was effective at significantly reducing seal disturbance and harassment with only ten observed flushing incidents in the five months during pupping season, primarily caused unintentionally by people lawfully swimming, boating, or kayaking in the tideland waters near the beach. Since then, the beach closures have resulted in ten observed flushing incidents during the 2015-2016 pupping season, four observed flushing incidents during the 2016-2017 pupping season, and one observed flushing incident during the 2017-2018 pupping season.

Therefore, the City has proposed to extend the term of CDP No. 6-14-0691-A1 to provide continued protection of the seals during pupping season after the permit authorization expires in August 2019. The amendment would authorize the City to continue to prohibit all public access beyond the "Area Closed" signs at the lower staircase and the emergency access gate ([Exhibit 3](#)). The clear demarcation between permitted and restricted areas will continue to 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. The Commission's staff ecologist, Dr. Laurie Koteen, 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. 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.

Any development that results in restrictions on public access, even on a seasonal basis raises concerns, as discussed in detail below under the Public Access and Recreation section of this staff report. However, and as further discussed below, access is tempered by several limitations, including the protection of fragile resources, restrictions in time, place, and manner according to the facts and circumstances at the site, and whether adequate access exists nearby. 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 permitted 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 (CDP No.

6-93-26 (1994-1999) and CDP No. 6-00-126 (2001-2006)). 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. The Commission also approved several waivers (Nos. 3-13-1175-W, 3-14-1577-W, 3-17-0986-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 during 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 No. 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 largest known aggregation of harbor seals in San

Diego and Orange 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.

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 beach and has been relatively consistent since implementation of the closure in 2014. For example, the largest average number of seals observed on the beach is during the month of May. According to the City's monitoring reports ([Exhibit 8](#)), in 2014, an average of 120 seals were present per observation compared to 141 seals in May 2015, 143 in May 2016, 52<sup>10</sup> in May 2017, and 108 in May 2018.

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, reauthorizing the closure and rope is not expected to substantially affect either the regional seal or fish populations, or the current water quality conditions.

In addition, research out of Scripps Institute of Oceanography<sup>11</sup> has found fish populations in the California Current have declined for four decades with no signs of reversal, reflecting large-scale change in environmental conditions, potentially including the transport of the California Current, salinity, zooplankton productivity, and other factors. At Children's Pool, divers and swimmers have expressed concern about the decreased ability to observe some species of fish. However, the presence of large predators, such as seals, in an ecosystem typically promotes greater overall species richness and diversity, potentially making for a more rewarding wildlife viewing experience.

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 throughout the entire year, as discussed above. A high number of seals are consistently observed hauled out on the beach by the Park Ranger outside of the pupping seasons, particularly in May and June as the seals haul out to molt after their breeding season. The number of hauled out seals also increases as the cooler fall weather arrives. In its approval CDP No. 6-15-0223, the Commission found that, by providing a guideline of the appropriate distance for safe and respectful viewing of the seals, the

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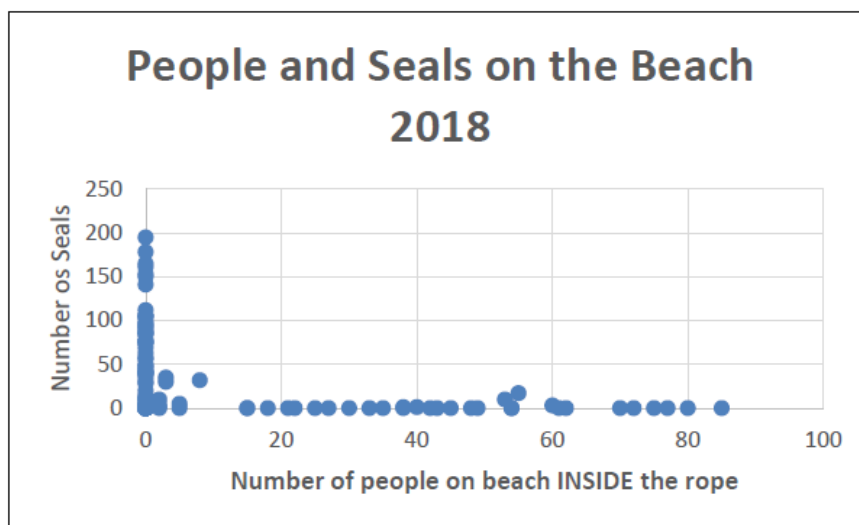
<sup>10</sup> Per the City's 2018 monitoring report, "An inconsistency occurred last May 2017 when a two-thirds drop in the average number of seals was observed. This May 2018, which again was an average May weather-wise, showed a return to the seasonal average observed since 2013 making May 2017 possibly a statistical aberration." ([Exhibit 8](#))

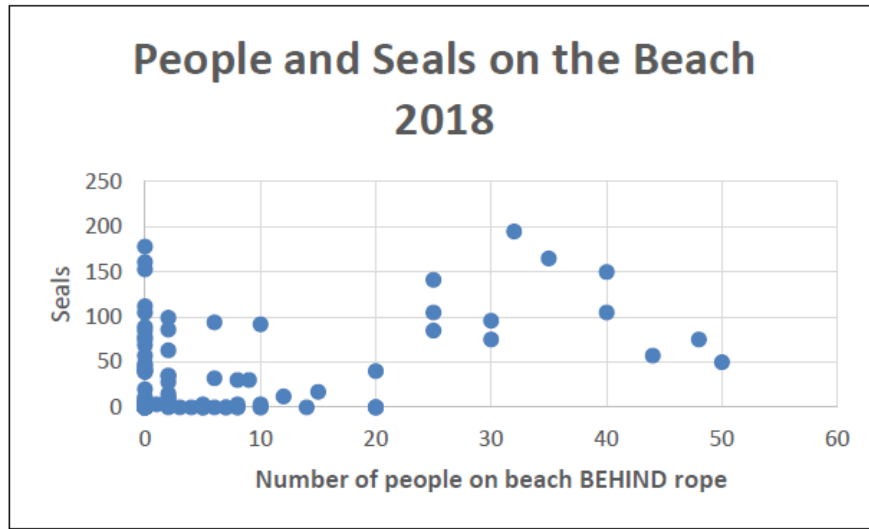
<sup>11</sup> <https://scripps.ucsd.edu/news/californias-fish-populations-are-declining>

proposed rope would minimize human-seal interaction and help maintain a healthy seal population at Children’s Pool Beach to protect marine resources, serve visitors, and fulfill recreational, scientific, and educational purposes, consistent with Section 30230 of the Coastal Act. The current proposal would provide continued seal protection and public awareness after the permit authorization for that permit expires in August 2019.

Special Condition No. 5 of CDP No. 6-11-078 required the City to monitor the beach and collect data on the use of the beach by seals and the effectiveness of the guideline rope ([Exhibit 9](#)). Monitoring was undertaken by the Park Ranger, and two monitoring reports have been submitted since then. The first report covered the period between May 15, 2013 and May 14, 2014; the second report covered May 15, 2014 through December 14, 2014, as the seasonal closure took effect on December 15, 2014 and requires a different monitoring program through CDP No. 6-14-0691. In the first report, the ranger indicated that the rope performed as expected, greatly reducing the amount of seal disturbance by beach visitors. A total of 28 harassment incidents were observed during the first monitoring period, about half of which occurred during non-pupping season months. The second report compared the amount of people seaward, or inside of the rope to the amount of people landward, or behind the rope, to the amount of seals hauled out on the beach. Special Condition No. 2 of CDP No. 6-14-0691 required the City to continue the monitoring reports and four more monitoring reports have been submitted; the third report covered May 16, 2015 through December 14, 2015, the fourth report covered May 16, 2016 through December 14, 2016, the fifth report covered May 16, 2017 through December 14, 2017, and the sixth report covered May 16, 2018 through December 14, 2018.

As depicted in the graphs below, the collected data shows that when there are seals hauled out on the beach, people tend to stay behind the rope and respect the boundary. Thus, the Park Ranger has concluded that the rope is generally effective at keeping people separated from the seals as people mostly stay behind the rope when there are hauled out seals present, and go inside of the rope when there are no seals on the beach.





Therefore, as the rope has been generally effective at reducing human/seal interaction by providing a visual guideline with informative signs about seal protection and sharing the beach, the City has proposed to maintain the rope on the beach outside of pupping season for a period of 10 years. When the beach is open to the public, the guideline rope provides for a maximum amount of public access while maintaining a reasonable level of natural resource protection for the seals.

Combined, the seasonal beach closure and guideline rope have effectively reduced human-caused seal disturbances at Children’s Pool Beach. The Seal Conservancy has indicated that the average number of seals flushed per day has significantly dropped from a peak of 345 flushing incidents in 2013 to only 5 annual flushing incidents in 2018 ([Exhibit 10](#)). To ensure the continued protection of the seals at Children’s Pool, **Special Condition No. 1** of CDP No. 6-14-0691-A1 and **Special Condition No. 2** of CDP No. 6-15-0223-A2 would both be revised to reauthorize the permits for a term of ten years. The City would be required to continue the existing monitoring program throughout the ten-year permit term, with the intention of assessing the level of use of the beach by seals and the effectiveness of the seasonal closure and guideline rope at minimizing harassment of hauled out seals. This will give the Commission the opportunity to review the City’s monitoring and analysis of the effectiveness of implementing both the guideline rope and seasonal closure in conjunction, and to decide if any changes occur over the next ten years that would render either project ineffective or no longer needed.

In conclusion, the Commission’s action approving the seasonal beach closure of Children’s Pool from December 15 to May 15 protects the seals during the most vulnerable stage of their lives when they are pupping, nursing, and weaning pups, consistent with Section 30230 of the Coastal Act. During the remainder of the year, the guideline rope has minimized human-seal interaction and helped maintain a healthy seal population at Children’s Pool Beach; thus, the guideline rope would continue to protect marine resources and fulfill recreational, scientific, and educational purposes, consistent with Section 30230 of the Coastal Act. Furthermore, the closure and guideline rope have been sited and designed to prevent adverse impacts that would degrade this

habitat and the adjacent parks and recreation areas, consistent with Section 30240 of the Coastal Act. Therefore, the Commission hereby finds that the proposed permit amendments, as conditioned, are consistent with the applicable Coastal Act policies regarding protection of marine resources.

#### **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 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. Chapter 3 access policies repeatedly cite the protection of coastal resources: Section 30210 maximizes access with the need to protect “natural resource areas from overuse;” Section 30212(a) exempts the requirement to provide access with new development when access would be inconsistent with the “protection of fragile coastal resources”; Section 30212.5 encourages the distribution of public facilities to avoid “overuse by the public” of an area, and Section 30214 allows the regulation of time, place, and manner of access according to “facts and circumstances” of the particular site, including the site’s capacity to sustain use and limiting public passage due to the “fragility of the natural resources” on the site. Courts have recognized the validity of these limits. (E.g., *Carstens v. California Coastal Com.* (1986) 182 Cal. App. 3d 277, 290 [Coastal Commission to consider environmental concerns as well as public access concerns in granting permits].) In 2018, the appeals court in *Friends of the Children’s Pool v. City of San Diego* agreed that the Commission may select among public trust uses to limit the contact between seals and people. (*Unpub.* [2018 WL 2731698], p. 16.) Moreover, the court found that seasonal closure amounted to a time, place, and manner restriction allowed by Section 30214. (*Ibid.*)

As noted above in the Marine Resources findings, the seals at the haul out site are considered a fragile coastal resource because they are highly vulnerable to frequent flushing which significantly affects their well-being, particularly during pupping season. When the Commission restricts access to protect fragile coastal resources, it requires that any restrictions on access be the minimum necessary to achieve the goal of protecting fragile coastal resources.

As discussed previously, the City has considered and implemented alternatives that are less restrictive on public access. The rope barrier should have been a sufficient means of protecting the seals while maintaining limited but sufficient public access to the water. Unfortunately, the previous shared use guidelines and rope barrier at Children’s Pool Beach 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 refused to adhere to the shared use informational signs containing guidelines to maintain an appropriate distance for safe and respectful viewing of the seals, and notifying the public 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. It is well documented 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 arose, the Park Ranger and lifeguards were regularly called to intervene and/or

mediate<sup>12</sup>. 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. 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). Alternatively, in 2018, the police responded to only 7 calls for disturbing the peace and no calls for battery.<sup>13</sup>

The seasonal beach closure has provided a much clearer, more enforceable line between public access restrictions and seal protection at Children's Pool during the pupping season. As described above, the park ranger and other enforcement personnel were regularly required to intervene in situations where the public does not adhere to the guidelines provided by the Shared Use Policy measures implemented previously, particularly the rope barrier. The issue of seal harassment was 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 seasonal beach closure provides this threshold by prohibiting all public access beyond the "Area Closed" signs at the lower staircase and the emergency access gate ([Exhibit 3](#)), effectively eliminating any gray area in interpretation of where the public is allowed at Children's Pool Beach. The seasonal beach closure has resulted in less enforcement time for the lifeguards and less police involvement, as well as more distinction for the public, as the beach closure and associated signage make it clear where and when public access is restricted. When violations do occur during the five months of public access restrictions, the lifeguards and park rangers have the authority to cite violators at their discretion and police will assist and enforce as needed. The City has indicated that since implementation of the closure, four warnings were issued in 2015 for beach closure violations, seven in 2016, three in 2017, and none in 2018 (although there were two instances of fresh footprints in the sand observed from persons going onto the beach at night).

As proposed, the sandy beach area of Children's Pool would continue to be closed 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 remain 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.

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<sup>12</sup> Lifeguards were also attacked, and at one point, won a restraining order against a zealous seal advocate. (*City of San Diego Lifeguard Service v. Riley* (unpub.) [2006 WL 3424996].

<sup>13</sup> City staff notes the San Diego Police Department no longer has the ability to analyze out of service times.

Outside of pupping season, the rope barrier is intended to continue to reduce the number of conflicts between beach visitors and the seals by providing guidance for a safe distance, or buffer, from the hauled out seals, while maintaining public access to the beach and water through a three-ft. opening. During the seven non-pupping season months of the year, the stairway leading to the beach and the beach upland of the rope will be open and available to the public and the beach will be open for swimming. Individuals are not prohibited from crossing the guideline rope, and the rope is not expected, nor is it intended, to keep people off the beach or out of the ocean. Thus, the proposed project will not have a significant impact on the public's ability to access or recreate at Children's Pool during non-pupping season.

To ensure that the public is aware of the shared use policy at Children's Pool Beach, the existing informational signage is proposed to be maintained on the support posts of the guideline rope, conspicuously posted as consistent with Section 30210 of the Coastal Act ([Exhibit 4](#)). The signage states, in part:

*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 guideline.  
50 feet is the minimum recommended viewing distance.*

This signage, as well as existing signage at the stairway leading to the beach, encourages visitors to maintain a safe and respectful distance from the seals, as mandated by federal and local law, and advises 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. Pursuant to Special Condition No. 5 of the seasonal closure permit, CDP No. 6-14-0691, the City was required to analyze the water quality at Children's Pool and assess methods for improving water quality, including assessing the feasibility of opening the sluiceways in the breakwater, as well as the sand quality and methods for improving sand quality. These studies were submitted by the City and are discussed in the Water Quality findings below.

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 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, and Windansea were all surveyed for Heal the Bay's 2018 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 seasonal closure of the Children's Pool would severely affect the ability of disabled people to access the shoreline. In its approval of CDP No. 6-14-0691, the Commission also required the City to conduct a study to assess the feasibility of providing ADA-complaint access to the sandy beach area of Children's Pool.

The City has evaluated the feasibility of constructing a new ramp or elevator/lift at the Children's Pool that would provide ADA access. However, the ramp would need to connect the lower deck to the beach, located approximately 20 feet below. The ramp would be required to be constructed at an ADA compliant slope of 1:12, which would require over 313 linear feet of ramps and landings. The ramp would extend onto a significant area of the beach and result in a development footprint of approximately 1,500-1,800 sq.ft. (30 ft. wide by 50 to 60 ft. long) ([Exhibit 11](#)). Thus, due to the large footprint that would be required on the beach, the City concluded a ramp would not be feasible. The City has also indicated that an elevator or lift would not be feasible because the installation of the elevator/lift could damage the bluff and would not have the structural complexity to withstand natural forces and sea erosion. The City is also concerned that the elevator/lift would require frequent maintenance due to its location being subject to salt air, water, and sand. Finally, the City sees limited benefits since the elevator/lift would likely be closed for frequent maintenance and while the beach is closed for pupping season.

While Children's Pool Beach does have an "access ramp" to the beach, it is not ADA compliant. The ramp is gated to prevent unauthorized vehicular access, and although the wide bar design of the gate does not strictly prevent pedestrian access the City has recently installed a 30-in. retaining wall below the gate to provide support for the ADA access ramp from Coast Boulevard to the restrooms in the new lifeguard station (discussed further in the Unpermitted Development findings), which further limits access. The City has asserted that its 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.

Some members of the public disagree with the City's assertion and claim that the ramp was historically used by the public. They maintain that the City should restore public access to the ramp and that improvements to the ramp would improve access for the disabled as well as for the general public. The City did analyze the feasibility of improving the existing ramp and determined that it would also be infeasible.

Specifically, the existing ramp has a slope of approximately 30%, is significantly eroded, and drops off steeply on either side ([Exhibit 12](#)). The City has indicated that, in order to open the ramp up to public use, the ramp would need to be improved to ensure compliance with local and state codes for pedestrian ramps. The City claims the amount of money needed for those improvements may trigger the requirement for the ramp to be compliant with federal law, the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.). To comply with ADA standards, the City would need to construct a new ramp that would not exceed a 1:12 slope (36

C.F.R. § Pt. 1191, App. D, § 405.2), which would require a large footprint on the beach similar to a new ramp, discussed above.

In 2016, the City completed demolition of the existing lifeguard station and construction of a new three-level, 1,900 sq. ft. lifeguard station at Children's Pool. The new lifeguard station includes a 10 ft. wide ADA-compliant pedestrian ramp from the sidewalk at Coast Boulevard to the restrooms at the lower level of the lifeguard station and breakwater viewing area. However, the City incorporated the existing stairs into its design and did not extend the ramp to the beach. The City has indicated that the City attorney evaluated legal requirements to provide access to the beach during the planning of the lifeguard station in 2012; however, the City attorney at the time opined that the improvements for the replacement of the lifeguard station did not trigger the need to provide a ramp to the beach and that the project was only required to provide a ramp to the restrooms on the lower level. Although the City has improved ADA-access by providing a ramp to the new restrooms, there is no existing ADA-access to the beach that would accommodate a person in a wheelchair.

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. The City has indicated that it is considering providing ADA accessible ramps to the beach at a more feasible location in proximity to the Children's Pool, including Marine Street and Sea Lane, which are located approximately one mile south of Children's Pool.

Although there are currently no ADA accessible facilities at Children's Pool that connect to the beach, there are many San Diego beaches that are easily accessible to beach-goers with disabilities and have Health Department-approved water quality. South Mission Beach has three accessible fixed concrete ramps between San Fernando and West Mission Bay Drive. There are seven locations with removable beach ramps that are available from the second week in May through the third week in September: La Jolla Shores, by the main lifeguard tower; Pacific Beach, in front of the main lifeguard tower at Grand Avenue; 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 beach wheelchair for disabled visitors and is a flat, accessible beach. Beach wheelchairs can also be found, free of charge, at Ocean Beach, Mission Beach, and Pacific 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 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.<sup>14</sup> 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 and 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 helped draw huge numbers of people to this coastal area, both locally and from around the world. According to the San Diego Tourism Authority, approximately 2.7 million people visited La Jolla area beaches in 2017. 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.

Members of the public have identified that there are additional seal rookeries establishing in San Diego County, namely, South Casa Beach and Birdrock in La Jolla, and Cabrillo National Monument in Point Loma. Staff has reached out to NMFS and has not been able to verify that there is an established rookery at Birdrock. In regards to Cabrillo National Monument, National Park Service staff has indicated that, while seals are known to haul out, they have not established a rookery at the park. NMFS staff did indicate that pupping does occur at South Casa Beach, adjacent to Children's Pool; however, the City has not proposed any actions to limit access at this beach.

As noted in Section 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, in the past, the public 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 amendment will continue to impact public access from December 15 to May 15 of each year, this is not only necessary but also provides the least impacts on access while effectively protecting 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 impact is minimized to the extent feasible. The closure is a limited restriction for a limited time of the year to ensure the seals and their pupping habitat are effectively protected. Additionally, Special Condition No. 1 limits the term to ten years, in order for the Commission to be able to review the

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<sup>14</sup> The Legislature recognized the value of observing the animals by amending the Trust to add an additional use of the Children's Pool Beach for a "marine mammal park for the enjoyment and educational benefit of children." (Stats. 2009, Ch. 19.)

site and impacts at that time. There is clear evidence that the seals may be subject to harassment and endangerment if the beach is not closed off during pupping season. The seasonal beach closure will continue 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 and guidance rope, as conditioned, are consistent with Sections 30210, 30212, and 30214 of the Coastal Act because public access to the beach will be maintained for seven months of the year while providing protection of the haul out site, or natural resource area, from overuse by people the other five months of the year.

Therefore, the Commission finds that the proposed amendments, as conditioned, are consistent with all of the applicable Coastal Act policies regarding Public Access and Recreation.

## **E. WATER QUALITY**

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

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 water quality as well, which include the following:

*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...*

*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...*



*Conserve and enhance the natural amenities of the community such as its views from identified public vantage points, (as identified in Figure 9), open space, hillsides, canyons, ocean, beaches, water quality, bluffs, wildlife and natural vegetation, and achieve a desirable relationship between the natural and developed components of the community.*

Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be maintained and, where feasible, restored. Since September 1997, a water quality advisory has been posted by the San Diego County Health Department at Children's Pool Beach advising against water contact as it poses a serious health risk. As response to testimony by opponents of the seasonal beach closure that the seals at Children's Pool impact water quality, Special Condition No. 5 was added to CDP No. 6-14-0691 by the Commission through an amending motion by Commissioner McClure. The condition required the City of San Diego to conduct a feasibility study that analyzed sand and water quality and methods to improve sand and water quality at Children's Pool, consistent with Section 30231 of the Coastal Act. To analyze the water and sand quality at Children's Pool, the City considered water quality data from the Bacteria Total Maximum Daily Load (TMDL) monitoring program and data from the Children's Pool Sand Study Technical Report.

The Clean Water Action Section 303(d) List is the state's listing of impaired and threatened waters. In 2002 and in 2010, the 303(d) List indicated that the greatest cause of waterbody impairments in the San Diego region was elevated bacteria levels, which impact recreational activities and cause greater potential for human health risks. The Children's Pool is listed in both the Bacteria TMDL and the 2010 303(d) list due to fecal indicator bacteria (FIB). The Bacteria TMDL requires the City to monitor, assess, and reduce FIB loading to Children's Pool. Compliance with final TMDL numeric targets is considered restoration of the impaired waterbody.

The Bacteria TMDL compliance monitoring dataset is the most comprehensive, continuous water quality dataset collected at Children's Pool, because samples are collected year-round during both wet and dry weather conditions at a rate of more than 40 samples per year. It includes separate evaluations of geometric mean<sup>15</sup> exceedance rates on a seasonal basis, as well as an evaluation using wet weather<sup>16</sup> single-sample maximum exceedance rates. The single-sample maximum numeric targets are required to be achieved during wet weather, with an allowable exceedance frequency of 22%. For dry weather days, the 30-day geometric mean numeric targets and single-sample maximum numeric targets must be achieved with a 0% exceedance frequency. Children's Pool has been in compliance with TMDL numeric targets since 2015, during both wet and dry weather conditions (with the exception of a 5% exceedance

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<sup>15</sup> Geometric means are logarithmic means and considered more representative of ambient water quality than a single sample assessment (United States Environmental Protection Agency [EPA], 2012).

<sup>16</sup> Separate dry weather and wet weather TMDLs were calculated for each type of FIB in recognition that exceedances of the water quality objectives for water contact recreation may be partially due to natural sources and, in response, the wet weather TMDLs were developed to include an allowable exceedance frequency based on a reference system approach designed to account for bacterial loads contributed from natural sources.

in 2018). Thus, these results indicate an improvement in water quality at Children's Pool since its inclusion in the TMDL.

It is important to note that animal bacteria do not present the same level of risk that is present in sewage and other anthropogenic sources of bacteria,<sup>17</sup> and the samples for bacteria do not differentiate between human and animal sources. It is possible to determine the source (human versus other warm blooded animals) of bacteria using Quantitative Microbial Risk Assessment (QMRA). By using QMRA, it would be possible for the City to make a case to increase the allowable level of bacteria in the TMDL, as long as it isn't from human sources. The City has indicated that they are considering using QMRA. However, since there have not been significant TDML exceedances, it is unclear if QMRA would be useful in this case.

State law requires local health officers to conduct weekly bacterial testing of waters between April 1 and October 31 adjacent to public beaches that have more than 50,000 visitors annually and that are near storm drains flowing in the summer. (See Health & Safety Code, § 115880(c)(3).) County Health Officers can take discrete actions to address elevated bacteria levels at a public beach. These actions include beach advisories, issued when testing indicates that one or more bacterial levels exceed the Ocean Water Contact Sport Standards issued by the California Department of Public Health; beach closures that are the result of sewage spills; rain advisories issued during and after rainstorms due to the ability of rainwater to carry pollutants; and chronic postings which can be permanently posted as a precautionary measure in areas where sources of FIB are frequently present and identifiable. In this case, Children's Pool has had a chronic advisory posting since 1997 warning of bacteria due to limited tidal exchange in the pool and the presence of seals. This posting is not placed or removed as a result of current water quality monitoring results.

The City analyzed the sand quality at Children's Pool Beach by sampling sand for FIB as well as mercury, which is considered to be a potential sand quality impairment in recent research where pinniped (seal and sea lion) molting and excrement are potential sources of mercury to beaches. Nine monitoring events took place from June 7 through December 8, 2016. Sand samples were also collected at the adjacent South Casa Beach to provide a reference for the samples collected at Children's Pool. FIB were present in the sand at Children's Pool, and concentrations were elevated compared with those at the reference beach. It is important to note that there are no objective standards related to evaluation of FIB concentrations in beach sand; the health standards for how much FIB is safe is based on tests of the water (e.g., parts per liter) and there is no equivalent standard for FIB in sand. Mercury concentrations at Children's Pool were three to four orders of magnitude lower than the residential soil screening level for oral ingestion. Based on these factors, the City found that Children's Pool Beach is not an environmental point source for mercury and the risk to human health is likely negligible.

Finally, the Sand Study found mercury concentrations were significantly higher during June when peak average daily seal populations were present, though still well below the residential

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<sup>17</sup> See <http://www.sccwrp.org/about/research-areas/microbial-water-quality/> [Non-human sources of contamination much less likely to contain pathogens infectious to other humans.]

soil screening level for oral ingestion. FIB concentration results were inconclusive when compared to seal counts, however, the City contends that multiple lines of evidence do implicate the seal population as a predominant source of FIB in the water column, via the sand.

The City evaluated several methods to improve sand and water quality including dredging, beach sand replacement, deterrence or removal of wildlife or wildlife scat, and opening the sluiceways to promote water circulation. The City found that dredging would likely improve sand and water quality temporarily, however, there would be a temporary loss in beach area available for seal haul-out and public use, and maintenance would be needed every two to five years, resulting in operational and permitting costs that would make the project infeasible. Sand replacement would temporarily improve sand and water quality although there would be concerns with impacts to the beach ecology (including habitat conversion, alterations in diversity, abundance, and distribution), as well as the physical and chemical composition of the sand, as matching the characteristics of the source sediment to the existing beach sediment is important to the ultimate recovery of the sandy beach ecosystem and preservation of the infaunal communities. Natural conditions would likely also re-establish with the continued use by the seals. Except under limited circumstances, the MMPA bars any removal of marine wildlife or other forms of take. While wildlife removal would likely improve sand and water quality, wildlife protection and viewing opportunities would decrease. There are also no known animal-safe methods for removal that guarantee long-term deterrence. As such, removing the seals is also not feasible. Finally, the City analyzed the feasibility of opening the sluiceways, which are located below the breakwater; however, the sluiceways have been permanently sealed with concrete and removing the concrete could compromise the integrity of the structure. In addition, while opening the sluiceways would likely increase sand quality, there would be an increased exposure to waves and currents in the pool which might deter use by both wildlife and beachgoers. As such, the City also found opening the sluiceways to be infeasible.

In summary, the City has completed a comprehensive assessment of sand and water quality at Children's Pool by collecting and assessing both sand and water samples from 2015–2018, and water sampling continues under the TMDL program. In total, the City collected approximately 100 sand samples and 120 water samples during this period. The Children's Pool Sand Study indicated that all types of FIB were present in the sand and that concentrations were elevated compared with those of a reference beach, although there are no objectives or standards available for evaluation of FIB concentrations in beach sand. The study also showed that FIB concentrations in sand and water are likely linked. However, Children's Pool has been in compliance with water quality Bacteria TMDL numeric targets since 2015, with the exception of a 5% dry weather sample exceedance in 2018, as documented by annual compliance monitoring reports. These results indicate an improvement in water quality at Children's Pool since its inclusion in the Bacteria TMDL. Regardless, animal bacteria do not present the same level of risk that is present in sewage and other anthropogenic sources of bacteria and the samples for bacteria do not differentiate between human and animal sources. The City also evaluated options to improve water quality, however, these options would adversely impact public access and marine resources, and were deemed infeasible. Finally, while Children's Pool has had a chronic advisory posting since 1997 due to limited tidal exchange in the pool and the presence of seals, this posting is not placed or removed as a result of current water quality monitoring results.

Therefore, the Commission finds that the project, as conditioned, is consistent with Section 30231 of the Coastal Act.

#### **F. UNPERMITTED DEVELOPMENT AT ADJACENT LIFEGUARD STATION**

On December 14, 2011, the City of San Diego approved CDP No. 549626 for the demolition and reconstruction of the existing lifeguard station at Children's Pool, which is located within the City's permit jurisdiction. In 2018, a member of the public contacted Commission enforcement staff to report that an approximately 30 in. high retaining wall had been constructed under the existing emergency access gate on the northwest side of the new lifeguard station and two public parking spaces had been converted into lifeguard parking. Commission staff contacted the City regarding the work and City staff indicated that the retaining wall was necessary to support the new ADA ramp from Coast Boulevard to the restrooms in the new lifeguard station. Specifically, the ramp as originally constructed did not pass the ADA inspection because it was too steep. Thus, the City's contractor was required to re-pour the concrete to create a more gradual slope, which required the ramp to be raised, and in turn required the construction of the retaining wall to support the thicker ramp. The City indicated that the retaining wall is also intended to prevent further erosion of the exposed bluff below the emergency access gate. The City asserted that this work was authorized as part of CDP No. 549626. However, after reviewing the Notice of Final Action for CDP No. 549626, which is within the Commission's appeal jurisdiction, Commission staff determined that neither the retaining wall nor the conversion of public parking spaces were included in the City-issued CDP and therefore constituted unpermitted development. According to the materials provided by City staff, the incorporation of the retaining wall into the approved project took place after the Commission received the Notice of Final Action from the City. Thus, neither the retaining wall nor the parking conversion was reviewed by Commission staff, when determining whether to appeal the City's action. In 2018, however, the City replaced the two public parking spaces as part of the Coast Boulevard Walkway Improvements project. Enforcement staff has verified the parking has been restored, thus correcting that issue.

Given that construction of the retaining wall is development that requires a Coastal Development Permit, as well as the potential impacts to public access resulting from construction of the retaining wall and the concern on behalf of interested parties, Commission staff advised City staff of the need to properly seek Coastal Development Permit authorization for the retaining wall after-the-fact, which was memorialized in a March 28, 2018 letter from Commission staff to the City. Commission staff met with City staff on May 23, 2018 and October 16, 2018 to discuss the CDP process. Staff subsequently agreed that the City would proceed with substantial conformance review for the retaining wall, which would be noticed to the public and appealable to the Commission.

The City has initiated but not yet completed the substantial conformance review for the unpermitted retaining wall and has identified that its staff are still in the process of finalizing the substantial conformance review, which includes two meetings with the La Jolla Community Planning Group, and should be completed by June 7, 2019, if an appeal is not received. If an appeal is received, the approval would be placed on hold until such time as the project can be reviewed by the City Council. If no appeals are received, the City could issue a Notice of Final Action to the Commission on June 10<sup>th</sup>. The Commission and public would then have 10 working days to appeal the City's decision. Commission staff has received correspondence

requesting that the Commission review the retaining wall as part of these proposed amendments, but given that the City has not yet completed its substantial conformance review process and has not submitted a Notice of Final Action, this development is not currently before the Commission for action.

Although construction of the retaining wall has taken place prior to submittal of these applications, consideration of these applications by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and as though the development was not in place. Commission approval of these applications pursuant to the staff recommendation is unrelated to the unpermitted development discussed in this section and will not bring the unpermitted development into conformance with coastal development permit requirements.

### **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; however, based on a jurisdictional boundary determination conducted on August 19, 2011 by the Commission's Mapping Department, Children's Pool Beach is located in an area where the Commission has retained permit jurisdiction ([Exhibit 6](#)). 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. Based on this boundary determination, the Commission is asserting jurisdiction over Children's Pool Beach, even though the City has a certified LCP. Thus, the standard of review for the proposed project is the Chapter 3 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 conditioned, the proposed project is consistent with the certified LCP and all applicable Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City 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 projects have been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As the proposed projects would provide increased protection of marine resources, no significant adverse effects on the environment are anticipated. Mitigation

measures, including conditions addressing assumption of risk, a ten-year permit authorization period, and a monitoring plan to record and monitor the effectiveness of the seasonal beach closure and guideline rope 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. In addition, the City determined that the proposed developments are categorically exempt under CEQA guideline sections 15304 (minor alterations to land) and 15333 (small habitat restoration projects). (Cal. Code of Regs., tit. 14.) Therefore, the Commission finds that the proposed projects are the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **Appendix A – Conditions of Approval**

### **Permit No. 6-14-0691**

#### **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 or 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.

#### **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 no 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.

**5. Feasibility Study.**

By acceptance of this coastal development permit, the applicant/permittee agrees that, prior to the submittal of any request for a new coastal development permit or an amendment to this coastal development permit to continue implementation of a seasonal beach closure and installation of associated signage at Children's Pool Beach, after the five (5) year authorized period of this coastal development permit expires, the applicant/permittee shall complete a feasibility study that shall address, the following three elements and shall be submitted with any new coastal development permit application or permit amendment application:

- a. Feasibility of providing ADA-compliant access to the sandy beach area of Children's Pool Beach.
- b. Analyze the water quality and methods for improving the water quality at Children's Pool Beach, including the feasibility of opening the sluiceways in the breakwater.
- c. Analyze the sand quality and methods for improving sand quality at Children's Pool Beach, including dredging.

**Permit No. 6-14-0691-A1**

**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)~~ ten (10) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-14-0691-A1, 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. [Special Condition No. 2 of CDP No. 6-14-0691 remains unchanged and in effect]
3. [Special Condition No. 3 of CDP No. 6-14-0691 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-14-0691 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-14-0691 is deleted]

**Permit No. 6-15-0223**

**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 or 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.

**SPECIAL CONDITIONS**

This permit is granted subject to the following special conditions:

1. **Revised Final Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for review and written approval by the Executive Director, final site plans for the proposed development. Said plans shall be in substantial conformance with the plans submitted with this permit application by the City of San Diego on March 4, 2014, except they shall be revised to reflect the following:
  - A. The rope shall be removed during the seasonal closure each year, which currently runs from December 15 to May 15, in order to reduce visual impacts. The foundations, posts, and signage may remain.

The permittee shall undertake 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 legally required.

**2. Permit Term.**

- A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of four (4) years, commencing upon the date of Commission approval of CDP No. 6-15-0223, after which time the authorization for continuation or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of a guideline rope 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 installation and maintenance of a guideline rope at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease use of the guideline rope.
- 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.

**3. 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 guideline rope at Children's Pool Beach. The plan shall include, but not be limited to, the following criteria:

- i. A physical description and exhibit delineating the precise location of the guideline rope and associated signage at Children's Pool;
- ii. 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 guideline rope at minimizing harassment of hauled-out seals with both methods employing, at a minimum, the procedures described in section A(iii) and A(iv), below, of this special condition;
- iii. Upon issuance of this coastal development permit, 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 injured or sick seals rescued by SeaWorld, 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 gazebo, the number of harassment instances, the number of citations and warnings issued, the outcomes of issued citations and warnings if feasibly available, the tide, the weather including water and air temperature, and the date. Recording according to these directions shall take place at least 16 days per month, including at least two weekend days and one holiday, if the month contains a federal or state holiday. Measurements shall be recorded a minimum of 3 times per day, at 10 AM, 1 PM, and 4 PM or as close to those times as feasible;

- iv. Provisions for taking measurements of the number of harassment instances, including noting activities that would likely qualify as harassment consistent with relevant regulatory definitions of harassment (e.g. seals flushing into water) under the Marine Mammal Protection Act (16 U.S.C. 1631 et seq.; 50 C.F.R., § 18.3).
- 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:
- i. All records of measurements, analyses and conclusions created in conformance with the approved Monitoring Plan;
  - ii. An evaluation of the condition and performance of the approved development, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the development;
  - iii. Recommendations for repair, maintenance, modifications, or other work to the development; and
  - iv. Photographs taken from pre-designated sites that are annotated to a copy of the site plans indicating the condition, performance, and effectiveness of the development.

If a monitoring report contains recommendations for repair, maintenance, modifications, or other work on the project, 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 Coastal Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**4. Assumption of Risk, Waiver of Liability and Indemnity Agreement.**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, and flooding; (ii) to assume the

risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

**5. 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.

**Permit No. 6-15-0223-A1**

1. [Special Condition No. 1 of CDP No. 6-15-0223 remains unchanged and in effect]

**2. Permit Term.**

- A.** This coastal development permit authorizes development on a temporary basis only. The development is authorized until August 14, 2019 ~~for a period of four (4) years~~, commencing upon the date of Commission approval of CDP No. 6-15-0223-A2, after which time the authorization for continuation or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of a guideline rope 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 installation and maintenance of a guideline rope at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease use of the guideline rope.

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.

3. [Special Condition No. 3 of CDP No. 6-15-0223 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-15-0223 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-15-0223 remains unchanged and in effect]

**Permit No. 6-15-0223-A2**

1. [Special Condition No. 1 of CDP No. 6-15-0223 remains unchanged and in effect]

**2. Permit Term.**

- A.** This coastal development permit authorizes development on a temporary basis only. The development is authorized ~~until August 14, 2019~~ for a period of ten (10) years, commencing upon the date of Commission approval of CDP No. 6-15-0223-A2, after which time the authorization for continuation or retention of any development approved as part of this permit shall cease. After the authorization for the development expires, the retention of a guideline rope 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 installation and maintenance of a guideline rope at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease use of the guideline rope.

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.

3. [Special Condition No. 3 of CDP No. 6-15-0223 remains unchanged and in effect]
4. [Special Condition No. 4 of CDP No. 6-15-0223 remains unchanged and in effect]
5. [Special Condition No. 5 of CDP No. 6-15-0223 remains unchanged and in effect]



Appendix B – Substantive File Documents

- CDP No. 6-14-0691/City of San Diego Park and Recreation Department
- CDP No. 6-15-0223-A2/City of San Diego Park and Recreation Department
- CDP No. 6-11-078/City of San Diego Park and Recreation Department
- CDP No. 6-14-0691/City of San Diego Park and Recreation Department
- CDP No. 6-93-026/City of San Diego Park and Recreation Department
- CDP No. 6-00-126/ City of San Diego Park and Recreation Department
- LCP Amendment No. LCP-6-LJS-14-0607-1/City of San Diego
- La Jolla Community Plan (certified Land Use Plan)
- 1931 Tidelands Trust
- Senate Bill 428 effective as of January 1, 2010
- City of San Diego Resolution R-305837 passed by City Council on May 17, 2010
- City of San Diego Resolution R-308759 passed by City Council on March 12, 2014
- Withdrawn CDP Application No. 6-05-098
- Appeal No. A-6-LJS-08-065
- Appeal No. A-6-LJS-10-009
- City of San Diego CDP No. 545642
- City of San Diego CDP No. 701673
- City of San Diego Site Development Permit No. 782184