

**ELDORADO COUNTY DEVELOPMENT SERVICES
STAFF REPORT**



Agenda of: July 13, 2006
Item No.: 8.a.
Staff: Winnifred Wilson

REZONE

FILE NUMBER: Z05-0011

APPLICANT: Michael and Melodie Iverson

REQUEST: Rezone the northern 23.90 acre-portion of the subject property from Estate Residential Five-acre (RE-5) to Planned Agriculture (PA), and the southern 1.79 acre-portion from Estate Residential Five-acre (RE-5) to Commercial (C) while the middle 5.79 acres remain unchanged.

LOCATION: On the north side of Perry Creek, approximately 400 feet east of the intersection with Fairplay Road, in the Fair Play area. (Exhibit A)

APN: 094-070-13

ACREAGE: 31.48 acres

GENERAL PLAN: Agricultural Lands (AL), Medium-Density Residential (MDR), Commercial (C) (Exhibit B)

ZONING: Estate Residential Five-acre (RE-5) (Exhibit C)

ENVIRONMENTAL DOCUMENT: Negative Declaration

SUMMARY RECOMMENDATION: Recommend approval

BACKGROUND: The 31.48 acre subject property has three General Plan designations: a Commercial designation in the southern 1.79 acre -portion, a Medium-Density Residential (MDR) in the central 5.79 acre-portion, and Agricultural Lands with an Agricultural District Overlay (AL-A)

in the northern 23.90 acre-portion. Only the small commercial area is located in the Fair Play Rural Center, while the remaining parcel is in the Rural Region.

STAFF ANALYSIS

Project Description: The applicant requests to rezone the northern 23.90 acres from Estate Residential Five-acre (RE-5) to Planned Agriculture (PA) that would allow a winery, a wine tasting room and special events by right, and the southern 1.79 acres from Estate Residential Five-acre (RE-5) to Commercial (C). The middle 5.79 acres of the subject property will remain unchanged. After the rezone is approved, the applicant intends to operate a winery in the existing 1,426 square foot accessory structure, indicated as the “shop” on the site plan and the wine tasting facility in the barn. Additionally, the applicant may propose commercial development, consistent with the provisions in the Commercial land use designation and zoning for the 1.79 acre southerly parcel. The applicant has not indicated a specific type of commercial development at this time.

Site Description: The subject property has a total acreage of 31.48 acres and is accessed directly off Perry Creek Road, a 22 feet wide County maintained road (60-foot right-of-way) via a paved, private 12-foot driveway. The driveway entrance, which is gated, is approximately 400 feet east of Fairplay Road. The terrain of the project site varies from undulating to steep with elevations ranging from 2,160 feet at the northeast property line to 2,360 feet at the southeast property line.

There are currently 8.8 acres of newly planted vineyards in the central portion of the property. Natural vegetation includes mixed conifer woodland and open grassland areas occurring mostly in the northern portion of the site. Ponderosa pine (*Pinus ponderosa*) is the predominant conifer. Existing oak trees include black oak (*Quercus kelloggii*) and interior live oak (*Quercus wislizenii*).

There is a small man-made pond, situated 180 feet northeast of the 3.2 acre northerly vineyard. The entire site is enclosed with an 8-foot deer fence. Perry Creek, a perennial stream, flowing southeast to northwest, is approximately 273 feet from the north property line. There is a cluster of existing buildings, consisting of a single-family residence and the accessory structures (the shop and the barn) located in the northern portion of the subject property.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	RE-5	AL-A,MDR, C	Single-family residence, the “shop” and the barn
North	RE-5	RR-A	Single-family residence/winery & vineyards
South	MP	HDR	Mobile home park/retail use
East	RE-5	RR-A	Single-family residences/winery & vineyard
West	RE-5 & C	RR-A, C	Winery/restaurant

General Plan:

The General Plan designates the northern part of the subject property as Agricultural Lands (AL-A), and the southern part as Commercial (C).

Policy 2.2.2.2: The Agricultural District overlay (-A) identifies those areas within the County containing federally designated prime, State designated unique or important, or County designated locally important soils (choice agricultural soils) in order to preserve those lands primarily for agricultural uses. This policy also contains the minimum 20 acres parcel size for lands containing choice agricultural soils.

Discussion: The northern 23.90 acre-portion has the Agricultural District Overlay (-A) added to its land use designation of Agricultural Land (AL). The soil for the subject property is classified as SbD, Shaver coarse sandy loam, 15 percent to 30 percent slope, under the Shaver Series. They are considered to be Farmland of Local Importance, as determined by the State Farmland Mapping and Monitoring Program. The rezone to PA would help to preserve this parcel for agricultural use. In addition, the 23.90 acres meets the minimum lot size for the (-A) Overlay and the PA zone district. The project parcel therefore meets all the criteria.

Policy 2.2.5.3: The County shall evaluate future rezoning: (1) To be based on the General Plan's general direction as to minimum parcel size or maximum allowable density; and (2) To assess whether changes in conditions that would support a higher density or intensity zoning district. The specific criteria to be considered include, but are not limited to, the following:

1. Availability of an adequate public water source or an approved Capital Improvement Project to increase service for existing land use demands;
2. Availability and capacity of public treated water system;
3. Availability and capacity of public waste water treatment system;
4. Distance to and capacity of the serving elementary and high school;
5. Response time from nearest fire station handling structure fires;
6. Distance to nearest Community Region or Rural Center;
7. Erosion hazard;
8. Septic and leach field capability;
9. Groundwater capability to support wells;
10. Critical flora and fauna habitat areas;
11. Important timber production areas;
12. Important agricultural areas;
13. Important mineral resource areas;
14. Capacity of the transportation system serving the area;
15. Existing land use pattern;
16. Proximity to perennial watercourse;
17. Important historical/archeological sites; and
18. Seismic hazards and present of active faults.
19. Consistency with existing Conditions, Covenants, and Restrictions.

Discussion: Since this is a rezone from RE-5 to PA, and RE-5 to C, there are no increased impacts associated with additional population density. The minimum parcel size is greater under the rezone, (20 acres minimum compared with 5 acres minimum) thereby decreasing developmental density in the area. The rezone to PA would allow by right certain agricultural-related commercial activities while the rezone to C would allow commercial activities by right. Based on these facts, the following describes the project's consistency with Policy 2.2.5.3:

1. 2. 3. Project parcel is not connected to any public water or wastewater system and uses existing wells, and septic systems.
4. Project parcel is not being developed for additional residential uses at this time. As part of the building permit process, the winery and tasting room facilities will be assessed school fees prior to permit issuance.
5. - Development of the project would not result in an increase in demand for fire protection services. No factual information was provided by the fire district stating that the minimum level of service would fall below the minimum response time of 15 to 45 minutes, as designated in Table 5-1. Future accessory uses to a winery, such as a tasting room, would require the interior road be brought up to fire-safe standards. Future construction, if any, must adhere to Fire Code for construction, prior to final occupancy under building permit process (see XIII.a. of the Initial Study).
6. - The southern portion of the project is in the Rural Center while the rest of the subject parcel is in the Rural Region. The proposed commercial zoning will help implement the land use concept of the Rural Center.
7. - General Plan Policy 7.3.2.2 states that projects requiring a grading permit shall have an erosion control program approved, where necessary. Under the ordinance, grading necessary for agricultural operations is exempt from a permit.
- 8.9. - Septic systems and wells on the property have or will have to be deemed adequate by Environmental Health through their permitting process.
- 10.11.13. Project parcel is not in any designated area for these criteria.
12. 8.8 acre-grape vineyards have been planted for this parcel.
14. Project parcel is accessed directly off of Perry Creek Road, a 22-foot wide County maintained road. Under the Winery Ordinance, §17.14.190, the rezone to PA and C, would allow, by right, wine tasting, tours, special events of up to 250 people, winery tours, and promotional events which would generate additional vehicle trips onto Perry Creek Road and Fairplay Road. All of these uses would only be allowed under the current zone of RE-5 with a special use permit. With a rezone to PA and C, these events would be permitted up to 250 people by right, subject to parking availability (17.14.190 D), or more than 250 people with a site plan review showing sufficient off-street parking

Based on the traffic study that was done for a similar rezone to agriculture with a winery anticipated as the result, this project will not exceed the threshold of the General Plan Circulation Element. That winery's projected production of 10,000 cases of wine is anticipated to generate 10 trips per peak hour and 118 trips (11.8 ADT per 1000 cases). This winery is anticipated to generate only 2,500 cases, therefore will generate about 2.5 peak hour trips and approximately 29.5 ADT. The proposed wine tasting facility is served by a 12-foot paved private driveway which connects directly to a public road (Perry Creek Road). Therefore, impacts from traffic are considered minimal, and the rezone will have no impact (see V- Cultural, VI - Geology and Soils, IX - Land Use Plan of the Initial Study).

Policy 8.1.1.5 states that parcels over 20 acres containing choice agricultural soils shall be zoned for agricultural use and be protected by the Right to Farm Ordinance and agricultural buffering.

Discussion: The proposed rezoned 23.90 acre-northern portion is within the Agricultural District (-A) overlay, which exceeds the minimum twenty (20) acres lot size and contain "Choice" agricultural soils or County designated locally important soils. This zone change will reorganize the agricultural use of the site and apply the agricultural protection measures.

Policy 2.2.5.21: 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 development project is proposed. Development projects that are potentially incompatible with existing adjoining uses shall be designed in a manner that avoids any incompatibility or shall be located on a different site.

Discussion: This rezone application currently does not include any new construction. It would allow winery and accessory uses under the winery ordinance, or Ranch Marketing Ordinance if applicable in the Planned Agricultural Zone. Commercial uses in the Commercial Zone are allowed by right under Section 17.32.020 of the Zoning Ordinance

The surrounding land uses in the project vicinity consist of single-family residences/vineyards to the north and east, and winery/restaurant to the west. Land to the south is a mobile home park and a retail use. The agricultural development of the project parcel is in keeping with the land use pattern within the Rural Region as discussed under Objective 2.1.3 of the General Plan. Uses that are accessory to agricultural development, such as a winery and tasting room, are subject to setback buffers under the Winery Ordinance in order to limit impacts on any incompatible uses found on adjacent parcels.

Policy 6.5.1.2 states that non-residential land uses likely to produce noise levels exceeding these standards require an acoustical analysis as a part of discretionary review.

Policy 6.5.1.7: 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.

Discussion: Amplified, outdoor sound systems are not included in Section 17.14.190 of the Winery Ordinance or Ranch Marketing Ordinance and are, therefore, prohibited. Sound generated as a result of outdoor special events must comply with the standards of Table 6-2. Based on these two

policies, the applicant will be required to obtain a special use permit if an amplified, outdoor sound system will be utilized during special events. This requirement has been included as a condition for the rezone request.

Policy 8.1.3.2 states that agriculturally incompatible uses adjacent to agricultural zone lands shall provide a minimum setback of 200' from the boundary of the agriculturally zoned lands. However, Section 17.06.150 of the Zoning Ordinance regulating special setbacks for agricultural protection, implements the above policy. It states that parcels created subsequent to August 11, 1983, will require only 100' set back from agricultural land provided that the parcel is between 5 to 20 acres and those created after 1983, will have 200' in order to minimize land use incompatibility.

Discussion: The existing parcels in the project vicinity would be subject to the 100 feet or 200 feet setbacks, as determined by the parcel history and Section 17.06.150 of the Zoning Ordinance. The Agricultural Commission may grant a reduced setback pursuant to the Board of Supervisor Resolution 176-97.

Policy 8.1.4.1 The County Agricultural Commission shall review all discretionary development applications and the location of proposed public facilities involving land zoned for or designated agriculture, or lands adjacent to such lands, and shall make recommendations to the reviewing authority. Before granting approval, a determination shall be made by the approving authority that the proposed use:

- A. Will not intensify existing conflicts or add new conflicts between adjacent residential areas and agricultural activities; and
- B. Will not create an island effect wherein agricultural lands located between the project site and other non-agricultural lands will be negatively affected; and
- C. Will not significantly reduce or destroy the buffering effect of existing large parcel sizes adjacent to agricultural lands.

Discussion: The Agricultural Commission at the March 8, 2006, meeting voted unanimously to recommend approval of this rezone based on the findings listed above.

Conclusion: As discussed above, staff finds that the proposed rezone to PA and C conforms to the existing General Plan land use designations. The proposed rezone to Planned Agriculture (PA) Zone District is compatible with the land use designation of Agricultural Land (AL-A), and the rezone to Commercial is compatible with the General Plan Commercial designation under Table 2-4. The proposed zone change is also consistent with the applicable policies as discussed above.

Zoning:

Section 17.14.190 permits wineries and tasting rooms by right in the PA Zone and the agricultural zone district and by a special use permit in the Estate Residential Five-acre Zone subject to site plan review approval by the Deputy Director of Planning if special events have more than 250 attendees.

The Winery Ordinance also permits winery and wine tasting rooms in a Commercial Zone District by right.

Discussion: The proposed rezone of the northern 23.90 acre portion, located in the Agricultural District, to PA, under the Winery Ordinance, will allow the proposed winery operation and wine tasting facility by right. If future attendees for special events exceed 250, the applicant will comply with the Winery Ordinance 17.14.190 (b) which requires a site plan review approval by the Deputy Director of Planning, following a recommendation by the Agricultural Commission.

The proposed rezone to Commercial therefore permits the applicant the flexibility of locating his winery business and tasting room in the commercial zone. However, the applicant has indicated that he plans to construct commercial development in the future in conformance with the provisions of the Commercial Zone District and the General Plan Commercial designation.

Section 17.36.110 states the purpose of the PA Zone District is to promote and encourage agricultural pursuits to increase agricultural-based economic viability and to protect agricultural land from encroachment by incompatible land use development.

Discussion: The rezone to PA for the northern 23.90 acre portion of the subject property will not only preserve a large part of the parcel for agricultural use, it would conform to the purpose and objectives of the PA Zone District, the Agricultural District Overlay, as well as the Winery Ordinance by promoting agricultural use, minimizing nuisance to adjacent land, and expanding and stimulating the local agricultural industry.

Section 17.36.160: states that parcels in the PA Zone District should have the minimum parcel size of 20 acres, lot width of 330 feet, yard setbacks of 30 feet, and agricultural setbacks of 50 feet.

Discussion: The project parcel meets or exceeds the above criteria as well as the development standards in the Winery Ordinance of a 50-foot minimum set back from the property line. The winery operation and the wine tasting room will be located in structures which are approximately 200 feet from the nearest property line to the east.

Issue unique to this project:

The subject property is unique in that the existing accessory structure, the 700 square foot barn, which the applicant proposes to use for winery related activities, straddles the line between the Agricultural Lands-Agricultural District (AL-A), and Medium Density Residential. This would mean that the proposed rezone from Estate Residential Five-acre (RE-5) to Planned Agriculture (PA) applies to only the northern half of the barn while the other half has to remain in RE-5. The RE-5 Zone would only allow wine-tasting subject to a special use permit while PA would allow it by right.

As a result of the dual land use designations and zoning bisecting the barn, the barn is useless for anything other than its original use (a storage barn). The applicant requests the Planning Commission's permission to convert the entire structure to a winery, a wine storage, or a wine tasting room if the rezone request is approved.

Given the fact that the General Plan boundary line was not a precise line tied to any specific location and may have shifted during the transfer into digital GIS technology under the 2004 General Plan, staff recommends that the Planning Commission approve the applicant's request. Staff confirms that the barn is set back approximately 200 feet from the nearest property line to the east in conformance with Section 17.14.190 D of the Winery Ordinance which requires only a 50-foot setback.

Agency and Public Comments: The following agencies provided comments on this application:

Agricultural Commission
Department of Transportation
Environmental Management Department (Air Quality Management, Environmental Health,
Hazardous Materials Management)
California Water Quality Control Board, Central Valley Region
Pioneer Fire Protection District

Copies of their written comments are available at the Planning Services office. From these comments, the following issues were raised:

Agricultural Commission: At their hearing on March 8, 2006, the Commissioners voted unanimously to recommend approval of the requested zone changes as all established criteria have been met.

Department of Transportation: The County Department of Transportation requires the applicant to widen the existing driveway from 12 feet to 24 feet in accordance with Chapter 17.18 of the Zoning ordinance prior to the occupancy of the wine-tasting room, or prior to grading, or prior to construction. In addition, the applicant shall improve the driveway encroachment to Perry Creek Road, and shall be subject to an encroachment permit, Standard Plan 103C, prior to occupancy of the tasting room, or prior to grading or prior to construction. Also, the applicant is required to dedicate a 30-foot half width right of way along Perry Creek Road frontage prior to occupancy of the wine tasting room, or grading, or construction of new facilities.

California Regional Water Quality Control Board: Waste Discharge Requirements (WDRs) or a waiver must be adopted by the Regional Board before any wastewater can be discharged to the land. If the winery either crushes less than 80 tons of grapes per year, produces less than 100,000 gallons of wastewater annually, or collects and hauls all process wastewater off-site for disposal, the applicant can apply for a waiver of WDRs. Otherwise, the applicant must comply with Waste Discharge Requirements (WDRs) and submit a Report of Waste Discharge with the Regional Board prior to discharging any winery related wastewater to the land. The permit will be required prior to final occupancy of the winery facility. Also, an NPDES General Permit for Storm Water Discharges Associated with Construction Activities is required when one acre or more of soil will be disturbed.

El Dorado County Hazardous Materials Division: If the winery operation involves the storage of large quantities of hazardous materials (55 gallons, 500 pounds, or 200 cubic feet), prior to

building permit issuance, a *Hazardous Materials/Hazardous Waste Generator Management Plan* must be submitted to the Department and applicable fees paid.

Environmental Health: Prior to applying for a building permit, a *Declaration of Small Water System Status* form must be submitted to the department in order to determine if the project will require a water system permit. If wine tasting activities include the preparation, storing or retail sale of food, further requirements are necessary, and the applicant must contact the department for assistance.

Pioneer Fire Protection District: As the El Dorado Irrigation District (EID) does not provide service to the site, a non-public water system, consisting of wells and storage tanks, must be reviewed and approved by the Fire District. Future buildings over 3,600 square feet are required to install an engineered fire sprinkler system, which will reduce fire flow requirements by 50 percent. Fire flow requirements are based on building type and size. Review and approval of the water system will be required prior to final occupancy under the building permit process. In addition, a minimum 20 foot wide all-weather access road to within 150 feet of all exterior portions of proposed structures shall be required, with either adequate emergency vehicle turn-around or a loop access road. Access roads must have 13.5 feet vertical clearance, 25 foot inside turning radius, and be capable of supporting a 40,000 pound load.

At the time of the Agricultural Commission meeting of March 8, 2006, staff had received some comments from the public. New issues may arise as a result of the public notice of the hearing which will be discussed at that time.

There are two letters from the adjacent property owners to the east of the subject property, voicing objections and concerns over the 100 feet required agricultural setbacks on their currently vacant properties. They are owners of parcels created prior to 1983, and therefore a 100 foot rather than a 200-foot set back from the agricultural lands would prevail. These future homeowners can apply for administrative relief. The Agricultural Commission can provide administrative relief (Resolution No. 176-97), subject to certain criteria from the setback requirements.

ENVIRONMENTAL REVIEW

Rezoning the property to Planned Agricultural (PA) and Commercial (C), allowing a winery and a wine tasting facility by right in the former and future commercial development by right in the latter, may create significant or potentially significant impacts upon the environment. Staff has prepared an Initial Study (Environmental Checklist with Discussion attached) to determine if the rezone has a significant effect on the environment. Based on the Initial Study, staff has determined that there is no substantial evidence that the rezone will have a significant effect on the environment, and a Negative Declaration has been prepared.

This project is found to be de minimis (having no effect on fish and game resources). Pursuant to Resolution No. 240-93, a \$35.00 processing fee is required by the County Recorder to file the Notice of Determination and Certificate of Fee Exemption with the State in accordance with State Legislation (California Fish and Game Code Section 711.4).

RECOMMENDATION

Staff recommends that the Planning Commission forward the following recommendations to the Board of Supervisors:

1. Adopt a Negative Declaration for Z05-0011 based on the Initial Study prepared by staff;
2. Approve the request to rezone the northern 23.90 acre portion of Assessor's Parcel Number 094-070-13 from Estate Residential Five-acre (RE-5) to Planned Agriculture (PA) and the southern 1.79 acre-portion of the same parcel from Estate Residential (RE-5) to Commercial (C), based on the findings listed on Attachment 1; and
3. Approve the 700 square foot barn which may be used for wine-related activities allowed by right in the Planned Agricultural (PA) Zone, even though it straddles the PA and RE-5 Zone boundary.

SUPPORT INFORMATION

Attachments to Staff Report:

Attachment 1	Findings
Exhibit A	Vicinity Map
Exhibit B	General Plan Land Use Map
Exhibit C	Zoning Map
Exhibit D	Site Plan
Exhibit E	Assessor's Parcel Map
Exhibit F	Aerial and Site Photos

ATTACHMENT 1 FINDINGS

FILE NUMBER Z05-0011

1. The rezone will not have a significant effect on the environment, based on the analysis contained in the Initial Study, and a Negative Declaration has been filed. Further, the project will not affect wetlands, water courses, riparian lands, unique plant or animal life and habitats, or other terrestrial matters under the jurisdiction of the State Department of Fish and Game. Therefore, the project has a de minimis impact on the environment and a Certificate of Fee Exemption (DFG 753.5-5/91 is applicable).

2. The proposed use is consistent with the policies in the El Dorado County General Plan, in that:
 - the project parcel meets both the required 20 acre minimum of the Agricultural Land-A designation and the required maximum 2 dwelling units for residential density found under Policy 2.2.1.2,
 - the Planned Agriculture rezone request is consistent with Policy 8.1.1.2, Policy 8.1.1.5, Policy 8.1.3.2 and the commercial rezone is consistent with Policy 2.2.1.2.
 - the Planned Agriculture rezone and the Commercial rezone are compatible with the land use designation under Table 2-4,
 - the agricultural use is consistent with the land use pattern established for the Rural Region under Objective 2.1.3,
 - the vineyard and proposed accessory uses are or will be developed in a manner that manages and protects the existing natural resources in compliance with Policy 2.2.1.2, and
 - the impacts on adjacent parcels from the resultant or potential uses will be reduced to less than significant through compliance with agricultural setbacks established in the County Code in order to avoid any incompatibility with the surrounding area in compliance with Policy 2.2.5.21.