

COUNTY OF NEVADA

(Attach pages if needed)

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 Planning Commission
Agency Name

PLN 16-0072 ; DVP 16-8 , EIS 16-0002 * 8/10/2017
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

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

Please see attached

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: _____

See attached

II. STATEMENT OF THE REASONS FOR THE APPEAL:

See attached

X Rules of Interpretation

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

- Compatibility between land use
- Providing buffering from adjacent land uses to minimize incompatibility
- Setbacks and buffers
- Prevention of environmental degradation
- Protection of the health and welfare of the residents of the County
- Allowing for growth while protecting, maintaining, and enhancing communities and neighborhoods
- Noise generating land uses shall be discouraged on lands abutting residential zoning
- Where two different zoning districts abut, the standard applicable to the lower, or more restrictive, district plus 5 dBA shall apply
- Encourage an environment free of unnecessary and annoying noise

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

- Nevada County Planning Commission approval of Development Permit (PLN16-0072; DVP16-8, EIS16-0002
- Nevada County Airport Land Use Commission approval of Resolution 17-01

II. STATEMENT OF THE REASONS FOR THE APPEAL:

We are submitting a request to appeal because the Planning Commission was not informed of all the facts relevant to the Northern Sierra Propane Development Permit which misled them into thinking the project was fully researched and in compliance with the Nevada County General Plan.

Additionally, the public comment portion of the hearing does not allow enough time to present new information and have all the facts processed. There is relevant and important information that the Planning Commission should have known prior to making a decision. We would like the opportunity to present that information to the Board of Supervisors.

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

1. Nevada County Airport Land Use Commission (NCALUC) Approved A Request for Consistency Determination (Resolution 17-01) for the Northern Sierra Propane Project (PLN16-0072) Based On Insufficient Data and Misleading Information
2. Development Permit (PLN16-0072) Is Not Consistent with the Nevada County Land Use and Development Code (NCLUDC) AND Is Not Consistent with the Loma Rica Industrial Area Plan (LRIAP)
3. Development Permit (PLN16-0072) Is Not Consistent with the Nevada County General Plan
4. Development Permit (PLN16-0072) Is Not Consistent with Prior Board Approved Mitigation Measures for this Property

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

We are asking that the Board of Supervisors:

- REVERSE the decision by the NCALUC (Resolution 17-01),
- REVERSE the decision by the Planning Commission to approve the Northern Sierra Propane Development Permit (PLN16-0072), and
- BLOCK all future requests for permits to place above ground bulk storage of hazardous materials on the lot in question (APN: 06-920-10).

If you vote to approve this project:

- Require the applicant or the County to install fire hydrants and/or the 10,000 gallon underground water storage tanks (as installed on Lee Lane) for fire protection on Loma Rica Drive and Madrona Leaf Court.

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

- The Airport Land Use Commission approved Resolution 17-01 enabling Northern Sierra Propane to place two 30,000 gallon propane storage tanks on land that the Nevada County Airport Land Use Compatibility Plan (NCALUCP) says is in a Zone prohibiting above ground storage of hazardous material. The Commission was not provided accurate information nor given input from those affected by this proposal which prevented them from having all the facts. Stricter requirements are based on recommendations from the FAA post 9/11. Petroleum refining and related industries (ie. Propane) are not permitted in any of the Airport Compatibility Zones as specified in the NCALUCP.

- Project IS NOT Consistent with the Nevada County Land Use and Development Code (NCLUDC)
 - NCLUDC requires a Use Permit for above ground propane storage NOT a Development Permit

- Not Consistent with General Plan
 - “Establish spaces between... uses with setbacks and buffers”
 - “Create compatibility between land uses”
 - “Prevent environmental degradation”
 - “Protect the health and welfare of the residents of the County”
 - “Ensure compatibility with surrounding land uses”
 - “Allow for growth while protecting, maintaining, and enhancing communities and neighborhoods”
 - “Uses should provide for buffering from adjacent land uses to minimize incompatibility”
 - “Noise generating land uses shall be discouraged on lands abutting residential zoning.”
 - “Encourage an environment free of unnecessary and annoying noise”.
 - “Where two different zoning districts abut, the standard applicable to the lower, or more restrictive, district plus 5 dBA shall apply.

- Not Consistent with Prior Board Approved Mitigation Measures for this Property
 - tenant noise should be limited to Residential Leq and Lmax limits.
 - does not include any outdoor uses

- The presentation to the Planning Commission and Staff Report lacked important and significant information.

- Hazardous Materials/Explosives storage is not compatible with the Nevada County Airport Compatibility Zone and it is not compatible with the adjacent Residential Zone.

- Reversal of this Development Permit does not prevent Northern Sierra Propane from doing business in the area. They are currently up and running in the Loma Rica Industrial Park. It would only mean that they must look for a more compatible location for expansion.

VI. IDENTIFICATION OF THE APPELLANT(S):

Kim & Don Crevoiserat [REDACTED]

Gary & Pauline Rudolph [REDACTED]

Kenneth & Elise Stupi [Redacted] [Redacted]
 Robert & Candace Burbage [Redacted] [Redacted]
 Carter & Louise Taylor [Redacted] [Redacted]
 Sterling & Connie Bailey [Redacted] [Redacted]
 Dana and Fayrene Dickey [Redacted]
 Ron & Mary Arneson [Redacted] [Redacted]

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

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

Kim Crevoiserat [Redacted] [Redacted] [Redacted] 8
 (Name/Representative) (Mailing Address) (Telephone)

Appellant:

Crevoiserat
 (Sign)

Dated: 8/20/2017

Kim R. Crevoiserat
 (Print)

[Redacted]
 [Redacted]

FOR OFFICE USE ONLY

\$1457.80
 Filing Fee

8-21-17
 Date Filed

B. Pin
 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

DETAILED EXPLANATION OF ARGUMENTS TO BE RAISED:

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

The Northern Sierra Propane Development Permit places two 30,000 gallon above ground propane storage tanks along with five delivery trucks in a restricted zone next to the airport. The Nevada County Airport Land Use Development Plan prevents all storage of above ground hazardous materials in specific areas adjacent to the airport. The lot Northern Sierra Propane is looking to develop falls in one of those area. In order for the Planning Department to move forward with the Development Permit, they needed a compatibility ruling by the Nevada County Airport Land Use Commission (NCALUC). The proposal was to waive the airport compatibility requirement in reference to the storage of hazardous materials. The compatibility zone is defined in the Nevada County Airport Land Use Compatibility Plan (NCALUCP) which was adopted in September 2011 with increased security measures on recommendation of the Federal Aviation Administration in the wake 9/11. The NCALUC recommendation is to waive what is a very clear definition of hazardous materials storage and suggests the guideline is only for the 60 decibel (dB) Community Noise Equivalent Level (CNEL) area.

Code Reference:

NCALUCP Chapter 2, 5.2.5. Land Uses of Special Concern, (c) Hazardous Materials Storage: Construction of facilities for the manufacture or storage of materials that are flammable, explosive, corrosive, or toxic constitute special safety compatibility concerns to the extent that an aircraft accident could cause release of the materials and thereby pose dangers to people and property in the vicinity. Therefore, the manufacture or storage of hazardous materials within the airport environs is restricted as follows:

- (2) Within Compatibility Zones B1 and B2, only the following is permitted:
 - Fuel or hazardous substances stored in underground tanks.
 - On-airport storage of aviation fuel and other aviation-related flammable materials.
 - Above ground storage of less than 6,000 gallons of nonaviation flammable materials (this limit coincides with a break-point used in the Uniform Fire Code to distinguish between different classes of tanks).

FACTS:

- The Nevada County General Plan (NCGP) has been reviewed and found consistent with NCALUP.
- The lot Northern Sierra Propane wants to develop is located in the B2 Airport Compatibility Zone where hazardous materials storage is NOT permitted.
- The NCALUCP clearly shows that the Northern Sierra Propane project would be out of compliance. Hazardous materials storage is NOT PERMITTED in the B2 Compatibility Zone.

- The California Airport Land Use Planning Handbook, which was used to argue in favor of a much smaller Compatibility Zone, has not been reviewed and deemed consistent with the NCGP and therefore should hold no bearing in the evaluation of County decisions without proper review and determination of consistency. Additionally, the it clearly states “the 2011 Handbook provides guidance for meeting the *baseline safety and compatibility requirements*; however, *ALUCs may choose to be more restrictive than the State’s guidance when their local conditions warrant doing so.*”
 - The location of multiple propane storage tanks and facilities in the immediate vicinity, the presence of over 30 residential properties, and numerous businesses which would be exposed to higher risk do to hazardous material storage in the B2 Compatibility Zone are “local conditions that warrant more restrictive safety and compatibility guideline” enforcement.
 - Also, in September 2012 the Federal Aviation Administration published (AC 150/5300-13A, Airport Design, 28 September 2012) updated runway compatibility zone requirements with increased restrictions post 9/11 in an effort “to achieve the desired protection of people and property on the ground.”

FAA Code Reference:

**Modified Land Uses in the Runway Protection Zone
(AC 150/5300-13A, Airport Design, 28 Sept. 2012)**

Regional and Airport District Office staff “must consult with the National Airport Planning and Environmental Division, APP-400, when above ground hazardous material storage enter the limits of the runway protection zone”.

WHY THE COMPATIBILITY RULING (RESOLUTION 17-01) SHOULD BE REVERSED:

- **Failure To Provide Adequate Community Outreach And Inform The Affected Property Owners**
 - In the May 17 NCALUC meeting minutes, Commissioner Arbuckle stated, “if there were a problem at the propane business, it would definitely affect those neighborhoods adjacent to the industrial zone.” A conversation was had about outreach to those residents. Executive Director Landon said, “He did not know” of any outreach and JD Trebec, Associate Planner with the Nevada County Planning Department, confirmed no notice was given concerning the NCALUC meeting and recommendation to waive safety zone B2 requirements as per the NCALUCP, the only notification was the “initial distribution of the project specification” requesting a Development Permit filed with the Planning Department. As the property owner, on the eastern boarder of this project, I should have received notification from J.D. Trebec about this meeting. Additionally, the other two property owners adjacent to this project did not receive notification. If the adjacent property owners did not receive notification, I

must conclude that adjacent business and industrial lot owners in the immediate vicinity also were not made aware of a proposal that poses a threat to their investments.

- The Nevada County Airport Land Use Commission meeting was held May 17, 2017 but the “initial distribution of the project specification” was dated and distributed after that meeting on July 17, 2017. There was no prior communication *concerning the storage of propane tanks in the airport “compatibility zone.”*

- **Ruling Was Made Without The Presence Of A Representative From The Nevada County Airport**

- Commissioner Scofield stated, “He was surprised the Airport Manager was not present” and that “when the NCALUC is meeting, a representative from the Nevada County Airport should be in attendance.”

A ruling of such a critical nature warrants the presence of someone who is closely aligned with the rules and regulation of the NCALUCP. Also, if input from Mead & Hunt is used in making a decision, a formal report or document detailing their review and recommendation should be required.

- **Project Description In Letter From Planning Department Is Misleading**

- Included in the proposal to the NCALUC is a copy of the request for review from the Planning Department. At the meeting, part of the deciding factor was the lack of concern raised about the project by the organizations listed below. After reviewing the letter, it is clear that the risk associated with this project was downplayed as there is no mention of the two 30,000-gallon propane storage tanks, ONLY two buildings and a parking lot.

Distribution List:

- Department of Public Works
- Federal Aviation Admin
- Airport Manager
- Nevada County Consolidate Fire District
- Environmental Health Department
- Nevada County Transportation Comm
- CalTrans Aeronautics
- Tyler Barrington, Principal Planner

Project Description:

“An application to the Planning Commission for a Development Permit for a proposed 2,000 square foot office building, 2,016 square foot warehouse/garage and parking for a propane business.”

This description is **misleading** and **irresponsible** on the part of the Planning Department. Its content suggests compatible development without risk to property of person. It raises no alarms nor suggests any concern should be had. With all the review documents coming across desks, it makes sense that this one would be ignored especially when more pressing hazards are on the table.

- **Letter From Project Planner, Kevin Nelson, With Nelson Engineering Is Deceptive.** Also included in the documents presented to the NCALUC is a letter from Kevin Nelson. The letter is titled “Re: **Use Permit** for Northern Sierra Propane, APN 06-920-10”. The application for this project is a **Development Permit** which has less restrictive review requirements. Kevin Nelson has implied the application is for a “Use Permit” which is misleading in that it suggests a stricter compliance review and a more comprehensive evaluation by the Planning Department. In situations where increased risk to person and property are being considered, calling the application a Use Permit is **deceptive** and delivers a **false sense of security** to those in a decision capacity.

Also in Mr. Nelson’s letter is a suggestion that approval of this project is standard protocol and should not raise any flags because many similar projects have already been approved by the County. He says “Currently, there are two similar tanks within Zone B1, two others within the Zone B2, and six others within the Loma Rica Industrial Park.” This statement is **misleading**. There is no mention of business existence prior to the expansion of the compatibility zone; no mention of the distance between other propane tanks and residential properties, and no mention of defensible space built around these facilities. Also, the NCGP clearly states provisions are made for existing businesses **BUT all new construction must comply** with the stricter standards.

- **Deferral Of Responsibility Due To Misleading And Inaccurate Information**
It is clear in the minutes that the Airport Land Use Commission is deferring final review and analysis concerning airport safety and compatibility to the Planning Commission.

NCALUC meeting minutes:

“Commissioner Scofield clarified that this application would be going to the Nevada County Planning Commission. Mr. Landon confirmed that NCLUC would not be the final determination and approval of the project.”

Commissioner Scofield’s comment implies concern over the approval of this project and clearly wants to verify that additional review and analysis will occur.

There are a number of inconsistencies in the project presentation to the NCALUC and disregard for the reviews that should have been completed prior to making this recommendation. The NCAPLUC was given misleading and inaccurate information

which led to a false sense of security and belief that the project would go through an additional review process by the County and so it was safe to approve.

In JD Trebec's Staff Report and presentation to the Planning Commission, it is clear that all responsibility concerning the recommendation to reduce the Airport Compatibility Zone is being placed on the NCAPLUC. The presentation implies no additional review is necessary because of their approval. The Planning Department recommendation relies entirely on the decision of the NCALUC.

- **No Formal Review Nor Written Recommendation From Law Firm**

Chairman Jostes of the NCALUC asked "if this analysis of the boundaries would stand up in court if they were challenged." Daniel Landon, Executive Director of the Nevada County Transportation Commission, replied "the airport land use consulting firm, Mead & Hunt, that prepared the NCALUCP, were never concerned from the beginning that the project would be a problem." No formal review from Mead & Hunt was done nor did they write a recommendation. There is a reason hearsay is not allowed in a court of law. There is no documentation showing the information that was provided to Mead & Hunt. If they were appraised of the project using the Description (reference above) in the Request for Review provided by the Planning Department, it makes sense that Mead & Hunt were not concerned.

Mr. Landon's comment **implies** the ALUC can have confidence that the recommended reduction of the airport compatibility zone is not only **legal but safe**. This irresponsible comment tipped the scale in favor of approval when in fact more serious review and consideration should have been undertaken.

- **No Environmental Impact Report Provided and Not Available Online**

The project proposal does not include a copy of the Environmental Impact outlining the cumulative risk of exposure to Loma Rica Industrial Park Business' as well as Nevada County residents and the adjacent residential community.

- Placement of explosive materials in the safety zone poses a higher risk of loss in Loma Rica Industrial Park because of the number of propane storage facilities in the immediate vicinity. There are a total of five bulk propane storage and distribution business that are more centrally located in the business park (as required by the Loma Rica Industrial Area Plan) and most are away from the airport safety zone (as required by the LCALUCP). There are 11 bulk storage tanks 30,000 gallons and more resulting in more than 450,000 gallons of propane being stored within 1 square mile. With the Northern Sierra Propane project being placed in the airport compatibility zone the safety hazard associated with an airport accident is **higher** due to the possibility of triggering multiple explosions. An accident at the Northern Sierra Propane location could block the main arterial

road to Cal Fire and exposes the residential community to risk of delayed response from NC Consolidated Fire Department for the same reason.

- There aren't any fire hydrants nor water tanks on Loma Rica Drive providing fire protection to the residential community beyond the Industrial Park.
- False security is given in reference to a letter from Deputy Fire Marshal Terry McMahan indicating he did not have a problem with the application because the "tanks have a shut off valve." Tank shut off valves are immaterial in the case of an airport impact incident.
- Additionally, there was no mention of the five propane delivery trucks and smaller storage tanks both with significantly less safety measures that will also be located in zone B2.
- Finally, in January 2005, a new California State Law became effective that extends defensible space requirements to 100 feet. The Northern Sierra Propane project proposed lot for development is heavily forested on three sides and abuts two residential properties. NO DEFENSIBLE SPACE from the 30,000-gallon tanks nor from the five distribution trucks was incorporated into this project. With a higher risk of airport impact accident, it is irresponsible to approve a project without defensible space measures being required.

SUMMARY OF REASONS TO REVERSE NCALUC RESOLUTION 17-01:

- Information Provided to Commission Was Misleading
- Project is out of compliance with the NCGP
- Project is out of compliance with NCALUCP
- Project Fails To Provide Adequate Community Outreach And Inform The Affected Property Owners
- ALUC ruled on NCALUCP revision Without The Presence Of A Representative From The Nevada County Airport
- Project Description In Letter From Planning Department Misleading
- Letter From Project Planner, Kevin Nelson, Is Deceptive.
- Deferral Of Responsibility Due To Misleading And Inaccurate Information
- No Formal Review Nor Written Recommendation From Law Firm
- No Environmental Impact Report Provided and Not Available Online

In light of these concerns, I am asking that you **OVERTURN** the airport land use commission's ruling (NCALUC Resolution 17-01) to override the NCALUCP preventing the placement of above ground hazardous material storage in the Nevada County Airport Compatibility Zone B2. Clearly there is reason to, at minimum, suspend this recommendation until proper notifications are given and a thorough review be done.

2. Development Permit (PLN16-0072) Is Not Consistent with the Nevada County Land Use and Development Code (NCLUDC) AND Loma Rica Industrial Area Plan (LRIAP)

Use Permit vs. Development Permit

Project application was for the less restrictive “Development Permit” but according to the Nevada County Land Use and Development Code (NCLUDC), the applicant should have applied for the more restrictive “Use Permit.”

Title 3 Land Use and Development Code, Chapter II: Zoning Regulations, Article 2 Zoning Districts, Sec. L-II 2.5 Industrial Districts (Table D)

- Under Industrial Uses for M1 zoned lots, Storage of Explosive and Storage and Distribution of Bulk Petroleum Products is applicable to this project and would require a **USE PERMIT** to “avoid creating problems or hazards, to provide for the compatibility of such land uses with adjacent properties and the surrounding area, and to assure their consistency with the General Plan.

NCLUDC (Title 3, Chapter II, Article 5, Sec. L-II 5.6)

USE PERMITS are required of projects that “create serious problems for adjoining properties or the surrounding area.”

A bulk storage and propane distribution business adjacent to a residential community imposes serious consequences on adjacent property owners in terms of

- Increased risk due to airport impact zone
- Fire risk due to blockage of main access road
- Health and well-being
- Property value
- Resell ability
- Homeowner’s Insurance rate hikes and/or policy cancellation

3. Development Permit (PLN16-0072) Is Not Consistent with General Plan

Nevada County General Plan (NCGP) stipulates the importance of “protecting, maintaining, and enhancing communities and neighborhoods” and it stipulates that **future development** “must also be compatible with adjacent properties specifically when abutting a residential zone.”

Code Reference:

Planning principals identified in the Introduction section of the NCGP

“Establish spaces between... uses with setbacks and buffers”

“Create compatibility between land uses”

“Prevent environmental degradation”

“Protect the health and welfare of the residents of the County”

- Setbacks, buffers, compatibility, environmental degradation, and protecting the welfare of County residents are clearly identified in the NCGP as design objectives for future

land development. Placing bulk storage hazardous materials on a lot adjoining a residential property and community is clearly in contradiction to the planning principals.

Code Reference:

Sec. L-II 2.5.A. Purpose of Section #2

To provide adequate space to meet the needs of industrial development, promote high standards of site planning and design, AND **ensure compatibility with surrounding land uses.**

- A hazardous material bulk storage and distribution business is not “compatible” with the adjacent residential properties. Residentially zoned lots abutting M1-SP lots have protection built in to the code so that hazardous material storage and distribution cannot be placed next door causing devaluation, inability to sell, increased insurance rates and possible cancellation because of unsuitability.

Code Reference:

NCGP Vol. 1, Section 2, Goals Policies and Programs Goal 1.6

Allow for growth while **protecting, maintaining, and enhancing communities and neighborhoods.**

- *Policy 1.6.1* Establish land uses which **protect, enhance, and complement existing communities and neighborhoods.**
- *Policy 1.6.2* General Plan Land Use Designations shall be implemented through adoption and application of compatible zoning districts
- *Table 1.2 General Plan Land Use Designation Compatibility Matrix*

This table clearly shows that an **M1-SP zone adjacent to a Residential zone is not compatible.** Because the NCGP clearly identifies a compatibility issue and clearly states one of its goals is to **protect existing communities**, it is incumbent upon the County to recognize special consideration must be made in situations where abutting lots are incompatible and must protect **existing** business and residents and impose restrictions on **new** development.

Code Reference:

Sec. L-II 2.5.B. Purpose of Individual Districts #2 M1 (Light Industrial))

The M1 District provides areas for the “production, repairing, distribution, and warehousing of goods and equipment, along with supporting businesses and services. **Uses should provide for buffering from adjacent land uses to minimize incompatibility** and should have convenient, controlled access to arterial or major collector roads without passing through residential areas.”

- This project is designed without any additional buffering from the neighboring residential property. The M1-SP zone calls for a 5-foot setback which is what was used. No consideration was given to the extra buffering called for by the zoning ordinance to “minimize incompatibility” of this project from the adjacent residential properties. Considering the seriousness of hazardous material storage, a wider setback and additional buffering is appropriate and reasonable.

Code Reference:

General Plan Recognizes Loma Rica Industrial Area Plan (LRIAP)

(Volume 1, Section 2, chapter 1, Supporting Planning Documents)

The General Plan acknowledges supporting land use policy documents that compliment and assist in the further implementation of the goals, policies, and programs of the General Plan and identifies the Loma Rica Industrial Area Plan (2006) as one of four adopted area plans.

The LRIAP page 41, Chapter VII, Section A, Goal 2.3, Policy 2.5 says “**Noise generating land uses shall be discouraged on lands abutting residential zoning.**”

Code Reference:

NCGP, Volume I - Page 9-4, Chapter 9 Noise, Goal 9.1

Provide for the health, safety, and welfare of the people of Nevada County through a set of policies designed to **encourage an environment free of unnecessary and annoying noise.**

Code Reference:

NCGP, Volume I - Page 9-4, Chapter 9 Noise, Policy 9.1

The following noise standards (reference is to a table labeled– Exterior Noise Limits), as performance standards and land use compatibility standards, shall apply. *Table identified Residential land use category noise level, dBA between 7am -7pm as 55 Leq and 75 Lmax and the Industrial as 80 and 90 respectively. However, NCGP, Volume I - Page 9-4, Chapter 9 Noise, Policy 9.1 b. states “Where two different zoning districts abut, the standard applicable to the lower, or more restrictive, district plus 5 dBA shall apply.* This property abuts two residentially zoned lots. That limits the property exterior noise level to 60 and 80 dBA. Part of the proposal is to have five industrial propane delivery trucks back-up into spaces located on the eastern property line on the residential border. Industrial truck back up alarms run 97 - 112 dBA. That is out of compliance by 37 and 32 dBA respectively. Clearly there is a compatibility issue here with the **existing residential home** and the **proposed new development**. We can all agree that truck back up alarms fall under NCGP Policy 9.1 (mentioned above) as an annoying noise.

Nevada County General Plan Residential Exterior Noise Limits:

<i>Land Use Category</i>	<i>Time Period</i>	<i>Leq</i>	<i>Lmax</i>
<i>Residential and Public</i>	<i>7 AM– 7 PM</i>	<i>55</i>	<i>75</i>
	<i>7 PM– 10 PM</i>	<i>50</i>	<i>65</i>
	<i>10 PM– 7 AM</i>	<i>45</i>	<i>60</i>

4. Project Is Not Consistent with Prior Board Approved Mitigation Measures for this Property

Back in 2015 the Wawona Madrono Homeowner's Association fought for and was awarded a modified condition of approval for a project on this same property (Board of Supervisors Resolution #15-131 dated 4/22/2015). It states that to minimize potential long term operational noise impacts on adjacent residential properties, there should be an 8 foot concrete/cement wall **AND tenant noise should be limited to Residential Leq and Lmax limits**. This decision was made after hearing public testimony from a sound expert on how sound travels and the ineffectiveness of concrete/CMU walls alone. The Board affirmed the importance of protecting neighboring residential properties and outlined noise attenuation as relevant and meaningful in reference to future business operations on this property and decided to place limits on exterior noise. The Northern Sierra Propane Development Permit completely disregards the Boards noise ruling.

Board of Supervisors Resolution #15-131 dated 4/22/2015 Exhibit A of the English Mountain Park Lot 16 Revised Development Permit Conditions of Approval (DP13-002, EIS-026)):

*A.1. The use of the site shall be consistent with the allowable uses for the M1-SP zoning district and **does not include any outdoor uses**. Any intensification of use shall require additional environmental review to ensure compatibility with adjacent uses relative to privacy, noise and on-site activity.*

The Staff Report suggests that this project is in compliance with the "no outdoor use" stipulation. Please consider the following, the project is for expansion of the existing business. Northern Sierra Propane is currently running 4 propane delivery trucks and the plan incorporates parking for five. We must conclude that the plan is to run five industrial trucks in and out on a daily basis. The reason "no outdoor uses" is specified is to protect the neighboring residential properties from exposure to noise and excessive activity. It implies pull in, park your car, and go inside. It does not mean drive and fuel five industrial trucks in and out daily. It does not mean hoisting, removing and returning customer storage tanks from the proposed outdoor storage area, and it does not mean it is okay to provide drive-in public propane tank fill up service. It is clear that saying there will be no outdoor use is misleading and that in fact this project does have considerable outdoor activity.

A.20. Property **owner shall incorporate noise attenuation features** into the design of the eastern project boundary (Mitigation Measure 12B) through the use of:

- 1. Eight (8) Foot Concrete/Cement Wall, AND**
- 2. Incorporate noise protections by limiting allowable activity to Nevada County Residential Leq and Lmax limits.**

Please note that the Board of Supervisors stipulated the noise limit to be in addition to the concrete wall. The new Development Permit proposal has removed exterior noise limits completely and suggests that the concrete wall is sufficient for noise attenuation.

The presentation to the Planning Commission and Staff Report is misleading. The Planning Commission should have been told that an approval of this project would be out of compliance with M1-SP zone regulations, that it deviates significantly from that approved by the Board of Supervisors, and conflicts with what is very clearly spelled out in the Loma Rica Industrial Area Plan.

Both compatibility and noise compliance are relevant and significant because they minimize the risk to persons and property ensuring that property values and the character of the neighborhood will not be adversely affected by future development. A hazardous propane storage and propane distribution business with five delivery trucks and back-up alarm decibels far exceeding zone guidelines will adversely affect the residential neighborhood.

In Summary:

- The Airport Land Use Commission was not provided accurate information nor given input from those affected by this proposal which prevented them from having all the facts. Stricter requirements are based on recommendations from the FAA post 9/11. Petroleum refining and related industries (ie. Propane) are not permitted in any of the Airport Safety Zones as specified in the NCALUCP.
- Project IS NOT Consistent with the Nevada County Land Use and Development Code (NCLUDC)
 - NCLUDC requires a Use Permit for above ground propane storage NOT a Development Permit
- Project IS NOT Consistent with General Plan
 - “Establish spaces between... uses with setbacks and buffers”
 - “Create compatibility between land uses”
 - “Prevent environmental degradation”
 - “Protect the health and welfare of the residents of the County”
 - “Ensure compatibility with surrounding land uses”
 - “Allow for growth while protecting, maintaining, and enhancing communities and neighborhoods”
 - “Uses should provide for buffering from adjacent land uses to minimize incompatibility”
 - “Noise generating land uses shall be discouraged on lands abutting residential zoning.”
 - “Encourage an environment free of unnecessary and annoying noise”.
 - “Where two different zoning districts abut, the standard applicable to the lower, or more restrictive, district plus 5 dBA shall apply.
- Not Consistent with Prior Board Approved Mitigation Measures for this Property

- tenant noise should be limited to Residential Leq and Lmax limits.
- does not include any outdoor uses
- The presentation to the Planning Commission and Staff Report lacked important and significant information.
- Hazardous Materials/Explosives storage is not compatible with adjacent residential zone
- Reversal of this Development Permit does not prevent Northern Sierra Propane from doing business in the area. They are currently up and running in the Loma Rica Industrial Park. It would only mean that they must look for a more compatible location for expansion.
- I understand that there is a limited number of lots zoned M1-SP however that does not mean it is okay to approve a project that is not a good fit. *General Plan Chapter 1, Policy 1.7.17* states “The County shall **encourage the development of Special Development Areas, consistent with the standards of Policy 1.2.4u., to accommodate future growth, rather than increases in density and intensity of land uses** in Rural Regions”

If there is a shortage of space for M1 zoned businesses, the NCGP makes accommodation by encouraging conversion of property to accommodate development of more M1 zoned lots. It also discourages forced placement of incompatible projects do to lack of space resulting in “increasing density and intensity.”

Conclusion:

In light of all these inconsistencies, We humbly request that you accept my appeal and give us the opportunity to have a conversation with The Board of Supervisors about our concerns.



COUNTY OF NEVADA COMMUNITY DEVELOPMENT AGENCY

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

Planning Department Environmental Health Building Department Department of Public Works Agricultural Commissioner

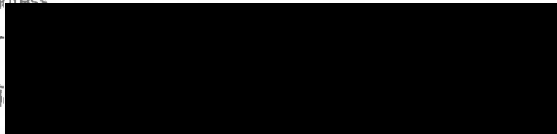
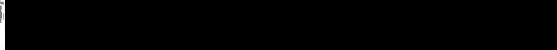
AGREEMENT TO PAY LAND USE APPEAL

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.


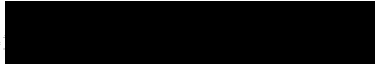
Appellant Information:

Invoices and/or notices to be mailed to:

Project:	Name: <u>Kim Crevoiserat</u>
	Address: 
	Tel: 

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:

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 the letter is received by the Nevada County Community Development Agency.

 Date: 8/21/17 DL# 

Signature

Kim R. Crevoiserat PH# 