



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Mark Brodeur, Community and Economic Development Director
MEETING DATE: September 5, 2018
SUBJECT: Amended Resolution for Hotel Durell
CEQA: Does Not Constitute a "Project" under the California
Environmental Quality Act (CEQA) Guidelines Section 15378

RECOMMENDATION

Ratify revisions to the Approved Resolution for Hotel Durell.

DISCUSSION

City Council directed staff to return to the Council allow ratification of specific text to the Resolution for Hotel Durell approved at the meeting of August 15th. The revised Resolution reflects the prior direction of the Council:

1. FACT #6 revised to reflect the correct number of parking spaces.
2. Condition # 5 and #20 deleted (these referred to car lifts).
3. Condition #10 revised to refine protection for the Farmers' Market during construction.
4. Condition #11 revised to clarify the applicant's responsibilities to improve the Central Avenue/Fountain Avenue & Grand Avenue/Central Avenue intersections.
5. Condition (#21) added to clarify applicant's responsibility to construct five bulb-outs.
6. Condition (#22) added to specify Trip Reduction requirements to be paid by the applicant.

FISCAL IMPACT

Revisions to the Resolution do not have any fiscal impact.

GOAL ALIGNMENT

Revisions to the Resolution support the Council's Downtown Revitalization Goal.

ATTACHMENTS

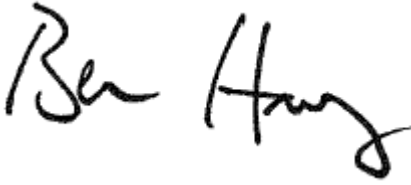
1. Red-Line Strikeout Version of the August 15th Resolution
2. New Resolution dated September 5, 2018

RESPECTFULLY SUBMITTED,



Mark Brodeur
Community and Economic Development Director

REVIEWED BY,



Ben Harvey
City Manager

RESOLUTION NO. 18-029

ARCHITECTURAL PERMIT AND USE PERMIT AP AND UP #16-203 TO DEMOLISH THE EXISTING 17,500 SQUARE FOOT BUILDING AND BUILD A 116 GUEST ROOM, 76,182 SQUARE FOOT HOTEL PURSUANT TO PGM §23.31.020

FACTS

1. The subject site is located at 157 Grand Avenue, Pacific Grove, 93950 APN 006-173-001.
2. The subject site has a designation of Light Commercial/ Hotel/Condominium District on the adopted City of Pacific Grove General Plan Land Use Map.
3. The project site is located in the C-I-T zoning district. The C-1-T zoning district was created through an approval of Ordinance 1951 by a public vote of Pacific Grove citizens on June 7, 1994.
4. The property is located in the Downtown Pacific Grove Business District per Chapter 6.50 of the Pacific Grove Municipal Code (PGMC), the 1961 Downtown Parking District and the Area of Special Biological Significance.
5. The subject site is approximately 0.77 acres (33,875 square feet).
6. The proposed project provides 799 valet parking spaces; 51 spaces on-site, and 4828 off-site spaces, located on a lot directly across Fountain Avenue, ~~using car lifts for 20 of the spaces~~ (APN 006-174-011). The proposed project is also providing 14 spaces at the back of the hotel to meet a condition of the Holman Building approval. Those spaces are open to the public.
7. The proposed project is adjacent to the Natural History Museum and the Public Library.
8. A Phase 1 Historic Report prepared by qualified historian Richard Brandi determined the existing structure to be ineligible for the City's Historic Resources Inventory.
9. On October 15, 2015, the City Council passed and adopted Resolution 15-056, which concluded the structure not to be historic.
10. An Environmental Impact Report (EIR) was prepared for this project and circulated on August 31, 2017 through October 26, 2017; no significant unavoidable impacts were identified.
11. The proposal requires additional potable water and the project was added to the City's water waitlist.

FINDINGS

Architectural Permit Findings

1. The proposed development will meet the development regulations set forth in the C-1-T zoning district including setbacks and height requirements;
2. The architecture and general appearance of the completed project is compatible with the neighborhood because the proposed exterior fits within the context and style of the existing commercial and civic structures in the immediate vicinity and within the downtown;
3. The completed project will neither be detrimental to the orderly and harmonious development of the City, nor impair the desirability of investment or occupation in the neighborhood because the project will be improving the subject property and the downtown fabric by replacing a surface level parking lot and single-story building with a multi-story building; it conforms to the General Plan Commercial Downtown and C-I-T zoning standards; and it will improve the downtown's walkability and vibrancy; and
4. On October 15, 2015, the City Council passed and adopted Resolution 15-056 which concluded the structure not to be historic, and therefore does not qualify for historic designation as defined by the California Environmental Quality Act (CEQA).

Use Permit Findings

1. The proposed use is allowed in the C-1-T zoning district with a use permit per PGMC § 23.31.040;
2. The proposed structure and parking is consistent with the City Zoning Code with regards to height, floor area ratio, setbacks, parking, and site coverage in the C-1-T zoning district;
3. The proposed use is consistent with the General Plan Commercial Downtown designation;
4. The establishment, maintenance or operation of the use will not, under the circumstances of this particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
5. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;
6. The location, size, and design of the proposed development are compatible with the existing uses in the vicinity because the proposed structure complements the civic character of the neighborhood and improves the economic viability of the downtown; and
7. In approving the permit, the following conditions of approval are imposed and deemed reasonable and necessary to ensure that the approval will be in compliance with the findings cited above.

CONDITIONS OF APPROVAL

1. **Permit Expiration.** This permit shall expire and be null and void if a building permit has not been applied for within one (1) year from and after the date of approval. Application for extension of this approval must be made prior to the expiration date.
2. **Conformance to Plans.** Development of the site shall conform to approved plans for “Hotel Durell” dated **August 3, 2018** by RRM Design Group on file with CEDD and to the City’s Building Code, with the exception of any subsequently-approved changes.
3. **Construction Compliance.** All construction must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions of approval herein. Any deviation from approvals must be reviewed and approved by staff and may require **City Council** approval.
4. **Deed Restriction.** Prior to Building Permit submittal, a deed restriction shall be recorded on the lot directly adjacent to the subject site located on Fountain Ave and Ricketts Row (APN 006-174-011; 006-174-012; 006-174-003), also known as the Fountain Street Parking Lot, requiring the lot’s exclusive use for off-site parking for the use of Hotel Durell for the duration of AP/UP 16-203.
- ~~5. **Fountain Street Parking Lot:** Prior to issuance of a building permit, the applicant shall obtain a separate and distinct Architectural Permit from the Architectural Review Board for the design of the screening and landscaping to screen the car lifts.~~
- ~~6.5.~~ **Valet Parking:** All parking provided for the hotel shall be free of charge valet. This condition was added after the Planning Commission hearing with the concurrence of the Owner.
- ~~7.6.~~ **Employee Parking.** Annually, the applicant shall secure 12 passes for the City’s Municipal parking lot and shall endeavor to use all means at its disposal to ensure hotel employees park in those spaces. The employees may park in the hotel’s Fountain Street Lot during nighttime hours and during periods of low hotel patronage. The parking passes are valid for use at any of the City’s Municipal Parking Lots.
- ~~8.7.~~ **During-Construction Pollution Prevention (a):** During construction, the developer shall employ storm water best management practices (BMPs) for erosion and sediment control, prevention of non-storm water discharges, and implement good housekeeping and construction waste management practices to protect the storm drainage system and water quality as required by City Code Section 9.30.130(c), the City Phase II NPDES Permit, State Water Resources Control Board (SWRCB) Construction General Permit (CGP), and the Monterey Regional Storm Water Management Program (MRSWMP).

Plans for during-construction storm water management and BMPs, such as a Storm Water Pollution Prevention Plan (SWPPP), shall be submitted to the City and subject to review and approval of the Public Works/Community Development Director and Building Official prior to issuance of a grading and/or building permit.

~~9.8.~~ **During-Construction Pollution Prevention (b).** Construction activities subject to BMP requirements shall continuously employ measures to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality, contamination, or unauthorized discharge of pollutants.

~~10.9.~~ **During-Construction Pollution Prevention (c).** Whenever construction activity is being done contrary to and in violation of PGMC Chapter 9.30, the Public Works/Community Development Director may order construction activity stop by posting a written notice on the premises. All persons shall immediately stop such work unless or until the Public Works Director authorizes removing the stop work order and allows construction activity to proceed.

~~11.10.~~ **Farmers Market.** No construction/demolition activity shall occur on Mondays between the hours of noon and 6:00 p.m. along Central Avenue and the northerly portion of Grand Avenue that may cause an adverse effect on Farmers Market set up, operation or breakdown.

~~12.11.~~ **Pedestrian safety.** The Applicant shall pay for 25% of the cost for design and construction of the complete reconfiguration of the intersection of Central Avenue and Fountain Avenue to provide an All-Way Stop intersection as identified in the Mitigation Measures of the Environmental Impact Report. The intersection redesign shall be consistent with the guidelines described in the "Pedestrian Safety Report" Prepared for the City by the Institute of Transportation Studies dated November dated November 2008.

The Applicant shall pay 25% of the cost for design and construction of the reconfiguration of the intersection of Central Ave, and Grand Ave. to accommodate a new raised pavement crosswalk across the intersection on the south side of Central Ave. The final project landscape plan for landscaping within the public right-of-way shall be designed to incorporate the new raised pavement crosswalk.

All plans for construction of improvements within the public right-of-way shall be reviewed and approved by the City Engineer prior to the City granting a Certificate of Occupancy. All improvements within the public right-of-way shall conform to ADA requirements, including curb ramps, bulb-outs and raised pavement crosswalks. All public works construction shall conform to City and State Standards and standard engineering practices

- ~~13.12.~~ **Roof top.** No activities shall be allowed on the rooftop, other than routine maintenance and repair.
- ~~14.13.~~ **Archeology.** If archaeological resources or human remains are discovered during construction, work shall be halted within 50 meters of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated, with the concurrence of City staff, and implemented.
- ~~15.14.~~ **Tribal Consultation.** Both a Tribal Monitor and an Archeologist will be on-site during ground disturbance. If any archaeological or paleontological resources are found, the project applicant and/or its contractor shall cease all work within 25 feet of the discovery and notify the Community and Economic Development Department (CEDD) Director. The City and the project applicant shall consider mitigation in consultation with the Ohlone/Costanoan-Esselen Nation and project archeologist.
- ~~16.15.~~ **Terms and Conditions.** These terms and conditions shall run with the land, and it is the intention of the CEDD Director and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions, unless amended. Amendments to this permit may be achieved only if an application is made and approved, pursuant to the City's Zoning Code.
- ~~17.16.~~ **Public Works, Fire and Building.** Review and approval by the Public Works, Fire and Building Departments are required prior to issuance of a building permit. Work taking place in the public right-of-way shall require an encroachment permit prior to issuance of the building permit.
- ~~18.17.~~ **Stormwater Treatment Measure.** The storm water treatment measures shall be maintained by the property owner in perpetuity and City staff shall be allowed access to inspect all storm water treatment measures on an annual basis.
- ~~19.18.~~ **Building Plans.** All conditions of approval for the Planning permit(s) shall be printed on a full-size sheet and included with the construction plan set submitted to the Building Department.
- ~~20.~~ **~~Car Lift Maintenance.~~** ~~The hotel owner shall maintain the car lifts in the Fountain Street parking lot in clean and working conditions at all times, regardless of the operator of the hotel.~~
- ~~21.19.~~ **Indemnification.** The applicant agrees to an Indemnification Condition, which is attached to this Resolution and incorporated by reference.
- ~~22.20.~~ **Agreement.** The applicant and the hotel owner consent to the proposed conditions.

~~23.21.~~ **Bulbouts.** The Applicant shall pay for design and construction of five street/sidewalk bulbouts. Three shall be on Fountain Street and two shall be on Grand Avenue. Bulbout designs shall receive approval from the Public Works Department before installation.

~~24.22.~~ **Trip Reduction Measures.** The Applicant, and any successor-in-interest as a continuing obligation during operation of the hotel, shall: (1) pay the full cost of monthly bus passes (31-day basic GoPasses) to enable employees to commute to work via Monterey-Salinas Transit; (2) provide, on site, ten (10) bicycles in good maintenance and repair for exclusive no-cost use by patrons; (3) install and maintain two (2) electric car super-charging stations in the parking garage; (4) designate two (2) employee carpool spaces in the Fountain Street Parking Lot; (5) pay (shared with other Pacific Grove lodging establishments, if possible) the full cost to extend into Pacific Grove then existing airport shuttle routes that provide access from the Monterey Regional Airport to Cannery Row or Monterey hotels.

FINAL EIR FINDINGS AND CERTIFICATION

1. The final EIR has been completed in compliance with CEQA;
2. The final EIR was presented to the City Council, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
3. The final EIR reflects the lead agency's independent judgment and analysis.
4. The custodian for these documents shall be the City Clerk for the City of Pacific Grove found at 300 Forest Avenue, Pacific Grove, California 93950

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

1. Determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.
2. Authorizes APPROVAL of Architectural Permit and Use Permit AP/UP 16-203 to demolish the existing 17,500 square foot building and to construct a 116 room hotel of approximately 76,182 square feet with on and off-site parking.
3. Attachments are hereby approved as exhibits to this Resolution, which by this reference are incorporated as set forth in its entirety, including the Indemnification Condition, and the legal instrument referred to as the Reaffirmation Agreement, which provides the City with evidentiary proof that the Fountain Street Lot is part of this hotel proposal.
4. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 5th day of ~~August~~ **September** 2018, by the following votes:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

INDEMNIFICATION CONDITION

In consideration for City review and approval of application in this matter, the Owner/Applicant shall indemnify, defend, protect and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnitees"), using counsel approved in writing by the City, from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements which may accrue against Indemnitees by reason of the City's approval of the request and application in this matter. Indemnification shall include, but shall not be limited to any action, or proceeding brought to attack, set aside, void, annul, limit, or inhibit the approval of the application referenced above, and shall expressly include causes of action under the California Environmental Quality Act (CEQA), or the National Environmental Policy Act (NEPA).

The obligation to indemnify shall include, but not be limited to, all costs relating to preparing administrative records, investigations, responses to discovery, retention of experts, and other costs, including attorney's fees or obligations related to this matter, including actions brought by the Owner/Applicant and also extend to any expense incurred in establishing the City's right to indemnification. City expenses shall be paid by Owner/Applicant upon City request notwithstanding final disposition of the matter has not yet occurred. If the City is later determined to not be entitled to indemnification, the City shall repay amounts so advanced.

This indemnification condition is the Owner/Applicant's inducement to the City to process and approve the application, which approval would otherwise be withheld by City due to its concern for liability or expense that may result from performance of the City's duties. Should any dispute arise regarding interpretation of this condition, the prevailing party shall recover all reasonable costs incurred, including court costs, attorney fees and related expenses. Recovery of expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

This indemnification condition shall not require the Owner/Applicant to indemnify the City or other Indemnitees: (a) to the extent that an obligation is actually paid by an insurer pursuant to an insurance policy; (b) in connection with any remuneration paid to the City, if it shall be finally adjudged that such remuneration was in violation of law; or (c) on account of the City's misconduct if such misconduct shall be finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful.

Any permit or other approval given by the City to the Owner/Applicant Guarantor shall be valid only so long as this indemnification condition is given full force and effect. If this indemnification condition is revoked, the permit or other approval of the City shall then become null and void.

RESOLUTION NO. 18-029

ARCHITECTURAL PERMIT AND USE PERMIT AP AND UP #16-203 TO DEMOLISH THE EXISTING 17,500 SQUARE FOOT BUILDING AND BUILD A 116 GUEST ROOM, 76,182 SQUARE FOOT HOTEL PURSUANT TO PGMC §23.31.020

FACTS

1. The subject site is located at 157 Grand Avenue, Pacific Grove, 93950 APN 006-173-001.
2. The subject site has a designation of Light Commercial/ Hotel/Condominium District on the adopted City of Pacific Grove General Plan Land Use Map.
3. The project site is located in the C-I-T zoning district. The C-1-T zoning district was created through an approval of Ordinance 1951 by a public vote of Pacific Grove citizens on June 7, 1994.
4. The property is located in the Downtown Pacific Grove Business District per Chapter 6.50 of the Pacific Grove Municipal Code (PGMC), the 1961 Downtown Parking District and the Area of Special Biological Significance.
5. The subject site is approximately 0.77 acres (33,875 square feet).
6. The proposed project provides 79 valet parking spaces; 51 spaces on-site, and 28 off-site spaces, located on a lot directly across Fountain Avenue, (APN 006-174-011). The proposed project is also providing 14 spaces at the back of the hotel to meet a condition of the Holman Building approval. Those spaces are open to the public.
7. The proposed project is adjacent to the Natural History Museum and the Public Library.
8. A Phase 1 Historic Report prepared by qualified historian Richard Brandi determined the existing structure to be ineligible for the City's Historic Resources Inventory.
9. On October 15, 2015, the City Council passed and adopted Resolution 15-056, which concluded the structure not to be historic.
10. An Environmental Impact Report (EIR) was prepared for this project and circulated on August 31, 2017 through October 26, 2017; no significant unavoidable impacts were identified.
11. The proposal requires additional potable water and the project was added to the City's water waitlist.

FINDINGS

Architectural Permit Findings

1. The proposed development will meet the development regulations set forth in the C-1-T zoning district including setbacks and height requirements;
2. The architecture and general appearance of the completed project is compatible with the neighborhood because the proposed exterior fits within the context and style of the existing commercial and civic structures in the immediate vicinity and within the downtown;
3. The completed project will neither be detrimental to the orderly and harmonious development of the City, nor impair the desirability of investment or occupation in the neighborhood because the project will be improving the subject property and the downtown fabric by replacing a surface level parking lot and single-story building with a multi-story building; it conforms to the General Plan Commercial Downtown and C-I-T zoning standards; and it will improve the downtown's walkability and vibrancy; and
4. On October 15, 2015, the City Council passed and adopted Resolution 15-056 which concluded the structure not to be historic, and therefore does not qualify for historic designation as defined by the California Environmental Quality Act (CEQA).

Use Permit Findings

1. The proposed use is allowed in the C-1-T zoning district with a use permit per PGMC § 23.31.040;
2. The proposed structure and parking is consistent with the City Zoning Code with regards to height, floor area ratio, setbacks, parking, and site coverage in the C-1-T zoning district;
3. The proposed use is consistent with the General Plan Commercial Downtown designation;
4. The establishment, maintenance or operation of the use will not, under the circumstances of this particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
5. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City;
6. The location, size, and design of the proposed development are compatible with the existing uses in the vicinity because the proposed structure complements the civic character of the neighborhood and improves the economic viability of the downtown; and
7. In approving the permit, the following conditions of approval are imposed and deemed reasonable and necessary to ensure that the approval will be in compliance with the findings cited above.

CONDITIONS OF APPROVAL

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5. **Valet Parking:** All parking provided for the hotel shall be free of charge valet. This condition was added after the Planning Commission hearing with the concurrence of the Owner.
6. **Employee Parking.** Annually, the applicant shall secure 12 passes for the City’s Municipal parking lot and shall endeavor to use all means at its disposal to ensure hotel employees park in those spaces. The employees may park in the hotel’s Fountain Street Lot during nighttime hours and during periods of low hotel patronage. The parking passes are valid for use at any of the City’s Municipal Parking Lots.
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8. **During-Construction Pollution Prevention (b).** Construction activities subject to BMP requirements shall continuously employ measures to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality, contamination, or unauthorized discharge of pollutants.
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11. **Pedestrian safety.** The Applicant shall pay for 25% of the cost for design and construction of the complete reconfiguration of the intersection of Central Avenue and Fountain Avenue to provide an All-Way Stop intersection as identified in the Mitigation Measures of the Environmental Impact Report. The intersection redesign shall be consistent with the guidelines described in the "Pedestrian Safety Report" Prepared for the City by the Institute of Transportation Studies dated November dated November 2008.

The Applicant shall pay 25% of the cost for design and construction of the reconfiguration of the intersection of Central Ave, and Grand Ave. to accommodate a new raised pavement crosswalk across the intersection on the south side of Central Ave. The final project landscape plan for landscaping within the public right-of-way shall be designed to incorporate the new raised pavement crosswalk.

All plans for construction of improvements within the public right-of-way shall be reviewed and approved by the City Engineer prior to the City granting a Certificate of Occupancy. All improvements within the public right-of-way shall conform to ADA requirements, including curb ramps, bulb-outs and raised pavement crosswalks. All public works construction shall conform to City and State Standards and standard engineering practices

12. **Roof top.** No activities shall be allowed on the rooftop, other than routine maintenance and repair.

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15. **Terms and Conditions.** These terms and conditions shall run with the land, and it is the intention of the CEDD Director and the Applicant to bind all future owners and possessors of the subject property to the terms and conditions, unless amended. Amendments to this permit may be achieved only if an application is made and approved, pursuant to the City's Zoning Code.
16. **Public Works, Fire and Building.** Review and approval by the Public Works, Fire and Building Departments are required prior to issuance of a building permit. Work taking place in the public right-of-way shall require an encroachment permit prior to issuance of the building permit.
17. **Stormwater Treatment Measure.** The storm water treatment measures shall be maintained by the property owner in perpetuity and City staff shall be allowed access to inspect all storm water treatment measures on an annual basis.
18. **Building Plans.** All conditions of approval for the Planning permit(s) shall be printed on a full-size sheet and included with the construction plan set submitted to the Building Department.
19. **Indemnification.** The applicant agrees to an Indemnification Condition, which is attached to this Resolution and incorporated by reference.
20. **Agreement.** The applicant and the hotel owner consent to the proposed conditions.
21. **Bulbouts.** The Applicant shall pay for design and construction of five street/sidewalk bulbouts. Three shall be on Fountain Street and two shall be on Grand Avenue. Bulbout designs shall receive approval from the Public Works Department before installation.
22. **Trip Reduction Measures.** The Applicant, and any successor-in-interest as a continuing obligation during operation of the hotel, shall: (1) pay the full cost of monthly bus passes (31-day basic GoPasses) to enable employees to commute to work via Monterey-Salinas

Transit; (2) provide, on site, ten (10) bicycles in good maintenance and repair for exclusive no-cost use by patrons; (3) install and maintain two (2) electric car super-charging stations in the parking garage; (4) designate two (2) employee carpool spaces in the Fountain Street Parking Lot; (5) pay (shared with other Pacific Grove lodging establishments, if possible) the full cost to extend into Pacific Grove then existing airport shuttle routes that provide access from the Monterey Regional Airport to Cannery Row or Monterey hotels.

FINAL EIR FINDINGS AND CERTIFICATION

1. The final EIR has been completed in compliance with CEQA;
2. The final EIR was presented to the City Council, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
3. The final EIR reflects the lead agency's independent judgment and analysis.
4. The custodian for these documents shall be the City Clerk for the City of Pacific Grove found at 300 Forest Avenue, Pacific Grove, California 93950

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

1. Determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.
2. Authorizes APPROVAL of Architectural Permit and Use Permit AP/UP 16-203 to demolish the existing 17,500 square foot building and to construct a 116 room hotel of approximately 76,182 square feet with on and off-site parking.
3. Attachments are hereby approved as exhibits to this Resolution, which by this reference are incorporated as set forth in its entirety, including the Indemnification Condition, and the legal instrument referred to as the Reaffirmation Agreement, which provides the City with evidentiary proof that the Fountain Street Lot is part of this hotel proposal.
4. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 5th day of September 2018, by the following votes:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

INDEMNIFICATION CONDITION

In consideration for City review and approval of application in this matter, the Owner/Applicant shall indemnify, defend, protect and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnitees"), using counsel approved in writing by the City, from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements which may accrue against Indemnitees by reason of the City's approval of the request and application in this matter. Indemnification shall include, but shall not be limited to any action, or proceeding brought to attack, set aside, void, annul, limit, or inhibit the approval of the application referenced above, and shall expressly include causes of action under the California Environmental Quality Act (CEQA), or the National Environmental Policy Act (NEPA).

The obligation to indemnify shall include, but not be limited to, all costs relating to preparing administrative records, investigations, responses to discovery, retention of experts, and other costs, including attorney's fees or obligations related to this matter, including actions brought by the Owner/Applicant and also extend to any expense incurred in establishing the City's right to indemnification. City expenses shall be paid by Owner/Applicant upon City request notwithstanding final disposition of the matter has not yet occurred. If the City is later determined to not be entitled to indemnification, the City shall repay amounts so advanced.

This indemnification condition is the Owner/Applicant's inducement to the City to process and approve the application, which approval would otherwise be withheld by City due to its concern for liability or expense that may result from performance of the City's duties. Should any dispute arise regarding interpretation of this condition, the prevailing party shall recover all reasonable costs incurred, including court costs, attorney fees and related expenses. Recovery of expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

This indemnification condition shall not require the Owner/Applicant to indemnify the City or other Indemnitees: (a) to the extent that an obligation is actually paid by an insurer pursuant to an insurance policy; (b) in connection with any remuneration paid to the City, if it shall be finally adjudged that such remuneration was in violation of law; or (c) on account of the City's misconduct if such misconduct shall be finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful.

Any permit or other approval given by the City to the Owner/Applicant Guarantor shall be valid only so long as this indemnification condition is given full force and effect. If this indemnification condition is revoked, the permit or other approval of the City shall then become null and void.