



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

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

MEETING DATE: February 27, 2018

TO: Board of Supervisors

FROM: **Brian Foss, Planning Director**

SUBJECT: A Public hearing to:

1. Consider the appeal filed by Charisse Lolli and Donald Mooney (Representative), (“Appellants”) to the Planning Commission’s actions on the Penn Valley Dollar General project (DP15-004, MGT15-013, COC17-0001, LLA16-006; EIR15-001) pertaining the certification of the project specific Environmental Impact Report (EIR), approval of the project development permit, wetlands and water course management plan, certificate of compliance and lot line adjustment at property located at 17652 Penn Valley Drive (proposed store parcel) (APN 51-120-06) and 17630 Penn Valley Drive (Lot-Line Adjustment and Certification of Compliance), Penn Valley, CA 95946 (District IV); and
2. Consider the appeal filed by Simon CRE, CJS Development, LLC and Peter Lemmon (Representative), (“Appellants”) to the Planning Commission’s actions on the Alta Sierra Dollar General project (DP14-001, MGT14-010, EIR15-001) pertaining the denial of the project Development Permit and Oak Tree Management Plan at property located at 10166 Alta Sierra Drive (proposed store parcel) (APN 25-430-08), 10120 Alta Sierra Drive (septic line parcel) (APN 25-430-10), and 15675 Johnson Place (septic leach field parcel) (APN25-430-12) Grass Valley, CA 95945 (District II); and
3. Consider the appeal filed by Simon CRE Harley V, LLC and Peter Lemmon (Representative), (“Appellants”) to the Planning Commission’s actions on the Rough and Ready Highway Dollar General project (DP15-001, EIR15-001) pertaining the denial of the project development permit at property located at 12345 Rough and Ready Highway (APN 52-122-03) Grass Valley, CA 95945 (District III).

RECOMMENDATION:

- I. Adopt the attached Resolution to deny the appeal, and uphold the decision of the Planning Commission to certify the project Environmental Impact Report (EIR15-001), and approve the Development Permit (DP15-004), Watercourse and Wetlands Management Plan (MGT15-013), Certificate of Compliance (COC17-0001) and Lot Line Adjustment (LLA16-006) for the Penn Valley Dollar General Retail Store project, including making findings 1-23 as noted in the Resolution, subject to the conditions of approval and Mitigation Monitoring Reporting Program (MMRP) making the CEQA Findings of Fact provided in Exhibit “A” to the Resolution.
- II. Adopt the attached Resolution to deny the appeal, and uphold the decision of the Planning Commission to deny the Development Permit (DP14-001) and Oak Tree Management Plan (MGT14-010) for the Alta Sierra Dollar General Retail Store project, including making findings 1-13 as noted in the Resolution.
- III. Adopt the attached Resolution to deny the appeal, and uphold the decision of the Planning Commission to deny the Development Permit (DP15-001) for the Rough and Ready Highway Dollar General Retail Store project, including making findings 1-9 as noted in the Resolution.

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

ATTACHMENTS:

Appeal #1: Environmental Impact Report*/Penn Valley Dollar General Project

- A. Proposed Resolution to Deny the Appeal with Exhibit A: CEQA Findings of Fact – p. 39
- B. Appeal to the Board of Supervisors (with supplementary letter submitted by Appellants) – p. 76
- C. October 26, 2017 Planning Commission Staff Report (with attachments) – p. 88
- D. October 26, 2017 Planning Commission Memo (with attachments) – p. 322
- E. October 26, 2017 Planning Commission Meeting Minutes – p. 353

*The EIR is available for download at <https://www.mynevadacounty.com/522/Dollar-General> or may be viewed at the Planning Department 950 Maidu Ave. Suite 170 Nevada City, CA 95959. The EIR has been provided to the Board of Supervisors for consideration, but due to overall size is not attached to this staff report.

Appeal #2: Alta Sierra Dollar General Project

- F. Proposed Resolution to Deny the Appeal– p. 447
- G. Appeal to the Board of Supervisors– p. 451
- H. October 26, 2017 Planning Commission Staff Report (with attachments) – p. 457
- I. November 2, 2017 Planning Commission Denial Findings Memo – p. 702
- J. November 9, 2017 Planning Commission Meeting Minutes – p. 705

Appeal #3: Rough and Ready Dollar General Project

- K. Proposed Resolution to Deny the Appeal– p. 708
 - L. Appeal to the Board of Supervisors – p. 713
 - M. October 26, 2017 Planning Commission Staff Report (with attachments) – p. 717
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SECTION I. INTRODUCTION

BACKGROUND: Simon CRE on behalf of Dollar General Corporation, proposed three separate 9,100 square foot retail stores with associated improvements including parking, landscaping, signage, lighting, and drainage improvements at the entrance of Alta Sierra, on Rough and Ready Highway and in Penn Valley. With each project at 9,100 square feet, they 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 (ZA) determined that these projects 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. In taking this action the ZA did not find that the projects were either consistent or inconsistent with the General Plan or the Zoning Code requirements.

Following this action by the ZA, the County and the applicant agreed to pursue an Environmental Impact Report (EIR) 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.

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 and individual actions on all three project proposals. During that meeting and throughout the environmental review process, a number of issues were raised by members of the public and the Planning Commission. After considering the issues, the Planning Commission on a 5-0 vote certified the Environmental Impact Report (EIR15-001) as adequate environmental review for the projects and took the following individual actions on each project:

1. Alta Sierra Project: On a 5-0 vote, the Planning Commission after closing the public hearing made a motion of intent to deny the Development Permit (DP14-001) and Oak Tree Management Plan (MGT14-010), providing direction to the Planning Department to develop findings for project denial based upon the reasoning provided by the Planning Commission's to deny the proposed project, continuing the consideration of the project to a date and time certain (November 9, 2017 at 1:30 p.m.) to allow staff time to prepare the appropriate denial findings. Subsequently, at the November 9, 2017 Planning Commission meeting, the

Planning Commission on a 4-0, 1 absent vote officially denied the project and its associated entitlements.

2. Penn Valley Project. On a 5-0 vote, the Planning Commission approved the Development Permit (DP15-004), Watercourse and Wetlands Management Plan (MGT15-013), Certificate of Compliance (COC17-0001) and Lot Line Adjustment (LLA16-006);
3. Rough and Ready Highway Project. On a 5-0 vote, the Planning Commission denied the project Development Permit (DP15-001); and

Following the Planning Commission's actions, on November 3, 2017, Mr. Peter Dunn Lemmon, Esq., Attorney, on behalf of Simon CRE Harley V, LLC (applicant) appealed the Planning Commission's action to deny the Rough and Ready Dollar General Project (DP15-001). On November 6, 2017, Mr. Donald Mooney, Attorney, on behalf of Ms. Charisse Lolli, a neighbor of the Alta Sierra Dollar General project, filed an appeal concerning the actions taken by the Planning Commission on certification of the EIR (EIR15-001), and approval of the Penn Valley Dollar General (DP15-004; MGT15-013; COC17-0001 and LLA16-006). Finally, on November 16, 2017, Mr. Peter Dunn Lemmon, Esq., Attorney, on behalf of Simon CRE, CJS Development II, LLC (applicant) appealed the Planning Commission's action to deny the Alta Sierra Dollar General Project (DP14-001; MGT14-010).

On December 12, 2017, the Board of Supervisors found that the each of the three appeals filed had standing and was submitted in a timely manner, and subsequently scheduled a public hearing to consider the appeal for a date and time certain, being February 27, 2018, at 1:30 p.m. Under Land Use and Development Code (LUDC) Section L-II 5.12, each appeal hearing is to be considered a "full hearing de novo on the project, without limitation as to the issues that may be raised, or as to the evidence that may be received." It is within the purview of the Board to approve, deny, or modify the project, including the authority to change, delete or add to the conditions of approval. Since each project is considered an independent land use entitlement, each appeal is independent of one other and should be considered and acted upon individually. While each project is to be considered a separate independent project, the California Environmental Quality Act Guidelines requires that the EIR be certified only once even though it applies to each individual project. Therefore, this staff report and staff's presentation of the appeals will follow the order outlined above with the Penn Valley Project Appeal considered first. This is due to the fact that the appellant appealed the Planning Commission's certification of the EIR which has implications on the other two appeals that only appealed the Planning Commission's denial of the project(s) requested entitlements. Second will be the Alta Sierra Project Appeal and lastly will be the Rough and Ready Highway Appeal.

This staff report will provide a brief background of the projects, the specifics about the projects the issues identified in the appeal, and staff's responses to the issues raised in the appeal.

SECTION II. APPEAL #1 CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT/ PENN VALLEY DOLLAR GENERAL

Environmental Impact Report: On December 8, 2015, the Board of Supervisors approved a contract with Michael Baker International (amended in April 11, 2017) to prepare the Environment Impact Report (EIR) for all three projects. The Draft EIR was available for public review from December 14, 2016 to January 31, 2017 and a public comment meeting was held before the Planning Commission on January 26, 2017. A total 291 comment emails or letters were provided on the three proposed projects during the public comment period. Each project specific comment has been responded to as required by the CEQA Guidelines. The Final EIR, referenced herein as the "EIR", includes the Draft EIR, the Technical Appendices, both volumes of the Final EIR and a Mitigation Monitoring and Reporting Plan for each project. As the primarily impact analysis is within the "Draft EIR", which was certified by the Nevada County Planning Commission, this staff report repeatedly references the Draft EIR, even though the "draft" is final and is one component of the certified EIR. The impacts of each of the projects are considered individually in the entire EIR. While each Dollar General Store represents a separate project under CEQA, the County determined that all three stores should be analyzed in a single EIR to ensure that the cumulative impacts associated with all three stores are adequately considered. While the project appeal focuses on the certification of the EIR as it applies to the Penn Valley project approvals, the certified EIR applies to all three project approvals and therefore a brief discussion of each project site as it applies to the EIR is provided below.

Penn Valley

Based on the CEQA Initial Study checklist criteria, the EIR did not identify any significant and unavoidable impact for the proposed Penn Valley Store, and all potential impacts were mitigated to less than significant levels.

Alta Sierra

Based on the CEQA Initial Study checklist criteria, the EIR identified one significant and unavoidable impact for the proposed Alta Sierra Store, which was a result of substantial changes in the visual character of the site and surroundings (Aesthetic Impact). All other impacts were mitigated to less than significant levels. The Planning Commission found that the EIR had adequately reviewed and disclosed the environmental impacts of the proposed Alta Sierra project and had made a good-faith effort to mitigate those impacts to the greatest extent possible. Therefore, the Planning Commission certified the EIR as

adequate and made the requisite CEQA Findings of Fact (*Sub-Attachment 3 of Attachment H*). The Planning Commission however, did not find that the project specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, outweighed the unavoidable adverse visual environmental effects of the project and therefore didn't make a statement of overriding considerations, as required by CEQA Guidelines Section 15093(a) as described above. As a statement of overriding considerations was not adopted for the project, the Planning Commission could not approve the project and subsequently denied the project Development Permit (DP14-001) and Oak Tree Management Plan (MGT14-010).

Rough and Ready Highway

Based on the CEQA Initial Study checklist criteria, the EIR identified two significant and unavoidable impacts to both aesthetics and land use compatibility for the Rough and Ready Highway project, and all other potential impacts were mitigated to less than significant levels. According to the CEQA Guidelines, when an impact is identified to be significant and unavoidable, a project may still be approved and an EIR may still be certified as adequate, so long as CEQA Findings of Fact are made and a Statement of Overriding Considerations is adopted.

Pertinent to CEQA Guidelines Section 15093, CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide and statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable" (CEQA Guidelines Section 15093(a)). Further, when the lead agency approves a project which will result in the occurrence of significant effects which are identified in the Final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence on the record (CEQA Guidelines Section 15093(b)).

The Planning Commission in certifying the EIR for the Rough and Ready Highway Project found that the EIR had adequately reviewed and disclosed the environmental impacts of the proposed project and had made a good-faith effort to mitigate those impacts to the greatest extent possible. Therefore, the Planning Commission certified the EIR as adequate and made the requisite CEQA Findings of Fact (*Sub-Attachment 3 of Attachment H*). Yet as a result of the project's overall land use incompatibility and incompatibility with the General Plan, the Planning Commission was unable to reasonably make a determination that the Rough and Ready project had any economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, that would outweigh the unavoidable adverse environmental effects of the project or lessen the project's incompatibility with the surrounding

residential neighborhood. As a result, an adequate Statement of Overriding considerations could not be prepared for the project. Subsequently, the Planning Commission was unable to find the identified significant and unavoidable impacts “acceptable” pursuant to CEQA Guidelines Section 15093 and therefore did not make a Statement of Overriding Considerations due to the significant and unavoidable impacts identified in the EIR and the inconsistency with County General Plan Policies as documented by the substantial evidence on record.

Penn Valley Dollar General Project:

Project Setting: The project area is surrounded by a mix of uses and zoning designations. The project site is bordered by the Penn Valley Mini-Storage to the west, the Penn Valley Post Office to the east, a large vacant parcel to the north (on the other side of Squirrel Creek) and Penn Valley Drive to the south. Immediately south of the project is the Penn Valley 7th Day Adventist Church, to the southwest is the Broken Oak Court residential development, to the southeast and east beyond the Post Office is the primary commercial core of the Penn Valley Village Center, consisting of shops, a gas station, restaurants and similar commercial uses. To the northeast is the Clear Creek Mobile Home Park. Moving farther west the area transitions into more rural residential uses and located approximately ½ mile to the west is the Western Gateway Park. The project site is within an area of Community Commercial (C2) zoning with some higher density residential (both R2 and R3) zoning in the immediate vicinity. The project property also has the Site Performance Combining District tied to it which requires adherence to the Penn Valley Area Plan. Figure 1 in *Attachment C* provides a zoning, vicinity and public notice map for the project. This project is within the Penn Valley Village Center which is a part of the larger Penn Valley Community Region as designated by the Nevada County General Plan.

Project Description: The proposed project is a combined application proposing: 1) A Development Permit application proposing a 9,100 square foot Dollar General Retail Store (DP15-004) and associated improvements including parking, lighting, signage and landscaping; 2) a Management Plan (MGT15-013) for impacts to a wetland and encroachment into the non-disturbance buffer of a seasonal stream; 3) a conditional Certificate of Compliance (COC17-0001) to recognize APNs 51-120-06 and 51-150-29 as separate legal parcels (*Sub-Attachment 6 of Attachment C*); and 4) a Lot-Line Adjustment (LLA16-006) between two adjoining parcels to reconfigure APN 51-120-06 from 5.95-acres to 1.20-acres to contain the proposed Dollar General project, while maintaining road frontage on Penn Valley Drive from APN 51-150-29, which would increase from 3.10-acres to 7.85-acres (*Sub-Attachment 7 of Attachment C*). The project proposes to fill approximately 7,000 square feet of wetlands and encroach into the non-disturbance buffer of a watercourse flowing through the site. The project would require an estimated 4,800 cubic yards of fill material, installation of an underground water detention system to capture storm water in excess of pre-project conditions and installation of a large underground water storage tanks to meet fire flow requirements. Project plans identify 46-parking stalls in conformance with County parking standards, as

well as associated lighting (including goose neck wall/sign lighting and typical parking lot standards), landscaping, and signage, shown in Figure 2 and *Sub-Attachment 8 of Attachment C*. The project would reconfigure two properties owned by the same owner to create the 1.2-acre subject parcel and merge the remainder with the neighboring parcel to the east/northeast (APN: 51-150-29) (as shown in Figure 3/*Sub-Attachment 7 of Attachment C*).

The proposed building design is a western theme with a rectangular façade and wood posts supporting an awning structure. Building materials including horizontal shiplap wood board with a 12-inch reveal in a “Cream Washed” (tan) color and an 8-inch reveal in a “Almond Latte” (darker tan) color, vertical board-and-batten wood siding with a 15” reveal in “Ruddy Oak” (burnt orange/reddish) color, wood plank barn doors in a “Draw your Sword” (grey) color, aluminum storefront windows in Dark Bronze color, composition shingle roof materials on the awnings, parapet wood trim and metal flashing in a “Castle Rock” (grey) color, a decorative gable roof wood element and exterior wood fascia in a “Chester Brown” Color and trim accents in a “Pure White” color. At its tallest point (the decorative gable roof) the building is proposed to be 26-feet 9-inches tall with the predominant roof line (parapet roof) at 17 feet and 8 inches tall. Figure 4 and *Sub-Attachment 9 of Attachment C* provide the architectural renderings for the project and *Sub-Attachment 8 of Attachment C* includes proposed elevations for the building prepared by MPA Architects, Inc. Staff would note that Figure 4 of *Attachment C* shows a cabinet mounted wall sign, yet *Sub-Attachment 8 of Attachment C* shows the use of a channel letter wall sign, which is encouraged by the County Sign Regulations and is required by the project conditions of approval.

Staff Recommendation/Planning Commission Action: For this project, the Planning Department recommended approval of the Project Development Permit as a result of the fact that all project impacts were mitigated below levels of significance, was compatible with surrounding commercial development and with several General Plan Goals and Policies and because the project met the County’s Land Use and Development Code Comprehensive Site Development Standards. On October 26, 2017, after review and considering the project including the entire administrative record before them and taking public testimony, the Planning Commission after certifying the EIR as thorough and adequate, approved the project and its various entitlements on a 5-0 vote.

THE APPEAL:

The appeal raises issues with the Planning Commissions certification of the EIR as it applies to the Penn Valley Dollar General Project citing that it fails to comply with the California Environmental Quality Act, For the complete text of the appeal, as well as additional materials provided by the Appellants, see *Attachment B*.

- 1. Final EIR fails to comply with the requirement of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq. The Final EIR failed to adequately discuss, disclose and mitigate the projects’ impacts, including but***

not limited to traffic, drainage, aesthetics and biological resources. (See Comment letters A, 157, 159, 169 (Final EIR at 3.0-23, 3.0-438, 3.0-447, 3.0-482).

The appellant's appeal paper work references four specific letters citing that the Final EIR failed to adequately discuss, disclose and mitigate the project's impacts to traffic, drainage, aesthetics and biological resources. Letter A is a letter from Kevin Yount representing the California Department of Transportation (CalTrans), Letter 157 is a letter from Ms. Charisse Lolli (appellant) and Mr. Brian Wallace, Letter 159 is a comment letter from Mr. Marc Mayfield and Letter 169 is a second letter from Ms. Lolli. The comments and issues identified in each individual letter, as well as the Final EIR response to this issue will be summarized below:

Letter A: Kevin Yount, Caltrans.

The letter from Caltrans focuses on Alta Sierra project but does not address the Penn Valley project. The comments suggest using an alternative type of analysis for identifying traffic impacts and highlights existing problems with signalization timing at the Alta Sierra/Highway 49 intersection. It cites that the County should consider using vehicle miles travelled (VMT) as outlined in the provisions of Senate Bill (SB) 743. The response in the Final EIR cites that the California Office of Planning and Research is required by SB 743 to develop guidelines for alternative measures to the traditional Level of Service analysis for incorporation into updated CEQA Guidelines. At the time of the completion of the EIR, final guidelines had yet to be prepared to develop a standardized method for analyzing projects to VMTs and therefore the EIR utilized acceptable methods for analyzing traffic impacts. Regarding the signal timing at the Alta Sierra/Highway 49 intersection, the letter does not indicate that the project will result in a significant impact to traffic operations at this intersection nor does it provide required mitigation to lessen project impacts. It outlines what the issue is with the existing timing at the intersection and states that an issue with queue lengths will be exacerbated by the incorrect timing plan and queue lengths will be increased due to the proposed project increasing in future years.

The comment letter requests that the County require the applicant to install a right-turn overlap as a condition of approval. This would require the applicant to replace one existing three section single head with a five-section signal head on a new Type 1B pole in the northeast quadrant of the intersection and tie all the connections into the single controller box. While CEQA does not require a project to fix existing problems and issues, the County has required this improvement as Condition G.2 since this project will contribute to the existing problem and the applicant has agreed to complete the improvement (*Sub-Attachment 1 of Attachment K*). In addition, the applicant is also required to pay their fair share contribution of future widening of State Highway 49 (*Condition G.1, Sub-Attachment 1 of Attachment K*) and pay County traffic mitigation fees (*Condition B.1, Sub-Attachment 1 of Attachment K*). For greater detail, please refer to Comment Letter A (Final EIR Volume 1, page 3.0-23 to 3.0-40), the Final EIR

response to Letter A (Final EIR Volume I, pages 3.0-41 to 3.0-45) and the Kunzman Associates, Inc. (traffic engineer) response to Letter A (Final EIR, Volume II, Appendix A).

Letters 157/169: Charisse Lolli/Brian Wallace

Within Letters 157 and 169, Ms. Lolli and Mr. Wallace (Letter 157) focus their comments primarily on the Alta Sierra project with one comment referencing the Rough and Ready project citing that “many issues pertain to each site”. No specific reference is made to the Penn Valley development in either letter 157 or 169. The issues raised are similar to those outlined in Ms. Lolli’s latest letter dated January 20, 2018, which is included as supplemental information to the appeal (*Attachment B*). In summary in Letter 157, as a neighbor to the Alta Sierra proposed development, Ms. Lolli expresses concerns over potential traffic safety, the size delivery trucks, economic impacts, big box stores, size of the store as it relates to tree removal and waste water disposal, visual impacts, the proposed reduction in required parking spaces, construction traffic, existing drainage issues, and tree removal.

In letter 169, like letter 157, Ms. Lolli expresses concerns over the potential economic impacts of projects citing that there has been no cited public need for the stores stating that if a significant and unavoidable impact has been identified for the project then it should be denied. Further in Letter 169, Ms. Lolli cites concerns with the proposed onsite storm drainage design, timing of traffic counts in the traffic study, the number of trees required to be removed, the size of delivery trucks, visual simulations, timing of septic testing, the traffic study, impacts of new lighting, interconnectivity of the project with other commercial uses in the area, and fire danger.

Within the supplemental letter supporting the appeal, Ms. Lolli reiterates that she believes the EIR does not adequately identify and mitigate project impacts, focusing on the Alta Sierra project. Much like letters 157 and 169, there is no reference to the Penn Valley project for which Ms. Lolli has appealed the approval of along with the certification of the EIR. Within this supplemental letter, Ms. Lolli reiterates much of her concerns outlined in Letters 157 and 169. Ms. Lolli adds that the 100+ trees required to be removed for the Alta Sierra project have not been adequately mitigated for, that the project at Alta Sierra is not within an existing shopping center as it will require a separate access and does not provide internal circulation to other business to the north or south creating traffic safety issues, the building size and requested reduction of parking using other similar Dollar General stores to justify the parking reduction and how that may impact future use of the site for other commercial uses, the developers refusal to re-orientate or reduce the size of the building. For greater detail regarding these letters please refer to the Final EIR Volume II, page 3.0-438 to 3.0-439 (Letter 157), pages 3.0-482 to 3.0-483 (Letter 169) and *Attachment B* (Appeal/Supplemental Appeal Letter).

The following section will provide a brief rebuttal to the comments contained within letters 157, 169 and the Appellant’s Appeal Supplement Letter based on the Final EIR

response to comments to document the EIR's adequate analysis and mitigation to project issues outlined within those letters.

Traffic Study/Safety: The commenters disagree with the conclusions presented in Impact 15.1.2(AS) in the EIR Section 15.0, Traffic and Transportation of the Draft EIR, which evaluates traffic safety, including line of sight, along Alta Sierra Drive. The EIR identifies the need for mitigation to ensure appropriate line of sight based on the current roadway alignment relative to the proposed driveway (mitigation measure MM AS-15.1.2a) and for curb modification at the proposed driveway (mitigation measure MM AS-15.1.c). As stated in the EIR (page 15.0-11 of the Draft EIR), these mitigation measures would reduce the impact to a less than significant level. The commenter states that the project will cause "certain danger, with no 'fix' available," but no data or technical analysis was provided in the comment that contradicts the conclusions of the EIR.

The traffic counts for the Alta Sierra site were collected on Thursday, June 19, 2014 at 15-minute intervals between peak commute hours (7AM to 9AM and 4PM to 6PM). These are the correct hours for traffic counts per the County's requirements for traffic studies. The traffic counts were not collected during quiet hours and on weekends, as stated by the commenter. The traffic count worksheets are included in the Alta Sierra site traffic study (Appendix 15.0-A in the Draft EIR [pages 31 through 39]).

The EIR identifies approved/pending projects assumed in the traffic studies for each project. For Alta Sierra, as stated on page 15.0-4 Section 15.0, Traffic and Transportation of the Draft EIR, there is only one project, the mobile home project to the north on SR 49, which results in a minimal contribution to traffic conditions on Alta Sierra Drive. Projects assumed in the analysis for the Penn Valley site are listed on page 15.0-17 in the Draft EIR, which includes Wildwood Ridge Estates among others. For the Rough and Ready Highway site, projects in the traffic analysis are listed on page 15.0-29 of the Draft EIR, which includes Yuba River Charter School.

The EIR evaluates potential traffic safety impacts at the Alta Sierra site in Impact 15.1.2(AS) on page 15.0-11 in Section 15.0 of the Draft EIR. The potential for traffic accidents to occur on SR 49 is an existing condition, regardless of whether the proposed projects are approved. By comparing the intersection approach lane turn movement data in the third row in Tables 15.0-1 and 15.0-12 to the same row in Tables 15.0-4 and 15.0-13 in the Draft EIR, there would be little change in the number of vehicles making turns from SR 49 onto Alta Sierra Drive. Thus, the proposed project would not contribute substantial volumes of traffic to SR 49 that would, in turn, substantially increase the potential for accidents. The County will require an improvement at this intersection as a condition of project approval that will allow for continuation of the current signal timing plan which provides greater safety and traffic operations at the intersection.

The EIR evaluates emergency access to the project sites in Impacts 15.1.2(AS), 15.2.2(PV), and 15.3.2(RR) in Section 15.0 of the Draft EIR. Each of these analyses concludes that there would be adequate room along roadways for emergency responders to park to access the sites in the event of a fire if access to the site is blocked or otherwise inaccessible. The criterion applied to this analysis is 1,000 feet. The commenter is of the opinion that the truck-turning templates are inaccurate, but did not suggest an alternative approach or what other distance criterion should have been applied. The maximum-length delivery trucks are not currently allowed to access the sites. The truck-turning templates included in the traffic studies thus provide a conservative analysis.

As outlined above, the entire project Final EIR fully analyzes potential traffic impacts including those that have the potential to result in safety impacts. Mitigation and conditions of approval have been applied related to reducing potential traffic impacts to the project and therefore, the Planning Commission determined that the project had fully addressed potential traffic impacts prior to approving the Penn Valley project.

Delivery Truck Size: The EIR addresses STAA trucks and explains that mitigation measures for each site (MM AS-15.1.2b, MM PV-15.2.2b, and MM RR-15.3.2b) expressly prohibit the project applicant from using the 73-foot truck for deliveries unless the roadway designations are changed to allow the trucks. Further Penn Valley and Alta Sierra project's final conditions of approval also include a Department of Public Works Condition of Approval prohibiting STAA trucks (*Condition B.4 in Sub-Attachment 1 of Attachment C for Penn Valley and Condition B.10 in Sub-Attachment 1 of Attachment H for Alta Sierra*).

The EIR, in Section 15.0 of the Draft EIR, Traffic and Transportation, includes an analysis of potential traffic safety hazards for each site, as follows: Alta Sierra (Impact 15.1.2 on page 15.0-11); Penn Valley (Impact 15.2.2 on page 15.0-23); and Rough and Ready Highway (Impact 15.3.2 on page 15.0-35). Each of these impact analyses evaluates the size of delivery trucks relative to the size that is currently permitted on the roadways that would be used by trucks to access the sites (Alta Sierra Drive, Penn Valley Drive, and Rough and Ready Highway), along with other impacts. The traffic study for each location assumed a "WB-67 STAA" truck. This is the longest truck that Dollar General uses (73 feet), and this length was used for purposes of depicting truck turning movements into and out of each site to provide a worst-case analysis. This assumption is stated in the traffic study for Alta Sierra (Draft EIR Appendix 15.0-A, page 6) and for Rough and Ready Highway (Draft EIR Appendix 15.0-C, page 7). None of the traffic studies assume the roadway designations will be changed to accommodate the project, and each noted that only shorter-length trucks are allowed.

As stated on EIR page 15.0-1 of the Draft EIR, the California Department of Transportation (Caltrans) Office of Commercial Vehicle Operations, Legal Truck Access Branch designates routes upon which STAA trucks may legally travel. Alta Sierra Drive, Penn Valley Drive, and Rough and Ready Highway are not STAA truck routes. The EIR

identifies this as a potentially significant impact because such use could pose a safety hazard if the trucks operate on roadways on which they are not allowed. The EIR includes mitigation measures for each site (MM AS-15.1.2b, MM PV-15.2.2b, and MM RR-15.3.2b) that expressly prohibit the project applicant from using the 73-foot truck for deliveries unless and until the roadway designations are changed to allow the trucks. However, many commenters appear to have misinterpreted the requirements of the mitigation measures.

While the EIR describes that STAA trucks would be allowed on these roadways if Caltrans approves a change in the STAA designation that would allow these longer trucks (see, for example, page 15.0-11, fourth paragraph of the Draft EIR), the County is not initiating a change of designation of these roadways. Such a change is also not proposed as part of the project. The intent of the mitigation measures is to require the project applicant to use alternate delivery methods (i.e., use smaller trucks as allowed), until such time that Caltrans approves a change in the STAA designation, if such a change ever occurs. There is no requirement in the mitigation measure that the roadways' designations be changed prior to issuance of building permits. As such, the EIR is not required to evaluate potential impacts of a change in roadway designation to allow the maximum-size trucks.

Within the Final EIR, the mitigation measures were revised, as follows, to clarify that the County is not proposing changes to the designation of these roadways and that the mitigation measures are intended to prohibit the use of illegal trucks, rather than to require the re-designation of the roads for STAA trucks.

MM AS-15.1.2b ~~Unless and until Alta Sierra Drive is designated a STAA route,~~
STAA trucks shall be prohibited from accessing the project site
unless Alta Sierra Drive is designated a STAA route.

MM PV-15.2.2b ~~Unless and until Penn Valley Drive is designated a STAA route,~~
STAA trucks shall be prohibited from accessing the project site
unless Penn Valley Drive is designated a STAA route.

MM RR-15.3.2b ~~Unless and until Rough and Ready Drive is designated a STAA~~
~~route,~~ STAA trucks shall be prohibited from accessing the project site
unless Rough and Ready Highway is designated a STAA route.

It should be noted that the measures do not specify a required delivery method or type of truck to allow the applicant to determine the method that is most practically and economically feasible while still complying with the mitigation measures.

Adherence to each mitigation measure prohibiting the use of WB-67 STAA truck deliveries to the proposed store locations will be monitored and enforced by the County throughout the life of the project through its Code Compliance Division. It is within the County's authority to enforce the prohibition and take necessary actions should the project applicant fail to abide by its requirements. Nevada County Code Section L-II 5.5, Development Permits, states, "no person shall fail to comply with any approved

Development Permit or any conditions or provisions thereof” (Section 5.5.B.2: Compliance). Section L-II 5.21, Enforcement and Penalty for Violations, sets forth the duties of the Planning Director, Code Enforcement, and law enforcement duties with respect to violations. Section L-II 5.23, Enforcement by Administrative Citation, provides for enforcement and citation in the event of violations and sets forth progressive fines for violations. Section L-II 5.11, Permit Revocation, provides for revocation of the permit for noncompliance with conditions of approval, mitigation measures or the approved site plan, or violation of any law in connection with the permit.

As documented above, the entire Final EIR fully analyzes the potential use of STAA 73-foot trucks and both the project specific mitigation and conditions of approval prohibit the use of these trucks. The Planning Commission determined that this issue was adequately reviewed, analyzed and mitigated for when approving the Penn Valley project.

Construction Traffic on Little Valley Road: This comment expresses concerns with the Alta Sierra project, including construction-related traffic, noise, vibration, dust, and pedestrian safety. The EIR evaluates construction-related impacts noted in the comment and identifies mitigation measures to reduce impacts to less than significant levels. For example, haul truck traffic associated with grading and soil export and its potential to impact existing land uses along Little Valley Road is specifically addressed in Impact 12.1.2(AS) and mitigation measure MM AS-12.1.2 on page 12.0-9 in Section 12.0, Land Use and Planning of the Draft EIR. The EIR also includes mitigation measures MM AS-15.1.5 (construction traffic control plan), MM AS-13.1.2 (construction noise), and MM AS-5.1.1a through MM AS-5.1.1c (construction vehicle emissions, construction dust, and volatile organic compounds).

The proposed project is a commercial project and is consistent with zoning and adjacent commercial uses, as stated in the EIR on page 12.0-8 in Section 12.0, Land Use and Planning of the Draft EIR, under the Nevada County General Plan and Nevada County Zoning Ordinance subheadings. The use of Little Valley Road was considered in the EIR, and there were no physical effects associated with that use.

The applicant has appealed the certification of the Final EIR in addition to the Penn Valley project approval. The information above clearly shows that the entire project Final EIR fully analyzed and adequately provided mitigation for the use of Little Valley Road for construction access. The Planning Commission took this into account when certifying the EIR as it applies to the Alta Sierra project and this comment did not apply to the Penn Valley project.

Economic Impacts/Big Box Store: This comment is generally related to the merits of the proposed projects and economic impacts. It is correct that the three individual projects were combined into one EIR for the purpose of evaluating cumulative environmental impacts. Although the analysis of cumulative economic impacts exclusively is not required under CEQA, the project applicant prepared economic studies for the three sites,

included in the EIR as Appendix 12.0 of the Draft EIR. The studies determined that the stores will need to capture only a small portion of market area demand to achieve stabilized sales consistent with national store performance standards. In addition, the studies found that the low capture rate in the area, combined with the retail leakage in the area in most sales categories, suggests the retail base can readily absorb the projected Dollar General sales, with little to no impact on existing retailers. The commenter states that the existing Dollar General store in Grass Valley does not demonstrate the need for more than one store. No data or technical analysis was provided in the comment to support the commenter's conclusion.

The commenters speculate that subsequent tenants at the proposed projects will result in "imminent and unavoidable" parking requirements and traffic considerations that will differ from those of the proposed projects. This comment expresses an opinion but does not provide any data or analysis that contradicts the conclusions of the EIR with regard to consistency with County policies concerning parking and results of the traffic study.

The commenter has mischaracterized the purpose of the cumulative analysis in the EIR. The purpose of evaluating the impacts of the three stores combined is to ascertain environmental impacts, not economic impacts, which do not require analysis. In addition, the purpose of the cumulative analysis is to consider effects of all development, not just effects related to a particular retailer.

Many commenters requested that the EIR include an analysis of the economic and environmental impacts should a Dollar General store fail in its proposed location. Commenters speculated that, in the event of a store failure, the building would remain vacant, which could lead to blight. Others stated that because the County would have approved less parking than typically required under the County Code, if a store site becomes vacant, the site would be "under-parked" for some future commercial use. California Health and Safety Code Section 33030(b)(1) defines blight as the following:

- (b) A blighted area is one that contains both of the following:
 - (1) An area that is predominantly urbanized, as that term is defined in Section 33320.1, and is an area in which the combination of conditions set forth in Section 33031 is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

CEQA does not require evaluation of speculative future conditions. CEQA Guidelines Section 15204(a) states, "CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters." CEQA Guidelines Section 15204(c) states that "reviewers should explain

the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” Commenters did not provide evidence regarding the potential for any of the stores to fail or, with such a failure, that there would then be the potential for physical deterioration such that it meets the criteria set forth in Health and Safety Code Section 33030(b)(1). It should also be noted that economic studies, prepared for each of the stores, determined that the stores will need to capture only a small portion of market area demand to achieve stabilized sales consistent with national store performance standards. In addition, the studies found that the low capture rate in the area, combined with the retail leakage in the area in most sales categories, suggests the retail base can readily absorb the projected Dollar General sales, with little to no impact on existing retailers. Therefore, the potential for failure of the stores that would then result in blight would be low.

For the record, however, in the case that any of the stores were to fail, any future proposed occupancy of the Dollar General store site by another business would be evaluated on a case-by-case basis through the Tenant Improvement (Building Permit) process. This process would consider the proposed use and ensure that site development standards, such as parking standards and sewage disposal requirements, are met.

Each individual project is a proposal for a 9,100 square foot Dollar General Retail Store. The County Planning Department does not have a policy or standards that restricts or dictates what the tenant of a retail store can be so long as the use type is consistent with the allowed uses within that Zoning District, meets the County’s comprehensive site development standards and can be found to be consistent with the County’s General Plan. For a project of this type and size, the County Code does not require that an economic analysis be prepared for the project, however the applicant elected to prepare an economic report to help document that the proposed stores could be supported in the areas where they were being proposed.

Parking Reduction: Under Section L-II 4.2.9 of the Nevada County Land Use and Development Code, uses that would not meet parking standards are not approved unless it can be demonstrated that the provided parking is sufficient for the proposed use. This evidence must be provided in the form of a parking study prepared by a licensed traffic engineer. Therefore, the processes in place during project review would prevent a future use at any of these locations from being approved with a parking shortfall such that it would affect surrounding development. The applicant was able to use similar examples of other operating Dollar General Stores in other northern California locations to show that the proposed Alta Sierra and Rough and Ready Highway projects would not need the minimum required number of spaces as allowed for by the County’s Code requirements. The Penn Valley development, which the appellant has appealed the approval of, provides the appropriate number of parking spaces as required by the County Code and did not require a parking reduction.

Tree Removal (mitigation): The EIR evaluates the loss of trees on the Alta Sierra site. The EIR fully discusses the impact of the project to trees for the Alta Sierra site (Impact 6.1.3[AS] within the Draft EIR) and clarifies the number of trees that would be removed and associated mitigation. The EIR identifies that there would be little or no tree removal on the Penn Valley and Rough and Ready Highway sites.

Several commenters, including the appellant questioned how many trees would be removed to accommodate the Alta Sierra project. The Management Plan identified over 100 trees on the project site including ponderosa pine, black oak, and valley oak. The proposed project will impact 85 trees; which was discussed in the Draft EIR, Management Plan and both the Zoning Administrator and Planning Commission Staff Reports. To further clarify how many trees were proposed to be removed as a result of the Alta Sierra Project, the Final EIR amended the third paragraph on Draft EIR page 6.0-10 as follows:

A tree survey identified the presence of 85 oak trees on the project site that are proposed for removal, including 71 California black oaks and 3 small valley oaks.

Commenters also questioned how many trees would be preserved on the Alta Sierra site. As noted in mitigation measure MM AS-6.1.3b, 17 trees (10 oaks and 7 pines) would be retained, and measures to protect the remaining trees are included in mitigation measures MM AS-6.1.3a, AS-6.1.3b, and AS-6.1.3c. The measures include fencing, establishing tree protection zones, informing construction personnel where all protective zones are, prohibiting activities such as excavation, trenching, or storage of equipment in drip zones, and periodic monitoring by a qualified professional.

Impacts 6.1.3(AS) and 6.1.5(AS) identified within the EIR, discuss the project's potential impacts to landmark oaks and landmark oak groves. With regard to comments questioning the efficacy of the mitigation measures for removed trees, the County's approach to mitigating the loss of landmark and heritage oaks associated with development projects and its enforcement of the regulations are set forth in Section L-II 4.3.15, Trees, in the Nevada County Land Use and Development Code, summarized on page 6.0-7 in Section 6.0, Biological Resources of the Draft EIR. The County considers compliance with the ordinance to fully mitigate a project's impacts. The ordinance requires a Management Plan, which allows for the removal of trees. A Management Plan was prepared for the project and is included in Appendix 6.0-AS of the Draft EIR. In lieu of replacement trees, LUDC Section L-II 4.3.15(C)(4) allows for payment into a Tree Preservation Fund for the planting and maintenance of trees on publicly owned property, or for purchase of replacement habitat.

Mitigation measure MM AS-6.1.3e requires payment of \$42,900 in mitigation costs to the Bear Yuba Land Trust (BYLT) for replanting, management, and restoration of black oak habitat on the Clover Valley Preserve Property located 2 air miles from the project site. The measure further requires the developer and the BYLT to enter into a contractual

agreement that outlines the specific steps of the Restoration Project that will occur, consistent with Appendix B of the Oak Tree Management Plan, including a clause to trigger the attachment of a conservation easement on the property if the BYLT should ever transfer the property to non-land trust ownership. The contractual agreement must also provide specific steps for annual monitoring of the success of the project and reporting to the County Planning Department by a qualified professional. While the replacement trees would be smaller than those removed, and the replacement value would not be immediate, the measure provides for planting of more trees than would be removed and requires long-term maintenance. For these reasons, implementation of this measure would comply with the County Code for the protection of trees and ensure the impact is less than significant.

The appellant's follow up letter (*Attachment B*) states that the oak tree mitigation and management do not adequately mitigate the impacts of the Alta Sierra project on oaks because the BYLT and the applicant have not reached an agreement on the proposal that was originally developed by BYLT and submitted by the applicant's Management Plan Biologist as mitigation for the project. This change was addressed in the October 26, 2017 memo to the Planning Commission changing the compensation amount of the mitigation measure from \$42,900 to implement the plan to "an amount agreed to by the Bear Yuba Land Trust", requiring that any changes to the restoration plan must be approved by the project biologist and be equal to or greater in effectiveness as the original restoration plan. This is documented in the staff memo to the Planning Commission dated October 26, 2017 (*Attachment D*). Requiring a fully developed restoration and planting plan is not typically a standard requirement for mitigating for oak tree impacts. Typically project mitigation requires on or off-site planting to compensate for loss of oaks and the details of the restoration/planting are developed and approved following issuance of project entitlements based upon County code replacement requirements. In this case, the applicant's biologist obtained the draft proposed restoration plan as developed by BYLT that was incorporated into the project Management Plan and subsequently into the mitigation outlined in the EIR. The revisions to the oak mitigation were the result of the BYLT expressing concerns about the mitigation and will provide equal to or greater compensation to the potential project impacts than the original restoration plan. While the Planning Commission ultimately denied the approval of the Management Plan and Project, the entire Final EIR did fully analyze the impacts and adequately mitigation was provided.

Waste Water Disposal: The EIR describes the result of soil testing for the septic system in Impact 8.1.4(AS) on page 8.0-9 in Section 8.0, Geology and Soils of the Draft EIR. The following is taken from Master Response #1 in the Final EIR Volume 1:

Alta Sierra Site – Use of Off-Site Parcels for Septic System

Some members of the public, [including the appellant] were of the opinion that the proposed use of off-site parcels for tight lines and leach fields for the Alta Sierra septic system is prohibited, citing, in some cases, the State Water Resources Control Board On-site Wastewater Treatment System (OWTS) policy, which references Appendix K of the

2007 California Plumbing Code. The current plumbing code is the 2016 California Plumbing Code, and Appendix H of that code contains the information formerly contained in Appendix K of the 2007 California Plumbing Code, among other additions. The current SWRCB On-site Wastewater Treatment System policy document is dated 2012; however, it continues to reference the 2007 California Plumbing Code. Concerns were also expressed that the soils testing for the system was performed in a drought year, which would not have accounted for normal or higher than normal precipitation conditions.

Commenters appear to have misinterpreted the Plumbing Code requirements regarding off-site parcels. The code does not state that off-site parcels may never be used. Appendix K Section K-1(G) of the 2007 California Plumbing Code and Section H 101.8 in Appendix H of the 2016 Plumbing Code contain identical language, which states:

No private sewage disposal system, or part thereof, shall be located in any lot other than the lot that is the site of the building or structure served by such private sewage disposal system, nor shall any private sewage disposal system or part thereof be located at any point having less than the minimum distances indicated in Table H 101.8 [Table K-1].

Nothing contained in this code shall be construed to prohibit the use of all or part of an abutting lot to provide additional space for a private sewage disposal system or part thereof where proper cause, transfer of ownership, or change of boundary not in violation of other requirements has been first established to the satisfaction of the Authority Having Jurisdiction. The instrument recording such action shall constitute an agreement with the Authority Having Jurisdiction, which shall clearly state and show that the areas so joined or used shall be maintained as a unit during the time they are so used. Such agreement shall be recorded in the office of the County Recorder as part of the conditions of ownership of said properties and shall be binding on heirs, successors, and assigns to such properties. A copy of the instrument recording such proceedings shall be filed with the Authority Having Jurisdiction.

Both the 2007 and 2016 California Plumbing Codes allow “abutting” parcels to be used for sewage disposal, and neither specifically prohibits non-abutting parcels from being used. It is the County’s standard practice to allow nearby, noncontiguous parcels to be used for sewage disposal, as with the Harmony Ridge Subdivision and the Buck Mountain Estates Subdivision projects, provided the appropriate easements are in place. The project applicant has provided a letter of intent to record a septic line/system easement from the property owner of all three properties included in the Alta Sierra project, including a draft Declaration of Easement to be recorded should the project be approved. This information is stated in the EIR on page 8.0-9 in Impact 8.1.3(AS) in Section 8.0, Geology and Soils, and in Impact 14.1.3(AS) on page 14.0-22 in Section 14.0, Public Services and Utilities of the Draft EIR. The project’s conditions of approval

would require the finalization and recordation of the easement prior to the issuance of any grading or building permits. The proposed design for the project's sewage disposal has been reviewed by the Nevada County Department of Environmental Health, which has found that the proposed system is compliant with County sewage disposal regulations. Thus, the proposed project septic system at the Alta Sierra site conforms to applicable regulations. As outlined above, the EIR fully considered and analyzed the impacts of the Alta Sierra projects proposed use of an offsite leach field.

Soil Testing at Alta Sierra and Rough and Ready Highway Sites

The two Dollar General locations where on-site sewage disposal system installation is proposed are the Alta Sierra Drive site and the Rough and Ready Highway site. Soil testing was done at both sites. The proposed Penn Valley site would be served by a County Sanitation District 1 public sewer connection to the Lake Wildwood Wastewater Treatment Facility, so no septic system facilities are proposed at that site.

The Nevada County Department of Environmental Health requirement for wet weather testing for on-site soil evaluation (for sewage disposal feasibility) is guided by departmental awareness of where generally low-lying, poorly drained areas of the county are located. Additionally, if shallow groundwater, or its indicators, is observed in site soil mantle test pits at a particular test event during drier periods of the year, such a site or parcel may be identified as one requiring wet weather testing. A subsequent test pit excavation during a defined wet weather period, or an alternate method (such as the installation and monitoring of piezometers in the test area), to evaluate the presence of persistent shallow standing groundwater at a proposed/intended on-site sewage disposal site would then be required.

County staff reviewed the testing for soil conditions on the Dollar General sites and determined additional soils testing is not required because the existing soil conditions do not warrant concern about wet weather conditions. It can be determined from soils testing, during the dry season or the wet season, how the soil reacts to saturation and whether precipitation events would impact the sewage disposal capacity of the soils. The tested soils demonstrated adequate properties to handle sewage disposal under precipitation events.

Neither the Alta Sierra Drive location nor the Rough and Ready Highway location was considered to be in low-lying, poorly drained areas, nor were conditions observed during the sites' testing to be especially impacted by shallow groundwater conditions, such that wet weather testing criteria was then determined to be needed. Therefore, the analysis and conclusions in the entire Final EIR regarding potential environmental impacts of the Alta Sierra site septic system (which includes the off-site parcels) and the Rough and Ready Highway site are factually correct and supported by substantial evidence.

Drainage/Strom Water Run-off: The EIR describes the existing drainage problems along Alta Sierra Drive and Little Valley Road on page 11.0-7 in Section 11.0, Hydrology and Water Quality of the Draft EIR. The proposed drainage system is described in Impact

11.1.1(AS) on page 11.0-8 of the Draft EIR and is based on a site-specific drainage study, which is included in the EIR as Appendix 11.0-A of the Draft EIR. With the proposed design and mitigation measures, post-development flows would not exceed pre-development flows. The commenter is of the opinion that the basin will not be sufficient to mitigate project flows. The project preliminary drainage study was prepared by a professional engineer and peer reviewed by the County's engineers and the EIR consultant. In concept. The preliminary drainage report documented that the site was designed to document increases in storm water runoff that would result from the project. The project conditions of approval require that a final drainage analysis be prepared as a part of the building permit process to ensure final designs are compliant with County code and policy requirements.

The EIR acknowledges the drainage problems along Alta Sierra Drive and Little Valley Road on page 11.0-7 in Section 11.0, Hydrology and Water Quality of the Draft EIR. The proposed drainage system, described in Impact 11.1.1(AS) on page 11.0-8, is based on a site-specific drainage study, which is included in as Appendix 11.0-A of the Draft EIR. For purposes of this response, it is assumed the commenter's statement regarding "underground holding tanks" is in reference to the underground catch basin that is part of the system and which would be used to store stormwater prior to its discharge to detention pipes. With the proposed design and mitigation measures, post-development flows would not exceed pre-development flows.

Several commenters expressed concerns that the project (particularly at the Alta Sierra and Rough and Ready Highway sites) would exacerbate existing drainage and overtopping problems along roadway ditches adjoining the sites, where project stormwater runoff would be conveyed. Some individuals described their observations and provided photographs showing excess water in ditches and on roadways. Similar comments were made by the public in response to the Notice of Preparation for the project.

Stormwater runoff and drainage impacts for each of the project sites are evaluated in the EIR in Section 11.0, Hydrology and Water Quality of the Draft EIR, as follows: Alta Sierra site (Impact 11.1.1(AS) on page 11.0-7); Penn Valley (Impact 11.2.1(PV) on page 11.0-12), and Rough and Ready Highway (Impact 11.3.1 on pages 11.0-17 and 11.0-18). The project applicant provided a drainage study for each site, and the drainage studies were included in Appendix 11.0-A (Alta Sierra), Appendix 11.0-B (Penn Valley), and 11.0-C (Rough and Ready Highway) of the Draft EIR. The description of existing conditions, impacts, and proposed drainage facilities presented in the EIR is based on those studies, as stated on page 11.0-6 in Section 11.0 of the Draft EIR. Public input on drainage problems was considered in the analysis. For example, the drainage study for Alta Sierra specifically states "as mentioned by the public, runoff flows from the roadside ditch and flows across the street to an existing curb line." It also notes that the reason for overtopping is a clogged storm pipe (culvert). Appendix 2 in the Alta Sierra drainage study includes photographs of the roadway, ditch, and culvert where runoff poses a

problem. The EIR (page 11.0-7 of the Draft EIR) also describes the existing roadway overtopping problem.

Although some commenters stated the proposed drainage plans or features thereof were inadequate, none provided any conflicting technical analysis or calculations prepared by a qualified professional for County consideration. The drainage studies show no net increase in flows, and the County has reviewed the plans and determined that they meet requirements. While the EIR considers the existing conditions on the site with regard to drainage, the purpose of the EIR is to consider existing conditions in the analysis, but projects are not responsible for mitigating an existing condition. If a project exacerbates an existing condition, it would be responsible for mitigating its contribution to that impact. In this case, however, the project applicant will be required to ensure no net increase in flows from the site(s). Consequently, the projects would not exacerbate the existing conditions at any of the sites.

Infill Project (interconnectivity): The appellant states that “it is important that we acknowledge that the project at Alta Sierra is not a part of an existing shopping center” citing concerns with the number of driveways on Alta Sierra Drive and the lack of pedestrian access between properties in this area. Planning Staff in recommending this project for approval determined that this project was within in existing approximately 35-acre pod of Neighborhood Commercial (C1) zoning that had been in place since the 1980’s and designated in the County General Plan as a “Rural Center.” Staff referenced that the project site was surrounded on all sides by pavement (roads and commercial development), with two developments of similar size on similar sized parcels to both the south and north of the site determining that this project was considered an “infill” development within an existing commercial area (*See the October 26, 2017 Planning Commission Staff Report, Attachment H*). As a result of topography and limits to the County right-of-way along Alta Sierra Drive, shared access and pedestrian interconnectivity were not an option for this project. While County policies encourage connecting businesses for pedestrian access, it is not mandated for projects to be approved. Regarding the Penn Valley project that the appellant has appealed, is in an area of the County without topographic constraints, and therefore the project has been designed to provide cross walks across the project access to the post office and across Penn Valley Drive to the existing paved walking path.

Building Re-Orientation/Size Reduction: The appellant states the “the developers were advised to adjust the size and orientation of the building, but refused.” Through the planning process several designs and version of the project site plan were provided for review by the Planning Department. Several revisions were made to the architecture to better fit the County’s design guidelines. At a March 2015, Zoning Administrator (ZA) meeting the ZA, required the developer to remove the permanent second access to Little Valley Road that was originally proposed and consider reorientation the building. Following this direction, the developer did remove the second access, reducing grading by approximately 3,000 cubic yards, but the developer cited that the rural Dollar General

“prototype” was 9,100 square feet and there was not a smaller size that would be allowed by Dollar General corporate and that they could not re-orientate the building because there would not be able to meet truck turning radii (for both deliveries and fire safety access) and they would be required for further reduce the number of parking spaces below what was already being proposed. The building was orientated to the north facing existing commercial businesses and the developer proposed a six-foot-tall CMU Block screen wall on the eastern side of the development to further reduce potential compatibility impacts of the project to residents who live east of the project site along Little Valley Road.

Visual Impacts/Lighting: The EIR includes four photographs of the Alta Sierra site as the site currently exists (Figures 4.0-2 through 4.0-4 in Section 4.1, Aesthetics of the Draft EIR). The site is undeveloped; it is not landscaped. The visual simulations in the EIR are intended to show general size and scale and exterior treatments on the site. The simulations are intended only to generally disclose the change at the site from a particular viewpoint. Any review conducted by planning staff during the building process would rely on approved site and landscape plans and would not refer to the visual simulations. In addition, to the extent that existing trees would be preserved that are not shown in the simulations, visual effects from the project would be more screened than shown in those simulations.

The EIR evaluates the potential impacts of nighttime lighting at each of the proposed project sites in Section 14.0, Aesthetics: Alta Sierra (Impact 4.1.2[AS]); Penn Valley (Impact 4.2.2[PV]), and Rough and Ready Highway (Impact 4.3.2[RR]) of the Draft EIR. The EIR concludes that impacts would be less than significant with mitigation. The comment does not state which aspect of the analysis is inaccurate. As such, no further response is possible

The EIR includes an analysis of the potential environmental impacts related to changes in the character of each project site and how the project would change the overall visual quality of the site and its surroundings. The Alta Sierra site impact is presented in Draft EIR Section 4.0, Aesthetics, in Impact 4.1.1(AS) on pages 4.0-6 through 4.0-9; the Penn Valley site impact is presented in Impact 4.2.1(PV) on pages 4.0-31 through 4.0-32; and the Rough and Ready Highway site impact is presented in Impact 4.3.1(RR) on pages 4.0-35 through 4.0-36. Mitigation measures MM AS-4.1.1a through MM AS-4.1.1c are identified for the Alta Sierra site that require compliance with the Western Nevada County Design Guidelines, retention of some of the existing trees, screening of the parking lot, and changes to signage. Even with implementation of these measures, the Draft EIR concludes that the impact would be significant and unavoidable for the Alta Sierra site.

No mitigation measures were determined to be feasible for the Rough and Ready Highway site, and the EIR concludes that the impact would be significant and

unavoidable. The impact for the Penn Valley site was determined to be less than significant without mitigation.

Many commenters reiterated the EIR's conclusions for the Alta Sierra and Rough and Ready Highway sites, and expressed an opinion that the project at each of those locations should not be approved because a significant and unavoidable impact was identified. Some individuals stated that mitigation measures should have been identified for the Rough and Ready Highway site, but they did not provide suggestions or examples of mitigation that would reduce the aesthetics impact. Similarly, commenters did not provide suggestions as to how the mitigation measures for the Alta Sierra site could be improved to reduce the impact.

With regard to the Alta Sierra and Rough and Ready Highway sites, the Final EIR fully complies with the requirements for disclosing significant environmental impacts and mitigation measures, consistent with CEQA Guidelines Section 15126.2(a) and Section 15126.4, respectively. The Final EIR also fully complies with the requirements for describing significant environmental effects that cannot be avoided if the project is implemented, as required under CEQA Guidelines Section 15126.2(b). In the case of significant and unavoidable impacts, CEQA requires that an explanation be provided, noting where there are impacts that cannot be alleviated without imposing an alternate design, and that the EIR should address the implications of those impacts. The EIR meets this requirement. Specifically, for the Alta Sierra site, the EIR (page 4.0-8 of the Draft EIR) states that even with mitigation measures, development of the Alta Sierra site would substantially change the existing visual character of the site, particularly when viewed from the residential area to the east (Little Valley Road).

The EIR goes on to note that a reduced-size project would likely be able to reduce the severity of this impact, but this would result in the need for a different design that would be beyond the scope of the EIR. Nonetheless, the EIR includes an analysis of a reduced-size project (Section 6.0, Alternatives, page 16.0-8 of the Draft EIR) and concluded the impact would remain unavoidable. For the Rough and Ready Highway site, the EIR (page 4.0-36 of the Draft EIR) explores the feasibility of a different site design in which increasing the size of the property to result in less land coverage would not be possible due to adjacent land ownership. Blocking views from the roadway would not meet with the commercial nature of the project and the need for visibility to the traveling public. The EIR (page 6.0-21 of the Draft EIR) also evaluates a reduced-size alternative for the Rough and Ready Highway site, but as with the Alta Sierra site, this alternative could reduce but not avoid the aesthetics impact.

Under CEQA, a project can result in a significant and unavoidable impact and still be approved by the lead agency. There is no requirement in CEQA that a project must be denied by the lead agency if a significant and unavoidable impact is identified. The following text, as stated in CEQA Guidelines Section 15091, Findings, describes the actions that need to occur should significant unavoidable impacts be identified. Under

Section 15091(a), “no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding.” In the case of significant and unavoidable impacts, for the County to approve a project is required to make a finding that specific economic, legal, social, technological, or other considerations, make the mitigation measures or project alternatives infeasible as identified in the Final EIR (CEQA Guidelines Section 15091(a)(3)).

The conclusions presented in the Final EIR for significant and unavoidable aesthetics impacts are factual and unbiased. The purpose of the EIR is to identify the significant impacts of the project, not to recommend whether a project should be approved or denied on the basis of identified significant and unavoidable impacts, as suggested by a few individuals. The decision as to whether the projects should be approved is at the direction of the Nevada County Planning Commission, and the impact analysis in the EIR informs that decision-making. Should the County approve the project at the Alta Sierra and/or Rough and Ready Highway sites, the County will be required to make findings described above in connection with its approval of the project(s), despite significant and unavoidable aesthetics impacts.

Significant and Unavoidable Impact and Project Approval: An EIR does not need to consider the need for a project, only the effects of that project if it is approved. Master Response 2 in the Final EIR Volume I, addresses how a project can be approved even if there are significant and unavoidable impacts. When preparing a Statement of Overriding Considerations for a project, neither CEQA nor the CEQA Guidelines prescribe what factors a lead agency must consider. However, such factors must be set forth in writing in the Findings and Statement of Overriding Considerations. There is no requirement that a project demonstrate “public need” in order for the lead agency to approve a project with significant and unavoidable impacts.

The EIR does not dismiss negative impacts. The standards by which an impact was determined to be significant and adverse are clearly stated for each of the 12 environmental topic sections in the EIR under the subheading Standards of Significance in each Impact Methodology subsection. The EIR fully discloses the environmental impacts and provides substantial evidence to support the conclusions.

The comment identifies eight specific areas for which the commenter believes the reports (assumed to consist of the technical studies and the Draft EIR) are neither accurate nor adequate. Responses to each issue are provided in Responses 169-4 through 169-11, within the Final EIR Volume II. For each topic, the commenter presents examples of issues, but does not include data or analysis to support how or why a conclusion other than presented in the technical studies or EIR could be reached.

The Final EIR comprehensively and objectively evaluates and discloses the environmental impacts of the proposed projects. The commenter appears to disagree with the conclusions, citing inaccurate, flawed data as the reason, but does not provide any analysis as to how a different conclusion might be reached. For the Alta Sierra Project, the Planning Commission determined that the EIR was thorough and adequate prior to certifying it as such. The Planning Commission in denying the project did not feel the project benefits outweighed the project impacts and subsequently did not make a Statement of Overriding Considerations prior to denying the project entitlements. For the Penn Valley Project, no significant and unavoidable impacts were identified in the Final EIR and therefore a Statement of Overriding Considerations was not required.

Letter 159: Marc Mayfield

The letter from Mr. Marc Mayfield focuses on certain impacts and mitigation measures related to Traffic and Transportation, specifically focusing on the potential for the projects to utilize Surface Transportation Assistant Act (STAA) of the 1982, 73-foot delivery trucks. It also provides an additional comment regarding the loss of gas tax revenues for maintenance of County roads that is not specifically related to a specific project. Mr. Mayfield's comment on STAA trucks is the result of the developer using a 73-foot STAA truck for their truck turning templates on all three projects. None of the project roadways are approved STAA routes and therefore 73-foot STAA trucks are already prohibited on these roadways. When this was pointed out to the developer, the developer elected to not revise their drawings as they felt if the site could accommodate a 73-foot delivery truck as demonstrated by the truck turning templates provided, that the site could accommodate a smaller California Legal truck which are allowed on County Roads up to a specific size and weight criteria established in Section 35780 of the California Vehicle Code, and that the project sites would be designed to accommodate a larger truck should they be allowed on County roads in the future.

Even though 73-foot STAA trucks are already prohibited on County Roadways, this potential impact was fully analyzed within Section 15.0 Traffic and Transportation of the Draft EIR and project specific mitigation measures were required (MM AS-15.1.2b, MM PV-15.2.2b, and MM RR-15.3.2b) that specifically prohibits the use of STAA trucks on Alta Sierra Drive, Penn Valley Drive, and Rough and Ready Highway unless in the future these roadways are designated for STAA truck use. This requirement is further reiterated in the Penn Valley and Alta Sierra project's final conditions of approval (*Condition B.4 in Sub-Attachment 1 of Attachment C for Penn Valley and Condition B.10 in Sub-Attachment 1 of Attachment H for Alta Sierra*). Final conditions of approval were not prepared for the Rough and Ready project as the Planning Department had recommended the Rough and Ready project for denial. As the Final EIR fully analyzed the impacts of using STAA trucks and adequate Mitigation and Conditions of Approval were applied to the project, the Planning Commission found that STAA delivery trucks were a non-issue and were adequately addressed by the project EIR. For greater detail regarding the Final EIR response to Mr. Mayfield's comments regarding STAA trucks, please refer to Master Response #3 (Final EIR Volume I, Page 3.0-15 to 3.0-16) which is also discussed above.

APPEAL CONCLUSION:

The appellant's appeal paper states that the "Final EIR fails to comply with the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 et. seq. The Final EIR failed to adequately discuss, disclose and mitigate the projects' impacts, including but not limited to traffic, drainage, aesthetics and biological resources. (See Comment Letters A, 157, 159, 169 (Final EIR at 3.0-23, 3.0-438, 3.0-447, 3.0-482).” In addition, the appellant provided a supplemental letter that echoes the comment letters referenced with the appeal paper work. As documented above and supported by the entire Final EIR and public record, the project Final EIR fully investigates, discusses, discloses and mitigates the project impacts not only related to traffic, drainage, aesthetics, and biological resources, but also to the other criteria outlined in Appendix G (Initial Study Checklist) of the CEQA Guidelines, Public Resources Code Section 21000 et. seq. Where impacts could not be fully mitigated, the EIR identifies these impacts as significant and unavoidable as required by the CEQA Guidelines.

As all project impacts have been disclosed, and appropriated analyzed and mitigated, Staff is recommending that the Board deny the appeal and uphold the actions taken by the Planning Commission on October 26, 2017, including the certification of the Final EIR (for all three projects) and the approval of the Penn Valley Project, Watercourse and Wetlands Management Plan, Certificate of Compliance, Lot Line Adjustment and Development Permit.

RECOMMENDATION:

- I. Adopt the attached Resolution to deny the appeal, and uphold the decision of the Planning Commission to certify the project Environmental Impact Report (EIR15-001), and approve the Development Permit (DP15-004), Watercourse and Wetlands Management Plan (MGT15-013), Certificate of Compliance (COC17-0001) and Lot Line Adjustment (LLA16-006) for the Penn Valley Dollar General Retail Store project, including making findings 1-23 as noted in the Resolution, subject to the conditions of approval and Mitigation Monitoring Reporting Program (MMRP) making the CEQA Findings of Fact provided in Exhibit "A" to the Resolution.

SECTION III. APPEAL #2 ALTA SIERRA DOLLAR GENERAL PROJECT

Alta Sierra Dollar General:

Project Setting: The project site is located approximately 550 feet east of State Highway 49 in a commercial use area of unincorporated western Nevada County, approximately 8.5 miles southeast of Nevada City and approximately 4 miles south of nearest Grass Valley city limit line. The subject site that will support the retail store is a 1-acre parcel between Alta Sierra Drive and Little Valley Road, and is Lot 9 of Indian Mountain Estates, Unit 2 subdivision. The applicant proposes access off Alta Sierra Drive as originally provided in the subdivision map for Indian Mountain Estates. The project site is generally sloped downward from north to south and the property is currently undeveloped and undisturbed. The General Plan land use designation for the site is Neighborhood Commercial (NC) and the zoning district is also Neighborhood Commercial (C1).

The site itself is surrounded by asphalt or pavement on all four sides, with existing commercial development to the north and south of the site. Immediately to the west of the site is Alta Sierra Drive which is a paved major collector road that is approximately 24-feet in width with a 2012 daily volume of approximately 5,200 vehicles. Across from Alta Sierra Drive are two undeveloped parcels totaling approximately 1.5-acres that are also zoned for C1 uses. Other uses to the west include primarily commercial development, with a personal storage facility, a real estate office, and the Oak View Center; a commercial development. Immediately to the east is Little Valley Road which is a paved local road approximately 20-feet in width with traffic volumes around 600 vehicles daily. Across from Little Valley Road is a developed residential parcel zoned Residential Agricultural- 1.5-acre density limitation (RA-1.5) where the dwelling is approximately 110-feet from the eastern property line of Parcel 1 of the proposed project. The next closest residential dwelling is approximately 180-feet from the northeastern property boundary and approximately 400-feet from the proposed commercial building. Rural residential uses dominate the landscape east of Little Valley Road which backup to the Alta Sierra Residential subdivision. Little Valley Road acts as the dividing line between commercially (C1) zoned lands to the west, northwest and southwest and rural residential and single family residential uses/zoning to the east, northeast and southeast.

To the south of the project site is the Alta Sierra Market, which is over 9,000 square feet in size with approximately 41-parking spaces on a 1-acre parcel that is zoned C1. To the north of the project site is another commercially developed 1-acre property that is also zoned C1. This property is developed with three commercial buildings making up approximately 10,000 square feet of commercial space with associated parking, landscaping, lighting and signage. Farther north/northwest along Alta Sierra Drive, are other commercially developed properties consisting of a variety of uses, including but not

limited to a gas station, bike shop, pizza parlor, and a specialty wine shop. Surrounding parcel sizes range from 1 to 2 acres in size, however some larger parcels exist primarily to the south farther away from the project site. Figure 1 in *Attachment H* shows the project vicinity and zoning designations within the area of the proposed project and Figure 2 in *Attachment H* provides an aerial view of the built environment within the vicinity of the project site.

Project Description: The proposed project is a Development Permit application proposing a 9,100-square-foot general Dollar General Retail store (DP14-001) including a 34-space parking lot with associated landscaping, signage and lighting. The project applicant is requesting a parking reduction, as allowed for by Nevada County Land Use and Development Code Sec. L-II 4.2.9.K.12, from 46-required spaces to 34-spaces by providing a Parking Study prepared by a Registered Professional Engineer authorized to practice as a Traffic Engineer (Kunzman Associates, Inc.) that substantiates that the required number of stalls needed for the proposed use are less than those required. Landscaped areas would comprise 17 percent of this site in addition to the 15 percent open space with impervious surfaces accounting for the remaining 68 percent. The project includes the consideration of a Biological Management Plan (MGT14-010) to mitigate potential impacts associated with the disturbance to the onsite landmark oak grove and 4 individual landmark oaks. The project site consists of 3 parcels in a south to north orientation; APN 25-430-08 is slightly under 1-acre in size and will support the retail store, onsite parking with access to the store from Alta Sierra Drive (parcel 1), and APN 25-430-10 and 25-430-12 (parcels 2 and 3 respectively) will support the proposed off-site septic system. Specifically, Parcel 2 will contain the 2-inch pipe line to the proposed leach field which will be located on Parcel 3 (See Figure 3 in *Attachment H*).

Parcel 1 is undeveloped while Parcels 2 and 3 are currently developed with commercial uses. Parcel 1 has been identified by the project's biologist as a landmark oak grove and hosts 3 landmark oak trees that will be removed. The portions of Parcels 2 and 3 that will be disturbed by this project are also shown as areas of landmark oak grove and Parcel 3 contains 1 Landmark oak tree that will be directly impacted by the project's leach field, since moisture levels of the soils will increase during the dry season. Overall the project will require the removal and/or disturbance to a 1.40-acre landmark oak grove (oak habitat with a canopy closure of 33% or greater) and loss of 4 landmark oak trees (oak trees that are 36" or greater in diameter measured at breast height). A total of 85 oak trees across all three parcels with 63 trees will be removed on Parcel 1 to allow for the building and parking lot improvements, 3 of those trees are considered landmark oak trees (See Figure 3). The dominate species is Black Oak, which is in abundance in Nevada County. The fourth landmark oak tree is located near the offsite septic system (Parcel 3) and will be indirectly impacted by the project. A total of 17 existing trees, 10-oaks and 7 pines will be retained and incorporated into the project's landscape plan.

No water features are present on the project site, with the nearest water feature, Rattlesnake Creek, approximately 170 feet to the east. Access to the project site is

proposed from Alta Sierra Drive per the original easement provided with the Indian Mountain Estates Unit 1 subdivision, as well as the Alta Sierra subdivision.

The site has access to piped treated Nevada Irrigation District (NID) water, and would be served by an off-site septic system utilizing approximately 6,275-feet of area of Parcel 3. An on-site driveway would bisect Parcel 1 and have ingress and egress onto Alta Sierra Drive. The only proposed building associated with this project is the 9,100 square foot retail store which will be located on Parcel 1 as shown on the site plan (See Figure 3). The project proposes 34 parking spaces which include 23 standard stalls, 9 compact stalls and 2 handicap stalls. The site plan identifies two parking areas for customers, both located to the north of the proposed building. No outdoor uses, with the exception of the loading dock and trash enclosure are proposed with this application, which are located along the western side of the building. Once built the project will support up to 8 employees at any given time, and will be open from 8 a.m. to 9 p.m. 7 days a week. A 10-foot strip of landscaping is proposed along the perimeter of the parcel as well as interior parking lot landscaping. Two fifteen-foot-tall pole lights are proposed on the site with dual fixture parking lot lights that are downward facing and fully shielded as well as down facing exterior lights on the building itself of varied luminance.

The proposed Dollar General Retail Store will include a variety of architectural features to break up the massing of the 9,100 square foot building. Elevations for the project illustrate parapets on the front and rear of the building and awnings along the front, and portions of both sides of the building, colored fiber cement lap siding is proposed for the parapets and stucco is represented on all sides of the building. The roof and awnings are proposed to be dressed up with exterior cultured stone veneer at the base of the awning's 8'x8' wood support beams. The project will utilize several complementary earth tones on the exterior including the following Sherwin William's colors: "Kilim beige, Warm Stone, Pure White, Enduring Bronze, Van Dyke Brown and Universal Khaki" (See Figure 4/*Sub-Attachment 7 of Attachment H*). To level the site out to meet accessibility and construction requirements, the applicant is proposing approximately 5,988 cubic yards of earthwork with 1,212 cubic yards being utilized as fill material and the remaining 4,776 cubic yards being exported off the site. Since the grading activity will not allow for a balance on-site, the applicant has indicated that the excess soils will be transferred to 11727 La Barr Meadows Drive, in Grass Valley (Hanson Brothers Inc.) which is a permitted location for the storage of soils/materials. The applicant is proposing a temporary access from Little Valley Road during grading and construction for soil export activities.

The project will require the construction of several long continuous retaining walls, including an approximately 8-foot tall retaining wall along the northern portion of the parking lot that will wrap around the eastern edge of the parking area where it will be tapered down to the finish grade elevation. A small section of the southwestern property line will require the construction of a retaining wall that will start out at approximately 3-foot tall on the southern side of the access point onto Alta Sierra Drive and will gain

height to approximately 8-feet tall where it will take a 90-degree turn heading east along the entire southern property line and vary in height from approximately 7.8 to a maximum of 12-feet at the southeast corner of the site. This wall will then take another 90-degree turn to the north and run alongside of the entire eastern side of the building to the start of the parking area where it will be approximately 6-feet tall. As portions of these walls are within the setback, LUDC Sec. L-II 4.2.6.D allows for the approval of the height increase in the setbacks as a part of the discretionary land use permit process. The project also proposes two 6-foot tall concrete block screening walls along the eastern extent of both fingers of the parking area.

Staff Recommendation/Planning Commission Action: For this project, the Planning Department recommended approval of the Project, as the project is viewed as an infill development that was consistent with the character and built commercial environment surrounding it and met the Land Use and Development Codes Comprehensive Site Development Standards. In addition, staff found that the all potential impacts of the project had been analyzed and except for a significant and unavoidable impact to aesthetic/visual resources as a result of taking a vacant vegetated parcel and removing the vegetation to construct the project (which would likely be required for any commercial project on this 1.00-acre site) were mitigated to less than significant levels by the project specific Environmental Impact Report (EIR15-001). A Statement of Overriding Considerations was prepared pursuant to California Environmental Quality Act Guidelines Section 15093 which outlined that this project would result in potential positive economic benefits, a potential reduction of greenhouse gas emissions and air quality impacts, and promoted several land use policies of the General Plan.

On October 26, 2017, after review and considering the project including the entire administrative record before them and taking public testimony, the Planning Commission after certifying the EIR as thorough and adequate, in their independent judgement ruled that the overall size, mass and scale of the project was incompatible with the one-acre site it was proposed to be built upon in part because the project needed an offsite septic system, a reduction in the required number of parking, the potential impacts to the sites oak trees and a significant amount of grading including the use of large retaining walls that added to the visual impacts of the project. The Planning Commission found that the project was inconsistent with the Central and Supportive Themes of the General Plan that are intended to protect the rural character of the County and existing neighborhoods. The Planning Commission did not agree that the project's benefits outweighed the potential significant and unavoidable impacts of the project and therefore elected not to make a statement of overriding considerations and on a 5-0 vote made a motion of intent to deny the project Development Permit (DP14-001) and Management Plan (MGT14-010). The final action on the project was continued to November 9, 2017, to allow staff time to prepare findings for project denial based on the Planning Commission's direction. On November 9, 2017, the Planning Commission on a 4-0, 1 absent vote officially denied the project and its associated entitlements.

THE APPEAL:

The appeal raises issue with the Planning Commission relying upon the project's incompatibility with the General Plan as reasoning for the denial of the project. For the complete text of the appeal, see *Attachment G*.

- 1. Project as applied for, after significant County Staff input and changes, meets all County codes. Proffered rationale for denial, such as that the Project conflicts with General Plan, is entirely subjective, and such a denial is therefore an abuse of discretion***

APPEAL CONCLUSION:

As documented in the October 26, 2017 Planning Commission Staff Report (*Attachment H*), the Planning Department recommended approval of the project for several reasons, including but not limited to the project being viewed as an infill development that was consistent with the character and built commercial environment surrounding it and because the project met the Land Use and Development Codes Comprehensive Site Development Standards. In addition, staff found that the all potential impacts of the project had been analyzed and except for a significant and unavoidable impact to aesthetic/visual resources as a result of taking a vacant vegetated parcel and removing the vegetation to construct the project (which would likely be required for any commercial project on this 1.00-acre site) were mitigated to less than significant levels by the project specific Environmental Impact Report (EIR15-001). A Statement of Overriding Considerations was prepared pursuant to California Environmental Quality Act Guidelines Section 15093 which outlined that this project would result in potential positive economic benefits, a potential reduction of greenhouse gas emissions and air quality impacts, and promoted several land use policies of the General Plan.

As discussed above at the October 26, 2017 Planning Commission meeting, the Planning Commission did not agree with the Planning Department's recommendation and therefore after certifying the Final EIR as thorough and adequate directed staff to prepare findings for denial as they found that the projects size, scale and massing was incompatible with the adjacent rural residential neighborhood, was overbuilt for the site as the project required an offsite septic system, significant grading requiring the use of large retaining walls and a reduction in the minimum required number of parking spaces, that the project management plan did not adequately provide methods to avoid the resource and did not clearly minimize the project impacts on landmark oak trees and groves and that the project was inconsistent with central and supportive themes of the Nevada County General Plan that are intended to protect the rural character of existing neighborhoods making specific denial findings pursuant to Section 4.3 and 4.3.15 (Management Plan) and Section L-II 5.2.2.D (Development Permit) of the Nevada County Land Use and Development Code as documented in the Planning Commission Staff Memo dated November 2, 2017 (*Attachment I*).

Pursuant to Land Use and Development Code (LUDC) Sec. L-II 5.5.2.C specific findings must be made for the Planning Commission to approve a project. Specifically, LUDC Sec. 5.5.2.C.1 requires the Planning Commission to make a finding that: “[t]he proposed use is consistent with the General Plan and its goals, objectives, and policies, with the General Plan Land Use Map and any Area or Specific Plan or development agreements in effect with the project area.” LUDC Sec. L-II 5.5.2.C.4 requires the Planning Commission to make a finding that: “[t]he design of any facilities for the proposed use are consistent with the intent of the design goals, standards, and elements of this Chapter and will be compatible with the design of existing and anticipated future uses on-site and the uses of the nearby surrounding area.” LUDC Sec. L-II 5.5.2.C.6 requires the Planning Commission to make a finding that: “[t]he 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.” As documented and supported by finding made by the Planning Commission and documented in the public record (*Attachments E and J*), the Planning Commission found that the overall size, mass and scale of the project was not compatible with the uses nearby, the site was not physically suitable for the project determining that the project was over-built for the site due to the need for a parking reduction, significant grading requiring extensive retaining walls on three sides of the site, and an offsite septic leach field.

Pursuant to Nevada County Administrative Code Section A-II 42.5.1 Planning Commission Jurisdiction, Powers and Duties, the Nevada County Planning Commission has the jurisdiction over and shall review and consider and approve or disapprove all major use permits and site plans (this includes development permits pursuant to LUDC Sec. L-II 5.5). In their role as the discretionary authority and decision making body for this project, the Planning Commission in their independent judgement, as supported by the evidence on the record, made a determination that the project as described above was not compatible with the General Plan or the surrounding neighborhood where it was being proposed. Within their discretionary authority for a project such as this, one of the many responsibilities of the Planning Commission is to find a project to be consistent with the General Plan. If this finding cannot be made, then a project cannot be approved.

In this case, the Planning Commission determined that the proposed Development Permit, including the proposed Oak Tree Management Plan, was inconsistent with the Central Themes of the General Plan which are intended to foster a rural quality of life and with the Supportive Themes of the General Plan which are intended to minimize conflicts do to incompatible uses. These findings are supported by Impact Discussion AS-4.1.3 on pages 4.0-6 to 4.0-11 of the Draft EIR. In taking these actions the Planning Commission determined that the overall size, mass and scale of the development was overbuilt for the project site resulting in incompatibility with existing uses primarily to the east of the project site. The need for large retaining walls, an offsite septic leach field and a reduction in the minimum number of required parking spaces lead to the Planning Commission to this determination. It was the decision of the Planning Commission that the project applicant had not done enough from a site planning perspective to reduce

these impacts. This determination was supported by the EIR finding that the project would result in a significant and unavoidable impact to aesthetics in this area of the County. For these reasons, the Planning Commission after certifying the project EIR as thorough and adequate, determined that the project benefits did not outweigh the project's environmental impacts or incompatibility with the surrounding development. As a result, a State of Overriding Considerations was not made for the project and the Planning Commission denied the project for those reasons described above and in more detail in denial findings made for the proposed Oak Tree Management Plan and Development Permit as provided in the Planning Commission Staff Memo dated November 2, 2017 (*Attachment I*).

Staff is recommending that the Board deny the appeal and uphold the actions taken by the Planning Commission on November 9, 2017.

RECOMMENDATION:

- II. Adopt the attached Resolution to deny the appeal, and uphold the decision of the Planning Commission to deny the Development Permit (DP14-001) and Oak Tree Management Plan (MGT14-010) for the Alta Sierra Dollar General Retail Store project, including making findings 1-13 as noted in the Resolution.

SECTION IV. APPEAL #3 ROUGH AND READY HIGHWAY DOLLAR GENERAL PROJECT

Rough and Ready Dollar General:

Project Setting: The project site is on what was originally State Route 20, which was realigned in the mid-1980's leaving remnants of former historical highway orientated uses. It is located at the western edge of the Grass Valley Community Region as identified in the County General Plan and within the City's Sphere of Influence "Area of Interest." The project site has a Neighborhood Commercial (NC) General Plan designation and is zoned Neighborhood Commercial (C1). This property is one of 9 parcels in the immediate vicinity that are zoned C1 totaling approximately 6.88-acres of C1 zoning that are developed with primarily residential uses. With the exception of the R3-MH zoned mobile home park, all other properties surrounding the project site area zoned Residential Agricultural and are used for residential or rural residential purposes (*Figure 1 in Attachment M*). Parcel sizes are typically smaller to the east/southeast (ranging between 0.20-0.80 acres) in the existing Sunset Neighborhood, and get larger in size moving north and west and consist of more undeveloped lands and otherwise rural residential and agricultural uses.

Project Description: The proposed project is a Development Permit proposal for a 9,100-square-foot retail store with a maximum height of 27-feet located on one acre on Rough & Ready Highway approximately 0.5 mile east of the intersection of Bitney Springs Road and Rough & Ready Highway and 0.75 miles west of the intersection of Ridge Road and Rough & Ready Highway, at 12345 Rough & Ready Highway. The project would result in the removal of an existing structure onsite and the export of approximately 2,294 cubic yards of excess fill material. The applicant is proposing two encroachments, one from Rough & Ready Highway and another from West Drive, and a parking reduction is requested to reduce the standard parking requirement of 46 spaces to 29 parking spaces as shown in Figure 3 in *Attachment M*. Project plans also identify appurtenant landscaping, lighting, and signage, as well as an underground detention system to capture storm water runoff in excess of pre-project conditions and an underground fire protection water supply system of at least 48,000 gallons. The retail store is proposed to be open 7 days a week from 8AM to 10PM and would employ up to 10 people. Building design is a traditional/western theme with a gabled entryway and rectangular façade elements with wood posts supporting an awning structure (*Figure 4/Sub-Attachment 5 of Attachment M*).

Staff Recommendation/Planning Commission Action: For this project, the Planning Department recommended denial of the Project Development Permit as a result of the inability to find the project consistent with the County's General Plan in relation to protection the rural quality of life as outlined in the General Plan Central themes and neighborhood compatibility due to the overall size, mass and scale of the proposed

development. On October 26, 2017, after review and considering the project including the entire administrative record before them and taking public testimony, the Planning Commission after certifying the EIR as thorough and adequate, did not make a statement of overriding consideration for the project's identified significant and unavoidable impacts (Aesthetics and Land Use Compatibility) and subsequently denied the project on a 5-0 vote.

THE APPEAL:

The appeal raises issue with the Planning Commission relying upon the project's incompatibility with the General Plan as reasoning for the denial of the project. For the complete text of the appeal, see *Attachment L*.

- 1. Project as applied for meets all applicable County codes, and proffered rationale for denial – conflicts with General Plan – is entirely subjective, and such a denial is therefore an abuse of discretion***

APPEAL CONCLUSION:

Pursuant to Land Use and Development Code (LUDC) Sec. L-II 5.5.2.C specific findings be made for the Planning Commission to approve a project. Specifically, LUDC Sec. 5.5.2.C.1 requires the Planning Commission to make a finding that: “[t]he proposed use is consistent with the General Plan and its goals, objectives, and policies, with the General Plan Land Use Map and any Area or Specific Plan or development agreements in effect with the project area. As documented in the October 26, 2017 Planning Commission Staff Report (*Attachment M*), the Planning Commission found several inconsistencies with the project and the General Plan and therefore were unable to make this finding.

LUDC Sec. L-II 5.5.2.C.4 requires the Planning Commission to make a finding that: “[t]he design of any facilities for the proposed use are consistent with the intent of the design goals, standards, and elements of this Chapter and will be compatible with the design of existing and anticipated future uses on-site and the uses of the nearby surrounding area.” As documented and supported by the Planning Commission Staff Report, the Planning Commission was able to find that the project colors and architectural design style was consistent with the LUDC, but that the overall size, mass and scale of the project was not compatible with the uses nearby which are primarily small lot residential uses even though the immediate surrounding property is also zoned for commercial use.

LUDC Sec. L-II 5.5.2.C.6 the Planning Commission to make a finding that: “[t]he 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.” Much like the findings discuss above, the Planning Commission was unable to determine that this project at 9,100 square feet and a maximum height of 27-feet would dwarf any existing development in the area and the commercial use at this

scale would not be compatibility with the small lot rural residential neighborhood where the project is being proposed.

Pursuant to Nevada County Administrative Code Section A-II 42.5.1 Planning Commission Jurisdiction, Powers and Duties, the Nevada County Planning Commission has the jurisdiction over and shall review and consider and approve or disapprove all major use permits and site plans (this includes development permits pursuant to LUDC Sec. L-II 5.5). In their role as the discretionary authority and decision making body for this project, the Planning Commission in their independent judgement, as supported by the evidence on the record, made a determination that the project as described above was not compatible with the General Plan or the surrounding neighborhood where it was being proposed. One of the roles of the Planning Commission as the discretionary authority for approving projects such as this is to determine if a given project is consistent with the County General Plan Goals, Objectives and Policies as well as with the overall themes of the Plan. For this project the Planning Commission made findings that the project was inconsistent with General Plan.

Specifically, the Planning Commission found that the project was inconsistent with the following General Plan Goals and Policies:

- General Plan Goal 1.4 which encouraged development to be consistent with surrounding neighborhoods;
- General Plan Policy 1.4.2 which protects the rural quality of life in Nevada County; General Plan Goal 1.5 which encourages development to reflect “our” small town character;
- General Plan Goal 1.6/Policy 1.6.1 which allows for growth while maintaining, protecting and enhancing neighborhoods;
- Goal 2.1 which promotes a strong economic base while protecting and enhancing neighborhoods;
- Goal MV-4.1 which encourages safe and efficient movement of goods and people in a manner that respects the rural character of Nevada County;
- Policy MV-4.2.5 which requires the County to consider the effects of a proposed development on the area wide transportation network;
- Policy 9.1.7 which encourages heavy truck traffic to those areas outside of residential areas; and
- Goal 18.1 which promotes an aesthetic design that reflects existing character.

In making these findings the Planning Commission determined that the overall size, mass and scale, as well as the potential for commercial delivery trucks using West Drive would be incompatible with the existing neighborhood where the project was being proposed. Therefore, the Planning Commission after certifying the project EIR as thorough and adequate, determined that the project benefits did not outweigh the project’s environmental impacts or incompatibility with the surrounding development. As a result, a state of overriding considerations was not made for the project and the Planning Commission denied the project for those reasons described above and in more detail in the October 26, 2017 Planning Commission Staff Report (*Attachment M*).

Staff is recommending that the Board deny the appeal and uphold the actions taken by the Planning Commission on October 26, 2017.

RECOMMENDATION:

- III. Adopt the attached Resolution to deny the appeal, and uphold the decision of the Planning Commission to deny the Development Permit (DP15-001) for the Rough and Ready Highway Dollar General Retail Store project, including making findings 1-9 as noted in the Resolution.

Item Initiated by: Tyler Barrington, Principal Planner

Approved by: Brian Foss, Planning Director