

RESOLUTION NO. 2023-002

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA
APPROVING TEMPORARY USE PERMIT TUP-1-22 AND COASTAL
DEVELOPMENT PERMIT CDP-445-22 (FILE NO. 2022-029), SUBJECT TO
CONDITIONS, FOR THE TEMPORARY INSTALLATION AND RESTORATION OF
OCEAN SHORE RAILROAD CAR NO. 1409 AT 1910 FRANCISCO BOULEVARD (APN
016-060-100), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA).**

Initiated by: Pacifica Historical Society

WHEREAS, an application has been submitted to temporarily install and restore Ocean Shore Railroad Car No. 1409 on an existing parking lot location at 1910 Francisco Boulevard (APN 016-060-100) in Pacifica (File No. 2022-029) (“Project”); and

WHEREAS, the Project requires approval of a temporary use permit pursuant to Pacifica Municipal Code (PMC) Section 9-4.2305(a) due to the temporary nature of the Project; and

WHEREAS, the Project requires approval of a coastal development permit pursuant to PMC Section 9-4.4303(a) due to the project site being within the coastal zone district; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on January 17, 2023, 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 a Class 4 exemption under CEQA. Guidelines Section 15304, as described below, applies to the Project:

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:

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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 proposed project 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 proposed 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 parking lot. 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.

Therefore, the project is consistent with the requirements for a Class 4 exemption and none of the exceptions to the exemptions in Section 15300.2 apply; 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 the approval of the Temporary Use Permit TUP-1-22 as indicated as required by PMC section 9-4.2305(a), which references the same findings as a regular use permit findings in section 9-4.3303:

- 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 to temporarily install the Ocean Shore Railroad Car No. 1409 and conduct minor restoration work utilizing small tools. The applicant has indicated that no hazardous materials, such as lead or asbestos, are present within the railcar. The railcar installation would be on wood cribbing within a temporary enclosure secured behind a fence.

Restoration work would be conducted during reasonable daytime hours from 9:00 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 8-1.05 (Monday through Friday, 7:00 AM to 7:00 PM, and Saturday and Sunday, 9:00 AM to 5:00 PM). The restoration work will include only battery-operated hand tools and no generator will be used on site. In addition, the City has not received any complaints related to the existing location and restoration work of the railroad car at the Vallemar Shopping Center.

Because restoration work would proceed in a manner consistent with hours of operation for large construction projects; because the tools used would be small in size; and, because no hazardous materials are present, therefore, 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

Policy LU-I-3 of the 2040 General Plan provides that where a conflict exists between the Local Coastal Land Use Plan (LCLUP) and the General Plan, the LCLUP policy shall prevail. Because not all of the policies in the 2040 General Plan are consistent with the 1980 LCLUP as applicable to this project, the provisions of the LCLUP will be applied to the determination of General Plan consistency.

The City's certified Local Coastal Program has no express provisions related to temporary development. Nonetheless, the proposed project would be consistent with the adopted Local Coastal Program policies, as the proposed project is a temporary use on an existing parking lot. The project proposes no permanent or temporary modifications that will affect coastal access, remove land suitable for visitor or recreational use, or affect marine resources. Furthermore, the restoration of the railcar is needed for public enjoyment of the railcar. Ocean Shore Railroad Car No. 1409 is intended to become a historic resource that is available to the residents and visitors thru its future permanent installation. As such, the project is consistent with the Local Coastal Program in that it will support establishment of an additional future visitor-serving use within the coastal zone. While the proposed railcar will occupy existing public parking spaces, the proposed project will leave several open spaces available to the public and the parking spaces will be occupied only temporarily until the railcar is moved to its permanent location.

The Community Scale and Design section of the Certified LCLUP (p. C-105 to C-106) indicates that "historic buildings and sites shall be protected," and references the Historic Preservation Element of the 1980 General Plan. Policy Nos. 1 and 2 of the Historic Preservation Element of the 1980 General Plan provide as follows:

- 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.

Ocean Shore Railroad Car No. 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 the railcar 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 and Local Coastal Land Use Plan as provided by Policy LU-I-3 of the 2040 General Plan.

- 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 would be consistent with the following adopted Design Guideline:

Building Location (Section I.A.2): Building placement should take into account potential impacts on adjacent property. Existing views, privacy, and solar access of surrounding properties should be preserved wherever possible.

While the temporary use is not a traditional building, the railcar location on the proposed site has been thoroughly considered to minimize impacts to the abutting residential and commercial properties. The railcar will be placed at least 14 feet from west property line and 10 feet from the south property line, which will protect privacy and solar access. The proposed tent is 18 feet tall and is consistent with the surrounding single and two-story structures. The railcar location will not interfere with any existing public views.

Because the proposed use would be consistent with a Design Guideline related to building location, 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 does make the following findings pertaining to the approval of the Coastal Development Permit CDP-445-22 as indicated as required by PMC section 9-4.4303(a):

- i. *The proposed development is in conformity with the City's certified Local Coastal Program.*

Discussion

As more fully detailed above in the findings for approval of a temporary use permit, the proposed project would be consistent with the Community Scale and Design section of the LCLUP, referenced policies in the Historic Preservation Element of the 1980 General Plan, and would further the establishment of an important visitor-serving use in the Coastal Zone. These findings are incorporated herein by reference.

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- ii. *Where the Coastal Development Permit is issued for any development between the nearest public road and the shoreline, the development in in conformity with the public recreation policies of Chapter 3 of the California Coastal Act.*

Discussion

The project site is not located between the nearest public road and the shoreline. Therefore, this finding is not applicable.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Pacifica does hereby approve Temporary Use Permit TUP-1-22 and Coastal Development Permit CDP-445-22 for the installation of a temporary structure to enclose Ocean Shore Railroad Car No. 1409 and performance of restoration work on the railroad car on portion of an existing parking lot at 1910 Francisco Boulevard (APN 016-060-100), subject to conditions of approval included in Exhibit A to this Resolution.

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Passed and adopted at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 17th day of January 2023.

AYES, Commissioners: Ferguson, Goodwin, Hauser, Leal, Wright

NOES, Commissioners: None

ABSENT, Commissioners: Berman

ABSTAIN, Commissioners: None



Samantha Hauser, Vice Chair

ATTEST:



Christian Murdock, Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2022-029 – Temporary Use Permit TUP-1-22 and Coastal Development Permit CDP-445-22, to install a temporary structure to enclose Ocean Shore Railroad Car No. 1409 and perform restoration work on the railroad car on portion of 1910 Francisco Boulevard (APN 016-060-100)

Planning Commission Meeting of January 17, 2023

Planning Division of the Planning Department

1. Temporary Use Permit TUP-1-22 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 circumstance 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-1-22 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-1-22 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-1-22.
3. In the event that additional security is needed, the Applicant may install exterior lighting. Prior to installation of any exterior lighting, 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. Applicant shall obtain all required City and Caltrans permits for relocation of railcar prior to commencing the relocation.
5. Applicant shall provide not less than seven calendar days notice to the Public Works Director and Planning Director prior to commencing relocation to the City-owned Project site.
6. The approval letter issued by the City and all conditions of approval attached thereto shall be include as plan sheets within the plan set 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 plan and/or provide written explanation 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.

Engineering Division of the Public Works Department

11. Site shall be in conformance with the City of Pacifica Storm Water Management and Discharge Control Ordinance and San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices shall be implemented.
12. Permittee shall allow the Public Works Director and/or their authorized representative's access to inspect all activities.
13. The Applicant shall be responsible for pre-installation and post-installation cleanup. The Applicant shall clean the area to the satisfaction of the Public Works Director.

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North County Fire Authority

14. Prior to installation of the tent, the Applicant must obtain a tent permit from the North County Fire Authority.

Added by Planning Commission on January 17, 2023

15. Construction and restoration work shall be in accordance with Pacifica Municipal Code section 8-1.05, which allow construction activity Monday through Friday, 7:00 AM to 7:00 PM, and Saturday and Sunday, 9:00 AM to 5:00 PM.

END

