

**EL DORADO COUNTY DEVELOPMENT SERVICES  
ZONING ADMINISTRATOR  
STAFF REPORT**



**Agenda of:** January 20, 2010  
**Item No.:** 5.a.  
**Staff:** Tom Dougherty

**CERTIFICATE OF COMPLIANCE**

**FILE NUMBER:** COC09-0012

**APPLICANT:** John and Mark Paye

**REQUEST:** Conditional Certificate of Compliance for Assessor's Parcel Number 061-071-26 created by U.S. Government Patent on August 3, 1998 and transferred to Mark Paye by Grant Deed recorded on that same day.

**LOCATION:** On the north and south sides of Wentworth Springs Road at the intersection with Fox Run Road in the Georgetown area, Supervisorial District IV. (Exhibit A)

**APN:** 061-071-26 (Exhibit B)

**ACREAGE:** 105 acres

**GENERAL PLAN:** Open Space (OS) (Exhibit D1)

**ZONING:** Estate Residential Ten-Acre (RE-10) (Exhibit E)

**ENVIRONMENTAL DOCUMENT:** Negative Declaration

**RECOMMENDATION:** Staff recommends that the Zoning Administrator take the following action:

1. Adopt the Negative Declaration based on the Initial Study prepared by staff; and
2. Issue a Conditional Certificate of Compliance, 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 a 105-acre parcel identified by Assessor's Parcel Number 061-071-26 which was created when the U.S. Bureau of Land Management established a government patent for the parcel on August 3, 1998.

The issuance of a Certificate of Compliance would acknowledge the County’s acceptance of the parcel as legally created in accordance with the Subdivision Map Act and local subdivision ordinances, and would allow development of the property consistent with the Estate Residential Ten-Acre Zone District (RE-10).

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 parcel cannot be developed until such time as a *clear* Certificate of Compliance is recorded.

**STAFF ANALYSIS**

**Project Description:** Conditional Certificate of Compliance for Assessor’s Parcel Number 061-071-26, which would acknowledge the County’s acceptance of the parcel as legally created in accordance with the Subdivision Map Act and local subdivision ordinances creating one, 105-acre parcel upon satisfaction of the Conditions of Approval. The parcel would be served by either a future well or a public water source and an onsite septic wastewater system.

**Site Description:** The 105-acre parcel is located at the 2,800 to 2,900-foot elevation above sea level. The parcel is covered primarily with young conifers with scattered black oaks. The parcel was recently logged and there are remnants of past surface mining activities on the site. There are access roads that transverse the western portion of the subject site. There are two swaths of trees cut out of the parcel to allow for water and power facilities that pass through the parcel. The portion of the parcel north of Wentworth Springs Road has varied slopes that generally do not exceed 30 percent. There is an unnamed ephemeral swale draining the upper central portion to the north and a Georgetown Divide Public Utility District open irrigation ditch passing through the central portion from south to north. The portion south of Wentworth Springs Road is split by two graveled roads running north and south through the parcel with a ravine in between.

**Adjacent Land Uses:**

	<b>Zoning</b>	<b>General Plan</b>	<b>Land Use/Improvements</b>
<b>Site</b>	RE-10	LDR	Open Space/Vacant, 105 acres.
<b>North</b>	RE-10/RA-20	LDR	Residential/single family dwellings, two parcels ranging from 16 to 114 acres..
<b>South</b>	RE-5	LDR	Residential/Single family dwellings, nine parcels from 0.65 to 40 acres.
<b>East</b>	RE-5	LDR	Residential/Single family dwellings and a Georgetown Fire Protection District substation. Three, 1.0 to 5.4-acre parcels.
<b>West</b>	RE-5/RE-10	LDR	Residential/Single-family residences, four, 8.5 to 19-acre parcels.

**Discussion:** The area consists of parcels ranging in size from 1.51 to 114-acres in size. The land use designations consist of Low Density Residential in all other directions. The parcel can be found to be consistent with the surrounding development.

**Site Access:** The access to the northwest part of the site is provided by Fox Run Road and Fox Kit Court. Access to the eastern portion of the site is provided by multiple driveways connected to Wentworth Springs Road. Access to the south side of the site is provided by both Raintree Road and Tannu Lane. All roads are graveled.

**General Plan:** The subject property is designated as Open Space (OS) on the General Plan Land Use Map. The OS land use designation establishes areas designated *public lands under governmental title (County, State Parks, BLM, U.S. Bureau of Reclamation, U.S. Forest Service, etc.)*, where no development other than that specifically needed for government-related open space uses is desired. This land use includes State parks, ecological preserves, and public lands acquired specifically for open space uses.

**Discussion:** The subject parcel was previously owned by the U.S. Bureau of Land Management (BLM) for the purpose of protecting potential mineral and timber resources. The submitted *Cultural Resource Survey, Peter Jensen*, dated January 20, 2009 reported evidence of a prior history of surface mining and logging operations generally over the entire parcel. It further reported that no significant historical or prehistoric resources are present on the parcel. By creating a U.S.A. Patent and then transferring the parcel to private ownership, the BLM relinquished their preservation and protection responsibility.

The General Plan does not state a required parcel size for lands designated OS and does not permit residential development. OS is typically not sub-dividable. The subject 105-acre parcel does conform to the RE-10 zone district minimum size of ten acres. A General Plan Amendment to Low Density Residential (LDR) land use would be required to permit single family residential development. The following General Plan policy applies to this project:

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

**Consistent:** The 105-acre parcel size would be consistent with the development pattern for the area.

**Conclusion:** The project has been reviewed in accordance with the General Plan policies and it has been determined that the project is consistent with the General Plan. Findings of consistency with the General Plan are provided in Attachment 2.

**Zoning:** The subject parcel is zoned Estate Residential Ten-Acre (RE-10) which permits a minimum parcel size of ten acres. All development on the parcel would be subject to the development standards contained in Sections 17.70.070 through 17.70.110 of the County Code with a land use designation change to LDR. The resulting 105-acre parcel would meet the minimum parcel size requirement.

**Conclusion:** As discussed above, and as conditioned, staff finds that the project can be found to be consistent with the RE-10 Zoning District and that the necessary findings can be made to support the request for a 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 parcel is greater than 40 acres in size, staff has determined that road improvements are not required for this existing parcel however; the applicant would be required to provide proof of legal access to the parcel from Miled Lane to Tannu Lane through the parcel identified by Assessor's Parcel Number 061-410-61.

## **ENVIRONMENTAL REVIEW**

Staff has prepared an Initial Study (Environmental Checklist with Discussion attached as Exhibit J) to determine if the Special Use project may have a significant effect on the environment. Based on the Initial Study, staff has determined that there is no substantial evidence that the proposed project would have a significant effect on the environment, and a Negative Declaration has been prepared.

This project is located within or adjacent to an area which has wildlife resources (riparian lands, wetlands, watercourse, native plant life, rare plants, threatened and endangered plants or animals, etc.). In accordance with State Legislation (California Fish and Game Code Section 711.4), the project is subject to a fee of \$2,010.25 after approval, but prior to the County filing the Notice of Determination on the project. This fee plus a \$50.00 administration fee, is to be submitted to Planning Services and must be made payable to El Dorado County. The \$2,010.25 is forwarded to the State Department of Fish and Game and is used to help defray the cost of managing and protecting the State's fish and wildlife resources.

## 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 .....	Parcelization Map
Exhibit D1 .....	General Plan Land Use Map
Exhibit D2 .....	Georgetown Rural Center Map
Exhibit E .....	Zoning Map
Exhibit F .....	Applicant submitted site plan
Exhibit G .....	Georgetown U.S.G.S. Quadrangle
Exhibit H .....	Soils Map
Exhibits I1, I2 .....	Aerial photos
Exhibit J .....	Environmental Checklist, Discussion of Impacts

**ATTACHMENT 1**  
**CONDITIONS OF APPROVAL**

**Certificate of Compliance COC09-0012/Paye**  
**January 20, 2010 Zoning Administrator Hearing**

**CONDITIONS OF APPROVAL**

**Planning Services**

1. This certificate of compliance is based upon and limited to compliance with the project description, the exhibits marked Exhibits 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:

Certificate of Compliance for Assessor's Parcel Number 061-071-26 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. In the event of the discovery of human remains, all work is to stop and the County coroner shall be immediately notified pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code. If the remains are determined to be Native American, the Coroner must contact the Native American Heritage Commission within 24 hours. The treatment and disposition of human remains shall be completed consistent with guidelines of the Native American Heritage Commission.
3. The applicant shall make the actual and full payment of Development Services Department processing fees for the Certificate of Compliance application prior to issuance of a Clear Certificate of Compliance.
4. The applicant shall submit to Planning Services a \$50.00 recording fee and a \$2,010.25 Department of Fish and Game fee prior to filing of the Notice of Determination by the

County. No permits shall be issued or Certificate of Compliance issued until said fees are paid.

5. No building permits shall be issued until a Clear Certificate of Compliance is recorded.
6. All Development Services fees for processing this application shall be paid in full prior to issuance of a Clear Certificate of Compliance.
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 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 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**

8. The applicant shall provide proof of access to the project site from Wentworth Springs Road through Tannu Lane and Miled Lane to the parcel identified by Assessor's Parcel Number 061-410-61 prior to issuance of a clear Certificate of Compliance. Said proof shall be provided by and through a "Parcel Map Guarantee" which shall be submitted to the County Surveyor's Office.

## **ATTACHMENT 2**

### **FINDINGS**

#### **Certificate of Compliance COC09-0012/Paye January 20, 2010 Zoning Administrator 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 considered the Negative Declaration together with the comments received during the public review process. The proposed General Plan Amendment project, will not have a significant effect on the environment. The Negative Declaration reflects the independent judgment of the County and has been completed in compliance with CEQA.
- 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 a 105-acre parcel, identified by APN 061-071-26 meets the requirements of the *Subdivision Map Act* and *County Code Title 16*, and creates a parcel consistent with the RE-10 Zone District with the ability to support residential use and that a legitimate transfer took place and with an accurate legal description.

##### **3.0 General Plan Consistency Findings**

- 3.1 The proposed Certificate of Compliance, as conditioned, is consistent with the Open Space General Plan land use designation for density and land use because it would allow for the preservation of natural resources and meets the parcel size requirements for the RE-10 zone district.
- 3.2 The proposal, as conditioned, is consistent with the intent of Policy 2.2.5.21 because the project is consistent with the dominant lot pattern of development in the project vicinity.

##### **4.0 Zoning Findings**

- 4.1 The project is zoned Estate Residential Ten-Acre (RE-10) which establishes a minimum parcel size of 10 acres. The project would legalize a parcel 105 acres in size which is consistent within the RE-10 zone district. The proposed parcel conforms to existing zoning.