

CALIFORNIA COASTAL COMMISSION

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W13b

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-16-0348

Applicant: City of Seal Beach

Agent: Tim Kelsey, Recreation Manager

Location: Seaward of the public walkway (Seal Way) on the public sandy beach, between 10th Street and Electric Avenue, City of Seal Beach, Orange County

Project Description: Request to authorize a public beach picnic table sponsoring program. A maximum of 16 public picnic tables will be placed on the sand at the street ends of each street, between 10th Street and Electric Avenue with associated signage. There will be a maximum of two tables per street end.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The City of Seal Beach is requesting to establish a public picnic table sponsorship program. Under this program, residents will be able to pay for the installation of public picnic tables on the beach sand seaward of Seal Way public boardwalk. A maximum of two tables per street end will be allowed for a maximum of 16 total tables. The City will maintain ownership of the picnic tables. The picnic tables will be available to the general public on a first come first served basis and not be eligible for reservations. The City will install informational signs indicating that the picnic tables are for public use.

Staff is recommending **approval** of the proposed coastal development permit with **five (5)** special conditions. The special conditions would: **1) ensure public access to the picnic tables; 2) require final signage plans; 3) waive the right to future shoreline protection for the picnic tables; 4) require the City to assume the risks associated with the development; and 5) submit a final maintenance plan.**

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	3
II. STANDARD CONDITIONS	3
III. SPECIAL CONDITIONS	4
IV. FINDINGS AND DECLARATIONS	6
A. PROJECT LOCATION & DESCRIPTION	6
B. STANDARD OF REVIEW	7
B. PUBLIC ACCESS AND RECREATION.....	7
C. HAZARDS AND OTHER ISSUES	9
D. LOCAL COASTAL PROGRAM (LCP)	11
E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	11

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Plan](#)

[Exhibit 3 – Sign Plan](#)

[Exhibit 4 – Public Correspondence](#)

[Exhibit 5 – City’s Response to Public Correspondence](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit 5-16-0348 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves Coastal Development Permit 5-16-0348 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following 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 of 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Public Access to Picnic Tables.** With the acceptance of this permit, the applicant (City) agrees that for the life of the approved development all installed picnic tables along Seal Way, that are the subject of this permit, will be available free to the general public on a first-come, first served basis, with no reservations at any time. The placement of personal unattended items prior to 6:30 a.m. are subject to removal by the City during the City's daily beach cleanup (6:30am to 9:00am).
2. **Submittal of Final Signage Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a revised final sign program for the proposed picnic tables that is in substantial conformance with the applicant's proposal, including, but not limited to, the preliminary plan dated September 16, 2016, but which shall be modified as follows:

The plan shall demonstrate the proposed location for the signage and shall not result in the direct placement of new signage poles in sandy beach areas or other sensitive resource areas.

- A. The plan shall include at a minimum, the following components: sign material, dimensions (minimum 8" x 11"), appearance, and clearly legible wording.
- B. The plan shall demonstrate that poles and signs are placed and oriented to minimize impacts on public views of the water. No new poles shall be placed on the beach or in areas that will disrupt public views to the beach or ocean.
- C. The plan shall include signage at the Seal Beach Pier public parking lot and at any pedestrian access points seaward of East Seal Way between 10th Street and Electric Avenue. In addition, the plan shall include information posted on the City of Seal Beach website advertising the availability and location of picnic tables. Signs and the website information submitted pursuant to this plan shall comply with the requirements of Special Condition No. 1 (Public Access to the Picnic Tables) of this coastal development permit and indicate that the tables are for public use and any unattended items will be removed by the City.
- D. The signs shall be designed similar to other official City signage.
- E. No plaques, or other commemorations, donning the names of a sponsor shall be placed on the tables. The only information (plaque, sign, or otherwise) that shall be affixed to any table is that which informs the public that the tables are for the general public to use.

The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. No Future Shoreline Protection Device.

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-16-0348 including, but not limited to, seawalls and/or rock revetments including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the picnic tables and associated signs if any government agency has ordered that the structures are not to be used due to any of the hazards identified above, or if any public agency requires the structures to be removed. The approved project may be implemented and used consistent with the terms and conditions of this permit for only as long as it remains safe for use by the public. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.
- C. Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean. In the event that portions of the development fall into the ocean before they are removed/relocated, the City shall remove all recoverable debris associated with the development from the ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. 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 from flooding, sea level rise, erosion, fire and wave uprush; (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 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.

5. Submittal of Final Maintenance Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a final maintenance plan, for all of the picnic tables that are the subject of

this permit, that is in substantial conformance with the preliminary plans dated April 18, 2016 and September 16, 2016. The plan shall identify, at a minimum, the City department responsible for inspecting, cleaning and replacing picnic tables, and the frequency of inspections and cleaning.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION & DESCRIPTION

The proposed project affects the street ends of an approximately 10-foot wide by 2,500-foot long stretch (approximately 0.5 miles) of the public sandy beach seaward of Seal Way boardwalk between 10th Street and Electric Avenue in the City of Seal Beach, Orange County ([Exhibits 1 & 2](#)). The subject sandy areas are designated as BEA (Beach) by the City of Seal Beach zoning code. The public boardwalk, Seal Way, is lined with residences on the landward side and a short dividing wall on the seaward side that separates the boardwalk from the sandy beach.

The City of Seal Beach proposes a public picnic table sponsor program. The program will allow Seal Beach residents to pay for picnic tables to be placed on the public beach sand seaward of the Seal Way public boardwalk at the street ends in between 10th Street and Electric Avenue ([Exhibits 1 & 2](#)). The benches will be paid for, or sponsored, by individuals but the City will maintain ownership of the tables. The program will allow a maximum of two tables to be placed on the sand seaward of each street end ([Exhibit 2](#)) with a maximum of 16 total picnic tables along the 2,500-foot long stretch of beach. The picnic tables will be approximately six to eight feet long and approximately four feet wide and have benches on either side. Residents will be allowed to sponsor a table on a first-come, first-served basis. Once a street end has two tables placed on the sand, no more tables will be allowed to be installed in that location. The picnic tables will be placed on the dry sand, close to the boardwalk and will not be permanently attached or anchored in place. The City will remove the tables if they are found to be damaged or unsafe. If a table is removed, another table may be installed in its place under the same program. The City also proposes to install signs associated with the picnic tables ([Exhibit 3](#)) that inform the public that the picnic tables are a public amenity and available for public use on a first-come first-served basis. The signs will have the City's logo on them and will be a minimum of 8" x 11" in size and will be placed on or near the picnic tables.

Project History

Historically, residents living along the Seal Way boardwalk have placed private picnic tables on the dry public sand seaward of the boardwalk during the summer months. Overtime, the tables were left out overnight, which is not allowed under the City's Municipal Code. The City received several complaints of residents leaving tables and other furniture on the beach overnight and, as a result of those complaints, the City notified residents to remove all personal items, including the picnic tables, from the beach at the end of each day. In response to the City's notification, some members of the community requested that the City place public picnic tables on the beach for use by the community and visitors to the area. City held at least four local public meetings regarding the picnic table program ([Exhibit 5](#)). During the local meetings, members of the public overwhelmingly spoke in support of a public picnic table program. The City conducted a feasibility study to determine the type of public picnic table program the City could reasonably implement and responded with the proposed program.

The proposed project was originally scheduled for the Commission's March 2017 meeting. After the public became aware of the Commission meeting and the proposed project, Commission staff received several letters from the public including 14 letters expressing opposition to the project and six letters expressing support for the project ([Exhibit 4](#)). Some of the concerns expressed by those opposed to the project include: those who sponsor the tables will not allow the public to use the tables; homeless people and gang members will use the tables and leave garbage behind on the beach and the tables will attract members of the public who use them in an area adjacent to private residences, which will be a nuisance to the adjacent residents; public safety concerns with regard to the tables moving during high tides and storm events; and the City does not and will not do a good job of maintaining the tables and cleaning up the garbage left on the beach. As a result of the many letters received by staff, the item was postponed in order to give the City an opportunity to address the concerns raised by members of the public ([Exhibit 5](#)), in turn, the concerns raised in the letters received by staff, as further informed by the City's response to these concerns, are addressed below.

B. STANDARD OF REVIEW

The City of Seal Beach does not yet have a certified LCP. Therefore, the standard of review for this CDP application is Chapter 3 of the Coastal Act. (Pub. Res. Code §§ 30600(c), 30604(a).)

C. PUBLIC ACCESS AND RECREATION

Coastal Act Section 30604(c) requires every CDP issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 [of the Coastal Act.]" The proposed project is located seaward of the first through public road ([Exhibit 1](#)). The following Coastal Act sections specifically protect public access and recreation:

Section 30210 states: In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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.

Section 30212.5 states: Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 states in part: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30214 states: (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to [Section 4 of Article X of the California Constitution](#). Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under [Section 4 of Article X of the California Constitution](#).

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30221 states: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

The proposed development is located between the first public road and the sea ([Exhibit 1](#)) and therefore must be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The beach in this area ranges from approximately 400-feet to 200-feet wide. The Seal Beach pier is directly adjacent to and upcoast of the project area. The Seal Beach boardwalk is a 10-foot to 15-foot wide concrete public lateral accessway that runs the entire length of the proposed project area ([Exhibit 1](#)). The Seal Beach Pier, boardwalk, and beach are very popular and heavily used. The proposed picnic tables will be located on the public sandy area seaward of the public board walk which separates private residences from the public beach and they will be spread out along a 0.5 mile stretch of the beach near the street ends to prevent overcrowding ([Exhibit 2](#)), consistent with Section 30212.5 of the Coastal Act. The intent of the picnic tables is to provide a public amenity to all visitors (consistent with Sections 30210, 30213, and 30221 of the Coastal Act) and to discourage the permanent or semi-permanent placement of private tables and benches on the public beach (consistent with Section 30214 of the Coastal Act by regulating the time, place, and manner of use of the tables and by providing an innovative access management technique). In order to ensure the tables will be available to the public and to prevent the picnic tables from becoming privatized, the Commission imposes **Special Conditions 1 & 2**. Additionally, **Special Conditions 1 & 2** address some of the concerns raised by the public ([Exhibit 4](#)). Specifically, **Special Condition 1** requires the picnic tables to be explicitly available for the public to use at no cost to the public on

a first-come first-served basis and they cannot be reserved. Furthermore, pursuant to **Special Condition 2**, the City will be required to install signs that indicate that the tables are a public amenity available for public use. Furthermore, the sponsors of the picnic tables will have no exclusive or preferential use or claim to the tables.

Another concern raised by certain members of the public is that the public picnic tables will attract members of the public (homeless people, gang members, etc.) who will use them, which will be a nuisance to the adjacent residents. Many of the homes along the public boardwalk have small setbacks (approximately 10 – 15 feet) from the public boardwalk, which does not necessarily provide the desired amount of privacy for individuals living there from those who enjoy the boardwalk and beach. However, residents who live along the public boardwalk are responsible for taking measures on their own property, consistent with the Coastal Act, to ensure they obtain a satisfactory amount of privacy in order to meet their individual needs. The public access and recreation policies of the Coastal Act protect the public's right to access and recreate along the shoreline. The proposed project is an enhancement to existing recreational opportunities in an existing recreational area. It will provide an amenity to the public that is commonly found in similar areas. The tables will be placed on the public beach that is currently open to and used by the public, not on any private property, and will not reduce the buffer between private residences and the beach. The proposed project does not place an undue burden on adjacent residents in terms of perceived privacy or safety impacts considering that: the homes are situated directly adjacent to a public beach; the proposed project merely diversifies the *type* of public access and recreation available at the beach without increasing the *amount* of access which already exists; the Coastal Act places paramount importance on protecting public access and recreation in the Coastal Zone; and similar public picnic table amenities exist in other parts of the Coastal Zone without resulting in the adverse impacts projected by some commenters here.

The proposed development, as conditioned, enhances public access and recreational opportunities in a coastal area suited for recreational uses by providing a no-cost passive recreational opportunity to all members of the public who visit the beach in that location. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30224 of the Coastal Act regarding the promotion of public recreational opportunities.

D. HAZARDS AND OTHER ISSUES

The Coastal Act requires that new development minimize the risks in areas of high flood hazard. With regard to the proposed project, the principal concerns related to coastal hazards are the risks associated with flooding and erosion due to sea level rise storm surges. The following Coastal Act sections address the relevant hazards associated with the proposed project to which the proposed project must be consistent with.

Section 30250 states: (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed

areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30253 states: *New development shall do all of the following:*

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.

(d) Minimize energy consumption and vehicle miles traveled.

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30253(a) of the Coastal Act states that new development shall minimize the risks to life and property in areas of high geologic, flood, and fire hazard. The subject site is located on the approximately 400-foot to 200-foot wide beach that has historically been subject to coastal flooding related to high tides and storm event. As a result of flooding and wave uprush, the City builds a seasonal sand berm on the subject beach in order to mitigate hazards associated with flooding and wave uprush along this portion of the beach. The proposed picnic tables are ancillary structures and the Commission has consistently found that such structures are not protected under section 30253 of the Coastal Act. Given the history of coastal hazards at the subject beach, **Special Condition 3** requires the City to remove the tables if they become unsafe as a result of sea level rise, flooding, and/or storm surges and **Special Condition 4** requires the City to assume all risks associated with the development and to hold the Commission harmless of any future actions.

Additionally, with regard to hazards, some members of the public have expressed concerns regarding the City's maintenance of the tables and the beach. They worry that garbage left behind by beachgoers on the proposed tables and the beach could be hazardous to public health and safety ([Exhibit 4](#)). The City beach maintenance program consists of daily garbage removal between 6:30 a.m. and 9:00 a.m. During that time, the City also grooms the beach subject to special circumstances (i.e. grunion runs) and meteorological conditions (i.e. high tides and storms). To ensure the continuation of the City's beach maintenance program, the Commission imposes **Special Condition 5**, which requires the City to submit a final maintenance plan that shall include details for how the City plans to maintain the picnic tables in a safe manner and the frequency of beach cleaning

including areas around the picnic tables. In addition to staff's comments, [Exhibit 5](#) is the City's response to the concerns raised by the public with regard to the public picnic table program.

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area, has been designed to assure structural integrity, will avoid cumulative adverse impacts on public access, and prohibits shoreline protection in response to coastal hazards. Therefore, the Commission finds that the development, as conditioned, conforms with Sections 30250 and 30253 and the public access provisions of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six months from the date of Commission action. Therefore, pursuant to Section 13537(b) of Title 14 of the California Code of Regulations, the Commission's certification of the land use plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a certified coastal program consistent with the Chapter 3 policies of the Coastal Act.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed project has received the approval of the City of Seal Beach on April 15, 2016 and has been determined to be categorically exempt from CEQA (Class 3, Section 15303 [new construction of small structures] & Section 15061(b)(3) [the so-called common sense exemption].) As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA. (*See* Pub. Res. Code § 21080.5(d)(2)(A).)