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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo**

MEETING DATE: October 10, 2017

TO: Board of Supervisors

FROM: **Brian Foss, Planning Director**

SUBJECT: Resolution denying the appeal filed by Kim & Don Crevoiserat, Gary & Pauline Rudolph, Kenneth & Elise Stupi, Robert & Candace Burbage, Carter & Louise Taylor, Sterling & Connie Bailey, Dana & Fayrene Dickey, and Ron & Mary Arneson regarding the Planning Commission's August 10, 2017 approval of a Development Permit (DVP16-8) for Northern Sierra Propane located at 13145 Loma Rica Drive, Grass Valley, Assessor's Parcel Number 06-920-10, and sustaining the Planning Commission's approval of the Development Permit.

RECOMMENDATION: Adopt the attached Resolution (Attachment 1) to deny the appeal, and uphold the decision of the Planning Commission to approve Development Permit (DVP16-8) for the Northern Sierra Propane project.

FUNDING: This hearing will have no impact on the General Fund. This project will impact the Planning Department's FY 17/18 budget for staff time.

ATTACHMENTS:

1. Resolution to Deny the Appeal and affirm the Planning Commission's decision to approve the Development Permit
2. Appeal to the Board of Supervisors
3. Final Project Approval Letter
4. August 10, 2017 Planning Commission Staff Report
5. August 10, 2017 Planning Commission Memo
6. August 10, 2017 Planning Commission Meeting Minutes
7. Nevada County Airport Land Use Commission Resolution 17-001

BACKGROUND: On June 10, 1999, the Nevada County Planning Commission approved the three-phased Tentative Final Map (FM99-001) for the English Mountain Park subdivision proposing to subdivide 43-acres into 16 industrial lots located east of Charles Drive and west of the Wawona Madrono residential subdivision. On August 19, 1999, Phases 1 and 2 recorded and created the 2.29-acre Lot 16, which is situated at the far eastern extent of the Light Industrial zoning designation and immediately adjacent to Wawona Madrono.

On May 25, 2006, the Planning Commission held a public hearing to consider an application proposing to construct an 18,700 square foot industrial building with 10 separate units on the 2.29-acre Lot 16. At the conclusion of the hearing, the Planning Commission approved the project. There was no appeal filed on that action. The approval was valid for three years; however, due to poor economic conditions, the Nevada County Board of Supervisors passed Ordinance 2284 which automatically extended all approved Use Permits and Development Permits for two additional years. Thus, the 2006 approval was extended until June 6, 2011.

On May 27, 2008, the Board of Supervisors adopted Resolution 08-218 approving the Loma Rica Drive Industrial Area Plan (LRDIAP). Among other things, the LRDIAP considers the infrastructure, development, and circulation within the area plan boundaries and sets forth the Goals, Policies, and Design Guidelines for new development within the Area Plan boundaries.

On May 19, 2010, the Nevada County Transportation Commission accepted designation as the Nevada County Airport Land Use Commission.

On December 13, 2013, a new owner hired another engineering firm and re-filed essentially the same project after the lot was sold in 2011 and the previous entitlement expired. Given the time span between 2006 and 2013, staff prepared another Initial Study with a proposed Mitigated Negative Declaration (MND).

On October 28, 2014, the Nevada County Board of Supervisors adopted an amendment of the Safety and Noise Elements of the General Plan to incorporate the Nevada County Airport Land Use Compatibility Plan.

On January 8, 2015, the Nevada County Planning Commission held a public hearing and adopted the MND and approved the project. The Wawona Madrono Home Owners Association filed an appeal due to concerns regarding the position of the structure, the number of parking spaces, hours of construction, types of landscaping, extents of the screening wall, and the height and architecture of the building.

On March 24, 2015, the Nevada County Board of Supervisors held a public hearing to consider the appeal. Resolution 15-131 denied the appeal, but modified the Conditions of

Approval to incorporate additional cedars in the landscaping, clarify required plant species, limit construction hours, raise the screening fence from 6 to 8 feet high, and specify noise limits. The permit was to remain active until March 24, 2018.

On October 12, 2016, a new application was made for a propane distribution business to supersede the existing approved entitlement. In the course of review, it was discovered that the lot occurred in a zone of the Airport Land Use Compatibility Plan which prohibited large aboveground tanks of hazardous substances. The application was deemed incomplete while the applicant sought a formal determination by the Nevada County Airport Land Use Commission.

On May 17, 2017, the Nevada County Airport Land Use Commission adopted Resolution 17-01 finding that the proposed project was consistent with the Nevada County Airport Land Use Compatibility Plan due to the fact that Safety Zone 5 which specifically prohibits the large aboveground tanks only extends 750 feet from the runway centerline and the proposed tanks are over 1,100 feet from the centerline therefore outside of the prohibited zone.

On August 10, 2017, the Planning Commission held a public hearing to consider the application by Northern Sierra Propane Company proposing to construct 2,000-square foot office, 2,016-square foot warehouse, and 2,500-square foot outdoor storage area with two 30,000-gallon propane tanks for a propane distribution business on the 2.3-acre lot. The Planning Commission approved the project and adopted the proposed Mitigated Negative Declaration for the project with a revised Mitigation Measure/Condition of Approval that raised the height and expanded the coverage of the noise attenuating wall.

Project Setting: The project site is part of the English Mountain Park subdivision within the Loma Rica Drive Industrial Area, approximately 2.5 miles southeast of Nevada City and a half mile east of Grass Valley. The lot slopes to the south away from Loma Rica Drive with terrain ranging from moderately sloped lower montane forest and chaparral to steeply sloped black oak woodland. The recorded subdivision map identifies a nondisturbance area for the steep slopes and landmark oak groves over the southern third of the site.

The General Plan land use designation for the project site is Industrial (IND) and the zoning district is Light Industrial with a Site Performance combining district (M1-SP). The SP combining district requires an evaluation of the project's consistency with the Loma Rica Drive Industrial Area Plan (LRDIAP). The area plan's goals include evaluating development potential and constraints for clean industry, identifying benefits of the Nevada County Airport, and developing design standards.

Surrounding parcel sizes range from 2 to 9 acres in size. The project site is at the transition between the other industrially zoned uses (to the west and north) and rural

residential uses (east and south). Properties to the north and northwest are developed with airport uses; the two properties to the west remain undeveloped. The properties to the east and south are residentially developed and zoned for Residential Agriculture to the east and General Agriculture to the south.

The Northern Sierra Propane Project: The approved Development Permit would allow the construction and operation of a propane distribution business consisting of a 2,000-square foot office, 2,016-square foot warehouse, and 2,500-square foot outdoor storage area with two 30,000-gallon propane tanks for a propane business on a 2.3-acre lot. Seventeen public and employee parking spaces will be provided, ten in front of the business and seven in the rear. Two ADA accessible spaces, and a van/car pool space are included. An eight-foot tall solid wall would screen parking in the rear for the company service vehicles from residences to the north and east. There would be five 15-foot tall light poles onsite: two at the corners of the front parking area and three in the rear. Signage consists of a 14-square foot monument sign at the entrance.

The office and warehouse design includes a dark green seamed metal roof, brown plank lap siding, and corrugated metal wainscoting. The office height is 17 feet high and the warehouse will not exceed 23 feet in height. Impervious surfaces including the buildings, pavement, curbs, walkways, and gravel covering approximately a third of the lot.

Approximately 6,000 cubic yards of material will be excavated and used as fill onsite to level the site for development. The remainder of the parcel coverage will consist of 20 percent landscaping and approximately 47 percent open space. The open space consists of steep slopes and Landmark Oak Groves at the lower south end of the property.

THE APPEAL: The appeal (Attachment 2) cites four reasons the appellant believes the Planning Commission's decision should be reconsidered. Specifically, (1) the appeal challenges the determination of the Nevada County Airport Land Use Commission through Resolution 17-01 that the project is consistent with the Nevada County Airport Land Use Compatibility Plan; (2) states that the approved project is inconsistent with the Land Use and Development Code and Loma Rica Drive Industrial Area Plan; (3) argues that the approved project is inconsistent with the County General Plan; (4) argues that the permit is inconsistent with the approved Mitigation Measures for the previously approved project for this lot. Staff will address each of these four arguments in turn and explain how the items were evaluated by staff and by the Planning Commission.

Argument 1: Nevada County Airport Land Use Commission Approved a Request for Consistency Determination (Resolution 17-01) for the Northern Sierra Propane Project (PLN16-0072) based on Insufficient Data and Misleading Information.

Under Nevada County Airport Land Use Compatibility Plan Policy 1.4.2 (b), after a local agency has revised its General Plan and it is found consistent with the Airport Land Use Compatibility Plan, the Nevada County Airport Land Use Commission (NCALUC) no

longer has authority under State law to require that all actions, regulations, and permits be referred to the NCALUC for a consistency determination. With the adoption of amendments to the Nevada County General Plan to include the Nevada County Airport Land Use Compatibility Plan on October 28, 2014, the NCALUC is no longer required to review all projects, but may be asked by the County to review individual projects under an advisory capacity. This means that the County is not required to adhere to the overruling process should the Board chose not to accept the NCALUC's determination in Resolution 17-01. However, there is no reason for the Board not to accept the expert determination provided by the resolution as described below.

Specifically, Resolution 17-01 is not a waiver of the safety requirements, but only a clarification of the Nevada County Airport Land Use Compatibility Plan. The NCALUCP uses a composite criteria table and map which, as described in the California Airport Land Use Planning Handbook (Handbook), merge the separate noise and safety zones into a "single set of criteria presented in one table and one map for each airport" (p. 3-37). The Handbook states that one disadvantage of this approach is that "if more detailed assessment of a complex land use development proposal is necessary, reference to separate noise and safety compatibility tables and maps is often still required" (p. 3-38).

The NCALUC found that the delineation of the B2 zone in which the project partially occurs is a composite of separate noise and safety compatibility concerns. The B2 designation refers specifically to areas of moderate to high noise impacts. The prohibition on aboveground hazardous materials storage comes from Safety Zone 5 as shown in the California Airport Land Use Planning Handbook. Safety Zone 5 does not actually have the same extents as the B2 zone which describes noise impacts. Although the two different zones were merged into one combined zone for ease of use, Safety Zone 5, which precludes the aboveground propane storage, does not actually extend as far as the B2 zone shown in the Airport Land Use Compatibility Plan. Safety Zone 5 typically extends about 750 feet from the airport runway. The large propane tanks are 1,100 feet from the runway which is approximately 350 feet beyond the prohibitive safety zone. The NCALUC thus determined that the proposed tanks were consistent with the Nevada County Airport Land Use Compatibility Plan and provided a determination of consistency with the resolution.

Regarding the question of whether the County acted in good faith for its part in the process, not only did the County meet all State and County notification obligations, it included the Wawona Madrono Home Owners Association (HOA) in the Initial Distribution of the project application on October 18, 2016 and received comments from both the HOA via Louise Taylor on November 7, 2016 and Kim Crevoiserat on November 11, 2016. The Project Planner continued to have email communication with Louise Taylor as a representative of the HOA throughout the process and did mention in an email dated May 8, 2017 that the project had a hearing with the Airport Land Use Commission on May 17, 2017.

At the Initial Distribution phase of the project, a brief preliminary description is provided for the project. This is not intended to be a complete description of the project, but merely a notice of the general type of land use and major structures involved. This would not go into specific ancillary details such as the capacity of storage tanks or parking spaces proposed at this stage. Once the project is deemed complete and all the project details have been worked out, a full project description is provided. In this case, the first sentence of the complete project description provided to the public in the Notice of Availability for Public Review published on July 14, 2017 clearly states the storage tanks' capacity. The appellants were included early in the planning process well before the typical public notification and hearing process and at a stage when details for the project are still being worked out.

For clarification, Kevin Nelson is the applicant's representative, not the Project Planner. The views and opinions expressed in the letter mentioned by the appellants do not in any way reflect the policy or position of the County.

Argument 2: The Development Permit is not consistent with the Nevada County Land Use and Development Code and Loma Rica Drive Industrial Area Plan.

Under the Nevada County Land Use and Development Code (LUDC) Sec. L-II 2.5.D which lists Allowable Uses and Permit Requirements for Industrial Districts, a "Commercial activity that normally requires extensive storage areas including, but not limited to, contractors equipment yard, vehicle storage yard, sales and storage of fuel, building/farm supply, equipment rental, kennels" requires a Development Permit. As the appellant points out, however, "Storage and distribution of bulk petroleum products" requires a Use Permit. For clarification, the "Storage of explosives" use would not be applicable. Although propane is highly flammable, it is not highly reactive or per se explosive. The project is for a retail propane business that delivers nearly exclusively to small residential users. Given the project's uses including a business office, small warehouse, and small residential delivery rather than large wholesale or industrial delivery, Staff designated the project a Development Permit.

Regardless of whether the project received a Development or Use Permit, the LUDC has the same requirements and findings for either type of permit. Sec. L-II 5.6.G of the Code which discusses the findings necessary for approval or denial of a Use Permit refers to Section 5.5.2.C and the same findings required for a Development Permit. Therefore, the Northern Sierra Propane project underwent the same type of review and required the same findings for approval as would be required for a Use Permit.

Additionally, through thorough review of potential fire, health and safety concerns by staff with review and comment from the NCALUC, the Fire Marshall, Nevada County Consolidated Fire District, Calfire Air Attack Base, and the Emergency Communications

Center, no safety objections were raised. The project is conditioned to comply with all State and County reporting and regulation of hazardous materials to further mitigate any potential risks and was not found to present any significant risk to the health or well-being of the community. Other speculative concerns regarding property values and insurance rates are not included within the purview of the County LUDC.

Furthermore, the approved project is consistent with the buffering requirements for residential property adjacent to nonresidential uses as found in the Community Design Standards. Under Sec. L-II 4.2.7.E, a landscape buffer is required for nonresidential development and associated parking that abuts residentially-zoned property. The intended visual screening requires at minimum a fence and five-foot landscape buffer. The permitted project exceeds these minimum requirements by providing an eight-foot concrete block wall and over ten feet of landscape buffer around the parking area. The actual buildings are over twenty feet from the residential property line where typically no setback is required for Light Industrial zoning.

The project was also found to be consistent with the Loma Rica Drive Industrial Area Plan (LRDIAP). The overall goal of the Plan is to “establish a working environment that attracts and retains business in Western Nevada County.” The Northern Sierra Propane project is consistent with the LRDIAP goals by supporting clean industry, conforming to site and building design guidelines for the area, and coordinating review of the project with Grass Valley and the Airport. Goal 2.3 of the LRDIAP requires that the plan maintain compatibility between neighboring land uses. This goal is to be met through policy 2.5 which states that noise generating land uses and outdoor activity areas shall be discouraged on lands abutting residential zoning. The approved project is consistent with this goal and policy. No outdoor work areas are proposed. Outdoor work areas would include areas with industrial activities such as welding, grinding, or the operation of heavy machinery which would generate considerable noise. Outdoor parking and storage do not constitute the significant noise generating uses discouraged in the exterior areas of the LRDIAP.

Argument 3: Development Permit is not compatible with the General Plan.

The permitted use was reviewed and found compatible with the General Plan. As described in the Staff Report for the project, it furthers the General Plan’s goals and policies including promoting Economic Development through the retention of local jobs that provide a necessary service to the County residents and benefits the local economy. The project reflects Open Space values and Resource Conservation by leaving over an acre of the south end of property in a natural forested state which preserves Landmark Oak Groves, protects steep slopes from erosion, and additionally buffers the residences to the south and southeast. The project meets Circulation goals by making efficient use of existing roads without decreasing levels of service. The approved project furthers all the elements mentioned above including the goals of the Land Use and Noise elements specified by the appellant.

Staff found that the project is consistent with Land Use and Noise elements of the General Plan. The General Plan prevents incompatibility between land uses through zoning. Policy 1.6.1 and 1.6.2 of the General Plan establish zones which follow General Plan designations which were established to “protect, enhance, and complement existing communities and neighborhoods.” The project parcel has the Industrial (IND) designation in the General Plan and as shown on the General Plan Land Use Designation Compatibility Matrix under Policy 1.6.2, the M1 light manufacturing zone is compatible with the General Plan’s IND designation. By setting zones for certain types of land uses, the General Plan separates incompatible uses. The propane distribution business is consistent with the Land Use element of the General Plan because it occurs in an area mapped for Industrial use, not an area designated for Residential use.

The appellants state that the Northern Sierra Propane project is not consistent with goal 9.1 under the Noise element of the General Plan which directs County policies to “encourage an environment free of unnecessary and annoying noise.” To that end, Policy 9.1.1 establishes and continues to reassess the noise environment for a realistic set of noise standards. Policy 9.1.2 sets noise standards which are reflected in the LUDC. As the appellant notes, where two different zoning districts abut, the County General Plan implements the noise standard of more restrictive district +5 dBA. This would result in a noise standard of 60 L_{eq} and 80 L_{max} based on the Residential Standards. Note that the project is also within the Airport Land Use Compatibility Plan’s B2 zone which categorizes noise impacts from the airport as moderate to high for the zone with noise levels described as typically exceeding 60 dB.

The appellants have specified that the noise of the service vehicles would be an unnecessary and annoying noise and inconsistent with General Plan policies. Although what is considered annoying is subjective, service trucks are not an unnecessary noise. They are a necessary and common part of any business. In this case, the trucks would be offsite for the vast majority of the workday making deliveries. Truck noise during the brief time they are onsite, typically at the beginning and end of the workday, even with required safety warning signals would only last a number of minutes. To ensure that any sound impacts from the business did not impact the appellants, Staff did condition that the screening wall for the parking area be of greater height and material than originally proposed to serve as a sound attenuating barrier. With this additional Mitigation Measure, Staff has determined that the General Plan policies setting noise standards are met.

Argument 4: Project is not consistent with prior Board approved Mitigation Measures for this property.

Conditions and Mitigation Measures are specific to an approved project. Different projects may have different potential impacts. In this case, the potential impacts of the former 10-unit industrial condominium project would have different including potentially greater noise and traffic impacts than a single retail propane distribution project. That

said, planning staff included most of the modifications to the conditions for the previously approved project including limiting construction hours, additional evergreen landscape material and an eight-foot screening and sound attenuating wall.

A. (Condition A.1) *The use of the site shall be consistent with the allowable uses for the MI-SP zoning district and does not include any outdoor uses.*

Again, this condition was specifically written for the 10-unit industrial condominium project where any number of unknown tenants and light manufacturing processes could occur. Outdoor uses refer to manufacturing work occurring outdoors such as material fabrication, welding, construction, or other production processes. It does not refer merely to vehicle parking and loading and unloading. No business could survive without the ability to transport workers and material on and off site.

B. (Condition A.20) *Property owner shall incorporate noise attenuation features into the design of the eastern project boundary.*

This condition was originally applied to the previous 10-unit industrial condominium project where numerous potential users and industrial processes made it difficult to know what noise levels would result and it may have been hard to ensure that industrial work was kept indoors. Therefore, an oversized wall was required around the parking area as well as the imposition of residential sound limits on the industrially-zoned project. Staff kept the wall requirement to mitigate potential truck traffic noise; however, due to the fact that the LUDC already addresses exterior noise limits between two different zones by limiting the noise to the more restrictive limit +5dB pursuant to Sec L-II 4.1.7 D.4, staff did not impose residential noise limits on the industrial lot.

APPEAL CONCLUSION: Staff finds that the Board of Supervisors does not have to adhere to the determination of the Nevada County Airport Land Use Commission; however, there is no compelling reason not to accept the determination regarding the location of the project outside the prohibitive Airport Land Use Compatibility Plan safety zone. Staff also finds that the project is consistent with the County Land Use and Development Code, the Loma Rica Drive Industrial Area Plan, and General Plan for the reasons discussed above. Staff worked with all interested parties to reduce potential impacts to adjacent residential properties. Where appropriate, many of the conditions from the previously approved industrial project were carried over to the new project. Staff believes this is a fair compromise that protects both the purpose and intent of the property zoning, while maintaining reasonable protections for the adjacent residential property in keeping with the Policies and Guidelines of the LRDIAP.

The Planning Commission carefully considered the issues of compatibility between the two land uses before making their decision to approve the project. Many concerns were raised during the public hearing before the Planning Commission, and the Planning

Commission exercised their independent judgment, to determine that the project impacts were all mitigated to a less than significant level. The minutes will show this decision was clearly reached before any action was taken to approve the project (Attachment 6).

SUMMARY: The findings and record in support of the Planning Commission's final decision are found in the attached August 10, 2017 Planning Commission staff report, the August 10, 2017 Memorandum, and August 10, 2017 meeting minutes (Attachments 4, 5, and 6). Before taking action on this appeal, the Board should independently consider the Planning Commission staff report, memorandum and meeting minutes with the discussion and reasoning presented in this report. Collectively, this information provides the reasons in support of those new findings listed in the Resolution to deny the appeal, and uphold approval of the Development Permit.

Please contact me should you require additional information or background.

Item Initiated by: JD Trebec, Associate Planner

Approved by: Brian Foss, Planning Director