

RESOLUTION NO. 2023-xx

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EUREKA CONDITIONALLY APPROVING A COASTAL DEVELOPMENT PERMIT (CDP-23-0009), CONDITIONAL USE PERMIT (CUP-23-0006) AND DESIGN REVIEW (AA-23-0001) FOR A RESTAURANT AND COMMISSARY KITCHEN AT 1935 5TH STREET (APN 002-105-005)

WHEREAS, the applicant is proposing to convert an existing restaurant building into a new restaurant and commissary kitchen called The Tasty Hub, at 1935 5th Street; and

WHEREAS, the commissary kitchen will serve food trucks, and food trucks will be stored and potentially operate onsite; and

WHEREAS, the applicant also proposes a number of site improvements including installation of a fenced food truck storage area at the northwest corner of the property, and the replacement of a 153-sf storage addition on the northeast side of the building with a new 256-sf addition; and

WHEREAS, the project site is zoned Service Commercial (CS), and has a land use designation of General Service Commercial (GCS); and

WHEREAS, the commissary kitchen and food trucks are principally permitted uses in the CS zone district, and principally permitted uses at the subject location are exempt from coastal development permitting pursuant to Eureka Categorical Exclusion Order E-88-2; therefore, no discretionary review is required for the commissary kitchen and food trucks; and

WHEREAS, pursuant to Eureka Municipal Code (EMC) §10-5.29133, the proposed restaurant is allowed with a Conditional Use Permit in the CS zone district; and

WHEREAS, pursuant to EMC §10-5.2401(c), projects in the coastal zone which require a use permit also require a Coastal Development Permit; and

WHEREAS, pursuant to EMC §10-5.29137, the project also requires Design Review; and

WHEREAS, the Conditional Use Permit, Coastal Development Permit, and Design Review approvals are discretionary actions subject to environmental review in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission of the City of Eureka did hold a duly noticed public hearing at City Hall in the City of Eureka on November 8, 2023 at 5:30 p.m. via Zoom and in person in the Council Chamber; and

WHEREAS, the Planning Commission of the City of Eureka has reviewed the subject application in accordance with EMC Title 10, Chapter 5, and after due consideration of all testimony, evidence, and reports offered at the public hearing, does hereby find and determine the following facts:

- A. The location of the restaurant is in accord with the objectives of Chapter 5 and the purposes and intent of the CS zone district.

- B. The proposed location of the restaurant and the conditions under which the conditional use will be operated and maintained will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.
- C. The project as conditioned complies with all applicable standards of the Coastal Zoning Code.
- D. The proposed building and site improvements will not be ugly, monotonous, hazardous, or inharmonious with the surroundings, and will have a positive effect on the value of properties within the vicinity.
- E. The project as conditioned conforms to the policies of the Local Coastal Program.
- F. The proposed project is categorically exempt from the provisions of the California Environmental Quality Act, in accordance with Section 15301 (Existing Facilities) of the CEQA Guidelines because the project will occupy an existing restaurant building on a developed site with negligible expansion of the building.

WHEREAS, in the opinion of the Planning Commission of the City of Eureka, the proposed application should be approved subject to the following conditions. Compliance with conditions will be to the satisfaction of Development Services – Planning unless noted otherwise.

1. **Operating Limitations.** As long as a restaurant is located at the site, no more than three food trucks shall be located at the site at any one time, in storage or operation, and no food trucks shall be stored onsite if alley access is denied, unless the applicant submits updated site plans demonstrating how additional food trucks can be accommodated onsite in a manner that maintains required restaurant parking and provides for safe and effective circulation, and any necessary improvements shown on the updated site plans are permitted and installed to the satisfaction of Development Services – Planning, Development Services – Building, and Public Works – Engineering. A minimum of eight parking spaces, including an ADA-accessible space, shall be unobstructed by food trucks and available for restaurant parking at all times.
2. **Building and Fire Department Approvals.** Prior to issuance of a business license and commencement of operations at the site, the applicant shall obtain all required Building and Fire permits to the satisfaction of Development Services – Building and Humboldt Bay Fire. Building permit applications involving ground disturbance beyond what was outline in the original project referral will be referred by Development Services – Planning to the Tribal Historic Preservation Officers (THPOs) of the Bear River Band, the Blue Lake Rancheria, and the Wiyot Tribe. If an Archaeological Monitor or Tribal Cultural Monitor is requested by any one of the THPOs, such a monitor will be required as a condition of building permit approval, in addition to the inadvertent discovery protocol outlined in Condition 13 below.
3. **Humboldt County Department of Human & Health Services (DHHS).** Prior to the finalization of any City of Eureka building permits or issuance of a City business license for the operation of the restaurant and commissary kitchen, the applicant shall submit evidence of all necessary DHHS approvals to Development Services – Planning.

4. **Encroachment Permits.** Any work required in, over, or under either the City of Eureka or Caltrans rights-of-way shall require issuance of an encroachment permit to the satisfaction of Public Works – Engineering or Caltrans, as applicable.
5. **ADA Path of Travel.** As requested by Caltrans, an accessible path of travel from the sidewalk on 5th Street (Highway 101 North) to the existing building shall be constructed to the satisfaction of Development Services – Building prior to the finalization of any City of Eureka building permits or issuance of a City business license for the operation of the restaurant and commissary kitchen, unless the cost of compliance exceeds the threshold outlined in California Building Code Section 11B-202.4 (Path of Travel Requirements in Alterations, Additions and Structural Repairs).
6. **Sidewalk Inspection.** Prior to the finalization of any City of Eureka building permits or the issuance of a City business license for the operation of the restaurant and commissary kitchen, all sidewalks abutting the property along 5th and U Streets shall be inspected, and repaired where found defective, to the satisfaction of Public Works – Engineering.
7. **Landscaping.** A minimum of 50% of the ground within the existing planters onsite must be covered with non-invasive plants at maturity, and the remainder of the ground must be covered in mulch, bark, pebbles, or similar non-plant material so that no bare ground is exposed. No plant species with a “High” rating in the California Invasive Plant Council’s Cal-IPC Inventory of invasive plants shall be planted or allowed to persist onsite. All landscaping must be maintained free of physical damage or injury, and dead or dying plants must be replaced. A landscape planting and maintenance plan consistent with these conditions shall be submitted as part of the building permit application and landscaping shall be installed to the satisfaction of Development Services – Planning Prior to the finalization of any City of Eureka building permits or issuance of a City business license for the operation of the restaurant and commissary kitchen.
8. **Grease Interceptor.** Prior to the finalization of any City of Eureka building permits or issuance of a City business license for the operation of the restaurant and commissary kitchen, the applicant shall install an appropriately sized grease interceptor to the satisfaction of Public Works – Engineering.
9. **Sewer Discharge.** Prior to the finalization of any City of Eureka building permits or issuance of a City business license for the operation of the restaurant and commissary kitchen, the sewer lateral certification process must be started, including CCTV inspection of the sewer lateral, to the satisfaction of Public Works - Engineering. Following the commencement of the sewer lateral certification process, the applicant will have one year to complete any required sewer lateral repairs, to the satisfaction of Public Works – Engineering.
10. **Water Service.** Prior to the finalization of any City of Eureka building permits or issuance of a City business license for the operation of the restaurant and commissary kitchen, the site’s water service must meet current City of Eureka standards, including, but not limited to the use of an approved backflow device. The water service shall be inspected and approved to the satisfaction of Public Works – Engineering.

11. **Signage.** Unless exempt from permitting requirements by EMC §10-5.1703, no sign shall be placed or erected on-site without a City of Eureka Sign Permit approved by Development Services – Planning, and, if required, a building permit from Development Services – Building.

12. **Exterior Building Lighting Requirements.** Prior to installation of any new exterior lighting, specifications for all new exterior lighting fixtures shall be submitted to Development Services – Planning for review and approval, consistent with the following standards:
 - a. Exterior lighting shall be fully shielded with fixtures or hoods, or recessed.
 - b. Exterior lighting shall be directed downward, away from adjacent properties or the public right-of-way.
 - c. All exterior light fixtures must meet the International Dark Sky Association’s requirements for reducing waste of ambient light (“dark sky compliant”).

13. **Inadvertent Discovery Protocol.** Ground disturbing activities are subject to the City’s standard protocol for inadvertent archeological discovery (cultural or historical artifacts) as follows:
 - a. If archaeological resources are encountered during construction activities, all onsite work shall cease in the immediate area and within a 50-foot buffer of the discovery location. A qualified archaeologist will be retained to evaluate and assess the significance of the discovery, and develop and implement an avoidance or mitigation plan, as appropriate. For discoveries known or likely to be associated with native American heritage (prehistoric sites and select historic period sites), the Tribal Historic Preservation Officers for the Bear River Band of Rohnerville Rancheria, Blue Lake Rancheria, and Wiyot Tribe are to be contacted immediately to evaluate the discovery and, in consultation with the project proponent, City of Eureka, and consulting archaeologist, develop a treatment plan in any instance where significant impacts cannot be avoided. Prehistoric materials may include obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. Historic archaeological discoveries may include 19th century building foundations; structure remains; or concentrations of artifacts made of glass, ceramic, metal or other materials found in buried pits, old wells or privies.
 - b. If paleontological resources, such as fossilized bone, teeth, shell, tracks, trails, casts, molds, or impressions are discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified paleontologist can assess the nature and importance of the find and, if necessary, develop appropriate treatment measures in conformance with Society of Vertebrate Paleontology standards, and in consultation with the City of Eureka.
 - c. In the event of discovery or recognition of any human remains during construction activities, the landowner or person responsible for excavation would be required to comply with the State Health and Safety Code section 7050.5. Construction activities within 100 feet of the find shall cease until the Humboldt County Coroner has been contacted at 707-445-7242 to determine that no investigation of the cause of death is required. If the remains are determined to be, or potentially be, Native American, the landowner or person responsible for excavation would be required

to comply with Public Resources Code (PRC) section 5097.98. In part, PRC section 5097.98 requires that the Native American Heritage Commission (NAHC) shall be contacted within 24 hours if it is determined that the remains are Native American. The NAHC would then identify the person or persons it believes to be the most likely descendant from the deceased Native American, who in turn would make recommendations to the landowner or the person responsible for the excavation work for the appropriate means of treating the human remains and any associated grave goods within 48 hours of being granted access to the site. Additional provisions of PRC section 5097.98 shall be complied with as may be required.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Eureka does hereby approve the application, subject to the conditions listed above.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Eureka in the County of Humboldt, State of California, on the 8th day of November, 2023 by the following vote:

AYES: COMMISSIONER
NOES: COMMISSIONER
ABSENT: COMMISSIONER
ABSTAIN: COMMISSIONER

Meredith Maier, Chair, Planning Commission

Attest:

Cristin Kenyon, Executive Secretary