



**COUNTY OF EL DORADO
PLANNING AND BUILDING DEPARTMENT
PLANNING COMMISSION
STAFF REPORT**

Agenda of: November 10, 2022

Staff: Melanie Shasha

CONDITIONAL USE PERMIT

FILE NUMBER: CUP20-0014/Use Nonconforming Use

PROPERTY

OWNER/APPLICANT: Londres Uso

REQUEST: A Conditional Use Permit (CUP) request to allow the existing, unfinished, unpermitted Accessory Dwelling Unit (ADU) and five (5) additional existing unpermitted residential accessory structures in the Open Space (OS) zone district.

LOCATION: The north side of Big Chief Trail approximately 300 feet north of the intersection with Wild Cat Court in the Cool area, Supervisorial District 4. (Exhibits A, B)

APN: 072-030-014 (Exhibit B)

ACREAGE: 10.54 acres

GENERAL PLAN: Open Space (OS) (Exhibit C)

ZONING: Open Space (OS) (Exhibit D)

ENVIRONMENTAL DOCUMENT: Categorically Exempt Pursuant to Section 15303 (New Construction or Conversion of Small Structures), of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Find the project Exempt from CEQA pursuant to Section 15303 (New Construction or Conversion of Small Structures),

2. Find the change or expansion of the nonconforming structures and uses will not have a negative effect on the surrounding conforming uses and the area overall pursuant to Zoning Ordinance Section 130.61.050(D)(2); and
3. Approve Conditional Use Permit CUP20-0014 based on the Findings and subject to the Conditions of Approval as presented.

EXECUTIVE SUMMARY

Approval of Conditional Use Permit CUP20-0014 would permit the existing unpermitted expansion of a nonconforming residential use. The primary house is nonconforming to the current OS zoning. The permit request is for one (1) existing, unfinished, unpermitted ADU and five (5) existing residential accessory structures consisting of a barn, wine processing building, workshop, and two (2) carports (Exhibits F, G and J). As proposed and conditioned, the project will be consistent with all applicable Zoning regulations and General Plan policies.

SETTING

The project parcel is located on the north side of Big Chief Trail approximately 300 feet north of the intersection with Wild Cat Court, approximately 1,700 feet above sea level. An agricultural structure (a barn) was added to the then-vacant parcel in 2015 to house livestock. A single-family home was permitted and constructed on the project parcel in 2016. An unpermitted accessory building for equipment was built in 2017. Three (3) additional unpermitted accessory buildings were constructed on the parcel in 2019. Construction on an unpermitted ADU began in 2020. A complaint was received, and an associated code enforcement case opened in 2020 for the five (5) unpermitted accessory structures and ADU. The code enforcement case (CE20-0249) remains open. Approval of the requested CUP would allow for the existing unpermitted structures to remain as-is and allow for County Code Enforcement to close the above-referenced case once the building permits for these structures have been finalized. An application for a building permit for the ADU (331103) was submitted on 06/23/2020 and is pending the outcome of this application.

There are undeveloped OS zoned lands to the north and west, and Residential, 1 and 2 acre minimum (R1A, R2A) and Single-unit Residential (R1) zoned lands containing residential uses to the east and south. Parcels to the north and west are designated as OS and the property to the east is designated Medium Density Residential (MDR) and land to the south is a mix of both High Density Residential (HDR) and Medium Density Residential (MDR) on the General Plan Land Use Map (Exhibits C, D).

	Current Zoning Designation	General Plan Designation	Existing Uses
Project Parcel	Open Space	Open Space	Residential
North	Open Space	Open Space	Undeveloped
East	R2A. R1A	MDR	Residential

West	Open Space	Open Space	Undeveloped
South	R1A, R1	MDR, HDR	Residential

PROJECT DESCRIPTION

CUP20-0014 is a request for a new CUP to permit the existing, unfinished, unpermitted expansion of a nonconforming residential use to add an ADU and five (5) accessory structures consisting of barn, wine processing building, shop and two (2) carports.

ESTABLISHMENT OF A LEGAL NONCONFORMING USE

The original residential structure was permitted on October 25, 2015 under permit No. 240426 (finalized September 21, 2016) consistent with zoning regulations in effect prior to the County's December 15, 2015 Zoning Ordinance Update. Prior to December 2015, previous zoning regulations for the OS zone district (previous Chapter 17.68 – land use regulations for the OS zone district) allowed one (1) single-family dwelling as well as agricultural and accessory buildings by right. For details, refer to Chapter 17.68.040 (Uses Permitted by Right) of the 2013 Zoning Ordinance (Exhibit H). As part of the December 15, 2015 Zoning Ordinance Update, development regulations and standards for the OS zone district were amended, no longer allowing single-family dwellings, residential accessory structures, and agricultural buildings in the OS zone district. For details, refer to current OS zone regulations, Table 130. 25.020 (Special Purpose Zones Use Matrix) (Exhibit I).

The Zoning and General Plan Land Use Designations have not changed on this parcel since at least 1996. OS designations are used for the purposes of preserving natural resources, manage production of resources, provide outdoor recreation, and for public health and safety.

In this situation, the above-referenced structures were added without the benefit of building permits. A code enforcement case (CE20-0249) was opened as a result of the unpermitted work. Processing of the requested CUP is the mechanism to review the expansions of the non-conforming use and determine if they are consistent with the General Plan and Zoning Ordinance.

REQUIRED FINDINGS

Zoning Ordinance Section 130.61.50 (Changes or Expansion of Legal Nonconforming Uses) requires the Planning Commission make one or more specific findings, as listed in Section 130.61.050(D) of the Zoning Ordinance, in order to approve the requested CUP for the expansion of the described legal nonconforming uses. The Findings listed under Section 130.61.050(D) are as follows:

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.

STAFF ANALYSIS

Environmental Review: Staff reviewed the project and found it exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines applying to existing facilities including garages, carports, or a second dwelling. and the area in which the project is located is not environmentally sensitive

General Plan Consistency: Staff has reviewed the project for consistency with all applicable General Plan policies including Policy 2.2.1.2 (appropriate land use types and density), Policy 2.2.5.2 (General Plan Consistency), Policy 2.2.5.21 (compatibility with adjoining land uses), Policy 5.7.2.1 (adequate fire protection services), Policy 6.2.2.2 (fire safe plan), and Policy 6.2.3.2 (adequate emergency access) Staff has determined that the project is consistent with these policies and related requirements in the El Dorado County General Plan, as discussed in more detail in Section 2.0 of the Findings.

Zoning Ordinance Consistency: Staff has determined that the project is consistent with applicable regulations and requirements in Title 130 of the County Ordinance Code, including Section 130.25.020 (Allowed Uses and Permit Requirements for the Special Purpose Zones), Section 130.52.021 (Conditional Use Permits) and Section 130.61.050 (Changes or Expansion of Legal Nonconforming Uses).

Public and Agency Comments: The project was distributed to all applicable public agencies and organizations for review and comment including the following County agencies: Air Quality Management District, Building Services, California Department of Forestry and Fire Protection, Diamond Springs/El Dorado Fire District, Environmental Management, Surveyor's Office, and Department of Transportation (DOT).

Conditions of Approval: Of the agencies and organizations notified of the project, as listed above, comments were received from Air Quality Management District, Environmental Management, and the Surveyor's Office. Comments from these departments have been incorporated as Conditions of Approval No. 5 through 16.

SUPPORT INFORMATION

Attachments to Staff Report:

Findings

Conditions of Approval

Exhibit A.....	Vicinity Map
Exhibit B.....	Assessor's Parcel Map
Exhibit C.....	General Plan Land Use Designation Map
Exhibit D.....	Zoning Designation Map
Exhibit E.....	Site Plan, most recent approvals
Exhibit F.....	Site Plan, current improvements
Exhibit G.....	Aerial Photo 6.2021
Exhibit H.....	Chapter 17.68 of 2013 Zoning Ordinance
Exhibit I.....	Chapter 130.25 of Current Zoning Ordinance
Exhibit J.....	Existing Conditions

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

Rational: 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

Rational: 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.

Rational: 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.

CONDITIONS OF APPROVAL

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

Planning Services

1. This Conditional Use Permit (CUP) is based upon and limited to compliance with the project description, the following hearing exhibits, and Conditions of Approval (COA) set forth below:

Conditional Use Permit CUP20-0014 to allow the existing, unfinished, unpermitted Accessory Dwelling Unit (ADU) and five additional existing unpermitted residential accessory structures in the Open Space (OS) zone district.

Exhibit F Site Plan, Current Improvements.

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 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 COAs 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.

2. **Permit Expiration:** Pursuant to Zoning Ordinance Section 130.54.060.A, implementation of the project shall occur within 24 months of approval of this permit, otherwise the permit becomes null and void. It is the responsibility of the applicant to monitor the time limit and make diligent progress toward implementation of the project and compliance with Conditions of Approval.
3. **Legal Indemnity/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 landowner agrees 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 landowner 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 of El Dorado County concerning a CUP.

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

5. **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.
6. **Fire Safe Plan:** Prior to issuance of any grading or building permits, the applicant shall submit a complete, signed, and approved Wildland Urban Interface Fire Safe Plan to Planning Services.
7. **Winery:** No commercial or micro-winery use or operation is allowed with this approval. Any wine made on site is for personal use only. Any future commercial winery or micro-winery use (as described in 130.40.400) would require that the applicant/ landowner submit a request for a zone change for the project parcel. It is anticipated that a zone change that would allow for a future commercial winery or micro-winery use would also require a General Plan Amendment to modify the current land use designation of the project parcel. Discretionary review is also anticipated for any proposed future commercial winery or micro-winery. The description of currently required entitlements in this condition does not exclude the need for future additional entitlements or reviews related to any proposed future commercial winery or micro-winery uses.

Air Quality Management District (AQMD)

8. **Fugitive Dust:** The project construction will involve grading and excavation operations which will result in a temporary negative impact on air quality with regard to the release of particulate matter (PM10) in the form of dust. The project shall adhere to the regulations and mitigation measures for fugitive dust emissions during the construction process. In addition, a Fugitive Dust Mitigation Plan (FDP) Application with appropriate fees shall be submitted to and approved by the County's AQMD prior to start of project construction if a Grading Permit is required from the Building Department. Dust control measures shall comply with the requirements of AQMD Rule 223, Fugitive Dust – General Requirements and Rule 223.1 – Construction, Bulk Material Handling, Blasting, Other Earthmoving Activities and Trackout Prevention.
9. **Paving:** The project construction may involve road development and shall adhere to AQMD Rule 224, Cutback and Emulsified Asphalt Paving Materials.
10. **Painting/Coating:** The project construction may involve the application of architectural coatings which shall adhere to AQMD Rule 215, Architectural Coatings.
11. **Open Burning:** Burning of wastes that result from "Land Development Clearing" must be permitted through the AQMD. Only dry vegetation originating from the property may be disposed of using an open outdoor fire and burning shall adhere to AQMD Rule 300, Open Burning.

12. **Construction Emissions:** During construction, all self-propelled diesel-fueled engines greater than 25 horsepower shall be in compliance with the California Air Resources Board (CARB) Regulation for In-Use Off-Road Diesel Fueled Fleets (§ 2449 et al, title 13, article 4.8, chapter 9, California Code of Regulations (CCR)). The full text of the regulation can be found at ARB's website here: <https://ww2.arb.ca.gov/our-work/topics/construction-earthmoving-equipment>. Questions on applicability should be directed to CARB at 1.866.634.3735. CARB is responsible for enforcement of this regulation.
13. **New Point or Stationary Source:** Prior to construction/installation of any new point/stationary source emissions units (e.g., emergency standby engine greater than 50 HP, etc.), Authority to Construct applications shall be submitted to the AQMD. Submittal of applications shall include facility diagram(s), equipment specifications and emissions estimates, and shall adhere to AQMD Rules 501, General Permit Requirements and 523, New Source Review.
14. **Portable Equipment:** All portable combustion engine equipment with a rating of 50 horsepower or greater shall be registered with the California Air Resources Board (CARB). A copy of the current portable equipment registration shall be with said equipment. The applicant shall provide a complete list of heavy-duty diesel-fueled equipment to be used on this project, which includes the make, model, year of equipment, daily hours of operations of each piece of equipment.

Environmental Management

15. An evaluation of the existing septic system will be required if the ADU is to be connected to it. If a new, separate septic system will be installed for the ADU, a new septic system design for it is required to be submitted in conjunction with the associated building permit.
16. The well on the property has a well production report on file documenting that it produces 12.5 gallons per minute. Five (5) gallons per minute of well production capacity is required per dwelling. Additional water storage will not be required when the ADU is connected to the existing well for its water supply.
17. State Law mandates that a minimum of 65% of the waste materials generated from covered Construction and Demolition projects must be diverted from being landfilled by being recycled or reused on site. Please visit the following website to view El Dorado County's Construction & Demolition Debris Recycling Ordinance Program information and requirements. If after reviewing this information you still have questions, you're welcome to call Environmental Management at (530) 621-5300.

Office of County Surveyor

18. Applicant will be required to coordinate with the County Surveyor's Office to ensure that all buildings on the subject parcel are addressed in compliance with County Code, Chapter 110.04. Compliance is required with 30 days of approval.

19. All boundary monuments disturbed during project construction shall be reset by a Professional Land Surveyor or Qualified Engineer as defined by Section 8771 of the California Business and Professions Code (Land Surveyors Act).

El Dorado County Fire Protection District

20. **Gate Access:** All gates shall meet the El Dorado County Fire Protection District standards, including an approve KNOX access or key switch depending on a manual or electric gate. The Fire Protection District shall review and approve the gates prior to issuance of the building permit.