



# COUNTY OF HUMBOLDT

AGENDA ITEM NO.

B1

For the meeting of: February 11, 2013

Date: January 23, 2013  
 To: Board of Supervisors  
 From: Kevin Hamblin, Planning and Building Department Director *KH*  
 Subject: **Appeal of the Planning Commission Approval of the Mateel Community Center Conditional Use Permit and Special Permit Application**  
 Case No.: **CUP 12-017A**  
 File Nos.: **APN 033-271-005, Cooks Valley Area**

### RECOMMENDATIONS:

That the Board of Supervisors:

1. Open the public hearing and receive the staff report and public testimony.
2. Based on the findings in the staff report and public testimony, deny the appeal and adopt Resolution \_\_\_\_\_ (Attachment A) certifying the Final Supplemental Environmental Impact Report (SEIR) and approving the Mateel Conditional Use Permit and Special Permit Application subject to the conditions of approval (beginning on Page 7 of Attachment D).
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the applicant's agent, and any other interested party.
4. Direct the Planning and Building Department Planning Division to file a Notice of Determination with the Humboldt County Recorder's Office, pursuant to the California Environmental Quality Act.

### SOURCE OF FUNDING:

Planning and Building Department - Current Planning Revenue Account, No. 1100-277-608000.

Prepared by: *Michael Richardson*  
 Michael Richardson, Senior Planner

CAO Approval: *Cheryl Dillingham*

REVIEW:	Auditor _____	County Counsel <u><i>DS</i></u>	Personnel _____	Risk Manager _____	Other _____
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TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:  
 Board Order No. \_\_\_\_\_  
 Meeting of: \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
 Upon motion of Supervisor \_\_\_\_\_  
 Seconded by Supervisor \_\_\_\_\_

Ayes \_\_\_\_\_  
 Nays \_\_\_\_\_  
 Abstain \_\_\_\_\_  
 Absent \_\_\_\_\_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: \_\_\_\_\_  
 By: \_\_\_\_\_  
**Kathy Hayes, Clerk of the Board**

## DISCUSSION:

### *Project Summary*

The matter before the Board of Supervisors is an appeal of the Planning Commission's January 3, 2013 certification of the Final Supplemental Environmental Impact Report (SEIR) and approval of the Mateel Conditional Use Permit and Special Permit application.

The project consists of a Conditional Use Permit and Special Permit for the Reggae on the River music festival. The permits allow the festival to be held from Thursday through Sunday during the first weekend of August, 2013 - 2017. Amplified music will be provided each night of the event. Attendance for the 2013 event is limited to 6,000 ticket holders, and 2,000 staff, volunteers, performers, guests, etc. for a total of 8,000 persons. Attendance for the 2014 - 2017 events may allow up to 8,000 ticket holders, and 2,500 staff, volunteers, performers, guests, etc. for a total of 10,500 persons. Up to 4,000 persons may be camping on site during events. Food booths and vendors will be on site during the events.

Off-site parking is provided within 6 miles of the event site on the Benbow Golf Course parking area, Assessor's Parcel Number (APN) 033-160-013. Up to 300 cars may be parked at that off-site location.

Also subject to appeal is the Planning Commission's certification of the Final Supplemental Environmental Impact Report (SEIR) for the project.

### *Planning Commission Decision*

The Humboldt County Planning Commission (Planning Commission) conducted public hearings on the project and the associated Draft and Final Supplemental Environmental Impact Reports (SEIR) on December 6, 2012 and January 3, 2013. On January 3, 2013 the Planning Commission certified the SEIR and approved the project by adopting Resolution No. 13-5 (Attachment C) on a unanimous vote after review of the SEIR, staff report and supplemental information (Attachment D).

### *Basis of Appeal*

The basis of the appeal submitted by Zachary Bowman on January 17, 2013 (Attachment B) is as follows:

"Appealing Reggae on the River Use Permit. I am appealing the use permit because it prohibits my ability to do business at Cook's Valley Patriot. The plan calls for delineators placed down the center of the highway which would prohibit the ability of North bound traffic to enter Cook's Valley Patriot. The plan also calls for chain fencing across the entire frontage of my business making it difficult for south bound traffic to enter my site as well. This plan should not have been approved."

The appellant requests that the Planning Commission's action be reversed and that the project be denied. Alternatively it appears he would also be satisfied if the proposed traffic plan is revised to 1) allow north-bound traffic direct access to the Patriot gas station across the highway from the project site, and 2) facilitate south-bound traffic access to the Patriot gas station by eliminating the fencing along the frontage of the Patriot gas station.

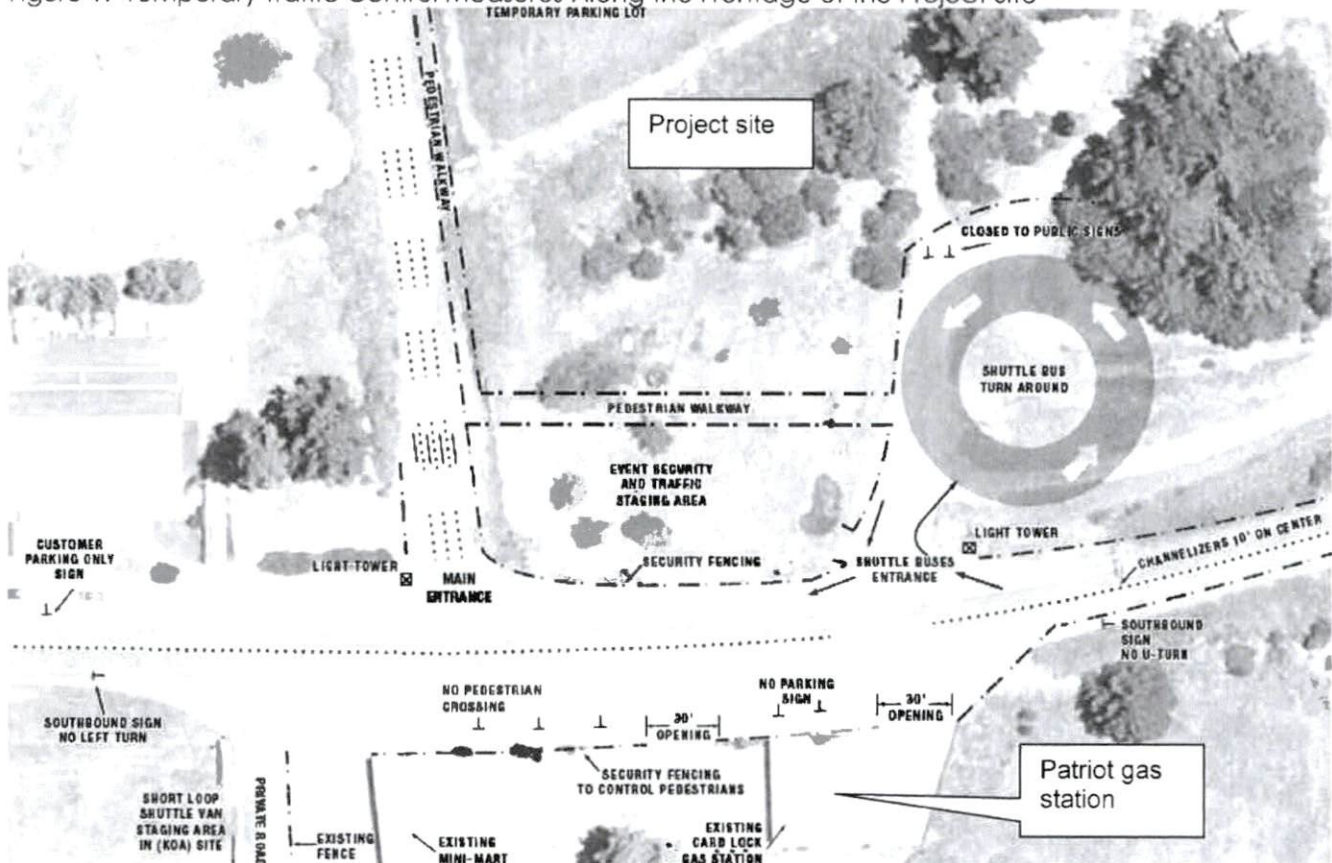
### *Background Information: Planning Commission Staff Report and Deliberations*

The proposed Traffic Plan and EIR describe mitigation measures that reduce the potential traffic impacts of the project to less than significant levels. The Traffic Plan was drafted in coordination with the California Highway Patrol (CHP) and the California Department of Transportation (CalTrans) and will be subject to the review and approval of both agencies. Conditions of approval require the applicant to submit letters from those agencies each year stating that the agencies have no objections to the event being held, and evaluating the mitigation measures from the previous year's event. The applicant is required to bring those evaluations to the Planning Commission each year for review and approval.

The figure below shows the proposed traffic control measures along the frontage of the project site and the Bowman Patriot gas station that will be installed during the event. It shows traffic cones in the center of

Highway 101 along the frontage of the project site as a dotted line. It also shows fencing along the frontage of the project site and the Patriot gas station as a dash-dot line.

Figure 1. Temporary Traffic Control Measures Along the Frontage of the Project Site



Source: Greenway Partners, January, 2013

The proposed traffic control measures are intended to maintain traffic flow on Highway 101 during the event to prevent collisions and to protect pedestrians by preventing them from crossing the highway between the project site and the Patriot gas station.

During the preparation of the EIR, and during the Planning Commission hearings, there was considerable discussion regarding the proposed traffic control measures and mitigating the economic impacts of the project on neighboring commercial businesses. During its deliberations the Planning Commission sought to mitigate the economic impact concerns raised by the appellant and others by adding to the conditions of approval an Informational Note:

"6. The applicant must continue to work in a reasonable manner with the neighboring commercial businesses regarding security and access."

*Applicant's Response to the Concerns Raised in the Appeal*

In response to the appeal, the applicant's agent provided the following responses:

- **"Northbound left turns.** The CHP and Caltrans are adamant that there will be no northbound left turns into the Patriot. The delineators will be installed on Thursday morning and taken down sometime Monday afternoon. They won't even allow it if we pay for a traffic cop to stand there and direct traffic. It is for the same reason that they won't allow a pedestrian cross walk...it's too dangerous. Vehicles that really need gas or convenience food can proceed a couple thousand feet north and make a u-turn at Richardson's Grove. Southbound traffic is not impeded in the least."

- **"Fenced off all access to the Patriot station.** The revised traffic plan (Sheet 10, attached, and still in drafting) shows that the southbound traffic is not restricted from entering the Patriot station. Vehicles are free to pull in immediately after the KOA access road. When they leave they can go back out the way they came in or proceed south and leave by either of the two other exits. We have established two 30' wide access points in the middle of the existing driveways. The fencing that we are proposing is there to keep pedestrians from approaching the highway from the Patriot gas station/store; not to keep vehicles out. A majority of the temporary chain link fencing we are proposing will sit parallel to the established planter strips that are at the edge of the Caltrans right-of-way and only act to narrow the existing exits. All this was explained to Zach by our traffic guy on site about two weeks ago. "
- **"Minimizing impacts caused by restricting access.** The Mateel has established a shuttle bus route making it convenient for Reggae attendees to get to the Patriot. It will circulate about once every 15 minutes between the KOA immediately adjacent to the store, Cooks valley turn off, the main entrance to the site, and Richardson's Grove. At one point the Mateel was offering to offset lost revenues if he could document the monetary difference between a peak no-event weekend and Reggae weekend. They also offered to provide access from the Loop Lot to a store on the Grandfather Tree site and not run a general store of their own on the site. "

The applicant's agent also provided the revised traffic plan shown in Figure 1.

*Staff Response to the Concerns Raised in the Appeal*

The Final EIR responded to the economic impact concerns raised by the appellant in Section 6.3 concluding that, while there may be an equity issue that may be relevant to the findings for approval of the Conditional Use Permit, the economic impacts of the project are outside the scope of environmental review pursuant to the California Environmental Quality Act (CEQA). No additional evidence has been presented by the appellant suggesting otherwise so this finding remains valid.

Section 312-17.1.4 of the County's Zoning Ordinance identifies the required findings for all Conditional Use Permits and Special Permits. The Planning Commission staff report in Attachment D provides an analysis of the evidence which demonstrates the project may be approved because it meets all of the required findings. The findings that appear to be unrelated to the appeal are as follows:

- The proposed development is in conformance with the County General Plan;
- The proposed development is consistent with the purposes of the existing zone in which the site is located;
- The proposed development conforms with all applicable standards and requirements of these regulations; and
- The project is consistent with CEQA.

One of the required findings is close to the appeal because it considers other properties in the vicinity of the project:

- The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare; or materially injurious to property or improvements in the vicinity.

No evidence has been presented demonstrating how temporarily controlling traffic on Highway 101 during the event is "detrimental to public welfare" or "materially injurious" to neighboring properties. The basis of the appeal is potential economic impact, which is not customarily considered "public welfare" or "material injury". Accordingly, all of the required findings can be made based on the analysis in the Planning Commission staff report in Attachment D.

Section 312-13.2 of the County's Zoning Ordinance identifies the appropriate grounds for an appeal:

"...the appellant shall state specifically why the decision of the Hearing Officer is not in accord with the standards and regulations of the zoning ordinances, or why it is believed that there was an error or an abuse of discretion by the Hearing Officer."

No evidence has been submitted by the appellant demonstrating the Planning Commission's action was "not in accord with the standards and regulations of the zoning ordinances", and no evidence was submitted by the appellant showing the required findings could not be made so the Planning Commission action was appropriate.

FINANCIAL IMPACT:

There will be no effect on the General Fund from this project. The appellant has paid the appeal fee amount, which is annually evaluated by the Department and the Board to ensure it adequately covers the full cost of appeals.

OTHER AGENCY INVOLVEMENT:

The Department has referred the project to numerous agencies for comments and recommendations including the CHP and CalTrans. These referrals are included in the Planning Commission staff report in Attachment D.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors can choose to uphold the appeal and deny the project or make changes to the conditions of approval to respond to the concerns raised by the appellant. Staff believes all the required findings can be made to approve the project so we do not recommend further consideration of these alternatives. However, if preferred by the Board, staff recommends continuing the matter to a later date to consider a revised resolution and/or revised conditions of approval.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

- Attachment A: Draft Board Resolution
- Attachment B: Appeal filed by Zachary Bowman
- Attachment C: Resolution of the Planning Commission, Resolution No. 13-5
- Attachment D: Planning Commission Staff Report and Supplemental Information