

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



August 28, 2012

Stacey LoMedico  
City of San Diego, Park and Recreation Department  
202 C Street, MS 35  
San Diego, CA 92101

Re: Children's Pool Beach Closure

Dear Ms. LoMedico:

First, thank you for your on-going efforts to coordinate review of the management issues at the Children's Pool. We appreciate the challenges that your department is responding to and these comments are offered to provide direction and support for marine mammal protection while ensuring public access opportunities are also protected. On August 17, 2012, we received an e-mail from the City requesting that the Commission process a consolidated Coastal Development Permit (CDP) for the installation of signage and a barrier chain at the top of the lower staircase to prohibit access to Children's Pool beach from December 15 to May 15, during seal pupping season. We also received the associated CDP application that was included as an attachment to the e-mail.

At the Children's Pool, the Coastal Commission's jurisdiction includes the entire sand area and the City's jurisdiction begins at the bottom of the lower stairs and then continues inland. Since the proposed physical development will be located at the top of the lower stairs, it is within the City's jurisdiction, and the City would be the agency responsible for permit issuance. However, given that the effect of the proposed signage, coupled with the City's proposed ordinance measure would seek to preclude all public access to the sandy beach at Children's Pool during pupping season, such an action would constitute development because the definition of "development" under the Coastal Act includes "change in the intensity of use of water, or of access thereto, [...]" Therefore, it is anticipated that "development" in the form of access restrictions will be imposed on the beach area which is subject to the Commission's original jurisdiction. If a portion of the project is within the Commission's jurisdiction, a consolidated CDP application may be considered depending on the results of the LCP amendment that the City is currently processing. We will make a final decision on consolidation of the permitting process at that time and any coastal development permit application may not be filed with the Commission until the associated Local Coastal Program (LCP) amendment is approved by the City and certified by the Commission. Pursuant to our e-mail correspondence on July 24, 2012, it is staff's understanding that the City does not intend to formally submit a CDP application until the LCP amendment has been processed. Please confirm that the August 17<sup>th</sup> e-mail attachment is not the City's official submittal.

The August 17<sup>th</sup> e-mail also included a request for preliminary review of the City's proposed ordinance and Community Plan/LCP amendment. The City is in the process of preparing a new ordinance to prohibit public access to Children's Pool beach during seal

pupping season, from December 15 to May 15. Since the proposed ordinance will not be located in a section of the San Diego Municipal Code that has been submitted as part of the City's LCP, an LCP amendment is only triggered if implementation of the ordinance would conflict with the LCP. In this case, an LCP amendment is required because implementation of the ordinance would conflict with several existing policies of the certified La Jolla Community Plan and Local Coastal Program Land Use Plan, specifically those regarding the provision of public access. Given that implementation of the ordinance would constitute development, as noted above, any such implementation of the ordinance would require a CDP, because the development would change the intensity of use of water, or of access thereto in the Commission's original jurisdiction. The Commission would apply the Coastal Act as the standard of review for any consideration of a CDP application to implement the ordinance.

The City proposes to amend the LCP to establish a seasonal Environmentally Sensitive Habitat Area (ESHA) and buffer for the Children's Pool Beach marine mammal haul out area in accordance with Section 30107.5 of the Act. In consultation with our staff ecologist, Dr. John Dixon, we advise the City not to invoke an ESHA or seasonal ESHA designation at Children's Pool as part of the LCP amendment. It is unclear whether the marine mammal haul out site would rise to the level of ESHA, as defined by the Coastal Act. In our informal consultation with Dr. Dixon, he expressed concern about the designation of the haul out site as an ESHA for a variety of reasons. Additionally, it is not evident that the issues at Children's Pool are completely resource based, but may result from the behavior of competing interest groups. Instead of designating the beach as a seasonal ESHA, we recommend that seasonal restrictions be considered based on the broader protection of sensitive resources and/or marine mammals pursuant to Section 30230 of the Coastal Act. Even if the City chose to amend its LCP to designate Children's Pool beach area as an ESHA and ESHA buffer, and the Commission certified it, such a designation is in the Commission's original jurisdiction and would not be binding authority in the Commission's consideration of a CDP to restrict access to the beach area. In areas of original jurisdiction, all the Chapter 3 policies of the Coastal Act represent the standard of review with any certified LCP providing guidance. We will continue to work with your office on suggested policy language for an LCP amendment as it progresses through your local amendment process.

Finally, at this point in time, Commission staff is not in support of complete beach closure at Children's Pool during pupping season. Without the results from a comprehensive monitoring program, it is premature to conclude that beach closure is necessary to protect the seal rookery during pupping season. Seasonal restrictions on public access may be necessary to provide an added level of protection to the harbor seals during pupping season when they are most vulnerable; however, Commission staff would still recommend that some public access be maintained. There may be an opportunity to provide the maximum level of protection of seals during pupping season by closing the beach to the general public, but still maintaining a narrow public access route along the southern portion of the beach, directly adjacent to the toe of the bluff, for use only when entering or exiting the water.

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Thank you for your attention to these matters and I look forward to working closely with you and your staff. If you have any questions or concerns, please do not hesitate to call or e-mail me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kanani Brown', with a long horizontal flourish extending to the right.

Kanani Brown  
Coastal Program Analyst II