

CALIFORNIA COASTAL COMMISSION

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October 25, 2013

Todd Gloria
Interim Mayor

Councilmembers
City of San Diego
202 C Street
San Diego, CA 92101

Re: La Jolla Community Plan and Local Coastal Program Amendment/Children's Pool

Dear Mayor Gloria and Councilmembers,

This letter represents Coastal Commission staff comments on the City of San Diego's proposal to amend the La Jolla Community Plan and Local Coastal Program (LCP) to designate Children's Pool Beach as an environmentally sensitive habitat area (ESHA) and prohibit the public from entering the sandy beach during harbor seal pupping season, from December 15th through May 15th. The purpose of this seasonal closure is to protect the harbor seal rookery from human disturbance and harassment during its most vulnerable period – the pupping season – when seals haul out and remain on the beach for longer periods of time in order to prepare for birth, go through the birthing process, and nurse and wean the seal pups once they are born.

While we are supportive of the City's proposal to impose seasonal restrictions, including full beach closure to the public during the pupping season, we do not support an ESHA designation at Children's Pool as part of the subject LCP amendment. Within areas designated as ESHA, only resource-dependent uses are allowed which would preclude many activities normally associated with the beach, including, but not limited to, sunbathing, accessing the water, passive recreational uses and possible repair/maintenance of the breakwater. Under the Coastal Act, marine mammal protection and maximum public access opportunities are both mandated. Even with a seasonal closure during the pupping season, there remains a significant public educational asset and substantial passive recreational/coastal access opportunities for the many visitors who stop by and view the seals. Visual access of the ocean and beach environment also remains fully available during this time from the various public vantage points around the area.

As discussed previously with City staff, other jurisdictions which have designated marine mammal haul-out areas and/or rookeries as ESHA do not share the same site-specific conditions present at Children's Pool, including its close proximity to an intense urban setting, ease in accessibility, major population bases for both local residents and visitors at large, dedicated user groups and the City's joint use management strategy that has

allowed people and seals to share the beach. Further, the Commission has typically applied the ESHA designation to special status species and their associated habitats, and terrestrial resources, not marine resources.

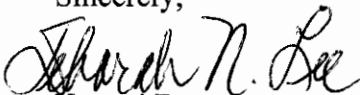
After further internal discussion with our staff ecologist and legal counsel, Commission staff recommends that seasonal restrictions be considered based on the protection of marine resources pursuant to Section 30230 of the Coastal Act. Section 30230 of the Coastal Act states:

*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.*
(emphasis added)

Section 30230 is the more appropriate policy of the Coastal Act for the subject LCP amendment because it specifically addresses the protection of marine resources, such as marine mammals, and areas of special biological significance, such as the harbor seal rookery at Children's Pool. Additionally, the majority of the area where the seals haul out is within the intertidal zone, such that application of the marine environment policies of the Coastal Act is more applicable than the land resource policies. Finally, the marine resource protection policy provides sufficient protection of the resources such that the City does not need to designate the beach as ESHA in its LCP. During the last pupping season, this office endorsed a full beach closure without the establishment of a designated ESHA. Commission staff shares the City's concern about providing needed protection for the seals, especially through their pupping season, having enforceable measures while recognizing broader public access goals outside of the pupping season. From a policy perspective, we also do not want to undermine and potentially prejudice the application of the ESHA provisions in the future when there are clear alternatives that result in the same protective measures.

In conclusion, Commission staff is supportive of the City's proposal to close Children's Pool Beach during the pupping season pursuant to Chapter 3 policies of the Coastal Act without an ESHA designation. Please see the attachment for suggested modifications to the City staff's proposed language. Thank you for your consideration and please do not hesitate to contact San Diego Commission staff at the above office if you have any questions or concerns.

Sincerely,


Kanani Brown
for Coastal Program Analyst

ATTACHMENT A – SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed LCP amendment be considered. The underlined sections represent language that Commission staff suggests be added, and the ~~struck-out~~ sections represent language that Commission staff suggests be deleted.

1. On Page 26, remove the language referring to ESHA and add provisions for marine resources:

Environmentally Sensitive Habitat Areas

The Natural Resources and Open Space System and Residential Elements recommend that development be designed to prevent significant impacts upon sensitive habitats and identified endangered or threatened plant and animal species. In addition, a ~~specific, Environmentally Sensitive Habitat Area that has seasonal access restrictions~~ and a buffer is ~~are~~ designated for the Children's Pool Beach in order to protect breeding pinnipeds pursuant to Section 30230 of the California Coastal Act. No public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season. ~~The beach area is designated as an Environmentally Sensitive Habitat Area pursuant to Sections 30107.5 and 30240 of the California Coastal Act and the lower staircase is a buffer the ESHA.~~

2. On Page 30, remove the language referring to ESHA:

Coast Boulevard Park: Children's Pool (For more information regarding the ESHA ~~with~~ seasonal access restrictions refer to Appendix G Subarea E)

3. On Page 40, remove the language referring to ESHA:

Public access to this resource is limited, particularly along portions of Bird Rock, La Jolla Hermosa and in La Jolla Farms due to steep slopes, cliff erosion and sensitive rock formations and restricted parking. Beach access is also limited on a in the seasonal basis at Children's Pool Beach ~~Environmentally Sensitive Area and buffer~~ during the seal pupping season to protect an area and species of special biological significance in order to prevent significant disruption.

4. On Page 168, remove the language referring to ESHA:

d. Children's Pool. Small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized. ~~A specific, Environmentally Sensitive Habitat Area that has seasonal access restrictions is designated for the Children's Pool~~ i In order to protect breeding Harbor Seals, ~~No~~ public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season. ~~This area is designated as an Environmentally Sensitive Habitat Area pursuant to Sections 30107.5 and 30240 of the California Coastal Act.~~ *See discussion below.

On Pages 168-169, delete the proposed "discussion" footnote in its entirety and replace it with the following:

*On June 8, 2010, the City of San Diego City Council, via Resolution R-305837, directed the City Attorney "to draft an ordinance amending the Municipal Code...to prohibit public access to the Children's Pool beach during harbor seal pupping season, from December 15 to May 15" and directed the Mayor or his designee "to amend the Local Coastal Program, only if required, to prohibit the public from entering the beach during harbor seal pupping season from December 15th through May 15th". In order to effect this directive, staff proposed the closure of Children's Pool beach during pupping season in accordance with California Coastal Act Section 30230:

"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."

Therefore, in order for the LCP to be consistent with the Coastal Act, compliance with Section 30230 is required. The seasonal prohibition of public access onto the lower staircase leading down to the sand from the sidewalk and onto the Children's Pool beach during the seal pupping season is based on such a prohibition being the most protective of significant marine resources.

In conjunction with the LCP amendment, the City Council also adopted an ordinance by adding a Section 63.0102(e)(2) as follows: *It is unlawful for any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach beginning with the second landing, from December 15 to May 15.*