

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



Agenda of: January 14, 2010
Item No.: 7.a
Staff: Tom Dougherty

SPECIAL USE PERMIT

FILE NUMBER: S09-0021/Burren Flower Essences Home Occupation

APPLICANT: Edward Madsen and Angela Burr Madsen

REQUEST: Special Use Permit request for an expanded home occupation to allow the production and distribution of flower essence products within a detached accessory building.

LOCATION: West side of Holly Drive approximately 1.2 miles south of the intersection with French Creek Road in the Shingle Springs area, Supervisorial District II. (Exhibit A)

APNs: 091-150-28 and 091-150-59 (Exhibit B)

ACREAGE: 6.00 acres

GENERAL PLAN: Low Density Residential-Important Biological Corridor (LDR-IBC) (Exhibit C)

ZONING: Estate Residential Five-Acre (RE-5) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines

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

1. Certify that the project is Categorically Exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines; and
2. Approve Special Use Permit S09-0021 subject to the conditions in Attachment 1, based on the findings in Attachment 2.

BACKGROUND: The six-acre parcel is identified by Assessor's Parcel Numbers 091-150-59 and 28. The two APNs are different tax rate areas but constitute one legal parcel.

The existing 2,082 square-foot primary residential dwelling was constructed in 1968. The existing detached garage was approved by Building Permit 110215 in January of 2000. That permit allowed the construction of a 1,200 square-foot, two-car garage, with a bathroom and storage on the first floor, and a 400 square-foot guest house on the second floor, accessed by outside stairs.

The applicants currently operate a home office for Gateways Health Care under Business License 004734 that was issued in May of 1986 (see Exhibit I). They hold a health clinic two days a week within the primary dwelling. One to two persons, (such as a couple), may visit the house twice a week for up to a two-hour visit. They also sell Burren Flower Essences through a distributorship called Gateways Distributors. Gateways Enterprises is the applicant's umbrella company. Their products are sold over the Internet. United Parcel Service (UPS) and Federal Express (FedEx) are used for shipping and receiving of vitamins, herbal or homeopathic products.

Flower essences: (excerpts from the applicant's narrative dated October 28, 2009, Exhibit H):

'Flower essences are the vibrational fragrances of flowers in sunlight captured in water and preserved, but not changed, with the addition of alcohol. The bottled flower essences serve as a homeopathic remedy for the treatment of emotional, mental, and psychic issues of animals, children, and adults; by the application of drops applied under the tongue.'

STAFF ANALYSIS

Project Description: Special Use Permit request for an expanded home occupation to allow the production and distribution of flower essence products within a detached accessory building. The accessory building includes a 1,200 square-foot garage with a 400 square-foot guest home on the second floor. The applicants would construct new interior wall within the first floor, to create a 140 square-foot room within the existing building for production of the essences. The proposed operation would include bottling, labeling and storage of natural healing remedies known as flower essences. Equipment, production and product storage would be contained and operated entirely within the first floor of a portion of the detached garage. No direct sales would occur on the premises. Sales would be conducted by internet, phone or mail. Shipments would be made via U.S. Postal Service, United Parcel Service, FedEx or similar service. The applicant submitted project description is included as Exhibit G. Also see Exhibit H for a detailed narrative of the production, use, and sales of flower essences.

Site Description: The site is located on a 6.0-acre parcel that is located at the 1,200-foot elevation above sea level. The paved driveway begins at Holly Drive and ends at a circle approximately 210 feet at the existing primary residential dwelling and detached garage and they are shown in Exhibits E, F and J1 to J4. The parcel is covered in native oak trees with a few small areas of annual grasses.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	RE-5	LDR-IBC	Residential/Single-family residence.
North	RE-5	LDR -IBC	Residential/Single-family residence.
South	RE-5	LDR -IBC	Residential/Single-family residence.
East	RE-5	LDR -IBC	Residential/Single-family residence.
West	RE-5	LDR -IBC	Residential/Single-family residence.

Discussion: All surrounding parcels are designated for residential uses by the General Plan. The closest residence on a surrounding parcel is located approximately 100 feet to the south, Exhibits K1 to K3).

Project Issues:

Regulation of flower essences: The El Dorado County Environmental Management Environmental, Health Division (Environmental Health) regulates retail food facilities throughout El Dorado County. California Retail Food Code, section 113895, defines "retail" as *the storing, preparing, serving, manufacturing, packaging, transporting, salvaging, or otherwise handling food for dispensing or sale directly to the consumer or indirectly through a delivery service*. Any food distributed or sold to the public at the retail level requires an approved health permit from the Environmental Health office.

California Retail Food Code, section 113781, defines "food" as *a raw, cooked, processed edible substance, ice, beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, and chewing gum*.

Prior to converting the accessory building to a flower essence bottling, labeling and storage facility, a completed Service Request Form including a description of the proposed operation would need to be submitted to Environmental Health for review. The description would need to include a list of the type of ingredients used in the bottling of flower essence, and a plan of how the ingredients would be stored. Upon approval of the Service Request, and fee payment, an annual operating permit would be issued to the applicants. The project has been conditioned for the fulfillment of this requirement (Condition of Approval 8). The applicants may also be required to obtain a wholesale distribution permit from the State of California, Department of Health Services (Condition of Approval 9).

Waste products associated with flower essence production: The El Dorado County Environmental Management, Hazardous Materials/Solid Waste Division (Division) responded that the production and packaging of flower essences may involve the use of hazardous materials such as ethanol. If this facility were to store reportable quantities of hazardous materials (55

gallons, 500 pounds or 200 cubic feet) or generate hazardous waste, prior to commencing operations the owner/operator would need to:

- *Prepare, submit and implement a hazardous materials business plan and pay appropriate fees.*
- *Obtain a hazardous waste generator identification number from the California Department of Toxic Substances Control.*
- *Train all employees to properly handle hazardous materials and wastes.*
- *Implement proper hazardous materials and hazardous waste storage methods in accordance with the Uniform Fire Code and Uniform Building Code.*

The project has been conditioned for the fulfillment of this requirement (Condition of Approval 10).

General Plan: The General Plan currently designates the subject site as Low Density Residential-Important Biological Corridor (RR-IBC). LDR permits single-family residential development in a rural setting. Policy 2.2.5.2 requires that applications for discretionary projects, such as a Special Use Permit, shall be reviewed to determine consistency with General Plan policies. With an approved Special Use Permit, the project would conform to the existing General Plan land use designation of LDR. The policies and issues that affect this project are discussed below:

Land use compatibility: **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.*

Consistent: The project does not propose activities that would occur outside the detached accessory building. Clients visit the site two days a week for one to two hours within the primary dwelling, and there is sufficient space for parking. UPS vehicles currently come down Holly Drive to service the neighborhood almost daily and stop at the applicants' house two to three times a week. FedEx delivery vehicles currently visit the neighborhood approximately three times a week and stops by the applicants' house about once a week. The proposed project would continue using those services at the existing levels. Staff has found that the project therefore would not impose an incompatible use within a residential area and would not generate traffic beyond what is typical within a residential area.

Noise Impacts: 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** 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.*

Consistent: As stated above in the *Land use compatibility* section, routine visits would occur by delivery vehicles. No changes in the existing traffic-generated noise levels along Holly Drive by UPS and FedEx vehicles would occur. The only noise generated from the flower essence

bottling process would be the noise of a compressor, housed within the building, to run both the bottling and labeling equipment. Those noise levels would not exceed the noise limits indicated in Table 6-2 of the General Plan. The project would be compliant with these Policies.

Important Biological Corridor: The parcel is also located within the IBC overlay. **Policy 7.4.2.9** states that *this overlay shall apply to lands identified as having high wildlife habitat values because of extent, habitat function, connectivity, and other factors.*

Consistent: The project does not propose any new impacts or land disturbance. The entire parcel is located within the IBC however; the project would not conflict with the intent of this policy. The project would result in the manufacturing of flower essences within an existing building with no exterior alterations required.

Promotion of Home Based Occupations: **Objective 10.1.7** seeks to promote the establishment and expansion of small businesses and work place alternatives including home occupations. **Policy 10.1.7.2** directs that the County assist small business in the County, and **Policy 10.1.7.4** states that *home occupations shall be encouraged and permitted to the extent that they are compatible with adjacent or surrounding properties.*

Consistent: Staff has determined that the approval of the project, as conditioned, can be found to support these policies, as it would promote a home-based business and would be compatible with surrounding RE-5 zoned properties.

Conclusion: The project has been reviewed in accordance with the El Dorado County 2004 General Plan policies, and it has been determined that the project would be consistent with the General Plan. Findings of consistency with the General Plan are provided in Attachment 2.

Zoning: The property is zoned Estate Residential Five-acre (RE-5), which permits single-family dwellings, accessory structures, and certain home occupations.

The proposed use is not specifically listed as a home occupation permitted by right under Section 17.28.190.C. The project is proposed to occur outside the residence within an accessory building and therefore requires a Special Use Permit pursuant to Section 17.28.200.G. This section requires that *home occupations not listed in subsection C of Section 17.28.190 which require special consideration such as the use of power tools, accessory building, noise, and will not change the residential character of the premises or adversely affect the other uses permitted in a residential area.*

The applicants propose to produce, bottle, label, and store of natural health remedies known as flower essences within an existing on-site, permitted, accessory structure, a portion of which would be converted for essence-making operations. Use of the accessory structure to produce essences would not require any physical site improvements or construction other than the installation of an interior partition wall. Water and septic facilities are available on-site. There would be no on-site sales and no employees.

The processing of flowers into essences would involve the operation of mechanical equipment within in the accessory structure. Equipment would operate for short periods of time. The equipment that would be used by the applicant would not generate excessive noise. All information received by staff indicates that there would be no conflict with Section 17.28.200.G

Conclusion: As discussed above, staff finds the project, as proposed and conditioned, would be consistent with all applicable provisions of County Zoning Ordinance Title 17.

Agency comments: The project proposal was distributed to both the El Dorado County Department of Transportation and the El Dorado County Fire Protection District. Both responded that they did not have any specific concerns with the project.

ENVIRONMENTAL REVIEW

This project has been found to be Categorical Exempt from the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines which exempts the minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. A \$50.00 administration fee is required by the County Recorder to file the Notice of Exemption.

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 Map
Exhibit D	Zoning Map
Exhibit E	Site Plan
Exhibit F	Accessory building floor plan
Exhibit G	Applicant submitted <i>Project Description</i>
Exhibit H	Applicant submitted Flower Essences Description
Exhibits I1 to I3	Site Photos
Exhibits J1, J2	Aerial Photos

ATTACHMENT 1
CONDITIONS OF APPROVAL

File Number S00-0021/Burren Flower Essences Home Occupation
January 14, 2010 Planning Commission Hearing

CONDITIONS OF APPROVAL

Planning Services

1. This Special Use Permit is based upon and limited to compliance with the project description, the hearing exhibits marked Exhibits A through J2, and conditions of approval set forth below. 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.

The project description is as follows:

Approval of the Special Use Permit allows the production, bottling, labeling, and storage of homeopathic remedies known as flower essences as an expanded home occupation pursuant to section 17.28.200.G of the El Dorado County Zoning Ordinance. There will be no on-site sales or employees and all operations will be carried out by the persons residing on the premises. All sales, except to those clients by appointment only, will be wholesale and to occur off-site via internet, telephone, or mail, and in accordance with applicable licensing requirements. The production facility or any portion of the subject parcels related to the flower essence production will not be open to the public, and access to the accessory building and home-based flower essence operation will be from Holly Drive only.

The flower essence production shall only occur in the first floor of the existing 1,200 square-foot accessory building, as shown on the approved site plan. A total of 140 square feet will be utilized in the production of flower essence products on the premises. Any improvements or modifications to this accessory structure that would increase the size or capacity would require the review of Development Services.

The operational activities shall include manufacturing, labeling and storing flower essences and related support equipment within the first floor existing accessory building labeled as “garage” in Exhibit E.

2. Project improvements shall be completed in conformance with the plans submitted and in conformance with the conditions of approval herein and shall substantially comply with Exhibit E. Minor variations are allowed, however, any major changes in the design of buildings, location of buildings, access ways, and parking shall require review and approval by the Planning Services prior to project modifications.

3. Prior to commencement of any use authorized by this permit, the applicant shall provide a written description, together with appropriate documentation, showing conformance of the project with each condition imposed as part of the project approval. The applicant shall also schedule an inspection by Planning Services for verification of compliance with applicable conditions of approval. The operator shall pay Planning Services for the time spent reviewing the site on a time and materials basis. All future development plans shall include this condition on the submitted plans.
4. The applicant shall be responsible for complying with all conditions of approval contained in this Special Use Permit. Any zoning violations concerning the installation, operation, and/or abandonment of the facility are ultimately the responsibility of the property owner.
5. The applicant shall make the actual and full payment of Planning Services processing fees for the Special Use Permit application prior to issuance of any County development permit.
6. A \$50.00 administration fee is required by the County Recorder to file the Notice of Exemption. This fee shall be made payable to El Dorado County and shall be submitted to Planning Services after the end of the ten working day appeal period of a final project decision.
7. 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 developer and land owner 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 of El Dorado County concerning a Special Use Permit.

The County shall notify the applicant of any claim, action, or proceeding, and the County shall cooperate fully in the defense.

El Dorado County Environmental Management, Environmental Health Division

8. Prior to converting the accessory building to a flower essence bottling, labeling and storage facility, a completed Service Request Form including a description of the proposed operation shall be submitted to Environmental Management for review. The description shall include a list of the type of ingredients used in the bottling of flower essences, and a plan of how the ingredients will be stored. Upon approval of the Service Request, and fee payment, an annual operating permit will be issued to the applicants. No uses permitted by the approval of the subject Special Use Permit shall be permitted prior to issuance of the Service Request.

9. The applicants shall obtain a wholesale distribution permit from the State of California, Department of Health Services, if applicable, prior to ignition of uses permitted by the approval of the subject Special Use Permit.

El Dorado County Environmental Management, Hazardous Materials/Solid Waste Division

10. The production and packaging of flower essences may involve the use of hazardous materials such as ethanol. If this facility will store reportable quantities of hazardous materials (55 gallons, 500 pounds or 200 cubic feet) or generate hazardous waste, prior to commencing operations the owner/operator must:
 - Prepare, submit and implement a hazardous materials business plan and pay appropriate fees.
 - Obtain a hazardous waste generator identification number from the California Department of Toxic Substances Control.
 - Train all employees to properly handle hazardous materials and wastes.
 - Implement proper hazardous materials and hazardous waste storage methods in accordance with the Uniform Fire Code and Uniform Building Code.Proof of compliance with the above requirements shall be received by the Hazardous Materials/Solid Waste Division prior to initiation of any use permitted by the approval of this Special Use Permit.

ATTACHMENT 2

FINDINGS

File Number S09-0021/Burren Flower Essences Home Occupation January 14, 2010 Planning Commission Hearing

Based on the review and analysis of this project by staff and affected agencies, and supported by discussion in the staff report and evidence in the record, the following findings can be made:

1.0 CEQA Findings

- 1.1 El Dorado County has determined that the project is exempt from the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines which exempts the minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.
- 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 As conditioned, the proposal is consistent with the intent of 2.2.5.2 (review for General Plan consistency), 2.2.5.21 (compatibility with surroundings), 6.5.1.2 and 6.5.1.7 (noise impacts), 7.4.2.9 (biological corridor), 10.1.7, 10.1.7.2, and 10.1.7.4 (promotion of home-based occupations), because the project would have minimal impacts on visual resources, existing utilities, and on the existing surrounding residences. There are adequate services to facilitate the site, such as water, power and solid waste. The project would not add excessive noise levels nor affect biological resources. The project provides natural home medicinal remedies to the County residents and provides an opportunity for home-based employment.

3.0 Zoning Findings

- 3.1 The project is zoned Estate Residential Five-Acre which allows home occupations not listed in subsection C of Section 17.28.190, which require special considerations with an approved Special Use Permit and pursuant to Section 17.28.200.G.
- 3.2 As proposed and conditioned, the project meets all applicable development standards contained within the El Dorado County Zoning Ordinance because the project would be located entirely within an existing, approved structure.

4.0 Special Use Permit Findings

4.1 **The issuance of the permit is consistent with the General Plan.** The applicant's proposal has been determined to be in compliance with County regulations, addressing environmental issues and health and safety concerns. The proposed use is consistent with the policies in the El Dorado County General Plan, as discussed in the General Plan section of this staff report. The proposed use is consistent with all applicable policies because the project will occupy an existing building with no exterior improvements, will not create excessive noise, waste or additional traffic. The project allows an expanded home occupation within an accessory building, carried out by the owners and their family. Therefore, staff finds that the project, as conditioned, conforms to the General Plan.

4.2 **The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood,** based on the conclusions contained in the staff report. The use will not conflict with the adjacent uses as it will occur entirely within an existing building. The project will result in insignificant environmental, visual, noise, and traffic impacts to surrounding residents. After review of the submitted site plan and upon consultations with concerned agencies, it has been determined that the impacts of allowing the project, will not have a detrimental affect nor be injurious to the neighborhood. The proposed use would not create hazards that would be considered detrimental to the public health, safety, and welfare, or injurious to the neighborhood based on the data and conclusions contained in the Staff Report.

4.3 **The proposed use is specifically permitted by Special Use Permit.**

Section 17.28.190.C of the County Code requires that home occupations be carried out with the residence. Section G of Section 17.28.200 requires a Special Use Permit for proposed use to be carried out within an accessory building. The project must be found to *not change the residential character of the premises or adversely affect the other uses permitted in a residential area.* After review of the submitted information and with consultation from concerned agencies, staff has determined that, as proposed, the project is consistent with these requirements and would not affect the existing area in a significant manner.