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**VIA U.S. MAIL**

Nevada County  
Planning Commission  
950 Maidu Avenue, Suite 170  
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**Re: Request for Revised Staff Recommendation for the Idaho-Maryland Mine Project**

Dear Commissioners:

I represent Rise Grass Valley Inc. (“Rise”) regarding its Idaho-Maryland Mine project (“IMM Project” or “Project”) located in Nevada County (“County”). As you may know, the Project would involve the re-opening of the historic Idaho Maryland Mine, processing the valuable minerals, and revitalization of an industrial zoned property to create hundreds of high paying jobs. The Project has been designed to be a model of a modern, environmentally sensitive mining operation, where no expense has been spared to benefit the community and protect the environment. The approvals for the Project are being considered by the Planning Commission on May 10 and May 11, so we are providing this letter to clarify and correct some of the conclusions reached in the Staff Report for the Project.

As you may be aware, the Staff Report published by Planning Staff is generally positive and provides the Commission the option to approve the Project or deny it, but recommends that the County deny Rise’s requested height variance in part because of concerns it would not satisfy the required findings for a height variance. Staff also recommends denial of a re-zone from M1-SP to M1-ME based on General Plan inconsistency by not having clear boundaries between Rural and Community Regions and with alignment with the rural character of the surrounding area. Rise is disappointed with the recommendation, not only because it would result in rejection of Rise’s Project, but also because Staff’s conclusions regarding the variance findings and General Plan consistency are at odds with its own analysis, are factually incorrect and are inconsistent with the conclusions in the County’s own environmental document. This letter respectfully requests support for Option B, supporting the project (Alternative No. 2) and height variance and finding that it is consistent with the General Plan.

Contrary to the Staff Report, the variance findings can be made, and the County’s Environmental Impact Report (“EIR”), which was vetted not only by Planning Staff, the County’s independent

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consultant, and both inside and outside counsel, is correct; to wit: that the Project is consistent with the General Plan. If the Project is consistent with the General Plan, it should be approved. As discussed below, the Project satisfies all required variance findings, and while Rise agreed to Staff's recommendation to apply for a height variance for the headframe, it is not required to do so under the County Code. The headframe is exempt from the County's variance requirements as a non-occupied structure, and the other structures covered under the variance application can be reduced to comply with the 45' height limitation.<sup>1</sup>

In addition, Rise respectfully requests that the County adopt Alternative No. 2, as specified in the Draft Environmental Impact Report ("DEIR"), to remove the Centennial Industrial Site ("Centennial Site") from this Project. As outlined in the Staff Report, Alternative No. 2 is the environmentally superior alternative (Staff Report p. 59; DEIR, p. 2-8), in that it addresses several concerns raised by the community, reduces truck traffic and, importantly, as the "environmentally superior alternative," would reduce the "intensity" of the Project.

#### **A. EIR Alternative No. 2 Can be Adopted Without Further Review Because It Was Properly Analyzed Under the DEIR**

As stated above, Rise requests the Planning Commission move forward with Alternative No. 2, which was identified in the DEIR as the environmentally superior alternative. While the Project proposed the transport and placement of approximately 1,600,000 tons of engineered fill at the Centennial Site in order to create 31 acres of flat useable industrial land at that site, Alternative No. #2 would place no fill on the Centennial Site and would remove the Centennial Site from the Project entirely.<sup>2</sup> In response to the significant confusion made obvious by several public comments about the Centennial clean up actions and the role of the Department of Toxic Substances Control ("DTSC") in relation to the Project, Rise believes that by adopting Alternative No. 2 and removing the Centennial Site from the Project will eliminate the basis for nearly half of all public comments received on the Project and allow the County to select the environmentally superior alternative identified in the DEIR.<sup>3</sup> This alternative also substantially reduces truck traffic on Brunswick Road for the first 10 to 20 years of the project life.

The California Environmental Quality Act ("CEQA") specifically allows lead agencies to adopt a project alternative analyzed in an EIR rather than the proposed project.<sup>4</sup> If a project alternative

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<sup>1</sup> Rise consents to the Commission placing a condition of approval on the project to assure that all occupied buildings comply with the 45-foot height limit.

<sup>2</sup> County of Nevada, *Idaho-Maryland Mine Project Draft Environmental Impact Report (IMM-DEIR)*, (December 2021) available at: <[https://www.nevadacountyca.gov/DocumentCenter/View/41650/Idaho-Maryland-Mine-Project-Draft-EIR\\_Volume-I-Draft-EIR-Chapters-1-8](https://www.nevadacountyca.gov/DocumentCenter/View/41650/Idaho-Maryland-Mine-Project-Draft-EIR_Volume-I-Draft-EIR-Chapters-1-8)> at p. 55.

<sup>3</sup> IMM-DEIR at p. 57.

<sup>4</sup> Pub. Resources Code §§21002-21002.1, 21004; 14 Cal Code Regs §15002 subd. (a).

could not be adopted, it would defeat the entire purpose of identifying and analyzing alternatives in an EIR. Importantly, project alternatives may be adopted by the CEQA lead agency without additional environmental review where there is sufficient analysis already conducted.<sup>5</sup>

For the Project, there is no question that the analysis found in the DEIR is sufficient to account for all potential impacts that may be caused by Alternative No. 2 as well as the impacts avoided by choosing it. In fact, Alternative No. 2 is almost identical to the proposed Project analyzed in the DEIR, *except* that engineered fill would not be placed on the Centennial Site, and that the engineered and vegetated pad on the Brunswick Site would be slightly higher to accommodate more material. Further, the DEIR provides a detailed discussion for Alternative No. 2 on impacts and reductions of impacts to: aesthetics, air quality, greenhouse gas emissions, energy, biological resources, culture, geology, soil, mineral resources, hydrology, water quality, transportation and circulation, and to wildfires as compared to the proposed Project. As such, the alternative has been properly analyzed in the DEIR and can be adopted without further analysis.

Rise respectfully requests that the Commission adopt Alternative No. 2 as it best serves the interests of the surrounding community and the environment, and directly addresses many of the comments received on the DEIR (and Final EIR).

## **B. The Project Does Not Need a Variance, but Still Satisfies the Required Variance Findings**

### **a. Under the County Code, Project Approval Does Not Require a Variance**

As outlined in the EIR, a height variance is requested as part of the Project due to the need to construct a headframe that exceeds the zoning code's maximum 45 ft height limit, as well as several of the processing buildings which were originally planned to be 50 feet tall. The processing buildings are heavily insulated to protect nearby neighbors from any noise impacts, and while 50 feet would be more convenient, these buildings can be reduced in height without causing any issue with processing and without any additional impact to the environment. The headframe is truly the central component of an underground mine, as it is responsible for lifting material from the underground works – and similar to the 85-foot tall silo that currently sits on the property, the height cannot be reduced to the zoning code's maximum 45 ft height limitation.

Unfortunately, Planning Staff did not mention to Rise its difficulty recommending approval with 50-foot structures prior to issuance of the Staff Report, however Rise actually *can* reduce the

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<sup>5</sup> see *Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, 1038 [where court reiterates that discussion of alternatives must be specific enough to permit informed decision making and public participation].

building height, aside from the headframes, to 45 feet or less (at a significant increase in capital & maintenance cost to the applicant), and hereby commits to doing so.<sup>6</sup>

Under the County Code, the headframe is not a habitable structure and therefore does not require a variance under Nevada County Code Section L-II 4.2.4 Subdivision D. This provision of the Code exempts height limits for buildings not intended for human occupancy, i.e. non-habitable structures, such as spires, chimneys, vents, skylights, antennas, or water towers, as some listed examples.<sup>7</sup> Non-habitable structures, like the headframe, falling within the variance exception with heights more than 20% over the allowable height are however still required to obtain a use permit.<sup>8</sup> As the headframe is not intended for human occupancy and is not a habitable structure, there is no need under the County Code to pursue a variance,<sup>9</sup> rather this requirement is met because the Project is already subject to a use permit that covers the headframe. In sum, the Commission can approve the Project without approving the variance findings by requiring a condition of approval that besides the headframe, process plant and hoist buildings, all other structures shall be 45 feet tall or less. Rise hereby agrees to this condition.

#### **b. Nevertheless, the Project Meets Every Required Variance Finding**

Variances are authorized by California Government Code Section 65906, and Section L-II 5.7 of County's Zoning Regulations when it can be demonstrated that a hardship exists based on the peculiarity of the property in relation to other properties in the same zoning district.<sup>10</sup> Where, as here, there is a unique property proposing a legal use, the County has a Constitutional obligation to consider, and where appropriate, *grant*, a variance to avoid a "taking" under both the California and U.S. Constitutions. At Planning Staff's insistence, Rise submitted the County's Variance Justification Application for the IMM Project, and amended it several times in response to County requests for additional information.<sup>11</sup> Rise's variance application is filled with great detail and specificity demonstrating that the Project can meet all of the findings required by the County Code; however, the Staff Report unexpectedly came to the conclusion that the variance findings should not be made.<sup>12</sup>

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<sup>6</sup> Rise asks the Commission to impose a condition of approval to this end.

<sup>7</sup> Nevada County Code Sec. L-II 4.2.4

<sup>8</sup> *Id.*

<sup>9</sup> *People ex rel. Breuning v. Berry* (1956), 147 Cal.App.2d 33, 39; see also: *Litch v. White* (1911), 160 Cal. 497, 500.

<sup>10</sup> Nevada County Zoning Regulation Sec. L-II 5.7.

<sup>11</sup> Rise Grass Valley Inc., *Variance Justification Application*, (Rise Variance Application) available at: <<https://www.nevadacountyca.gov/DocumentCenter/View/47893/11---Applicants-Variance-Justification>>

<sup>12</sup> *Id.*

The Report's conclusion is surprising for several reasons: (1) the County received Rise's variance application years ago but only presented this issue as a surprise in the Staff Report mere days before the hearing – County Staff could have asked for more information or even project modifications years ago if were interested in working with the applicant to solve a genuine problem; (2) the County routinely approves variances based on findings that are scant and questionable compared to the findings justification provided for the Project.

As just one example, the County has found that a different project qualified for “special circumstances” worthy of a variance where, as a justification, the project proponent asked for a variance based on the fact that his property was “relatively flat” and “near local amenities.” In contrast, the Project's history as the largest producing gold mine in the U.S., and its existing and usable mining facilities (existing industrial pond, 3,000-ft deep mine shaft, existing 85-foot silo and large graded areas, reuse of an existing mine site, existing zoning allowing an underground mine, etc.) are somehow *not* unique enough or constitute special circumstances; (3) the County's own DEIR did not identify any land use impact related to the variance such as inability to make the variance findings, and the County Staff thoroughly reviewed and concurred with that conclusion prior to release of the DEIR; and (4) the County zoned the property M1, and underground mining is an allowable use in the M1 Zone (with approval of a use permit) and a tall headframe is an absolute necessity for underground mining (see the existing silo on the property). As such, the Staff Report's position that a variance cannot be approved for a headframe is not reconcilable with the County Code, because under that reasoning relied upon for Option A, underground mining would be prohibited in all zones, contrary to the text of the County Code specifically allowing underground mining.

The following analysis lays out the findings that must be made to grant a variance. As demonstrated below, the Rise Project can meet every one:

*i. The Variance Does Not Grant a Special Privilege Inconsistent with Limitations Placed on Other Properties in the Vicinity and in the Same Zoning District*

County approval of a variance for the 165-foot headframe (and other mine-related buildings that exceed the height limitation to a lesser degree) does not grant a special privilege to Rise because not only are there no other properties in the vicinity, every other property with the same M1 zoning would also need to seek a variance to construct facilities taller than the allowed 45 feet for underground mining operations (an allowed use in the M1 Zone).<sup>13</sup> In the area surrounding the Project, the uses are predominantly residential, and the commercial and industrial uses in the area typically do not require structures taller than 45 feet.<sup>14</sup> Nonetheless, M1 Zoning specifically allows underground mining, and underground mining requires tall headframe structures (for

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<sup>13</sup> *Id.* at p. 1.

<sup>14</sup> *Id.* at p. 2.

example, the 85-foot tall silo already existing on the Brunswick property), so any other M1 zoned property where underground mining would occur would also need a headframe taller than 45 feet. The variance is not a special privilege, but rather, a necessity to conduct a use that is specifically allowed by the County Code in the M1 Zone. Furthermore, the County regularly allows for the construction of structures that are taller than the maximum height allowed by the underlying zoning in areas across the County, such as communications towers that are 140 to 160 feet tall.<sup>15</sup> The headframe is similar to those communications towers, as it is of similar height and is a non-occupied structure. Contrary to the County Staff Report’s reasoning, given the regularity with which those other tall structures are approved by the County, Rise’s requested variance cannot be considered a special privilege. As such, this variance finding can easily be satisfied.

*ii. There are Special Circumstances Applicable to the Property, and Strict Application of the Provisions Would Deprive Property of Privileges Enjoyed by Other Properties in Vicinity*

The Brunswick Industrial Site has a unique location and circumstance; it is an existing mine site and is situated above an identified gold resource which would be one of the highest grade gold mines in the world, and historically the site was formerly the largest gold mine in the United States.<sup>16</sup> The site’s special circumstances include existing infrastructure which includes an 85-foot rock silo, industrial pond that has already been permitted with the Army Corps of Engineers, is located along a designated truck hauling route, and an existing 3,000-foot-deep shaft—unique features which no other property in the County has.<sup>17</sup>

Given the unique suitability of the project site for underground gold mining, the strict height limitation of 45 feet by the County would deprive the property of privileges enjoyed by other properties in the vicinity: the privilege of utilizing the property as it historically has been used, which is the best and highest use allowed under the current zoning, and which is an allowed use under the Zoning Code.<sup>18</sup> Other properties throughout the County have regularly been granted variances and use permits for cellular towers, buildings, and other structures that are substantially taller than the underlying zoning allows.<sup>19</sup> Additionally, the Project site is the only available site that can reasonably serve as an access point and processing facility for extracting the mineral resources.<sup>20</sup> Contrary to the Staff Report’s reasoning, it is apparent that the

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at p. 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at p.6.

<sup>20</sup> *Id.* at p.5.

Brunswick Site is a unique site with special circumstances that allow this variance finding to be satisfied.

*iii. The Variance Does Not Authorize a Use Not Otherwise Authorized by the Zoning District in Which the Property is Located*

Underground mining is specifically allowed in the proposed zoning district where the site is located; therefore, the variance would not allow an otherwise unauthorized use.<sup>21</sup> With the proposed rezone, gold mining and processing on the surface would also be an allowed use.<sup>22</sup> Historically, the Idaho-Maryland Gold Mine used a 135-foot-tall headframe, which was placed on top of the still-existing 85-foot concrete silo located at the site.<sup>23</sup> The proposed 165-foot headframe is consistent with the historic use of the site, the current aesthetic of the site, and is the only way to conduct economic subsurface mining on the property.<sup>24</sup> This finding can be made because the variance facilitates an existing structure required for a use already authorized within the zoning district.

*iv. Granting the Variance Does Not Adversely Affect the Public Health, Safety, Welfare, the Integrity and Character of the District, nor the Utility and Value of Nearby Property*

The use facilitated by granting a variance is entirely consistent with the character and history of the property and the surrounding properties and uses, as the site has historically been a gold mine, and there is no proposed change from the historic use. The height of the Project structures, as allowed by the proposed variance, will not adversely affect the health and safety of those working or residing in the neighboring areas because the structures mirror the historic and existing structures on site and will be subject to all applicable safety standards.<sup>25</sup> The Project will also be required to comply with the Design Standards in the Nevada County Land Use and Development Code, and the Western Nevada County Design Guidelines.<sup>26</sup> The DEIR thoroughly analyzed the Project's impacts and did not identify any public health, safety or welfare impact from the height of the structures. Notably, County Planning did not seem to have any objections to the DEIR's conclusions regarding the height of the structures until the Staff Report was prepared, and a basis for a recommendation of denial was needed.

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<sup>21</sup> Nevada County Code Sec. L-II 3.21 [Subsurface Mining].

<sup>22</sup> *Id.*

<sup>23</sup> Rise Variance Application at p. 6

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at p.7.

<sup>26</sup> Nevada County LUDC, Article 4, Comprehensive Site Development Standards, Section L-II; Draft EIR, pp. 4.1-10 to 4.1-11.

While the DEIR did conservatively identify a significant aesthetics impact based on the visibility of some of the structures, in reality, most of the structures will be heavily screened from public view by trees, and the clean modern facilities will be an aesthetic improvement over the existing character of the site which is heavily disturbed and battered. The site will be in compliance with all applicable laws and regulations, including the Design Guidelines in the Nevada County Land Use and Development Code<sup>27</sup> and Western Nevada County Design Guidelines, conditions of approval imposed by the Conditional Use Permit, and would ensure that the Project, including the taller structures allowed by the variance, would not cause harm to the public or adversely affect the public's wellbeing.<sup>28</sup> While there is a potential for some aesthetic impacts related to the project, granting the variance would not adversely affect the integrity and character of the District (which is a historic mining district), nor the utility and value of nearby property because existing setbacks, ample sight distances greater than 600 feet, and various deed notices and disclosures notifying buyers that sensory nuisances are present are all precautions taken in consideration of respecting the integrity and character of the district. As such, the project can satisfy this variance finding.

*v. The Variance is Consistent with the Nevada County General Plan*

The Nevada County General Plan limits building height for Industrial Zones to 45 feet.<sup>29</sup> However, discretionary permits may be granted for special uses that exceed that limit.<sup>30</sup> The General Plan also provides that the County should “[r]ecognize and protect valuable mineral resources for current and future generations in a manner that does not create land use conflicts.”<sup>31</sup> The General Plan continues to provide, “resource based land uses (timber, **mining**, farming, and ranching) continue to be significant in terms of the extent of such uses and continuity of their function in the County's economy.”<sup>32</sup> Granting the variance recognizes and protects the importance of the valuable resource existing on the site by allowing the necessary infrastructure to provide access to those valuable mineral resources and recognizes the importance of the mine on the economy. As discussed by the DEIR, the Project would not create a land use conflict as it will incorporate the Design Guidelines as set forth in Policies 18.1 to 18.11 of the General Plan, and comply with numerous mitigation measures and conditions that

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<sup>27</sup> See Nevada County LUDC, Article 4, Comprehensive Site Development Standards.

<sup>28</sup> *Id.*

<sup>29</sup> Nevada County General Plan, Volume I – Pages 1-38, 1-39.

<sup>30</sup> *Id.*

<sup>31</sup> Nevada County General Plan, Volume I – Page 17-3.

<sup>32</sup> Nevada County General Plan, Volume I – Page 1-3 Emphasis Added.

minimize the potential conflicts with surrounding land uses.<sup>33</sup> As such, granting the variance is consistent with the Nevada County General Plan.

*vi. The Variance is the Minimum Departure from the Requirements of this Ordinance Necessary to Grant Relief to the Applicant*

For the Project to operate, the building heights for mining operations are required as requested and keep operations feasible. To safely access the underground workings and place rock into the concrete silo, the headframe must be a height of 165 feet.<sup>34</sup> The new Service Shaft headframe requires a height of 80 feet in order to allow hoisting cages to transport people, materials, and equipment to and from the underground mine.<sup>35</sup> Shorter structures have a difficult time meeting the operational needs of the Project to develop a modern, efficient, and safe underground mining operation. Therefore, the heights requested by the variance represent the minimum departure from the requirements.

**C. The Project Variance is Similar To Other Variances Granted in the County, and Any Disparity in Either Process, Review or Standards is Unconstitutional**

The variance, as proposed by Rise, is a small departure from many uses common in the County including 140 to 160 foot tall communications towers. Other variance projects are justified in simple one or two-page documents with very little detail, in comparison to the Project's eleven-page document detailing justification with specificity.<sup>36</sup> As discussed above, the County previously justified height variances based on dubious special circumstances where the justification for a variance was that the land was "relatively flat" or because it was "nearby local amenities." The Variance Justification for the Project provided more than adequate information, detailing and answering every question, and when asked by the County, was expanded with even more detail.<sup>37</sup> The last-minute conclusion reached in the Staff Report raises the threshold for variance findings to an unreasonable level for the Project, and Option A treats the Project inconsistently with previous projects approved by the County, denying Rise equal protection under the law. As you may be aware, when a local government intentionally treats an individual or project differently from others similarly situated, and there is no rational basis for the difference in treatment, that treatment constitutes an equal protection violation. (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564–565.) Further, the U.S. Supreme Court has

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<sup>33</sup> IMM-DEIR at p. 731.

<sup>34</sup> Rise Variance Application at p. 11

<sup>35</sup> *Id.*

<sup>36</sup> see Lone Oak Apartments Variance Application; Rise Variance Application.

<sup>37</sup> Rise Grass Valley Inc., *Variance Justification Application*, (Rise 2019 Variance Application) available at: <<https://www.nevadacountyca.gov/DocumentCenter/View/31132/Nevada-County-Variance-Application>>

explained that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. (*Sioux City Bridge Co. v. Dakota County* (1923) 260 U.S. 441, 445.)

#### **D. The IMM Project Is Consistent with the General Plan**

County Planning Staff previously reviewed, approved and released for public comment the Draft EIR in 2022, which concluded that the Project is consistent with the General Plan. Now suddenly the Staff Report contradicts the EIR, and came to the opposite conclusion about the Project's General Plan consistency, in secret while the Staff Report was being drafted a mere two weeks ago. The inconsistency between the Staff Report and EIR's conclusions regarding General Plan consistency can only be interpreted as a pretext to justify a recommendation of denial, not an actual problem with General Plan consistency. As discussed below, the Staff Report's reasoning and conclusions are incoherent, inconsistent with the County's treatment of other projects, and/or are not based on the actual text or intent of the General Plan.

##### *i. Brunswick Industrial Site has Clear Boundary Between Community and Rural Regions*

Option A in the Staff Report recommends denial of the re-zone from M1-SP to M1-ME because it asserts that the proposed amendment is not consistent with General Plan Policy 1.1.2, which provides that there must be a clear boundary between Community and Rural Regions.<sup>38</sup> Option A asserts this because of the six parcels for the Brunswick Industrial Site, four are located in the Community Region while two are located in the Rural Region. The County is incorrect that there is no clear, distinct boundary.

The Staff Report itself states that “[t]he only feasible argument that the proposed project fails to maintain a line between Community and Rural Regions involves the quantity of cars to be parked at the employee parking lot.”<sup>39</sup> So it does not make sense for the Report to recommend denial of the re-zone. The Report goes on to further contradict itself continuing: “given the proximity of Brunswick road, regular automobile traffic in the area has already been normalized,” and that, “[a] gold mine, and specifically its related facilities would probably serve as an additional applicable use.” The site itself is already zoned and has been used for industrial uses for decades, and many of these uses could be, and actually have been, much more intense than the Project, and may be implemented without County approval of a use permit.

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<sup>38</sup> County of Nevada, *Nevada County Planning Staff Report*, (“IMM-Staff Report”), (May 2023), available at: <<https://www.nevadacountyca.gov/DocumentCenter/View/47876/0---Idaho-Maryland-Mine-Project-Planning-Commission-Staff-Report>> at p. 116.

<sup>39</sup> IMM-Staff Report at p. 82.

The entire concept that approval of an industrial use on an already industrially-zoned parcel as inconsistent with the General Plan is unsupported and nonsensical.

*ii. The Project is Consistent with the Overall Rural Quality of the Life in the County*

Contrary to the Staff Report, the proposed mining operations are compatible with the rural character of the surrounding area. In fact, rural areas are where mining is permitted by Nevada County and by other counties across the state. Mining operations complement the past, present, and future of diversified rural areas throughout the West, and provide lasting jobs and economic development, serve rural communities, and benefit rural quality of life. Rural areas typically provide larger parcels, greater available setbacks, natural visual screening, and natural topographical noise buffers. The Staff Report's conclusion that mining is not compatible with rural areas is absurd, given that the County has an extremely long history of approving mining in rural areas, and that the location of mining operations in dense urban areas would cause far more impacts on the community.

General Plan Policy 1.4.2 states that development within the Community Regions shall be consistent with the overall rural quality of life in the County.<sup>40</sup> Similar surface mining operations have been conducted in rural areas for decades, a recent example of which is the Boca Quarry.<sup>41</sup> The Project's intensity is consistent with the type of mining historically conducted in the area, where nearby residences were occupied during both mining and industrial sawmill uses.<sup>42</sup> In addition, the Project has taken measures to mitigate potential negative impacts to the rural character of the area, such as setbacks, noise reducing measures including placing noisy activities within insulated noise-reducing structures, and planting additional trees to reduce some of the aesthetic consequences of the Project.<sup>43</sup>

County Planning Staff, as well as the County's independent consultant, previously reviewed and approved the EIR's analysis of the General Plan which found that the land-use impacts were all less than significant – notably with no mention of any conflict with the General Plan regarding rural character.<sup>44</sup> This conclusion was unveiled as another last minute surprise in the Staff Report rather than a genuine problem presented to the applicant early in the process to allow an opportunity to address. As discussed above, there is no real conflict with the General Plan

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<sup>40</sup> Nevada County General Plan, Volume I – Page 1-28.

<sup>41</sup> County of Nevada, *Nevada County Planning Staff Report*, (“Boca Quarry-Staff Report”), (Aug. 22, 2019), available at: <<https://www.nevadacountyca.gov/DocumentCenter/View/28955/Boca-Quarry-Expansion-Staff-Report-U11-008-RP11-001-EIR11-001PDF>> at p. 3.

<sup>42</sup> IMM-Staff Report at p. 11.

<sup>43</sup> IMM-Staff Report at p. 92.

<sup>44</sup> IMM-DEIR at p. 724-731.

related to the rural character of the area. Mining is most appropriate in rural areas with proper implementation of mitigation, and the County has a pattern of approving mining in rural areas given its natural suitability. In conclusion, the Project is consistent with the General Plan and the rural quality of life of the area.

*iii. The Staff Report's Assertion of General Plan Inconsistency due to "Intensity" is Incorrect Because the Relevant General Plan Policies Do Not Mention Intensity*

Option A of the Staff Report recommends denial of the Project based on the presupposition that the Project would be inconsistent with General Plan Policy 1.4.2 due to the Variance request to increase building heights, and the "intensity" of mining being inconsistent with the rural character of the area.<sup>45</sup> General Plan Policy 1.4.2 actually states:

*Development within the Community Regions shall be consistent with the overall rural quality of life in the County, as demonstrated through sensitivity to resource constraints, provision of interwoven open space as a part of development, and community design which respects the small town or village character of the Community Regions. **These criteria shall be accomplished through application of the Comprehensive Site Design Standards in review of discretionary and ministerial projects.***

The Staff Report is incorrect that the project is inconsistent with the General Plan, because Policy 1.4.2 provides clear language that consistency with the overall rural quality of life in the County **shall be accomplished through the application of the Comprehensive Site Design Standards**.<sup>46</sup> The Project has been designed specifically to comply with those standards, and great care was taken to make sure the building design and even the paint color for the buildings complies with the standards.

Of note is the lack of any reference to "intensity" in Policy 1.4.2, so the Staff Report's use of "intensity" as a basis for finding inconsistency with this policy is not actually based on language of the General Plan. The use of "intensity" as a justification for recommending denial is bizarre not only because this concept does not appear in the subject General Plan policy, but because the site is currently zoned for industrial use and has an approved specific plan allowing for uses much more intense than the Project. The Project complies with the Comprehensive Site Design Standards, and therefore is in compliance with Policy 1.4.2.<sup>47</sup>

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<sup>45</sup> IMM-Staff Report at p. 83.

<sup>46</sup> Nevada County General Plan, Volume I – Page 1-28

<sup>47</sup> IMM-Staff Report. at p. 33.

The Staff Report also states that the Project would be inconsistent with General Plan Policy 17.6, because the intensity of the mining operations exceeds those that are compatible with the rural character of the surrounding area.<sup>48</sup> General Plan Policy 17.6 states “*Encourage extraction of mineral resources in compatible areas prior to intensified urbanization or conversion to other incompatible land use development.*” As discussed above, this Policy also does not use the language of intensity of the use, but instead encourages extraction of mineral resources in compatible areas prior to *intensified urbanization*.<sup>49</sup> The only area that could possibly be classified as semi-urbanized near the Brunswick site is the Cedar Ridge rural neighborhood, which is Zoned Urban Single Family. This area was constructed and inhabited even before the Brunswick Mine closed the first time, and was inhabited throughout the years of intense sawmill operation and trucking use, as can clearly be seen in aerial photos taken in 1947. Additionally, a large buffer of 13 acres of mature trees occupies the area between the mine and this area. The Project is consistent with Policy 17.6, and the suggestion that the Project should not be recommended is entirely at odds with the plain language of the General Plan.

Option A of the Staff Report relies heavily on the term “intensity” to recommend denial of the Project due to an alleged inconsistency with General Plan Policy 1.4.2 and 17.6 with the Report’s creative writing interpretation of “Central Theme 1” of the General Plan.<sup>50</sup> However the Report’s rather interesting interpretation of the Central Theme is not present anywhere in the General Plan itself, and was made up as a stand-alone justification to support the recommendation of denial. In fact, the General Plan specifically states that the goals, objectives, policies, and implementation measures of the general Plan are intended to carry out the four central themes of the General Plan.

The Staff Report re-interprets the General Plan specifically for the Project, rather than relying on the actual text of the General Plan or the County’s past interpretation of its General Plan policies. As such, Rise respectfully requests that the Commission reject the Report’s recommendation, and correctly find that the Project does indeed comply with the language and intent of the General Plan.

*iv. Other Sites Such as Boca Quarry Were Considered Consistent with the General Plan Even When The Impacts Were Far Larger*

The Boca Quarry and the proposed Project are two different, yet in some ways similar, projects in Nevada County. The Boca Quarry’s impacts are much more significant, or to use the Staff Report’s vernacular, *intense*, especially when considering rural aesthetics and traffic. For

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<sup>48</sup> *Id.* at p. 84.

<sup>49</sup> Nevada County General Plan, Volume I – Page 17-5

<sup>50</sup> IMM-Staff Report at p.84.

example, the Project would generate 112 one-way daily truck trips compared to 1,432 trips for the Boca Quarry, and despite close proximity to neighbors being located on the surface without enclosed operations like the Project, the Boca Quarry may operate 24/7 to meet customer demand. Regarding aesthetics, many nearby homes can see the quarry (a large surface mine rather than an underground mine) with an unobstructed view.<sup>51</sup>

As a further example of the disparity in treatment, the Project's truck trip generation is far less intense than other mines with a proposed 100 maximum daily rock truck round trips compared to Boca Quarry's 560 daily rock truck round trips.<sup>52</sup> Even though the Boca Quarry is in plain view of nearby homes and the noise, dust and air quality impacts are directly affecting nearby residences and the County as a whole, and not contained underground like the Project, yet the Boca Quarry was found consistent and recommended for approval.<sup>53</sup> Unlike the Project, the Boca quarry was determined to have a significant and unavoidable air quality impact. In other words, the impacts of the Project are far less intense than other, similar projects in the County, but Option A of the Staff Report has tortured the words of the General Plan and County Code to find a way to recommend denial—despite the positive EIR and great benefits provided for Nevada County—and, is treating the Project very differently than other past (and similarly situated) projects. Further, the Staff recommendation is inconsistent with the DEIR analysis, which finds that the IMM project is consistent with the General Plan.<sup>54</sup> The role of the General Plan is the County's constitution for the physical use of the County's resources, the foundation upon which all land use decisions are made. The Staff Report does not honor this constitution and erodes this foundation.

In conclusion, Option A's recommendation for denial premised on a perceived inability to make variance findings and General Plan inconsistency is not based on facts or unbiased interpretation of County policy. The Project meets all findings required for a variance, the headframe does not even need a variance because it is a non-habitable building, and the other structures can, and will be reduced to 45 feet or below. Additionally, the Project is consistent with the General Plan, just as the EIR states, because it does have a clear boundary between the Rural and Community Regions, and does not have impacts uncharacteristic of the rural character of the area or vastly more intense than other comparable sites in the County.

Given the foregoing, Rise respectfully requests that the Commission adopt Alternative No. 2, the environmentally superior alternative, which adequately addresses the public concerns with traffic, as well as the Staff Report's obsession with "intensity."

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<sup>51</sup> Boca Quarry-Staff Report at p. 20.

<sup>52</sup> Boca Quarry-Staff Report at p. 53.

<sup>53</sup> Boca Quarry-Staff Report at p. 58.

<sup>54</sup> IMM-DEIR at p. 237.

Given the foregoing, Rise respectfully requests that the Commission adopt Alternative No. 2, the environmentally superior alternative, which adequately addresses the public concerns with traffic, as well as the Staff Report's obsession with "intensity."

Best regards,

MITCHELL CHADWICK LLP



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