

**CALIFORNIA COASTAL COMMISSION**

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**Th16c**

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**STAFF REPORT: REGULAR CALENDAR**

<b>Application No.:</b>	<b>6-19-0131</b>
<b>Applicant:</b>	<b>Debi Nolan</b>
<b>Agent:</b>	Elsa Brennan
<b>Location:</b>	1548 Quivira Way, Mission Bay, San Diego, San Diego County (APN: 760-029-05)
<b>Project Description:</b>	Convert 616 sq. ft. of an existing 7,781 sq. ft., 2-story commercial leasehold into a restaurant/bar.
<b>Staff Recommendation:</b>	Approval with Conditions

**SUMMARY OF STAFF RECOMMENDATION**

The proposed project requires a coastal development permit because it involves a change in the intensity of use at the subject site. The area to be converted is currently divided between a 2,000 square foot restaurant/deli and 616 square foot hardware store. The proposed project would convert the hardware store into restaurant space to expand the existing restaurant. A majority of the proposed work will consist of interior renovations to the existing space. Exterior work will consist of installing low-emitting LED blubs in the exterior light fixtures on the roof and updating the signage on the exterior of the restaurant to reflect the change in subtenants. No expansion of the existing building is proposed. Adequate parking will be provided on-site for the proposed restaurant conversion; however, existing tow-away signs at the entrance of the parking lot that will serve the patrons of the proposed restaurant contain vague terms that may be interpreted by future patrons as prohibiting them from parking in the lot. As a result, patrons of the restaurant and other businesses located on the leasehold may

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usurp nearby public parking spots intended for use by members of the public coming to access the bay or for recreational activities such as fishing off the jetties located west of the project site. The applicant changed the scope of work to include modifying the existing parking lot signs to explicitly state that the parking lot is open to patrons of the businesses located on the site.

**Special Condition #1** requires the applicant to submit final plans in substantial conformance with the preliminary plans showing the number of current parking spaces, the number of slips in the marina, and the tenant square footage breakdown. **Special Condition #2** requires the applicant to submit a final sign plan showing the proposed change to the signs. **Special Condition #2** also restricts the height of any monument signs to no more than eight feet and prohibits free-standing pole or roof signs. **Special Condition #3** notifies the applicant that any future or additional conversions require a coastal development permit. **Special Condition #4** requires the applicant to submit final plans in substantial conformance with the preliminary plans stating that exterior lights will comply with the above requirements.

Commission staff recommends **approval** of coastal development permit application 6-19-0131 as conditioned.

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## **I. MOTION AND RESOLUTION**

### **Motion:**

*I move that the Commission **approve** Coastal Development Permit Application No. 6-19-0131 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 6-19-0131 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 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.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Submittal of Final Plans.**
  - (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, final plans that are in substantial conformance with the plans prepared by Elsa Brennan Interiors, revised 4/1/19.
  - (b) The permittee shall undertake the 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 an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
2. **Final Sign Program.**
  - (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a comprehensive sign program for all proposed signage documenting that only monument signs, not to exceed eight feet in height, or façade signs are proposed. Free-standing pole or roof signs are prohibited. Signs at the entrance of the parking lot immediately east of the restaurant shall explicitly state that the parking lot is open to patrons of the businesses located on-site. Plans shall be subject to the review and written approval of the Executive Director, and signs shall subsequently be installed consistent with the approved plans.
  - (b) The permittee shall undertake the 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 an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
3. **Future Development.** This permit is for the conversion of 2,616 square feet of an existing 7,781 square foot, two-story commercial leasehold into a

restaurant/bar. All other development proposals for the site, including conversion of the restaurant use to other uses, shall require review and approval by the Coastal Commission by applying for an amendment to this permit, unless the Executive Director determines that no amendment is legally required. Future development or conversion of the parking lot serving the tenants and patrons of the project site also requires a separate coastal development permit or amendment by the Coastal Commission or its successor in interest.

4. **Assumption of Risk, Waiver of Liability, and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from 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 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.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION/HISTORY**

The proposed project consists of improvements to the first floor of an existing 2-story, 7,781 sq.ft. building located in Mission Bay Park in the City of San Diego. The applicant would convert 616 sq.ft. of retail commercial space into a restaurant/bar in order to expand the existing 2,000 sq.ft. first-floor restaurant/deli. Currently, the ground floor uses consist of the restaurant/deli and a hardware store. The proposed project would convert the hardware store into restaurant space to expand the existing restaurant. Almost all of the work will consist of interior renovations; no outdoor dining areas or expansion of the existing building is proposed. The applicant also proposes to shield the existing exterior lights on the roof of the building and install low-emitting LED luminaries, update the signage on the exterior of the restaurant to reflect the change in tenants and modify the existing parking lot signage to make it clear that patrons of the restaurant or other business on the leasehold can park in the parking lot.

The subject site is a 12.75-acre leasehold encompassing land and water area along Quivira Basin, located in the southwestern portion of Mission Bay Park. Mission Bay Park is a public park and recreation area of statewide and national significance. It was created prior to the Coastal Act and is built primarily on filled tidelands granted to the City of San Diego by the state. The park overall includes both active and passive public recreational venues, multiple commercial and non-profit leaseholds, wildlife refuges, least tern nesting sites, and undeveloped land. The site is parallel to Quivira Way, which

provides access to adjacent leaseholds within Quivira Basin ([Exhibit #1](#)). Quivira Basin and marina are located north of the site. Jetties are located west of the site and provide recreational and possibly subsistence fishing opportunities. To the east of the site are several parking lots that serve the users of the marina docks lining Quivira Basin. A public parking reservoir and the San Diego River are to the south of the site.

The marina, boatyard, and buildings on the site are privately managed by the sublandlord, Driscoll Mission Bay, LLC. Two buildings currently exist on the site along with several storage containers/sheds: Building A, the subject structure (1548 Quivira Way), and Building B (1500 Quivira Way). Building A is a 7,781 square foot, two-story leasehold with currently eight suites. A 143-space City-owned parking lot located immediately east of Building A provides parking for marina users for the docks north of the site and for the tenants and patrons of Buildings A and B ([Exhibit #2](#)).

In 1982, the Commission approved the demolition of an existing 400 square foot storage shed located in the boatyard and construction of a 480 square foot shed in the same place (CDP #6-82-183). The following year, the Commission approved construction of an approximately 450-foot long finger pier at the existing marina to provide twenty new boat slips (CDP #6-82-528). The finger pier was never constructed.

Mission Bay Park is an area of both original and deferred certification, where the Commission retains jurisdiction and Chapter 3 policies of the Coastal Act are the standard of review. The Commission has certified the Mission Bay Park Master Plan as the LUP for Mission Bay Park and uses the Master Plan as guidance.

## **B. PUBLIC ACCESS/PARKING**

Section 30213 states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

*The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Section 30220 states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

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.*

Section 30252 states, in relevant part:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, [...] (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings [...]*

The Coastal Act emphasizes the need to protect and provide for public access to and along the coast. Mission Bay Park is a public aquatic park built primarily on tidelands granted to the City of San Diego. The project site is located between the first coastal roadway and the sea (Mission Bay). Public lateral access is available along most of the Mission Bay shoreline with the exception of a few leaseholds that are managed by private entities, such as the subject site. An existing walkway provides lateral access in this area up to the east side of the boatyard. The boatyard is gated private property. Lateral access continues west of the boatyard and extends north. Pedestrian and bicycle traffic can also use the adjacent public street, Quivira Way, and public parking is available south of the project site. Changing the intensity of use of an existing commercial building to a more demanding use of land will likely increase the demand for parking to serve that use. Inadequate parking can interfere with public access opportunities, especially if nearby public parking reservoirs are usurped by the tenants and patrons of the proposed restaurant/bar.

The Mission Bay Park Master Plan contains “Appendix G – Design Guidelines,” which provides parking standards for “commercial leaseholds” such as the subject site, with parking requirements based on the square footage of each of the distinct uses that are located within a leasehold. The 143-space parking lot on the site serves Building A, Building B, and the marina. Building A contains a mix of office, restaurant, and boat making, repair, and sales uses. There is also a yoga studio/“wellness lounge” leased on the second floor of Building A, which offers some water-oriented activities. Building B contains a mix of office and boat making, repair, and sales uses, and the marina contains 225 boat slips.

The relevant parking standards in the Master Plan are as follows:

- Marina: 1 space per three boat slips
- Restaurant: 1 space per 200 gross square feet, including outdoor dining areas
- Boat Making, Repair, and Sales: 1 space per 1,000 gross square feet



Under the Master Plan’s parking requirements, the existing marina uses require 75 spaces, the proposed restaurant 13 spaces, and the boat repair/sales 4 spaces. The yoga studio and office spaces do not easily fit into any of the commercial use categories contained in the Master Plan’s commercial parking standards. However, using the strictest Master Plan commercial parking requirements of 1 space per 200 gross square feet, the remaining tenants would require 16 spaces, for a total requirement of 108 parking spaces. The lot currently contains 143 parking spaces. Thus, sufficient parking is provided to accommodate the conversion. **Special Condition #1** requires the applicant to submit final plans in substantial conformance with the preliminary plans showing the number of current parking spaces, the number of slips in the marina, and the tenant square footage breakdown. **Special Condition #3** notifies the applicant that any future or additional conversions require a coastal development permit or amendment to this permit.

Currently, several tow-away signs are erected around the parking lot that prohibits “open public parking” in the lot. This lot is intended to serve the tenants and patrons of the leasehold and the marina so that nearby public parking is not usurped; however, the language of the signs is vague and could be interpreted as prohibiting parking by patrons attempting to access the uses on-site ([Exhibit #3](#)). As a result, patrons may choose to park in the public parking reservoir across the street or in other nearby public reservoirs to access the site. Thus, the applicant has proposed to modify the signs to state that the parking lot is open to patrons of the businesses located on the site. **Special Condition #2** requires the applicant to submit a final sign plan showing the proposed change to the signs. **Special Condition #2** also restricts the height of any monument signs to no more than eight feet and prohibits free-standing pole or roof signs.

Typically, the Commission requires that lateral public access be provided along the shoreline wherever possible. The Mission Bay Master Plan contains setbacks for leaseholds and design standards for public walkways to provide an area for public use along the water. If access is not provided, it should be when the site is redeveloped or substantially remodeled/redesigned. As noted, the subject leasehold does not provide waterside access along the boatyard portion of the site. However, the subject project does not involve any demolition or expansion to the existing structures on-site, but only revises the existing uses on the site to expand an existing visitor-serving use. The revisions to the existing signage will ensure that parking for the uses on the site is accommodated on-site, and not in nearby public parking areas. The lack of waterfront access along the boatyard leasehold has relatively minor impacts on public access since waterfront access is available again approximately 500 feet to the west of the project. Nevertheless, continual shoreline access is an important public recreational feature, and future proposals for improvements at the site may require those applicants to provide public access along the entire waterfront portion of the site, including through the existing boatyard. Therefore, as conditioned, the proposed development will be consistent with the public access and recreation policies of the Coastal Act and the certified LUP.

## C. BIOLOGICAL RESOURCES

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Several ornamental trees line the perimeter of the site. No trees will be removed as part of this project, and no sensitive or special-status bird species have been observed in any of the trees. Commission staff observed birds nesting in the trees during a site visit. Two existing lights mounted on the roof of the Building A, above the area to be converted, face south towards Quivira Way. The lights are used to illuminate the area in front of the building at night. The lights are currently not shielded and use 500-watt fluorescent bulbs. At night, the lights shine into the trees located south of the Building A. If not properly shielded, the light sources could cause sky glow from light reflecting off the concrete patio area fronting Building A. The lights may also unnecessarily illuminate the trees which could adversely impact birds nesting there. In previous projects involving lighting impacts, the Commission has found that lighting with a color temperature exceeding 3,000 Kelvin has been shown to adversely impact the natural circadian rhythm of wildlife leading to disruption in sleep and wildlife behaviors. The applicant has proposed to shield both lights and replace the old 500-watt fluorescent bulbs with low-emitting LED lights with a color temperature between 2,700 to 3,000 Kelvin. **Special Condition #1** requires the applicant to submit final plans in substantial conformance with the preliminary plans stating that exterior lights will comply with the above requirements. Thus, the project will not result in adverse impacts to nesting birds. Therefore, the project is not anticipated to result in adverse impacts to any biological resources and is consistent with Section 30240 of the Coastal Act.

#### **D. COASTAL HAZARDS/FLOODING**

Section 30253 of the Act states, in part:

*New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) 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. [ . . . ]*

The subject site is between Quivira Basin and the San Diego River. A preliminary review of the site through the CoSMoS “Our Coast Our Future” (OCOF) web tool shows that with fifty centimeters of sea level rise, during a 100-year storm event, some areas on the site along the waterfront are projected to be flooded to depths of one to two meters, for as long as nine to eighteen hours; but complete flooding of the site is within the model’s range of uncertainty. Portions of Quivira Way, the only road providing vehicular access to the site, and nearby leaseholds are also within the model’s range of uncertainty for flooding. According to the 2018 OPC sea level rise projections, the above scenario could occur on-site as soon as 2045.

The proposed is a tenant improvement within an existing building; no demolition, expansion, or reconstruction is proposed. Nothing in the project would result in any further seaward expansion of either of the buildings on-site or increase the risk to property or life in an area that will be subject to flood hazards in the near future. Thus, this particular project adequately minimizes risks to life and property. However, future proposals to modify the existing building footprint may trigger the need for sea level rise adaptation strategies designed to move the development away from hazards or relocation of the development due to loss of access to the site via Quivira Way. Nevertheless, because substantial flooding is expected to occur on the subject site in the relatively near future, **Special Condition #4** requires the applicant to acknowledge the hazards present onsite, assume the risk of such hazards, and accept full liability for developing in a hazardous location. As conditioned, the proposed development will minimize risks to life and property in an area of high flood hazard pursuant to Sections 30253 of the Coastal Act.

## **E. LOCAL COASTAL PLANNING**

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The Commission certified the Mission Bay Park Master Plan on May 11, 1995, as the land use plan (LUP) component of its certified LCP, but no implementation plan has been prepared for this segment to date, and Mission Bay Park is primarily unzoned. As a whole, Mission Bay Park is a dedicated public park, and the project site is one of many designated commercial lease areas in the certified LUP. The proposed development consists primarily of interior renovations to an existing leasehold and is consistent with the Mission Bay Park Master Plan, including the parking ratios for commercial leaseholds. Moreover, it has been found consistent with all applicable Chapter 3 policies of the Coastal Act. No other local discretionary actions are required as a result of the improvements proposed herein. Therefore, the Commission finds that the approval of the project will not prejudice the ability of the City of San Diego to prepare a fully certifiable LCP for its Mission Bay Park segment.

## **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego exempted this project as requiring only ministerial review.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions designed to avoid adverse impacts to birds and addressing parking, to avoid or minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Mission Bay Park Master Plan
- CDP #6-82-183
- CDP #6-82-528