



NEVADA COUNTY PLANNING COMMISSION
STAFF REPORT

NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum

MEETING DATE: February 15th and 16th, 2024 (If needed)

TO: Board of Supervisors

FROM: **Brian Foss, Planning Director**

SUBJECT: Public Hearing to consider A) **PLN19-0176; EIR19-0001; RZN19-0002; VAR19-0003; MIS22-0019; CUP19-0004; MGT19-0039, MGT19-0040, MGT20-0009, MGT20-0010, MGT20-0011, MGT20-0012, MGT20-0013; LLA20-0006; AAM21-0002;** a proposed project that would reinstate underground mining and gold mineralization processing for the Idaho-Maryland Mine over an eighty (80)-year permit period with gold mineralization processing and underground exploration and mining proposed to operate twenty-four (24) hours a day, seven (7) days a week during full operations. Following completion of mining and processing activities, the project site would be reclaimed to open space and land suitable for future development of industrial uses; and B) to carry forward the results of the Special Meeting of Nevada County Planning Commission on May 10, 2023, and May 11, 2023 and the (5-0) vote and recommendation to deny the proposed Idaho-Maryland Mine – Rise Grass Valley Project, as follows: 1.) Not certify the Final environmental Impact Report (EIR 19-0001, SCH# 2020070378) as adequate for the Idaho-Maryland Mine Project including not adopting the California Environmental Quality Act Findings of Fact and not adopting a Statement of Overriding Considerations. 2.) Adopt a Resolution to deny the Rezone (RZN19-0002) for the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME). 3.) Adopt a Resolution to deny the Variance (VAR19-0003) for the construction of several structures up to a height of 165 feet, where forty-five (45) feet is required, pursuant to Nevada County Land Use and Development Code, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E). 4.) Take no action

on the following project entitlements: Development Agreement (MIS22-0019), Use Permit with a Reclamation Plan (CUP19-0004); Management Plans (MGT MGT19-0039, MGT19-0040, MGT20-0009, MGT20-0010, MGT20-0011), Boundary Line Adjustment (LLA20-0006), Parcel Map Amendment (AAM21-0002). (Districts I & III)

RECOMMENDATION OF THE PLANNING COMMISSION TO THE BOARD OF SUPERVISORS:

At the Special Meeting of May 10, 2023, and May 11, 2023, the Nevada County Planning Commission held a duly noticed public hearing to consider the proposed project. After taking public testimony and deliberating on the project, the Planning Commission voted unanimously (5-0) to recommend the Board of Supervisors take the following actions to deny the project:

- I. Environmental Action: Not certify the Final Environmental Impact Report and find the project statutorily exempt pursuant to Section 15270(a) of the California Environmental Quality Act (CEQA) Guidelines because CEQA does not apply to projects which a public agency rejects or disapproves. The Planning Commission recommends that the Board of Supervisors deny the request for Project approval of the Rezone and Variance. Therefore, the project would be disapproved and accordingly exempt.
- II. Project Action: Adopt the attached Resolution to deny the Rezone (RZN19-0002) for the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME), based on the findings contained within the attached Resolution (*Attachment 1*).
- III. Project Action: Adopt the attached Resolution to deny the Variance (VAR19-0003) for the construction of several structures up to a height of one hundred sixty-five (165) feet, where forty-five (45) feet is required, pursuant to the Light Industrial Zoning District (Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E), based on the findings contained within the attached Resolution (*Attachment 1*).
- IV. Project Action: Take no action on the following project entitlements: Development Agreement (MIS22-0019), Use Permit with a Reclamation Plan (CUP19-0004) for uses and facilities over the eighty (80)-year permit life consist with the project described in the Environmental Impact Report,

Management Plans (MGT19-0039, MGT19-0040, MGT20-0009, MGT20-0010, MGT20-0011, MGT20-0012, MGT20-0013), Boundary Line Adjustment (LLA20-0006), Parcel Map Amendment (AAM21-0002).

RECOMMENDED BOARD OF SUPERVISORS ACTIONS:

Not certify the Final Environmental Impact Report and find the project statutorily exempt pursuant to Section 15270(a) of the California Environmental Quality Act (CEQA) Guidelines because CEQA does not apply to projects which a public agency rejects or disapproves. Adopt a Resolution to deny the Rezone (RZN19-0002) for the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME), based on the findings contained within the Resolution, and adopt a resolution to deny the Variance (VAR19-0003) for the construction of several structures up to a height of 165 feet, where 45 feet is required, pursuant to the Light Industrial Zoning District (Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E), based on the findings contained within the Resolution. Take no action on the following project entitlements: Development Agreement (MIS22-0019), Use Permit with a Reclamation Plan (CUP19-0004) for uses and facilities over the 80-year permit life consist with the project described in the Environmental Impact Report, Management Plans (MGT19-0039, MGT19-0040, MGT20-0009, MGT20-0010, MGT20-0011, MGT20-0012, MGT20-0013), Boundary Line Adjustment (LLA20-0006), Parcel Map Amendment (AAM21-0002).

FUNDING:

No budget amendments are required.

ATTACHMENTS:

1. Draft Resolution: Idaho-Maryland Mine Project Denial
2. May 10, 2023 and May 11, 2023, Planning Commission Staff Report (with Attachments)
3. May 10, 2023 and May 11, 2023, Draft Planning Commission Meeting Minutes

PROJECT DESCRIPTION:

The proposed project would reinstate underground mining and gold mineralization processing for the Idaho-Maryland Mine over an 80-year permit period with gold

mineralization processing and underground exploration and mining proposed to operate twenty-four (24) hours a day, seven (7) days a week during full operations. Following completion of mining and processing activities, the subject project sites would be reclaimed to open space and land suitable for proposed future development of industrial uses, subject to additional environmental review and permitting. Generally, the proposed project would include the following components:

- Dewatering the existing underground mine workings (approximately six (6) months);
- Underground mining at a depth of five hundred (500) feet or more within defined areas underlying the mineral rights properties (eighty (80) years);
- Construction (approximately eighteen (18) months) and operation (eighty (80) years) of aboveground processing and water treatment facilities at the Brunswick Industrial Site;
- Engineered fill placement for potential future industrial pad development at the Centennial (approximately five (5) years) and the Brunswick (approximately six (6) years) Industrial Sites;¹
- Installation of a potable water pipeline along East Bennett Road for residential potable water supply (approximately 4 months); and
- Reclamation of the project sites in accordance with a proposed Reclamation Plan (upon completion of the eighty (80)-year mining).

The aboveground facilities would be located within an approximately twenty-nine (29)-acre industrial area on the existing approximately one hundred nineteen (119)-acre Brunswick Industrial Site that would include but not be limited to, a headframe building around the existing concrete silo used to hoist rock from the Brunswick shaft; covered conveyor system used to transport, a) barren rock to a truck hauling area within an adjacent enclosed building, and b) gold concentrate to the processing plant; a processing plant to grind rock and recover gold minerals through various processes; and other appurtenant structures such as office and warehouse space. An above-ground water treatment plant would also be built at the Brunswick Industrial Site to treat groundwater associated within initial and ongoing (“maintenance”) dewatering of the underground mine workings. A new aboveground pipe would convey treated water from the water treatment plant along an existing dirt road to the planned discharge point at South Fork Wolf Creek. The pipe and discharge point would be located entirely within the property boundaries of the Brunswick Industrial Site.

Engineered fill generated by the proposed mining activities would be placed on approximately thirty-one (31) acres of the Brunswick Industrial Site to create a level pad of approximately twenty-one (21) acres for potential future industrial use. In total, up to approximately sixty (60) acres of the one hundred nineteen (119)-acre site could be subject

¹ As amended by May 5, 2023 request by the applicant. Please see discussion of proposed Alternative 2 below.

to surface disturbance and/or development for the aboveground facilities and fill placement. The remaining fifty-nine (59) acres would remain undeveloped and would not be subject to surface disturbance or infrastructure improvements.

Engineered fill would also be placed on the Centennial Industrial Site (approximately 1.5 miles from the Brunswick Industrial Site), provided that the separate DTSC cleanup project has been approved and completed on the Centennial Industrial Site. In that case, engineered fill would be transported by truck from the Brunswick Industrial Site and placed on approximately forty-four (44) acres of the Centennial Industrial Site to create approximately thirty-seven (37) acres for potential future industrial use. The remaining approximately twelve (12) acres would remain as a private driveway for site access and open space. The open space area would include Wolf Creek, a one hundred (100)-foot setback for riparian area on Wolf Creek, and an undisturbed area providing protection for identified special-status plant species.

After full placement of fill at the Centennial and Brunswick Industrial Sites to complete the pad design elevations expected to span approximately 11 years, the need for hauling of engineered fill would continue due to ongoing mining over the Use Permit term of eighty (80) years, and thus, hauling would shift entirely to local and regional markets for sale as construction aggregate and fill. If the separate DTSC cleanup project is not approved by DTSC and completed within the term of the Idaho Maryland Mine Project Use Permit, engineered fill would be placed on the Brunswick site, but not the Centennial site, and the remainder would be hauled to local and regional markets.

Prior to dewatering of the existing mine, a buried potable water pipeline would be constructed as part of the proposed project to provide water to residences along a portion of East Bennett Road. Construction would take approximately four months. The pipeline would extend an existing Nevada Irrigation District (NID) potable water pipeline along an approximately 1.25-mile segment of East Bennett Road to provide potable water service to residential properties currently on wells that may be affected by the project's dewatering of the mine. NID would be the water supplier for the potable water service.

PROPOSED PROJECT ALTERNATIVE 2:

On May 5, 2023, the representative for the project applicant respectfully requested the Planning Commission move forward with Alternative 2 which was identified in the DEIR as the preferred alternative to the proposed project. Alternative 2 proposes to eliminate the Centennial Industrial Site from the proposed project and expand the fill pile at the Brunswick Industrial Site.

The proposed project proposes to transport and place approximately 1,600,000 tons of engineered fill at the Centennial Industrial Site in order to create thirty-one (31) acres of

flat usable industrial land at that site. The Centennial Industrial Site could be excluded from the proposed project as the equivalent amount of engineered fill could be placed by increasing the height of the planned engineered fill area at the Brunswick Industrial Site.

Alternative 2 would eliminate the Centennial Industrial Site, and any related impacts, entirely from the IMM Project. The indirect economic benefit from the creation of fifty-two (52) acres of flat ready-to-build industrial land would be lost (thirty-one (31) acres of flat industrial land at the Centennial Industrial Site and the economic benefit for the twenty-one (21) acres at the Brunswick Site – Brunswick acreage included here would be insignificantly reduced only because the final pad configuration under this alternative would require more grading for a site-specific design).

Most of the project objectives identified in the DEIR would be achieved with this alternative and operating costs decreased due to the elimination of trucking from the Brunswick to Centennial Industrial Site. However, two objectives related to increasing usable land for future industrial use at the Centennial and Brunswick Industrial Sites, respectively, would not be achieved.

The design of the engineered fill pad at Brunswick Industrial Site, under the proposed project scenario, slopes from a final elevation of approximately 2,830 ft mean sea level (msl) at the hillside to an elevation of 2,820 ft msl at the crest of the pad. The engineered fill pad at the Brunswick Industrial Site is designed to maximize usable area after construction. Alternative 2 would still allow industrial uses to be developed at the Brunswick Industrial Site. Alternative 2 would result in the placement of fill within the existing footprint to an elevation of ~2,880 ft msl, or approximately fifty (50) feet higher, as shown in Figure 6-2 and Figure 6-3. The placement of this additional fill would add additional volume of approximately thirty (30) million ft³, or approximately 1.7 million tons, and allow for the replacement of storage lost from the elimination of the Centennial Industrial Site. The additional fill would have an area at the base elevation at 2,830 ft msl of approximately 18.5 acres and at the top 2,880 ft msl elevation of approximately 6.5 acres. The intensity of activity related to construction of the larger engineered fill pad under this Alternative would not increase, but the duration of the activity would be lengthened due to the increase in material volume. Other aspects of the proposed project would remain unchanged.

For the full Project Description, please see the DEIR Chapter 3.0, Project Description and DEIR Chapter 6.0, Project Alternatives (Attachment 3).

LAND USE ENTITLEMENT REQUIREMENTS:

The following entitlements would be required as part of the proposed project and proposed Alternative 2:

- **Rezone:** The applicant has submitted a Rezone application to rezone the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME) to allow for surface mining facilities related to the underground mining operations, pursuant to the Nevada County Land Use and Development Code (LUDC), Section L-II 2.7.3.
- **Use Permit:** The applicant has applied for a Use Permit for uses and facilities over the eighty (80)-year permit life consistent with the project as described in the DEIR.
- **Reclamation Plan:** The applicant has submitted a Reclamation Plan and Financial Assurance Cost Estimate to reclaim project-related surface disturbance to a condition suitable for industrial uses and open space as allowed by Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5 D – Light Industrial.
- **Variance:** A Variance to the Building Height Limits has been requested to allow for the construction of Headframes at eighty (80) and one hundred sixty-five (165) feet in height, two hoist buildings at fifty (50) feet, and a processing plant at sixty-four (64) feet, where forty-five (45) feet is required, pursuant to the Light Industrial Zoning District (Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E).
- **Management Plans:** Management Plans (included in the Draft Environmental Impact Report as appendices E.2, F.4, F.5, F.8, H.2, H.3, H.5, and K.6) would need to be approved in conjunction with approval of the proposed project in order to accomplish the following:
 - Allow for activities within the required one hundred (100)-foot setback from the Riparian Area of a Perennial Watercourse (i.e., Wolf Creek and South Fork Wolf Creek), pursuant to Nevada County LUDC, Section L-II 4.3.17, at the Brunswick and Centennial Industrial Sites);

- Minimize the direct impact to special-status plant species, pursuant to Nevada County LUDC, Section L-II 4.3.12, at the Centennial Industrial Site;
 - Allow development within locations of areas of Steep Slopes that are in excess of 30 percent (30%) and high erosion potential at both the Brunswick and Centennial Industrial Sites, pursuant to the Nevada County LUDC, Section L-II 4.3.13;
 - Allow for development within a building setback associated with a fault zone at the Brunswick Industrial Site, pursuant to the Nevada County LUDC, Section L-II 4.3.8; and
 - Allows limited grading within the required 100-foot buffer from the Wolf Creek one hundred (100)-year floodplain boundary, subject to mitigations and conditions that must be complied with to ensure that the operations at the Centennial Industrial Site would not result in adverse effects to the one hundred (100)-year floodplain associated with Wolf Creek.
- Parcel Map Amendment: An amendment to the Final Map for Bet Acres recorded in February 1987 in Book 7 of Subdivision Maps at Page 75 would be required to remove the “200’ Building Setback From Fault”, as shown on Sheet 4 of Final Map #85-7. The geotechnical support for removing this setback is provided in Chapter 4.6, Geology, Soils, and Mineral Resources of the EIR.
 - Boundary Line Adjustment: A Boundary Line Adjustment would be required in order to transfer approximately 46.27 acres for three separate parcels (APN: 009-630-039, 006-441-034, 006-441-003) to reconfigure the property lines to resolve an issue of the proposed buildings crossing property lines at the Brunswick Industrial Site.
 - Development Agreement: As part of the proposed project, the applicant proposes to enter into a Development Agreement with the County (Attachment 10). The Development Agreement would establish a framework for: 1.) how the Use Permit (CUP19-004) with a Reclamation Plan would apply to the mining and reclamation phasing of the project; and 2.) costs and timing for the payment of a cents per ton fee, pursuant to CUP19-004 and the scope of those activities.

PROJECT LOCATION:

The proposed project’s surface components would be located within unincorporated western Nevada County on approximately 175.64 acres, consisting of the Brunswick

Industrial Site, the Centennial Industrial Site, and an approximately 0.30-acre portion of East Bennett Road for offsite improvements associated with a potable water pipeline easement. The proposed project would also involve underground mining within a defined portion of an approximately 2,585-acre mineral rights boundary² owned by the project applicant. It should be noted that underground mining would not occur within the entire area of mineral rights and would be limited to an approximately 1,415-acre portion of the underground mineral rights boundary as analyzed in the Draft Environmental Impact Report (DEIR). The potable water pipeline easement would be located along East Bennett Road and would be contained within the existing right-of-way.

The Centennial and Brunswick Industrial Sites are located within unincorporated Western Nevada County and are owned by Rise Grass Valley (Rise) (see Figure 1, below)³. The one hundred nineteen (119)-acre Brunswick Industrial Site (Assessor's Parcel Numbers [APNs] 006-441-003, -004, -005, -034; and 009-630-037, -039) is located southwest of the intersection of East Bennett Road and Brunswick Road and is accessible from Brunswick Road or East Bennett Road. The 56.41-acre Centennial Industrial Site (APNs 009-550-032, -037, -038, -039, -040; and 009-560-036) is located southwest of the intersection of Idaho Maryland Road and Centennial Drive, approximately 1.5 miles from the Brunswick Industrial Site.

The surface components on the Brunswick Industrial Site, Centennial Industrial Site, and East Bennett Road are located within the Industrial (IND) Nevada County General Plan Land Use Designation. In addition, the Centennial Industrial Site and East Bennett Road Right-of-Way (ROW) are zoned as Light Industrial (M1); and the Brunswick Industrial Site is zoned as Light Industrial, Site Performance Combining District (M1-SP).

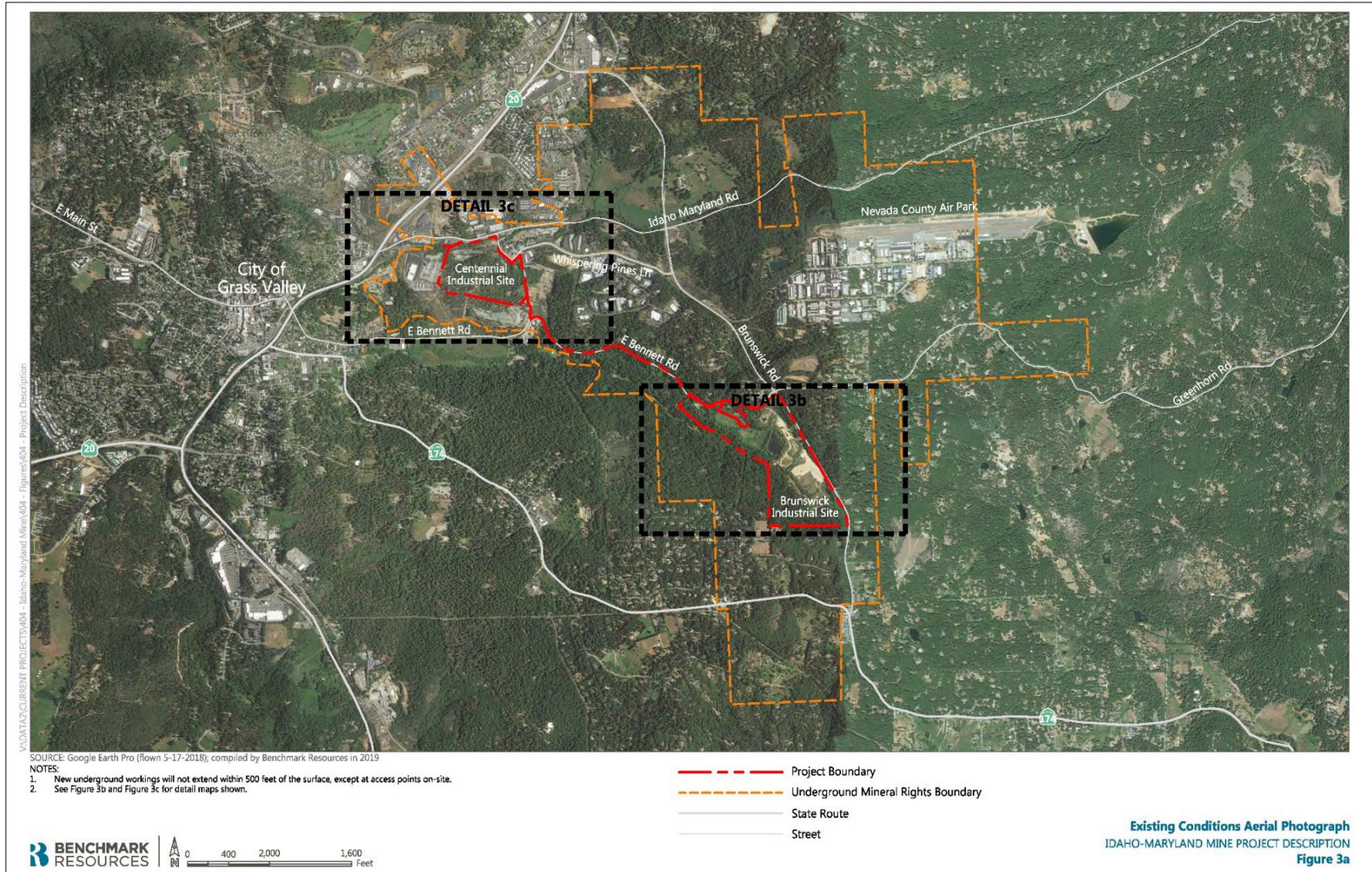
The majority of the aboveground project is located on twenty-nine (29) acres of the Brunswick Industrial Site, which is partially located within the City of Grass Valley's long-term SOI. The southern portion of the Brunswick Industrial Site is outside of the City's SOI. The Centennial Industrial Site is located within the City's Near-Term Sphere of Influence.

For a more detailed description of the Project Location, see the Planning Commission Staff Report.

² The Mineral Rights boundary is stated as represented by the Applicant. The County has not conducted, nor is it required to conduct, an independent verification of Applicant's Mineral Rights.

³ Figure 1, including the Underground Mineral Rights Boundary description is as represented by the Applicant. The County has not conducted, nor is it required to conduct, an independent verification of Applicant's Mineral Rights Boundary.

**Figure 1
Project Location Map**



APPLICATION BACKGROUND:

In November 2019, the applicant Rise Grass Valley, Inc. submitted an application to the Nevada County Planning Department for the proposed Idaho-Maryland Mine – Rise Grass Valley Project to reinstate underground mining and gold mineralization processing for the Idaho-Maryland Mine over an 80-year permit period with gold mineralization processing and underground exploration and mining proposed to operate twenty-four (24) hours a day, seven (7) days a week during full operations. Following the submission of the application, the County initiated the process of contracting with a consulting firm to assist with the preparation of an Environmental Impact Report (EIR) for the project and to assist County staff with the review and processing of the project. In April 2020 the County executed a contract with Raney Planning & Management to provide these services. Following the completion of the contracting process, a Notice of Preparation (NOP) to prepare an EIR for the project was prepared and circulated from July 27, 2020 through August 17, 2020, and a virtual project scoping meeting was held on July 27, 2020, for the purpose of informing the public and receiving comments on the scope of the environmental analysis to be prepared for the proposed project. A summary of the comments received on the NOP is available in the Draft EIR (Section 1.8).

Concurrent with the undertaking of the contracting process and the environmental review process, County staff along with Raney conducted a review of the required application content completeness review process with application materials being resubmitted in February 2020 with final submission being in January 2022. In accordance with CEQA, the Draft EIR was sent to the State Clearinghouse (SCH# 2020070378) for distribution to State agencies. The public review period began on January 4, 2022, for a sixty (60)-day public review period, which was extended to April 4, 2022, for a total public review period of ninety-one (91) days. In addition, the Draft EIR, and Notice of Availability (NOA) for the DEIR were published on the Nevada County Community Development Agency website. Printed copies of the DEIR were made available for public review at the Nevada County Planning Department (950 Maidu Avenue, Suite 170, Nevada City, CA), as well as the following library locations: Madelyn Helling Library (980 Helling Way, Nevada City, CA); Grass Valley Library – Royce Branch (207 Mill Street, Grass Valley, CA); Penn Valley Library (11252 Pleasant Valley Road, Penn Valley, CA); and Truckee Library (10031 Levon Avenue, Truckee, CA). A Special Public Meeting before the Nevada County Planning Commission was held on March 24, 2022, to solicit public comments regarding the DEIR.

Following the closure of the public comment period on April 4, 2022, Raney Planning & Management and the County undertook the preparation of the Final EIR (FEIR), constituting the County's formal response to the comments received. All comments received have been addressed in the Final EIR, which was released to the public for review on December 16, 2022.

Public Comments During Draft EIR Public Review Period

During the public review period on the DEIR, Nevada County received 12 comment letters from agencies, thirty-two (32) letters from groups, and 2,821 individual comment letters. In addition, verbal comments were received at the Special Public Meeting, and six comment letters were received shortly after the close of the public comment period. All comments received have been addressed in the Final EIR, which was released to the public for review on December 16, 2022. Pursuant to CEQA Guidelines Section 15132, the Final EIR consists of:

- (a) The draft EIR or a revision of the draft.⁴
- (b) Comments and recommendations received on the draft EIR either verbatim or in summary.
- (c) A list of persons, organizations, and public agencies commenting on the draft EIR.
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- (e) Any other information added by the Lead Agency.

All public comments received during and shortly after the public comment period were addressed within the FEIR and non-material update revisions to the DEIR text were made. These revisions are included in Chapter 3 of the Final EIR, Revisions to the DEIR Text. Although numerous revisions were made, none of the revisions were material, nor did they alter the adequacy of the analyses, notice, or conclusions made in the DEIR. No recirculation was warranted because no significant new information was added as defined under CEQA. Pursuant to CEQA Guidelines Section 15088.5, Recirculation of an EIR Prior to Certification, a lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. A detailed explanation of CEQA Guidelines Section 15088.5 is provided in Chapter 1 of the FEIR.

⁴ Because the Final EIR technically includes the Draft EIR, pursuant to CEQA Guidelines Section 15132, there is no requirement, nor need to include with the separately bound responses to comments document the same technical appendices that were provided with the Draft EIR.

For a more detailed background and project timeline, please refer to the Planning Commission Staff Report.

PROPOSED PROJECT REDESIGN:

On May 5, 2023, the representative for the project applicant respectfully requested the Planning Commission move forward with Alternative 2 as described above and in Chapter 6.0 of the DEIR, as the preferred alternative. In addition, the representative for the project applicant also committed to reducing the building height, aside from the headframes to 45 feet or less, and requested the Planning Commission impose a Condition of Approval to that end. The representative for the project applicant also contested that no Variance should be required, and a Use Permit may be another acceptable entitlement pathway to allow for the proposed headframes.

On May 10, 2023, and May 11, 2023, the Nevada County Planning Commission held a Special Meeting at a duly noticed public hearing to consider the proposed project.

ENVIRONMENTAL REVIEW:

A Draft Environmental Impact Report was prepared for the proposed Idaho-Maryland Mine Project in accordance with the California Environmental Quality Act (CEQA) of 1970, Public Resources Code (PRC) §§ 21000-21178, as amended, and the Guidelines for Implementation of the California Environmental Quality Act, California Code of Regulations (CCR) Title 14, §§ 15000-15387 (CEQA Guidelines). The County of Nevada is the CEQA lead agency for the environmental review of the proposed project and has the principal responsibility for approving the project.

Under CEQA, a significant effect on the environment is defined as a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, mineral, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

The EIR determined that the proposed project would result in significant environmental impacts to ten (10) CEQA resource categories/topics. Mitigation measures must be implemented as part of the proposed project to reduce potential adverse impacts to a less-than-significant level, when feasible. Such mitigation measures are noted in this EIR and are found in the following technical chapters: Aesthetics; Air Quality, Greenhouse Gas Emissions, and Energy; Biological Resources; Cultural and Tribal Cultural Resources; Geology, Soils, and Mineral Resources; Hazards and Hazardous Materials; Hydrology and Water Quality; Noise and Vibration; Transportation; and Wildfire. The mitigation measures required for the proposed project, as presented in this EIR, will form the basis of the Mitigation Monitoring and Reporting Program. Any impact that remains significant

after implementation of mitigation measures is considered a significant and unavoidable impact.

The EIR identified that the proposed project has the potential to create significant and unavoidable impacts for the following resources: Aesthetics (Visual Character); Noise (substantial temporary increase in ambient noise levels); and Transportation and Circulation (significant impact to intersections). The identified Project-level Aesthetics and Transportation impacts are also both cumulatively considerable and significant and unavoidable. Feasible mitigation measures were provided for all other identified potential environmental impacts of the project. Below is a discussion of a summary of the potential impacts as they were analyzed in the EIR for the proposed project.

Aesthetics:

The EIR determined that a less-than-significant impact would occur related to substantial adverse effects on scenic vistas and creation of new sources of substantial light or glare.

Impact 4.1-2 of the EIR addresses the potential for the proposed project to substantially degrade the existing visual character or quality of the site and its surroundings. While the Centennial and Brunswick Industrial Sites are zoned for industrial development and there are existing industrial land uses in the vicinity of the project sites, the proposed project would result in noticeable changes to the existing visual character of the project sites, as viewed from public vantage points in the project vicinity. Landscape trees would be planted at strategic locations to partially screen project elements when the trees reach maturity; however, the proposed structures and engineered fill pads are substantial in height and vegetation screening would not be sufficient to prevent a substantial degradation in visual character or quality of the sites and their surroundings when viewed from public locations. As previously discussed, several of the proposed structures require a building height Variance, subject to review and approval by the County pursuant to Nevada County LUDC Section L-II 5.7.

Mitigation Measure 4.1-2 would reduce the significant impact by requiring more dense plantings along the project frontages to screen project structures to the maximum extent feasible. However, given the proposed heights of the structures and the permanent alteration of the views, the impact would remain significant and unavoidable.

The EIR also found (Impact 4.1-4) that cumulative buildout in the geographic area would result in a change in the visual character of the region, which would be considered a significant cumulative impact. As discussed under Impact 4.1-2 above, the proposed project would substantially degrade the character of the Centennial and Brunswick Industrial Sites, though they are zoned for industrial development and there are surrounding industrial land uses in the vicinity of the project sites. Therefore, the project's incremental

contribution to the significant cumulative impact would be cumulatively considerable and significant and unavoidable.

Air Quality, Greenhouse Gas Emissions:

The EIR determined that a less-than-significant impact would occur related to resulting in emissions (such as those leading to odors) adversely affecting a substantial number of people. The EIR also determined that a less-than-significant impact would occur related to inefficient or wasteful use of energy and conflicts with a state or local plan for renewable energy or energy efficiency. In addition, with the exception of greenhouse gas emissions, all cumulative impacts were determined to be less than significant or less than cumulatively considerable.

The EIR determined that implementation of the proposed project could result in a conflict with implementation of the applicable air quality plan through generation of construction and operational criteria pollutant emissions that would exceed the Northern Sierra Air Quality Management District's (NSAQMD) applicable thresholds. In addition, the project could result in emissions of asbestos dust related to on-site ground disturbing activities having the potential to expose receptors to substantial concentrations of asbestos. With respect to greenhouse gas (GHG) emissions, the proposed project could result in a significant impact during the construction period. However, the EIR requires mitigation in order to ensure that the aforementioned impacts are reduced to less-than-significant levels.

Mitigation Measure 4.3-1(a-b) includes the use of mitigation measures from the Northern Sierra Air Quality Management District and requires the submittal of a Construction Exhaust Emissions Minimization Plan to Nevada County or its designated representative for review and approval.

Mitigation Measure 4.3-2 would require the submittal of an Asbestos Dust Mitigation Plan (ADMP) to Northern Sierra Air Quality Management District (NSAQMD) for review and approval.

This plan must be approved by the Northern Sierra Air Quality Management District before commencement of clearing or grubbing. The ADMP has minimum requirements as described in the mitigation measure, regulated by the Asbestos ATCM for Construction, Grading, Quarrying and Surface Mining Operations [17 CCR 93105]). Notably, compliance with the CARB ATCMs for naturally occurring asbestos, including development of an ADMP, is the standard approach within CEQA documents to address health concerns associated with exposure to asbestos from unpaved surfaces, construction and grading operations and quarries where asbestos is found or likely to be found in order to ensure potential health risk impacts to the public would be minimized to a less than significant impact. Multiple other projects in the NSAQMD jurisdiction, as well as

throughout the state, have relied upon compliance with these naturally occurring asbestos ATCMs in order to control any potential asbestos emissions to the extent possible.

The potential presence of asbestos in underground rock is also being addressed by the project through an Asbestos, Serpentinite, and Ultramafic Rock (ASUR) Management Plan. Prior to underground gold mining, intensive planning efforts will be conducted as required under the ASUR Plan and as required to meet state and federal regulations and achieve safety, environmental, and economic goals. Please see Section 6.0 of the ASUR Plan (Appendix E.2 of the DEIR). Underground mine planning, as required in the ASUR Plan, includes exploratory drilling, geologic mapping, material logging, and testing. These same processes also ensure future mining operations avoid and manage rock types that may contain naturally occurring asbestos to ensure that applicable thresholds are not exceeded. In other words, the mandatory mine planning that is required by the DEIR in the ASUR Plan will provide information to the mine operator on asbestos content of rock prior to mining that area. This is a standard component of modern underground mine planning and was made an explicit requirement of the ASUR Plan, which will be required through a Condition of Approval (A.32 – APM-AQ-3).

Mitigation Measure 4.3-7(a-b) includes specific measures to reduce construction greenhouse gas emissions and implementation of carbon offsets for reducing construction impacts to air quality.

Biological Resources:

The EIR determined that impacts related to interfering substantially with the movement of native resident or migratory wildlife, and conflicts with local policies or ordinances protecting biological resources would be less than significant.

The EIR determined that implementation of the proposed project could result in potential significant adverse effects to special-status plants at both the Centennial and Brunswick Industrial Sites; foothill yellow-legged frog, western pond turtle, California red-legged frog, California black rail, California spotted owl, coast horned lizard, special-status bats, and non-special status raptors and migratory birds at both Sites; and aquatic resources on both Sites that are subject to regulatory agency jurisdiction. However, the EIR requires mitigation in order to ensure that impacts related to the aforementioned biological resources would be reduced to less-than-significant levels.

Mitigation Measure 4.4-1(a-b) would implement measures for the protection of the Pine Hill Flannelbush. Such measures include:

- Seed collection for seed banking and future replacements and recovery efforts;

- Development of a transplantation plan and monitoring plan to include locations for dormant season relocation, site selection for transplanting, and metrics of successful establishment;
- The transplantation of individual Pine Hill flannelbush that fall within the disturbance footprint to another site with similar environmental conditions;
- Transplantation monitoring every month for the first six months, then subsequently, every two months for the first two years;
- habitat enhancement of Pine Hill flannelbush habitat outside of the disturbance footprint; and
- The recording of a conservation easement for the on-site Pine Hill flannelbush avoidance area, or use of a similar land protection mechanism that runs with the land in perpetuity to protect the Pine Hill flannelbush individuals within the disturbance footprint.

Mitigation Measure 4.4-2(a-g) includes measures such as preconstruction surveys, avoidance, and minimization techniques to reduce impacts to Foothill yellow-legged frog, western pond turtle, California red-legged frog, California back rail, coast horned lizard, special-status bats, California spotted owl, and nesting birds.

Mitigation Measure 4.4-3(a-c) includes the implementation of the Watercourse/Wetlands/Riparian Areas Management Plan, coordination with the U.S. Army Corps of Engineers, and avoidance of waters of the U.S. or jurisdictional waters of the State of California.

Cultural and Tribal Cultural Resources:

The EIR determined that impacts related to disturbing human remains would be less than significant. In addition, all cumulative impacts were determined to be less than significant.

The EIR determined that, at both Sites, implementation of the proposed project could result in a significant impact to unknown archaeological resources and Tribal Cultural Resources, as defined in Public Resources Code, Section 21074. In addition, the EIR determined that the project would have a significant adverse effect on the underground workings of the Idaho-Maryland Mine. However, the EIR requires mitigation in order to ensure that impacts related to cultural resources would be less than significant.

Mitigation Measure 4.5-1(a-b) requires the project applicant share all historical documentation of the Idaho-Maryland Mine Company in their possession with the public through one of the following libraries: the California State Library, the California Geology and Mining Library, or the Searls Library. The project applicant shall also retain a qualified historian meeting the Secretary of the Interior’s standards, to perform a historical study of the underground mine workings in the areas deemed safe by a certified mining geologist.

Mitigation Measure 4.5-2 establishes the procedures should any cultural resources be discovered during construction or mining activities.

Mitigation Measure 4.5-3 establishes the procedures should any person discover human remains within the project area.

Geology and Soils:

The EIR determined that impacts related to directly or indirectly destroying a unique paleontological resource or unique geologic feature, and loss of availability of mineral resources would be less than significant. In addition, cumulative impacts were determined to be less than significant.

The EIR determined that implementation of the proposed project could result in significant impacts related to the following geology and soils issues at both Sites: soil erosion related to stockpiles, engineered fill slopes, and general site disturbance during construction; presence of undocumented fill; and thin lenses of expansive soils. In addition, within off-site areas at the industrial complex south of Idaho Maryland Road and north of Whispering Pines Lane, near surface geotechnical features need to be closed so as to ensure that collapse would not result during dewatering of the mine.

Significant geology issues specific to the Centennial Industrial Site include the safety concern related to the presence of the South Idaho Shaft.

Significant geology issues specific to the Brunswick Industrial Site include potential seismic hazards at the Brunswick Industrial Site; slope stability associated with temporary steep cut slopes at the new service shaft collar; and an unstable portion of the clay-lined pond dam. The EIR requires mitigation in order to ensure that the aforementioned impacts are reduced to less- than-significant levels.

Mitigation Measure 4.6-1 requires the incorporation of the design recommendations from the Brunswick Industrial Site Geotechnical Report into the Plans.

Mitigation Measure 4.6-2 requires the incorporation of the mitigation measures and the Best Management Practices included in the Management Plans for Steep Slopes and High Erosion Potential for both the Brunswick Industrial Site and the Centennial Site into the final Improvement Plans.

Mitigation Measure 4.6-3(a-c) requires the submittal of a final geotechnical engineering report, a final grading plan, slope stability analysis, and a physical closure evaluation of a number of near mine features.

Mitigation Measure 4.6-4 requires the submittal of a complete sewage disposal design report for review and approval by the Nevada County Environmental Health Department (NCEHD).

Hazards and Hazardous Materials:

The EIR determined that the proposed project would result in a less-than-significant impact related to being located within an airport land use plan and creating a safety hazard or excessive noise for people residing or working in the project area. The EIR also determined that the proposed project would not result in a significant impact related to creating a significant hazard through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment related to the Centennial Industrial Site, given the post-remediation baseline condition.

Potentially significant hazards identified on the Brunswick Industrial Site include elevated arsenic in the southeastern paved area, potential residual petroleum contamination in a few locations, and presence of groundwater monitoring wells of unknown status. However, the EIR requires mitigation in order to ensure that the aforementioned impacts are reduced to less-than-significant levels.

The EIR also determined that the proposed project could have a significant impact related to creating a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials, specifically, the transport, underground storage, and use of explosives at the Brunswick Industrial Site. Upon delivery to the project site, explosives and detonators would be immediately transported underground and placed in separate magazines pursuant to 29 Code of Federal Regulations (CFR) 1926.904, subdivision (b), and 8 CCR 5251, subdivision (a). The explosives and detonators would be moved and stored underground in auxiliary facilities - they would not be stored on the surface. The auxiliary facilities would be located in an area of the underground mine suitable for such storage use, and would consist of wooden, box-type containers equipped with covers or doors, or facilities constructed or mined-out to provide equivalent impact resistance and confinement so as to comply with 30 CFR 57.6161, subdivision (a). The auxiliary facilities will be located in such a way so as to ensure that escape routes are not obstructed, and will be located a safe distance from underground workings, tunneling and construction operations, shafts, electrical wiring, and combustible rubbish, as is required by 29 CFR 1926.904, 30 CFR 57.6161 and 8 CCR 5258.

The Hazardous Material Inventory Statement for Brunswick provides that a maximum of twenty-eight thousand (28,000) pounds of explosives will be stored underground. Rise intends to use approximately 0.93 tons of explosives and approximately two hundred fifty-seven (257) detonators per day to facilitate Rise's mining operations at the Brunswick

Industrial Site. Implementation of the mitigation measures required in the EIR would reduce the impact to a less-than-significant level.

Mitigation Measure 4.7-1(a-d) requires the mine operator to comply with all applicable federal and state regulations governing the transport, underground storage and use of explosives, as well as requiring the mine operator prepare a Risk Assessment, and ensure that the transport of explosives is conducted in a manner consistent with all applicable regulations and guidelines. The mine operator shall also prepare a Hazardous Materials Business Plan to be reviewed and approved by the County.

Mitigation Measure 4.7-2(a-c) establishes the requirements and procedures that shall be followed should the proposed project disturb the mine waste beneath the southeastern paved area within the Brunswick Industrial Site, or if contaminated soil or groundwater is found. In addition, the measure requires the applicant to obtain a well abandonment permit from the NCEHD for any wells that will not be used on the project site.

Hydrology and Water Quality:

The EIR determined that the proposed project would result in a less-than-significant impact related to conflicting with or obstructing implementation of a water quality control plan or sustainable groundwater management plan. In addition, cumulative impacts were determined to be less than significant.

The EIR determined that implementation of the proposed project could result in potential construction and operational impacts related to water quality (e.g., Centennial Industrial Site: engineered fill pad construction; Brunswick Industrial Site: operations within industrial area, underground placement of Cement Paste Backfill, use of clay-lined pond for water treatment process purposes, engineered fill pad construction, treated water discharge in South Fork Wolf Creek). In addition, the proposed project would result in substantial reduction in groundwater supplies; substantial alteration of drainage patterns; and for the Centennial Industrial Site, risk release of pollutants in flood hazard area. However, the EIR requires mitigation in order to ensure that impacts related to hydrology and water quality are reduced to less-than-significant levels.

Mitigation Measure 4.8-1(a-e) requires the project applicant to submit a Notice of Intent to the Central Valley Regional Water Quality Control Board (RWQCB) for coverage under the Limited Threat Discharge permit and Construction General Permit for both sites and prepare a Construction Stormwater Pollution Prevention Plan (C-SWPPP), along with requiring the applicant acquire other necessary entitlements.

Mitigation Measure 4.8-2(a-c) requires the implementation of the Groundwater Monitoring Plan and the Well Mitigation Plan as approved by Nevada County. This measure also

Mitigation Measure 4.10-3 requires the on-site mobile equipment be fitted with broad-band “growler” type back-up warning devices rather than conventional “beeper” devices and requires the preparation of a comprehensive noise monitoring program.

Mitigation Measure 4.10-3 of the DEIR requires ongoing implementation of a comprehensive noise monitoring program using noise monitors around the Brunswick and Centennial Industrial Sites. The monitoring program will be independently verified by a third-party consultant under direct contract with Nevada County. Within 30 days of installation and operation of mine-related equipment at the Brunswick Industrial Site, the County’s third-party noise consultant shall retrieve and evaluate noise monitoring data to evaluate whether mine-related operational noise levels are in compliance with County noise standards at the pre-determined Receptor locations. The results shall be submitted to the Nevada County Planning Department within one week from evaluation of the noise data. If the results indicate that the County noise standards are being exceeded either by individual equipment or processes, or cumulative noise generation of the entire facility, operations shall cease until additional engineering controls can be implemented as needed. Such measures could take the form of noise barriers, installation of sound absorbing materials, use of additional silencers, etc. After implementation of any recommended measures, follow-up noise level data evaluation shall be conducted to demonstrate that the resultant operational noise levels comply with the County noise level standards at nearby sensitive receptors.

Mitigation Measure 4.10-4 requires the project applicant to conduct a project-specific Ground Vibration Monitoring Program.

Transportation:

The EIR determined that impacts related to the following categories would be less than significant: study roadway segments and intersection queues under Existing Plus Approved Projects (EPAP) Plus Project conditions; transit, bicycle, and pedestrian facilities; vehicle miles traveled; and emergency access. Under Cumulative Plus Project conditions, a less-than-cumulatively considerable impact would occur related to study roadway segments.

The EIR determined that implementation of the proposed project would result in a significant impact related to construction traffic, truck turn movements at the Mill site Road/E. Bennett Road project egress (Brunswick Industrial Site), and pavement condition at several locations. However, the EIR requires mitigation in order to ensure that the aforementioned impacts are reduced to a less-than-significant level.

The EIR determined that the proposed project would result in a significant impact at three study intersections under the EPAP Plus Project scenarios, one of which would be

significant and unavoidable even after mitigation (Brunswick Road/SR 174). The EIR also determined that the proposed project would have a cumulatively considerable incremental contribution to two intersections under Cumulative Plus Project scenarios, one of which would be significant and unavoidable even after mitigation (Brunswick Road/SR 174). In addition, the project’s incremental traffic would cause a significant impact at one intersection queue during Cumulative Plus Project scenarios (Brunswick Road/Sutton Way). Mitigation measures are identified and required for the aforementioned cumulative impacts, but it cannot be guaranteed that the measures would reduce the incremental impacts to a less than cumulatively considerable level for the reasons previously described in this report.

Mitigation Measure 4.12-1 requires the applicant to enter into a traffic mitigation agreement with the County and provide the project’s fair share toward needed improvements, as well as requiring the applicant to enter into road maintenance agreements with Nevada County and City of Grass Valley, and other measures to reduces the impacts to transportation.

Mitigation Measure 4.12-6(a-f) requires the submittal of construction signing and traffic control plans to the Nevada County Public Works Department and the City of Grass Valley for review and acceptance.

Mitigation Measure 4.12-8(a-b) requires the payment of the Grass Valley Transportation Impact Fee to the City of Grass Valley.

Mitigation Measure 4.12-10 requires the re-timing of the Brunswick Road/Sutton Way intersection to the satisfaction of the City of Grass Valley.

Public Utilities:

The EIR determined that all impacts related to public services and utilities (e.g., fire, law enforcement, schools, parks, water, sewer, solid waste), including cumulative impacts, would be less than significant. As discussed in the EIR, for public services impacts, the analysis appropriately focuses on an evaluation of whether the project’s demand upon service providers would generate the need to build new facilities or expand existing facilities, the construction of which could cause environmental impacts.

Wildfire:

The EIR determined that the proposed project would result in a less-than-significant impact related to substantially impairing an adopted emergency response plan or emergency evacuation plan, installation or maintenance of wildfire-associated infrastructure which could exacerbate wildfire hazard, and exposing people or structures to significant risks,

including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes. In addition, cumulative impacts were determined to be less than significant.

The EIR determined that implementation of the proposed project would result in a significant impact related to exacerbating wildfire hazards. The EIR requires mitigation in order to ensure that the aforementioned impact is reduced to a less-than-significant level.

Mitigation Measure 4.13-2 requires the submittal of a comprehensive Vegetation Management Plan for the review and approval by the County Fire Marshall’s Office.

PROPOSED ALTERNATIVE 2 ENVIRONMENTAL IMPACTS COMPARED TO THE PROPOSED PROJECT:

Pursuant to CEQA Guidelines Section 15126.6(a), alternatives to the project must be capable of feasibly attaining most of the basic objectives of the project. As discussed previously, the representative for the project applicant respectfully requested the Planning Commission move forward with Alternative 2. The DEIR determined that the proposed project would result in significant environmental impacts to ten (10) CEQA resource categories/topics. This alternative could result in fewer impacts to all resource categories, with the exception of Hazards and Hazardous Materials, which would likely result in similar impacts as the proposed project. This alternative would not result in changes to levels of significance for impact determinations of any resource categories. Significant and Unavoidable Impacts would still be expected to occur under Alternative 2 for the same resources described above.

Aesthetics:

The EIR determined that the placement of substantial engineered fill at the Centennial Industrial Site would result in a significant and unavoidable impact related to the substantial degradation or the visual character or quality of the site and its surroundings. Under Alternative 2, engineered fill generated at the Brunswick Industrial Site would not be placed on the Centennial Industrial Site. Therefore, the significant and unavoidable aesthetic impact created at the Centennial Industrial Site by the proposed project would be eliminated under this Alternative. It is important to note that vegetation and earthmoving would still take place on the Centennial Industrial Site as a result of the separate Centennial Clean-Up Project. Thus, the visual character or quality of the Centennial Industrial Site will change regardless of the proposed project. Overall, this Alternative could be considered to have fewer aesthetic impacts as compared to the proposed project, given it would eliminate the significant and unavoidable aesthetic impact at the Centennial Industrial Site. It is recognized, however, the severity of the significant aesthetic impact at the Brunswick Industrial Site would be increased.

Air Quality, Greenhouse Gas Emissions, and Energy:

Overall initial construction activity would be reduced for this Alternative, given that the Centennial Industrial Site would not need to be prepped in any way. However, given the estimated construction emission levels in the EIR, similar to the proposed project, the Alternative would be expected to generate a significant temporary air quality and GHG construction impact.

While the Centennial Industrial Site would be eliminated under this Alternative, the engineered fill that would have been placed at Centennial would need to be deposited at the Brunswick Industrial Site. In other words, the same level of overall operational activities associated with placement of engineered fill would be expected to occur under this Alternative. Reduced mobile emissions could be generated during this phase, however, due to the elimination of trucking to/from Centennial, as compared to the proposed project. Overall, similar to the proposed project, this Alternative would be expected to have a significant air quality operational impact that could be mitigated to a less-than-significant level and the air quality and GHG impacts associated with this Alternative could be fewer as compared to the proposed project.

Biological Resources:

Given that this Alternative would eliminate the Centennial Industrial Site, the potential adverse effects to all of the aforementioned biological resources would be reduced, though they would still potentially occur at the Brunswick Industrial Site. It is important to note that the project impacts to Pine Hill flannelbush are specific to the Centennial Industrial Site; thus, they would be avoided under this Alternative. The EIR determined that the proposed project would result in approximately 0.033-acre of impact to mapped streams within the Centennial Industrial Site. The impact to mapped streams on the Centennial Industrial Site would be avoided under this Alternative. Overall, the biological resources impacts associated with this Alternative would be fewer when compared to the proposed project.

Cultural and Tribal Cultural Resources:

The potential for impact to Cultural and Tribal Cultural Resources would be eliminated at the Centennial Industrial Site under this Alternative. The EIR determined that the project would have a significant adverse effect on the underground workings of the Idaho-Maryland Mine. However, the EIR requires mitigation in order to ensure that impacts related to cultural resources would be less than significant. The potential impact to the historic underground workings would still occur under this Alternative. Overall, this Alternative could result in reduced impacts to cultural/tribal cultural resources when compared to the proposed project.

Geology, Soils, and Mineral Resources:

Significant geology issues specific to the Centennial Industrial Site include the safety concern related to the presence of the South Idaho Shaft. The above-noted geology and soils impacts at the Centennial Industrial Site would be eliminated under this Alternative. The potential geology and soils impacts that could occur at the Brunswick Industrial Site during construction and operational activities would remain with the Alternative, and some may be increased given the substantial increase in the engineered fill pad that would occur at the Brunswick Industrial Site (e.g., soil erosion). Overall, this Alternative could result in fewer impacts to geology and soils when compared to the proposed project.

Hazards and Hazardous Materials:

The EIR determined that significant hazards/hazardous materials impacts would be limited to the Brunswick Industrial Site. For example, potentially significant hazards identified on the Brunswick Industrial Site include elevated arsenic in the southeastern paved area, potential residual petroleum contamination in a few locations, and presence of groundwater monitoring wells of unknown status. However, the EIR requires mitigation in order to ensure that the aforementioned impacts are reduced to less-than-significant levels.

The EIR also determined that the proposed project could have a significant impact related to transport, underground storage and use of explosives at the Brunswick Industrial Site. With implementation of mitigation in this EIR, the impact would be reduced to a less-than-significant level. The above-noted project-related impacts associated with construction and operational activities at the Brunswick Industrial Site would also occur as part of this Alternative. Overall, given that the EIR found significant hazards/hazardous materials impacts would be limited to the Brunswick Industrial Site, and these same significant impacts would occur under this Alternative, the Alternative would have similar impacts related to hazards/hazardous materials when compared to the proposed project.

Hydrology and Water Quality:

The EIR determined that implementation of the proposed project at the Centennial Industrial Site could result in potential construction and operational impacts related to water quality at the Centennial Industrial Site (e.g., engineered fill pad construction); risk release of pollutants in flood hazard area associated with Wolf Creek; and substantial alteration of drainage patterns. These significant project-related effects would be avoided with implementation of this Alternative.

The project-related significant effects specific to the Brunswick Industrial Site would still occur under this Alternative, including impacts to substantial alteration of drainage patterns and water quality associated with operations within the industrial area, underground

placement of Cement Paste Backfill, use of clay-lined pond for water treatment process purposes, engineered fill pad construction, treated water discharge in South Fork Wolf Creek, and substantial reduction in groundwater supplies due to operation of the mine. Similar to the proposed project, the Alternative would be required to implement mitigation in order to ensure that impacts related to hydrology and water quality are reduced to less-than-significant levels. Overall, this Alternative could result in fewer impacts to hydrology and water quality when compared to the proposed project.

Noise:

One significant project-related impact could be avoided with implementation of this Alternative; this is the impact related to potential use of Jake brakes along the haul route connecting the Brunswick and Centennial Industrial Sites. The EIR determined that the proposed project could result in a substantial increase in ambient noise levels in the vicinity of the project due to haul truck traffic should Jake brakes be used.

While equipment noise associated with placement of engineered fill at the Brunswick Industrial Site would occur for a longer period of time due to the substantial amount of additional fill that would be placed at Brunswick under this Alternative, the EIR determined that equipment-related noise at the nearest sensitive receptors would be in compliance with the County's noise standards. Overall, this Alternative could result in slightly fewer noise impacts when compared to the proposed project.

Transportation and Circulation:

While this Alternative would reduce the amount of truck travel on local roads, the significant intersection impacts identified for the proposed project would remain with implementation of this Alternative. A similar situation exists for the Cumulative Plus Project intersection queue impact at Brunswick Road/Sutton Way. This location is unaffected by project truck traffic, so this significant impact would remain with implementation of this Alternative.

Pavement impacts on Brunswick Road and East Bennett Road would be eliminated with implementation of this Alternative, at least until such time that haul truck traffic commences to the highway when the design height of the Brunswick fill pad is achieved. Implementation of this Alternative would also eliminate the truck turning movements along Whispering Pines Lane into the Centennial Industrial Site driveway; thus, widening along the Centennial Industrial Site's frontage for purposes of facilitating adequate truck turn movements into and out of the Site would not be required for this Alternative. Overall, this Alternative could result in slightly fewer impacts to transportation when compared to the proposed project, though the significant and unavoidable transportation impacts identified for the proposed project would remain.

Wildfire:

While elimination of the Centennial Industrial Site would reduce the overall potential for wildfire hazards to be exacerbated, in comparison to the proposed project, a significant impact, prior to mitigation, would still occur under this Alternative due to operations at the Brunswick Industrial Site. Overall, this Alternative could result in fewer impacts related to exacerbating wildfire hazards when compared to the proposed project.

Please see the attached Planning Commission Staff Report for a more detailed discussion and review of the proposed project impacts and mitigation measures, as well as Chapter 6.0 of the DEIR for a discussion regarding the project alternatives reviewed in the Final EIR.

CONCLUSION AND ENVIRONMENTAL REVIEW PROCESS FOR DISAPPROVED PROJECTS:

Although an EIR was prepared for the proposed project and proposed Alternative 2, a project which is denied or rejected is considered statutorily exempt from analysis and determination of environmental impacts under the CEQA Guidelines Section 15270. As discussed in this Staff Report, the Planning Commission recommended that the Board of Supervisors deny the request for Project approval of the Rezone and Variance. Therefore, should the Board of Supervisors accept the Planning Commission’s recommendation, the project would be disapproved, accordingly exempt pursuant to the CEQA Guidelines, and no further action would be necessary on behalf of the Board of Supervisors to not certify the FEIR, as recommended by the Planning Commission.

ZONING AND GENERAL PLAN CONSISTENCY:

The County may approve a project for a discretionary permit only if it can be demonstrated that the project, as designed and sited, meets the intent of the performance criteria.

The General Plan Guidelines published by the State Office of Planning and Research defines consistency as follows, “An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” The determination that the project is consistent or inconsistent with the Nevada County General Plan policies is ultimately the decision of the Nevada County Board of Supervisors. Furthermore, although some areas of general inconsistency with County policies is noted, the County has the ability to impose additional requirements or conditions of approval on the project, at the time of its approval, to bring a project into more complete conformance with existing policies.

Neither the proposed project nor proposed Alternative 2 are found to be consistent with all of the Goals and Policies that encourage development to be compatible with the existing rural character of the neighborhoods or communities where the development is being proposed while maintaining the rural quality of life and compatibility. Because of this, staff believes that the required findings pursuant to Nevada County Land Use and Development Code, Section L-II 5.5.2.C.1 cannot be made and thus it would appear that the proposed project is inconsistent with the Nevada County General Plan. Specifically, the rezone is found to be inconsistent with Land Use Element Policies 1.1.1; 1.1.2; 1.3.2; 1.4.2 & Mineral Management Element Policy: 17.6.

REZONE (RZN19-0002):

Pursuant to Nevada County Land Use and Development Code Section L-II 5.9 and California Government Code, section 65800 a Rezone is a legislative act and is a discretionary approval of the Nevada County Board of Supervisors following the recommendation of the Nevada County Planning Commission, to determine whether the rezone is in the public interest. As outlined above, the Brunswick Industrial Site is zoned Light Industrial (M1) with Site Performance Combining District (SP) with a corresponding General Plan Land Use Designation of Industrial (IND). In 1994, Ordinance 1853 was adopted which established the SP Combining District on the Brunswick Industrial Site to define development standards for a future industrial park to support light industrial uses including Office and Professional uses, Administrative and Research uses, Employment Center Support uses, Sales Office/Showroom uses, Conference Facilities, and other similar type uses. As proposed, the project would require the approval of a Rezone of the Brunswick Site from M1- SP to M1-ME. (Light Industrial with a Mineral Extraction Combining District). The Centennial Industrial Site is zoned Light Industrial (M1) with a corresponding General Plan Land Use Designation of Industrial (IND).

The Brunswick Industrial Site is zoned M1-SP, and the Centennial Industrial Site is zoned M1. As proposed, the project would require the approval of a Rezone of the Brunswick Site from M1-SP to M1-ME. As outlined in Section L-II 2.5 of the LUDC the M-1 (Light Industrial) District provides areas for the production, repairing, distribution, and warehousing of goods and equipment, along with supporting businesses and services. The M-1 District also permits the following uses: residential, commercial uses including but not limited to fitness centers, restaurants, auto repair, lumberyards, parks as an accessory use for employees, mini-storage, indoor shooting range, and offices, services and retail sales as part of a primary light industrial use. Uses should provide for buffering from adjacent land uses to minimize incompatibility and should have convenient, controlled access to arterial or major collector roads without passing through residential areas.

As outlined in the Nevada County Land Use and Development Code the ME Combining District allows for surface mining and provides public awareness of the potential for

surface mining to occur where adequate information indicates that significant mineral deposits are likely present. This District should be used only on those lands that are within any of the compatible Nevada County General Plan designations and that are not in a residential zone. All uses in the ME Combining District are subject to approval of a Use Permit with a Reclamation Plan. The extraction of minerals by open mining, quarrying, dredging, and related operations on the surface, including comminution, concentration, processing, waste disposal, tailing disposal, and the reclamation thereof shall be conditionally allowed subject to the regulations in Nevada County Land Use and Development Code Section L-II 3.22 – Surface Mining and Permits and Reclamation Plans.

1. The Proposed Amendment Does Not Further the Goals, Objectives, Policies or Implementation Measure of the General Plan.

The core issue is whether the proposed Rezone to add the ME Combining District is consistent with the requirements and findings required under Nevada County Land Use and Development Code Section L-II 5.9.G. The project as proposed does not include a General Plan Amendment and the subject parcels are as they are currently zoned would meet the intent of the existing M1 Light Industrial Zoning District. Although this limited aspect of the project is consistent with the General Plan. Notwithstanding, as set forth in the discussion at page 32 herein entitled, “Inconsistency With General Plan Central Themes and Goals, Objectives and Policies”, there are significant key inconsistencies with the General Plan sufficient to conclude that the first required finding of L-II 5.9.G cannot be made.

2. The Proposed Amendment is Detrimental to the Public Interest, Health, Safety, Convenience or Welfare of the County.

The second finding as required by Nevada County Land Use and Development Code Section L-II 5.9.G is to determine that the proposed Rezone would not be detrimental to the public interest, health, safety, convenience, or welfare of the County. The County has received a significant number of comments and concerns regarding the incompatibility of the proposed use with neighboring residential and commercial properties and how the use would detrimentally impact the public interest, health, safety, convenience, or welfare of the County. In addition, there is extensive evidence concerning noise, traffic, aesthetic, air quality pollution, water impacts to surrounding property owners and the buffer zone with adjacent parcels along with impacts to residents of the City of Grass Valley. In processing of the application, the County expressed concerns over the size and mass of the proposed industrial use and mining operations, which would occur 24 hours a day, seven days a week, including the height of several of the proposed buildings and Headframe which is proposed at a height of one hundred sixty-five (165), where forty-five (45) feet is required by the Light Industrial Zoning District. As proposed it is estimated that a maximum of two

hundred thirty-six (236) one (1)-way truck trips and an average of one hundred fifteen (115) one (1)-way truck trips would daily occur over the course of eighty (80) years. This level of mining and processing activity could also be considered inconsistent with the rural character and quality of life of the surrounding area. While the project site is zoned Light Industrial (M1), there are many types of industrial development. The purpose of the Light-Industrial Zoning Industrial District provides areas for the production, repairing, distribution, and warehousing of goods and equipment, along with supporting businesses and services. Uses should provide for buffering from adjacent land uses to minimize incompatibility and should have convenient, controlled access to arterial or major collector roads without passing through residential areas. While the above ground facilities include adequate setbacks from adjacent land uses, the intensity of the mining operations would exceed those that are compatible with the rural character of the surrounding semi-rural area. Therefore, based on the findings required to be made to Rezone the subject Brunswick Industrial Site to add the ME Combining District would not be consistent with the Light-Industrial Zoning District given the overall intensity of the proposed mining project and it is not Consistent with the General Plan

INCONSISTENCY WITH GENERAL PLAN CENTRAL THEMES AND GOALS, OBJECTIVES AND POLICIES:

Fostering a Rural Quality of Life (General Plan Central Theme 1)

The term “rural quality of life” means different things to different people. The General Plan explains the goals and policies of the Land Use Element “establish a desired land use pattern which balances growth between rural and urban areas. Providing a balance between housing, employment, natural resources, and services is a key element in maintaining the quality of life and unique character of Nevada County.” (Vol. I Page 1-1) In this context the project sites are designated as IND by the General Plan. The nature of the discussion then, must focus on how the proposed project in the IND designated area can be developed while at the same time fostering a rural quality of life as defined in the General Plan.

The Brunswick Industrial Site is surrounded primarily by property zoned Residential Agriculture (RA), with property which is also zoned Single-Family Residential (R-1), thus the balancing of the land use pattern is very important. The overall project site is mostly located within the Grass Valley Community Region, and the southern portion of the Brunswick Industrial Site is within the Rural Region. As shown on the submitted site plans all proposed buildings on the Brunswick Industrial Site would be located within the Grass Valley Community Region. The site entrance, part of the employee parking lot, and engineered fill pad at the Brunswick Industrial Site would be located within the Rural Region. Although development of the engineered fill pad is not proposed as part of the proposed project, the fill pad has been designed to allow potential future development that would be consistent with the project site’s IND General Plan Land Use Designation and

Industrial zoning designations. Portions of this area of the project site have historically been used as lumber storage associated with the former Bohemia Mill on the site. The proposed engineered fill pad would be located approximately fifty (50) feet from the southern property line and one hundred fifty (150) feet from the western property boundary. If any future development of this industrial area is proposed, it would require additional discretionary actions by the County as well as additional CEQA review once a specific development application is submitted. The challenge will be to ensure that any future development is consistent with the General Plan policies related to the Rural Region and provides adequate buffers to maintain quality of life for surrounding uses.

The above ground uses on the Brunswick Industrial Site would be located on areas of the site where prior lumber mill and mining processing occurred. All activities would be within enclosed areas to minimize noise and dust for surrounding uses. The buildings would total approximately 126,000 square feet, but would be separated into smaller buildings, the largest of which would be the process plant at approximately 29,200 square feet. Smaller buildings located throughout the site, create a more rural character than larger buildings. The headframe for the shaft, however, extends to approximately 165 feet in height and the headframe for the service shaft is approximately eighty (80) feet high. A variance has been requested to exceed the forty-five (45)-foot height limit of the Industrial Zone. As proposed these building heights could be considered inconsistent with the rural character and quality of life.

As proposed, the mining operations would occur 24 hours a day, seven days a week. It is estimated that a maximum of two hundred thirty-six (236) one-way truck trips and an average of one hundred fifteen (115) one (1)-way truck trips would occur daily over the course of eighty (80) years. This level of mining and processing activity could also be considered inconsistent with the rural character and quality of life of the surrounding area. While the Site is designated IND and zoned Industrial, there are many types of industrial development. The purpose of the industrial district provides areas for the production, repairing, distribution, and warehousing of goods and equipment, along with supporting businesses and services. Uses should provide for buffering from adjacent land uses to minimize incompatibility and should have convenient, controlled access to arterial or major collector roads without passing through residential areas. While the above ground facilities include adequate setbacks from adjacent land uses, the intensity of the mining operations exceed those that are compatible with the rural character of the surrounding semi-rural area.

The Centennial Industrial Site is surrounded primarily by commercial and industrial land, most of which is within Grass Valley City Limits. This Site is located within the *Community Region*. As with the engineered fill pad of the Brunswick Industrial Site, development on the Centennial engineered fill pad is not proposed as part of the project and will also require discretionary actions and CEQA review when specific development

Regions, balanced growth is encouraged to provide managed housing, community, located for convenience, efficiency and affordability.

The General Plan Land Use Maps delineate specific boundaries for Community Regions. All portions of the County not within a Community Region shall be considered to be in a Rural Region.

The relevant surrounding land use patterns involve those areas surrounding the southern portion of the Brunswick Industrial Site that exists in the Rural Region. This portion of the proposed project would be located adjacent to parcels which contain the Estate (EST) General Plan Land Use Designation and are zoned Residential Agricultural (RA). Brunswick Road, which is adjacent to the proposed project, separates a portion of the proposed project from nearby EST-designated parcels. Brunswick Road serves as a well-traveled Minor Arterial roadway that connects State Route 174, and residents of nearby communities, to various amenities located in northwestern Grass Valley. That route flows northward past the subject Brunswick Industrial Site. Additional EST-designated parcels are also located adjacent to the southern boundary of the project site, several of which themselves abut Brunswick Road. Because the EST designation possesses a “rural character,” agricultural operations and natural resource-related uses are appropriate in this region as outlined by Policy 1.2.4.e of the General Plan Land Use Element. Meanwhile, a smaller portion of the site’s southern portion sits adjacent to parcels categorized as Urban Single-Family Residential (USF). The EST and USF designations are analyzed below:

EST Designation

The EST designation is intended for low-density residential development at a minimum lot size of three (3) acres per dwelling unit in areas which are essentially rural in character but are adjacent to Community boundaries or near Community Regions and therefore are more accessible to shopping, employment, and services (LUE Policy 1.2.4.e). The EST designation thus stands for what can best be described as a “rural-like” way of living that is, in part, premised upon its proximity to amenities within the Community Region. Thus, given the existence of nearby residential development, the proposed engineered fill pad which would be located on the southern portion of the Brunswick Site is enough to render the demarcation line between the Community and Rural Regions broken. In addition, regarding parking, there are automobiles parked at nearby residential uses. Thus, these parked automobiles can represent a rural way of life while the existence of additional parked cars at the project site would antagonize that rural way of life. The quantity of cars to be parked at the employee parking lot, along with the timing of those vehicle trips would further interfere with that demarcation between the Community and Rural Regions. Additionally, compatible natural resource-related uses are acceptable in Rural Regions, such as timber production. While LUE Policy 1.2.4.e includes timber production as an example of a permissible use, the intensity of the mining operations as described above,

exceed those that are compatible with the rural character of the surrounding area, which has transitioned to semi-rural since the original mining operation and subsequent sawmill operation concluded.

USF Designation

Meanwhile, the USF designation is intended for single-family residential uses at densities of up to 4 dwelling units per acre (LUE Policy 1.2.4.c. The proposed project with three hundred twelve (312) employees slated to work at the mine, twenty-four (24) hours a day, seven (7) days a week, would not be consistent with the “open, rural, lifestyle, pastoral character” of the surrounding rural residential development to the south of the project. As a result, the intensity of the mining operations exceed those that are compatible with the low-density residential character of the surrounding area.

Thus, as proposed, the project would not be consistent with General Plan Policy 1.1.2.

General Plan Policy 1.3.2 – Land Use Element

Within the Rural Regions, growth is provided for only those types and densities of development which are consistent with the open, pastoral character which exists in these areas. [...] These uses require and support lower levels of service and through low density and intensity of use and provide mutual benefits for the maintenance of a rural character and preservation of natural resources.

As proposed, the mining operations would occur 24 hours a day, seven days a week. It is estimated that a maximum of 236 one-way truck trips and an average of 115 one-way truck trips would occur over 80 years. This level of mining and processing activity could be considered inconsistent with the rural character and quality of life of the surrounding Rural Region. Land uses in Rural Regions should provide for buffering from adjacent land uses to minimize incompatibility and should support lower levels of service and through low density and intensity of use. Although the above ground facilities include the required minimum setbacks from adjacent land uses, the intensity of the mining operations is incompatible with the rural character of the surrounding area and are inconsistent with the open, pastoral character of Rural Regions and would therefore be inconsistent with General Plan Policy 1.3.2.

General Plan Policy 1.4.2 - Land Use Element

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 Western Nevada County Design Guidelines are applicable to all Development Permits and Use Permits for all public, commercial, industrial, and multi-family projects in Western Nevada County. The proposed structures on the Brunswick Industrial Site have been conceptually designed to generally comply with the standards set forth in the Western Nevada County Design Guidelines. For example, the campus is comprised of buildings of various scales and massing. In addition, the primary parking lot has been setback from the building and is separated by landscaping. The office is the first building one approaches from the parking lot, whereas heavier uses and loading bays face the interior of the campus. The warehouse and office buildings are the most prominent when entering the campus from the parking lot and each has a contrasting wainscot and lowered roof structures with stone clad columns that are intended to reduce the building to a human scale. Included is recommended Condition of Approval A.20 to break up the rear elevations of the processing plant to conform to the Western Nevada County Design Guidelines. Condition of Approval A.19 is also recommend ensuring that the colors are earth tone and Mitigation Measure 4.1-2C, is recommended to require the submission of a final Landscaping Plan along with standard Condition of Approval A.16 being recommended to ensure that lighting complies with International Dark Sky Association standards.

However, as proposed the applicant’s request for a Variance to increase building heights (to a maximum of 165 feet for the head frame building) where forty-five (45) feet is required and the intensity of the mining and industrial use, is inconsistent with rural character of the area as outlined in the Central Theme 1 discussion above and would therefore be inconsistent with General Plan Policy 1.4.2.

*General Plan Policy 17.6 – Mineral Management Element
Encourage extraction of mineral resources in compatible areas prior to intensified urbanization or conversion to other incompatible land use development.*

The project as proposed would be a gold mining operation on a site previously used for gold mining, and on sites zoned for industrial use, which is consistent with the policy. The mining operations would occur twenty-four (24) hours a day, seven (7) days a week. It is estimated that a maximum of two hundred thirty-six (236) one-way truck trips and an average of one hundred fifteen (115) one-way truck trips would occur over eighty (80) years. This level of mining and processing activity could also be considered inconsistent with the rural character and quality of life of the surrounding area. While the above ground facilities include adequate setbacks from adjacent land uses, and as noted in the discussion outlined the Central Theme 1 discussion above and based on Policy 1.1.2 of the General Plan, the intensity of the mining operations exceed those that are compatible with the rural character of the surrounding area, which has transitioned to semi-rural since the original

mining operation concluded. Therefore, the proposed project is not consistent with Policy 17.6 of the Mineral Management Element currently.

VARIANCE (VAR19-0003)

Pursuant to Nevada County Land Use a Development Code, Section L-II 2.5, a Variance to the Building Height Limits has been requested to allow for the construction of Headframes at eighty (80) and one hundred sixty-five (165) feet in height, two hoist buildings at fifty (50) feet, and a processing plant at 64 feet, where 45 feet is the maximum allowed height, pursuant to the Light Industrial Zoning District (Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E). As outlined in Nevada County Land Use and Development Code, Section L-II 5.7 a Variance is a departure from any provision of the Code for a specific parcel, except use, without changing the zoning of the parcel. A Variance may only be granted upon demonstration of a hardship based on the peculiarity of the property in relation to other properties in the same zoning district. A Variance is required does not change the zoning designation of parcel and a finding of consistency with the General Plan is required to approve a Variance.

The proposed project and proposed Alternative 2 include building heights of up to 165 feet, and thus does not comply with the M1 building height standards. Therefore, the applicant has requested a Variance. Specifically, the Variance would apply to the proposed one hundred sixty-five (165)-foot-tall headframe for the Brunswick shaft and the proposed 80-foot-tall headframe for the proposed service shaft as the project applicant respectfully committed to reducing the building height, aside from the headframes to forty-five (45) feet or less and requested the Planning Commission impose a Condition of Approval to that end. The proposed headframe would extend above the top of the existing forest canopy and project into the skyline. The Brunswick headframe is the tallest structure on the site and has a facade that is distinct from the rest. The vertical structure would be clad with a weathered copper, perforated at the top, to blur the lines between the structure and the sky.

As discussed throughout this Staff Report, the project as proposed would require the approval of several entitlements including a Rezone to remove the existing SP Combining District and to add the ME Combining District, along with the approval of a Use Permit with a Reclamation Plan to allow for the approval of the proposed project. In processing of the application, the County expressed concerns over the size and mass of the proposed industrial use and mining operations, which would occur twenty-four (24) hours a day, seven (7) days a week, including the height of several of the proposed buildings and the Headframe building. This level of mining and processing activity could also be considered inconsistent with the rural character and quality of life of the surrounding area. While the project site is designated as IND on the General Plan Land Use Map and zoned Industrial, there are many types of industrial development. The purpose of the Industrial District provides areas for the production, repairing, distribution, and warehousing of goods and

equipment, along with supporting businesses and services. Uses should provide for buffering from adjacent land uses to minimize incompatibility and should have convenient, controlled access to arterial or major collector roads without passing through residential areas. While the above ground facilities include adequate setbacks from adjacent land uses, the intensity of the mining operations exceed those that are compatible with the rural character of the surrounding semi-rural area.

Subsequently in the preparation of the proposed specific EIR, the EIR identified significant and unavoidable impacts to aesthetics, noise and traffic, with impacts related to aesthetics, outlined in the EIR that the proposed project would result in noticeable changes to the existing visual character of the project site, as viewed from public vantage points in the project vicinity due to the height of the proposed buildings. Landscape trees would be planted to mitigate impacts at strategic locations to partially screen the Project elements when the trees reach maturity, however, the proposed structures and engineered fill pads are substantial in height and vegetation screening would not be sufficient to prevent a substantial degradation in visual character or quality of the sites and their surroundings when viewed from public locations (Condition of Approval A.18 (MM 4.1-2)).

Landscape plans have been prepared for the Brunswick Industrial Site by a licensed landscape architect. In general, screening trees are proposed in breaks in existing tree canopy along Brunswick Road and south of the intersection of East Bennett Road and Brunswick Road. In general, the proposed trees are anticipated to reach full maturity in approximately thirty (30) years. The plant schedule identifies a range of tree species (fifteen (15)-gallon) to be planted in varying quantities. In addition to plantings along Brunswick Road and its intersection with East Bennett Road, landscaping is proposed along the southernmost buildings, and within the southerly parking lot, of the Brunswick Industrial Site. Parking lot landscaping would meet County spacing and coverage standards.

The County's Variance application outlines these findings and allows the applicant to provide justification for their requested deviation from the County's code requirements. As provided in the project application, the applicant's Variance Justification is citing that the project site is limited by development standards, mineral resources being located on the project site, the use of the project as a modern gold mine, and limitations placed on other similarly zoned M1-ME Zoned Parcels. Further, the applicant is requesting the variance as a result of the fact that the County's Development Standards do not align with other similarly zoned parcels along with the historic use of the subject project site which previously contained a 135-foot-tall headframe building, which stood atop of the existing 85-foot concrete silo located at the Brunswick Industrial Site.

According to Land Use and Development Code Section L-II 5.7, the purpose of a Variance is to provide a procedure to allow variation from the strict application of provisions of the

Zoning Ordinance where special circumstances pertaining to the physical character of the site are such that the literal enforcement of the requirements deprives the property privileges enjoyed by other property in the vicinity and under identical zoning classifications. To approve a variance, specific findings are required as set forth in Government Code Section 65906. These findings are as follows:

1. The variance, if granted, does not constitute the granting of a special privilege inconsistent with the limitations placed on other properties in the vicinity and in the same zoning district in which the subject property is located; and,
2. There are special circumstances applicable to the subject property including size, shape, topography, location or surroundings and because of these circumstances, the strict application of the provisions of this Chapter would deprive the subject property of privileges enjoyed by other properties in the vicinity and in the same zoning classification; and,
3. The variance does not authorize a use not otherwise authorized by the zoning district in which the property is located, and,
4. The granting of the variance does not, under circumstances and conditions applied in the particular case, adversely affect the public health, safety, or welfare, the integrity and character of the District, nor the utility and value of nearby property; and,
5. The variance is consistent with the Nevada County General Plan; and,
6. The variance is the minimum departure from the requirements of this ordinance necessary to grant relief to the applicant.

In reviewing the submitted Variance Justification findings submitted by the applicant, it could be argued that the Variance proposed to allow for the construction of buildings over the required forty-five (45)-foot height limit as allowed by the Light Industrial Zoning District is based on the proposed use of the project site as a gold mine and is not based on the limitations of the physical characteristics of the subject Brunswick Industrial Site parcels. As outlined in Nevada County Land Use and Development Code, Section L-II 5.7 a Variance is a departure from any provision of the Code for a specific parcel, except use, without changing the zoning of the parcel. A Variance may only be granted upon demonstration of a hardship based on the peculiarity of the property in relation to other properties in the same zoning district.

The applicant asserts that the mineral resources of the project site are unique and are of quality, quantity, accessibility in close proximity to processing facilities to allow for a feasible mining operation; and the surrounding properties with the same Zoning District would need to use the same general height of a headframe and other facilities that are taller than the forty-five (45)-foot height limit to operate a modern gold mine. The applicant, however, has failed to demonstrate that there are special circumstances applicable to the subject property including size, shape, topography, location or surroundings, and because of these circumstances, the strict application of the provisions of the Nevada County Land Use and Development Code would deprive the subject property of privileges enjoyed by other properties in the vicinity and in the same zoning classification.

Furthermore, the applicant also presented evidence of previously approved variances for over height structures, including a Senior Housing Facility (Lone Oak Apartments), which allowed for a Senior Housing Apartment building to be constructed a height of 38-feet 10 3/8-inches where 35 feet or 3-stories is allowed within the R3 Zoning District. In the applicant's presentation to the Planning Commission, Applicant stated the approval of the Lone Oak Apartments variance was based on justification that the subject parcel was flat. However, upon review of the staff report for the Lone Oak Apartments, it is clear that staff made its findings for approval of the variance based on that site's setback and development standard limitations; plus, the proposed overall height of the building included built in exterior ladders within an enclosed stairwell to provide roof access for the Penn Valley Fire District. The stair well projected an additional approximately four (4) feet above the proposed roof line and was designed to blend into the overall architectural theme of the proposed apartment building. In addition, the Penn Vally Fire Protection District had commented on the proposed project and indicated that the addition of the attached ladder and stairwell are a reasonable compromise to the purchase of a "very expensive" aerial ladder device and that the stairwell seemed to be the best path forward. In addition, the staff report included that the project site was one of the sites identified and rezoned to accommodate the County's shortfall of high-density residential zoned property. Subsequently, the project site had a minimum density assigned to it and is required to be developed at this density to maximize the number of high-density units as required by the State Mandated Housing Element Rezone Implementation project. To remain feasible from a cost perspective, the Variance is required to allow the Penn Valley Fire District to serve the project safely. The stairwell tower has been incorporated into the overall design utilizing the same materials and colors to seamlessly blend into the overall design them. It is located at the rear of the building and is the minimum size necessary to accommodate safe access to the roof.

As to this project, the Applicant has not been able to demonstrate the special circumstances applicable to this site and the over height structure. On the contrary, Applicant's Lone Oak Apartments example underscores where the justification to issue a variance is supported and how there is no such justification to issue a variance here.

Thus, based on the above discussion and on the applicant’s submitted variance justification the required findings to approve the proposed height exception to the forty-five (45)-foot height limitations of the Light-Industrial Zoning District as required by Nevada County Land Use and Development Code, Section L-II 5.7 cannot be made.

In addition, while the County has approved structures which are taller than the Base Zoning District in which they are located such as a Communication Tower; pursuant to Nevada County Land Use and Development Code Section L-II 3.8.F.2, Communication Towers are not subject to the maximum building height established within each zoning district. Furthermore, no tower shall exceed 150 feet in a residential district.

PLANNING COMMISSION ACTION:

The Planning Commission considered the proposed project at its’ May 10-11, 2023 Special Meeting. At this hearing, Staff provided a comprehensive overview of the proposed project including a detailed discussion of the EIR, and the basis for staff’s recommendation to the Planning Commission, as a recommendation to the Board of Supervisors in the form of Recommendation A and Recommendation B.

Following presentations by Staff and the project applicant’s team, the Planning Commission opened public comment to hear public testimony on the proposed project. In summary, the members of the public had concerns regarding the following summarized topics:

- Inconsistency with the Nevada County General Plan
- Inadequate environmental review
- Groundwater and surface water pollution
- Groundwater availability and sustainability
- Domestic well operations in the project vicinity
- Inadequate mine waste disposal
- Greenhouse gas emissions impacts and air quality
- Airborne asbestos impacts
- Cleanup procedures and requirements for the Centennial Industrial Site
- Electricity and energy generation
- Groundwater monitoring and baseline establishment
- Financial assurance requirements
- Biological resource impacts
- Inadequate mitigation monitoring and reporting program
- Impacts to surrounding property values
- Traffic impacts and vehicular safety

- Effect of mining operations on local economic development
- Impacts to special status species
- Inadequate review of economic impacts
- Hazardous and toxic materials
- Visual impacts
- Inadequate review of cumulative impacts
- Public and community health impacts
- Economic impacts and job development

Following public comment to hear public testimony on the proposed project, the Planning Commission had concerns regarding the following summarized topics:

- Hydrologic modeling and impacts to surrounding wells
- Inadequate groundwater monitoring
- Inadequate financial assurances
- Enforcement of mitigation measures and conditions of approval
- Environmental review process for the Centennial Industrial Site cleanup
- Seismic hazards and development nearby fault zones
- Community benefits in the proposed Development Agreement
- Stormwater detention system size and capacity
- Hazardous material quantity, use, and storage

As discussed previously, the representative for the project applicant committed to reducing the building height, aside from the headframes to 45 feet or less, and requested the Planning Commission impose a Condition of Approval to that end. The Planning Commission recommended no action be taken on the Use Permit, and no additional conditions of approval were proposed. The representative for the project applicant also contested that no Variance should be required, and a Use Permit may be another acceptable entitlement pathway to allow for the proposed headframes. The Planning Commission recommended the Board of Supervisors deny the Variance, recommended no action be taken on the Use Permit, and did not address the most appropriate entitlement pathway to permit the proposed headframes.

Pursuant to a) hearing public testimony and providing the opportunity for presentations by staff and the applicant, b) providing the concurrent opportunity for responses to comments by the applicant based on public testimony and the Planning Commission comments; and c) deliberations on the project, the Planning Commission, in considering the entire record before them, voted 5-0 and recommended that the Board of Supervisors deny the proposed project by taking the following actions: 1.) Not certify the Final environmental Impact Report (EIR 19-0001, SCH# 2020070378) as adequate for the Idaho-Maryland Mine Project including not adopting the California Environmental Quality

Act Findings of Fact and not adopting a Statement of Overriding Considerations. 2.) Adopt a Resolution to deny the Rezone (RZN19-0002) for the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light-Industrial with Mineral Extraction Combining District (M1-ME). 3.) Adopt a Resolution to deny the Variance (VAR19-0003) for the construction of several structures up to a height of 165 feet, where 45 feet is required, pursuant to Nevada County Land Use and Development Code, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E). 4.) Take no action on the following project entitlements: Development Agreement (MIS22-0019), Use Permit with a Reclamation Plan (CUP19-0004); Management Plans (MGT MGT19-0039, MGT19-0040, MGT20-0009, MGT20-0010, MGT20-0011), Boundary Line Adjustment (LLA20-0006), Parcel Map Amendment (AAM21-0002).

SUMMARY:

As proposed, the Idaho-Maryland Mine, Rise Grass Valley project represents a large and unique project for Nevada County. According to the applicant, the Idaho-Maryland Mine encompasses an extensive system of approximately seventy-three (73) miles of underground tunnels, many raises, four inclined shafts, and two vertical shafts. The historic mining operation had extensive surface infrastructure adjacent to the Centennial Industrial Site and at the Brunswick Industrial Site, most of which has been dismantled and removed. The applicant, Rise Grass Valley, Inc., has proposed a project for underground mining and gold mineralization processing for the Idaho-Maryland Mine over an eighty (80)-year permit period with gold mineralization processing and underground exploration / mining proposed to operate twenty-four (24) hours a day, seven (7) days a week during full operations. Following completion of mining and processing activities, the project sites would be reclaimed to open space and industrial uses. The proposed project's surface components would be located within unincorporated western Nevada County on approximately 175.64 acres, consisting of the Brunswick Industrial Site, the Centennial Industrial Site⁵, and an approximately 0.30-acre portion of East Bennett Road for off-site improvements associated with a potable water pipeline easement. The proposed project would also involve underground mining within a defined portion of an applicant's claimed approximately 2,585-acre mineral rights boundary. As analyzed in the Draft EIR, however, underground mining would not occur within the entire area of mineral rights and would be limited to an approximately 1,415-acre portion of the underground mineral rights boundary.

The requested project approvals from the County of Nevada include: Certification of the EIR subject to the adoption of the recommended Mitigation Measures found in the Mitigation Monitoring and Reporting Program (EIR19-0001), Rezone (RZN19-0002), Use Permit with a Reclamation Plan and Financial Assurance Cost Estimate (CUP19-0004),

⁵ As amended by May 5, 2023 request by the applicant. Please see discussion of proposed Alternative 2 above.

Variance (VAR19-0003), Management Plans (MGT19-0039; MGT19-0040; MGT20-0009; MGT20-0010; MGT20-0011; MGT20-0012; MGT20-0013), Parcel Map Amendment (AAM21-0002), Boundary Line Adjustment (LLA20-0006) and a Development Agreement (MIS22-0019). The proposed project would also require a number of permits and approvals from the City of Grass Valley, and local, state, and federal agencies and organizations.

As discussed at the Planning Commission hearing, and analyzed through Staff Reports, staff believes that the either the proposed project or proposed Alternative 2 would be inconsistent with key General Plan Themes and Goals, Objectives and Policies, including Central Theme 1 of the Nevada County General Plan. Based thereon, the Board of Supervisors conclude that the project as proposed is not consistent with the Themes, Goals, Objectives and Policies of the Nevada County General Plan that encourage development to be compatible with the existing rural character of the neighborhoods or communities where the development is being proposed, while maintain the rural quality of life. Therefore, based on the proposed project’s overall inconsistency with the Nevada County General Plan and Zoning Ordinance, Planning Department staff recommend that the Nevada County Board of Supervisors, after opening the public hearing and taking public testimony, take the project actions described below, which are consistent with and in furtherance of the recommendation made by the Nevada County Planning Commission.

RECOMMENDATION: Consistent with the recommendation of the Nevada County Planning Commission, at its Special Meeting of May 10, 2023, and May 11, 2023, wherein a duly noticed public hearing was held to consider the proposed project; and, after taking public testimony and deliberating on the project, the Nevada County Planning Commission voted unanimously (5-0) to recommend that the Board of Supervisors deny the project. The Board of Supervisors should therefore take the following actions to deny the project:

- I. Environmental Action: Not certify the Final Environmental Impact Report and find the project statutorily exempt pursuant to Section 15270(a) of the California Environmental Quality Act (CEQA) Guidelines because CEQA does not apply to projects which a public agency rejects or disapproves. The Planning Commission recommends that the Board of Supervisors deny the request for Project approval of the Rezone and Variance. Therefore, the project would be disapproved and accordingly exempt.

- II. Project Action: Adopt the attached Resolution to deny the Rezone (RZN19-0002) for the parcels located at the Brunswick Industrial Site from Light-Industrial with Site Performance Combining District (M1-SP) to Light Industrial with Mineral Extraction Combining District (M1-ME), based on the findings contained within the attached Resolution (*Attachment 1*).

- III. Project Action: Adopt the attached Resolution to deny the Variance (VAR19-0003) for the construction of several structures up to a height of 165 feet, where 45 feet is required, pursuant to the Light Industrial Zoning District (Nevada County LUDC, Section L-II 2.5 – Industrial Uses, Table L-II 2.5.E), based on the findings contained within the attached Resolution (*Attachment I*).
- IV. Project Action: Take no action on the following project entitlements: Development Agreement (MIS22-0019)⁶, Use Permit with a Reclamation Plan (CUP19-0004) for uses and facilities over the 80-year permit life consist with the project described in the Environmental Impact Report, Management Plans (MGT19-0039, MGT19-0040, MGT20-0009, MGT20-0010, MGT20-0011, MGT20-0012, MGT20-0013), Boundary Line Adjustment (LLA20-0006), Parcel Map Amendment (AAM21-0002).

Item Initiated by: Kyle Smith, Senior Planner

Approved by: Brian Foss, Planning Director

⁶ The Planning Commission made no recommendation on the Development Agreement.