

# DEVELOPMENT SERVICES DEPARTMENT

County of  
EL DORADO

<http://www.edcgov.us/devservices>



**PLACERVILLE OFFICE:**  
2850 FAIRLANE COURT PLACERVILLE, CA 95667  
BUILDING (530) 621-5315 / (530) 622-1708 FAX  
[bdgdept@edcgov.us](mailto:bdgdept@edcgov.us)  
PLANNING (530) 621-5355 / (530) 642-0508 FAX  
[planning@edcgov.us](mailto:planning@edcgov.us)  
Counter Hours: 8:00 AM to 4:00 PM

**LAKE TAHOE OFFICE:**  
3368 LAKE TAHOE BLVD. SUITE 302  
SOUTH LAKE TAHOE, CA 96150  
(530) 573-3330  
(530) 542-9082 FAX  
[tahoebuild@edcgov.us](mailto:tahoebuild@edcgov.us)  
Counter Hours: 8:00 AM to 4:00 PM

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TO: Planning Commission Agenda of: October 14, 2010

FROM: Tom Purciel, Associate Planner Item No.: 11

DATE: October 1, 2010

RE: V10-0001/Stein Variance Application – Supplemental Information

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## **Request:**

Variance request to reduce the front yard setback from 20 feet to 1 foot and side yard setback from 5 feet to 1 foot for a single-story garage on an existing parking pad.

## **Background:**

At the Planning Commission hearing of September 9, 2010, the Planning Commission continued the project to October 14 to allow the applicant time to address the Planning Commission's concerns regarding the proposed structure's proximity to existing public utility infrastructure. In addition, the Commission requested the applicant to submit additional information regarding TRPA parcel coverage restrictions. A map of utility infrastructure has been submitted to Planning Services and is attached as Exhibit L. TRPA parcel coverage information is included as part of a Site Assessment, attached as Exhibit M. In addition, to address Commission concerns regarding potential "downstream" easement interests from adjacent parcels, a survey of adjacent parcels (Record of Survey No. 30-134) has also been submitted as Exhibit N.

## **Staff Analysis:**

Staff has reviewed the project, including supplemental information requested by the Planning Commission, for compliance with County regulations and requirements. A detailed discussion of the permit request and issues for the Planning Commission is provided in the discussion of Variance Findings below.

As discussed in the Staff Report, it should be noted that the permitting of a garage over existing public utility easements has the potential to constitute a risk to public health, safety and welfare, or be injurious to the neighborhood. Accordingly, staff recommends that, if the Planning Commission should recommend approval, that a condition be added to require the portion of existing public utilities easement(s) within the project area be abandoned.

Further, the County has not historically permitted structures within utility easements due to potential risk to public health, safety and legal liability concerns for both the utility agencies and the County. Approval of this Variance could establish a precedent in the public record potentially allowing future encroachments into utility easements. For the above reasons, it is staff's opinion that structures should not be permitted within utility easements.

In addition, if the Planning Commission should revise the project to remove Condition of Approval No. 4, allowing the permitting of the proposed structure within utility easement(s), then staff will forward the project application to the Board of Supervisors for a policy determination regarding the permitting of said structure within utility easements.

**Variance Findings:**

The granting of a variance requires four findings pursuant to Section 17.22.630 of the County Zoning Ordinance. Accordingly, these findings are shown below with a discussion of the issues related to each finding.

*Required Finding 2.1: There are exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings or uses in the vicinity and the same zone, and have not resulted from any act of the owner or applicant.*

Virtually the entire subject parcel is constrained by the lack of additional area to locate a new garage outside the setbacks required by Section 17.56.040 due to a combination of strict TRPA parcel coverage limitations, TRPA Scenic Highway Corridor screening requirements and excessive slope (exceeding 40 percent). If this Variance is approved, the proposed garage site would require no additional (TRPA) lot coverage and cause only minimal grading/soil disturbance. In addition, the proposed structure would be screened from the viewshed of a designated Scenic Highway Corridor (State Route 89) by a combination of existing trees and the existing residence (See site photographs, Exhibit H). Further, Section 30.13.C (3) of the TRPA Code of Ordinances (Exhibit J) requires all projects within the viewshed of Scenic Highway Corridors "be sited in such a manner that they are not visually evident from the scenic highway." As proposed, this project will be sited to comply with this requirement.

However, if the garage was constructed outside the required zoning setbacks, the applicant would be required to obtain additional (TRPA) lot coverage, which is not possible due to the sensitive nature of the site (Refer to the TRPA Site Assessment, Exhibit M). Also, relocating the garage would require a significant amount of grading/soil disturbance due to average slopes exceeding forty percent. Further, any alternate location for a garage would virtually eliminate screening from the existing vegetation and residence, both of which would likely cause a significant visual impact. Therefore, due to parcel coverage constraints, excessive slope and significant scenic concerns, it can be found that there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in this application, and that these circumstances have not resulted from any act of the owner or applicant. Accordingly, Finding 2.1 can be made.

*Required Finding 2.2: The strict application of the provisions of the ordinance requested to be varied would deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone.*

Noncommercial accessory buildings and structures, including garages, are among uses allowed by right in the Tahoe One Family (TR1) Zone District. Further, it has been determined that garages in the Lake Tahoe Basin constitute a reasonable use due to the excessive amount of annual snowfall the area experiences. By requiring the applicant to locate a garage in accordance with the building setbacks of the Tahoe One Family (TR1) Zone District, the strict application of the provisions of the ordinance would thus deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone, and therefore, Finding 2.2 can be made.

*Required Finding 2.3: The variance is the minimum necessary for the reasonable use of the land or building.*

Staff has determined that, due to the severe TRPA lot coverage constraints discussed in Finding 2.1 above, the variance is the minimum necessary for the reasonable use of the land or building because there are no other locations on the subject parcel that would allow for a single story garage to be consistent with the building setbacks and Development Standards of Section 17.56.040 of the Zoning Ordinance. In addition, by utilizing the location of the existing parking pad, the project would require only very minimal soil disturbance. Therefore, Finding 2.3 can be made.

*Required Finding 2.4: The variance is in conformity with the intent of this article and not detrimental to public health, safety and welfare, or injurious to the neighborhood.*

Although there are two public utility easements within the area of the proposed garage, staff has determined that all utility infrastructure is located outside the area of proposed construction. Further, written comments and documents from affected utility companies indicated that the requested variance would not interfere with, or obstruct, their operations. Therefore, staff has determined that, as approved and conditioned, the permitting of the proposed garage would be in conformity with the intent of this article, and would not constitute a significant risk to public health, safety and welfare or be injurious to the neighborhood. Accordingly, Finding 2.4 can be made.

**Recommendation:**

Staff recommends the Planning Commission take the following actions:

1. Find that the project is Categorical Exempt pursuant to CEQA Guidelines Section 15305(a); and
2. Deny Variance V10-0001 based on the Findings in Attachment 1.

Should the Planning Commission make appropriate Findings for Approval, staff would recommend conditional approval subject to the Revised Conditions of Approval in Attachment 1, based on the Revised Findings for Approval in Attachment 2.

**Attachments:**

- Attachment 1 .....Revised Conditions of Approval
- Attachment 2 .....Revised Findings for Approval
  
- Exhibit L .....Utility Location Map
- Exhibit M .....TRPA Site Assessment
- Exhibit N .....Record of Survey No. 30-134

## **ATTACHMENT 1**

### **REVISED CONDITIONS OF APPROVAL**

**Variance V10-0001/Stein  
Planning Commission/~~September 9, 2010~~October 14, 2010**

#### **CONDITIONS OF APPROVAL**

1. This variance is based upon and limited to compliance with the project description, the approved site plan (Exhibit D), 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:

Variance to reduce the front yard setback from 20 feet to one foot and the side yard setback from five feet to one foot, respectively, to allow a single story garage on an existing parking pad, as shown on the approved site plan, Exhibit D.

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. All plans must be submitted for review and approval and shall be implemented as approved by the County.

#### **Planning Services**

2. 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 developer and land owner 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 variance. The County shall notify the applicant of any claim, action, or proceeding, and the County shall cooperate fully in the defense.

3. Prior to issuance of any permits, the applicant shall pay all Development Services fees in full.
4. Prior to issuance of a building permit, all portions of existing public utility easement(s) under and within two feet of the proposed building footprint shall be permanently abandoned and, upon completion, the applicant shall submit appropriate documentation from a title company to Planning Services verifying that the above abandonment has been completed.
45. Prior to issuance of a building 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.
56. Prior to issuance of a building permit, the applicant shall record a Hold Harmless Agreement, or equivalent legal instrument approved by County Counsel, with El Dorado County, holding the County harmless for any public health, safety or welfare issues that may arise, or be caused by, locating the proposed structure within utility easement(s).
67. Any exterior lighting installed as a result of construction of the proposed garage shall conform to § 17.14.170, and be fully shielded pursuant to the Illumination Engineering Society of North America's (IESNA) full cut-off designation.
78. The applicant shall submit to Planning Services the \$50.00 administrative filing fee prior to filing of the Notice of Exemption by the County. No permits shall be issued until said fee is paid.
89. All site improvements, building locations, building orientations, and materials shall substantially conform to the approved site plan, floor plans and elevations (Exhibits D, E, F)
910. Approval of this Variance authorizes the setback encroachment for the garage only, as shown on the approved site plan. All other structures shall conform to the setbacks as specified in the TR1 Zone District.

## **ATTACHMENT 2**

### **REVISED FINDINGS FOR APPROVAL**

#### **Variance V10-0001/Stein Planning Commission/October 14, 2010**

#### **1.0 CEQA FINDINGS**

- 1.1 This project has been found to be Categorically Exempt from the requirements of CEQA pursuant to Section 15305(a) that allows minor alterations in land use limitations for a variance.

#### **2.0 REQUIRED VARIANCE FINDINGS**

- 2.1 *There are exceptional or extraordinary circumstances or conditions applying to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings or uses in the vicinity and the same zone, and have not resulted from any act of the owner or applicant*

Virtually the entire subject parcel is constrained by the lack of additional area to locate a new garage outside the setbacks required by Section 17.56.040 due to a combination of strict TRPA parcel coverage limitations, TRPA Scenic Highway Corridor screening requirements and excessive slope (exceeding 40 percent). Therefore, it can be found that there are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in this application, and that these circumstances have not resulted from any act of the owner or applicant. Accordingly, Finding 2.1 can be made.

- 2.2 *The strict application of the provisions of the ordinance requested to be varied would deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone.*

Noncommercial accessory buildings and structures, including garages, are among uses allowed by-right in the Tahoe One Family (TR1) Zone District. Further, it has been determined that garages in the Lake Tahoe Basin constitute a reasonable use due to the excessive amount of annual snowfall the area experiences. By requiring the applicant to locate a garage in accordance with the building setbacks of the Tahoe One Family (TR1) Zone District, the strict application of the provisions of the ordinance would thus deprive the applicant of the reasonable use of the land or building allowed for other land in the vicinity and the same zone. Accordingly, Finding 2.2 can be made.

2.3 *The variance is the minimum necessary for the reasonable use of the land or building.*

Staff has determined that, due to severe TRPA lot coverage constraints, the variance is the minimum necessary for the reasonable use of the land or building because there are no other locations on the subject parcel that would allow for a single story garage to be consistent with the building setbacks and Development Standards of Section 17.56.040 of the Zoning Ordinance. In addition, by utilizing the location of the existing parking pad, the project would minimize soil disturbance. Therefore, Finding 2.3 can be made.

2.4 *The variance is in conformity with the intent of this article and not detrimental to public health, safety and welfare, or injurious to the neighborhood.*

Although there are two public utility easements within the area of the proposed garage, staff has determined that all utility infrastructure is located outside the area of proposed construction. Further, written comments and documents from affected utility companies indicated that the requested variance would not interfere with, or obstruct, their operations. Therefore, staff has determined that, as approved and conditioned, the permitting of the proposed garage would be in conformity with the intent of this article, and would not constitute a significant risk to public health, safety and welfare or be injurious to the neighborhood. Accordingly, Finding 2.4 can be made.







**LAKE TAHOE OFFICE**  
3368 LAKE TAHOE BLVD.#302  
SOUTH LAKE TAHOE, CA 96150  
(530) 573-3330  
FAX (530) 542-9082  
E-mail EDC-BldgDept@oakweb.com

**PLACERVILLE OFFICE**  
2850 FAIRLANE COURT  
PLACERVILLE, CA 95667  
(530) 621-5315  
FAX (530) 622-1708

August 20, 1998

HALE-TIPPON CONSULTANTS  
P.O. BOX 5399  
TAHOE CITY CA 96145

Dear Mr. Hale:

Subject: Site Assessment for APN 016-600-19.

As you requested, a site assessment was done at 9170 Emerald Bay Road. This was completed by our inspector on June 10, 1998. The inspector's notes relating to this site assessment are on the Plot Plan and Site Assessment Field Notes. The results of this site assessment are listed below.

LAND CAPABILITY VERIFICATION

The inspector determined that the "Land Capability District" for this parcel is class 1a which has an allowable coverage of 1 percent.

BASE ALLOWABLE LAND COVERAGE

The base allowable land coverage for this building site of 79,940 square feet (1 $\frac{1}{8}$  X 79,940 sq. ft.) is 799 square feet. Because this is an environmentally sensitive parcel there is no additional land coverage allowed.

LAND COVERAGE VERIFICATION

While at the site, the inspector measured the existing land coverage. El Dorado County can verify the following as legally existing land coverage:

Onsite Coverage Verified

Building	1,206 square feet
Concrete Pads	8 square feet
Deck and Stairs	371 square feet
A/C Driveway	632 square feet

Total Onsite Coverage Verified . . . . . 2,217 square feet

Since the onsite verified legally existing land coverage of 2,217 square feet exceeds the base allowable land coverage of 799 square feet there is excess land coverage of 1,418 square feet.

Offsite Coverage Verified

Driveway	55 square feet
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EXHIBIT M

Total Offsite Coverage Verified . . . . . 55 square feet

UNITS OF USE VERIFIED

El Dorado County can verify the following as legally existing units of use:

Units of Use Verified

Primary units of use . . . . . 1 Residential unit

LAND COVERAGE NOT VERIFIED

El Dorado County cannot verify the following as legally existing land coverage:

Onsite Coverage Not Verified

Dirt Path . . . . . 386 square feet

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Total Onsite Coverage Not Verified . . . . . 386 square feet

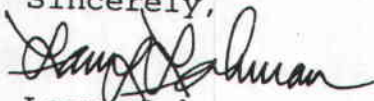
BEST MANAGEMENT PRACTICES

As a part of this site assessment the inspector identified the Best Management Practices (permanent) that must be included as a part of any proposed activity on this parcel. If you want to do your part in preserving our lake, it is recommended that you put in these BMPs with or without an associated activity (permits may be required). These are the identified BMPs:

1. Place infiltration trenches below the roof driplines.
2. Place an infiltration trench or drywell at the driveway.
3. Place 3" of gravel under all decks.
4. Revegetate dirt path.

If you have questions relating to this matter, call the Building Department at (530) 573-3330. Hours for the Lake Tahoe office are 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. Monday through Friday, except holidays.

Sincerely,

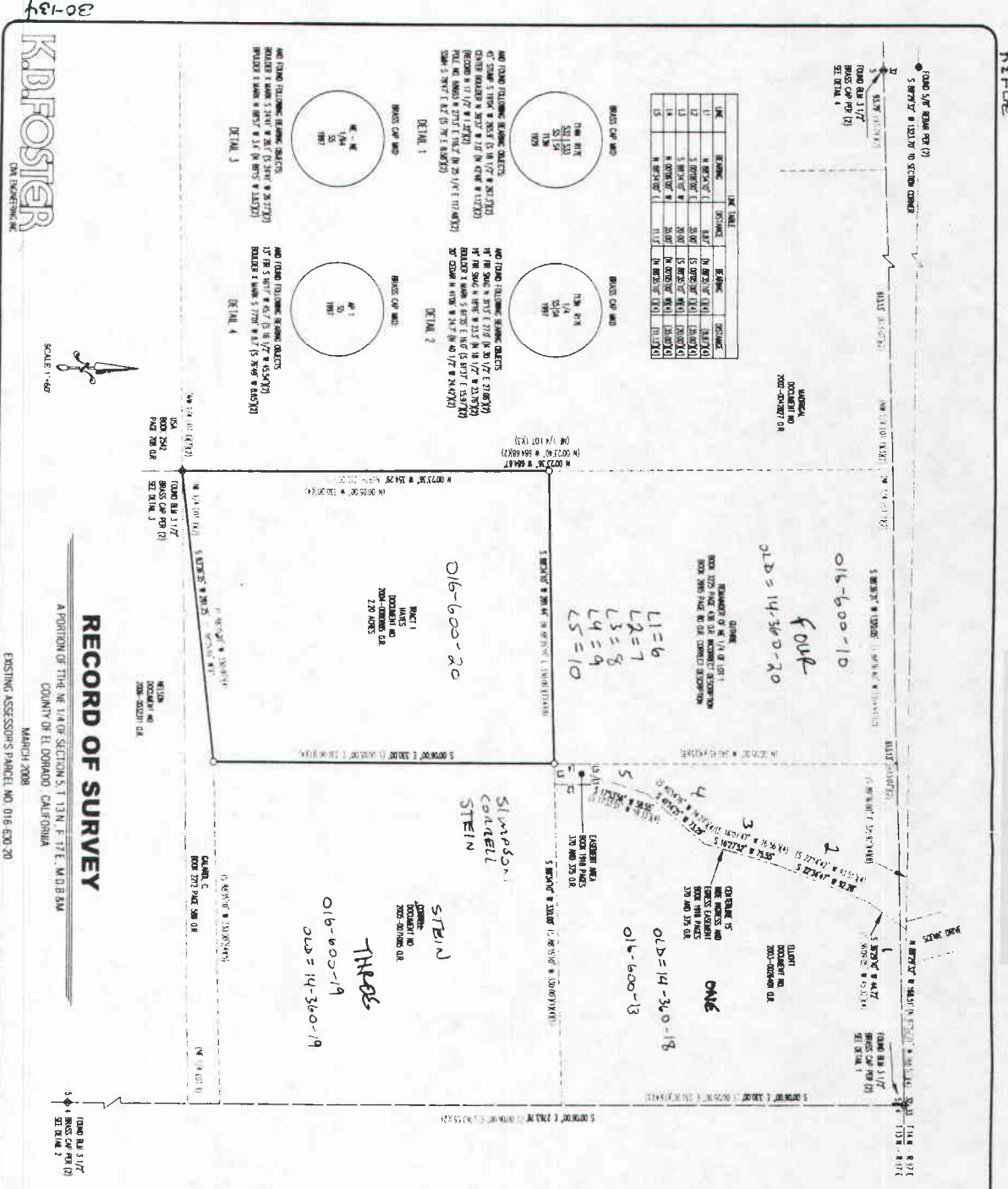


Larry Lohman  
Operations Supervisor, Lake Tahoe office

Enclosures:  
Plot Plan  
Site Assessment Field Notes

cc:  
MONTE SIMPSON  
#4 TROWBRIDGE ROAD  
MORRIS PLAINS NJ 07950

# EXHIBIT N



**RECORD OF SURVEY**  
 A PORTION OF THE NE 1/4 OF SECTION 5, T.13N., E. 17E., M.D.B.M.  
 COUNTY OF EL DORADO, CALIFORNIA  
 MARCH 2008  
 EXISTING ASSESSORS' PARCEL NO. 016-630-20

**LEGEND**  
 ● FORD MOMENTUM 4.5 1800  
 ○ SET-UP READY WITH 1/8" P.P. PLASTIC CAR'S 1666  
 — ADJACENT PROPERTY LINE  
 — SECTION LINES  
 — EASEMENT LINES

**ADJACENT PROPERTY LINE**  
 ADJACENT PROPERTY LINE  
 SECTION LINES  
 EASEMENT LINES

**SECTION 5 STATEMENT**  
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT AT THE REQUEST OF JAMES A. HAYES  
 SEPTEMBER 2007

**EDMUND CORNELL'S STATEMENT**  
 THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 5716 OF THE PROFESSIONAL LAND SURVEYORS ACT AND I AM  
 OF APRIL 2008

**DANIEL S. ROSSER'S STATEMENT**  
 DANIEL S. ROSSER, I.S. 5017 LICENSED EXPRESS 12-28-07  
 COUNTY SURVEYOR  
 COUNTY OF EL DORADO, CALIFORNIA

**RICHARD J. BRONKHORST'S STATEMENT**  
 RICHARD J. BRONKHORST, I.S. 5044 LICENSED EXPRESS 06-30-09  
 COUNTY SURVEYOR  
 COUNTY OF EL DORADO, CALIFORNIA

**COUNTY REQUIREMENTS STATEMENT**  
 FILED THIS 7 DAY OF APRIL 2008  
 AT THE OFFICE OF THE COUNTY CLERK  
 COUNTY OF EL DORADO, CALIFORNIA  
 DOCUMENT NO. 2008-16622

**KATHLEEN E. SCHULTZ**  
 COUNTY CLERK  
 COUNTY OF EL DORADO, CALIFORNIA

**BY: [Signature]**  
 COUNTY CLERK

2008 APR 7 10:30 AM  
 20-134