

CALIFORNIA COASTAL COMMISSION

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Filed: 3/18/22
180th Day: 9/14/22
Staff: K. Carney-SD
Staff Report: 3/24/22
Hearing Date: 4/8/22

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-22-0113

Applicant: City of San Diego Parks & Recreation
Department

Agent: Cherlyn Cac

Location: Point La Jolla Bluffs, La Jolla, San Diego, San Diego
County (APN 350-010-0100)

Project Description: Seasonal closure of Point La Jolla bluffs during
California sea lion pupping season from May 25 to
September 15, including installation of a K-rail barrier
to create an ocean access path to Boomer Beach,
signage, and a chain at the top of access stairway.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

In response to reports of harassment and conflicts between the public and California sea lions, the City of San Diego Parks and Recreation Department (City) proposes to close the Point La Jolla bluffs area to public access during California sea lion pupping season.

Over the last year, City and Commission staff have received numerous complaints from members of the public of increased harassment and conflicts between humans and sea lions at Point La Jolla. There have been many occurrences of people disregarding

distancing guidelines with reports of people attempting to touch the sea lions, take close photographs (i.e., selfies), or act in ways that would likely be considered harassment, despite signage placed by the City indicating that it is illegal under federal law to harass marine mammals. Thus, on August 10, 2021, the City issued an emergency Coastal Development Permit (CDP) for the immediate and temporary closure of Point La Jolla to public access until September 15, 2021. The emergency closure included signage, closure of the wooden access stairway, and monitoring by City Park Rangers. Based on information provided by volunteer docents, the 2021 emergency closure was successful in keeping the public away from the animals and reducing incidents between people and sea lions during the pupping season. The subject application is the follow-up CDP to the City's emergency CDP.

The City proposes to close Point La Jolla to public access from May 25 to September 15. Signage will be installed indicating that the area is closed to the public, a chain will close the wooden access stairway, and two K-rails will be placed on the western end of the closure area to create a path from the top of the bluff/concrete walkway down to Boomer Beach to allow for limited ocean recreation access during the seasonal closure. The public will be allowed to transit through the K-rails between the top of the bluffs to the water to participate in ocean recreation activities, including swimming, bodysurfing and spearfishing, and a "Water Access Only" sign will be installed in front of the ocean access areas. One to two City Park Rangers will be assigned to monitor the area year-round during peak hours from 10 a.m. to 6 p.m. or 11 a.m. to 7 p.m. depending on the season. Dogs will be prohibited in Point La Jolla year-round.

The primary issues raised by the proposed project relate to Coastal Act requirements to protect marine resources in a manner that will sustain the biological productivity and maintain healthy populations of marine species while maximizing public access and recreation to the coast.

The potential adverse impacts of disturbance to hauled out sea lions are particularly significant during the vulnerable mating and pupping season when sea lions haul out (i.e., exit the water) and remain on the beach and bluffs for longer periods of time to prepare for birth, give birth, nurse their pups, and mate. While the City's proposed closure period generally coincides with the peak sea lion pupping season, based on discussions with experts and review of scientific literature, the Commission's ecologist recommends that the closure begin on May 1 and extend through October 31st to capture the full extent of the sea lion mating and pupping season. This would include time for pregnant females to haul out and prepare for birth, a four-month period for pups to adequately bond with their mothers and develop swimming skills after birth, and a buffer to reduce public safety concerns from aggressive animals during mating season. Therefore, **Special Condition No. 1** requires the City to revise the seasonal closure to extend from May 1 to October 31.

To inform the public of the seasonal closure and the year-round requirements to maintain a safe distance from the sea lions, **Special Condition No. 5** requires the City to submit a final signage plan consistent with the one submitted with this application and that includes signs for posting both during the seasonal closure and outside of the seasonal closure. However, the "Area Closed" signs proposed to be installed during the

seasonal closure shall be revised to add language indicating “Sea Lion Pupping and Mating Season” so that members of the public understand the purpose of the seasonal closure.

To assess the on-going effectiveness of the seasonal closure and determine if any significant changes have occurred **Special Condition No. 3** requires that the City prepare and submit a monitoring plan that assesses a) the level of use by sea lions of the haul out site at Point La Jolla, and b) the effectiveness of the seasonal closure at eliminating harassment of hauled out sea lions. The monitoring reports will be submitted to the Commission by January 1 of each year, at which point the Executive Director will review the results and assess the need for any changes to the seasonal closure length and spatial extent through a CDP amendment.

It is possible that changed circumstances at Point La Jolla may negate the need for perpetual seasonal public access restrictions in the future, such as natural migration of the sea lions to another area. It is also possible that the allowance for ocean access to the water at Boomer Beach may not adequately protect the sea lions. For that reason, **Special Condition No. 2** limits the permit term to seven (7) years and requires the City to apply for an amendment or new coastal development permit to continue authorization of the public access restrictions. Further, a permit term of seven years will generally align with the end of the Commission’s approvals for a similar seasonal closure to protect harbor seals from December 15 to May 15 at nearby Children’s Pool. By aligning the permit terms of these CDPs, the City and the Commission will have the opportunity to holistically review the issue of marine mammal management in La Jolla.

Based on the outcome of the City’s emergency seasonal closure, it is anticipated that the proposed project will effectively eliminate or reduce sea lion harassment during the vulnerable sea lion pupping season. However, it is possible that harassment may begin again once public access restrictions are lifted. Therefore, **Special Condition No. 4** requires the City to submit a long-term management plan for Point La Jolla by November 1, 2022 that includes strategies to reduce harassment outside of the pupping season while maximizing public access.

In implementing the public access policies of the Coastal Act, the Commission must consider 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 to provide marine resource protection during sea lion pupping and mating season. The City has tried various means of protecting the sea lions without resorting to a seasonal closure, but warning signage alone proved ineffective. The proposed closure will provide a much clearer, more enforceable line between public access restrictions and sea lion protection and is expected to eliminate or significantly reduce the sea lion harassment and disturbance by the public during a vulnerable life stage. The seasonal closure will improve the protection and enhancement of the sea lion population, consistent with Coastal Act Section 30230. During the seasonal closure, the public walkway along the top of the bluff, which provides a unique public area to walk and observe the sea lions and their pups, will remain open to public access. Further, the City’s proposal provides a means for the public to transit from the top of the bluffs to the water at Boomer Beach, allowing

for ocean recreation activities (e.g., swimming, bodysurfing, spearfishing) to continue even during the seasonal closure. In the other six non-pupping season months of the year, public use of the bluffs and surrounding waters would be restored.

In late 2021, members of the public reported to Commission staff that unpermitted development has occurred on the subject site, including the construction of a wooden public access stairway at the eastern end of the project site sometime between 1987 and 2002. Although public access to the bluffs is available throughout the project area since there is no fence and people can easily step over the concrete retaining wall, the stairway provides convenient access down to the bluffs. During the seasonal closure, the City proposes to install a chain and sign across this wooden stairway to close access to Point La Jolla. The Commission and the City have no permit history for this stairway. Commission staff recommended that the City address the unpermitted development as part of the subject permit application; however, the City declined to include after-the-fact authorization for this stairway as part of this CDP, but has indicated that they will process a separate CDP in the future. Any CDP issued by the City for the wooden stairway would be appealable to the Commission and, moreover, if it remains unpermitted the Commission's enforcement staff will consider options to address the unpermitted development through a separate enforcement action.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0113, as conditioned. The motion is on page 6. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

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[Exhibit 6 – Proposed Signage Plan](#)

[Exhibit 7 – Wooden Stairway Historic Photos](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-22-0113 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

- 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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Revised Final Plans.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, final site plans for the proposed development. Said plans shall be in substantial conformance with the plans submitted by the City of San Diego on March 18, 2022, except that they shall be revised to reflect the following:

- (a) The seasonal closure shall extend from May 1 through October 31 of each year.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. Permit Term.

- (a) This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of seven (7) years, commencing upon the date of Commission approval of Coastal Development Permit No. 6-21-0113, 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 seasonal closure and associated development at Point La Jolla will require the issuance of a new coastal development permit or an amendment to this coastal development permit.
- (b) If the permittee wishes to retain the project beyond the seven-year term for which this permit provides authority and to maintain the seasonal closure, then no later than six months prior to the end of that seven-year term, the permittee shall submit a complete coastal development permit amendment application for the reauthorization of the seasonal closure. The amendment application shall, at a minimum, include the results of the required monitoring reports in order to evaluate the effectiveness and impacts of the project; address changed circumstances and unanticipated impacts; consider modifications to the boundaries and timing of the closure; and consider measures necessary to minimize any adverse impacts to coastal resources or public access resulting from the continuation of the seasonal closure. Failure to either (1) obtain a permit amendment authorizing the permittee to retain the development for an additional term or (2) remove the project shall constitute a violation of the terms and conditions of this Coastal Development Permit. The Executive Director may grant the permittee additional time to file the application for good cause. If the permittee does not obtain a coastal development permit or amendment from the California Coastal Commission to continue implementation of seasonal closure and installation of associated development at Point La Jolla prior to the date that authorization for the development expires, the City shall cease implementation of the seasonal 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, unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

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 seasonal closure at Point La Jolla. The plan shall include, but not be limited to, the following criteria:
- (i) A physical description and exhibit delineating the precise location of the public access restrictions and associated signage at Point La Jolla;
 - (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 (frequency and spatial extent) by sea lions of the haul out site at Point La Jolla and Boomer Beach throughout the year and the method of determining the effectiveness of the seasonal beach closure at minimizing harassment of hauled out sea lions with both methods employing, at a minimum, the procedures described in section 3 and 4, below, of this special condition;
 - (iii) Upon implementation of the seasonal closure, a qualified biologist, environmental resources specialist, park ranger, lifeguard, and/or City-trained volunteer shall record the number of sea lions hauled out at Point La Jolla within the closure area, the number of sea lions hauled out within the "ocean recreation accessway" and Boomer Beach, the number of people present on the bluffs, the number of people present on the concrete walkway at the top of the bluffs, the number of people transiting the "ocean recreation accessway," 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 and specifically including at least two Saturdays and two Sundays each month, and Memorial Day, July 4th, and Labor Day. 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;
 - (iv) 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. sea lions flushing into water) under the Marine Mammal Protection Act (16 U.S.C. 1362(18)(A); 50 C.F.R., § 18.3).

- (b) The City shall submit, for the review and written approval of the Executive Director, on an annual basis and by January 1 of each year, 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) Recommendations for repair, maintenance, modifications, or other work to the development; and
 - (iii) Photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the condition, performance, and 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 City shall submit, for the review and written approval of the Executive Director, by August 1, 2022, an interim update that includes all raw monitoring data collected thus far during the seasonal closure per subsection (a)(iii) above.
- (d) If, based on the required monitoring report and/or first-year interim data update, the Executive Director determines that the seasonal closure is not significantly reducing conflicts between humans and sea lions and harassment incidents continue, such as due to the ocean recreation accessway to Boomer Beach, the Permittee shall apply for a coastal development permit or amendment within three months of the Executive Director's determination to evaluate and remedy any impacts.
- (e) 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 for any proposed minor deviations.

4. Long-Term Management Plan.

Prior to November 1, 2022, the applicant shall submit to the Executive Director for review and written approval a Long-Term Management Plan for managing public access and marine mammal interaction at the project site. The Long-Term Management Plan shall be prepared in consultation with a qualified biologist or marine mammal expert, as well as appropriate state and federal agencies (i.e., NOAA). The plan shall include measures for the long-term management of Point La Jolla, including outside of the seasonal closure time period, and shall consider strategies to improve the enforcement

capabilities of City Park Rangers and engineering solutions, such as installing a fence/railing along the project area.

5. Revised 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 on March 18, 2022 and as shown in Exhibit 7 except that the program shall be revised to reflect the following:

- (a) The “Area Closed” signs to be installed during the seasonal closure shall be revised to add that the closure is for “Sea Lion Popping and Mating Season.”

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 for any proposed minor deviations.

6. Liability for Costs and Attorney Fees.

By acceptance of this coastal development permit, the applicants 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.

7. Assumption of Risk, Waiver of Liability and Indemnity.

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, bluff retreat, and erosion, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee 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.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

Project Location

The project site is Point La Jolla, an approximately 0.7-acre area consisting of coastal bluffs and a rocky outcropping located in the La Jolla community of the City of San Diego. Point La Jolla is north and west of Ellen Browning Scripps Park and La Jolla Cove Bridge Club and is between Boomer Beach and La Jolla Cove ([Exhibit 1](#)). Children's Pool Beach, the popular beach protected by a seawall/breakwater and known for its harbor seal population, is approximately 0.4 miles south of Point La Jolla. Point La Jolla is also located immediately downcoast from La Jolla Cove, another popular beach. Point La Jolla is designated as "Parks, Open Space" in the City of San Diego's certified Land Use Plan (La Jolla Community Plan and Local Coastal Program Land Use Plan). Point La Jolla and the surrounding area provide recreational and educational opportunities for swimmers, divers, tourists, scientists, and the general public through its provision of lifeguard facilities, large grassy park, paved walking path with public view points, parking along Coast Boulevard, benches, and restrooms/rental facilities.

The Matlahuayl State Marine Reserve is located immediately north of Point La Jolla. This Marine Protected Area (MPA) is managed by California Department of Fish and Wildlife and is afforded the highest level of protection authorized for MPAs. Fishing and collecting are prohibited within the 1.04 sq. mile area to protect the reefs, kelp forests, surfgrass beds, and sandy floor at the head of the La Jolla Submarine Canyon. The deepwater canyon funnels deep, cold, nutrient-rich waters into the reserve and surrounding area, helping to support an array of wildlife. Prior to its MPA status, this area was protected as San Diego-La Jolla Underwater Park Ecological Reserve since 1970. To the north of the Matlahuayl MPA is San Diego-Scripps Coastal State Marine Conservation Area.¹

Proposed Project

The City of San Diego (City) proposes to close the Point La Jolla area to public access 7 days a week, 24 hours a day, from May 25 to September 15 ([Exhibit 2](#)). This time period generally coincides with the peak of the California sea lion pupping season. During the seasonal closure, the City will install signs indicating that the area is closed to public access ([Exhibit 6](#)). The City will install a chain and "Area Closed" sign at the top of the wooden access stairs at the eastern end of the closure area. The City will also install two K-rails on the western portion of the project site to delineate a path from the top of the bluff/concrete walkway down to Boomer Beach to allow for limited ocean

¹ California Department of Fish and Wildlife. Matlahuayl State Marine Reserve Overview. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=98226>

recreation access during the seasonal closure. The public will be allowed to transit through this area between the top of the bluffs to the water at Boomer Beach to participate in ocean recreation activities, including swimming, bodysurfing, and spearfishing. A “Water Access Only” sign will be installed in front of the ocean access area. Outside of the seasonal closure, the City will install signs indicating that the area is open to public access, but federal law requires people to maintain a safe viewing distance from sea lions to avoid harassment at all times of the year. Dogs will be prohibited at Point La Jolla year-round and two “No Dogs Allowed” signs will be installed at the east and west ends of the project area. The area will be monitored by one to two City Park Rangers year-round during peak hours from 10 a.m. to 6 p.m. or 11 a.m. to 7 p.m. depending on the season.

Project History

The City has received email complaints about human and sea lion interactions at Point La Jolla since as early as 2014. In 2018, the City installed a sea lion interpretive table staffed by interns to educate the public on safe marine mammal viewing. This program ended with the COVID pandemic shutdown in March 2020.

In September 2020, the Sierra Club received three “Warning” signs from the National Oceanic and Atmospheric Administration (NOAA) and requested that the City display the signs at Point La Jolla. The signs were attached to the west facing, or seaward side, of the wall at Point La Jolla and provide recommendations on safe marine mammal viewing practices.

Around this time, the City also began operating a sea lion interpretive table staffed by Rangers on weekends and some holidays due to an increase in visitor attendance at Point La Jolla. The presence of Rangers reduced the number of harassment complaints. This interpretive table operated until implementation of the temporary emergency closure in August 2021.

In April 2021, the City painted 12 “Do Not Approach Sea Lions” signs on the concrete wall along Point La Jolla, stenciled a similar message on three nearby trash cans, and installed two “Stay Back – Sea Lion Birthing Area” signs at the eastern and western ends of Point La Jolla.

An increase in conflicts at Point La Jolla between people and sea lions was brought to the attention of the Commission in spring and summer of 2021. Press reports, phone calls to Commission offices, video recordings, and numerous photos and observations by trained, volunteer docents documented repeated instances of harassment to sea lions. Reports included the death of one sea lion pup and several reports of injury to sea lions from visitor harassment, both accidental and malicious.

Around this same time, City staff also expressed their desire to conduct a July 4th firework display directly adjacent to Point La Jolla at the Ellen Browning Scripps Park. Commission staff directed the City that a firework display in close proximity to sea lions during the peak of their pupping season would not be consistent with marine resource protection policies of the Coastal Act due to adverse impacts caused by excessive

noise, light, vibration, and debris ([Exhibit 5](#)). Thus, Commission staff directed the City to relocate the fireworks display to an alternative location further away from Point La Jolla.

Emergency Coastal Development Permit

Despite the signage warning visitors to maintain a safe viewing distance installed in late 2020 and early 2021, reports of harassment continued. Therefore, on August 10, 2021 the City issued an Emergency Coastal Development Permit #695848 for the immediate and temporary seasonal closure of Point La Jolla until September 15, 2021 for the sea lion pupping season ([Exhibit 4](#)). The approval included the placement of five, "Area Closed" signs installed on the concrete wall running along the public pathway at the top of the site, placement of one plastic K-rail barrier on the sand area of the bluffs, placement of a metal chain and sign indicating that the wooden beach access stairs were closed, and staffing by one to two City Rangers from 10 a.m. to 6 p.m. to educate visitors and issue citations to those who might breach the boundaries of the closure area. This subject permit is the follow-up CDP to the City's emergency CDP.

Jurisdiction/Standard of Review

The project area spans both the Commission's retained permit jurisdiction and the City's permit jurisdiction (appealable to the Commission) ([Exhibit 3](#)). The City's appealable permit jurisdiction spans much of the bluffs, but portions of the bluffs below the mean high tide line and the sandy beach are within the Commission's retained jurisdiction. Thus, Commission and City staff agreed that the emergency CDP should be issued by the City and the follow-up CDP should be issued by the Commission as a consolidated CDP pursuant to Coastal Act Section 30601.3. At the request of the applicant, who in this case is the local government, Commission staff has agreed to process the subject permit as a consolidated CDP. Therefore, the standard of review for the proposed project is the Chapter 3 policies of the Coastal Act with the certified City of San Diego Land Use Plan (LUP) La Jolla Community Plan used as guidance.

B. Biological and 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.

The certified La Jolla Community Plan and Local Coastal Program Land Use Plan contains goals and policies to protect biological and marine resources, including the following:

GENERAL COMMUNITY GOALS

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.

Preserve the natural amenities of La Jolla such as its open space, hillsides, canyons, bluffs, parks, beaches, tidepools and coastal waters.

The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline.

The 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. Maximum developable area and encroachment limitations are established to concentrate development in existing developed areas and outside designated open space. Prior to the adoption of rezonings for the open space shown on Figure 7, and in addition the Environmentally Sensitive Lands regulations, when applicable, the encroachment limitation standards taken from the OR-1-1 and OR-1-2 zone and included in Appendix L, shall be implemented for development of those portions of the property designated as open space on Figure 7.

History of Pinnipeds in La Jolla

Point La Jolla and the surrounding area provides important habitat for a variety of marine species. California sea lions, harbor seals, and other pinnipeds have been using Seal Rock (located approximately 0.25 miles south of Point La Jolla) and Children's Pool beach (located approximately one-half mile south) for decades ([Exhibit 1](#)). In the 1990s, the Commission approved a request by the City of San Diego to establish a 1.41-acre marine mammal reserve consisting of open coastal waters and sandy beach area surrounding Seal Rock with all public access and recreation prohibited (CDP #6-93-026, #6-00-126). The reserve was proposed due to increased presence of harbor seals using the area as a haul out site and the desire to avoid disturbing the seals in what was suspected to be a new rookery, or breeding area. The Commission granted

two CDPs for the reserve, each with a limited permit term of 5 years. The reserve status for Seal Rock ended in March 2006 and the City did not pursue an extension.

Instead, attention turned to nearby Children's Pool. Controversy arose in the early 1990s when seals began to regularly haul out onto Children's Pool Beach and in greater numbers. Historic maps show that the sandstone reef and adjacent rocks on which the breakwater was built were identified as Seal Rock and Seal Rock Point as far back as the late 1800's. Thus, these maps demonstrate that seals most likely utilized this area as a natural haul out site prior to the breakwater's construction.

In December 2009, the City approved a CDP for the annual placement of a temporary rope barrier at Children's Pool Beach from December 15 to May 15 to provide a buffer between people and seals during the harbor seal pupping season. In May 2010, the City Council adopted a resolution establishing a new Seasonal Shared Use Policy at Children's Pool Beach and directing City staff to: 1) acquire a coastal development permit to maintain a year-round rope barrier; 2) amend the LCP to prohibit public access to the beach during seal pupping season; 3) prohibit dogs on the beach year-round; 4) seek grants or private funding for a full-time Park Ranger or Lifeguard position and create a Volunteer Docent Program led by a Park Ranger or Lifeguard; and 5) establish clear signage explaining the rules to the public. The Commission approved the rope barrier for a limited term of 3 years (CDP #6-11-078).

Despite the guideline rope and Shared Use Policy, accidental and intentional harassing of the seals continued. Thus, in 2014 the Commission approved the City's request to implement a seasonal closure during harbor seal pupping season from December 15 to May 15 to protect the animals from harassment during their most vulnerable time (CDP #6-14-0691). This approval was limited to 5 years. In years since, the Commission has authorized extensions of the permit terms for both the guideline rope and seasonal closure and thus both measures are currently in effect until 2029, with the potential for continuance pursuant to City application and Commission approval (CDPs #6-15-0223, -A1, -A2, 6-14-0691-A1).

In terms of California sea lions, in 2017 the City submitted a CDP application for the installation of two, 3-ft high gates at two public beach access stairways at nearby La Jolla Cove (CDP #6-17-0707). The proposed gates were in response to numerous incursions by sea lions up onto the public viewing deck and area around the lifeguard station via the public access stairways. The City indicated that sea lions periodically ascend the two public access stairways during the day and become aggressive due to the large number of visitors on the deck, and when they spend the night on the deck they defecate around the area, causing a health hazard for visitors and the lifeguards. The Commission approved the gates, with conditions to protect public access, for five years.

California sea lions (*Zalophus californianus*)

California sea lions (sea lions) range from Alaska to the Pacific coast of central Mexico. Their primary breeding range is from the California Channel Islands to central Mexico and all breeding sites and birthing sites (rookeries) besides Point La Jolla are on

offshore islands. In normal years, male sea lions migrate during the winter to feeding areas off California, Oregon, Washington, British Columbia, Canada, and southeast Alaska. Females and pups stay near the breeding colonies until the pups are weaned, but in warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.²

The California sea lion population size was estimated at approximately 260,000 animals along the U.S. west coast in 2014. Over the last 40 years, the population has been increasing, aided by passage of the federal Marine Mammal Protection Act (MMPA). California sea lions in the U.S. are not listed as “endangered” or “threatened” under the Endangered Species Act, or as “depleted” under the MMPA. The current population is considered to be within the range of its optimum sustainable population.³

Sea lions live in shallow waters and prefer sandy beaches or rocky coves for breeding and haul-out sites.⁴ They mainly feed offshore and are social on land and in the water. Sea lions haul-out and spend time on land to rest, sleep, thermal regulate, maintain their skin and molt, interact socially, evade predators, birth, and nurse. Sea lions will usually return to breed in the same location as they were born, unless frequent disturbances cause them to abandon the site. While on the breeding islands, sea lions are very skittish of humans and will flush into the water if they see or smell people.⁵

Most sea lion pups are born from mid-May through early July, with the peak of pup births occurring in mid-June. Pups are generally well developed at birth; they are born with their eyes open and can vocalize. Within 30 minutes they are able to shake, groom, scratch, and walk. Pups appear to be able to swim at birth, although their movements are not well coordinated.⁶ Sea lion pups nurse from their mothers 15 to 30 minutes after birth, and then continuously over the next eight days.⁷ Then sea lion pups are frequently left on the beach by their mothers, who spend time in the water foraging for food, sometimes leaving their pups ashore for two to three days at a time.⁸ Pups are weaned

² NOAA Fisheries. “California Sea Lion.” <https://www.fisheries.noaa.gov/species/california-sea-lion>

³ NOAA Fisheries. “NOAA Stock Assessment California Sea Lion (Zalophus californianus): U.S. Stock” Revised 3/18/2019. <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock>

⁴ NOAA Fisheries. “NOAA Stock Assessment California Sea Lion (Zalophus californianus): U.S. Stock” Revised 3/18/2019. <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock>

⁵ NOAA Fisheries. “California Sea Lion.” <https://www.fisheries.noaa.gov/species/california-sea-lion>

⁶ SeaWorld. “All about California sea lion pups: Birth and care of young.” <https://seaworld.org/animals/all-about/california-sea-lion/care-of-young/>

⁷ Pacific Marine Mammal Center. “California sea lions (Zalophus, californianus).” <https://www.pacificmmc.org/california-sea-lions>

⁸ NOAA Fisheries. “California Sea Lion.” <https://www.fisheries.noaa.gov/species/california-sea-lion>

from their mothers after about a year. The four months following birth are the most vulnerable in the sea lion life cycle and are critical for mother-pup bonding and learning to swim. Harassment during the pupping season may cause mothers to abandon their pups. When a disturbance causes the sea lions to flush quickly into the water, a sea lion pup may become separated from its mother and abandoned. Additionally, too many disturbances on the beach may prevent a mother from returning from the water to reunite with her pup after hunting. Abandonment severely decreases the pup's chance for survival. At Point La Jolla there have been several reports from the public of mothers being flushed and potentially abandoning their young. During this period of caring for their young, mother sea lions become more aggressive due to their instinct to protect themselves and their pups from people who get too close.

Three to four weeks after giving birth, females are ready to mate again. Breeding season lasts from May to August. During breeding season, males will aggressively defend their territories and females will fight other females to protect their pups.⁹

Conflicts at Point La Jolla

Over the past year the Commission and the City have received numerous complaints from members of the public regarding increased conflicts between humans and sea lions at Point La Jolla.

To reduce conflicts and minimize harassment, the City first installed signage in 2020 that warned the public of the presence of sea lions, including their vulnerable state during the pupping season, and stating the legal requirements to maintain a safe distance from the animals. Despite the new signage and additional signage installed in 2021, people continued to disregard directions to stay away and not approach the sea lions. Observations provided by the public from both before installation of the signs and after indicate that the signs were ineffective at encouraging some members of the public to stay away from the sea lions and instances of harassment and conflict continued. City Rangers staffing the interpretive table from September 2020 to August 2021 continued to relay numerous accounts of poor visitor behavior.

As a result, the City implemented a seasonal closure from August 10, 2021 to September 15, 2021 pursuant to a city-issued emergency CDP ([Exhibit 4](#)). Public access was prohibited beyond the concrete retaining wall and onto the bluffs in an effort to reduce harm to sea lions during the pupping season. Volunteer docents from Sierra Club have provided monitoring data and reports of incidents, both during the emergency closure and after the re-opening of the area. Based on this information, the 2021 temporary closure was successful in keeping the public away from the animals and reducing incidents between people and sea lions. Although not present continuously, Sierra Club docents reported 12 illegal entries into the closure area during the temporary closure. This includes either direct observations of people within the closure area, or clear evidence of prior human presence (e.g., fresh footprints, excessive trash).

⁹ NOAA Fisheries. "California Sea Lion." <https://www.fisheries.noaa.gov/species/california-sea-lion>

Once the temporary closure ended on September 15, 2021, Sierra Club docents observed numerous people within the bluff area, with more than 100 people on the bluffs at times. Many, if not all, were inconsistent with distancing guidelines, some brought dogs, and again there were reports of people attempting to touch the sea lions, take close photographs (i.e., selfies), or act in ways that would likely be considered harassment. This harassment occurred despite signage placed by the City indicating that it is illegal under federal law, the MMPA, to harass marine mammals.

Coastal Act/LCP Consistency

Although sea lions are neither threatened nor endangered under federal or state law, the haul-out and pupping sites that they use provide valuable habitat for the sea lion life cycle that warrants protection under Coastal Act Section 30230. Haul-out sites provide essential habitat that sea lions utilize for a variety of functions, including rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, birthing, and nursing. Harassment by the public during the vulnerable pupping season is not consistent with Coastal Act requirements to sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms.

Congress enacted the MMPA to prevent the extinction or depletion of marine mammal stocks as a result of human activity.¹⁰ In achieving this goal, the MMPA generally prohibits “take” of marine mammals, with limited statutory exemptions, with an act of “take” meaning “to harass, hunt, capture, collect or kill, any marine mammal.”¹¹ 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.¹²

While the Commission does not regulate the take 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 “take,” of the sea lions at Point La Jolla, then such acts of harassment are not consistent with Chapter 3 policies of the Coastal Act because such activities would not achieve the marine resource protections provided under Section 30230. The multiple instances of harassment, injury, and

¹⁰ 16 U.S.C. § 1361(1); *Natural Resources Defense Council, Inc. v. Evans* (2003) 279 F.Supp.2d 1129, 1141.

¹¹ 16 U.S.C. § 1362(13); see also 50 C.F.R. § 216.3,

¹² 16 U.S.C. § 1362(18)(a.) Incidental take is allowed only under strict circumstances not applicable here. See 16 U.S.C. § 1371.

possible death that have been documented over the last year are inconsistent with Coastal Act Section 30230, in addition to potentially violating the MMPA.

Pursuant to the MMPA, the public is prohibited from harassing, harming, pursuing, wounding, killing, capturing, or collecting marine species.¹³ Human activities in the vicinity of marine mammals may have adverse impacts on the animals. These impacts may range from no observable effect, to modifying the animal's behavior, to causing physical harm to the animals. Human activity may result in disrupting important behaviors that are critical to the animals' health and survival, such as separation of mothers and their young, disruption of migratory patterns and social groups, and interference in breeding and/or reproductive and rearing activities (such as the abandonment of nursing pups). In addition, wild animals can injure people, as well as injure or spread disease to pets.

The National Oceanic and Atmospheric Administration (NOAA), which has jurisdiction over implementing the MMPA, recommends that people maintain a distance of at least 50 feet from sea lions in the water or on shore to avoid harassment.¹⁴ Unlike many of the state's other pinniped haul-out areas and rookeries, the sea lion haul-out site at Point La Jolla is unique due to its location in an urbanized setting that is easily accessible to the public. As a result, there has been ongoing disturbance and harassment of the hauled-out sea lions. Due to the developed setting, it is likely impossible to maintain a 50-foot separation at all times. Nevertheless, maintaining a safe and respectful distance from the sea lions is critical for ensuring that human activities do not result in harassment. Efforts by the public to closely approach or otherwise interact with sea lions have led to harassment, which is illegal under the MMPA, regardless of the distance from which it occurs, and is not consistent with the Coastal Act. Although the sea lions at this location may be more acclimated to human presence than other areas of the coast, harassment and flushing of the sea lions into the water does occur, which disrupts normal behavioral patterns linked to survival and well-being. However, due to severe staffing limitations, NOAA is unable to maintain a continued presence at this site and has a limited ability to pursue harassment penalties and access restrictions. Activities that have caused hauled out sea lions to flush into the water, thus disrupting their behavior patterns, include people making loud noises, approaching or surrounding sea lions to take pictures, pet, feed, chase, follow, or throw rocks or sand, bringing dogs into the area, and entering and exiting the water.

Not only are the sea lions at risk, but public health and safety are also at risk from adverse interactions between people and sea lions. Sea lions have been known to bite when people attempt to interact too closely with them. Mother sea lions can act in protection of their young, but large adult males represent the most significant threat to

¹³ NOAA Fisheries. "Marine Life Viewing Guidelines: Guidelines and Distances." <https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines#guidelines-&-distances>

¹⁴ NOAA Fisheries. "Watching Marine Mammals on the West Coast." <https://www.fisheries.noaa.gov/west-coast/marine-life-viewing-guidelines/watching-marine-mammals-west-coast>

humans. Male sea lions can reach 800 pounds, and during mating and breeding season will act territorially towards humans.¹⁵ In addition to danger from biting, sea lions carry diseases, including leptospirosis, a bacterial disease that can be communicated to people and dogs. Although there has not been a confirmed case of a person or pet being infected from a sea lion directly, leptospirosis cases in pets and humans can occur because of contact with standing water or fresh water, and experts recommend that pets be kept away from sea lions and other wildlife.¹⁶

This haul-out site at Point La Jolla is of special biological significance as the first occurrence of sea lions reestablishing a breeding area on mainland California; all other breeding sites are on islands. The sea lions at Point La Jolla are more vulnerable to harassment by the public at this urbanized site than other haul-out sites along the coast because there is a very high potential that a large number of people from the densely populated San Diego Metropolitan Area and beyond will visit the popular La Jolla area and attempt to interact with the sea lions. Indicative of the area's popularity, La Jolla Cove, located immediately upcoast of Point La Jolla, was recently ranked as one of the top ten beaches in the United States by the travel company TripAdvisor due to the ability to view seals and sea lions in close proximity.¹⁷

The potential adverse impacts of disturbance to hauled out sea lions are particularly significant during pupping season when sea lions haul out and remain on the beach for longer periods of time to prepare for birth, go through the birthing process, and nurse their pups once they are born. Harassment by humans and other activities likely to disturb the sea lions, such as the City's previously considered firework display, will have the most severe consequences during this time period. Thus, to ensure that distances from humans and sea lions are maximized during this important period in the animals' life cycle and to provide the sea lions with unimpeded protection during the vulnerable pupping season months, the City proposes to close the area of Point La Jolla to public access from May 25 to September 15. Based on discussions with experts and review of scientific literature, the Commission's ecologist recommends that the closure begin on May 1 and extend through October 31 to capture the full extent of the sea lion mating and pupping season, provide time for pregnant females to haul-out and prepare for birth, provide a four month period for pups to bond with their mothers and improve their swimming skills, and reduce public safety concerns from aggressive animals during mating season ([Exhibit 5](#)). Therefore, **Special Condition No. 1** requires the City to revise the seasonal closure to extend from May 1 to October 31.

¹⁵ NOAA Fisheries. "California Sea Lion." <https://www.fisheries.noaa.gov/species/california-sea-lion>

¹⁶ Oregon Department of Fish and Wildlife. "Leptospirosis and marine mammals." https://www.dfw.state.or.us/wildlife/health_program/docs/Leptospirosis_and_marine_mammals.pdf

¹⁷ TripAdvisor. "Wave Hello to Travelers' Favorite Beaches for 2022: TripAdvisor Travelers' Choice Awards." February 23, 2022. <https://tripadvisor.mediaroom.com/2022-02-23-Wave-Hello-to-Travelers-Favorite-Beaches-for-2022-Tripadvisor-Travelers-Choice-Awards>

The recommended closure is expected to provide more effective protection for the sea lions compared to signage alone because prohibiting all public access beyond the signs and concrete wall requires the public to stay farther away from the sea lions. The clear demarcation between permitted and restricted areas will eliminate any gray area in interpretation of where the public is allowed at Point La Jolla, thus ensuring no accidental encroachment into the sea lion pupping area occurs, and also allowing for more precise enforcement of the restrictions by rangers, lifeguards, and safety officers. To enforce the seasonal closure, the City has hired five additional rangers for their shoreline parks and will have a consistent, onsite presence of one to two rangers at Point La Jolla from 10 a.m. to 6 p.m. or 11 a.m. to 7 p.m. (depending on the season) beginning April 25, 2022 to manage human and sea lion interactions. Thus, the seasonal closure will maintain, enhance, and restore the habitat as a safe area for the sea lions to birth and care for their pups by eliminating the potential for human interference during the pupping and mating season. The Commission's staff ecologist has reviewed the proposed project and concurs that the seasonal closure, with dates revised per staff's recommendation, will benefit the sea lion population and provide enhanced marine resource protection ([Exhibit 5](#)).

To inform the public of the seasonal closure and the year-round requirements to maintain a safe distance from the sea lions, **Special Condition No. 5** requires the City to submit a final signage plan consistent with the one submitted with this application and that includes signs for posting both during the seasonal closure and outside of the seasonal closure. However, the "Area Closed" signs proposed to be installed during the seasonal closure shall be revised to add language regarding "Sea Lion Pupping and Mating Season" so that members of the public understand the purpose of the seasonal closure.

The seasonal closure will improve the protection and enhancement of the sea lion habitat, consistent with Coastal Act Section 30230. However, it is possible that changed circumstances at Point La Jolla may negate the need for perpetual seasonal public access restrictions in the future, such as natural migration of the sea lions to another area. It is also possible that the allowance for ocean access to the water at Boomer Beach may not adequately protect the sea lions. For that reason, the Commission imposes **Special Condition No. 2** to limit the permit term to seven (7) years and requires the City to apply for an amendment or new coastal development permit to continue authorization of the public access restrictions. The seven-year permit term will allow the Commission to revisit the issue at a later date to confirm both that the project is adequately protecting the sea lions and review any changed circumstances that might warrant revisions to the restrictions. Further, a permit term of seven years will generally align with the end of the Commission's approvals for a similar seasonal closure program to protect harbor seals at Children's Pool (CDPs # 6-15-0223, -A1, -A2, 6-14-0691-A1). By aligning the permit terms of these three CDPs, the City and the Commission will have the opportunity to holistically review the issue of marine mammal management in La Jolla.

In order for the Commission to have the opportunity to review the circumstances at Point La Jolla and determine if any significant changes have occurred, it is necessary to

assess the effectiveness of the seasonal closure. Therefore, the Commission imposes **Special Condition No. 3** requiring the preparation, submission to the Executive Director for review and approval, and implementation of a monitoring plan to be conducted during the seasonal closure. The monitoring plan will help the City and the Commission assess a) the level of use by sea lions of the haul out site at Point La Jolla, and b) the effectiveness of the seasonal closure at eliminating harassment of hauled out sea lions. A qualified biologist, environmental resources specialist, park ranger, lifeguard, or City-trained volunteer shall record the number of sea lions hauled out on the bluffs of Point La Jolla within the closure area, the number of sea lions hauled out within the “ocean recreation accessway” and on Boomer Beach, the number of people present on the concrete walkway at the top of the bluffs, the number of people transiting the “ocean recreation accessway,” the number of violations of the closure and harassment instances, the number of citations and warnings given to violators and the outcomes of these violations if applicable and possible, the tide, the weather (including water and air temperature), and the date, a minimum of three times per day. These observations shall be recorded at 16 days per month and shall include at least two Saturdays and two Sundays each month, and Memorial Day, July 4th, and Labor Day. **Special Condition No. 3** also requires the City to submit an interim data update mid-way through the first seasonal closure to ensure that the closure is adequately protecting the sea lions while providing public access through the ocean accessway.

Based on the outcome of the City’s emergency seasonal closure, it is anticipated that the proposed project will effectively eliminate or reduce sea lion harassment during the vulnerable sea lion pupping season from May 1 to October 31. However, as evident from reports by the public following the end of the emergency closure on September 15, 2021, harassment may begin again once public access restrictions are lifted. Therefore, **Special Condition No. 4** requires the City to submit by November 1, 2022, for Executive Director review and approval, a long-term management plan for Point La Jolla that includes strategies to reduce harassment outside of the pupping season while maintaining public access. This plan should include recommendations from a qualified biologist and should be prepared in consultation with NOAA, the federal agency with jurisdiction over marine mammals. The plan should include measures to increase the enforcement authority of Park Rangers and the consideration of engineering solutions, such as the installation of a fence/railing at Point La Jolla (similar to what exists along the bluffs in La Jolla surrounding the subject site and with added features to deter movement of sea lions onto the grass and park areas) or educational/artistic displays, such as installation of a bronze sea lion statue so that the public can take photos with the statue rather than the animals. The City could also install a sea lion web camera such as was previously done at Children’s Pool and would serve as an educational feature and harassment deterrent. Regarding increased enforcement authority, in a meeting between Commission staff and the California Department of Fish and Wildlife (CDFW), the CDFW representative recommended that the City give the park rangers

the same authority as lifeguards to cite members of the public in violation of California state code regarding harassment of animals.¹⁸

Because the site is subject to known or potential hazards, including those from the coastal environment (e.g., waves, storms, flooding, erosion, bluff retreat, landslide, earth movement) and from the presence of marine mammals, **Special Condition No. 7** requires the City to assume the risks from these known and potential hazards.

In conclusion, the Coastal Act policies regarding marine resources require protection of the valuable habitat that Point La Jolla provides sea lions for giving birth to pups, and a haul-out site that sea lions use for other important life functions/behavioral patterns, including rest, sleep, thermal regulation, skin maintenance and molting, social interaction, predator evasion, nursing and weaning pups. The proposed seasonal closure will maintain and enhance the sea lion habitat, consistent with Section 30230 of the Coastal Act. The seasonal closure will ensure that the use of the marine environment will sustain the biological productivity of coastal waters and will assist in maintaining healthy populations of sea lions, as mandated under Section 30230, because it will significantly reduce or eliminate the existing periodic harassment of the sea lions during a vulnerable period in their life cycle. Therefore, the Commission finds that the proposed permit application, as conditioned, is consistent with the applicable Coastal Act policies regarding protection of marine resources, as well as with the La Jolla Community Plan and Local Coastal Program Land Use Plan.

C. 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:

¹⁸ Cal. Code Regs. Tit. 14, Section 251.1

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 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

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 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 use 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.
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. [...]

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.

The Natural Resources and Open Space System chapter of the certified La Jolla Community Plan and Local Coastal Program Land Use Plan contains goals and policies to protect public access, including the following:

Enhance existing public access to the ocean, beach and park areas such as Ellen B. Scripps Park and Kellogg Park along the shoreline in order to be of greatest benefit to neighborhood residents and visitors to the community.

Maintain the identified public views to and from these amenities in order to achieve a beneficial relationship between the natural or unimproved and developed areas of the community.

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

The City shall maintain, and where feasible, enhance and restore the shoreline areas such as Torrey Pines City Beach, Coast Walk, Emerald Cove, Wipeout Beach and Hospital Point, along with the areas of Scripps Park, Coast Boulevard Park, including Shell Beach and the Children's Pool, in order to benefit present and future residents and visitors to these areas (see Appendix G, Figures A through E).

The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways and railings along the shoreline to preserve vertical access (to the beach and coast), to allow lateral access (along the shore), and to increase public safety at the beach and shoreline areas. No encroachment into the public right-of-way should be permitted within the Coastal Zone without a permit.

The City should limit public access in open space areas that contain sensitive resources to scientific or educational use. Access should be confined to designated trails or paths and no access should be approved which would result in the disruption of habitat areas.

The City should ensure that new development does not restrict or prevent lateral vertical or visual access (as identified in Figure 9 and Appendix G) to the beach on property that lies between the shoreline and first public roadway, or to and from recreational areas and designated public open space easements. Further, in areas where physical vertical access to the shoreline does not exist within 500 feet of a private development project on the shoreline, consideration of a new accessway across private property should be analyzed.

Continue to provide a park and beach maintenance program in coastline recreational areas in order to encourage use of coastal resources like La Jolla Shores Beach, Kellogg Park, Coast Boulevard Park and Ellen B. Scripps Park by residents and visitors to La Jolla.

To protect the sea lions during pupping season, the City proposes to restrict public access at Point La Jolla each year from May 25 to September 15. During the seasonal closure, the proposed “Area Closed” signs would be installed along the concrete public walkway at the top of the bluff ([Exhibit 6](#)). A chain would be installed across the wooden public access stairway at the northern end of Point La Jolla. Two K-rails would be placed on the western end of the bluffs and would delineate an accessway for ocean recreation users to transit from the top of the bluffs to the water at Boomer Beach. ([Exhibit 2](#)). Outside of the seasonal closure, public access to Point La Jolla would not be restricted; however, the City will install signage that indicates that sea lions are a protected species under the MMPA and members of the public are legally required to view the animals from a safe distance to avoid harassment ([Exhibit 6](#)). The public would be allowed to view the animals from the public walkway on top of the bluff, while standing inland of the concrete retaining wall, throughout the year; only public access to the bluff and rocky outcropping during the six months of closure each year would be prohibited.

As cited above, the Coastal Act has numerous policies supporting, encouraging, and requiring the protection of public access. Preserving public access to the shoreline and public recreational facilities is one of the primary goals of the Coastal Act. However, there are occasionally circumstances where the Coastal Act mandate to protect marine resources requires limiting public access, such as the provisions in Sections 30212 and 30214, which allow the Commission to restrict access in a particular time, place and manner if doing so would protect fragile coastal resources. As noted above in the Biological and Marine Resources section, the sea lions at this haul out and pupping site are considered a fragile coastal resource because they are highly vulnerable to frequent flushing and human harassment, which significantly affects their well-being and potential survival of pups, particularly during pupping season. When the Commission restricts access to protect fragile coastal resources, it requires that alternatives be considered, and that any restrictions on access be the minimum necessary to achieve the goal of protecting coastal resources.

Alternatives

As discussed previously, the City has considered and previously implemented measures that are less restrictive of public access. In 2020, the City installed signage prepared by NOAA warning people of the presence of the sea lions and stating the legal requirements to maintain a safe and respectful viewing distance. Additional warning signs and stencils were installed in April 2021, but the signage failed to prevent conflicts between animals and the public, and reports of harassment continued.

In addition, since the sea lions started hauling out at Point La Jolla, there have been ongoing conflicts between people who want to protect the sea lions and people who

want to approach the sea lions and/or use the bluffs and ocean at this location without maintaining a reasonable distance from the wildlife.

In addition to alternatives attempted at Point La Jolla, the City has prior experience from managing conflicts between humans and harbor seals at Children's Pool. The issues that have arisen at Point La Jolla are similar to those of Children's Pool. While neither species are threatened or endangered, the population of pinnipeds at both sites have grown over the last several years, which draws added visitors who come to view the animals. Again, given the urban, developed nature of La Jolla, viewing the animals from a safe distance can be difficult. Similar to Children's Pool, the public ignored warnings and attempts by the City to separate people and animals without limiting public access. Ultimately, a shared use policy was not effective at reducing conflicts and Children's Pool beach is closed to public access for five months during the harbor seal pupping season from December 15 to May 15 each year. Outside of the seasonal closure, a guideline rope with an opening for beach and ocean access is installed year-round to provide a visual buffer between harbor seals and the public.

The proposed seasonal closure and the park rangers assigned to enforce it would provide a clear and enforceable line between public access restrictions and sea lion protection at Point La Jolla. The issue of sea lion harassment is exacerbated by the fact that the warning signs and distancing guidelines 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 illegal under the MMPA. The proposed project will provide this threshold by prohibiting all public access beyond the concrete wall except for entry and exit of the water at Boomer Beach via the ocean recreation accessway ([Exhibit 2](#)), effectively eliminating any gray area, or excuses, in interpretation of what is an appropriate viewing distance. This will result in less enforcement time for the assigned park rangers, as well as more distinction for the public, as the closure and associated signage will make it very clear where and when public access is restricted.

The presence of rangers, and the clear area boundaries and time frame of the seasonal closure will also help to resolve conflicts between various stakeholder groups over what is and is not allowed at Point La Jolla. During the seasonal closure, the ranger will be able to enforce the prohibition on access to Point La Jolla. Outside of the seasonal closure, the ranger will be able to ensure that the public has access to Point La Jolla to conduct various ocean recreation activities, while maintaining a respectful distance from the sea lions to prevent disturbance.

Minimum Necessary

As conditioned, the bluffs of Point La Jolla would be closed from May 1 to October 31 of each year during sea lion pupping and mating season, the period during which protection from human harassment is most critical. While these six months do occur during the peak beach-going season between Memorial Day and Labor Day, these are the times when the coast experiences the greatest number of visitors, and therefore, pose the greatest possibility for conflicts between sea lions and the public. Even during the restricted period, the public accessway along the top of the bluff, which provides a

unique public area to walk and observe the sea lions and their pups at a safe distance, will remain open to public access. The public pathway will continue to provide public recreation opportunities such as wildlife viewing, walking, and scientific observation on a year-round basis. In the other six non-pupping season months of the year, public use of the bluffs and surrounding waters would be restored. Visitors will be allowed on the bluffs of Point La Jolla, but they will continue to be encouraged to maintain a safe and respectful distance from the sea lions, as mandated by the MMPA.

Further, the City's proposal provides a means for the public to transit from the top of the bluffs to the water at Boomer Beach via the ocean access path, allowing for ocean recreation activities to continue even during the seasonal closure. (Exhibit 2). The City proposes to place two K-rails to demarcate this public accessway, which will allow the public to enter and exit the water at Boomer Beach for ocean recreation activities, including swimming, bodysurfing and spearfishing, which are popular activities in this area of La Jolla.

Many opponents of the City's proposal are members of the spearfishing community who oppose the seasonal closure because it blocks access to "No Man's Point," a rocky outcropping at the north-eastern edge of Point La Jolla that provides access to the water for spearfishing ([Exhibit 1](#)). Much of the waters east of this area of La Jolla are within the boundaries of the Matlahuayl MPA, where fishing is prohibited. The easternmost boundary of the MPA generally coincides with Point La Jolla, thus spearfishers are able to enter the water at Point La Jolla to fish outside the boundaries of the MPA. Access to No Man's Point from the eastern portion of Point La Jolla will be restricted during the seasonal closure; however, there are other entry points to the water, including the proposed ocean recreation accessway that will maintain ocean access to Boomer Beach. During times when ocean swells and wave conditions are favorable and calm, when most people participate in spearfishing activities, this will provide an access point in close proximity to No Man's Point.

While the presence of the sea lions has affected the public's ability to access and recreate at Point 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, Children's Pool, South Casa Beach, Ravina, and Windansea. Many of these beaches are within walking distance of or a short drive from Point La Jolla and offer public amenities such as permanent restrooms, showers, additional parking, and lifeguard facilities. Staff notes that spearfishers are allowed to enter the water from La Jolla Cove, located immediately upcoast of Point La Jolla and swim to No Man's Point to fish; however, because the Cove is located within the MPA, spearfishing gear is required to be in an unloaded condition, not carried in hand, and the diver is to remain at the surface of the water, which typically requires a floatation device, and the City's municipal code does not allow floatation devices at the Cove.

As noted above, ever since the sea lions began hauling out on the beach at Point La Jolla they have become a major tourist attraction and a public access and recreation amenity in and of themselves. The ability to observe sea lions closely yet respectfully in their natural environment is unique to this location, and the seasonal closure would

protect this passive public access and recreation amenity. The most popular activity at Point La Jolla appears to be viewing the animals, which will still be able to be done, albeit from a safe and respectful distance from the top of the bluff. Hundreds of visitors descend on Point La Jolla at any given time to view the sea lions in their natural habitat and to witness the sea lion life cycle, in particular mating, birthing, and caring for young. Viewing the sea lions and other wildlife in Point La Jolla was noted as an attractive amenity when the travel company TripAdvisor ranked La Jolla Cove, located immediately upcoast of Point La Jolla, as one of the top ten beaches in the United States. Thus, the sea lions encourage public access by attracting the public to the shore and providing a lower cost visitor amenity, consistent with Coastal Act Section 30213.

To inform the public of the restrictions at Point La Jolla, **Special Condition No. 5** requires the City to submit, for review and approval of the Executive Director, a final sign program. The sign program will include signage to be installed from May 1 to October 31 that alerts the public of the seasonal closure and the presence of pupping sea lions. These signs will be stored off-site outside of the closure period. The sign program will also include signage to be installed during the remainder of the year (November 1 to April 30) that warns the public of the presence of sea lions and MMPA requirements to maintain a safe distance to avoid illegal harassment.

As noted in Section 30214 of the Coastal Act and relevant LUP policies, 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 sea lion pupping season. The facts, as described above and in the Biological and Marine Resources section, support the need for the seasonal closure as the public has ignored the City's warning signage and continues to harass the sea lions and their pups by disregarding distancing requirements. And as allowed by Section 30212, public access to Point La Jolla during the pupping season would be inconsistent with the protection of fragile coastal resources and adequate access exists nearby. The public will still be able to access the bluffs at Point La Jolla for six months of the year, will be able to access the water at Boomer Beach for ocean recreation year-round, will be able to utilize the surrounding beaches and waters, and will be able to enjoy public views of the ocean and the sea lions from the concrete public access walkway year-round.

In addition, **Special Condition No. 2** limits the permit term to seven years, and **Special Condition No. 3** requires annual monitoring of the level of use of the area by both sea lions and the public. Together, these conditions will allow the City and the Commission to evaluate the necessity of the seasonal closure over time and determine if adjustments need to be made, such as relaxing access restrictions should sea lions no longer haul out at Point La Jolla.

In conclusion, while the proposed project will impact public access from May 1 to October 31 of each year, this is the minimum necessary to effectively protect the sea lions from harassment during their vulnerable months of pupping season. Public access

protection is one of the Commission's highest priorities, and this proposed project will have an impact on public access, but this is the least environmentally damaging alternative. In addition, it would be a limited restriction for a limited time of the year for a limited permit term of seven years to ensure the sea lions and their pupping habitat are effectively protected. There is clear evidence that the sea lions will continue to be subject to harassment if the area is not closed during pupping season. The seasonal closure will improve the protection and enhancement of the sea lions, while maintaining public access to all but a small area of the La Jolla bluffs. Therefore, the proposal as conditioned is consistent with Sections 30212 and 30214 of the Coastal Act.

D. 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 [...]

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 the biological productivity and quality of coastal waters be maintained and, where feasible, restored. Opponents of the proposed seasonal closure have suggested that the sea lions have degraded local water quality through their urine and feces. Water quality at nearby La Jolla Cove is sampled weekly year-round by the County of San Diego, Department of Environmental Health and has

not received a grade of less than a “B” since 2010.¹⁹ In fact, most often the site receives an “A+.”²⁰ Unlike Children’s Pool, which does have a water quality advisory, Point La Jolla is a rocky outcropping, open to the ocean with no structures to block water circulation or mixing. Therefore, the presence of the sea lions is not anticipated to result in significant adverse impacts on water quality compared to natural environmental conditions.

E. Unpermitted Development

Unpermitted development has occurred on the subject site, including the construction of a wooden public access stairway at the eastern end of the project site ([Exhibit 2](#)). Members of the public reported the unpermitted development to Commission staff in late 2021. Although public access to the bluffs is available throughout the project area since there is no fence and people can easily step over the approximately two-foot high concrete retaining wall, the stairway provides convenient public access down to the Point La Jolla bluffs. During the seasonal closure, the City proposes to install a chain and sign across this wooden stairway to close access to Point La Jolla ([Exhibit 2](#)). The Commission and the City have no permit history for this stairway, but a review of historical imagery suggests that it was constructed between 1987 and 2002 ([Exhibit 7](#)). Prior to construction of the wooden staircase, it appears that a concrete ramp provided access in this area, but may have eroded away.

Commission staff recommended that the City address the unpermitted development as part of the subject permit application; however, the City declined to include after-the-fact authorization for this stairway as part of this CDP, but has indicated that they will process a separate CDP in the future. Any CDP issued by the City for the wooden stairway would be appealable to the Commission and, moreover, if it remains unpermitted, the Commission’s enforcement staff will consider options to address the unpermitted development through a separate enforcement action.

Although development occurred prior to the submission of the permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act and the City’s LCP. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission’s position regarding the legality of any development, other than the development addressed herein, undertaken on the subject site without a coastal development permit.

¹⁹ San Diego County Beach and Bay Program. <http://www.sdbeachinfo.com/#>

²⁰ Beach Report Card for La Jolla Cove. Heal the Bay. <https://beachreportcard.org/32.85011060592686/-117.27406445447485/16/314>

F. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The proposed project is located within the City of San Diego, which has a certified Local Coastal Program; however, portions of the bluffs below the mean high tide line and the sandy beach are within the Commission's retained jurisdiction. The proposed project spans both jurisdictions. Section 30601.3 of the Coastal Act provides that when a project requires a coastal development permit (CDP) from both a local government with a certified LCP and the Coastal Commission, a single, consolidated CDP for the entire project may be processed. At the request of the applicant, who in this case is the local government, Commission staff agreed to process the subject permit as a consolidated CDP. Thus, the standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified City of San Diego Land Use Plan (specifically the La Jolla Community Plan and Local Coastal Program Land Use Plan) serve as guidance. As described above, as conditioned, the proposed project is consistent with the certified LCP and all applicable Chapter Three policies of the Coastal Act and will not prejudice the ability of the City of San Diego to continue to implement its LCP for the La Jolla area.

G. 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. In 2014, the City of San Diego prepared a Negative Declaration (ND 225045) for the La Jolla Children's Pool seasonal closure. For the subject project, the City prepared an addendum to the Children's Pool ND and determined that, pursuant to Section 15162 and 15164 of CEQA Guidelines, there are no changes in circumstances, and no new information of substantial importance, which would result in new significant or substantially increased adverse impacts as a result of the project.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing timing of the seasonal closure and monitoring will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible

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alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

H. Attorney Fee Reimbursement

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications (see also Cal. Code Regs. tit. 14, § 13055(g)). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition No. 6**, requiring reimbursement of any costs and attorneys' fees the Commission incurs "in connection with the defense of any action brought by a party other than the Applicant/Permittee . . . challenging the approval or issuance of this permit."

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- City of San Diego Emergency CDP #695848
- CDP#s 6-93-026 and 6-00-126/Seal Rock Reserve
- CDP#s 6-11-078, 6-14-0691, -A1, 6-15-0223, -A1, -A2/Children's Pool
- CDP# 6-17-0707/La Jolla Cove Sea Lion Gates
- CDP# 3-13-1175-W/Pacific Grove Harbor Seal seasonal closure
- CDP# 4-01-139 & CDP# 4-08-007/Devereaux Slough Snowy Plover fencing
- CDP# 2-13-1020/Pacifica State Beach Snowy Plover fencing
- CDP# 5-87-847-A1/Venice State Beach and Dockweiler Beach Least Tern fencing
- CDP# A-3-SLO-95-70/Piedras Blancas Elephant seal fencing