

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 6-23-0349

Applicant: Gail and Matt Bigelow

Agent: Tim Golba

Location: 726 Jersey Court, Mission Beach, San Diego, San Diego County. (APN No. 423-643-10)

Project Description: Demolition of a 12 ft. tall, one-story, 1,050 sq. ft. single-family residence and construction of a 29 ft. tall, three-story, 2,499 sq. ft. single-family residence with attached 461 sq. ft garage, on a 2,402 sq. ft. lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by this project relate to the protection of public views and public access. The subject property is located on the north side of the east-west Jersey Court pedestrian right-of-way, which serves as an access and visual corridor for this part of Mission Beach.

While the proposed project will not block any public views to the beach along the shoreline, visual resources could be impacted if the required view corridors were blocked by landscaping as it grows in the future. In addition, the presence of construction workers and equipment in such a densely populated, popular beach area could impact public access by occupying public parking spaces for storage or blocking

public right-of-ways to and along the beach, especially during the summer months when beach use is at its peak.

The project site is located between Mission Boulevard and the beach. As a near-shore development, the proposed project could be subject to coastal hazards such as flooding as sea level rise increases. Although there is an existing seawall located seaward of the development that protects the public boardwalk a block to the west of the subject site, the subject project must not be designed to rely on the seawall.

To address these potential adverse impacts, Commission staff is recommending several special conditions. **Special Condition No. 1** requires submittal of final site construction and landscaping that limit landscaping in the public view corridors to a height of 3 feet. **Special Condition No. 2** prohibits development activity during the busy summer months between Memorial Day Weekend and Labor Day in order to remove the potential of development activity impeding coastal access. **Special Condition No. 3** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. **Special Condition No. 4** requires the applicant to acknowledge the development is proposed in a site subject to coastal hazards and assume the risks of development. **Special Condition No. 5** requires the applicant to waive any right to construct a future shoreline protective device. **Special Condition No. 6** requires the applicant to record a deed restriction against the property that imposes the conditions of the permit for the purpose of providing notice to future property owners. Therefore, as conditioned, the project will be consistent with the public access and visual resource protection policies of Chapter 3 of the Coastal Act, and no impacts to coastal resources are anticipated.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-23-0349, as conditioned. The motion is on page 4.

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EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Site Plan](#)

[Exhibit 3 – Site Photographs](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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

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 applicant 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Submittal of Final Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director a full-size set of the following final plans:

- (a) Final Project Plans approved by the City of San Diego that substantially conform with the plans submitted to the Commission, titled "Bigelow Residence" dated 4/4/2023.
- (b) Final Landscape/Yard Area Plans that substantially conform with the plans submitted to the Commission, titled "Bigelow Residence" dated 4/4/2023, and shall include the following:
 - i. A view corridor, 10 feet wide, shall be preserved in the south yard area adjacent to Jersey Court. All proposed landscaping in the south yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Mission Boulevard and along Jersey Court toward the ocean.
 - ii. No landscaping or hardscape shall be retained or erected within the Jersey Court right-of-way.
 - iii. All landscaping shall be drought tolerant, native or non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.
 - iv. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the southern yard setback areas along Jersey Court shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
 - v. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a landscaping monitoring report, prepared by a licensed Landscape Architect or qualified resource specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to

this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. **Timing of Development.** No construction shall take place for the project from Memorial Day Weekend to Labor Day of any year. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (e.g., no street closures or use of public parking as staging areas).
3. **Written Agreement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the property owner shall submit a written agreement, in a form and content acceptable to the Executive Director, that acknowledges and accepts the timing of development approved pursuant to Special Condition No. 2, and provide a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to Labor Day.
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 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. **No Future Shoreline Protective Device.**
 - a. By acceptance of this Permit, the applicants agree, on behalf of themselves 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. 6-23-0349 including, but not limited to, the residence and foundation in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- b. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
 - i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;
 - ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
 - iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
 - iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP No. 6-23-0349 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

6. **Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property subject to the terms and conditions that restrict the use and enjoyment of that property, and (2) imposing the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire

parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project is the demolition of an existing 12 ft. tall, one-story, 1,050 sq. ft. single-family residence and construction of 29 ft. tall, three-story, 2,499 sq. ft. single-family residence with attached 461 sq. ft. garage, on a 2,402 sq. ft. lot at 726 Jersey Court in the Mission Beach community of the City of San Diego ([Exhibit 1](#)). The subject site is within an existing residential area zoned R-S and the proposed development is similar in size and scale to the surrounding development. The proposed project is consistent with the development standards contained in the City's certified LCP, including those standards related to building height and floor area ratio. Although not the standard of review, the certified LCP serves as guidance. The site is located within the original permitting jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review.

The project site is located on the north side of Jersey Court, an east-west public pedestrian right-of-way ([Exhibit 2](#)). In the Mission Beach neighborhood, the public right-of-way of the various courts and places, which are generally east-west running streets, as well as the yard setbacks of the adjacent properties comprise the community's public view corridors. Additionally, the public boardwalk – Ocean Front Walk – which runs north-south along the beach, serves not only as a highly popular public access way, but also serves as a public view corridor along the shoreline. Because the project is located between the first public road and the sea, there is the potential for the project to impact views to the shoreline from Mission Boulevard.

The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas, which could impede public views, or into public rights-of-way, which could impede public access. Such encroachments could include structures and/or landscaping. As proposed, no new structures will be located within property setbacks ([Exhibit 2](#)). To ensure that public views and public access towards the ocean are protected, **Special Condition No. 1** requires the applicant to submit final plans confirming that no structures will be located in the view corridors. The existing residence has a 6 ft. tall wall in the southern yard area which is in conflict with the City's LCP requirements that all fencing and landscaping located within the view corridor be a maximum height of 3 ft. tall; however, the applicant has proposed to lower the wall to 3 ft. As such, Special Condition No. 1 also requires the applicant to submit a final landscaping plan that requires all landscaping and hardscape in the southern yard area to consist of low-lying materials not exceeding three feet in height.

Because many of the lots in Mission Beach, including the subject site, are constrained and have limited access and space to accommodate construction activities and staging, demolition and construction activity could impede public access by occupying public parking spaces or blocking public right-of-ways with materials or debris. Therefore, **Special Condition No. 2** prohibits any development during the peak summer months when public access could be impacted and **Special Condition No. 3** requires the property owners to submit a written agreement indicating that they acknowledge and accept the construction timing limitations and will submit a weekly construction schedule to confirm that work will not occur during summer. Finally, **Special Condition No. 6** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above mentioned protections and conditions.

Since the existing structure was built in 1927, it is subject to the City of San Diego's review for historical significance. Section 143.0212 of the City's Land Development Code provides that the City shall determine the need for a site-specific survey for the purposes of obtaining a construction permit or development permit for development for any parcel containing a structure that is 45 or more years old. In this particular case, the structure is approximately 96 years old, but the City's Development Services did not find the structure to be eligible for historical designation and there is no evidence that the structure has historic value.

Sea level rise is expected to exacerbate existing coastal hazards by raising mean water levels and extending flood zones inland. As noted in the Commission's 2018 Sea Level Rise Guidance Update and other studies, increased sea level is expected to cause increased inundation of beaches, reduced accretion, or increased erosion of beaches. The Mission Beach community is low-lying area on a narrow peninsula situated between the Pacific Ocean to the west and Mission Bay to the east, which currently experiences periodic flooding that will likely increase with sea level rise. Because there is a wide sandy beach (approximately 200 feet wide) and a public boardwalk (approximately 20 feet wide) protected by a seawall between the subject property and the Pacific Ocean, wave runup and overtopping are not expected to significantly impact this inland site over the life of the proposed improvements; however, as a near-shore property, the proposed development may be threatened by sea-level rise at some point in the future. Historically, the most common response to coastal hazards has been to construct shoreline protective devices in order to slow the erosion of beaches and bluffs, retain unstable slopes, and prevent flooding.

The Coastal Act discourages shoreline protection devices because they generally cause adverse impacts to coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. Shoreline protection devices are physical structures that take up space and displace or modify prior uses of coastal land (e.g., beach recreation, habitat, etc.) including occupation of the public beach. Seawalls and, in particular, revetments, may have large horizontal footprints, displacing what would otherwise be sandy beach, and resulting in a long-term loss of beach area for public access, recreation and other uses. In addition to frequently encroaching onto the public beach, shoreline protection devices, by slowing or stopping natural processes of shoreline retreat, also prevent the future creation of new beach and eliminate a supply

of new sand that would otherwise have resulted from bluff and shoreline erosion. By design, shoreline protection devices establish a fixed landward boundary of the back beach (“fixing the back beach”), and prevent the natural, on-going inland adjustment of the beach that occurs on an eroding coast; over time, this restriction of a beach’s adaptive capacity can result in the narrowing or loss of the beach (“passive erosion”). Future sea level rise is expected to result in the drowning or “pinching out” of many California beaches (Vitousek et al. 2017), an effect that will only be exacerbated in locations with extensive shoreline protection.

By substituting hard materials (e.g., rock, concrete) in place of more erodible natural substrates (e.g., sand, soils, terrace deposits, sedimentary rocks), shoreline protection devices can also change wave reflection patterns, cause scour or winnowing of beach sediments along the shoreline, and increase erosion rates at unarmored locations up- and down-coast of the structure (“end effects”). In certain locations, shoreline protection devices may also interrupt or interfere with longshore and cross-shore sediment transport, resulting in deposition of sand in one location at the expense of other locations further “down drift” along the coast. Broader effects of shoreline protection devices include changes to the recreational and beach use experience, impacts to beach and other coastal ecosystems, and impairment of the aesthetic and visual character of the coast.

Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could “create [or] 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.” However, Section 30235 of the Coastal Act recognizes that existing development may be protected by shoreline protective devices subject to certain conditions. This limitation is particularly important when considering new development, such as in this case, because if it is known that a new development may need shoreline protection in the future, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act, which requires new development to minimize risks to life and property. Therefore, the Commission’s action on this project must consider the effects of wave uprush, flooding, and storm events (with sea-level rise considerations) on public access and recreation.

The proposed project is located approximately 200 ft. east of Ocean Front Walk, an approximately 2.3-mile public beach boardwalk constructed prior to the effective date of the Coastal Act. The boardwalk consists of a 20-ft. wide sidewalk bordered on the seaward side by a concrete parapet above a sheetpile seawall that extends approximately 20 feet down into the sand. During the summer, sand typically covers most of the seaward side of the seawall; in the winter, more of the seawall is exposed, and during extreme storm events, waves have overtopped the parapet. The boardwalk effectively serves as a low seawall along the entire shoreline in Mission Beach, set back from the shoreline and fronted by the beach. If beach erosion were to continue unabated as a result of accelerated sea level rise, it would eventually lead to a situation where the water’s edge would be at the base of the seawall that protects the boardwalk.

Without the beach buffer, the waves – particularly storm waves – would eventually undercut the seawall and damage the boardwalk. While the seawall does reduce the risk to the structures inland of the boardwalk from flooding from overtopping waves, the seawall should not be relied upon to protect new private development, including the proposed project.

The Commission has authorized repair and maintenance to the boardwalk and associated seawall in the past (CDP Nos. 6-98-102, 6-00-130, 6-03-090-W, 6-05-0125-W, 6-13-1359); however, those repairs were authorized to maintain and protect existing public improvements, including the boardwalk itself, as well as public amenities located landward of the boardwalk (i.e., Belmont Park, public parking, and a grassy park). While future repair and maintenance of the boardwalk and seawall could be considered and authorized by the Commission, any such repairs would likely be authorized only for the benefit of the existing public amenities, and would not be considered for the protection of private residential development landward of the boardwalk, including the proposed project.

The project, as new development, is not entitled to shoreline protection and as such, the applicant is required to waive any possible right to construct a shoreline protective device to protect the property in the future, as outlined in **Special Condition No. 5**. Further, the landowner must remove the development if (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act or certified LCP.

The applicant has acknowledged that periodic storm and flood events occur throughout the Mission Beach community; however, the subject site is located in an area that slopes up and is therefore 1-2 ft. higher than the adjacent parcels and the finished floor level of the home will be constructed approximately 3 ft. higher than the lot to provide additional flood protection. **Special Condition No. 4** requires the applicant to acknowledge the risk of building in a hazardous location and ensures that the risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the permittee who is enjoying the benefits of the new development, and not the public.

The site is within an area of original jurisdiction where the Chapter 3 policies of the Coastal Act are the standard of review with the City's certified LCP used as guidance.

B. Community Character/Visual Quality

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

C. Public Access/Parking

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

D. Coastal Hazards

Coastal Act Sections 30235 and 30253 acknowledges that seawalls, revetments, and other such “hard” structures designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, with the exception of coastal dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing permitted structures or public beaches in danger from erosion. Section 30253 requires that new development be sited, designed, and built in a manner to not require construction of shoreline protection devices that would substantially alter natural landforms along the shoreline.

The development is located in an area that may be subject to coastal hazards. As conditioned, the risks of property damage or loss arising from such hazards will be borne by the applicant and not the public. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30253 of the Coastal Act.

E. Local Coastal Planning

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

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 determined that no CEQA review was required for the proposed project since it is not a project as determined by San Diego Municipal Code section 128.0202.

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 addressing visual resources and public access will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation

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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

- Certified Mission Beach Precise Plan
- Certified Mission Beach Planned District Ordinances
- City of San Diego Land Development Code