

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of:	December 12, 2013
Item No.:	9.b
Staff:	Tom Dougherty

SPECIAL USE PERMIT

FILE NUMBER: S12-0005/Montano de El Dorado Shopping Plaza Outdoor Music

APPLICANT: El Dorado Hills Pavilion Venture, LLC

REQUEST: Request to allow occasional outdoor amplified music events between 12:00 pm to 12:00 am within the common area at the Montano de El Dorado Shopping Plaza.

LOCATION: Southeast corner of the intersection of White Rock Road and Latrobe Road, in the south El Dorado Hills area, Supervisorial District 2. (Exhibit A)

APNs: 118-010-15 and -16 (Exhibit B-1)

ACREAGE: 1.67 combined acres

GENERAL PLAN: Commercial (C) (Exhibit C)

ZONING: Commercial-Design Community (C-DC) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Categorically exempt pursuant to Section 15323 of the CEQA Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Find that the project is Categorically Exempt pursuant to CEQA Guidelines Section 15323; and
2. Approve Special Use Permit S12-0005 subject to the Conditions of Approval in Attachment 1 (including limiting outdoor amplified music to no later than 10:00 p.m.), based on the Findings in Attachment 2.

BACKGROUND: The Montano de El Dorado Shopping Plaza was originally approved by DR04-0019-S on April 19, 2006. The shopping plaza is comprised of four parcels. The Relish Burger Bar is located in the northwest corner of the center, which is the furthest building from adjacent residential uses to the east. Two of the four parcels would be utilized for the music events because the proposed stage location would be within the common area in between Relish Burger Bar and Peets Coffee. Ongoing operations at the Relish Burger Bar include restaurant and bar services, and outdoor seating is available for dining on the patio. The music events would primarily be sponsored by the Relish Burger Bar.

Planning has approved Temporary Use Permits TUP11-0012, 12-0014, 13-0008, and 13-0032 for one-day music events over the last three years and was aware of only one noise complaint in 2011, from a residence on Dover Court within the Springfield Meadows Subdivision, located approximately 2,000 feet to the west. This special use permit application is a result of that original complaint.

Pursuant to Section 17.32.020(e) of the zoning ordinance, permitted uses in the C zone district include: “Places of entertainment, appliance store and repair (new and used), antique store and furniture store, second-hand store, when they are fully enclosed in a building”. However, the proposed project would occur on the outdoor patio, and as such it requires a special use permit pursuant to Section 17.32.030 (d).

STAFF ANALYSIS

Project Description: Special Use Permit to allow for acoustic outdoor music events on the patio within the common area in between Relish Burger Bar and Peets Coffee between the hours of 12:00 p.m. to 11:00 pm and occasionally to 12:00 am on weekends. No new seating would be proposed. No new outdoor signage or advertising would be proposed as a result of the project. Speakers associated with music events would be positioned and oriented toward the restaurant/bar, and would be shielded on the west side by existing Plexiglas panels. The music event staging area is proposed to be utilized for various seasonal music events involving the entire shopping plaza, as well as by the Relish Burger Bar.

Site Description: The Montano de El Dorado Shopping Plaza maintains a variety of businesses including but not limited to restaurants, commercial retail, and banking uses. Three of the four parcels are entirely developed with these businesses, parking lot, and landscaping. The fourth, easternmost parcel is partially developed in the northern portion. Access to the site is provided by two encroachments onto White Rock Road. The plaza is surrounded on the north by White Rock Road and the west by Latrobe Road and the corner proposed for the music is significantly higher in elevation than those roads.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	C-DC	C	Commercial/Montano de El Dorado Shopping Plaza
North	CG	AP: Valley View Specific Plan	Commercial/Park and Ride lot.
South	R&D	R&D	Research and Development/Vacant.
East	R2	HDR	Residential/Single-family dwellings (Creekside Greens subdivision).
West	R&D	R&D	Latrobe Road

Discussion: The closest residences from the proposed stage area are located approximately 620 feet to the east within the Creekside Greens subdivision which was established in 1997. The portion of that subdivision that adjoins the Plaza directly to the east of the proposed event area is significantly lower in elevation, where it is separated by the retaining wall.

Project Issues: Issues for discussion with this project include noise and land use compatibility.

Noise: General Plan **Policy 6.5.1.2** states that “where proposed non-residential land uses are likely to produce noise levels exceeding the performance standards of Table 6-2 (see below) at existing or planned noise-sensitive uses, an acoustical analysis shall be required as part of the environmental review process so that noise mitigation may be included in the project design. Policy 6.5.1.7 states that noise created by new proposed non-transportation noise sources shall be mitigated so as not to exceed the noise level standards of Table 6-2 for noise-sensitive uses.”

TABLE 6-2 NOISE LEVEL PERFORMANCE PROTECTION STANDARDS FOR NOISE SENSITIVE LAND USES AFFECTED BY NON-TRANSPORTATION* SOURCES						
Noise Level Descriptor	Daytime 7 a.m. - 7 p.m.		Evening 7 p.m. - 10 p.m.		Night 10 p.m. - 7 a.m.	
	Community	Rural	Community	Rural	Community	Rural
Hourly Leq, dB	55	50	50	45	45	40
Maximum level, dB	70	60	60	55	55	50
Each of the noise levels specified above shall be lowered by five dB for simple noises, noises consisting primarily of speech or music, or for recurring impulsive noises.						
County can impose noise level standards which are up to 5 dB less than those specified above based upon determination of existing low ambient noise levels in the vicinity of the project site.						
In Community areas the exterior noise level standard shall be applied to the property line of the receiving property.						

Based upon Table 6.2, the applicable standards are those designated for a "Community", which also need to be lowered by 5 dB, due to the fact that the noise source consists primarily of speech and music. Therefore, the evening and nighttime standards are as follows:

Evening (7:00 p.m. - 10:00 p.m.): 45 dB Leq, 55 dB Lmax

Night (10:00 p.m. - 7:00 a.m.): 40 dB Leq, 50 dB Lmax

When complaints of noise such as loud outdoor music are received, the following County Code Section applies:

“9.16.050 Loud and Raucous Noises—Prohibited: Except as otherwise provided in this chapter, it is unlawful for any person to willfully make, emit, or transmit or cause to be made, emitted, or transmitted any loud and raucous noise upon or from any public highway or public thoroughfare or from any aircraft of any kind whatsoever, or from any public or private property to such an extent that it unreasonably interferes with the peace and quiet of another's private property.”

The applicant has submitted an Environmental Noise Assessment dated August 15, 2011 which analyzed live music events at the Relish Burger Bar. The Assessment measured noise levels at the north end of the patio and near a residence on Dover Court within the Springfield Meadows Subdivision, located approximately 2,000 feet to the west.

During the simulated concert and playing of music, the measured noise levels at the north end of the patio ranged between 75 dB and 81 dB Lmax, and between 74 dB to 79 dB Leq, while music was playing. Measured noise levels at Dover Court, without music playing was between 44 dB and 45 dB Leq, and between 53 dB and 55 dB Lmax. The primary noise source when music was not playing was local roadway traffic. Measured noise levels at Dover Court with the music playing, ranged between 43 dB Leq and 45 dB Leq, and between 53 dB and 55 dB Lmax. Although the music was audible, local roadway traffic remained the dominant noise source. Observations indicated that when traffic noise subsided, the maximum noise levels were in the range of 43 dB Lmax.

An additional noise analysis dated October 11, 2013 was submitted that analyzed potential noise impacts to the closest residence to the east, located approximately 620 feet away on Monte Verde Drive. There is a retaining wall approximately 18 feet tall constructed between those residences and the commercial uses. The top of that wall is level with the parking lot surface. The noise analysis found that because of the difference in elevation, the predicted noise levels in the back yards of those residences to the east are 41 dBA Lmax and 39 dBA Leq. Those noise levels comply with the daytime and evening noise level criteria.

Based upon the measured noise levels with music playing, the acoustical engineer concluded that the live music events would comply with the General Plan Noise Element evening and nighttime standards. The Assessment included recommendations that the managers of the Plaza and the Relish Burger Bar purchase a Type 1 or Type 2 sound level meter and calibrator, and that periodically during live music events, a designated representative should conduct short-term noise measurements at a distance of 50 feet from the staging area. If maximum noise levels

begin to exceed 85 dBA, the sound system shall have the volume reduced. In addition, that study recommended that amplified music cease by 10:00 p.m.

The El Dorado County Sherriff's Office responded that between August 27, 2010 and November 1, 2012, the Sheriff's Office had received ten complaints involving loud music, noise and a live band at the Montano de El Dorado Shopping Plaza. All of the complaints were received between the hours of 10:00 pm and 1:00 am. With that in mind, they are expecting more complaints if amplified music were allowed after 10:00 pm.

The El Dorado Hills Area Planning Advisory Committee conditionally supports the project if their concerns are met as follows: 1. County or the restaurant, must periodically monitor the Db noise level emanating from the events and check any reported community complaints to determine what is an acceptable sound level; 2. The type of music allowed (no hard rock or rap) must be specified in the SUP; and 3. If multiple complaints are received weekday music amplification must be reduced at 10:00 PM and end at 11:00 PM, and weekend music must be reduced at 10:00 PM and end at 11:30 PM. Their letter is included as Exhibit K.

Policy 2.2.5.21 directs that development projects shall be located and designed in a manner that avoids incompatibility with adjoining land uses that are permitted by the policies in effect at the time the project is proposed.

As discussed above, if noise is constrained, noise levels would not be anticipated to exceed County noise standards at nearby sensitive receptors. The project is intended to provide musical entertainment for outdoor patrons. No new seating is proposed as a result of the project and in fact seating would likely be removed in order to provide space for entertainers. If the recommendations of the noise consultant, Sherriff's Office, and the El Dorado Hills Area Planning Advisory Committee are put into effect, the noise levels would be compatible with the surrounding uses. However, Planning cannot support a limitation to the type of music that may be played as that would have no bearing on the volume.

ENVIRONMENTAL REVIEW: The project is exempt from environmental review pursuant to CEQA Guidelines 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. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility. In this instance, intermittent music events have occurred at the Montano de El Dorado Shopping Plaza, within the patio shared by two restaurants. That area is designed for shared shopping center activities such as a restaurant/bar and coffee shop. There will be no physical modifications to the existing facility other than a slight rearrangement of tables and chairs on the outdoor patio to accommodate entertainers.

A \$50.00 processing fee is required by the County Recorder to file the Notice of Exemption. The filing of the Notice of Exemption is optional, however, not filing the Notice extends the statute of limitations for legal challenges to the project from 30 days to 180 days.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Location Map
Exhibit B	Assessor's Parcel Map
Exhibit C	General Plan Land Use Designations Map
Exhibit D	Zoning Designations Map
Exhibit E	Overall Site Plan
Exhibit F	Relish Burger Restaurant Floor Plan
Exhibit G	Patio Layout
Exhibit H	Applicant-submitted Project Description; April 18, 2013 (two pages)
Exhibit I	Environmental Noise Assessment; August 15, 2011 (six pages)
Exhibit J	Environmental Noise Assessment; October 11, 2013 (six pages)
Exhibit K	El Dorado Hills Area Planning Advisory Committee Letter; June 14, 2013.
Exhibits L-1, L-2	Aerial Photos

ATTACHMENT 1

CONDITIONS OF APPROVAL

**Special Use Permit S12-0005/Montano de El Dorado Shopping Plaza Outdoor Music
Planning Commission/December 12, 2013**

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

2. **Seating:** No new outdoor seating shall be allowed.
3. **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:

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

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.

ATTACHMENT 2

FINDINGS

Special Use Permit S12-0005/Montano de El Dorado Shopping Plaza Outdoor Music Planning Commission/December 12, 2013

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.
- 1.2 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). 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, 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 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.**