

From: La Jolla Parks and Beaches Inc

Re: CP 10 year closure renewal application

To: Herman Parker and staff :
San Diego Park and Recreation Dept.

Ref: Recommendations Concerning Permit Renewals for Closure and Rope Barrier at Children's Pool.

Park and Recreation dept. submitted its request to renew alternating Rope Barrier and Legal Closure at Children's Pool beach for 10 more years. The Coastal Commission is scheduling a San Diego hearing in June on both types of access restrictions. La Jolla Parks and Beaches Inc. (LJPB) is chartered to provide advice on processes in La Jolla, within its Special Use Permit.

Recommendation categories with explanations afterward are:

1. Do not renew. It was not in the best interest of Park and Recreation or its charter to change the purpose of a dedicated public beach (and parkland) from public use to a closed state animal reserve, though a City Council majority wanted it for the tourism. ¹
2. Solicit needed legal opinions and indemnifications from the City Attorney.
3. Respond to Closure Permit condition terms vs CCC misgivings in its letter of 2/21/19. The research, evaluations and considerations were ok. See recommendation 4 below.
4. At most P&R should request a 2 year permit renewal for time to really prove meeting the intended conditions of the original permits, but have CCC designated contractors do so.
5. Replace the federal signs claiming beach visits have been killing seal pups in La Jolla.

1. Do not renew: due to unforeseen cost and liability in the permit process, past and future. Park and Recreation (P&R) should not be committed to an expensive, never ending and dangerous path to its disadvantage. Evidence P&R has submitted does not substantiate danger to the public from seal feces, nor verified pup abandonments, no enforceable offenses seen against seals on either of our seal rookeries. It is seen a few signs now suffice to educate (intimidate) the public to treat urban pinnipeds appropriately in our la Jolla seal and sea lion rookeries (see item 5). Rangers don't even have to be there. A complete lack of seal harassment on the unattended adjacent South Casa Beach rookery is the comparative example.

Legal action to protect the CP closure permit cost the City a fortune and future implementation will cost P&R forever. The real winners were special interest groups and NOAA/NMFS being able to give away management responsibility for urban pinnipeds. The most affected, whose best interests were ignored were the people of La Jolla, the Children, and seals exploited for tourism. The assumption seals are better off relying on people for shelter than being on their own in the wild is not supported. Seal and sea lion populations are well past historic levels and communities all over California will share our pain.

Park and Rec should follow the precedent of the Seal Rock Reserve and not pursue renewal. As with that 5 year temporary reserve, closure is the wrong answer to the wrong problem.

2. Legal Opinions Needed: Solicit legal opinions from the City Attorney.

¹ When the City sought to alter the Children's Pool Trust to allow shared use, the City Attorney said he would do so using City lobbyists in Sacramento such as San Diego Association of Governments. And he did, though the lobbying did not produce the wording the City Council had said it wanted.

This renewal relies on a successful appeal seeming to reverse a Superior Court ruling that the closure was illegal under the MMPA section 109(a).² But the appeal ruling did not address that issue. They ruled the Coastal Commission could interpret its Coastal Act to grant a permit to San Diego to proceed anyway. Question for the City Attorney: Can the Commission under the Coastal Act legally issue a permit to San Diego to violate other laws, but leave San Diego liable for then enforcing the illegality?

Park and Rec needs City Attorney indemnification against any charges P&R staff has held private undocumented meetings with Commission Staff or NOAA in violation of the Brown Act.

Before P&R accepts responsibility for protection of marine mammals on beaches, the City Attorney's office should review the verdict brought concerning sea lions on the Cove bluffs in which the court agreed with City Attorney Goldsmith; "The City is not responsible for the actions of wild animals".

Some might assume potential disturbance of marine mammals in the Coastal Zone is now illegal under the Coastal Act and for California communities to enforce. Ask the City Attorney: Who now enforces when NOAA does not respond on beaches with pinnipeds? Hopefully not scarce rangers or lifeguards or police. Suggest California Fish and Wildlife dept. should monitor and enforce animal harassment on beaches under California Code 251.1.³

Ask of the City Attorney; If future marine mammal/citizen approach conflicts are to be resolved per conformance to the Coastal Act, then enforced by whom? ⁴

The Coastal Commission does not have any police force. Communities enforce their own Local Coastal Plan. But anybody can sue anybody else under the Coastal Act. What will prevent activist groups from suing San Diego under the Coastal Act for perceived failure to protect its marine mammal resources?

For police to enforce seal and sea lion well-being requires resources. It is reported after Children's Pool was closed, police calls dropped 90%. Good, but that only showed the real belligerents on the sidewalks had been appeased. Back then there was only one ranger needed on one beach. Citations of people for seal "harassment" have had a zero conviction rate. Northern Division Police protocol since 2007 says protection enforcement is for NOAA only. Download here. [Children's Pool](#)

3. The 2014 closure special conditions: included studies and annual data reports returned to the CCC, which have not been fully accepted. "Why did they not specify what was really wanted 5 years ago?" is not the right answer. Meeting the conditions was up to Park and Rec personnel also pursuing their department goals while beset by special interest groups and unsubstantiated "findings" from the most respected but not disinterested authority; NOAA/National Marine Fisheries. (See item 5)

The final permit LCP-6-LJS-14-0607-1 was certified and delivered in November 2014. The Commission office indicated unmet condition requirements in a letter of 2/21/19. Commission staff had been invited

² Sec 109(a): No state shall enforce or attempt to enforce any law concerning the take of marine mammals....

³ no person shall *harass*, herd or drive any game or nongame bird or mammal..... harass is defined as an intentional act which disrupts an animal's normal behavior patterns

⁴ A citizen complaint resulted in a warning from Coastal Commission Enforcement to Children's Pool beachgoers that moving wrack (seaweed) to enhance beach visiting was not allowed under the Coastal Act. P&R refuted evidence it had ever cleaned Children's Pool Beach and said it never would. But when the CP Ranger notified beachgoers of the ruling he was ignored because he had to admit he had no authority to enforce the Coastal Act.

to a slide show last year to review the case for calling Special Conditions met. Some would see such private undocumented meetings with Commission Staff more as lobbying than submission of requested material. The same for Item 5.

To best answer CCC conditions misgivings, consider

- a. *“Feasibility of providing ADA-compliant access to the sandy beach area of Children's Pool Beach”* was a badly worded requirement. A Court decision meantime had ruled strict Federal standard ADA compliance was not required on all major beaches. P&R maintains it was not obliged to check what the CCC might have otherwise wanted or would settle for. It was the CCC who used the legal term ADA-Compliant so did not require San Diego to otherwise find reasonable accommodations or mitigations.
- b. Analyze water quality. Citing new TMDL state standards for animal waste runoff, consultants determined there never was dangerous bacteria from seals or basis for Health Department warnings. P&R needs to better explain to the CCC though the water is unchanged, San Diego need not act on outdated Health Department findings. San Diego had its own contractors measure and analyze bacteria and is not responsible for vintage County Health Department postings that discourage public access.
- c. Sluiceways: Relies on old studies done when the City was fighting a court order to restore the Pool to public use. P&R needs to provide the CCC facts found after the permit conditions were imposed. Unfortunately, what was submitted seems to conclude it is only projected cost and trouble that make restoring sluiceways “not feasible”. Real experiments need to be performed.
- d. A slide show meeting by P&R personnel failed to completely convince the CCC staff. Not the fault of P&R personnel. The presenters were not conversant with contractor findings and methods and those contracts were closed. P&R should open new contracts with Ametec Foster Wheeler and such to have them present their data and findings to the CCC.

4. Request a 2 year permit extension: to do better more complete studies. The time would also would allow renewal participation by Californian Fish and Wildlife and State Lands Commission, as they had petitioned against the Seal Rock Reserve and now could be the rightful enforcement authorities with NOAA unaccountable.

5. Replace federal signs: P&R accepted signs off the record from NOAA Long Beach in Jan 2017 to post at our 2 adjacent seal rookeries. Their unsubstantiated claims that people visiting beaches results in abandoned pups serve to inhibit access just as a Rope Barrier would, and have re-invigorated activists to harass the public should citizens cross their “Line in the Sand” at South Casa Beach. They demand Lifeguards help them.

The la Jolla Light has run an incendiary video for a year “Harassed seals abandon their pups La Jolla’s Children’s Pool” (no, wrong beach) loosely based on these signs and it belies Ranger data submitted to the CCC. Accurate and helpful replacement signs simply could just say what NOAA has used in the past: “If any seal is looking at you, step back”. But please advise the Coastal Commission this time before taking action.