

## **DESCRIPTION OF GROUNDS FOR APPEAL:**

### **GROUND 1 – There is no Environmental Impact Report.**

The Notice of Right to Appeal (NORA) does not specify the process for appealing this decision and states the City Council will consider this appeal.

The NORA states this determination is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA State Guidelines 15269(c) Emergency Projects.

Despite input from Federal and State Agencies, the City apparently has not prepared an EIR (see Exhibit A, letters including those referenced below). Also, members of the public have tried to obtain the City's records concerning whether an EIR was ever prepared or intended to be prepared, with no response (see eg., CPRA #21-3738, submitted 5 weeks ago, with no response!).

Best Management Practices (BMP's), especially given so long a time period for similar matters involving public access restrictions due to the Harbor Seal colony at Childrens' Pool, would include an EIR. This process provides the opportunity for public input and the application of science, on matters involving sea lion colony forming at Point La Jolla. Seals are different from sea lions; but in both cases, "emergencies" have been used to circumvent the environmental process, with similar results—unendangered sea mammals forming colonies in urban areas. The resulting usurpation of the public's right to cross its tidelands is justified by either the purported "protection" of the animals and their young, or as a public viewing opportunity and tourist attraction.

Although sea lions are naturally more aggressive and defensive when approached by humans than seals, the environmental impacts of neither the sea lion colony, nor the seal colony, have been considered on the adjacent Matlahuayl Marine Preserve.

### **GROUND 2 – The City's findings that there is a present, immediate emergency, are not supported**

15269(c), by its terms, "does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short term; but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare."

The City has interpreted 15269(c) to define "emergency" contrary to its explicit wording. Despite the City's experience with the seal colony, there has been no longer-term cumulative environmental consequence. Clearly, the City's "hand's-off" strategy has resulted in these established sea mammal colonies. There is no evidence that a safety risk would occur during the preparation period of an EIR. Therefore, the Environmental Determination that this project is "categorically exempt" is incorrect, and this Appeal must be upheld.

Since 2000, when the City applied for a Coastal Development Permit (#6-00-126) for the establishment of Seal Rock as a permanent marine mammal reserve, the City has avoided preparation of standard Environmental Impact Reports (EIR) under CEQA, by claiming that measures to mitigate the foreseeable consequences of allowing non-threatened pinnipeds to establish colonies are "emergency projects" under section 15269(c).

In 2000, the Coastal Commission asked the City for a long-term management plan for the Children's Pool. Of particular interest were how the City would address water contamination, long-term closure of the beach to the public, and viable alternatives (9-29-2000, California Coastal Commissions (CCC) letter to City). These topics could be addressed in an EIR. Absent an EIR, a "temporary preserve" was established that lapsed before it was renewed. (Note the letter dated 3-5-2001, where counsel for the State Dept of Fish and Game concluded the City "has no authority under its tidelands grant to undertake the proposed project in the first place" and urged a cooperative plan among governmental authorities in order to avoid judicial scrutiny).

The City itself has therefore created the "emergency" of expanding pinniped populations (in this case sea lions overtaking Point La Jolla) by failing to fairly consider the consequences of its actions. This includes: disregarding harm to the marine environment as the animals search for food in the Matlahuayl Marine Preserve (Marine Protected Area, or MPA); and, the fouling of the air with fecal odor, of the rocks with fecal material and of the water with fecal bacteria. These issues would normally be scientifically examined in a standard EIR to justify restricting the public from access to its tidelands. These ever-renewing "emergencies" are not scientific review.

An "emergency" is something that is sudden, unexpected and unforeseen. The Hanan Report (Exhibit B) provided the City with information on what would happen if the establishment of pinniped colonies was allowed. The City chose monitoring and signage rather than maintaining access to urban tidelands for the public. Even the City agrees this strategy is inconsistent with both coastal public access requirements and marine mammal protection regulations.

The latest "emergency" stated in the NORA, is that "staff has determined that immediate action to close Point La Jolla is necessary to prevent further risk to public health, safety and welfare" and that "not taking emergency action would likely endanger the public health, safety, and welfare of persons accessing the site and further disturb marine mammal populations."

In the "Agreement for an Emergency Coastal Development Permit" (Exhibit C), upon which this Appeal is based, the City states that:

"the Parks and Recreation Department was notified by the CCC of information it had received from the general public in the form of recent press reports, video recordings as well as numerous phone calls, emails and photos documenting repeated instances of harassment of the sea lions residing at Point La Jolla...volunteer docents have submitted reports of sea lion injuries or fatalities sustained as a result of both accidental and malicious interactions by humans."

The Agreement also states the "goal" of this endeavor is to "legally control visitor behavior, improve visitor safety, and help maintain healthy marine mammal populations." Despite the direction of the greater governmental authorities shown in Exhibit A, despite the fact that neither seals nor sea lions are endangered, and rather than providing an EIR, the City chooses NOT to avail itself of the power granted it under the MMPA to humanely control marine mammals and instead chooses to "avoid judicial scrutiny" by enacting yet another "emergency" measure based on claims that are not verifiable and could well be biased.

Since the City provides no verifiable instances of injuries to marine mammals or people, to justify such use of 15269(c), there is no harm demonstrated to justify the immediate, or any, emergency action.

**GROUND 3 – The City has violated the Coastal Act.**

The California Coastal Act of the Public Resources Code, section 30211, 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.”

In La Jolla, the heavy rails and slope work (dumping non-native soil material) placed by the City under “emergency” claims at Point La Jolla, would normally require formal environmental evaluation and mitigation under CEQA. The City would require such required environmental review of any coastal homeowner. Why has it not required the same standard of environmental review of itself?

There is no question that an EIR would be time-consuming and costly; but, this is normal course for such a significant series of events. An EIR should have been undertaken long ago. The consequences of inaction are now before us and are ongoing. Rather than the incremental, piecemeal “emergency” approaches favored by the City, an EIR should be prepared now, before more time is lost.

**GROUND 4 – An EIR is also needed to determine if the harbor seal and/or the sea lion colonies are causes of declining fish populations and giant kelp in the MPA.**

The Hanan Report, disregarded by the City at a cost of \$100,000, was intended to provide the City a Marine Mammal Management Plan, including options for moving and/or excluding sea lions, using approved National Oceanic and Atmospheric Association (NOAA) and Marine Mammal Protection Act (MMPA) deterrent techniques. Instead, the City chose to provide signs, rope barriers and education, which has resulted in the need for these further “emergency” actions.

Additional monetary costs of this inaction are cleanup costs, costs to businesses because of the odor, and enforcement costs when the signs, ropes and education aren’t universally effective.

Although the animals are attractive to some members of the public, they are also a nuisance to others. An EIR is necessary to inform the public of the consequences of these colonies, including unseen consequences in the water such as the apparent decline in fish and marine life populations in the area of the colonies, excrement, shark attraction to similar colonies and the probable consequences of biological imbalance due to marine mammal over population.

It is the City’s burden to provide an EIR to justify its actions here. Instead, the City attempts to unfairly shift this burden to the citizens of San Diego by requiring CEQA Appeals on coastal access blockades (the scope of which keep changing), to mitigate human induced “emergencies.”

The City of San Diego does not own the tidal areas they are attempting to block. They have not cited pollution or any evidence of an emergency justifying usurping the public’s access rights.

For the above reasons, this Appeal should be upheld and the proposed Environmental Determination should be denied.