

**CALIFORNIA COASTAL COMMISSION**

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April 18, 2022

Permit Application Number: **6-22-0113****COASTAL DEVELOPMENT PERMIT**

On April 08, 2022, the California Coastal Commission granted to **City of San Diego, Parks & Recreation Department** this permit subject to the attached Standard and Special conditions, for development consisting of **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, and after-the-fact authorization for the wooden public access stairway** more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at **Point La Jolla Bluffs, La Jolla, San Diego, San Diego County (APN 350-010-0100)**.

Issued on behalf of the California Coastal Commission by

Sincerely,

John Ainsworth  
Executive Director

A handwritten signature in black ink, appearing to be "Kaitlin Carney".

Kaitlin Carney  
Coastal Program Analyst

cc: Commissioners/File

**ACKNOWLEDGMENT:**


The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part of that: "A Public entity is not liable for injury caused by the issuance... of any permit..." applies to the issuance of this permit.

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**IMPORTANT:** THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date: 5/9/2022

Signature 

**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 permittee 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 or 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 permittee 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.

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- (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

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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;

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- (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.

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- (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 Pupping Season May 1<sup>st</sup> to October 31<sup>st</sup>".
- (b) The signs shall include a Spanish language translation.

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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.

