

RESOLUTION NO. 2018-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA APPROVING USE PERMIT UP-106-18 (FILE NO. 2018-021), SUBJECT TO CONDITIONS, FOR GOLDEN GATE BELL LLC, TO LOCATE AND OPERATE AN OUTDOOR SEATING AREA IN CONJUNCTION WITH THE TACO BELL CANTINA AT 5200 COAST HIGHWAY, NEAR PACIFICA STATE BEACH (APN 022-191-190) AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

Initiated by: Dan Kramer for Golden Gate Bell LLC (“Applicant”).

WHEREAS, an application has been submitted (File No. 2018-021) to permit an existing nonconforming outdoor seating area established in conjunction with the existing restaurant “Taco Bell Cantina” restaurant at 5200 Coast Highway, adjacent to Pacifica State Beach; and

WHEREAS, the project requires approval of a Use Permit because it involves a commercial use conducted outside of an enclosed structure in the C-R (Commercial Recreation) zoning district, pursuant to Section 9-4.2308; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on August 20, 2018, at which time it continued the matter to September 17, 2018; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on September 17, 2018, at which time it continued the matter to October 1, 2018; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on October 1, 2018, 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 categorical

Attachment A

exemption under California Environmental Quality Act (CEQA) Guidelines Sections 15301, as described below:

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 use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

* * * * *

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

- (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less;

* * * * *

The subject location of outdoor seating on an existing deck attached to an existing restaurant fits within the scope of a Class 1 categorical exemption. Specifically, the project expands seating for the restaurant outdoors on an existing deck. The area of the deck (1,112 square feet) is less than 50 percent of the area of the restaurant building (2,400 sf) as well as less than 2,500 square feet. Therefore, the project constitutes negligible expansion of an existing use at the subject site.

For this reasons, there is substantial evidence in the record to support a finding that the project is categorically exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines.

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 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. The project is located in the area of Pacifica State Beach. Pacifica State Beach is designated as a Special Area (SA-4, Pacifica State Beach District) pursuant to the Pacifica Municipal Code (PMC). Per the PMC, the purpose of establishing the SA-4 District is "to acknowledge and address the following environmental conditions and technical constraints unique to the Pacifica State Beach: (1) Potential presence of the San Francisco garter snake; (2) Potential wetlands habitat; (3) Panoramic coastal views; (4) Inadequate beach parking; and (5) Local and regional importance as a swimming and picnicking beach." The project will not adversely impact these environmental conditions as it does not propose any new construction in otherwise undeveloped areas of the Pacifica State Beach District.

- 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 establishment of an outdoor seating area at an existing restaurant. No recent other projects of the same class have occurred within the vicinity of the project site.
- 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 zoned for commercial recreational use and the proposed establishment of outdoor seating is of a small scale such that no identifiable impacts to the environment would occur.
- Sec. 15300.2(d): The outdoor seating is in conjunction with an existing restaurant located on Highway 1 (Coast Hwy), which although not officially designated, is eligible for designation as a state scenic highway, in Pacifica. However, the subject deck is located to the rear of the existing restaurant and neither infringes upon nor visible from Highway 1.
- Sec. 15300.2(e) and (f): The project does not involve a current or former hazardous waste site, and, does not affect any historical resources. Therefore, the provisions of subsections (e) 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 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-106-18:

- 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

There is sufficient basis for the Planning Commission to make this finding based upon the facts described in the following discussion, which focuses on factors that could potentially impact health, welfare and safety of the persons residing or working in the neighborhood or to the general welfare of the City:

Trash Management: The facility currently includes four trash receptacles inside the building, four new trash receptacles in the parking lot in front of the building and two new trash receptacles on the rear deck. Based on information provided by the applicant, trash receptacles are regularly emptied into a trash enclosure located to the southwest side of the restaurant building and is serviced by a waste

management company three times per week. The applicant has also proposed a plan titled "Management Plan - outdoor Cleaning Maintenance - Taco Bell Cantina Pacifica" for managing trash and maintaining cleanliness at the facility.

To ensure permanence of these measures and facilitate enforcement, The Planning Commission has incorporated three conditions of approval: # 7, #8, and #9 aimed at preventing litter, ensuring cleanliness and maintenance of the outdoor seating area as well as finalization of and adherence to the trash management and cleanliness maintenance practices spelled out in the "Management Plan - outdoor Cleaning Maintenance - Taco Bell Cantina Pacifica".

Alcohol Service: The project includes a gate at the stairway leading to the beach from the deck, with signage identifying it as an alarmed, emergency exit, in order to control access to the beach from the deck and contain consumption of alcoholic beverages within the restaurant premises. The project also includes signage on the patio directing patrons not to take alcoholic beverages past a certain point on the deck.

As indicated in the staff report the restaurant has implemented an alcoholic beverage service policy for alcoholic beverage service indoors and employees' training program that focuses on prevention of sale or service of alcohol to minors and guests who may appear to be intoxicated and prevention of alcohol from leaving the premises. Although the restaurant's current alcoholic beverage policy is not applicable to outdoor service on the deck, it includes essential elements to prevent sale or service of alcohol to minors and guests who may appear to be intoxicated. It may, therefore, be customized for alcoholic beverage service in the outdoor seating area on the deck. Such customization should address the hours of alcoholic beverage service outdoors and monitoring mechanisms particular to alcoholic beverage service outdoors.

The Planning Commission has incorporated six conditions of approval #10 to #15 aimed at further strengthening project features and measures for preventing access to alcoholic beverages by minors, other guests who appear to be intoxicated and access to alcohol off-premises. Additionally, condition of approval # 14b specifies the hours of alcohol service for the outdoor seating area. These hours draw upon the limitations on the hours of alcohol service and operations contemplated by the Planning Commission and the restaurant's current alcohol policy whereby last call is offered 30 minutes prior to the restaurant closing times. Given compliance with these conditions of approval and operations in accordance with Department of Alcoholic Beverage Control (ABC) regulations, the Planning Commission has determined that alcoholic beverage service in the outdoor seating area would not be detrimental to public health, safety and welfare.

Noise: Land uses in the immediate vicinity of the site include Pacifica State Beach to the northwest. In other directions the site is surrounded by parking lots. The closest building is located in a generally southerly direction from the site, separated from it by a parking lot. This building contains restrooms. Single family residential and other commercial uses in the area are separated from the site by State Highway 1 (Coast Highway), which is located approximately 215

feet southeast of the restaurant building with a parking lot intervening between the Highway and the restaurant.

While it appears unlikely that outdoor seating operations on the deck would cause significant noise disturbance to the residences in the area because of their relative location, it is a possibility during late hours in the night when ambient noise levels are low. The applicant has proposed modified hours of operation for the outdoor seating area. These hours are 7:00 AM to Midnight all days of the week from Sunday through Monday. Condition of approval #14a mandates hours of operations for the proposed outdoor seating area to be commensurate with the hours of alcohol service i.e. 30 minutes later than the last call is offered. The truncated hours for outdoor seating will address any noise concerns that may arise from activity in the outdoor seating area. Additionally, condition of approval #16 prohibits amplification of music or voice outside.

- 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; and*

Discussion

The proposed outdoor seating area, as conditioned, would 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 policies:

GENERAL PLAN

a. Community Design Element

- Policy No. 2: *Encourage the upgrading and maintenance of existing neighborhoods.*

The outdoor seating area on an existing deck makes the site attractive to visitors and orients the site to its coastal setting.

b. Land Use Element

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

Single family residential and other commercial uses in the area are separated from the site by State Highway 1 (Coast Highway) and an intervening parking lot between the restaurant and Highway 1. Thus, these uses will not be affected by the operations of the outdoor seating area at the subject restaurant. The establishment, maintenance and operations of the use of outdoor seating, as conditioned, would be

consistent with this policy of the General Plan.

LOCAL COASTAL PLAN

The project site is located within the Local 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 of the Local Coastal Land Use Plan, as follows:

Coastal Act Policy No. 2: Development shall not interfere with the public's right of access to the sea where acquired through use or 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 establishes outdoor seating on an existing deck attached to the rear of an existing restaurant in the area of the Pacifica State Beach and does not propose new construction. The project does not interfere with the public right of access to the sea. A gate is proposed 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.

Coastal Act Policy No. 7: The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

PMC Section 9-4.265 defines "Recreational facilities" as facilities installed on the site, either inside or outside of structures, for the active and/or passive enjoyment of persons residing on or visiting the site. The outdoor seating area on the subject deck oriented towards the ocean would provide a facility where visitors to the beach may sit, relax and enjoy the views of the ocean.

Coastal Act Policy No 8: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The a place to sit and relax in an area overlooking the ocean, in proximity of the beach, may be regarded as a recreational use that will be afforded to the community and visitors to the beach by the outdoor seating area on the subject deck.

The project would also comply with applicable laws of the City including those contained in the Zoning Regulations (Chapter 4 of Title 9 of the PMC), in particular the development standards and permissible uses of the C-R (Commercial Recreation) district. Additionally, it would comply with

applicable Coastal Act Policy No. 2, 7 and 8. It would also be consistent with the neighborhood narrative in the General Plan for San Pedro Beach (Pacifica State Beach) in that the proposed use is consistent with uses, such as snack bars and restaurants, contemplated in the narrative for this neighborhood.

- iii. *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, 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 which complies with some but not all guidelines and the Planning Commission may still find the 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 whether a project has achieved Design Guidelines consistency.

The 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. 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. Existing lighting on the deck includes outdoor wall lanterns and LED flood light fixtures. Based on information provided by the applicant, the flood lights are not currently operational. However, in the event their operation is resumed, it is likely that they may cause glare in neighboring areas. In order to address this and any other potential new light source on the deck, the Planning Commission has included Condition of Approval # 6, which requires that lighting fixtures on the deck include buffering techniques to reduce light and glare impact to adjacent properties. As conditioned, the Planning Commission anticipates that lighting for the deck will provide illumination that enhances safety and security while reducing glare.

- b. Screening. *Exterior trash and storage areas, service yards, landing docks and ramps, electrical utility boxes, etc., should be screened from view of all nearby streets and adjacent structures in a manner that is compatible with building and site design. Such facilities should be conveniently located, but must not interfere with the circulation and parking on the site.*

Discussion

The trash area for the restaurant is located to southwestern side of the restaurant building, as shown on Sheet A-1 of the Project Plans and is screened from view by an enclosure. The trash enclosure is located at the edge of the parking lot next to the restaurant building and does not interfere with the circulation and parking on site.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica approves Use Permit UP-106-18 to locate and operate an outdoor seating area in conjunction with the Taco Bell Cantina at 5200 Coast Highway, near Pacifica State Beach, subject to conditions of approval attached as Exhibit A.

* * * * *


PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 1st day of October, 2018.

AYES, Commissioners: KRASKE, GORDON, CLIFFORD, RUBENSTEIN
CAMPBELL

NOES, Commissioners: NIBBELIN

ABSENT, Commissioners: STEGINK

ABSTAIN, Commissioners:


Richard Campbell, Chair

ATTEST:


Tina Wehrmeister, Planning Director

APPROVED AS TO FORM:

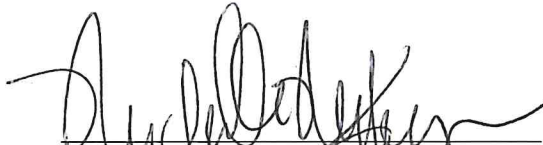

Michelle Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2018-021 – Use Permit UP-106-18, for Golden Gate Bell LLC to Locate and Operate an Outdoor Seating Area in Conjunction with the Taco Bell Cantina at 5200 Coast Highway in the Area of Pacifica State Beach (APN 022-191-190)

Planning Commission Meeting of October 1, 2018

Planning Division

1. Development shall be substantially in accord with the plans titled “Taco Bell, 5200 Pacific Coast Highway, Pacifica, CA 94044” and stamped received on September 25, 2018, except as modified by the following conditions.
2. That the approval or approvals is/are 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.
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, but excluding any approvals governed by California Government Code Section 66474.9. 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 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.
4. Within 30 days of the approval of Use Permit UP-106-18, Applicant shall request an exemption from the requirements of the Coastal Development Permit (CDP) or

apply for a CDP, as may be necessary, from the California Coastal Commission.

5. 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.
6. Exterior lighting shall include buffering techniques to reduce light and glare impacts to adjacent properties.
7. Applicant shall ensure that the outdoor trash receptacles are bird safe, permanent, and maintained at all times.
8. Applicant shall maintain all outdoor areas 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.
9. Within 30 days of the approval of the Use Permit UP-106-18, Applicant shall submit a final trash management and cleanliness maintenance plan incorporating the plan titled "Management Plan-Outside Cleaning Maintenance-Taco Bell Cantina Pacifica" included as Attachment D in the Project staff report, dated October 1, 2018, and an illustration demarcating the exterior areas to be maintained, for approval by the Planning Director. Operations on site shall be consistent with the final approved plan, to the satisfaction of the Planning Director.
10. Within 30 days of the approval of Use Permit UP-106-18, the Applicant shall revise and submit the plans incorporating a barrier made of plexiglass or other suitable material above the alarmed gate at the stairway leading to the beach from the deck for approval by the Planning Director. The barrier shall extend above the gate to a height of six feet from the surface of the deck and shall be installed within 90 days of the approval of Use Permit UP-106-18, to the satisfaction of the Planning Director.
11. Permanent and temporary signs and banners, in the parking lot or other exterior areas on the premises, advertising alcohol shall be prohibited.
12. Applicant shall maintain as installed, the alarmed gate, the barrier above the gate and the signage identifying it as an alarmed, emergency exit.
13. Applicant shall maintain the signage, as installed, on the patio directing patrons not to take alcoholic beverages past a certain point on the deck.

14. Applicant shall maintain the following hours of operations:
 - a. Hours of operation for the outdoor seating area shall be as follows:
7:00 AM to 10:30 PM – Sunday-Monday-Tuesday-Wednesday-Thursday
7:00 AM to MIDNIGHT – Friday-Saturday
 - b. Hours of alcohol service in the outdoor seating area shall be as follows:
10:00 AM to 10:00 PM – Sunday-Monday-Tuesday-Wednesday-Thursday-Friday-Saturday
15. Within 30 days of the approval of Use Permit UP-106-18, Applicant shall submit an alcohol service policy customized for alcoholic beverage service on the outdoor seating area, for approval by the Planning Director and the Chief of Police. The policy shall reflect the hours of alcohol service as specified in condition of approval #13. The policy shall draw upon the current “Golden Gate Bell, LLC, DBA Taco Bell Cantina Responsible Alcohol Service Policy” with the exception that alcoholic beverages may be served on the outdoor seating area on the deck in conjunction with the restaurant but shall not be permitted beyond this area outside. The policy shall also provide for staff to monitor alcohol consumption in the outdoor seating area on the deck. Operations on site shall be consistent with the final approved plan, to the satisfaction of the Planning Director and the Chief of Police.
16. There shall be no amplification of music or voice in the outdoor seating area.
17. Unless Applicant has obtained an easement or other legally enforceable mechanism from the owner of the adjacent property to maintain the trash storage enclosure to the southwest side of the building, as currently located, Applicant shall modify this trash storage enclosure such that it does not encroach in the adjacent property, within 120 days of the approval of Use Permit UP-106-18. Applicant may seek an extension to perform the modification to the trash enclosure beyond the 120 days duration, subject to approval by the Planning Director.
18. All outstanding and applicable fees associated with the processing of this project shall be paid within 30 days of the approval of Use Permit UP-106-18.
19. This Use Permit UP-106-18 shall be subject to two consecutive annual reviews by the Planning commission. The first annual review period shall commence one year from the date of the final approval of the Department Alcoholic Beverage Control license for alcoholic beverage service in the outdoor seating area or final approval of the Coastal Development Permit/Exemption, as necessary, from the California Coastal Commission, whichever comes later. The annual review process shall afford the Planning Commission with the ability to evaluate whether ongoing operation of the site is in accordance with Use Permit-106-18 and to modify the conditions of approval, if deemed necessary.

Building Division

20. Applicant shall provide seating in the patio area that is accessible to persons with disabilities in accordance with local, state, and federal laws.

***END OF CONDITIONS ***