

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



Agenda of: December 11, 2008
Item No.: 10
Staff: Aaron Mount

REZONE

FILE NUMBER: Z08-0020

APPLICANT: Randolph Fulp

REQUEST: Request for an immediate conversion of use and zone change of a Timberland Preserve (Production) Zone parcel to Estate Residential Five-acre

LOCATION: On the south side of Pleasant Valley Road, approximately ¼ miles east of the intersection with Oak Hill Road in the Pleasant Valley/Oak Hill area, Supervisorial District III. (Exhibit A)

APN: 098-160-44

ACREAGE: 5.31 acres

GENERAL PLAN: Medium Density Residential (MDR) (Exhibit B)

ZONING: Timberland Preserve Zone (TPZ) (Exhibit C)

ENVIRONMENTAL DOCUMENT: Exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines

RECOMMENDATION

Staff recommends that the Planning Commission forward a recommendation that the Board of Supervisors take the following actions:

1. Find the project is Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines (General Rule); and
2. Approve Zone Change Z08-0020, based on the Findings in Attachment 1.

BACKGROUND

Gordon Fulp, the applicant's father, submitted a request to the Board of Supervisors (BOS) on October 17, 1977 to enter the subject parcel into Timberland Preserve Zone List "B" and was approved by the Board of Supervisors on December 8, 1977. As part of the request, a forest management plan detailed that 4.31 acres of the 5.31 acre parcel would constitute timberland. Approximately 6,000 trees were planted including bishop pine, sequoia, douglas fir, and scotch pine. According to information provided by the applicant, his father never had an economically viable Christmas tree farm. A report has been submitted by a registered forester, dated April 21, 2008, stating that an economically productive Christmas tree farm could not be established at the site due to its location, five acre size, elevation, and need for irrigation.

The TPZ district is used by property owners, traditionally timber companies, to pay property taxes based on the yield of the harvest rather than traditional ad valorem tax. There are two ways in which to remove land from a TPZ district: rezone with a 10-year pay back or an immediate conversion and rezone with the payment of a tax recoupment fee calculated by the County Assessor.

STAFF ANALYSIS

Staff has reviewed the project for compliance with County regulations and requirements. An analysis of the permit request and issues for the Planning Commission and Board of Supervisors consideration are provided in the following sections.

Project Description: The request is for an immediate conversion of use and rezone of a parcel from Timberland Preserve Zone (TPZ) district to Estate Residential Five-acre (RE-5). The adoption of the Findings would allow, upon California Department of Forestry and Fire Protection (CalFire) approval, the conversion of use and rezone of the five acres from TPZ to RE-5. The conversion and rezone requires approval by the Board of Supervisors, by a 4/5 vote, and by the State Board of Forestry and the filing of a Timber Conversion Permit (TCP) with CalFire. The conversion of use and rezone of the parcel would not have a significant impact on the tax base as the applicant and forester's report have described the timber as having diminished quality and quantity that reduces any tax that may be garnered through harvest yield. The property accounts for 0.003 percent of the TPZ land within the County. From a land use perspective the request would bring the parcel into consistency with the Medium Density Residential land use designation as the current TPZ zoning is

not consistent as shown in Table 2-4 of the General Plan. Additionally, the parcel is within the Oak Hill Rural Center which was established by the General Plan for areas of higher intensity development.

Site Description: The approximately five-acre subject parcel is at an average elevation of 2,200 feet above mean sea level in the Oak Hill/Pleasant Valley area. Soil types include Josephine gravelly loam, 9-15 percent slopes, and Josephine silt loam, 5-15 percent slopes. The Josephine series soils are classified as Unique and/or Soils of Local Importance. Vegetation consists of ponderosa pines, black oaks, and scotch pines left over from the past Christmas tree farm. Physical improvements include a 1,305 square foot residence. The project parcel is accessed by Scotch Pine Road which is a typical private rural residential road. Scotch Pine Road encroaches onto Pleasant Valley Road which is a County maintained road.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	TPZ	MDR	Residential
North	R1A	MDR	Residential
South	RE-5	LDR	Residential
East	RE-5	LDR	Residential
West	R1A	MDR	Residential

Discussion: The subject parcel and adjacent parcels to the north and west are located in the Oak Hill Rural Center.

TPZ Removal Process

Immediate rezones that result in a conversion of timber land to another use requires that a multi-step process be followed in order to receive final approval on the rezone application. Once an application is held complete and a hearing date is scheduled, a public notice is mailed to all property owners within one (1) mile of the exterior boundary of the subject parcel. Prior to the Board of Supervisors hearing, a similar public mailing occurs. At the public hearing the project may only be approved by a four-fifths vote of the full board, and the following findings are met from the California Government Code:

1. *The immediate rezoning is not consistent with the purposes of the subdivision (j) of Section 3 of Article XIII of the California Constitution and of this chapter (California Government Code Sections 51101, 51102, and 51103); and*
2. *The immediate rezoning is in the public interest.*

The applicant has supplied a letter from a Registered Forester, Exhibit G, to support these findings. With regard to the first finding, the referenced section of the California Constitution addresses forested lands and the different methods of taxation. State law allows for timber land to have an alternative system or systems of taxing or exempting forest trees or timber, including a taxation system not based on property valuation as is the situation with the subject land which is under TPZ and taxed on harvest yields. The rezone and conversion are not consistent with the purpose of this section because their intent is to assure that the lands are taxed for their most appropriate use. The foresters report has stated that the subject parcel would not be able to sustain an economical Christmas tree farm. For this reason the conversion and rezone are in the public interests because the land cannot produce commercial timber at a rate and volume to allow for it to meet any fair share of the tax burden under a yield tax. The conversion and rezone is also in the public's interest in that the area has been designated by the County for residential development and that the approval of the conversion and rezone establishes compliance with the County's General Plan.

If the rezone is approved, the Board of Supervisors shall forward its tentative approval to the State Board of Forestry and Fire Protection, together with the application for immediate rezoning, a summary of the public hearing, and any other information required by the State Board of Forestry. The State Board shall consider the tentative approval pursuant to Section 4621.2 of the Public Resources Code (PRC). Final approval to an immediate rezoning is given only if the State Board has approved the conversion pursuant to Section 4612.2 of the PRC. The conversion is done through a separate Timber Conversion Permit that is filed with CalFire concurrently with the County rezone process as required by Public Resource Code 5471. The State Board may only approve the application for conversion if written findings can be made that the following exists:

- 1. The conversion would be in the public interest.*
- 2. The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve situated within one mile of the exterior boundary of that land upon which immediate rezoning is proposed.*
- 3. The soils, slopes, and watershed conditions would be suitable for uses proposed if the conversion were approved.*

Although the supporting information to make these findings would be submitted separately by the applicant as part of the Timber Conversion Permit, County staff has reviewed each. For item one, the supporting information is addressed above as it is also a required finding for the County. For item two, the Agricultural Commission heard the item at its regularly scheduled meeting held on July 9, 2008. The Agricultural Commission reviewed the project and parcels zoned TPZ in the vicinity and concluded that the rezoning of the subject parcel would not have a detrimental effect on the growing and harvesting of timber on other nearby lands used for timber production. Two parcels within the TPZ zone district are within a mile of the project parcel as shown on Exhibit F. For item number three, the subject parcel contains an existing approved residence with a functioning septic system and public water supplied by EID.

If the State Board of Forestry can make the written findings to address the items above, they will then approve the conversion and notify the Board of Supervisors of the approval, and the Board of Supervisors shall remove the parcel from the timberland preserve zone.

General Plan:

The General Plan designates the subject site as Medium Density Residential (MDR). This designation establishes areas suitable for detached single-family residences with larger lot sizes. Additionally, the following General Plan policies also apply to this project:

The subject parcel is within the Oak Hill Rural Center. **Policy 2.1.2.2** states *that Rural Center boundaries establish areas of higher intensity development throughout the rural areas of the County based on the availability of infrastructure, public services, existing uses, parcelization, impact on natural resources, etc.* **Policy 2.1.2.3** directs that *to meet the commercial and service needs of the residents of the Rural Centers and Rural Regions, the predominant land use type within Rural Centers shall be commercial and higher density residential development.*

Discussion: The subject parcels zoning request of Estate Residential Five-acre would bring the subject parcel into consistency with the parcels land use designation and location within the Oak Hill Rural Center. The intention of the General Plan is for the area to be strictly residential and commercial and is not be compatible with a timber operation.

Policy 2.2.5.2 directs that *all applications for discretionary projects or permits including, but not limited to, General Plan amendments, zoning boundary amendments, tentative maps for major and minor land divisions, and special use permits shall be reviewed to determine consistency with the policies of the General Plan.*

Discussion: The rezoning of the parcel to RE-5 and ensuing uses it allows is consistent with the MDR land use designation as indicated in Table 2-4 of the General Plan. The current TPZ district is not consistent with Table 2-4 of the General Plan.

Policy 2.2.5.3 includes 19 specific criteria to be considered in evaluating zone change requests.

Discussion: Staff has reviewed the zone change request against the 19 specific criteria under policy 2.2.5.3 and found that the proposal is consistent with applicable criteria such as important timber production areas and existing land use pattern. The requested zone district of RE-5 is consistent with the MDR General Plan land use designation as indicated in Table 2-4 of the General Plan.

Policy 8.3.1.3 directs *that the County Agricultural Commission shall assess lands to determine their suitability for timber production.*

Discussion: The Agricultural Commission heard the item at its regularly scheduled meeting held on July 9, 2008 and concluded that the parcel is not suitable for timber production and does not meet the required criteria to be used to determine suitability of timber production lands. This conclusion

was based on the parcel not being within the Natural Resource land use designation and the five acre parcel size not meeting the minimum 40 acres for TPZ lands below 3,000 feet elevation.

Conclusion: As discussed above, staff finds that the project, as proposed/conditioned, conforms to the General Plan.

Zoning: The subject parcel is consistent with the development standards for the proposed RE-5 zone district. Specifically Ordinance section 17.28.210.A specifies a minimum parcel size of five acres. The subject parcel is approximately 5.31 acres which exceeds the minimum.

ENVIRONMENTAL REVIEW

This project has been found to be Exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines stating that The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The site was previously developed and contains no native vegetation that is proposed to be removed, is not adjacent to riparian habitat or wetlands, is not located in an area known to contain protected species, and will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. There is no impact to the County's inventory of timberlands as the project site was determined by the Agricultural Commission to not be suitable and an economically viable timber operation was never achieved due to the parcels size and elevation.

Pursuant to Resolution No. 240-93, a \$50.⁰⁰ processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments:

Attachment 1	Findings
Exhibit A	Vicinity Map
Exhibit B	General Plan Land Use Map
Exhibit C	Zoning Map
Exhibit D	Site Plan
Exhibit E	Rural Center Boundary
Exhibit F	Adjacent TPZ Parcels
Exhibit G	Forester's Site Assessment Dated April 21, 2008
Exhibit H	Sections of State Law

ATTACHMENT 1 FINDINGS

FILE NUMBER Z08-0020

1.0 CEQA Findings

- 1.1 This project has been found to be Exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines stating that The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The site was previously developed and contains no native vegetation that is proposed to be removed, is not adjacent to riparian habitat or wetlands, is not located in an area known to contain protected species, and will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. There is no impact to the County's inventory of timberlands as the project site was determined by the Agricultural Commission to not be suitable and an economically viable timber operation was never achieved due to the parcels size and elevation.
- 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 Department -Planning Services at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 General Plan Findings

- 2.1 The zone change from TPZ to RE-5 is consistent with General Plan Policy 2.2.5.3 as the proposal was reviewed against the 19 specific criteria under policy 2.2.5.3 and found to be consistent with applicable criteria such as important timber production areas and existing land use pattern. There are no existing CC & R's.
- 2.2 The proposed Williamson Act Contract is consistent with policies 2.1.2.2 and 2.1.2.3 (Rural Centers), 2.2.5.2 (General Plan Consistency), and 8.3.1.3 (Suitability for Timber Lands) of the El Dorado County General Plan, as discussed in the General Plan section of the staff report.

3.0 Zoning Findings

- 3.1 The subject parcel meets the design standards of the proposed RE-5 zone district pursuant to 17.28.210.A of the Zoning Ordinance.

4.0 Administrative Findings

- 4.1 TPZ Conversion and Rezone:
- 4.1.1. The project is consistent with Government Code Section 5113 as it applies to the immediate rezone of Timberland Production zoned lands;
 - 4.1.2. A public hearing was held with notice of the hearing being given to all owners of land situated within one mile of the exterior boundary of the land proposed to be immediately rezoned;
 - 4.1.3. Granting the immediate rezoning of this property is not inconsistent with the purposes of the TPZ zoning as found in California Constitution Article XIII section 3(j) and Government Code Sections 551101, 51102, and 51103. Specifically, the parcel subject to rezoning is not suited for an economically viable timber production due to its size, elevation, location, and necessity for irrigation. These combined effects lead to a relatively low volume of tree production that would not be economically viable;
 - 4.1.4. The conversion and rezoning serves the public's interest in that it cannot produce commercial timber at a rate and volume to allow for it to meet any fair share of the tax burden under a yield tax. Further, the rezoning and conversion serves the public's interest in that the area has been designated for residential use in the County's General Plan. Making property available for housing as designated in its General Plan is important to the County to meet its regional housing needs allocation required by the State;
 - 4.1.5. The immediate rezoning does not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland production and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed;
 - 4.1.6. The conversion would not prevent or make existing access to other nearby TPZ lands more difficult so as to not make their timber management or harvest more difficult.