

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# Th16a

Filed: 7/7/23  
180<sup>th</sup> Day: 1/3/24  
Staff: M. Lasiter-SD  
Staff Report: 8/17/23  
Hearing Date: 9/7/23

## STAFF REPORT: AMENDMENT

**Application No.:** 6-22-0113-A1

**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)

**Original 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. After-the-fact authorization for the wooden public access stairway.

**Proposed Amendment:** Extend the seasonal closure to apply year-round and install a permanent gate at the top of the access stairs.

**Staff Recommendation:** Approval with conditions.

---

## SUMMARY OF STAFF RECOMMENDATION

Staff is recommending **approval** of the proposed amendment with special conditions requiring the installation of four additional "Area Closed" signs.

In April 2022, the Commission approved CDP #6-22-0113 to seasonally close Point La Jolla during pupping season (May 1 through October 31) and the City is now requesting

the subject amendment to extend the closure on a year-round basis and construct a permanent gate at the top of the access stairs. The proposed amendment is in response to conflicts between the public and sea lions that have occurred outside of the seasonal closure (November 1 through April 30) authorized by CDP #6-22-0113, including people taking selfies, getting too close, attempting to pet and wake up the animals, and bringing dogs into the area. The proposed year-round closure would otherwise be consistent with the development previously approved by the Commission, and includes signage, provision for ocean access across the site to Boomer Beach, staffing of park rangers, the year-round prohibition of dogs, prohibition of fireworks during pupping season, and a limited permit term to 2029, at which time the City would need to apply for an amendment to extend the closure.

The City has indicated that the seasonal closure has been effective to protect the animals and the public based on the results of a monitoring report for the 2022 seasonal closure, which indicate that no harassment incidents were observed by rangers. The proposed closure provides an effective tool to reduce conflicts between the public and sea lions since park rangers are able to enforce the closure but not the general harassment of marine mammals under the Marine Mammal Protection Act (MMPA) since that is under the jurisdiction of the National Oceanic and Atmospheric Administration (NOAA). NOAA has told the Commission it lacks the staff to patrol the site.

**Special Condition No. 1** is revised to extend the closure year-round. **Special Condition No. 2**, which limits the permit term to seven years and requires the City to apply for an amendment or new coastal development permit to continue authorization of the public access restrictions, is also revised to clarify that the year-round closure is limited to the same term. 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, **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 would be modified to be implemented year-round consistent with the proposed closure period. Finally, **Special Condition No. 5** is modified to require the City submit a revised signage plan that includes four additional "Area Closed" signs in order to ensure an adequate number of signs are onsite and able to be seen by members of the public to reduce the number of trespassing incidents. The remaining special conditions of the underlying permit would be unchanged and remain in full effect.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0113-A1, as conditioned. The motion is on page 4. The site spans both City and the Commission's jurisdiction and the subject coastal development permit has been consolidated per a request by the City. As such, the standard of review is Chapter 3 of the Coastal Act with the certified City of San Diego Land Use Plan (LUP) La Jolla Community Plan used as guidance.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>4</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>4</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>5</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>9</b>
A. Project Description and Background .....	9
B. Biological and Marine Resources.....	12
C. Public Access and Recreation .....	21
D. Water Quality .....	27
E. Local Coastal Planning.....	29
F. California Environmental Quality Act .....	29
<b>APPENDIX A - CONDITIONS OF APPROVAL .....</b>	<b>31</b>
<b>APPENDIX B – SUBSTANTIVE FILE DOCUMENTS .....</b>	<b>41</b>

### EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Jurisdiction Map](#)

[Exhibit 3 – Approved Closure Area](#)

[Exhibit 4 – Gate Plans](#)

[Exhibit 5 – Sierra Club Request for Additional Signage](#)

[Exhibit 6 – Point La Jolla Photographs](#)

[Exhibit 7 – 2022/2023 Seasonal Closure Monitoring Report](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the proposed amendment to Coastal Development Permit 6-22-0113-A1 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 amendment for the proposed project and adopts the findings set forth below on grounds that the development as amended and conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. 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

This permit is granted subject to the following special conditions:

NOTE: Appendix A, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment #6-22-0113-A1. All of the Commission's adopted special conditions and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on amendment # 6-22-0113-A1 are shown in the following section. Within Appendix A, changes to the previously approved special conditions are also shown in ~~strikeout~~/underline format. This will result in one set of adopted 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 year-round from ~~May 1 through October 31~~ of each year.
- (b) Fireworks shall be prohibited within Ellen Browning Scripps Park during sea lion pupping season ~~the seasonal closure~~ from May 1 through October 31 of each year.
- (c) The ~~seasonal~~ closure area shall be expanded to include all of the area that was authorized to be closed by the City of San Diego Emergency CDP#695848.
- (d) The ~~seasonal~~ closure area boundaries shall be revised to allow ocean access only to the remainder of Boomer Beach, southwest of the expanded ~~seasonal~~ closure area.
- (e) The project plans shall include a permanent gate at the top of the stairway in substantial conformance with the plans submitted by the City of San Diego on July 7, 2023.

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 under the Marine Mammal Protection Act (16 U.S.C. 1362(18)(A); 50 C.F.R., § 18.3).

(v) A City Park Ranger shall be present at the site year-round, 7 days per week, and from 10 a.m. to 6 p.m. or 11 a.m. to 7 p.m., depending on the season.

(b) The City shall submit, for the review and written approval of the Executive Director, on an annual basis and by March 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) Prior to submitting the formal report required per subsection (b) above, the City shall submit, for review and written approval of the Executive Director, on an annual basis and by January 1 of each year, all raw monitoring data collected during the ~~seasonal~~ closure per subsection (a)(iii) above.
- (d) The City shall provide an annual report to the Commission on the status of harassment reduction efforts during and outside of the closure period for the length of the permit term.
- (e) 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.
- (f) 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.
- (g) 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. [Special Condition 4 of CDP #6-22-0113 remains unchanged and in effect]

#### 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 state: "No Access Allowed During CA Sea Lion Popping Season May 1<sup>st</sup> to October 31<sup>st</sup>" in substantial conformance with the plans submitted by the City of San Diego on July 7, 2023.
- (b) The signs shall include a Spanish language translation.
- (c) Installation of four (4) additional "Area Closed" signs as shown on Exhibit 5.



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. [Special Condition 6 of CDP #6-22-0113 remains unchanged and in effect]

7. [Special Condition 7 of CDP #6-22-0113 remains unchanged and in effect]

8. [Special Condition 8 of CDP # 6-22-0113 remains unchanged and in effect]

## IV. FINDINGS AND DECLARATIONS

### A. Project Description and Background

The City of San Diego (City) proposes to modify the seasonal closure of Point La Jolla to public access during sea lion pupping season (May 1 – October 31) to apply year-round ([Exhibit 3](#)) and construct a permanent gate at the top of the access stairway ([Exhibit 4](#)). The closure would otherwise be consistent with the development previously approved by the Commission in CDP # 6-22-0113, including the following:

- **Signage.** Signage indicating that the area is closed to public access would remain throughout the year. Note that under CDP #6-22-0113-A1, this signage was removed outside of the seasonal closure for sea lion pupping.
- **Ocean Recreation.** Two K-rails would be located year-round 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 recreation access. The public would continue to 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 would be located in front of the ocean access area. Note that under CDP #6-22-0113-A1, the K-rails and signage were removed outside of the seasonal closure for sea lion pupping.
- **Dogs Prohibited.** Dogs will continue to be prohibited at Point La Jolla year-round and two “No Dogs Allowed” signs will remain at the east and west ends of the project area.
- **Park Ranger Staffing.** The area will continue to be monitored by one to two City Park Rangers year-round during peak hours from 10 a.m. to 6 p.m. (from Labor Day through the Saturday of Memorial Day weekend) or 11 a.m. to 7 p.m. (from the Saturday of Memorial Day weekend through Labor Day) depending on the season.

- **Fireworks.** Fireworks will continue to be prohibited within Ellen Browning Scripps Park during the pupping season from May 1 to October 31 of each year.
- **Permit Term.** The permit will expire seven years following the Commission's approval of CDP #6-22-0113, or on April 4, 2029.

The project site is located at 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 viewing areas, parking along Coast Boulevard, benches, and restrooms/rental facilities.

Finally, the Matlahuayl State Marine Reserve is located immediately north of Point La Jolla. This Marine Protected Area (MPA) is managed by the 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.<sup>1</sup>

### 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 requested and 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

---

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

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.

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. 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.

On April 8, 2022 the Commission approved CDP #6-22-0113 for the seasonal closure of Point La Jolla during sea lion pupping season, which was the follow up CDP to the City’s emergency permit, and included a seven year permit term, the placement of “Area Closed” signs installed on the concrete wall running along the public pathway at the top of the site, placement of two plastic K-rail barriers, 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. (from Labor Day through the Saturday of Memorial Day weekend) or 11 a.m. to 7 p.m. (from the Saturday of Memorial Day weekend through Labor Day) to educate visitors and issue citations to those who might breach the boundaries of the closure area. To assess the on-going effectiveness of the seasonal closure and determine if any significant changes occurred, a condition of approval required the City to monitor and report the effectiveness of the seasonal closure at eliminating harassment of hauled out sea lions. The report for the 2022 seasonal closure indicated that no instances of harassment were observed by the rangers.

The Commission also anticipated that it was possible that harassment may begin again once public access restrictions were lifted and required the City to submit a long-term management plan for the site containing specific management measures and strategies to reduce the human-sea lion conflicts. On March 9, 2023 a status update on the plan was included in the San Diego Deputy Director's Report to the Coastal Commission, following rejection of the draft plan by staff and public reports of harassment outside of the seasonal closure. Prior to the meeting, the City provided a letter indicating that the City had not determined how long the City's preferred long-term strategies, which included installing cameras and a locked gate at the top of the access stairs, would take to implement. As a result of the ongoing harassment and uncertainty in the timing of long-term strategies, the Commission recommended that the City apply for the subject amendment to close the site year-round.

On March 30, 2023 the City submitted the final long-term management plan which included five specific management actions: 1) year-round closure of Point La Jolla, 2) installation of a gate at the Point La Jolla staircase to prevent public access onto the coastal bluffs, 3) surveillance technologies to monitor the area outside of ranger hours, 4) reimplement of the City's volunteer program for Point La Jolla, and 5) enhanced ranger education and training to manage the area. The subject application addresses the first two actions.

#### 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 2](#)). 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 originally 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 agreed to process the permit as a consolidated CDP. Therefore, the standard of review for the proposed amendment 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.

Most recently, in 2022, the Commission approved CDP # 6-22-0113 to close Point La Jolla during sea lion pupping season (May 1-October 31) with a seven-year permit term,

to expire in 2029 concurrently with the restrictions at Children's Pool (CDPs # 6-15-0223, -A1, -A2, 6-14-0691-A1). The issues relating to this closure are discussed in more detail below.

### **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.<sup>2</sup>

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.<sup>3</sup>

Sea lions live in shallow waters and prefer sandy beaches or rocky coves for breeding and haul-out sites.<sup>4</sup> 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.<sup>5</sup>

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

---

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

<sup>3</sup> 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>

<sup>4</sup> 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>

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

are not well coordinated.<sup>6</sup> Sea lion pups nurse from their mothers 15 to 30 minutes after birth, and then continuously over the next eight days.<sup>7</sup> 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.<sup>8</sup> Pups are weaned 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.<sup>9</sup>

### **Conflicts at Point La Jolla**

Since 2021, 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. While these conflicts decreased during the seasonal closures, they returned once Point La Jolla re-opened to public access in November 2022 as discussed below.

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 continue 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.

---

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

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

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

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



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. 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 twelve 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). 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, violated 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. However, enforcement of the MMPA is the jurisdiction of the National Oceanic and Atmospheric Administration (NOAA) and both NOAA and the City agree the MMPA cannot be enforced by the City of San Diego.

In 2022, the City implemented the seasonal closure approved by the Commission under CDP #6-22-0113 from May 1 – October 31. The seasonal closure provided the City with a more effective tool to reduce harassment at the time the closures were in place. During the May 1, 2022-October 31, 2022 closure, the City's monitoring report indicates that while 322 instances of trespassing into the closure area were observed by the Park Rangers, no instances of sea lion harassment occurred. As such, it appears that the seasonal closure was successful in reducing harassment. However, following the 2022 seasonal closure, numerous instances of conflicts were again reported including people taking selfies, being too close, attempting to pet and wake up the animals, and bringing dogs into the closure area.

### **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 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.<sup>10</sup> 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.”<sup>11</sup>

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.<sup>12</sup>

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 basis 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 possible death that have been documented in recent years 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.<sup>13</sup> 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

---

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

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

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

<sup>13</sup> NOAA Fisheries. “Marine Life Viewing Guidelines: Guidelines and Distances.”

<https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines#guidelines-&-distances>

50 feet from sea lions in the water or on shore to avoid harassment.<sup>14</sup> 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. 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. 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 harm, 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. Further, City rangers do not have authority to intervene under the MMPA and can only enforce the seasonal closure; as such, harassment of the sea lions continues to persist when the closure is not in effect.

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 humans. Male sea lions can reach 800 pounds, and during mating and breeding season will act territorially towards humans.<sup>15</sup> 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.<sup>16</sup>

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

---

<sup>14</sup> 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>

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

<sup>16</sup> 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](https://www.dfw.state.or.us/wildlife/health_program/docs/Leptospirosis_and_marine_mammals.pdf)

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.<sup>17</sup> Thus, because of this ongoing harassment and to ensure that distances from humans and sea lions are maximized, the City proposes to close the area of Point La Jolla to public access year round. Therefore, **Special Condition No. 1** is revised to extend the closure term year-round.

The proposed year-round 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 haul out area occurs, and also allowing for more precise enforcement of the restrictions by rangers, lifeguards, and safety officers.

To enforce the closure, the City will continue to 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) to manage human and sea lion interactions. Thus, the closure will maintain, enhance, and restore the habitat as a safe area for the sea lions by eliminating the potential for human interference benefiting the sea lion population and providing enhanced marine resource protection year-round.

To inform the public of the seasonal closure and the year-round requirements to maintain a safe distance from the sea lions, the City has installed "Area Closed" signs along the wall landward of Point La Jolla. However, as previously mentioned, the City's monitoring report for the 2022 seasonal closure indicated that there were 322 instances of trespassing into the closure area observed and, a letter to the City from the Sierra Club indicates that some trespassers indicated that they did not see the closure signage ([Exhibit 5](#)). As such, four additional "Area Closed" signs are recommended where there are gaps in signage on the wall to increase public awareness of the closure. **Special Condition No. 5** is modified to require the City to submit a revised signage plan that includes four additional signs, consistent with the recommendation in [Exhibit 5](#), and reflects the year round closure.

**Special Condition No. 2**, which 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, is also revised to clarify that the year-round closure is limited to the same term. The seven-year permit term is intended to 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

---

<sup>17</sup> 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>

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, **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 would be modified to be implemented year-round consistent with the closure period. 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 year-round 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.

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 year-round closure will maintain and enhance the sea lion habitat, consistent with Section 30230 of the Coastal Act. The 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. 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:

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, the City proposes to restrict public access at Point La Jolla year-round which would be demarcated by “Area Closed” signage and a new gate at the top of the wooded public access stairway and the northern end of the site. The two K-rails on the western end of the bluffs that delineate an accessway for ocean recreation users to transit from the top of the bluffs to the water at Boomer Beach would remain ([Exhibit 3](#)). 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 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 and public safety. 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. 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. Finally, in 2022-2023, the City closed the area to the public during pupping season only; however, harassment of the sea lions continued once the seasonal closure was lifted and rangers no longer had the authority to intervene.

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 year-round 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 amendment 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 3](#)) year-round, 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 public access is restricted.

The presence of rangers, and the clear area boundaries of the year-round closure will also help to resolve conflicts between various stakeholder groups over what is and is not allowed at Point La Jolla. The rangers will be able to enforce the prohibition on access to Point La Jolla throughout the year.

### **Minimum Necessary**

As previously discussed, the City initially implemented the closure only during pupping and mating season, the period during which protection from human harassment is most

critical. However, harassment of the sea lions resumed once the restrictions were lifted; thus, the seasonal restrictions were not enough to prevent harassment and the year-round closure is needed.

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.

Further, transit from the top of the bluffs to the water at Boomer Beach via the ocean access path will continue to be provided to the public, allowing for ocean recreation activities to continue throughout the year. ([Exhibit 3](#)). Two K-rails 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. The City's 2022 monitoring report identified 555 public uses of the accessway were observed by rangers during the closure indicating that the designated pathway is effective in providing public access to the water.

Many opponents of the City's proposal are members of the spearfishing community who oppose the 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; 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. Thus, adequate access exists nearby.

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 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. 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.

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. The facts, as described above and in the Biological and Marine Resources section, support the need for the 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 would be inconsistent with the protection of fragile coastal resources and adequate access exists nearby. The public will still 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 conclusion, while the proposed project will impact public access to Point La Jolla, this is the minimum necessary to effectively protect the sea lions from harassment. 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 permit term (until 2029) 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 ongoing harassment if the area is not closed. The 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 closure have suggested that the sea lions have degraded local water quality through their urine and feces.

While water quality is not tested at the project site, water quality at nearby La Jolla Cove is sampled weekly year-round by the County of San Diego, Department of Environmental Health. La Jolla Cove has been under a water quality advisory since June 28, 2023 due to bacteria levels in excess of health standards. In 2022, the County implemented a newly approved water testing technology to identify fecal indicator bacteria (FIB). In addition to getting faster results, the test revealed higher levels of FIB in area beaches resulting in several county beaches being issued new advisories.

At La Jolla Cove, it is unclear if the water quality issue is caused by sea lions or by an existing storm water outfall located at the Cove, which are known to carry pollutants, or another factor(s). Animal bacteria also do not present the same level of risk that is present in sewage and other anthropogenic sources of bacteria,<sup>18</sup> and the samples for bacteria do not differentiate between human and animal sources.

---

<sup>18</sup> See <http://www.sccwrp.org/about/research-areas/microbial-water-quality/> [Non-human sources of contamination much less likely to contain pathogens infectious to other humans.]

Since the County does not currently test at Point La Jolla and Boomer Beach, it is unclear if water quality at the site is impaired. Unlike La Jolla Cove and Children's Pool, which has had a chronic water quality advisory since 1997, Point La Jolla is a rocky outcropping, open to the ocean with no structures or landforms to block water circulation or mixing.

Regardless, the continued presence of sea lions as part of the proposed closure of Point La Jolla on a year-round basis instead of a seasonal basis is intended to help control human behavior and is not anticipated to result in significant adverse impacts to water quality compared to existing conditions.

## **E. 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 project site 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, which in this case is the local government, Commission staff agreed to process the original permit as a consolidated CDP and therefore this amendment to the permit is also being processed by the Commission. 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.

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

## APPENDIX A – CONDITIONS OF APPROVAL

### Permit No. 6-22-0113

### 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.

### 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.
- (b) Fireworks shall be prohibited within Ellen Browning Scripps Park during the seasonal closure from May 1 through October 31 of each year.
- (c) The seasonal closure area shall be expanded to include all of the area that was authorized to be closed by the City of San Diego Emergency CDP#695848.

- (d) The seasonal closure area boundaries shall be revised to allow ocean access only to the remainder of Boomer Beach, southwest of the expanded seasonal closure area.

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).
  - (v) A City Park Ranger shall be present at the site year-round, 7 days per week, and from 10 a.m. to 6 p.m. or 11 a.m. to 7 p.m., depending on the season.
- (b) The City shall submit, for the review and written approval of the Executive Director, on an annual basis and by March 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) Prior to submitting the formal report required per subsection (b) above, the City shall submit, for review and written approval of the Executive Director, on an annual basis and by January 1 of each year, all raw monitoring data collected during the seasonal closure per subsection (a)(iii) above.
- (d) The City shall provide an annual report to the Commission on the status of harassment reduction efforts during and outside of the closure period for the length of the permit term.
- (e) 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.
- (f) 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.
- (g) 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 Preliminary Long-Term Management Plan for managing

public access and marine mammal interaction at the project site. Prior to April 1, 2023, the applicant shall submit to the Executive Director for review and written approval a Final Long-Term Management Plan. 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, outside of the rangers' working hours (i.e., at night), and shall consider strategies to improve the enforcement capabilities of City Park Rangers, such as through citations and penalties, and engineering solutions, such as installing a fence/railing along the project area or a camera.

#### **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 state: "No Access Allowed During CA Sea Lion Popping Season May 1<sup>st</sup> to October 31<sup>st</sup>"

(b) The signs shall include a Spanish language translation.

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.

## 8. As-Built Plans.

WITHIN 90 DAYS OF COMMISSION APPROVAL, the applicant shall submit as-built plans for review and written approval of the Executive Director for the wooden public access stairway located on the eastern portion of the site.

### Permit No. 6-22-0113-A1

#### 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 year-round ~~from May 1 through October 31 of each year.~~
- (b) Fireworks shall be prohibited within Ellen Browning Scripps Park during sea lion pupping season ~~the seasonal closure~~ from May 1 through October 31 of each year.
- (c) The ~~seasonal~~ closure area shall be expanded to include all of the area that was authorized to be closed by the City of San Diego Emergency CDP#695848.
- (d) The ~~seasonal~~ closure area boundaries shall be revised to allow ocean access only to the remainder of Boomer Beach, southwest of the expanded seasonal closure area.
- (e) The project plans shall include a permanent gate at the top of the stairway in substantial conformance with the plans submitted by the City of San Diego on July 7, 2023.

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).
- (v) A City Park Ranger shall be present at the site year-round, 7 days per week, and from 10 a.m. to 6 p.m. or 11 a.m. to 7 p.m., depending on the season.
- (b) The City shall submit, for the review and written approval of the Executive Director, on an annual basis and by March 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) Prior to submitting the formal report required per subsection (b) above, the City shall submit, for review and written approval of the Executive Director, on an annual basis and by January 1 of each year, all raw monitoring data collected during the ~~seasonal~~ closure per subsection (a)(iii) above.
- (d) The City shall provide an annual report to the Commission on the status of harassment reduction efforts during and outside of the closure period for the length of the permit term.
- (e) 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.
- (f) 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.
- (g) 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. [Special Condition No. 4 of CDP No. 6-22-0113 remains unchanged and in effect]

#### 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 state: "No Access Allowed During CA Sea Lion Popping Season May 1<sup>st</sup> to October 31<sup>st</sup>" in substantial conformance with the plans submitted by the City of San Diego on July 7, 2023
- (b) The signs shall include a Spanish language translation.

(c) Installation of four (4) additional "Area Closed" signs as shown on Exhibit 5.

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. [Special Condition No. 6 of CDP No. 6-22-0113 remains unchanged and in effect]
7. [Special Condition No. 7 of CDP No. 6-22-0113 remains unchanged and in effect]
8. [Special Condition No. 8 of CDP No. 6-22-0113 remains unchanged and in effect]



## **APPENDIX B – SUBSTANTIVE FILE DOCUMENTS**

- CDP# 6-22-0113/City of San Diego Park and Recreation Department
- 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