

CALIFORNIA COASTAL COMMISSION

San Diego Coast District Office
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www.coastal.ca.gov



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Date: June 24, 2015

Permit Application No.: 6-15-0223

COASTAL DEVELOPMENT PERMIT

On **June 10, 2015**, the California Coastal Commission granted to:

City of San Diego Park and Recreation Department

this permit subject to the attached Standard and Special Conditions, for development consisting of

Re-authorize use of an existing 4 ft. high, 152 linear ft. guideline rope with 3 ft. opening for beach and ocean access, support posts, foundations and informational signs, on a year-round basis, in perpetuity, to provide a buffer between humans and harbor seals at Children's Pool Beach

more specifically described in the application filed in the Commission offices.

The development is within the coastal zone at

Children's Pool Beach, west of Coast Boulevard, southwest of Jenner Street, La Jolla, San Diego, San Diego County.

Issued on behalf of the California Coastal Commission by

RECEIVED

JUN 30 2015

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT
ACKNOWLEDGMENT:

CHARLES LESTER
Executive Director

By: **BRITTNEY IAVER**
Coastal Program Analyst

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 that: "A Public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

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

6/30/15
Date

Signature of Permittee

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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:

The permit is subject to the following conditions:

1. **Revised Final Plans. PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall submit for review and written approval by the Executive Director, final site plans for the proposed development. Said plans shall be in substantial conformance with the plans submitted with this permit application by the City of San Diego on March 4, 2014, except they shall be revised to reflect the following:
 - A. The rope shall be removed during the seasonal closure each year, which currently runs from December 15 to May 15, in order to reduce visual impacts. The foundations, posts, and signage may remain.

The permittee shall undertake development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. **Permit Term.**
 - A. This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of four (4) years, commencing upon the date

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of Commission approval of CDP No. 6-15-0223, 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 a guideline rope at Children's Pool Beach will require the issuance of a new coastal development permit or an amendment to this coastal development permit.

B. If the applicant does not obtain a coastal development permit or amendment from the California Coastal Commission to continue installation and maintenance of a guideline rope at Children's Pool Beach prior to the date that authorization for the development expires, the City shall cease use of the guideline rope.

C. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved project plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

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 guideline rope at Children's Pool Beach. The plan shall include, but not be limited to, the following criteria:

- i. A physical description and exhibit delineating the precise location of the guideline rope and associated signage at Children's Pool;
- 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 by seals of the haul-out site at Children's Pool Beach throughout the year and the method of determining the effectiveness of the guideline rope at minimizing harassment of hauled-out seals with both methods employing, at a minimum, the procedures described in section A(iii) and A(iv), below, of this special condition;
- iii. Upon issuance of this coastal development permit, a qualified biologist, environmental resources specialist, park ranger, lifeguard, and/or City-trained volunteer shall record the number of seals hauled out at Children's Pool Beach, the number of injured or sick seals rescued by SeaWorld, the number of people present on the beach, the number of people present in the water from the tip of the breakwater across to the point of rock directly below the gazebo, the number of harassment instances, the number of citations and warnings issued, the outcomes of issued citations and warnings if feasibly available, the tide, the weather including water and air temperature, and the date. Recording according to these directions shall take place at least 16 days per month, including at least two weekend days and one holiday, if the month contains a federal or state holiday. Measurements shall be recorded a minimum of 3 times per day, at 10 AM, 1 PM, and 4 PM or as close to those times as feasible;

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- iv. Provisions for taking measurements of the number of harassment instances, including noting activities that would likely qualify as harassment consistent with relevant regulatory definitions of harassment (e.g. seals flushing into water) under the Marine Mammal Protection Act (16 U.S.C. 1631 et seq.; 50 C.F.R., § 18.3).

B. The City shall submit, for the review and approval of the Executive Director, on an annual basis, 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. An evaluation of the condition and performance of the approved development, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the development;
- iii. Recommendations for repair, maintenance, modifications, or other work to the development; and
- iv. Photographs taken from pre-designated sites that are annotated to a copy of the site plans indicating the condition, performance, and effectiveness of the development.

If a monitoring report contains recommendations for repair, maintenance, modifications, or other work on the project, the permittee shall contact the San Diego Coastal Commission Office to determine whether such work requires an amendment or new coastal development permit.

C. 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 Coastal Commission-approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

4. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.**

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, and flooding; (ii) to assume the risks to the applicant 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 of 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.

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B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

5. **Liability for Costs and Attorney Fees.**

By acceptance of this coastal development permit, the Applicants/Permittees 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.