

APPEAL TO BOARD OF SUPERVISORS

(Per Article 5 of Chapter II of the Land Use and Development Code)

Any applicant or interested party may file an appeal with the Board of Supervisors requesting review of any final action taken by Various County Agencies. Such appeal shall be filed with the Clerk of the Board of Supervisors within **ten (10) calendar days** from the date of the decision, except for recommendations on general plan amendments which by State law are subject to a **five (5) calendar day** appeal period. Filing shall include all information requested herein and shall be accompanied by the appropriate filing fee. The statements (required below) must contain sufficient explanation of the reasons for and matters being appealed in order to facilitate the Board of Supervisors initial determination as to the propriety and merit of the appeal. Any appeal which fails to provide an adequate statement may be summarily denied. The filing of such an appeal within the above stated time limit shall stay the effective date of the action until the Board of Supervisors has acted upon the appeal.

I. APPEAL: I/We, the undersigned, hereby appeal the decision/recommendation of the

Nevada County Community Development Agency- Planning Department

Agency Name

PLN18-0023

2/28/2019

Agency File No.

Date of Decision

PLANNING AGENCY DECISIONS:

- Airport Zoning
L-III Airport Zoning; Truckee-Tahoe Airport, 2.12 Appeals; Nevada County Air Park, 3.10
- Environmental Impact Report
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.20 Appeals of the Adequacy of the EIR
- Floodplain Management Regulations (Floodplain Administrator)
L-XII Floodplain Management Regulations; 1.4 Administration
- Historic Preservation Combining District
L-II Zoning Regulations; Zoning Districts; 2.7.2 HP Combining District
- Inoperable Vehicles
L-II Zoning Regulations; Administration and Enforcement, 5.20 Abatement and Removal of Inoperable Vehicles
- Land Use Applications
L-II Zoning Regulations; 5.12 Administration and Enforcement
- Negative Declaration
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration

Rules of Interpretation

L-II Zoning Regulations; 1.4 Rules of Interpretation Regarding:

PUBLIC WORKS DECISIONS:

Roadway Encroachment Permit

G-IV General Regulations; 4.A Regulating Roadway Encroachments; 15.1 Appeals

FIRE AGENCY DECISIONS:

Fee Assessments (Fire Protection District)

L-IX Mitigation and Development Fees; Fire Protection Development Fees; 2.6 Appeal from Fee Assessment

Fire Safety Regulations; General Requirements (Fire Safety Reg. Hearing Body)

L-XVI Fire Safety Regulations; General Requirements; 2.7 Appeals

Fire Safety Standards (County Fire Marshal or Fire Chief)

L-V Buildings; 5.8 Fire Agency Appeals

ENVIRONMENTAL HEALTH DECISIONS:

Sewage Disposal (Sewage Disposal Technical Advisory Group)

L-VI Sewage Disposal; 1.18 Appeals

Water Supply and Resources (Health Officer)

L-X Water Supply and Resources; 5.1 Appeal Procedures

List All Agency Action(s) Taken That Are Being Appealed: _____

Planning Commission Approval of Conditional Use Permit CUP 18-0009

Planning Commission Approval of Seasonal and Ephemeral Stream Management Plan (MGT-0019)

Planning Commission Approval of Amendment to Tentative Parcel Map AAM19-0002

Planning Commission Adoption of Mitigated Negative Declaration EIS18-0012

Planning Commission Findings related to each of the above.

II. STATEMENT OF THE REASONS FOR THE APPEAL:

See Attachment 1

III. STATEMENT OF THE SPECIFIC PROVISIONS WHICH ARE BEING APPEALED:

See Attachment 2

IV. STATEMENT OF THE CHANGES OR ACTION REQUESTED OF THE BOARD OF SUPERVISORS: _____

Uphold the appeals of Planning Commission approvals listed in Section I of this Appeal and deny the project as proposed.

V. SUMMATION OF THE ARGUMENTS TO BE RAISED BY THE APPELLANT(S):

See Attachment 3

VI. IDENTIFICATION OF THE APPELLANT(S):

Jennifer D' Andrade _____
(Name) (Mailing Address) (Telephone)

VII. NOTICE: (Multiple appellants should select one representative for purposes of notice.

All notices to appellant(s) should be mailed to: (Please Print)

Jennifer D'Andrade
(Name/Representative) _____ (Mailing Address) _____ (Telephone) _____

Appellant:

Jennifer D'Andrade
(Sign)

Dated: 3/11/2019

Jennifer D'Andrade
(Print)

FOR OFFICE USE ONLY

\$ 1,501.40
Filing Fee

3/11/19
Date Filed

B. Price
Received By

Appeal form to be returned to: Nevada County Board of Supervisors Office, Eric Rood
Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959-8617. (530) 265-1480

ec: Planning
COCO



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY

MAR 11 2019

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 265-9854 http://www.mynevadacounty.com
NEVADA COUNTY BOARD OF SUPERVISORS

Planning Department Environmental Health Building Department Sanitation Department Dept. of Public Works Agricultural Commissioner

AGREEMENT TO PAY FORM
LAND USE APPEAL

Nevada County Community Development Agency (NCCDA) Appeal fees are based on Board of Supervisor approved fee schedules. Hourly fees and fees for services by departments not included in the original appeal fees are billed to the applicant based on the Board approved fee schedule in effect at the time services were performed and once the final appeal decision has been rendered by the Board. This Agreement To Pay Form must be signed and original signatures submitted to the Clerk of the Board along with the completed forms and the initial payment of fees. Copy of current fee schedule is attached to the appeal packet.

I/We understand that the NCCDA may bill for services not included in the original appeal fee, and I/We agree to pay such billing within thirty (30) days of the mailing of such billing. All fees must be paid prior to the granting of any permits, approvals, or any land use entitlement for which services are required. The collection of fees, however, will have no effect upon the decision of the appeal by the Board of Supervisors.

Appellant Information:

Invoices and/or notices to be mailed to:

Project: PLN18-0023	Name: Jennifer D'Andrade
Caldwell Event Center	Address: [REDACTED]
	[REDACTED]
	[REDACTED]

NCCDA Staff is authorized to consult with necessary governmental agencies concerning this project. They are also authorized to consult with the following individuals concerning this appeal:

Jennifer D'Andrade

I certify under proof of perjury that I am the party authorized to enter into this fee agreement. I have read the conditions concerning Nevada County Community Development Agency Fees and I understand that in the event that the billing party I have indicated does not pay required fees, I will be responsible for payment. I further agree to advise the department in writing should I no longer be associated with the above referenced project/property, rendering this agreement invalid as of the change of the date that the letter is received by the Nevada County Community Development Agency.

Jennifer D'Andrade
Signature

Dated: 3/11/2019

CDL# [REDACTED]

Jennifer D'Andrade

Tel #: [REDACTED]

Printed Name

Attachment 1

II. STATEMENT OF THE REASON FOR THE APPEAL:

A. The seasonally flooded areas/intermittent waterways are not accurately mapped or addressed in the project submittals.

The proposed parking lot and driveway widening will be located in an ephemeral stream that is not mapped in the project submittal.

As nearby neighbors, we know that the ephemeral streams are incorrectly mapped on the site plan. The applicant's biologist in March 2016 mapped two watercourses on the site- a seasonal stream which enters the site from the northeast and an ephemeral stream which enters from the east. However, an additional ephemeral stream area was unmapped and regularly inundates a significant portion of the proposed parking area and overflows the existing driveway. The project initial study assumes that the ephemeral streams cross the driveway at the existing culverts 210 feet from Cattle Dr. This does not account for the flows from the unmapped ephemeral stream.

If the parking lot is allowed to be completed as shown it will need to divert the stream and cause significant negative impacts due to the adjusted flow on the neighboring properties to the west. This is not mentioned in the environmental document or any of the project submittals. This is in violation of General Plan policies 1.5.3 and 1.5.5 which discuss environmental resources that must be avoided by clustering of project features as well as Nevada County Code Section L-II-4.3.17 which requires a 50 foot setback from intermittent streams.

B. The amendment to an approved Tentative Map requested should be denied. It is needed to create the location of the parking area which is within a seasonal ephemeral stream flow location.

As stated previously, there is no setback shown from the unmapped ephemeral stream since it actually flows over the proposed parking area. There is no setback (as required for an ephemeral stream in L-II 4.3.17) and the unmapped stream does not flow into the mapped seasonal stream or the existing culverts nearer the residence. The unmapped ephemeral stream flows across the proposed parking lot and over the driveway then across the southern property boundary onto the neighboring property. This unmapped flow is significant. There is no mention of any mitigation for this flow.

C. The project is incompatible with agriculture and provides no public benefit to agriculture. As such, it is inconsistent with Nevada County General Plan goals and policies that call for protection and promotion of agriculture and the agricultural economy.

The proposal is for a very large wedding event center with parking lot allowing 20 events per year each with up to 125 guests in the agricultural and scenic area just north of Highway 20 in Penn Valley. The size and number of events will make it a primary and commercial use of this agriculturally designated property, secondary to any existing or future agricultural uses. This is inconsistent with the General Plan goal of protecting agriculture now and in the future.

Relative to general plan consistency, the February 28, 2019 staff report (p. 17) and the Initial Environmental Study (p. 40-41 of Initial Study, p. 89 of 2/28/19 staff report) discuss only the project's relationship to the general plan clustering policy and some of the implementing zoning requirements such as setbacks, impervious coverage, and resource management plans. Yet, the issue of land use compatibility with agriculture is much larger and more complex than these few criteria. The consistency of the event center must first be evaluated against these critical overarching General Plan goals and objectives:

General Plan themes. Two of the key General Plan themes are: "ensuring the sustainability of agriculture...." and to "minimize conflicts due to incompatible land uses" (General Plan p.1-8).

Objective 16.3. *Minimize and reduce pressure to convert lands zoned for agricultural use to more intensive uses.*

Goal 16.2. *Promote a strong and sustainable local agricultural economy.*

The project is inconsistent with these General Plan themes, goals, and objectives for the following reasons:

- 1. The size and scale of this use is large enough that it will be the primary use and will affect upward the highest and best use valuation of the land when it is sold.**
- 2. The project is not an agtourism use as defined in L-II 3.3 of the Nevada county Code.**

L-II b. 2. ***Agritourism - The act of visiting a working farm or ranch, or any agricultural or horticultural operation for the purpose of involvement in the ancillary activities of the farm, ranch or agricultural operation that also adds to the economic vitality of the operation.***
Agritourism uses include, but are not limited to, marketing events, farm tours, facilities for the

promotion of agricultural crops grown onsite, the sale of farm/ranch branded agricultural related merchandise, educational classes and lectures, U-pick produce, seasonal celebrations, and other gatherings, activities and uses found to be appurtenant to the agricultural business, but shall not include concerts and weddings, camping or other commercial activities/events that are not related to the promotion of the working farm, ranch or agricultural/horticultural operation. (Underlining added for emphasis.)

3. This large event center does not include activities that are connected to agriculture.

- a. The small vineyard on the site (half the size of proposed parking) has a visual barrier between it and the event area. It has no bearing on the events, even if it did provide a visual backdrop.
- b. Events and weddings proposed have no involvement in the working activities of the ranch or future agricultural uses.

4. This decision will be a precedent setting type and scale of use and scale of use for this area and Nevada County small parcel agriculturally zoned areas.

5. Both the Nevada County Agricultural Commission and the Penn Valley MAC concluded that this event center is an incompatible land use for the area.

The Area Plan being prepared currently should be allowed to be completed before a permanent change of use such as this is made.

6. Loss of the local rural and agricultural environment will result.

The area north of Highway 20 in Penn Valley is a particularly important area to the community for its agricultural value and its outstanding views. This area defines the rural and agricultural feeling of the Penn Valley area at this entrance to Penn Valley, Rough and Ready, Lake Wildwood, and western Nevada County.

During the General Plan formation this corridor was noted specifically for its visual importance and it is designated as a Scenic Corridor in the General Plan (Policy 18.8a). These county Scenic Corridors were all intended to have special design review which has not been conducted in this case. The 59 car parking lot directly adjacent to this heavily travelled highway will violate this policy. The parking lot will be an urban intrusion into the existing historic rural agricultural views north of the highway. The Initial Environmental Study maintains that the proposed landscaping will mitigate the visual impacts of the parking lot. However, an urban selection of maple, bay laurel, and crepe myrtle trees will add to the urban visual intrusion into this very rural agricultural and native oak woodland vista.

Attachment 2

III. SPECIFIC PROVISIONS BEING APPEALED

Nevada County General Plan

The project is inconsistent with the following General Plan goals and objectives:

Policy 1.5.4 This policy notes that the County will approve a discretionary permit only if it meets the performance criteria of the Comprehensive Site Development Standards.

This criteria has not been demonstrated relative to the unmapped ephemeral stream and related drainage issues Seasonal and Ephemeral Stream Management Plan (MGT-0019) or the Initial Environmental Study.

Policy 1.5.5 also calls for "clustering in the least sensitive habitat or resource area" .

This has not been demonstrated in project submittals relative to the unmapped ephemeral stream and related drainage issues on the site plan or in the Seasonal and Ephemeral Stream Management Plan (MGT-0019) or the Initial Environmental Study.

Objective 16.3. "Minimize and reduce pressure to convert lands zoned for agricultural use to more intensive uses."

(See discussion under Appeal Item II.)

Goal 16.2. "Promote a strong and sustainable local agricultural economy."

(See discussion under Appeal Item II.)

Policy 1.7.6 This policy notes that community and group meeting centers are allowed in Rural land use designations with a use permit if they are found consistent with listed findings including the following relevant to this project:

- a. Will provide support for the neighborhood or surrounding community;
- b. Is in keeping with the residential or rural character
- d. Will have no significant adverse effect on the surrounding property.

Findings cannot be made to agree with these statements. The project will not provide support for the neighborhood or surrounding community since it is a private commercial center, it is not in keeping with the rural character of the area, and it will have significant impacts on surrounding properties relative to streams and drainage, views, and land use compatibility. (Also see discussion under Appeal Item II.)

Policy 18.8a The County will designate scenic corridors along the following routes: Interstate 80 and Highways 49, 89, 174, and 267 for their entire length in the County; all of Highway 20, Donner Pass Road (Old Highway 40), from the Interstate 80 intersection at Soda Springs to the town limits of Truckee. These corridors should be placed within the SC "Scenic Corridor" Combining District, with boundaries based upon adopted studies.

(Also see Discussion in Appeal Item II.)

Nevada County Zoning Ordinance

The project approval is inconsistent with the following Zoning Ordinance sections:

L-II 4.3 Resource Standards

The project is inconsistent with this section in part because:

--An ephemeral stream on the site has not been mapped.

L-II 4.3.17 C Watercourses, Wetlands and Riparian Areas

The project is inconsistent with this section because an ephemeral stream in the location of the proposed parking lot has not been mapped and, as a result, the required 50 foot setback has not been provided. Though a Stream Management Plan has been prepared, it does not address the unmapped ephemeral stream nor provide mitigation. We do not believe that a 50 foot setback can be achieved, and without this setback impacts to this watercourse will be unavoidable.

Nevada County Subdivision Ordinance

L-IV Subdivisions

Approval of the project under this chapter of the Nevada County Code is being appealed since it is being requested to create a parking lot in a visually sensitive area and within an unmapped ephemeral stream.

Nevada County CEQA Guidelines

L-XIII. California Environmental Quality Act

Certification of the CEQA Initial Environmental Study for the project is being appealed because it does not adequately address the following issues:

--An ephemeral stream on the site has not been mapped or discussed. Unavoidable impacts due to parking lot construction in this natural ephemeral stream are expected.

--Land use/ agricultural compatibility and general plan compatibility issues have not been adequately discussed. (See Appeal Item II for additional discussion of these issues and General Plan discussion at beginning of this section. Impacts are expected to be unavoidable as a result of our additional discussion.)

--Visual impacts have not been adequately discussed.

(See Appeal Item II for additional discussion of these issues. Impacts are expected to be unavoidable due to the proposed parking lot adjacent to the highway and overall change in views across the viewshed of a county Scenic Highway, as well as related change in the rural character of the area.)

Findings

The Planning Commission Findings for Approval of the Actions listed in Section I of this appeal are also under appeal, including those specifically listed below with brief summary reasons for our disagreement with the Findings noted.

EIS Findings IA and ID

The project will have significant, unavoidable impacts as described throughout this appeal.

Stream Management Plan MGT 18-0019 Findings III A and B

The environmental document and conditions of approval have not mitigated the project impact to waterways because an unmapped ephemeral stream has not been identified or discussed in the Initial Environmental Study.

Tentative Parcel Map Revision Findings IV A-F

The project will have an impact on waterways on and adjacent to the site which were not identified in the Tentative Map Amendment application and related submittals and reports which would affect the Tentative Map Findings. The amendment area and the project in the amendment area is not outside environmental resources and required setbacks and will result in significant, unavoidable impacts.

Conditional Use Permit Findings V A-L

As further discussed in Appeal Section II:

- A. The project will not be consistent with General Plan policies relative to agricultural compatibility, land use compatibility, view protection, and environmental resource protection.
- B. The project will not be consistent with the AG-5 zoning district because it will be the primary use of the property, rather than agriculture.
- C. Setbacks from the unmapped ephemeral stream have not been met.
- D. The project is not consistent with the goals, standards, and elements of the Land Use and Development Code as described in the General Plan and Zoning Ordinance sections of this appeal section as well as Appeal Section II. Of particular concern are measures needed to address the unmapped ephemeral stream in the parking lot area and visual impacts of the parking lot.
- E. The site is not large enough for the proposed project activities without compromising site development standards as described throughout this appeal. The major facilities needed to support the events are a septic system, a parking lot, road widening, and a new driveway. All of these improvements need to encroach on resource areas. Visual impacts from the proposed parking lot which can only fit adjacent to the highway have not been adequately addressed. Most importantly, the unmapped ephemeral stream in the proposed parking lot area has not been addressed.
- F. The project will not be compatible with existing and future agricultural uses on site and in the surrounding area as described throughout this appeal.

K.L.

It is not clear that all feasible mitigation measures have been imposed since a significant existing ephemeral stream in the proposed parking lot area has not been addressed. As a result, the conditions approved by the Planning Commission are not adequate to protect the public health, safety, and general welfare of the public.

Attachment 3

V. SUMMATION OF ARGUMENTS TO BE RAISED BY THE APPELLANTS

1. The project approval did not address impacts to a significant unmapped ephemeral stream which is located where the parking lot is proposed. This is in violation of the 50 foot intermittent stream setback requirement in Nevada County Code Section L-II 4.3.17 and other County ordinances and General Plan policies that require protection of sensitive resources. As the project is currently proposed, it will result in unavoidable impacts to this waterway and to drainage patterns on surrounding properties.
2. The project is incompatible with agriculture on the site and in the surrounding area, provides no public benefit to agriculture, and is counter to County General Plan policies which call for minimizing pressure to convert lands zoned to agriculture to more intensive uses.
3. The project will result in loss of the local rural and agricultural environment now and in the future.
4. Both the Nevada County Agricultural Commission and the Penn Valley Municipal Advisory Commission concluded that the proposed event center is incompatible with agriculture in the area and recommended denial.