

RESOLUTION NO. 2021-013

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA APPROVING SUBDIVISION SUB-250-21 FOR A TENTATIVE SUBDIVISION MAP TO SUBDIVIDE THE AIRSPACE OF AN EXISTING 100,846- SQUARE FOOT (2.3151 ACRES) PARCEL INTO TWENTY-FIVE (25) COMMERCIAL CONDOMINIUMS, SUBJECT TO CONDITIONS, ON THE PROJECT SITE LOCATED SOUTH OF THE INTERSECTION OF CRESPI DRIVE AND ROBERTS ROAD (APN 022-162-390) WITHIN THE C-3 (SERVICE COMMERCIAL) ZONING DISTRICT AND COMMONLY KNOWN AS THE CRESPI BUSINESS CENTER, AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) (FILE NO. 2021-012)

Initiated by: Mark Heavey of Vertical Ventures LLC (“Applicant”).

WHEREAS, the Applicant submitted an application for a tentative subdivision map on March 17, 2021, seeking approval to subdivide the air space of one 100,846-square foot (sf) parcel into twenty-five (25) commercial condominium units, on a site located south of the intersection of Crespi Drive and Roberts Road (APN 022-162-390) within the C-3 (Service Commercial) zoning district (“Project”); and

WHEREAS, the Project requires approval of a tentative subdivision map in accordance with Pacifica Municipal Code (PMC) Section 10-1.302 and 10-1.407; and

WHEREAS, Title 10 of the PMC establishes the procedural and substantive requirements for review and approval of a tentative map for the subdivision of land; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on October 18, 2021, 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:

1. The above recitals are true and correct and material to this Resolution.
2. 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 1 exemption under CEQA. The Project qualifies as a Class 1 exemption provided in Section 15301 (Existing Facilities) of the CEQA Guidelines. Specifically, subsection (k) of Section 15301 provides an exemption for subdivision of existing commercial and industrial buildings where no physical changes occur which are not otherwise exempt, as follows:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of “existing facilities” itemized below are not intended to be all-inclusive of the types of projects. The key consideration is whether the project involves negligible or no expansion of use.

* * * * *

(k) Division of existing multiple family or single-family residences into common interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt.

The Project would include subdivision of two existing commercial/industrial buildings into 25 commercial condominiums with no physical change occurring to the Project site or the buildings located thereon. Therefore, it would qualify for application of this categorical exemption.

Additionally, none of the exceptions to application of a categorical exemption in Section 15300.2 of the CEQA Guidelines would apply:

- Sec. 15300.2(a): There is no evidence in the record that the Project would 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.
- Sec. 15300.2(b): There is no evidence in the record that cumulative projects of the same type would occur within the same place to create a significant cumulative impact.
- Sec. 15300.2(c): There is no evidence that the Project would have a significant effect on the environment due to unusual circumstances.
- Sec. 15300.2(d) through (f): The Project is not proposed near an officially designated scenic highway, does not involve a current or former hazardous waste site, and does not affect any historical resources. Therefore, the provisions of subsections (d) through (f) are not applicable to this Project.

Because the Project is consistent with the requirements for a Class 1 exemption and none of the exceptions to the exemptions 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 hereby make the following findings pertaining to Subdivision SUB-250-21 for a tentative subdivision map to subdivide two buildings into twenty-five (25) commercial condominiums:

The Project site is not located within the Coastal Zone or the boundaries of a specific plan area; therefore, the Local Coastal Program and any specific plan do not apply to consideration of this tentative map. The applicable considerations for the proposed subdivision pursuant to this finding include only consistency with the General Plan and the zoning provisions, including but not limited to the provisions of PMC Title 9 and Title 10.

General Plan

The General Plan land use designation of the land proposed for subdivision is Commercial. The proposed subdivision would continue the commercial use of the site as a business park and would only subdivide the airspace to allow separate ownership of individual units. Therefore, the use associated with the proposed subdivision would be consistent with the General Plan land use designation.

The proposed subdivision would also be consistent with other provisions of the General Plan, including the following General Plan policies:

- i. Community Design Element, Policy No. 1: *Preserve the unique qualities of the City's neighborhoods.*

The proposed subdivision would preserve the existing buildings at the Project site and would continue use of the site in the manner in which it has operated for decades as the Crespi Business Center. The Project site is the only business park within the City of Pacifica and the collection of diverse small businesses that operate within the business park is a unique quality of the West Linda Mar neighborhood. The conversion of the 25 for-lease units to 25 commercial condominium units would not result in a change to the diverse commercial character of the existing business park and would provide ownership opportunities for small business owners, potentially securing their operation on a longer-term basis than if they continued to operate as tenants within their existing lease spaces. Ensuring continued operation of the Project site as a business park would be consistent with this General Plan policy.

- ii. Community Design Element, Policy No. 2: *Encourage the upgrading and maintenance of the City's neighborhoods.*

The conversion to commercial condominiums would also include creation of an owners' association that would be responsible for property maintenance and improvements to the Project site. By establishing an owners' association, the Project would result in a specific entity responsible for the property, and would encourage the upgrading and maintenance of the Project site in a manner consistent with this General Plan policy.

- iii. Land Use Element, Policy No. 8: *Land use and development shall protect and enhance the individual character of each neighborhood.*

As noted above in discussion of Community Design Element Policies No. 1 and 2, the proposed subdivision would maintain the existing commercial use of the site as a business park and would include provisions for the upgrading and maintenance of the Project site. Because it would encourage the continued operation of the site in the same manner as it has operated as the Crespi Business Center, and because the Project site is the only business park located within Pacifica, the proposed subdivision would be consistent with this General Plan policy.

Because the Project would be consistent with the land use designation for the Project site as identified in the Land Use Element, and because the Project would be consistent with policies in the Community Design and Land Use elements, there is sufficient evidence to support a conclusion that the Project would be consistent with the General Plan.

Zoning Provisions

PMC Title 9

The Project site is located within the C-3 (Service Commercial) zoning district. Zoning standards in the C-3 zoning district applicable to the subdivision of land include lot area and lot width as provided in PMC Section 9-4.1202. As demonstrated in Table 1 of the staff report, the existing ground lot at the Project site complies with these zoning standards. The proposed subdivision would not alter the existing ground lot

and would only create condominiums within the airspace above the ground lot. There are no zoning standards applicable to condominiums created within airspace. Additionally, because the proposed subdivision would not modify the existing ground lot, it would not modify any existing property line setbacks that were established at the time of initial approval of development on the Project site. Therefore, the Project site would continue to comply with applicable zoning standards within the C-3 zoning district.

PMC Title 10

Section 10-1.402 and 10-1.403 requires applicants for tentative subdivision maps to submit specified information. On August 17, 2021, staff found that the applicant met the requirements. Except, however, that the City did not request the applicant to provide a soils report pursuant to PMC Section 10-1.403(b) because the proposed condominium subdivision of airspace at an existing developed business park did not constitute a “proposed development” as that term is used in PMC Section 10-1.404(b).

There are no specific standards applicable to condominium subdivisions in PMC Title 10. The standards contained in Title 10 of the PMC primarily relate to the subdivision of ground lots. The proposed subdivision would not alter the existing ground lot at the Project site and it would continue to comply with standards applicable to minimum area, width, depth, and frontage for sites with cross-slopes of less than 10 percent as demonstrated in Table 1 of the staff report. The proposed subdivision would also include sufficient easements for ingress/egress, utilities, and drainage in accordance with PMC Section 10-1.903 and 10-1.910.

Staff has not identified a need for dedication of streets, alleys, or other public rights-of-way for vehicular or pedestrian access pursuant to PMC Section 10-1.801 because sufficient facilities already exist abutting the Project site. As noted above, easements will be provided for ingress/egress. Provisions for dedication of park land, school sites, and local transit facilities pursuant to PMC Sections 10-1.803, 10-1.804, and 10-1.806, respectively, are not applicable to the proposed subdivision because it would not include any dwelling units. Provisions for other reservations of land pursuant to PMC Section 10-1.805 are also not applicable to the proposed subdivision because the site is not identified for a park, recreational facility, fire station, library, or other public use in an adopted specific plan or in the General Plan.

Because the proposed subdivision would comply with applicable standards in PMC Title 9 and PMC Title 10, including but not limited to standards for lot area, width, depth, and frontage, as well as standards applicable to access and utilities, there is sufficient evidence to support a conclusion that the Project would be consistent with applicable zoning provisions.

As demonstrated in the foregoing analysis, the proposed subdivision would be consistent with applicable General Plan policies and zoning standards. Therefore, there is sufficient evidence to support a finding to approve the proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan and zoning provisions.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica approves Subdivision SUB-250-21 to subdivide the air space of a 100,846-square foot (sf) parcel into twenty-five (25) commercial condominium units south of the intersection of Crespi Drive and Roberts Road (APN 022-162-390), subject to conditions of approval included as Exhibit A to this resolution.

* * * * *

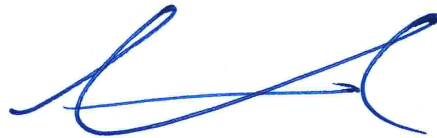
Passed and adopted at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 18th day of October 2021.

AYES, Commissioners: BERMAN, DOMURAT, FERGUSON, GODWIN, HAUSER,
LEAL, NIBBELIN

NOES, Commissioners: N/A

ABSENT, Commissioners: N/A

ABSTAIN, Commissioners: N/A



John Nibbelin, Chair

ATTEST:



Tina Wehrmeister, Assistant City
Manager/Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2021-012, Subdivision SUB-250-21 to subdivide to subdivide the air space of two commercial buildings on one 100,846-square foot (sf) parcel into twenty-five (25) commercial condominium units south of the intersection of Crespi Drive and Roberts Road (APN 022-162-390)

Planning Commission Meeting of October 18, 2021

Planning Division of the Planning Department

1. The subdivision shall be substantially in accord with the plans entitled "Pacifica Commerce Center Tentative Parcel Map for Condominium Purposes," dated April 28, 2021, except as modified by the following conditions.
2. The tentative map is valid for a period of 24 months from the date of final determination. Only one final map may be recorded. If a final map is not recorded within this time, the tentative subdivision map approval shall expire unless Applicant submits a written request for an extension, stating the reasons for requesting the extension, and applicable fee to the Planning Director at least 30 days prior to the expiration date as provided in Pacifica Municipal Code Section 10-1.412. The Planning Director shall process an extension request in accordance with Section 10-1.412 and submit it for consideration by the Planning Commission. The Planning Commission may grant an extension request for a period not exceeding three years beyond the expiration date of the original tentative map approval.

In the event of litigation filed to overturn the City's determination on the tentative subdivision map, the expiration of the tentative subdivision map may be tolled during the pendency of such litigation as provided in state law, including but not limited to section 66452.6(c) of the Government Code.

3. 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.
4. All outstanding and applicable fees associated with the processing of this Project shall be paid prior to final map approval.

5. Prior to final map approval, Applicant shall clearly indicate compliance with all conditions of approval on the plans and/or provide written explanations to the Planning Director's satisfaction.
6. Prior to final map approval, the Applicant shall prepare and record with the San Mateo County Recorder's Office a Declaration of Covenants, Conditions and Restrictions and Equitable Servitudes ("Declaration") which shall run with the land and be binding on all future owners and occupants of each of the commercial condominium units within the subject property and their successors, heirs, and assigns. Prior to recordation, the Declaration shall be approved as to form and content by the City Attorney and Planning Director, and shall at a minimum include the following:
 - A. The Declaration shall be binding upon each of the owners of each of the commercial condominium units on the subject property and their heirs, successors and assigns.
 - B. There shall be an Owners' Association to manage the Project. The Declaration shall specify that the Owners' Association shall be responsible for the repair, maintenance and replacement of exterior lighting, common areas, utility areas within common areas, parking, landscaping, building signage, sanitary sewer, stormwater facilities, open space, and other features of the Project.
 - C. The Declaration shall establish standards and guidelines for the maintenance, repair and replacement, where applicable, of exterior lighting, common areas, utility areas within common areas, parking, landscaping, building signage, sanitary sewer, stormwater facilities, open space, and other features of the Project.
 - D. The Declaration shall establish a mechanism for placing assessments against the owners of all commercial condominiums within the subject property for the purpose of financing the maintenance, repair and replacement of the exterior lighting, common areas, utility areas within common areas, parking, landscaping, building signage, sanitary sewer, stormwater facilities, open space, and other features of the Project. The assessments shall be apportioned in an equitable manner.
 - E. The assessments shall be made, work shall be contracted for, and funds shall be disbursed by such person ("Agent") as may be delegated from time to time, by the Owners' Association. The Applicant or his/her successor in interest shall act as the Agent as long as he/she owns at least a majority of the units on the subject property.
 - F. Any assessment not paid when due shall become a lien against the unit of the nonpaying owner, which lien may be foreclosed by the Agent.
 - G. Communication. Each owner is responsible for, and shall agree to, furnish to each new tenant a copy of the CC&Rs prior to execution of the lease or purchase agreement for each unit.
 - H. The Declaration shall include procedures for designating a project "Manager" if different than the "Agent" who shall at all times be responsible for security and/or maintenance of the overall Project. At all times the Manager shall provide his/her name and current phone number to the Planning Director, including any changes thereto.
 - I. The Declaration shall include a provision that the provisions relating to this condition shall not be amended without prior approval in writing from the City of Pacifica.
 - J. The Declaration shall specify that the owners of each of the commercial condominiums on the property shall comply with all other applicable conditions of approval for the Project.
 - K. The Declaration shall specify that in no way shall the appearance of any building or premises be so altered, or the conduct of the occupancy within the building or premises be such that the commercial condominium units may be reasonably recognized as serving other than a purely commercial use by virtue of color, materials, construction, lighting, noise, vibration, or the like, without prior written approval of the Planning Director.

- L. The Declaration shall include any provisions required to be included in the CC&Rs by this Resolution. The CC&Rs shall include any mitigation measure which requires the owners, Owners' Association, or other similar entity to undertake maintenance or other obligations after occupancy of the Project.
 - M. The Declaration shall name the City of Pacifica as a third-party beneficiary with the right (but not the obligation) to enforce the provisions required to be included in the CC&Rs by the Resolution or these conditions of approval.
 - N. The Declaration shall state that the exterior colors used in the Project shall be subject to Planning Director review and approval in perpetuity.
7. The approval letter issued by the City and all conditions of approval attached thereto shall be included as plan sheets within any subdivision improvement plans.
8. In the event of any changes by the City subsequent to approval of the tentative subdivision map to the General Plan land use designation and/or zoning classification applicable to the Project site that regulates allowable land uses thereon, the Declaration shall not contain any provision that prohibits such allowable uses to be conducted on the Project site. In the event any amendment to the Declaration is necessary to comply with this condition, the Owners' Association shall adopt the amendment to the Declaration to remove any such prohibition on said uses within one of year of the City's written notification of enactment of any applicable General Plan land use designation and/or zoning classification change. Any changes to the Declaration shall be first reviewed and approved by the City to ensure compliance with any applicable City laws, regulations, and/or conditions of approval. Nothing stated in this condition shall affect the approvals stated herein, or any vested rights the applicant may have accrued.

Engineering Division of Public Works Department

9. A City of Pacifica Encroachment Permit shall be obtained for all work undertaken in the public right-of-way. All work shall be done in accordance with City Standards, Standard Specifications for Public Works Construction (Green Book) or Caltrans Standard Specifications, Pacifica Municipal Code, Administrative Policies and to the satisfaction of the City Engineer. Permit fees shall be determined per the current adopted fee schedule at the time of permit issuance.
10. No private structures, including but not limited to fences, mailboxes, or stairs shall encroach into the public right-of-way.
11. All utilities shall be installed underground from the nearest box or joint pole.
12. All proposed sanitary sewer system and storm drain system elements, including detention facilities, shall be privately maintained up to their connections to the existing mains.
13. The applicant shall submit a Final Map to the Engineering Division for approval by the City Engineer. All required monumentation shall be shown on the map and set prior to recordation of the map. Additional fees may apply to final map review as established in the City's adopted fee schedule.

END