

FINDINGS

Conditional Use Permit CUP20-0014/Use Nonconforming Use Planning Commission/November 10, 2022

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:

1.0 CEQA FINDINGS

- 1.1 CUP20-0014 has been found categorically exempt pursuant to Section 15303 (New Construction or Conversion of Small Structures of the California Environmental Quality Act (CEQA) Guidelines applying to new accessory structures including garages, carports, or an accessory dwelling unit.
- 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 establishes an appropriate range of land use types and densities within the County. The Open Space (OS) Land Use Designation establishes areas suitable for public lands under governmental title, where no development other than that specifically needed for government-related open space uses is desired. It may also be used on private lands to maintain natural features within clustered development where a General Plan amendment is processed. This designation is considered appropriate within Community Regions, Rural Centers, and Rural Regions.

Rationale: The existing nonconforming use on this parcel is the residential use. the unpermitted and unfinished accessory dwelling unit use is inconsistent with uses allowed in the OS Land Use Designation. However, nonconforming uses are typically permitted to continue subject to certain restrictions including the ability to rebuild in case of calamity, the requirement for abandonment if the use is discontinued for 12 or more months, and the requirement for a conditional use permit (CUP) in the event the nonconforming use is expanded. Other restrictions listed in the Zoning Ordinance 130.61.030 for nonconforming structures include: a strict timeline to rebuild a destroyed nonconforming structure, these structures can be repaired or altered if it complies with this Title and the most recent building code, the structure can be converted to a use that conforms to the zone district and will lose their nonconforming status, or a structure not conforming to the setbacks of the zone may be increased in area or volume provided it does not increase the nonconforming setback.

2.2 The project is consistent with General Plan Policy 2.2.5.2.

All applications for discretionary projects or permits including, but not limited to, General Plan amendments, zoning boundary amendments, tentative maps for major and minor land divisions, and special use permits shall be reviewed to determine consistency with the policies of the General Plan. No approvals shall be granted unless a finding is made that the project or permit is consistent with the General Plan. In the case of General Plan amendments, such amendments can be rendered consistent with the General Plan by modifying or deleting the General Plan provisions, including both the land use map and any relevant textual policies, with which the proposed amendments would be inconsistent. 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: As proposed and conditioned, the project would be compatible with adjoining land uses. The existing unpermitted structures and the unfinished Accessory Dwelling Unit (ADU) would be similar to uses allowed on neighboring residential lots including accessory dwelling units, keeping of large animals, and the growing of grapes for personal use. There are residential uses to the south and east. Open Space uses are to the north and west.

2.4 The project is consistent with General Plan Policy 5.7.2.1.

General Plan Policy 5.7.2.1 requires the responsible fire protection district to review all applications to determine the ability of the district to provide protection services prior to approval of new development.

Rationale: El Dorado County Fire Protection District reviewed both this CUP and Building Permit 331131 for the ADU. Their conditions of approval are included below.

2.5 The project is consistent with General Plan Policy 6.2.2.2.

General Plan Policy 6.2.2.2 requires the County to preclude development in high wildland fire hazard areas as listed in the Federal Register Executive Order 13728 of May 18, 2016 unless such development can be adequately protected from wildland fire hazard as

demonstrated by a Wildland Urban Interface (WUI) Fire Safe Plan prepared by a qualified professional as approved by the El Dorado County Fire Prevention Officers Association. The WUI Fire Safe Plan shall be approved by the local Fire Protection District having jurisdiction.

Rationale: Condition of Approval 6 is included below and states: **Fire Safe Plan:** Prior to issuance of any building permits, the applicant shall submit a complete, signed and approved WUI Fire Safe Plan to Planning Services.

2.6 **The project is consistent with General Plan Policy 6.2.3.2.**

General Plan Policy 6.2.3.2 requires the applicant to 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: This will be addressed in the WUI Fire Safe Plan included as Condition of Approval 6 below.

3.0 **ZONING FINDINGS**

3.1 **The project is consistent with Table 130.25.020 (Allowed Uses and Permit Requirements for the Special Purpose Zones).**

Table 130.25.020 shows allowed uses and permit requirements for each of the Special Purpose zones, including specific use types either allowed by right (P) or by CUP.

Rationale: Nonconforming uses are allowed in any zoning district with the approval of a CUP. Finding 130.61.050 is made below.

3.2 **The project is consistent with Section 130.52.021 (Conditional Use Permit).**

Section 130.52.021.C provides three (3) findings to be met before the Planning Commission can approve a CUP permit. Those are:

1. The proposed use is consistent with General Plan; and

Rationale: Finding of consistency with the General Plan is in Finding 2.3 and states: As proposed and conditioned, the project would be compatible with adjoining land uses. The existing unpermitted structures and the unfinished ADU would be similar to uses allowed on neighboring residential lots including accessory dwelling units, keeping of large animals, and the growing of grapes for personal use. There are residential uses to the south and east. Open Space uses are to the north and west.

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

Rationale: The ADU and accessory buildings are not expected to be detrimental to the public health, safety and welfare or be injurious to the neighborhood.

3. The proposed use is specifically allowed by a CUP pursuant to Title 130.61.050 of the Zoning Ordinance.

Rationale: The expansion of the legal nonconforming residential use is specifically allowed in the Zoning Ordinance pursuant to Section 130.61.050. Those findings are below.

3.3 The project is consistent with Section 130.61.050 (Changes or Expansion of Legal Nonconforming Uses)

D. The Zoning Ordinances states that the Planning 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 and/or desirable to the public convenience or welfare;
2. The change or expansion of the nonconforming use will not have a negative impact on the surrounding conforming 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);
4. No other appropriate remedies are available to bring the use into conformance, including amending the zone or zoning ordinance text.

Rationale: Based on documentation submitted by the property owner and evidence in the record, required Findings 130.61.050 (D)(2) can be made.

Required Finding 130.61.050(D)(2): The change or expansion of the nonconforming use will not have a negative impact on the surrounding conforming uses and area overall as the existing, unfinished, unpermitted ADU and accessory buildings would not significantly intensify the number of the buildings and the expanded use is not anticipated to create any public safety hazards or impede traffic flow into and out of the existing driveway. Further, the proposed expansion would be consistent with existing residential uses in the vicinity including both to the immediate east and south.