

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



**Agenda of:** December 16, 2015  
**Item No.:** 4.a.  
**Staff:** Rob Peters

**CERTIFICATE OF COMPLIANCE REVISION**

**FILE NUMBER:** COC11-0007-R/Beam COC Revision

**APPLICANT:** Denton Beam

**AGENT:** Steven Becker

**REQUEST:** Certificate of Compliance revision to allow modification of Condition of Approval Number 9 requiring the applicant to show proof of access to a State or County Maintained Road.

**LOCATION:** Northwest side of Cement Hill Road, approximately 0.6 miles from Bottle Hill Road, in the Georgetown area, Supervisorial District 4. (Exhibit A)

**APN:** 061-780-03, 061-780-05, 061-780-08, 061-780-09 and 061-780-10 (Exhibit B)

**ACREAGE:** 118.83 acres

**GENERAL PLAN:** Rural Residential (RR) (Exhibit C)

**ZONING:** Residential Agricultural-80 (RA-80) (Exhibit D)

**ENVIRONMENTAL DOCUMENT:** Statutorily exempt pursuant to Section 15268 of the CEQA Guidelines

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

- 1) Certify that the project is statutorily exempt from CEQA pursuant to Section 15268 of the CEQA Guidelines, as a Certificate of Compliance is a ministerial project; and

- 2) Approve Certificate of Compliance Revision COC11-0007-R based on the revised Findings and subject to the revised Conditions of Approval as presented.

## PROJECT INFORMATION

**Site Description:** The subject site lies at an average elevation of 2,000 feet above mean sea level and is approximately 1.5 miles north of the Georgetown Rural Center. The forested parcels are undeveloped and would be served by individual septic systems and well water (Exhibit E). Adjacent land uses include rural residential, agricultural, natural resources, and open space.

**Project Description:** Certificate of Compliance (COC) revision to allow modification of Condition of Approval Number 9 requiring the applicant to show proof of access to a State or County Maintained Road.

## STAFF ANALYSIS

**Background:** COC11-0007 was approved by the Zoning Administrator on June 5, 2013 allowing issuance of two Conditional Certificates of compliance for five parcels created by Gift Deeds and Grant Deed recorded in 1980 and 1981 resulting in two parcels. Revisions to the existing findings and conditions of approval for COC11-0007 are shown in the attached findings and conditions of approval in strikeout/underline format.

**Access:** Access to the subject site is currently provided by Canyon Creek and Bottle Hill Roads. Existing Condition of Approval Number 9, from the Surveyor's Office, requires the applicant to show proof of access to a State or County Maintained road and to irrevocably offer to dedicate in fee, 50-feet of right-of-way along the on-site portions of the access roadway located on the proposed parcels in its entirety, prior to issuance of a clear COC.

Access along Bottle Hill Road (Road 13N58) is under the jurisdiction of the Forest Service, Eldorado National Forest. According to a letter dated August 14, 2015 from the Forest Service, Bottle Hill Road is open to public motorized travel in the dry season, but motorized travel is prohibited annually at a minimum from January 1 to March 31, and even longer if the wet season extends earlier or later (Exhibit G). Year-round motorized travel on Bottle Hill Road requires a special use authorization from the Forest Service. Special Use Permits are may be issued for up to 10 years and are not transferable between land owners. As part of the Special Use Permit the applicant would also be required to provide improvements to the road that will harden the road for winter travel and yearly maintenance.

According to the applicant, providing proof of access is proving to be difficult and cost-prohibitive (Exhibit F). The applicant submitted a proposal to the Forest Service for a Special Use Permit and the Forest Service is evaluating the proposal to identify the improvements that would be required. Allowing the release of the COCs for the properties would allow for legitimizing the resultant parcels. The COC does not grant development rights, and the applicant, or a future property owner, would still be required to obtain a Special Use Permit for the portion of Bottle Hill Road under the jurisdiction of the Forest Service for year-round access.

The Surveyor's Office takes no exceptions to the proposed modifications to Condition of Approval Number 9.

**Environmental Review:** This project has been found to be statutorily exempt from the requirements of CEQA pursuant to Section 15268 of the CEQA Guidelines stating that "ministerial projects are exempt from the requirements of CEQA." In its 1993 decision, *Findleton v. Board of Supervisors*, the California Appeals Court said that a certificate of compliance is a "ministerial project" requiring no exercise of discretion in the course of its approval (*Findleton v. El Dorado Co. Board of Supervisors* (1993) 12 Cal. App. 4th 709).

**General Plan Consistency:** Staff has determined that the proposed project is consistent with the applicable policies and requirements in the El Dorado County General Plan, as discussed below in Section 4.0, General Plan findings.

**Zoning Ordinance Consistency:** Staff has determined that the proposed project is consistent with the applicable regulations and requirements in Title 130 of the El Dorado County Code, as discussed below in Section 5.0 Zoning findings.

**Subdivision Ordinance Consistency:** Staff has determined that the proposed project is consistent with the applicable regulations and requirements in Title 120 of the El Dorado County Code, as discussed below in Section 3.0 Subdivision Ordinance findings.

## SUPPORT INFORMATION

### Attachments to Staff Report:

Findings  
Conditions of Approval

Exhibit A.....Location Map  
Exhibit B.....Assessor's Map  
Exhibit C.....General Plan Land Use Map  
Exhibit D.....Zoning Map  
Exhibit E.....Aerial Photo  
Exhibit F.....Project Narrative, July 8, 2015  
Exhibit G.....USDA Forest Service Letter, August 14, 2015

**ATTACHMENT 2 FINDINGS**  
**Certificate of Compliance**  
**Zoning Administrator/~~JUNE 5, 2013~~December 16, 2015**

**File Number COC11-0007-R/Beam COC Revision**

**FINDINGS FOR APPROVAL**

**1.0 CEQA FINDINGS**

- 1.1 This project has been found to be statutorily exempt from the requirements of CEQA pursuant to Section 15268 of the CEQA Guidelines stating that “ministerial projects are exempt from the requirements of CEQA.” In its 1993 decision, *Findleton v. Board of Supervisors*, the California Appeals Court said that a certificate of compliance is a "ministerial project" requiring no exercise of discretion in the course of its approval (*Findleton v. El Dorado Co. Board of Supervisors* (1993) 12 Cal. App. 4th 709).
- 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 ADMINISTRATIVE FINDINGS**

- 2.1 The issuance of the two Conditional Certificates of Compliance for Assessor’s Parcel Numbers 061-780-03, -05, -08, -09 and -10 merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08, -09 and -10 into an approximately 74.51 acre parcel, meets the requirements of the *Subdivision Map Act* and *County Code Title ~~46120~~* because the County is verifying that the parcel has sufficient access, safety and ability to support residential uses. Further, the County is ensuring that a legitimate transfer took place and with an accurate legal description.

**3.0 TITLE ~~46120~~ SUBDIVISIONS ORDINANCE**

- 3.1 The project parcel was a result of a division of land after March 4, 1972. Section ~~46120~~.76.090.G authorizes issuance of a conditional certificate of compliance if the parcel is a parcel created without the benefit of a Parcel or Final Map that has not been specifically cited in Chapter ~~46120~~.76 of the El Dorado County Subdivision Ordinance.

**4.0 GENERAL PLAN CONSISTENCY FINDINGS**

- 4.1 The proposed two Certificates of Compliance, as conditioned, is consistent with the General Plan and the RR land use designation for density and land use.

- 4.2 The proposal is consistent with all applicable Policies of the General Plan including 2.2.5.21 (compatibility with the surrounding neighborhood), and 6.2.3.2 (adequate emergency access). The project provides adequate access and parcel size that ensure compatibility with the surrounding permitted land uses, and is consistent with the General Plan policies identified above.

## **5.0 ZONING FINDINGS**

- 5.1 The project is zoned Residential Agricultural-80 (RA-80) which establishes a minimum parcel size of 80 acres. The project will legalize a 43.3-acre parcel and a 74.51-acre parcel which are inconsistent with the RA-80 Zone District since there is no other way to combine the illegally-created lots. This is a reasonable solution and meets the intent of the Zoning Ordinance.

# **ATTACHMENT 1 CONDITIONS OF APPROVAL**

## **Certificate of Compliance**

**Zoning Administrator/~~JUNE 5, 2013~~December 16, 2015**

**File Number COC11-0007-R/Beam COC Revision**

### **I. PROJECT DESCRIPTION**

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

Two Certificates of Compliance for Assessor's Parcel Numbers 061-780-03, -05, -08, -09 and -10 merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08, -09 and -10 into an approximately 74.51 acre parcel which will acknowledge the County's acceptance of the parcels as legally created in accordance with the Subdivision Map Act and local subdivision ordinances.

Revision COC11-0007-R consists of the following:

Certificate of Compliance revision to allow modification of Condition of Approval Number 9 to remove the requirement for the applicant to show proof of access to a State or County Maintained Road.

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.

### **II. PROJECT CONDITIONS OF APPROVAL**

#### **Planning Services**

2. A Certificate of Merge shall be submitted, approved, and recorded merging parcels APNs 061-780-03, and -05 into an approximately 43.33 acre parcel and parcels APNs 061-780-08, -09 and -10 into an approximately 74.51 acre parcel. All conditions of approval for this conditional Certificate of Compliance shall be met prior to recording of a Certificate of Merge.

3. All fees associated with the Certificate of Compliance shall be paid prior to issuance of a Clear Certificate of Compliance.
4. Prior to issuance of Clear Certificate of Compliance 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.
5. 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.

6. Notice of Exemption Fee: 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 upon project approval.
7. Archeological Resources: The following shall be incorporated as a note on the grading/improvement plans:

In the event archeological resources are 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. If the find is determined to be a “unique archeological resource”, contingency funding and a time allotment sufficient to allow recovering an archeological sample or to employ one of the avoidance measures may be required under the provisions set forth in Section 21083.2 of the Public Resources Code. Construction work could continue on other parts of the project site while archeological mitigation takes place.

If the find is determined to be a “unique archeological resource”, the archaeologist shall determine the proper method(s) for handling the resource or item in accordance with Section 21083.2(b-k). Any additional costs as a result of complying with this section shall be borne by the project applicant. Grading and construction activities may resume after appropriate measures are taken or the site is determined a “nonunique archeological resource”.

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

8. Human Remains: The following shall be incorporated as a note on the grading/improvement plans:

In the event of the discovery of human remains, all work shall cease and the County coroner shall be immediately notified pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code and Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

Upon the discovery of the Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in Section 5097.98 of the Public Resources Code, with the most likely descendants regarding their recommendations. The descendants shall complete their inspection and make their recommendation within 48 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials or other proper method(s) for handling the remains in accordance with Section 5097.98(b-h). Any additional costs as a result of complying with this section shall be borne by the project applicant. Grading and construction activities may resume after appropriate measures are taken.

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

### **Department of Transportation**

9. Road & Public Utility Easements: The applicant ~~shall show proof of access to a State or County Maintained Road as defined in 16.44.120(B)(2) and~~ shall irrevocably offer to dedicate a 50-foot wide non-exclusive road and public utility easement for the on-site access roadway located on the proposed parcels in its entirety, prior to issuance of clear COC. This offer will be rejected by the County.

**Environmental Management**

10. Wastewater: Suitable wastewater disposal area shall be identified on all proposed parcels. The areas identified shall meet the requirements for onsite wastewater disposal system and be located so as not to conflict with any other applicable county requirements. An OWTS capability report and site map showing the locations of the usable sewage disposal area shall be submitted to Environmental Management.
  
11. Water: The applicant shall provide a safe and reliable water source for each proposed parcel.