

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA APPROVING TEMPORARY USE PERMIT TUP-2-19 (FILE NO. 2019-029), SUBJECT TO CONDITIONS, TO INSTALL A TEMPORARY STRUCTURE TO ENCLOSE OCEAN SHORE RAILROAD CAR NO. 1409 AND PERFORM RESTORATION WORK ON THE RAILROAD CAR ON A PORTION OF THE VALLEMAR CENTER SHOPPING CENTER AT 2125 COAST HIGHWAY (APN 018-041-010), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

Initiated by: Kathleen Manning of the Pacifica Historical Society (“Applicant”)

WHEREAS, Applicant has submitted an application on behalf of the Pacifica Historical Society to perform minor grading, to construct heavy timber cribbing, to install a railcar, to install a temporary enclosure, and to perform renovation work on the railcar (“Project”); and

WHEREAS, the Project requires Planning Commission approval of a temporary use permit pursuant to section 9-4.2305(a) of the Pacifica Municipal Code (PMC) because the proposed use is not listed as a permitted or conditional use within the C-1 (Neighborhood Commercial) zoning district; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on November 4, 2019, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pacifica as follows:

- A. The above recitals are true and correct and material to this Resolution.
- B. In making its findings, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does hereby make the finding that the Project qualifies for Class 4 exemption under California Environmental Quality Act (CEQA) Guidelines Section 15304, as described below:

Section 15304 (Minor Alterations to Land) of the CEQA Guidelines states in part:

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

- (a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

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(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

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The Project fits into the scope of the Class 4 exemption in that it includes grading on land with a slope of less than 10 percent, which is located outside a waterway, wetland, or any officially designated scenic area, and which is also located outside any officially mapped areas of severe geologic hazard as delineated by the State Geologist. The Project also fits into the scope of the Class 4 exemption in that it involves a minor temporary use of land to restore a railcar which will have no permanent effects on the environment.

Additionally, none of the exceptions to application of an exemption contained in Section 15300.2 of the CEQA Guidelines apply to the Project, as described below:

- Sec. 15300.2(a): There is no evidence in the record that the Project will impact an environmental resource of hazardous or critical concern in an area designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies. The Project site is located within a substantially developed shopping center.
- Sec. 15300.2(b): There is no evidence in the record that successive projects of the same type in the area would have a significant environmental impact. The Project involves the temporary placement of a railcar and enclosure structure. There are no other projects of this type in the area. Therefore, there is no foreseeable cumulative impact from this type of project which could have a significant environmental impact.
- Sec. 15300.2(c): There is no evidence in the record of any possibility that the Project would have a significant effect on the environment due to unusual circumstances. The Project site is designated for commercial use and includes renovation of an existing railcar on a portion of an existing, developed shopping center. As such, there are no identifiable unusual circumstances that would have a significant effect on the environment.
- Sec. 15300.2(d) through (f): The Project is not proposed near a designated scenic highway, does not involve a current or former hazardous waste site, and, does not affect any historical buildings. Therefore, the provisions of subsections (d) through (f) are not applicable to this Project.

Because the Project is consistent with the requirements of a Class 4 exemption and none of the exceptions to applying an exemption in Section 15300.2 apply; therefore, there is substantial evidence in the record to support a finding that the Project is categorically exempt from CEQA.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does make the following findings pertaining to Temporary Use Permit TUP-2-19:

- i. *That the establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City.*

Discussion

The Project proposes temporary installation of Car #1409 and minor restoration work utilizing small tools. The applicant has indicated that no hazardous materials, such as lead or asbestos, are present within the railcar. Installation of the railcar would require approval of a building permit to ensure the wood cribbing is safely constructed. The site currently has a slight slope rising toward the eastern property line. The Project would grade this area to ensure the wood cribbing can be installed on a level surface.

Restoration work would be conducted during reasonable daytime hours from 8:00 AM to 5:00 PM, which are consistent with weekday work hours for construction projects operating under a building permit as set by PMC section 8-1.08 (7:00 AM to 7:00 PM). However, weekend construction hours are limited to 9:00 AM to 5:00 PM and staff has proposed a condition of approval to ensure weekend renovation work is consistent with these limitations. These construction hour limitations are necessary to minimize adverse noise impacts to businesses within the shopping center and to nearby residents. The limited scope and term of grading, the small size of the tools to be used during the restoration, and the small size of the generator needed to power certain of the tools, will further serve to limit potential noise impacts.

It is staff's assessment that the installation of security lighting is sufficient to address concerns about potential vandalism of the railcar because it will deter nefarious activity by increasing in the area immediately surrounding the railcar. The installation of security lighting could have the potential to be disruptive to nearby residents, however. The placement of such lighting could shine into the windows of residents or affect their privacy within yard areas. Therefore, staff has recommended a condition of approval which would require review and approval of the exterior lighting plan and which would further require that all exterior lighting be down-facing and directed away from nearby residences.

Because the Project would require approval of a building permit; because restoration work would proceed in a manner consistent with hours of operation for large construction projects; because the tool and generator used will be small in size; because the installation of security lighting will be regulated; and, because no hazardous materials are present, the establishment, maintenance, and operation of the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City.

- ii. *That the use or building applied for is consistent with the applicable provisions of the General Plan and other applicable laws of the City and, where applicable, the local Coastal Plan.*

Discussion

The temporary installation and restoration of Car #1409 is consistent with the General Plan. Policy Nos. 1 and 2 of the Historic Preservation Element, included below, demonstrate the importance of the conservation of historic resources:

Historic Preservation Element Policy No. 1: *Conserve historic and cultural sites and structures which define the past and present character of Pacifica.*

Historic Preservation Element Policy No. 2: *Consider creative alternatives, which may include uses other than the original use, to protect and preserve historic sites and structures.*

As explained by the applicant, Car #1409 transported passengers along the OSRR from 1905 to 1920. This important period in early Pacifica history pre-dates the City's incorporation in 1957 when Pacifica existed as a collection of coastal neighborhoods. The creative application of the temporary use permit procedure to enable restoration of Car #1409 is essential to protect and preserve this historic resource.

Because the Project would conserve a historic resource which defines the past and present character of Pacifica, and because a creative alternative is necessary to protect and preserve the resource, therefore, the proposed Project is consistent with the General Plan.

The Local Coastal Plan is not applicable to the Project as the site is not located in the coastal zone.

- iii. *Where applicable, that the use or building applied for is consistent with the City's adopted Design Guidelines.*

Discussion

The City's adopted Design Guidelines have few provisions which pertain to temporary development. Nevertheless, the proposed Project is consistent with the following adopted Design Guidelines:

Lighting (Section I.A.3): *Exterior lighting should be subdued, and should enhance building design as well as provide for safety and security. Lighting which creates glare for occupants or neighbors should not be used. In general, large areas should be illuminated with a few low shielded fixtures. Tall fixtures which illuminate large areas should be avoided.*

As previously mentioned, the Planning Director will review and approve an exterior lighting plan which will ensure safety and security of the Project site while avoiding glare for neighbors. Therefore, the Project would be consistent with this Design Guideline.

Grading (Section I.A.8): *Where significant amounts of grading are required, contours should be graded to blend with those of adjacent properties. Contours should be rounded on both cut and fill slopes, horizontally and vertically.*

The Project does not involve significant amounts of grading; therefore, the Project would be consistent with this Design Guideline.

Because the proposed use would be consistent with Design Guidelines related to lighting and to grading, there is evidence to support a conclusion that it is consistent with the City's adopted Design Guidelines.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica approves Temporary Use Permit TUP-2-19, subject to conditions of approval attached as Exhibit A.

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PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 4th day of November, 2019.

AYES, Commissioners:

NOES, Commissioners:

ABSENT, Commissioners:

ABSTAIN, Commissioners:

Oren Rubinstein, Vice Chair

ATTEST:

APPROVED AS TO FORM:

Tina Wehrmeister, Planning Director

Michelle Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2019-029 – Temporary Use Permit TUP-2-19, to install a temporary structure to enclose Ocean Shore Railroad Car No. 1409 and perform restoration work on the railroad car on a portion of the Vallemar Center shopping center at 2125 Coast Highway (APN 018-041-010).

Planning Commission Meeting of November 4, 2019

Planning Division

1. Temporary Use Permit TUP-2-19 shall be valid for an initial term of six months from the date of final determination. If the use or uses approved is/are not established within such period of time, the approval(s) shall expire unless Applicant submits a written request for an extension and applicable fee prior to the expiration date. In the event of such a request for an extension, the Planning Commission authorizes the Planning Director to approve the extension request as follows: The Planning Director may administratively grant up to two (2), six-month extensions, provided that, in the Planning Director's sole discretion, the circumstances considered during the initial project approval have not materially changed. In the event that circumstances have materially changed, the Planning Commission shall consider a request for an extension.

In the event of litigation filed to overturn the City's determination on the approval or approvals, the Planning Director may toll the expiration of the approval or approvals during the pendency of such litigation.

2. In the event that the uses authorized under Temporary Use Permit TUP-2-19 are established, the following process for an extension of the permit is applicable. Due to the rare nature of the subject historical resource, and because of the unique challenges associated with relocating the railcar, the Planning Commission authorizes the Planning Director to grant one extension of up to six (6) months of the term of Temporary Use Permit TUP-2-19 pursuant to Applicant's written request for an extension, if such request is made at least 30 days prior to the expiration of the permit. Upon the Planning Director's receipt of an extension request, the Planning Director shall provide notice of the impending decision at least 10 days prior to the administrative decision to owners and occupants of the Project site within a radius of 500 feet of the exterior boundaries of the property. The failure of any person to receive such notice shall not invalidate the decision. The Planning Director shall approve the extension request in the following circumstances: (1) the Applicant requires additional time to identify another location for installation and renovation of the railcar; (2) the Applicant has encountered logistical difficulties in timely relocating the car upon the expiration of the initial term of Temporary Use Permit TUP-2-19.
3. Prior to issuance of a building permit, Applicant shall submit an exterior lighting plan for review and approval of the Planning Director. The exterior lighting plan shall ensure that all exterior lighting is down-facing and directed away from adjacent residences, and that the motion sensor is limited to detecting motion within the immediate vicinity of the Project, to the satisfaction of the Planning Director. All exterior lighting shall be operated consistent with the approved exterior lighting plan during the permit term.
4. Prior to issuance of a building permit, Applicant shall submit a power plan for review and approval of the Planning Director. The power plan shall ensure that the generator to be used to power certain tools and interior lighting shall be the smallest size necessary, the generator shall be designed to minimize noise emissions, and the plan shall also demonstrate how electrical cabling

will be installed, to the satisfaction of the Planning Director. All power equipment shall be operated consistent with the approved power plan during the permit term.

5. Applicant shall obtain all required City and Caltrans permits for relocation of railcar prior to commencing the relocation.
6. The approval letter issued by the City and all conditions of approval attached thereto shall be included as plan sheets within all plan sets submitted to the City as part of any building permit application.
7. Prior to issuance of a building permit, Applicant shall clearly indicate compliance with all conditions of approval on the plans and/or provide written explanations to the Planning Director's satisfaction.
8. Applicant shall maintain its site in a fashion that does not constitute a public nuisance and that does not violate any provision of the Pacifica Municipal Code.
9. All outstanding and applicable fees associated with the processing of this Project shall be paid prior to the issuance of a building permit.
10. The Applicant shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Applicant's project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Applicant's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Applicant, City, and/or parties initiating or bringing such Proceeding. If the Applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Applicant of any Proceeding and shall cooperate fully in the defense.

Building Division

11. The Project requires review and approval of a building permit by the Building Official. Applicant shall apply for and receive approval of a building permit prior to grading the site, relocating the railcar, or installing the wooden cribbing, temporary enclosure, or railcar.

12. Applicant shall install and maintain all best management practices (BMPs) during grading and construction which may be required by PMC Title 6, Chapter 12.
13. Construction and renovation operations shall be limited to the hours specified in PMC section 8-1.08, which are 7 AM to 7 PM from Monday through Friday, and 9 AM to 5 PM on Saturday and Sunday.
14. Roadways and parking lots shall be maintained clear of construction materials, equipment, storage, and debris, especially mud and dirt. Dust control and daily road cleanup will be strictly enforced.
15. Existing curb, sidewalk or other street improvements adjacent to the property frontage that are damaged or displaced shall be repaired or replaced as determined by the City Engineer.
16. All recorded survey points, monuments, railroad spikes, pins, cross cuts on top of sidewalks and tags on top of culvert headwalls or end walls whether within private property or public right-of-way shall be protected and preserved. If survey point/s are altered, removed or destroyed, the applicant shall be responsible for obtaining the services of a licensed surveyor or qualified Civil Engineer to restore or replace the survey points and record the required map timely following removal of the railcar from the site.

END