



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

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

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**MEETING DATE:** April 23, 2019

**TO:** Board of Supervisors

**FROM:** **Brian Foss, Planning Director**

**SUBJECT:** Resolution denying the appeal filed by Jennifer D' Andrade regarding a Conditional Use Permit (CUP18-0009), an Amendment to an Approved Map (AAM18-0002), a Seasonal and Ephemeral Stream Management Plan (MGT18-0019), and the Mitigated Negative Declaration (EIS18-0012) to allow up to twenty (20) outdoor events per year with up to 125 guests at each event.

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**RECOMMENDATION:** Adopt the attached Resolution (Attachment 1) to deny the appeal and uphold the decision of the Planning Commission to approve the Conditional Use Permit (PLN18-0023, CUP18-0009), the Amendment to the Tentative Parcel Map (AAM18-0002), and the Seasonal and Ephemeral Stream Management Plan (MGT18-0019) with conditions, and to adopt the Mitigated Negative Declaration (EIS18-0012).

**FUNDING:** This hearing will have no impact on the General Fund. This project will affect the Planning Department's FY 18/19 budget for staff time.

**ATTACHMENTS:**

1. Resolution to Deny the Appeal and affirm the Planning Commission's decision to approve the Conditional Approval for the Conditional Use Permit, the Amendment to the Tentative Parcel Map, and the Seasonal and Ephemeral Stream Management Plan, and to affirm the Planning Commission's decision to adopt the Mitigated Negative Declaration.
2. Appeal to the Board of Supervisors
3. March 1, 2019 Notice of Conditional Approval
4. February 28, 2019 Planning Commission Staff Report (with attachments)
5. February 28, 2019 Planning Commission Hearing Minutes
6. Project Site Plan

7. Landscape Plan
8. Biological Inventory
9. Memo from the Biologist
10. Alternative Landscape Plan
11. Alternative Site Plan

## **BACKGROUND**

The project site is located just north of State Highway 20 in Penn Valley. The parcel is accessed off Cattle Drive, which runs parallel with the right-of-way for State Highway 20. The proposed Use Permit for outdoor events would be located on a 15.05-acre parcel that is developed with a single-family residence, an accessory dwelling unit, and accessory structures. The project site has AG-5 zoning and a RUR-5 General Plan designation. Although the parcel is currently 15.05 acres, there is an approved Tentative Parcel Map (PM16-002) to divide the property into two parcels of approximately 5.0 and 10.1 acres. The Parcel Map has not been recorded to finalize the land division. If/when the Parcel Map is recorded, the project site would be located on a 10.1-acre parcel (Parcel 1) of the approved Tentative Parcel Map. Please see Figure 1 (page 4) for the configuration of the parcels.

The property has been used as a wedding venue for approximately the last three years or more, and there is an open Code Compliance case for having events without an approved Use Permit. The property owner applied for the Use Permit in March 2018, to work toward bringing the property into compliance and has been working on meeting the application requirements since that time. Simultaneously with the processing of the Use Permit, the property owner obtained a special events permit from the Nevada County Sheriff's Office (NCSO) to have up to four commercial events in a year, which will occur during the early part of 2019. The special events permit from the NCSO only allows four events per year and it was obtained by the property owner to allow events to be held while trying to obtain approval of the Use Permit.

Originally, when the application for the Use Permit was first applied for in March 2018, it only included the Conditional Use Permit application to allow the outdoor events. As the property owner worked to redesign the project to meet County requirements and to minimize environmental impacts, additional improvements and applications were required. The project resulted in the following project description and site plan (Attachment 6):

**Project Description:** The project is a combined application for a Conditional Use Permit, an Oak Resources Management Plan, a Seasonal Stream Management Plan, and an Amendment to an Approved Tentative Parcel Map to allow outdoor special events. The site would be primarily used as an outdoor wedding event venue, but would also be used for similar special events and gatherings. Please see the descriptions below for each application.

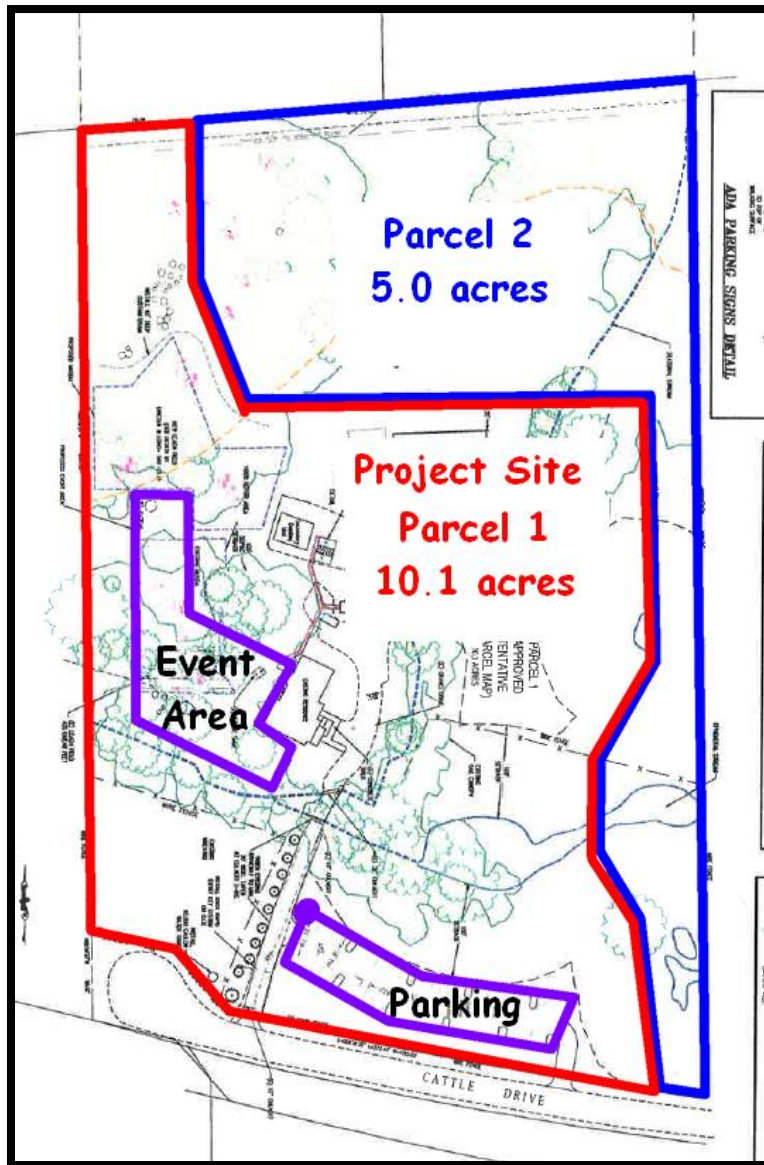
Conditional Use Permit: The Conditional Use Permit is for up to twenty (20) outdoor special events per year with a maximum of 125 guests, including event attendees, vendors and employees. All event activities would be outdoors only, with no indoor use or kitchen facilities. All food for special events would be catered to the event area and would not be prepared at the site. Event activities would occur between 11:00 a.m. and 10:00 p.m. The project proposes to construct a new ADA (Americans with Disabilities Act) compliant restroom facility for event use, and the installation of a new septic system. The restroom facility would be approximately 350 square feet and includes a storage area and an employee shower. Other proposed improvements include widening the existing driveway, the installation of a 10,000-gallon water tank for fire suppression, constructing two ADA compliant parking spaces and an ADA compliant pathway, installing a curtain drain just north of the new leach field, constructing an additional driveway off Cattle Drive, and the construction of a gravel parking area with fifty-nine (59) spaces and landscaping.

Oak Resources Management Plan: The first Management Plan is to allow the leach field and septic transport lines for the new restroom facility to be installed near and within a landmark oak grove. No trees would be removed for the installation of the leach field and septic transport line.

Seasonal and Ephemeral Stream Management Plan: The second Management Plan is for disturbance within the 50-foot setback of a seasonal stream and ephemeral stream to widen an existing driveway from 14 feet to 20 feet wide. The existing driveway crosses over the streams to access the primary residence and accessory dwelling unit. Approximately, the first 210 feet of driveway off Cattle Drive would be widened, up until where the driveway crosses the streams. The stream crossings and the rest of the driveway would not be expanded.

Amendment to an Approved Map: The Amendment to the Approved Tentative Parcel Map (PM16-002) is to expand the building envelope on Parcel 1 (10.1 acres) to include approximately 0.5 acres at the front of the parcel. The additional building envelope would include the area for improvements of the proposed 59-space parking area with landscaping.

**Figure 1: Project Site Plan**



Once the application was deemed complete on November 9, 2018, Planning Department staff completed the environmental review and analysis of the project, and it was heard at the Planning Commission hearing on February 28, 2019. Several public comments were made at the hearing opposing the project and in support of the project. To address some of the concerns that were brought up, the Conditions of Approval were revised to restrict the events to one event per day, and to prohibit the use of subwoofers. An additional Condition of Approval (A.27) was added to require annual reporting of the amount of events held onsite. Other concerns discussed during the hearing were for conflicts with the General Plan, General Agricultural (AG) zoning and agricultural uses. In addition, one public

comment was made stating that the gravel parking area would be built on wetlands. Based on the analysis of the project and the environmental review, the Planning Commission approved the project and found that it was not in conflict with the General Plan, AG zoning, agricultural uses, or wetlands.

The appellant for this project did not submit public comments or make comments at the hearing. The appeal included concerns regarding an unmapped ephemeral stream and visual impacts that were not brought up at the hearing or during the public comment period for the proposed mitigated negative declaration. Furthermore, Planning Department staff has not been contacted by the appellant and was unaware of the appellant's concerns until the appeal was filed on March 11, 2019.

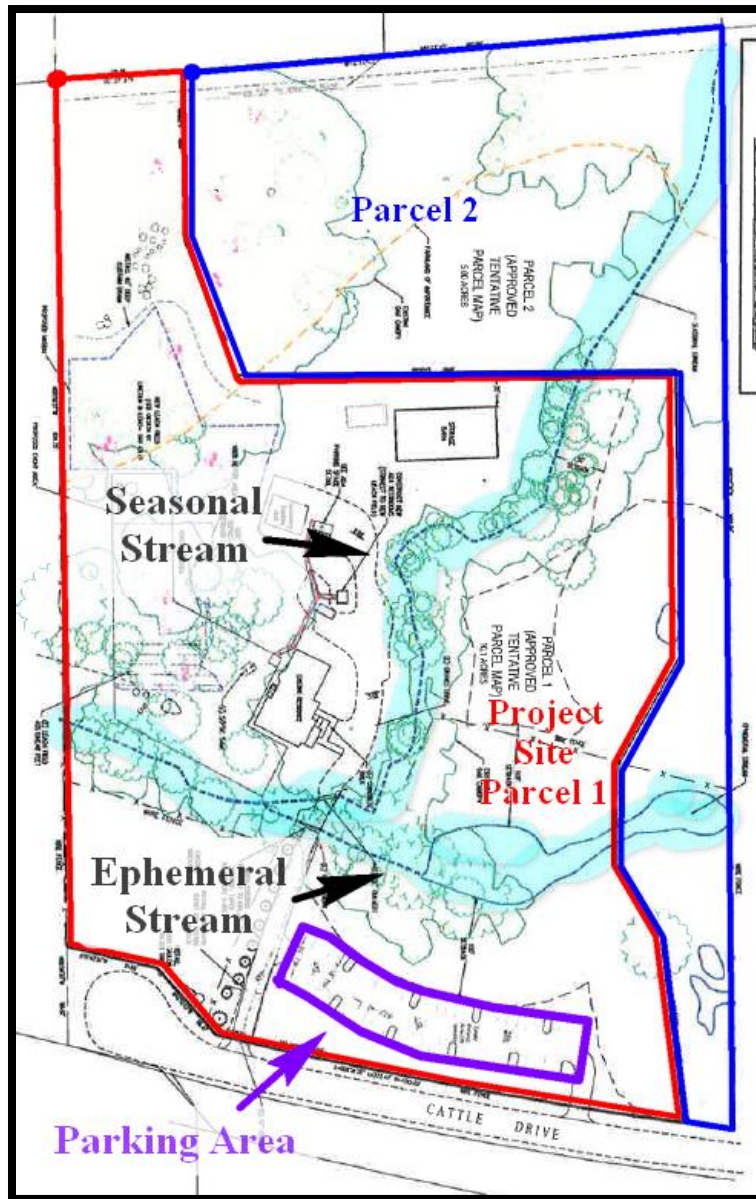
**THE APPEAL:** The appeal (Attachment 2) cites a summation of three main reasons why the appellant believes the project should be denied: (1) an ephemeral stream is not mapped along the front of the parcel; (2) the parking area would be built on the unmapped ephemeral stream; and (3) the project is incompatible with agriculture, and there is no benefit to agriculture. The appeal also includes multiple policies, goals and objectives of the General Plan, and multiple code sections of the Zoning Ordinance that the appellant believes the project is inconsistent with.

The project is a combination of four land use applications, three of which are included in the appeal—the Conditional Use Permit (to allow the events), the Amendment to the Tentative Parcel Map (to extend the building envelope to allow the gravel parking area to be constructed), and the Seasonal and Ephemeral Stream Management Plan (to allow the existing driveway to be widened to improve access). The fourth application for an Oak Resources Management Plan was not included in the appeal. However, the appeal includes the initial study/mitigated negative declaration that was prepared for the environmental review of the project. The appeal states that the unmapped seasonal stream and issues with land use compatibility and agriculture are not included in the environmental review.

### **Argument 1: An Ephemeral Stream is not Mapped or Included in the Review**

The appeal acknowledges that there are two streams on the project parcel, but believes that a third, ephemeral stream exists on the property that was not mapped by the project's biologist. The appeal states that the third ephemeral stream regularly inundates a significant portion of the proposed parking area and that the stream overflows the existing driveway. The site plan shown on the following page shows the seasonal stream and the ephemeral stream, and the location of the proposed parking area. The biologist refers to the ephemeral stream (or a swale) as less defined and more intermittent than the seasonal stream.

**Figure 2: Site Plan with Streams**



The project site has been visited multiple times by biologists and County staff, and there have been no signs that a third, seasonal or ephemeral waterway along the front of the parcel exists. In May 2016, Biologist Tina Costella from the Nevada County Pre-Qualified Biological Consultants List, prepared a Biological Inventory (Attachment 8) to identify all of the environmental resources on the project parcel. This was completed for the Tentative Parcel Map application to divide the property into two parcels, which was approved in a separate application in 2017. As part of the Biological Inventory, the site was surveyed by the biologist on March 8, 2016, and on May 23, 2016. Two streams were identified, which

are shown on the project site plan and are not being disputed by the appellant. In addition to the Biological Inventory, Biologist Tina Costella prepared two Management Plans for the site, one being the Seasonal and Ephemeral Stream Management Plan (Attachment 4, page 141) included in this project, which addresses minor improvements to widen the existing driveway from fourteen (14) feet to twenty (20) feet wide. As part of the second Management Plan prepared by Tina Costella for Oak Resources, another site inspection was conducted in October 2016. This Management Plan also references a fourth site visit by Tina Costella that occurred in April 2016. In total, Tina Costella reported four site visits and completed three biological reports, with one report specifically done to survey the entire property for biological resources. A third ephemeral stream was not identified in any of the documentation prepared by Tina Costella.

Subsequent to the 2016 reports prepared by Tina Costella, a second biologist from the County's Pre-Qualified Biological Consultants List—Greg Matuzak—also completed surveys of the site. The first survey was on October 11, 2018, for an Oak Resources Management Plan, which is not part of the appeal. Although this site survey was completed for a specific area of the property that is not where the appellant refers to a third unmapped stream, the Management Plan included a resources map that showed the two streams and it did not indicate any disagreements with the amount or location of the mapped resources.

After the appeal was filed, two more inspections of the site were done by Biologist Greg Matuzak. The inspections were done on March 13 and March 28, 2019, in order to specifically evaluate the front of the parcel for an ephemeral stream. The biologist explained that he went to the site during dry weather and after two large precipitation events. Greg Matuzak prepared a memo (Attachment 9) with an evaluation of the site and photos. Mr. Matuzak determined that there are no ephemeral streams or drainages located within the area of the proposed parking area, and there are no streams along Cattle Drive in this area or along the entrance to the parcel. The report by Mr. Matuzak acknowledges that there is a small culvert for drainage along the gravel driveway, but there are no features of a stream. Drainage areas would not require a setback unless they are defined as waterways by a biologist from the County's Pre-Qualified Biological Consultants List. In this case, two pre-qualified biologists have completed multiple site inspections and did not observe features in this area that would represent a waterway.

As part of the review for this project, Associate Planner Sadie Caldas conducted site visits in April 2018 and November 2018. Pictures of this area were taken and are shown on the following page (Figures 3 & 4). The parcel has landscaping along the driveway and in the corner of the pasture. There were no signs that this area of the property has a seasonal or ephemeral stream. Staff also reviewed U.S. Geological Survey (USGS) topographic maps and no blue-line features are shown along the front of the parcel to represent a seasonal or perennial waterway.



**Figure 3: April 2018 Photo of Proposed Parking Area**



**Figure 4: November 2018 Photo of Proposed Parking Area**







The appeal requests denial of the Seasonal and Ephemeral Stream Management Plan because it states that it does not include the third, unmapped waterway. The appeal does not include any concerns for the adequacy of the Management Plan for the protection of the undisputed seasonal and ephemeral streams. Therefore, there are no other contentions with the Seasonal and Ephemeral Stream Management Plan.

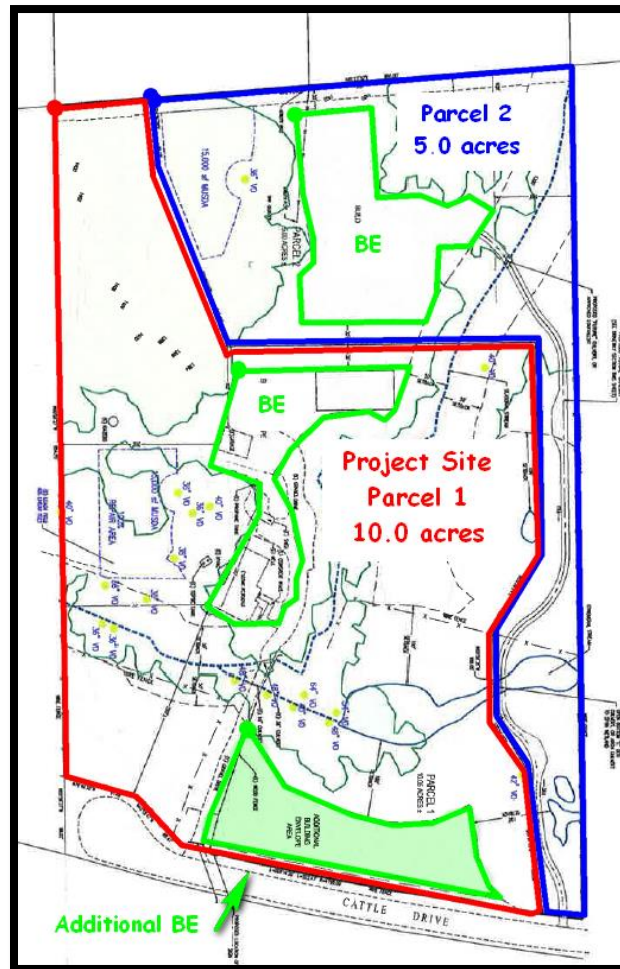
### **Argument 2: Deny the Amendment to the Tentative Parcel Map**

For a previous project on the subject parcel, the Nevada County Zoning Administrator approved a Tentative Parcel Map (PM16-002) to divide the 15.05-acre parcel into two parcels of approximately 10.1 and 5.0 acres. Condition of Approval A.12 (MM2.D) of that project requires that all structures outside of the designated building envelopes shall be for agricultural uses or agricultural accessory structures. The project parcel for this Use Permit to allow special events is Parcel 1 (10.1 acres) of the approved Tentative Parcel Map. The original building envelope was designed around the developed area of the parcel, which is located toward the center of the property. Although the Use Permit does not propose any structures outside of the building envelope, the proposed 59-space parking area and landscaping would be outside of the building envelope, and it is not related to agricultural activities. To prevent a conflict with the approved Tentative Parcel Map if/when it is recorded, this project includes an Amendment to the Tentative Parcel Map to add the gravel parking area in the building envelope for Parcel 1. No other changes to the approved Tentative Parcel Map have been proposed.

Due to the same concerns that were brought up in Argument 1, regarding an unmapped waterway, the appellant believes that the Amendment to the Approved Tentative Parcel Map should be denied, because it would allow the building envelope to be created on top of an environmental resource. By creating building envelopes on a parcel, it achieves the clustering requirement in General Plan Policy 1.5.5, which is to protect environmental resources and preserve open space. If a building envelope was created over a waterway, there would be a potential conflict with this policy, but this is not the case for this project.

Since the biologists and staff have not found a waterway to exist in this area, there would not be a conflict with the additional building envelope or General Plan Policy 1.5.5 for clustering. This policy in the General Plan also discusses that U.S. Geological Survey maps should be used as the basic level of information, which staff has reviewed and confirmed that no blue line features for a waterway exist on the U.S. Geological Survey maps. No other issues or concerns were included in the appeal for the Amendment to the Approved Tentative Parcel Map. Figure 6 on the following page shows the already approved building envelopes and the additional building envelope for the parking area.

**Figure 6: Amendment to the Approved Tentative Parcel Map**



**Argument 3: Incompatible with Agriculture**

The appellant believes that the size and number of events (125 guests/20 events per year) would make events the primary use of the agriculturally zoned property, and that the project is inconsistent with General Plan goals to protect agriculture. The appeal also states that the initial study only discusses some of the requirements for a social event facility and does not address agriculture. Some of the conflicts brought up in the appeal are because the project is not agritourism or connected to agriculture, the decision will be precedent setting, the project is not supported by the Penn Valley Municipal Advisory Council (PV MAC) or the Agricultural Advisory Commission (AAC), and there will be a loss of a local rural and agricultural environment. Staff’s BE comments to these concerns are discussed below.

Land Uses and Agriculture: Events have been occurring at this site for the last three years or more. The property has landscaped lawn areas where the events take place. The Use



Permit would allow events to continue to occur in the same area, with minimal improvements to the site in order to meet code requirements. The event areas are not currently being used for agricultural operations, and could be converted to agricultural uses at any time, even with the approval of the Use Permit. The Use Permit would only allow up to twenty (20) events per year, which would only be a part-time use of the property. Figures 7 and 8 below show the existing event area on the property, which consists of two separate spaces that are used for wedding ceremonies and receptions.

**Figure 7: Ceremony Area**



**Figure 8: Reception Area**



The project parcel and the area immediately surrounding the site are zoned AG-5. There are some existing agricultural uses on this parcel and on adjacent parcels, which would/could continue to occur with the Use Permit for special events. The project parcel has a vineyard in the front of the parcel that would still operate as a vineyard, although it is a small vineyard and staff is unaware of it being a commercial vineyard. The adjoining 11.11-acre parcel to the west has agricultural crops located approximately 200 feet from the event area, and the adjoining 34.52-acre parcel to the east has livestock approximately 480 feet from the event area. The Use Permit for special events would not prevent any of the existing land uses from continuing to occur and it would not prevent future agricultural activities on or off-site. In case any current or future property owners of adjacent parcels would feel obligated or required to temporarily cease agricultural activities while events are being held, the project's Conditions of Approval (A.12) includes a Mitigation Measure for the Right to Farm Notice (LUDC Section L-XIV 1.4) to be included in all contracts for special events at the site. The Right to Farm Notice would provide disclosure to special event applicants that Nevada County supports the right to farm agricultural lands and that agricultural operations have inconveniences or discomforts that shall not be considered a nuisance. This disclosure was recommended to prevent any disruption of agricultural activities while events are being held, and to provide protection for those operations. Planning Department staff discussed this requirement with the property owner/applicant during earlier stages of the project. The owner advised that guests are aware of the rural/agricultural environment and that if any agricultural activities are required in the vineyard on the parcel, those activities could occur at the same time as events. The Right to Farm mitigation was added to the project to address comments by the PV MAC and the AAC for concerns with incompatible land uses and agriculture, and was included in Section 2 (Agricultural/Forestry Resources) and Section 10 (Land Use/Planning) of the initial study (Attachment 4, page 50).

Agritourism/Use Permit: The appellant discusses that the project is not agritourism. Staff agrees that the project is not agritourism, which specifically precludes weddings and other commercial events from the definition of agritourism. The project was processed as a social event facility, which is an allowed use with an approved Use Permit in AG zoning (LUDC Table L-II 2.3.D). The Use Permit allows a site-specific analysis of the individual project on the parcel to address any conflicts or impacts that the project may have. A connection to agriculture is not required to allow a Use Permit for social events in AG zoning. The project meets the standards for Churches, Community Meetings and Social Event Facilities in LUDC Section L-II 3.7, which allows social events in Rural Districts, as long as certain standards regarding access and impervious surface coverage are met. This code section includes a requirement for a 50-foot buffer, when the social event facility would be located where the zoning of adjacent properties provides for residential development as the primary use. The zoning on this parcel and the adjacent parcels is AG-5 with agriculture being designated as the primary use, but the adjacent parcel to the west of the



project parcel is developed with a residence. Due to the rural residential uses in the area, the 50-foot buffer requirement was applied to this project.

General Plan Goals and Policies: Although the project is not for an agricultural operation, it would not prevent or restrict agricultural operations on this parcel or the adjacent parcels; therefore, it would not be in conflict with General Plan goals that support agriculture. The appeal cites General Plan Policy 1.7.6, which staff finds that the project is consistent with this policy. This policy allows for community and group meetings, and other facilities, in Rural General Plan designations, with requirements that the project will provide support for the surrounding community, is in keeping with the rural or residential character, will not require sewer extensions, and will not have a significant adverse effect on surrounding property. The Use Permit would be to allow outdoor special events, which would primarily be for weddings, but would include family gatherings and community events. Events at this site would be temporary in nature, with only one event per day, up to twenty (20) days per year. A thorough analysis of the project and the site were completed through the environmental review, and staff believes that any adverse impacts have been adequately mitigated.

Rural Environment/Visual Impacts: The appellant discusses the visual impacts of the project from State Highway 20, and states that the parking area and landscaping would be an urban intrusion to the existing, historic views. The appeal also discusses that this area is designated as Scenic Corridor in the General Plan.

The project parcel is located off Cattle Drive, which runs alongside State Highway 20 in Penn Valley. The 59-space gravel parking area would be located approximately 220 feet north of State Highway 20 and would take up approximately 0.5 acres of property. A landscape plan (Attachment 7) was prepared for the site by a landscape architect, and was intended to reduce the visual impacts of the gravel parking area from public views. The landscape plan includes twenty-four (24) trees, consisting of red maples, bay laurels, and purple crape myrtle trees. Ninety-four (94) shrubs are also included, which consist of drought-tolerant, native plants, such as yarrow, red leaf Japanese barberry, fortnight lily, and deer grass. The property currently has mature ornamental trees along the driveway. The additional landscaping for this project would be located behind the fencing along the front of the parcel, in front of the gravel parking area, and within the interior of the parking lot. A view from State Highway 20 at the project parcel is shown in Figure 9 on the following page. The gravel parking area and landscaping would be located on the right side of the driveway. As proposed, the current landscape plan meets landscaping requirements in LUDC Section L-II 4.2.7. However, to address the concerns in the appeal for visual impacts, the property owner had an alternative landscape plan prepared, which replaces four ornamental trees (bay laurels) with four interior live oak trees at the front of the parcel to add more native vegetation and allow the landscaping to blend in better with the existing

setting. The alternative landscape plan is included in Attachment 10 and has been reviewed by County staff. The alternative plan would also meet County landscaping requirements.

To further reduce visual impacts, the property owner/applicant has offered to eliminate the proposed gravel surfacing in the parking area. In this case, landscaping would still be added to the site but vehicles would park on native soil. The curbing with pressure treated boards around the landscape islands would also be removed. The parking standards in LUDC Section L-II 4.2.9 allows gravel parking in rural regions, instead of pavement, and allows overflow areas to have alternative surfacing. Because the events would only occur up to twenty (20) times per year, the parking area would not be for a full-time commercial use. Field parking—similar to what is used for other intermittent special events—would be acceptable in lieu of the gravel parking area. The applicant and County staff have confirmed with the Penn Valley Fire District that the field parking would be acceptable for the site and that there would be no additional surfacing requirements. An alternative site plan without gravel surfacing for the parking area is included in Attachment 11. If the Board of Supervisor’s finds that this would be a better fit for the site, the gravel surfacing can be eliminated from the project.

**Figure 9: View from State Highway 20**



The appeal also references General Plan Policy 18.8A. This policy discusses that the County will designate scenic corridors along certain routes, including State Highway 20, and the corridors will be placed within the Scenic Corridor Combining District, based upon

adopted studies. Certain areas along Highway 20, which are northeast of Nevada City, have been placed in a Scenic Corridor Combining District, but a vast majority of Highway 20 has not been placed in this district. The project parcel is not directly off Highway 20, but it is in clear view, approximately 200 feet away. This area does not have a Scenic Corridor Combining District and it is not subject to additional design criteria beyond what is required in the Land Use and Development Code.

**APPEAL CONCLUSION:** The Board of Supervisors does not have to adhere to the determination of the Planning Commission; however, staff finds that the project conditions of approval are consistent with the Nevada County LUDC for the reasons discussed above, and that the mitigated negative declaration adequately addresses impacts to the resources and the surrounding community. Based on site surveys and the analysis of two biologists, there are no unmapped waterways along the front of the parcel, and therefore, there would be no issues with the Seasonal and Ephemeral Stream Management Plan and the Amendment to the Tentative Parcel Map. The project, to allow 20 events per year with 125 guests, including all attendees, vendors and staff, is allowed in AG zoning with an approved Use Permit to address adverse impacts. Mitigation has been included in the project to protect environmental resources and agricultural activities. Visual impacts would be minimal with the limited development of the site, but an alternative landscape plan and the removal of the proposed gravel surfacing from the parking area has been offered by the property owner to further reduce visual impacts. The project as proposed or with the alternative options for the parking area and landscaping, would meet the requirements of the Land Use and Development Code.

**SUMMARY:** The findings and record in support of the Planning Commission's final decision are found in the attached March 1, 2019, Notice of Conditional Approval (Attachment 3). Before taking action on this appeal, the Board should independently consider the Notice of Conditional Approval and the discussion presented in this report. This information provides the reasons in support of those new findings listed in the Resolution to deny the appeal, and uphold conditional approval of the Conditional Use Permit, the Amendment to the Tentative Parcel Map, and the Seasonal and Ephemeral Stream Management Plan, and to affirm the Planning Commission's decision to adopt the Mitigated Negative Declaration.

**Please contact me should you require additional information or background.**

**Item Initiated by:** Sadie Caldas, Associate Planner

**Approved by:** Brian Foss, Planning Director