

NOV 06 2017

NEVADA COUNTY
BOARD OF SUPERVISORScc: Planning
CounselCOUNTY OF NEVADA

(Attach pages if needed)

APPEAL TO BOARD OF SUPERVISORS

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

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

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

Nevada County Planning Commission
Agency Name

EIR15-001; DPI5-004; MAT15-D13; COL17-0001; LLA16-006
Agency File No. Date of Decision

PLANNING AGENCY DECISIONS:

- ☒ Environmental Impact Report
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.20 Appeals of the Adequacy of the EIR
- ☐ Floodplain Management Regulations (Floodplain Administrator)
L-XII Floodplain Management Regulations; 1.4 Administration
- ☐ Historic Preservation Combining District
L-II Zoning Regulations; Zoning Districts; 2.7.2 HP Combining District
- ☐ Inoperable Vehicles
L-II Zoning Regulations; Administration and Enforcement, 5.20 Abatement and Removal of Inoperable Vehicles
- ☒ Land Use Applications
L-II Zoning Regulations; 5.12 Administration and Enforcement
- ☐ Negative Declaration
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration
- ☐ Rules of Interpretation
L-II Zoning Regulations; 1.4 Rules of Interpretation Regarding:

PUBLIC WORKS DECISIONS:

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

FIRE AGENCY DECISIONS:

- _____ Fee Assessments (Fire Protection District)
L-IX Mitigation and Development Fees; Fire Protection Development
Fees; 2.6 Appeal from Fee Assessment
- _____ Fire Safety Regulations; General Requirements (Fire Safety Reg. Hearing Body)
L-XVI Fire Safety Regulations; General Requirements; 2.7 Appeals
- _____ Hazardous Vegetation Abatement (Local Fire Official)
G-IV General Regulations; 7.9 Appeals Process (No Fee to File Appeal)

ENVIRONMENTAL HEALTH DECISIONS:

- _____ Sewage Disposal (Sewage Disposal Technical Advisory Group)
L-VI Sewage Disposal; 1.18 Appeals
- _____ Water Supply and Resources (Health Officer)
L-X Water Supply and Resources; 5.1 Appeal Procedures

List All Agency Action(s) Taken That Are Being Appealed: Certification of
Dollar General Final Environmental Impact Report
(EIR15-001); approval of Penn Valley Dollar
General - DP15-004; MGT15-013, COL17-0001,
LA16-006

II. STATEMENT OF THE REASONS FOR THE APPEAL:

Final EIR fails to comply with the
requirements of the California Environmental
Quality Act, Public Resources Code section
21000 et seq.

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

See Attachment A

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

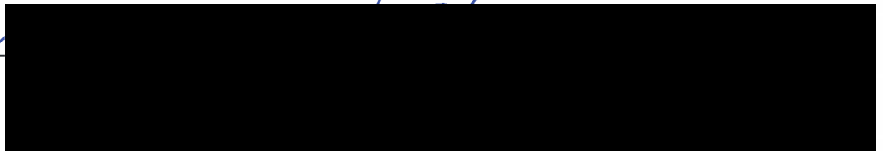
OF SUPERVISORS: *Grant appeal and vacate and
rescind Planning Commission's certification
of ^{the} Final EIR (EIR15-001) and all Planning
Commission's approvals that relied on the
Final EIR.*

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

See Attachment A

VI. IDENTIFICATION OF THE APPELLANT(S):

Charisse Lolli
(Name)



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

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

Donald B. Mooney, Law Office of Donald B. Mooney,
(Name/Representative) (Mailing Address) (Telephone)

[Redacted]
[Redacted]
[Redacted]

Appellant:

[Redacted]

Donald B. Mooney
(Sign)

Dated: 11/3/17

Donald B. Mooney
(Print)

FOR OFFICE USE ONLY

\$1,457.80
Filing Fee

11/6/2017
Date Filed

Joe Patten
Received By

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

**ATTACHMENT A
TO APPEAL TO BOARD OF SUPERVISORS**

**II. STATEMENT OF THE SPECIFIC PROVISIONS WHICH ARE BEING
APPEALED:**

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.)

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

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 (See Final EIR at 3.0-23; 3.0-438, 3.0-447, 3.0-482.)

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY



RECEIVED

NOV 06 2017

NEVADA COUNTY
BOARD OF SUPERVISORS

November 3, 2017

VIA FEDERAL EXPRESS

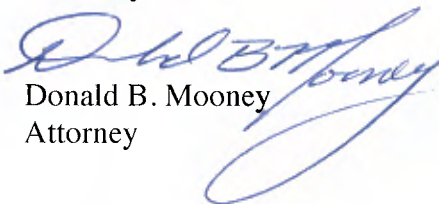
Julie Patterson Hunter
Clerk of the Board
County of Nevada
950 Maidu Avenue, Suite 200
Nevada City, CA 95959

Re: Appeal to Board of Supervisors

Dear Ms. Hunter:

Enclosed please find Chariss Lolli's *Appeal to Board of Supervisors* regarding the Nevada County Planning Commission's October 26, 2017 certification of the Dollar General Final Environmental Impact Report (ER15-001) and related approvals, DP15-004; MGT15-013; COC17-0001; and LLC16-006. I have also enclosed a check in the amount of \$1,457.80 for the appeal fee. Based upon this appeal, the Planning Commissions' actions, including certification of the Final EIR and subsequent approvals should be stayed. In addition, the County's issuance of the Notice of Determination must be withdrawn, unless and until the Board of Supervisors certifies the EIR and approves the Project.

Sincerely,


Donald B. Mooney
Attorney

cc: Client

Encl.

Charisse Lolli
15729 Little Valley Rd.
Grass Valley, CA 95949
(530) 273-3945

January 20, 2018

Via Electronic Mail:

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Board of Supervisors:

Hank Weston, Chair, Supervisor District 4
Ed Scofield, Vice Chair, Supervisor District 2
Heidi Hall, Supervisor District 1
Dan Miller, Supervisor District 3
Richard Anderson, Supervisor District 5

Planning Commissioners:

Ricki Heck, District I
Laura Duncan, District II
Paul Aguilar, District III
Ed James, District IV
Bob Jensen, District V

Brian Foss, Nevada County Zoning Administrator
Tyler Barrington, Principal Planner

RE: Appeal of EIR Certification for three proposed Dollar General Stores

To all concerned,

As our elected governing board, Nevada County residents expect you to uphold our values and rural way of life that our County represents. In the case of the proposals to develop three more Dollar General Stores in Nevada County, 2 of these projects were found to require many exemptions to building codes that negatively impact the building sites and the residents surrounding them. The Nevada County Planning Commission stated eleven findings for disallowing the projects. We come before you now in hopes that you will uphold these findings by disallowing these developments to occur. The EIR for these three sites should not be certified because it does not adequately address the negative impacts, or create proper mitigation measures for them. Residents have consistently cited the same issues over and over again, but the EIR continues to ignore or disvalue them by proposing mitigation measures that make no attempt to avoid them. In fact, in most cases, the FEIR states that those issues are not within its scope, although it does acknowledge and agree that the Alta Sierra surroundings are "visually sensitive", and that this plan is "inconsistent with the scale and style of the existing structures", concluding that that its impact is "significant and unavoidable", and does not fit the environment.

Extensive reviews of these proposals were made by the Planning Commission, who had to pour over thousands of pages of documents and revisions of documents, with the support of the Planning Department and the various agencies within Nevada County, concluding with a

list of findings that support their decision against developments at Alta Sierra and Rough & Ready. I support, and hope to expound upon those findings in order to provide more background on their cause and effect than you might gather by just reading the findings. I also intend to open up additional issues that continue to be overlooked. I will limit my comments to the Alta Sierra Site, but many of the same issues also pertain to the Rough & Ready site.

First, we need to acknowledge that the FEIR does not actually contain any mitigation measure for the Landmark Oak Grove, or the 100+ trees that will be cut down for this project. Both the Draft and the Final EIR cited that there was an agreement with the Bear Yuba Land Trust to spend money on replanting oaks on a rocky slope several miles away in exchange for several thousand dollars. The hearing before the Planning Commission exposed that there was no agreement, and as of today there is still no agreement. Failure of the FEIR to contain factual information should render it unable to be certified.

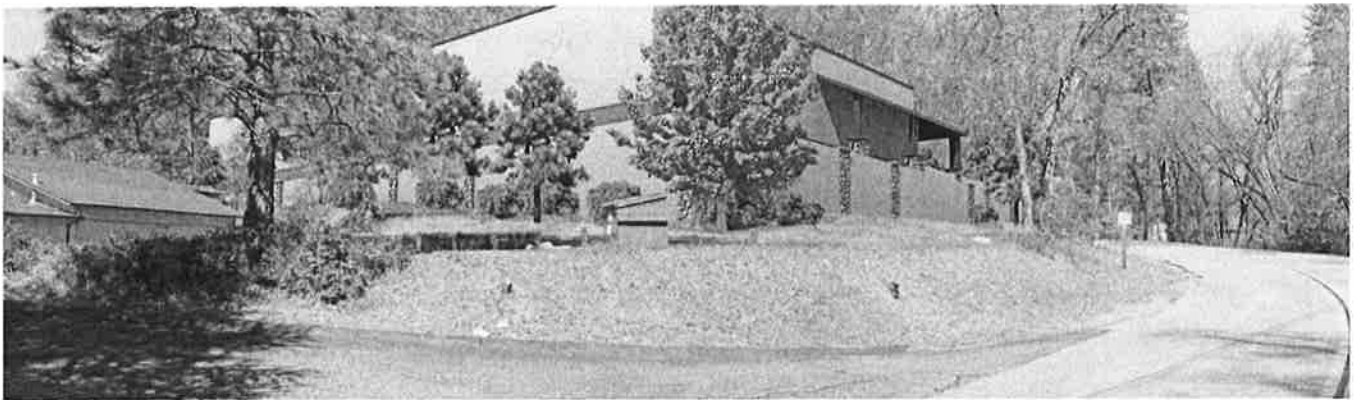
The Planning Commission found that the Management Plan was inconsistent with the Resource Standards Land Use and Development Code because it does not clearly minimize the project impacts to the sites landmark oak trees and grove. Throughout this development process, the mitigation for the proposed decimation of our County Resources has not been properly addressed. It has been not been presented as a question whether cutting down a Landmark Oak grove over 100 trees strong should be allowed, but at what price you will let it be allowed. This project's scale and mass was found to be incompatible with central themes, goals and policies of the Nevada County General Plan, which are intended to protect the rural character of existing neighborhoods. We expect our government seat to take position against such destruction of our natural resources. Let's not be so soon to forget the thousands of trees that Nevada County is currently cutting down due to drought, disease, fire, and flooding.

Secondly, it's important that we acknowledge that the project at Alta Sierra is NOT part of an existing shopping center. The Developer continues to claim that certain exemptions and development failures be allowed because the building site is part of an existing shopping center, creating a commercial pod. The existing shopping center businesses share 5 driveways that open up along the S-curved Alta Sierra Drive. The design of the existing center also provides open walkways between every business within it, in addition to overflow parking at neighboring businesses. A member of a shopping center is identified by its common traffic, parking, and access to the other businesses within the shopping center. In contrast, the Dollar General project creates a completely new and separate driveway which serves only that business, and provides no way of accessing other businesses within the shopping center except by going into the traffic of Alta Sierra Drive. The sites proximity to Hwy 49, and immediate 4-way stop with Little Valley Road creates a natural funnel effect along that curve, and a great deal of traffic travels too quickly to accommodate a sixth driveway without putting commuters, pedestrians, and shoppers at risk. This project should not be considered any differently than any other individual commercial development, and be required to maintain its own infrastructure of sewage and storm drainage, in addition to safe ingress and egress. As cited by the Planning Commission, this project fails to do that.

The neighborhoods of Alta Sierra have been informed that other development is slated for the property directly across the street from the proposed Dollar General site. The owner's agent

has contacted residents via the Nextdoor Social Media site to see what kind of businesses the residents will support. It does not appear that the EIR for Dollar General has given any real consideration to determine what requirements and burden these new access points puts upon future developers of the surrounding properties. It fails to adequately address the dangers imposed upon those who travel on Alta Sierra Drive as this project and new developments are unable to facilitate a sixth and seventh driveway along that dangerous S-Curve without major road improvements.

The massive building size was the cause of many of the findings against the project. A retail store of this size would normally require 46 parking stalls, but these plans only allow for 34. That's more than a 26% reduction in County Code. The Developer has conducted its own study to show that the Dollar General Corporation does not require an average number of parking stalls, hoping that this explanation serves as grounds to exempt them from code standards, but there are two problems with that conclusion. First, the study that provided those results needs to explain how lower item prices and sales totals per customer would produce **less** need to provide parking for their stores. Meeting an income goal with a smaller sales average would require **more** traffic, **more** parking, and **more** customers. The assumption that there are lower needs for customer parking also demonstrates a likely conflict in traffic estimates. The second error in the rationale supporting decreased parking stalls is that it does not take into consideration the future of the building and neighboring businesses. Although, after much examination, it may be deemed that this chain store may not need as many parking stalls, it is unlikely that future businesses taking residence after them will have a "study" to show the same results, thereby limiting those who may come in after Dollar General has vacated the building. Imposing that requirement on any future tenant will preclude anything but a "chain store" from taking residence there. This puts a permanent restriction on future tenants, which becomes a reality as soon as their tenant, the Dollar General Corporation, terminates their lease. Pending any other factors that would stop their business sooner, that lease is slated to expire in 15 years. Perhaps a more relevant question is this... If the Dollar General sells out to another corporate chain that cannot meet the same reduced need for parking stalls (that would be any other chain), is Nevada County Community Development likely to kick out the new tenant to leave it vacant? Either choice leaves the residents with either unmanageable traffic and safety hazards, or a vacant and useless building in the middle of our community.



The building size is so large that it requires an entitlement to pump its sewage across the abutting parcel, to a third parcel which already houses a separate commercial septic and leach

field. This entitlement permanently restricts the third parcel from any other purpose than to gather and leach waste into the ground along our residential neighborhood.

The significant light and glare produced by this development is already cited as an unavoidable negative impact, but in addition, the FEIR states that the existing trees which will shield the existing and proposed lights will disappear as the remaining mature oak trees along the new sewage line also die, regardless of care taken during construction. Because the Alta Sierra shopping center was developed without the planning and consideration that a commercial development deserves, our neighborhood has very little protection from the light, glare and noises produced by the commercial businesses currently located at the shopping center. Further tree and brush removal will create an even worse impact to the residents of Little Valley Road. The developer and owner have made no provision for correcting an already bad situation, but are proposing to make it worse. The Planning Commission recognized the project to be a degradation of the visual character of the site and surrounding area, even after mitigation measures are applied, and further cited it to be inconsistent with the General Plan's theme to minimize conflicts due to incompatible uses.

During the application process, the Developers were advised to adjust the size and orientation of the building, but refused. In many of the Planning Commission findings, the massive size of the development was found to be inappropriate for the parcel size, but the developer has not been amenable to any meaningful adjustments. The choice is obvious. Any developer must either adjust their project to fit the parcel, or find a different property that will accommodate their project size requirements.

Developers have assured the engineers of the EIR that they will not use their standard 73' Delivery trucks on the roadways approaching the Alta Sierra or Rough & Ready site, because it would be illegal for them to do so, but they have not provided a plan of how they will maintain deliveries that come from Southern California which require overnight trucks, and also make the deliveries in trucks that are approved for our residential roadways. Personal experience at the Brunswick store has shown disregard for the laws by their continued deliveries to that store with their illegal trucks, and has no meaningful escalating punishment that would prevent further willful offenses. Enforcement of the laws is almost nonexistent, and residents should be assured of how deliveries will be made, and that the law will be enforced.

The residents around this development site have had year after year of ditch and culvert failures inundating our land with flooding. The existing systems and ditches are not adequate, and are not maintained. Asphalt failure is consistent, and adding new developments that adds to those problems without fixing them first is irresponsible. We have voiced complaints and have waited for over a year for County Road Maintenance to address the lack of maintained ditches and culverts currently present along Little Valley Road and Alta Sierra Drive.

The construction plan proposes to cut into a steep embankment to provide a temporary driveway, running over 400 dump trucks through a residential neighborhood for the commercial development. There is no reason that a commercial development should impact a residential neighborhood in this way to be "convenient" for the developer, even though it is detrimental to the public. To further state that our small and narrow residential roadway is adequate to withstand that kind of traffic without causing further damage, without even having the ability to

monitor or maintain that roadway is irresponsible. I have personally had to repair overflowing ditches along Little Valley Road to prevent devastating floods to the homes below.

Please take another look at the pictures provided by neighbors and residents surrounding the building site showing the current flood conditions that impact this area each year. They demonstrate that the existing culverts and ditches do not adequately handle the flooding situation. Flooded neighbors reported up to 3 inches of water flowing freely across the lanes of Alta Sierra Drive during rain storms, and the photos below show the resulting floods on nearby properties. The Dollar General project claims that a 990 gallon tank and a series of underground pipes will prevent any additional failures to the storm-water runoff, but logic states that once the ground is saturated, as it is each year, a holding tank (roughly the size of a casket) will not be able to collect all of the additional runoff caused by removing the grounds natural ability to absorb at the construction sites.

The discussion between the Planning Commission and Developer identified the economic benefit as 1) local contractors during construction, and 2) up to 2 minimum wage jobs, and one mid-wage job. The consideration was described as "weak", and the final decision expressed the comparison of benefit against detriment as unjustified.

Board of Supervisors, I urge you to prohibit development of the Dollar General stores at Alta Sierra and Rough & Ready. There are no reasonable overriding considerations for the projects that outweigh the Unavoidable and Significant Negative Impacts that the projects promise to impose upon us. There is no legal basis that requires you to extend entitlements to a developer who wants to operate outside of the General Plan. Your decision to deny the projects is supported by Nevada County residents, the Planning Department's Statement of Findings, and the Planning Commission's decision.

Thank you for your consideration.

Charisse Lolli

cc: D.B. Mooney, Attorney at Law
cc: Honorable Steven S. Honigman

