



THE CITY OF SAN DIEGO

AGREEMENT FOR AN EMERGENCY COASTAL DEVELOPMENT PERMIT

August 10, 2021

Point La Jolla Seasonal Closure – PTS No. 695848

Emergency Coastal Development Permit No. 2572053

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation, and the CITY OF SAN DIEGO, PARKS & RECREATION DEPARTMENT, Owner/Permittee, to allow the emergency temporary seasonal closure of Point La Jolla on a 24-hours and seven days a week basis beginning immediately through September 15, 2021 in the La Jolla Community Planning and Local Coastal Program Land Use Plan area, within Council District 1, on City of San Diego-owned property and within the City's Coastal (Appealable) Overlay Zone; and

WHEREAS, a coastal emergency is a sudden, unexpected occurrence within the Appealable Area of the Coastal Zone that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services; and

WHEREAS, this coastal emergency is subject to the regulations in the City of San Diego Municipal Code Section 126.0718 (SDMC); and

WHEREAS, this emergency is not impacting environmentally sensitive lands and is not subject to the regulations in the City of San Diego Municipal Code Section 143.0126 (SDMC); and

WHEREAS, the SDMC permits approval for a coastal emergency by authorizing the minimum amount of impact necessary to stabilize the emergency; and

WHEREAS, the SDMC requires the subsequent processing of a standard Coastal Development Permit (CDP) application through either the City or California Coastal Commission for any work authorized as a coastal emergency; and

WHEREAS, the Owner/Permittee requests approval to obtain an emergency CDP and agrees that any emergency development allowed is temporary therefore must be removed if a follow-up CDP application is not deemed complete within 180 days of approval, or if the follow-up CDP is denied, then all development approved by this agreement shall be removed from the property.

BE IT RESOLVED, by the City of San Diego, that it adopts the following Findings with respect to this coastal emergency impacting environmentally sensitive lands:

1. **A coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a CDP and the development can and will be completed within 30 days unless otherwise specified in the permit.**

On June 29, 2021, the Parks and Recreation Department was notified by the California Coastal Commission 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, located north of Boomer Beach and south of La Jolla Cove. In addition to the input received from the general public, volunteer docents have submitted reports of sea lion injuries or fatalities sustained as a result of both accidental and malicious interactions by humans.

The multiple instances of sea lion harassment, injury, and death that have been documented in recent weeks violate the intent of Coastal Act Policy 30230. The Coastal Act prohibits harassment of marine mammals. 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."

In addition to the Coastal Act, the Marine Mammal Protection Act (MMPA) provides protective regulations which is enforced by three federal agencies: the U.S. Fish and Wildlife Service; the National Oceanic and Atmospheric Administration; and the Marine Mammal Commission. Because the MMPA is a federal law, City law enforcement officers do not have the authority to enforce it. This lack of authority jeopardizes visitor safety, animal welfare, and natural resource protection which renders the City unable to uphold the intent of Coastal Act Policy 30230.

A sea lion pupping season closure at Point La Jolla will provide the City of San Diego, a municipal corporation and its officers with a valuable tool to legally control visitor behavior, improve visitor safety, and help maintain healthy marine mammal populations, thereby complying with the intent of the Coastal Act. Therefore, a coastal emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring a CDP and the development can and will be completed within 30 days unless otherwise specified in the permit.

2. Public comment on the proposed coastal emergency action has been solicited and reviewed to the extent feasible.

On August 6, 2021, the City of San Diego posted the Notice of Proposed Work for a Coastal Emergency in the local newspaper, City's Noticing webpage, and mailed to the California Coastal Commission, Chair of the La Jolla Community Planning Association, and publicly listed it on the City's "All" and "Coastal" public notice listing. On August 5, 2021, the City of San Diego determined the emergency work to be statutorily exempt from CEQA pursuant to CEQA State Statute and Guidelines Section 15269(c), Emergency Project, and posted the Notice of Right to Appeal Environmental Determination. Therefore, public comment on the proposed emergency action has been solicited and reviewed to the extent feasible.

3. The proposed emergency work is consistent with the Local Coastal Program.

The project site is located within the La Jolla Community Plan and Local Coastal Program Land Use Plan (Local Coastal Program) and the emergency work with special protection measures given to areas and species of special biological or economic significance is necessary to protect both the health, safety, and welfare of human beings and marine mammals. The emergency protective actions 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. In addition, the emergency action will protect humans from potential aggressive actions by marine mammals if perceived threatened by close human contact.

The proposed signage and area closure does not limit the public's long term ability to access scenic coastal areas and continues to be consistent with the adopted Local Coastal Programs efforts to preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline.

The emergency exists that requires action more quickly than would be permitted by the normal procedures for acquiring an CDP, the scope of work appears to be consistent with the minimum necessary to address the emergency, and the development can and will be completed within 30 days unless otherwise specified in the permit. Therefore, the proposed emergency work is consistent with the Local Coastal Program.

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and in consideration thereof, the Parties agree as follows:

The above-listed recitals are true and correct and incorporated by reference.

1. The Owner's real property is legally described as and is commonly referred to as "Point La Jolla", within the northwest portion of Ellen Browning Scripps Park, a 5.60-acre site west of Coast Boulevard, La Jolla, Block 58, Map 352 (APN 350-01-5800).

2. The Owner's Property is in OP-1-1 and RS-1-7 Base Zones and Coastal (appealable) Overlay Zone.
3. The Owner/Permittee may implement an emergency temporary seasonal closure of Point La Jolla on a 24-hour-seven day a week basis beginning immediately through September 15, 2021. The proposed emergency temporary seasonal closure would involve the use of the following:
 - Five (5) separate, 18 inches-high by 24 inches-wide "AREA CLOSED" signs will be affixed to removable Telespar poles, spaced apart, and installed in the concrete wall running along the boardwalk as shown on the attached Project Site Map (Attachment 1). The first pole and sign will be located 20 feet from the end of the metal railing that borders Boomer Beach, followed by the second, third, and fourth poles and signs placed at 20-foot intervals from one another. The fifth pole and sign will be located 80 feet from the fourth pole and sign;
 - One (1) plastic K-rail barrier will be placed outside of, and perpendicular to, the concrete wall and sit on the sand area of the bluffs, forming the southern border of the closure area. One (1) Telespar pole with an "AREA CLOSED" sign will be attached to the K-rail. The K-rail will be filled with water to stabilize it and have pieces of wood inserted beneath it to provide a more even surface. The K-rail will be located next to the first southern most pole and sign (which is 20 feet from the end of the metal railing bordering Boomer Beach);
 - At the wooden beach access stairs to the north that lead beyond the wall, a metal chain, with an "AREA CLOSED" sign attached, would be connected to the hand railing and placed across the top step of the staircase; and
 - One (1) to two (2) City Park Rangers will be staffing the Project site, seven (7) days a week between the hours of 10:00 am – 6:00 pm, which covers the period of time during the day in which there are the most public visitors to the site. The Park Rangers will be educating visitors on sea lion interactions and monitor any violations of San Diego Municipal Code Section 63.20.13. If anyone is found to go past the boundaries that are designated as closed by the "AREA CLOSED" sign, then they will be cited. Park Rangers will compile their observations and any reports of violations against the Marine Mammal Protection Act (MMPA) by contacting the National Oceanic and Atmospheric Administration (NOAA).
4. This Agreement shall run with the land for the protection and benefit of all Parties concerned. If fee title to the property or any partial interest therein is conveyed to any other person, firm, or corporation, the conveying instrument shall contain a restriction referencing this Agreement or restrictive language consistent with this Agreement.
5. If the Owner/Permittee or their successor or assign violates any term of this Agreement at any time, the City may terminate this Agreement consistent with the revocation procedures in the SDMC.


CONDITIONS

1. This Agreement must be signed by the Owner/Permittee and returned to the Development Project Manager within 5 calendar days.
2. Only work specifically described in this Agreement and for the specific property listed above is authorized. No other work is approved by this emergency action.
3. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this Agreement.
4. This Agreement does not obviate the need to obtain necessary authorization and/or permits from other agencies (e.g. California Coastal Commission, Department of Fish & Game, U.S. Fish & Wildlife, U.S. Army Corps of Engineers, and the State Lands Commission).
5. This emergency project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-0009DWQ, or subsequent order, and the Municipal Storm Water Permit, Order No. R9-2013-0001, or subsequent order.
6. All work authorized by this Agreement must be completed within 45 days from the date of authorization. Following completion of work, any areas impacted by the emergency repair would be restored to as-built condition. If during construction, site conditions warrant changes to the proposed construction, the Development Services Department (DSD) shall be contacted immediately prior to any changes in the field.
7. Within 180 days of issuance of the emergency CDP agreement, a standard CDP application shall be submitted and deemed complete by DSD or the California Coastal Commission, San Diego Office.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Development Services Department Director, pursuant to the City Manager's delegation of authority in SDMC Section 22.0226 authorizing such execution, and by the Owner.

Dated this 10th day of August 2021.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

By 
Catherine Rom
Development Project Manager - Authorized Representative

I HEREBY CERTIFY I am the record Owner/Permittee of the Property and that I have read all of this Agreement, this 10th day of August 2021. By execution hereof, I agree to each condition of this Agreement and promise to perform each obligation of Owner/Permittee hereunder.

By  _____

Karen Dennison

Assistant Director

Parks and Recreation Department

Owner/Permittee

Attachment(s):

1. Project Site Map

Site Plan Pt. La Jolla-Seasonal Closure Ellen Browning Scripps Park La Jolla



24 inch wide by 18 inch high "Area Closed" sign



K-Rail Plastic Water Filled Barrier with "AREA CLOSED" sign attached placed here to block access.

Stair Access Point: A chain with an "AREA CLOSED" sign attached will be connected to the hand railings across the top step to block access.



Telespar Post Locations

5 telespar posts will be secured to the seaside of the wall with removable anchor bolts at the yellow circle locations. Posts will extend 18 inches above the wall. A 24-inch wide by 18-inch high "AREA CLOSED" sign will be attached to each post with rivets. The bottom of the sign will be flush to the top of the wall. The top of the sign will be flush with the top of the post. Posts and signs will be removed at the end of the closure period.

Boomer Beach

Point La Jolla

La Jolla Caves

Pt. La Jolla Seasonal Closure

Closed Area Description

N32-51.082 W117-16.432

N32-51.068 W117-16.447

N32-51.078 W117-16.397

The closed area of Pt. La Jolla is defined as the area to the north or seaside of the low wall bordering the Scripps Park perimeter walkway (the boardwalk) and bounded by the area outlined by red line with vertices annotated.

N32-51.057 W117-16.441

N32-51.045 W117-16.451

N32-51.058 W117-16.384

N32-51.056 W117-16.388

N32-51.036 W117-16.443

