

LAW OFFICES OF BERNARD F. KING III, APC

4747 Executive Drive, Suite 700

San Diego, California 92121

Telephone: (858) 737-3046

Facsimile: (858) 746-4045

E-mail: bking@bernardkinglaw.com

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/10/2014 at 12:52:24 PM

Clerk of the Superior Court
By Andrea Santiago, Deputy Clerk

Attorney for Petitioner Friends of the Children's Pool

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DISTRICT

FRIENDS OF THE CHILDREN'S POOL, a
nonprofit public benefit corporation,

Petitioner,

v.

CITY OF SAN DIEGO, CALIFORNIA
COASTAL COMMISSION, and
DOES 1 through 50,

Respondents.

CASE NO: 37-2014-00034589-CU-WM-CTL

PETITION FOR WRIT OF MANDATE

[Pub. Res. Code, §§ 30801, 30804.]

I

INTRODUCTION

1. This suit arises from Respondent California Coastal Commission and City of San Diego's violation of the California Coastal Act (Public Resources Code, § 30000, et seq.), which prohibits development that interferes with the public's right of access to the sea, where acquired through use or legislative authorization. (Pub. Res. Code, § 30211.) Here, the public acquired access to the sea at Children's Pool Beach by both use and legislative authorization. Furthermore, the public's right of access is protected by numerous provisions of the California

1 Constitution and the Legislature’s bill granting the Children’s Pool to the City of San Diego.
2 By authorizing and proceeding with development that interferes with this public access, the
3 City and the Commission violated the Coastal Act.

4 II

5 THE PARTIES

6 2. At all times relevant herein, Petitioner Friends of the Children's Pool was, and
7 is, a California nonprofit public benefit corporation.

8 3. Petitioner is informed and believes, and thereupon alleges, that Respondent City
9 of San Diego (the "City") is a California city whose actions alleged herein occurred in whole or
10 in part within the County of San Diego, California.

11 4. Petitioner is informed and believes, and thereupon alleges, that Respondent
12 California Coastal Commission (the “Commission”) is a sub-entity of the State of California,
13 whose actions alleged herein occurred in whole or in part within the County of San Diego,
14 California.

15 5. The true names, whether corporate, individual or otherwise of Respondents
16 named herein as DOES 1 through 50, inclusive, are unknown to Petitioner who, therefore, sues
17 these Respondents by fictitious names. Petitioner will seek leave to amend this Complaint to
18 show their true names and capacities when they have been ascertained.

19 6. Petitioner is informed and believes, and thereupon alleges, that DOES 1 through
20 50 include individuals, corporations or other forms of business entities who worked in concert
21 with or at the direction of the other Respondents to violate the Coastal Act as alleged herein.
22 Petitioner does not know the identity of DOES 1 through 50, but upon ascertaining the identity
23 or identities of these individuals or business entities, Petitioner will seek leave to amend this
24 Complaint to identify more specifically DOES 1 through 50.

25 7. As used herein, the term "Respondent" means Respondents and each of them,
26 and any reference to an act of a Respondent means that such act was done by all Respondents
27 and each of them, unless otherwise specifically stated.

28 // // // // //

1 III

2 FACTUAL ALLEGATIONS

3 8. The Children's Pool, located along the rocky bluffs of the Pacific Ocean below
4 the Casa de Manana, is one of La Jolla's best-known structures. Built in 1930 by Ellen
5 Browning Scripps, the prominent philanthropist wanted to provide young swimmers with safe
6 beach access, away from the dangerous ocean currents. On June 15, 1931, the Governor of
7 California signed legislation that granted the Children's Pool shoreline to the City of San Diego
8 in trust, to be used "exclusively to public park, bathing pool for children, parkway, highway,
9 playground, and recreational purposes, and to such other uses as may be incident to, or
10 convenient-for the full enjoyment of, such purposes." Sixty years after its completion,
11 however, the Children's Pool became the subject of a now infamous debate.

12 9. The debate involved a colony of harbor seals that has inhabited the beach since
13 the mid-1990s. By 1999, the fecal contamination from over 100 seals rendered the beach a
14 health hazard. People either supported the seal habitat or argued that the seals prevented
15 swimming, diving, and use of the beach. On March 29, 1999, the San Diego City Council
16 voted to install a rope barrier to separate the seals and the public.

SCOTT PETERS

17 10. In 2004, the City Council removed the rope barrier and adopted a "joint use"
18 policy. Joint use allowed the seals to remain, while members of the public continued to use the
19 beach recreationally. Although the Children's Pool was never intended for use as a seal habitat,
20 the Legislature later amended the land grant in 2009 "to include in that list of uses and
21 purposes a marine mammal park for the enjoyment and educational benefit of children." The
22 policy of joint use continues to this day, but it is now threatened by Respondents efforts to
23 prohibit all public access to the beach for five months out of the year.

24 11. In 2010, the City Council passed a resolution calling on the City Attorney to
25 draft an ordinance that would prohibit the public from accessing Children's Pool beach from
26 December 15 to May 15 every year.

27 12. At first, the City wanted to seek Planning Commission approval of an ordinance
28 prohibiting public access to the beach for five months every year, a corresponding amendment

1 to the City’s local coastal program, and designation of the Children’s Pool beach as an ESHA,
2 i.e. environmentally sensitive habitat area.

3 13. Before submitting this proposal to the Planning Commission, the City sought
4 advice from the Commission’s staff on how to implement the proposed beach closure in a way
5 that would not be rejected by the Commission. On December 13, 2012, a staff analyst with the
6 Commission wrote to the City stating:

7 [W]e advise the City not to invoke an ESHA, or seasonal ESHA designation at
8 Children’s Pool as part of the LCP amendment. Instead of designating the beach as a
9 seasonal ESHA, we recommend that seasonal restrictions be considered based on the
10 broader protection of sensitive resources and/or marine mammals pursuant to Section
30230 of the Coastal Act. Again, we will continue to work with your office on
suggested policy language for an LCP amendment as it progresses through your local
amendment process.

11 14. The City incorporated the Commission’s advice and submitted a revised
12 proposal to the Planning Commission in December 2013 – that no longer sought an ESHA
13 designation for the Children’s Pool beach.

14 15. Thereafter, the LCP amendment and ordinance implementing a seasonal beach
15 closure at the Children’s Pool went to the City Council, where it passed in March 2014.

16 16. On or about August 14, 2014, the Commission approved the City’s proposed
17 LCP amendment and granted the City a coastal development permit to close public access to
18 the Children’s Pool from December 15 to May 15 every year.

19
20 **FIRST CAUSE OF ACTION**

21 **Enforcement of Duties [Pub. Res. Code, §§ 30801, 30804]**

22 **Against the City of San Diego and the California Coastal Commission**

23 17. Petitioner incorporates by reference as though set forth in full herein each of the
24 preceding allegations of paragraphs 1 through 16 of the Petition.

25 18. The California Constitution ensures that “access to the navigable waters of this
26 State shall be always attainable for the people thereof.” (Cal. Const., art. X, § 4.) The Coastal
27 Act states that in carrying out this constitutional requirement, “maximum access ... and
28 recreational opportunities shall be provided for all the people consistent with public safety
needs and the need to protect public rights, rights of private property owners, and natural

1 resource areas from overuse.” (Pub. Res. Code, § 30210.)

2 19. The Coastal Act further provides:

3 Development shall not interfere with the public's right of access to the sea where
4 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.

5 (Pub. Res.Code, § 30211.)

6 20. The City and the Commission each have a duty to uphold these constitutional
7 and statutory requirements. In this case, they have a duty to not interfere with the public’s
8 right of access to the Children’s Pool under Section 30211 for two reasons:

9 21. First, the public acquired access to the Children’s Pool by continuous use over
10 the past 80 years. As the Commission itself concedes, “the Children’s Pool is easily accessible
11 to the public and has a dedicated user group (e.g., divers, swimmers, and beachgoers).”

12 22. Second, the public’s right of access was also guaranteed by legislative
13 authorization. As stated in the legislative grant:

14 (a) That said lands shall be devoted exclusively to public park, marine mammal park
15 for the enjoyment and educational benefit of children, bathing pool for children,
16 parkway, highway, playground and recreational purposes, and to such other uses as
may be incident to, or convenient for the full enjoyment of such purposes.

17 (b) The absolute right to fish in the waters of the Pacific Ocean over said tidelands or
18 submerged lands, **with the right of convenient access to said waters over said lands
for said purpose is hereby reserved to the people of the State of California.**

19 (Section 1 of Chapter 937 of the Statutes of 1931, as amended.) (emphasis added)

20 23. As evidenced by the language of the grant, the Legislature authorized (in fact it
21 guaranteed) the public’s right to access the beach. Having acquired the right to access, section
22 30211 prohibits the City’s to interfere with this access and ban the public from the beach for
23 five months every year.

24 24. By approving the ordinance, the LCP amendment, and the the coastal
25 development permit, the City and the Commission breached these duties because the proposed
26 closure is development which will directly interfere with access to the Children's Pool the
27 public acquired through both use and legislative authorization.

28 // // // // //

