

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



Agenda of: February 25, 2010
Item No.: 7
Staff: Tom Dougherty

CERTIFICATE OF COMPLIANCE

FILE NUMBER: COC09-0022

APPLICANTS: Michael Kuhl, Penny Hocking, Paula Hustead, Gary Williams, Tony Angulo, Sam Angulo and Fred Angulo

REQUEST: Conditional Certificate of Compliance for Assessor's Parcel Numbers 011-030-45 and 011-030-46 which were subdivided into three parcels by a court order in 1994 and transferred by Grant Deeds in 1994.

LOCATION: On the north side of Union Valley Reservoir, approximately two miles west of the intersection of NF-12N52 and NF-12N78 Roads in the Ice House area, Supervisorial District IV. (Exhibit A)

APNS: 011-030-45 and 011-030-46 (Exhibit B)

ACREAGE: 214.17 acres

GENERAL PLAN: Natural Resource (NR) (Exhibit D)

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

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

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

1. Certify that the project is exempt from CEQA pursuant to Section 15061.b.3 of the CEQA Guidelines; and
2. Approve Certificate of Compliance COC09-0022, subject to the Conditions of Approval in Attachment 1, based on the Findings in Attachment 2.

BACKGROUND: A Certificate of Compliance has been requested to recognize three parcels created by court partition in 1994. Subsequent to this partition, Grant Deeds for the parcels described in the court order were recorded November 21, 1994. The current owner of the 83.55-acre Parcel 1 acquired title on December 27, 1995. The current owner of the 65.78-acre Parcel 2 acquired title on March 2, 2005. The current owner of the 64.84-acre Parcel 3 acquired title on June 13, 1995. The parent parcels are currently identified by two Assessor's Parcel Numbers; 011-030-45 consists of 132.82 acres and 011-030-46 consists of 81.35 acres. The recording of said deeds created the parcels, albeit in violation of the Subdivision Map Act. The issuance of a Certificate of Compliance would acknowledge the County's acceptance of the parcels as legally created in accordance with the Subdivision Map Act and local subdivision ordinances, and would allow development of the property consistent with the TPZ district.

Without the Certificate of Compliance, the County cannot issue development permits, including building permits on the site. In this instance, the parcel would be issued a Conditional Certificate of Compliance requiring specific conditions be completed prior to the issuance of an unconditional or *clear* Certificate of Compliance. The parcels could not be developed until such time as a *clear* Certificate of Compliance is recorded, and then, only with an approved Special Use Permit because of the TPZ zoning.

The 1969 General Plan classified the parcels as Timber-Seasonal Recreational-Residential. The 1996 General Plan designated the parcels as Natural Resource. The 1969 El Dorado County Zoning Map shows that the subject parcels were zoned TPZ as they are today. 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. The project does not include a request for residential development of any kind and would not reduce the overall acreage of the existing TPZ acreage.

STAFF ANALYSIS

Project Description: Conditional Certificate of Compliance for three parcels created by court partition and subsequent recorded Grant Deeds, which would acknowledge the County's acceptance of the parcels as legally created in accordance with the Subdivision Map Act and local subdivision ordinances. They are currently identified by Assessor's Parcel Numbers 011-030-45 and 46. The acknowledgement would create an 83.55-acre Parcel 1, a 65.78-acre Parcel 2, and a 64.84-acre Parcel 3, as shown in Exhibit F, upon satisfaction of the Conditions of Approval.

Site Description: The existing 132.82-acre and 81.35 parent parcels are located at the 5,000-foot elevation above sea level. They are covered primarily with conifers with some annual grassland areas. The parcels have historically been used as a cattle ranch since the 1940s, and have previously been harvested for timber. There is an existing cabin within the project area estimated to be over 100 years old. The U.S.G.S. Quadrangles, provided as Exhibit G, classify the two streams flowing north to south through the parcels into Union Valley Reservoir as perennial. There are existing historic dirt access and logging roads meandering through the project area.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	TPZ	NR	Timber preserve/vacant.
North	A/TPZ	NR	Timber preserve/U.S. Forest Service and Sierra Pacific lands.
South	A	NR	Recreational/Union Valley Reservoir.
East	A/TPZ	NR	Timber preserve/U.S. Forest Service land.
West	A/AE	NR	Timber preserve/U.S. Forest Service land.

Discussion: Adjacent parcel zoning includes TPZ, Exclusive Agricultural (AE) and Agricultural (A). The area consists of parcels ranging in size from 16 to 120 acres in size. The land use designation consists of Natural Resource in all directions and all parcels are used for timber production and recreational uses. The parcels can be found to be compatible with the surrounding parcel sizes and present uses.

Site Access: The primary access to the parcels provided by Forest Service Road 12N78 which travels south from Ice House Road which is County maintained. Road 12N78 is partially asphalted and leads to Forest Service Road 12N52 which has a graveled surface. This road leads to Forest Service Road 12N30 which is graveled and dirt and leads to the project site. These access roads travel through both U.S. Forest Service and Sierra Pacific Industries (SPI) lands and portions of the roads have existing easements shared by both. The access roads are labeled and shown in Exhibits I-1 and I-2.

El Dorado County Department of Transportation (DOT) has conditioned the project to require that the applicants demonstrate to the County that this project has entitlements for use of the off-site roads and public utility easements to access the site prior to issuance of a clear Certificate of Compliance. The Forest Service would require that the applicants apply for a “Special Use Permit” for the use of their roads by a private property owner, which are valid for ten years at which time they would be reviewed again and either continued or changed. The County would require that the applicants provide proof that both the Forest Service and SPI requirements have been satisfied.

General Plan: The subject property is designated as Natural Resource (NR) on the General Plan Land Use Map which identifies *areas that contain economically viable natural resources and to protect the economic viability of those resources and those engaged in harvesting/processing of those resources including water resources development from interests that are in opposition to the managed conservation and economic, beneficial use of those resources. This designation shall be applied to those lands which are 40 acres or larger in size and contain one or more important natural resource. Compatible uses on private land may include agriculture, rangeland, forestry, wildlife management, recreation, water resources development, and support single-family dwellings. The maximum allowable density for this designation is one dwelling*

unit per 160 acres or larger outside the National Forest Service lands and within “timber production” areas.

Discussion: The project would legitimize three parcels consisting of 83.55, 65.78 and 64.84-acres in size which would be larger than the required 40-acre size allowed but less than the 160-acre size required for parcels above 3,000 feet in elevation. The project does not include a proposal for development. Any future development of permanent structures would require approval of a Special Use Permit consistent with the TPZ Zone District.

Land Use Compatibility: Policy 2.2.5.21 directs that new development be compatible with the surrounding neighborhood.

Consistent: Under the NR land use designation and TPZ zone district, the site is authorized to engage in timber management uses consistent with the surrounding agricultural and timber preserve land uses. As such, the request would be consistent with Policy 2.2.5.21.

Wetland buffers: Policy 7.3.3.4 directs that *buffers and special setbacks of 50 feet from intermittent streams and wetlands.*

Discussion: The project adjoins Union Valley Reservoir on the south boundary. There are two streams classified on the U.S.G.S. Quadrangle as perennial. The applicants would be required to submit a Jurisdictional Wetland Delineation report along with any future Special Use Permit request for construction of permanent structures that would determine which wetland features could be classified as Waters of the U.S. within the parcels. A minimum setback of 100 feet would be required from all perennial streams, rivers, lakes, and 50-foot setback would be required from intermittent streams and wetlands. The project does not propose any development at this time and this discussion is provided for informational purposes only.

Conflicts with Agriculture: Policy 8.3.1.1 (protecting NR lands), **Policy 8.3.2.1** (Lands zoned TPZ not to be less than 160 acres), **Policy 8.3.2.2** (NR lands above 3,000 feet elevation shall maintain a 160-acre minimum parcel size or larger), **Policy 8.3.3.1** (forest lands reserved for multiple use purposes), **Policy 8.3.3.2** (Board of Supervisors considering the advice of the Agricultural Commission about preservation of forest resources), **Policy 8.4.1.2** (permanent 200-foot setback adjacent to NR and TPZ lands, 8.1.4.1 (Agricultural Commission review), and **Policy 8.4.2.1** Agricultural Commission evaluation of discretionary applications involving NR and TPZ lands.

Consistent: Review of the General Plan land use map for the project area indicates that there are no areas designated as being within the Agricultural District (A) General Plan land use overlay designation adjacent to the parcels. They are however, surrounded on all sides by NR designated lands, as shown in Exhibit C.

On December 9, 2009, the El Dorado County Agricultural Commission reviewed and discussed the subject application requests, as well as the County Agriculture staff’s observations and recommendations. The full text of the Memo from the Agricultural Commissioners to Planning staff is included as Exhibit H. The Commission supported the applicant’s project request.

The TPZ, A and AE zoned lands to the east, north and south would be required to be buffered by 200-foot setbacks. The project would not diminish or impair the existing or potential timber use, and would not create conflicts between residential and timber related activities. Any residential use would require an approved Special Use Permit and all three parcels are encumbered by an approved forest management plan. Staff has found the proposed project would not cause significant conflicts with agriculturally or timber preserve-zoned lands because of the previously stated reasons, as well as the recommendation for approval based on the findings made by the Agricultural Commission.

Conclusion: The project has been reviewed in accordance with the General Plan policies and it has been determined that the project is not consistent with the General Plan. Findings of consistency with the General Plan are provided in Attachment 2.

Zoning: The subject parcel is zoned Timberland Preserve Zone (TPZ) which permits a minimum parcel size of 160 acres. All development on the parcel would be subject to the development standards contained in Sections 17.44.030 through 17.44.080 of the County Code which include the requirement for an approved Special Use Permit for any new structure on the parcels as well as a minimum setback of 100 feet from all parcel boundaries and road easements. The resulting 83.55-acre Parcel 1, a 65.78-acre Parcel 2, and a 64.84-acre Parcel 3, as shown in Exhibit F, would not meet the minimum parcel size requirement. The three parcels were however, created by Grant Deeds recorded by El Dorado County following a court partition.

Conclusion: As discussed above, and as conditioned, staff finds that the project can be found to legitimize three legal non-conforming parcels and that the necessary findings can be made to support the request for a conditional Certificate of Compliance. The details of those findings are contained in Attachment 2.

Authority to Issue a Conditional Certificate of Compliance: Section 16.76.050 of County Code states that the Subdivision Map Act requires Conditional Certificates of Compliance be issued on certain types of parcels which were created in violation of the Subdivision Map Act. A local agency may impose any conditions that would have been applicable to the division of the property at the time the current owner(s) acquired his or her interest, except that where the current owner(s) was involved in the initial land division violation, then the local agency may impose any conditions that would be applicable to a current division of the property. The current owners received title on August 3, 1998. A Conditional Certificate of Compliance would be recommended for this division of land.

Conditioning Parcels Over 40-acres in Size: The El Dorado County Subdivisions Ordinance, Design Criteria, Section 16.44.120 (E) states that *when an applicant proposes to create parcels in all other areas, any one of which is less than forty (40) acres or less than a quarter-quarter section or five (5) or more parcels, he/she shall construct and improve a road which conforms to the standard, as set forth in the Subdivision Design and Improvement Standards Manual, to serve each parcel to be created.*

Discussion: Since the subject parcels are greater than 40 acres in size, staff has determined that road improvements are not required for the parcels however; the applicant would be required to provide proof of legal access to the parcels from Ice House Road.

Relevant State Government Code: Section 51119.5 concerns the size of parcels zoned as timberland production lands and reads as follows: *Parcels zoned as timberland production under this chapter may not be divided into parcels containing less than 160 acres unless the original owner prepares a joint timber management plan prepared or approved as to content by a registered professional forester for the parcels to be created. The joint timber management plan shall provide for the management and harvesting of timber by the original and any subsequent owners, and shall be recorded with the county recorder as a deed restriction on all newly created parcels. The deed restriction shall run with the land rather than with the owners, and shall remain in force for a period of not less than 10 years from the date division is approved by the board or council. The division shall be approved only by a four-fifths vote of the full board or council, and only after recording of the deed restriction.*

Discussion: The parcels were subject to a Forest Management Plan dated December 2, 2009. This Plan includes the three parcels resultant of the Deeds recorded in 1994. The Plan is included as Exhibit I. Typically the State's primary concern is the overall acreage of existing timber preserve areas is not being reduced. The project would legitimize three sub-standard sized TPZ parcels but would not reduce the overall acreage of the existing timber preserve acreage.

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 "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." As such, the proposed legalization of three parcels through the Certificate of Compliance process, which would not include any physical development of the parcels, or allow residential development absent of an approved Special Use Permit, is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. A \$50.00 processing 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	Record of Survey 21-41 and 21-41 A
Exhibit D	General Plan Land Use Map
Exhibit E	Zoning Map
Exhibit F.....	Site Plan
Exhibit G.....	Robbs Peak and Riverton U.S.G.S. Quadrangles
Exhibit H.....	Agricultural Commission memo to Planning dated December 16, 2009
Exhibits I-1, I-2.....	Aerial photos
Exhibit J	Forest Management Plan

ATTACHMENT 1
CONDITIONS OF APPROVAL

Conditional Certificate of Compliance COC09-0022
February 25, 2010/Planning Commission Hearing

CONDITIONS OF APPROVAL

Planning Services

1. This Conditional Certificate of Compliance is based upon and limited to compliance with the project description, the exhibits marked Exhibit A through J, 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:

Conditional Certificate of Compliance for Assessor's Parcel Numbers 011-030-45 and 011-030-46 which will acknowledge the County's acceptance of the parcel, as shown in Exhibit F, as legally created accordance with the Subdivision Map Act and local subdivision ordinances.

The grading, development, use, and maintenance of the property, the size, shape, arrangement, and location of structures, parking areas and landscape areas, and the protection and preservation of resources shall conform to the project description above and the hearing exhibits and conditions of approval below. The property and any portions thereof shall be sold, leased or financed in compliance with this project description and the approved hearing exhibits and conditions of approval hereto. All plans must be submitted for review and approval and shall be implemented as approved by the County.

Planning Services Site Specific and Standard Conditions

2. If human remains are discovered at any time during the subdivision improvement phase, the County Coroner and Native American Heritage Commission shall be contacted per Section 7050.5 of the Health and Safety Code and Section 5097.89 of the Public Resources Code. The procedures set forth in Supplementary Document J, Section VIII, of the California Environmental Quality Act (CEQA) Guidelines concerning treatment of the remains shall be followed. If archaeological sites or artifacts are discovered, the subdivider shall retain an archaeologist to evaluate the resource.

If the resource is determined to be important, as defined in Appendix K of the CEQA Guidelines, mitigation measures, as agreed to by the subdivider, archaeologist, and Planning Services shall be implemented. Treatment of Native American remains and/or

archaeological artifacts shall be the responsibility of the parcel owners and shall be subject to review and approval by Planning Services.

3. The applicant shall make the actual and full payment of Development Services Department processing fees for the Conditional Certificate of Compliance application prior to issuance of a clear Certificate of Compliance.
4. 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.
5. All Development Services fees for processing this application shall be paid in full prior to issuance of a clear Certificate of Compliance.
6. 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 applicant 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 by El Dorado County of the Conditional Certificate of Compliance.

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

Department of Transportation

7. **Proof of Offsite Road Entitlements:** The applicant shall demonstrate to the County that this project has entitlements for use of the off-site roads and public utility easements to access the site prior to issuance of a Clear Certificate of Compliance.
8. **Road & Public Utility Easements:** The applicant shall irrevocably offer to dedicate a 50-foot wide non-exclusive road and public utility easement for the on-site access roadways for access of all lots prior to issuance of a Clear Certificate of Compliance. This offer will be rejected by the County.

El Dorado County Agriculture Commission

9. The three parcels subject of this Conditional Certificate of Compliance shall have a 200-foot non-building setback shown along all parcel boundaries, with the exception of those along Union Valley Reservoir to the south, measured from the property line into the subject parcels, with a note that explains it shall apply to incompatible uses including

residential structures. The Agriculture Department shall review and approve the inclusion of this requirement, as a deed restriction, prior to issuance of a Clear Certificate of Compliance. A copy of the recorded Notice of Restrictions for the three separate parcels shall be received by Planning Services for inclusion into the project file, prior to issuance of a Clear Certificate of Compliance.

10. The Forest Management Plan, attached as Exhibit J, shall be recorded with the County Recorder as a deed restriction on all newly created parcels and shall run with the land. The deed restriction shall remain in effect for a period of not less than 10 years from the date the clear Certificate of Compliance is recorded.

ATTACHMENT 2

FINDINGS

Certificate of Compliance COC09-0022 **February 25, 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:

FINDINGS FOR APPROVAL

1.0 CEQA Findings

- 1.1 El Dorado County has determined that the proposed project will have no significant impact on the environment and is exempt from CEQA pursuant to 15302(b) of the CEQA Guidelines.
- 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-Planning Services Department at 2850 Fairlane Court, Placerville, CA.

2.0 Administrative Findings

- 2.1 The issuance of a Conditional Certificate of Compliance for 83.55-acre Parcel 1, a 65.78-acre Parcel 2, and a 64.84-acre Parcel 3, as shown in Exhibit F, and currently identified by Assessor's Parcel Numbers 011-030-45 and 46, meets the requirements of the *Subdivision Map Act* and *County Code Title 16*, and creates parcels with the ability to support timber use, and legitimizes the transfers by Grant Deeds following a court partition.

3.0 General Plan Consistency Findings

- 3.1 The proposed Certificate of Compliance, as conditioned, would legitimize three parcels 83.55, 65.78 and 64.84-acres in size which would be larger than the minimum required 40-acre size allowed within a Natural Resource (NR) designated land use area, but less than the minimum 160-acre size required for parcels above 3,000 feet in elevation in timber production areas. The parcels would not be of a size required by the Timberland Preserve Zone (TPZ), as required by the 2004 General Plan as well as the 1993 General Plan Public Review Draft in effect at the time of the 1994 creation date however, the parcels were created by Grant Deeds recorded by El Dorado County following a court partition.
- 3.2 The proposal, as conditioned, are consistent with the intent of Policies 2.2.5.21 (land use compatibility), 8.3.1.1 (protecting NR lands), 8.3.2.1 (Lands zoned TPZ not to be less than 160 acres), 8.3.2.2 (NR lands above 3,000 feet elevation shall maintain a 160-acre minimum parcel size or larger), 8.3.3.1 (forest lands reserved for multiple use purposes),

8.3.3.2 (Board of Supervisors considering the advice of the Agricultural Commission about preservation of forest resources), 8.4.1.2 (permanent 200-foot setback adjacent to NR and TPZ lands, and 8.4.2.1 (Agricultural Commission review for NR and TPZ designated lands) because the project is conditioned for 200-foot setbacks, will allow uses consistent with the existing uses in the project vicinity, and will preserve the total acreages of the existing timber preserve area.

4.0 Zoning Findings

- 4.1 The project is zoned TPZ which establishes a minimum parcel size of 160 acres. The project would legalize three parcels 83.55 acres, 65.78 acres, and 64.84-acres in size, as shown in Exhibit F, that would not meet the minimum parcel size requirement. The three parcels were however, created by Grant Deeds recorded by El Dorado County following a court partition. Although the parcel sizes are substandard, the Certificate of Compliance has been conditioned requiring that a Notice of Restriction be recorded limiting development of the parcels and maintaining that the parcels are to be used for timber management for a period of not less than ten years in accordance with Government Code 51119.5.