

**RESOLUTION NO. 24-2017**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S DENIAL OF A REQUEST TO EXTEND EXPIRATION DATE OF SITE DEVELOPMENT PERMIT PSD-757-06, USE PERMIT UP-965-06, AND TENTATIVE SUBDIVISION MAP (CONDOMINIUM) SUB-211-06 FOR THE CONSTRUCTION OF NINE CONDOMINIUMS AT 1567 BEACH BOULEVARD (APN 016-011-190)**

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Initiated by: Shaohong "Simon" Weng ("Appellant").

**WHEREAS**, a request has been submitted to extend the expiration date of Site Development Permit PSD-757-06, Use Permit UP-965-06, and Tentative Subdivision Map (Condominium) SUB-211-06 for the construction of nine condominiums at 1567 Beach Boulevard (APN 016-011-190); and

**WHEREAS**, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on December 19, 2016, February 6, 2017, and March 20, 2017, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference; and

**WHEREAS**, the Planning Commission denied the request to extend the expiration date of Site Development Permit PSD-757-06, Use Permit UP-965-06, and Tentative Subdivision Map (Condominium) SUB-211-06 for the construction of nine condominiums at 1567 Beach Boulevard by adopting Resolution No. 971 at a regularly scheduled Planning Commission Meeting on March 20, 2017; and

**WHEREAS**, Appellant filed an appeal of the Planning Commission's denial on March 30, 2017 in opposition to the Planning Commission's action; and

**WHEREAS**, the City has discretion to approve or deny extension requests for the subject permits under Pacifica Municipal Code sections 9-4.3206, 9-4.3308, and 10-1.412; and

**WHEREAS**, the City Council did hold a duly noticed public hearing on May 22, 2017, at which time it considered the appeal, the record of the Planning Commission's action, and other information presented by Appellant and staff.

**NOW, THEREFORE BE IT RESOLVED** by the City Council 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 City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

3. Since final approval of Site Development Permit PSD-757-06, Use Permit UP-965-06, and Tentative Subdivision Map (Condominium) on appeal by the City Council on May 14, 2007, the following changes in Federal, State, Regional, and Local Regulatory Requirements have become effective and were not in effect when the project was approved and are therefore not applicable to the project:
  - a. Pacifica Zoning Regulations – Inclusionary Housing Requirements (PMC Title 9, Chapter 4, Article 47)
  - b. California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit and Municipal Regional Permit Updates
  - c. Building Standards Code Updates
4. Not applying the new and/or updated standards above is not in the interests of public health and safety as detailed in the associated staff report that is part of the record. Specifically, the project would not comply with enhanced energy compliance standards and green building standards that protect the environment and are important regulations implemented by local agencies to combat the effects of global warming and climate change; the project does not treat stormwater discharges as required under the Municipal Regional Permit which will negatively impact public health and safety by introducing pollutants into water bodies, including the adjacent Pacific Ocean; and, the project does not comply with local inclusionary housing requirements which were adopted to address the severe shortage of affordable housing, to assist the City of Pacifica in meeting its share of Regional Housing Need Allocations, and to implement the State-mandated General Plan Housing Element.
5. Changes in Beach Boulevard Seawall conditions have occurred, specifically the portion located north of the Pacifica pier which experienced a partial failure in the winter of 2015-2016.
6. The following Findings required to approve the project cannot be made without additional factual support in the record:
  - a. Site Development Permit - A site development permit shall not be issued if the Commission makes any of the following findings:
    - (ix) That the proposed development is inconsistent with the General Plan, Local Coastal Plan, or other applicable laws of the City.

In the years that have passed since initial approval, the project is now inconsistent with the following Pacifica Municipal Code requirements: Inclusionary Housing Ordinance (Title 9, Chapter 4, Article 47), Storm Water Management and Discharge Control Ordinance (Title 6, Chapter



12); and Building Code (Title 8). Additionally, the project may no longer be consistent with the General Plan. Policy No. 1 of the Seismic Safety and Safety Element of the General Plan requires the City to “Prohibit development in hazardous areas unless detailed site investigation ensures that risks can be reduced to acceptable levels.” Insufficient evidence exists currently to conclude that risks associated with the Beach Boulevard Seawall can be reduced to acceptable levels.

- b. Use Permit - The Commission shall grant a use permit only upon making all of the following findings:

- (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.

The failure of the seawall and need to replace the northern portion of the wall are clear indicators that additional study is needed to factually make this finding. An alternative project design and engineering solutions may be appropriate.

- (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.

In the years that have passed since initial approval, the project is now inconsistent with the following Pacifica Municipal Code requirements: Inclusionary Housing Ordinance (Title 9, Chapter 4, Article 47), Storm Water Management and Discharge Control Ordinance (Title 6, Chapter 12); and Building Code (Title 8). Additionally, the project may no longer be consistent with the Policy No. 1 of the Seismic Safety and Safety Element of the General Plan.

- 7. A Mitigated Negative Declaration (MND) was adopted for this project in order to comply with the California Environmental Quality Act (CEQA).
  - a. The City’s adoption of a MND at the time of original project approval in 2007 meant the City at that time found all potentially significant impacts on the environment had been mitigated to less than significant levels through incorporation of mitigation measures.
  - b. Given the information presented in the staff report, particularly the change in conditions of the Beach Boulevard sea wall and potential impacts of

stormwater infiltration on the Beach Boulevard seawall, the analysis of potential impacts related to Geology and Soils and Hydrology and Water Quality should be revisited to ensure that the project would not have any potentially significant impacts on the environment and that appropriate mitigation measures are implemented if any potentially significant impacts are identified.

- c. The analysis in Section III.b of the MND pertaining to Geology and Soils concluded there would be “no impact” related to unstable soil or soil that would become unstable as a result of the project and which could potentially result in on- or off-site landslide, subsidence, or collapse. With the known collapse of a portion of the Beach Boulevard sea wall in the vicinity of the project in 2015-2016, the effect of stormwater infiltration should be evaluated to identify any potential impacts that could lead to liquefaction, collapse or other adverse events.
- d. The analysis in Section IV.a of the MND concluded there would be “no impact” from violating any water quality standards or waste discharge requirements. As explained in the City’s stormwater analysis attached to the staff report, the project would not comply with San Mateo County Municipal Regional Permit requirements for reducing or eliminating pollution within stormwater discharges which would be applicable to the project today. The project proposes no treatment measures to reduce transmission of pollutants within stormwater discharged from the site.
- e. Substantial evidence in the record supports a finding that the CEQA analysis performed for the project may no longer be adequate due to changed circumstances since the project’s initial approval in 2007.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of Pacifica finds and determines that the project at 1567 Beach Blvd. is no longer consistent with applicable laws and regulations, new information about the condition of the seawall is a significant changed circumstance that warrants re-analyzing the project design and engineering, and all findings required to approve the project can no longer be made based on the information in the record. Therefore, expiration dates for Site Development Permit PSD-757-06, Use Permit UP-965-06, and Tentative Subdivision Map (Condominium) SUB-211-06 for the construction of nine condominiums at 1567 Beach Boulevard (APN 016-011-190) shall not be extended and the permits are considered expired.

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Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 22nd day of May 2017.

AYES, Councilmember: Martin, Vaterlaus, Digre, Keener, O'Neill

NOES, Councilmember: None

ABSENT, Councilmember: None

ABSTAIN, Councilmember: None



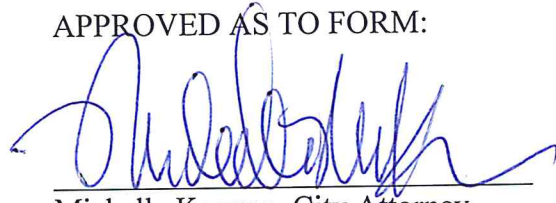
Mike O'Neill, Mayor

ATTEST:



Kathy O'Connell, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney