

FINDINGS

Conditional Use Permit CUP22-0015/Farrell Nonconforming Use (New Build) Planning Commission/November 9, 2023

1.0 CEQA FINDINGS

- 1.1 El Dorado County has reviewed the proposed project and has determined the project is exempt pursuant to CEQA Section 15303.e (New Construction or Conversion of Small Structures) which exempts accessory structures including garages, carports, patios, swimming pools, and fences.
- 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 Planning and Building Department, Planning Services Division, at 2850 Fairlane Court, Placerville, CA, 95667.

2.0 GENERAL PLAN FINDINGS

2.1 The project is consistent with General Plan Policy 2.2.1.2.

General Plan Policy 2.2.1.2 identifies that the purpose of the Multifamily Residential (MFR) land use designation identifies those areas suitable for high-density, single family and multifamily design concepts such as apartments, single-family attached dwelling units (i.e., air-space condominiums, townhouses, and multiplexes), and small-lot single-family detached dwellings subject to the standards set for in the Zoning Ordinance and which meet the minimum allowable density. Lands designated as MFR can be located only in Community Regions and Rural Centers.

Rationale: The existing single-family residence was developed per a prior Zoning Ordinance which allowed for single-family development on the project parcel without approval of a Development Plan. The single-family residence is nonconforming to the current Zoning Ordinance and is denoted as a legally nonconforming use. As the proposed project proposes uses which would be accessory to the legal nonconforming single-family residence, it would be consistent with the nonconforming use of the site. The site is within the El Dorado – Diamond Springs Community Region. Therefore, the proposed project is compatible with the land use designation.

2.2 The project is consistent with General Plan Policy 2.2.5.2.

This policy requires that all applications for discretionary projects or permits shall be reviewed to determine consistency with the policies of the General Plan.

Rationale: Staff has prepared this section on General Plan findings to document the project's consistency with the policies of the General Plan.

2.3 The project is consistent with General Plan Policy 2.2.5.21.

General Plan Policy 2.2.5.21 requires that development projects be located and designed in a manner that avoids incompatibility with adjoining land uses.

Rationale: The project site is developed with single-family residential uses and is surrounded by similarly zoned and developed residential properties. The adjoining properties to the north, east, and west are similarly zoned and developed. Properties to the south are zoned and developed for One-Acre Residential (R1A) uses. Therefore, the project has been located and designed to be compatible with adjoining land uses.

2.4 General Plan Policy TC-Xa does not apply to the project.

(1) Traffic from residential development projects of five (5) or more units or parcels of land shall not result in, or worsen, Level of Service (LOS) F (gridlock, stop-and-go) traffic congestions during weekday, peak-hour periods on any highway, road, interchange, or intersection in the unincorporated areas of the County.

Rationale: The project will not create additional residential units; therefore, this policy does not apply.

(2) The County shall not add any additional segments of U.S. Highway 50, or any other highways and roads, to the County's list of roads from the original Table TC-2 of the 2004 General Plan that are allowed to operate at LOS F without first getting the voter's approval.

Rationale: This is not applicable as the project is not requesting any modifications to Table TC-2.

(3) and (4). Intentionally blank as noted in the General Plan.

(5) The County shall not create an Infrastructure Financing District unless allowed by a 2/3rds majority vote of the people within that district.

Rationale: This is not applicable as the project is not requesting the County create an Infrastructure Financing District.

(6) Intentionally blank as noted in the General Plan.

(7) Before giving approval of any kind to a residential development project of five (5) or more units or parcels of land, the County shall make a finding that the project complies with the policies above. If this finding cannot be made, then the County shall not approve the project in order to protect the public's health and safety as provided by state law to assure that safe and adequate roads and highways are in place as such development occurs.

Rationale: This project will not result in five (5) or more units or parcels of land for residential development.

2.5 General Plan Policy TC-Xb does not apply to the project.

Policy TC-Xb ensures that potential development in the County does not exceed available roadway capacity.

Rationale: This policy is not applicable as this policy refers to the County preparing a Capital Improvement Program (CIP), preparing a Traffic Impact Mitigation (TIM) Fee Program, and monitoring traffic volumes.

2.6 General Plan Policy TC-Xc does not apply to the project.

Policy TC-Xc directs that developer paid traffic impact fees combined with any other available funds shall fully pay for building all necessary road capacity improvements to fully offset and mitigate all direct and cumulative traffic impacts from new development.

Rationale: This policy is not applicable as this policy directs how the County will pay for building the necessary road capacity.

2.7 The project is consistent with General Plan Policy TC-Xd.

LOS for County-maintained roads and State highways within the unincorporated areas of the County shall not be worse than LOS E in the Community Regions or LOS D in the Rural Centers and Rural Regions except as specified in Table TC-2. The volume to capacity ratio of the roadway segments listed in Table TC-2 shall not exceed the ration specified in that table. LOS will be as defined in the latest edition of the Highway Capacity Manual (Transportation Research Board, National Research Council) and calculated using the methodologies contained in that manual.

Analysis periods shall be based on the professional judgement of the County's Department of Transportation (DOT) which shall consider periods including, but not limited to, Weekday Average Daily Traffic (ADT), AM Peak Hour, and PM Peak hour traffic volumes.

Rationale: This project will not worsen LOS for any County-maintained road or State highway.

2.8 The project is consistent with General Plan Policy TC-Xe.

For the purposes of this Transportation and Circulation Element, "worsen" is defined as any of the following number of project trips using a road facility at the time of issuance of a use and occupancy permit for the development project:

- (1) A two percent (2%) increase in traffic during the AM Peak Hour, PM Peak Hour, or daily; or
- (2) The addition of 100 or more daily trips; or
- (3) The addition of ten or more trips during the AM Peak Hour or the PM Peak Hour.

Rationale: This project will generate fewer than ten trips in the peak hour, and fewer than 100 daily trips. No thresholds have been met. Therefore, this project will not worsen the LOS from the current baseline and is not subject to a traffic study.

2.9 **The project is consistent with General Plan Policy TC-Xf.**

At the time of approval of a tentative map for a single family residential subdivision of five (5) or more parcels that worsens (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall do one (1) of the following: (1) condition the project to construct all road improvements necessary to maintain or attain LOS standards detailed in this Transportation and Circulation Element based on existing traffic plus traffic generated from the development plus forecasted traffic growth at ten years from project submittal; or (2) ensure the commencement of construction of the necessary road improvements are included in the County's ten-year CIP.

For all other discretionary projects that worsen (defined as a project that triggers Policy TC-Xe [A] or [B] or [C]) traffic on the County road system, the County shall do one of the following: (1) condition the project to construct all road improvements necessary to maintain or attain LOS standards detailed in this Transportation and Circulation Element; or (2) ensure the construction of the necessary road improvements are included in the County's 20-year CIP.

Rationale: The project will not create residential units and will not worsen traffic on the County road system. Therefore, this policy does not apply.

2.10 **The project is consistent with General Plan Policy TC-Xg.**

Each development project shall dedicate right-of-way, design and construct or fund any improvements necessary to mitigate the effects of traffic from the project. The County shall require an analysis of impacts of traffic from the development project, including impacts from truck traffic, and require dedication of needed right-of-way and construction of road facilities as a condition of the development. This policy shall remain in effect indefinitely unless amended by voters.

Rationale: Per DOT's review, the project will not worsen traffic. Therefore, this policy does not apply.

2.11 The project is consistent with General Plan Policy TC-Xh.

All subdivisions shall be conditioned to pay the traffic impact fees in effect at the time a building permit is issued for any parcel created by the subdivision.

Rationale: This project will pay any required traffic impact fees at the time a building permit is issued.

2.12 General Plan Policy TC-Xi does not apply to the project.

General Plan TC-Xi directs the County to coordinate and work with other agencies to plan for the widening of U.S. Highway 50.

Rationale: This policy is not applicable to the project as it is directed to the County to coordinate with other agencies.

2.13 The project is consistent with General Plan Policy 5.1.2.1

General Plan Policy 5.1.2.1 requires a determination of the adequacy of the public services and utilities to be impacted by that development.

Rationale: Utility requirements for accessory structures would make use of existing utility services provided to the existing single-family residence. Utility provision approved for the primary residence would include water needs for uses accessory to the residence.

2.14 The project is consistent with General Plan Policy 5.2.1.2.

General Plan Policy 5.2.1.2 requires that adequate quantity and quality of water for all uses, including fire protection, be provided with proposed development.

Rationale: The project proposes accessory uses to an existing single-family residence. Accessory structures would make use of the existing residential water supply. Water supply approved for the primary residence would include water needs for uses accessory to the residence.

2.15 The project is consistent with General Plan Policy 5.7.1.1.

General Plan Policy 5.7.1.1 (Fire Protection in Rural Regions and Rural Centers) requires the applicant to demonstrate that adequate emergency water supply, storage, conveyance facilities, and access for fire protection would be provided concurrent with development.

Rationale: The project proposes accessory uses to an existing single-family residence. Accessory structures would make use of existing emergency water provisions for the existing primary structure. Site access for emergency requirements would not change as a result of constructing the accessory structures.

2.16 The project is consistent with General Plan Policy 6.2.3.2.

Policy 6.2.3.2 (Adequate Access for Emergencies) requires the applicant demonstrate that adequate access exists, or can be provided to ensure that emergency vehicles can access the site and private vehicles can evacuate the area.

Rationale: The project proposes accessory uses to an existing legally nonconforming single-family residence. Site access for emergency requirements would not change as a result of constructing the accessory structures.

3.0 ZONING FINDINGS

3.1 The project is consistent with Section 130.24.030.

Section 130.24.030 (Residential Zone Development Standards) prescribes site-specific development standards for new lots, allowed uses and associated structures within the Residential Multi-Unit (RM) zone district.

Rationale: The proposed development of residential structures accessory to a legally nonconforming single-family residence is allowed within the RM zone district with approval of a Conditional Use Permit (CUP).

3.2 The project is consistent with Section 130.61.050.

Section 130.61.050 (Changes or Expansion of Legal Nonconforming Uses) states, “The Commission may allow changes or expansions to legal non-conforming uses as set forth by a Conditional Use Permit. Procedures adopted for Conditional Use Permits shall be consistent with Article 5 (Planning Permit Procedures) of this Title, and the findings in Subsection D below in this Section shall be made by the Commission prior to approval.” Subsection D states, “The Commission shall make one or more of the following findings regarding changes or expansions to legal nonconforming uses:”

1. The proposed change or expansion of the legal nonconforming use is essential or desirable to the public convenience or welfare.

Rationale: The project is consistent with other findings as listed below. Despite the fact that the project cannot be found consistent with this finding, the project can be found consistent with Section 130.61.050.

2. The change or expansion of the nonconforming use will not have a negative impact on the surrounding conforming uses and the area overall.

Rationale: The addition of proposed accessory structures would not result in a change to the current use of the project parcel. The addition of residential accessory structures to the project parcel would not have a negative impact on the surrounding uses and the area overall.

3. Other property where the use would be conforming is unavailable, either physically or economically, within the limits of the nearest similarly developed area(s).

Rationale: As the project parcel is developed with a single-family residence, any accessory structures would necessarily be built on the same site. An accessory structure would necessarily be constructed on the same site as a developed primary structure. Therefore, an accessory structure could not be constructed on another parcel and be considered accessory to the existing residence on the project site.

4. No other appropriate remedies are available to bring the use into conformance, including amending the zone or zoning ordinance text.

Rationale: The only potential remedy available to bring the use into conformance would require a General Plan Amendment. A General Plan Amendment is not a requirement for those sites which are legally nonconforming and maintain the use as established under prior Zoning Code.