



# **RESOLUTION No. \_\_\_\_\_**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

**RESOLUTION DENYING THE APPEAL FILED BY DONALD MOONEY, ATTORNEY ON BEHALF OF CHARISSE LOLLI REGARDING THE PLANNING COMMISSION'S OCTOBER 26, 2017 DECISION TO CERTIFY ENVIRONMENTAL IMPACT REPORT (EIR15-001) FOR THE DOLLAR GENERAL STORE PROJECTS IN ALTA SIERRA, ROUGH AND READY HIGHWAY AND PENN VALLEY AND THE APPROVALS OF DEVELOPMENT PERMIT (DP15-004), WETLANDS AND WATERCOURSE MANAGEMENT PLAN (MGT15-013), CERTIFICATE OF COMPLIANCE (COC17-0001), AND LOT-LINE ADJUSTMENT (LLA16-006) FOR A PROPOSED 9,100 SQUARE FOOT DOLLAR GENERAL STORE AND ASSOCIATED IMPROVEMENTS LOCATED AT 17652 PENN VALLEY DRIVE (PROPOSED STORE PARCEL) (APN 51-120-06) AND 17630 PENN VALLEY DRIVE (LOT-LINE ADJUSTMENT AND CERTIFICATE OF COMPLIANCE) (APN 51-150-29) PENN VALLEY, CALIFORNIA AND SUSTAINING THE PLANNING COMMISSION'S CERTIFICATION OF THE PROJECT ENVIRONMENTAL IMPACT REPORT (EIR15-001) AND APPROVAL OF THE PROJECT ENTITLEMENTS (DP15-004; MGT15-013; COC17-0001; AND LLA16-006)**

WHEREAS, on June 5, 2015 Simon CRE, Raylan V, LLC applied for a Development Permit proposing to construct a 9,100 square foot Dollar General Retail Store, including associated improvements (parking, lighting, retaining walls, landscaping and signage), a management plan for disturbance to an onsite wetland and encroachment in the setbacks to a watercourse, a certificate of compliance to legalize both parcels, and a lot line adjustment to create the approximately 1.20-acre store parcel on privately-owned and undeveloped land located at 17652 Penn Valley Drive, Penn Valley (APN 51-120-06) (store parcel) and 17630 Penn Valley Drive (lot-line and certificate of compliance); and

WHEREAS, at 9,100 square feet, this project fell just short of the threshold for being considered a Planning Commission project (typically 10,000 square feet), however, the Planning Director in his role as Zoning Administrator determined that this project along with the other two Dollar General proposals should be reviewed and considered by the Planning Commission instead of the Zoning Administrator consistent with the provisions of Nevada County Land Use and Development Code (LUDC) Section L-II 5.5.E.4; and

WHEREAS, the County and the applicant agreed to pursue an Environmental Impact Report (EIR15-001/ SCH2016012009) for all three of the Dollar General Stores as a way to ensure all potential cumulative impacts could be considered under one environmental document. While only one EIR was prepared, the EIR was structured to allow the Planning Commission to take individual actions on each separate project and each project is considered an independent entitlement.

WHEREAS, on October 26, 2017, the Nevada County Planning Commission held a public hearing to consider the certification of an Environmental Impact Report for all three projects, including the Penn Valley Project (DP15-004; MGT15-013; COC17-001; LLA16-006) and the Planning Commission on a 5-0 vote certified an Environmental Impact Report (EIR15-001/SCH2016012009) as adequate environmental review for the project, making project specific CEQA Findings of Fact and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, on October 26, 2017, the Nevada County Planning Commission conducted a public hearing, considered the entire public record before them and after deliberating on the project, the Planning Commission conditionally approved the proposed Management Plan (MGT15-013), Certificate of Compliance (COC17-0001), Lot-line Adjustment (LLA16-006) and Development Permit (DP15-004) making appropriate findings as documented in the October 26, 2017 Planning Commission Staff Report; and

WHEREAS, pursuant to Section L-II 5.12.D of the Nevada County Land Use and Development Code, the Planning Commission's approval of the Application is appealable to the Board of Supervisors within 10 days after the date of the decision; and

WHEREAS, on November 6, 2017, Mr. Donald Mooney., Attorney (Representative) on behalf of the Appellant Charisse Lolli filed a timely appeal of the Planning Commission's decision; and

WHEREAS, on December 12, 2017, the Board of Supervisors adopted Resolution 17-620 to accept the appeal as to the Planning Commission's actions on the Environmental Impact Report and Project and scheduled the appeal for hearing on February 27, 2018 at 1:30 p.m.; and

WHEREAS, on February 27, 2018, the Board of Supervisors held a duly noticed public hearing at which the Board considered all evidence both oral and written regarding the appeal and denied the appeal, upholding the Planning Commission's October 26, 2017 certification of the EIR (EIR5-001), approval of Management Plan MGT15-013, Certificate of Compliance COC17-0001, Lot-line Adjustment LLA16-006 and Development Permit DP15-004.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines that:

1. The facts set forth above are true and correct.
2. That the potential environmental impacts of the project have been adequately reviewed, disclosed and mitigated for pursuant to the project specific certified Environmental Impact Report (EIR15-001/ SCH2016012009) as required by the California Environmental Quality Act Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15090 making CEQA Findings of Fact attached hereto as Exhibit A and adopting the Mitigation Monitoring and Reporting Program.
3. That the issuance of this Management Plan is consistent with the provisions of Section L-II 4.3. Resource Standards of the Nevada County Land Use and Development Code; and
4. That potentially significant impacts water courses and wetlands located on the project site have been minimized through the incorporation of mitigation measures, including payment of compensatory mitigation in the form of a onetime in-lieu fee for wetland impacts, implementing best management practices during construction and minimizing post project erosion;
5. The subject parcels were initially created when the Nevada County Tax Collector sold them in separate deeds in February 2013, after the 1972 approval of the Subdivision Map Act which requires a recorded map to create new property, and are therefore both in noncompliance with the Subdivision Map Act.

6. Section 66499.35(b) of the California Subdivision Map Act requires that a conditional certificate of compliance be issued whenever a local agency determines that real property does not comply with the provisions of the Subdivision Map Act and local ordinances. The local agency may require, as a condition of granting the conditional certificate of compliance, any conditions that would have been applicable at the time the applicant acquired interest in the property (February 5, 2013). One of the proposed parcels is not compliant with local ordinances in that the parcel (APN 51-150-29) does not meet road frontage requirements;
7. The parcels comply with the minimum parcel size requirement of the C2 zoning which is in effect for this area; and
8. The conditions attached to the Conditional Certificate of Compliance (COC17-0001) are the minimum necessary to protect the public health and safety and are necessary to the orderly development of surrounding area.
9. That this project, as approved, is consistent with Sec. L-II 4.1.3.E, Boundary Line Adjustment Standards for Approval, in that the adjustment does not result in conflicts with site development standards, that the adjustment will not result in additional parcels or additional density, that the subject parcels will meet the minimum Environmental Health standards contained in Chapters VI and X of the Land Use and Development Code, and that the adjusted parcels will conform to the minimum parcel sizes required by the zone district.
10. That this project as conditioned and mitigated is consistent with the General Plan goals, objectives and policies, and with the Community Commercial General Plan land use map designation applicable to this project site;
11. The proposed use is allowed within and is consistent with the purpose of the C2 zoning district within which the project is located, which allows commercial uses with an approved development permit;
12. The proposed use and any facilities, as conditioned, will meet all applicable provisions of the Land Use and Development Code, including design and siting to meet the intent of the Site Development Standards, as refined by the Penn Valley Area Plan, mitigating the impact of development on environmentally sensitive resources;
13. The site for the proposed use is adequate in size, shape and location to accommodate the proposed use and all facilities needed for that use and reasonable expansion thereof, if any, and to make appropriate transitions to nearby properties and permitted uses thereon, without compromising site development standards;
14. That Penn Valley Drive, which serves the project is a County-maintained Major Collector road that is adequate in size, width, and pavement type to carry the quantity and kinds of traffic generated by this project;
15. The proposed use and facilities are compatible with, and not detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area;
16. Adequate provisions exist for water and sanitation for the proposed use;
17. Adequate provisions exist for emergency access to the site;

18. That this development permit, proposing a commercial building for commercial use, is consistent with the intent of the design goals, standards, and provisions of the Nevada County Zoning Ordinance and will be compatible with the design of existing and anticipated future uses on the nearby surrounding areas;
19. That based on the comments received and conditions applied from the Nevada County Departments of Public Works, Planning, Environmental Health, Nevada Irrigation District, Penn Valley Fire District, and CalFire, adequate public services exist in the immediate area to support the project including adequate sewage disposal, domestic water service, fire flow, and safe and adequate roads;
20. All feasible mitigation measures have been imposed upon the project to offset the impacts this project may have to the greatest extent possible on aesthetics, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hydrology and water quality, noise, land use, transportation and circulation, and utilities and service systems; and
21. That the conditions listed are the minimum necessary to protect the public's health, safety and general welfare.
22. These findings are supported by substantial evidence in the record, as detailed in this Resolution, in the staff report for the February 27, 2018 appeal hearing before the Board, and as discussed at the hearing. That evidence includes but is not limited to the professional expert advice of staff of the County's Planning Department, County Counsel, as well as the judgment of the Board of Supervisors.
23. The location and custodian of the documents which constitute the record of these proceedings is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby denies the appeal of the Appellant and upholds the decision of the Planning Commission to certify the Environmental Impact Report (EIR15-001); Management Plan (MGT15-013); Certificate of Compliance (COC17-0001); Lot-Line Adjustment (LLA16-006) and Development Permit (DP15-004) located at 17652 and 17630 Penn Valley Drive, Penn Valley California based on the findings as set forth herein.

The Planning Director is directed to re-file the Notice of Determination for this project action within 5 days after the adoption of this Resolution.

The Clerk of the Board shall mail the Appellant a copy of this Resolution, and any appeal of this decision shall be governed by California Code of Civil Procedure section 1094.6.