

**RESOLUTION NO. 2024-005**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA APPROVING USE PERMIT UP-135-23 AND TEMPORARY USE PERMIT TUP-2-24 (FILE NO. 2023-017), SUBJECT TO CONDITIONS, FOR MODIFICATION OF AN EXISTING OUTDOOR COMMERCIAL OPERATION AND TEMPORARY OUTDOOR DINING IN THE EXISTING PARKING LOT AT 5200 COAST HIGHWAY (APN 022-191-190) AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

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Initiated by: DRG Foods ("Applicant")

**WHEREAS**, an application has been submitted to allow modification of an existing outdoor commercial operation (outdoor seating area), including modification to alcohol service, and temporary outdoor dining during construction in a portion of the existing parking lot located at 5200 Coast Highway (APN 022-191-190) in Pacifica (File No. 2023-017) ("Project"); and

**WHEREAS**, the Project requires approval of a use permit pursuant to Pacifica Municipal Code (PMC) section 9-4.2308(a) because it involves commercial use conducted outside of an enclosed structure in the C-R (Commercial Recreation) zoning district; and

**WHEREAS**, the Project requires approval of a temporary use permit pursuant to PMC section 9-4.2305(a) to allow a temporary use for a period of up to six months in developed areas; and

**WHEREAS**, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on April 29, 2024, 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 1 and Class 4 exemptions under CEQA. Guidelines Section 15301 and 15304, as described below, applies to the Project:

The Planning Commission finds that the Project qualifies for a categorical exemption from the California Environmental Quality Act (CEQA). The project qualifies as a Class 1 (Existing Facilities) Categorical Exemption, CEQA Guidelines Section 15301 and Class 4 Categorical Exemption, CEQA Guidelines Section 15304(e) (Minor Alternations to Land.

Section 15301 (Existing Facilities) of the CEQA Guidelines states in part:

Class 1 consists of operations, repair, maintenance, permitting, leasing, licensing, or minor alterations of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing for former use.

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

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

\* \* \* \* \*

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

The proposed project fits into the scope of the Class 1 and Class 4 exemptions in that it involves no expansion of square footage, modifications to existing outdoor seating, modification to existing alcohol services and minor temporary use of land to for dining 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 does not propose any expansions and will only occupy portions of the site that are substantially developed.
- 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 modifications to an existing business and the temporary placement of a tent. 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 visitor-serving commercial use. 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.

The project is consistent with the requirements of a Class 1 and Class 4 exemptions 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 Use Permit UP-135-23 as required by PMC section 9-4.3304:

- 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 to modify the existing seating configuration and add direct alcohol service at the existing outdoor deck via a new indoor/outdoor bar. The existing Taco Bell Cantina received approval to utilize and provide alcohol service at the existing outdoor deck in 2018 (Planning Commission Resolution No. 2018-004).

The project site is already required to provide outdoor trash receptacles that are bird safe and regularly maintained to prevent litter on the deck and carrying onto the beach from the deck. The project site currently has signage identifying the gate at the stairway leading to beach as an alarmed, emergency exit to control access from the deck to the beach.

The applicant has provided information related to its safe and responsible alcohol service policy. The policy was crafted with input from communities in which this business model has already been deployed, including the project site. The policy covers all aspects of alcohol service, including safe servicing, preventing service to underage patrons, and preventing alcohol from leaving the premises. Furthermore, the project site already has signage at all exit points to direct patrons to not take alcoholic beverages off the premises. Taco Bell Cantina requires all employees to review and understand the policy to ensure safe and responsible alcohol service.

Additionally, the proposed operations will not increase noise. The new indoor/outdoor bar will not have any noise creation appliances, such as blenders, and there will no music played on the existing deck.

With these measures, appropriate maintenance and operation in accordance with Department of Alcoholic Beverage (ABC) regulations, the modifications to the outdoor seating area and operations will not be detrimental to health, safety, and welfare of the persons residing in the neighborhood or 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 modification to the outdoor seating area and operations, as conditioned, will be consistent with the General Plan, Local Coastal Plan, and other applicable laws of the City. General Plan and Local Coastal Plan consistency includes, but is not limited to the following:

#### GENERAL PLAN

- a. *ES-G-1 Leverage Assets: Leverage Pacifica's coastal location and unique assets as a primary means to strengthen the local economy, focusing on increasing tourism facilities, including shops, hotels, restaurants, and hiking trails.*
- b. *ES-G-4 Support Existing Businesses: Retain and foster the growth of existing Pacifica businesses, and foster a positive relationship between the business community and the City government.*

Taco Bell Cantina is an existing business and a tourist destination, bringing visitors from around the world to the iconic beachfront deck. The Taco Bell Cantina has been featured in publications, including Business Insider, and is often featured on social media as a must-see for anyone visiting the Bay Area. Additionally, as an existing business, Taco Bell Cantina staff has worked closely with Pacifica Police Department to provide a safe environment for staff and patrons.

#### LOCAL COASTAL PLAN

The project site is located within the Coastal Zone; however, the project does not require a Coastal Development Permit (CDP) from the City as it is located in the permit jurisdiction of the California Coastal Commission. The project is consistent with the applicable policies in the Local Coastal Land Use Plan, as follows:

- a. *Coastal Act Policy No. 2: Development shall not interfere with the public's right of access to the sea where acquired through use of legislative authorization, including, but not limited to, the use of dry sand and rock coastal beaches to the first line of terrestrial vegetation.*

The proposed project modifies an existing operation on an existing deck attached to the rear of an existing restaurant in the area of the Pacifica State Beach and does not propose any square footage expansion. The project does not interfere with the public right of access to the sea. A gate exists at a stairway from the deck to the beach to control access for public safety; however, the project does not propose any development in the area upon the beach that would infringe upon the use of the beach.

The project would also comply with applicable laws of the City including those contained in the Zoning Regulations, in particular the development standard and permissible uses of the C-R district. Additionally, it would comply with applicable Coastal Act Policy No. 2. The project is also consistent with 2040 General Plan Economic Sustainability policies.

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

#### Discussion

The City has adopted Design Guidelines which are intended to accomplish the following purposes:

- Ensure at least a minimum standard of design through the application of consistent policies.
- Encourage new construction which exceeds minimum standards and discourage construction which falls short of those standards.
- Provide a framework for review and evaluation of design proposals.
- Implement applicable General Plan and Local Coastal Plan goals and policies.
- Expedite and facilitate the planning permit process.
- Provide direction for design and redesign of projects.

The Design Guidelines are advisory in nature and, unlike zoning regulations, do not contain explicit standards for determining strict compliance. Rather, they address significant elements of project design that, when balanced overall, result in the best possible site layout and building architecture for a project. An applicant may propose a project consistent with the Design Guidelines. It is up to the Commission's discretion to determine the appropriate balance and relative priority of the guidelines for a particular project when considering a project has achieved Design Guidelines consistency.

In staff's assessment, the proposed project, as conditioned, is consistent with the City's adopted Design Guidelines. Major areas of project consistency with the Design Guidelines include the following:

#### SITE PLANNING

- a. Lighting. Lighting. 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.

#### Discussion

The project does not propose new lighting. The deck contains existing lighting that includes wall lanterns and LED light fixtures. The LED light fixtures have dimmers and are downward-facing light to avoid glare or light pollution to the surrounding properties. Per the existing conditions and no proposed changes, the lighting on deck will provide illumination that enhances safety and security while reducing glare.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Pacifica does make the following findings pertaining to Temporary Use Permit TUP-2-24 as required by PMC section 9-4.2305(a):

- 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 to place a 40-foot by 10-foot-wide tent in the existing off-street parking lot during the construction of the project, anticipated to be 30 to 45 days. The tent will occupy 10 of the existing parking spaces and provide enough seating for 48 patrons. The temporary outdoor seating in the parking lot is necessary to close the dining room to patrons during the construction of the new indoor/outdoor bar. The applicant is required to place trash receptacles in or near the tent. The trash receptacles shall be the same or similar to those currently placed in the outdoor deck and be bird safe and regularly maintained to prevent litter.

The potential for a vehicle to inadvertently enter the temporary outdoor seating area would exist as the layout is currently proposed. The draft resolution includes a condition of approval to install vehicle barriers to protect diners, to the satisfaction of the Planning Director. Installation of these vehicle barriers would be sufficient to mitigate this risk.

As conditioned, the proposed project is not detrimental to health, safety, and welfare of the persons residing in the neighborhood or 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 2040 General Plan does not contain any policies related to temporary uses. However, it does contain policy OC-I-44 related to temporary events, which requires temporary events to minimize impacts to public access, recreation, and coastal resources. The temporary tent is placed on the existing parking lot for Taco Bell Cantina and does not impede any coastal access points. Additionally, although the temporary tent will occupy existing parking spaces, the parking lot is for Taco Bell Cantina patrons only and will not impede coastal visitors arriving by vehicle. Public beach parking is also available adjacent to the Taco Bell Cantina property in the event customers are unable to find a parking space on-site.

The City's adopted and certified Local Coastal Program has no 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.

Additionally, the temporary tent is required to comply with Fire Code and is conditioned as such. The proposed project, as conditioned, is consistent with the General Plan, Local Coastal Plan, and applicable laws of the City.

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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 tent location on the proposed site has been thoroughly considered to minimize impacts to coastal resources and Taco Bell Cantina patrons. The tent location will minimize the number of parking spaces that need to be temporarily closed for safe usage of the tent for diners. 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.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Pacifica does hereby approve Use Permit UP-135-23 and Temporary Use Permit TUP-2-24) to allow modification of an existing outdoor commercial operation, including modification to alcohol service, and temporary usage of portion of the existing parking lot located at 5200 Coast Highway (APN 022-191-190), subject to conditions of approval included in 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 29<sup>th</sup> day of April 2024.

AYES, Commissioners: BERMAN, DEVINE, FERGUSON, GODWIN,  
HAUSER, REDFIELD, WRIGHT

NOES, Commissioners: N/A

ABSENT, Commissioners: N/A

ABSTAIN, Commissioners: N/A



Samantha Hauser, Chair

ATTEST:



Christian Murdock, Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

## Exhibit A

**Conditions of Approval: File No. 2023-017 – Use Permit UP-135-23 and Temporary Use Permit TUP-2-24) to authorize modifications of an existing outdoor commercial operation (outdoor seating area) and temporary outdoor dining in the existing parking lot located at 5200 Coast Highway (APN 022-191-190).**

**Planning Commission Meeting of April 29, 2024**

### **Planning Division of the Planning Department**

1. Development shall be substantially in accord with the plans titled “Taco Bell, Pacifica, CA” and dated March 14, 2024 and August 8, 2023, except as modified by the following conditions.
2. The Use Permit UP-135-23 shall be valid for a period of two years 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, and the Planning Director or Planning Commission approves the extension request as provided below. The Planning Director may administratively grant a single, one-year extension provided, if in the Planning Director's sole discretion, the circumstances considered during the initial project approval have not materially changed. Otherwise, the Planning Commission shall consider a request for a single, one-year extension. In the event of litigation filed to overturn the City's determination on the development permits, the Planning Director may toll expiration of the development permits during the pendency of such litigation.
3. Temporary Use Permit TUP-2-24 shall be valid for an initial term of six months. The initial term will begin upon issuance of a building permit to undertake the renovations associated with Permit UP-135-23. 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 one, six-month extension, 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.

4. The conditions of approval imposed upon Use Permit UP-106-18 in Resolution 2018-004 of the Planning Commission shall remain in full force and effect. Except, however, that in the event of any conflict with provisions or conditions of approval imposed upon Use Permit UP-135-23, the provisions of Use Permit UP-135-23 shall govern operation of the outdoor seating area.



5. Prior to commencement of temporary outdoor dining operation in the off-street parking area, Applicant shall install safety barriers around the temporary outdoor seating area to protect diners from vehicles circulating within the off-street parking area, to the satisfaction of the Planning Director.
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. 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.
8. All outstanding and applicable fees associated with the processing of this project shall be paid prior to the issuance of a building permit.
9. 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.
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.
11. Prior to issuance of a building permit, Applicant shall provide an approved exemption or Coastal Development Permit issued by the California Coastal Commission.
12. Prior to occupancy, Applicant shall provide documentation indicating Department of Alcoholic Beverage (ABC) has issued a new or revised license for the proposed indoor/outdoor bar service and service in the existing outdoor deck.
13. Only furniture designed for outdoor use by the manufacturer may be placed within the outdoor seating area. Furniture includes, but is not limited to, tables, chairs,

umbrellas, and trash receptacles. Applicant shall ensure that all furniture shall be maintained in working order and in good condition. Applicant shall timely replace faded, rusted, worn, or broken furniture when the deteriorated condition is first observed, but in no case longer than 90 days after a written request by the Planning Director.

14. Exterior lighting shall include buffering techniques to reduce light and glare impacts to adjacent properties.
15. Applicant shall ensure that the outdoor trash receptacles are bird safe and maintain them at all times.
16. Applicant shall maintain the outdoor seating area in a high state of cleanliness, including daily removal of trash, debris, and litter from trash receptacles, seating and ground areas, and actively monitor the area under their control in an effort to prevent littering and maintain cleanliness, to the satisfaction of the Planning Director.
17. Applicant shall maintain the alarmed gate, as installed, at the stairway leading to the beach from the deck, with signage identifying it as an alarmed, emergency exit, to control access from the deck to the beach.
18. Applicant shall maintain the signage, as installed, on the patio directing patrons not to take alcoholic beverages past a certain point on the deck.

#### **Building Department**

19. The project shall comply with applicable California Building Standard Codes at the time of building permit application.
20. Applicant shall provide seating in the patio area that is accessible to persons with disabilities in accordance with local, state, and federal laws.

#### **Engineering Division, Public Works Department**

21. Construction 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 and the construction BMPs plans sheet from the Countywide program shall be included in the project plans.
22. Roadways shall be maintained clear of construction materials, equipment, storage, and debris, especially mud and dirt tracked onto Cabrillo Highway. Dust control and daily road cleanup will be strictly enforced.
23. Permittee shall allow the Public Works Director and/or his authorized representative's access to inspect all activities.

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**North County Fire Authority**

24. Comply with appropriate provisions of the California Fire & Building Codes, as well as the Pacifica Municipal Code.
25. All tents/canopies shall bear California State Fire Marshal approved tags or markings indicating fire resistivity.
26. No open flame is to be utilized under or within 20 feet of tent/canopy.
27. No parking of vehicles within 20 feet of tent canopy.
28. An approved 2A10BC fire extinguisher shall be within 75 feet travel distance of each tent/canopy.
29. Tents/canopies shall be properly secured against displacement.

**Conditions added by the Planning Commission on April 29, 2024**

30. Prior to issuance of a building permit, Applicant shall revise the plans to demonstrate the accessible path of travel to/from the temporary tent.
31. Prior to issuance of a building permit, Applicant shall revise the tent placement to ensure it results in the maximum number off-street parking spaces available for use, to the satisfaction of the Planning Director.
32. In the absence of lighting approved by the Building Official within the temporary tent, operating hours of the temporary tent shall be limited to sunrise to sunset.

\*\*\*END\*\*\*

