

FROM THE PLANNING COMMISSION MINUTES OF MARCH 13, 2014

3. (14-0329) Hearing to consider request to allow occasional outdoor amplified music events between 12:00 p.m. to 12:00 a.m. within the common area at the Montano de El Dorado Shopping Plaza [Special Use Permit S12-0005/Montano de El Dorado Shopping Plaza Outdoor Music]* on property identified by Assessor's Parcel Numbers 118-010-15 and 118-010-16, consisting of 1.67 acres, in the south El Dorado Hills area, submitted by El Dorado Hills Pavilion Venture, LLC; and staff recommending the Planning Commission take the following actions:

- 1) Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff;
- 2) Adopt the Mitigation Monitoring Program in accordance with CEQA Guidelines, Section 15074(d), incorporating the Mitigation Measure in the Revised Conditions of Approval; and
- 3) Approve Special Use Permit S12-0005 based on the Revised Findings and subject to the Revised Conditions of Approval (including limiting outdoor amplified music to no later than 10:00 p.m.). (Supervisory District 2) (Cont. 12-12-13, Item 9.b)

Tom Dougherty presented the item to the Commission with a recommendation for approval. He stated that no public comment had been received for this hearing and one comment had been received for the last hearing. In response to Commissioner Stewart's inquiry on noise reaching Dover Court, Mr. Dougherty replied that a Plexiglas wall facing that location has since been placed at the project site.

Vinyl Perkins, applicant, made the following comments:

- Thanked staff for assisting in the hard job of finding a balance between business activities and residences;
- Attempting to make the shopping center a part of a lifestyle;
- Agreed with staff on having no amplified music after 10:00pm;
- Would like non-amplified music after 10:00pm and stated that it would not include drums;
- Trying to compete with the Center across the road;
- Would be monitoring the noise as a landlord and would not be opposed to having the type of music (i.e., classical) restricted as part of the Conditions of Approval;
- There has been no music at the subject site for approximately two years;
- Acknowledged that there has been some struggles with the neighbors; and
- Will have the noise consultant train staff on using the noise monitor.

Angela Simeone, Orofino Drive resident, made the following comments:

- Notified of this meeting through a community meeting;
- Everyone in the neighborhood should be notified;
- Many people at the community meeting stated they didn't know the process on how to voice their concerns;
- Wants applicant to be successful and to be able to compete with Town Center;
- Already has issues with noises coming from Town Center;
- Music would affect them during the summer since most people like to keep their windows open in the evening;

- Neighborhood has been dealing with an increase in criminal activity and having more events in the area that include alcohol would increase this type of activity;
- Parking is already limited with cars now parking in their neighborhood and this will only increase as the number of events increase; and
- Significant impacts to neighborhood from having two centers next to each other being allowed music events.

Sandy Pfeiffer, Monte Verde resident, made the following comments:

- Unaware of today's meeting;
- Wants applicant to be successful;
- Neighborhood is family-oriented;
- Wants a restriction to allow only mellow music; and
- Parking needs to be addressed.

Mr. Perkins provided the following rebuttal comments:

- Appreciated the neighbors voicing their concerns;
- Since this is commercial property, it is a matter of "managed" growth;
- Has been approved by Planning for an overflow/temporary parking lot with 75 parking spaces, that will have chip & seal on it and the gates will only be open for peak times; and
- The 10:00pm cut-off will resolve many of the issues.

Chair Mathews closed public comment.

Commissioner Heflin suggested adding a new condition requiring a one-year review with the Commission.

Commissioner Stewart made the following comments:

- Inquired on the formal complaint process and if the applicant gets feedback on this in real time;
- Suggested adding a requirement that a noise measurement be taken when a complaint is received;
- Clarified that non-amplified music after 10:00pm was allowed without a Special Use Permit; and
- Suggested adding language to Conditions of Approval requiring the noise between 10:00pm-7:00am be 5 decibels lower.

Significant discussion ensued between the Commission members on requiring immediate noise monitoring when complaints were received.

Chair Mathews and Commissioner Pratt were in agreement with the requirement for a one-year review.

County Counsel David Livingston recommended putting the burden on the applicant to contact Planning on scheduling the one-year review.

Roger Trout spoke on the County's meeting notification process.

Mr. Trout stated that Condition 2 could be amended to require acoustic events to end at 12:00am.

There was no further discussion.

Motion: Commissioner Pratt moved, seconded by Commissioner Stewart, and carried (5-0), to take the following actions: 1) Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff; 2) Adopt the Mitigation Monitoring Program in accordance with CEQA Guidelines, Section 15074(d), incorporating the Mitigation Measure in the Revised Conditions of Approval; and 3) Approve Special Use Permit S12-0005 based on the Revised Findings and subject to the Revised Conditions of Approval (including limiting outdoor amplified music to no later than 10:00 p.m) as modified: (a) Amend Condition 2 to require acoustic music to end at 12:00am and to revise the table by adding a new column for 10:00pm-7:00am, with the noise level being 5 decibels lower; and (b) Add new condition requiring a one-year review.

AYES: Heflin, Shinault, Stewart, Pratt, Mathews

NOES: None

This action can be appealed to the Board of Supervisors within 10 working days.

Findings

1.0 CEQA FINDINGS

- 1.1 ~~This project is Categorically Exempt from the requirements of CEQA pursuant to Section 15323 of the CEQA Guidelines. A Class 23 exemption consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. Regular music events have occurred at the common area patio shared by the parcels identified by Assessor's Parcel Numbers 118-010-15 and 16 on an intermittent basis. The facility is designed for such activities as a restaurant/bar. There will be no physical modifications to the existing facility other than a slight rearrangement of tables on the outdoor patio to accommodate entertainers. El Dorado County has considered the Mitigated Negative Declaration together with the comments received during the public review process. The proposed project, as conditioned, will not have a significant effect on the environment. The Mitigated Negative Declaration reflects the independent judgment of the County and has been completed in compliance with CEQA and is adequate for this proposal.~~
- 1.2 Through feasible conditions and mitigation placed upon the project, impacts on the environment have been eliminated or substantially mitigated.

1.3 Public Resources Code Section 21081.6 requires the County to adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of approval in order to mitigate or avoid significant effects on the environment. The approved project description and conditions of approval, with the corresponding permit monitoring requirement, is hereby adopted as the monitoring program for this project. The monitoring program is designed to ensure compliance during project implementation.

~~1.2~~1.4 The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Division - Planning Services at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 GENERAL PLAN FINDINGS

2.1 As proposed, the project is consistent with the Commercial (C) land use designation as defined within General Plan Policy 2.2.1.2 because the intent of the land use designation is to provide a full range of commercial retail, office, and service uses to serve the residents, businesses, and visitors of El Dorado County. The proposed project will provide residents and visitors with entertainment services in the El Dorado Hills area.

2.2 The proposal is consistent with General Plan policies, 2.2.5.2 (General Plan consistency), 2.2.5.21 (land use compatibility), and General Plan Policy 6.5.1.2 (noise). With the inclusion of Mitigation Measure NOISE-1, the use is compatible with the surrounding commercial uses, and nearby residential uses, and the design of the project minimizes noise levels to at or below the noise standards of the General Plan.

3.0 ZONING FINDINGS

3.1 The proposed use is permitted by Special Use Permit in the Commercial (C) zone district, pursuant to Section 17.32.030(d) of the County Code provided that the administrative findings outlined below can be made by the Planning Commission.

3.2 As proposed and conditioned, the project meets all applicable development standards contained within the El Dorado County Code.

4.0 SPECIAL USE PERMIT FINDINGS

4.1 **The issuance of the permit is consistent with the General Plan.** The applicant's proposal, as conditioned and mitigated, is in compliance with the General Plan as set forth in Section 2.0 of these findings.

4.2 **The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood.** With incorporation of conditions of approval and Mitigation Measure NOISE-1 included in the project description the project will not have significant impacts on surrounding residential land uses because there would be no

increase in use of the site and noise would not be generated in excess of the County's noise standards. The project is compatible with surrounding commercial land uses.

- 4.3 **The proposed use is permitted by special use permit pursuant to County Code Section 17.32.030(d) which allows for uses enumerated in Section 17.32.020(e) when they are not fully enclosed in a building.**

Conditions of Approval

Planning Services

1. This Special Use Permit is based upon and limited to compliance with the project description, the Conditions of Approval set forth below, and the following hearing exhibits:

Exhibit EOverall Site Plan
Exhibit F.....Relish Burger Restaurant Floor Plan
Exhibit G.....Patio Layout

Any deviations from the project description, exhibits, or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require approved changes to the permit and/or further environmental review. Deviations without the above described approval will constitute a violation of permit approval.

Approval of this Special Use Permit allows uses as follows on the parcels identified by Assessor's Parcel Numbers 118-010-15 and 16 for amplified outdoor music events on the patio/common area shared by the two parcels, between the hours of 12:00 p.m. to 10:00 p.m.

The development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans must be submitted for review and approval and shall be implemented as approved by the County.

Planning Services

Conditions from the Mitigated Negative Declaration

The following Mitigation Measure is required as a means to reduce potential significant environmental effects to a level of insignificance:

2. **NOISE-1:** The applicant is responsible for monitoring all sound levels and enforcing time restrictions for all music events occurring on the subject parcels for compliance with the El

Dorado County General Plan noise standards. Noise levels shall not exceed those prescribed in Table 6-2 of the El Dorado County General Plan as outlined below:

	<u>Daytime (7am-7pm)</u>	<u>Evening (7pm-10pm)</u>	<u>Night (10pm-7am)</u>
<u>Hourly dB</u>	<u>50</u>	<u>45</u>	<u>40</u>
<u>Max. dB</u>	<u>65</u>	<u>55</u>	<u>50</u>

The managers of the Plaza and the Relish Burger Bar shall purchase a Type 1 or Type 2 sound level meter and calibrator. The managers of the Plaza and the Relish Burger Bar shall receive training from a qualified acoustical consultant to assure accuracy of the noise measurements. Periodically during live music events, the trained representative shall conduct short-term noise measurements at a distance of 50 feet from the staging area to the north, east and southeast (three measurements). Speakers associated with music events shall be positioned and oriented toward the north at all times. If maximum noise levels begin to exceed 85 dBA, the sound system shall have the volume reduced. Amplified music events shall end at 10:00 pm, and acoustic events at 12:00 am, and for the first year subsequent to project approval, the applicant shall be required monitor each music event and provide the County with monthly monitoring results.

Monitoring Responsibility: Planning Services

Monitoring Requirement: Planning Service would require proof that the he managers of the Plaza and the Relish Burger Bar have received training from a qualified acoustical consultant to ensure accuracy of the noise measurements, prior to the first music event occurring.

- 2.3. Seating: No new outdoor seating shall be allowed.
- 3.4. Signs: No new outdoor signage or advertising shall be allowed as a result of the project.
- ~~4. **Noise:** The applicant is responsible for monitoring all sound levels and enforcing time restrictions for all events occurring on the subject parcels for compliance with the El Dorado County General Plan noise standards. Noise levels shall not exceed those prescribed in Table 6-2 of the El Dorado County General Plan as outlined below:~~

	<u>Daytime (7am-7pm)</u>	<u>Evening (7pm-10pm)</u>
<u>Hourly dB</u>	<u>50</u>	<u>45</u>
<u>Max. dB</u>	<u>65</u>	<u>55</u>

~~Speakers associated with music events shall be positioned and oriented toward the north at all times. In order to ensure sound levels are not exceeded, the applicant shall monitor noise levels during music events. The applicant shall purchase a Type I or Type 2 sound level and calibrator and shall ensure that noise levels do not exceed 75 dBA within 50 feet of the sound stage area to the north, east and southeast (three measurements).~~

~~For the first year subsequent to project approval, the applicant shall monitor each music event and provide the County with monthly monitoring results.~~

5. **Notice of Exemption Fee:** A \$50.00 administrative processing fee is required by the County Recorder to file the Notice of Exemption. This fee must be delivered to the El Dorado County Planning Services prior to the issuance of any development permit being issued on the project parcel.

6. **Hold Harmless Agreement:** In the event of any legal action instituted by a third party challenging the validity of any provision of this approval, the developer and landowner agree to be responsible for the costs of defending such suit and shall hold County harmless from any legal fees or costs County may incur as a result of such action.

The applicant shall defend, indemnify, and hold harmless El Dorado County and its agents, officers, and employees from any claim, action, or proceeding against El Dorado County or its agents, officers, or employees to attack, set aside, void, or annul an approval by El Dorado County. County shall notify the applicant of any claim, action, or proceeding and County will cooperate fully in the defense.

7. The applicant shall contact Planning Services one year from the project approval date with a review of the Special Use Permit.