

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



Agenda of: May 19, 2010
Item No.: 4.a.
Staff: Aaron Mount

SPECIAL USE PERMIT

FILE NUMBER: S09-0005/Hulett TPZ Caretaker's Residence

APPLICANT: Kelly and Mike Hulett

REQUEST: Special Use Permit to allow a caretaker's residence, an agricultural storage building, and storage shed on a parcel within the Timberland Preserve Zone district.

LOCATION: On the north side of Forest Service Road 11N38, approximately 6 miles east of the intersection with Ice House Road in the American River Canyon area, Supervisorial District II. (Exhibit A)

APN: 011-100-11

ACREAGE: 40.47 acres

GENERAL PLAN: Natural Resources (NR) (Exhibit B)

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

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

RECOMMENDATION: Staff recommends the Zoning Administrator take the following actions:

1. Find the project is Exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines (New Construction or Conversion of Small Structures); and
2. Approve Special Use Permit S09-0005 based on the findings in Attachment 2 and subject to the conditions in Attachment 1.

BACKGROUND

The applicants acquired the subject parcel in 2001 and have actively managed the property for timber production since that time. The application has been revised multiple times with the final project description being heard at the Agricultural Commission on March 10, 2010. In 2003 a code enforcement case was opened for the existing 120 square foot storage shed.

STAFF ANALYSIS

Staff has reviewed the project for compliance with the County’s regulations and requirements. An analysis of the special use permit request and issues for Zoning Administrator consideration are provided in the following sections.

Project Description: A request for a 1,600 square foot single family residence, a 500 square foot agricultural storage building, and a 120 square foot storage shed on a parcel within the TPZ zone district. All permanent structures require a special use permit in the TPZ zone district.

Site Description: The project parcel is at an average elevation of 5,000 feet above sea level on a south facing slope of the American River canyon. Improvements include a 120 square foot storage shed and two onsite access roads (driveways). The area proposed for the residence and agricultural structure have been previously graded. Subject parcel soils consist of Chaix Coarse Sandy Loam and Crozier-Cohasset Loams of which both are considered timber production soils. The applicants have an approved Forest Management Plan and have been managing their property according to the plan, including removal of fire damaged trees, clearing of brush, and replanting of timber.

Adjacent Land Uses:

	Zoning	General Plan	Land Use/Improvements
Site	TPZ	NR	Timberland/ storage shed
North	RA-160	NR	USDA Forest Service land/ unimproved
South	TPZ	NR	Timberland/ unimproved
East	RA-160	NR	USDA Forest Service land/ unimproved
West	RA-160	NR	USDA Forest Service land/ unimproved

Access: The subject parcel is accessed by US Forest Service (USFS) roads that connect to Ice House Road, which is a county maintained road. The County has no jurisdiction to condition improvements to the two USFS roads that are used for access. The applicants have received approval from the USFS to improve Forest Service road 11N38G which is used to directly access the subject parcel. On-site access improvements will be required at the building permit stage to fire safe

residential driveway standards. The subject parcel is not accessible during the winter and other times when the USFS roads are impassable.

Fire Protection: The subject parcel is not within a defined fire protection district service area or sphere of influence. The subject parcel is adjacent, 0.6 of a mile, to a portion of the El Dorado County Fire Protection District service area which serves the Kyburz Rural Center and the clusters of residences in the American River Canyon. Annexation would require extending the El Dorado County Fire Protection District service area and sphere of influence to the project parcel and would include the parcels between the project parcel and the service area which are undeveloped timber lands. The USFS currently provides wildfire protection services to the project parcel and adjacent undeveloped timberland parcels. On June 18, 2009 the El Dorado County Fire Protection District Board at its regular meeting approved the option of an out-of-service area contract for the project parcel for structural fire protection as annexation may not be an option due to the project parcel not being in the sphere of influence.

Water Source and Septic System Design: The projects water source is a spring whose water rights have been approved by the State and the water quality and quantity has been approved by Environmental Health. A septic system will be evaluated at the time of the building permit. Environmental Health had no concerns that the project parcel would be able to have a viable septic system based on the parcels size and soil types.

General Plan: The General Plans designate the subject site as Natural Resources (NR). This land use designation is to identify 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. The important natural resources of the County include forested areas, mineral resources, important watershed, lakes and ponds, river corridors, grazing lands, and areas where the encroachment of development would compromise these natural resource values. 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 following policies apply to the subject project:

Policy 2.2.5.2: Applications for discretionary projects or permits, including special use permits, shall be reviewed to determine consistency with General Plan policies. No approvals shall be granted unless a finding is made that the project or permit is consistent with the General Plan.

Residential use of timberland is in general inconsistent with growing and harvesting of timber. However, it is recognized that in certain situations such as intensively managed minimum size acreages, nurseries, etc., in private ownership, living quarters and outbuildings are necessary in connection with the management and protection of the property; therefore, the applicant has applied for the required Special Use Permit. The application has been reviewed in accordance with Section 17.44.050 of the County Code, which states that the applicant must show and demonstrate that the land has been under intensive management for three consecutive years for the Special Use Permit to be granted by the Zoning Administrator. The applicant has provided documentation consisting of

Timber Harvesting Plans and a Forest Management Plan to support the application. It can be found through the discretionary Special Use Permit process that the project is consistent with the specific, fundamental, and mandatory land use development goals, objectives, and policies of the General Plan. Staff finds that the project, as conditioned, will be compatible with the adjacent and surrounding properties, and conforms to the General Plan.

Policy 2.2.5.21 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 development project is proposed. Development projects that are potentially incompatible with existing adjoining uses shall be designed in a manner that avoids any incompatibility or shall be located on a different site.

The proposed development is consistent with the development standards of the TPZ Zone District and should not have an impact on adjacent timber operations. Additionally the proposed development meets the 200 foot setbacks required by Policy 8.4.1.2.

Policy 7.4.4.1: The Natural Resource land use designation shall be used to protect important forest resources from uses incompatible with timber harvesting.

Section 17.44.050 of the County Code recognizes that residential use of timberland is in general inconsistent with growing and harvesting of timber. However, it is recognized that in certain situations such as intensively managed minimum size acreages, nurseries, etc., in private ownership, living quarters and outbuildings are necessary in connection with the management and protection of the property. Therefore, by recommendation of the Agricultural Commission acknowledging that three consecutive years of intensive management of lands have been shown by the landowner, the Zoning Administrator may grant a Special Use Permit for construction of a one owner or caretaker occupied single-family detached dwelling or a mobile home on an approved foundation. The applicant has provided documentation consisting of Timber Harvesting Plan and a Forest Management Plan to support the application.

Policy 8.3.1.1: Lands suitable for timber production which are designated Natural Resource (NR) on the General Plan land use map and zoned Timber Production Zone (TPZ) or Forest Resource (FR) are to be maintained for the purposes of protecting and encouraging the production of timber and associated activities.

The applicant intends to maintain timber production and associated activities on the property, which includes the planting of Christmas trees.

Policy 8.4.2.1: The County Agricultural Commission shall evaluate all discretionary development applications involving identified timber production lands which are designated Natural Resource or lands zoned Timberland Production Zone (TPZ) or lands adjacent to the same and shall make recommendations to the approving authority. Prior to granting an approval, the approving authority shall make the following findings:

a. *The proposed use will not be detrimental to that parcel or to adjacent parcels for long-term forest resource production value or conflict with forest resource production in that general area;*

- b. The proposed use will not intensify existing conflicts or add new conflicts between adjacent proposed uses and timber production and harvesting activities;*
- c. The proposed use will not create an island effect wherein timber production lands located between the project site and other non-timber production lands are negatively affected;*
- d. The proposed use will not hinder timber production and harvesting access to water and public roads or otherwise conflict with the continuation or development of timber production harvesting; and*
- e. The proposed use will not significantly reduce or destroy the buffering effect of existing large parcel sizes adjacent to timber production lands.*

The Agricultural Commission reviewed the application on April 8, 2009, and found that three consecutive years of intensive management of lands had been shown by the landowner, and that a 1,600 square foot owner or caretaker occupied single-family detached dwelling could be constructed on the property. At its regularly scheduled meeting on March 10, 2010 the Agricultural Commission approved the requested agricultural structure with modification. A 1,500 square foot agricultural building was requested but the Commission expressed that the size was not justified and would have an impact on the timber potential of the project parcel. The Agricultural Commission recommended a size of 500 feet for the agricultural building which the applicants have agreed to.

Conclusion: As discussed above, staff finds that the project, as proposed/conditioned, does not conform to the General Plan.

Zoning: The proposed use is permitted in the TPZ Zone District, pursuant to Section 17.44.050 and 17.44.040.B. In order to approve the project, the approving authority must find that the project is consistent with the General Plan and would not be detrimental to the public health, safety and welfare nor injurious to the neighborhood. Based on comments received from public agencies as discussed below, staff finds that the project would not be detrimental to the public health, safety and welfare and would not be injurious to the neighborhood.

17.44.050 Criteria for residential use.

A. Residential use of timberland is in general inconsistent with growing and harvesting of timber. However, it is recognized that in certain situations such as intensively managed minimum size acreages, nurseries, etc., in private ownership, living quarters and outbuildings are necessary in connection with the management and protection of the property. Therefore, by recommendation of the agricultural commission acknowledging that three consecutive years of intensive management of his lands have been shown by the landowner, the zoning administrator may grant a special use permit for construction of one owner or caretaker occupied single-family detached dwelling or a mobile home on an approved foundation.

B. The following criteria will aid the agricultural commission in determining what constitutes intensive management and must be in any case considered in granting a special use permit for a residence.

C. Where a landowner has:

- 1. A timber inventory of his stand;*
- 2. Conducted commercial harvesting operations;*
- 3. Provided legal and physical access to his property so commercial operations can be carried out;*
- 4. Made a reasonable effort to locate the boundaries of the property and has attempted to protect his property against trespass;*
- 5. Conducted disease or insect control work;*
- 6. Performed thinnings, slash disposal, pruning and other appropriate silvicultural work;*
- 7. Developed a fire protection system or has a functioning fire protection plan;*
- 8. Provided for erosion control on existing roads and skid trails and has maintained existing roads;*
- 9. Planted a significant portion of the understocked areas of his parcel*

Discussion: In 2002 a Forest Management Plan was approved by California Department of Forestry. The parcel was last logged in 1992 and in 2006 11,125 seedlings were planted and an herbicide treatment was applied. In 2008 600 silver tips were planted for Christmas trees. The parcel was surveyed by the USFS in 1985 and the entrance to the parcel is gated. The parcel has adequate access and the applicants are obtaining a Special Use Permit from the USFS for residential and commercial access. At its regularly scheduled meeting on April 8, 2009 the Agricultural Commission recommended approval of the residence and again on March 10, 2010 they approved the requested agricultural structure with modification in size.

17.44.060 Development standards. The following area and building regulations shall apply in TPZ districts unless a variance is first obtained from the planning commission or zoning administrator:

A. Minimum parcel area:

- 1. Any use permitted in Sections 17.44.040 or 17.44.050 shall be allowed on any existing parcel of record as of October 12, 1976,*
- 2. Any use permitted in Sections 17.44.040 or 17.44.050 shall be allowed on a parcel of not less than one hundred sixty contiguous (as defined in Section 51100(b) of Article 7, Chapter 6.7 of the Government Code) acres or the equivalent of a quarter of a section or sections within which the parcel is located, whichever is less, where the parcel is created after October 12, 1976;*

B. Minimum setback, one hundred feet on any side;

C. Maximum building height shall not exceed fifty feet, nor shall buildings exceed any applicable height restrictions imposed by airport approach districts. (Ord. 3452 §1, 1984: prior code §9432(F))

Discussion: The subject parcel was created June 3, 1966. The location of the structures greatly exceeds the required 100 foot setback and all structures will not exceed the height limit of 50 feet.

ENVIRONMENTAL REVIEW

This project has been found to be Categorical Exempt from CEQA pursuant to Section 15303 (a) new construction. This CEQA exemption allows for one single-family residence, or a second dwelling unit in a residential zone. The subject property is TPZ land; however, it is believed that the exemption applies because the exemption is not limited to the example. There is no reasonable possibility that the construction of the owner or caretaker occupied single-family detached dwelling will have a significant effect on the environment due to unusual circumstances. The project will not result in damage to a scenic resource. The project is not located on a hazardous waste site. The project will not cause a substantial adverse change in the significance of a historical resource. A \$50.⁰⁰ processing fee is required by the County Recorder to file the Notice of Exemption.

SUPPORT INFORMATION

Attachments:

Attachment 1	Conditions of Approval
Attachment 2	Findings
Exhibit A	Location Map
Exhibit B	Assessor's Plat Map
Exhibit C	General Plan Land Use Map
Exhibit D	Zoning Map
Exhibit E	Local Circulation
Exhibit F	EDCFPD Boundaries
Exhibit G	ENF Route Inventory Map SW Kyburz
Exhibit H	Letter From Applicant Dated 1/22/09
Exhibit I	Site Plan
Exhibit J	Residential Floor Plan
Exhibit K	Ag Commission Memo Dated 4/15/09
Exhibit L	Ag Commission Memo Dated 3/19/10

ATTACHMENT 1

CONDITIONS OF APPROVAL

Special Use Permit S09-0005/Hulett TPZ Residence Zoning Administrator/May 19, 2010

Conditions of Approval:

1. This special use permit is based upon and limited to compliance with the project description, the Planning Commission hearing exhibits marked Exhibits E and F, dated May 19, 2010, 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:

Special use permit (SUP) authorizes construction of a 1,600 square foot caretaker's residence, a 500 square foot agricultural storage building, and a 120 square foot storage shed in conformance with Exhibit I and J. Domestic water will be supplied by a spring and sewage disposal will be provided by septic facilities.

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 (such as Landscape and Tree Protection Plans) must be submitted for review and approval and shall be implemented as approved by the County.

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 Exhibits E through F. Minor variations are allowed, however, any major changes in the design of buildings, location of buildings, and access ways shall require review and approval by the Planning Services prior to project modifications.
3. All Planning Services fees shall be paid in full prior to issuance of the building permit.

4. Written approval of a Special Use Permit issued by the USDA Forest Service for access shall be submitted to Planning Services prior to finaling of the building permit.
5. The applicants shall enter into an out of area service contract with the El Dorado County Fire Protection District prior to finaling of the building permit.
6. The owner shall obtain a timber conversion permit or timber conversion exemption from Cal Fire prior to issuance of any building permit.
7. 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.
8. Condition Compliance: Prior to issuance of a building permit or 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.
9. Archeological Resources: In the event a heritage resource or other item of historical or archaeological interest is discovered during grading and construction activities, the applicant shall ensure that all such activities cease within 50 feet of the discovery until an archaeologist can examine the find in place and determine its significance. If the find is determined to be significant and authenticated, the archaeologist shall determine the proper method(s) for handling the resource or item. Grading and construction activities may resume after the appropriate measures are taken or the site is determined not to be of significance.

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.

Planning Services shall verify the inclusion of this notation on the grading plans prior to the issuance of a grading permit.

10. Hold Harmless Agreement: 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.

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

ATTACHMENT 2

FINDINGS FOR APPROVAL

Special Use Permit S09-0005/Hulett TPZ Residence Zoning Administrator/May 19, 2010

1.0 CEQA FINDING

- 1.1 The caretaker's residence, agricultural storage structure, and storage shed are found to be Categorically Exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines which exempts construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure from further environmental review.
- 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.

2.0 SPECIAL USE PERMIT FINDINGS

2.1 The issuance of the permit is consistent with the General Plan;

The proposed project has been analyzed for consistency with General Plan Policies 2.2.5.2 (General Plan Consistency), 2.2.5.21 (Compatibility With Adjacent Uses), 7.4.4.1 (Protection of Forest Resources), 8.3.1.1 (Maintaining Timber Production), 8.4.2.1 (Impact to Timber Production Lands) and has been found to be consistent with these policies. The proposed project is also consistent with the General Plan Land Use Designation of NR.

2.2 The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood;

The proposed project will comply with the Development Standards of the TPZ zone district. The proposed Special Use Permit for the residence and associated agricultural structures has been found to comply with the requirements of Chapter 17.22, Special Use Permits, and the proposed use is not considered detrimental to the public health, safety and welfare, nor injurious to the neighborhood, because the project has been designed to comply with setback requirements, provide for landscape buffers, restrict hours of operation and comply with lighting requirements. The project would not be detrimental to adjacent timberland uses.

2.3 The proposed use is specifically permitted by special use permit pursuant to this Title.

The proposed use is specifically permitted in the TPZ Zone District pursuant to Section 17.44.040.B and 17.44.050 of the Zoning Ordinance which states that permanent structures and residences are allowed only after obtaining a Special Use Permit.