

**Local Agency Formation Commission (LAFCo)
Agenda for a Regular Meeting**

Thursday, January 16, 2020 ... 9:30 a.m.

Board of Supervisors Chamber – Nevada County Administrative Center
950 Maidu Avenue, Nevada City, CA

The Commission may take action upon any item listed on the agenda at any time during the meeting. Scheduled items will normally be heard at the time noted, but the Commission may interrupt or defer discussion in order to deal with other matters.

Agenda materials submitted for the Commission’s attention at least 72 hours before the meeting are available for review at the LAFCo office and are posted online, accessible via link from the LAFCo website: <https://www.mynevadacounty.com/907/Local-Agency-Formation-Commission-LAFCo>

Members of the Commission may participate in the meeting by video teleconference from the following remote site: District 5 Supervisors Conference Room, east (left) of the Nevada County Sheriff’s Substation, 10897 A Donner Pass Road, Truckee, California. Pursuant to Section 54953 of the Government Code, Commissioners participating at the remote site shall have the same rights to participate as if they were present at the primary meeting site. Members of the public may also attend the meeting at the site specified above and participate in the meeting as if they were at the primary meeting site.

1. Call to Order/Flag Salute/Roll Call

Commissioners

Richard Anderson (County)
Kurt Grundel (Districts), **Chair**
Anna Klovstad (Cities)
Dan Miller (County)
Erin Ruark-Minett (Cities)
Josh Susman (Public)
Nick Wilcox (Districts), **Vice-Chair**

Alternates

Ben Aguilar (Cities)
Ed Beckenbach (Districts)
Sue Hoek (County)
Gloria Glenn (Public)

Staff

SR Jones, Executive Officer
Marsha Burch, Legal Counsel
Deborah Gilcrest, Clerk to the Commission

2. Public Comment

At this time, members of the public may address the Commission on any matter not on the agenda. Testimony related to an item on the agenda should be presented at the time that item is considered.

3. Consent Calendar

These items are expected to be routine and noncontroversial. The Commission will act upon them at one time without discussion. Any Commission member, staff member or interested party may request that an item be removed from the consent calendar for discussion.

3.1. Draft Minutes of November 21, 2019 

4. Business/Action

4.1. Introduce County Counsel Kit Elliot

This will be an opportunity for the Commission to meet newly appointed County Counsel. No action will be taken.

4.2. County Sanitation District, Lake of the Pines Zone: Annexation - Higgins Marketplace

The developer of the Higgins Marketplace shopping center has applied for annexation of four parcels to the County Sanitation District. Annexation will allow the project to be connected to the County Sanitation District's Lake of the Pines wastewater system. Annexation and connection to the District's Lake of the Pines wastewater treatment system is a condition of approval of the project, and the District has indicated it has capacity and willingness to provide service.

5. CALAFCO Matters

CALAFCo Calendar of Events

6. Announcements (Informational Items Only)

Pursuant to Government Code Section 54954.2, Commission and staff members may make brief announcements or report on activities. Commission members may also provide a reference to staff or other resources for factual information, request staff to report back to the Commission at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

7. Executive Officer's Activity Report

Public Comment

Members of the public may address the Commission regarding items not appearing on the agenda, as well as any item that does appear on the agenda, subject to the following restrictions:

- Items not appearing on the agenda must be of interest to the public and within the Commission's subject matter jurisdiction.
- No action shall be taken on items not appearing on the agenda unless otherwise authorized by Government Code Section 54954.2 (known as the Brown Act or California Open Meeting Law)
- The total amount of time allotted for receiving public comment may be limited to 15 minutes.
- Any individual's testimony may be limited to 3 minutes. Time to address the Commission will be allocated on the basis of the number of requests received.

Public Hearings

Members of the public may address the Commission on any item appearing on the agenda as a Public Hearing. The Commission may limit any person's input to three minutes. A person may provide a written statement in lieu of or to supplement any oral statement made during a public hearing.

Accessibility

An interpreter for the hearing-impaired may be made available upon request to the Executive Officer 72 hours before a meeting. The location of this meeting is wheelchair accessible.

Disclosure and Disqualification Requirements

A LAFCo Commissioner must disqualify herself or himself from voting on an application involving an "entitlement for use" (such as an annexation or sphere amendment) if the Commissioner has received, within the last twelve months, \$250 or more in campaign contributions from the applicant, any financially interested person who actively supports or opposes an application, or an agent (such as an attorney, engineer, or planning consultant) representing the applicant or an interested party. The law (Government Code Section 84308) also requires any applicant or other participant in a LAFCo proceeding to disclose the contribution amount and name of the recipient Commissioner on the

*LAFCo Office Located at: 950 Maidu Avenue ... Nevada City, California 95959
Telephone: 530-265-7180 ... Toll Free: 888-846-7180*

official record of the proceeding. This can be done in advance (in writing) or at the beginning of the hearing either orally or in writing.

The law also prohibits an applicant or other participant from making a contribution of \$250 or more to a LAFCO Commissioner while a proceeding is pending or for three months afterward.

Any person or group that contributes or expends \$1,000 or more in support of or in opposition to a proposal before Nevada LAFCo, during either the application and hearing stage or the protest hearing stage, must disclose such contributions and expenditures through the County Elections Office, 950 Maidu Avenue, Nevada City, CA 95959.

**LOCAL AGENCY FORMATION COMMISSION (LAFCo)
OF NEVADA COUNTY**
DRAFT MINUTES
Regular Meeting
November 21, 2019

Commissioners Present:

Richard Anderson (County)
Kurt Grundel (Districts), **Chair**
Anna Klovstad (Cities)
Sue Hoek (County)
Erin Ruark-Minett (Cities)
Gloria Glenn (Public)
Nick Wilcox (Districts), **Vice-Chair**

Commissioners Absent:

Dan Miller (County)
Josh Susman (Public)

Alternates Present:

Ben Aguilar (Cities)
Ed Beckenbach (Districts)

Alternates Absent:

none

Staff:

SR Jones, Executive Officer
P. Scott Browne, Legal Counsel
Deborah Gilcrest, Clerk to the Commission

Call to Order/Flag Salute/Roll Call

Chair Grundel called the meeting to order and lead those present in the Pledge of Allegiance. The Chair asked the Commission Clerk to call roll. Following roll call, the Clerk noted a quorum was present.

Public Comment

Chair Grundel announced this as the time for any members of the public to address the Commission on any matter not on the agenda. Testimony related to an item on the agenda is to be presented at the time designated on the agenda. No comments from the public were received.

Consent Calendar

Chair Grundel announced the items listed on the Consent Calendar; the draft minutes for the September 19, 2019 Commission meeting and the First Quarter Budget Status Report.

MOTION was made by Commissioner Hoek to approve the Consent Calendar. **MOTION** was seconded by Commissioner Anderson, and passed unanimously.

Public Hearings

- **Annexation to City of Grass Valley – Schools & Town Talk Road; and proposed Sphere Amendment to the City of Grass Valley**

The Chair introduced Item 4.1, and asked staff for a report on the proposed annexations to the City of Grass Valley.

SR Jones, the LAFCo Executive Officer, explained that Lyman Gilmore Middle School and the Scotten Elementary School are engaged in an agreement with the City of Grass Valley to allow joint use of school recreational facilities with students and members of the public. The two school properties are located off of West Main Street *outside* the Grass Valley Sphere of Influence; consequently, the City's application includes a request to amend the City's sphere of influence.

Jones explained that the City also proposes to annex a 5,736 square foot section of the abandoned portion of Town Talk Road that has been deeded by the County to River Valley Bank. Annexation of this area is the culmination of a series of actions undertaken by the County to facilitate realignment of Town Talk Road as a traffic safety measure. Jones added that area proposed for annexation was the subject of a land exchange between the County and River Valley Bank resulting in the bank property being brought into the City boundaries.

Jones added that both schools are already connected to city sewer and receive treated water from NID. However, one school property (Scotten Elementary) is not currently within the boundaries of the Nevada Irrigation District, and is therefore recommended for annexation to NID.

Jones noted that the project area is located near a Disadvantaged Unincorporated Community (DUC). Grass Valley staff and LAFCO have plans to re-visit this issue during the process of updating the city's sphere of influence.

Jones recommended adoption of Resolution 19-17, which approves an amendment to the City of Grass Valley Sphere of Influence; and adoption of Resolution 19-18, approving conditions of approval and annexation of the subject territory and a modification adding the Scotten School property to the Nevada Irrigation District.

Chair Grundel opened the public hearing and asked audience members to address the Commission.

Ms. Lois McClaughry of 10443 Cedar Avenue in Grass Valley, addressed the Commission regarding the proposed project. Ms. McClaughry explained her concern that the proposed use will adversely impact her neighborhood. She stated that Cedar Avenue is substandard; currently two cars cannot pass each other safely. Ms. McClaughry explained that the City needs to rethink its plan (to add an overflow parking lot at the end of Cedar Avenue). She encouraged the Commission and Staff to visit the area before approving the annexation.

Ms. Andrea Eads of 10497 Cedar Avenue in Grass Valley, addressed the Commission regarding the proposed annexation. She explained she had received a Notice of Intent from the City of Grass Valley and at that time was made aware of the City's intention to use Prop 68 Park Improvement funds to connect Condon Park, Scotten Elementary and Lyman Gilman Middle School properties for public recreational uses.

Using an aerial view and conceptual layout (borrowed from the Mitigated Negative Declaration, November 8, 2019), Ms. Eads added a marker to indicate where the one acre parking lot is proposed. Access to the parking lot is viewed by Ms. Eads and her neighbors as inadequate, since Cedar Avenue is a narrow, unimproved, dead-end street. Ms. Eads stated that while she is not opposed to the annexation, she is concerned about potential noise and light pollution, lack of a wildfire escape route,

the increased traffic congestion resulting from the project, and security/safety issues in the neighborhood, which could decrease with additional access to Condon Park.

Mr. John Barlebee (Cedar Avenue) addressed the Commission regarding fire danger in the neighborhood. Mr. Barlebee said he has tried several times to work with the schools and the local fire district get them to reduce fuel in the area. He said that while some trees were cut down, the slash has remained creating additional habitat for the bark beetle. Mr. Barlebee's other concern was with regard to the narrowness of Cedar Avenue, adding that an emergency vehicle such as a fire truck or an ambulance, would not be able to get through if there were increased traffic on the road.

Chair Grundel closed the public hearing and asked if staff from City of Grass Valley would address the Commission and the audience on the issues raised.

Mr. Tom Last, Community Development Director for the City of Grass Valley, began by explaining the City Manager and other city staff have been working with local schools to improve recreational opportunities for residents. Mr. Last stated this process began in earnest at the beginning of 2019 around the same time as Prop 68 Funds were made available to cities throughout the state.

Mr. Last explained that some overlap has occurred because the Prop 68 application required the City complete an Initial Study showing plans for all proposed recreational improvements, including traffic circulation and parking accommodations. He summarized the situation as two tracks happening simultaneously, and that review of environmental and other impacts associated with the recreational improvements will require further public hearings. Mr. Last addressed the fire safety concerns by outlining the actions city staff has taken to reduce fuel one lot at a time, educating residents about vegetation management, and implementing an aggressive plan to eliminate undergrowth in and around Condon Park.

Chair Grundel closed the public hearing and asked the commission to present a motion.

MOTION was made by Commissioner Anderson to adopt Resolution 19-17 approving the Sphere Amendment for the City of Grass Valley to allow for annexation of Scotten Elementary School and the Lyman Gilmore Middle School properties. **MOTION** was seconded by Commissioner Minett, and passed unanimously.

MOTION was then made by Commissioner Minett to adopt Resolution 19-18 and approving the annexation of the Grass Valley Schools and a portion of the Town Talk Road Right-of-way to the City of Grass Valley; including a modification of the proposal to annex Scotten School property to the Nevada Irrigation District. **MOTION** was seconded by Commissioner Klovstad, and passed unanimously

- **Annexation to NID on East Bennett**

Chair Grundel introduced Agenda Item 4.2, a proposed annexation to Nevada Irrigation District adding several parcels adjacent to East Bennett Road just to the east of the Grass Valley City Limits. The Chair asked Executive Officer Jones to present a staff report on the issue.

Jones explained that the Nevada Irrigation District has submitted a proposal to annex 25 properties in the vicinity of East Bennett Road and Idaho Maryland Road. The annexation proposal was initiated in response to the request of one of the landowners (Mr. Loren Willman) who receives treated water service from the District as an out-of-agency user. She added that the District has expanded the annexation area to include other adjacent properties pursuant to an annexation program developed in conjunction with its sphere of influence plan. Jones explained that the goal of the District's annexation program in this area is to facilitate annexation of the various 'islands' which were omitted from NID's boundaries when it was established in 1921.

As part of this process, the District sent a letter to all property owners informing them of the District's plans to initiate annexation of the entire area at its own cost. No objections were received.

Clerk's Note: At this point in the meeting, staff and commissioners discovered that the Draft Resolution of approval was accidentally omitted from the packet. Chair Grundel decided to take a break from the agenda, and have NID staff present their power point to the Commission (Item 5.1, below). Shortly thereafter, the draft resolution was forwarded to Counsel by email and distributed to the commissioners.

Discussion ensued with regard to the other "islands" in the vicinity which were not included as part of this annexation proposal.

MOTION to adopt Resolution 19-19 was made by Commissioner Anderson and modified by Counsel's condition that NID proceed with a subsequent annexation of adjacent pre-existing islands of property within six months, if determined to be feasible by LAFCo, **MOTION** was seconded by Commissioner Minett, and passed unanimously.

Following up, Commissioner Hoek asked if this means the annexation presented today is being held up for a six month period. Counsel Browne responded that the subsequent annexation will come back to the Commission at a later date, and the additional wording added to Resolution 19-19 is not intended to hold up the filing of the Certificate of Completion for the proposal approved today.

- **Public Workshop**

Chair Grundel introduced Item 5.1, a workshop presentation developed by NID and asked NID staff to proceed.

Greg Jones, Assistant General Manager of Nevada Irrigation District introduced himself and Rem Scherzinger - the General Manager of NID, and then he introduced Keane Sommers, NID's Hydroelectric Manager. Mr. Jones presented a power point outlining the District's proposal to provide electrical power to portions of Nevada and Placer counties. The full power point, outlining NID's proposal, is attached.

LAFCo's Executive Officer, SR Jones, took this opportunity to introduce Kris Berry, the EO for Placer County. Jones explained that Placer and Nevada LAFCo's have an agreement to cooperate on significant proposals, such as the one being considered presently by NID. She added that the majority of the Nevada Irrigation District properties are in Placer County, and two of Nevada LAFCo commissioners would be appointed to the AdHoc Committee working on the issue.

Business/Action

- **Proposed Higgins Marketplace Project – Information Only**

Chair Grundel introduced Item 5.2, an informational item; and asked the Executive Officer to present her staff report.

SR Jones, Nevada LAFCo Executive Officer, explained that she had received an application for annexation to the County Sanitation District (LOP Zone) from the developers of Higgins Marketplace. The application was submitted by the landowners and was not accompanied by a Resolution of Application adopted by the District. Jones explained that LAFCo law specifies

that when an annexation application is not filed by the affected district, the Executive Officer must place the proposal on the Commission's agenda for informational purposes only. As per Government Code Section 56857, the process is intended to give the district the opportunity to either file a resolution of support or request termination of the proceedings.

Jones added that Nevada County Sanitation District has indicated initial support and will provide a Will Serve letter documenting adequate sewer capacity for the project.

Jones stated the proposed annexation will be scheduled for the Commission's January meeting. Chair Grundel thanked the EO for the informational report, and introduced the next item on the agenda.

- **Personnel Policy Amendment**

Chair Grundel introduced Item 5.3, and reminded the Commission that following the September 19th LAFCo meeting, he had directed staff to prepare an item discussing a proposed amendment of the Commission's Personnel Policies proposing changes to staff's current and future vacation times. The Chair asked staff to present a staff report on the matter.

Jones explained that the Commission's Personnel Policies, as adopted June 11, 2015, provided unequal amounts of paid vacation for support staff. Resolution 19-20 is intended to correct this discrepancy and provide an equal amount of vacation time to each part-time employee. The resolution would also provide four weeks of vacation time per year for full-time employees when their service time exceeds twelve years of service, such as in the case of the current Executive Officer.

MOTION to adopt Resolution 19-20 was made by Commissioner Hoek, to adopt the changes as proposed in the staff report. **MOTION** was seconded by Commissioner Glenn, and passed unanimously.

CALAFCO Matters

- CALAFCO Conference 2019

Commissioner Glenn stated she attended two days of the Conference and found the sessions to be very interesting, especially the innovations in sewer service disposal and increased community involvement in these type of activities.

Commissioner Hoek shared that this was her first conference and she was very glad to have had the opportunity to learn more about LAFCO issues. She added the conversation regarding the dues increase was protracted but also very interesting. Commissioner Hoek said the Fire Museum was her favorite outing and she encouraged others to visit the facility for its outstanding historical displays.

Commissioner Grundel was really looking forward to the tour of the Port Authority which turned out to be a bit of a disappointment. However, he enjoyed the rest of the mobile tour, especially the mayor's outstanding explanation of the history of West Sacramento's incorporation process and re-development of the river corridor over the last 10-20 years.

Commissioner Minett explained this was her second conference, and she enjoyed it very much; particularly the tour of West Sacramento.

Commissioner Wilcox attended the Conference and acknowledged Commissioner Susman for his handling of the sensitive issue of the proposed dues structure. *(Clerk's note: Commissioner Susman is the current Chair of the CALAFCO Board of Directors.)*

Announcements

Chair Grundel asked if there were any announcements from the floor. No announcements were made.

Executive Officer's Activity Report

The Executive Officer stated she had nothing to add to her written report.

Adjournment

Chair Grundel adjourned the meeting at approximately 1:20 p.m. and announced the next LAFCo meeting would be held January 16, 2020.

Exploring the Possibility of Electrical Power Distribution

Nevada County LAFCo Meeting

NOVEMBER 21, 2019



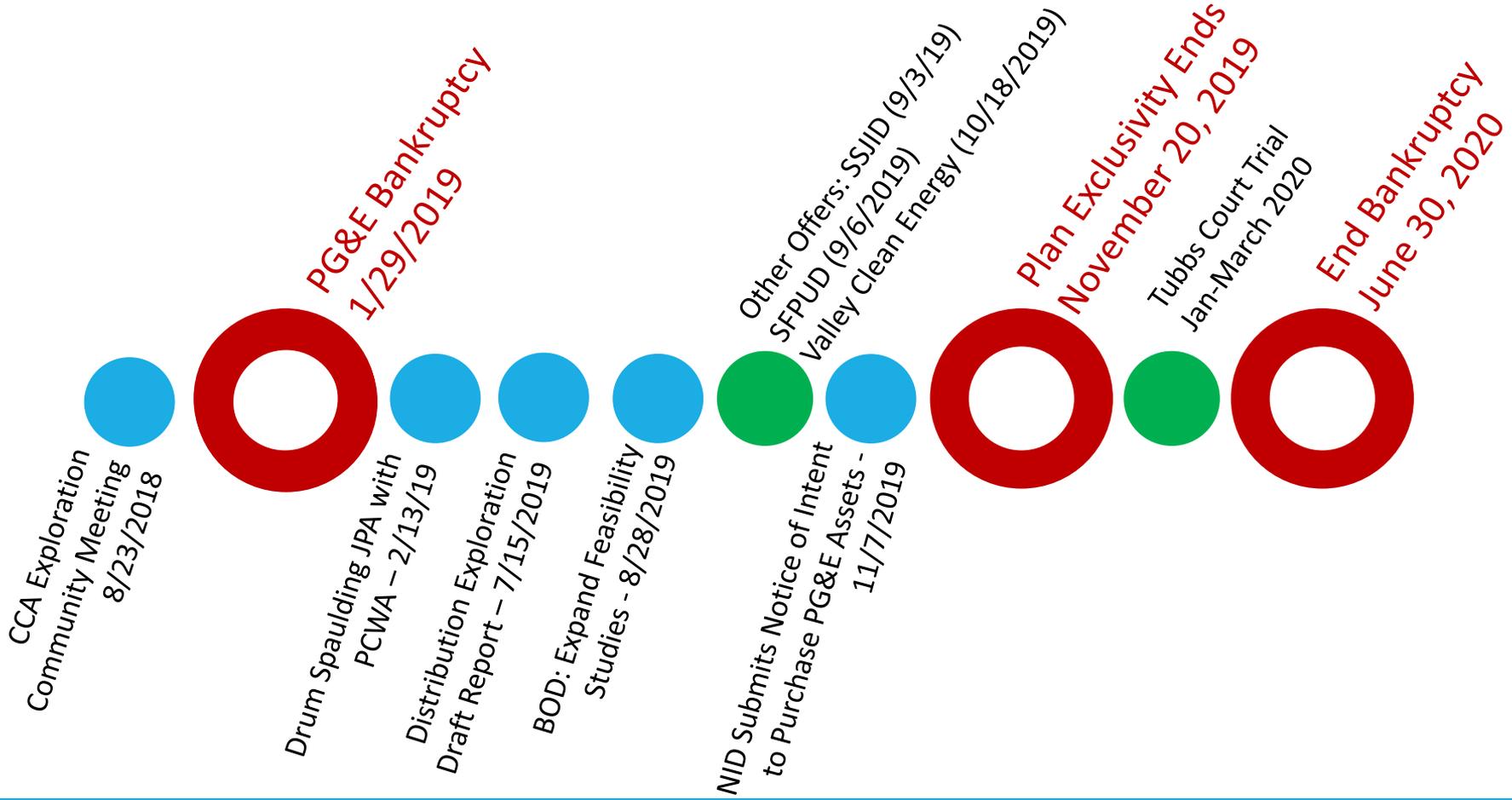
NID

Key Benefits: Local Electric Power Distribution Utility

- ❖ Local representation (and control) of retail policies and practices
- ❖ Access to locally elected policy-makers
 - Improved customer service
 - Increased reliability of service
- ❖ Reduction of utility revenue leakage from local economy
- ❖ Not-for-Profit
- ❖ Investment of utility revenues into local electric system infrastructure
- ❖ Lower Rates on Average

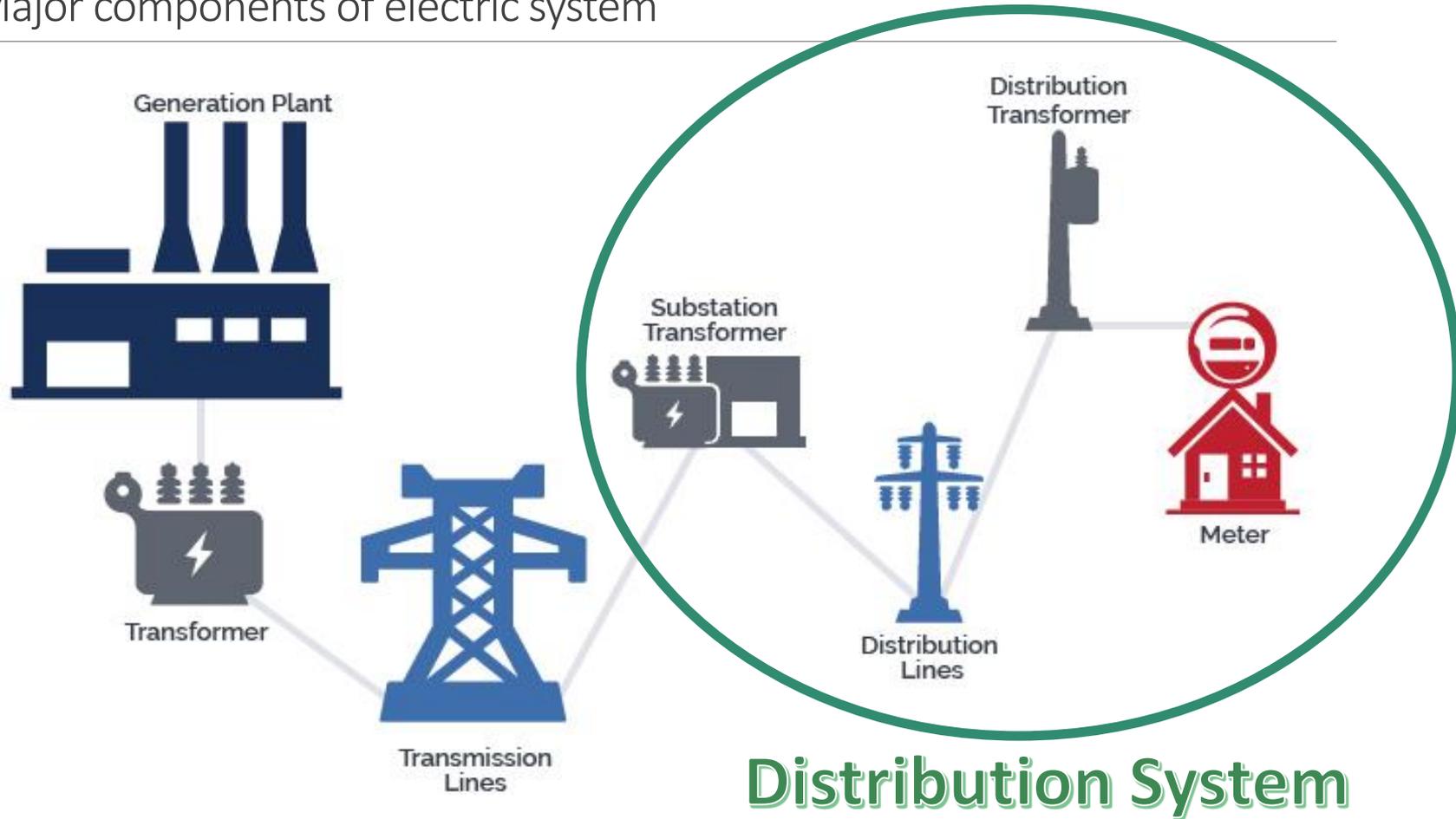
Timeline

NID Exploration of Public Power



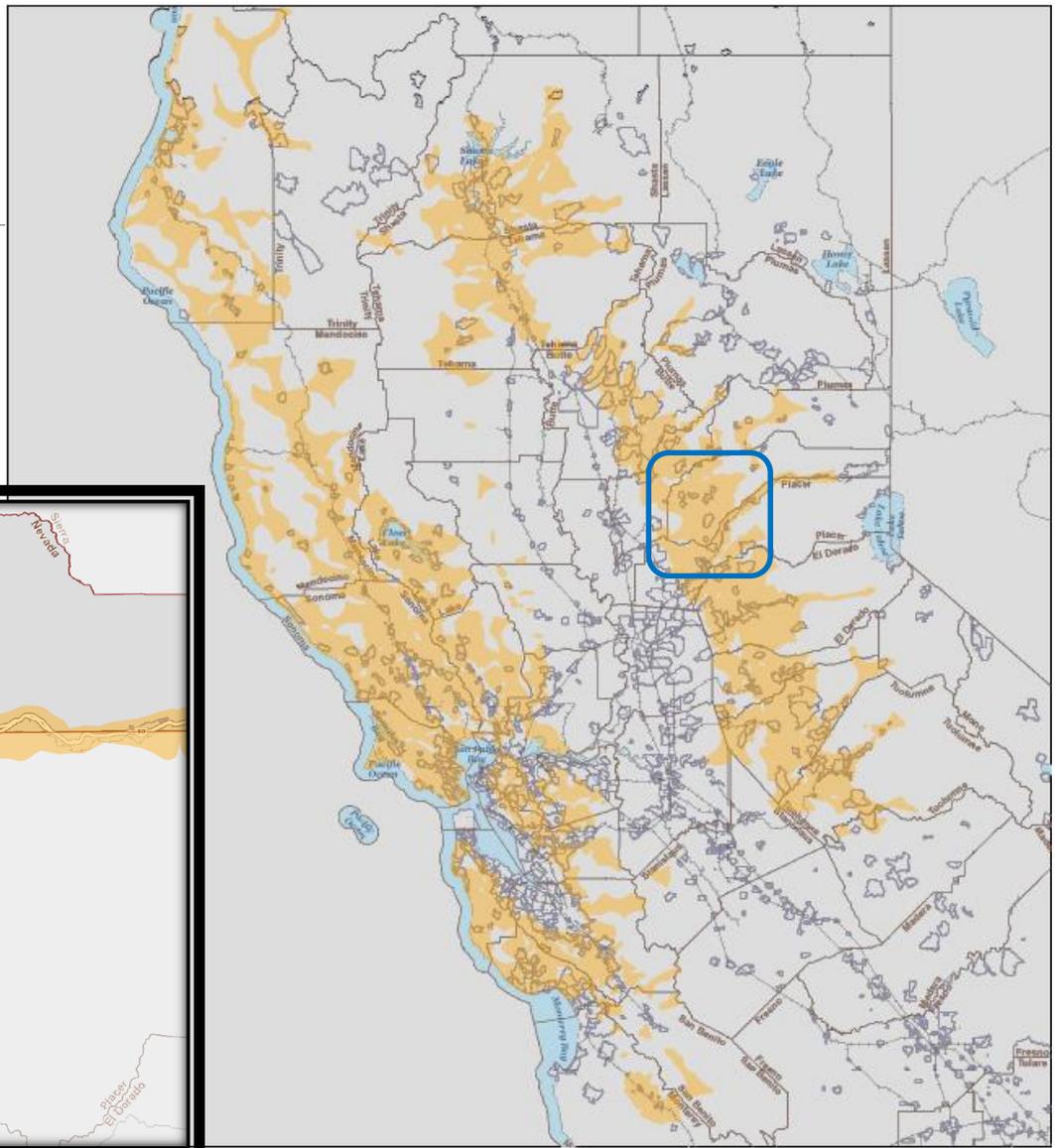
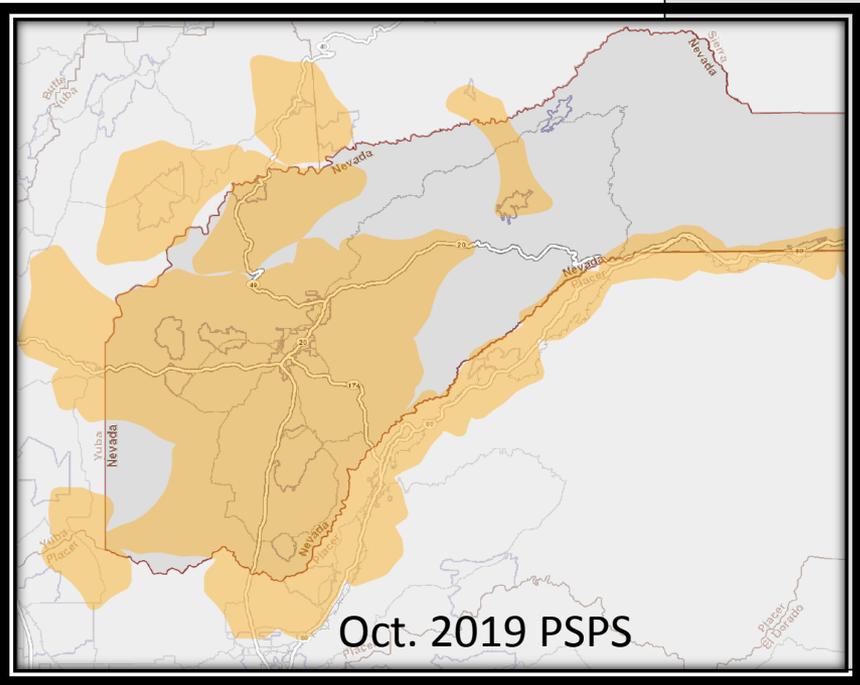
The Grid

Major components of electric system



Recent PSPS

Wholesale power shutoff
Absent local factors



Capital Improvements

Distribution System Smart Node

Function

- Isolation or Shut-off of Localized Service Area Section
- Active Sensor
- Feedback to Substation and Control Center
- Real-time Remote Control (on/off)
- Automatic Protection Controls

Purposes

- Active Protection (falling tree, downed pole, lightning strike, fire)
- Precautionary shut-down (localized meteorological conditions)

Criteria for Placement (in priority rank)

- Terrain Features (vegetation, access, ridges, canyons, etc.)
- Hospital/Critical Care Facilities
- First Responders (Police, Fire)
- Government Facilities
- Schools
- Commercial Centers & Corridors
- Gas Stations & Convenience Stores
- HOAs and Suburban Neighborhoods
- Residential Meter Count

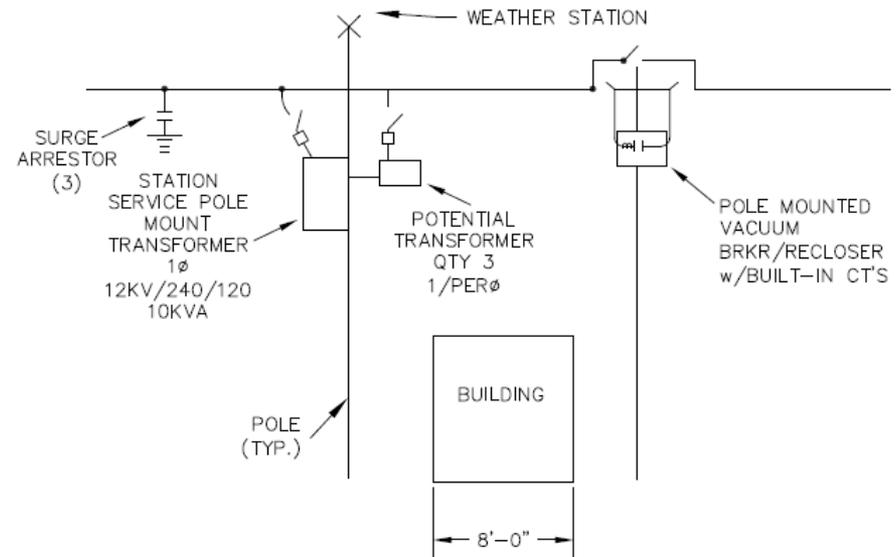
Distribution System Smart Node

Components

- Pole-mounted monitoring and protective systems
- Battery backup
- Fiber-optic lines proposed for communication

Additional benefits of Smart Node System Network

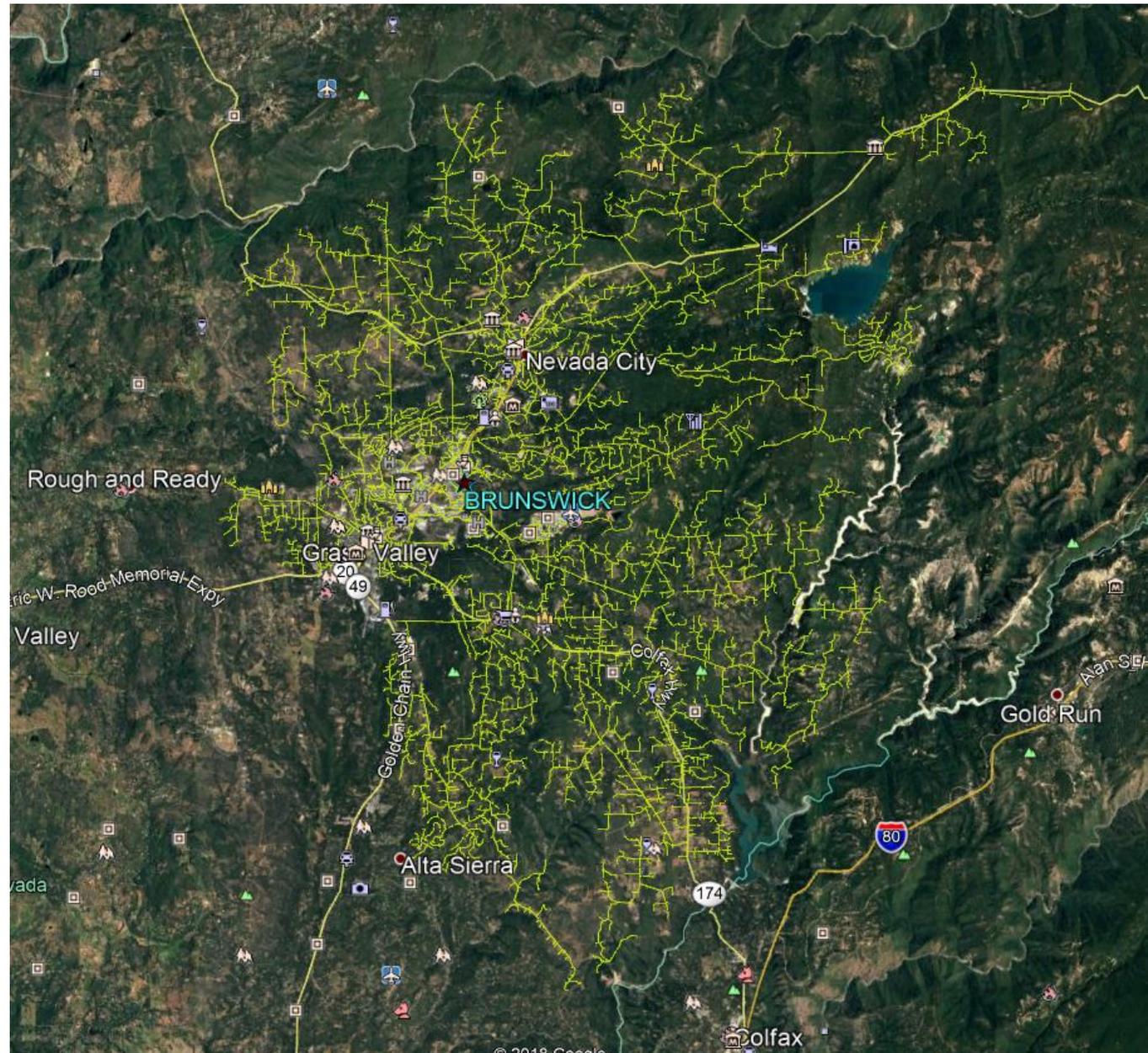
- Faster pin-point response to system faults
- Fewer customers out of service during fault
- Additional capacity on fiber bundle for other data providers (internet, cellular, government communications)



Smart Node Placement Example

Brunswick Substation

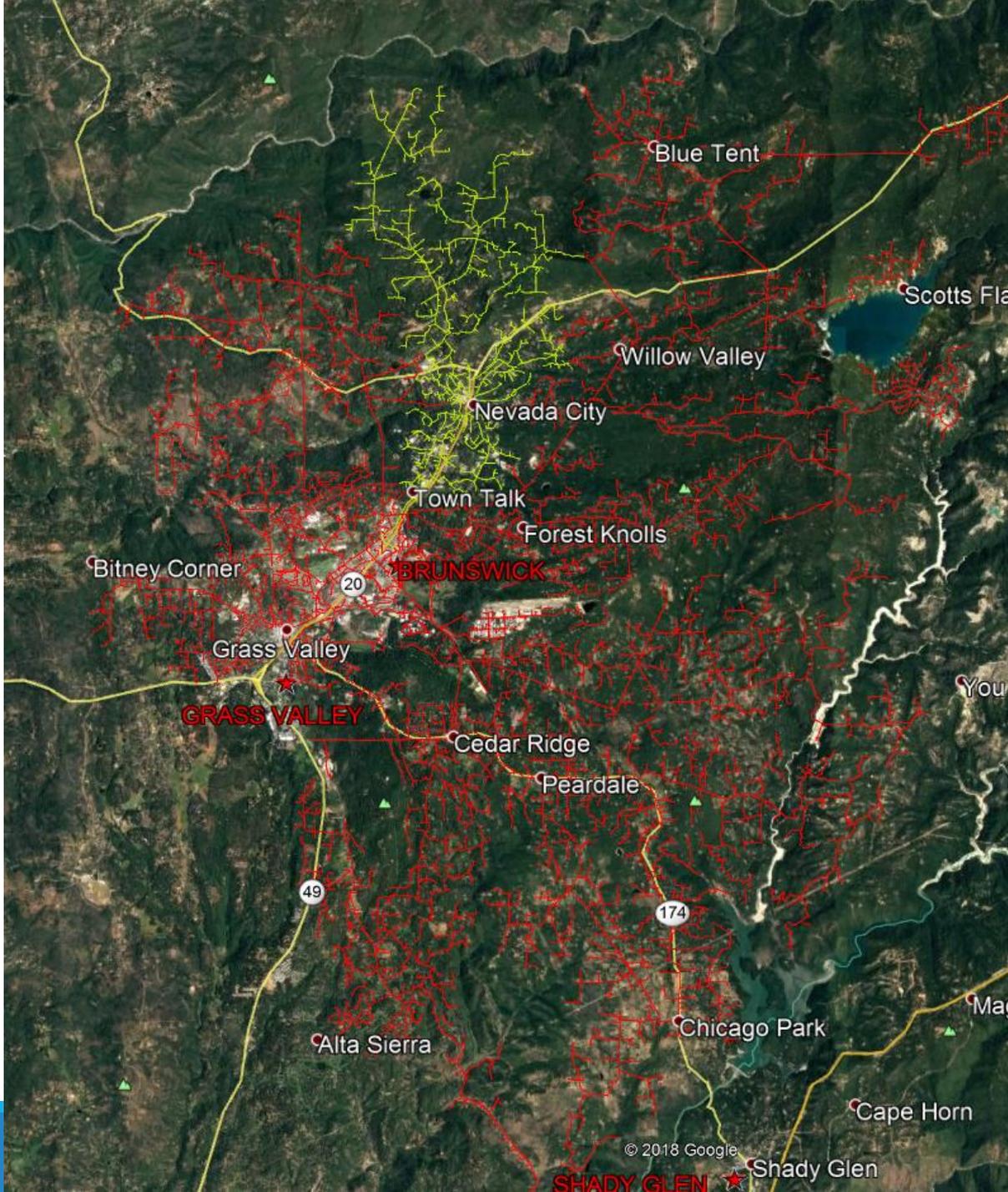
- Seven (7) Distribution Systems
- Serves two cities
- Commercial centers
- Suburban and remote rural areas



Smart Node Placement Example

Brunswick 1103 System

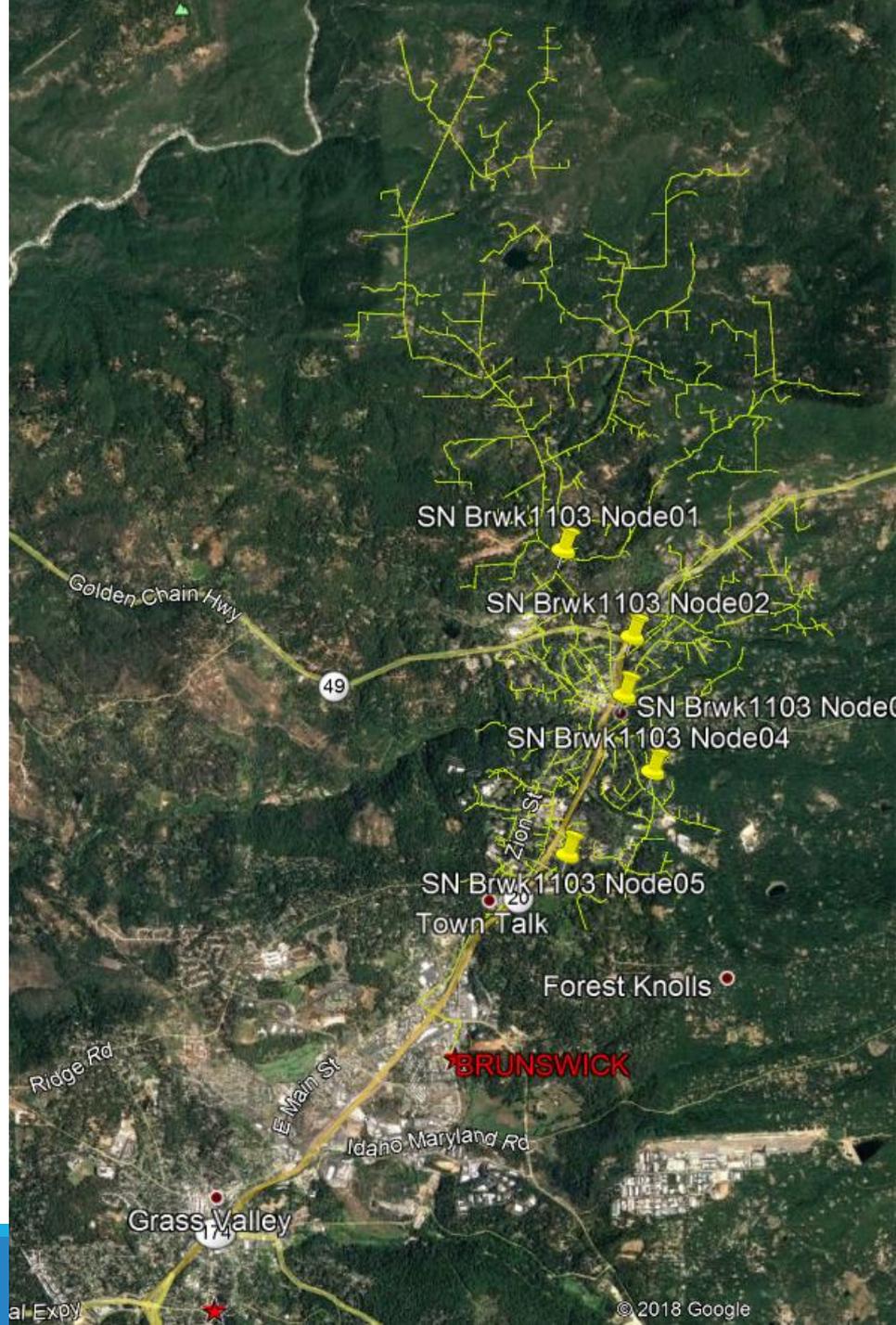
- City of Nevada City
- Commercial Corridor
- Downtown
- Schools
- County Government Center
- First Responders
- Remote Rural Areas



Smart Node Placement Example

Brunswick 1103 System

Proposed Smart Node Locations



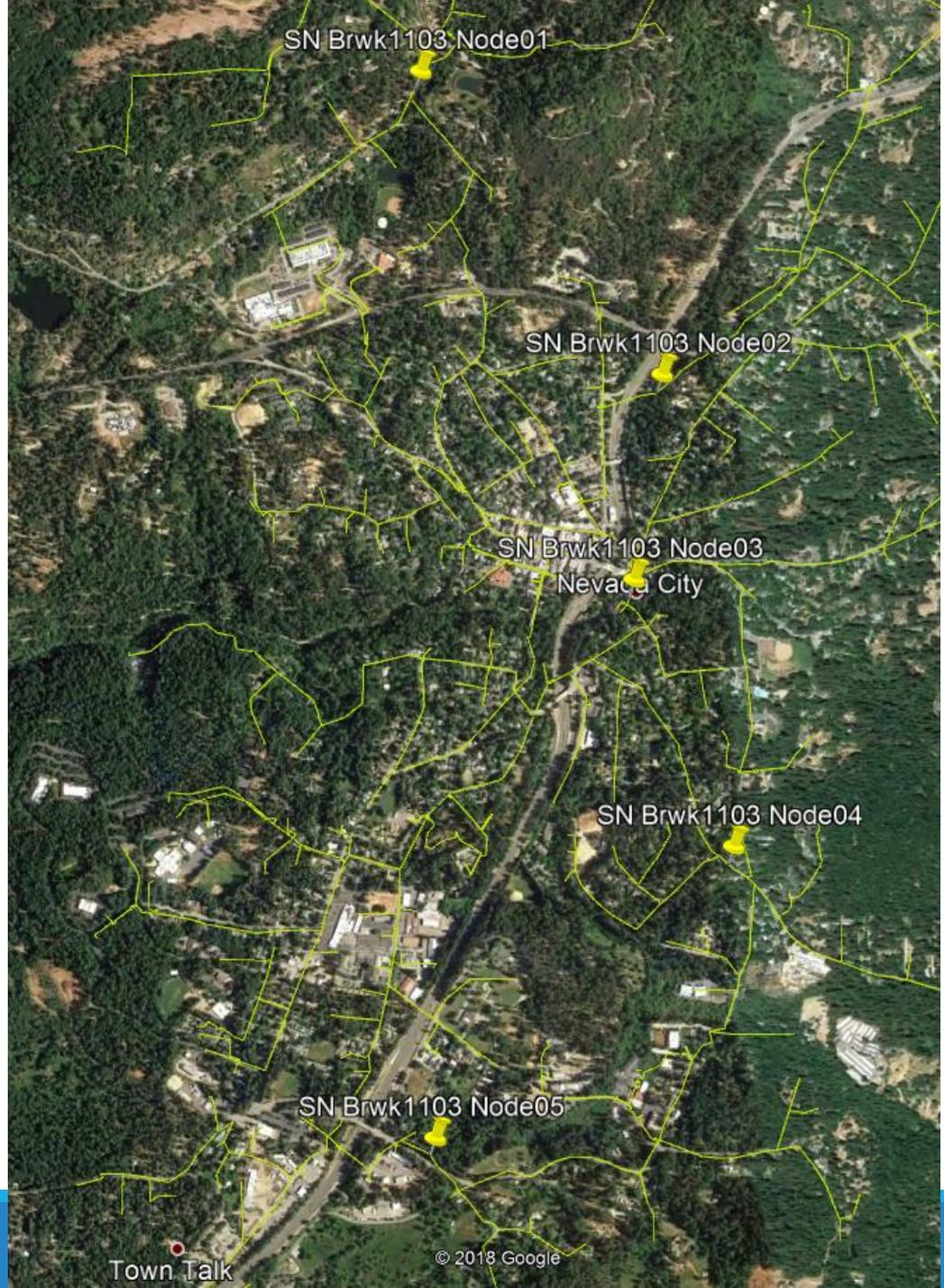
Smart Node Placement Example

Brunswick 1103 System

Ability to isolate rural areas
(all or portions)

Maintain service to:

- Downtown & Commercial Corridor
- City Hall
- County Government Center
- Schools
- First Responder Stations
- Highway Corridor



Near Term System Upgrades

Covered Conductor



- Used since 1970s
- Popular in forested areas – Scandinavia, the U.K., and New England
- Being installed in Australia to reduce “brushfires”
- Similar cost to bare conductor (\$430k vs. \$300k per mile)



Logical Service Area

Local Communities

12/11/19:

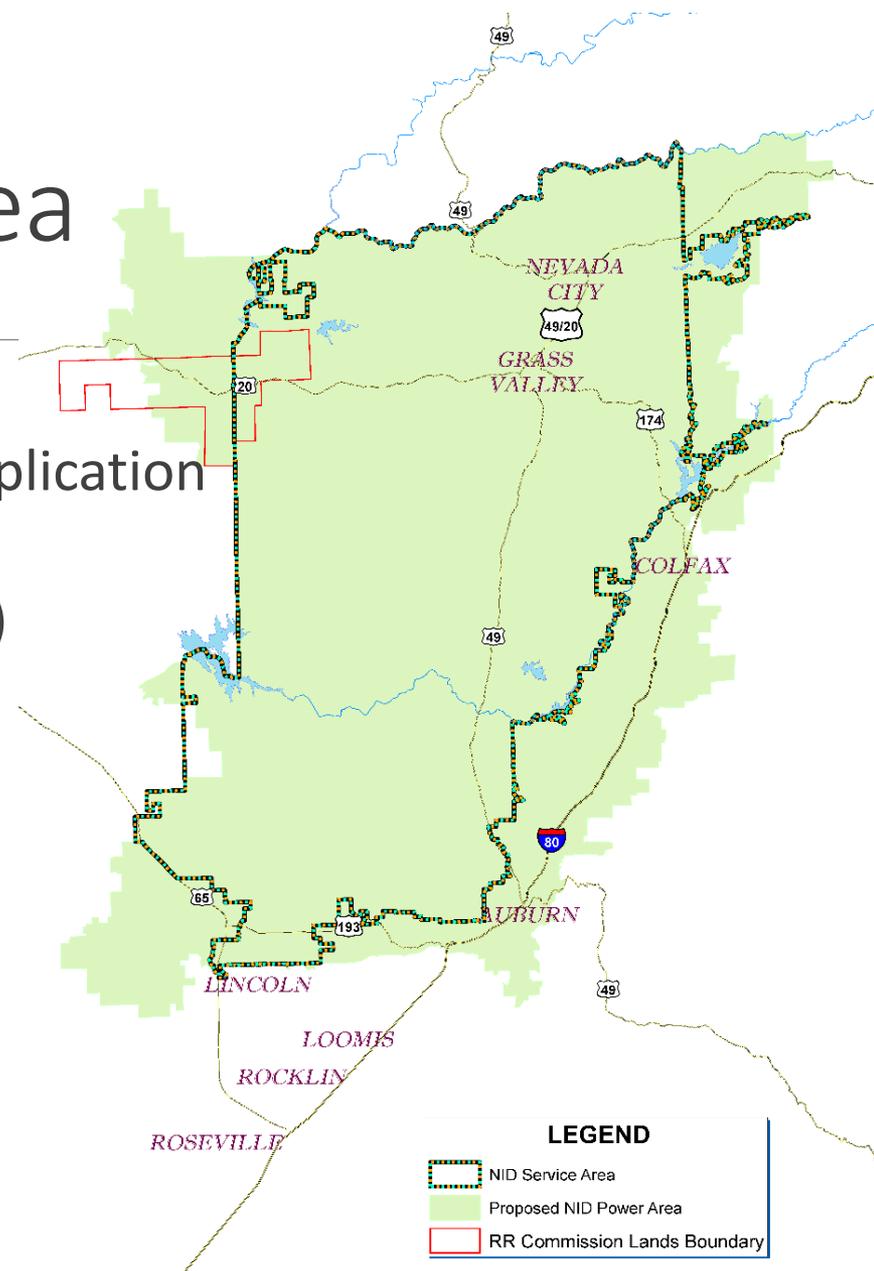
Public Hearing / Resolution of Application

LAFCo (Local Agency Formation Commission)

- MSR Municipal Service Review
- Fiscal Feasibility Study
- Risk Feasibility Study
- Activate Latent Powers
- Amend SOI Sphere of Influence

Vote of the Public

Annexation of Parcels



Comparable Offers

Agency	Approximate Number of Connections	Offer	Cost/ Customer
San Francisco Public Utilities Commission	375,000	\$ 2,500,000,000	\$ 6,667
Valley Clean Energy	75,000	\$ 300,000,000	\$ 4,000
Nevada Irrigation District	85,000	\$ 300,196,900	\$ 3,532
South San Joaquin Irrigation District	40,000	\$ 115,995,500	\$ 2,900

Thank You / Questions



More information:

<https://nidwater.com/local-power-solutions/>

County Sanitation District, Lake of the Pines Zone—Annexation: Higgins Marketplace

Summary

An application for annexation of approximately 9.66 acres to the County Sanitation District (Lake of the Pines Zone) has been submitted by the developer of the Higgins Marketplace project on behalf of the landowner. The Higgins Marketplace project was approved by the County in 2010, and includes construction of a shopping center that will include a large retail grocery store, two buildings which would house numerous retail shops and two fast food restaurants. The area is located in the Higgins area, south of the Highway 49/Combie Road intersection.

The County Sanitation District has reviewed the request of the developers for annexation and connection of the project to the Lake of the Pines sewer system. The District has provided a will serve letter and plan for providing service to the shopping center.

A map showing the area subject to annexation is included herein as **Attachment 1**. A vicinity map showing County Sanitation District boundaries and sphere of influence is included as **Attachment 2**. The Plan for Service and Will Serve letter prepared by the County Sanitation District is provided as **Attachment 3**.

Recommendation

Staff makes the following recommendations for Commission action:

1. Make appropriate California Environmental Quality Act Findings:
 - a. Find that Nevada County LAFCo is a responsible agency with respect to CEQA for this proposal;
 - b. Find that the Final Environmental Impact Report (SCH 2006112097) prepared and certified by the County of Nevada for the Higgins Marketplace development and related development entitlements is adequate and complete;
 - c. Find that the Commission has considered the information contained in the Final Environmental Impact Report and the Mitigation Monitoring and Reporting Plan prior to its action on the proposal;
 - d. Find that on the basis of the Final Environmental Impact Report and the Mitigation Monitoring and Reporting Plan that no supplemental environmental document is necessary for consideration of the proposal;
 - e. Adopt the Findings of Fact and Statement of Overriding Considerations prepared by the County for the Higgins Marketplace development.
 - f. Direct staff to prepare and file a Notice of Determination.
2. Recommended Actions on the Proposal:
 - a. Determine that the proposal complies with the Commission's adopted Policies for annexations. Recommended determinations are included in this staff report.
 - b. Adopt Draft Resolution 20-01, which incorporates recommended determinations, findings, and conditions of approval of the annexation of the subject territory.

Draft Resolution 20-01 (**Attachment 6**) incorporates LAFCo staff's recommended conditions of approval and the required CEQA findings prepared by the Lead Agency.

Suggested motion:

- *Adopt proposed Resolution No. 20-01, approving the proposal, subject to terms and conditions set forth in the resolution.*

Proposal and History

The Higgins Marketplace project is located south of the Combie Road intersection with Highway 49 on the east side of the highway. The project area is south of the Higgins Village shopping center, which was annexed to the County Sanitation District in 2003. The Higgins Marketplace project was approved by the County in 2010; the project included a General Plan amendment, rezoning, tentative parcel map, use permit and management plan. The County’s review included preparation of an Environmental Impact Report, (Draft and Final EIRs have been provided electronically for this staff report as **Attachments 4 and 5**).

The parcel map created seven parcels which are zoned for commercial, business park, office and open space uses. Four of the parcels (totaling 9.68 acres) which constitute the proposed annexation area are being developed, providing for a 35,000 square foot retail grocery store, two retail buildings with shops, two fast-food restaurants and several parking areas. A remaining parcel of 4.22 acres is located adjacent to the highway and is designed to protect an existing wetland area; this parcel is not proposed for annexation.

In addition, two other parcels (one to the east of the annexation area and one to the south) were created in conjunction with the parcel map, but they are not part of the Higgins Marketplace development and are also not included in the annexation proposal.

The development proposal was initially filed with the County in 2004, with the Environmental Impact Report being completed in 2008. Following several project revisions and appeals, the County Board of Supervisors approved the General Plan Amendment and took other associated actions in 2009. The project was subject to litigation, with the Court of Appeal upholding the Superior Court decision to uphold the County’s approval.

The County’s approval included adoption of a Mitigation Monitoring Plan, Findings of Fact, and a Statement of Overriding Consideration. The project conditions of approval included connection of the project to the County Sanitation District for wastewater service.

The project area and surrounding lands are known as the Higgins Corner area, and the County has prepared an area plan for the 250 acre area. The Higgins Area Plan provides design guidelines and specifies plans for public water and sewer service for future development. The Higgins Area Plan is available on the County’s website, and has also been included in the Dropbox file for this project.

Relationship to Other Projects

The area along Combie Road is generally developed with commercial and office uses. The Higgins Village Shopping Center, approved by the County in 2003, is located to the north of the project area. The Higgins Village shopping center is not connected to the Lake of the Pines Wastewater Treatment Plant, since at the time of construction the WWTP lacked sufficient capacity to serve the project. Instead, the Higgins Village project uses a land-based STEP system which involves flows from the shopping center being discharged on a neighboring parcel. This arrangement was intended to be a temporary measure until capacity at the LOP WWTP became available. Note that even though sufficient capacity is now available at the regional treatment plant, the shopping center has not been connected

and continues to discharge to the land based system on an adjacent parcel. Now that the infrastructure is in place (to accommodate the Higgins Marketplace project), the District will be pursuing the connection of the Higgins Village Zone to the LOP Zone and the decommissioning of the Higgins Village WWTP. This process will require a prop 218 process due to its effect on the customers O&M and Capital Improvement costs.

Another project in the area is the Rincon del Rio retirement community, which was annexed into the District in 2013, but has not yet been developed. Note that the Rincon del Rio developer recently applied to the County for some modifications to the project's Comprehensive Master Plan, but these modifications are not expected to impact the project's wastewater requirements.

It should also be noted that the Commission will be completing the update of the County Sanitation District sphere of influence, pending completion of environmental review (tentatively anticipated in early 2020). The subject territory is located within the district's sphere of influence at present and would also be located in the sphere under the proposed sphere plan update.

Service Issues

Wastewater: The County Sanitation District provides wastewater collection, treatment and disposal. District staff has issued a Will Serve letter and prepared a Plan for Service, indicating that connection of the property is feasible, and that the wastewater treatment plant has sufficient capacity to accommodate the connection. The cost of the connection infrastructure will be the sole responsibility of the developer.

The District's wastewater treatment plant (WWTP) is located along Combie Road, just outside the Lake of the Pines community. According to the 2015 LAFCo Municipal Service Review of Western Nevada County Wastewater Services, the WWTP was last upgraded in 2008 and has a plant design flow of 0.72 MGD, with a present average dry weather flow of 0.523 MGD. The WWTP is a tertiary treatment plant that discharges into Magnolia Creek under the Central Valley Regional Water Quality Control Board Waste Discharge Requirements Order R5-2015-0028. Dewatered solids are hauled offsite to the McCourtney Road transfer station.

The WWTP serves over 2,090 sewer connections (80 of which are commercial and the remainder residential) and has unused capacity to accommodate nearly 600 more. Future projects that would be treated at the WWTP include the Rincon del Rio development (280 EDUs). The District also plans to connect the 48 EDU Higgins Village shopping center to the LOP treatment plant, which will involve decommissioning the treatment facility that was constructed to serve the shopping center on a temporary basis.

Water: The project is located within Nevada Irrigation District boundaries, and the District anticipates providing treated water service to the shopping center (although NID has not provided an official will serve letter). The developer has installed treated water infrastructure to connect to the District's Lake of the Pines water treatment plant, located at 12812 Torrey Pines Drive. The water treatment plant currently has a capacity of 5 MGD, and currently serves 2,338 connections. NID plans to extend the 10 inch water line that now serves the Higgins Village shopping center along Higgins Road to the new

project. The water line will provide adequate fire flow to meet the requirements specified by the Higgins Fire Protection District.

Road Maintenance and Traffic Circulation: The main access point for the shopping center will be off Combie Road via the Higgins Road intersection. There will also be limited access from Highway 49 at the Woodridge Road intersection (northbound Highway 49 traffic will be able to turn right onto Woodridge, and cars exiting the center on Woodridge will be able to travel north). Required project improvements include widening of Combie Road and Woodridge Drive, as well as placement of a traffic signal at the intersection of the two roads. Funding for maintenance of improvements and a share of the cost of maintaining the traffic signal shall be funded by the property owners through a Permanent Road Division created in 2018.

Fire Protection and Rescue: The territory is within the boundaries of the Higgins Area Fire Protection District. Response to the shopping center will generally be from the nearby Station No. 21 at 10106 Combie Road, which is staffed 24/7. The District’s requirements for vegetative fuels management and fire flow have been incorporated into the County’s Conditions of Approval for the project (fire flow issues are also discussed above in the section on water service).

Boundary

The boundaries of the annexation area are definite and certain, and include only the four lots (parcels 1-4) on which the shopping center will be constructed. Parcel 5 is occupied by wetlands (note that the County’s conditions of approval provide for the creation of a wetland reserve and preparation of a Wetland-Riparian Habitat Mitigation Plan) and is therefore *not* proposed for annexation. Parcels 6 and 7 are not a part of the Higgins Marketplace project and are also not included in this annexation proposal.

Timely Availability of Water Supplies

The Nevada Irrigation District has provided documentation indicating sufficient availability of water needed for domestic purposes. The District’s documentation is consistent with the LAFCo Municipal Service Review on Water Services and the Nevada Irrigation District Sphere of Influence Plan.

Disadvantaged Unincorporated Communities

The Higgins Corner/Lake of the Pines area is not considered by the County to be a Disadvantaged Unincorporated Community.

The Commission’s policies recognize any Disadvantaged Unincorporated Community that have been identified by the County or any city. The County recognizes five Disadvantaged Unincorporated Communities (Penn Valley, Rough and Ready, North San Juan, Washington and Soda Springs), none of which are in the immediate vicinity of this project.

Regional Supply of Housing

The Commission is required by Government Code § 56668 (l) to consider “the extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.” This section is specifically in reference to the Regional Housing Need Allocation (RHNA) targets that are developed by the State Department of Housing and Community Development, and then

allocated locally to cities and counties for inclusion into their Housing Elements. The project itself will not result in any new residential development, and will have no impact on the County’s achievement of its housing goals.

Environmental Justice

“Environmental Justice” is defined as the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and provision of services. A review of census data does not reveal concentration of any specific racial, cultural or income group in the area.

California Environmental Quality Act Compliance

The County, as Lead Agency, prepared and certified an Environmental Impact Report for the project (**Attachments 4 and 5**, which have been provided electronically, include both the Draft and Final EIRs). The County’s environmental findings and the comprehensive set of Mitigation Measures have been included in the draft resolution (**Attachment 6**). The County Sanitation District and LAFCo are considered Responsible Agencies for the proposal and are required to utilize the County’s environmental document in the absence of specific circumstances under CEQA as set forth in § 15052 of the State CEQA Guidelines.

If the Commission determines to approve the proposed annexation, it will also need to certify the EIR and adopt Findings of Fact, Statement of Overriding Considerations, and the County’s Mitigation Monitoring and Reporting Plan. The draft resolution included in this report includes the appropriate determinations and findings.

Governing Law and LAFCo Policy

Generally, Government Code §56000 *et seq.* governs proceedings. A public hearing has been scheduled as the annexation includes inhabited territory (i.e., more than twelve registered voters reside within the annexation area), even though the proposal enjoys written support from both property owners.

The annexation appears to be in compliance with legal and policy requirements, as summarized below.

Statutory Requirements

Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following provisions of Section 56668 of the Government Code:

-
- (a) Population, and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.**

Population, density, and proximity to other populated areas, as well as the likelihood of significant growth in the subject area, are discussed by the County General Plan, which designates the shopping center property as Community Commercial. Elevation is approximately 1,400 feet. Ragsdale Creek is located to the immediate north of the project area.

- (b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. “Services” refers to governmental services whether or not the services are services which would be provided by local agencies subject to LAFCo law, and includes the public facilities necessary to provide those services.**

The area is within the Higgins Fire District and is also within the Nevada Irrigation District. The territory is within the sphere of influence of the Lake of the Pines zone of the County Sanitation District, and is adjacent to the Higgins Village zone. Public sewer service can be made available upon annexation and connection to the system.

- (c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.**

The proposed annexation will support provision of public sewer service to the shopping center, which is a condition of approval of the project.

- (d) The conformity of both the proposal and its anticipated effects with both adopted Commission policies on providing planned, orderly, and efficient patterns of urban development, and with the policies and priorities set forth in GC Section 56377.**

Consistency with adopted LAFCo policies is addressed in a subsequent section of this report.

- (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.**

No agricultural lands meeting the definition established by § 56016 are involved in the proposal, and no agricultural uses are associated with the subject territory. The subject territory and surrounding area is currently zoned and used variously for residential and commercial uses. The proposed annexation will have no impact on the physical and economic integrity of any agricultural lands.

- (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.**

The area proposed for annexation includes four subject parcels in their entirety.

- (g) A regional transportation plan adopted pursuant to GC Section 65080.**

The project’s impacts to existing traffic circulation patterns and levels have been analyzed for consistency with the Regional Transportation Plan in effect during the EIR preparation. Appropriate measures to address adverse impacts have been incorporated into the project’s conditions of approval.

- (h) The proposal’s consistency with city or county general and specific plans.**

County General Plan and zoning designations have been assigned by the County in conjunction with the approval process for the project.

-
- (i) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.**

The subject territory is within the sphere of influence of the County Sanitation District.

-
- (j) The comments of any affected local agency or other public agency.**

The District has provided a will serve letter indicating willingness and capacity for service, with recommended conditions of approval for the annexation. No agency has provided comments indicating opposition to the proposal.

-
- (k) The ability of the newly formed or receiving entity to provide to the area the services which are the subject of the application, including the sufficiency of revenues for those services following the proposed boundary change.**

The District's Lake of the Pines wastewater treatment plant has capacity to accommodate the development. The cost of connecting the development to the District's existing wastewater collection systems are the responsibility of the applicant. The District's operational and administrative costs are incorporated into the District's rate structure and are collected through the property tax roll.

-
- (l) Timely availability of water supplies adequate for projected needs as specified in GC Section 65352.5**

As discussed in this report, Nevada Irrigation District will provide treated water service for the project using the District's Lake of the Pines water treatment plant.

-
- (m) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with section 65580) of Chapter 3 of Division 1 of Title 7.**

The proposed annexation will have no adverse impact on the County's ability to achieve its fair share of regional housing needs, and may have a beneficial impact by ensuring continued stability for provision of sewer service to the mobile home park

-
- (n) Any information or comments from the landowner or owners, voters, or residents of the affected territory.**

No comments have been received by LAFCo from landowners, voters or residents of the affected territory.

-
- (o) Any information relating to existing land use designations.**

Land use designations for the area are described below in the Technical Factors of Consideration section of this report.

-
- (p) The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.**

There are no concentrations of any specific racial, cultural or income groups in the area.

Section 56668.3 (a) establishes additional factors of consideration for proposals involving district annexations:

-
- 1. Whether the proposed annexation will be for the interest of the landowners or present or future inhabitants within the district and within the territory proposed to be annexed.**

The annexation of the subject territory will benefit current and future landowners by ensuring provision of sewer service. Present and future inhabitants of the district will also benefit in that the service costs will be spread over a larger rate base.

-
- 2. Any resolution raising objections that was filed by an affected agency.**

No resolutions of objection to the proposal have been filed with LAFCo.

Commission Policy

Applicable Commission policies include General Policies, as well as specific policies for spheres of influence and for district annexations.

GENERAL POLICIES (SECTION II of the Commission’s Policies)

A. Communication between local agencies is encouraged.	<i>Consistent</i>
B. Urban development proposals shall include annexation to a city where possible.	<i>Consistent</i>
<i>Annexation to a city is not possible, given the project location..</i>	
C. LAFCo will normally deny proposals that result in urban sprawl.	<i>Consistent</i>
<i>This proposal will not result in urban sprawl as characterized by LAFCo policy.</i>	
D. Environmental consequences (CEQA) shall be considered.	<i>Consistent</i>
<i>The County, as Lead Agency for the Higgins Marketplace development project, has prepared and certified an EIR, adopted findings, a mitigation monitoring plan, and a statement of overriding consideration.</i>	
E. LAFCo will consider the impact of a proposal on the regional supply of housing for all income levels.	<i>Consistent</i>
<i>This project involves no residential uses and will have little to no effect on the regional housing supply.</i>	
F. LAFCo will favor proposals that promote compact urban form and infill development.	<i>Consistent</i>
<i>This proposal will result in the development of a retail shopping center, located in the vicinity of similar uses. However, the location of the project would not necessarily be characterized as infill.</i>	
G. Government structure should be simple, accessible, and accountable.	<i>Consistent</i>
H. Agencies must provide documentation that they can provide service within a reasonable period of time.	<i>Consistent</i>
<i>The County Sanitation District has provided documentation that it can provide the required services. Other service providers have also provided documentation regarding their ability to serve the project</i>	

<p>I. Efficient services are obtained when proposals:</p> <ul style="list-style-type: none"> a. Utilize existing public agencies. b. Consolidate activities and services. c. Restructure agency boundaries to provide more logical, effective, and efficient services. 	<i>Consistent</i>
<p>J. Adverse impacts on adjacent areas, social and economic interests and the local government structure must be mitigated.</p> <p><i>The County’s environmental report indicates that the project’s adverse environmental impacts have been mitigated to the extent possible and the County has adopted a Statement of Overriding Consideration justifying the remaining unmitigated impacts.</i></p>	<i>Consistent</i>
<p>K. Conformance with general and specific plans required.</p> <p><i>The project, which required a General Plan amendment, is now consistent with the County’s General Plan.</i></p>	<i>Consistent</i>
<p>L. Boundaries:</p> <ul style="list-style-type: none"> a. Definite boundaries are required. b. Boundaries that are favored: <ul style="list-style-type: none"> • Create logical boundaries & eliminate islands or illogical boundaries. • Follow natural or man-made features and include logical service areas. c. Boundaries that are disfavored: <ul style="list-style-type: none"> • Split neighborhoods or communities. • Result in islands, corridors, or peninsulas. • Are drawn for the primary purpose of encompassing revenue-producing territories. • Create areas where it is difficult to provide services. 	<i>Consistent</i>
<p>M. Revenue neutrality is required for all proposals.</p>	<i>Consistent</i>
<p>N. Prime Agricultural and Open Space Land conservation standards are:</p> <ul style="list-style-type: none"> a. The proposal must lead to planned, orderly and efficient development. b. An approved Sphere of Influence Plan is required. c. Findings with respect to alternative sites are required. d. Impact on adjacent agricultural/open space lands must be assessed. <p><i>This proposal does not involve Prime Agricultural or Open Space lands.</i></p>	<i>Not Applicable</i>
<p>O. Need for services must be established, and exists when:</p> <ul style="list-style-type: none"> a. A public health and safety threat exists. b. The residents have requested extension of non-growth-inducing community services. c. The subject area is likely to be developed for urban use within 5 years. 	<i>Consistent</i>

P. Disadvantaged Unincorporated Communities will be identified and addressed as required.	<i>Consistent</i>
<i>The subject territory is not recognized as a Disadvantaged Unincorporated Community.</i>	
Q. Exceptions are justified on the following grounds:	<i>Not</i>
a. Unique	<i>Applicable</i>
b. Standards conflicts	
c. Quality/Cost	
d. No alternative is available	

ANNEXATION POLICIES—GENERAL STANDARDS (SECTION IV)

1. Proposals must be consistent with LAFCo general policies.	<i>Consistent</i>
2. A proposal must be consistent with the agency’s Sphere Plan.	<i>Consistent</i>
3. A Plan for Services is required.	<i>Consistent</i>
4. The subject territory must be contiguous to the agency’s boundaries if required by law or if necessary for efficient service delivery.	<i>Not</i>
<i>Although not contiguous to district boundaries, the subject territory is within the district sphere, and connection infrastructure is nearby. Note that contiguity is <u>not</u> required by the district’s principal act.</i>	
5. Piecemeal annexations are prohibited.	<i>Consistent</i>
6. Annexations to eliminate islands are encouraged and normally are approved.	<i>Not</i>
7. Annexations that create islands are discouraged and normally are not approved.	<i>Consistent</i>
8. Full service array is considered: proposals that facilitate the delivery of one or a few services to the detriment of the delivery of a larger number of services are not favored.	<i>Consistent</i>
9. Adverse impact of annexation on other agencies or service recipients is cause for denial.	<i>Not</i>
10. Action options include:	<i>applicable</i>
• Approval	
• Conditional approval to maximize the efficiency of service and meet other policy objectives	
• Denial	

Comments from the Public and from Affected Agencies

No unfavorable comments have been received from any of the affected agencies or from neighboring landowners or voters.

Final Steps

Following the public hearing, the Commission may approve, conditionally approve or deny the proposal. Should the Commission determine to approve the proposal, conditionally or unconditionally, LAFCo law provides for the following two processes prior to the completion of the annexation:

Reconsideration: When the Commission adopts a resolution making determinations, within 30 days, any person or affected agency may file a request for an amendment or reconsideration of the resolution. The request must state the specific modification being requested and must state the new or different facts that could not have been presented previously which warrant the Commission’s reconsideration.

Protest Hearing: California Government Code §57002 requires that within 35 days following the adoption of the Commission’s resolution approving the annexation, the LAFCo Executive Officer shall set the proposal for a protest hearing and give notice of that hearing. If written protests are submitted by at least 25% of the registered voters within the annexation area, or by 25% of the landowners who control 25% of the entire assessed value of property within the annexation area, the annexation would be subject to an election. However, the Commission may waive the protest hearing under the following circumstances:

1. Mailed notice of the proposal hearing has been provided to the voters and landowners the affected territory,
2. The mailed notice discloses that unless written opposition to the proposal is received before the conclusion of the commission proceedings, the commission intends to waive protest proceedings,
3. The notice discloses the potential for the extension or continuation of any previously authorized charge, fee, assessment or tax, and
4. No written opposition by voters or property owners has been received before the conclusion of the Commission’s proceedings.

For this proposal, mailed notice of the hearing was sent to landowners (there are no voters) within the annexation area and it disclosed that the District’s sewer charges would extend to the area. The notice also disclosed that the Commission intends to waive the final protest hearing. If by the end of the hearing no written objections have been presented, the Commission may waive the protest hearing.

Remarks and Conclusion

This commercial development project was comprehensively reviewed by the County and received the scrutiny of interested members of the Higgins area community. The public agencies who would be service providers and therefore most immediately impacted participated in the County’s environmental and permitting process. The project has not been without controversy, as evidenced by the appeal and subsequent litigation; however, as pointed out above, no letters of opposition to the annexation have been received by LAFCo to date. The County Sanitation District has provided documentation of its ability to provide services to the project; the Nevada Irrigation District has also provided documentation of its ability to provide sufficient and sustainable water service to the project. Impacts on the local government structure and services have been mitigated or avoided.

Staff recommends that the Commission approve the proposed annexation by adopting draft Resolution 20-01 (*Attachment 6*).

Technical Factors of Consideration

Location:

The subject territory is located in the Higgins area, near the intersection of Highway 49 and Combie Road.

Population:

There are fewer than 12 registered voters residing within the territory, qualifying it as uninhabited.

Assessed Value and Property Tax Apportionment:

The taxable value on the 2019-2020 Assessment Roll:

Taxable Value - Land:	42,724
Taxable Value - Improvements:	0
Homeowner's & Other Exemptions:	0
Personal Property & Fixtures:	0
<i>Total Taxable Value Less Exemptions:</i>	42,724

The County Sanitation District is an enterprise district that receives no revenue from property tax. As per the Master Tax Sharing Formula in effect for annexations by special districts (as set forth in BOS Resolution 06-162) there will be no re-apportionment of property tax within the subject territory.

Land Use, General Plan, Development Potential:

The County’s General Plan designations include Community Commercial, Business Park, Open Space and Office and Professional for the project area. Zoning categories include Community Commercial, Office and Professional, Business Park, Open Space, all with Scenic Corridor and Site Performance overlay zoning.

The annexation of this site to the County Sanitation District is required to provide sewer collection and treatment service, which is critical to the development of the subject territory.

Utilities and Services:

<i>Service</i>	<i>Present Provider</i>	<i>Proposed Provider</i>
Fire Protection	Higgins FPD	no change
Police Protection	Nevada County Sheriff	no change
Domestic Water	Nevada Irrigation District	no change
Agricultural Water	Nevada Irrigation District	no change
Public Sewer	None	County Sanitation Dist.
Solid Waste	County	no change
Road/Street Maintenance	County	no change
Snow Removal	County	no change
Power	PG & E	no change
Street Lighting	Private	no change
Land Use Authority	County	no change
Schools	Pleasant Ridge; Nevada Union	no change
Recreation	Bear River Rec. District	no change

- CC: Mr.Russ King, King Engineering, Landowner Representative
 Mr. Steve Kirkpatrick, Landowner/Developer
 Mr. Fred Katz, Landowner/Developer
 Mr. Brad Torres, Wastewater Operations Manager, County Sanitation District

- 1 Annexation Map
- 2 Vicinity Display Map showing Sanitation District Boundaries
- 3 Plan for Service and Justification Statement
- 4 Draft EIR, provided digitally
- 5 Final EIR, provided digitally
- 6 Draft LAFCo Resolution 20-01

**ANNEXATION MAP NO. _____
TO NEVADA COUNTY SANITATION DISTRICT NO. 1, ZONE #2**
BEING A PORTION OF
SECTION 28, TOWNSHIP 14 NORTH, RANGE 8 EAST, M.D.B. & M.,
IN THE UNINCORPORATED COUNTY OF NEVADA, CALIFORNIA

Attachment 1

SEPTEMBER 30, 2019

APPROVED BY NEVADA COUNTY LOCAL AGENCY FORMATION COMMISSION

RESOLUTION NO: _____
DATE: _____

THIS MAP, WHEN RECORDED, WAS ACCOMPANIED BY A CERTIFICATE OF COMPLETION, PREPARED PURSUANT TO SECTIONS 57200-57202 OF THE GOVERNMENT CODE, TO WHICH WAS ATTACHED A CERTIFIED COPY OF THE BOUNDARY DESCRIPTION OF THE TERRITORY SHOWN ON SAID MAP. THE CERTIFICATE OF COMPLETION IS RECORDED AS DOCUMENT NO. _____ NEVADA COUNTY RECORDS.

SR JONES
EXECUTIVE OFFICER, NEVADA LAFCO

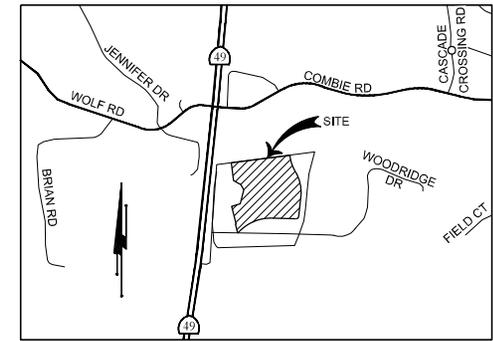
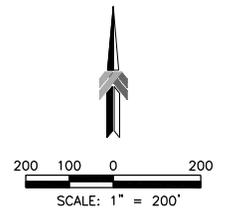
RECORDED AT THE REQUEST OF S.R. JONES, OFFICER OF THE NEVADA COUNTY LOCAL AGENCY FORMATION COMMISSION, AT _____ M. THIS DAY OF _____ 20__ IN BOOK _____ OF SURVEYS AT PAGE _____ NEVADA COUNTY RECORDS.

DOCUMENT NO.: _____ GREGORY J. DIAZ
FEE: _____ NEVADA COUNTY RECORDER
BY: _____ DEPUTY

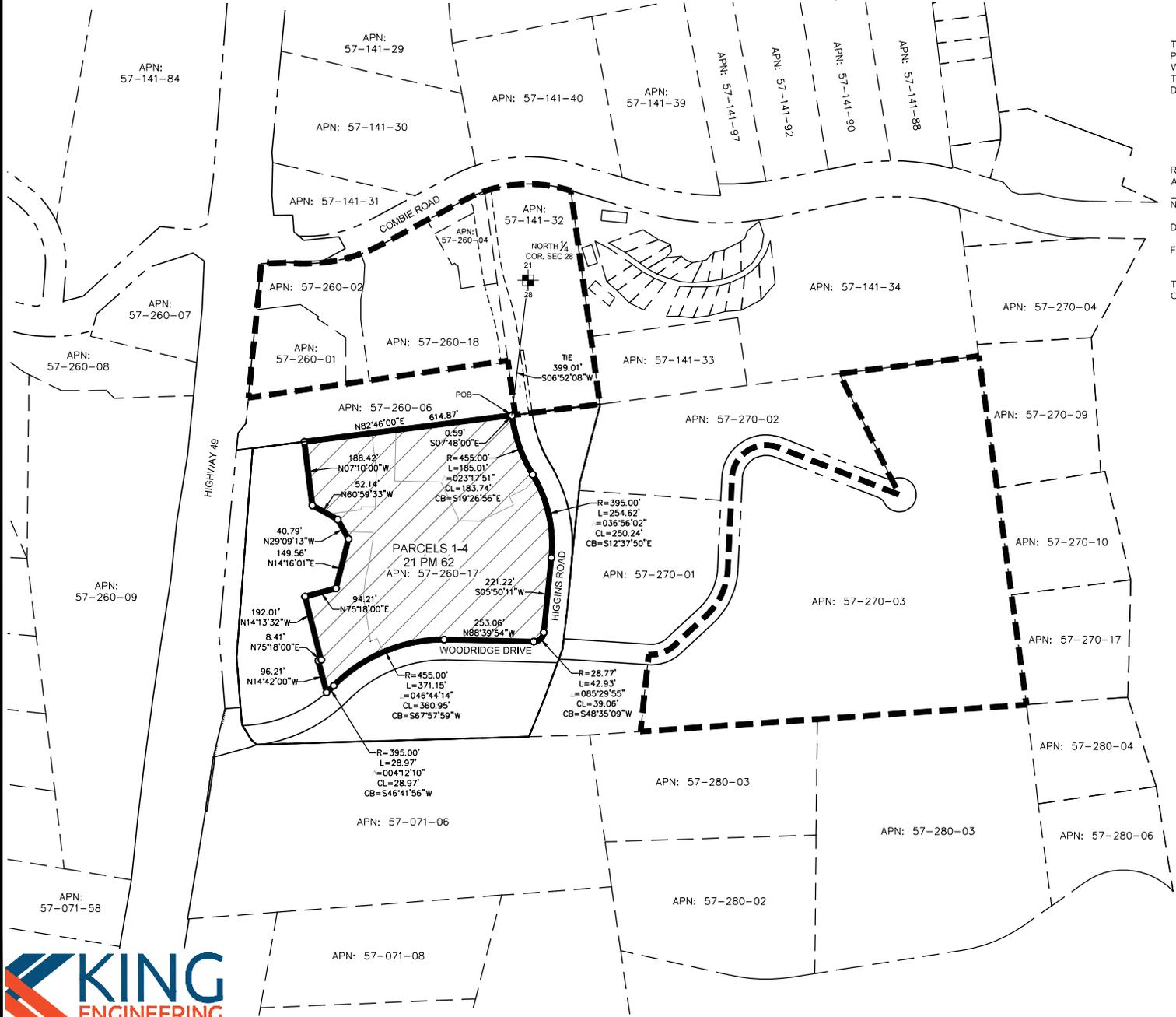
THIS MAP WAS PREPARED BY _____
OR UNDER THE DIRECTION OF: _____
LICENSE EXPIRES _____

LEGEND

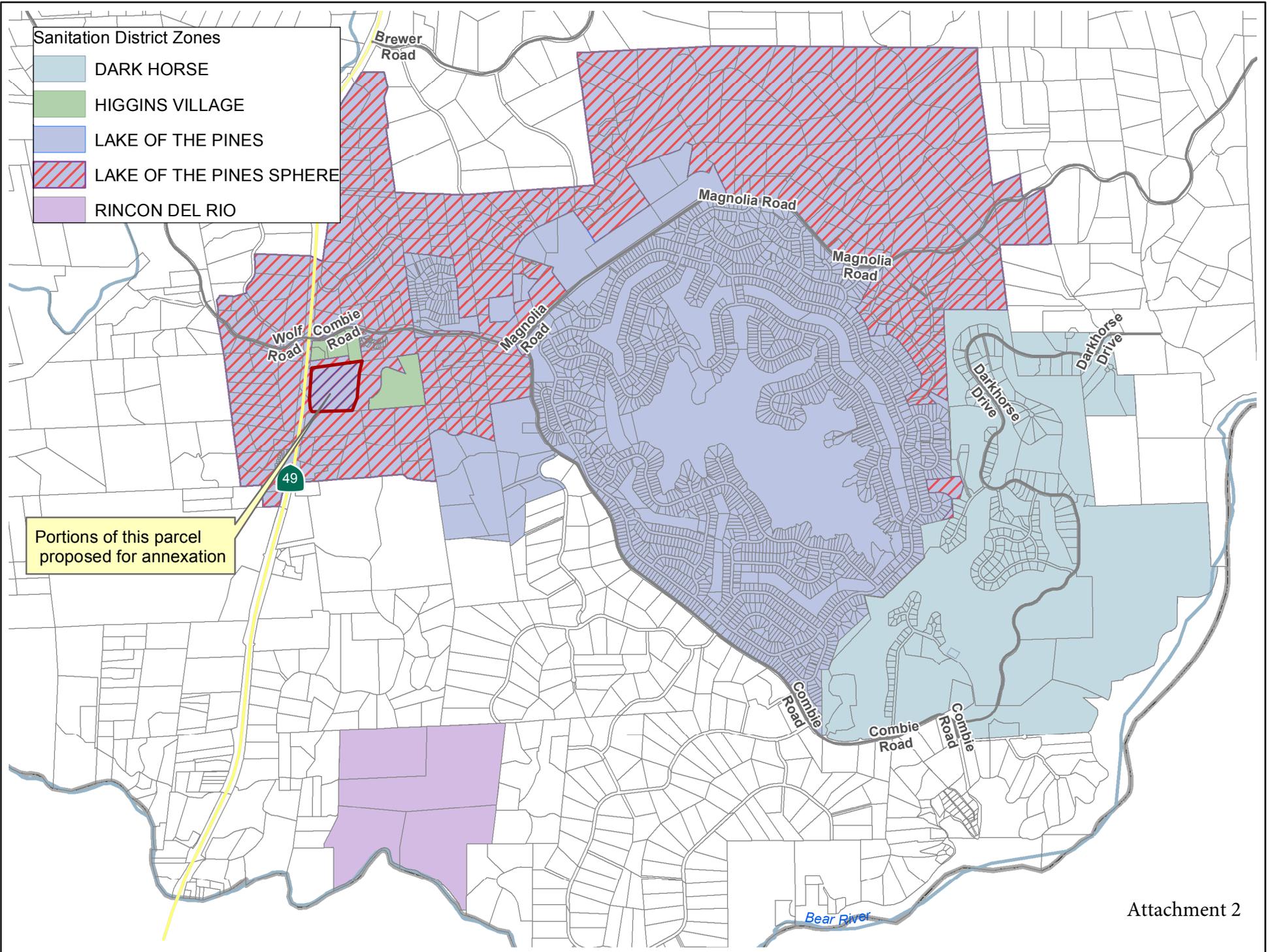
-  DIMENSION POINT
-  EXISTING DISTRICT BOUNDARY - ZONE #11
-  PROPOSED DISTRICT BOUNDARY
-  PROPOSED ANNEXATION AREA



VICINITY MAP
NOT TO SCALE



200 Auburn Folsom Road, Ste. 201 T: (530) 272-3308
Auburn, California 95603 E: info@king-engineering-inc.com



NEVADA SANITATION DISTRICT – PLAN FOR SERVICES
ANNEXATION TO NEVADA COUNTY SANITATION DISTRICT NO. 1
(APN 057-260-017)

The Nevada County Sanitation District No. 1 will provide services to the subject territory as outlined below. The subject territory consists of 7 legal parcels with a project area totaling approximately 20.07 acres, located on Woodridge Dr. and State Route 49 Auburn CA. The design value per EDU in Sanitation District No. 1 is 196 gallons per day for average dry weather flow.

1. An enumeration and description of the services to be extended to the affected territory.

The District will provide sewer collection and treatment service to support the above-referenced APN. The 7 legal parcel area is owned by:

Fred and Cathy Katz – APN 057-260-017

This parcel will consist of a commercial shopping center located on approximately 20.07 acres. Currently, the parcel is undeveloped.

Based on average daily water usage estimates provided in the developer Sewer Report, this parcel will require sixty five (65) EDUs for its current and future use.

2. The level and range of those services.

The services would be extended to the nearest public easement at the same level and range as provided throughout the Nevada County Sanitation District No. 1.

3. An indication of when those services can feasibly be extended to the affected territory.

Wastewater services provided by Nevada County Sanitation District No. 1 have been extended along Combie Road, in close proximity to the subject territory. Those services are complete and connection is now possible and available.

4. **An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.**

The existing Lake of the Pines Treatment Plant has sufficient capacity for the subject property. No additional improvements to roads or facilities are anticipated with the exception of connecting the subject property to the future sewer mainline proposed in the neighboring property along Combie Road, and what was included in the conditions of approval in the infrastructure Reimbursement Agreement.

5. **Information with respect to how each of those services will be financed.**

The property owner(s) are responsible for the cost of the design, construction, and installation of conveyance facilities necessary to tie into the future sewer main to be constructed within Combie Road, in addition to permit and connection fees, and ongoing O&M fees as established by NCSD No. 1.



NEVADA COUNTY SANITATION DISTRICT NO. 1

950 MAIDU AVENUE, NEVADA CITY, CA 95959-8617

(530) 265-1411 FAX (530) 265-9849 www.mynevadacounty.com

Sean Powers
Deputy District Administrator

Trisha Tillotson
Director of Public Works

January 6, 2020

Mr. Frank Katz

APN 057-141-031

SUBJECT: Will Serve Letter and Annexation Procedure for Assessor's Parcel Number 057-260-017 into Nevada County Sanitation District No. 1, Lake of the Pines, Zone 2

Dear Mr. Katz:

Nevada County Sanitation District does have sufficient capacity in the Lake of the Pines Zone to accommodate an annexation request for parcel number 057-260-017 which will consist of primarily light commercial use as a real estate office and small church.

Prior to connection, the following conditions will have to be met:

1. It is the property owner's responsibility to acquire ALL the necessary permits and permissions and to install the infrastructure to facilitate capture and conveyance of sewerage from the buildings to the mainline connection point at the Sanitation District force main.
2. In order for the Sanitation District to provide future sewer service to Assessor's Parcel Number 057-260-017 located on Woodridge Rd., it will be necessary for said parcels to annex into Nevada County Sanitation District No. 1, Lake of the Pines, Zone 2, and acquire sewer capacity. In this case, parcel 057-260-017 would need to acquire up to 65 EDUs at the time of connection. Annexation will require conformance to California Environmental Quality Act.
3. Any change in use plans for the property will be reviewed and approved by The Sanitation District prior to construction/installation.
4. After installation is completed and approved; the Sanitation District will only be responsible to maintain the portion of infrastructure consisting of the holding tanks, out to and including the collector force main.

Mr. Wood
Page 2

5. Property owners will be responsible for maintaining the infrastructure on the parcels between the sewer pump tanks and the structures to ensure that they are free from debris, fats, oils, grease, roots and ground or rain water intrusion.

If you have any additional questions, please feel free to contact me at (530) 265-7103.

Sincerely,

Trisha Tillotson, Director
Nevada County Sanitation District No. 1



Brad Torres
Wastewater Operations Manager

BT:kk

Resolution 20-01
Nevada LAFCo

**Resolution 20-01 of the
Local Agency Formation Commission
of Nevada County, California**

RESOLUTION OF THE NEVADA COUNTY LOCAL AGENCY FORMATION
COMMISSION CONSIDERING THE FINAL ENVIRONMENTAL IMPACT REPORT (SCH
2006112097), ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A STATEMENT OF
OVERRIDING CONSIDERATIONS, ADOPTING THE MITIGATION MONITORING AND
REPORTING PROGRAM PREPARED AND ADOPTED BY THE COUNTY OF NEVADA
and
APPROVING ANNEXATION OF THE HIGGINS MARKETPLACE DEVELOPMENT PROJECT
TO THE COUNTY SANITATION DISTRICT

WHEREAS, a petition and application for the annexation to the Nevada County Sanitation District of certain territory in Nevada County known as Assessor Parcel Numbers 057-260-019, 057-260-020, 057-260-023 and 057-260-024 was filed by the owner of the property with the Executive Officer of the Local Agency Formation Commission of Nevada County, California, and said petition complied with all the requirements of law and the Commission and was accompanied by written consent of 100% of the property owners of the subject territory;

WHEREAS, the proceedings for this reorganization are governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act, Section 56000 *et seq.* of the Government Code; and,

WHEREAS, the annexation is requested in order to provide public sewer collection, treatment and disposal service to a development project referred to as Higgins Marketplace, a shopping center consisting of retail stores and shops, restaurants and various common facilities located on the subject territory consisting of 9.68 acres located off Highway 49 at Woodridge Drive and Higgins Road in Nevada County; and

WHEREAS, the County of Nevada, as the Lead Agency, prepared and certified an Environmental Impact Report for the Higgins Marketplace development project, as well as Findings of Fact, Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Plan; and,

WHEREAS, on April 13, 2010, the County of Nevada (1) certified the environmental impact report for the project, (2) approved an amendment of the County General Plan, (3) adopted zoning designations for the project site, (4) adopted a Management Plan for the project, (5) approved the Tentative Final Subdivision Map and (6) approved a Use Permit to establish a Comprehensive Master Plan for the entire site; and,

WHEREAS, on October 7, 2019, the project developer/landowner submitted an application accompanied by landowner petition for annexation to the Lake of the Pines Zone of the County Sanitation District in order to establish public sewer service for the project, including collection, treatment and disposal; and,

WHEREAS, the Executive Officer has reviewed the application and associated materials and has prepared a report including staff recommendations thereon within the time required by law and has furnished copies of said report to the Commission and to all other persons required by

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law to receive it; and,

WHEREAS, at the time and in the manner provided by law, the Executive Officer gave notice of the date, time, and place of a hearing by the Commission upon said application; and,

WHEREAS, at a hearing on January 16, 2020, the Commission considered the proposal, the associated materials, and the report of the Executive Officer; the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Section 56668; and all other relevant evidence and information presented at said hearing, including the comments of all interested parties desiring to be heard;

NOW, THEREFORE, the Local Agency Formation Commission of Nevada County hereby determines the following:

1. The territory comprises approximately 9.68 acres and is found to be uninhabited.
2. The proposal is accompanied by written consent from 100% of the landowners within the subject territory.
3. The Commission has reviewed the proposal and the recommended determinations regarding consistency with LAFCo Policies contained in the LAFCo staff report for this project (dated January 16, 2020) and incorporates them by reference herein.

NOW, THEREFORE, the Commission makes the following findings pursuant to the California Environmental Quality Act:

1. Nevada County LAFCo is a Responsible Agency with respect to California Environmental Quality Act for this proposal, which includes annexation of the project area to the County Sanitation District;
2. The County of Nevada, in its capacity as Lead Agency for the Higgins Marketplace development project and related development entitlements, has prepared and certified a Final Environmental Impact Report (SCH 2006112097), and adopted Findings of Fact, a Statement of Overriding Consideration, and a Mitigation Monitoring and Reporting Program.
3. There are no changed circumstances that would require LAFCo to prepare a supplemental EIR pursuant to State CEQA Guidelines Section 15162 or 15163; the Commission has considered the information contained in the Final Environmental Impact Report and the Mitigation Monitoring and Reporting Plan prior to its action on the proposal;

NOW, THEREFORE, the Commission resolves and orders the following:

1. The boundaries, as set forth in the proposal, are hereby approved as depicted and described in *Exhibit A* attached hereto and by this reference incorporated herein.
2. The Commission hereby adopts the Findings of Fact, Statement of Overriding Considerations prepared by the County of Nevada for the project, attached hereto as *Exhibit B*, and the Mitigation Monitoring and Reporting Program prepared and adopted for the project by the County of Nevada and contained within the Notice of Conditional Approval File No. PM 04-020, U04-019 Dated April 21, 2010, attached hereto as *Exhibit C*.
3. The proposal is approved, subject to terms and conditions as stated herein.

4. The change of organization is assigned the following distinctive short-term designation:

County Sanitation District, Zone 2 (Lake of the Pines) —Annexation: Higgins Marketplace

5. The reorganization consists of the following jurisdictional changes:

County Sanitation District – Annexation

6. The regular county assessment roll will be utilized.
7. No existing bonded indebtedness shall be affected by this reorganization.
8. As authorized by Section 56886(t) of the Government Code, all previously authorized charges, fees, assessments, or taxes currently levied by the City shall be extended to the subject territory upon completion of this annexation.
9. The exchange of tax revenues for the reorganization will be performed in accordance with the provisions established by the Nevada County Board of Supervisors in the form of Resolution 06-162.
10. LAFCo is the conducting authority for this reorganization. In accordance with the provisions of Section 56663 (c) and with Nevada LAFCo Policies, the Commission hereby waives protest proceedings entirely.
11. The Executive Officer is hereby authorized and directed, upon the expiration of the reconsideration period specified by Section 56895 and payment of all applicable fees and satisfaction of all conditions for completion, to prepare and file a Certificate of Completion as provided by Section 57200 of the California Government Code and to mail certified copies of this resolution to each affected local agency as provided in Section 56882.

The foregoing resolution was duly passed by the Local Agency Formation Commission of Nevada County at a regular meeting held on January 16, 2020, by the following roll call vote:

Ayes:

Noes:

Abstentions:

Absent:

Signed and approved by me after its passage this ____ day of January, 2020.

Attest:

SR Jones, Executive Officer

Kurt Grundel, Chair
Nevada LAFCo

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Exhibit A -- Map and Legal Description

Exhibit B – Findings of Fact and Statement of Overriding Consideration (Lead Agency, County of Nevada)

Exhibit C – Mitigation Monitoring Plan (Lead Agency, County of Nevada) (contained in Notice of Conditional Approval)

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EXHIBIT A – Map and Legal Description

**ANNEXATION MAP NO.
TO NEVADA COUNTY SANITATION DISTRICT NO. 1, ZONE #2**
BEING A PORTION OF
SECTION 28, TOWNSHIP 14 NORTH, RANGE 8 EAST, M.D.B.& M.,
IN THE UNINCORPORATED COUNTY OF NEVADA, CALIFORNIA

Exhibit A

SEPTEMBER 30, 2019

APPROVED BY NEVADA COUNTY LOCAL AGENCY FORMATION COMMISSION

RESOLUTION NO: _____
DATE: _____

THIS MAP, WHEN RECORDED, WAS ACCOMPANIED BY A CERTIFICATE OF COMPLETION, PREPARED PURSUANT TO SECTIONS 57200-57202 OF THE GOVERNMENT CODE, TO WHICH WAS ATTACHED A CERTIFIED COPY OF THE BOUNDARY DESCRIPTION OF THE TERRITORY SHOWN ON SAID MAP. THE CERTIFICATE OF COMPLETION IS RECORDED AS DOCUMENT NO. _____ NEVADA COUNTY RECORDS.

SR JONES
EXECUTIVE OFFICER, NEVADA LAFCO

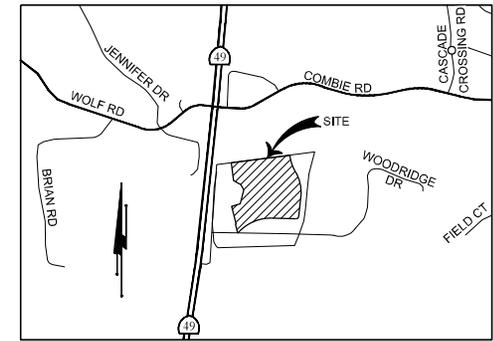
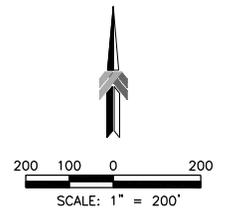
RECORDED AT THE REQUEST OF S.R. JONES, OFFICER OF THE NEVADA COUNTY LOCAL AGENCY FORMATION COMMISSION, AT _____ M. THIS DAY OF _____ 20__ IN BOOK _____ OF SURVEYS AT PAGE _____ NEVADA COUNTY RECORDS.

DOCUMENT NO.: _____ GREGORY J. DIAZ
FEE: _____ NEVADA COUNTY RECORDER
BY: _____ DEPUTY

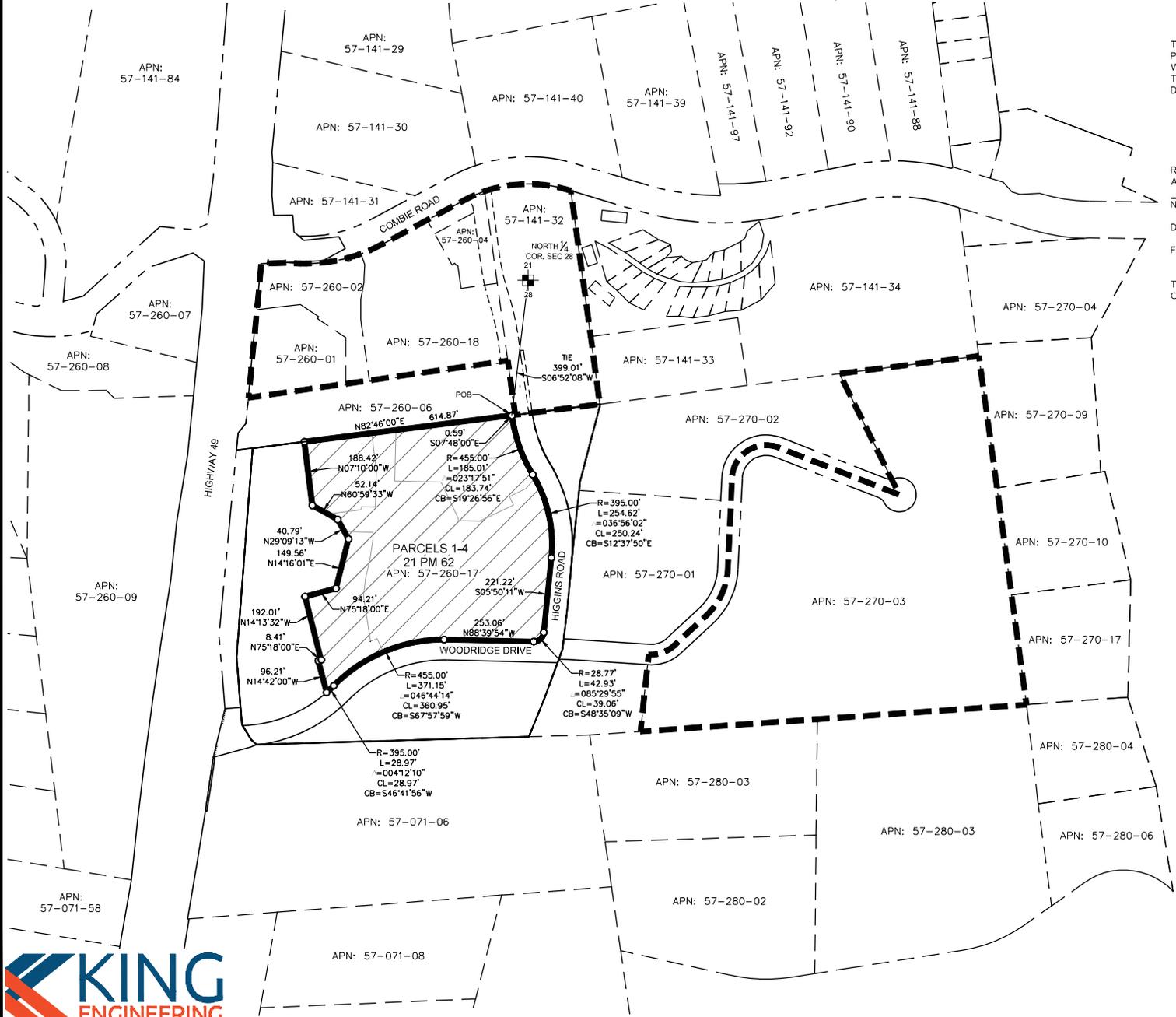
THIS MAP WAS PREPARED BY _____
OR UNDER THE DIRECTION OF: _____
LICENSE EXPIRES _____

LEGEND

-  DIMENSION POINT
-  EXISTING DISTRICT BOUNDARY - ZONE #11
-  PROPOSED DISTRICT BOUNDARY
-  PROPOSED ANNEXATION AREA



VICINITY MAP
NOT TO SCALE



200 Auburn Folsom Road, Ste. 201 T: (530) 272-3308
Auburn, California 95603 E: info@king-engineering-inc.com

EXHIBIT 'A'

**BOUNDARY DESCRIPTION OF ANNEXATION NO. _____
TO
NEVADA COUNTY SANITATION DISTRICT NO. 1, ZONE #2**

All that real property, located within the North one half of Section 28, Township 14 North, Range 8 East, M.D.B. & M., within Nevada County, California, more particularly described as follows:

Beginning at a point from which the North one quarter corner of Section 28 bears N 06°52'08" E 399.01 feet, thence from said **Point of Beginning**:

Course 1. S 07°48'00" E 0.59 feet, thence,

Course 2. Along a tangent curve concave Northeast having a radius of 455.00 feet, through a central angle of 23°17'51" for a distance of 185.01 feet, chord bearing being S 19°26'56" E and chord length being 183.74 feet, thence,

Course 3. Along a tangent curve concave Southwest having a radius of 395.00 feet, through a central angle of 36°56'02" for a distance of 254.62 feet, chord bearing being S 12°37'50" E and chord length being 250.24 feet, thence,

Course 4. S 05°50'11" W 221.22 feet, thence,

Course 5. Along a tangent curve concave Northwest having a radius of 28.77 feet, through a central angle of 85°29'55" for a distance of 42.93 feet, chord bearing being S 48°35'09" W and chord length being 39.06 feet, thence,

Course 6. N 88°39'54" W 253.06 feet, thence,

Course 7. Along a tangent curve concave Southeast having a radius of 455.00 feet, through a central angle of 46°44'14" for a distance of 371.15 feet, chord bearing being S 67°57'59" W and chord length being 360.95 feet, thence,

Course 8. Along a tangent curve concave Northwest having a radius of 395.00 feet, through a central angle of 04°12'10" for a distance of 28.97 feet, chord bearing being S 46°41'56" W and chord length being 28.97 feet, thence,

Course 9. N 14°42'00" W 96.21 feet, thence,

Course 10. N 75°18'00" E 8.41 feet, thence,

Course 11. N 14°13'32" W 192.01 feet, thence,

Course 12. N 75°18'00" E 94.21 feet, thence,

Course 13. N 14°16'01" E 149.56 feet, thence,

Course 14. N 29°09'13" W 40.79 feet, thence,

Course 15. N 60°59'33" W 52.14 feet, thence,

Course 16. N 07°10'00" W 188.42 feet, thence,

Course 17. N 82°46'00" E 614.87 feet to the **Point of Beginning** and containing 9.66 acres of land more or less.

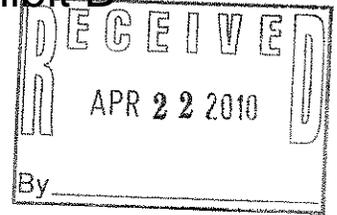
For assessment purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.



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**EXHIBIT B – ENVIRONMENTAL FINDINGS AND STATEMENTS REQUIRED
UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (PREPARED AND
ADOPTED BY COUNTY OF NEVADA)**

Exhibit B



CEQA FINDINGS OF FACT

and

**STATEMENT OF OVERRIDING
CONSIDERATIONS**

OF THE NEVADA COUNTY BOARD OF SUPERVISORS
for the

HIGGINS MARKETPLACE PROJECT

April 13, 2010

I. INTRODUCTION

The County of Nevada (“County”), as lead agency, prepared an Environmental Impact Report (“EIR”) for the Higgins Marketplace Project (“Project”). In its entirety, the document consists of the November 2007 Draft EIR (“DEIR”) and the May 2009, Final EIR (“FEIR”), (State Clearinghouse No. 2006112097) the December, 2008, Technical Memorandum to the Final EIR, and the August, 2009, Technical Memorandum to the Final EIR.¹ These findings, as well as the accompanying statement of overriding considerations in Section XI, *infra*, have been prepared in accordance with the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.) and its implementing guidelines. (“CEQA Guidelines”) (Cal. Code Regs., tit. 14, § 15000 et seq.)

Subsequent to the release of the FEIR and after the Planning Commission hearing on the project held on January 8, 2009, the applicant advised the County that it would work with County Staff to refine the Project design concept described in the EIR in a manner that addressed the significant traffic impacts of the Project. To that end, County Planning Staff met with the applicant to review and refine the Project design concept. Following the January 8, 2009 Planning Commission hearing, the applicant submitted detailed plans for what it referred to as the “Revised Project.” Prior to the May 28, 2009 Planning Commission hearing, the applicant informed County staff that it was no longer seeking approval for the project as initially proposed and described in the EIR, but rather is seeking approval of the Revised Project instead. The Planning Commission considered the merits of the Revised Project at the public hearing held on May 28, 2009. On August 18, 2009, the Board of Supervisors determined that the Revised Project is more desirable and is environmentally superior to both the project initially proposed and the alternatives described in the EIR (except for the “No Project” alternative which is not feasible). Therefore, Board of Supervisors approved the General Plan Amendment (GP-005) as modified, to re-designate the site from the Business Park land use designation to Community Commercial (12.03-acres), Business Park (3.03 acres), Office Professional (0.77 acres), and Open Space (4.23-acres). The Board of Supervisors also approved the Rezone (Z04-012), as modified to rezone the site from BP-SC-SP (Business Park – Scenic Corridor – Site Performance) to 12.03 acres of C2-SC-SP (Community Commercial – Scenic Corridor – Site Performance), 3.03 acres of BP-SC-SP (Business Park – Scenic Corridor – Site Performance), 0.78 acres of OP-SC-SP (Office Professional – Scenic Corridor – Site Performance), and 4.23 acres of Open Space including Site Performance standards.

Based on these events, and, for the reasons set forth in the Planning Commission’s findings and in other approval documents, the Planning Commission concurred that the Revised Project is more desirable and is environmentally superior to both the project initially proposed and the alternatives described in the EIR (except for the “No Project” alternative which is not feasible). The Planning Commission, therefore, approved The Project’s Use Permit, Tentative Parcel Map

¹ In October of 2008, an FEIR was circulated for the Project. An updated FEIR was also circulated in April of 2009. Finally, in May of 2009 a final FEIR was circulated, which supersedes both the October 2008 and April 2009 FEIRs. The May 2009 FEIR includes several corrections and modifications to respond further to comment letters received during the public comment period and to account for additional technical studies produced since the October 2008 FEIR was released.

and Habitat Management Plan. These quasi-adjudicatory approvals were appealed to the Nevada County Board of Supervisors.

These findings will explain how the County has met its various duties under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) with respect to its approval of the Revised Project.

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute goes on to provide, however, that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in section 21002 are implemented, in part, through the requirement that agencies must adopt findings when approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a Project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR. The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding, and that such changes have been adopted by such other agency or can and should be adopted by such other agency. The third potential conclusion is that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. (CEQA Guidelines, § 15091.) In connection with its legislative approvals of the General Plan Amendment (GP04-005) and Rezone for the Project, the Board of Supervisors certified the FEIR in compliance with CEQA Guidelines section 15090, adopted CEQA Findings of Fact and Overriding Considerations, and adopted the Mitigation Monitoring and Reporting Program for the Project.

These findings are intended to satisfy CEQA’s requirements with respect to the Board of Supervisors’ review of the Planning Commission’s quasi-adjudicatory approvals for the Project and approval of the use permit.

II. **PROJECT DESCRIPTION**

A. LOCATION

The 20.07-acre project site consists of one parcel (Assessor’s Parcel Number 57-260-17) and is located on the east side of State Route 49 (SR 49), in the southwestern portion of Nevada County near the Lake of the Pines community. The site is part of the Higgins Area Village Center and is within the boundaries of the Higgins Area Plan. The project site is currently designated BP, Business Park, in the General Plan and Higgins Area Plan. (DEIR, p. 4.1-5.)

B. OVERVIEW

Project entitlements include, but are not limited to, a General Plan Amendment and a Rezone for a portion of the project site from Business Park to Community Commercial and Office-Professional, a Tentative Parcel Map, a Use Permit, and a Habitat Management Plan.

The Higgins Marketplace Project as originally proposed consisted of the subdivision of the 20.07-acre site into 10 parcels for commercial, light industrial, and office uses. On five of the parcels (approximately 10.58 acres), the originally proposed project called for a 59,800 square-foot retail store (expected to be a Bel-Air Market),² two retail buildings (one 13,200 square feet and one 6,500 square feet), two 3,500 square-foot fast-food restaurant buildings, and 482 parking stalls. No development was proposed on four other parcels (approximately 5.07 acres). It was anticipated, however, that these parcels could accommodate 42,000 square feet of light industrial and office space. The last parcel (approximately 3.26 acres in size) was designated to retain the existing wetlands and to provide an approximately 25-foot setback between the developed parcels and the onsite wetlands. As originally proposed, some tenants would require drive-throughs, outside storage, outdoor display, outdoor vendor sales and/or outside seasonal sales. These uses and structures were to be permitted and controlled through a set of design guidelines subject to County approval and would be applicable to the entire shopping center. Signage would be governed by County sign criteria. A free standing pylon sign was anticipated to be located on the eastern property boundary, visible from State Route 49.

The Revised Project is substantially similar to the originally proposed project except that modifications have been made to further decrease potential environmental impacts associated with the Project. The Revised Project achieves the goal of decreasing the Project's potential environmental impacts by increasing the wetland buffer parcel, reducing the overall size of the area to be developed, reducing the total number of buildings proposed to be constructed from five to four, reducing the combined building footprint of the Project, and prohibiting the development of drive-through restaurants. Specifically, the Revised Project consists of the subdivision of the 20.07-acre site into 7 parcels for commercial, light industrial, and office uses. On four of the parcels (approximately 9.68 acres), the Revised Project calls for a 50,060 square-foot retail store (expected to be a Bel-Air Market), two retail buildings (one 11,400 square feet and one 8,250 square feet), one 6,000 square-foot sit-down restaurant, and 411 parking stalls. In total, the Revised Project includes the development of 75,710 total square feet of commercial building area; in comparison, the originally proposed project included 86,500 square feet and the Redesign/Reduced Density Alternative included 80,000 square feet. No development is proposed on two other parcels (approximately 3.80 acres). Under the Revised Project, however, it is still anticipated that these parcels could accommodate 26,000 square feet of light industrial and office space. The last parcel (approximately 4.23 acres in size) was designated to retain the existing wetlands and to provide an approximately 70-foot setback between the developed parcels and the onsite wetlands. No drive-through restaurants are included in the Revised Project, and the Use Permit established for the Revised Project would prohibit the future development of drive-through restaurants within the Higgins Marketplace. As with the originally proposed project, some tenants will require outside storage, outdoor display, outdoor

² The FEIR amended the Project description to reduce the anticipated Bel-Air Market from 59,800 square feet to 57,022 square feet. (FEIR, p. 4.0-1.)

vendor sales and/or outside seasonal sales. These uses and structures will be permitted and controlled through the Use Permit process subject to County approval and will be applicable to the entire shopping center. Signage will be governed through the Use Permit process and approval of a Master Sign Criteria for the shopping center. A free standing pylon sign is still anticipated to be located on the eastern property boundary, visible from State Route 49 and will be included in the Master Sign Criteria.

C. PROJECT OBJECTIVES

As set forth in the DEIR, the Project applicant's objectives for the Revised Project are as follows:

- Provide a full-service grocery shopping alternative for local residents currently driving to the City of Grass Valley or Auburn for a full-service grocery store.
- Improve the jobs/housing balance in Nevada County.
- Follow an architectural design that will look and appear similar to the existing Higgins Center north of the project site.
- Protect the existing wetlands occurring on the project site.
- Protect the visual corridor along SR 49.

(DEIR, p. 3.0-1 to 3.0-2.)

Based on its own review of the EIR and other information and testimony received in connection with the Project, the County finds these objectives to be acceptable and persuasive from a public policy standpoint. In deciding to propose the Revised Project in lieu of the project as originally proposed, the applicant has concluded that Revised Project generally meets these objectives and it is thus acceptable. In choosing to approve the project, the County thus embraces these objectives virtually as its own, and accords them weight in considering the feasibility of alternatives set forth in the EIR, and in invoking overriding considerations in approving the Project. (See *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1507-1508; *Sequoiah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal. App. 4th 704, 715 (*Sequoiah Hills*)).

D. DISCRETIONARY APPROVALS

Project approval requires the County, as lead agency, as well as certain "responsible agencies" to take discrete planning and regulatory actions to approve the overall Project. Described below are the discretionary actions necessary to fully carry out the Project.

On May 28, 2009, the Nevada County Planning Commission met to consider the Higgins Marketplace Project. Due to an error in the public noticing, the Planning Commission was only able to consider the Final EIR portion of the Project. Upon conclusion of the hearing, the Planning Commission voted unanimously to recommend that the Board of Supervisors certify the Final EIR. At the June 11, 2009 Planning Commission hearing, discussion of the Higgins Marketplace Project continued. Upon conclusion of the hearing, the Planning Commission voted to recommend the Board of Supervisors approve the Revised Project and again recommended the Board of Supervisors certify the Final EIR. On June 30, 2009, the Planning Department also

participated in a public workshop in the Lake of the Pines / Higgins Area to discuss the Revised Project. One of the focuses of this workshop was to discuss the Revised Project and growth in the south County area.

On August 18, 2009, the Board of Supervisors the Board of Supervisors approved the legislative approvals required to develop the Revised Project. In addition to certifying the Final EIR and adopting CEQA Findings and the associated Statement of Overriding Considerations and Mitigation Monitoring Plan (CEQA requirements), actions taken by the Nevada County Board of Supervisors on August 18, 2009, included, but were not necessarily limited to, the following:

- Certification of FEIR;
- Approval of the General Plan Amendment;
- Approval of the Rezone, including any combining districts;
- Adoption of CEQA Findings of Fact;
- Adoption of Mitigation Monitoring and Reporting Plan.

On November 12, 2009, the Planning Commission approved the quasi-adjudicatory entitlements (e.g., use permit, and habitat management plan) required for the applicant to commence construction of the Revised Project. These approvals included:

- Adoption of a Mitigation Monitoring and Reporting Program;
- Approval of the Use Permit and Tentative Parcel Map;
- Adoption of Habitat Management Plan.

Two appeals to the Planning Commission's approval of the quasi-adjudicatory entitlements were filed with the Board of Supervisors. In adopting these findings and Statement of Overriding Considerations, the Board of Supervisors affirms the Planning Commission's approval of the Project's quasi-adjudicatory approvals, with amendments.

Other Project approvals and associated entitlements that must be granted by responsible agencies include or may include the following:

- A Streambed Alteration Agreement (Sections 1601 and 1603 of the Fish and Game Code) from California Department of Fish and Game (CDFG), if necessary.
- Issuance of a National Pollution Discharge Elimination System (NPDES) Permit and Storm Water General Permit, Storm Water Pollution Prevention Program (SWPPP), and Water Quality Certification or Waiver, under Sections 401 and 402 of the Clean Water Act (CWA) would be required from Central Valley Regional Water Quality Board (CVWQCB).
- Approval of permits under Section 404 of the CWA from the U.S. Army Corps of Engineers (COE).
- An agreement regarding facility expansion for the provision of water from the Nevada Irrigation District.
- Approval of the project's annexation into the Nevada County Sanitation District 1 from the Nevada County Local Agency Formation Commission (LAFCo).

- Issuance of an Encroachment Permit from the California Department of Transportation (Caltrans).

III. ENVIRONMENTAL REVIEW PROCESS

In accordance with section 15082 of the CEQA Guidelines, the County prepared a Notice of Preparation (“NOP”) of an Environmental Impact Report (“EIR”) on January 31, 2005. Pursuant to CEQA Guidelines sections 15023, subdivision (c), and 15087, subdivision (f), the State Clearinghouse in the Office of Planning and Research was responsible for distributing environmental documents to State agencies, departments, boards, and commissions for review and comment. The County followed required procedures with regard to distribution of the appropriate notices and environmental documents to the State Clearinghouse. The State Clearinghouse was obligated to make, and did make, that information available to interested agencies for review and comment. The NOP was received by the State Clearinghouse (SCH #2005022022) on February 9, 2005, and a 30-day public review period ended on March 15, 2005. The County also held a scoping meeting on June 22, 2005, to receive comments on the NOP. The NOP and all comments received on the NOP are presented in Appendix A of the DEIR. (FEIR, p. 1.0-1.)

The EIR includes an analysis of the following issue areas:

- | | |
|---------------------------------------|-------------------------------------|
| • Land Use | • Hazardous Materials/Risk of Upset |
| • Traffic and Circulation | • Geology and Soils |
| • Air Quality | • Hydrology and Water Quality |
| • Noise | • Biological and Natural Resources |
| • Population, Housing, and Employment | • Cultural Resources |
| • Public Services and Utilities | • Visual Resources/Light and Glare |

(See DEIR, p. i.)

The County published the DEIR on November 30, 2007. The County published notification of the release of the DEIR in the Union Newspaper on December 6, 2007, which began the initial 45-day public comment period on the project. As provided in the Notice of Availability, the public comment period provided on the DEIR was initially going to end on January 23, 2008. (DEIR Notice of Availability, p. 1.) During the County Planning Commission public hearing held on January 10, 2008, to take public comments on the DEIR, the Planning Commission agreed to extend the comment period to end the day of its first scheduled hearing in February (scheduled for February 14, 2008). To provide the public with an opportunity to review and comment on the comments on the DEIR that were submitted by the applicant during the February 14, 2008 Planning Commission hearing, the comment period was once again extended by the Planning Commission to February 29, 2008. Therefore, the County offered a comment period on the DEIR that was substantially longer than originally stated in the Notice of Availability and significantly greater than the 45-day review period set forth in section 15105 of the CEQA Guidelines. Responses to agency comments were provided in October, 2008.

Consistent with section 15202 of the CEQA Guidelines, the Nevada County Planning Commission held two public meetings to receive comments on the DEIR. The first was held on January 10, 2008, and the second was held on February 14, 2008. In May of 2009, the County published the FEIR for the Project. In December, 2008 and August, 2009, Technical Memoranda were prepared responding to late comment letters was prepared and included in the FEIR. The Board of Supervisors certified the FEIR, including the December, 2008 and August 2009, Technical Memoranda, on August 18, 2009.

IV. ABSENCE OF SIGNIFICANT NEW INFORMATION

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification of the Final EIR. The Board of Supervisors' CEQA Findings of Fact for the Project determined that the EIR need not be recirculated. As explained therein, 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 that the project proponent declines to implement. The CEQA Guidelines provide the following examples of significant new information under this standard:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043).

These examples are now reflected in section 15088.5 of the CEQA Guidelines. In this case, the "new" information reflecting the revised project does not show a new substantial environmental impact or a substantial increase in the severity of an environmental impact previously identified. Indeed, many of the Revised Project's impacts are less than those associated with the Project as originally proposed. Also, the information updated in response to the Project's revisions do not demonstrate that there is a feasible alternative or mitigation measure considerably different from the alternatives and mitigation measures evaluated in the DEIR which the applicant has not agreed to implement that would clearly reduce environmental impacts. Finally, the fourth example of a circumstance in which recirculation is required, as interpreted by case law, applies only in unusual situations where an entire section on basic and critical analysis was omitted from the DEIR. Here, as found by the Board of Supervisors, the EIR contains a thorough evaluation of all the potentially significant impacts. The impact discussion represents a conservative analysis of the Revised Project's environmental impacts in that it overstates the impacts of the Revised Project, which is smaller than the project as originally proposed. The Revised Project will not result in any new significant impacts and, in some cases, will reduce the significant impacts identified in the draft EIR without the need for mitigation. Accordingly, recirculation is not

required (Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5; *Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the Univ. of Cal.*(1993) 6 Cal.4th 1112, 1130 (*Laurel Heights II*)).

Furthermore, the Board of Supervisors hereby finds that the circumstances set forth in Public Resources Code section 21166 (governing subsequent environmental review where an EIR has been certified), as amplified by CEQA Guidelines sections 15162 and 15163 are not present with respect to the Project, and therefore a subsequent or supplemental EIR is not required in connection with the County's approvals for the Project.

V. RECORD OF PROCEEDINGS

In accordance with Public Resources Code section 21167.6, subdivision (e), the record of proceedings for the County's decision on the Project includes the following documents:

- The NOP and all other public notices issued by the County in conjunction with the Project;
- All comments submitted by agencies or members of the public during the comment period on the NOP;
- The DEIR for the Project (November 2007) and all appendices;
- All comments submitted by agencies or members of the public during the comment period on the DEIR;
- The Final EIR as revised May 2009 for the Project, including comments received on the DEIR, and responses to those comments and appendices (May 2009);
- The December 2008 Technical Memorandum for the Final EIR and the August 2009 Technical Memorandum from PMC to the Nevada County Community Development Center (Final EIR Appendix L);
- Documents cited or referenced in the Draft and Final EIRs;
- The project application and subsequent revisions to the application, and supporting materials submitted by the applicant.
- The mitigation monitoring and reporting program for the Project;
- All findings and resolutions adopted by the Planning Commission and the Board of Supervisors in connection with the Project and all documents cited or referred to therein;
- All reports, studies, memoranda, maps, staff reports, or other planning documents relating to the Project prepared by the County, consultants to the County, or responsible or trustee agencies with respect to the County's compliance with the requirements of CEQA and with respect to the County's action on the Project;
- All documents submitted to the County by other public agencies or members of the public in connection with the Project, up through the close of the Planning Commission public hearing on November 12, 2009;
- All documents submitted to the County by other public agencies or members of the public in connection with the Project, up through the close of the Board of Supervisors public hearing on April 13, 2009;
- Any minutes and/or verbatim transcripts of all information sessions, public meetings, and public hearings held by the County in connection with the Project;

- Any documentary or other evidence submitted to the County at such information sessions, public meetings, and public hearings;
- The Nevada County General Plan and all environmental documents prepared in connection with the adoption of the General Plan;
- Nevada County Zoning Ordinance and all other County Code provisions cited in materials prepared by or submitted to the County;
- Any and all resolutions adopted by the County regarding the Project, and all staff reports, analyses, and summaries related to the adoption of those resolutions;
- Matters of common knowledge to the County, including, but not limited to federal, state, and local laws and regulations;
- Any documents expressly cited in these findings, in addition to those cited above; and
- Any other materials required for the record of proceedings by Public Resources Code section 21167.6, subdivision (e).

The documents constituting the record of proceedings are available for review by responsible agencies and interested members of the public during normal business hours at the Nevada County Community Development Agency, 950 Maidu Avenue, Nevada City, CA 95959-8617. The custodian of these documents is the Community Development Director.

VI. CONSISTENCY WITH APPLICABLE PLANS

The EIR evaluated the Project to determine whether it is consistent with applicable plans, policies, and regulations. The relevant plans, policies, and regulations are summarized below.

NEVADA COUNTY GENERAL PLAN

The Nevada County General Plan was adopted in 1995, and serves as the overall guiding policy document for the unincorporated areas of Nevada County. The General Plan is designed to identify the direction the County will take concerning its future development and to serve as a long-term guide for the orderly growth and development of Nevada County. It forms the basis for zoning, subdivision regulation, and other planning decisions on the location, intensity and design of public facilities and land use. The Nevada County General Plan land use goals, policies and objectives related to the project are identified below.

The General Plan EIR analyzed the environmental impacts associated with buildout of the County under the land uses and densities allowed by the General Plan. Where feasible, the County has adopted mitigation measures to reduce impacts to a level of insignificance. In addition, significant and unavoidable impacts identified in the General Plan EIR were addressed by the County in the General Plan EIR and the Findings of Fact and Statement of Overriding Considerations were adopted with the approval of the General Plan EIR by the Nevada County Board of Supervisors on November 14, 1995.

The primary tool for implementation of the General Plan is through what is known as the consistency requirement. All discretionary land use approvals must be found to be consistent with the goals and policies contained in the General Plan, as well as the General Plan Land Use and Circulation Map. The consistency requirement is enforced by denying projects that are

inconsistent or by redesigning and/or conditioning projects to bring them into conformance with the General Plan. In this manner, the provisions of the General Plan are applied and implemented in the design and construction of development projects.

The General Plan goals and policies were largely developed to address and minimize the potentially significant environmental impacts of development under the General Plan Land Use Map. These goals and policies seek to preserve and enhance the special environmental amenities of Nevada County while providing for new development to serve the housing, economic, and social needs of the community and the region. It is expected that the goals and policies will operate to avoid significant environmental impacts of development in most cases.

The Land Use Element plays a central role in the General Plan. It provides a description of the existing pattern of land use and establishes a pattern for future land use. It also sets County policy on population density and intensity of development, is the basis for determining service requirements, and establishes policy on annexation and development phasing. The Land Use Element identifies specific goals and policies for residential, commercial, and industrial uses as well as goals and policies for land outside of the County, for land use consistency and for land use coordination. The goal and policies for commercial land uses are applicable to the project. The specific commercial land use policies applicable to the Revised Project are identified below under the goal for commercial land use.

Goal for Commercial Land Use

To retain and renew existing commercial land uses and designate sufficient new commercial areas to meet future County needs.

Policy 1.1

The General Plan divides the County into Community Regions and Rural Regions. All of the land area of the County is placed in one of these regions. Within the Rural Regions, growth is limited to those types and densities of development which are consistent with the open, rural lifestyle, pastoral character and natural setting and surrounding land use patterns which exists in these areas. Within the Community Regions, balanced growth is encouraged to provide managed housing, employment, shopping and cultural opportunities appropriate to each community, located for convenience, efficiency and affordability.

Policy 1.2

Within Nevada County, the Community Regions are established as the areas of the County within which growth should be directed to provide compact, areas of development where such development can be served most efficiently and effectively with necessary urban services and facilities. The Community Regions are defined by Community boundaries generally based upon the following criteria:

- a. Existing development patterns reflecting higher intensity and density of use and need to provide land area to accommodate a balanced pattern of development in the County;
- b. Existing and potential service areas for major services such as public sewer and water;
- c. Location of major topographic patterns and features;
- d. Major transportation corridors and travel patterns; and

- e. Ability to provide and maintain appropriate transitions at Community boundaries.

In addition to the Town of Truckee, Grass Valley and Nevada City, Community Regions are established for Higgins Corner/Lake of the Pines, Lake Wildwood and Penn Valley. Boundaries for the Community Regions are shown on the General Plan Land Use Maps.

Policy 1.5

The General Plan provides for future development in accordance with the following criteria for the various land use designations:

h. Community Commercial (CC) is intended to provide a wide variety of commercial uses to serve large geographical areas with a wider range of goods and services than are available in Neighborhood Commercial areas. Community Commercial designations shall be located within Community Regions although they may serve areas outside the Community Region. This designation shall contain 10 acres or more of land area with development grouped as a contiguous center to preclude strip development, with convenient, controlled access to arterial or major collector, roads.

l. Office-Professional (OP) is intended to provide for office uses, including business, medical, dental and other professional, as well as supporting business services, at intensities of development, which complement other commercial centers and are compatible in scale with nearby residential neighborhoods. Such designations shall be located only in Community Regions or Rural Centers and shall have convenient, controlled access to arterial or collector roads.

m. Business Park (BP) is intended to provide for a variety of related and mutually supporting manufacturing, distribution, processing, service, and research and development uses. Development within this designation shall consist of light industries and supporting business and service activities, which are conducted within enclosed structures and do not create external vibration, noise, glare or other hazard. Accessory uses typical for such development may include residences required for on-site security, dining, or recreational facilities for employees. These uses are contained within a planned environment which has a "campus" character providing a high level of on-site amenities. A comprehensive master plan for the entire site shall be required prior to approval of any development.

Goal 1.4

Within Community Regions, provide for an adequate supply and broad range of residential, employment-generating, and cultural, public and quasi-public uses located for convenience, efficiency and affordability while protecting, maintaining, and enhancing communities and neighborhoods.

Objective 1.6

Maintain a land use pattern based upon criteria that establish the amount of land use types necessary to meet the needs of the population/employment levels, while recognizing the unique character of each Community Region.

Objective 1.7

Encourage land use patterns which minimize use of the automobile and allow for viable alternative transportation modes.

Objective 1.8

Designate a diversified compatible mix of land uses in close proximity to residential uses.

Objective 1.10

Establish a land use pattern which provides for open space, environmentally sensitive land, resource management areas and appropriate transitions.

Objective 1.11

Implement development standards which incorporate open space, protect environmentally sensitive land, and allow for resource management.

Objective 1.12

Provide land uses which protect, enhance, and complement existing communities and neighborhoods.

Objective 1.14

Direct development to areas that can create the opportunity to provide acceptable levels of public facilities and services.

Higgins Area Plan

The project site is located in the Higgins Area Plan (“Plan”) portion of the Nevada County General Plan. Located in southwest Nevada County, the Higgins Area Plan encompasses approximately 246 acres. The Plan consists of a variety of land use designations including commercial, industrial, business park, office, residential, open space, planned development and public uses.

The Plan establishes the goals, policies and implementation measures intended to guide development through the year 2010 for the Higgins Corner-Lakes of the Pines Village Center (“Higgins Area”). As a policy document, this plan supplements the countywide General Plan in guiding future development within the Higgins Area. Higgins Area Plan policies and guidelines provide for preservation of area resources and reinforce policies contained in the Nevada County General Plan by emphasizing protection of ridgelines views, slopes in excess of 30 percent, oak woodlands and riparian corridors.

The Higgins Area Plan was specifically designed to be consistent with a number of the County of Nevada General Plan policies. Land use policies from the General Plan that are especially relevant to the Higgins area include Policy 1.7 that directs the County to prepare and adopt comprehensive site development standards to use in reviewing projects and provide a consistent approach for addressing sensitive environmental features and/or natural constraints, clustering, potential for land use conflicts, and potential for public health hazards. Policy 1.18 encourages clustering to retain permanent open space and protect natural resources and environmental characteristics of the site. The Revised Project’s design is consistent with the intent of these policies. The layout of the Revised Project retains the majority of the site’s oak trees, protects

on-site wetlands, and provides setbacks and landscape screening to protect views along the SR 49 corridor.

General Plan Land Use Designations

The Board of Supervisors, on August 18, 2009, approved the General Plan Amendment and Rezone for the Project. Prior to the approval of the General Plan Amendment, the project site was designated BP, Business Park in the General Plan and Higgins Area Plan. Policy 1.5(m) indicates that the BP designation is intended to provide for a variety of related and mutually supporting manufacturing, distribution, processing, service, and research and development uses. The General Plan Amendment adopted by the Board on August 18, 2009, changed the land use designation for a portion of the project site from BP to CC, Community Commercial and OP, Office-Professional. General Plan Policy 1.5(h) indicates that the CC designation is intended to provide a wide variety of commercial uses to serve large geographic areas with a wider range of goods and services than are available in Neighborhood Commercial areas. Community Commercial designations are to be located within Community regions, although they may serve areas outside the Community Region. The CC designation shall contain 10 acres or more of land area with development grouped as a continuous center to preclude strip development, with convenient, controlled access to arterial or major collector roads. General Plan Policy 1.5(l) states that the OP designation is intended to provide for office uses, including business, medical, dental and other professional, as well as supporting business services, at intensities of development, which complement other commercial centers and are compatible in scale with nearby residential neighborhoods. Such designations shall be located only in Community Regions or Rural Centers and shall have convenient, controlled access to arterial or collector roads.

Objective 1.6 requires the County to maintain a land use pattern based upon criteria that establishes the amount of land use types necessary to meet the needs of the population/employment levels, while recognizing the unique character of each Community Region. Policy 1.15 follows this objective and specifically speaks to the land use balance within the Village Centers, which are located within the Community Regions. The Policy then provides examples of “typical” ratios for the total land uses within the Village Centers: Residential (High Density) – 20 percent; Residential (Medium Density) – 20 percent; Commercial – 25 percent; Business Park (including Industrial) – 15 percent; and Public and Institutional (including recreation and dedicated open space) -20 percent. As described in the January 8, 2009 staff report to the Planning Commission, the existing land use patterns of the Project site are generally consistent with the examples of typical land use ratios within the Village Centers. The Project alters the land use ratios at the Project site primarily by reducing the Business Park designation and increasing the Community Commercial designation. The land use ratios presented in Policy 1.15 are intended as examples of typical land use ratios for Village Centers and are not mandatory. In this case, the Board of Supervisors finds the Community Commercial designation for the Project site to be in keeping with the Village Center concept of the General Plan. The Community Commercial designation would provide employment and shopping opportunities to the Higgins Corner-Lake of the Pines area. The Project has been designed to provide additional services to expand and compliment those available as part of the Higgins Center located northern

of the project site. These interrelated uses will enhance the functional and visual identity of the Community. By providing shopping and employment in the area, vehicle trips to outside shopping and employment will be reduced. Further, the Project's design is in keeping with the small town or village character of the Higgins Corner-Lake of the Pines area.

Nevada County Zoning Code

The Nevada County Zoning Ordinance provides specific development and land use standards for the unincorporated areas of the County. The Zoning Ordinance was updated and revised (September 28, 2004) to reflect new standards that consist of implementation of many objectives and policies set forth in the General Plan. The project site's location adjacent to SR 49 places it within a County designated scenic highway. As a result, the project's zoning would include the Scenic Corridor Combining District.

Project Site Zoning Designations

Prior to the Board of Supervisors approval of the rezone for the Project, the project site was zoned BP-SC-SP (Business Park-Scenic Corridor-Site Performance). The BP zoning designation provides areas for a variety of related uses, including manufacturing, distribution, processing, service, and research and development uses normally associated with light industries. The SC combining district is used to protect and preserve the scenic resources of areas which are adjacent to highways and roads which have been identified as having high scenic quality and requiring protection for the benefit of residents and visitors. The SP combining district is used to provide for refinements in the site development standards and/or the permitted uses in the base zone district with which the "SP" District regulations are combined. Such refinements shall ensure consistency with, and further the intent of, all General Plan policies.

A portion of the Revised Project does not include any of the uses identified as part of BP zoning. The Revised Project provides a variety of retail stores, a restaurant and a 50,060 sq. ft. grocery store. Future uses would include light industrial and office space. In order to accommodate commercial and office uses, the Board of Supervisors approved, on August 18, 2009, a change of a portion of the zoning designation from BP to C2, Community Commercial and OP, Office-Professional.

The C2 Zoning District is intended to provide a wide range of retail and service uses that serve the varied needs of large geographic areas. This designation is consistent with the approved General Plan Amendment and uses proposed as part of the Revised Project.

The OP Zoning District is intended to provide areas for the development of professional and administrative offices and related uses and structures that complement other commercial centers and are considered compatible with adjacent residential and related land uses. This designation is consistent with the approved General Plan Amendment and uses proposed as part of the Revised Project.

As reflected in Chapter 4.1, *Land Use*, of the DEIR, the originally proposed project is consistent with the policies of the aforementioned plans, code, and ordinance (assuming approval of the above-described general plan and zoning amendments). (DEIR, p. 4.1-2 to 4.1-5.) As discussed

in section III.B of these findings, the Revised Project is similar to the originally proposed project, but includes a reduced project footprint and the build out of less total square feet of building area. Like the originally proposed project, the Revised Project is consistent with the policies of the aforementioned plans, code, and ordinance.

VII. FINDINGS REQUIRED UNDER CEQA

Public Resources Code section 21002 provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects[.]” The same statute provides that the procedures required by CEQA “are intended to assist public agencies in systematically identifying both the significant effects of Projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects.” Section 21002 goes on to provide that “in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

The mandate and principles announced in Public Resources Code section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a Project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR. The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency. The third potential conclusion is that specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. (CEQA Guidelines, § 15091.) As explained elsewhere in these findings, “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors. The concept of “feasibility” also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) Moreover, “feasibility” under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.” (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417 (*City of Del Mar*)).

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less-than-significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less-than-significant level.

CEQA requires that the lead agency adopt feasible mitigation measures or, in some instances, feasible alternatives to substantially lessen or avoid significant environmental impacts that would otherwise occur.

With respect to a project for which significant impacts are not avoided or substantially lessened, a public agency, after adopting proper findings, may nevertheless approve the project if the agency first adopts a statement of overriding considerations setting forth the specific reasons that the agency found the project's benefits outweigh its unavoidable adverse environmental effects. The County of Nevada's Statement of Overriding Considerations for the Project is included herein in Section XI below.

VIII. **MITIGATION MONITORING AND REPORTING PROGRAM**

A Mitigation Monitoring and Reporting Program has been prepared for the Project, and was approved by the Board of Supervisors on August 18, 2009 by the same Resolution adopting the Board of Supervisors' findings on the Project. The County will use this Mitigation Monitoring and Reporting Program to track compliance with Project mitigation measures. The Mitigation Monitoring and Reporting Program will remain available for public review during the compliance period. The Final Mitigation Monitoring and Reporting Program is attached to and incorporated into the environmental document approval resolution and is approved in conjunction with certification of the EIR and adoption of these Findings of Fact.

IX. **SIGNIFICANT EFFECTS AND MITIGATION MEASURES**

The DEIR identified relatively few significant and potentially significant environmental effects (or impacts) that the Project will cause or contribute to. Most of these significant effects can be fully avoided through the adoption of feasible mitigation measures or through the revisions that have been made to the Project. One effect (cumulative impacts on regional increases in air pollution), however, cannot be avoided by the adoption of feasible mitigation measures or alternatives, and thus will be significant and unavoidable. Through implementation of mitigation measures this unavoidable significant effect can be lessened, but cannot be avoided. As discussed in more detail below, by adopting the Revised Project as opposed to the originally proposed project, the significant and unavoidable cumulative impacts on regional increases in air pollution can be lessened further. Nevertheless, this impact will not be reduced to a less than significant level by adopting the Revised Project. For reasons set forth in Section XI *infra*, however, the Board of Supervisors has determined that overriding economic, social, and other considerations outweigh the significant, unavoidable effect of the Revised Project.

The discussion below provides a summary description of each impact, describes the applicable mitigation measures identified in the Draft and Final EIRs and adopted by the Board of Supervisors, and states the Board of Supervisors' findings on the significance of each impact after imposition of the adopted mitigation measures. Further explanation of these environmental findings and conclusions can be found in the Draft and Final EIRs, and these findings hereby incorporate by reference the discussion and analysis in those documents supporting the Final EIR's determinations regarding mitigation measures and the Projects' impacts and mitigation

measures designed to address those impacts. In making these findings, the Board of Supervisors ratifies, adopts, and incorporates into these findings the analysis and explanation in the Draft and Final EIRs, and ratifies, adopts, and incorporates in these findings the determinations and conclusions of the Draft and Final EIRs relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings.

The Board of Supervisors has adopted all of the mitigation measures identified below. Some of the measures identified below are also within the jurisdiction and control of other agencies. To the extent any of the mitigation measures are within the jurisdiction of other agencies, the Board of Supervisors finds those agencies can and should implement those measures within their jurisdiction and control.

In several comments on the DEIR, commenters suggested additional mitigation measures and/or modifications to the measures recommended in the DEIR. As is evident from the Final EIR and the discussion below, the County modified several of the originally proposed measures in response to such comments. The Board of Supervisors commends staff for its careful consideration of those comments, agrees with staff in those instances when staff did not accept proposed language, and hereby ratifies, adopts, and incorporates staff's reasoning on these issues.

In considering specific recommendations from commenters, the County has been cognizant of its legal obligation under CEQA to substantially lessen or avoid significant environmental effects to the extent feasible. The County recognizes, moreover, that comments frequently offer thoughtful suggestions regarding how a commenter believes that a particular mitigation measure can be modified, or perhaps changed significantly, in order to more effectively, in the commenter's eyes, reduce the severity of environmental effects. The County is also cognizant, however, that the mitigation measures recommended in the DEIR represent the professional judgment and long experience of the County's expert staff and environmental consultants. The County therefore believes that these recommendations should not be lightly altered. Thus, in considering commenters' suggested changes or additions to the mitigation measures as set forth in the DEIR, the County, in determining whether to accept such suggestions, either in whole or in part, has considered the following factors, among others: (i) whether the suggestion relates to a significant and unavoidable environmental effect of the Project, or instead relates to an effect that can already be mitigated to less than significant levels by proposed mitigation measures in the DEIR; (ii) whether the proposed language represents a clear improvement, from an environmental standpoint, over the draft language that a commenter seeks to replace; (iii) whether the proposed language is sufficiently clear as to be easily understood by those who will implement the mitigation as finally adopted; (iv) whether the language might be too inflexible to allow for pragmatic implementation; (v) whether the suggestions are feasible from an economic, technical, legal, or other standpoint; and (vi) whether the proposed language is consistent with the project objectives.

As is often evident from the specific responses given to specific suggestions, County staff and consultants spent large amounts of time carefully considering and weighing proposed mitigation language, and in many instances adopted much of what a commenter suggested. In some instances, the County developed alternative language addressing the same issue that was of concern to a

commenter. To the extent appropriate, the County conducted additional studies in considering concerns of commenters and appropriateness of proposed mitigation measures in relationship to the Revised Project. In no instance, however, did the County fail to take seriously a suggestion made by a commenter or fail to appreciate the sincere effort that went into the formulation of suggestions.

LAND USE

Impact 4.1.1 Consistency with General Plan. The project site is designated as Business Park in the Nevada County General Plan. A portion of the proposed project is not consistent with this designation and proposes a general plan amendment from the current land use designation to Community Commercial and Open Space. Consistency with the general plan is considered a less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion Objective 1.6 of the General Plan provides that the County shall strive to meet the population and employment needs of each community region of the County while recognizing each region's unique character. To achieve this goal, Policy 1.15 establishes a "desired mix" of activities within the village center and establishes a "desirable ratio" of these uses. Policy 1.15 recognizes that "the actual land uses in each Village Center may be varied to reflect the particular needs and character of its location." In order to ensure consistency with Objective 1.6 and Policy 1.15, the Nevada County Planning Commission May 28, 2009 staff report recommended the Project be modified to reduce the useable Commercial acreage of the project. The Revised Project was proposed by the developer after the January 8, 2009 Planning Commission hearing to respond to County staff's recommendation to reduce the project scale to ensure the project addresses the needs of the area while conforming to the character of the location. The County, thus, finds that the Revised Project is consistent with Objective 1.6 and Policy 1.15.

As with the originally proposed Project, a portion of the Revised Project is not consistent with the site's current Business Park designation and proposes a general plan amendment to amend the designation to Community Commercial and Open Space. Based on the amended land use designation, the Revised Project would comply with the land cover limitations established in Policy 1.23. Additionally, as explained further in the discussion of Overriding Considerations, *infra*, amendment of the General Plan to allow development of the Revised Project is in the public interest and is consistent with the General Plan's central themes, goals, objectives, and policies. Therefore, as general plan consistency will be addressed through a general plan amendment, the impact is considered less than significant.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.1.2 Consistency with Nevada County Zoning. The project proposes a rezone of a portion of the proposed project site from BP, Business Park to C2, Community Commercial and OP, Office-Professional. The zoning will also include a combining district to implement site specific design standards for the project. (LS)

Mitigation Measure No mitigation is required.

Discussion As with the originally proposed Project, the Revised Project proposes a rezone of a portion of the project site from BP, Business Park to C2, Community Commercial and OP, Office-Professional. As County zoning consistency will be addressed through a rezone, the impact is considered less than significant.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.1.3 Physical Deterioration of Existing Commercial Areas. Development of the proposed project would increase commercial and retail uses in the Higgins Corner-Lake of the Pines community. The project is expected to primarily capture demand from households that reside within the area, but have to travel outside the market area, as far as the Grass Valley and Auburn areas, for grocery shopping at a full-size market. Therefore, impacts to physical deterioration of existing commercial areas within the Higgins-Corner-Lake of the Pines community are considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion In comment letters submitted by Keith Wagner on November 13, 2008, January 8, 2009, July 7, 2009, and July 18, 2009, Mr. Wagner expressed concerns regarding the economic studies relied on by the Draft and Final EIRs to consider the potential competitive impacts of development of the Bel-Air Market. Mr. Wagner's January 8, 2009, letter included a memorandum produced by Philip King, which argues that development of the Higgins Marketplace will lead to an oversupply of retail, driving weaker centers out of business and causing urban decay. Mr. Wagner's July 7, 2009, letter included an additional memorandum produced by Dr. King, which argued the EIR's analysis and the County's draft findings were not based on substantial evidence. Mr. Wagner's July 18, 2009, letter included an additional memorandum produced by Dr. King, which argued that the August 5, 2009 PMC memorandum (FEIR Technical Appendix L) and BAE's responses to Mr. Wagner's July 7, 2009, comments were not based on substantial evidence. The Board of Supervisors disagrees. Based on all the analysis included in the Draft and Final EIRs, and the evidence contained in the entire Record of Proceedings, the Board of Supervisors finds that the conclusion that the Project will have a less-than-significant impact on physical deterioration of existing commercial areas is supported by substantial evidence in the record.

As discussed in the Final EIR, subsequent analysis by Bay Area Economics revealed that there is a distinct possibility that development of the project would create competitive impacts such that the existing Holiday Market store would not remain economically viable. If the Holiday Market is vacated, however, retenanting the store is considered to be highly feasible based on the shopping center appearance, mix of tenants and the presence of several other small shopping centers in the area, including Combie Plaza at Combie Road and Armstrong Road and Higgins Village at the southeast corner of Combie Road and Highway 49. (FEIR, p. 4.0-3.)

The likelihood of securing a replacement tenant for the Holiday Market, if it was vacated, is highly likely for numerous reasons. First, the economic analysis conducted by Bay Area Economics found that the Combie Road commercial area appears economically strong, as evidenced by the low vacancy rates and the apparent health of the existing tenants. Second, the area is demographically attractive to retailers, based on the nearly \$87,000 annual average household income for the market area reported by Pitney Bowes MapInfo. Third, the development of a full-sized Bel-Air supermarket will increase the stature of this area as a shopping destination for residents of the surrounding area. Residents of the Holiday Market's existing trade area can be expected to shop in the area more frequently when a larger Bel-Air store that meets more of their grocery needs is present. Fourth, due to its larger size, a new Bel-Air store would draw greater numbers of customers from a larger trade area than the existing Holiday Market. This increased shopper traffic will create additional spillover demand for other commercial establishments in the Combie Road area. Fifth, the Holiday Market is in a convenient location to serve the Lake of the Pines residents, which would make it desirable to potential future tenants. Possible tenants could include a niche grocery or Trader Joes, a bank, a medical office or surgery center, and an expansion of the existing hardware store.

Brokers agreed that overall, it would be very unlikely for a grocery to reoccupy the Holiday Market, and that any space left vacant by the market would likely need to be subdivided. At its current depth, the Holiday Market space could only be practically subdivided into two or three spaces, to allow for the creation of functional units. Estimated time to retenant could range from six months to three years. Nevertheless, given the overall strength of the center and the prospect of the Combie Road/Highway 49 intersection becoming an even stronger commercial destination for this part of Nevada County with the addition of the Bel-Air store, the Lake Center ownership is anticipated to have sufficient economic incentive to undertake these changes and not allow the Holiday Market space or the surrounding center to fall into disrepair. (FEIR, pp. 4.0-3 to 4.) Therefore, even in the event that the Holiday Market were vacated, the Project is not expected to result in a substantial loss of revenues for existing commercial uses in the Higgins Center-Lake of Pines Village Center or in the surrounding area that would result in physical deterioration and blight conditions.

The economic downturn tempers the near-term perspective on economic vitality of the region. However, the conclusions of the Bay Area Economics report remain unchanged in that, although the addition of the Bel-Air market may lead to the closure of the Holiday Market, the potential closure of the market is not anticipated to result in a chain reaction of store closures, long-term vacancies, or the overall deterioration of the existing shopping center. In contrast, the Bel-Air market may help to bolster the local economy in the short term by generating construction jobs. And, in the long term, the project would provide permanent jobs for area residents and generate increased taxes that would fund services in the area. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, potential to result in physical deterioration of existing commercial areas within the Higgins-Corner-Lake of the Pines community.

Further, in response to Mr. Wagner's July 7, 2009, letter and attached memorandum prepared by Dr. King, Bay Area Economics provided additional substantial evidence supporting the conclusion that the economic and social consequences of the Project will not lead to significant environmental impacts. As explained in Bay Area Economics' letter, Mr. Wagner's July 7, 2009, comments rely on a series of assumptions to arrive at different conclusions than those in the EIR, but do not raise any new environmental impacts. The Board of Supervisors is persuaded by the reasoning set forth Bay Area Economics' letter as well as by the reasoning set forth above. Based on the totality of the Record of Proceedings, including all the analyses included in the Draft and Final EIRs, and subsequent information provided by the County's consultants, staff, and Bay Area Economics, the Board of Supervisors finds that the Revised Project will have a less-than-significant impact on physical deterioration of existing commercial areas is supported by substantial evidence in the record.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.1.4 Compatibility with Adjacent Land Uses. Development of the proposed project would place a retail shopping center in an area that is scheduled for development. The project has been designed to incorporate features to be compatible with existing uses. Therefore, impacts to compatibility with adjacent land uses are considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project's impacts to compatibility with adjacent land uses are also considered less than significant.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.1.5 Cumulative Compatibility Impacts. Continued development in southern Nevada County could potentially result in increased land use incompatibility. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project's cumulative compatibility impacts associated with continued development in southern Nevada County will be the same as those of the originally proposed Project.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

POPULATION AND HOUSING

Impact 4.2.1. Population and Housing Growth. Development of the Higgins Marketplace project is not anticipated to increase the population in the County. Therefore, the development of the Higgins Marketplace would have a less-than-significant impact on the population growth. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project's population and housing growth impacts will be the same as those of the originally proposed Project.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.2.2 Displace Persons or Housing. Development of the proposed project would not displace people or housing. There is no impact regarding displacement of persons or housing. (N)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project, like the originally proposed Project, will not displace persons or housing.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.2.3 Cumulative Population and Housing Effects. Implementation of the proposed project would not result in substantial employment growth which would generate new residents within the area and, therefore, would not result in direct and indirect environmental effects from a population increase. Therefore, the project's contribution to cumulative impacts related to population and housing are considered to be less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project's cumulative population and housing growth impacts will be the same as those of the originally proposed Project.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

HAZARDOUS MATERIALS / RISK OF UPSET

Impact 4.3.1 Routine Use of Hazardous Materials. During operation of the project, small quantities of hazardous materials would be used in association with landscaping and maintenance. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, potential for impacts associated with the routine use of hazardous materials.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.3.2 Release of Hazardous Materials. The project site may contain hazardous materials from past and present uses. Additionally, implementation of the project would involve the use of hazardous materials during construction. Heavy equipment would require refueling and occasional maintenance on-site. This impact is considered potentially significant. (PS)

Mitigation Measure 4.3.2a Project grading and construction permits shall designate staging areas where fueling, oil-changing and maintenance activities are permitted. No fueling and oil-changing activities shall be allowed outside the designated staging areas. The staging areas, as

much as practicable, shall be located on level terrain. Staging areas shall not be located within 200 feet of any stream channels or wetlands. The proposed staging areas shall be identified in the Storm Water Pollution Prevention Plan (SWPPP), which shall be reviewed and approved by the Regional Water Quality Control Board as part of the NPDES permit process.

Mitigation Measure 4.3.2b Prior to map recordation, the applicant shall certify to the County that the project site is free from hazardous materials and/or public safety nuisances.

Discussion Implementation of mitigation measure 4.3.2a would confine fueling and oil-changing activities to specific areas that would avoid potential spread of spills or entry of spills into local water systems. With this measure and compliance with other applicable hazardous material regulations, potential release of hazardous materials impacts would be less than significant. Implementation of mitigation measure 4.3.2b would ensure that the potential hazardous materials and/or public safety conditions present on the site are adequately identified and reduced to a less than significant level.

As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, potential for the release of hazardous materials. Therefore, after implementation of mitigation measures 4.3.2a and 4.3.2b, potential impacts associated with the release of hazardous materials would be less than significant for both the originally proposed Project and the Revised Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.3.3 PCB Hazards. The proposed project is not likely to be impacted by PCBs. One pole-mounted transformer was observed on the site. However, any PCB-contaminated transformers are quickly replaced by PG&E. Therefore, impacts resulting from PCBs are considered less than significant for the project. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project's PCB hazards impacts will be the same as those of the originally proposed Project.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.3.4 Cumulative Hazardous Materials, Natural Hazards and Public Health Impacts. Implementation of the proposed project could contribute to exposing persons to hazards

during construction and operation. This is considered a less than significant cumulative impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, potential for cumulative hazardous materials, natural hazards, and public health impacts.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

TRANSPORTATION AND CIRCULATION

Impact 4.4.1 Impacts to Study Intersections. Following implementation of the proposed project, two study intersections would operate acceptably while the SR 49 / Combie Road and Combie Road / Longs Driveway intersections would operate at LOS F conditions or have at least one approach operating at LOS F. This is considered a significant impact. (S)

Mitigation Measure 4.4.1a The project applicant shall install a traffic signal at the intersection of Combie Road / Higgins Road prior to issuance of an occupancy permit. At the developer's request, the County will facilitate an agreement whereby other benefiting property owners will reimburse the developer for the extra capacity created at the time those properties are developed.

Mitigation Measure 4.4.1b The project shall be responsible for the entire cost of constructing/reconfiguring the two Combie Road westbound left turn lanes at SR the 49/Combie Road intersection to be a minimum of approximately 250 feet each to allow for adequate storage.

Mitigation Measure 4.4.1c The project shall be responsible for the entire cost of constructing an approach at Higgins Road providing a minimum of 250 feet of left turn storage and a minimum of 75 feet of right turn lane to allow adequate queuing.

Mitigation Measure 4.4.1d Access to and from northbound SR 49 at Woodridge Court shall be limited to right-in/right-out turn movements. Left turns from Woodridge Court to southbound SR 49 shall not be allowed. Left turns onto Woodridge Court from southbound SR 49 shall be allowed.

Discussion In response to the comment letter submitted by the Department of Transportation a SimTraffic simulation was performed for the Mitigated Future + Project, Right-In, Right-Out scenario for both a.m. and p.m. peak hours. The analysis was based on the revised trip generation / distribution and assignment resulting from the reduction in supermarket size and the redistribution of market share based on the July 2008 Pitney Bowes MapInfo study. As demonstrated by the SimTraffic simulation, as discussed in connection with the analysis of the Right In Right Out

Alternative in the DEIR (see DEIR, pp. 6.0-6 to 8), and as supported by the additional traffic analysis conducted for the Project (see Final EIR, Appendices A, C), with the implementation of mitigation measures 4.41a-c and the addition of mitigation measure 4.4.1d, Project impacts to all study intersections will be reduced to less than significant.

Only July 31, 2009, Caltrans submitted a letter to the County Board of Supervisors opining, among other things, that the signal required by Mitigation Measure 4.4.1a would not operate acceptably unless Combie Road is widened to provide two lanes in each direction through the SR 49 intersection. As demonstrated in MRO Engineers' August 4, 2009 memorandum, Caltrans' concern is unsubstantiated. As explained in MRO Engineers' August 4, 2009 memorandum, "review of the DEIR level of service calculation sheets for Combie Road/Higgins Road reveals that acceptable operations would result at that location under Existing + Project conditions (LOS B in the AM and LOS C in the PM) with one eastbound through lane and two westbound through lanes, which is the existing configuration. Only under Cumulative Conditions is the second eastbound lane necessary, and that lane will be added in 2011." Therefore, the Board of Supervisors disagrees with Caltrans that the signal required by Mitigation Measure 4.4.1a would not operate acceptably unless Combie Road is widened to provide two lanes in each direction through the SR 49 intersection. No changes to Mitigation Measure 4.4.1a are required.

With regard to Mitigation Measure 4.4.1d, a number of studies have been conducted to determine whether that measure should be implemented in a manner to prohibit left turns onto Woodridge Court from southbound SR 49. The County has determined that under the Revised Project, a limitation on left turns onto Woodridge Court is not required. In a comment letter submitted by the Department of Transportation ("Caltrans") on February 27, 2008, Caltrans concluded that "[l]eft turns from the highway to Woodridge, may be assumed to be allowed, even under cumulative conditions." (See FEIR, p. 3.0-15.) A memorandum produced by Steve Castleberry on June 1, 2009, confirmed Caltrans' conclusion using the *Highway Capacity Manual*. (Castleberry Memo, p. 1.) The memorandum, however, also concluded that additional field observations should be conducted to determine potential delay under cumulative conditions. (*Ibid.*)

On June 8, 2009, Neal K. Liddicoat of MRO Engineers reviewed the conclusions reached in Mr. Castleberry's memorandum and conducted additional field observations. Mr. Liddicoat's memorandum explains that the traffic estimates included in Mr. Castleberry's memorandum are based on the traffic counts estimated prior to revision of the project. (Liddicoat Memo, p. 2.) Because the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and the elimination of drive-through restaurants, the Liddicoat memorandum estimates that the traffic counts associated with the Revised Project will be lower than those estimated from the original Project.

Specifically, the Liddicoat memorandum finds that the projected PM peak-hour demand for the southbound left turn is 52 vehicles per hour under the Revised Project. This is less than one vehicle per minute, even in the year 2030. This relatively low left-turn demand, combined with the existence of adequate gaps in oncoming, northbound traffic, demonstrates that left turns can be made safely. Moreover, for drivers who are concerned about safety of the left turn from SR 49, an alternative exists at Combie Road, where the turn can be made under the protection of a traffic signal. (Liddicoat memo, p. 5)

It should also be noted that the estimates included in the Liddicoat memo “do not reflect the possibility of the future installation of a traffic signal at Streeter Road (about 1,200 feet to the south of Woodridge Road). Such a signal, if installed, would create additional gaps on northbound SR 49; those gaps would, in turn, make the southbound left turns easier. (*Ibid.*, pp. 4-5.) Therefore, the evidence demonstrates that it is not necessary for left turn movements onto Woodridge Court to and from southbound SR 49 to be prohibited under the cumulative + project scenario. As a result, under the Revised Project, Mitigation Measure 4.4.1d will allow right turns to and from northbound SR 49 and restrict left turns onto southbound SR 49 from Woodridge Court, but will not restrict left turns from southbound SR 49 onto Woodridge Court.

As with all modifications to the state highway system, the final design of the improvement must be approved by Caltrans. Note that in its recent letter of July 31, 2009, Caltrans states that a center median and modifications to the street markings will be needed as part of this mitigation measure. The final design of the intersection improvements will be subject to the requirements of a Caltrans encroachment permit and may include an island or other barrier to traffic. Because the barrier will be within the existing developed road prism, there are no environmental impacts.

The Revised Project will result in further reductions in impacts to all study intersections, which through implementation of the above mitigation measures, are already reduced to a less than significant level. Therefore, after implementation of mitigation measures 4.4.1a through 4.4.1d, potential impacts to all study intersections will be less than significant for the Revised Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.4.2 Project Impacts to Roadway Segments. The segment of SR 49 between Combie Road and Lime Kiln Road will continue to operate at LOS D following implementation of the proposed project. This is considered a less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion

Widening of SR 49 between Combie Road and Grass Valley is identified in the County's Regional Transportation Improvement Program. Adequate funding is not available to widen the entire corridor. The County plans to widen the corridor one section at a time. The DEIR concluded that until the corridor widening is completed, impacts to SR 49 between Combie Road and Lime Kiln Road would remain significant and unavoidable. Once the SR 49 widening is completed, the section would operate at LOS A and the impact would be reduced to less than significant.

In the FEIR, the size of the grocery store was reduced from 59,800 square feet to 57,022 square feet. In addition, as discussed above, the FEIR also includes mitigation measure 4.4.1d. After adoption of this mitigation measure, access at Woodridge Court would be available from SR 49 northbound (right in) and left turns off of Woodridge Court onto SR 49 would not be provided. Traffic would be allowed to access SR 49 northbound (right out) from Woodridge Court and left turns off of southbound SR 49 would also be allowed. Additional traffic studies were conducted for the project to account for these changes.

Pitney Bowes MapInfo prepared an updated distribution of projected patrons to the project site as part of the Final EIR. This work effort resulted in a re-review of the daily traffic volumes along the major roadways. After implementation of the modifications to the originally proposed Project discussed in the Final EIR, including a reduction in the square footage of the grocery store building, the Pitney Bowes MapInfo analysis illustrates that the segment of SR 49 from Combie Road to Lime Kiln Road would continue to operate at LOS D. Therefore, as concluded in the Final EIR, the Project would have less-than-significant impacts on the segment of SR 49 from Combie Road to Lime Kiln Road without mitigation.

In addition, the KD Anderson & Associates, Inc. traffic analysis (the "Revised Traffic Study") conducted for the Revised Project determined that by limiting the driveway / side street access along Combie Road, including the addition of mitigation measure 4.4.1d, Combie Road will have additional capacity. With driveway / side street access limited, Combie Road will qualify as a minor arterial roadway and under this designation the roadway will operate at LOS C or better.

As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area and elimination of drive-through restaurants within the shopping center, the Revised Project will result in further reductions in the already less than significant impacts to the segment of SR 49 from Combie Road to Lime Kiln Road.

In a letter dated July 7, 2009, to the Board of Supervisors, Keith Wagner, on behalf of South County Citizens for Smart Growth, questioned the Revised Traffic Study's roadway segment analysis's assumption that the portion of Combie Road between Higgins Road and SR 49 would be re-designated from its

current major collector status to minor arterial classification, under which the road would have higher capacity. In particular, Mr. Wagner stated the change in designation is infeasible because of the existing driveway accesses along the route, and that the change in designation will not result in an increase in capacity. As noted in Response E-2 to Letter E in the Final EIR, this section of Combie Road is planned to be expanded to five lanes in 2011, and is funded through the RTMF. As the project is funded, and scheduled for completion in 2011, widening of the road was also assumed in cumulative conditions. As noted in response E-2, the County is considering requiring widening of the roadway to be complete prior to occupancy as a condition of approval. Caltrans' July 31, 2009, letter asserts that the widening of the roadway is essential to the operation of the new signal at Combie/Higgins Road. This assertion is not supported in the EIR which shows the road operating acceptably in the near term, and that the additional lanes are only in the cumulative condition.

The widening project will inevitably result in modifications to access conditions along Combie Road. For example, the KDA traffic study reasonably assumed that the widening project would include the construction of a raised median along Combie Road (see FFIR Response 2a-9), which will likely result in access restrictions to the existing driveways in the area. Nevada County has the authority to impose access restrictions deemed necessary for safety or operational reasons. The *Combie Road and Lake of the Pines Traffic Study* (Nevada County and Sanitation, Adopted October 19, 2004) states that driveway access is a major factor in enhancing [Combie Road's] volume of traffic. The facility's purpose of providing a direct route between origin and destination locations, not facilitating access to adjacent properties, is the perspective from which potential

access restrictions to affected driveways, access modifications to the driveways. The busiest driveway is the Longs driveway, which is used for right-turns in and out, so no further access restrictions are proposed at the fire station driveway. The potential impact of any change to the fire station driveway is limited to the real estate office and the fire station. There may be a significant impact on the fire station.

Combie Road is currently

In fact, staff has taken steps toward the formal redesignation of the road as a minor arterial. As also noted in FEIR Response 1a-7, “. . . the County has submitted this change to Caltrans for use on Federal Functional Class Maps.” This reclassification action was independent of the Higgins Marketplace project; it is, instead, based on County policies regarding the function of Combie Road, as referenced above. It is, therefore, reasonable to assume that the road will be reclassified within the long-term time frame associated with the analysis documented in the April 17, 2009 KDA report. Moreover, given the history associated with the effort to reclassify Combie Road to minor arterial status, to characterize this reclassification of the roadway as a project-related mitigation measure is inaccurate.

Such a reclassification of Combie Road is appropriate given that the primary function of the subject segment of that facility is to carry traffic between SR 49 and Lake of the Pines and other residential areas to the east.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.4.3 Cumulative Intersection Operations. The DEIR concluded that under cumulative conditions, the SR 49/Combie Road and the Combie Road / Higgins Road intersections would operate unacceptably and the remaining two study area intersections would have at least one approach operating unacceptably. This is considered a significant impact and the project would have a potentially cumulatively considerable contribution. (S, PCC) As explained further in the discussion section below, the Board of Supervisors has determined that due to the changes included in the Revised Project, the potential cumulative impacts to intersection operations at the SR 49 / Combie Road intersection will be less than cumulatively considerable before mitigation. For the Revised Project, this is considered a less-than-significant impact (LS, LCC). Therefore, Mitigation Measure 4.4.3a is no longer necessary for the Project. However, a cumulatively considerable impact would occur at the Combie Road / Higgins Road intersection, even with the Revised Project. Therefore, implementation of Mitigation Measure 4.4.3b remains necessary.

Mitigation Measure 4.4.3b The following improvements shall be constructed or funded by the project applicant at the Combie Road / Higgins Road intersection and shall be completed prior to issuance of occupancy permits:

- Extend the left turn lane along the westbound Combie Road approach by approximately 250 feet.
- In addition to the left turn lane(s) along Higgins Road, provide a 150 foot turn lane for right turning traffic leaving the site.

Discussion The DEIR identified the need for a second southbound left turn lane along SR 49 at the Combie road intersection in order to meet the LOS threshold levels. (DEIR, pp. 4.4-21 to 4.4-24 [Mitigation Measure 4.4.3a].) The DEIR also identified the need for the left turn lane along westbound Combie Road to be extended by approximately 250 feet, and for a 150-foot right turn lane on Higgins Road for traffic leaving the project site. (DEIR, pp. 4.4-21 to 4.4-24 [Mitigation Measure

4.4.3b].) As discussed below, through revisions to the originally proposed Project, Mitigation Measure 4.4.3a is no longer necessary to reduce the impact to the SR 49 / Combie Road intersection to less than significant. Implementation of Mitigation Measure 4.4.3b would reduce the impact to the Combie Road / Higgins Road intersection to less-than-significant. Traffic generated by the Project does not warrant development of two southbound left turn lanes at the intersection of SR 49 and Combie Road. However, the second SR 49 at Combie Road southbound left turn lane has been included in the Regional Transportation Mitigation Fee Program (RTMF). The Project applicant will be required to pay its fair share fees within the RTMF Program.

In December of 2008, County staff expressed a desire to eliminate the two proposed fast-food restaurants as a part of the original site development. The applicant proposed the Revised Project to respond to County Staff's request and to further reduce the project footprint. As noted in the January 8, 2009 County Planning Commission Staff Report, removal of the fast food restaurants with drive-through windows will result in a significant reduction in the traffic impacts associated with the Revised Project. Fast food restaurants with drive-through windows generate approximately 496 average daily trips (ADTs) per 1,000 square feet of building space, which accounts for almost five times the volume of traffic per square foot than a supermarket use and more than ten times the volume of traffic per square foot for specialty retail use. And, fast food restaurant traffic also affects both a.m. and p.m. peak hour volumes. (January 8, 2009 County Planning Commission Staff Report, p. 7.)

Accounting for the traffic reduction associated with the elimination of the fast food restaurants and the reduction in the proposed supermarket, KD Anderson & Associates, Inc. conducted a new traffic analysis (Revised Traffic Study (KD Anderson & Associates, Inc. (April 17, 2009)). The analysis was performed using the number of trips generated by the Revised Project based on the trip generation rates published in *Trip Generation* (Institute of Transportation Engineers, 8th Edition, 2008). The proposed project is expected to generate 6,752 daily trips to and from the project site and 265 a.m. and 643 p.m. peak hour trips.

Trips generated by commercial / retail projects fit into two categories. Some trips will be made by patrons who would not otherwise be on the local street and who go out of their way to reach the site. These are "new" trips. Other trips will be made by patrons who are already driving by the site and simply interrupt a trip already being made to other destinations. These are "pass-by" or diverted trips. Various pass-by rates were used for this project based upon the projected uses. Pass-by rates of 15% for retail uses, 20% for supermarket and 40% for the sit-down restaurant were used for the site. In addition to the pass-by / diverted link reduction an additional 5% internal capture was included to account for trips traveling within the project boundaries. After accounting for the pass-by / diverted link traffic, the internally captured trips and the office-related uses from the adjacent properties, the

KD Anderson & Associates analysis concludes that the project is expected to generate 229 new a.m. peak hour trips and 508 new p.m. peak hour trips.

The trip generation assumptions used in the Revised Traffic Study are supported by substantial evidence. Keith Wagner's July 7, 2009 (which included a letter prepared by Smith Engineering & Management dated July 6, 2009) asserts the Revised Traffic Study's trip generation assumptions are understated. K.D. Anderson & Associates and MRO Engineers have provided the County responses to Mr. Wagner's July 7, 2009, letter. The Board of Supervisors has no quarrel with, and thus incorporates by reference and adopts as its own, the reasoning set forth in the Revised Traffic Analysis and MRO Engineers' July 17, 2009 letter and K.D. Anderson & Associates' July 16, 2009 letter responding to Mr. Wagner's and Smith Engineering's July 7, 2009 letters with respect to trip generation assumptions.

As explained Appendix L to the Final EIR, Smith Engineering's July 6, 2009 letter misstates the ITE manual, as well as the factor of increase assumed for the difference between Specialty Retail and Shopping Center uses. Further, the commenting letter does not show that the total trips were reduced as a result of modifications to the project. As noted in MRO Engineers' July 17, 2009 letter, the application of the Smith Engineering's trip generation rate would result in a 20 trip increase from that assumed in the EIR. Using the pass-by and trip distribution assumptions, the resulting incremental change is too small to have any effect on the intersection levels of service. As noted in K.D. Anderson & Associates' July 16, 2009 letter, the assumptions for the trip generation factors were reviewed by Caltrans who concurred with the rates used in the analysis.

Caltrans' recent July 31, 2009 letter states that Caltrans does not support the removal of Mitigation Measure 4.4.3(a) because it believes the removal of that mitigation measure is unjustified. As explained in MRO Engineers' August 4, 2009 memorandum the removal of Mitigation Measure 4.4.3(a) is well justified. An objective, third third-party traffic analysis conducted for the Revised Traffic Study concluded that, with the reduced project, the intersection will operate at acceptable levels of service under all analysis scenarios, both short-term and long-term. Level of service is the primary adopted standard by which intersection operations (and the potential need for mitigation) are judged. In fact, in Nevada County, no other adopted standard exists with regard to intersection operations.

Further, Caltrans' reference to the Caltrans Highway Design Manual (HDM) as the basis upon which to require the construction of a second left-turn lane is faulty. The referenced portion of the HDM provides: ". . . double left-turn lanes *should be considered* if the left-turn demand is 300 vehicles per hour (vph) or more." [Emphasis added] This statement from the HDM is a guideline, not a standard. If it were a standard, it would state that double left-turn lanes "shall be provided" under these circumstances.

The second southbound left-turn lane is in the County's fee program. Consequently, when the Project pays its traffic mitigation fees to Nevada

County, it will satisfy its obligations with regard to this improvement.

Caltrans notes Table 5 of the Revised Traffic Study (KD Anderson & Associates (April 17, 2009)) indicates vehicle queues are at 522 feet in the cumulative plus project condition for the year 2030. That figure is an estimate for the year 2030. Any such estimate is bound to have a sizable margin of error, given the long-range nature of the associated traffic volume forecast and other factors. In addition, it is reasonable to assume that the second southbound left-turn lane would be provided between now and the year 2030, based on fee program contributions by Higgins Marketplace and other projects that will occur over that period of time (MRO Engineers, August 4, 2009).

Mr. Wagner's July 18, 2009, letter stated that mitigation measures are identified in the Revised Traffic Study (KD Anderson & Associates (April 17, 2009)), which are required to be incorporated into the Project, but which have not been. Each of the mitigation measures identified in the Revised Traffic Report are set forth in italics below as well as the County's responses thereto, which are based on communication by Neal Liddicoat of MRO Engineers.

- 1. In Future plus Project conditions the eastbound approach of the SR 49 /Combie Road intersection should be modified to a through-right lane to reduce the queue along the eastbound approach. The lane should also be lengthened to about 210' and is illustrated in Figure 4 [to the Revised Traffic Study]. The exiting lane configuration includes left, through and right lanes.*

Although couched in terms of impacts to intersections, this improvement is described by the Revised Traffic Study as being necessary to "reduce the queue" along the eastbound approach. The intersection is projected by The Revised Traffic Report to operate at an acceptable level of Service (LOS D), even if the recommended modification does not occur. The conclusion that this mitigation measure is only recommended to address queue lengths is also based on Revised Traffic Study Figure 3, which shows the existing lane configuration, rather than the recommended configuration. Furthermore, the text relating to Table 3 (Levels of Service, Cumulative Plus Project), which shows does not mention the need for this improvement.

Because the need for the improvement is driven solely by a desire to shorten the eastbound queue (and because the County has no adopted standard of significance with respect to queue lengths; that is, the only standard for determining whether intersection operation is acceptable is level of service), the need for the improvement is optional. Furthermore, the suggested improvement is infeasible because adequate right-of-way to allow the lengthening of the lane to 210' does not exist. The right-of-way would only allow an approximately 100'.

2. *In the Future plus Project conditions the northbound right turn lane at the Combie Road / Higgins Road intersection should be lengthened to a minimum of 150' as shown in Figure 5. This should provide adequate storage for the right turning traffic.*

The improvement to the northbound right-turn lane at Combie Road/Higgins Road is included as part of Mitigation Measure 4.4.3b, which requires (second bullet point): “In addition to the left turn lane(s) along Higgins Road, provide a 150 feet turn lane for right turning traffic leaving the site.”

3. *As noted in Response to Comment 5.4 of the DEIR (FEIR), it was noted that while the inside westbound lane along Combie Road approaching the SR 49 intersection is a trap lane: i.e., there is no advance signage indicating when the left turn lane begins. A total of 500' of storage is needed. The outside lane is about 120'; this is where the lane widens to a left, a through and a right turn lane. Therefore the inside left turn lane should be striped with a solid line from the limit line 380' to the east. In addition, advance signage should be installed to alert motorists of the trap left turn lane. This is delineated in Figure 6 [of the Revised Traffic Study].*

Mitigation measure 4.4.1b calls for providing 500 feet of westbound left-turn storage by, “constructing/reconfiguring the two Combie Road westbound left turn lanes at the SR 49/Combie Road intersection to be a minimum of approximately 250 feet each to allow adequate storage.” Thus, mitigation measure 4.4.1b addresses the Revised Traffic Study’s recommendation.

For all these reasons, and as further discussed in the Staff Report for the May 28, 2009 Planning Commission hearing, due to the elimination of the two fast food restaurants, reduction of the building square footage (on Parcels 1, 2, 3, 4), designation of Parcel 6 as Open Space, and designation of Parcel 7 as Office Professional, the cumulative traffic (plus project) scenario will be better than LOS E at SR 49 / Combie Road. (May 28 Staff Report, pp. 14-15.) The Revised Project will result in less than cumulatively considerable impacts to intersection operations at SR 49 /Combie Road before mitigation. With implementation of Mitigation Measure 4.4.3b, impacts to the Combie Road Higgins Road intersection would be reduced to less than significant levels.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.4.4 Cumulative Roadway Segment Operations. Under cumulative conditions, study area roadways would operate at acceptable levels. This is considered a less than significant impact and the project would have a less than cumulatively considerable contribution. (LS, LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, the Revised Project will result in further reductions to less than cumulatively considerable impacts on cumulative roadway segment operations.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

NOISE

Impact 4.5.1 Construction Noise Impacts. Construction activities could result in periods of elevated noise levels at existing residences. This is considered a significant impact. (S)

Mitigation Measure 4.5.1 The project applicant and all successors in interest shall ensure that construction activities adhere to the following measures with respect to hours of operation, muffling of internal combustion engines, and other factors that affect construction noise generation and its effects on noise-sensitive land uses:

- Restrict construction activities to between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday. Restrict construction activities between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction activities shall occur on Sundays.
- All equipment shall be fitted with factory-equipped mufflers, and shall be in good working order.
- Locate all staging areas for equipment as far as possible from residential areas.

Discussion Implementation of mitigation measure 4.5.1 would reduce construction noise impacts to a less-than-significant level. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measure 4.5.1, the Revised Project will result in similar, if not reduced, construction noise impacts.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.5.2 Traffic Noise Impacts. Development of the project would generate a slight increase in traffic noise levels above the existing traffic noise levels on the local roadway system.

This project-generated traffic is expected to result in increased traffic noise levels over existing traffic noise levels between 0 dB and 1 dB. This is considered a less than significant impact.(LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, the Revised Project will result in similar, if not reduced, traffic noise impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.5.3 Impacts of On-Site Noise Sources on Nearby Residential Uses. Noise levels associated with medium truck traffic circulation from commercial uses adjacent to the north property line of the project site are expected to exceed the daytime and nighttime noise criteria. The DEIR therefore proposed mitigation for this impact for residential uses near parcels 2, 3, and 4 as well as parcels 7, 8, and 9. Based on the Revised Project's parcel re-numbering, these impacts would occur to Parcels 2, 3 and 6 of the Revised Project. On-site noise is considered a potentially significant impact with respect to Revised Project parcels 2, 3 and 6.(PS)

Mitigation Measure 4.5.3a Three options are available to mitigate impacts of on-site noise sources on nearby residential uses for parcels 2 and 3:

- An 8-foot tall sound wall shall be constructed along the north property line of parcels 2 and 3 and shall be in place prior to issuance of occupancy permits. The wall shall be landscaped to provide visual screening from residents located north of the project site. When parcels to the north of the project site are developed with non-residential uses, the wall shall be removed to accommodate shared circulation; or
- As an alternative to a sound wall, truck deliveries should be restricted to the front or south sides of the commercial uses located along Parcel 3 and/or the front or east side of the commercial uses along Parcel 2. If this option is implemented, it shall be implemented as a condition of project approval; or
- No sound wall or restriction on delivery hours shall be required if the legal property owner of the northern parcel, zoned C2-Community Commercial and containing the two non-conforming residences, consents in writing their waiver of the sound wall and delivery hour restrictions. Said written waiver, if available, shall be provided to the Planning Department and a copy kept in the project file.

Mitigation Measure 4.5.3b Two options are available to mitigate impacts of on-site noise sources on nearby residential uses for parcel 6:

- An 8-foot tall sound wall shall be constructed along the south property line of parcel 6 and shall be in place prior to issuance of occupancy permits. The wall shall

be landscaped to provide visual screening from residents located north of the project site; or

- As an alternative to a sound wall, truck deliveries should be restricted to the front or north sides of the light industrial uses located along parcel 6. If this option is implemented, it shall be implemented as a condition of project approval.

Discussion Implementation of mitigation measures 4.5.3a and 4.5.3b would reduce impacts of on-site noise sources on residential uses near parcels 2, 3, and 6 of the Revised Project to a less-than-significant level.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.5.4 Cumulative Traffic Noise. Cumulative development within the project area would generate a slight increase in future traffic noise levels on the local roadway. The project's contribution to cumulative noise levels is considered less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, the Revised Project will result in similar, if not reduced, cumulative traffic noise impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

AIR QUALITY

Impact 4.6.1 Construction Related Air Quality Impacts. Construction activities such as clearing, excavation and grading operations, construction vehicle traffic and wind blowing over exposed earth would generate fugitive particulate matter emissions that would temporarily affect local air quality. This impact is considered potentially significant. (PS)

Mitigation Measure 4.6.1a Project proponent and all successors in interest shall include dust control mitigation requirements in all construction contracts. All construction contracts will require the following:

- All construction activities would be subject to the requirements of the Northern Sierra AQMD's Regulation 2, Rule 226 regarding dust control.
- Alternatives to open burning of vegetative material on the project site shall be used unless deemed infeasible by the Northern Sierra Air Quality Management District. Suitable alternatives are chipping, mulching, or conversion to biomass fuel.

- Contractors shall be responsible for ensuring that adequate dust control measures are implemented in a timely manner during all phases of project development and construction.
- All material excavated, stockpiled, or graded shall be sufficiently watered, treated, or covered to prevent fugitive dust from leaving the property boundaries and causing a public nuisance or violation of an ambient air standard. Watering should occur at least twice daily, with complete site coverage, preferably in the mid-morning and after work is completed each day.
- All areas (including unpaved roads) with vehicle traffic shall be watered or have a dust palliative applied as necessary for stabilization of dust emissions.
- All on-site vehicle traffic shall be limited to a speed of 15 mph on unpaved roads.
- All land clearing, grading, earth moving or excavation activities shall be suspended as necessary to prevent excessive windblown dust when winds are expected to exceed 20 mph.
- Temporary traffic control will be provided during all phases of the construction to improve traffic flow as deemed appropriate by local transportation agencies and/or Caltrans.
- Construction activities should be scheduled to direct traffic flow to off-peak hours as much as possible.
- All inactive portions of the construction site shall be covered, seeded, or watered until a suitable cover is established. Alternatively, apply non-toxic soil stabilizers (according to manufacturer's specifications) to all inactive construction areas (previously graded areas which remain inactive for 96 hours) in accordance with County standards. Acceptable materials that may be used for chemical soil stabilization include petroleum resins, asphaltic emulsions, acrylics, and adhesives, which do not violate Regional Water Quality Control Board or California Air Resources Board standards.
- Wheel washers will be installed where project vehicles and/or equipment enter and/or exit onto paved streets from unpaved roads. Vehicles and/or equipment will be washed prior to each trip, as necessary to prevent visible dust emissions from adhering dirt or deposition on roadways.
- All material transported off-site shall be either sufficiently watered or securely covered to prevent public nuisance.
- Re-establish ground cover on the site through seeding and watering in accordance with the local grading ordinance.
- Properly maintain all mobile and stationary equipment.

Mitigation Measure 4.6.1b Prior to issuance of a grading permit for the pipeline and infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effects of construction air quality impacts:

The project applicant shall provide a construction equipment plan to Nevada County and the Northern Sierra AQMD for approval by the lead agency demonstrating that:

- The heavy-duty (> 50 horsepower [hp]), off-road vehicles to be used in the construction project, including owned, leased, and subcontractor vehicles, will achieve a project-

wide fleet-average of 20% NOX reduction and 45% particulate reduction compared to the most recent ARB fleet average at the time of construction. Acceptable options for reducing emissions include the use of late-model engines, low-emission diesel products, alternative fuels, particulate matter traps, engine retrofit technology, after-treatment products, and/or such other options as become available.

- The project representative shall submit to the lead agency and Northern Sierra AQMD a comprehensive inventory of all off-road construction equipment, equal to or greater than 50 hp, that will be used an aggregate of 40 or more hours during any portion of the project. The inventory shall be updated and submitted monthly throughout the duration of the project, except that an inventory shall not be required for any 30-day period in which no construction operations occur.
- At least 48 hours before the subject heavy-duty off-road equipment is used, the project representative shall provide the Northern Sierra AQMD with the anticipated construction timeline, including start date, and the name and telephone number of the project manager and on-site foreman.
- Emissions from off-road, diesel powered equipment used on the project site shall not exceed 40% opacity for more than 3 minutes in any 1 hour. Any equipment found to exceed 40% opacity (or Ringlemann 2.0) shall be repaired immediately, and the Northern Sierra AQMD shall be notified of noncompliant equipment within 48 hours of identification.
- A visual survey of all in-operation equipment shall be made at least weekly, and a monthly summary of visual survey results shall be submitted throughout the duration of the construction project, except that the monthly summary shall not be required for any 30-day period in which no construction operations occur. The monthly summary shall include the quantity and type of vehicles surveyed, as well as the dates of each survey.
- Placer County and the Northern Sierra AQMD, and/or other officials may conduct periodic site inspections to determine compliance.

Discussion On January 11, 2008, the Placer County Air Pollution Control District (APCD) submitted a comment letter on the DEIR. In the letter, the Placer County APCD requested that the maximum daily grading area during project construction should be limited to 1 acre or less per day. (FEIR, p. 3.0-29.) The response to the Placer County APCD's request notes that the commenter provides no evidence or details to demonstrate that construction emissions could be understated in the DEIR. Although the October 2008 version of the FEIR initially added the requested measure to mitigation measure 4.6.1a, the May 2009 FEIR does not include the requested additional mitigation measure.

As explained in the January 2009 Technical Memorandum Errata to the FEIR and the May 2009 FEIR, on November 12, 2008, Remy, Thomas, Moose and Manley, LLP, submitted a letter on behalf of the project applicant explaining that restricting grading to 1-acre per day is infeasible and is unnecessary as the DEIR already demonstrated that the project's impact would be less than significant prior to inclusion of this additional measure. In addition, Gary Rubenstein of Sierra Research provided a letter that reviewed the Placer County APCD's comment letter on the DEIR. As explained by Mr. Rubenstein, it is not the number of acres being

graded that determines NOx emissions; rather, it is the number of vehicles operated during any given day, and how many hours each vehicle operates. Based on the supporting evidence from Sierra Research and support from the Placer County APCD, the 1-acre limitation mitigation measure added by the FEIR has been eliminated.

Ultimately, the Board of Supervisors has determined that no further mitigation beyond that stated in the DEIR is required to reduce this impact to less than significant. Mitigation measures 4.6.1a and 4.6.1b would substantially reduce construction-phase emissions and greatly reduce the potential for nuisance. This impact, after mitigation, would be less than significant. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measures 4.6.1a and 4.6.1b, the Revised Project will result in similar, if not reduced, construction related air quality impacts as compared with the originally proposed Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.6.2 Toxic Air Contaminants. During construction, various diesel-powered vehicles and equipment would be in use on the site that would emit diesel particulates, a Toxic Air Contaminant. Construction fugitive dust could also contain naturally occurring asbestos which is a Toxic Air Contaminant. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, impacts related to toxic air contaminants.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.6.3 Local Carbon Monoxide Concentrations. The project would increase traffic volumes and congestion levels, changing carbon monoxide concentrations at nearby roads providing access to the site. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, the Revised Project will result in similar, if not reduced, local carbon monoxide concentrations impacts.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.6.4 Increased Emissions of Regional Pollutants. Trips to and from the project and area sources within the project would result in new air pollutant emissions of ozone precursors and Particulate Matter within the air basin. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion Operational air pollution emissions resulting from the originally proposed project were shown in Table 4.6-7 of the DEIR. As demonstrated by the table, emissions range between 61.9 pounds per day (ppd) and 119.8 ppd, which fall within Northern Sierra AQMD Level B thresholds. While the originally proposed project individually represents a less-than-significant impact on increased emissions of regional pollutants, as discussed in relation to Impact 4.6.5, the emissions represent a cumulatively considerable impact.

As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, the Revised Project will result in similar, if not reduced, impacts on emissions of regional pollutants.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.6.5 Cumulative Increases in Emissions of Regional Pollutants. The project would contribute to cumulative regional increases in air pollutants. This is considered a significant impact and the project would have a cumulatively considerable contribution. (S, CC)

Mitigation Measure 4.6.5a The project developer and all successors in interest shall incorporate to the extent practical and feasible the following energy-efficiency/area source features into the design of the project:

- Install EPA Energy Star (high reflectance) roofing materials to reduce building heat absorption and summer energy costs.
- Plant shade trees in parking lots at 10 percent or more in excess of that already required by ordinance.
- Landscape with native drought-resistant species (plants, trees and bushes) to reduce the demand for gas powered landscape maintenance equipment.
- Incorporate passive solar space heating designs and solar water heaters into commercial units.
- Install low nitrogen oxide (NOx) energy-efficient heating and other appliances, such as water heaters, cooking equipment, refrigerators, furnaces and boiler units.

Mitigation Measure 4.6.5b The project developer and all successors in interest shall incorporate the following features into the design of the project to reduce vehicle trip generation:

- Provide direct, safe, attractive pedestrian access from project land uses to the Higgins Center to the north at the corner of SR 49 and Combie Road.
- Provide secure and conveniently located bicycle parking.
- Specialty equipment (utility carts, forklifts, etc.) should be electrically, CNG or propane powered.

Discussion The list of measures provided in the DEIR represented an extensive list of possibilities to reduce emissions based on the standard mitigation suggested by the NSAQMD. As noted in DEIR, “Feasible mitigation measures are limited by the rural nature of the site and its lack of transit access or pedestrian/bicycle facilities.” (DEIR, p. 6- 16.) In response to the letter by Sierra Research, and as discussed in the FEIR, the standard mitigation measures were amended to remove measures that are not feasible or necessary based on the rural nature of the project area. (FEIR, p. 3.0-102 to 103.)

The measures set forth in the FEIR are listed above. These measures have the potential to reduce project-related regional emissions by a small percentage. After mitigation, regional air quality impacts would remain significant and unavoidable and project emissions would remain cumulatively considerable. Changes or alterations have been required in, or incorporated into, the project. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, after implementation of mitigation measures 4.6.5a and 4.6.5b, the Revised Project will result in similar, if not reduced, impacts on cumulative increases in emissions of regional pollutants as compared to the originally proposed Project. As with the originally proposed Project, however, the Revised Project would result in significant and unavoidable cumulative emissions of regional pollutants even after implementation of the above described feasible mitigation measures.

Finding **Specific economic, legal, social and technological, or other considerations make infeasible further mitigation and the impact remains significant and unavoidable. (Pub. Resources Code, § 21081, subs. (a)(1) and (3); CEQA Guidelines, § 15091, subd. (a)(1) and (3).)**

Impact 4.6.6 Potential Increase in Long-Term Atmospheric Greenhouse Gas Emissions. Implementation of the proposed project, in combination with existing, approved, proposed, and reasonably foreseeable development in the Northern Sierra Air Quality Management District, would contribute to GHGs. This impact is considered less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion Trips and traffic congestion would be the primary source of air quality impacts resulting from implementation of the Project. Vehicle emissions primarily consist of CO₂ from the tailpipe during vehicle operation. Therefore, the major sources of GHG emissions generate from the project would be vehicle source CO₂ emissions. Moreover, the project would provide a full-service grocery shopping alternative for local residents currently driving to the City of Grass Valley or Auburn for a full-service grocery store, which could promote shorter vehicle trips, more walking, and overall less energy usage. Based on the small size of the project and the beneficial impacts anticipated to result from providing a local full-service grocery shopping alternative, the County has determined that the project's contribution to GHGs is less-than-cumulatively-considerable.

Additionally, the proposed Project would incorporate mitigation measures identified above (see discussions, *supra*, Impacts 4.6.2, 4.6.3, and 4.6.4), which are designed to reduce mobile, as well as stationary source, emissions. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and elimination of drive-through restaurants within the shopping center, the Revised Project will result in similar, if not reduced, impact on the potential to increase long-term atmospheric greenhouse gas emissions. Therefore, the Revised Project will have a less-than-cumulatively-considerable impact on long-term atmospheric greenhouse gas emissions.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

HYDROLOGY AND WATER QUALITY

Impact 4.7.1 Construction Water Quality Impacts. Soil disturbance associated with construction activities for the proposed project could cause accelerated soil erosion and sedimentation or the release of other pollutants into wetlands located on parcel 6. This would be a significant impact. (S)

Mitigation Measure 4.7.1a Prior to the issuance of grading permits, the project applicant shall prepare a spill prevention and countermeasure plan describing measures to ensure proper collection and disposal of all pollutants handled or produced on the site during construction, including sanitary wastes, cement, and petroleum products. The plan shall be submitted to the County for approval and incorporation into the SWPPP. All construction contractors shall comply with the spill prevention and countermeasure plan.

Mitigation Measure 4.7.1b Prior to the approval of improvement plans, the project applicant shall clearly identify specific water quality control measures for wetlands on parcel 6 including but not limited to, a 25 foot buffer area as stipulated under MM 4.9.2. Such water quality control measures may include setbacks, silt fencing, hay bales, and other appropriate measures deemed acceptable by the County and the CVRWQCB. These water quality control measures shall be reviewed and approved by the County and CVRWQCB prior to construction activities.

Mitigation Measure 4.7.1c The project applicant shall develop and submit an erosion control plan, per Higgins Area Plan Policy 6, to manage site erosion during construction of the project. The developer shall be required to incorporate BMPs to provide for the removal and control of sediments and pollutants in site runoff to acceptable levels prior to discharge into downstream facilities.

Discussion Implementation of the mitigation measures 4.7.1a, 4.7.1b, and 4.7.1c, as well as mitigation measure 4.9.2 in Section 4.9, Biological Resources, would mitigate construction water quality impacts to a less-than-significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.7.1a through 4.7.1c, the Revised Project will result in similar, if not reduced, construction water quality impacts as compared to the originally proposed Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.7.2 Operational Surface Water Quality Impacts. Urban runoff from the operation of the proposed project into Ragsdale Creek could contain pollutants that would degrade surface water quality. This would be a potentially significant impact. (PS)

Mitigation Measure 4.7.2 Prior to the approval of improvement plans for each commercial center and for future light industrial and office uses, the applicable project applicant shall submit a water quality control program to the County. This program will specify the design of planned water quality facilities in the project's drainage system and will include the following items:

- All storm drain inlets and oil separators will be routinely cleaned and maintained during the dry months of July through September. The program will also establish maintenance responsibility, funding and schedules for servicing the drainage system.
- Storm drain inlets will also be labeled "No Dumping – Drains to Streams".
- Energy dissipaters will be incorporated into drainage outlets into Ragsdale Creek.
- Sediment basins will include appropriate vegetation to naturally filter the drainage flows.

The water quality control program may be incorporated into the final Wetland/Riparian Enhancement Plan and Flood Control Plan for Ragsdale Creek and will require County approval.

Discussion Implementation of mitigation measure 4.7.2 would mitigate operational water quality impacts to a less than significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, elimination of drive-through restaurants within the shopping center, and an increased wetland buffer, after implementation of mitigation measure 4.7.2, the

Revised Project will result in similar, if not reduced, operational surface water quality impacts as compared to the originally proposed Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.7.3 Interference with Groundwater Recharge Impacts. The proposed project would introduce impervious surfaces in the form of structures and parking lots to a previously undeveloped piece of land. This would result in an incremental reduction in recharge of the local groundwater aquifer. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion Open space retained as part of project design would provide for on-site groundwater recharge. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, the Revised Project will result in similar, if not reduced, impacts associated with interference with groundwater recharge as compared to the originally proposed Project.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.7.4 Alteration of Drainage Patterns. Development of the proposed project would alter existing drainage patterns on-site by grading and paving this site. This is considered a potentially significant impact. (PS)

Mitigation Measure 4.7.4 The project applicant shall prepare a detailed drainage report consistent with County standards for submittal with the improvements plans. The drainage report shall include the following:

- An accurate calculation of the existing runoff coefficient conditions and anticipated flow conditions as a result of buildout of the Ragsdale Creek drainage basin.
- A detailed analysis of the effects that the project will have on peak flow conditions at the State Route 49 culvert and other downstream facilities. No net increase to 100-year storm event peak year discharge may be realized within the State's highway right of way and/or Caltrans drainage facilities as a result of the project. The analysis associated with the State Route 49 culvert shall be submitted to Caltrans for their review and concurrence.
- If increased drainage flows of the project are anticipated to contribute to drainage capacity deficiencies for downstream facilities during peak flow conditions, the project shall include onsite detention facilities adequate to mitigate project increases to peak flow conditions.

- Proof that the drainage report was prepared by a registered Civil Engineer.

Discussion Implementation of mitigation measure 4.7.4 would ensure that the project would be protected from flood conditions and would not contribute to downstream flooding impacts. Thus, the project's flooding impact would be less than significant.

As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measure 4.7.4, the Revised Project will result in similar, if not reduced, impacts associated with alteration of on-site drainage patterns as compared to the originally proposed Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.7.5 Increases in Runoff. Development of the proposed project would increase impervious surfaces on the project site resulting in increased volumes of runoff. This impact is considered potentially significant. (PS)

Mitigation Measure 4.7.5a Prior to site grading, a detailed set of improvement plans with drainage design will be developed that analyzes the flow of drainage before and after grading.

Mitigation Measure 4.7.5b Detention and conveyance facilities shall be designed to ensure that drainage flows are not discharged from the site in quantities or at velocities above those conditions that exist prior to grading.

Discussion Implementation of mitigation measures 4.7.5a and 4.7.5b would reduce impacts associated with increases in runoff to a less-than-significant level. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measures 4.7.5a and 4.7.5b, the Revised Project will result in similar, if not reduced, impacts on runoff as compared to the originally proposed Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.7.6 Cumulative Water Quality, Runoff and Flooding Impacts. The proposed project would contribute to the cumulative effects of changes in runoff patterns and the potential for increased flooding. This would be a potentially significant cumulative impact. (PSC)

Mitigation Measure No additional mitigation is required.

Discussion The originally proposed project would include detention and conveyance facilities to ensure that drainage flows are not discharged from the site in quantities or at velocities above those conditions that exist prior to grading and would be required to obtain an NPDES permit and implement best management practices to reduce water quality impacts.

In addition to obtaining an NPDES permit and implementing best management practices, implementation of mitigation measures 4.7.4 and 4.7.5a and 4.7.5b would ensure that the project's contribution to cumulative runoff, water quality, and flooding impacts are reduced to a less than cumulatively considerable level.

As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.7.4 and 4.7.5a and 4.7.5b, the Revised Project will result in similar, if not reduced, impacts on cumulative water quality, runoff and flooding impacts as compared to the originally proposed Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

GEOLOGY AND SOILS

Impact 4.8.1 Erosion and Soil Stability. Implementation of the project would require extensive grading and site preparation, which may increase soil erosion and stability. This would be a potentially significant impact. (PS)

Mitigation Measure 4.8.1a The project applicant shall submit an erosion control plan to the County for approval pursuant to the Nevada County Land Use and Development Code Zoning Regulations. The County shall review the erosion control plan prior to the issuance of the grading permit. Erosion control measures will include techniques such as physical and vegetative stabilization measures and runoff diversion measures. Additionally the plan will specify measures for reuse or disposal of excavated materials. If excavated material is suitable for the use of the project site, the plan shall minimize the elapsed time between excavation and reuse and provide adequate stockpile coverage and protection from wind and water erosion during the entire storage period. If excavated material is unsuitable for reuse at the project site, the plan will include specific information regarding the eventual reuse or disposal site, transportation methods, disposal reuse management, and schedule. The erosion control plan will be in conformance with County standards and standards of the Nevada County Resource Conservation District. The County and the Central Valley Regional Water Quality Control Board shall be the monitoring agencies.

Mitigation Measure 4.8.1b The Developer shall submit the Erosion and Sediment Control Plan prepared by a licensed engineer as a part of the permit application information to the Corps of Engineers pursuant to compliance with MM 4.8.1a to ensure that full disclosure of the potential

magnitude of impacts to wetlands are considered. The permit application information submitted to the Corps of Engineers shall also be submitted for review of the County Planning Department.

Mitigation Measure 4.8.1c No single structure shall be supported partially upon hard rock and partially upon softer natural soils or engineered fill materials. Deepening of the foundation excavations shall be required to expose the recommended bearing materials, as determined by a qualified engineer. The proposed structures shall be supported upon continuous and/or isolated spread foundations extending at least 18 inches below building pad subgrade. Lowest adjacent soil grade shall be measured from the surface on which the capillary break gravel is placed or exterior compacted soil grade, whichever is lower. A minimum width of 12 inches shall be maintained for continuous foundations and a minimum plan dimension of 24 inches shall be maintained for isolated spread foundations. A continuous, reinforced foundation shall be utilized for the perimeter of the structure to act as a “cut-off” wall to help minimize infiltration beneath structures.

Mitigation Measure 4.8.1d The following measures shall be followed for the clearing and preparation of the project site:

- Construction areas designated to receive fill, remain at-grade or achieved by excavation should be scarified to a depth of at least 12 inches, moisture conditioned to at least the optimum moisture content and uniformly compacted to at least 90 percent of the ASTM D1557 maximum dry density. Scarification operations shall extend at least five feet beyond the perimeter building foundations and pavements, where possible.
- Building pads constructed partially by cut and partially by fill that exceed five feet in thickness, and fill differentials that exceed five feet shall be avoided where possible. If clay soils are encountered during earthwork, they shall be thoroughly mixed with on-site granular soils during fill placement and not used as fill within the upper two feet of building pads or those subgrades supporting exterior flatwork. Clay soils shall not be placed in keyways or in fills constructed on sloping ground.
- Rocky materials shall be thoroughly moisture conditioned to at least the optimum moisture content and uniformly compacted by three complete passes with a heavy, self-propelled sheepsfoot compactor to the satisfaction of an on-site, qualified engineer.
- Compaction of subgrades must be performed in the presence of a qualified engineer.

Mitigation Measure 4.8.1e The applicant shall observe the following measures for the placement of fill on the project site:

- Rocky materials shall be placed in horizontal lifts about 12 inches in compacted thickness. The materials shall be uniformly and thoroughly moisture conditioned to the full depth of each lift. Compaction of the rocky fill materials shall be achieved by at least three successive passes with a Caterpillar 825 compactor.
- Engineered fill composed of native soils or imported materials shall be placed in horizontal lifts not exceeding six inches in compacted thickness with each layer uniformly moisture conditioned to at least the optimum moisture content and compacted to at least 90 percent of the maximum dry density.
- Engineered fill to be placed on existing slopes that are steeper than six horizontal to one vertical (6:1) should begin with a level bench constructed at the toe of the fill with

benching done progressively up the slope at vertical increments not exceeding two feet. On slopes steeper than four horizontal to one vertical (4:1), a key should be constructed at the toe of the fill with the toe key at least 15 feet wide, centered along the toe of the fill slope, and excavated to a depth of at least two feet (measured from the down-slope side) into dense materials.

- The upper 12 inches of final building pad subgrades shall be moisture conditioned to at least the optimum moisture content and uniformly compacted to at least 90 percent relative compaction, or at least three complete passes with a heavy, self-propelled, sheepsfoot compaction regardless of whether final grade is achieved by excavation, filling, or left at existing grade.
- The upper six inches of pavement subgrade should be moisture conditioned to at least the optimum moisture content and uniformly compacted to not less than 95 percent relative compaction, or at least five complete passes with a heavy, self-propelled, sheepsfoot compactor, regardless of whether final grade is achieved by excavation, filling or left at existing grade.
- Final pavement subgrade processing and compaction should be performed after completion of underground utilities and just prior to aggregate base placement.
- Permanent excavation and fill slopes should be constructed no steeper than two horizontal to one vertical (2:1) and shall be vegetated as soon as practical following grading to minimize erosion.
- Backfill shall be mechanically compacted in thin lifts to at least 90 percent of the maximum dry density as determined by ASTM D1557. The upper 12 inches of utility trench backfill in pavement areas should be compacted to at least 95% of the maximum dry density. Utility trench backfill materials should consist of on-site granular soils or approved granular import material. NOTE: Rock over six inches in diameter should not be used as trench backfill material AND rock over three inches in diameter should not be used as initial backfill to avoid impact damage to utility lines.
- A County approved engineer shall be present during site preparation and all grading operations.

Mitigation Measure 4.8.1f The ground adjacent to all structures must be sloped away from the structure at a gradient no less than two percent (2%) for a distance of at least five (5) feet, where possible. Roof drains shall discharge onto paved surfaces leading away from the structural foundations or connected to non-perforated rigid piping directed to an appropriate drainage point away from the structures. Ponding of surface water shall be avoided near foundations.

Mitigation Measure 4.8.1g During construction activities, the project applicant shall employ the following mitigation measures:

- Expansive soils can be excavated and replaced with non-expansive materials. The required depth of excavation shall be specified by a registered geotechnical engineer based on actual soil conditions;
- Expansive soils may be treated in place by mixing them with lime. Lime treatment alters the chemical composition of the expansive clay materials such that the soil becomes non-expansive; or,

- Implement other engineering practices for mitigation of expansive soil conditions considered appropriate by the Nevada County Department of Transportation and Sanitation.

Discussion Implementation of the mitigation measures 4.8.1a through 4.8.1g would mitigate potential erosion and soil stability impacts to a less-than-significant level. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measures 4.8.1a through 4.8.1g, the Revised Project will result in similar, if not reduced, potential erosion and soil stability impacts as compared to the originally proposed Project.

Following the Board of Supervisors’ legislative approvals for the Project, the applicant requested that the timing of this mitigation measure, which previously required implementation “prior to construction” be changed to “during construction.” The reasoning was that expansive soil is not anticipated to be present and if it were present, it would not typically be known until such soil is encountered, if at all. According to the Public Works Department (who is the agency charged with enforcing/monitoring this mitigation measure), the “during construction” period is consistent with County standards for construction. The changing of the timing of this measure does not relieve the developer of the requirements under the mitigation measure. Any expansive soils that may be encountered will still need to be removed or treated before the construction activities can be completed. Therefore, the change in the timing of this mitigation measure does not change the determination that this impact is reduced to less-than-significant.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.8.2 Seismic Ground Shaking. Development of the project would expose businesses and facilities to seismic ground shaking. This would be a potentially significant impact. (PS)

Mitigation Measure 4.8.2 All project related utilities and infrastructure facilities shall be designed and constructed consistent with the seismic standards of the Uniform Building Code for Zone 3.

Discussion Implementation of mitigation measure 4.8.2 would mitigate potential seismic hazards to a less-than-significant level consistent with Nevada County General Plan Policy 10.18. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measure 4.8.2, the Revised Project will result in similar, if not reduced, potential impacts caused by seismic ground shaking as compared to the originally proposed Project.

Finding Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

Impact 4.8.3 Corrosive Soils. Development of the project could react with lime in concrete to form soluble reaction products that can leach out of concrete resulting in more porous, weaker concrete. This is a potentially significant impact. (PS)

Mitigation Measure 4.8.3 The project applicant shall consult a corrosion engineer to further define the soil corrosion potential at the project site, or to determine the need or design parameters for cathodic protection or grounding systems.

Discussion Implementation of mitigation measure 4.8.3 would mitigate potential leaching properties to a less than significant level consistent with Uniform Building Code. As the Revised Project includes a reduced project footprint, after implementation of mitigation measure 4.8.3, the Revised Project will result in similar, if not reduced, potential impacts related to corrosive soils as compared to the originally proposed Project.

Finding Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

Impact 4.8.4 Cumulative Geology and Soils Impacts. The proposed project has expansive or unstable soil properties, seismic ground shaking, and corrosive soils potential due to its topography and soil characteristics. This impact would be mitigated on a site-specific level. Therefore, cumulative geology and soils impacts are considered less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative geology and soils impacts as compared to the originally proposed Project.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

BIOLOGICAL RESOURCES

Impact 4.9.1 Potential Adverse Effect on Special Status Species. Implementation of the proposed project would result in temporary and direct disturbance to nesting raptors and migratory birds. This would be considered a potentially significant impact. (PS)

Mitigation Measure 4.9.1a If proposed grading, site preparation, or construction activities are planned to occur during the nesting seasons for local avian species (typically March 1st through August 31st), the project applicant shall retain a qualified biologist approved by Nevada County to conduct a focused survey for active nests of raptors and migratory birds within and in the vicinity of (no less than 100-foot outside project boundaries, where possible) the project area no more than 30 days prior to initial ground disturbance and before construction resumes if a gap of inactivity occurs for a duration of 30 days or more. If an active nest is located during preconstruction surveys, USFWS and/or DFG (as appropriate) shall be notified regarding the status of the nest. Furthermore, construction activities shall be restricted, as necessary, to avoid disturbance of the nest until it is abandoned or the biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 100-foot around the nest) or alteration of the construction schedule. No action is necessary if construction will occur during the nonbreeding season (generally September 1st through February 28th).

Mitigation Measure 4.9.1b Prior to issuance of a grading permit for the pipeline infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effect to special-status species:

- a) The project proponent shall retain a qualified biologist to conduct a reconnaissance-level survey to determine whether special-status plant or wildlife species would occur within the easement area for construction of the pipeline and associated improvements.
- b) If the biologist determines that there is no potential for occurrence of any special-status plant or wildlife species, special-status species may be presumed absent and no further mitigation is necessary.
- c) If suitable habitat for a special-status plant or wildlife species is present, focused surveys shall be conducted by a qualified biologist during the appropriate season to determine if the species is present or absent.
- d) If a special-status species is determined to be present, the project applicant shall consult with DFG, USFWS, and/or the Nevada County Planning Department as appropriate. Through consultation and negotiations with the appropriate agency or agencies, appropriate mitigation and avoidance measures shall be developed and implemented to avoid any significant effects on special-status species. Mitigation measures will depend on the species potentially affected and the nature of the impact, but may include routing pipelines to avoid areas of natural habitat, exclusionary fencing, creation of buffer zones, and limiting construction to non-breeding periods.

Discussion Implementation of mitigation measures 4.9.1a and 4.9.1b would reduce impacts to special status species to a less than significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.9.1a and 4.9.1b, the Revised Project will result in similar, if not reduced, impacts caused by potential adverse effect on special status species.

With respect to the proposed wastewater conveyance facilities since the release of the Draft EIR, site plans for the wastewater conveyance infrastructure improvements have become available. The wastewater connection will involve construction of sewer lines and a sewer lift station. Construction within the road prism, as shown in Figure 1 Final EIR Appendix L, will not result in any biological impacts, which are typically associated with excavation include dust, noise, traffic control, and erosion. Mitigation measures contained in the EIR that address all construction will apply to construction within the roadways. Further, as Nevada County must issue an encroachment permit for construction within its right of way, all county standards must also be met. County construction standards address traffic control, access, dust and erosion. The proposed sewer line will connect to the approved Saddle Ridge Estates sewer system which was evaluated through a separate CEQA document and approved by the County. Construction of the wastewater conveyance system will not result in any biological impacts. For these reasons, the Board of Supervisors finds that impacts to biological resources associated with the Project's wastewater conveyance system will be less-than-significant and that no mitigation is required for this impact (FEIR Appendix L).

Nevertheless, the applicant has agreed to implement Mitigation Measure 4.9.1b in order to further ensure biological impacts resulting from construction of the wastewater conveyance system improvements are less-than-significant. Mitigation Measure 4.9.1b requires that if any special-status species is determined to be present in the area of the wastewater treatment conveyance facilities, mitigation measures shall be developed in consultation with the Department of Fish and Game, U.S. Fish and Wildlife Service, and/or the Nevada County Planning Department as appropriate to avoid any significant effects on special-status species. Mitigation measures may include routing pipelines to avoid areas of natural habitat, exclusionary fencing, creation of buffer zones, and limiting construction to non-breeding periods. By requiring the specific performance standard of avoiding any significant effects on special-status species, implementation of Mitigation Measure 4.9.1b will ensure that the Project's wastewater conveyance facilities will not have a significant impact on special-status species. As noted above, Mitigation Measure 4.9.1b exceeds the applicant's legal duty because due to the site characteristics of the proposed wastewater conveyance infrastructure, no significant impacts to biological resources from construction of that infrastructure will occur.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.9.2 Potential Adverse Effect on the Proposed Wetland Preserve. Implementation of the proposed project would result in temporary and long-term disturbance to wetland and riparian habitat within the area of the proposed wetland preserve. This would be considered a potentially significant impact. (PS)

Mitigation Measure 4.9.2a The project applicant shall at a minimum:

- a) Retain a qualified biologist/restoration ecologist approved by the Nevada County Planning Department to implement mitigation outlined in both this document and the Habitat Management Plan for the Higgins Marketplace Reduced Wetland Setback and Stream Crossing to address the long-term sustainability of the wetland preservation area (Susan Sanders Biological Consulting 2004). Qualifications of key personnel responsible for implementation of mitigation shall be submitted to the Nevada County Planning Department for approval prior to any ground disturbance at the site;
- b) Maintain a 25-foot buffer between the wetland preserve boundary (as shown on Figure 4.9-3) and any area to be developed as depicted on the tentative parcel map for the proposed project. The boundary of the area to be avoided shall be delineated with orange safety netting under the direction of a qualified biologist prior to grading activities. The netting shall remain onsite for the duration of construction to ensure no personnel or vehicles enter the environmentally sensitive area;
- c) Install a permanent low perimeter fence between the edge of the 25-foot buffer area and any developed area to preclude unauthorized access to the preservation site. Include signage at various points along the fence that designates the area as a wetland preservation site and prohibits incompatible uses (i.e., dumping, parking, or recreation). Upkeep of both the fence and the signs should be incorporated into the maintenance contract for the development;
- d) Within the 25-foot buffer, plant native shrubs, bunchgrasses, and at least one grove of trees to (1) enhance pollution and sediment filtration, (2) provide a visual and auditory buffer between wildlife and human activity, such as vehicle traffic, and (3) discourage the continued spread of Himalayan blackberry at the site;
- e) Prepare a Drainage Plan (included as a portion of the Final Wetland-Riparian Habitat Mitigation Plan discussed in MM 4.9.3) that (1) ensures runoff from the slope to the east is returned to the wetland, (2) directs all development and road runoff through a combination of oil and grit separators as well as grassy swales (to be serviced through contract of ongoing maintenance for the development) prior to discharging into the wetland, and (3) precludes a net increase of storm runoff entering the wetland preserve through landscape design and implementation of a monitoring plan;
- f) Ensure that water quality in the preserve area and downstream will not be significantly impacted with completion of the project through use of best management practices, such as: (1) installation and inspection of sediment barriers, (2) taking reasonable precautions that pollutants and construction byproducts do not enter the wetland area, (3) having a Spill Containment Kit with appropriately trained staff onsite at all times, (4) restoring any temporarily impacted areas, and (5) implementation of a Storm Water Pollution Prevention Plan (SWPPP); and
- g) Ensure any personnel involved in construction activities onsite is trained regarding Nevada County and regulatory agency restrictions/mitigation established in this document and the Habitat Management Plan (Susan Sanders Biological Consulting 2004). Training shall be conducted by a qualified biologist approved by Nevada County to highlight best management practices (e.g., erosion control, dust control, noise abatement), outline exclusion areas (if necessary), identify special status species potentially in the area, and stress the importance of wildlife (any species) avoidance

when onsite or within staging areas. A short (about 15-minute) tailgate training session would be adequate for the proposed project.

Discussion On March 3, 2009, in response to the changes proposed in the Revised Project, the 2004 Habitat Management Plan for the project was updated. By increasing the open space parcel to 4.23 acres and decreasing the project footprint, the Revised Project increases the wetland setback buffer from approximately 25 feet under the originally proposed project to approximately 70 feet. The 70-foot setback includes a 50-foot setback from onsite wetlands and a 20-foot vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge) between the open space parcel and the onsite commercial development.

Implementation of the Habitat Management Plan will not result in significant environmental impacts. Under existing conditions, the onsite open space area is dominated by non-native species (Addendum to the 2004 Habitat Management Plan, p. 5). As explained in the DEIR, project site conditions are typical of the predominant grassland ecosystem found within Nevada County. “Considering the generally wide distribution of this habitat throughout California and the familiar nature of the site (as found within Nevada County), loss of this habitat type at the project location is not considered to be significant.” (DEIR, p. 4.9-2).

Indeed, implementation of the Habitat Management Plan will likely *improve* the habitat value of the open space area. As explained in the Addendum to the 2004 Habitat Management plan, the habitat within the open space can be enhanced by removal of non-native vegetation and introduction of native plant species (Addendum to the 2004 Habitat Management Plan, p. 5). Further, the current alignment of Woodridge Court will be removed, including the existing culvert. This area will be restored and revegetated with native plant species representative of the transition between wetland and uplands. (*Ibid.*) The proposed 20-foot vegetated barrier between the open space parcel and the on-site commercial development will be planted with native shrubs and grasses, more in keeping with the natural state of the area (as opposed to the non-native grassland that currently comprises the open space area).

Implementation of the Habitat Management Plan and the mitigation measures set forth in the DEIR (MM 4.9.2a) will ensure that the Project does not significantly impact the wetland and riparian habitat to be preserved in order to mitigate the Project’s impacts to riparian/wetland habitat (DEIR, p.4.9-62 to 4.9-63). Riparian/wetland habitat is a valuable resource uncommon in Nevada County (Habitat Management Plan (Susan Sanders Biological Consulting 2004) as updated by North Fork Associates, 2009, p. 10). Implementation of the Habitat Management Plan will also ensure that impacts to upland habitat are less-than-significant through the vegetated buffer planting described in the Habitat Management Plan for the uplands between the wetland and development (see Habitat Management Plan (Susan Sanders Biological Consulting 2004) as updated

by North Fork Associates, 2009, p. 23; Addendum to Habitat Management Plan pp. 4-5).

Thus, as further discussed in the FEIR, implementation of mitigation measure 4.9.2a would reduce impacts to the proposed wetland preserve to a less-than-significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, elimination of drive-through restaurants within the shopping center, and an increased wetland buffer, after implementation of mitigation measure 4.9.2a, the Revised Project will result in similar, if not reduced, impacts to the proposed wetland preserve.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.9.3 Loss of Jurisdictional Waters of the U.S. Implementation of the proposed project would result in the loss of approximately 0.08-acres of jurisdictional wetlands regulated under Section 404 of the CWA. This would be considered a potentially significant impact. (PS)

Mitigation Measure 4.9.3a Mitigation shall be employed to achieve no net loss of wetlands and the appropriate wetland permits (i.e., Section 404 and 401 under the Clean Water Act, Section 1602 Streambed Alteration Agreement) shall be obtained prior to issuance of grading permits. The project applicant shall comply with all permit conditions and employ best management practices and measures (established by the permitting authorities and Nevada County) to minimize and compensate for potential impact to any jurisdictional waters. A Conceptual Wetland-Riparian Habitat Mitigation Plan for onsite and in-kind creation of wetlands and upland buffer planting has previously been developed for this project (Sanders and Chainey 2004). A Final Mitigation Plan shall be completed and approved by the ACOE and Nevada County Planning Department prior to implementation. In addition to data presented in the conceptual plan, the final plan shall include a discussion of site drainage (Drainage Plan as discussed in MM 4.9.2e), a schematic that shows the specific locations of proposed replacement plantings, and information regarding the contractor responsible for overseeing the three-year monitoring and maintenance period. In addition, wetland delineation and mitigation details shall be noted on the design plans for the proposed project.

Mitigation Measure 4.9.3b Prior to issuance of a grading permit for the pipeline infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effects to wetlands and riparian habitat:

- a) The project proponent shall determine through the formal Section 404 wetland delineation process whether potential jurisdictional waters of the United States, including wetlands, are present within the easement area for construction of the pipeline and associated improvements.

- b) If wetlands are determined to be jurisdictional and can be avoided, no further mitigation shall be required.
- c) If potential jurisdictional waters of the United States, including wetlands, are present and would be filed as result of the project, authorization of a Section 404 permit shall be secured from ACOE, and a Section 1600 agreement shall be secured by DFG, as appropriate.
- d) As part of the permitting process, mitigation of impacts to jurisdictional waters of the United States, including wetlands, shall be identified and implemented. The acreage shall be replaced or rehabilitated on a “no-net-loss” basis in accordance with ACOE regulations. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to ACOE.
- e) All grading and trenching plans shall include adequate setbacks for preserved seasonal and perennial drainages. Measures to minimize erosion and runoff into seasonal and perennial drainages that are preserved shall also be included in all grading and trenching plans.

Discussion On March 3, 2009, in response to the changes proposed in the Revised Project, the 2004 Habitat Management Plan for the project was updated. By increasing the open space parcel to 4.23 acres and decreasing the project footprint, the Revised Project increases the wetland setback buffer from approximately 25 feet under the originally proposed project to approximately 70 feet. The 70-foot setback includes a 50-foot setback from onsite wetlands and a 20-foot vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge) between the open space parcel and the onsite commercial development.

As discussed in the FEIR, the applicant redesigned the project development footprint in order to avoid impacts to wetlands and waters of the U.S. The avoided wetlands onsite are not proposed to serve as mitigation for project impacts. Nonetheless, the proposed project would result in unavoidable impacts to 0.08 acres of jurisdictional wetlands. Accordingly, the applicant proposes to provide compensatory mitigation for 0.08 acres of impacts to wetlands.

Since the release of the FEIR, site plans for the Project’s proposed wastewater conveyance infrastructure improvements have become available. The pipelines will be located under existing roads (see Figure 1 of FEIR Appendix L). Impacts to waters of the U.S. are not anticipated with construction of the wastewater conveyance infrastructure improvements because the conveyance system is within a developed roadway, and there are mitigation measures in the EIR that address construction and stormwater runoff (FEIR Appendix L). Therefore, the Board of Supervisors finds that impacts to U.S. waters resulting from the construction of the wastewater conveyance infrastructure improvements will be less than significant without mitigation.

Nevertheless, the applicant has voluntarily agreed to implement Mitigation Measure 4.9.3b in order to fully guarantee that any such impacts would be less than

significant. Mitigation Measure 4.9.3b requires that if impacts to U.S. waters occur, the acreage shall be replaced or rehabilitated on a “no-net-loss” basis in accordance with ACOE regulations. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to ACOE. By requiring the Project to meet the specific performance criteria of “no-net-loss” through such methods as habitat restoration, rehabilitation, and/or replacement, implementation of Mitigation Measure 4.9.3b will ensure that impacts of the wastewater conveyance infrastructure for the Project will be less than significant.

More than one option exists to off-set impacts to the 0.08 acres of jurisdictional wetlands affected by the Project. The Addendum to the 2004 Habitat Management Plan identifies purchase of mitigation credits at an agency approved mitigation bank authorized to sell wetlands mitigation credits to projects within Nevada County and participation in an agency approved in-lieu fee program as two such options. Another option would be to create wetlands on-site. The ultimate determination as to how best to off-set the impacts to the 0.08 acres of jurisdictional wetlands affected by the Project will be made in consultation with the U.S. Army Corps’ of Engineers.

Securing mitigation credits at an approved mitigation bank or participation in an in-lieu fee program is consistent with the Final Mitigation Rule adopted by the Corps and Environmental Protection Agency on March 18, 2008. Either option will facilitate the establishment of regional aquatic resource restoration, preservation, enhancement projects based on a watershed approach and will lessen the risks and uncertainty for compensatory mitigation project success (Addendum to the 2004 Habitat Management Plan, p. 6).

If wetlands are created on-site as part of implementation of the Habitat Management Plan, the loss to existing non-native grassland habitat would be trivial as compared to the habitat value of the created wetland habitat. As noted, impacts to non-native grassland are considered less-than-significant in light of its abundance in Nevada County (DEIR, p. 4.9-2). Therefore, implementation of the Habitat Management Plan would not lead to significant environmental effects.

As discussed in the FEIR, implementation of mitigation measures 4.9.3a and 4.9.3b would reduce impacts to jurisdictional waters of the U.S. to a less-than-significant level. After implementation of mitigation measure 4.9.3a and 4.9.3b, the Revised Project will result in similar, if not reduced, impacts caused by the loss of jurisdictional waters of the U.S.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.9.4 Potential Adverse Effect on Oaks and Oak Woodland. Implementation of the proposed project would result in temporary and direct disturbance to oaks and oak woodland. This would be considered a potentially significant impact. (PS)

Mitigation Measure 4.9.4a The project applicant shall at a minimum:

- a) Minimize construction impacts to oaks by (1) protecting landmark oaks onsite with fencing established at the dripline during onsite activity, and (2) establishing guidelines for onsite personnel, such as no vehicles or equipment allowed within the dripline of trees (to be preserved) as well as no removal or addition of soil within the dripline of sensitive trees;
- b) Prepare and implement an Oak Woodland Mitigation Plan to address the long-term maintenance of preserved oaks as well as establish a replacement/restoration plan for loss of habitat and tree removal at the project location. The Plan shall be submitted to the Nevada County Planning Department for approval prior to ground disturbance at the site; and
- c) Limit irrigation and ornamental plants requiring irrigation to areas outside of the dripline of oaks (to be preserved). Mulches or drought-tolerant, non-irrigated plantings are suitable within the dripline (Susan Sanders Biological Consulting 2005a). Wherever possible, native plants shall be incorporated as the preferred landscape vegetation.

Mitigation Measure 4.9.4b The following mitigation measure from the Draft Environmental Impact Report Lake of the Pines Wastewater Treatment Plan Upgrade project (EDAW, 2005) would also apply to the proposed project. Before issuance of a grading permit for any new Lake of the Pines Sphere of Influence pipeline project, the project proponent shall complete the following to minimize effects to foothill woodland and oak trees:

- a) The project proponent shall submit a tree survey to the Nevada County Planning Department for approval. A map of all trees to be removed or disturbed during project construction and a preservation and replacement plans shall be included with the survey.
- b) Oaks not approved for removal that are within 200 feet of the grading activity shall be protectively fenced 5 feet beyond the dripline and root zone of each oak tree (as determined by a certified arborist). This fence shall be maintained until all construction activities are completed. No grading, trenching, or movement of construction equipment shall be allowed within the fenced area. Protection for oak trees on hillsides shall include installation of a silt fence. A silt fence shall be installed at the upslope base of the protective fence to prevent any soil from drifting down over the root zone.

Discussion Implementation of mitigation measures 4.9.4a and 4.9.4b would reduce impacts to oaks and oak woodland to a less-than-significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.9.4a and 4.9.4b, the Revised Project will result in similar, if not reduced, impacts caused by potential adverse effects on oaks and oak woodland.

Finding Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

Impact 4.9.5 Cumulative Impacts to Special Status and Sensitive Species. Development of the project location, in addition to anticipated cumulative development in the project vicinity, would result in disturbance to special status species and sensitive habitats throughout the region. These impacts would be considered cumulatively considerable. (PCC)

Mitigation Measure 4.9.1 – 4.9.4 Implement mitigation measures 4.9.1 through 4.9.4.

Discussion Implementation of mitigation measures 4.9.1 through 4.9.4, would reduce the Project's overall contribution to cumulative biological resource impacts resulting from completion of the project to a less-than-cumulatively-considerable level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, elimination of drive-through restaurants within the shopping center, and an increased wetland buffer, after implementation of mitigation measures 4.9.1 through 4.9.4, the Revised Project will result in similar, if not reduced, cumulative impacts to special status and sensitive species.

Finding Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

CULTURAL AND PALEONTOLOGICAL RESOURCES

Impact 4.10.1 Undiscovered Prehistoric Resources, Historic Resources, and Human Remains. Implementation of the proposed project could result in the potential disturbance of undiscovered cultural resources. This is considered a potentially significant impact. (PS)

Mitigation Measure 4.10.1a If any prehistoric or historic artifacts, or other indications of archaeological resources are found during site grading or once project construction is underway, all work in the immediate vicinity must stop and the County shall be immediately notified. An archaeologist meeting the Secretary of Interior's Professional Qualifications Standards in prehistoric or historical archaeology, as appropriate, shall be retained to evaluate the finds and recommend appropriate mitigation measures for the inadvertently discovered cultural resources. The County and the project applicant will consider the recommendations of the qualified archaeologist. The County and the project applicant shall consult and agree upon implementation of a measure or measures that the County and the project applicant deem feasible and appropriate. Such measures may include avoidance, preservation in place, excavation, documentation, curation, data recovery, or other appropriate measures.

Mitigation Measure 4.10.1b If human remains are discovered, all work must stop in the immediate vicinity of the find, and the County Coroner must be notified, according to Section

7050.5 of California's Health and Safety Code. If the remains are determined to be Native American, the coroner will notify the Native American Heritage Commission, and the procedures outlined in CEQA Section 15064.5(d) and (e) shall be followed.

Mitigation Measure 4.10.1c Prior to issuance of a grading permit for pipeline and infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effects to prehistoric resources, historic resources, and human remains. The applicant shall retain the services of a qualified professional archaeologist who shall conduct background research at the appropriate repositories and conduct a field investigation of the specific pipeline routes and pump station sites if such an inventory has not been performed within the preceding 5 years. The archaeologist shall provide written results of the background research and field inventory, including recommended mitigation for the protection or recovery of any cultural resources concluded by the archaeologist to represent significant or potentially significant resources as defined by CEQA or National Historic Preservation Act.

Discussion Implementation of mitigation measures 4.10.1a, 4.10.1b and 4.10.1c would reduce potential impacts to undiscovered resources to a less-than-significant level. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measures 4.10.1a, 4.10.1b and 4.10.1c, the Revised Project will result in similar, if not reduced, potential impacts to undiscovered prehistoric resources, historic resources, and human remains.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.10.2 Paleontological Resources. Implementation of the proposed project could result in the potential damage or destruction of undiscovered paleontological resources. This is considered a potentially significant impact. (PS)

Mitigation Measure 4.10.2 If any paleontological resources (i.e., fossils) are found once project construction is underway, all work in the immediate vicinity must stop and the County shall be immediately notified. A qualified paleontologist shall be retained to evaluate the finds and recommend appropriate mitigation measures for the inadvertently discovered paleontological resources. The County and the project applicant will consider the recommendations of the qualified paleontologist. The County and the project applicant shall consult and agree upon implementation of a measure or measures that the County and the project applicant deem feasible and appropriate. Such measures may include avoidance, preservation in place, excavation, documentation, curation, or other appropriate measures.

Discussion Implementation of 4.10.2 would reduce impacts on paleontological resources to a less-than-significant level. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after

implementation of mitigation measure 4.10.2, the Revised Project will result in similar, if not reduced, potential impacts to paleontological resources.

Finding Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

Impact 4.10.3 Cumulative Impacts to Prehistoric and Historic Resources. Implementation of the proposed project, along with any foreseeable development in the project vicinity, could result in cumulative impacts to cultural resources. This is considered a less-than-cumulatively-considerable impact. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, potential cumulative impacts to Prehistoric and Historic Resources.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.10.4 Cumulative Impacts to Paleontological Resources. Implementation of the proposed project, along with any foreseeable development in the project vicinity, could result in cumulative impacts to paleontological resources. This is considered a less-than-cumulatively-considerable impact. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, potential cumulative impacts to Paleontological Resources.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

PUBLIC SERVICES AND UTILITIES

Impact 4.11.1.1 Impacts to Fire Protection and Emergency Medical Services.

Implementation of the proposed project would not significantly increase demand for fire protection and emergency medical services beyond those previously identified under the General Plan EIR. Therefore this would be a less-than-significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, impacts to the demand for fire protection and emergency medical services.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.1.2 Potential Exposure to Wildland Fire. The project site is adjacent to areas covered with flammable vegetation. Therefore, the project may be at risk of wildland fire. This impact is considered potentially significant. (PS)

Mitigation Measure 4.11.1.2a During construction of the proposed project and off-site improvements (roadway extension and pipeline infrastructure improvements), the project applicant shall perform the following tasks:

- All on-site flammable vegetation and fuels shall be legally disposed of or removed. Vegetation clearance around structures shall meet the minimum requirements of Public Resources Code 4291. Firebreaks shall be maintained by removing and clearing away all existing brush, flammable vegetation or combustible growth within 100 feet of structures.
- Temporary provisions for emergency access and fuel modification zones shall be provided. The project applicant shall prepare a temporary fire protection plan that will provide temporary emergency access and fuel modification zones for development.
- Any grass or other vegetation planted along cut/fill areas (i.e., roadways for erosion control purposes shall be low growing grasses and shall be on the Nevada County approved plant list. Tall grasses can subject the development to an increase in fire danger.

Mitigation Measure 4.11.1.2b The project applicant shall submit the improvement plans for the site to the Nevada County Fire Marshal and the Nevada County Consolidated Fire Protection District for review and approval.

- Designation of a fuel modification zone or greenbelt established along the perimeter of the project site. Perimeter fuel breaks will be a minimum of 30 feet (typically ranging between 30 and 100 feet) as required by the Nevada County Fire Marshal. The developer, with the assistance of CFD and NCCFD, will determine the specific dimensions of each fuel modification zone located along the project perimeter based on the location, topography, access points, vegetation, degree of exposure, local weather conditions, and design and construction of structures.
- Designation of a 10-foot wide fuel modification zone established and maintained along each side of Woodridge Court.
- Project emergency access shall be designed to meet District, County, and State standards. Nevada County requires a 20-foot road right-of-way for local streets, with 18 feet of paving, a 10-foot fuel modification zone on either side of the road.

Mitigation Measure 4.11.1.2c The project applicant shall submit a Vegetative Fuel Management Plan to the Nevada County Fire Marshal and the Nevada County Consolidated Fire Protection District. The plan shall contain information about fuel modification zones/fuel breaks, canopy spacing, roads, and types of plants to be used in landscaping and erosion control. Fuel management shall occur outside of aquatic and riparian woodland areas and wetland areas as shown in Figure 3.0-3 of the DEIR. The Plan shall include:

- Requirements that fire resistant landscaping is used in the fuel modification zones for project accesses.
- Provisions and funding for maintenance of fuel modification zones by the project applicant.
- No trees that will grow over 20 feet in height will be planted or allowed to grow within 20 feet of any high voltage power line.

Discussion Implementation of mitigation measures 4.11.1.2a, 4.11.1.2b, and 4.11.1.2c would mitigate potential project wildland fire hazards to a less-than-significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.11.1.2a, 4.11.1.2b, and 4.11.1.2c, the Revised Project will result in similar, if not reduced, potential impacts of exposure to wildland fire.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.11.1.3 Fire Flow Impacts. The Higgins Fire Protection District has indicated the minimum fire flow requirements would not be met under the proposed project. This impact is considered a potentially significant impact. (PS)

Mitigation Measure 4.11.1.3 To ensure adequate fire flow on the project site, one of the following measures shall be implemented:

- 1) Construct improvements to the NID system to increase the NID distribution system fire flows to meet HFPD requirements.
- 2) Construct an on-site storage tank and fire pump system to contribute the additional fire flow needed beyond what the NID main can provide in order to achieve a total fire flow of 1,625 gallons per minute for a two-hour duration. These improvements shall be within areas designated for development and shall not occur on Parcel 6. The on-site storage tank and fire tank system shall be constructed consistent with mitigation measures identified in this EIR. Screening for the on-site storage tank shall be consistent with MM 4.12.2a and the tank shall be painted to match the color scheme of the buildings on the project site.

Discussion Construction of the off-site improvements to water lines would occur within existing easements that have already been developed and thus would not impact biological or cultural resources. These off-site improvements would generate temporary air, noise, soil erosion, and water quality impacts associated with construction of the improvements. However, no significant impacts are anticipated to occur.

Construction of the on-site storage tank and fire pump system would be subject to mitigation measures identified in this EIR. The on-site storage tank would be screened to reduce visibility and would be required to blend with the design of the project, so no significant visual impacts are anticipated. These improvements would be constructed as part of the originally proposed project and would not result in greater impacts than those identified for the project construction in the relevant sections of this EIR, such as air, noise, water quality, geology/soils, and traffic.

As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measure 4.11.1.3, the Revised Project will result in similar, if not reduced, fire flow impacts.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.11.1.4 Emergency Access. Implementation of the project will require adequate emergency access as required by the California Fire Code for commercial development. This impact is considered a less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As with the originally proposed Project, the Revised Project will comply California Fire Code requirement to provide adequate emergency access for commercial developments.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.1.5 Cumulative Impacts to Fire Protection and Emergency Services. Cumulative development within the Higgins Fire Protection District would increase demand for fire protection and emergency medical services. The project would have a less-than-cumulatively-considerable contribution to this impact. (LCC)

Mitigation Measure Implement mitigation measures 4.11.1.2a, 4.11.1.2b, 4.11.1.2c, and 4.11.1.3.

Discussion Mitigation measures 4.11.1.2a, 4.11.1.2b, 4.11.1.2c, and 4.11.1.3 would reduce the project's contribution to cumulative impacts to less than cumulatively considerable. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measures 4.11.1.2a, 4.11.1.2b, 4.11.1.2c, and 4.11.1.3, the Revised Project will result in similar, if not reduced, cumulative impacts to fire protection and emergency services.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.11.2.1 Law Enforcement Impacts. Implementation of the proposed project would increase demand for law enforcement services and reduce the level of service currently being provided. This impact is considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, law enforcement impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.2.2 Cumulative Impacts to Law Enforcement. The proposed project, in addition to reasonably foreseeable development, would increase the population within Nevada County and require additional law enforcement services under cumulative conditions. The project would have a less than cumulatively considerable contribution to this impact. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative law enforcement impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.3.1 School Impacts. Implementation of the proposed project would generate additional students. Payment of Level 1 developer fees for commercial development would reduce this impact to less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion The payment of the Level 1 developer fees would reduce the impact of the project to a less than significant level. As the Revised Project includes the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, school impacts. As with the originally proposed Project, the Revised Project requires the payment of Level 1 developer fees for commercial developments.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.3.2 Cumulative Impacts to Schools. Implementation of the project would require the payment of Level 1 development fees for commercial development. The project would have a less-than-cumulatively-considerable contribution to cumulative impacts on district facilities. (LCC)

Mitigation Measure No mitigation is required

Discussion As the Revised Project includes the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative school impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.4.1 Project Water Demand and Supplies. The proposed project would result in an average daily demand of approximately 44,268 gallons per day. This impact would be considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, impacts on water demand and supplies.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.4.2 Water Supply and Conveyance Facilities. No timing and enforcement mechanism is currently in place that would ensure the timing related to the design and construction of the project's water distribution system to ensure delivery of water to the proposed project. This is a potentially significant impact. (PS)

Mitigation Measure 4.11.4.2 Prior to approval of improvement plans for each building, the project applicant shall provide the County with an approved set of improvement plans accepted by NID, which shall include:

- Quantification of anticipated water usage by parcel.
- A comprehensive water system design for distribution piping and connection to the existing NID distribution system.
- Appropriate pipe sizing to accommodate minimum fire flow water pressures (as determined by California Department of Forestry and Fire Protection, NID and the Higgins Fire Protection District).
- Identification of pipe sizing, pipe location, and the location of the tie-in with NID facilities.
- Provisions for easement, rights-of-way, and in-fee land to NID for water facilities.

Discussion Implementation of mitigation measure 4.11.4.2 would reduce both the originally proposed Project's and the Revised Project's impacts to water supply and conveyance facilities to less than significant.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.11.4.3 Cumulative Water Impacts. Implementation of the proposed project, in combination with cumulative development, would increase the current demand for water supply service. Cumulative impacts to water supply are considered less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative water impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.5.1 Wastewater Treatment Impacts. The proposed project would generate 29,488 gpd of wastewater. Sewer service to the project site would be provided by NCSD-1, Lake of the Pines, Zone 2. This impact is considered potentially significant. (PS)

Mitigation Measure 4.11.5.1 Sewer service shall be provided by the Lake of the Pines Zone 2 Wastewater Treatment system. Prior to issuance of occupancy permits for the commercial and retail establishments, the project applicant shall provide the Nevada County Building Department

with proof that the project has been annexed into the NCS-1 service district, acquired the necessary number of EDUs, completed construction of necessary conveyance infrastructure (and lift pump if not previously installed), connected to the NCS-1 system, and paid required fees.

Discussion Implementation of mitigation measure 4.11.5.1 would ensure that wastewater treatment service would be provided to the proposed project and would reduce impacts to less than significant. As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, after implementation of mitigation measure 4.11.5.1, the Revised Project will result in similar, if not reduced, wastewater treatment impacts.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.11.5.2 Wastewater Conveyance Impacts. Implementation of the proposed project would require construction of wastewater conveyance infrastructure. This infrastructure would be installed within right-of-ways on and off-site. Therefore, impacts to wastewater conveyance are considered potentially significant. (PS) Under the Revised Project, no new wastewater conveyance infrastructure would be required. However, the Revised Project would require connection to existing wastewater infrastructure. Therefore, impacts to wastewater conveyance are considered potentially significant. (PS)

Mitigation Measure 4.11.5.2a Prior to the issuance of occupancy permits, the project applicant shall:

- Construct all necessary wastewater conveyance infrastructure, as well as the pump/lift station, if not already in place, and get approval and acceptance of this infrastructure by NCS-1. The infrastructure shall be installed and operational prior to issuance of occupancy permits.

Mitigation Measure 4.11.5.2b Prior to issuance of occupancy permits for the commercial and retail establishments, the project applicant shall:

- Provide NCS-1 with a financial plan that identifies estimated administration, operation, and maintenance costs for the on-site and off-site sewage collection system. The plan shall identify amortization of the capital improvements over a period not to exceed ten years.
- Based on the financial plan, as reviewed and approved by NCS-1, the project applicant shall pay an annual fee based on the projected build-out of the project, the estimated administration, operation, and maintenance costs, and amortization of the capital improvements of the public components of the sewage collection system.
- A reimbursement agreement or permit credit shall be formulated to ensure that the project is reimbursed if it is required to construct the necessary components to connect to the existing infrastructure. The reimbursement or credit will be used against sewer

fees in the event that the project is required to oversize infrastructure improvements over and above what is required to serve the project.

Discussion Implementation of the above mitigation measures as well as mitigation measure MM 4.10.1c in Section 4.10, Cultural and Paleontological Resources; MM 4.9.1b and MM 4.9.3b in Section 4.9, Biological Resources; and MM 4.6.1b in Section 4.6, Air Quality, would reduce potential impacts associated with construction and operation of sewage collection and conveyance to less than significant.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.11.5.3 Cumulative Wastewater Impacts. Implementation of the proposed project in combination with other developments within NCSD-1's service area would increase wastewater flows and the current demand for wastewater treatment services. Necessary infrastructure to accommodate the proposed project and future planned development could be extended and wastewater services could be provided by the wastewater treatment plant. Therefore, the project's contribution to cumulative wastewater impacts would be less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative wastewater impacts.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

Impact 4.11.6.1 Solid Waste Impacts. Implementation of the proposed project would generate additional solid waste. This impact is considered less than significant. (LS)

Mitigation Measure 4.11.6.1 Prior to issuance of occupancy permits the applicant will complete the following mitigation measures:

- 1) All businesses will subscribe to waste collection and recycling services provided by the County's franchised waste collection company.
- 2) All businesses will participate in the recycling program offered through the County's franchised waste collection company. Businesses will recycle all items available through the company's program, or an equivalent method, which ensures that the waste is diverted away from landfill disposal.

- 3) Any green waste material generated at the project area such as lawn trimmings, shrubbery, and tree trimmings shall be diverted away from disposal through the County's franchised waste collection company's green waste collection program, or an equivalent method which ensures that the waste is diverted away from landfill disposal.
- 4) Adequate space for waste and recycling containers will be constructed at the complex to ensure ease of collection by the County's franchised waste collection company. The units housing the containers shall be constructed to allow sufficient space for the quantity of containers needed to ensure that the waste and recyclables can be collected in an efficient manner. Waste Management will be consulted to ensure that sufficient space is for recycling and trash containers.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, solid waste impacts.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.) Nevertheless, changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

Impact 4.11.6.2 Cumulative Solid Waste Impacts. Implementation of the proposed project, as well as other proposed and approved projects would increase solid waste generation in Nevada County. Waste Management, Inc. has indicated they have sufficient landfill capacity to serve the project. Therefore the project's contribution to cumulative impacts to landfill capacity and solid waste disposal is considered less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative solid waste impacts.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.7.1 Impacts to Park Facilities. The proposed project would not require the construction of any new recreation facilities to serve it, nor would it contribute to deterioration of existing park facilities. This impact is considered less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, impacts to park facilities.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.7.2 Cumulative Impacts to Park Facilities. The proposed commercial project would not require the construction of additional park and recreation facilities, nor would it contribute to the deterioration of existing park facilities. Therefore, the project's contribution to cumulative parks and recreation impacts are less than cumulatively considerable. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative impacts to park facilities.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.8.1 Impacts to General Government Services. Implementation of the proposed project would contribute to an increased demand for jail, library and other general governmental services adjacent to the proposed project. This would be a less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, impacts to general government services.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.8.2 Roadway Maintenance Impacts. Implementation of the proposed project would increase use of public roadways. This would be a less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, roadway maintenance impacts.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.8.3 Cumulative Impacts to General Government Services. Implementation of the proposed project would contribute to an increased demand for general governmental services anticipated as part of General Plan growth. This would be a less-than-cumulatively-considerable impact. (LCC)

Mitigation Measure 4.11.8.3 Mitigation for development impacts on growth-related services and facilities identified in the General Plan consists of the establishment of a comprehensive development fee impact program pursuant to General Plan Policy 3.8. The applicant will contribute fair share funding for general governmental capital facilities and equipment not covered by a current development fee to mitigate the cumulative demand on general governmental services and facilities of the County. A comprehensive capital facilities fee for this purpose is under development by the County. Upon County adoption of the comprehensive capital facilities fee program, a fee there under will be levied based upon the issuance of the building permits for each commercial project based upon the rates in effect under the latest fee schedule adopted by the Board of Supervisors prior to the issuance of such building permits.

Currently, the County is in the process of developing the fee program. In the event that no comprehensive capital facilities fee program has been adopted by the County when the application is made for any building permit or such earlier time as such a fee may be payable pursuant to Government Code sections 66000 et seq., the sum of \$0.36 per square foot of retail development and \$0.73 per square foot of office development shall be required. This fee shall be payable to the County by the applicant solely for use to purchase general governmental capital facilities and equipment not covered by other development fees, subject to a refund for the difference if a lesser comprehensive facilities fee program is subsequently adopted.

Inclusion of a Supplemental Note in the Supplemental Data Sheet or Notice of Supplemental Information reflecting the obligation shall be required as a condition of project approval unless the project applicants pay a sum of \$0.36 per square foot of retail development and \$0.73 per square foot of office development. This fee will be collected prior to issuance of building permits and would be subject to a credit if the adopted fee is less than payment made by the project applicant. In the event that a greater comprehensive capital facilities fee is adopted prior to issuance of building permits, the applicant shall pay the difference above the already paid fees at the time the fee is adopted.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative impacts to general government services. Implementation of mitigation measure 4.11.8.3 would further reduce the less than cumulatively considerable contributions to general governmental services for both the originally proposed Project and Revised Project.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.) Nevertheless, changes or alterations have been required in, or incorporated into, both the originally proposed Project and Revised Project which further avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)

Impact 4.11.9.1 Impacts to Electrical, Propane and Telephone Service. Implementation of the proposed project would increase demand for electric, propane, and telephone services and require the extension of existing infrastructure. This would be a less than significant impact. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, impacts to electrical, propane and telephone services.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.11.9.2 Cumulative Impacts to Electric, Propane, and Telephone Service and Infrastructure. Implementation of the proposed project in addition to reasonably foreseeable developments may include the extension of existing infrastructure and require new facilities to accommodate the anticipated growth. The project would have a less-than-cumulatively-considerable contribution to this cumulative impact. (LCC)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint and the build out of less total square feet of building area, the Revised Project will result in similar, if not reduced, cumulative impacts to electrical, propane and telephone services.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

VISUAL RESOURCES/LIGHT AND GLARE

Impact 4.12.1 Adverse Effect on Scenic Vista. The proposed project has been designed to retain on-site oak trees and wetlands and preserve views of hills to the east of the project site. Therefore, impacts associated with substantially damaging scenic resources are considered less than significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, the Revised Project will result in similar, if not reduced, impacts on scenic vistas.

Finding Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)

Impact 4.12.2 Damage Resources within Scenic Corridor. Implementation of the proposed project would introduce a commercial development adjacent to SR 49, a scenic highway. This is considered a significant impact on a scenic view. (PS)

Mitigation Measure 4.12.2a Prior to issuance of a grading permit for the proposed project, the project applicant shall submit final landscaping and improvement plans to the Planning Department for review and approval. The final landscaping plans and/or improvement plans shall be revised to include the following items:

- Solid waste dumpster facilities and infrastructure facilities shall be architecturally designed and/or screened with landscaping.
- Onsite telephone and electrical distribution lines shall be undergrounded.
- Final landscaping plans for the project shall preserve and incorporate existing oak trees (to the maximum extent feasible) and will provide plant species that complement the existing rural character of the Higgins Corner-Lake of the Pines area.
- Fences and walls shall be landscaped to buffer their appearance from Combie Road and SR 49.
- The Landscaping Plan shall ensure that the existing natural landscape characteristics of the wetlands are retained. This landscaping plan shall be reviewed and approved the Nevada County Planning Department to ensure that the plantings do not conflict with existing on-site vegetation.
- The Landscaping Plan shall depict the placement of evergreen conifer and oak species, similar to the native species on the site, that shall be planted along western perimeter of the site adjacent to Pad A and Pad B. These trees shall be planted a minimum of 15 feet apart on the property line and shall be of a minimum container size to reach 50% of their mature height within 10 years.
- The Landscaping Plan and improvement plans shall depict the restoration of natural areas for all off-site improvements, including utility and infrastructure improvements. Where water, sewer, and other underground utilities are extended through undeveloped natural areas, restoration of areas shall include areas affected by cut, back-fill, and grading. All surfaces shall be revegetated with appropriate ground covers and plant materials.

Mitigation Measure 4.12.2b Prior to the issuance of building permits, final building plans shall provide screening details for building mechanical equipment and facilities.

Mitigation Measure 4.12.2c All trees shown on the Landscape Plan that have been selected for preservation, including all portions of adjacent off-site oak trees which have driplines that extend onto the project site, and all off-site oak trees which may be impacted by improvements associated with this project, shall be protected as follows:

- a. A circle with a radius measurement from the trunk of the tree to the tip of its longest limb shall constitute the dripline protection area of each tree. Limbs must not be cut back in order to change the dripline. The area beneath the dripline is a critical portion of the root zone and defines the minimum protected area of each tree. Removing limbs that make up the dripline does not change the protected area.
- b. Any protected trees on the site that require pruning shall be pruned by a certified arborist prior to the start of construction work. All pruning shall be in accordance with American National Standards Institute (ANSI) A300 pruning standards and the International Society of Arboriculture (ISA) Tree Pruning Guidelines. Contractor shall employ a firm with certified tree workers to clean up and make safe any of the trees scheduled to remain. Workers shall remove dead and severely rotted branches, eliminate crossed or rubbing branches, install cabling as needed and provide any aesthetic shaping needed to better balance one-sided trees. Do not allow workers to use spurs while climbing. Avoid any damage to branch collars.
- c. Temporary protective fencing shall be installed at least one foot outside the driplines of the protected trees prior to initiating construction in order to avoid damage to the tree canopies and root systems. The temporary protective fencing must be shown on all improvement plans.
- d. No signs, ropes, cables (except those which may be installed by a certified arborist to provide limb support) or any other items shall be attached to the trees. Small metallic numbering tags for the purpose of preparing tree reports and inventories shall be allowed.
- e. No vehicles, construction equipment, mobile home/office, supplies, materials or facilities shall be driven, parked, stockpiled or located within the driplines of protected trees.
- f. No grading (grade cuts or fills) shall be allowed within the driplines of protected trees, unless approved by a certified arborist.
- g. Drainage patterns on the site shall not be modified so that water collects or stands within, or is diverted across, the dripline of any protected tree.
- h. No trenching shall be allowed within the driplines of protected trees. If it is absolutely necessary to install underground utilities within the dripline of a protected tree, the utility line shall be bored and jacked under the supervision of a certified arborist.
- i. The construction of impervious surfaces within the driplines of protected trees shall be stringently minimized.
- j. No sprinkler or irrigation system shall be installed in such a manner that it sprays water or requires trenching within the driplines of protected trees. An above-ground drip irrigation system is recommended.
- k. Landscaping beneath oak trees may include non-plant materials such as bark mulch, wood chips, boulders, etc. The only plant species that shall be planted within the driplines of oak trees are those which are tolerant of the natural semi-arid environs of

the trees. Limited drip irrigation approximately twice per summer is recommended for the understory plants.

- l. Any weed control chemicals utilized prior to laying of new asphalt shall not be applied where they can leach into the dripline area.
- m. During construction, contractor must maintain the same watering frequency around the trees that they are used to receiving.
- n. Clearing of weeds and debris from the protected dripline area shall be done by hand and will not disturb the natural grades within protected dripline area.

Mitigation Measure 4.12.2d Prior to the issuance of building permits, the project applicant shall provide detailed plans for project signage. Building signage shall utilize the same materials and colors of the commercial center buildings and shall be designed consistent with signage standards set forth in the Nevada County Land Use and Development Code Zoning Regulations. Sign hardware shall be concealed from view. Sign illumination shall exclude utilization of exposed neon or other direct lighting features. Freestanding signs shall utilize materials and colors of the commercial center buildings and shall be incorporated into project landscaping.

Discussion Implementation of mitigation measures 4.12.2a through 4.12.2d will ensure that trees are retained, protected and planted to screen views. These measures are expected to reduce damage to visual resources within a scenic corridor to a less than significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.12.2a through 4.12.2d, the Revised Project will result in similar, if not reduced, impacts to aesthetic resources within a scenic corridor.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.12.3 Degrade Existing Visual Character. Implementation of the proposed project would introduce urban development on to a natural area. This is considered a significant impact on a scenic view. (S)

Mitigation Measure Implementation of mitigation measures 4.12.2a, 4.12.2b and 4.12.2c would reduce impacts associated with degradation of existing visual character. The requirement that a soundwall, if constructed, be landscaped, would mitigate visual impacts of such a barrier (MM 4.5.3a).

Discussion As stated above, implementation of mitigation measures 4.12.2a, 4.12.2b and 4.12.2c would reduce impacts associated with degradation of existing visual character. The requirement that a sound wall, if constructed, be landscaped, would mitigate visual impacts of such a barrier (Mitigation Measure 4.5.3a). As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation

of mitigation measures 4.12.2a, 4.12.2b and 4.12.2c, the Revised Project will result in similar, if not reduced, impacts on the existing visual character of the area.

The project would alter existing private views (residents north of the project site) and change the character of the site from undeveloped open space to urban development, similar to the Higgins Center at the corner of Combie Road and SR 49. The change to urban (Business Park - light industrial) uses was intended in the Nevada County General Plan. However, a combination of commercial, light industrial, and office uses would be developed on the project site because of the proposed general plan amendment. The change in land use character from what is currently envisioned in the Nevada County General Plan to that allowed by the proposed general plan amendment would not be substantial and is therefore considered a less than significant impact for both the originally proposed Project and the Revised Project.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.12.4 Daytime Glare and Nighttime Light Impacts. Development of the proposed project would result in the introduction of building materials and nighttime light sources that could adversely affect adjacent areas. This would be a significant impact. (S)

Mitigation Measure 4.12.4 Outdoor light fixtures for parking areas and roadways shall be low-intensity, shielded and/or directed away from residential areas and the night sky. Exterior lighting of areas adjacent to the commercial buildings shall be limited to public safety and security purposes. Lighting fixtures shall use low-pressure sodium lamps or other similar lighting fixtures and shall be installed and shielded in such a manner that no light rays are emitted from the fixture at angles above the horizontal plane. High-intensity discharge lamps such as mercury, metal halide and high-pressure sodium lamps shall be prohibited. Lighting plans shall be provided as part of facility improvement plans to the County with certification that illumination of adjacent properties will not exceed 2.0 foot-candles.

Discussion Implementation of mitigation measure 4.12.4 would ensure that nighttime lighting impacts of the project are mitigated to a less than significant level. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measure 4.12.4, the Revised Project will result in similar, if not reduced, daytime glare and nighttime light impacts.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 4.12.5 Cumulative Visual\Glare and Light Impacts. Implementation of the proposed project, in combination with anticipated development in the Higgins Area Plan, would alter the visual character of the area resulting in a change to public views as well as increased daytime glare levels and nighttime light. This is considered a potentially cumulative considerable impact. (PCC)

Mitigation Measure Implementation of mitigation measures 4.12.2a through 4.12.2d and 4.12.4 would mitigate the project's contribution to cumulative visual, glare and light impacts by minimizing views of the project from SR 49, providing landscaping to retain natural views of the project site, and ensuring that nighttime lighting would not spillover to adjacent properties of illuminate the night sky.

Discussion As stated above, implementation of mitigation measures 4.12.2a through 4.12.2d and 4.12.4 would mitigate the project's contribution to cumulative visual, glare and light impacts by minimizing views of the project from SR 49, providing landscaping to retain natural views of the project site, and ensuring that nighttime lighting would not spillover to adjacent properties or illuminate the night sky. Therefore, cumulative visual, glare and light impacts are considered less than cumulatively considerable. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and an increased wetland buffer, after implementation of mitigation measures 4.12.2a through 4.12.2d and 4.12.4, the Revised Project will result in similar, if not reduced, cumulative visual/glare and light impacts.

Finding **Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. (Pub. Resources Code, § 21081, subd. (a)(1); CEQA Guidelines, § 15091, subd. (a)(1).)**

Impact 7.2 Growth-Inducing Impacts. Implementation of the proposed project would include the connection to and expansion of infrastructure, such as water and wastewater lines, roads and electrical distribution facilities. The project also includes commercial, light industrial, and office components which would introduce employment opportunities, including construction employment opportunities. The project is located in an area that is intended for growth and future growth would continue to be directed by the Nevada County General Plan. Construction employment opportunities would not result in additional demand for housing in the County. (DEIR, p. 7.0-4.) Infrastructure improvements associated with the Higgins Marketplace project will be sized to meet only the demands of the Higgins Marketplace project and would not introduce wastewater service into un-served areas outside the Project boundary. Infrastructure facilities, including wastewater lines, and in some cases, septic tanks, are already available on adjacent properties. (DEIR, p. 7.0-4.) Because the Project infrastructure will only be sized to meet its demands, the Project will not result in growth beyond that planned in the County's General Plan. The environmental effects of growth under the County's General Plan were evaluated and mitigated for in connection with the County's adoption of the Nevada County General Plan. (DEIR, p. 7.0-3; Nevada County General Plan EIR (State Clearing House No. 940206.973).) Overall, secondary effects of growth associated with the proposed project are

anticipated to be minimal as a result of the change in land use. Therefore, the project's potential to induce growth is less-than-significant. (LS)

Mitigation Measure No mitigation is required.

Discussion As the Revised Project proposes a similar, but reduced size, retail shopping center on the same property as the originally proposed Project, the Revised Project's growth inducing impacts will be the same as those of the originally proposed Project.

At the August 18, 2009, Board of Supervisors hearing on the Higgins Marketplace Project, Mr. Keith Wagner, attorney for South County Citizens for Smart Growth, questioned whether the Project's wastewater infrastructure would induce growth. Chapter 7.0, Long-Term Implications of the Project, evaluated the Project's potential to induce growth, including whether the Project would remove obstacles to population growth (such as a major expansion of a water treatment plant or other infrastructure that might allow for additional development in Nevada County). (DEIR, pp. 7.0-2 to 7.0-5; see also CEQA Guidelines, § 15126.2, subd. (d).)

Infrastructure improvements associated with the Higgins Marketplace project will be sized to meet only the demands of the Higgins Marketplace project and would not introduce wastewater service into un-served areas outside the Project boundary. (DEIR, p. 7.0-3.) Infrastructure facilities, including wastewater lines, and in some cases, septic tanks, are already available on adjacent properties. (See DEIR, p. 7.0-4.) Because the Project infrastructure will only be sized to meet its demands, the Project will not result in growth beyond that planned in the County's General Plan. The environmental effects of growth under the General Plan are identified in Chapter 7.0, Long-Term Implications of the Project. (DEIR pages 7.0-4 and 7.0-5.) To the extent the project's wastewater lines replace existing lines or septic tanks, such replacement would not induce growth beyond that which already exists or is planned. No further analysis of the Project's growth inducement potential is required. (See CEQA Guidelines, § 15126.2, subd. (d).)

The Project would not require expansion of the Saddle Ridge Estate wastewater infrastructure beyond that already approved by the County. The Saddle Ridge Estate wastewater system is required to be sized to accommodate future development in the adjacent territory, including the Project area. (Nevada LAFCo Staff Report, September 21, 2006, regarding annexation of Saddle Ridge Estates.) It will also connect the Higgins Village project to the Lake of the Pines WWTP. The MND/IS adopted for the Saddle Ridge Estates project evaluated the environmental effects of the wastewater system and included mitigation measures, as necessary, to reduce all project impacts to less-than-significant levels. Nevada County approved the Saddle Ridge Estates project on June 23, 2006 and, as lead agency, adopted the MND/IS for the project at that time. Implementation of the mitigation measures identified in the Higgins Marketplace EIR and in the Saddle Ridge Estates MND/IS will ensure that impacts associated with connecting the

Higgins Marketplace Project to the Saddle Ridge Estates Project which would then connect to the Lake of the Pines WWTP will be less-than-significant.

Second, the Higgins Marketplace project would not require expansion of the Lake of the Pines WWTP. Although implementation of the Project would increase the overall demand for wastewater collection and treatment services, the necessary wastewater treatment services to accommodate the Project and future planned development could be provided by the Lake of the Pines WWTP Upgrade. (DEIR, p. 4.11-36.) As explained in the DEIR, the Nevada County Sanitation District is currently constructing additional capacity to serve the County's anticipated development over the next ten years, including the Higgins Market Place project. (DEIR, pp. 4.11-29 to 4.11-30.) Extending service to the Higgins Area was envisioned as part of the Lake of the Pines WWTP Upgrade Project. (DEIR, p. 4.11-30; see also Lake of the Pines WWTP Upgrade Project Draft EIR (EDAW, 2005), Exhibit 2-3.) Growth inducing effects of the Lake of the Pines WWTP Upgrade Project, including the extension of wastewater service to the Higgins Marketplace project area were evaluated in the Lake of the Pines WWTP Upgrade Project EIR (Lake of the Pines WWTP Upgrade Project Draft EIR (EDAW, 2005), § 5.3.) That EIR concluded the WWTP expansion would not stimulate growth that is inconsistent with County land use and growth management plans, nor would the project alter the location or amount of growth and development envisioned under the County's land use plans, nor would it dictate the timing of growth. (Id. at pp. 5-4 to 5-6.) As noted, NCSD has indicated that following completion of the Lake of the Pines WWTP Upgrade, there would be adequate capacity at the WWTP available to serve the Project and anticipated growth. (DEIR, p. 4.11-33.)

The Project would not facilitate growth beyond that for which the County has planned in its General Plan. Indeed, the Project will result in less demand for wastewater services (and corresponding infrastructure) than anticipated under the General Plan. As discussed in the DEIR, the Nevada County General Plan EIR analyzed wastewater flows associated with development of the project site as Business Professional. The wastewater flow rates in the Nevada County General Plan EIR for the Business Professional designation are well above the flow rates for Community Commercial and Office-Professional designations. As a result, the equivalent dwelling units (EDUs) anticipated for the Project site under the General Plan are greater than the EDUs necessary to serve the proposed project with commercial, light industrial, and office uses. (DEIR, p. 4.11-36.) Therefore, the necessary infrastructure to meet Project demands is less than that anticipated under the County's General Plan. Therefore, and for the reasons discussed above and in the EIR, it is reasonable to conclude that the Project will not induce growth beyond that which has already been planned and mitigated for by the County.

Finding **Under CEQA, no mitigation measures are required for impacts that are less than significant. (Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15126.4, subd. (a)(3), 15091.)**

X.
PROJECT ALTERNATIVES

A. BASIS FOR ALTERNATIVES-FEASIBILITY ANALYSIS

1. Significant, Unavoidable Impacts of the Revised Project

The Higgins Marketplace Revised Project will result in the following significant and unavoidable impacts, which can be substantially lessened, though not avoided, through implementation of feasible mitigation measures adopted in connection with the Revised Project:

Impact 4.6.5 Cumulative Increases in Emissions of Regional Pollutants. The project would contribute to cumulative regional increases in air pollutants.

Under CEQA, where a significant impact can be substantially lessened (i.e., mitigated to an "acceptable level") solely by the adoption of mitigation measures, the agency, in drafting its findings, has no obligation to consider the feasibility of alternatives with respect to that impact, even if an alternative would mitigate the impact to a greater degree than the proposed project. (Pub. Resources Code, § 21002; *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 521 (*Laurel Hills*); see also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731; and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 400-403.) Specifically, the CEQA Guidelines provide that "[t]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (CEQA Guidelines, § 15126.6, subd. (a).) When a lead agency has determined that certain effects on the environment of a project are not significant, the lead agency does not need to discuss those impacts in detail within the environmental impact report. (Pub. Resources Code, § 21100.) Therefore, like mitigation measures, a lead agency is not required to consider the feasibility of implementing an alternative to a project unless the alternative will avoid or substantially lessen a significant impact. (CEQA Guidelines, § 15126.4, subd. (a)(3) [mitigation measures are not required for effects which are not found to be significant]; CEQA Guidelines, § 15126.6, subd. (a) [alternatives must focus on significant impacts of the project and the ability of the alternative to avoid or substantially lessen such impacts].)

As is evident from the text of the EIR and the above discussion of the Revised Project's environmental impacts, every significant effect of the Revised Project, with the exception of Impact 4.6.5 (Cumulative Increases in Emissions of Regional Pollutants) has been reduced to a less-than-significant level, if not fully avoided, by the adoption of feasible mitigation measures. Thus, as a legal matter, except to the extent that proposed alternatives substantially reduce cumulative increases in emissions of regional pollutants, the Board of Supervisors need not consider, in these findings, the feasibility of the various alternatives described in the DEIR.

Nevertheless, these findings provide a detailed discussion of each project alternative including potential differences between each alternative and the Revised Project with respect to each impact even if less than significant. The Board of Supervisors has chosen to address alternatives to the Revised Project in detail within these findings in the interest of full disclosure and to ensure its constituents that it has fully considered whether any of those alternatives is indeed feasible or more desirable from a policy standpoint. As will be explained below, the Board of Supervisors is unable to identify any alternative that is both feasible and environmentally superior to the Revised Project with respect to its only remaining significant unavoidable effect.

2. Scope of Necessary Findings and Considerations for Project Alternatives

As noted above, these findings address whether the various alternatives substantially lessen or avoid any of the significant unavoidable impacts associated with the Revised Project and (though not legally necessary) also consider the feasibility of each alternative with respect to each impact area. Under CEQA, “[f]easible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (CEQA Guidelines § 15364.) As explained earlier, the concept of feasibility permits agency decision makers to consider the extent to which an alternative is able to meet some or all of a project’s objectives. In addition, the definition of feasibility encompasses “desirability” to the extent that an agency’s determination of infeasibility represents a reasonable balancing of competing economic, environmental, social, and technological factors supported by substantial evidence.

In identifying potentially feasible alternatives to the project, the following Project Objectives were considered:

- Provide a full-service grocery shopping alternative for local residents currently driving to the City of Grass Valley or Auburn for a full-service grocery store.
- Improve the jobs/housing balance in Nevada County.
- Follow an architectural design that will look and appear similar to the existing Higgins Center north of the project site.
- Protect the existing wetlands occurring on the project site.
- Protect visual corridor along SR 49.

Under CEQA Guidelines section 15126.6, as noted earlier, the alternatives to be discussed in detail in an EIR should be able to “feasibly attain most of the basic objectives of the project[.]” For this reason, the Objectives described above provided the framework for defining possible offsite alternative project locations. Based on these objectives, several offsite alternative locations within the Higgins Corners/Lake of the Pines community were considered. However, no sites of adequate size were identified that would result in reduced environmental impacts. Sites of appropriate size for the project were 1) either adjacent to more residential uses than the proposed site which would result in increased exposure of residents to noise impacts; or 2) would have resulted in increased impacts compared to the proposed project. Locations outside of the Higgins Corner/Lake of the Pines area were not considered as they would not serve the market area identified by the Project Objectives. (DEIR, 6.0-2.)

A reduced density alternative to avoid traffic impacts, noise impacts, and biological resource impacts was considered. In order to reduce traffic impacts to a level that would not require mitigation, however, the project would need to be reduced to less than one-fourth of the proposed project size. This reduction in size would not allow the project to meet its objectives, including that of providing a full-service grocery store. (DEIR, 6.0-2.)

Based on the requirements of State CEQA Guidelines §15126.6 and the Project's Objectives, the following alternatives to the Project were identified:

- No Project Alternative;
- Woodridge Court Right-In, Right-Out Alternative;
- Business Park Land Use Alternative; and
- Redesign/Reduced Density Alternative.

In addition, as discussed earlier in these findings, County Planning Staff met with the applicant to review and refine the Project design concept. These discussions resulted in the Project applicant proposing a Revised Project. The Revised Project increases the Project's wetland buffer parcel, reduces the overall size of the area to be developed, reduces the combined building footprint of the Project, and prohibits the development of drive-through restaurants.

The Board of Supervisors finds that the range of alternatives studied in the EIR reflects a reasonable attempt to identify and evaluate various types of alternatives that would potentially be capable of reducing the Project's environmental effects, while accomplishing most but not all of the Project Objectives. The Board of Supervisors finds that the alternatives analysis is sufficient to inform the Board of Supervisors and the public regarding the tradeoffs between the degree to which alternatives to the Revised Project could reduce environmental impacts and the corresponding degree to which the alternatives achieve the Project Objectives.

3. Planning Commission's January 8, 2009 Recommendation

On January 8, 2009, the Planning Commission voted 3-2 to recommend the Board of Supervisors approve a staff-recommended modified version of the Project. Although the Planning Commission's final recommendation for the legislative actions was not unanimous, there did appear to be a consensus that the traffic resulting from the project as originally proposed was a significant concern. Following the January 8, 2009 Planning Commission hearing, the applicant formally redesigned the project size (close to the Planning Commission's recommended 75,000 square foot cap) and submitted two preliminary alternative designs. One design conformed to the 100-foot setback from the onsite wetlands, and the other design had a better interior parking lot circulation but only provided a 50-foot non-disturbance setback with an additional 20-foot buffer zone. Staff reviewed the modified site plans and determined the second design would address concerns raised over the original proposal. This second design proposal became the Revised Project, approved by the County.

South County Citizens for Smart Growth has suggested that the County violated CEQA in not analyzing the January 8, 2009 staff recommendation and recirculating the EIR. For the reasons set forth section IV, "Absence of Significant New Information," recirculation is not required.

The Revised Project will not result in any new significant impacts and, in some cases, will reduce the significant impacts identified in the draft EIR without the need for mitigation. Accordingly, recirculation is not required (Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5.)

The Revised Project is substantially similar to the Planning Commission’s January 8, 2009 recommendations. Furthermore, the Redesign/Reduced Density Alternative (discussed below) is also similar to the Revised Project. The following table summarizes the differences between the Planning Commission’s recommendation and the Revised Project:

Planning Commission Recommendation	Revised Project
Reduce Community Commercial area from 15.00 acre to 10.00 acre.	Parcels 1, 2, 3, 4, (totaling 9.68 acres and the road right of way that includes the realigned Woodridge Drive and Higgins Road (totaling 2.35 acres) are designated Community Commercial for a total of 12.03 acres of Community Commercial.
Remove the Office and Professional (1.38 acres) and the Business Park (3.69 acres) area and with the additional 5.00 acres from the Community Commercial area, amend the remaining 10.07 acres to Open Space.	Proposed parcel 7 (totaling 0.78 acres) is redesignated from Business Park to Office Professional. The remaining area, including Parcel 5 and 6 (totaling 7.26 acres) is redesignated from Business Park to Open Space (thus a total of 7.26 acres are designated open space). While this differs from the prior 10.07 of Open Space and 10.00 acre of Community Commercial, it more realistically puts the land use designations in line with the physical development (including the road improvements.) (May 28, 2009 staff report to Planning Commission, p. 7.)
Prohibit through the use of Site Performance combining district, all fast food restaurants within the C2 Community Commercial zoning district.	Through the use of the Site Performance district, “[a]ll fast food or drive-through restaurants shall be prohibited within the C2 Community Commercial zoning district.”
Limit the building square footage within the C2-SP designation to no more than 75,000 square feet.	Through the use of the Site Performance combining district the total square footage allowed within the C2-SP designation is 75,800 square feet.
The Open Space area should contain all of the wetlands area as well as the area along the southern property line (and south of the proposed realignment of Woodbridge Drive. The reduction of the	The Project was not modified to avoid the loss of 0.08 acres of wetland due to the proposed realignment of Woodbridge Drive. A revised site plan with a 100-foot buffer was prepared; however, it conflicted with parking and interior circulation reroutes. The County therefore determined that due to the relatively level

<p>overall Commercial area should also allow the project design to conform to the required setbacks (100 feet) from the existing wetland on site.</p>	<p>grade of the habitat, a 50-foot setback plus 20-foot buffer was sufficient. (May 28, 2009 staff report to Planning Commission, pp. 2-3.)</p> <p>The over-all commercial area was reduced. The Revised Project includes a 50-foot setback and a 20-foot vegetated barrier (for a total of 70 foot variable setback for wetland on the proposed project). The County Code allows for a less-than-100 feet setback where a Management Plan has been prepared, as was the case with the Revised Project</p>
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CEQA’s requirement to discuss project alternatives in an EIR is tied to CEQA’s substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. (Pub. Resources Code, §§ 21100, subd. (b)(4), 21002.) The CEQA Guidelines provide that “[t]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (CEQA Guidelines, § 15126.6, subd. (a), italics added.) To that end, an EIR must consider alternatives: “which (1) offer substantial environmental advantages over the project proposal . . . ; and (2) may be ‘feasibly accomplished in a successful manner’ considering the economic, environmental, social and technological factors involved.” (*Goleta II, supra*, 52 Cal.3d at p. 566; see also CEQA Guidelines, § 15365.) It follows from these principles that a lead agency need not analyze alternatives that would not reduce a Project’s significant environmental effects. (See e.g. *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 710-714 [holding EIR need not analyze an alternative that would not have reduced significant and unavoidable visual impact of a residential development project].)

After mitigation, the only significant and unavoidable impact of the Project is the Project’s cumulative increase in emission of regional pollutants (air quality impact 4.6.5). In light of the similarities between the Planning Commission’s January 8, 2009, recommendation and the Revised Project, there is no reason to believe the Planning Commission’s recommended proposal would reduce the air quality impact to any greater extent than under the Revised Project. Notably, both projects eliminate the fast-food restaurants, which, as noted in the January 8, 2009, staff report, generate almost five times the volume of traffic per square foot than the supermarket use and more than ten times the volume of traffic per square foot than specialty retail use and affect both AM and PM peak hour volumes. Air quality impacts would be similar under either version of the project. For these reasons, the Board of Supervisors finds that the EIR did not need to be recirculated to analyze the Planning Commission’s January 8, 2009, recommendation.

B. DESCRIPTION OF PROJECT ALTERNATIVES

The DEIR identified and compared environmental effects of the four alternatives listed below with environmental impacts resulting from the project as originally proposed. The following alternatives to the Project were evaluated:

Alternative 1 - No Project Alternative. Alternative 1 is the No Project Alternative. CEQA Guidelines Section 15126.6(e)(1) states that a No Project Alternative shall be analyzed. The purpose of describing and analyzing a No Project Alternative is to allow decisionmakers to compare the impacts of approving a proposed project with the impacts of not approving the proposed project. The No Project Alternative analysis is not the baseline for determining whether the environmental impacts of a proposed project may be significant, unless the analysis is identical to the environmental setting analysis which does establish that baseline.

Under this alternative, the project would not be constructed. The project site would remain in its existing state. No infrastructure improvements beyond those currently existing on or near the project site would be installed. Existing land use designations for the project site would not be changed.

Alternative 2 – Woodridge Court Right-In, Right-Out Alternative. The Woodridge Court Right-In Right-Out Alternative would result in the same site development plan as the originally proposed project but would not allow access to the project site off of southbound SR 49 (left in). Access would only be available from SR 49 northbound (right in) and no left turns off of Woodridge Court onto SR 49 would be provided. Traffic would be allowed to access SR 49 northbound (right out) from Woodridge Court. All other aspects of this alternative would be identical to the originally proposed project.

Alternative 3 – Business Park Land Use Alternative. The Business Park Land Use Alternative assumes that the project would be developed with uses allowed under the existing BP land use designation. Business Park (BP) is intended to provide for a variety of related and mutually supporting manufacturing, distribution, processing, service, and research and development uses. Uses typically include light industries and supporting business and service activities. The Business Park Land Use Alternative assumes the acreage of the site developed would be identical to that of the originally proposed project, resulting in approximately 90,000 square feet of building development.

Alternative 4 – Redesign/Reduced Density Alternative. The Redesign/Reduced Density Alternative would develop the site with commercial uses similar to the originally proposed project, but remove Parcel 3 (6,500 square foot. commercial building and associated improvements) in order to accommodate a 50-foot buffer between the wetland conservation area and the proposed development on Parcels 4 and 5, relocation of the proposed drive-through restaurant on Parcel 5 to be farther from the adjacent residence, and re-orientation of the proposed commercial building on Parcel 3 to reduce truck noise to the adjacent residence. Buildings on Parcels 7 through 9 would be oriented to reduce potential truck noise to the nearby residences. This redesign would also set the development further back from SR 49, reducing visual impacts. Access would be generally consistent with that of the originally proposed project.

CEQA Guidelines Section 15126.6, subdivision (e)(1) requires that a No Project Alternative be analyzed. The Woodridge Court Right-In Right-Out Alternative was examined to determine if

traffic impacts would change if a right in, right out access was included. The Business Park Land Use Alternative was analyzed to determine if the existing land use designation would result in differing environmental effects than the originally proposed project. The Redesign/Reduced Density Alternative was analyzed to avoid traffic impacts, noise impacts, and biological resource impacts. In the sections below, the environmental impacts of each of these alternatives are identified and compared with those resulting from the Revised Project.

ALTERNATIVE 1 – (No Project)

Section 15126.6(e) of the CEQA Guidelines requires that a “no project” alternative be evaluated in comparison to the proposed project. Section 15126(e) also requires that the no project alternative discuss the existing conditions that were in effect at the time the Notice of Preparation was published as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

1. Description

The No Project Alternative assumes that the project would not be implemented. No infrastructure improvements beyond those currently existing on or near the project site would be installed. Existing land use designations for the project site would not be changed. Therefore, the physical conditions of the site would remain status quo because development consistent with adopted plans and programs is not anticipated in the foreseeable future. Alternative 3, the Business Park Land Use Alternative, considers potential impacts if development were to occur on the project site consistent with adopted plans and programs.

2. Comparative Impacts

Land Use

As noted in Section 4.1 of the DEIR (Land Use), the originally proposed project would not result in any significant impacts associated with land use. As discussed further in these findings, the Revised Project would also not result in any significant impacts associated with land use. Under the No Project Alternative, no development would occur. Therefore, land use impacts associated with conflicting land uses and inconsistency with adopted plans and programs adopted for the purpose of protecting the environment would not occur.

Population, Housing and Employment

The No Project Alternative would result in no additional housing or commercial development on the project site. No commercial development would forgo employment opportunities on the project site. Economic issues, however, such as the creation of jobs, are not considered impacts or benefits under CEQA (Section 15064(e)). Only the physical changes in the environment that would occur as a result of creating these opportunities would be considered impacts. As noted in Section 4.2 of the DEIR (Population, Housing and Employment), the originally proposed project would not result in any significant impacts associated with population, housing and employment.

As discussed further in these findings, the Revised Project would also not result in any significant impacts associated with population, housing and employment. Thus, impacts to population, housing and employment would be similar for both the No Project Alternative and the Revised Project.

Hazardous Materials/Risk of Upset

As noted in Section 4.3 of the DEIR (Hazardous Materials/Risk of Upset), the originally proposed project has the potential to result in release of hazardous materials but with mitigation would not result in any significant impacts associated with human health or risk of upset. As discussed further in these findings, with mitigation the Revised Project would also not result in any significant impacts associated with human health or risk of upset. The No Project Alternative would not create any hazards to human health, safety, or welfare. As no development would occur, people would not be exposed to potential hazards on-site or in the vicinity of the project site. Therefore, the less than significant impacts to human health/risk of upset associated with the Revised Project would be further decreased under the No Project Alternative.

Traffic and Circulation

Implementation of the No Project Alternative would result in no additional traffic volumes on area roadways or intersections associated with development. Furthermore, no change in circulation patterns would occur as there would be no development to create the need for changes in circulation patterns. As noted in Preface and Errata in the FEIR, after implementation of the mitigation measures included in the FEIR, the originally proposed project would not result in any significant impacts to traffic and circulation. As discussed further in these findings, the Revised Project would also not result in any significant impacts associated with traffic and circulation. The No Project Alternative would not create any traffic and circulation impacts as no development would be constructed to generate increase traffic. Therefore, the No Project Alternative would result in less severe impacts to traffic and circulation compared to the Revised Project.

Noise

The No Project Alternative would not result in increased noise levels on the project site or in the project vicinity. No construction traffic noise would be generated as no construction would take place on the project site. Increased traffic noise and noise associated with delivery trucks and operation of the commercial activities not occur. Therefore, implementation of the No Project Alternative would result in better noise impacts as compared to the Revised Project.

Air Quality

Implementation of the No Project Alternative would not generate air quality impacts associated with commercial uses as no development would occur on the site. Construction air quality emissions, which are considered potentially significant before mitigation in association with the originally proposed project and Revised Project, would be avoided entirely if the No Project Alternative were implemented. Likewise, increases in ozone precursors from vehicular emissions and delivery truck traffic would be avoided. Unlike the originally proposed project and Revised

Project, the No Project Alternative would not result in significant and unavoidable cumulatively regional increases in air pollutants. Therefore, the No Project Alternative would result in better air quality impacts than the Revised Project.

Hydrology and Water Quality

The No Project Alternative would result in no commercial development occurring on the project site. No increase in impervious surfaces or runoff pollutants would occur, nor would surface flows or drainage patterns be affected if the No Project Alternative were implemented. Water quality would not be affected as no additional impervious surfaces or sources of pollution would be introduced to the project site. After implementation of mitigation, hydrology and water quality impacts associated with the originally proposed project and Revised Project would be less than significant; under the No Project Alternative these impacts would be further reduced.

Geology and Soils

The No Project alternative would result in no impacts relative to erosion, unstable soils, earthquake hazards, etc., because no development would be proposed on the project site. Potential for reactions with lime in the soil would also be avoided as no construction would take place on the project site. After implementation of mitigation, geology and soils impacts associated with the originally proposed project and Revised Project would be less than significant; under the No Project Alternative these impacts would be further reduced.

Biological Resources

Implementation of the No Project Alternative would avoid potential impacts to Special Status Species and the proposed wetland preserve because no development would occur on the project site. In addition, no jurisdictional waters of the U.S. and oaks/oak woodland would be lost. Cumulative impacts to special status specie would also be avoided in association with the No Project Alternative. After implementation of mitigation, biological resources impacts associated with the originally proposed project and Revised Project would be less than significant; under the No Project Alternative these impacts would be further reduced.

Cultural Resources

Implementation of the No Project Alternative would avoid potential impacts to cultural resources because no development would occur on the project site. Potential disturbance of cultural resources and destruction of undiscovered paleontological resources would not occur because no construction activities would take place. After implementation of mitigation, cultural resources impacts associated with the originally proposed project and Revised Project would be less than significant; under the No Project Alternative these impacts would be further reduced.

Public Services and Utilities

The No Project Alternative would result in no development on the project site. The No Project Alternative would not create need for additional fire protection, law enforcement, schools, water service, wastewater service, solid waste, parks and recreation, electricity, natural gas and

telephone. The originally proposed project and Revised Project would require extension of infrastructure and construction of facilities to provide water, wastewater, and utility service to the project site. The No Project Alternative would not require development of services and utilities infrastructure to serve the project. After implementation of mitigation, public services and utilities impacts associated with the originally proposed project and Revised Project would be less than significant; under the No Project Alternative these impacts would be further reduced.

Visual Resources/Light and Glare

As noted in Section 4.12 of the DEIR (Visual Resources/Light and Glare), prior to the implementation of mitigation, the originally proposed project would result in significant impacts associated with visual resources by introducing a commercial development adjacent to SR 49. As discussed further in these findings, with mitigation the Revised Project would also not result in any significant impacts associated with visual resources or light and glare. Under the No Project Alternative, no development would occur and no change in the existing visual setting would take place. In addition, no new sources of light and glare would be introduced if the No Project Alternative were implemented. Therefore, visual resources/light and glare impacts would be better in association with implementation of the No Project Alternative compared with the originally proposed project and Revised Project.

3. Analysis of Alternative 1's Ability to Reduce Significant Unavoidable Project Impacts

The No Project Alternative would produce no changes on the project site, effectively eliminating those project impacts discussed in the DEIR, Final EIR, and these findings. Because the site would remain in its current condition, there would be no environmental impacts associated with introducing buildings and people into an area that is currently undeveloped. Under the No Project Alternative, there would be no change in the existing visual environment. No light sources would be created and there would be no change to the existing visual character of the project site. There would be no increase in air pollutants associated with project construction nor an increase in pollutants associated with more vehicles accessing the area. There would be no impacts to biological resources without development of the project. In addition, the potential disturbance to any unknown subsurface cultural resources would not be an issue because the site would not be disturbed to accommodate the construction of new buildings. Any hazards associated with building design or use would not occur, nor would there be any changes to the existing drainage and water quality. The current drainage pattern would not be changed. There would be no increase in noise associated with project construction and/or any noise impacts associated with future operational activities. Greenhouse gas emissions that could contribute to global warming would remain the same. Lastly, no impact on public services and public utilities would occur under this alternative because the site would not be developed, so there would be no need for additional police or fire services, sewer capacity, potable water, schools, or parks. Under this alternative, the number of vehicles accessing the site would not change; therefore, there would be no operational impacts to the surrounding roadway network or freeway. (DEIR, pp. 6.0-2 to 6.0-5.)

4. Feasibility of Alternative 1 (No Project)

As described earlier in these findings, the concept of “feasibility” encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

While the No Project Alternative would result in fewer environmental impacts than the Revised Project, the County finds this alternative infeasible and less desirable than the Revised Project and rejects this alternative for “[s]pecific economic, legal, social, technological, or other considerations” which include project benefits such as providing a full-service grocery shopping alternative for local residents currently driving to the City of Grass Valley or Auburn for a full-service grocery store, improving the jobs/housing balance in Nevada County, and other benefits of the project that “make infeasible the ... project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).)

Despite the fact that most, if not all, of the significant impacts associated with implementation of the Revised Project would be reduced in significance under this Alternative, the implementation of the No Project Alternative would fail to achieve any of the project objectives. The No Project Alternative’s desirability is not on balance with the Revised Project in terms of its economic, environmental, social and technological elements. The Revised Project is the more desirable choice for the community and the region.

The Board of Supervisors finds the No Project to be infeasible for the above reasons and rejects it as a viable alternative to the Revised Project.

ALTERNATIVE 2 – (Woodridge Court Right-In, Right-Out Alternative)

1. Description

The Woodridge Court Right-In, Right-Out Alternative would restrict access to the project site from Woodridge Court to right-in, right-out only. This alternative was developed to determine whether this restricted access would avoid traffic impacts to SR 49, and whether this alternative would improve traffic safety associated with accessing SR 49 from Woodridge Court.

The Woodridge Court Right-In Right-Out Alternative would result in the same site development plan as the originally proposed project but would not allow access to the project site off of southbound SR 49 (left in). Access would only be available from SR 49 northbound (right in) and no left turns off of Woodridge Court onto SR 49 would be provided. Traffic would be allowed to access SR 49 northbound (right out) from Woodridge Court. All other aspects of this alternative would be identical to the originally proposed project.

2. Analysis of Alternative 2’s Ability to Reduce Significant Unavoidable Project Impacts

Adoption of Alternative 2 would not avoid any significant and unavoidable impacts.

Land Use

The Woodridge Court Right-In Right-Out Alternative would result in land use impacts identical to the originally proposed project relative to consistency with the Nevada County General Plan and Higgins Area Plan and Compatibility with Adjacent Land Uses both on a project and cumulative level. In each case, land use impacts would be less than significant. Therefore, the Woodridge Court Right-In Right-Out Alternative would result in land use impacts similar to the originally proposed project and Revised Project.

Population, Housing and Employment

Impacts to population, housing and employment for the Woodridge Court Right-In Right-Out Alternative would be identical to those of the originally proposed project. Population and housing growth impacts would be less than significant and no impacts relative to displacing persons would occur. Cumulative impacts to population and housing would be less than significant. Therefore, population, housing and employment impacts of the Woodridge Court Right-In Right-Out Alternative would be similar to those of both the originally proposed project and the Revised Project.

Hazardous Materials/Risk of Upset

Impacts to hazardous materials/risk of upset for the Woodridge Court Right-In Right-Out Alternative would be identical to those of the originally proposed project. Impacts associated with routine use of hazardous materials and PBC would be less than significant. Release of hazardous materials impacts would be potentially significant, but would be mitigated to less than significant by implementing the same mitigation measures associated with the originally proposed project and the Revised Project. Cumulative Hazardous Materials, Natural Hazards and Public Health Impacts would be less than significant for the Woodridge Court Right-In Right-Out Alternative. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, a ban on the development of drive-through restaurants within the shopping center, and an increased wetland buffer, the Revised Project may result in reduced hazardous materials and risk of upset impacts as compared to Woodridge Court Right-In Right-Out Alternative. However, after implementation of mitigation, hazardous materials/risk of upset impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Traffic and Circulation

The Woodridge Court Right-In Right-Out Alternative would reduce impacts to the SR 49 / Woodridge Court intersection to less than significant, as overall operations would be acceptable during the a.m. and p.m. peak hours and, while the westbound approach would operate at LOS E during the p.m. peak hour, would not meet peak hour warrants. Impacts to the remaining affected intersections and roadway segments under the Woodridge Court Right-In Right-Out Alternative would be similar to those associated with the originally proposed project. As the Revised Project would also restrict access to the project site from Woodridge Court to right-in, right-out, reduces the project footprint, includes the build out of less total square feet of building area, and prohibits

the development of drive-through restaurants, the Revised Project may result in reduced traffic and circulation impacts as compared to Woodridge Court Right-In Right-Out Alternative. Although the Revised Project would allow left turns onto Woodridge Court from southbound SR 49 (see Mitigation Measure 4.4.1d) traffic analyses performed for the revised Project demonstrates that it is not necessary to restrict left turn movements onto Woodridge Court from southbound SR 49. After implementation of mitigation, traffic and circulation impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Noise

Noise impacts for the Woodridge Court Right-In Right-Out Alternative would be similar to those of the originally proposed project. Before implementation of mitigation, impacts of on-site noise sources on nearby residential uses would be potentially significant for both the originally proposed project and the Woodridge Court Right-In Right-Out Alternative. Before implementation of mitigation, construction noise impacts would be significant for both the originally proposed project and the Woodridge Court Right-In Right-Out Alternative. As with the originally proposed project, cumulative traffic noise levels would also be less than significant for the Woodridge Court Right-In Right-Out Alternative. As the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, a ban on the development of drive-through restaurants within the shopping center, and an increased wetland buffer, the Revised Project may result in reduced noise impacts as compared to Woodridge Court Right-In Right-Out Alternative. After implementation of mitigation, noise impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Air Quality

Air quality impacts resulting from construction would be similar for both the originally proposed project and the Woodridge Court Right-In Right-Out Alternative. As the Revised Project would also restrict access to the project site from Woodridge Court to right-in, right-out only, and reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced air quality impacts as compared to Woodridge Court Right-In Right-Out Alternative. Both the Revised Project and the Woodridge Court Right-In Right-Out Alternative, however, would result in significant and unavoidable cumulative impacts to regional increases in air pollutants. After implementation of mitigation, all other air quality impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Hydrology and Water Quality

The Woodridge Court Right-In Right-Out Alternative would have hydrology and water quality impacts identical to the originally proposed project. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced hydrology and water quality impacts as compared to Woodridge Court Right-In Right-Out Alternative.

After implementation of mitigation, hydrology and water quality impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Geology and Soils

Geology and Soils impacts would be identical for both the originally proposed project and the Woodridge Court Right-In Right-Out Alternative. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced geology and soils impacts as compared to Woodridge Court Right-In Right-Out Alternative. After implementation of mitigation, geology and soils impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Biological and Natural Resources

Impacts to biological resources would be similar for both the originally proposed project and the Woodridge Court Right-In Right-Out Alternative. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced biological and natural resources impacts as compared to Woodridge Court Right-In Right-Out Alternative. After implementation of mitigation, biological and natural resources impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Cultural Resources

The same degree of disturbance would occur to the project site in association with the originally proposed project as with the Woodridge Court Right-In Right-Out Alternative. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced cultural resources impacts as compared to Woodridge Court Right-In Right-Out Alternative. After implementation of mitigation, cultural resources impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Public Services and Utilities

The same magnitude of impacts would occur to fire protection and emergency medical services, exposure to wildfire, fire flow, emergency access, law enforcement, schools, water demand and water system facilities, wastewater treatment and conveyance, solid waste, parks and recreation, roadway maintenance, electrical, propane and telephone service and infrastructure under the originally proposed project and the Right-In Right-Out Alternative. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced public services and utilities impacts as compared to Woodridge Court Right-In Right-Out Alternative. After implementation of mitigation, public services and utilities impacts would

be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

Visual Resources/Light and Glare

Impacts to visual resources would be identical for both the originally proposed project and the Woodridge Court Right-In Right-Out Alternative. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced visual resources/light and glare impacts as compared to Woodridge Court Right-In Right-Out Alternative. After implementation of mitigation, visual resources/light and glare impacts would be less than significant for both the Revised Project and the Woodridge Court Right-In Right-Out Alternative.

3. Analysis of Alternative 2's Ability to Reduce Significant Unavoidable Project Impacts

The Revised Project incorporates the right-in right-out limitation developed under this alternative. The only significant and unavoidable impact of the Revised Project is its cumulatively considerable impacts on regional increases in air pollutants. As discussed, this significant and unavoidable impact would remain under the Right-In Right-Out Alternative. And, as the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced cumulatively considerable impacts on regional increases in air pollutants as compared to Woodridge Court Right-In Right-Out Alternative.

4. Feasibility of Alternative 2 (Right-In Right-Out Alternative)

As described earlier in these findings, the concept of “feasibility” encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

The County finds that the Right-In Right-Out Alternative is feasible. Mitigation Measure 4.4.1d, in fact, includes the right-in right-out only restriction on Woodridge Court. Under the proposed measure, access to Woodridge Court would be available from SR 49 northbound (right in) and left turns off of Woodridge Court onto SR 49 would not be provided. Traffic would also be allowed to access SR 49 northbound (right out) from Woodridge Court and left turns off of southbound SR 49 onto Woodridge Court would be allowed. Therefore, the right-in right-out measure incorporated into the Revised Project (Mitigation Measure 4.4.1d) will prohibit left turns off of Woodridge Court onto SR 49, but will not prohibit left turns off of SR 49 onto Woodridge Court. Implementation of Mitigation Measure 4.4.1d in this manner is consistent with the comment letter submitted by the Department of Transportation (“Caltrans”) on February 27, 2008. Caltrans concluded that “[l]eft turns from the highway to Woodridge, may be assumed

to be allowed, even under cumulative conditions.” (See FEIR, p. 3.0-15.) Moreover, a memorandum produced by Steve Castleberry on June 1, 2009, confirmed Caltrans’ conclusion using the Highway Capacity Manual. (Castleberry Memo, p. 1.)

On June 8, 2009, Neal K. Liddicoat of MRO Engineers reviewed the conclusions reached in Mr. Castleberry’s memorandum and conducted additional field observations. Mr. Liddicoat’s memorandum explains that because the Revised Project includes a reduced project footprint, the build out of less total square feet of building area, and the elimination of drive-through restaurants, the traffic counts associated with the Revised Project will be lower than those estimated from the original Project. Specifically, the Liddicoat memorandum finds that the projected PM peak-hour demand for the southbound left turn is 52 vehicles per hour under the Revised Project. This is less than one vehicle per minute, even in the year 2030. This relatively low left-turn demand, combined with the existence of adequate gaps in oncoming, northbound traffic, demonstrates that left turns can be made safely. Moreover, for drivers who are concerned about safety of the left turn from SR 49, an alternative exists at Combie Road, where the turn can be made under the protection of a traffic signal. (Liddicoat memo, p. 5)

While the County finds that the Right-In Right-Out Alternative is feasible, the County finds that it is not the environmentally superior alternative. As compared to the Right-In Right-Out Alternative, the County finds that the Revised Project is environmentally superior. The County, therefore, has chosen not to adopt the Right-In Right-Out Alternative.

ALTERNATIVE 3 – (Business Park Land Use Alternative)

The County was cognizant of the requirement from CEQA Guidelines section 15126.6, subdivision (e)(2), that a No Project Alternative must consider “what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” (See also CEQA Guidelines, § 15126.6, subd. (e)(3)(C).) Consistent with this obligation, the County analyzed a Business Park Land Use Alternative that assumes that the project would be developed with uses allowed under the existing Business Park land use designation.

1. Description

The Business Park Land Use Alternative assumes that the project site would be developed with uses allowed under the existing Business Park (BP) land use designation. BP is intended to provide for a variety of related and mutually supporting manufacturing, distribution, processing, service, and research and development uses. Uses typically include light industries and supporting business and service activities. The Business Park Land Use Alternative assumes the acreage of the site developed would be identical to that of the originally proposed project.

2. Analysis of Alternative 3’s Ability to Reduce Significant Unavoidable Project Impacts

Land Use

The Business Park Land Use Alternative would not require a general plan amendment because the site would be developed under the existing General Plan land use designation. The presence of a business park south of the Higgins Center would be compatible with the adjacent commercial uses. Implementation of the Business Park Land Use Alternative would forego development of community commercial and office professional uses on the site. Like the originally proposed project and Revised Project, which were determined to have less than significant impacts on physical deterioration of existing retail establishments such as the Holiday Market, the Business Park Land Use Alternative is expected to have less than significant impacts on existing commercial uses. Therefore, land use impacts would be similar for both the Revised Project and the Business Park Land Use Alternative.

Population, Housing and Employment

Impacts to population, housing and employment for the Business Park Land Use Alternative would be similar to those of the originally proposed project and Revised Project. Population and housing growth impacts would be less than significant and no impacts relative to displacing persons would occur in association with locating business park uses on the project site. BP uses may result in more employees on site if the use is an office complex compared to a retail/commercial/office development. Business park uses, however, are not anticipated to require more housing or generate substantial employment in the County beyond what was already assumed in the Nevada County General Plan. As with the originally proposed Project and Revised Project, cumulative impacts to population and housing would be less than significant for the Business Park Land Use Alternative. Therefore, population, housing and employment impacts would be similar for both the Revised Project and the Business Park Land Use Alternative.

Hazardous Materials/Risk of Upset

Impacts to hazardous materials/risk of upset for the Business Park Land Use Alternative would be similar to those of the originally proposed project as the handling, transport and use of these materials are not anticipated to vary substantially between the BP and CC/OP uses. Impacts associated with routine use of hazardous materials and PCB hazards would be less than significant as such materials would be used only in association with landscaping and facilities maintenance. Release of hazardous materials impacts would be potentially significant for both the originally proposed project and the Business Park Land Use Alternative, as hazardous materials may be present on site which could be disturbed during construction, but would be mitigated to less than significant. Cumulative Hazardous Materials, Natural Hazards and Public Health Impacts would be less than significant for both the originally proposed project and the Business Park Land Use Alternative after implementing project specific mitigation. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced hazardous materials and risk of upset impacts as compared to Business Park Land Use Alternative. After implementation of mitigation, hazardous materials and risk of upset impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Traffic and Circulation

Table 6.0-4 of the DEIR presents the projected trip generation under the existing BP (Business Park Land Use Alternative) land use and the difference in trips compared to the originally proposed project. The originally proposed project would result in significant impacts to the intersections of SR 49 / Combie Road and Combie Road / Longs Driveway. Significant traffic impacts would occur to the segment of SR 49 between Combie Road and Lime Kiln Road in association with the proposed project. Impacts to SR 49 / Combie Road and the SR 49 segment would be significant and unavoidable. Cumulative impacts would be significant in association with the SR 49 / Combie Road and Combie Road / Higgins Road intersections but could be mitigated to a less than significant level.

As discussed in these findings, the Revised Project will result in significantly reduced traffic impacts as compared with the originally proposed project. As noted in the January 8, 2009 County Planning Commission Staff Report, fast food restaurants with drive-through windows generate approximately 496 average daily trips (ADTs) per 1,000 square feet of building space, which accounts for almost five times the volume of traffic per square feet than a supermarket use and more than ten times the volume of traffic per square foot for specialty retail use. And, fast food restaurant's traffic also affects both a.m. and p.m. peak hour volumes. (January 8, 2009 County Planning Commission Staff Report, p. 7.)

KD Anderson & Associates, Inc. conducted a new traffic analysis based on the changes to the originally proposed project included in the Revised Project. The new traffic analysis projected that the area surrounding the Revised Project, including adjacent parcels 6 and 7, would be buildout fully based on the current zoning. Therefore, by assuming maximum buildout of the surrounding area, the new traffic analysis represented a very conservative estimate of potential cumulative traffic conditions after buildout of the Revised Project. The number of trips generated by the Revised Project was developed based on the trip generation rates published in *Trip Generation* (Institute of Transportation Engineers, 8th Edition, 2008). The proposed project is expected to generate 6,752 daily trips to and from the project site and 265 a.m. and 643 p.m. peak hour trips.

Trips generated by commercial / retail projects fit into two categories. Some trips will be made by patrons who would not otherwise be on the local street and who go out of their way to reach the site. These are "new" trips. Other trips will be made by patrons who are already driving by the site and simply interrupt a trip already being made to other destinations. These are "pass-by" or diverted trips. Various pass-by rates were used for this project based upon the projected uses. Pass-by rates of 15% for retail uses, 20% for supermarket and 40% for the sit-down restaurant were used for the site. In addition to the pass-by / diverted link reduction an additional 5% internal capture was included to account for trips traveling within the project boundaries.

In addition to project trips, trip generation was also established for two parcels adjacent to the project site. These parcels are identified to have office related land uses. Pass by trips were not considered for the office park and single tenant office uses. The residential portion of adjacent property, at the end of Woodridge Road, was included as part of the Future No Project analysis originally conducted and described in the DEIR. After accounting for the pass-by / diverted link traffic, the internally captured trips and the office-related uses from the adjacent properties, the Revised Project is expected to generate 229 new a.m. peak hour trips and 508 new p.m. peak hour trips.

The existing BP zoning is projected to generate 2,247 daily trips with 283 a.m. peak hour and 253 p.m. peak hour trips. From a qualitative standpoint, it is expected that the improvements needed in the project vicinity under existing plus project conditions would be required under both the Business Park Land Use Alternative and the originally proposed project given the existing and future traffic volumes along SR 49 and Combie Road.

It is anticipated that the fair share costs associated with the Business Park Land Use Alternative would be reduced based on the reduced number of trips generated as compared with the originally proposed project. The reduced traffic volumes would also result in an overall reduction in queue lengths; however, improvements would still be necessary. Although traffic volumes would be less in association with the Business Park Land Use Alternative, similar roadway improvements necessary to accommodate the originally proposed project would still be required.

Traffic impacts were analyzed for the Business Park Alternative under cumulative conditions (see DEIR, Tables 6.0-5 and 6.0-6). Before mitigation, the SR 49 / Combie Road intersection operations would remain significant (LOS E) in the overall a.m. peak but would be acceptable (LOS D) in the p.m. peak; Combie Road / Higgins Road would operate acceptably overall in the a.m. peak (LOS C) but would improve to LOS E in the p.m. peak; the northbound approach would continue to operate at LOS F during both peak hours; the westbound approach to SR 49 / Woodridge would improve to LOS D during the p.m. peak. Under the Business Park Alternative, study area intersections and roadway segments would operate similarly to the originally proposed project and Revised Project. Therefore, under the Business Park Alternative, the reduced traffic volumes would result in slightly better operations overall as compared to the originally proposed project. By reducing the project footprint and including the build out of less total square feet, the Revised Project will have further reduced traffic and circulation impacts from the originally proposed project. However, the Business Park Land Use Alternative will still have lower traffic volumes than the Revised Project. Therefore, although the Revised Project would result in less than significant traffic and circulation impacts after mitigation, traffic impacts associated with the Business Park Land Use Alternative would be better than what would occur in association with the Revised Project.

Noise

Construction noise impacts associated with the originally proposed project would be similar for the Business Park Land Use Alternative. Operational noise impacts would primarily be associated with traffic in the vicinity of the site and internal roadway circulation. Traffic volumes would be lower in association with the Business Park Land Use Alternative. Under the Business Park Land Use Alternative, there is the potential for delivery trucks and truck usage on the site associated with light industrial uses allowed under the BP designation. Noise impacts associated with the Business Park Land Use Alternative would be comparable to the originally proposed project. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced noise impacts as compared to Business Park Land Use Alternative. After implementation of mitigation, noise impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Air Quality

Air quality impacts resulting from construction would be similar for both the originally proposed project and the Business Park Land Use Alternative. Operational impacts in terms of restaurant odors would be eliminated in association with the Business Park Land Use Alternative. Traffic related air quality impacts would vary between the originally proposed project and the Business Park Land Use Alternative. Traffic volumes would be lower for the Business Park Land Use Alternative as compared to the originally proposed project. (see DEIR, Table 6.0-4.) Lower traffic volumes would result in the generation of slightly less ozone precursor emissions. Therefore, air quality impacts associated with the Business Park Land Use Alternative would be better than what would occur in association with the originally proposed project. By reducing the project footprint and including the build out of less total square feet, the Revised Project will have further reduced air quality impacts from the originally proposed project. Nevertheless, the Business Park Land Use Alternative will still have lower traffic volumes than the Revised Project. Therefore, air quality impacts associated with the Business Park Land Use Alternative would be better than what would occur in association with the Revised Project. However, like the Revised Project, it is anticipated that the Business Park Land Use Alternative would result in significant and unavoidable cumulative impacts to regional increases in air pollutants.

Hydrology and Water Quality

The Business Park Land Use Alternative would have hydrology and water quality impacts similar to the originally proposed project. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced hydrology and water quality impacts as compared to Business Park Land Use Alternative. After implementation of mitigation, hydrology and water quality impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Geology and Soils

Geology and Soils impacts would be identical for both the originally proposed project and the Business Park Land Use Alternative. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced geology and soils impacts as compared to Business Park Land Use Alternative. After implementation of mitigation, geology and soils impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Biological and Natural Resources

The change in land use between the originally proposed project and the Business Park Land Use Alternative would not result in any variation in biological and natural resources impacts which would occur. The same degree of disturbance is anticipated to occur to the project site in association with the originally proposed project as with the Business Park Land Use Alternative. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced biological and natural resources impacts as compared to Business Park Land Use Alternative. After implementation of

mitigation, biological and natural resources impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Cultural Resources

The change in land use between the originally proposed project and the Business Park Land Use Alternative would not result in any variation in cultural resources impacts. The same degree of disturbance would occur to the project site in association with the originally proposed project as with the Business Park Land Use Alternative. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced cultural resources impacts as compared to Business Park Land Use Alternative. After implementation of mitigation, cultural resources impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Public Services and Utilities

The difference in land use proposed in association with the Business Park Land Use Alternative would not change the severity of impacts to wildland fire, law enforcement, schools, parks and recreation, gas, electric, and telephone utilities, roadway maintenance, and general governmental services. Potential light industrial uses under the Business Park Alternative could result in increased fire flow requirements, greater water demand, and increased wastewater generation in comparison to the originally proposed project, which could result in the need for additional water and wastewater infrastructure. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced public services and utilities impacts as compared to both the originally proposed project and the Business Park Land Use Alternative. After implementation of mitigation, public services and utilities impacts would be less than significant for both the Revised Project and the Business Park Land Use Alternative.

Visual Resources/Light and Glare

The character and scale of development associated with a business park would vary from that of the commercial center comprising the originally proposed project. However, both the Business Park Land Use Alternative and originally proposed project would result in changes in the existing character of the site and the area. Both would affect existing views off of SR 49 and degrade the current natural aesthetic of the site. However, it is assumed that on-site resources including oak trees and wetlands would be retained under either scenario. Light and glare impacts would be more intense in association with the proposed commercial project than with the Business Park Land Use Alternative based on the amount of signage, parking lot lighting, and car traffic to the site. Under the Business Park Land Use Alternative and the originally proposed project, light and glare impacts would be less than significant after mitigation. As the Revised Project reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project may result in reduced light and glare impacts as compared to the originally proposed project. Under the Revised Project, however, light and glare impacts would still be anticipated to be more intense than with the Business Park Land Use Alternative based on the amount of signage, parking lot lighting, and car traffic to the site. Nevertheless, all

visual resources and light and glare impacts would be less than significant after mitigation for both the Revised Project and the Business Park Land Use Alternative.

3. Analysis of Alternative 3's Ability to Reduce Significant Unavoidable Project Impacts

The only significant and unavoidable impact of the Revised Project is its cumulatively considerable impacts on regional increases in air pollutants. As discussed, this significant and unavoidable impact would remain under the Business Park Land Use Alternative.

4. Feasibility of Alternative 3 (Business Park Land Use Alternative)

As described earlier in these findings, the concept of “feasibility” encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

While the Business Park Land Use Alternative may reduce cumulatively considerable impacts on regional increases in air pollutants, the impact would still remain significant and unavoidable. The County further finds this alternative infeasible and less desirable than the Revised Project and rejects this alternative for “[s]pecific economic, legal, social, technological, or other considerations” which include project benefits such as providing a full-service grocery shopping alternative for local residents currently driving to the City of Grass Valley or Auburn for a full-service grocery store, improving the jobs/housing balance in Nevada County, and other benefits of the project that “make infeasible the ... project alternatives identified in the final EIR.” (CEQA Guidelines, § 15091, subd. (a)(3).) Therefore, the Business Park Land Use Alternative’s desirability is not on balance with the Revised Project in terms of its economic, environmental, social and technological elements. The Revised Project is the more desirable choice for the community and the region.

Bay Area Economics (BAE) (October 24, 2008) performed a study to evaluate the extent to which a rezone of the 20-acre Higgins Marketplace site from BP to its former Community Commercial (C2) zoning would foreclose on significant opportunities to meet potential future demand for uses intended for the BP zoning districts within the unincorporated parts of Nevada County (see Appendix E of this FEIR). A comparison between the land use demand projections and the sites inventory suggests that the removal of the 20-acre Higgins Marketplace site from the available BP inventory will not likely have a significant effect on Nevada County’s overall potential to absorb demand for light industrial and business park uses in the unincorporated area. It would, however, greatly reduce the County’s potential to attract a higher-end user to the unincorporated part of western Nevada County.

The overall countywide demand for BP-zoned land through 2030 is projected at between 22 and 85 acres. Of this, significant portions will likely be absorbed within Nevada City, Grass Valley

(including Nevada County SDA's that would be annexed to the City of Grass Valley) and the Town of Truckee. Furthermore, there are substantial quantities of M1-zoned land (approximately 530 acres) located in the unincorporated area that may also accommodate BP-compatible employment growth. The result of this is that the actual demand for BP-zoned land in the unincorporated area is, at most, a fraction of the 22 to 85 acre range.

With the conversion of the Higgins Marketplace site, the County would still have approximately 10-acres of BP-zoned land within the Higgins Corner area which is considered viable. The remaining BP site, located near the corner of Combie Road and Kingston Lane, lacks the prime street frontage offered by the Higgins Marketplace site, has limited access to necessary infrastructure, faces topographical constraints, and is adjacent to the existing high school, which may create constraints for certain types of potential users at this location. Due to direct street frontage along SR 49, access to adjacent utilities and compatibility with existing land uses and wetland resources, the Higgins Marketplace site represents the prime location for business park development in this part of Nevada County.

The redesignation of the Higgins Marketplace site would not significantly impact the overall quantity of BP-zoned land throughout the County, leaving a total of nearly 700 gross acres. A significant portion this acreage, however, is unlikely to be viable for development under the County's jurisdiction. The proposed project would remove the site in the unincorporated area with the strongest potential for successful BP development from the existing inventory. Furthermore, under the proposed project, the three BP-zoned lots that would remain at the Higgins Marketplace site would likely be too small to achieve the "campus" atmosphere that the County targets for the BP zoning district.

Of the nearly 700 gross acres of BP, the County will have approximately 45 additional acres of BP land in other areas of the County that are considered viable for development. This remaining BP site acreage is equal to approximately 65 percent of the maximum potential BP acres demanded, and approximately 2.5 times the amount indicated by the lower intensity projection, depending on the intensity level (i.e., floor area ratio) of the BP development on these sites.

In summary, it is unlikely that the County would be able to capture more than 65 percent of the maximum potential BP acres demanded countywide. Should BP development intensity be more consistent with the higher intensity scenario, unincorporated Nevada County alone would provide more than double the amount of land needed to accommodate the total countywide demand through 2030.

The Board of Supervisors finds the Business Park Land Use Alternative to be infeasible for the above reasons and rejects it as a viable alternative to the Revised Project.

ALTERNATIVE 4 – (Redesign/Reduced Density Alternative)

1. Description

The Redesign/Reduced Density Alternative would develop the site with commercial uses similar to the originally proposed project, but remove Parcel 3 (6,500square foot commercial building and associated improvements) in order to accommodate a 50-foot buffer between the wetland

conservation area and the proposed development on Parcels 4 and 5, relocation of the proposed drive through restaurant on Parcel 5 to be farther from the adjacent residence, and re-orientation of the proposed commercial building on Parcel 3 to reduce truck noise to the adjacent residence. Buildings on Parcels 7 through 9 would be oriented to reduce potential truck noise to the nearby residences. This redesign would also set the development further back from SR 49, reducing visual impacts.

2. Analysis of Alternative 4's Ability to Reduce Significant Unavoidable Project Impacts

Land Use

The Redesign/Reduced Density Alternative would result in land use impacts comparable to the originally proposed project and Revised Project relative to consistency with the Nevada County General Plan and Higgins Area Plan and Compatibility with Adjacent Land Uses both on a project and cumulative level. Land use impacts would be less than significant. Therefore, the Redesign/Reduced Density Alternative would result in land use impacts similar to the Revised Project.

Population, Housing and Employment

Impacts to population, housing and employment for the Redesign/Reduced Density Alternative would be similar to those of the originally proposed project and Revised Project. Population and housing growth impacts would be less than significant and no impacts relative to displacing persons would occur. Cumulative impacts to population and housing would also be less than significant. Therefore, population, housing and employment impacts of the Redesign/Reduced Density Alternative would be similar to the originally proposed project and Revised Project.

Hazardous Materials/Risk of Upset

Impacts to hazardous materials/risk of upset for the Redesign/Reduced Density Alternative would be comparable to those of the originally proposed project. Impacts associated with routine use of hazardous materials and PCBs would be less than significant. Release of hazardous materials impacts would be potentially significant and would be mitigated to less than significant. Cumulative Hazardous Materials, Natural Hazards and Public Health Impacts would also be less than significant. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project may result in reduced hazardous materials and risk of upset impacts as compared to the Redesign/Reduced Density Alternative. After implementation of mitigation, hazardous materials and risk of upset impacts would be less than significant for both the Revised Project and the Redesign/Reduced Density Alternative.

Traffic and Circulation

Traffic and circulation impacts would vary between the originally proposed project and this alternative. The removal of 6,500 square feet of commercial development associated with the Redesign/Reduced Intensity Alternative would result in an overall reduction in the number of

trips associated with the originally proposed project, further improving the alternative's traffic impacts. The originally proposed project would result in significant impacts to the intersections of SR 49 / Combie Road and Combie Road / Longs Driveway. Significant traffic impacts would occur to the segment of SR 49 between Combie Road and Lime Kiln Road in association with the proposed project. Impacts to SR 49 / Combie Road and the SR 49 segment would be significant and unavoidable. Cumulative impacts of the originally proposed project would be significant in association with the SR 49 / Combie Road and Combie Road / Higgins Road intersections but could be mitigated to a less than significant level. This alternative is not anticipated to avoid any of the impacts associated with the originally proposed project, but would slightly reduce the severity of the impacts.

Compared with the proposed project, the Redesign/Reduced Intensity Alternative would result in better traffic operations. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project would result in reduced traffic and circulation impacts as compared to the Redesign/Reduced Density Alternative. As discussed in the January 8, 2009 County Planning Commission Staff Report, by eliminating the fast food restaurant uses the Revised Project will result in reduced traffic impacts. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in slightly worse traffic operations.

Noise

Noise impacts for the Redesign/Reduced Density Alternative would be better than those of the originally proposed project. Impacts associated with traffic noise would be less than significant, with a slight reduction in traffic noise associated with the removal of 6,500 square feet of commercial uses. Impacts of on-site noise sources on nearby residential uses would be improved under the Redesign/Reduced Density Alternative as the uses conflicting with the nearby residential uses would be re-located and oriented to reduce noise impacts. Construction noise impacts would be potentially significant for both the originally proposed project and the Redesign/Reduced Density Alternative before mitigation. While specific uses and site layout proposed as part of Phase 2 on Parcels 7, 8, 9 and 10 are unknown at this time, this alternative would require development on those parcels to be oriented in a manner to avoid truck traffic and delivery noise impacts on nearby residences.

As with the originally proposed project, cumulative traffic noise levels would also be less than significant for the Redesign/Reduced Density Alternative. Therefore, noise impacts for the proposed Redesign/Reduced Density Alternative would be reduced when compared to the originally proposed project. As the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project would result in similar, if not slightly reduced, noise impacts as compared to the Redesign/Reduced Density Alternative. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in similar, if not slightly greater, noise impacts. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, all noise impacts are less than significant after mitigation.

Air Quality

Air quality impacts resulting from construction would be similar for both the originally proposed project and the Redesign/Reduced Density Alternative. Operational impacts in terms of restaurant odors would be similar for both the originally proposed project and the Redesign/Reduced Density Alternative. As compared to the originally proposed project, traffic related air quality impacts would be slightly improved under the Redesign/Reduced Density Alternative as the emissions would be slightly reduced in association with the removal of 6,500 square feet of commercial uses. Therefore, air quality impacts associated with the Redesign/Reduced Density Alternative would be better than for the originally proposed project. However, as with the originally proposed project, the Redesign/Reduced Density Alternative will have significant and unavoidable cumulative impacts on cumulative impacts to regional increases in air pollutants.

As the Revised Project includes one restaurant use (as opposed to two under the Redesign/Reduced Density Alternative) and eliminates drive-throughs, operational impacts in terms of restaurant odors may be slightly greater under the Redesign/Reduced Density Alternative as compared to the Revised Project. Traffic related air quality impacts of the Redesign/Reduced Density Alternative may also be slightly greater than with the Revised Project because the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in similar, if not slightly worse, air quality impacts. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, except for cumulative impacts to regional increases in air pollutants, all air quality impacts are less than significant after mitigation. Under both the Redesign/Reduced Intensity Alternative and the Revised Project, cumulative impacts to regional increases in air pollutants are anticipated to be significant and unavoidable.

Hydrology and Water Quality

The Redesign/Reduced Density Alternative would have better hydrology and water quality impacts compared with the originally proposed project. The reduction in the level of development would result in decreased runoff and water quality impacts as compared to the originally proposed project. The increase in the buffer for the wetland/riparian easement would also result in improved water quality in the wetland, and to Ragsdale Creek, as compared to the originally proposed project. Therefore, hydrology and water quality impacts would be slightly improved with the Redesign/Reduced Density Alternative compared to the originally proposed project.

The Revised Project increases the buffer for the wetland/riparian easement and results in improved water quality in the wetland, and to Ragsdale Creek. The Revised Project, like the Redesign/Reduced Density Alternative, includes a 50-foot setback from onsite wetlands. Unlike the Redesign/Reduced Density Alternative, the Revised Project also includes an additional 20-foot vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge) between the open space parcel and the onsite commercial development. Therefore, the Revised Project provides a total of a 70-foot buffer between the commercial development and the wetlands.

With respect to other hydrology and water quality impacts, as the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project would result in similar, if not slightly reduced, impacts as compared to the Redesign/Reduced Density Alternative. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in similar, if not slightly worse, hydrology and water quality impacts. However, under both the Revised Project and the Redesign/Reduced Intensity Alternative, all hydrology and water quality impacts are less than significant after mitigation.

Geology and Soils

Geology and soils impacts would be similar for both the originally proposed project and the Redesign/Reduced Density Alternative. Prior to mitigation, erosion and soil stability, seismic groundshaking and corrosive soils impacts would all be potentially significant for the originally proposed project and the Redesign/Reduced Density Alternative. Therefore, geology and soils impacts would be similar for both the originally proposed project and the Redesign/Reduced Density Alternative. As the Revised Project further reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project would result in similar, if not slightly reduced, geology and soils impacts as compared to the Redesign/Reduced Density Alternative. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in similar, if not slightly worse, geology and soils impacts. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, all geology and soils impacts are less than significant after mitigation.

Biological and Natural Resources

The increase in the buffer between the proposed development and wetland/riparian conservation area would reduce biological impacts associated with the Redesign/Reduced Density Alternative when compared to the originally proposed project. The Redesign/Reduced Density Alternative would also result in slightly less disturbance than the originally proposed project. Therefore, impacts to biological resources would be better under the Redesign/Reduced Density Alternative than with the originally proposed project.

The Revised Project increases the buffer for the wetland/riparian easement. The Revised Project, like the Redesign/Reduced Density Alternative, includes a 50-foot setback from onsite wetlands. Unlike the Redesign/Reduced Density Alternative, the Revised Project also includes an additional 20-foot vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge) between the open space parcel and the onsite commercial development. Therefore, the Revised Project provides a total of a 70-foot buffer between the commercial development and the wetlands.

As the Revised Project further reduces the project footprint, includes the build out of less total square feet of building area, prohibits the development of drive-through restaurants, and increases the open space buffer, the Revised Project would result in similar, if not slightly reduced, biological and natural resources impacts as compared to the Redesign/Reduced Density Alternative. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity

Alternative would result in similar, if not slightly worse, biological and natural resources impacts. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, all biological and natural resources impacts are less than significant after mitigation.

Cultural Resources

The modification between the originally proposed project and the Redesign/Reduced Density Alternative would result in little if any variation in cultural resources impacts. While less disturbance would occur to the project site in association with the Redesign/Reduced Density Alternative, impacts to cultural resources would generally similar for both the originally proposed project and this Alternative. As the Revised Project will result in even less disturbance than the Redesign/Reduced Density Alternative, the Revised Project will have similar, if not slightly reduced, impacts on cultural resources as compared to the Redesign/Reduced Density Alternative. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, all cultural resources impacts are less than significant after mitigation.

Public Services and Utilities

The reconfiguration of the originally proposed project and slight reduction in development proposed in association with the Redesign/Reduced Density Alternative would generally result in comparable impacts to public services when compared to the originally proposed project. Impact to fire protection and emergency medical services, exposure to wildfire, fire flow, emergency access, law enforcement, schools, water demand and water system facilities, wastewater treatment and conveyance, solid waste, parks and recreation, roadway maintenance, electrical, propane and telephone service and infrastructure would be generally comparable to the originally proposed project, although the total service and generation demands would be slightly less with the Redesign/Reduced Density Alternative. Therefore, impacts to public services and utilities would be similar for both the originally proposed project and the Redesign/Reduced Intensity Alternative. As the Revised Project further reduces the project footprint and includes the build out of less total square feet of building area, the Revised Project would result in similar, if not slightly reduced, public services and utilities impacts as compared to the Redesign/Reduced Density Alternative. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in similar, if not slightly worse, public services and utilities impacts. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, all public services and utilities impacts are less than significant after mitigation.

Visual Resources/Light and Glare

As compared to the originally proposed project, impacts to visual resources would be reduced under the Redesign/Reduced Density Alternative. The increase of the buffer between the wetland/riparian conservation area and the proposed development would also increase the distance between SR 49 and the proposed development. The removal of one building would decrease the overall mass of the project. Impacts relative to adversely effecting scenic views and degrading the existing visual character of the project site would also be considered significant for the Redesign/Reduced Density Alternative, but would be less than those anticipated with the originally proposed project. And, as with the originally proposed project, this impact could be reduced to a less than significant level through mitigation. Damage to scenic resources would be

less than significant for the Redesign/Reduced Density Alternative. As with the originally proposed project, daytime light and glare impacts would be significant before mitigation for the Redesign/Reduced Density Alternative. Cumulative visual/light and glare impacts of the Redesign/Reduced Density Alternative would be generally comparable with the originally proposed project. Therefore, as compared with the originally proposed project, visual resources/light and glare impacts would be reduced under the Redesign/Reduced Density Alternative.

The Revised Project increases the buffer for the wetland/riparian easement. The Revised Project, like the Redesign/Reduced Density Alternative, includes a 50-foot setback from onsite wetlands. Unlike the Redesign/Reduced Density Alternative, the Revised Project also includes an additional 20-foot vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge) between the open space parcel and the onsite commercial development. Therefore, the Revised Project provides a total of a 70-foot buffer between the commercial development and the wetlands. This buffer also increases the distance between the proposed commercial development and the SR 49.

With respect to other visual resources and light and glare impacts, as the Revised Project reduces the project footprint, includes the build out of less total square feet of building area, and prohibits the development of drive-through restaurants, the Revised Project would result in similar, if not slightly reduced, impacts as compared to the Redesign/Reduced Density Alternative. Therefore, compared with the Revised Project, the Redesign/Reduced Intensity Alternative would result in similar, if not slightly worse, visual resources and light and glare impacts. Under both the Revised Project and the Redesign/Reduced Intensity Alternative, all visual resources and light and glare impacts are less than significant after mitigation.

3. Analysis of Alternative 4's Ability to Reduce Significant Unavoidable Project Impacts

The only significant and unavoidable impact of the Revised Project is its cumulatively considerable impacts on regional increases in air pollutants. As discussed, this significant and unavoidable impact would remain under the Redesign/Reduced Intensity Alternative. As compared to the Redesign/Reduced Intensity Alternative, the Revised Project further reduces the project footprint, includes the build out of even less total square feet of building area, and prohibits the development of drive-through restaurants. Therefore, the Revised Project may result in reduced cumulatively considerable impacts on regional increases in air pollutants as compared to the Redesign/Reduced Intensity Alternative.

4. Feasibility of Alternative 4 (Redesign/Reduced Density Alternative)

As described earlier in these findings, the concept of “feasibility” encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.) “[F]easibility’ under CEQA encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.” (*Ibid.*; see also *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.)

The County finds that the Redesign/Reduced Intensity Alternative is feasible. While the County finds that the Redesign/Reduced Intensity Alternative is feasible, the County finds that it is not environmentally superior to the project as revised. Compared to the Redesign/Reduced Intensity Alternative, the Revised Project further reduces the project footprint, includes the build out of even less total square feet of building area, provides a setback that is approximately 20-feet greater including the vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge), and prohibits the development of drive-through restaurants. Therefore, the County finds that the Revised Project is environmentally superior to the Redesign/Reduced Intensity Alternative. The County, therefore, has chosen not to adopt the Redesign/Reduced Intensity Alternative.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The DEIR concludes that the No Project Alternative (Alternative 1) is the environmentally superior alternative. The No Project Alternative was determined to have less adverse environmental impacts than the originally proposed project on all issues overall. The No Project Alternative, however, would not meet any of the objectives of the project. Under CEQA Guidelines Section 15126.6 (e)(2), if the environmentally superior alternative is the No Project Alternative, another environmentally superior alternative must be identified.

The DEIR concludes that the Redesign/Reduced Intensity Alternative is the environmentally superior alternative because, as compared to the originally proposed project, the Redesign/Reduced Intensity Alternative would reduce biological, noise, visual, and traffic impacts while meeting the objectives of the project. (DEIR, p. 6.0-20.) As discussed in these findings, the Revised Project further reduces the project footprint, includes the build out of less total square feet of building area, increases the open space buffer by approximately 45-feet as compared to the originally proposed project including the vegetated barrier (an area planted with native shrubs and grasses and including a pedestrian path on the eastern edge), and prohibits the development of drive-through restaurants. Therefore, the Board of Supervisors finds that the Revised Alternative is environmentally superior to the Redesign/Reduced Intensity Alternative because it would result in similar, if not reduced, biological, noise, visual, and traffic impacts while meeting the objectives of the project. The Revised Project is, therefore, the environmentally superior alternative for this project.

XI. STATEMENT OF OVERRIDING CONSIDERATIONS

As set forth in the preceding sections, the County's approval of the Higgins Marketplace Revised Project will result in one significant adverse environmental effect that cannot be avoided even with the adoption of all feasible mitigation measures; and there are no feasible Project Alternatives that would mitigate or substantially lessen the impact. Despite the occurrence of this effect, however, the Board of Supervisors, in accordance with CEQA Guidelines Section 15093, chooses to approve the Revised Project because, in its view, the economic, social, and other benefits that the Revised Project will produce will render the remaining significant effect acceptable.

A. SIGNIFICANT AND UNAVOIDABLE IMPACTS

As discussed in Section IX, *supra*, the Higgins Marketplace Revised Project will result in the following potentially significant and unavoidable impact, even with the implementation of all feasible mitigation measures:

Impact 4.6.5 Cumulative Increases in Emissions of Regional Pollutants. The project would contribute to cumulative regional increases in air pollutants.

B. OVERRIDING CONSIDERATIONS

In the County's judgment, the Revised Project and its benefits outweigh the unavoidable significant effect on cumulative increases in emissions of regional pollutants. The following statement identifies the specific reasons why, in the County's judgment, the benefits of the Revised Project as approved outweigh this unavoidable significant effect. Any one of these reasons is sufficient to justify approval of the Revised Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Board of Supervisors would stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings and the Record of Proceedings, as defined in Section V, which are incorporated into this section by reference.

The Revised Project provides a unique opportunity for both the County and surrounding communities to achieve a variety of important goals that will benefit both the County and the region. While the Revised Project will create a regionally attractive retail center, it will also provide significant fiscal and economic benefits to the Nevada County.

1) *The Revised Project Will Revitalize a Currently Underutilized Area of the County, Consistent with Long-Standing Land Use Policies.* The project would place a retail shopping center in an area that is scheduled for development. (DEIR, p. 4.1-12.) The Revised Project will develop a currently underutilized site with major potential as a tax-generating commercial area due to its proximity to, and visibility from, State Route 49. The Revised Project will revitalize this area with economically beneficial uses; new retail buildings of high quality architecture, landscape and hardscape design.

2) *The Revised Project Will Create Diverse Employment Opportunities For Local Residents.* The Revised Project will also have a positive impact on job creation in the South County. The Revised Project will generate diversity in employment opportunities, including temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The Bel-Air Market is anticipated to employ approximately 100 people alone (full and part time), while the entire site is anticipated to employ approximately 160 people (full and part time) at full buildout. The employment growth anticipated with the Revised Project will represent an increase in total employment within the South County (zip code area 95949) of approximately 3.56% (160 new jobs divided by 4,495 existing jobs). Consequently, it is reasonably expected that the County and its residents will enjoy the economic and social benefits from added employment opportunities offered by the Project.

3) *The Revised Project Will Contribute to and Fund Needed Infrastructure Improvements.* The Revised Project will contribute to needed transportation infrastructure improvements by paying its fair share towards the cost of regional transportation improvements, as well as fair share funding for general governmental capital facilities and equipment not covered by other development fees. The project will also construct off-site improvements to Nevada irrigation District (NID) to increase the NID distribution system fire flows in the Higgins Fire Protection District to ensure that the NID's system can provide service for and meet the water demands of not only the Revised Project, but also other commercial developments that may or are expected to occur within the area. (DEIR, p. 4.11-2.)

4) *The Revised Project Will Increase Retail Activity in the Project Area.* The Revised Project may draw additional retailers to the South County (i.e., those on the project site), thereby increasing retail activity in the area. The Revised Project will provide a commercial shopping center in the South County (Grass Valley/SR 49 corridor sub-area) for which the economic analysis performed for the project indicates that there is an unmet need. The study showed that residents in the area currently must travel to either Grass Valley or Auburn to purchase groceries in a full-size supermarket. (DEIR, p. 4.1-12.) This means that area residents must drive farther, at more expense and inconvenience, to obtain their needed goods than they would if they had a convenient location nearby to obtain them. The project would capture a market niche of spending by residents that must leave the area for their grocery store shopping in the vicinity of \$23.8 million to \$26.0 million, indicating the market area will readily support the Revised Project. (See DEIR, p. 4.1-12.) Spending by residents within the market area totaled \$33.3 million at grocery stores, \$1.0 million at specialty food stores, and \$ 1.9 million at liquor stores in 2003; spending was projected to increase to \$38.8 million at grocery stores, \$1.2 million at specialty food stores, and \$1.9 at liquor stores by 2020, further indicating that the market area will generate more than enough demand to support Higgins Marketplace. (DEIR, p. 4.1-12.) This Revised Project will serve a good portion of the current unmet commercial retail need and capture much of the spending by residents that must leave the area to shop.

5) *The Revised Project Will Generate Sales and Property Taxes For the County.* With limited shopping and other retail opportunities in the South County, the County loses potential sales tax revenue. When local residents shop in Auburn or other communities outside of Nevada County, the sales tax they pay goes towards meeting the police, fire, maintenance and other service demands of those communities – not the County's demands. The Project will not only provide a range of goods and services to South County residents, it will provide much needed sales tax and property tax revenues to the County's coffers. These revenues would go to the County's General Fund, which is the primary funding source for the construction, operation, and maintenance of a number of essential County services, programs, and facilities, including fire and police services, recreation programs, transit operations, and administrative functions, among other things. More specifically, the Revised Project alone will contribute approximately \$21.5 million in taxable sales to the County upon completion.

6) *The Revised Project Will Complement Existing Development.* The Revised Project will have a rural motif that would complement and blend with existing development. The architecture of the buildings will be designed with a modern interpretation of rural architecture similar to the Higgins Village to the north of the site. Building design, placement, and massing, as well as

materials and colors will be generally consistent with the design guidelines contained in the Higgins Area Plan. (DEIR, p. 4.12-18.)

7) *The Revised Project Will Utilize High-Quality Building Materials.* The Revised Project will use different high-quality materials to anchor the buildings to the site. Building materials will include wood siding, corrugated metal siding, wood trim and stone veneer and metal roofs, as well as attractive fabric awnings. In other words, the Revised Project will use various high quality materials to provide a quality foundation for the building that meets or exceeds building code and architectural design requirements. (DEIR, p. 4.12-18.)

8) *The Revised Project Will Feature Numerous Energy Conserving Measures.* Setting an excellent example for other nearby businesses in an era of increasing environmental consciousness, the Revised Project will include numerous sustainable features. For example, the design of the project will incorporate the following features to the extent practical and feasible: installation of high-reflectance EPA Energy Star roofing materials to reduce building heat absorption and summer energy costs; incorporation of passive solar space heating designs and solar water heaters in to commercial units; installation of low nitrogen oxide energy-efficient heating and other appliances, such as water heaters, cooking equipment, refrigerators, furnaces and boil units; (DEIR, pp. 4.6-15 through 4.6-16; see also FEIR, pp. 4.0-5 through 4.0-6.) Additional energy-efficient features include the planting of shade trees in parking lots at 10% or more in excess of that already required by ordinance and landscaping with native drought-resistant species. (DEIR, pp. 4.6-16.)

9) *The Revised Project Will Provide Abundant Landscaping.* Extensive landscaping will be planted throughout the Revised Project site including a combination of native and non-native species. Internal parking lot landscaping will include over 33,000 square feet of vegetation and will provide shading for 47 percent of the parking area. Trees with canopy diameters of 20 to 35-feet will be utilized to provide shade. Areas adjacent to roadway will be heavily planted to provide a natural screen between the Revised Project and the roadway and to soften and create a visual transition between passing vehicle traffic and the project site. The buildings have been placed to avoid on-site oak trees. A variety of trees, shrubs and groundcover will be planted. (DEIR, p. 3.0-4 to 3.0-5; 4.12-18.)

C. CONCLUSION

As explained earlier, the Board of Supervisors has balanced these benefits and considerations against the single significant unavoidable environmental effect of the Revised Project and has concluded that the impact is outweighed by these benefits, among others. After balancing environmental costs against the Revised Project's benefits, the Board of Supervisors has concluded that the benefits to the County community, economy, and fiscal that will derive from the Revised Project outweigh the risks. The Board of Supervisors believes the Revised Project's benefits outlined above override the remaining significant and unavoidable environmental impact associated with the Revised Project.

Resolution 20-01
Nevada LAFCo

**EXHIBIT C –MITIGATION MONITORING AND REPORTING PROGRAM ADOPTED
BY THE COUNTY OF NEVADA FOR THE HIGGINS MARKETPLACE
DEVELOPMENT PROJECT**

Exhibit C

April 21, 2010

CERTIFIED MAIL 7007 0220 0004 6804 7757

NOTICE OF CONDITIONAL APPROVAL USE PERMIT, PARCEL MAP, AND MANAGEMENT PLAN

Fred M. Katz
Katz Kirkpatrick Properties
3300 Douglas Blvd., Suite 385
Roseville, CA 95661

File No. PM04-020, U04-019;
APN 57-260-17

At the regular meeting of April 13, 2010, the Nevada County Board of Supervisors took final action on the two appeals of the Planning Commission's approval of the above referenced project. The project includes a Use Permit proposing to construct a 75,710 square foot shopping center consisting of four buildings and the associated parking; a Tentative Parcel Map proposing to subdivide the 20.07-acre parcel into seven parcels; and a Management Plan proposing to reduce the 100-foot non-disturbance setback from the onsite wetlands to 50 feet (plus an additional 20-foot buffer) and proposing to disrupt a small portion of the wetlands with the realignment of the western portion of Woodridge Drive.

The following is a copy of the Final Project Conditions of Approval:

MITIGATION MEASURES:

MM 4.3.2a Project grading and construction permits shall designate staging areas where fueling, oil-changing and maintenance activities are permitted. No fueling and oil-changing activities shall be allowed outside the designated staging areas. The staging areas, as much as practicable, shall be located on level terrain. Staging areas shall not be located within 200 feet of any stream channels or wetlands. The proposed staging areas shall be identified in the Storm Water Pollution Prevention Plan (SWPPP), which shall be reviewed and approved by the Regional Water Quality Control Board as part of the NPDES permit process.

Timing/Implementation: Prior to issuance of grading permits.

Enforcement/Monitoring: Nevada County Community Development Agency, Planning Department.

MM 4.3.2b Prior to map recordation, the applicant shall certify to the County that the project site is free from hazardous materials and/or public safety nuisances.

Timing/Implementation: Shown as a note on the Parcel Map and implemented prior to the issuance of building permits

Enforcement/Monitoring: Nevada County Planning and Department of Public Works.

MM 4.4.1a The project applicant shall install a traffic signal at the intersection of Combie Road / Higgins Road prior to issuance of an occupancy permit. At the developer's request, the County will facilitate an agreement whereby other benefiting property owners will reimburse the developer for the extra capacity created at the time those properties are developed.

Timing/Implementation: Prior to issuance of occupancy permit.
Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.4.1b The project shall be responsible for the entire cost of constructing/reconfiguring the two Combie Road westbound left turn lanes at the SR49/Combie Road intersection to be a minimum of approximately 250 feet each to allow for adequate storage.

Timing/Implementation: Prior to issuance of occupancy permit.
Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.4.1c The project shall be responsible for the entire cost of constructing an approach at Higgins Road providing a minimum of 250 feet of left turn storage and a minimum of 75 feet of right turn lane to allow adequate queuing.

Timing/Implementation: Prior to issuance of occupancy permit.
Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.4.1d Access to and from northbound SR 49 at Woodridge Drive shall be limited to right-in/right-out turn movements. Left turns from Woodridge Drive to southbound SR 49 shall not be allowed. Left turns onto Woodridge Drive from southbound SR 49 shall be allowed.

Timing/Implementation: Prior to issuance of occupancy permit.
Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.4.3b The following improvements shall be constructed or funded by the project applicant at the Combie Road/Higgins Road intersection and shall be completed prior to issuance of occupancy permits:

- Extend the left turn lane along the westbound Combie Road approach by approximately 250 feet.
- In addition to the left turn lane(s) along Higgins Road, provide a 150 feet turn lane for right turning traffic leaving the site.

Timing/Implementation: Prior to issuance of occupancy permit.
Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.5.1 The project applicant and all successors in interest shall ensure that construction activities adhere to the following measures with respect to hours of operation, muffling of internal combustion engines, and other factors that affect construction noise generation and its effects on noise-sensitive land uses:

- Restrict construction activities to between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday. Restrict construction activities between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction activities shall occur on Sundays.
- All equipment shall be fitted with factory-equipped mufflers, and shall be in good working order.
- Locate all staging areas for equipment as far as possible from residential areas.

***Timing/Implementation:** The requirements shall be reflected on all grading and improvement plans and shall be placed in all construction contracts for individual contractors throughout the grading and construction process.*

***Enforcement/Monitoring:** The Nevada County Department of Public Works.*

MM 4.5.3a Three options are available to mitigate impacts of on-site noise sources on nearby residential uses for parcels 2 and 3:

- An 8-foot tall sound wall shall be constructed along the north property line of parcels 2 and 3 and shall be in place prior to issuance of occupancy permits. The wall shall be landscaped to provide visual screening from residents located north of the project site. When parcels to the north of the project site are developed with non-residential uses, the wall shall be removed to accommodate shared circulation; or
- As an alternative to a sound wall, truck deliveries should be restricted to the front or south sides of the commercial uses located along Parcels 2 and 3 and/or the front or east side of the commercial uses along Parcel 2. If this option is implemented, it shall be implemented as a condition of project approval; or
- No sound wall or restriction on delivery hours shall be required if the legal property owner of the northern parcel, zoned C2-Community Commercial and containing the two non-conforming residences, consents in writing their waiver of the sound wall and delivery hour restrictions. Said written waiver, if available, shall be provided to the Planning Department and a copy kept in the project file.

***Timing/Implementation:** As a condition of project approval if truck delivery locations will be restricted; Prior to issuance of occupancy permits if the sound wall option is Implemented.*

***Enforcement/Monitoring:** Nevada County Planning Department.*

MM 4.5.3b Two options are available to mitigate impacts of on-site noise sources on nearby residential uses for Parcel 6:

- An 8-foot tall sound wall shall be constructed along the south property line of Parcel 6 and shall be in place prior to issuance of occupancy permits. The wall shall be landscaped to provide visual screening from residents located north of the project site; or
- As an alternative to a sound wall, truck deliveries should be restricted to the front or north sides of the light industrial uses located on Parcel 6. If this option is implemented, it shall be implemented as a condition of project approval.

***Timing/Implementation:** As a condition of project approval if truck delivery locations will be restricted; Prior to issuance of occupancy permits if the sound wall option is implemented.*

***Enforcement/Monitoring:** Nevada County.*

MM 4.6.1a Project proponent and all successors in interest shall include dust control mitigation requirements in all construction contracts. All construction contracts will require the following:

- All construction activities would be subject to the requirements of the Northern Sierra AQMD's Regulation 2, Rule 226 regarding dust control.
- Alternatives to open burning of vegetative material on the project site shall be used unless deemed infeasible by the Northern Sierra Air Quality Management District. Suitable alternatives are chipping, mulching, or conversion to biomass fuel.
- Contractors shall be responsible for ensuring that adequate dust control measures are implemented in a timely manner during all phases of project development and construction.
- All material excavated, stockpiled, or graded shall be sufficiently watered, treated, or covered to prevent fugitive dust from leaving the property boundaries and causing a public nuisance or violation of an ambient air standard. Watering should occur at least twice daily, with complete site coverage, preferably in the mid-morning and after work is completed each day.
- All areas (including unpaved roads) with vehicle traffic shall be watered or have a dust palliative applied as necessary for stabilization of dust emissions.
- All on-site vehicle traffic shall be limited to a speed of 15 mph on unpaved roads.
- All land clearing, grading, earth moving or excavation activities shall be suspended as necessary to prevent excessive windblown dust when winds are expected to exceed 20 mph.
- Temporary traffic control will be provided during all phases of the construction to improve traffic flow as deemed appropriate by local transportation agencies and/or Caltrans.
- Construction activities should be scheduled to direct traffic flow to off-peak hours as much as possible.
- All inactive portions of the construction site shall be covered, seeded, or watered until a suitable cover is established. Alternatively, apply non-toxic soil stabilizers (according to manufacturer's specifications) to all inactive construction areas (previously graded areas which remain

inactive for 96 hours) in accordance with County standards. Acceptable materials that may be used for chemical soil stabilization include petroleum resins, asphaltic emulsions, acrylics, and adhesives, which do not violate Regional Water Quality Control Board or California Air Resources Board standards.

- Wheel washers will be installed where project vehicles and/or equipment enter and/or exit onto paved streets from unpaved roads. Vehicles and/or equipment will be washed prior to each trip, as necessary to prevent visible dust emissions from adhering dirt or deposition on roadways.
- All material transported off-site shall be either sufficiently watered or securely covered to prevent public nuisance.
- Re-establish ground cover on the site through seeding and watering in accordance with the local grading ordinance.
- Properly maintain all mobile and stationary equipment.

Timing/Implementation: Prior to the issuance of grading permits

Enforcement/Monitoring: Nevada County Planning Department; Department of Public Works; and the Northern Sierra Air Quality Management District.

MM 4.6.1b Prior to issuance of a grading permit for the pipeline and infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effects of construction air quality impacts:

The project applicant shall provide a construction equipment plan to Nevada County and the Northern Sierra AQMD for approval by the lead agency demonstrating that:

- The heavy-duty (> 50 horsepower [hp]), off-road vehicles to be used in the construction project, including owned, leased, and subcontractor vehicles, will achieve a project-wide fleet-average of 20% NOX reduction and 45% particulate reduction compared to the most recent ARB fleet average at the time of construction. Acceptable options for reducing emissions include the use of late-model engines, low-emission diesel products, alternative fuels, particulate matter traps, engine retrofit technology, after-treatment products, and/or such other options as become available.
- The project representative shall submit to the lead agency and Northern Sierra AQMD a comprehensive inventory of all off-road construction equipment, equal to or greater than 50 hp, that will be used an aggregate of 40 or more hours during any portion of the project. The inventory shall be updated and submitted monthly throughout the duration of the project, except that an inventory shall not be required for any 30-day period in which no construction operations occur.
- At least 48 hours before the subject heavy-duty off-road equipment is used, the project representative shall provide the Northern Sierra AQMD with the anticipated construction timeline, including start date, and the name and telephone number of the project manager and on-site foreman.

- Emissions from off-road, diesel powered equipment used on the project site shall not exceed 40% opacity for more than 3 minutes in any 1 hour. Any equipment found to exceed 40% opacity (or Ringlemann 2.0) shall be repaired immediately, and the Northern Sierra AQMD shall be notified of noncompliant equipment within 48 hours of identification.
- A visual survey of all in-operation equipment shall be made at least weekly, and a monthly summary of visual survey results shall be submitted throughout the duration of the construction project, except that the monthly summary shall not be required for any 30-day period in which no construction operations occur. The monthly summary shall include the quantity and type of vehicles surveyed, as well as the dates of each survey.
- Placer County and the Northern Sierra AQMD, and/or other officials may conduct periodic site inspections to determine compliance.

Timing/Implementation: Prior to the issuance of grading permits
Enforcement/Monitoring: Nevada County Planning Department;
Department of Public Works; and the Northern Sierra Air Quality
Management District.

MM 4.6.5a The project developer and all successors in interest shall incorporate to the extent practical and feasible the following energy-efficiency/area source features into the design of the project:

- Install EPA Energy Star (high reflectance) roofing materials to reduce building heat absorption and summer energy costs.
- Plant shade trees in parking lots at 10 percent or more in excess of that already required by ordinance.
- Landscape with native drought-resistant species (plants, trees and bushes) to reduce the demand for gas powered landscape maintenance equipment.
- Incorporate passive solar space heating designs and solar water heaters into commercial units.
- Install low nitrogen oxide (NOx) energy-efficient heating and other appliances, such as water heaters, cooking equipment, refrigerators, furnaces and boiler units

Timing/Implementation: As a condition of project approval.
Enforcement/Monitoring: Nevada County Planning Department.

MM 4.6.5b The project developer and all successors in interest shall incorporate the following features into the design of the project to reduce vehicle trip generation:

- Provide direct, safe, attractive pedestrian access from project land uses to the Higgins Center to the north at the corner of SR 49 and Combie Road.
- Provide secure and conveniently located bicycle parking.
- Specialty equipment (utility carts, forklifts, etc.) should be electrically, CNG or propane powered.

Timing/Implementation: As a condition of project approval.
Enforcement/Monitoring: Nevada County Planning Department.

MM 4.7.1a Prior to the issuance of grading permits, the project applicant shall prepare a spill prevention and countermeasure plan describing measures to ensure proper collection and disposal of all pollutants handled or produced on the site during construction, including sanitary wastes, cement, and petroleum products. The plan shall be submitted to the County for approval and incorporation into the SWPPP. All construction contractors shall comply with the spill prevention and countermeasure plan.

Timing/Implementation: Prior to issuance of grading permits.

Enforcement/Monitoring: Nevada County Department of Public Works and CVRWQCB.

MM 4.7.1b Prior to the approval of improvement plans, the project applicant shall clearly identify specific water quality control measures for wetlands on parcel 6 including but not limited to, a 25 foot buffer area as stipulated under MM 4.9.2. Such water quality control measures may include setbacks, silt fencing, hay bales, and other appropriate measures deemed acceptable by the County and the CVRWQCB. These water quality control measures shall be reviewed and approved by the County and CVRWQCB prior to construction activities.

Timing/Implementation: Prior to approval of improvement plans for the commercial center.

Enforcement/Monitoring: Nevada County Department of Public Works and CVRWQCB.

MM 4.7.1c The project applicant shall develop and submit an erosion control plan, per Higgins Area Plan Policy 6, to manage site erosion during construction of the project. The developer shall be required to incorporate BMPs to provide for the removal and control of sediments and pollutants in site runoff to acceptable levels prior to discharge into downstream facilities.

Timing/Implementation: Prior to issuance of grading permits and improvement plans.

Enforcement/Monitoring: Nevada County Department of Public Works and CVRWQCB.

MM 4.7.2 Prior to the approval of improvement plans for each commercial center and for future light industrial and office uses, the applicable project applicant shall submit a water quality control program to the County. This program will specify the design of planned water quality facilities in the project's drainage system and will include the following items:

- All storm drain inlets and oil separators will be routinely cleaned and maintained during the dry months of July through September. The program will also establish maintenance responsibility, funding and schedules for servicing the drainage system.
- Storm drain inlets will also be labeled No Dumping – Drains to Streams.
- Energy dissipaters will be incorporated into drainage outlets into Ragsdale Creek.
- Sediment basins will include appropriate vegetation to naturally filter the drainage flows.

The water quality control program may be incorporated into the final Wetland/Riparian Enhancement Plan and Flood Control Plan for Ragsdale Creek and will require County approval.

*Timing/Implementation: Prior to the approval of improvement plans.
Enforcement/Monitoring: Nevada County Department of Public Works and CVRWQCB.*

MM 4.7.4 The project applicant shall prepare a detailed drainage report consistent with County standards for submittal with the improvements plans. The drainage report shall include the following:

- An accurate calculation of the existing runoff coefficient conditions and anticipated flow conditions as a result of buildout of the Ragsdale Creek drainage basin.
- A detailed analysis of the effects that the project will have on peak flow conditions at the State Route 49 culvert and other downstream facilities. No net increase to 100-year storm event peak year discharged may be realized within the State's highway right of way and/or Caltrans drainage facilities as a result of the project. The analysis associated with the State Route 49 culvert shall be submitted to Caltrans for their review and concurrence.
- If increased drainage flows of the project are anticipated to contribute to drainage capacity deficiencies for downstream facilities during peak flow conditions, the project shall include onsite detention facilities adequate to mitigate project increases to peak flow conditions.
- Proof that the drainage report was prepared by a registered Civil Engineer.

*Timing/Implementation: Prior to the approval of improvement plans.
Enforcement/Monitoring: Nevada County Department of Public Works.*

MM 4.7.5a Prior to site grading, a detailed set of improvement plans with drainage design will be developed that analyzes the flow of drainage before and after grading.

*Timing/Implementation: Prior to issuance of grading permit.
Enforcement/Monitoring: Nevada County Department of Public Works.*

MM 4.7.5b Detention and conveyance facilities shall be designed to ensure that drainage flows are not discharged from the site in quantities or at velocities above those conditions that exist prior to grading.

*Timing/Implementation: Prior to approval of improvement plans.
Enforcement/Monitoring: Nevada County Department of Public Works and CVRWQCB.*

MM 4.8.1a The project applicant shall submit an erosion control plan to the County for approval pursuant to the Nevada County Land Use and Development Code Zoning Regulations. The County shall review the erosion control plan prior to the issuance of the grading permit. Erosion control measures will include techniques such as physical and vegetative stabilization measures and runoff diversion measures. Additionally the plan will specify measures for reuse or disposal of excavated materials. If excavated material is

suitable for the use of the project site, the plan shall minimize the elapsed time between excavation and reuse and provide adequate stockpile coverage and protection from wind and water erosion during the entire storage period. If excavated material is unsuitable for reuse at the project site, the plan will include specific information regarding the eventual reuse or disposal site, transportation methods, disposal reuse management, and schedule. The erosion control plan will be in conformance with County standards and standards of the Nevada County Resource Conservation District. The County and the Central Valley Regional Water Quality Control Board shall be the monitoring agencies.

Timing/Implementation: Prior to issuance of grading permits.

Enforcement/Monitoring: Nevada County Department of Public Works and Central Valley Regional Water Quality Control Board.

MM 4.8.1b The Developer shall submit the Erosion and Sediment Control Plan prepared by a licensed engineer as a part of the permit application information to the Corps of Engineers pursuant to compliance with MM 4.8.1a to ensure that full disclosure of the potential magnitude of impacts to wetlands are considered. The permit application information submitted to the Corps of Engineers shall also be submitted for review of the County Planning Department.

Timing/Implementation: Prior to issuance of the Grading Permit.

Enforcement/Monitoring: Nevada County Planning and Department of Public Works.

MM 4.8.1c No single structure shall be supported partially upon hard rock and partially upon softer natural soils or engineered fill materials. Deepening of the foundation excavations shall be required to expose the recommended bearing materials, as determined by a qualified engineer. The proposed structures shall be supported upon continuous and/or isolated spread foundations extending at least 18 inches below building pad subgrade. Lowest adjacent soil grade shall be measured from the surface on which the capillary break gravel is placed or exterior compacted soil grade, whichever is lower. A minimum width of 12 inches shall be maintained for continuous foundations and a minimum plan dimension of 24 inches shall be maintained for isolated spread foundations. A continuous, reinforced foundation shall be utilized for the perimeter of the structure to act as a cut-off wall to help minimize infiltration beneath structures.

Timing/Implementation: Prior to commencement of construction activities.

Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.8.1d The following measures shall be followed for the clearing and preparation of the project site:

- Construction areas designated to receive fill, remain at-grade or achieved by excavation should be scarified to a depth of at least 12 inches, moisture conditioned to at least the optimum moisture content and uniformly compacted to at least 90 percent of the ASTM D1557 maximum dry density. Scarification operations shall extend at least five feet beyond the perimeter building foundations and pavements, where possible.

- Building pads constructed partially by cut and partially by fill that exceed five feet in thickness, and fill differentials that exceed five feet shall be avoided where possible. If clay soils are encountered during earthwork, they shall be thoroughly mixed with on-site granular soils during fill placement and not used as fill within the upper two feet of building pads or those subgrades supporting exterior flatwork. Clay soils shall not be placed in keyways or in fills constructed on sloping ground.
- Rocky materials shall be thoroughly moisture conditioned to at least the optimum moisture content and uniformly compacted by three complete passes with a heavy, self-propelled sheepsfoot compactor to the satisfaction of an on-site, qualified engineer.
- Compaction of subgrades must be performed in the presence of a qualified engineer.

*Timing/Implementation: Prior to commencement of construction activities.
Enforcement/Monitoring: Nevada County Building Department.*

MM 4.8.1e The applicant shall observe the following measures for the placement of fill on the project site:

- Rocky materials shall be placed in horizontal lifts about 12 inches in compacted thickness. The materials shall be uniformly and thoroughly moisture conditioned to the full depth of each lift. Compaction of the rocky fill materials shall be achieved by at least three successive passes with a Caterpillar 825 compactor.
- Engineered fill composed of native soils or imported materials shall be placed in horizontal lifts not exceeding six inches in compacted thickness with each layer uniformly moisture conditioned to at least the optimum moisture content and compacted to at least 90 percent of the maximum dry density.
- Engineered fill to be placed on existing slopes that are steeper than six horizontal to one vertical (6:1) should begin with a level bench constructed at the toe of the fill with benching done progressively up the slope at vertical increments not exceeding two feet. On slopes steeper than four horizontal to one vertical (4:1), a key should be constructed at the toe of the fill with the toe key at least 15 feet wide, centered along the toe of the fill slope, and excavated to a depth of at least two feet (measured from the down-slope side) into dense materials.
- The upper 12 inches of final building pad subgrades shall be moisture conditioned to at least the optimum moisture content and uniformly compacted to at least 90 percent relative compaction, or at least three complete passes with a heavy, self-propelled, sheepsfoot compaction regardless of whether final grade is achieved by excavation, filling, or left at existing grade.
- The upper six inches of pavement subgrade should be moisture conditioned to at least the optimum moisture content and uniformly compacted to not less than 95 percent relative compaction, or at least five complete passes with a heavy, self-propelled, sheepsfoot compactor, regardless of whether final grade is achieved by excavation, filling or left at existing grade.
- Final pavement subgrade processing and compaction should be performed after completion of underground utilities and just prior to aggregate base placement.

- Permanent excavation and fill slopes should be constructed no steeper than two horizontal to one vertical (2:1) and shall be vegetated as soon as practical following grading to minimize erosion.
- Backfill shall be mechanically compacted in thin lifts to at least 90 percent of the maximum dry density as determined by ASTM D1557. The upper 12 inches of utility trench backfill in pavement areas should be compacted to at least 95% of the maximum dry density. Utility trench backfill materials should consist of on-site granular soils or approved granular import material. NOTE: Rock over six inches in diameter should not be used as trench backfill material AND rock over three inches in diameter should not be used as initial backfill to avoid impact damage to utility lines.
- A County approved engineer shall be present during site preparation and all grading operations.

*Timing/Implementation: Prior to commencement of construction activities.
Enforcement/Monitoring: Nevada County Building Department.*

MM 4.8.1f The ground adjacent to all structures must be sloped away from the structure at a gradient no less than two percent (2%) for a distance of at least five (5) feet, where possible. Roof drains shall discharge onto paved surfaces leading away from the structural foundations or connected to non-perforated rigid piping directed to an appropriate drainage point away from the structures. Ponding of surface water shall be avoided near foundations.

*Timing/Implementation: Prior to commencement of construction activities.
Enforcement/Monitoring: Nevada County Building Department.*

MM 4.8.1g During construction activities, the project applicant shall employ the following mitigation measures:

- Expansive soils can be excavated and replaced with non-expansive materials. The required depth of excavation shall be specified by a registered geotechnical engineer based on actual soil conditions;
- Expansive soils may be treated in place by mixing them with lime. Lime-treatment alters the chemical composition of the expansive clay materials such that the soil becomes non-expansive; or,
- Implement other engineering practices for mitigation of expansive soil conditions considered appropriate by the Nevada County Department of Public Works.

*Timing/Implementation: Prior to commencing building construction activities.
Enforcement/Monitoring: The Nevada County Department of Public Works.*

MM 4.8.2 All project related utilities and infrastructure facilities shall be designed and constructed consistent with the seismic standards of the Uniform Building Code for Zone 3.

*Timing/Implementation: Prior to commencing construction activities.
Enforcement/Monitoring: Nevada County Department of Public Works.*

MM 4.8.3 The project applicant shall consult a corrosion engineer to further define the soil corrosion potential at the project site, or to determine the need or design parameters for cathodic protection or grounding systems.

Timing/Implementation: Prior to commencing construction activities.

Enforcement/Monitoring: Nevada County Department of Public Works.

MM 4.9.1a If proposed grading, site preparation, or construction activities are planned to occur during the nesting seasons for local avian species (typically March 1st through August 31st), the project applicant shall retain a qualified biologist approved by Nevada County to conduct a focused survey for active nests of raptors and migratory birds within and in the vicinity of (no less than 100-feet outside project boundaries, where possible) the project area no more than 30 days prior to initial ground disturbance and before construction resumes if a gap of inactivity occurs for a duration of 30 days or more. If an active nest is located during preconstruction surveys, USFWS and/or DFG (as appropriate) shall be notified regarding the status of the nest. Furthermore, construction activities shall be restricted, as necessary, to avoid disturbance of the nest until it is abandoned or the biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 100-feet around the nest) or alteration of the construction schedule. No action is necessary if construction will occur during the nonbreeding season (generally September 1st through February 28th).

Timing/Implementation: Prior to issuance of permits and during construction activities.

Enforcement/Monitoring: Nevada County Planning Department.

MM 4.9.1b Prior to issuance of a grading permit for the pipeline infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effect to special-status species:

- a) The project proponent shall retain a qualified biologist to conduct a reconnaissance-level survey to determine whether special-status plant or wildlife species would occur within the easement area for construction of the pipeline and associated improvements.
- b) If the biologist determines that there is no potential for occurrence of any special-status plant or wildlife species, special-status species may be presumed absent and no further mitigation is necessary.
- c) If suitable habitat for a special-status plant or wildlife species is present, focused surveys shall be conducted by a qualified biologist during the appropriate season to determine if the species is present or absent.
- d) If a special-status species is determined to be present, the project applicant shall consult with DFG, USFWS, and/or the Nevada County Planning Department as appropriate. Through consultation and negotiations with the appropriate agency or agencies, appropriate mitigation and avoidance measures shall be developed and implemented to avoid any significant effects on special-status species. Mitigation measures will depend on the species potentially affected and the nature of the impact, but may include routing pipelines to avoid areas of

natural habitat, exclusionary fencing, creation of buffer zones, and limiting construction to non-breeding periods.

Timing/Implementation: Prior to issuance of grading permits and during construction activities.

Enforcement/Monitoring: Nevada County Planning Department, DFG, USFWS.

MM 4.9.2a The project applicant shall at a minimum:

- a) Retain a qualified biologist/restoration ecologist approved by the Nevada County Planning Department to implement mitigation outlined in both this document and the Habitat Management Plan for the Higgins Marketplace Reduced Wetland Setback and Stream Crossing to address the long-term sustainability of the wetland preservation area (Susan Sanders Biological Consulting 2004). Qualifications of key personnel responsible for implementation of mitigation shall be submitted to the Nevada County Planning Department for approval prior to any ground disturbance at the site;
- b) Maintain a 25-foot buffer between the wetland preserve boundary (as shown on Figure 4.9-3) and any area to be developed as depicted on the tentative parcel map for the proposed project. The boundary of the area to be avoided shall be delineated with orange safety netting under the direction of a qualified biologist prior to grading activities. The netting shall remain onsite for the duration of construction to ensure no personnel or vehicles enter the environmentally sensitive area;
- c) Install a permanent low perimeter fence between the edge of the 25-foot buffer area and any developed area to preclude unauthorized access to the preservation site. Include signage at various points along the fence that designates the area as a wetland preservation site and prohibits incompatible uses (i.e., dumping, parking, or recreation). Upkeep of both the fence and the signs should be incorporated into the maintenance contract for the development;
- d) Within the 25-foot buffer, plant native shrubs, bunchgrasses, and at least one grove of trees to (1) enhance pollution and sediment filtration, (2) provide a visual and auditory buffer between wildlife and human activity, such as vehicle traffic, and (3) discourage the continued spread of Himalayan blackberry at the site;
- e) Prepare a Drainage Plan (included as a portion of the Final Wetland-Riparian Habitat Mitigation Plan discussed in MM 4.9.3) that (1) ensures runoff from the slope to the east is returned to the wetland, (2) directs all development and road runoff through a combination of oil and grit separators as well as grassy swales (to be serviced through contract of ongoing maintenance for the development) prior to discharging into the wetland, and (3) precludes a net increase of storm runoff entering the wetland preserve through landscape design and implementation of a monitoring plan;
- f) Ensure that water quality in the preserve area and downstream will not be significantly impacted with completion of the project through use of best management practices, such as: (1) installation and inspection of sediment barriers, (2) taking reasonable precautions that pollutants and construction byproducts do not enter the wetland area, (3) having a Spill Containment Kit with appropriately trained staff onsite at all times, (4)

- restoring any temporarily impacted areas, and (5) implementation of a Storm Water Pollution Prevention Plan (SWPPP); and
- g) Ensure any personnel involved in construction activities onsite is trained regarding Nevada County and regulatory agency restrictions/mitigation established in this document and the Habitat Management Plan (Susan Sanders Biological Consulting 2004). Training shall be conducted by a qualified biologist approved by Nevada County to highlight best management practices (e.g., erosion control, dust control, noise abatement), outline exclusion areas (if necessary), identify special status species potentially in the area, and stress the importance of wildlife (any species) avoidance when onsite or within staging areas. A short (about 15-minute) tailgate training session would be adequate for the proposed project.

Timing/Implementation: Prior to issuance of permits and during construction activities.

Enforcement/Monitoring: Nevada County Planning Department.

- MM 4.9.3a** Mitigation shall be employed to achieve no net loss of wetlands and the appropriate wetland permits (i.e., Section 404 and 401 under the Clean Water Act, Section 1602 Streambed Alteration Agreement) shall be obtained prior to issuance of grading permits.

The project applicant shall comply with all permit conditions and employ best management practices and measures (established by the permitting authorities and Nevada County) to minimize and compensate for potential impact to any jurisdictional waters. A Conceptual Wetland-Riparian Habitat Mitigation Plan for onsite and in-kind creation of wetlands and upland buffer planting has previously been developed for this project (Sanders and Chainey 2004). A Final Mitigation Plan shall be completed and approved by the ACOE and Nevada County Planning Department prior to implementation. In addition to data presented in the conceptual plan, the final plan shall include a discussion of site drainage (Drainage Plan as discussed in MM 4.9.2e), a schematic that shows the specific locations of proposed replacement plantings, and information regarding the contractor responsible for overseeing the three-year monitoring and maintenance period. In addition, wetland delineation and mitigation details shall be noted on the design plans for the proposed project.

Timing/Implementation: Prior to issuance of grading permits.

Enforcement/Monitoring: Nevada County Planning Department.

- MM 4.9.3b** Prior to issuance of a grading permit for the pipeline infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effects to wetlands and riparian habitat:
- a) The project proponent shall determine through the formal Section 404 wetland delineation process whether potential jurisdictional waters of the United States, including wetlands, are present within the easement area for construction of the pipeline and associated improvements.
- b) If wetlands are determined to be jurisdictional and can be avoided, no further mitigation shall be required.

- c) If potential jurisdictional waters of the United States, including wetlands, are present and would be filed as result of the project, authorization of a Section 404 permit shall be secured from ACOE, and a Section 1600 agreement shall be secured by DFG, as appropriate.
- d) As part of the permitting process, mitigation of impacts to jurisdictional waters of the United States, including wetlands, shall be identified and implemented. The acreage shall be replaced or rehabilitated on a no-net-loss basis in accordance with ACOE regulations. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to ACOE.
- e) All grading and trenching plans shall include adequate setbacks for preserved seasonal and perennial drainages. Measures to minimize erosion and runoff into seasonal and perennial drainages that are preserved shall also be included in all grading and trenching plans.

Timing/Implementation: Prior to issuance of grading permits.

Enforcement/Monitoring: Nevada County Planning Department, ACOE, DFG.

MM 4.9.4a The project applicant shall at a minimum:

- a) Minimize construction impacts to oaks by (1) protecting landmark oaks onsite with fencing established at the dripline during onsite activity, and (2) establishing guidelines for onsite personnel, such as no vehicles or equipment allowed within the dripline of trees (to be preserved) as well as no removal or addition of soil within the dripline of sensitive trees;
- b) Prepare and implement an Oak Woodland Mitigation Plan to address the long-term maintenance of preserved oaks as well as establish a replacement/restoration plan for loss of habitat and tree removal at the project location. The Plan shall be submitted to the Nevada County Planning Department for approval prior to ground disturbance at the site; and
- c) Limit irrigation and ornamental plants requiring irrigation to areas outside of the dripline of oaks (to be preserved). Mulches or drought-tolerant, non-irrigated plantings are suitable within the dripline (Susan Sanders Biological Consulting 2005a). Wherever possible, native plants shall be incorporated as the preferred landscape vegetation.

Timing/Implementation: Prior to issuance of permits and during construction activities.

Enforcement/Monitoring: Nevada County Planning Department.

MM 4.9.4b The following mitigation measure from the Draft Environmental Impact Report Lake of the Pines Wastewater Treatment Plan Upgrade project (EDAW, 2005) would also apply to the proposed project.

Before issuance of a grading permit for any new Lake of the Pines Sphere of Influence pipeline project, the project proponent shall complete the following to minimize effects to foothill woodland and oak trees:

- a) The project proponent shall submit a tree survey to the Nevada County Planning Department for approval. A map of all trees to be removed or disturbed during project construction and a preservation and replacement plans shall be included with the survey.

- b) Oaks not approved for removal that are within 200 feet of the grading activity shall be protectively fenced 5 feet beyond the dripline and root zone of each oak tree (as determined by a certified arborist). This fence shall be maintained until all construction activities are completed. No grading, trenching, or movement of construction equipment shall be allowed within the fenced area. Protection for oak trees on hillsides shall include installation of a silt fence. A silt fence shall be installed at the upslope base of the protective fence to prevent any soil from drifting down over the root zone.

***Timing/Implementation:** Prior to issuance of grading permits and during construction activities.*

***Enforcement/Monitoring:** Nevada County Planning Department.*

- MM 4.10.1a** If any prehistoric or historic artifacts, or other indications of archaeological resources are found during site grading or once project construction is underway, all work in the immediate vicinity must stop and the County shall be immediately notified. An archaeologist meeting the Secretary of Interior's Professional Qualifications Standards in prehistoric or historical archaeology, as appropriate, shall be retained to evaluate the finds and recommend appropriate mitigation measures for the inadvertently discovered cultural resources. The County and the project applicant will consider the recommendations of the qualified archaeologist. The County and the project applicant shall consult and agree upon implementation of a measure or measures that the County and the project applicant deem feasible and appropriate. Such measures may include avoidance, preservation in place, excavation, documentation, curation, data recovery, or other appropriate measures.

***Timing/Implementation:** As a condition of project approval, and implemented during grading and construction activities.*

***Enforcement/Monitoring:** Nevada County Planning Department.*

- MM 4.10.1b** If human remains are discovered, all work must stop in the immediate vicinity of the find, and the County Coroner must be notified, according to Section 7050.5 of California's Health and Safety Code. If the remains are determined to be Native American, the coroner will notify the Native American Heritage Commission, and the procedures outlined in CEQA Section 15064.5(d) and (e) shall be followed.

***Timing/Implementation:** As a condition of project approval, and implemented during construction activities.*

***Enforcement/Monitoring:** Nevada County Planning Department.*

- MM 4.10.1c** Prior to issuance of a grading permit for pipeline and infrastructure improvements to convey wastewater from the project site to the Lake of the Pines Wastewater Treatment Plant facilities, the project applicant shall complete the following to minimize effects to prehistoric resources, historic resources, and human remains.

The applicant shall retain the services of a qualified professional archaeologist who shall conduct background research at the appropriate repositories and conduct a field investigation of the specific pipeline routes and pump station sites if such an inventory has not been performed with the

preceding 5 years. The archaeologist shall provide written results of the background research and field inventory, including recommended mitigation for the protection or recovery of any cultural resources concluded by the archaeologist to represent significant or potentially significant resources as defined by CEQA or National Historic Preservation Act.

*Timing/Implementation: Prior to issuance of a grading permit.
Enforcement/Monitoring: Nevada County Planning Department.*

MM 4.10.2 If any paleontological resources (i.e., fossils) are found once project construction is underway, all work in the immediate vicinity must stop and the County shall be immediately notified. A qualified paleontologist shall be retained to evaluate the finds and recommend appropriate mitigation measures for the inadvertently discovered paleontological resources. The County and the project applicant will consider the recommendations of the qualified paleontologist. The County and the project applicant shall consult and agree upon implementation of a measure or measures that the County and the project applicant deem feasible and appropriate. Such measures may include avoidance, preservation in place, excavation, documentation, curation, or other appropriate measures.

*Timing/Implementation: As a condition of project approval, and implemented during construction activities.
Enforcement/Monitoring: Nevada County Planning Department.*

MM 4.11.1.2a During construction of the proposed project and off-site improvements (roadway extension and pipeline infrastructure improvements), the project applicant shall perform the following tasks:

- All on-site flammable vegetation and fuels shall be legally disposed of or removed. Vegetation clearance around structures shall meet the minimum requirements of Public Resources Code 4291. Firebreaks shall be maintained by removing and clearing away all existing brush, flammable vegetation or combustible growth within 100 feet of structures.
- Temporary provisions for emergency access and fuel modification zones shall be provided. The project applicant shall prepare a temporary fire protection plan that will provide temporary emergency access and fuel modification zones for development.
- Any grass or other vegetation planted along cut/fill areas (i.e., roadways for erosion control purposes shall be low growing grasses and shall be on the Nevada County approved plant list. Tall grasses can subject the development to an increase in fire danger.

*Timing/Implementation: Prior to and during construction activities.
Enforcement/Monitoring: Higgins Fire District and the Nevada County Fire Marshal.*

MM 4.11.1.2b The project applicant shall submit the improvement plans for the site to the Nevada County Fire Marshal and the Higgins Fire District for review and approval.

- Designation of a fuel modification zone or greenbelt established along the perimeter of the project site. Perimeter fuel breaks will be a minimum of 30 feet (typically ranging between 30 and 100 feet) as required by the Nevada County Fire Marshal. The developer, with the assistance of CFD and HFD, will determine the specific dimensions of each fuel modification zone located along the project perimeter based on the location, topography, access points, vegetation, degree of exposure, local weather conditions, and design and construction of structures.
- Designation of a 10-foot wide fuel modification zone established and maintained along each side of Woodridge Court.
- Project emergency access shall be designed to meet District, County, and State standards. Nevada County requires a 20-foot road right-of-way for local streets, with 18 feet of paving, a 10-foot fuel modification zone on either side of the road.

Timing/Implementation: Prior to approval of the improvement plans.

Enforcement/Monitoring: Higgins Fire District and the Nevada County Fire Marshal.

MM 4.11.1.2c The project applicant shall submit a Vegetative Fuel Management Plan to the Nevada County Fire Marshal and the Higgins Fire District. The plan shall contain information about fuel modification zones/fuel breaks, canopy spacing, roads, and types of plants to be used in landscaping and erosion control. Fuel management shall occur outside of aquatic and riparian woodland areas and wetland areas as shown in **Figure 3.0-3**. The Plan shall include:

- Requirements that fire resistant landscaping is used in the fuel modification zones for project accesses.
- Provisions and funding for maintenance of fuel modification zones by the project applicant.
- No trees that will grow over 20 feet in height will be planted or allowed to grow within 20 feet of any high voltage power line.

Timing/Implementation: Prior to approval of the improvement plans.

Enforcement/Monitoring: Higgins Fire District and Nevada County Fire Marshal.

MM 4.11.1.3 To ensure adequate fire flow on the project site, one of the following measures shall be implemented:

- 1) Construct improvements to the NID system to increase the NID distribution system fire flows to meet HFD requirements.
- 2) Construct an on-site storage tank and fire pump system to contribute the additional fire flow needed beyond what the NID main can provide in order to achieve a total fire flow of 1,625 gallons per minute for a two-hour duration. These improvements shall be within areas designated for development and shall not occur on Parcel 6. The on-site storage tank and fire tank system shall be constructed consistent with mitigation

measures identified in this EIR. Screening for the on-site storage tank shall be consistent with mitigation measure MM 4.12.2a and the tank shall be painted to match the color scheme of the buildings on the project site.

Timing/Implementation: Prior to improvement plan approval.
Enforcement/Monitoring: HFD and NID.

MM 4.11.4.2 Prior to approval of improvement plans for each building, the project applicant shall provide the County with an approved set of improvement plans accepted by NID, which shall include:

- Quantification of anticipated water usage by parcel.
- A comprehensive water system design for distribution piping and connection to the existing NID distribution system.
- Appropriate pipe sizing to accommodate minimum fire flow water pressures (as determined by California Department of Forestry and Fire Protection, NID and the Higgins Fire Protection District.)
- Identification of pipe sizing, pipe location, and the location of the tie-in with NID facilities
- Provisions for easement, rights-of-way, and in-fee land to NID for water facilities.

Timing/Implementation: Prior to improvement plan approval.
Enforcement/Monitoring: Nevada County Planning Department and NID.

MM 4.11.5.1 Sewer service shall be provided by the Lake of the Pines Zone 2 Wastewater Treatment system. Prior to issuance of occupancy permits for the commercial and retail establishments, the project applicant shall provide the Nevada County Building Department with proof that the project has been annexed into the NCSD-1 service district, acquired the necessary number of EDUs, completed construction of necessary conveyance infrastructure (and lift pump if not previously installed), connected to the NCSD-1 system, and paid required fees.

Timing/Implementation: Prior to the issuance of occupancy permits for commercial and retail establishments.
Enforcement/Monitoring: Nevada County Sanitation District and Nevada County Building Department.

MM 4.11.5.2a Prior to the issuance of occupancy permits, the project applicant shall:

- Construct all necessary wastewater conveyance infrastructure, as well as the pump/lift station, if not already in place, and get approval and acceptance of this infrastructure by NCSD-1. The infrastructure shall be installed and operational prior to issuance of occupancy permits.

Timing/Implementation: Prior to issuance of occupancy permits.
Enforcement/Monitoring: Nevada County Sanitation District and Nevada County Building Department.

MM 4.11.5.2b Prior to issuance of occupancy permits for the commercial and retail establishments, the project applicant shall:

- Provide NCSD with a financial plan that identifies estimated administration, operation, and maintenance costs for the on-site and off-site sewage collection system. The plan shall identify amortization of the capital improvements over a period not to exceed ten years.
- Based on the financial plan, as reviewed and approved by NCSD, the project applicant shall pay an annual fee based on the projected build-out of the project, the estimated administration, operation, and maintenance costs, and amortization of the capital improvements of the public components of the sewage collection system.
- A reimbursement agreement or permit credit shall be formulated to ensure that the project is reimbursed if it is required to construct the necessary components to connect to the existing infrastructure. The reimbursement or credit will be used against sewer fees in the event that the project is required to oversize infrastructure improvements over and above what is required to serve the project.

***Timing/Implementation:** Prior to the issuance of occupancy permits for commercial and retail establishments, and payment of annual sewage collection system fee for the life of the project.*

***Enforcement/Monitoring:** Nevada County Sanitation District and Nevada County Building Department.*

MM 4.11.6.1 Prior to issuance of occupancy permits the applicant will complete the following mitigation measures:

- 1) All businesses will subscribe to waste collection and recycling services provided by the County's franchised waste collection company.
- 2) All businesses will participate in the recycling program offered through the County's franchised waste collection company. Businesses will recycle all items available through the company's program, or an equivalent method, which ensures that the waste is diverted away from landfill disposal.
- 3) Any green waste material generated at the project area such as lawn trimmings, shrubbery, and tree trimmings shall be diverted away from disposal through the County's franchised waste collection company's green waste collection program, or an equivalent method which ensures that the waste is diverted away from landfill disposal.
- 4) Adequate space for waste and recycling containers will be constructed at the complex to ensure ease of collection by the County's franchised waste collection company. The units housing the containers shall be constructed to allow sufficient space for the quantity of containers needed to ensure that the waste and recyclables can be collected in an efficient manner. Waste Management will be consulted to ensure that sufficient space is for recycling and trash containers.

***Timing/Implementation:** Prior to the issuance of occupancy permits for commercial and retail establishments.*

***Enforcement/Monitoring:** Nevada County Department of Public Works*

MM 4.11.8.3 Mitigation for development impacts on growth-related services and facilities identified in the General Plan consists of the establishment of a comprehensive development fee impact program pursuant to General Plan Policy 3.8. The applicant will contribute fair share funding for general governmental capital facilities and equipment not covered by a current development fee to mitigate the cumulative demand on general governmental services and facilities of the County. A comprehensive capital facilities fee for this purpose is under development by the County. Upon County adoption of the comprehensive capital facilities fee program, a fee there under will be levied based upon the issuance of the building permits for each commercial project based upon the rates in effect under the latest fee schedule adopted by the Board of Supervisors prior to the issuance of such building permits.

Currently, the County is in the process of developing the fee program. In the event that no comprehensive capital facilities fee program has been adopted by the County when the application is made for any building permit or such earlier time as such a fee may be payable pursuant to Government Code sections 66000 et seq., the sum of \$0.36 per square foot of retail development and \$0.73 per square foot of office development shall be required. This fee shall be payable to the County by the applicant solely for use to purchase general governmental capital facilities and equipment not covered by other development fees, subject to a refund for the difference if a lesser comprehensive facilities fee program is subsequently adopted.

Inclusion of a Supplemental Note in the Supplemental Data Sheet or Notice of Supplemental Information reflecting the obligation shall be required as a condition of project approval unless the project applicants pay a sum of \$0.36 per square foot of retail development and \$0.73 per square foot of office development. This fee will be collected prior to issuance of building permits and would be subject to a credit if the adopted fee is less than payment made by the project applicant. In the event that a greater comprehensive capital facilities fee is adopted prior to issuance of building permits, the applicant shall pay the difference above the already paid fees at the time the fee is adopted.

***Timing/Implementation:** Prior to issuance of building permits.*

***Enforcement/Monitoring:** Nevada County Planning Department and Building Department.*

MM 4.12.2a Prior to issuance of a grading permit for the proposed project, the project applicant shall submit final landscaping and improvement plans to the Planning Department for review and approval. The final landscaping plans and/or improvement plans shall be revised to include the following items:

- Solid waste dumpster facilities and infrastructure facilities shall be architecturally designed and/or screened with landscaping.
- Onsite telephone and electrical distribution lines shall be undergrounded.
- Final landscaping plans for the project shall preserve and incorporate existing oak trees (to the maximum extent feasible) and will provide

plant species that complement the existing rural character of the Higgins Corner-Lake of the Pines area.

- Fences and walls shall be landscaped to buffer their appearance from Combie Road and SR 49.
- The Landscaping Plan shall ensure that the existing natural landscape characteristics of the wetlands are retained. This landscaping plan shall be reviewed and approved the Nevada County Planning Department to ensure that the plantings do not conflict with existing on-site vegetation.
- The Landscaping Plan shall depict the placement of evergreen conifer and oak species, similar to the native species on the site, that shall be planted along western perimeter of the site adjacent to Pad A and Pad B. These trees shall be planted a minimum of 15 feet apart on the property line and shall be of a minimum container size to reach 50% of their mature height within 10 years.
- The Landscaping Plan and improvement plans shall depict the restoration of natural areas for all off-site improvements, including utility and infrastructure improvements. Where water, sewer, and other underground utilities are extended through undeveloped natural areas, restoration of areas shall include areas affected by cut, back-fill, and grading. All surfaces shall be revegetated with appropriate ground covers and plant materials.

Timing/Implementation: Prior to the issuance of a grading permit.

Enforcement/Monitoring: Nevada County Planning Department.

MM 4.12.2b Prior to the issuance of building permits, final building plans shall provide screening details for building mechanical equipment and facilities.

Timing/Implementation: Prior to the issuance of building permits.

Enforcement/Monitoring: Nevada County Planning Department.

MM 4.12.2c All trees shown on the Landscape Plan that have been selected for preservation, including all portions of adjacent off-site oak trees which have driplines that extend onto the project site, and all off-site oak trees which may be impacted by improvements associated with this project, shall be protected as follows:

- a. A circle with a radius measurement from the trunk of the tree to the tip of its longest limb shall constitute the dripline protection area of each tree. Limbs must not be cut back in order to change the dripline. The area beneath the dripline is a critical portion of the root zone and defines the minimum protected area of each tree. Removing limbs that make up the dripline does not change the protected area.
- b. Any protected trees on the site that require pruning shall be pruned by a certified arborist prior to the start of construction work. All pruning shall be in accordance with American National Standards Institute (ANSI) A300 pruning standards and the International Society of Arboriculture (ISA) Tree Pruning Guidelines. Contractor shall employ a firm with certified tree workers to clean up and make safe any of the trees scheduled to remain. Workers shall remove dead and severely rotted branches, eliminate crossed or rubbing branches, install cabling as needed and provide any aesthetic shaping needed to better balance one-sided trees. Do not allow workers to use spurs while climbing. Avoid any damage to branch collars.

- c. Temporary protective fencing shall be installed at least one foot outside the driplines of the protected trees prior to initiating construction in order to avoid damage to the tree canopies and root systems. The temporary protective fencing must be shown on all improvement plans.
- d. No signs, ropes, cables (except those which may be installed by a certified arborist to provide limb support) or any other items shall be attached to the trees. Small metallic numbering tags for the purpose of preparing tree reports and inventories shall be allowed.
- e. No vehicles, construction equipment, mobile home/office, supplies, materials or facilities shall be driven, parked, stockpiled or located within the driplines of protected trees.
- f. No grading (grade cuts or fills) shall be allowed within the driplines of protected trees, unless approved by a certified arborist.
- g. Drainage patterns on the site shall not be modified so that water collects or stands within, or is diverted across, the dripline of any protected tree.
- h. No trenching shall be allowed within the driplines of protected trees. If it is absolutely necessary to install underground utilities within the dripline of a protected tree, the utility line shall be bored and jacked under the supervision of a certified arborist.
- i. The construction of impervious surfaces within the driplines of protected trees shall be stringently minimized.
- j. No sprinkler or irrigation system shall be installed in such a manner that it sprays water or requires trenching within the driplines of protected trees. An above-ground drip irrigation system is recommended.
- k. Landscaping beneath oak trees may include non-plant materials such as bark mulch, wood chips, boulders, etc. The only plant species that shall be planted within the driplines of oak trees are those which are tolerant of the natural semi-arid environs of the trees. Limited drip irrigation approximately twice per summer is recommended for the understory plants.
- l. Any weed control chemicals utilized prior to laying of new asphalt shall not be applied where they can leach into the dripline area.
- m. During construction, contractor must maintain the same watering frequency around the trees that they are used to receiving.
- n. Clearing of weeds and debris from the protected dripline area shall be done by hand and will not disturb the natural grades within protected dripline area.

Timing/Implementation: *The Landscape Plan shall be submitted for review and approval of the Nevada County Planning Department and Building Department prior to approval of the improvement plans. Implementation shall occur prior to and during grading and construction*

Enforcement/Monitoring: *Nevada County Planning Department and Building Department. The contractor shall provide to all subcontractors contract specifications that reflect the above guidelines.*

MM 4.12.2d Prior to the issuance of building permits, the project applicant shall provide detailed plans for project signage. Building signage shall utilize the same materials and colors of the commercial center buildings and shall be designed consistent with signage standards set forth in the Nevada County Land Use and Development Code Zoning Regulations. Sign hardware shall be concealed from view. Sign illumination shall exclude utilization of exposed neon or other direct lighting features. Freestanding signs shall

utilize materials and colors of the commercial center buildings and shall be incorporated into project landscaping.

*Timing/Implementation: Prior to the issuance of building permits.
Enforcement/Monitoring: Nevada County Planning Department.*

- MM 4.12.4** Outdoor light fixtures for parking areas and roadways shall be low-intensity, shielded and/or directed away from residential areas and the night sky. Exterior lighting of areas adjacent to the commercial buildings shall be limited to public safety and security purposes. Lighting fixtures shall use low-pressure sodium lamps or other similar lighting fixtures and shall be installed and shielded in such a manner that no light rays are emitted from the fixture at angles above the horizontal plane. High-intensity discharge lamps such as mercury, metal halide and high-pressure sodium lamps shall be prohibited. Lighting plans shall be provided as part of facility improvement plans to the County with certification that illumination of adjacent properties will not exceed 2.0 foot-candles.

*Timing/Implementation: Prior to the approval of improvement plans.
Enforcement/Monitoring: Nevada County Planning Department.*

PARCEL MAP CONDITIONS OF APPROVAL

A. PLANNING DEPARTMENT

1. Prior to recordation of the parcel map (or issuance of the first Building Permit, whichever comes first) the existing billboard located on Parcel 5 shall be removed.
2. All road names shall be posted at the intersection of Woodridge Drive and Higgins Road.

B. DEPARTMENT OF PUBLIC WORKS

1. Road Improvements:
 - a) Improve Combie Road in accordance with the mitigation measures in the Environmental Impact Report. These improvements include a traffic signal at the intersection of Combie Road and Higgins Road.
 - b) Higgins Road and Woodridge Drive (from existing terminus at Longs to the end of Woodridge Drive at Highway 49) shall be improved as follows:
 - (Half width on the side adjacent to the project): 12-foot lane, 4-foot paved shoulder (to back of curb), A2-6 curb & gutter, 4-foot concrete sidewalk. The concrete sidewalk shall extend along the Higgins Road frontage and along the northern side of Woodridge Drive from Higgins Road to the western-most parking lot access (near Building 4) and terminating at the DG path within the wetland buffer area. A temporary asphalt path shall also be extended along the westerly remainder of Woodridge Drive to the driveway along the frontage (serving the Jasper parcel).
 - (Half width on the side opposite the project): 12-foot lane, with either 1) 2-foot paved shoulder, then 2-foot gravel shoulder and seeded V-ditch; **OR** 2) a 4-foot paved shoulder and AC dike, depending on the slope conditions beyond the road edge.

(Note: Parcels 6 and 7 will be required to do frontage improvements in the future.)

Higgins Road (fronting Jasper parcel) shall be improved as follows:

- 2 - 12-foot lanes, 2 - 2-foot shoulders, and a 4-foot separated temporary asphalt walkway on the west side of the roadway connecting the existing terminus at Longs to the full roadway section described above.

(Note: The Jasper parcel will be required to do frontage improvements if it develops in the future)

- c) A pedestrian connection to Combie Road and Higgins Road shall be constructed to connect to the pedestrian path being constructed on Combie Road.
- d) A direct pedestrian connection across the open space between Buildings 3 and 4 shall be constructed.
- e) The individual driveway connections to Higgins Road shall conform to Commercial Approach standards. Additional shoulder width shall be provided to accommodate truck maneuvering to access the Bel-Air Market loading docks.
- f) The applicant's engineer shall prepare improvement plans for the required road work, drainage design and grading details, to be reviewed and approved by the Nevada County Building Department.
- g) The applicant's engineer shall certify that the road improvements were completed in conformance with the approved plans.
- h) An Encroachment Permit issued by the Nevada County Department of Public Works is required prior to any work within the Combie Road right-of-way.

2. Right-of-way:

- a) Offer for dedication to the County of Nevada, a 60-foot wide right-of-way on Woodridge Court and Higgins Road for Public Utilities, Emergency Access and Public Road purposes.
- b) The sub-divider is responsible for obtaining any offsite easement necessary for construction of the required improvements.

3. Road Maintenance:

Applicant shall form a Public Road Division ("PRD") to provide for the maintenance of those portions of Woodridge Court and Higgins Road constructed by the applicant. The PRD shall also include the cost of maintaining the traffic signal required by mitigation measure 4.4.1a; provided, however, applicant's share of the cost to maintain said signal shall not exceed \$5,000 annually for ten years, thereafter to be proportional to their share of benefit. Such payments shall commence thirty (30) days following the County's written acknowledgement of the satisfactory installation of said signal.

The County shall cause any property developed in the future that benefits from the signal and/or roads to annex their property into the PRD and to vote to be assessed for their proportionate share of the cost of such maintenance under the PRD.

4. Tax Certificate:

A Tax Certificate, issued by the Nevada County Tax Collector, is required prior to map submittal for recordation.

5. The following notes shall be included on the Supplemental Data Sheet for the Parcel Map:

“A Road Improvement Fee in accordance with Nevada County Ordinance No. 1829, creating and establishing the authority for imposing and charging a Road Improvement Fee with the unincorporated territory of Nevada County, will be levied at the issuance of building permits for each parcel created by the map, and will be based on the latest fee schedule adopted by the Nevada County Board of Supervisors.”

“All Parcels are within a County Service Area and are assessed an annual Special Tax or Parcel Charge for road maintenance of Woodridge Court, Higgins Road and the traffic signal at the intersection of Higgins Road and Combie Road”

USE PERMIT CONDITIONS OF APPROVAL

C. PLANNING DEPARTMENT

1. This use permit approval, predicated upon the approval of the General Plan Amendment and Rezone (which has been challenged), authorizes the construction of a 75,710 square foot shopping center consisting of four buildings including a large supermarket (50,060 square feet); two multi-tenant retail buildings (11,400 square feet and 89,250 square feet); and one restaurant building (6,000 square feet plus an outdoor dining patio of no more than 1,000 square feet). Any further change in size or occupancy requires review and approval by the Planning Department to determine if the occupancy load exceeds the maximum allowed to be reviewed as a ministerial permit.
2. The project signage shall be consistent with the preliminary sign plan, as modified, and with Section L-II 4.2.12 of the Land Use and Development Code as follows:
 - a. A landscape planter shall be installed and maintained for the Pole Sign. The size, colors and design of the Pole Sign shall be consistent with the approved Sign Plan.
 - b. Two monument signs, not exceeding 6 feet in height and 50-square feet in area, are permitted on site. One monument sign is permitted along each road frontage (Higgins Road and Woodridge Drive). The monument signs may utilize Halo lettering on the sign face only, and the sign face should be made of a wooden (or wood-like) material.
 - c. The tenant wall signs shall consist of individual letters mounted to the wall, and shall utilize halo lighting for those letters or, on Buildings 3 and 4 only, either halo lit letters or non-internally illuminated letters. Wall signs shall also contain the gooseneck fixture above the signs, which shall utilize low wattage

lamps, as shown on the approved sign drawings and consistent with the approved building architecture. One wall sign for each street or parking lot frontage is approved, with a maximum of two (2) wall signs for each business or tenant. However, the Bel Air building may have the "Bel Air/Fresh Market" (or other anchor tenant if this changes) and a separate "Pharmacy" sign (unless the occupant of the building changes and such occupant does not have a pharmacy), and is limited to having signs on two walls only. The coffee shop and the bank shall be considered as separate businesses and are each subject to a separate two sign limit. The walls signs may face the parking lot or any of the roads (Woodridge Drive, Higgins Road, or Highway 49). Except as prescribed herein, no more than five wall signs shall be situated on the western elevation of Building 4 facing Highway 49. Wall signs shall not cover more than 15% of a building façade or tenant storefront.

d. Window signage shall be limited to 144 square inches, pursuant to the sign plan. No roof signs are permitted.

3. The parking lot shall be constructed in accordance with the design standards of Section L-II 4.2.9 of the Land Use and Development Code, including surfacing, curbing, slope, drainage, backout area, driveway/aisle widths, and parking stall sizes. The parking lot may be constructed in phases (along with each building). The required minimum parking spaces for each phase/building shall be as follows:

Building 1 (50,060 s.f.)	250 spaces (7 wheelchair accessible)
Building 2 (11,400 s.f.)	57 spaces (3 wheelchair accessible)
Building 3 (+ outdoor seating 7,000 s.f.)	47 spaces (2 wheelchair accessible)
Building 4 (8,250 s.f.)	42 spaces (2 wheelchair accessible)

A minimum of 396 parking spaces shall be constructed, 14 of which shall be wheelchair accessible, designed in accordance with Title 24 of the California Administrative Code.

4. All exterior lighting shall be top and side screened, directed downward and shielded to prevent spill-over onto adjacent properties or roadways. Lighting that casts any shadows across an exterior property line is prohibited. All proposed lighting shall be shown on building plans.

5. All solid waste receptacles and outside recycling storage shall be placed within a screened enclosure, constructed of colors and materials compatible with building style. All on-site trash enclosures shall be consistent in location with that of the approved site plan, and approved by Waste Management for access. Adequate recycling storage and collection area is mandated with each facility. Construction detail shall be represented on the final building plans. Where walls are used for screening outdoor storage, landscaping shall be installed to buffer the view of the storage area from public view.

6. Outdoor storage areas for the receiving area of the shopping center facility shall be adequately screened from views along Higgins Road.

7. All mechanical equipment, air conditioning units, heating units, and utilities shall be screened from the view of adjacent properties or roadways.

8. The applicant shall submit a detailed final landscaping plan, consistent with the approved Preliminary Landscape Plan (if necessary, as amended), prepared by a

licensed landscape architect (experienced in high elevation plantings), to the Planning Department for review and approval. Pursuant to Sec. L-II 4.2.7 of the Land Use Code, the final plan shall incorporate the following:

- a. The location of all required plant materials, evenly dispersed within each required planting area (interior parking lot landscaping, street buffers, and residential buffers.
 - b. Provide a legend listing the type, number and size of plant materials; indicating both the both the required number and the provided number of each plant type. List plants for each required landscaped area. Include a listing of water usage type, or hydrozone, for each plant type. List plant materials in groupings of trees, shrubs, and ground cover plants. Show both common names and botanical names.
 - c. List plant materials in groupings of trees, shrubs and ground cover plants. Show both common names and botanical names of plants.
 - d. The Landscape Plan shall include a note that "All plantings and irrigation shall be maintained by the property owner and in any case where a required planting has not survived the property owner shall be responsible for replacement with equal or better plant materials."
 - e. Provide a water-efficient Irrigation Plan, noting compliance with the Water Conservation standards of Sec. L-II 28.7.B. including the use of soil amendments.
9. Trees and resident species shown for retention (in proximity of the improvement area) shall be incorporated into the grading improvement and landscape plans, including methods to be employed for tree retention and preservation.
 10. Prior to final occupancy of each phase, the landscape architect shall verify that all plant materials have been established pursuant to the approved plan.
 11. Prior to occupancy the applicant shall contact the Planning Department for a field inspection to verify all Conditions of Approval and ordinance requirements have been satisfied. Fees for such inspection shall be applicable on the project building permit or at the time of request if no building permit is required.
 12. Prior to initiating any land disturbance or final map recordation, whichever occurs first, the applicants shall sign and file with the Nevada County Planning Department an indemnity agreement, approved by the County Counsel, which shall be substantially in the following form:

“The applicants shall defend, indemnify, and hold harmless the County and its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, and employees to attack, set aside, void, or annul this approval or any prior or subsequent project-related approvals or conditions imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning this project, or to impose personal liability against such agents, officers, or employees resulting from their involvement in the project, which claim, action, or proceeding is brought within the time provided by law, including any claim for private attorney general fees claimed by or awarded to any party from County. The County shall not be required to but may, within its

unlimited discretion participate in the defense of any such claim, action, or proceeding in good faith at its own expense. The applicants shall not be required to pay or perform any settlement of such claim, action, or proceeding unless the settlement is approved by the applicants. The applicants' obligations under this condition shall apply regardless of whether any permits or entitlements are or have been issued under this project.

Building permits shall not be issued unless and until the applicants have complied with this condition.

D. ENVIRONMENTAL HEALTH

Prior to building permit issuance:

1. Prior to building permit issuance of any food facilities, underground fuel storage tanks, bulk hazardous material storage facilities or any hazardous waste generators, the applicant shall submit plans and permit applications to the Nevada County Department of Environmental Health Department. Submitted plans shall be in accordance with the California Retail Food Facility Law, California Health and Safety Code Chapters 6.5 through 6.95 and the related State and County regulations as applicable. Applicants that qualify for these types of permits are strongly advised to contact Environmental Health early in the project design.

Prior to occupancy:

2. Any food facilities, underground fuel storage tanks, bulk hazardous material storage facilities or any hazardous waste generators, shall secure an annual certificate of operation (Health Permit) as applicable.

In upholding the Planning Commission approval in the appeal filed by South County Citizens for Smart Growth on November 20, 2009, and modifying three of the project Conditions of Approval in the appeal filed by KKP Lake of the Pines, LLC on November 20, 2009, the actions on these two appeals sustains and does not modify the Mitigation Monitoring Program as approved by the Planning Commission. The Board of Supervisors adopted the updated CEQA Findings of Fact, which includes the Statement of Overriding Conditions, in support of these decisions.

Construction pursuant to this permit approval must be completed and the use commenced thereon within three (3) years from the effective date of this approval of the permit, which would be April 13, 2013, unless an extension of time for reasonable cause is requested prior to the expiration date, and granted by the Planning Commission pursuant to Section 5.10 of the Nevada County Land Use and Development Code. If no extension is granted, the permit shall become null and void, as to the portion of the approved use not completed.

Sincerely,



CATHY R. THOMPSON
Clerk of the Board

CRT:drl

cc: Jory Stewart, Planning Director
Doug Farrell, Director of Public Works
Brian Washko, Chief Building Official
Mark Miller, Director of Sanitation
Wesley Nicks, Director of Environmental Health
Nevada County Fire Marshal
Higgins Area Fire Protection District
Nevada Irrigation District
Nevada County Resource Conservation District
Northern Sierra Air Quality Management District
Central Valley Regional Water Quality Control Board
Attorney James Moose, Thomas, Moose, & Manley, Sacramento
Attorney Keith G. Wagner, Lippe Gaffney Wagner, LLP

2020 Events Calendar

JANUARY

- 13** CALAFCO University course (Orange County)
- 17** CALAFCO Legislative Committee (Irvine)
- 21-23 CA Assn. of Sanitation Agencies Conference (Indian Wells)
- 22-24 League New Mayor & Council Academy (Sacramento)

FEBRUARY

- 21** CALAFCO Board of Directors Meeting (San Diego)

MARCH

- 5-8 Local Government Commission Ahwahnee Conference (Yosemite)
- 6** CALAFCO Legislative Committee (Sacramento)
- 12 Assn. of CA Water Agencies Legislative Symposium (Sacramento)
- 25-27** CALAFCO Staff Workshop (Newport Beach)
- 31 Fire District Assn. Annual Meeting (Napa)

APRIL

- 1-3 Fire District Assn. Annual Meeting (Napa)
- 3** CALAFCO Legislative Committee (San Diego)
- 22 League of Cities Legislative Day (Sacramento)

MAY

- 1** CALAFCO Board of Directors Meeting (Sacramento)
- 5-8 Assn. of CA Water Agencies Conference (Monterey)
- 8** CALAFCO Legislative Committee (Conference call)
- 19-20 CA Special Districts Assn. Legislative Days (Sacramento)
- 27-28 CA State Assn. of Counties Legislative Days (Sacramento)

JUNE

- 12** CALAFCO Legislative Committee (Conference call)
- 17-18 League Mayor & Council Executive Forum (Monterey)

JULY

- 17** CALAFCO Legislative Committee (Conference call)
- 24** CALAFCO Board of Directors Meeting (San Diego)

AUGUST

- 12-14 CA Assn. of Sanitation Agencies Annual Conference (Squaw Valley)
- 24-27 CA Special Districts Assn. Annual Conference (Palm Desert)

SEPTEMBER

- 16-17 Regional Council of Rural Counties Annual Conference (Napa)

OCTOBER

- 2** CALAFCO Legislative Committee (2021) (Conference call)
- 7-9 League Annual Conference (Long Beach)
- 21-23** CALAFCO Annual Conference (Monterey)
- 22** CALAFCO Annual Business Meeting (Monterey)
- 23** CALAFCO Board of Directors Meeting (Monterey)

NOVEMBER

- 6** CALAFCO Legislative Committee (2021) (Sacramento)
- 13** CALAFCO Board of Directors Meeting (Sacramento)

DECEMBER

- 1-4 CA State Assn. of Counties Annual Conference (Los Angeles)
- 1-4 Assn. of CA Water Agencies Conference (Indian Wells)

Sharing Information and Resources

CALIFORNIA ASSOCIATION OF
LOCAL AGENCY FORMATION
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Local Agency Formation Commission of Nevada County

950 Maidu Avenue

Nevada City, CA 95959

Phone 530-265-7180 or 888-846-7180

Date: January 16, 2020
To: LAFCo Commissioners
From: SR Jones, Executive Officer
Subject: Executive Officer's Activity Report

This activity report is for the period from mid-November, 2019.

1. Grass Valley: Sphere Amendment and Annexation of Lyman Gilmore and Scotten Schools

Following the Commission's approval of this annexation and completion of the reconsideration period, LAFCo staff is preparing to record the annexation with the County and file it with the State Board of Equalization.

2. Nevada Irrigation District: East Bennett Street Properties

Following the Commission's approval of this annexation, NID and LAFCo staff have discussed the feasibility of annexation of two 'islands' located in the vicinity of this annexation area. The District indicates it plans to proceed this year with a proposal to address these properties. Several other island areas have been identified (in the vicinities of Osborne Hill, John Born Road, and off Highway 49) and NID staff will be researching the cost of mapping these areas to determine a budget for proceeding. LAFCo staff is therefore completing the annexation process by recording the East Bennett Street annexation with the County and filing it with the State Board of Equalization.

3. County Sanitation District: Higgins Marketplace

An application for annexation to the County Sanitation District was submitted by the developer of the Higgins Marketplace project in the Lake of the Pines area. The development project itself was approved by the County in 2009, and the conditions of approval require annexation to the County Sanitation District for public wastewater service. The County Sanitation District has provided a will serve letter and plan for services from the District. LAFCo staff has completed review of the proposal and prepared a report, including recommendations for approval, and scheduled the matter for the Commission's consideration at today's meeting.

4. Ethics Workshop

LAFCo will host its annual Ethics Training on February 5, 2020 from 5 to 7pm. This training session helps local officials meet the requirements of AB 1234, which requires public officials to receive a two-hour training on ethics (covering Open Meeting Law, Conflicts of Interest and other related topics) every two years. The training is free and offered as a courtesy to local officials and interested members of the public. This year, the session will be presented by David Ruderman (senior counsel at Colantuono, Highsmith and Whatley and attorney for the City of Lakeport, Yuba and Calaveras LAFCos) and Kit Elliott (County Counsel for Nevada County).

5. Nevada Irrigation District: Authority to Provide New Service

The District had been exploring the potential for acquisition of the regional retail power distribution assets of Pacific Gas and Electric Company in response to PG&E bankruptcy proceedings. In order to begin providing the new service of retail power distribution, the District would need to apply to LAFCo and obtain authorization. At its December 11, 2019 meeting, the NID Board opted not to proceed with these efforts.

6. Western County Fire Reorganization Discussions

Following the completion of a polling process to determine the interest of the public in financing an expanded level of service, these discussions have been discontinued.

7. Upcoming LAFCo Projects & Proposals (most previously listed)

• **Grass Valley: Southern Sphere Annexation**

Grass Valley staff has been working to obtain grant funding to support a project that would include annexation of the "Southern Sphere Annexation Area," which is a large area located south of the City on the east and west sides of Highway 49, including a portion of Berriman Ranch and the industrial properties along La Barr Meadows Road. The grant funding (SB 2) is intended to help local jurisdictions with planning efforts in support of promoting residential housing projects. City has already prepared a Draft EIR for this project, but will now prepare a Supplemental EIR. Tentatively, this project may be presented for Commission review later this year (i.e. in 2020).

• **Nevada City Sphere of Influence Plan Update**

LAFCo has contracted with consultant Kimley Horn to prepare a program Environmental Impact Report for the sphere update. Staff is now reviewing the chapters of the administrative draft EIR and will be working closely with Nevada City staff as the process moves forward.

• **Western County Wastewater Agencies Sphere of Influence Updates**

In November 2018, the Commission considered a draft update to the sphere of influence plans for the County Sanitation District and the Kingsbury Greens Community Service District, and directed staff to identify an environmental consultant to prepare a CEQA compliance document for the sphere updates. Subsequently, the Commission authorized a contract with environmental consultant Kimley Horn for preparation of an initial study of the environmental impacts of the sphere updates. This work is expected to be completed within the coming months and will be presented to the Commission in conjunction with a public hearing for completion of the sphere of influence plan updates.

• **Nevada Irrigation District Sphere of Influence Plan Update**

The District plans to apply to LAFCo for a sphere of influence amendment and is preparing an Environmental Impact Report that will review both the sphere amendment and update. LAFCo staff and counsel have been working with the District to ensure the EIR adequately addresses the issues critical to LAFCo's determinations. The District is proposing that three areas be added to the sphere of influence: 1) 5,120 acres in the Cascade Shores/Banner Mountain area, which can be served by a newly installed treated water pipeline connecting the Cascade Shores area to the Elizabeth George treatment plant on Banner Mountain; 2) 702 acres located along Dog Bar Road, a 'pocket area' that is surrounded by the District's boundaries on three sides; and, 3) 1,640 acres north of Lake Wildwood, also a 'pocket area.' NID's boundaries and service area include large portions of western Nevada and Placer counties. Consequently, Placer LAFCo has been closely involved in the environmental review and sphere plan report process.