

Agenda of: December 13, 2012

Item No.: 4.d

Staff: Noah R. Triplett

**STAFF REPORT – COMMERCIAL RIVER USE PERMIT APPLICATIONS**

**APPLICANTS:** Commercial outfitters that held River Use Permits in 2012

**REQUEST:** Your Commission approves three-year Commercial River Use Permits for applicants meeting the standards of the Streams and Rivers Commercial Boating Ordinance Chapter 5.48.

**LOCATION:** The project area is located in western El Dorado County, within the South Fork of the American River (South Fork) corridor, between Chili Bar Dam and Salmon Falls Road.

**ENVIRONMENTAL DOCUMENT:** February 28, 2002 initial evaluation by the General Services Department utilizing the El Dorado County Environmental Checklist Form and the Final Environmental Impact Report for the River Management Plan, State Clearinghouse Number 1998092013, certified on March 27, 2001.

**SUMMARY RECOMMENDATION**

Recommend the Planning Commission approve three-year Commercial River Use Permits for applicants meeting the standards established in the Streams and Rivers Commercial Boating Ordinance Chapter 5.48.

**BACKGROUND**

Commercial river use is one of the primary whitewater recreation activities managed by the County through its River Management Plan (RMP). Many of the RMP's provisions for Commercial River Use Permits (Permits) remain unchanged from the 1984 River Management Plan. In particular, the number of Permits issued by the County and the river use allocation associated with each Permit did not change with the 2001 RMP. Permits will generally be issued by your Commission for a three-year term which last occurred in 2007. Annual reviews of permittees' river use plans performed by the General Services Department and Environmental Management Department have been ongoing since adoption of the 2001 RMP. Permit holders must comply with several application and operating requirements annually. In addition, commercial river use is subject to additional conditions or restrictions on river use through the RMP's carrying capacity strategy.

In 2001 the Board took several actions to implement elements of the RMP related to commercial river use, and allow for the issuance of Permits in 2002. First, the Board adopted Ordinance 4594, revising the Streams and Rivers Commercial Boating Ordinance Chapter 5.48, which governs the process by which the County issues Permits (Exhibit A). The Board also adopted Resolution No. 033-2002, which raised the minimum liability insurance coverage to \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

The revisions to Ordinance Chapter 5.48 make the application provisions in the ordinance consistent with the policies of the 2001 RMP. The application procedure by commercial outfitters is essentially the same as the previous RMP. Applicants must provide a river use plan that documents all important aspects of their propose operations: landowner/agency permission for all ingress, egress, camping and other land uses; parking facilities; customer shuttle operations; compliance with health standards for food, water and waste; safety measures; and insurance coverage. Your Commission's decision to approve an application for a Permit will be based upon the standards for the river use plan established in Ordinance Chapter 5.48.070. The County's procedures have been changed by the revisions. County Counsel believes that Commercial River Use Permits should be processed as discretionary permits under the 2001 RMP, and included this designation in the revisions to Ordinance Chapter 5.48.

### **PERMIT ISSUANCE PROCEDURE**

Ordinance Chapter 5.48.050 describes the County's procedure for issuing Commercial River Use Permits. Applicants must submit an application consisting of an application fee and a river use plan that conforms to the standards of Ordinance Chapter 5.48.070. County River Program staff reviews the applications for compliance with the standards for a river use plan and County business license requirements. This staff report contains staff's conclusions and recommendations on whether an application's river use plan meets the standards of Ordinance Chapter 5.48.070.

The ordinance continues the County policy of granting your Commission the authority to issue Commercial River Use Permits. The ordinance states that your Commission shall approve a Permit upon a finding that the application and river use plan meet the standards of Ordinance Chapter 5.48.070 and the RMP. Your Commission shall deny the permit upon a finding that the application and plan do not meet one or more river use plan or RMP standards.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The County has defined Commercial River Use Permits as discretionary permits in Ordinance Chapter 5.48.030.D. CEQA Guidelines §15357 requires that discretionary projects be subject to CEQA, requiring an analysis of the environmental factors that would be potentially affected by the approval of Permits. The initial evaluation by the Department of General Services sought to determine whether the program Environmental Impact Report (EIR) for the RMP could be used as the environmental document for the approval of Commercial River Use Permits. The initial evaluation's Discussion section described the analysis undertaken to determine that the potential environmental effects from the approval of Commercial River Use were within the scope of the project analyzed by the EIR. The analysis concluded that all potentially significant effects from the approval of Commercial River Use Permits were addressed by mitigation measures developed in the EIR for the RMP, with the exception of three potentially significant impacts for which the Board adopted a Statement of Overriding Considerations. The County has incorporated all applicable mitigation measures developed in the EIR into the approval of Commercial River Use Permits.

The General Services Department made the following findings in its initial evaluation pursuant to CEQA Guidelines §15162 and §15168 (c) (2):

1. The approval of Commercial River Use Permits is within the scope of the project described and analyzed in the EIR for the River Management Plan.
2. Although the approval of Commercial River Use Permits could have a significant effect on the environment, all potentially significant impacts have been avoided or mitigated pursuant to the EIR for the River Management Plan or have been determined through the Statement of Overriding Considerations to be acceptable because of economic, public safety and social considerations.
3. No new effects could occur from and no new mitigation measures would be required for the approval of Commercial River Use Permits.
4. No further environmental document is required.

## **COMMERCIAL RIVER USE PERMIT APPLICATION STANDARDS**

This section describes the elements and standards of staff's review of Permit applications as established by Ordinance Chapter 5.48, River Management Plan Element Six, and other applicable County ordinances. The attached Exhibit C summarizes each applicant's compliance with the following standards.

### Application fee

An application fee sufficient to reimburse the County for administrative costs is required by RMP Element 6.2.6.3.1 (pg. 6-19). The fee is currently \$200 per permit.

### Business License and unsecured property tax

RMP Element 6.2.9.2 (pg. 6-21) requires each applicant to maintain a current business license.

The Treasure/Tax Collector's Office requires payment of an annual unsecured property tax by each Permit holder in order to renew a business license.

Chapter 5.48.070 River Use Plan requirements:

A. *Names, mailing address, and location of place of business.*

The applicant must provide the business name and address for tax assessment, business license, and administrative purposes. The applicant also provides the name and address of the primary contact person for Permit violation notices.

The applicant must have a place of business in the County that provides a parking location for commercial vehicles, employee vehicles and customer vehicles. The property must have a Special Use Permit allowing commercial boating use or be zoned commercial. See item E below.

B. *If place of business is located outside County, the name of the local agent within the county who will be available in the event of emergencies or other problems.*

Staff reviews applications by outfitters whose primary place of business is located outside the County for this required information.

C. *Full description of activities proposed to be conducted under the permit.*

Staff reviews descriptions to ensure that applicants do not propose activities such as motorized trips or raft rentals that are prohibited by Ordinance. The form also requires information on type of craft so staff can know what types of craft or trips to expect to see on the water (i.e. rafts, inflatable kayaks, or kayak instruction classes).

D. *Land use requirements (locations of ingress, egress, rest stops, lunch stops, camping or other planned non-emergency stops). All private property locations must have a Special use Permits that allows commercial boating activity. Permits or authorization is required for the use of County, state or federal lands. Section F requires written authorization for use of all lands by an applicant.*

The applicant must list the location of all lands used to conduct river trips including ingresses or put-ins, lunch stops, rest stops, camping areas, and egresses or take-outs. The applicant must provide a letter of authorization for use of private lands from the private property owner. Most property owners provide a list of authorized outfitters to the County. Each private property parcel must have a Special Use Permit allowing commercial rafting use. The level of use allowed by an outfitter's river use allocation must not exceed the conditions and capacities of the Special Use Permit. Permits from California State Parks must be obtained that allow take-outs at Salmon Falls, in the Folsom Lake State Recreation Area, or lunch stops at Marshall Gold State Historic Park. Permits from the Bureau of Land Management must be obtained for use of public lands along the river. For use of Henningsen Lotus Park, the applicant must sign a use-authorization form, which stipulates the conditions for commercial use of the park.

The application form is constructed so that staff can ascertain whether the applicant has a complete plan for ingress into and egress out of the river. Applicants must have authorization for put-ins, take-outs and lunch stops on the upper and lower runs. The Planning Department has responsibility for monitoring compliance with Special Use Permit conditions.

*E. Parking facility requirements for employees, clients, guests and commercial vehicles. Section F requires written authorization for use of all lands by an applicant.*

The applicant must list customer and commercial vehicle parking locations. All parking locations must be on private property with a Special Use Permit allowing commercial boating use or on property that is zoned commercial. Ordinance Chapter 17.18.060, Schedule of Off-Street Vehicle Parking Requirements, defines the minimum parking requirements for campgrounds and River Use Permits: 1 parking space per every three day users plus one space per each designated camping space, or as otherwise determined by the approving authority as provided in Section 17.18.040D.

*G. Shuttle transportation requirements*

The County requires outfitters to shuttle their customers from customer parking areas to the put-in, and from the take-out back to the customer parking areas. Vehicles must meet all current California Vehicle Code regulations. Staff obtains copies of current Public Utility Commission certificates from outfitters that provide their own shuttle service. Most outfitters utilize a local company, River Transportation (which has a Public Utilities Commission B Certificate), for their customer shuttle service.

The State of California provides regulatory oversight over the transportation activities of outfitters through the Public Utilities Commission. The California Public Utilities Code 5371.3 requires outfitters providing transportation services incidental to commercial river rafting to have a Class C Certificate issued by the California Public Utilities Commission (PUC). The PUC, through various statutes, prescribes insurance requirements (including workers compensation certificates), vehicle safety and maintenance standards and driver licensing standards. The California Highway Patrol performs inspections on both vehicles and outfitter records. The PUC requires an annual fee and collects road use taxes from each Certificate holder.

*H. County Health Permit requirements*

Applicant must sign an agreement produced by the Environmental Health Division. The agreement requires applicant to: 1) obtain a food facility permit; 2) have one employee obtain a food handling certificate; 3) undergo an inspection of food handling operations; 4) abide by the Commercial Rafting Sanitation Guidelines. Staff reviews to ensure the applicant has signed the agreement. The Environmental Health Division administers the permits and inspections.

The outfitter food preparation, solid waste, sewage and sewage disposal and water supply policies found in the Commercial Rafting Sanitation Guidelines are standards consistent with the California Uniform Retail Food Facilities Law.

*I. Planned safety measures that meet the standards of Section 5.48.120.*

RMP Element 6.2.7 (pg. 6-20) has two commercial guide requirements. First, commercial trip leaders are required to have certification of swiftwater rescue training. Second, all guides are required to sign an agreement to comply with safety and etiquette standards. Each outfitter will be required to provide a list of guides and accompanying evidence of swiftwater rescue training to the County. Every commercial trip by the outfitter must include at least one guide with swiftwater rescue training. Staff will also present the goals of the safety and etiquette standards and the relationship of the standards to the RMP's carrying capacity elements. All river guides of each outfitter will be required to sign the safety and etiquette agreement. Section 5.48.140 provides penalties for violation of the safety equipment and standards required by Section 5.48.120.

Applicants must provide a copy of the water flow notice required by RMP Element 6.2.9.3.

*J. Proof of liability insurance.*

Resolution #033-2002 establishes the requirements for workers' compensation and commercial general liability insurance. Applicants are required to submit current certificates of insurance. Staff reviews the certificate for compliance with Resolution #033-2002.

*K. Boat logo or identification*

Staff ensures each outfitter's logo is unique.

**DISCUSSION:**

The full meaning of the RMP's designation of Commercial River Use Permits as discretionary permits has not been explored. The standards for river use plans in Section 5.48.070 are largely ministerial. The swiftwater rescue training requirements, however, may be interpreted as discretionary because there is not a fixed and objective national or state standard for this type of training. In future years, the RMP's mitigation monitoring program may reveal impacts for which the County must provide mitigation. The County may use considerable judgment in imposing conditions to mitigate these impacts, including the implementation of the carrying capacity related actions. These potential actions could take effect through your Commission approving Permits with applicable carrying capacity actions attached as conditions of approval.

For the initial approval of Commercial River Use Permits under the RMP in 2002, staff infers that discretion includes imposing reasonable conditions on a Permit's approval based on professional judgment. There are two issue areas discussed below that result in staff requesting your Commission to attach conditions to the approval of a number of Permits.

**Status of Permittees not included in recommendations for approval**

Two outfitters have not completed or applied for applications for a 2012 Permit as of July1, 2012:

- Fluid Dynamics Kayaking, RUP #36
- Action Whitewater Adventures, RUP #63

One outfitter is new and has a one year provisional permits.

- River Rat and Co., RUP #67

One outfitter is not in good standing with the County

- Gold Rush Outfitters, LLC., RUP #02

**FINDINGS:**

The application for a Commercial River Use Permit by the following outfitters meets the standards required by the River Management Plan and County Ordinance Chapter 5.48.070.

<u>Outfitter Name</u>	<u>Permit Number(s)</u>
Mariah Whitewater Expeditions	#01
Pirate Rafting Co.	#03
River Runners Inc.	#05
WET River Trips	#08
All Outdoors, Inc.	#10, 49, 52
Tributary Whitewater Tours	#11
Whitewater Connections	#13, 28, 44, 47
Disabled Sports USA	#15
Sierra Nevada College	#18
Sierra Whitewater	#19
River Otter Adventures	#20
Whitewater Excitement	#23, 30, 43
California Canoe & Kayak	#24
California River Adventures	#25
Whitewater Voyages	#26
Associated Students, Chico CSU	#27
American River Touring Assoc.	#32
Current Adventures Kayak School	#33
Wilderness Adventures	#34
ASI, PEAK Adventures	#38
American River Recreation	#40
American Whitewater Expeditions	#45
Beyond Limits Adventures	#48

Adventure Connection	#50
Rock n Water	#55
Earthtrek Expeditions	#58
Tahoe Whitewater Tours	#60, 59
Motherlode River Trips	#68, 51, 61
OARS, Inc.	#70, 14
River and Rock Adventures	#72
Rubicon Whitewater Adventures	#74
Outdoor Adventures, UC Davis	#75
Environmental Traveling Companions	#79

**RECOMMENDATION:**

Your Commission approves three-year Commercial River Use Permits for the following applicants:

<u>Outfitter Name</u>	<u>Permit Number</u>
Mariah Whitewater Expeditions	#01
Pirate Rafting Co.	#03
River Runners Inc.	#05
WET River Trips	#08
All Outdoors, Inc.	#10, 49, 52
Tributary Whitewater Tours	#11
Whitewater Connections	#13, 28, 44, 47
Disabled Sports USA	#15
Sierra Nevada College	#18
Sierra Whitewater	#19
River Otter Adventures	#20
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Tahoe Whitewater Tours	#60, 59
Motherlode River Trips	#68, 51, 61
OARS, Inc.	#70, 14

River and Rock Adventures #72  
Rubicon Whitewater Adventures #74  
Outdoor Adventures, UC Davis #75  
Environmental Traveling Companions #79

**ATTACHMENTS**

Exhibit A: Streams and Rivers Commercial Boating Ordinance Chapter 5.48

Exhibit B: Environmental Checklist Form and Discussion of Impacts