Rise Grass Valley Inc.
333 Crown Pt Circle, Ste 215
Grass Valley, CA 95945 USA

Nevada County Board of Supervisors
950 Maidu Avenue
Nevada City, CA 95959

1 June 2023

RE: Planning Commission Hearing for Idaho-Maryland Mine Project

Dear Nevada County Board of Supervisors:

Rise Grass Valley, Inc. ("Rise") is writing to you as community leaders and elected officials of Nevada County (the "County"), to make you aware of the results of our initial investigation into recent events relating to the Idaho-Maryland Mine Project (the "Project") including the Planning Commission hearing (the "Hearing") for the Project. We have evidence that certain parties have conspired to co-opt public agencies to pressure the Board of Supervisors ("Board") to vote to deny the Project at the future Board hearing. Their illegitimate tactics include adding last minute surprise findings in the Staff Report, submittal of comment letters at the last possible moment with the intention to deny the opportunity to respond, modification of documents by Project opponents intended to cause confusion, misrepresentation of documents as new information, and using the weight and trust of public agencies to transmit comment letters drafted by private opponents of the Project, all of which were intended to attack the County's Final Environmental Impact Report ("EIR") for the Project.

The Hearing took place on May 10 and 11, 2023. Based solely on the public record, there have been egregious violations of the County's ethics training and adopted policies for conducting the business of Board-appointed bodies. These violations amount to a near complete disregard of Rise's constitutionally-protected due process rights, as well as Brown Act violations.

These seemingly concerted efforts to thwart the Project culminated at the Hearing. However, the biased actions throughout the permitting and environmental review process beginning in November 2019, as well as actions after the Hearing, demonstrate the commitment of some County employees to ensuring that the Project is denied. While we recognize that the biased actions of the Planning Commission and other County representatives throughout the Project entitlement process do not necessarily reflect the manner in which the Board will consider the Project, we are concerned that the demonstrably biased disposition may influence the Board's decision. As such, we respectfully request that the Board publicly disavow the Planning Commission's recommendation to deny the Project and disregard it when deliberating whether to approve or deny the Project. Ensuring that all projects are reviewed impartially, without bias, and according to both the law and the ethical standards enshrined in the County's ethics policies, is essential for the Board as the highest decision-making body within the County.

I. A Fair, Unbiased, and Impartial Hearing is Constitutionally Required When the County is Considering a Project at Any Level.

Both the federal and State Constitutions guarantee the right to due process of law.[1] This Constitutional right to due process requires a fair tribunal, and has been interpreted to apply to local agencies' (e.g., the County) decisions on land use permits.[2] A fair tribunal requires that the decision-making process – including all decision-makers – be impartial, noninvolved, and unbiased for or against a project proponent and/or project.[3]

Notably, the rule against biases "has been framed in terms of probabilities, not certainties."[4] The law does not require that a party prove actual bias, but must instead only prove "an unacceptable *probability* of actual bias" on the part of the decision-making process.[5] Thus bias, either actual or an "*unacceptable probability*" of it, alone, is enough to show a violation of the due process right to a fair hearing.[6] Where there is a probability of actual bias during the decision-making process, the decision must be vacated.[7]

Here, there is evidence of organized opposition between County representatives and community organizations prior to the Hearing to influence the Planning Commission's decision, and the coordination of testimony and specific talking points. Further, Planning Commissioner Terry McAteer knowingly presented false and inaccurate evidence and testimony, waited to present evidence and additional testimony until after public comment was closed, failed to afford Rise an opportunity to rebut or clarify such false or inaccurate evidence and testimony, failed to disclose new evidence prior to the Hearing, failed to introduce evidence until after the close of public comment, and utilized prepared remarks (i.e., a script) to recommend Project denial.

Courts have consistently found that the actions above constitute a violation of due process. For example, in *Petrovich Development Company LLC v. City of Sacramento*, the court found a developer was denied a fair hearing as to his request for a CUP to operate a gas station where a councilmember prepared opposition talking points in advance of the hearing, attempted to persuade his colleagues to vote against the project, coordinated with the mayor on how to manage the hearing, and coached local project opponents on how to oppose developer's appeal of the council's decision.[8] Similarly, in *Woody's Group, Inc. v. City of Newport Beach*, the court held that a councilmembers actions consisting of reading a set of remarks into the record prepared prior to the hearing and after the close of public comment established an unacceptable probability of actual bias, and was ordered to vacate the order.[9] In *Nasha v. City of Los Angeles*, a commissioner's pre-hearing actions, authorship of a newsletter speaking against a housing

[1] See U.S. Const., amend. XIV, § 2; Cal. Const., art. I, §§ 7, subd. (a), 15.
[2] See *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 736–737; *Withrow v. Larkin* (1975) 421 U.S. 35, 46; *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482-483.
[3] See *Nasha*, *supra*, 125 Cal.App.4th at p. 483; *People v. Harris* (2005) 37 Cal.4th 310, 346; *Haas v. County of San Bernardino* (2002) 27 Cal.App.4th 1017, 1025; *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021.
[4] *Woody's Group, Inc., supra,* 233 Cal.App.4th 1012, 1021–1022, underline added.
[5] *Ibid.*; *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236.
[6] E.g., *Cohan v. City of Thousand Oaks*, (1994) 30 Cal.App.4th at p. 559.
[7] *Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 969–970; *Nasha*, *supra*, 125 Cal.App.4th at p. 486; *Woody's Group, Inc., supra,* 233 Cal.App.4th at p. 1027.
[8] *Petrovich*, *supra*, 48 Cal.App.5th at pp. 969–970.
[9] *Woody's Group, Inc., supra,* 233 Cal.App.4th at p. 1027.

development at issue during planning commission proceedings, violated the developer's right to a fair hearing, and required the order to be vacated.[10]

Finally, in an eerily similar circumstance to the one at hand, in *Clark v. City of Hermosa Beach*, a councilmember met in private with other councilmembers before the public hearing, and raised new concerns after the close of public comment upon which the council then based its denial of the project.[11] Notably, the court found that a hearing "based upon information of which the parties were not apprised and which they had no opportunity to controvert" amounted to a hearing "in form but not in substance."[12]

Consistent with Constitutional due process guarantees to a fair, unbiased hearing, the County has likewise imposed requirements that its decision-makers (e.g., Planning Commissioners and Supervisors) remain unbiased when conducting hearings and rendering decisions on land use permits. In particular, the County requires that its decision-makers participate in and complete extensive ethics training on this subject prior to taking office.[13] This training provides that "as a decision-maker, the public expects County representatives to be impartial and avoid favoritism" and that allowing "a biased decision maker to participate in a decision is enough to invalidate the decision."[14]

II. The Biases Against the Project were Evident Prior to the Hearing.

A. The County was Biased During the Environmental Review and Permitting Process

As the Project went through the environmental review process, Rise has consistently sought to address both the County's and public's concerns regarding the Project's potential environmental impacts, and has worked collaboratively with various local agencies to ensure the Project has a net benefit for the County and local community. However, Rise's efforts to fulfill agency demands or requests were all too often met with resistance from the County, belying an intent to stonewall the Project as opposed to a genuine effort to produce a thorough EIR.

In addition, throughout the environmental review process, the County consistently delayed key milestones and disregarded statutory deadlines set forth pursuant to CEQA.[15] These delays were numerous, lengthy, and without good cause, cumulatively causing years of delay and substantially and

[10] *Nasha*, *supra*, 125 Cal.App.4th at pp. 484, 486.
[11] *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1163-1164, 1168, 1171-1172.
[12] *Id*. at pp. 1171-1172.
[13] Nevada County, *Committees and Commissions*, available at: https://www.nevadacountyca.gov/882/Committees-Commissions.
[14] Nevada County, AB 1234 Ethics and Brown Act Training Presentation, *Ethics and Public Service, Laws and Principles* at slides 36-37, available at: https://www.nevadacountyca.gov/DocumentCenter/View/35218/Brown-Act-and-AB-1234-Ethics-Training-2020-Kit-Elliott (underline added).
[15] The most egregious of the County's delays included: (1) taking approximately 6 months to commence work on the EIR; (2) a 5-month delay for the County to complete comments on traffic impact studies; (3) 6 months to review the Administrative Draft EIR (4) a 10-month delay to finalize the Administrative Draft EIR; (5) nearly 12 months to meet with Rise regarding County questions on the aesthetics report; (6) a 21-month delay to discuss County questions with Rise regarding the cultural report; (7) nearly 10 months to finalize and release the Draft EIR for public comment; (8) required a 3-month public comment period for the Draft EIR, in excess of the maximum 60-day statutory review period; (9) 7 months to complete the Administrative Final EIR; (10) and over 8 months to finalize the Administrative Final EIR.

unnecessarily increasing costs. Considered within the context of the County's other actions, the extremity of this drawn-out process appears to rise to a level of intentionality.

Unlike any other project considered by the County, the County Executive Team also commissioned an economic study, prepared by Robert D. Neihaus, Inc. ("RDN Economic Study") and released on November 15, 2022, as part of the decision-making process. The RDN Economic Study was designed to assess the Project's potential impacts on real estate, with a clear focus on proving that the Project would negatively impact neighboring property values. To Rise's knowledge, no other project in the County has been subjected to similar treatment. Although the County required the economic consultant to interview a litany of non-experts, including project opponents and local real estate agents, the economic report ultimately supported Rise's claims of a positive economic effect on the County. The RDN Economic Study confirmed that the Project would not negatively affect property values.[16]

Actions taken by the County prior to and after the release of the RDN Economic Study also support an inference of bias. While the County seemingly aimed to utilize the RDN Economic Study to broadcast negative economic impacts, it sent the report back to RDN for "revisions" before releasing it to the public, and even after the release, was reluctant to share information supporting the Project's economic benefit.[17] Rise notes that economic factors are not considered under CEQA.[18] Therefore, any economic review is intended to be restrictive. The extent to which the County mined for negative economic data was unusual in the context of both normal project review and CEQA.[19] Rise also understands that after the Hearing, the County extended Robert D. Niehaus' contract without a clear explanation as to the scope of additional work.

In addition, the County published its Staff Report prior to the Hearing (without first discussing its negative determinations with the applicant as is customarily done) recommending that the Planning Commission certify the Final EIR but deny the application on the grounds that: (1) the height variance findings could not be made; and (2) the proposed rezone is inconsistent with the area's "rural character" pursuant to the County's General Plan designation. These issues had not been raised in the three years since the Project application was first submitted and were in stark contrast to the County's analysis in its own Final EIR, which determined there were no inconsistencies with either the General Plan or the Zoning Ordinance. The dissonance between the Staff Report and the Final EIR's conclusions regarding General Plan and Zoning Ordinance consistencies is seemingly a pretext to justify a recommendation of denial, and was not based on the General Plan or Zoning Ordinance consistency.

[16] Robert D. Niehaus Economic Report at p. 6, available at: https://www.nevadacountyca.gov/DocumentCenter/View/46101/Economic-Impact-Report_Final.

[17] For example, the executive summary of the RDN Economic Study downplayed the total tax benefits of the Project stating that the only fiscal impact was to the County's General Fund, while the total economic benefit of the Project – a key metric generally included in an executive summary – was buried on page 65.

[18] Cal. Code Regs. tit. 14 § 15131; Cal. Pub. Res. Code § 21000 *et seq*. (CEQA's sole purpose is to inform decision makers and the public about potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible.).

[19] *Ibid*. (providing that "[t]he intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect [between economic changes and physical changes]. The focus of the analysis shall be on the physical changes").

B. Organized Project Opposition Between County Agencies and Anti-Mine Community Groups Demonstrate Biases.

Evidence of organized Project opposition between County representatives and community organizations prior to the Hearing is evident based on statements made by Nevada Irrigation District ("NID") Director Ricki Heck, NID Director Rich Johansen, NID General Manager Jennifer Hansen, and Wells Coalition members at NID Board meetings. In addition, social media posts made by NID members[20] as well as NID's comment letter,[21] indicate NID's strong opposition to the Project and coordination with various levels in the County. NID General Manager, Jennifer Hansen, provided testimony at the Hearing (discussed in greater detail below) purportedly to objectively discuss the Project's impact to local groundwater. However, pre-Hearing statements made at NID Board meetings, and NID's comment letter indicate that NID coordinated with Project opponents.

In addition, Rise notes that documents received from Inyo County indicate that Commissioner McAteer coordinated with NID staff, including Ricki Heck, regarding Hearing testimony,[22] personally reached out to Project opponents to discuss opposition and planned comments during the Hearing,[23] was involved in organizing County public school participation opposition for the Hearing,[24] coordinated with NID regarding NID's testimony,[25] and affirmatively reached out to engage with community opposition groups, including Charles Brock of Concerned Citizens Roundtable, the Wells Coalition, MineWatch, Community

[20] For example, NID Director Ricki Heck reposted a MineWatch advertisement on April 14, 2022, stating: "[h]elp us show Nevada County decision makers this community's overwhelming opposition to reopening the Idaho-Maryland Mine." NID Director Heck also published comments on social media outlets several times, on October 11, 2022, stating: "If you have questions about which candidate will best represent our neighborhoods in the sphere of the Rise Gold Mine, please read the following article from CEA." The referenced article provides guidance as to which candidate is most likely to vote against the Project, and recommends Supervisor Swarthout.; Heck again posted on September 28, 2022, recommending Supervisor Swarthout as the best pick for Supervisor due to her sentiment opposing the Project.

[21] Robert Hubbard of the Wells Coalition Public Comment to NID Board on March 22, 2023. "We've prepared a document for your staff that includes two things. First part is a summary or our key recommendations. Second is a draft of a comment letter that NID might write."

[22] Email from NID Director Ricki Heck to Commissioner McAteer on May 9, 2023, sent a day before the hearing, stating that NID's comment letter, previously sent for Commissioner McAteer's "review and consideration" was "in [his] docket for questioning."

[23] Email chain from Project opponent Gary Pierazzi with the Wells Coalition to Commissioner McAteer on May 13, 2023, apologizing to Commissioner McAteer for not being able to attend the celebration for Project denial at the National Hotel on Thursday May 11, 2023, and thanking Commissioner McAteer for reaching out and inviting project opponents to present concerns about the Project. This email chain specifies that the meeting regarding Project opposition with the Wells Coalition took place at Commissioner McAteer's residence.

[24] Email from Project opponent James Blair to Jeff Johnson on May 4, 2023 with Commissioner McAteer blind copied. The email discusses that students will be able to receive an excused absence for attending the Hearing and lend support in opposition to the Project. The fact that Commissioner McAteer is blind copied on this email indicates that his participation was meant to be concealed.

[25] Email from Wells Coalition president Christy Hubbard to Commissioner McAteer on Apr. 13, 2023, providing a "preview of the Comment letter we'll be delivering on May 10."; Email from Project opponent Francis Hamilton Commissioner McAteer only, and not any other commissioners, regarding thoughts on the Project's impact to their well; Email from Rondal Snodgrass to Tim Ogburn with Commissioner McAteer carbon copied on Mar. 28, 2023 detailing specific instructions regarding opposition strategy for testimony.

Environmental Advocates Foundation ("CEA"), Sierra Fund, SYRCL, Wolf Creek Alliance, and the Sierra Club to strategize anti-Project testimony at the Hearing.[26] NID's coordination and influence with County employees was explicitly stated by NID Director Rich Johansen at an NID Board Meeting on April 26, 2023. Mr. Johansen's comments specifically address the need to craft talking points in opposition to the hydrological analysis as "it's the one thing that has sunk other mines,"[27] and that their talking points could be used to sway the Planning Commission's decision, as "both Ricki and I have been on the Nevada County Planning Commission […] and we have a pretty good relationship with those who took our place."[28]

The County also took actions to exclude supporters of the project from speaking during public comment. Before the hearing, Rise asked the County to implement a system with fair distribution of speaking tickets. The County refused and stated verbally and by formal notice that the speaking tickets would be distributed at 8:30AM[29]. Instead, the County distributed speaker numbers at 7:00AM to project opponents[30] ensuring that over seventy community members, a number of whom had taken the day off of work, could not speak in favor of the project at the hearing.

As further illustrated above, the County's actions prior to the Hearing demonstrate that some County employees were, at a minimum, biased. These actions are inconsistent with Constitutional guarantees to a fair hearing conducted by impartial, unbiased, and uninvolved decision-makers, and violated the County's own policies regarding hearing procedures.

III. Members of the Planning Commission's Biases During the Hearing were on Display.

A. Inaccurate Evidence was Presented Without Opportunity for Rebuttal.

Throughout the two-day Hearing, Commissioner McAteer consistently took actions that demonstrated a clear bias against the Project. As discussed below, these actions included testifying instead of deliberating, presenting false and inaccurate evidence during the Hearing, waiting to present evidence until public comment was closed, failing to afford Rise an opportunity to rebut or clarify the false or inaccurate evidence and testimony, failing to disclose new evidence to Rise or County Staff prior to the Hearing, and appearing to utilize prepared remarks (i.e., a script) to recommend Project denial.

One instance of Commissioner McAteer introducing inaccurate evidence, during Rise's presentation, for the purpose of rebutting the County's own economic report and conclusions of the EIR, can be seen in his

[26] Email from Commissioner McAteer to Gary Pierazzi of the Wells Coalition on Jan. 29, 2023, requesting "time to chat with me about your concerns regarding the mine project." Commissioner McAteer specifically reached out to Project opposition groups and arranged for a private meeting at Commissioner McAteer's private residence to discuss Project opponent concerns.
[27] NID Board Meeting - Jan 25th 2023 – 1:32:39 minute mark, available at: https://www.youtube.com/watch?v=qeQsv9OzJ2k.
[28] NID Board Meeting – April 26th, 2023 – 53:52 minute mark, available at: https://www.youtube.com/watch?v=MoqsZD9zpwE&t=3171s.
[29] https://www.nevadacountyca.gov/DocumentCenter/View/47688/2023---Idaho-Maryland-Mine-Notice-of-Public-Hearing
[30] https://www.youtube.com/watch?v=7M8Ivs6qp_U

comments on the Project's benefits. Specifically, when Rise's representative was discussing the Project's benefit of generating tax revenue for, among other things, the County's public schools, Commissioner McAteer disputed that there was any benefit, drawing on his "personal experience as a County School District Superintendent." Unfortunately, he ended up contradicting the County's own published data regarding the use of tax dollars,[31] stating that, "One thing I can talk about having been the school superintendent I can attest to how schools are funded […] So there will be no, and I want to make that clear, there are no tax benefits to schools in this county by this project."[32]

As illustrated by Commissioner McAteer's statement, he effectively testified as an expert witness in a matter he would ultimately cast a vote on instead of asking questions or deliberating on the information presented, in contravention to his role as a neutral decision-maker. Further, Commissioner McAteer's statements were factually incorrect. While Commissioner McAteer challenged the accuracy of the data presented, the data in question is from the County's own Auditor-Controller, and not from the RDN Economic Study as he intimated.[33] Second, because the County is composed of school districts that receive revenue based on both the Local Control Funding Formula ("LCFF") as well as Basic Aid (the two main methods by which California public school districts receive funding), increased property tax revenue generated by the Project would still go to those school districts, and would be of substantial benefit to the County. [34] This directly contradicts Commissioner McAteer's own "expert testimony." Given Commissioner McAteer's experience as County Schools Superintendent, it is almost certain he was aware of the falsity of his statements.

In addition, Commissioner McAteer instructed County Staff to request NID General Manager, Jennifer Hansen, to return to the second day of the Hearing to allow him to question her regarding the impact of the Project on groundwater and elicit misleading testimony to create doubt and confusion on the County's own conclusions in its EIR. Ms. Hansen had previously testified on May 10th (the first day of the Hearing) for the sole purpose of delivering the NID Board's comments on the Project. However, Commissioner McAteer personally requested that County staff ask Ms. Hansen to return on May 11th and, after waiting

[31] Notably, Commissioner McAteer's experience as a School Superintendent does not qualify him to be a tax or public funds expert, as he represented.

[32] Planning Commission Hearing, 3:11:22 minute mark (May 10, 2023), available at: https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s (underlines added).

[33] County of Nevada, 2022-2023 1% Ad Valorem Distribution, available at: https://nevadacountyca.gov/ArchiveCenter/ViewFile/Item/1397; County of Nevada, Estimated Distribution of 1% Ad Valorem Property Taxes (2022-2023), available at: https://nevadacountyca.gov/ArchiveCenter/ViewFile/Item/1396.

[34] California sets a minimum base funding level for public school districts, but the method by which those base levels are met differs depending on the property tax revenue available in those districts. School districts that do not have enough property tax revenue to meet the minimum base funding level receive supplemental funding from the State through the LCFF to meet that baseline. However, school districts that have property tax revenues that exceed the minimum base funding level do not receive funding through LCFF and retain the majority of their surplus property tax revenue. Because the County has several school districts that are Basic Aid (community funded) districts, increased property tax revenue generated by the Project would still go to those school districts, and would be of substantial benefit to the County. Only a small portion (11.7%) of the County's property tax revenue is allocated for the Education Revenue Augmentation Fund, which redirects a portion of property taxes statewide to local school districts.

until the public comment had been closed by the Planning Commission chair so as to preclude Rise from rebutting Ms. Hansen's statements, utilized Ms. Hansen as an "expert witness" to attack the groundwater analysis of the Final EIR (which had undergone review by three independent hydrogeological firms, one of which worked exclusively for the County). Ms. Hansen, who is not a geologist or a hydrologist, explicitly acknowledged that she was ***not*** an expert and not familiar with the data, stating in relevant part:

> *I can't speak to the modelling. I have not personally reviewed the modelling outputs, the calibration, or the assumptions that have been made…*
>
> *I would not say that I am by any means an expert in their technical studies that were completed in this particular project…*[35]

Despite this admission, Commissioner McAteer represented Ms. Hansen's testimony on hydrologic impacts as expert opinion and precluded the three hydrology experts in attendance from commenting on this issue.

Commissioner McAteer continued to discuss the adequacy of the EIR as related to the Project's potential impacts on groundwater. Throughout this discourse, County consultant Nick Pappani of Raney Planning and Management, Inc., who prepared the Project's EIR, attempted to provide clarification in response to Commission McAteer's questions and comments. Commissioner McAteer, however, refused to allow Mr. Pappani that opportunity.

Although County consultant Nick Pappani offered to provide insight as to a comparison of the two well monitoring methodologies, Commissioner McAteer was not amenable to discussion, and did not permit Mr. Pappani, Rise, County Staff, nor the hydrological experts in attendance to comment. Instead, Commissioner McAteer argued with Mr. Pappani, and became angry, incoherently stating, "It doesn't ok it just doesn't ok. You know like poop happens" clearly failing to allow Rise or consultants to rebut or clarify false or misleading evidence. His inaccurate statements inappropriately swayed deliberations.

B. The Planning Commission Relied on Impermissible Evidence.

1. *The Planning Commission Relied on a Retracted Northern Sierra Air Quality Management District Letter.*

The Planning Commission relied on known inaccurate and impermissible evidence, including a retracted letter from the Northern Sierra Air Quality Management District (the "Air District"), as well as a geotechnical report and magazine article that were introduced as "new" evidence *after* the close of public comment.

The letter in question was originally submitted by the Air District on April 4, 2022, 13 months *before* the Hearing, and had been retracted a year prior to the Hearing by the Air District due to its factual inaccuracies and highly prejudicial and subjective tone. The author of the letter subsequently left the Air

[35]Planning Commission Hearing (May 11th 2023) – 6:04:00 minute mark, available at: https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s.

District for reasons unknown to Rise, although Rise can speculate. Although Commissioner McAteer was aware the letter had been retracted, he falsely stated that the letter had been submitted on May 8, 2023, two days prior to the Hearing and one year after it was retracted. Commissioner McAteer then relied on the letter as evidence that the EIR was insufficient, inaccurate, and therefore could not be certified.[36]

Thereafter, County consultant Nick Pappani asked Commissioner McAteer to clarify which letter he was reading from. But because Commissioner McAteer presented the letter as a new piece of evidence, Mr. Pappani was confused regarding the information contained in the letter and was not able to address Commissioner McAteer's comments. When Mr. Pappani requested assistance from experts in attendance to address Commissioner McAteer's concerns, Commissioner McAteer refused to allow them to explain or answer questions. Upon later review, the letter Mr. McAteer was reading from had just been resubmitted by a Project opponent a few days before the Hearing under a different name and date, with a forged agency signature, and was used to support false statements as to air quality impacts. Rise can only speculate as to who forged the agency's signature and why Commissioner McAteer misrepresented what the letter was and where it came from.

2. Geotechnical Report Submitted After Close of Public Comment

The Planning Commission relied on an unsubstantiated geotechnical report to bolster an opposition argument that a fault line would cause impacts to the Project. The EIR examined the issue closely and concluded that the Project was not located on a seismically active fault. However, Commissioner McAteer led the public to believe that he secretly possessed and then introduced, *only after* the close of public comment, a geotechnical report prepared by Anderson Geotechnical Consulting, discussing the Project's impact to fault lines that Commissioner McAteer reportedly received from a "friend."[37]

Neither County Staff nor Rise were given the opportunity to review this report before or during the Hearing. Nor was Rise made aware of its existence prior to its introduction at the Hearing. Commissioner McAteer attempted to utilize the geotechnical report to support the contention that the EIR did not properly analyze the Project's potential impacts associated with seismic activity as the EIR did not discuss the presence of a fault—all of which was untrue. Commissioner McAteer stated that the report provided evidence that the epicenter of a nearby Sierra Fault has been known to cause earthquakes in the magnitude of 5 to 6.[38] Additionally, Rise was not given an opportunity to refute this evidence nor provide

[36] Planning Commission Hearing, 6:43:00 minute mark (May 11, 2023), available at: https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s (stating, "I like [sic] to move to asbestos for a second. The Northern Sierra Air Quality Management District, I'll just call them air quality, recommend and I quote from their recent letter [quotes 2 paragraphs from retracted letter]. How do you respond my friends from the EIR to that statement from the Air Quality District?").

[37] Commissioner McAteer stated: "'The report was not located by public records review and was not available from the firm that substantially acquired the report." [McAteer quoting the EIR] Well here's the report. Here [sic] the report dated May 12. Now that what [sic] if you live in this community long enough you find these things from friends."

[38] Commissioner McAteer stated that the "California Geology magazine of August 1978 […] denotes […] that the epicenter for the Sierra faults is where essentially right near the center of Nevada city and Grass Valley. Is that a

expert testimony to address the purported environmental impacts at issue (i.e., seismic impacts). It is important to note that Commissioner McAteer's screed regarding the "Sierra Fault" was given in the context of a false narrative created by project opponents earlier in the Hearing that an earthquake will drain the area's wells due to the presence of the fault, and that all the faults are connected to each other. Again, no evidence was provided substantiating this claim (rather, the opposite), and no opportunity was given to County Staff or technical consultants to respond to the impermissibly submitted and entirely inaccurate "evidence."

Similar to the Air District letter, upon later review of the comment letters submitted immediately before the Hearing, it was determined that the report Commissioner McAteer said was unavailable was actually the Anderson Geotechnical Report that was part of the County's EIR. This geotechnical report was presented by Commissioner McAteer as new evidence was attached to a comment letter sent by mine opponent Charles Brock, dated April 25, 2023, and marked received by the County on May 8, 2023 just days before the Hearing. The evidence was not new, and had actually been analyzed in the EIR.

In addition to the Planning Commission failing to allow an inspection of the "new" documents or afford Rise, County Staff, the County consultant, or County experts in attendance the opportunity to rebut Commissioner McAteer's statements, Commissioner McAteer's assertions regarding the accuracy of the geotechnical report were indeed provably false based on the very EIR he was deriding as incomplete. This is in stark contrast to Commissioner McAteer's representation that the fault located near the Project is in any way active, or capable of producing an earthquake of 5 or 6 magnitude.

C. Commissioner McAteer Prepared a Script that he Used to Provide Closing Opposition Remarks.

At the close of the Hearing, Commissioner McAteer ignored the conclusions and analyses in the EIR prepared by the County and gave an impassioned speech in opposition to the Project, which he delivered by reading from a prepared document after the close of public comment. This demonstrates that Commissioner McAteer had a predetermined opposition to the Project prior to the Hearing, which is inconsistent with his role as an impartial and unbiased decision-maker, and is factually similar to cases that have invalidated a local agency decision due to bias.[39]

Near the close the Hearing, Commissioner McAteer accentuated his opposition by making extortionate remarks regarding Rise's profit margins, stating that Rise would "make billions." He then used the fact that the Project would generate significant revenue as justification for concluding that Rise had not offered the County "nearly enough" money in return. Commissioner McAteer's remarks amounted to a very public display of extortion in violation of both California and federal constitutions, and served to further inflame tensions in the audience, especially among Project opponents. Considering that the

fair statement commissioners? I'm just reporting what I'm not a geologist. But I am saying that it says in here in the first paragraph, Damaging earthquakes in the magnitude of 5 to 6 have occurred within a portion of the foothill fault system." (underline added).

[39] See e.g., *Petrovich*, *supra*, 48 Cal.App.5th at pp. 969–970; *Woody's, supra,* 233 Cal.App.4th at p. 1027; *Nasha*, *supra*, 125 Cal.App.4th at pp. 484, 486; *Clark*, *supra*, 48 Cal.App.4th at 1163-1164, 1168, 1171-1172.

County has had ample opportunity to converse with Rise regarding any requests outside the four corners of the EIR or provisions in the Development Agreement, this new monetary attack on the Project also appeared highly coordinated.

As demonstrated above, the Planning Commission, and Commissioner McAteer specifically, consistently failed to provide an impartial forum for both Rise and the public during the Hearing. These actions consisted of presenting false and inaccurate evidence and testimony, failing to afford Rise an opportunity to rebut or clarify false or inaccurate evidence, failing to disclose new evidence prior to the Hearing, and appearing to utilize prepared remarks (i.e., a script) to recommend Project denial. This is in contravention to the County's own ethics codes and policies which requires that its decisionmakers exercise impartiality, and avoid favoritism. [40] Taken cumulatively, the actions described above indicate that the Planning Commission failed in its legal duty to remain impartial and trampled on Rise's Constitutional rights.

IV. The Planning Commission's Biases were Further Demonstrated After the Hearing.

Actions taken by Commissioner McAteer after the Hearing also indicate that denial of the Project was a fait accompli, planned prior to the Hearing, and was done in collaboration with opposition groups' efforts to thwart approval of the Project. This is evidenced by the fact that after the Hearing Commissioner McAteer attended a project-denial celebration party at the National Hotel in Nevada City with his wife and NID Director, Ricki Heck, on May 11, 2023, just hours after engineering the Project's defeat. There, he joined a celebration with Project opponents. During this party, Commissioner McAteer was seen celebrating with the opponents and congratulating each other about the Planning Commission's decision to recommend denial of the Project. Photographic evidence of Commissioner McAteer entering the hotel and victory party was taken by an individual at the hotel and was thereafter provided to Rise. Commissioner McAteer's emails confirm his attendance to the victory party.[41]

In addition, Commissioner McAteer engaged in a number of dialogues with Project opponents on the social media platform, NextDoor in the days after the Hearing, where Project opponents directly reached out to Commissioner McAteer thanking him for "leading the charge" and praising him for his "masterful performance" in opposing the Project.[42] Commissioner McAteer responded to a majority of these

[40] Nevada County Committees and Commissions, available at: https://www.nevadacountyca.gov/882/Committees-Commissions; Nevada County, AB 1234 Ethics and Brown Act Training Presentation, *Ethics and Public Service, Laws and Principles,* pp. 36-37, available at: https://www.nevadacountyca.gov/DocumentCenter/View/35218/Brown-Act-and-AB-1234-Ethics-Training-2020-Kit-Elliott (providing that "When you are a public servant, it's not just about our own sense of personal ethics – it's about the public's perception of your ethics. … As a decision-maker the public expects you to be impartial and avoid favoritism. … A biased decision make participating in the decision may actually invalidate the decision."); see also Nevada County 2019 Order and Decorum for Business of all Board-Appointed Bodies, Item 6, available at: https://readynevadacounty.org/DocumentCenter/View/13719/Order-and-Decorum-for-Board-Appointed-Bodies-PDF (providing that "Last minute supporting documents puts members at a disadvantage by diluting the opportunity to study the documents. All late submission of supporting documents must be justified in writing stating the reasons for the late submission, and approved by the Chair.").

[41] Email from Project opponent Gary Pierazzi with the Wells Coalition to Commissioner McAteer on May 13, 2023, apologizing to Commissioner McAteer for not being able to attend the celebration for Project denial at the National Hotel on Thursday May 11, 2023, and thanking Commissioner McAteer for reaching out and inviting project opponents to present concerns about the Project.

[42] See NextDoor posts attached.

comments, stating that it was his pleasure to be able to serve and defend his community. Commissioner McAteer's responses were subsequently deleted on May 15, 2023, which indicates he is aware that the posts were inappropriate and/or demonstrated that he was inappropriately embedded in Project opposition groups.

V. Given the County's Prior Actions, Rise has Legitimate Concerns Regarding the Upcoming Board of Supervisors Hearing.

As illustrated above, the County's actions since the Project application was first submitted in 2019 have demonstrated a clear bias against the Project. Rise's concern that the Board may be deceived and unknowingly fall into this pattern of prejudice is not unwarranted. In our opinion, the entire Planning Commission is now tainted with an unacceptable bias towards our project. With the poisoned Planning Commission recommendation and staff report carried forward to the Board of Supervisors as a matter of procedure, project opponents are attempting to usurp the democratic process by making it difficult for the Supervisors to vote for the Project and setting the stage for an unlawful taking of private mineral property to achieve their political goals. The Planning Commission recommendation should be not be given any weight in any County deliberations or decision-making. Rise looks forward to the Board of Supervisors hearing, with a factual presentation of evidence culminating in a comprehensive, objective, and accurate understanding of the merits of the Project.

These events have caused enormous harm to not only to our Company and Project but also to the reputation of the County of Nevada. Our professional advisors, who have been involved in many projects throughout California, have stated to us that they have never encountered a hearing such as has occurred at the Hearing. The behavior discussed at length above is decidedly in conflict with the County's duty as an impartial decision-making body. This activity violated the succinct instruction by County Council Katherine Elliot in a recent ethics training course: *"When you are a public servant, its not just about your own sense of personal ethics – its about the public's perception of your ethics"*

With respect, Rise requests that the Board of Supervisors review the attached information, conduct your own independent inquiry into these events and take decisive action to clear the County's name. To assist in your review, enclosed is a summary of important issues which came up during the Hearing and our responses, as well as attachments referenced throughout this letter, including several documents presented by members of the Planning Commission and the originals of those documents included in the EIR. This is a partial list of the inaccuracies published and due diligence violations suffered by the Company during the Planning Commission Hearings. We are working diligently to create a complete catalog. The County should actively defend the results of its own Final Environmental Impact Report and Independent Economic Report which conclude that the Project would have no significant impacts to air quality, biological resources, water quality, groundwater, vibration, or noise from operations and deliver substantial economic benefits including hundreds of high paying jobs, millions of dollars per year in new property taxes, and a stronger and diversified local economy.

Rise looks forward to meeting with members of the Board to discuss our Project, the necessity of a fair hearing for the Project, and how Rise can work with the County and the Board of Supervisors in addressing any concerns or questions about our Project.

Sincerely and on behalf of the Board of Directors of Rise Gold Corp,

Ben Mossman
President, Rise Grass Valley Inc.
CEO, Rise Gold Corp.

Encl.

Attachment 1 – Issues and Responses
Attachment 2 – McAteer Nextdoor posts
Attachment 3 – Portion of McAteer emails – Obtained from Public Records Request
Attachment 4 – NSAQMD Letter Dated April 4th 2022 (Agency Letter 12 of the FEIR)
Attachment 5 – James Bair Comment Letter Dated May 8th 2023, including modified NSAQMD letter
Attachment 6 – Rise Response to NSAQMD Letter dated April 12 2022
Attachment 7 – Fault Management Plan – Appendix H.2 of the IMM DEIR
Attachment 8 – Charles Brock Comment Letter Received May 8th 2023
Attachment 9 – Rise Letter to Planning Commission dated May 5th 2023 regarding Staff Report

ATTACHMENT 1

PLANNING COMMISSION ISSUE	RISE GRASS VALLEY RESPONSE
Nevada Irrigation District: Ricki Heck – Director of NID testified at the Planning Commission Hearing on May 10th 2023. *"How can we certify an EIR as adequate with all this missing data or a baseline of accurate flow and production data. Well you can't you just can't do this. You all know that a home without water has no value. I've been a real estate broker for over 30 years. Relying on NID and water trucks are simply not options and in fact its a joke. We cannot sell our homes under this cloud. If you take an average value within about a mile or mile and a half from the central mine area and multiply that by the average home value of $600,000 dollars. Mine is worth more many are some are worth less. The value of that $262 million five hundred thousand dollars. The loss of tax revenue is almost 3 million dollars based on that valuation. If the applicant wants to offer full market price for all the homes within a 2 mile radius that might be a serious mitigation measure that could be considered. Nothing short of that."*[44]	**Rise Response:** We have reviewed all of the recent public meetings of the NID Board of Directors who have made statements suggesting their intent was to influence the recommendation of the Planning Commission. We also believe that the comment letter submitted to the Planning Commission by NID General Manager, Jennifer Hansen is largely based on comments provided by project opponent group CEA/Minewatch/Wells Coalition. Rise prepared a video compilation of these meetings which includes a voicemail discussing the victory party attended by Commissioner McAteer and NID Director Ricki Heck. The video may be viewed at the following link. https://www.youtube.com/watch?v=82WkV8JDssk Ricki Heck – Director of NID – NID Board Meeting on Jan 11th 2023 *"I've been pretty active with the Wells Coalition and the anti-mine folks and I'm hoping that our staff, you guys, are going to go through the Final EIR which was released recently."*[45] Rich Johansen – Director of NID – NID Board Meeting on Jan 25th 2023 *"So are we going if if our concerns are not addressed would we even could we even go as far as saying do not certify this."*[46] *"It's a narrow lens but it's the one lens the one thing that has sunk other mines"*[47]

[44] Planning Commission Hearing – May 10th, 2023 – 1:48:35 minute mark.
https://www.youtube.com/watch?v=pH7uMbn88NE&t=22389s
[45] NID Board Meeting - Jan 11th 2023 - 43:30 minute mark.
https://www.youtube.com/watch?v=1ZD1UGIJBWs&t=2535s
[46] NID Board Meeting - Jan 25th 2023 – 1:30:10 minute mark. https://www.youtube.com/watch?v=qeQsv9OzJ2k
[47] NID Board Meeting - Jan 25th 2023 – 1:32:39 minute mark. https://www.youtube.com/watch?v=qeQsv9OzJ2k

	Rich Johansen – Director of NID – NID Board Meeting on April 26th 2023 *"So both Ricki and I have been on the Nevada County planning commission and this is probably the most critical meeting they have ever had. And the talking points in response to the EIR because this morning it came out that Option A and B of the staff report both recommend approving the EIR, some with mitigation some whatever. We need the districts talking points so that presented at the meeting and personally we have pretty good relationship we those who took our places"*[48] Calvin Grant – Wells Coalition – Public comment to NID board on March 22, 2023 *"The threshold for triggering that impact would be a 10% drawdown. Hydrology experts call the use of that threshold arbitrary. For homeowners with marginal wells much smaller drawdowns could make their wells useless long before getting a call for Rise Gold. The list of issues goes on. The program won't collect the well performance data that NID needs. Monitoring is only scheduled for 12 months which doesn't account for seasonal variation from year to year. Experts say a minimum of three years are needed to collect valid data."*[49] Robert Hubbard – Wells Coalition – Public comment to NID board on March 22, 2023 *"We've prepared a document for your staff that include two things. First part is a summary of our key recommendation. Second is a draft of a comment letter that that NID might write"*[50]

[48] NID Board Meeting – April 26th, 2023 – 53:52 minute mark. https://www.youtube.com/watch?v=MoqsZD9zpwE&t=3171s
[49] NID Board Meeting – March 22 2023 – 16:52 minute mark. https://www.youtube.com/watch?v=7IttH5DPsBA&t=399s
[50] NID Board Meeting – March 22 2023 – 26:50 minute mark. https://www.youtube.com/watch?v=7IttH5DPsBA&t=399s

	Jennifer Hansen – General Manager of NID- During public comment of NID Board Meeting on April 12 2023: *"I was intending to process the comments under my name um as a representative of the district. If the board desires to sign the comment letter it would need to come back as a full agenda item. I would recommend letting staff provide the comments under our name this would then lend itself to me making public comments at the hearing. "* *"I'll send it out to the board individually and if you have any comments or questions for me just please reply back to me only."* [51]
Jennifer Hansen testimony: After close of public comment the Planning Commission called upon Jennifer Hansen, General Manager of NID to provide expert testimony regarding impacts of the project to groundwater. Ms. Hansen's testimony mirrored the content of a comment letter submitted by NID on May 8th 2023 summarized as follows: 1. NID requests financial assurance in the amount of $14 million to cover the cost of mitigation potential dewatering impacts in the Greenhorn, Woodrose, and Beaver Lane areas. 2. Considering the uncertainty of climate change it is recommended that the 10% drawdown threshold of significance be reduced to **<u>any</u>** drawdown from the established baseline. 3. Groundwater fluctuates greatly from season to season, and it will not be	**Rise Response:** Rise was not provided this comment letter dated May 8th 2023[52] by either NID or the County Planning Department before or during the hearing. Ms. Hansen acknowledged in her testimony that she has no expertise in this area stating[53]: *"I cant speak to the modelling. I have not personally reviewed the modelling outputs, the calibration, or the assumptions that have been made"* *"I would not say that I am by any means an expert in their technical studies that were completed in this particular project"* As stated by Rise in the Planning Commission hearing, despite the County's EIR stating that such a surety bond is not required as mitigation, the applicant is amenable to discussing a surety bond to be added to the development agreement but has not been provided any information from NID or the County on this request.

[51] NID – Board Meeting – April 12th 2023 – 2:21 minute mark. https://www.youtube.com/watch?v=UDky0SAveBY
[52] https://www.nevadacountyca.gov/DocumentCenter/View/48051/Nevada-Irrigation-District-Comment-Letter-05-08-2023
[53] Planning Commission Hearing - May 11th 2023 – 6:04:00 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

possible to establish a reasonably sufficient baseline with data from only one year. NID requests that the baseline groundwater monitoring program be extended to three years.	A zero-drawdown threshold has no justification and would not be measurable with normal annual fluctuations in wells ranging from 5 to 50 feet per year. Notably NID does not apply this standard to its own projects where it has converted open canals to pipelines and thereby reduced the amount of groundwater to water wells[54]. Master Response 16 of the FEIR – Drought and Climate Change[55], provides a detailed response on the effect of climate change of wells. As stated on page 27 of Appendix K2 of the DEIR: > Within individual wells, the magnitude of the seasonal fluctuation remains consistent throughout the monitoring period. No long-term increasing or decreasing trends are observed and there are no apparent annual variations due to drought or above-normal rainfall years. This relationship was also discussed during the applicant rebuttal presentation at the Planning Commission hearing by Dr. Andy Kopania.
Emgold EIR vs. Current EIR: The Planning Commission asserted that the 1995 Emperor Gold EIR was superior to the current EIR in its conclusion regarding groundwater impacts stating in summary that *"I think Emgold had it right and you got it wrong."*	**Rise Response:** As explained in detail in Master Response 13 of the Final EIR[56]: > The conclusions of the hydrogeologic analyses used in the 1995 and 2008 EIRs are substantially the same as the conclusions in the Rise Gold EIR, and there are only minor differences in the overall conclusions, which are explained by the different modelling methods. In general, the practical result of these differences is that the previous hydrogeologic assessments predicted more wells would be impacted by dewatering as compared to the current DEIR's findings. However, as shown above, the number of impacted wells is not substantially greater than that which is predicted in the current

[54] https://knco.com/nid-well-owners-stealing-canal-water/
[55] Page 165 https://www.nevadacountyca.gov/DocumentCenter/View/46392/1_IMM-FEIR_Volume-I---Chapter-1-Introduction-Table-of-Contents--List-of-Commenters-Chapter-2-Responses-to-Comments
[56] Page 136 https://www.nevadacountyca.gov/DocumentCenter/View/46392/1_IMM-FEIR_Volume-I---Chapter-1-Introduction-Table-of-Contents--List-of-Commenters-Chapter-2-Responses-to-Comments

	DEIR, and said DEIR includes mitigation measures (MMs 4.8-2(a-c)) to ensure that impacts to groundwater wells (Appendix G, X(b)) are reduced to a less-than-significant level.
12161 E. Bennett Road: During deliberation the Planning Commission spoke of an email from Francis and Nancy Hamilton on E. Bennett Street who own and reside at 12161 E. Bennett Road on the Creekside of the road and do not show on any of the lists of properties that would have potable water coverage from NID. Planning Commissioner McAteer testimony[57]: *"I think Emgold had it right and you got it wrong. I received an email. I mean Ricki Heck was up here today telling us that her well isn't even identified on any of the lists. And I get an email from Francis and Nancy Hamilton on E. Bennett Street and they say we own and reside at 12161 E. Bennett Road on the creekside of the road. It has just come to our attention that we do not show on any of the lists of properties that would have potable water coverage from NID."* County consultant Nick Pappani offered to bring that location up to look at the location. The Planning Commission refused and moved on to the next question.	**Rise Response:** Rise was not provided this letter before or during the hearing and was not able to locate this email in the comments posted by the County Planning Department. Based on a Public Records Request, this email was sent to Commission McAteer on March 28th 2023. The property at 12161 E. Bennett Road is specifically addressed on page 2-64 of the Final EIR in Master Response 13[58]. The 1995 EIR also found five wells south of E. Bennett Road and nearby South Fork Wolf Creek (Wells #128, 240,113,233,236)8 to have dewatering impacts; however, these wells were not found to have the potential for significant dewatering under the Itasca model used in the DEIR. The 1995 hydrologic assessment does not model the regional groundwater flow and simulations of streams, which is why these five additional wells were found to have dewatering impacts in 1995. Conversely, by using a comprehensive Groundwater Model, rather than simplistic analytical methods used in 1995, Itasca determined that the influence of a shallow groundwater table and recharge from South Fork Wolf Creek limits groundwater drawdown in the valley bottom south of E. Bennett Road, resulting in no significant dewatering impact to these 5 wells south of E. Bennett Road and nearby South Fork Wolf Creek.
13641 Greenhorn Road:	**Rise Response:**

[57] Planning Commission Hearing - May 11th 2023 – 6:36:45 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

[58] Page 136 https://www.nevadacountyca.gov/DocumentCenter/View/46392/1_IMM-FEIR_Volume-I---Chapter-1-Introduction-Table-of-Contents--List-of-Commenters-Chapter-2-Responses-to-Comments

During deliberation Commissioner McAteer stated that NID Director Ricki Heck was up here today telling us that her well isn't even identified on any of the lists. Ricki Heck stated during public comment that she lives at 13641 Greenhorn Road.	This address, 13641 Greenhorn Road is outside and to the east of the 1 ft groundwater drawdown isopleth. Therefore, this property is modelled to have no calculable impact and is not included in the proposed domestic well monitoring program (See Figure 18 on page 2-81 of the Final EIR).
Anderson Geotechnical Report: During deliberation the Planning Commission presented a historic geotechnical report, authored by Anderson Geotechnical on May 12th which it believed to be a report that was missing from the EIR. Commissioner McAteer testimony: *"The report was not located by public records review and was not available from the firm that substantially acquired the (company that prepared the) report . Well, here's the report. Here's the report dated May 12. Now that's what. If you live in this community long enough you find these things from friends."* [59] No opportunity was given to staff or consultants to review this "new" report or to respond.	**Rise Response:** This report is not a new report and is already attached to the Fault Management Plan, Appendix H.2 of the DEIR. The origin of the "new" report was actually from a copy of the Fault Management Plan that was attached to a comment letter sent by a project opponent, Charles Brock, dated April 25, 2023, and marked received by the county on May 8th 2023.[60] The County Planning Department did not provide this comment letter from Charles Brock to Rise before or during the hearing. According to emails obtained from Public Records Request, Commissioner McAteer may have met with Charles Brock on April 25 (Also the date of Charles Brock's comment letter) although this meeting was not disclosed by Commissioner McAteer during disclosures in the Planning Commission Hearing.
Fault connecting to Siskon Gold mine During deliberation Commissioner McAteer stated "It was said here by comments earlier that the same fault that caused the Siskon Gold mine collapse is the same fault that we're trying to erase" [61]	**Rise Response:** The claim that the subject fault is the same as the fault encountered at Siskon Gold mine, can be disregarded through a simple review of a regional geologic map.

[59] Planning Commission Hearing - May 11th 2023 – 6:48:15 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

[60] Page 1580 https://www.nevadacountyca.gov/DocumentCenter/View/48077/Idaho-Maryland-Mine-Public-Comments-Received-05-09-2023

[61] Planning Commission Hearing - May 11th 2023 – 6:46:15 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

California Geology Magazine of August 1978: During deliberation Commissioner McAteer presented the California Geology magazine of August 1978 and stated that the epicentre for the Foothill Fault System is near the center of Nevada City and Grass Valley. Commissioner McAteer testimony: *"I also would like to submit to you the California Geology magazine of August 1978. And In in that report of 1978 it denotes the importance of, and you will note that the center, the epicentre for the Sierra faults is where? Essentially right near Nevada City and Grass Valley. Is that a fair statement commissioners? I'm just reporting. I'm not a geologist, but I am saying that it says in here in the first paragraph, damaging earthquakes in the magnitude of 5 to 6 have occurred within the portion of the foothill fault system."* [62] No opportunity was given to staff or technical consultants to respond. After the Planning Commission voted to recommend that the Supervisors reject the project, McAteer posted on social media site Nextdoor: "Yep the earthquake sealed the deal!"	**Rise Response:** The origin of this report appears to from an attachment to a comment letter sent by a project opponent, Charles Brock, dated April 25, 2023, and marked received by the county on May 8th 2023.[63] The County Planning Department did not provide this comment letter from Charles Brock before or during the hearing. As stated in the Fault Management Plan, Appendix H.2 of the DEIR[64], prepared by a professional geologist and peer revied by county experts: The Fault Activity Map of California (2010) (http://maps.conservation.ca.gov/cgs/fam/), prepared by the California Department of Conservation, California Geological Survey (CGS), indicates that the Site is located within the Foothills Fault System. The Foothills Fault System is designated as a Type C fault zone, with low seismicity and a low rate of recurrence. The Foothills Fault System has been assigned a moment magnitude of 6.5. The nearest mapped active portion of the Foothill Fault System is approximately 25 miles northwest of the site on the Cleveland Hill Fault. The inferred fault alignment identified by Anderson at the Site is mapped as a north-northwest trending liniment of the Grass Valley Fault Zone, a subset within the regional Foothills Fault System. The Foothills Fault System formed during the Mesozoic era (between approximately 65 million and 248 million years ago). The Grass Valley Fault Zone is not considered active, and the Foothills Fault System is designated as a Type C fault zone, with low seismicity and a low rate of recurrence.

[62] Planning Commission Hearing - May 11th 2023 – 6:49:10 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

[63] Page 1580 https://www.nevadacountyca.gov/DocumentCenter/View/48077/Idaho-Maryland-Mine-Public-Comments-Received-05-09-2023

[64] https://www.nevadacountyca.gov/DocumentCenter/View/41635/Appendix-H2_Brunswick-Fault-Zone-MP

Map Amendment The Planning Commission questioned the map amendment stating, *"We are being asked to erase a fault that currently exists on maps."*	**Rise Response:** The purpose of the map amendment included in the project is simply to correct an out-of-date, and inappropriately applied, 200-foot set-back limitation of use on one parcel of the Brunswick site. The County specifically asked Rise to prepare a Map Amendment application because it agrees with the conclusions of the Fault Management Plan (Appendix H.2 of the DEIR) which states that the fault on the Brunswick site is not an active fault. Land development over-active faults is regulated by the California Geological Survey (not by old maps that are encountered in the planning departments archives) and CGS does not recognize any active faults in our area. The actual regulation is explained simply by CGS, https://www.conservation.ca.gov/cgs/alquist-priolo and there is an interactive map where you can look up active faults and/or parcels. If a person did not trust the peer reviewed contents of the EIR they could easily confirm the Brunswick property is not in an earthquake fault zone through the use of this online tool. ArcGIS Web Application
Letter from NSAQMD: During deliberation the Planning Commission presented a letter from the Northern Sierra Air Management District which is believed to be a recent letter that was not addressed in the EIR. Commissioner McAteer testimony: *"I like to move to asbestos for a second. The Northern Sierra Air Quality Management District, I'll just call them air quality, recommend and I quote from their recent letter (quotes*	**Rise Response:** Upon review of comments letters sent immediately before the planning commissions hearing, this letter is in fact comment letter Agency letter 12[66] from the Final EIR and is not a new or recent letter. Notably the original agency letter 12 was unsigned. As stated in the FEIR this letter was superseded and replaced by Agency letter 11. The NSAQMD chose to retract this letter and the County Planning Department and County Council are well informed on this issue. The NSAQMD retracted this unsigned letter in April 2022, within days after Rise Grass Valley sent a public records request and analysis

[66] Page 423 - https://www.nevadacountyca.gov/DocumentCenter/View/46392/1_IMM-FEIR_Volume-I---Chapter-1-Introduction-Table-of-Contents--List-of-Commenters-Chapter-2-Responses-to-Comments

2 paragraphs from retracted letter). How do you respond my friends from the EIR to that statement from the Air Quality district." [65] County consultant Nick Pappani is confused and asked the Planning Commission which letter they are referring to. The Planning Commission response was as follows; *"The most recent one we got"* *"I think it was the fifth"* The Planning Commission refused to allow Nick Pappani to recruit help from his technical experts. When Nick Pappani makes this request the response from Commissioner McAteer was *"sounds shoddy operation to me. Anyway let's move on".* Commissioner Duncan then states to McAteer *"You're getting all our questions answered"* Commission Greeno then states to McAteer *"I'm checking mine off one bv one here"*	detailing the outrageous tone and substance of this letter and belief that it was written by a project opponent rather than an unbiased and neutral government agency. The author of this letter, Sam Longmire, soon after suddenly retired from the NSAQMD in June 2022[67]. The source of the letter presented by the Planning Commission was from project opponent James Bair who sent a comment letter to the Planning Commission on May 8th 2023[68]. In this letter, he attached a letter from the Northern Sierra Air Quality Management District dated April 4th 2022. The clean copy (unbracketed) version of this letter was used and was likely obtained through a public record request. The original letter was modified by James Bair with the insertion of a date of May 8th, 2023 on the top right corner of the letter and insertion of a signature on the bottom of the letter (the original letter was unsigned). The County Planning Department did not provide this comment letter from James Bair to Rise before or during the hearing.
Economic Benefit of the Project: During deliberation the Planning Commission stated that the community would only receive benefits of three firemen and a firetruck from the gross revenue generated by the project.	**Rise Response:** This statement by the Planning Commission is absurd. Like any other business, a large portion of the annual revenues is paid to employees, suppliers, capital costs, and taxes. Furthermore, the Planning Commission statement is in direct contradiction to the County's own independent economic study which shows significant local economic benefits from the project.

[65] Planning Commission Hearing - May 11th 2023 – 6:43:00 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

[67] Page 9 https://myairdistrict.com/wp-content/uploads/2022/06/Board-Packet-6-27-22.pdf

[68] Page 1372 - https://www.nevadacountyca.gov/DocumentCenter/View/48077/Idaho-Maryland-Mine-Public-Comments-Received-05-09-2023

Project Benefits to Local School Funding: In response to the applicant presentation, Commissioner McAteer testified as follows: *"Unfortunately, Mr. Niehaus and you have a misinterpretation of school funding. One thing I can talk about having been the school superintendent I can attest to how schools are funded. So if you don't mind finding that pie chart I really like to clarify that for everyone. Thankyou for the time sorry about this but It will really help everyone. So as you can see there by that chart 55%, according to this chart, of tax dollars would go to schools. So I need you to understand that those dollars are essentially sent to Sacramento because of an important court case many years ago so that schools are all equalized. So none of those tax dollars where you said Nevada Union may be getting $700,000 dollars or so I need you to understand that's not how schools are funded. Schools are funded that our dollars come in and essentially, they are shipped to Sacramento and Sacramento creates this big pool and then divides it up by the millions of kids in the state and then sends it back to Nevada County. So there will no, and I want to make that clear, there are no tax benefits to schools in this county by this project."* [69]	**Rise Response:** The pie chart Commissioner McAteer is referring to comes directly from the Nevada County Auditor-Controller website. While some of the property tax (11.7%) is allocated to the state Education Revenue Augmentation Fund the majority is paid directly to the school districts in the county. [70] Furthermore, the Nevada Union Joint High School district is a Basic Aid district[71]. This means that the school district's property tax revenue exceeds the minimum base funding level established by the State and any excess property taxes are retained by the school district[72]. Other school districts in Nevada County are basic aid (community funded) including Tahoe Truckee Unified School District and Nevada City School District. Therefore, based on our understanding, schools will receive substantial benefits from the IMM project. Rise asked for confirmation on this issue from the Nevada County Auditor Controller and is awaiting response at the time of this letter.

[69] Planning Commission Hearing - May 10th 2023 – 3:11:22 minute mark. https://www.youtube.com/watch?v=pH7uMbn88NE&t=6649s

[70] https://nevadacountyca.gov/ArchiveCenter/ViewFile/Item/1397

[71] https://www.njuhsd.com/documents/Budgets/NJUHSD-2022.23-Adopted-Budget.pdf

[72] https://ed100.org/lessons/lcff

Attachment 2

Commissioner McAteer Nextdoor Post

Captured May 14th 2023

Terry McAteer

Alta Hill

Connect | Message | ...

Activity

Terry McAteer
Alta Hill • 1 day ago •

On behalf of my fellow Planning Commissioners, I want to express my sincere thanks to the Nextdoor community for your outpouring of interest and support regarding our hearings on the Idaho-Maryland Mine Project. We heard you. In appreciation--
Commissioner Terry McAteer, District 3

160 | Like | 126 Comments | Share

Jacqueline J. • Nevada City
You were a rock star, Terry! Thank you!!
1d Like Reply Share 8

Terry McAteer Author • Alta Hill
Many thanks Jacqueline
1d Like Reply Share 1

Jessica L'Esperance • Nevada City
Thank you! #hero
1d Like Reply Share 6

Terry McAteer Author • Alta Hill
You are welcome-- democracy still works. Terry
1d Like Reply Share 5

Jim Weir • Greater Greenhorn

In my political career I have never seen ANYBODY slice and dice the b@$+**Rd Custom Homes**$ like you did. McAteer for President '24. Congrats, Jim And can somebody tell me how to get "RD Custom HOmes" out of the middle of my comment? If I EVER need a custom home, RD is at the absolute bottom of my list. (edited)

Rd Custom Homes - CLOSED
13259 Idaho Maryland Rd, Nevada City, CA 95959

1d Like Reply Share 7

Kelley Thompson • Sierra Alta

Jim - edit your comment - change the Capital R to a lower case and the company tag will probably disappear. I get frustrated when that happens to me.

1d Like Reply Share 2

Terry McAteer Author • Alta Hill

Jim-- I took your words to heart. Thank you for speaking at the hearing... you gave me a license to speak up. Terry

1d Like Reply Share 2

Lou Douros • Grass Valley - The Bar

It was incredibly heartening to watch someone in political leadership defend and practice freedom of speech. Questions are a kind of speech, all too often frowned upon. At a time when "because Science" is frequently the last answer to every doubt, you courageously had your constituent's backs simply by allowing common sense to take its turn on the dias. Let us all know when you're running for higher office, this is a great time for hard questions. Your fearlessness (and commitment) are contagious. Thanks for practicing them both on our behalf.

1d Like Reply Share 23

Theodora Alves • Greater Champion Mine

Lou Thank you Lou. I really appreciate your comment here.

1d Like Reply Share 3

Terry McAteer Author • Alta Hill

Lou-- You flatter me... just doing my job as I not shy with a mic and a passion on the topic to preserve our great community. Can't wait to see the documentary. terry

1d Like Reply Share 5

perissa busick • Lake Vera / Round Mountain

THANK YOU! for hearing us and for caring for our beautiful rural community.

1d Like Reply Share 6

Terry McAteer Author • Alta Hill

That I do and will continue to work on your behalf. Terry

1d Like Reply Share 2

Rick Esterly • Litton Hill

Well done Terry!

1d Like Reply Share 6

Terry McAteer Author • Alta Hill

Thanks Rick!

1d Like Reply Share 1

Debbie Lindh • Grandview Ter

You so rocked it. We all appreciate your insights, questions and persistence to get to the truth. Thank you Terry, all of us in District 3 are grateful to have you as our Planning Commissioner! Heck you even got the earth to move.😉
(edited)

1d Like Reply Share 10

Terry McAteer Author • Alta Hill

Great to see you at the hearing Debbie. Thanks for your efforts!

1d Like Reply Share 3

Beverly Blake • Greater Greenhorn

Terry, thank you all so much! I was there for both days and will never forget the moment of the earthquake! Just after Rise Gold had said that there was no possibility of earthquakes here! It was truly an unfo

1d Like Reply Share 8

Terry McAteer Author • Alta Hill

Yep the earthquake sealed the deal! Terry

1d Like Reply Share 5

Stacey Redman • Idaho Maryland

Thank you!

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

You are very welcome... glad to give back. Terry

1d Like Reply Share 2

Anna Guerrero • Greater Alta Sierra

So it sounds like the mine is a No go correct?

1d Like Reply Share

Debbie Lindh • Grandview Ter

@Anna still needs to go to the Board of Supervisors in August. We must not let our guard down!

1d Like Reply Share 9

Pauli Halstead • Nevada City

Terry for Supervisor.

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

No thanks-- 6 elections in my past is enough. Thank Lisa Swarthout for appointing me. Terry

1d Like Reply Share 6

Ellen Macdonald • Alta Hill

We are so very grateful to you, Terry, and the rest of the commissioners. Bravo for a masterful performance, especially by you. So good to see people's voices and writings heard and, happily, acknowledged by your decision. Thanks and more thanks!

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

Ellen-- Great to see you in the audience, my friend!! Thanks always for your efforts. Terry

1d Like Reply Share 1

Maryanne Murphy • Banner Mountain

Ellen

12h Like Reply Share

R **rachel woodward** • Peardale

Thank you! Mr. McAteer for doing the right thing

1d Like Reply Share ❤ 4

T **Terry McAteer** Author • Alta Hill

Rachel--- It was easy to vote for our communities best interest. Terry

1d Like Reply Share ❤ 2

R **Richard Panos** • Cement Hill

They could have skipped all the drama of the two days, their mind was made up before they started the meetings.

1d Like Reply Share

 **Celine N.** • Hidden Valley

Richard, the public meetings are legal requirement.

1d Like Reply Share +1 1

R **Richard Panos** • Cement Hill

Celine I'm very well aware of that, but it does change the fact that it was all for the drama because their minds were made up before the meeting started.

1d Like Reply Share

 **Celine N.** • Hidden Valley

Richard and?
It was law.

1d Like Reply Share

R **Richard Panos** • Cement Hill

Celine I didn't think politics was at the level of planning commissions but it sure is here. I wonder how many future council or supervisor candidates there are amongst the group.

1d Like Reply Share

 **Celine N.** • Hidden Valley

Richard ok 👍

1d Like Reply Share ❤ 1

Lou Douros • Grass Valley - The Bar

Richard it's likely that had the vote gone in the opposite direction, you'd be hearing the same thing from Minewatch. Quite honestly, going into the meeting I felt it was Rise Gold's to lose. I was taken completely by surprise when the vote came out. Rise had all the data and science and "experts" on their side. Commissioners and politicians usually LOVE that stuff as it can be blamed later for problems, and celebrated as a triumph when things go to plan. Science is the ultimate inanimate "smarter older brother"!

The disclosures alone indicated Zero personal engagement between the commissioners and the opposition. It was sort of laughed off when they one by one declared, "and of course I didn't return those calls". While they, every one of them, disclosed lengthy tours of the mine that can only have been filled with pitches and promises.

I doubt this was a political move as much as a reaction to flaws and failures in the presentations and plans, perhaps even the inconsistencies with board priorities, pointed out mostly by commissioners McAteer and Milman.

It's still Rise Gold's to lose by the way. I can think of a couple scenarios that could win the day for them. They'll have to get out of their own way... and get real though. This is where the story gets interesting.

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

Richard-- I can assure that going into the vote I had no idea how my fellow commissioners were voting. Terry

1d Like Reply Share 6

Veronica Labouré Slaughter • Morgan Ranch

Richard the People spoke!

14h Like Reply Share

Richard Panos • Cement Hill

Veronica yes but the majority lost.

Richard Panos • Cement Hill

Veronica yes but the majority lost.

13h Like Reply Share

Maryanne Murphy • Banner Mountain

Richard I disagree Richard. I have followed the process.

13h Like Reply Share

Richard Panos • Cement Hill

Maryanne say what you want but based on what I've seen this is the classic case of the loud minority. The mine is supported by a greater than 50% of the populous. But many of them chose to just go on with their responsibilities with work and family and not speak up. It's too bad that it happens that way. IMHO most of what is spoken by the loud minority is emotionally based with no facts given to back it up. In other words, just as this exchange is happening, we can give our opinion on anything and it doesn't have to be fact based. That's called free speech. For what it's worth, there were some valid point's brought up by your side that had merit but could easily be addressed and protected those affected. From my perspective the vote should have been approval with qualifications. But that was not the politically correct thing to do so the politically based commission chose the easy way out. A yes vote would not get them the votes for their future political aspirations. BTW I am a licensed Architect with 50 plus years in the business and have been through numerous EIR processes and this is the first I've seen that was so politically influenced.

12h Like Reply Share 1

Kathie Keefer • Cedar Ridge

So grateful!

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

Kathy-- Thank for the note. Hope this finds you well. Terry

1d Like Reply Share 2

Christy Hubbard • Cedar Ridge

Terry. You are nothing short of amazing. I thank you from the bottom of my heart. I know the rest of the well owners in the area do too. We are so fortunate to have as our District 3 Commissioner.

And please.. don't go running for president too soon. We need you here!

1d Like Reply Share 11

Terry McAteer Author • Alta Hill

Christy-- After 6 elections of my-- no more. Thanks-- Terry

1d Like Reply Share 2

Ray Baldock • Cedar Ridge

#terrymcateer There are three jobs at hand for public officers - understanding the application and it's benefits, assessing the fit against the generally agreed direction decided... See more

1d Like Reply Share 3

Terry McAteer Author • Alta Hill

Ray-- Well reading a 8700 page EIR was a bit much but I like doing the deep dive. Thanks for your kind words. Terry

1d Like Reply Share 3

Theodora Alves • Greater Champion Mine

Thank you Mr. McAteer, I'm deeply grateful to you for all of your expertise and commitment. I would love to get a copy of your "presentation." I hear you totally hit it out of the park!!!!

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

Theodora-- Sorry no copy exists as it was all from crazy notes... watch the video on the county website. Best-- Terry

1d Like Reply Share 3

Theodora Alves • Greater Champion Mine

Terry Thank you! Actually, I am doing that right now!!!

1d Like Reply Share 1

Karen Koskey • You Bet

Thank you to everyone who convinced the planning commission that the mine is a horrible idea. However, it still needs to go up before the board of stupervisors (not a misprint), but I believe if they let this mine go through, it will definitely show that they are getting kickbacks from rise gold

1d Like Reply Share 3

Terry McAteer Author • Alta Hill

Karen-- I can assure that the Board is taking this seriously and no kick-backs are occurring. Believe in democracy as it still works! Add your voice and chat with them. My supervisor, Lisa Swarthout, cares deeply about this topic. Terry

1d Like Reply Share 11

Carrie Zoll • Greater Alta Sierra

We are eternally grateful!🙏

1d Like Reply Share 3

Terry McAteer Author • Alta Hill

Carrie-- Thanks for caring about our community. I'm honored to serve you. Terry

1d Like Reply Share 3

Anna Behn • Banner Mountain

You were amazing Terry! I loved your questions and pointed conclusions. Apparently Mother Nature did too!

1d Like Reply Share 5

Terry McAteer Author • Alta Hill

Anna-- No I'm not shy when it comes to defending our community.... with a bit of help from Mother Nature. Terry

1d Like Reply Share ❤ 2

Karin Kleinhans • Peardale

My heartfelt gratitude !

1d Like Reply Share ❤ 4

Terry McAteer Author • Alta Hill

Karin-- I was honored to be in the right place at the right time. Terry

1d Like Reply Share ❤ 2

Charly Price • Nevada City

Thanks for doing the homework Terry and Teaching the scammers.
You da man.

1d Like Reply Share ❤ 4

Terry McAteer Author • Alta Hill

Charly-- Being a former teacher I know about doing my homework. Thanks--Terry

1d Like Reply Share ❤ 3

Punita Greenberg • Nevada City

I was unable to be there and when I heard about your final comments and the question you posed about the earthquake map being removed from the EIR, just minutes away from the vote, and that the planning commission unexpectedly all voted NO, I had to pull over and stop driving, I was crying from such joy, relief and surprise. Thank you for your support of our community and for hearing our concerns..... And for restoring a bit of faith in our democractic procedures!!! (edited)

1d Like Reply Share ❤ +1 5

Terry McAteer Author • Alta Hill

Punita-- You just got an old white guy choked-up. Thanks for sharing-- Terry

1d Like Reply Share ❤ 1

Elizabeth Winters • Banner Mountain

Terry, I was so inspired by your tenacity and felt more grateful to you than words can express. Thank you, whole heartedly, for hearing us and defending our precious home. I am forever indebted to you and am now your biggest fan.

1d Like Reply Share 4

Terry McAteer Author • Alta Hill

Elizabeth-- I come from a background of tough Irishmen and we love a good fight. Thanks for your kind words. terry

1d Like Reply Share 3

Elizabeth Winters • Banner Mountain

Terry same 😂❤️

23h Like Reply Share 2

Pinky Zalkin • Nevada City

Terry, there are no additional words or sentiments I can add to all the much deserved, many praises folks have written before me. Therefore, I'll simply offer a HUGE THANK YOU for all the work you put into the Planning Commission meeting and everything you've done over the years for our community. Bless you🙏

1d Like Reply Share 3

Terry McAteer Author • Alta Hill

Pinky-- Thanks for the phone call too. I'm just one of many who tries to make this community a better place to live. Best-- Terry

15h Like Reply Share 1

Laurel Davis • Beitler / Bitney Springs

Many residents throughout NV County, which not only includes LWW but Rough & Ready, Smartsville, Penn Valley in general & others who may not have been directly affected by Rise Gold stood for their Grass Vly. & NV City neighbors as well & voiced their objections either in person, by written letters or by returning the requests received by mail from Rise Gold w/our "NO MINE" replies. All of NV Co can continue to breathe easier (literally) because of those who voiced their
concerns. Good job NV Co. inc. Terry McAteer! (edited)

Terry McAteer Author • Alta Hill

Laurel-- The Commission heard those voices as it was just not NIMBYism but a general feeling to mine was not wanted. Terry

15h Like Reply Share 2

Stephanie Steyer • Rough and Ready

Laurel Davis, you're right! I live in Rough and Ready and I got my neighbors to write letters against the mine. Thank you Terry for all your hard work!

12h Like Reply Share 2

Mary C. • Greater Greenhorn

Thank you! Your questions were spot on. 😊

22h Like Reply Share 3

Terry McAteer Author • Alta Hill

Mary-- You are so welcome. Terry

15h Like Reply Share 2

M T Hicklin • Alta Hill

Great job, Terry! It was a pleasure to watch you nimbly eviscerate those who thought we are just a bunch of "rubes" here in Nevada Co. So proud of our community for standing up tall & the PC for speaking unanimously for the people!

21h Like Reply Share 3

Terry McAteer Author • Alta Hill

Terri-- I agree. I think they totally underestimated the brilliance and resolve of this community. Terry

15h Like Reply Share 4

Tom Behlmer • East Bennett

The mine would add 15,000 vehicle trips in or out. This includes employees commuting to the site, trucks hauling rock and five deliveries per day for supplies. Bennett and Hwy 174 are curving roads with semi blind turns, traffic feeding in from side roads crossing lanes with on coming cars and no center dividers. Plus Bennett can get icy in the winter as I have slid off hitting black ice. There have been two fatal head on accidents in the last ten years on either Brunswick or 174. The above adds straws to the camel's back when it comes to risk.

Tom Behlmer • East Bennett

.... While taking my daughter to school almost had a head on with a speeder taking a turn too fast. He was going so fast he had to pass me going in the opposite direction on the passenger side. No way he could get his car back on his side of the road. Lucky for both of us there was a wide shoulder which he could use to pass me, otherwise his option would be to drive off the road or collide with me. The again taking my daughter to school a person blew threw the red light at the intersection of Bennett and Brunswick just before I entered the intersection. So I don't think I am being chicken little or a hair on fire NIMBY being concerned about the increased risk of accident from increased traffic (15,000 trips per month) from the mine. For those who respond sarcastically "lets get rid of all businesses to reduce traffic". My reply is we won't be going to the mine to buy groceries, gas, dentist appointment or other essential services that we MUST have. Hope you see this Terry Mc Ateer. :)

20h Like Reply Share 3

T

Terry McAteer Author • Alta Hill

Tom-- Yes, Tom I read it twice. 174 was not built as a major thoroughfare. I didn't even get to discuss the hundreds of cement hauling trips which wasn't brought up in the EIR. Terry

16h Like Reply Share 2

Becky Smith • Cement Hill

Terry you were amazing! Thank you for your work and incredible due diligence for our community!! Now please run for 2024 President to bring some common sense to our nation!

14h Like Reply Share 3

T

Terry McAteer Author • Alta Hill

Becky-- You are welcome.... thank to you for your involvement. Terry

11h Like Reply Share 1

Vicki Day • Nevada City - East

🙏

14h Like Reply Share 3

T

Terry McAteer Author • Alta Hill

Vicki-- back at ya. Terry

11h Like Reply Share 2

Laura Gagliasso • East Bennett

My faith in public comments, civility, questions asked and public service have been restored.
Thank you!
Rise did not have answers to the questions. I do not believe minds were made up beforehand. I was surprised by the unanimous vote.
Thank you commissioner McAteer!

13h Like Reply Share ❤️ 4

Terry McAteer Author • Alta Hill

Laura-- I too was surprised by the 5-0 vote. Kudos to fellow Commish Mike Mastrodonoto for his words of support. Stay involved!! Terry

11h Like Reply Share ❤️ 2

Glenn Freitas • Buck Mountain Estates

Warmed my heart to read that the Director of Rise Gold had such nice things to say about you after the decision.😉

13h Like Reply Share ❤️ 2

Lou Douros • Grass Valley - The Bar

Glenn is there a link to that somewhere? I'd love to see it.

13h Like Reply Share 😮 1

Glenn Freitas • Buck Mountain Estates

It was posted in The Union yesterday.

13h Like Reply Share ❤️ 1

Lou Douros • Grass Valley - The Bar

Glenn got it. Lawrence Leopard's opinion piece. Thanks.

12h Like Reply Share

Maryanne Murphy • Banner Mountain

Democracy works because of all of you and leaders like Terry. Thank you for all you have done Terry and all you still will do for the Community.

13h Like Reply Share ❤️ 3

Terry McAteer Author • Alta Hill

Maryanne-- You are right... stay active as its still the best system ever invented. Terry

11h Like Reply Share ❤️ 1

Maryanne Murphy • Banner Mountain

I attended both sessions. I heard from several local citizens about their families being associated with the mine. If I would have had time to say this I would have so I will now.

I respect miners and their families. That work was demanding to say the least. It is this area's heritage and we must honor it as much as we honor our local Nisean heritage. This community rose from the devastation caused by mining to it. It is those who lived here and came here in the last 70 years to make it what it is. To my fellow neighbors, please stay as engaged as you can be to protect it by knowing more about how your government works at the County and City level. You pay taxes each day to fund it and have a collective powerful voice. Together, we can make this County more prosperous. The signs are there with more housing coming in. Nevada City, Grass Valley, and Penn Valley comprise about 1/3 of the County's population. The area is a " gem". (edited)

13h Like Reply Share 3

T **Terry McAteer** Author • Alta Hill

Maryanne-- I too am pro-mining just not in R-1 neighborhoods and companies with a better track record. Terry

11h Like Reply Share 1

Laina Levy • Greater Greenhorn

Terri, it was so very inspiring to see the depth of your preparation and your persistence. You got to the heart of the issues with this project and made me feel truly well-represented in the democratic process. Thank you on behalf of my whole family.

13h Like Reply Share 4

T **Terry McAteer** Author • Alta Hill

Laina-- And to think I had another 20 questions to go as I was just getting warmed-up until Laura Duncan said.... we got it... and they did. Best-- Terry

11h Like Reply Share 4

John Vaughan • Cedar Ridge

You 'da best ! (Well, given your background, I should probably form a real sentence and say: You are the best!). And manifesting one earthquake is probably enough for now, so you can put that skill to rest. Great job. Thanks for your decades of outstanding public service.

12h Like Reply Share 5

Terry McAteer Author • Alta Hill

John-- Very kind works-- much appreciated. Terry

11h Like Reply Share 1

CJ Jenkins • Lake of the Pines

Thank you Terry. We believe in you, Christine and Bob Jenkins

12h Like Reply Share 3

Terry McAteer Author • Alta Hill

Christine and Bob-- Hope this finds you two well. Jeanne is getting married in Sept. Thanks for being such a super teacher. Terry

11h Like Reply Share

Terri Pencovic • Rattlesnake

Thanks so much Terry!

11h Like Reply Share 2

Terry McAteer Author • Alta Hill

Hey Terri-- Haven't seen you in ages. Hope all is well. Terry

11h Like Reply Share

Rosemary Hill • South Auburn - Empire

You were AMAZING, Commissioner McAteer! I was glued to the YT live stream! Thank you so much for your hours of study and preparation you devoted to our community! Bravo, Sir!!

11h Like Reply Share 3

Terry McAteer Author • Alta Hill

Rosemary-- Yes, it was a lot of prep but well worth the investment. Thank you for your involvement-- stay active. Terry

8h Like Reply Share

Lynn Marie Lumiere • Greater Greenhorn

THANK YOU Commissioner McAteer !! It means SO much to our community to see elected officials actually serve the people rather than the corporations!

10h Like Reply Share 3

Terry McAteer Author • Alta Hill

Lynn Marie-- I was honored to be asked to serve by Supervisor Swarthout in my second career. It shows that elections have consequences. Thanks for your note. terry

8h Like Reply Share 2

Mike Shea • Cedar Ridge

Thank you Terry for bringing out details that Rise, Raney, and the planning staff either missed or chose to ignore. So nice that you actually studied the project for yourself!

9h Like Reply Share 5

Terry McAteer Author • Alta Hill

Mike-- Thanks for the kudos Mike. I spent weeks in reading and researching. Terry

8h Like Reply Share 1

Tony Powell • Fairgrounds

Terry, you are the type of person who we need to search out going forward, for representation.
Someone who actually took this matter to heart with seriousness. You are an excellent spokesperson for your district. Kudos!

8h Like Reply Share 1

Terry McAteer Author • Alta Hill

Tony-- Thank you Tony... being well prepared is the key to being heard. Terry

8h Like Reply Share 1

Rick Sharkey • Nevada City

Terry, you all made the right decision. Thanks for your collective efforts! Keep up the great work!

8h Like Reply Share

Terry McAteer Author • Alta Hill

Rick-- You are welcome. Honored to represent my constituents. Terry

8h Like Reply Share 2

Janet Goodban • Fairgrounds

Terry, you were a ROCK STAR! Thank you and the rest of the commission for all your truly hard and diligent work! You were awesome!

8h Like Reply Share 1

Terry McAteer Author • Alta Hill

Janet-- You are very welcome... everybody pitched-in. Terry

7h Like Reply Share 2

Cris Kelly • Idaho Maryland

Thank you for hearing this remarkable community. ❤️❤️❤️

7h Like Reply Share

Terry McAteer Author • Alta Hill

Cris-- We heard it loud and clear. Terry

7h Like Reply Share

Daniel Locatelli • Sweethaven Ct

Terry I just read all the comments on here and u seem to be the man I need to ask a question . I read all the comments and I didn't see why everyone is against the mine what part of our environment is the mine going to hurt ? And what is everyone afraid of I've not fallowed this topic just noticed no mine signs around town thankyou for your time. Daniel

7h Like Reply Share

Terry McAteer Author • Alta Hill

Daniel-- Happy to chat about it... just give me a call at home 530-273-2776. Terry

6h Like Reply Share

John Pettitt • Jones Bar

As a former planning commissioner (Sausalito) who had a controversial project come up for consideration but nothing close to this I'm hugely impressed by how the commission handled it. (edited)

45m Like Reply Share 2

Terry McAteer Author • Alta Hill

John-- Thanks John... your insight is appreciated. Terry

6h Like Reply Share

drue mathies • Lake Vera / Round Mountain

You should run for supervisor, Terry!

5h Like Reply Share

T

Terry McAteer Author • Alta Hill

drue-- No thanks.... I run successfully 6 times and that is enough. Best-- Terry

5h Like Reply Share

Sean MacKenzie • Nevada City

Thank you, Terry!

4h Like Reply Share

Dawna Johnson • South of Fairgrounds

Thank you Terry ! You punched so many holes in the FEIR, even stumped them on a response more than once . It was awesome. Oh ! And that earthquake ! 👏👏👏

2h Like Reply Share 1

T

Terry McAteer Author • Alta Hill

Dawna-- Mother Nature sure did speak! Thanks for the kudos. Terry

1h Like Reply Share 1

J

Jacquie Weills • Nevada City

Thanks Terry. You were a hero, proud to say I know him!!! Hugs.

1h Like Reply Share 1

T

Terry McAteer Author • Alta Hill

Jacquie-- Hugs back at you friend. Terry

1h Like Reply Share

K

Kelly Cichowicz • Catherine Ln

I have a question? Where are the jobs going to come from? That this county will need to support all these new people moving here, you have pretty much destroyed all mom and pop businesses here, no matter what stores we have here one still has to go out of town to buy items because every business carries the same thing or it's a shop for tourists and unreal in price

40m Like Reply Share

Celine N. • Hidden Valley

Kelly, who are you referring to when you say "YOU have pretty much destroyed..."??

Attachment 3

Commissioner McAteer

Portion of emails obtained from Public Records Request

From: GARY PIERAZZI <pierazzi@pacbell.net> on behalf of GARY PIERAZZI
To: Terry McAteer
Subject: Thank you
Date: Saturday, May 13, 2023 11:09:29 AM

Hi Terry,

I had to leave the celebration at the National Hotel early on Thursday and missed you but wanted to thank you again for taking the time to be informed and engaged on our issue.
In the 30+ years of dealing with the mine, you are the only commissioner who has ever reached out and invited us to present our concerns.
We are extremely lucky to have you represent us in the 3rd district.

Your comments on the erasing of the fault line that runs through the project's site were so prescient!

Best,
Gary Pierazzi
13997 Emerald Ct.
Grass Valley, Ca 95945

> On Jan 30, 2023, at 5:31 PM, Terry McAteer <tmcateer@inyocoe.org> wrote:
>
> great... see you then
>
> On Mon, Jan 30, 2023 at 3:08 PM Wells Coalition <wells@cea-nc.org> wrote:
>> Terry,
>>
>> Great. We (myself and Christy Hubbard) would like to meet at 2:00pm tomorrow at your place.
>> Let me know if that time is good.
>>
>> Thanks, Gary
>>
>>> On Jan 30, 2023, at 1:38 PM, Terry McAteer <tmcateer@inyocoe.org> wrote:
>>>
>>> Gary-- Tuesday afternoon..... sometime between 1:30 and 5 would work. Send them to my house at 1140 Slate Creek Rd GV (off Ridge). I'm interested in hearing their response to the EIR and focusing on the 3 most important issues that your group has in opposition to the mine. Thanks-- Terry
>>>
>>> On Mon, Jan 30, 2023 at 12:48 PM Wells Coalition <wells@cea-nc.org> wrote:
>>>> Hello Terry,
>>>>
>>>> Yes, we'd love to talk with you regarding our concerns of the

proposed mine. If you have time in your schedule to talk with us Tuesday or Wednesday,
two members from the Wells Coalition would welcome a chat.

Thank you,

Gary Pierazzi
The Wells Coalition

> On Jan 29, 2023, at 4:35 PM, Terry McAteer <tmcateer@inyocoe.org> wrote:
>
> Hello-- I'm Lisa Swarthout's new Planning Commissioner and would appreciate an hour of your time to chat with me about your concerns regarding the mine project. Please give me a call at 530-273-2776. Thanks you-- Terry McAteer

The information contained in this email may be personal and confidential and is intended only for the recipients named above (and any of the recipient's authorized designees). If the reader of this message is not the intended recipient of this message or of any attachments to the message, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message, including any attachments, is strictly prohibited. The sender does not waive any related rights and obligations. If you have received this message in error, please notify the sender immediately and delete the original message. Thank you.

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From: Charlie Brock <charlie@charliebrock.com> on behalf of Charlie Brock
To: Liz & Terry McAteer
Subject: Fwd: IMM - Great read
Date: Friday, April 14, 2023 12:23:38 PM
Attachments: SM&W_IMM_FEIR_Comment_Letter.pdf

Hi Terry,
Guessing Jeff or Planning staff may have sent you the anttached already, but just in case….
Working on my 20 items. See you the 25th.
Thanks,
CB

Sent from my iPhone

Begin forwarded message:

> **From:** Charlie Brock <charlie@charliebrock.com>
> **Date:** April 14, 2023 at 12:19:49 PM PDT
> **To:** Charlie Brock <charlie@charliebrock.com>
> **Subject: IMM - Great read**
>
> Sent from my iPhone

From: Terry McAteer <tmcateer@inyocoe.org> on behalf of Terry McAteer
To: Ricki RHeck
Subject: Re: NID"s Comment Letter
Date: Tuesday, May 9, 2023 5:24:10 AM

---

got it yesterday from the planning dept..... it is in my docket for questioning..... thanks for coming to the Shores HOA.... I hear you were great. See you Wed. Terry

On Mon, May 8, 2023 at 9:34 PM Ricki RHeck <rickirheck@gmail.com> wrote:

> Hi Terry - Sending the attached letter for your review and consideration.
>
> Thank you-
>
> *Ricki Heck*
> *530-263-5433 | cell*

From: Francis Hamilton <fxhtrinity@gmail.com> on behalf of Francis Hamilton
To: tmcateer@inyocoe.org
Subject: Proposed FEIR for mine is missing my property
Date: Tuesday, March 28, 2023 12:55:33 PM

Hi Mr McAteer.
Gary Pierazzi, of the WELLS coalition gave me your email address as a way to introduce our problem to you.
We own and reside at 12161 E Bennett Rd, on the creek side of the road. It has just come to our attention that we do not show on the list of properties that would have potable water coverage from NID were our wells to be adversely affected by the mining operation proposed. We spent years having our well monitored by Cranmer Engineering for the EMGOLD (and whatever its predecessor was named) dewatering permit process in the last sustained effort to reopen the Idaho-MD mine. We were considered very high risk at that time. So we can't understand how we were completely excluded this time?
Thank you for your attention to this matter.
Yours,
Francis (& Nancy) Hamilton
530-263-3647 (cell)
12161 E Bennett Rd, Grass Valley, CA 95945
Parcel #: 009-600-027

From: Brian Foss <Brian.Foss@nevadacountyca.gov> on behalf of Brian Foss
To: Terry McAteer
Subject: RE: Planning Commission Documents
Date: Monday, May 15, 2023 2:25:35 PM

Ok, got it. Thank you!

Brian

From: Terry McAteer <tmcateer@inyocoe.org>
Sent: Monday, May 15, 2023 2:18 PM
To: Brian Foss <Brian.Foss@nevadacountyca.gov>
Subject: Re: Planning Commission Documents

Brian-- all of the documents I noted were in the public record, #1 and #2-- yes are those ones.... 3 and 4 were provided by Charles Brock and are in the last batch of public comments which Shelley forwarded to us. Terry

On Mon, May 15, 2023 at 1:52 PM Brian Foss <Brian.Foss@nevadacountyca.gov> wrote:

> Good Afternoon Commissioner McAteer,
>
> During your deliberation for the mine hearing you referenced a few documents that were before you. We do need those for the administrative record. Would you be able to send me the documents listed below?
>
> 1) Nevada Irrigation District - Letter dated May 8th 2023 presented at hearing by Jennifer Hansen
> 2) Northern Sierra Air Management District - Letter dated May 5th?
> 3) Anderson Geotechnical Report
> 4) California Geology magazine
>
> I believe the first two items are part of the record as a comment letter in the EIR (Northern Sierra letter) and I think you were referencing the most recent NID letter that we have received. Can you verify that these are the correct letters you were referencing? If so, no need to provide those documents as we have those as part of the record.
>
> The other two documents I don't believe we have. Would it be possible to get copies? You could bring them to the Planning Commission meeting next we and we can make the copies if that is more convenient.
>
> Thank you,

Brian Foss
Planning Director
(530) 265-1256

Attachment 4

NSAQMD Letter dated April 4th 2022

IMM Project Final EIR – Agency Letter 12

(Superseded and Replaced by Agency Letter 11)

Northern Sierra Air Quality Management District

Gretchen Bennitt, Executive Director

District Headquarters
200 Litton Drive, Suite 320
Grass Valley, CA 95945
(530) 274-9360
FAX: (530) 274-7546
office@myairdistrict.com
www.myairdistrict.com

Northern Field Office
257 E. Sierra, Unit E
Mailing Address: P.O. Box 2227
Portola, CA 96122
(530) 832-0102
FAX: (530) 832-0101

April 4, 2022

Re: Comments on Draft EIR for Idaho-Maryland Mine, Nevada County, CA

Introduction

The NSAQMD submitted comments and recommendations regarding the proposed project as part of the NOA/NOP, but these were omitted from the DEIR's NOP comment section.

The NSAQMD recommended that the applicant work with the Department of Toxic Substances Control, the US Geological Survey and/or the Office of Environmental Health Hazard Assessment to obtain concurrence that asbestos testing for the proposed mine is adequately addressed with regard to the number and locations of samples and applicable analytical techniques. It does not appear as if this was done.

The NSAQMD has also submitted additional comments and been involved in other ways with the environmental documentation process for the proposed project. Many of the NSAQMD's comments and observations have been addressed, but some important ones remain unaddressed. Notably, the DEIR includes a newly added, previously undiscussed method of converting asbestos in rocks to asbestos in air that is not backed by science.

Asbestos emissions are the primary concern of the Northern Sierra Air Quality Management District (NSAQMD). The DEIR's treatment of naturally occurring asbestos is scientifically unsound and therefore not adequate for CEQA purposes. Laboratory testing in November 2021 of seven dominant types of rock from the site discovered asbestos in every type, with an average of 594,625,000 asbestos fibers per gram. For perspective, a new penny weighs 2.5 grams. Based on the recent tests of 40 rock samples and 2 previous rock samples, in a penny's mass of average mine rock there are well over a billion asbestos fibers.

Asbestos and Public Health

Asbestos is a well-known carcinogenic toxic air contaminant. Effects of asbestos exposure are insidious, highly variable and may not show up for 10 to 40 years or more. The most infamous result of asbestos exposure is mesothelioma, a specific type of cancer. The Office of Environmental Health Hazard Assessment (OEHHA) approach to asbestos risk assessment under AB2588 (the Air Toxics Hot Spots Act) is currently based only on a person's risk of developing mesothelioma. It does not provide any assessment of risk of developing other types of asbestos-related diseases such as asbestosis (an inflammatory condition affecting the lungs that can cause shortness of breath, coughing, and permanent lung damage), pleural

plaques (changes in the membranes surrounding the lung), pleural thickening, benign pleural effusions (abnormal collections of fluid between the thin layers of tissue lining the lungs and the wall of the chest cavity) and assorted cancers of the lung, larynx, pharynx, stomach, colorectum and ovary.

For additional information on the effects of asbestos exposure, see the National Cancer Institute website (https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/asbestos/asbestos-fact-sheet). Following is a relevant excerpt from this website:

*There is some evidence that family members of workers heavily exposed to asbestos face an increased risk of developing mesothelioma (https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/asbestos/asbestos-fact-sheet#r12). This risk is thought to result from exposure to asbestos fibers brought into the home on the shoes, clothing, skin, and hair of workers. To decrease these exposures, Federal law regulates workplace practices to limit the possibility of asbestos being brought home in this way. Some employees may be required to shower and change their clothes before they leave work, store their street clothes in a separate area of the workplace, or wash their work clothes at home separately from other clothes (*https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/asbestos/asbestos-fact-sheet#r2*).*

Cases of mesothelioma have also been seen in individuals without occupational asbestos exposure who live close to asbestos mines ((https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/asbestos/asbestos-fact-sheet#r12)).

Asbestos PCM Conversion

The Air Quality sections of the DEIR include a newly introduced concept of converting asbestos measurements to PCM (phase contrast microscopy) units. There is no accepted method to convert between rock samples and air samples. The DEIR's approach of translating asbestos discovered in solid rock samples into PCM fiber concentrations in air is not possible. The PCM concept is from Appendix C: Asbestos Conversion Factors & Cancer Potency Factor, which is part of OEHHA's February 2015 Air Toxics Hot Spots Program Guidance Manual. OEHHA's conversion from fiber counts to mass as PCM fibers was developed exclusively for air samples. This is made clear in EPA's Airborne Asbestos Health Assessment Update document (USEPA, 1986. Airborne Asbestos Health Assessment Update. EPA/600/8-84/003F, Office of Health and Environmental Assessment, Washington, DC), which is referenced in OEHHA's Air Toxics Hot Spots Program Guidance Manual, Appendix C: Asbestos Conversion Factors & Cancer Potency Factor.

None of the DEIR's discussions regarding PCM conversions are valid. PCM cannot be used as a reporting metric, a compliance verification mechanism or a replacement for other methods of asbestos investigation. PCM asbestos conversion is not a concept that applies outside the world of asbestos air monitoring. During the DEIR comment period the NSAQMD contacted OEHHA with questions about the PCM conversion. OEHHA referred the NSAQMD to the California Air Resources Board (CARB) Risk Analysis Section, which worked with CARB's

Monitoring and Laboratory Division in providing an assessment of the underlying science. In short, CARB confirmed the non-validity of the applicant's PCM conversion approach. Following is an excerpt from a 3/28/22 email from CARB's Risk Analysis Section:

I … wanted to clarify our earlier statement from our previous email regarding the risk calculations based on the lab reports, we initially attempted to convert TEMs into concentration in the air per the OEHHA guidance and ran it through HARP, but after discussing the outcome with others internally, it really isn't an appropriate way to calculate the risk (this was confirmed below with our MLD staff as well). Rather, you would need an annual average concentration from either sampled or modeled air concentrations, so our initial analysis no longer applies.

Staff from our Monitoring and Laboratory Division observed the following:

1. Determination of Risk from Rock Samples. *I agree with you, it is not appropriate to determine risk from rock samples. The asbestos fibers considered in Appendix C of the Hot Spots Guidance came from airborne samples during occupational exposure studies. I checked the 1986 U.S. EPA reference….*

The PLM and TEM analyses in this DEIR were done on bulk samples (rocks), and the asbestos concentrations are reported in weight percent. It is not known how many asbestos fibers can be generated (and become airborne) from a given mass of asbestos-containing rock material. So there is no known conversion factor for the asbestos weight % (by TEM analysis of a rock sample) that can be used to estimate the number of PCM fibers/m^3 applicable for the Hot Spots risk assessment equation.

2. Calculation of asbestos weight % in TEM analysis report. *[This is in response to a separate question from the NSAQMD] The total asbestos weight % should be the sum of the chrysotile and amphibole asbestos weight percent. For sample **Y962990** (attached) it appears that there is an error in the report. Only 1 chrysotile fiber ≥5 µm is reported, and yet the weight % is 0.075. Comments describe actinolite fibers detected (an amphibole asbestos). Strange that a total weight % of <0.001 is reported.*

*For sample **Y962999** … I did not detect an anomaly in the TEM report. Chrysotile fibers can be much smaller and thinner than amphibole asbestos fibers. Many chrysotile fibers detected do not amount to much weight because they are so small or thin. CARB M435 PLM analysis of this sample is 2.5% asbestos by point-count. This is not unusual either. PLM analysis uses ~100,000 times more mass of sample than TEM analysis. It is best to start with PLM, and follow up with TEM for the PLM non-detects. TEM can miss out on finding the asbestos because the TEM sample mass is so low.*

3. DEIR asbestos calculations (Appendix C). *For Appendix C (attached) there were no equations given on how TEM structures per nanogram and PCM asbestos weight percent were calculated in the first table that groups asbestos test results by rock type. In the next table, on the second and third pages (pages 56 and 57), there is a missing column for TEM weight % from the analyses.*

4. Geological Units and Asbestos Testing (page 9). *The equations that [were] used for calculations of asbestos structures per nanogram and PCM asbestos by weight are not given. It is difficult to follow the discussion in this section because the lithology of the rock units is not described, and neither are the rock sample groupings clearly identified in Appendix C.*

NSAQMD recommends that the notion of PCM conversion should be thrown out because using OEHHA's air sampling PCM conversion formula for rock samples has the effect of making it look like there is less asbestos present than TEM laboratory work has demonstrated to be the case. Instead, the project's risk should be evaluated based on many more samples being gathered, and evaluated using TEM asbestos by weight. Those samples should be gathered in an approved, standardized manner (such as is set forth in Method 435) that employs composite collection practices rather than hand-picked pieces of core samples (which the tested samples were).

Using TEM to look at the same old core samples that were previously analyzed with PLM does have some value because we can now see how much asbestos the PLM method missed. PLM only detected asbestos in 2 of the 40 core samples, but the TEM method detected asbestos in 17 of the 40 samples, including in every rock type evaluated.

Both chrysotile and amphibole asbestos were discovered in the core samples. Chrysotile fibers tend to be smaller than amphibole fibers, making them more likely to become airborne and be transported great distances in the wind. Depending on weather conditions, they could be inhaled or deposited on surfaces in all parts of Nevada County for the 80-year duration of the project.

Note that the footnote on page 55 reads, "Samples containing naturally-occurring asbestos were from underground rock only; naturally-occurring asbestos is not known to outcrop at the surface of the Brunswick Site or Centennial Site." This is not the case – it could be that this was mistakenly left in the document from a version written before TEM was employed to get a closer look at the samples. While only 2 grab samples were taken from the surface of the 55-acre Centennial site, one of the two was found to contain 30-million chrysotile asbestos fibers per gram of rock, as is listed in the lab report for Sample Y962843 (ASUR Plan, unnumbered document page 106/131).

It is difficult to find the Health Risk Assessment among the many pages of the DEIR. It begins on unnumbered document page 356 of 1938 of Appendix E.1, as Appendix B of Appendix E.1. It should be noted that Appendix B of Appendix B of Appendix E.1, titled "Fugitive Dust TAC Concentrations" (starting on page 1,901 of the document) is missing asbestos. The Health Risk Assessment should be easier to locate.

The HARP report lists the maximum mitigated cancer risk as 3.34e-5 (group 543, p. 1839 of 1938) while the Appendix B, p. 1 reports the maximum cancer risk as 1.04e-5 (= 10.4e-6).

Asbestos Sampling and Monitoring

The NSAQMD has recommended that additional rock sampling be performed, and performed in a representative manner using composite samples, but it appears that no further sampling has been done (only further investigation of previously collected samples). There are still only 2 samples from the 56-acre Centennial site. All of the samples analyzed using TEM were previously analyzed using the inferior PLM method. The difference in the results from the two methods is large. PLM only detected asbestos in 2 of the 40 samples, but the TEM method detected asbestos in 17 of the 40 samples. This is mainly because PLM cannot detect small asbestos fibers, which are more easily entrained in the wind, can travel farther, and are inhaled deeper into the lungs.

It is unclear why the two serpentine samples originally evaluated using TEM were discarded from the 40-sample statistics and from consideration for the Health Risk Assessment. There were 42 samples analyzed using TEM, not 40. The two that were excluded are especially rich in asbestos. If all 42 samples are considered, the average asbestos concentration is 0.24% by weight.

In September 2020, the NSAQMD and Dudek communicated about monitoring. It would be ideal to have baseline monitoring data for at least a year before the project starts up. The NSAQMD suggested including a publicly accessible webcam (one for each site preferably) in the monitoring plan, as well as a MET site and a rain gauge. Monitoring specifics set forth in the Construction ATCM are available at CCR 93105(h)(3) and (h)(4). 40 CFR Part 58 (especially Appendix E) also contains relevant monitoring specifics.

Asbestos Emissions

Table 5 (App. E.1, document page 378/1938) lists construction emissions of .00003 tpy of asbestos, which is 0.06 lbs/year. This is incorrect. If we add the obvious dust from mitigated PM10 construction emissions due to off-road equipment (0.6 lbs/day) to the fugitive dust emissions (8.30 lbs/day) we get 8.9 lbs/day, or 3,248.5 lbs/year. TEM laboratory testing of 42 samples from the site yielded an average of 0.236355% asbestos content by weight. .236355 / 100 x 3,248.5 lbs/yr = 7.68 lbs/year, or 128 times the quantity of asbestos emissions presented in Table 5.

Dust emissions for the following 10 years are estimated at lbs/day from underground blasting (1.61) + ore processing (0.29) + fugitives (39.05) = 40.95 lbs/day, or 14,946.75 lbs/year. This comes to 35.33 lbs/year of asbestos emissions.

There is an Engineered Fill placement emissions table on unnumbered document page 303 that lists 37.95 lbs/day of PM emissions. The asbestos emission calculations are based not on the amount of asbestos present in the rock, but on the ASUR plan's goal of 0.01% asbestos in the engineered fill. The table at the top of the page includes emission factors. For the dumping of dump trucks, it includes emission factors for "material drop" from AP42, Table 13.2.4. The "material drop" emission factor is not for "material handling – blending." "Blending" implies disturbance that is continuous for some amount of time, whereas a material

drop is more or less instantaneous. The emission factor assumptions for the use of AP-42 section 13.2.4 should be explained. A material drop emission factor of 0.0001 lb/ton is used in the DEIR. However, the equation in 13.2.4 for material drop yields more than 6 times that amount if we apply a reasonable 5 mph wind speed and 3% moisture content.

Emissions Estimate Assumptions

On page 304, there are a few tables that are not explained. The rationale for using a silt content of 1.6% for the crushed rock and a moisture content of 15% for the sand tailings should be discussed. The normal ranges noted in AP-42 section 13.2.4 are a silt content of 0.44% to 19% and a moisture content of 0.25% to 4.8%. The choices taken in the DEIR for silt and moisture content result in lower emissions than the average anticipated values. Particularly since the waste rock has been crushed finely (beyond normal aggregate processing), the fill would have an increased concentration of fine particles/dust.

Additional assumptions on document page 304 that are questionable include a wind erosion area of 0.72 acres of active compaction, 0.34 acres access road and 1.00 acres either seeded or with covering underway. Elsewhere in the DEIR, it appears that more surface is to be disturbed that the area indicated in the assumptions on page 304. Likewise, the assumptions for bulldozing and compaction (2.43 hrs/day and 1.02 hrs/day respectively) seem to be less than indicated elsewhere in the DEIR.

The Logging and Chipping (described on page 4.3-56) is assumed to be for only 24 acres (Centennial and Brunswick sites combined). This is expected to take 11 years, so the assumptions divide 24 acres by 11 years to arrive at 2.18 acres per year, and it is assumed that logging and chipping will occur on only 1 day per year. It would be more realistic to consider that more than 2.18 acres might be cleared in a given year. Also, there is no mention of emissions associated with ongoing vegetation management.

Document page 306 contains logging & chipping emissions. There should be a source listed for the emission estimates. It is impossible to tell if the emissions are only from the equipment engines, engines plus tires, or engines, tires, root balls, fugitives from fans and loading limbs into the chipper, and so forth. Without an explanation there is no way to assess the validity of the numbers. From the tables on pages 307 and 308, it appears that those logging and chipping emissions listed on page 306 are only from the engines (which would be far less than if the entire process was evaluated). Following the chipping and logging estimates is a table that represents mobile sources associated with logging and chipping. However, it assumes that all operation is on paved roads and none of the vehicles are operating off-road, and only includes emissions directly from the vehicles (no fugitives). The emissions are based on EMFAC, which does not consider emissions from tires, fans and air displacement as vehicles navigate off-road to collect chips and logs.

The beginning of the Earthwork and Material Handling section (App. E-1, p. 24) reads, “Barren rock hoisted from the Brunswick shaft will be placed in the existing concrete silo located at the Brunswick Industrial Site. The barren rock will be transported from the concrete silo using a series of chutes and conveyors to a fully enclosed truck loading building. Barren rock may be

mixed with sands from the ore processing plant to create an engineered fill that meets appropriate geotechnical specifications for construction of development pads. Engineered fill would be transported from the ore processing facility to a receiving site, where it would be spread using a dozer."

Each transfer point along the "series of chutes and conveyors" is an emission point which is not accounted for in the DEIR.

Table 2 of the Health Risk Assessment lists the Base Elevation for the generators and diesel storage tanks in meters (placing them above 9,000'), whereas it should be feet.

The footnote for table 8 on page 28 of E.1 says, "Concentrate truck trip distance of 145 miles is based on the distance between the project sites and the Port of Oakland." There should be an explanation of why the 20 tpd of ore concentrate is going to the Port of Oakland. Is that where it is to be refined, or is it being shipped overseas for processing? If it is being transported overseas, the associated emissions should be included in the GHG analysis since GHG emissions are a global concern.

Unnumbered document page 184 of E.1 (for paved road fugitive emissions from vehicles) shows a table that makes no sense. It has fractions of vehicles making fractions of trips, and then rounds the VMT numbers that result before performing the final calculations. For instance, Freight Trucks have an average of 0.43 daily trips going 0.52 miles and lists their VMT as 0. It appears that the 0 miles travelled is the multiplied by the weight of the trucks, which would yield 0. It also shows only 1 concentrate truck trip per day, whereas elsewhere there are 10 concentrate trips/day. However, there are 5 concentrate truck trips listed on page 186 and 187. This is just an example. Not only concentrate trucks but also other vehicles show different mileage, different trips numbers, etc. throughout the emissions calculations throughout the document. These should all be corrected and standardized before the DEIR is considered adequate.

The emissions estimates assume that all on-site roads will be paved. This should be included as a condition or mitigation measure.

The spreading of 1,000 tons per day of engineered fill with a dozer should be considered in the off-road equipment emissions (dozers are considered to be off-road equipment).

Also, it is not clear how or where the rock is to be "mixed with sands from the ore processing plant to create an engineered fill that meets appropriate geotechnical specifications for construction of development pads." The off-road equipment list includes a "mobile auger blending plant," so it would be presumed that this is how the waste sand from the processing plant would be mixed with waste rock. Every time rock and dirt that contain asbestos are moved there is the potential for additional asbestos emissions. All of these emissions should be included in the Toxic Air Contaminant/Health Risk Assessment evaluation.

The last sentence under Earthwork and Material Handling reads, "Notably, for fill transported to off-site industrial sites (for year 2033 and beyond), emissions associated with fill placement were not included since it was assumed that the other industrial facilities are already receiving,

or would receive, fill from other sources." The big difference between fill transported from the proposed Mine to be deposited in unknown locations around the community contains asbestos. When considering airborne toxics it doesn't make sense to consider emissions from handling fill with asbestos in it as equivalent to emissions from handling fill without asbestos in it.

App. E-1, document page 380/1938 lists 3 diesel generators that would operate 8 hours per day, 7 days per week in perpetuity (operational). Yet, the emissions from these generators are not reflected in the various emission quantification efforts.

Table 4 (off-road construction emissions), p. 32 includes 9 portable diesel generators operating 6 hours/day, 6 days/week.

The Wastewater Septic System does not include any mention of how the wastewater is getting from the Brunswick mine area up the hill to the proposed septic field. The main buildings at the mine are at approximately 2740' and the upper portion of the septic field is at 2875'. Therefore, all of the sewage from the mine's 312 employees plus contractors, visitors and truck drivers has to be pumped a quarter mile up the hill across an elevation gain of 135'. If it is being pumped by a generator, those emissions should be quantified.

Emissions from construction of the septic leach field and quarter-mile sewage line running up hill to the septic system appear to be missing.

The OFFROAD model does not include fugitive emissions. It only includes engine emissions. The Operational Off-road Equipment list (App. E-1, document page 380/1938) lists plenty of off-road equipment at the Brunswick site. Table 8 (Off-Road Equipment Assumptions – Logging and Chipping) includes a grapple loader, a front-end loader, a skidder, a grinder and two excavators. PM/NOA emissions from those do not appear to be included in the TAC calculations, which specify that there would be zero emissions from off-road equipment. This doesn't seem possible given the amount of off-road disturbance from the variety of mobile off-road machinery, most of which moves dirt and rock as its primary function.

The "Earthwork and Material Handling Fugitive Dust" section starting on page 300 only includes a few of the construction activities that are anticipated (SF Creek Culvert Replacement, Pond Berm Repair, Service Shaft Collar and Building Pad). It assumes a serpentinite content (spelled "Sepentinite Concent" in the DEIR) in fill of 14.3%, with an asbestos content of 0.20%. A figure of 0.03% (which should be explained) appears to be derived from these numbers. Then there is a calculation of wind erosion that assumes a disturbed area of 4 acres. The resultant calculated fugitive dust emissions from wind erosion during construction is 0.41 tpy of PM10 and 0.02 tpy of PM2.5. The following unnumbered page (doc page 301) has an unlabeled table which seems to say that only 40,150 tons of fill would be placed per year (versus the proposed 365,000 tpy). The pages after that are unclear. For example, there is a sub-table called "Compaction" as part of the Fill Placement calculation series that notes a piece of equipment ("Cat563") that works for 0.06 hours per day. That is 216 seconds. On that same page is a bulldozer that moves 411.1 tons per hour and works 0.27 hours/day, which is 16 minutes and 12 seconds.

The reason for selecting 25 meters as the plume height and width for all of the line volume sources in Table 2 starting on page 8 of Appendix B of Appendix E.1 should be explained.

The DEIR cites AP-42, Ch. 13.3 as a source for blasting emissions information. ANFO is listed in that source as emitting 17 lb/ton of NOx. At 0.93 tpd of ANFO, that comes to 2.89 tons per year of NOx emissions from ANFO detonation. Nitrogen oxides are principally NO2, which is recognized as a TAC. These TAC emissions are not included in the DEIR. The "Underground Blasting and Crushing" section (p. 4.3-56) assumes no TAC emissions from blasting.

ASUR Plan

The NSAQMD is neither approving nor disapproving the ASUR Plan because there is no legal requirement for such a plan – it is part of the project planning documentation.

The ASUR Plan includes corrective actions for certain circumstances. The NSAQMD does not necessarily approve these actions in lieu of other actions or penalties that the NSAQMD or other agencies may prescribe or require. The ASUR Plan cannot be seen as being exclusively directive for the applicant or binding in any way on any agency, and should include a statement to that effect. The enforcement authority of agencies is unaffected by the ASUR Plan.

The ASUR Plan's shortcomings include difficulties with enforceability, uncertainty regarding the exact nature of control technologies to be used, the self-policing nature of the plan and a way to quickly evaluate its effectiveness.

The first page of the ASUR's Table includes the TEM % by weight, but the next two pages omit this statistic.

The summary table (1st page of Appendix C) is missing a sample. It appears to be sample Y962992, which has the highest concentration of asbestos of any of the rock samples (7.3 structures per nanogram, or 7,330,000,000 asbestos fibers per gram).

ASUR 5.0 paragraph 5 reads, "The great majority of mine tunneling in barren rock for the Idaho-Maryland Mine Project is expected to occur in the meta-andesite porphyrite "Brunswick Block". No asbestos was detected by PLM in samples from the meta-andesite porphyrite lithology. Asbestos was detected in six of the eighteen samples by TEM methods and the eighteen samples averaged 0.26 TEM structures per nanogram (s/ng) or 0.002% PCM asbestos by weight." Here again the conversion to PCM is unwarranted, since OEHHA's PCM conversion only applies to air monitoring samples. The TEM data sheets provide a calculated asbestos percentage, which averages to 0.192% asbestos by weight in the porphyrite samples. At this concentration, in the daily mining of 1,500 tons there would be 2.88 tons of asbestos. However, using the inferior PLM quantification technique there would appear to be no asbestos at all.

Similarly, Table 2 of the Vergence report illustrates the superiority of TEM to PLM analyses in the comparison of two results from the same core sample. The 1.1 foot-long core from hole #I-19-13, which was from a depth of 5090.50 feet to 5091.60 feet, was analyzed using both TEM

and PLM. The less reliable PLM method did not detect any asbestos but the TEM method detected 2.0% asbestos. The average asbestos content in the two TEM-evaluated samples of serpentinite was 2.8%.

The proposal to use PLM for compliance purposes may be convenient, but there is a big difference between PLM results and TEM results. TEM is preferred for asbestos quantification because it is able to detect smaller particles. A comparison between PLM and TEM results shows that there are a lot of asbestos fibers in the rock that are too small to be detected using PLM. Choosing to use PLM is, in effect, choosing not to see the asbestos.

Asbestos has been found in all of the kinds of rocks that were analyzed from the site (porphyrite, diabase, sand tailings, unmineralized serpentinite, weakly ankeritized diabase/serpentinite, ankeritized serpentinite, and serpentinite). With only a relatively few samples having been analyzed, there is no way to know how much asbestos is present in a given untested rock sample, but every fragment of rock or soil from the mine or the mine tailings could contain asbestos. When those rocks are broken or that soil is driven on or otherwise disturbed, asbestos fibers could be released to the air in unknown concentrations. Once airborne, tiny asbestos fibers can potentially travel many miles.

There is at least one serious mistake in the TEM lab reports. The sheet for sample Y962990 lists a “Calculated Asbestos Concentration (Weight %)” for chrysotile asbestos as .075% (29 million fibers per gram), so there is obviously an error in the reporting of the total as <0.001 %. The percentage of total asbestos can’t be less than the percentage of a particular kind of asbestos.

Page 14, item 7 says that records of all analytical test work will be kept for a minimum of 7 years. Since asbestos related diseases often do not show up for 40 years or more, 7 years is not long enough for recordkeeping. Instead, the records should be kept (at least in electronic form) until at least 40 years after the mine closes.

Page 8, item 3 says, “Lithological units and gold mineralization will be adequately sampled and tested for naturally occurring asbestos….” The term “adequately sampled” is meaningless. Item 3 also includes some vague phrasing about testing using PLM and TEM. Is every sample to be tested both ways? How often? Also, in addition to converting TEM results to PCM with OEHHA’s conversion formula, the TEM results should be reported and available to the public.

The ASUR Plan should include measures to prevent secondary asbestos emissions from workers’ clothing and shoes. Historically, family members of individuals who have worked in mines where naturally occurring asbestos is present have been exposed to asbestos from the workers’ clothing and shoes, resulting in asbestosis and mesothelioma. Asbestos exposures to the general public could also occur if workers carry asbestos-containing soil on their shoes and clothing into local places of business, such as restaurants, retail stores, fitness centers, etc. Showering on-site and changing shoes and changing and washing clothing at the end of a worker’s shift is one way to prevent this type of secondary exposure. Alternatively, workers could wear protective suits and shoes that stay on-site. The manner of keeping asbestos from

leaving the site on workers' clothes, shoes and persons could be considered an airborne toxics mitigation measure.

The publication cited in the ASUR Plan, "NIOSH (2019). *Dust control handbook for industrial minerals mining and processing. Second edition*. https://doi.org/10.26616/NIOSHPUB2019124" discusses additional options for dust control, including the use of wind fences, fixed water spray systems and crust-forming agents, and covering inactive areas with clean gravel. The discussion of dome enclosures on page 357 of that document in particular should be reviewed (large ones can span a thousand feet and they can withstand 90-mph winds and heavy ice loads). Such technologies should be discussed/evaluated in the DEIR

As the tunnels progress and more samples are tested for asbestos, an ever-increasing knowledge base will develop. There should be a way to refine the ASUR Plan and reassess the project periodically. As a precedent, Teichert Aggregates has a 5-year conditional use permit review requirement for their Martis Valley operation near Truckee. If it is found that asbestos emissions are great enough to create a significant health risk, there should be a way to put the project on hold for as long as necessary to find ways to bring the asbestos emissions down, such as through additional or new technologies. It would be short-sighted to commit to the ASUR Plan for the entire life of the mine based on the few samples that have been tested so far. As time passes, technology advances. There may be a way to quickly monitor for asbestos emissions or assess the asbestos content of the rock body in the future. Control technology also advances, and someday there may be ways to further reduce the release of microscopic airborne asbestos fibers into the community.

Some of the gold veins are known to be hosted entirely in serpentinite. The NSAQMD recommends considering leaving those veins untouched for at least 40 years, by which time emission control technology is likely to have improved. Electrostatic mist screens, for example, show promise among emerging technologies.

Water

The Water Supply Assessment (WSA) is important because an abundant supply of water is necessary for the control of dust and toxics such as silica and asbestos. Unfortunately, it does not include enough detail to evaluate its accuracy. There should be an itemized list, or inventory, of water usage features so that reviewers can check to see if key elements are being overlooked or mischaracterized.

The water usage estimates are based on usage at "buildout." The document considers the first 10 years as the "construction" period because that is when the waste material is being deposited and compacted as engineered fill at the Centennial and Brunswick sites. It reads, "Because this WSA is assessing the impacts at buildout of the Proposed Project, the water demand during construction will not be included in buildout water demands." However, the buildout phase is not when the project would use the most water. That is, unless the eventual off-site compaction of engineered fill were to be included in water usage, that would increase the buildout consumption, especially since it would require an abundance of water due to the

presence of asbestos in the fill and the resulting requirement to comply with the Asbestos Airborne Toxic Control Measures for all fill placement activities (not discussed in the DEIR).

The DEIR estimates 5,700 gpd of potable water for sinks, toilets, showers and laundry. It would be important to have adequate shower capacity at the facility for the hundreds of anticipated employees. Workers in the mine would continually be subject to air saturated with moisture to the point of it dripping off their clothing (the DEIR specifies that there would be 100% saturation of the air in the mine). Dust laden with asbestos and other toxic substances would stick to skin, hair and clothing. Workers should not be allowed to leave the site with asbestos dust on their bodies, clothes or shoes because they would carry the asbestos dust into public places or home to people they live with.

A key question regarding water use assumptions is if the non-potable water would be of high enough quality to use for "100 percent saturation of air" (estimated at 40,000 gpd). If it has elevated levels of natural contaminants (such as arsenic, mercury and other heavy metals, iron and manganese) or if it has too much of the proposed water treatment and ore processing chemicals, it may not be suitable for employees to breathe. Water pumped from the mine would contain numerous substances including sodium hypochlorite (bleach), ammonia (partly from detonation of 1,860 lbs/day of ANFO explosive), potassium permanganate, sulfuric acid, sodium hydroxide, sodium bisulfite, assorted lubricants and petroleum products lost from equipment, and reagents including Aerofloat 208 (odor of alcohol and sulfur), Aerophine 3418A, Aerofroth 70-MIBC (odor of alcohol), Magnfloc 10 and Scaletrol PDC9401.

The ASUR Plan proposes that unpaved areas will be watered for dust suppression every 2 hours, which should be considered carefully in the WSA. The NSAQMD is concerned that the water budgeted for the project might not be adequate to meet the dust control requirements. Since the dust contains asbestos, silica and numerous other toxic substances, adequate dust control is necessary. There should never be a situation where dust control is compromised because of water usage restrictions, particularly in the summer months when the potential for dust generation is greatest.

https://www.epa.gov/sites/default/files/2019-04/documents/mr_guidanceforapplicationfordustcontrolpermit.pdf contains some "rules of thumb" for estimating water usage. For example, grading uses approximately 10,000 gal/acre per day; 30 gallons is required for each cubic yard moved; and pre-wetting areas to be disturbed requires 1 acre-foot of water (325,851 gal) per acre of land. The Health Risk Assessment (page 3) says that 104 acres are to be disturbed.

A lot of water is also needed for grinding mills, crushers, conveyors, conveyor transfer points and drop points to control emissions of dust and asbestos.

Attachment 5

James Bair Comment Letter

Dated May 8th 2023

May 8, 2023

To: Nevada County Planning Commission

From: James Bair aristotle2001@gmail.com

Subject: IMM Project FEIR Violation of CEQA Guidelines

The IMM FEIR cannot be certified because there is a pattern of explicitly excluding critical content (**see CEQA quotes below**). In order to predict of the "adequacy" of mitigation measures, **CEQA requires that the FEIR provide details of how negative environmental impacts are to be mitigated**. This FEIR omits mitigation details based on case law (citations below) which are not relevant to the IMM Project in our judgement. For example, it states that measurements of toxins such as asbestos will be measured **after approval** based on plans also **developed after approva**l. The FEIR includes the following questionable statement in at least 7 places (quotes in italics):

> **To quote the IMM FEIR,** "*The engineering details and intensive sampling described by many commenters **would be** developed and completed through the implementation of mitigation measures, and is not required to be completed as part of the CEQA process".* **We cannot determine the adequacy of mitigation measures that are not fully described in the FEIR.** Excluding "engineering details" is justified using legal cases that are not relevant or comparable. Each of the seven FEIR occurrences of that quote in the FEIR are the same (See FEIR pages 19, 411, 638, 6835, 7590, 7797, and 8187).

But CEQA states: "*The project description **must contain sufficient specific information** about the project to allow the **public** and reviewing agencies to evaluate and review its environmental impacts. A project description that omits integral components of the project may result in an **EIR that fails** to disclose the actual impacts of the project."* (See Note 2 below). *(Santiago County Water Dist. v. County of Orange (1981) 118 Cal.App.3d 818, 829, 173 Cal.Rptr. 602.)* In this case the Court stated *"we hold that the provisions of CEQA do not exempt a public agency from the Public Resources Code section 21100 requirement that an EIR shall include a detailed statement setting forth "all significant effects on the environment of the proposed project…"* (see Note 2 and Exhibit A). The Santiago case cites several cases that reference examples of inadequate mitigation descriptions.

Legal Council also supports IMM FEIR insufficiency: *"See Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412, 439 (holding factual inconsistencies and lack of clarity in the [IMM] FEIR leave the reader and the decision makers without substantial evidence to support the EIR's conclusions); Laurel Heights Improvement Assn v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376, 404 (There must be a disclosure of the analytic route the agency traveled from evidence to action….)"* (See Note 5).

We recommend that the County Planning Commission not certify the FEIR because there is insufficient information as required by CEQA to allow evaluation of the mitigation measures.

/s/ James Bair 510.910.2300 Grass Valley, CA 94945

Former Grass Valley Planning Commissioner, Scientist at Stanford, Bell Labs of CN, and the USAF; also Manager, HP; Sr. Manager, Xerox Corp.

CC: Board of Supervisors and County Council

REFERENCES

NOTE 1: <u>FEIR references the legal cases on</u> pages 119, 411, 638, 6835, 7590, 7797, 8187.

The cases are [see Exhibit A]*: (1) Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) **Which cites** *Sacramento Old City Assn. v. City Council,* Court of Appeal Third District Apr 30, 1991**.**

(2) DRY CREEK CITIZENS COALITION v. Artesia Ready Mix Concrete, Inc., Real Party in Interest and Respondent. (1999) https://caselaw.findlaw.com/ca-court-of-appeal/1129797.html

The FEIR also states on p. 411 that "*details to be from the County …"* to further justify omission of mitigation measure details.

NOTE 2: CEQA Requirements

CEQA states:

"*There must be sufficient information to understand the environmental impacts of the proposed project.* (CEQA Guidelines, § 15146, *discussion*.) *The EIR must achieve a balance between technical accuracy and public understanding."* (Guidelines, § 15147, discussion.) [A detailed description of the project and mitigation measures is provided in the Guidelines to illustrate the required level of detail.]

> **Court of Appeal Judgement:**
>
> In *Santiago County Water Dist. v. County of Orange (continued from above): "…and that under the facts of the present case the superior court erred in upholding the approval of an EIR which deferred any consideration of any significant environmental effects of supplying water to the new community."*

NOTE 3: Dependency upon State agencies for implementation after IMM Project approval

For example, the FEIR says that plans to control the lethal air pollution and other negative environmental impacts will be done **after** the Mine Project is approved. They justify not doing the "engineering" plans for managing asbestos air pollution by **delegating** responsibility to The Northern Sierra Air Quality Management District (NSAQMD) that does not agree [see Exhibit B].

NOTE 4: Relevant Case Law, CA 3rd Appellate Court

Based in thousands of hours of analysis by the Public, a recommendation to certify the FEIR is vulnerable to a **"prejudicial abuse of discretion" decision based on case law**. To wit, *"In reviewing the adequacy of the county's actions in preparing the EIR for the sand and gravel mining plant, we are limited to deciding "whether there was a prejudicial abuse of discretion . . . [which] is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (§ 21168.5.) Thus, we do "not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document."* (*County of Inyo* v. *City of Los Angeles* (1977) 71 Cal.App.3d 185, 189 [139 Cal.Rptr. 396].) [enhancement added]

Note 5: Legal conclusion that the mitigation measures are inadequate in SHUTE, MIHALY & WEINBERGER LLP letter to Matt Kelley, Nevada County Planning Department, March 20, 2023, page 24. "*The applicant prepared an Asbestos, Serpentinite, and Ultramafic Rock Management Plan (ASUR Plan) that purportedly incorporates measures to minimize asbestos in the engineered fill generated by the Project. DEIR at 3-20. According to the EIR, the ASUR Plan requires testing of all mined materials to ensure that average mined material and engineered fill contains* ***less than 0.01%*** *asbestos by mass. DEIR at 4.3-61 (emphasis added); id. at 3-20. Thus, the EIR gives the impression that all rock generated by the Project will be tested, and that it will achieve an average level of less than 0.01% asbestos by mass. However,* ***to the contrary****, the EIR and ASUR Plan elsewhere obliquely reveal that very little of the mined rock will actually be tested, that it will be held to a much lower standard of* ***0.25% asbestos****, and that there is no concrete plan for what to do if the engineered fill is found to be contaminated."* (Page 26) [CA State law clearly states contaminated fill cannot be hauled or used…]. (c.f. CEQA Guidelines § 15126.4(a)(1). [https://www.law.cornell.edu/regulations/california/14-CCR-15126.4]

EXHIBIT A: IMM FEIR CASES CITED TO JUSTIFIY EXCLUDING MITIGATION DETAILS

Dry Creek Citizens Coalition v. County of Tulare (1999) 70 Cal.App.4th 20 *Citizens challenged the County's approval of the Artesia sand and gravel mine on Dry Creek on the claim that the project description contained in the EIR prepared for a proposed expansion of the operation (from 33.5 ac. to 162 ac.) inadequately described water diversion elements of the project. They also challenge the adequacy of the EIR re: road improvements, mitigation measures, and cumulative impact analysis as to biological resources.* ***T****he court upheld the EIR on the basis that the Guidelines require a general description of project characteristics, not engineering drawings as argued by Citizens. Also, the County included "well established design criteria" for the project's water diversion structures. The county also included contingency measures in its requirement for a sycamore alluvial woodland revegetation plan, substantial evidence supported the adequacy of this mitigation. In dismissing the claim that some of the county mitigation was unlawfully deferred, the court cited* ***Sacramento Old City Assoc. v. City Council of Sacramento*** *(1991) 229 Cal.App.3rd 1011 for the proposition that an agency may adopt a mitigation program that will require mitigation, the precise design of which will be determined in the future. Read as*

a whole, the EIR adequately discussed impacts. https://casetext.com/case/sacramento-old-city-assn-v-city-council: Sacramento Old City Assn. v. City Council.

Case Summary: we conclude this case is not relevant to the IMM FEIR

The Sacramento Old City case is urban demolition and construction: "[Petition] *to set aside the decision of defendant, City Council of Sacramento (the City) to expand the downtown Sacramento Convention Center complex (the center) and to construct an office tower at 1325 J Street (the office tower). Plaintiffs also sought an injunction against the future demolition of the Merrium Apartments until the City prepares an adequate environmental impact report (EIR) on the project. On appeal, plaintiffs argue the EIR approved by the City is inadequate under CEQA. Plaintiffs contend the EIR is deficient because: (1) the EIR fails to adequately address mitigation of parking and traffic impacts; (2) the EIR contains insufficient findings concerning parking and the destruction of the Merrium Apartments.*

EXHIBIT B: Northern Sierra Air Quality Management District (NSAQMD) DEIR Comment April 4, 2022 [superseded ON April 28, 2023, AFTER THE COMMENT Period and is not addressed in the FEIR per NSAQMD.]

IMM-FEIR_Volume-I---Volume-VI-Chapters-1---4 (nevadacountyca.gov) pages 2-350 - 2-361.

Copied here because the comment was improperly excluded from the FEIR responses and is critical to FEIR mitigation adequacy determination:

Northern Sierra Air Quality Management District

Gretchen Bennitt, Executive Director

District Headquarters
200 Litton Drive, Suite 320
Grass Valley, CA 95945
(530) 274-9360
FAX: (530) 274-7546
office@myairdistrict.com
www.myairdistrict.com

Northern Field Office
257 E. Sierra, Unit E
Mailing Address: P.O. Box 2227
Portola, CA 96122
(530) 832-0102
FAX: (530) 832-0101

April 4, 2022

Re: Comments on Draft EIR for Idaho-Maryland Mine, Nevada County, CA

Introduction

The NSAQMD submitted comments and recommendations regarding the proposed project as part of the NOA/NOP, but these were omitted from the DEIR's NOP comment section.

The NSAQMD recommended that the applicant work with the Department of Toxic Substances Control, the US Geological Survey and/or the Office of Environmental Health Hazard Assessment to obtain concurrence that asbestos testing for the proposed mine is adequately addressed with regard to the number and locations of samples and applicable analytical techniques. It does not appear as if this was done.

The NSAQMD has also submitted additional comments and been involved in other ways with the environmental documentation process for the proposed project. Many of the NSAQMD's comments and observations have been addressed, but some important ones remain unaddressed. Notably, the DEIR includes a newly added, previously undiscussed method of converting asbestos in rocks to asbestos in air that is not backed by science.

Asbestos emissions are the primary concern of the Northern Sierra Air Quality Management District (NSAQMD). The DEIR's treatment of naturally occurring asbestos is scientifically unsound and therefore not adequate for CEQA purposes. Laboratory testing in November 2021 of seven dominant types of rock from the site discovered asbestos in every type, with an average of 594,625,000 asbestos fibers per gram. For perspective, a new penny weighs 2.5 grams. Based on the recent tests of 40 rock samples and 2 previous rock samples, in a penny's mass of average mine rock there are well over a billion asbestos fibers.

Asbestos and Public Health

Asbestos is a well-known carcinogenic toxic air contaminant. Effects of asbestos exposure are insidious, highly variable and may not show up for 10 to 40 years or more. The most infamous result of asbestos exposure is mesothelioma, a specific type of cancer. The Office of Environmental Health Hazard Assessment (OEHHA) approach to asbestos risk assessment under AB2588 (the Air Toxics Hot Spots Act) is currently based only on a person's risk of developing mesothelioma. It does not provide any assessment of risk of developing other types of asbestos-related diseases such as asbestosis (an inflammatory condition affecting the lungs that can cause shortness of breath, coughing, and permanent lung damage), pleural

plaques (changes in the membranes surrounding the lung), pleural thickening, benign pleural effusions (abnormal collections of fluid between the thin layers of tissue lining the lungs and the wall of the chest cavity) and assorted cancers of the lung, larynx, pharynx, stomach, colorectum and ovary.

For additional information on the effects of asbestos exposure, see the National Cancer Institute website (https://www.cancer.gov/about-cancer/causes prevention/risk/substances/asbestos/asbestos-fact-sheet). Following is a relevant excerpt from this website:

*There is some evidence that family members of workers heavily exposed to asbestos face an increased risk of developing mesothelioma (https://www.cancer.gov/about-cancer/causes prevention/risk/substances/asbestos/asbestos-fact-sheet#r12). This risk is thought to result from exposure to asbestos fibers brought into the home on the shoes, clothing, skin, and hair of workers. To decrease these exposures, Federal law regulates workplace practices to limit the possibility of asbestos being brought home in this way. Some employees may be required to shower and change their clothes before they leave work, store their street clothes in a separate area of the workplace, or wash their work clothes at home separately from other clothes (*https://www.cancer.gov/about-cancer/causes prevention/risk/substances/asbestos/asbestos-fact-sheet#r2*).*

Cases of mesothelioma have also been seen in individuals without occupational asbestos exposure who live close to asbestos mines ((https://www.cancer.gov/about-cancer/causes prevention/risk/substances/asbestos/asbestos-fact-sheet#r12)).

Asbestos PCM Conversion

The Air Quality sections of the DEIR include a newly introduced concept of converting asbestos measurements to PCM (phase contrast microscopy) units. There is no accepted method to convert between rock samples and air samples. The DEIR's approach of translating asbestos discovered in solid rock samples into PCM fiber concentrations in air is not possible. The PCM concept is from Appendix C: Asbestos Conversion Factors & Cancer Potency Factor, which is part of OEHHA's February 2015 Air Toxics Hot Spots Program Guidance Manual. OEHHA's conversion from fiber counts to mass as PCM fibers was developed exclusively for air samples. This is made clear in EPA's Airborne Asbestos Health Assessment Update document (USEPA, 1986. Airborne Asbestos Health Assessment Update. EPA/600/8-84/003F, Office of Health and Environmental Assessment, Washington, DC), which is referenced in OEHHA's Air Toxics Hot Spots Program Guidance Manual, Appendix C: Asbestos Conversion Factors & Cancer Potency Factor.

None of the DEIR's discussions regarding PCM conversions are valid. PCM cannot be used as a reporting metric, a compliance verification mechanism or a replacement for other methods of asbestos investigation. PCM asbestos conversion is not a concept that applies outside the world of asbestos air monitoring. During the DEIR comment period the NSAQMD contacted OEHHA with questions about the PCM conversion. OEHHA referred the NSAQMD to the California Air Resources Board (CARB) Risk Analysis Section, which worked with CARB's

Monitoring and Laboratory Division in providing an assessment of the underlying science. In short, CARB confirmed the non-validity of the applicant's PCM conversion approach. Following is an excerpt from a 3/28/22 email from CARB's Risk Analysis Section:

I … wanted to clarify our earlier statement from our previous email regarding the risk calculations based on the lab reports, we initially attempted to convert TEMs into concentration in the air per the OEHHA guidance and ran it through HARP, but after discussing the outcome with others internally, it really isn't an appropriate way to calculate the risk (this was confirmed below with our MLD staff as well). Rather, you would need an annual average concentration from either sampled or modeled air concentrations, so our initial analysis no longer applies.

Staff from our Monitoring and Laboratory Division observed the following:

1. Determination of Risk from Rock Samples. *I agree with you, it is not appropriate to determine risk from rock samples. The asbestos fibers considered in Appendix C of the Hot Spots Guidance came from airborne samples during occupational exposure studies. I checked the 1986 U.S. EPA reference….*

The PLM and TEM analyses in this DEIR were done on bulk samples (rocks), and the asbestos concentrations are reported in weight percent. It is not known how many asbestos fibers can be generated (and become airborne) from a given mass of asbestos-containing rock material. So there is no known conversion factor for the asbestos weight % (by TEM analysis of a rock sample) that can be used to estimate the number of PCM fibers/m^3 applicable for the Hot Spots risk assessment equation.

2. Calculation of asbestos weight % in TEM analysis report. *[This is in response to a separate question from the NSAQMD] The total asbestos weight % should be the sum of the chrysotile and amphibole asbestos weight percent. For sample **Y962990** (attached) it appears that there is an error in the report. Only 1 chrysotile fiber ≥5 µm is reported, and yet the weight % is 0.075. Comments describe actinolite fibers detected (an amphibole asbestos). Strange that a total weight % of <0.001 is reported.*

*For sample **Y962999** … I did not detect an anomaly in the TEM report. Chrysotile fibers can be much smaller and thinner than amphibole asbestos fibers. Many chrysotile fibers detected do not amount to much weight because they are so small or thin. CARB M435 PLM analysis of this sample is 2.5% asbestos by point-count. This is not unusual either. PLM analysis uses ~100,000 times more mass of sample than TEM analysis. It is best to start with PLM, and follow up with TEM for the PLM non-detects. TEM can miss out on finding the asbestos because the TEM sample mass is so low.*

3. DEIR asbestos calculations (Appendix C). *For Appendix C (attached) there were no equations given on how TEM structures per nanogram and PCM asbestos weight percent were calculated in the first table that groups asbestos test results by rock type. In the next table, on the second and third pages (pages 56 and 57), there is a missing column for TEM weight % from the analyses.*

4. Geological Units and Asbestos Testing (page 9). *The equations that [were] used for calculations of asbestos structures per nanogram and PCM asbestos by weight are not given. It is difficult to follow the discussion in this section because the lithology of the rock units is not described, and neither are the rock sample groupings clearly identified in Appendix C.*

NSAQMD recommends that the notion of PCM conversion should be thrown out because using OEHHA's air sampling PCM conversion formula for rock samples has the effect of making it look like there is less asbestos present than TEM laboratory work has demonstrated to be the case. Instead, the project's risk should be evaluated based on many more samples being gathered, and evaluated using TEM asbestos by weight. Those samples should be gathered in an approved, standardized manner (such as is set forth in Method 435) that employs composite collection practices rather than hand-picked pieces of core samples (which the tested samples were).

Using TEM to look at the same old core samples that were previously analyzed with PLM does have some value because we can now see how much asbestos the PLM method missed. PLM only detected asbestos in 2 of the 40 core samples, but the TEM method detected asbestos in 17 of the 40 samples, including in every rock type evaluated.

Both chrysotile and amphibole asbestos were discovered in the core samples. Chrysotile fibers tend to be smaller than amphibole fibers, making them more likely to become airborne and be transported great distances in the wind. Depending on weather conditions, they could be inhaled or deposited on surfaces in all parts of Nevada County for the 80-year duration of the project.

Note that the footnote on page 55 reads, "Samples containing naturally-occurring asbestos were from underground rock only; naturally-occurring asbestos is not known to outcrop at the surface of the Brunswick Site or Centennial Site." This is not the case – it could be that this was mistakenly left in the document from a version written before TEM was employed to get a closer look at the samples. While only 2 grab samples were taken from the surface of the 55-acre Centennial site, one of the two was found to contain 30-million chrysotile asbestos fibers per gram of rock, as is listed in the lab report for Sample Y962843 (ASUR Plan, unnumbered document page 106/131).

It is difficult to find the Health Risk Assessment among the many pages of the DEIR. It begins on unnumbered document page 356 of 1938 of Appendix E.1, as Appendix B of Appendix E.1. It should be noted that Appendix B of Appendix B of Appendix E.1, titled "Fugitive Dust TAC Concentrations" (starting on page 1,901 of the document) is missing asbestos. The Health Risk Assessment should be easier to locate.

The HARP report lists the maximum mitigated cancer risk as 3.34e-5 (group 543, p. 1839 of 1938) while the Appendix B, p. 1 reports the maximum cancer risk as 1.04e-5 (= 10.4e-6).

Asbestos Sampling and Monitoring

The NSAQMD has recommended that additional rock sampling be performed, and performed in a representative manner using composite samples, but it appears that no further sampling has been done (only further investigation of previously collected samples). There are still only 2 samples from the 56-acre Centennial site. All of the samples analyzed using TEM were previously analyzed using the inferior PLM method. The difference in the results from the two methods is large. PLM only detected asbestos in 2 of the 40 samples, but the TEM method detected asbestos in 17 of the 40 samples. This is mainly because PLM cannot detect small asbestos fibers, which are more easily entrained in the wind, can travel farther, and are inhaled deeper into the lungs.

It is unclear why the two serpentine samples originally evaluated using TEM were discarded from the 40-sample statistics and from consideration for the Health Risk Assessment. There were 42 samples analyzed using TEM, not 40. The two that were excluded are especially rich in asbestos. If all 42 samples are considered, the average asbestos concentration is 0.24% by weight.

In September 2020, the NSAQMD and Dudek communicated about monitoring. It would be ideal to have baseline monitoring data for at least a year before the project starts up. The NSAQMD suggested including a publicly accessible webcam (one for each site preferably) in the monitoring plan, as well as a MET site and a rain gauge. Monitoring specifics set forth in the Construction ATCM are available at CCR 93105(h)(3) and (h)(4). 40 CFR Part 58 (especially Appendix E) also contains relevant monitoring specifics.

Asbestos Emissions

Table 5 (App. E.1, document page 378/1938) lists construction emissions of .00003 tpy of asbestos, which is 0.06 lbs/year. This is incorrect. If we add the obvious dust from mitigated PM10 construction emissions due to off-road equipment (0.6 lbs/day) to the fugitive dust emissions (8.30 lbs/day) we get 8.9 lbs/day, or 3,248.5 lbs/year. TEM laboratory testing of 42 samples from the site yielded an average of 0.236355% asbestos content by weight. .236355 / 100 x 3,248.5 lbs/yr = 7.68 lbs/year, or 128 times the quantity of asbestos emissions presented in Table 5.

Dust emissions for the following 10 years are estimated at lbs/day from underground blasting (1.61) + ore processing (0.29) + fugitives (39.05) = 40.95 lbs/day, or 14,946.75 lbs/year. This comes to 35.33 lbs/year of asbestos emissions.

There is an Engineered Fill placement emissions table on unnumbered document page 303 that lists 37.95 lbs/day of PM emissions. The asbestos emission calculations are based not on the amount of asbestos present in the rock, but on the ASUR plan's goal of 0.01% asbestos in the engineered fill. The table at the top of the page includes emission factors. For the dumping of dump trucks, it includes emission factors for "material drop" from AP42, Table 13.2.4. The "material drop" emission factor is not for "material handling – blending." "Blending" implies disturbance that is continuous for some amount of time, whereas a material

drop is more or less instantaneous. The emission factor assumptions for the use of AP-42 section 13.2.4 should be explained. A material drop emission factor of 0.0001 lb/ton is used in the DEIR. However, the equation in 13.2.4 for material drop yields more than 6 times that amount if we apply a reasonable 5 mph wind speed and 3% moisture content.

Emissions Estimate Assumptions

On page 304, there are a few tables that are not explained. The rationale for using a silt content of 1.6% for the crushed rock and a moisture content of 15% for the sand tailings should be discussed. The normal ranges noted in AP-42 section 13.2.4 are a silt content of 0.44% to 19% and a moisture content of 0.25% to 4.8%. The choices taken in the DEIR for silt and moisture content result in lower emissions than the average anticipated values. Particularly since the waste rock has been crushed finely (beyond normal aggregate processing), the fill would have an increased concentration of fine particles/dust.

Additional assumptions on document page 304 that are questionable include a wind erosion area of 0.72 acres of active compaction, 0.34 acres access road and 1.00 acres either seeded or with covering underway. Elsewhere in the DEIR, it appears that more surface is to be disturbed that the area indicated in the assumptions on page 304. Likewise, the assumptions for bulldozing and compaction (2.43 hrs/day and 1.02 hrs/day respectively) seem to be less than indicated elsewhere in the DEIR.

The Logging and Chipping (described on page 4.3-56) is assumed to be for only 24 acres (Centennial and Brunswick sites combined). This is expected to take 11 years, so the assumptions divide 24 acres by 11 years to arrive at 2.18 acres per year, and it is assumed that logging and chipping will occur on only 1 day per year. It would be more realistic to consider that more than 2.18 acres might be cleared in a given year. Also, there is no mention of emissions associated with ongoing vegetation management.

Document page 306 contains logging & chipping emissions. There should be a source listed for the emission estimates. It is impossible to tell if the emissions are only from the equipment engines, engines plus tires, or engines, tires, root balls, fugitives from fans and loading limbs into the chipper, and so forth. Without an explanation there is no way to assess the validity of the numbers. From the tables on pages 307 and 308, it appears that those logging and chipping emissions listed on page 306 are only from the engines (which would be far less than if the entire process was evaluated). Following the chipping and logging estimates is a table that represents mobile sources associated with logging and chipping. However, it assumes that all operation is on paved roads and none of the vehicles are operating off-road, and only includes emissions directly from the vehicles (no fugitives). The emissions are based on EMFAC, which does not consider emissions from tires, fans and air displacement as vehicles navigate off-road to collect chips and logs.

The beginning of the Earthwork and Material Handling section (App. E-1, p. 24) reads, “Barren rock hoisted from the Brunswick shaft will be placed in the existing concrete silo located at the Brunswick Industrial Site. The barren rock will be transported from the concrete silo using a series of chutes and conveyors to a fully enclosed truck loading building. Barren rock may be

mixed with sands from the ore processing plant to create an engineered fill that meets appropriate geotechnical specifications for construction of development pads. Engineered fill would be transported from the ore processing facility to a receiving site, where it would be spread using a dozer."

Each transfer point along the "series of chutes and conveyors" is an emission point which is not accounted for in the DEIR.

Table 2 of the Health Risk Assessment lists the Base Elevation for the generators and diesel storage tanks in meters (placing them above 9,000'), whereas it should be feet.

The footnote for table 8 on page 28 of E.1 says, "Concentrate truck trip distance of 145 miles is based on the distance between the project sites and the Port of Oakland." There should be an explanation of why the 20 tpd of ore concentrate is going to the Port of Oakland. Is that where
it is to be refined, or is it being shipped overseas for processing? If it is being transported overseas, the associated emissions should be included in the GHG analysis since GHG emissions are a global concern.

Unnumbered document page 184 of E.1 (for paved road fugitive emissions from vehicles) shows a table that makes no sense. It has fractions of vehicles making fractions of trips, and then rounds the VMT numbers that result before performing the final calculations. For instance, Freight Trucks have an average of 0.43 daily trips going 0.52 miles and lists their VMT as 0. It appears that the 0 miles travelled is the multiplied by the weight of the trucks, which would yield 0. It also shows only 1 concentrate truck trip per day, whereas elsewhere there are 10 concentrate trips/day. However, there are 5 concentrate truck trips listed on page 186 and 187. This is just an example. Not only concentrate trucks but also other vehicles show different mileage, different trips numbers, etc. throughout the emissions calculations throughout the document. These should all be corrected and standardized before the DEIR is considered adequate.

The emissions estimates assume that all on-site roads will be paved. This should be included as a condition or mitigation measure.

The spreading of 1,000 tons per day of engineered fill with a dozer should be considered in the off-road equipment emissions (dozers are considered to be off-road equipment).

Also, it is not clear how or where the rock is to be "mixed with sands from the ore processing plant to create an engineered fill that meets appropriate geotechnical specifications for construction of development pads." The off-road equipment list includes a "mobile auger blending plant," so it would be presumed that this is how the waste sand from the processing plant would be mixed with waste rock. Every time rock and dirt that contain asbestos are moved there is the potential for additional asbestos emissions. All of these emissions should be included in the Toxic Air Contaminant/Health Risk Assessment evaluation.

The last sentence under Earthwork and Material Handling reads, "Notably, for fill transported to off-site industrial sites (for year 2033 and beyond), emissions associated with fill placement were not included since it was assumed that the other industrial facilities are already receiving,

or would receive, fill from other sources." The big difference between fill transported from the proposed Mine to be deposited in unknown locations around the community contains asbestos. When considering airborne toxics it doesn't make sense to consider emissions from handling fill with asbestos in it as equivalent to emissions from handling fill without asbestos in it.

App. E-1, document page 380/1938 lists 3 diesel generators that would operate 8 hours per day, 7 days per week in perpetuity (operational). Yet, the emissions from these generators are not reflected in the various emission quantification efforts.

Table 4 (off-road construction emissions), p. 32 includes 9 portable diesel generators operating 6 hours/day, 6 days/week.

The Wastewater Septic System does not include any mention of how the wastewater is getting from the Brunswick mine area up the hill to the proposed septic field. The main buildings at the mine are at approximately 2740' and the upper portion of the septic field is at 2875'. Therefore, all of the sewage from the mine's 312 employees plus contractors, visitors and truck drivers has to be pumped a quarter mile up the hill across an elevation gain of 135'. If it is being pumped by a generator, those emissions should be quantified.

Emissions from construction of the septic leach field and quarter-mile sewage line running up hill to the septic system appear to be missing.

The OFFROAD model does not include fugitive emissions. It only includes engine emissions. The Operational Off-road Equipment list (App. E-1, document page 380/1938) lists plenty of off-road equipment at the Brunswick site. Table 8 (Off-Road Equipment Assumptions – Logging and Chipping) includes a grapple loader, a front-end loader, a skidder, a grinder and two excavators. PM/NOA emissions from those do not appear to be included in the TAC calculations, which specify that there would be zero emissions from off-road equipment. This doesn't seem possible given the amount of off-road disturbance from the variety of mobile off road machinery, most of which moves dirt and rock as its primary function.

The "Earthwork and Material Handling Fugitive Dust" section starting on page 300 only includes a few of the construction activities that are anticipated (SF Creek Culvert Replacement, Pond Berm Repair, Service Shaft Collar and Building Pad). It assumes a serpentinite content (spelled "Sepentinite Concent" in the DEIR) in fill of 14.3%, with an asbestos content of 0.20%. A figure of 0.03% (which should be explained) appears to be derived from these numbers. Then there is a calculation of wind erosion that assumes a disturbed area of 4 acres. The resultant calculated fugitive dust emissions from wind erosion during construction is 0.41 tpy of PM10 and 0.02 tpy of PM2.5. The following unnumbered page (doc page 301) has an unlabeled table which seems to say that only 40,150 tons of fill would be placed per year (versus the proposed 365,000 tpy). The pages after that are unclear. For example, there is a sub-table called "Compaction" as part of the Fill Placement calculation series that notes a piece of equipment ("Cat563") that works for 0.06 hours per day. That is 216 seconds. On that same page is a bulldozer that moves 411.1 tons per hour and works 0.27 hours/day, which is 16 minutes and 12 seconds.

The reason for selecting 25 meters as the plume height and width for all of the line volume sources in Table 2 starting on page 8 of Appendix B of Appendix E.1 should be explained.

The DEIR cites AP-42, Ch. 13.3 as a source for blasting emissions information. ANFO is listed in that source as emitting 17 lb/ton of NOx. At 0.93 tpd of ANFO, that comes to 2.89 tons per year of NOx emissions from ANFO detonation. Nitrogen oxides are principally NO2, which is recognized as a TAC. These TAC emissions are not included in the DEIR.
The "Underground Blasting and Crushing" section (p. 4.3-56) assumes no TAC emissions from blasting.

ASUR Plan

The NSAQMD is neither approving nor disapproving the ASUR Plan because there is no legal requirement for such a plan – it is part of the project planning documentation.

The ASUR Plan includes corrective actions for certain circumstances. The NSAQMD does not necessarily approve these actions in lieu of other actions or penalties that the NSAQMD or other agencies may prescribe or require. The ASUR Plan cannot be seen as being exclusively directive for the applicant or binding in any way on any agency, and should include a statement to that effect. The enforcement authority of agencies is unaffected by the ASUR Plan.

The ASUR Plan's shortcomings include difficulties with enforceability, uncertainty regarding the exact nature of control technologies to be used, the self-policing nature of the plan and a way to quickly evaluate its effectiveness.

The first page of the ASUR's Table includes the TEM % by weight, but the next two pages omit this statistic.

The summary table (1st page of Appendix C) is missing a sample. It appears to be sample Y962992, which has the highest concentration of asbestos of any of the rock samples (7.3 structures per nanogram, or 7,330,000,000 asbestos fibers per gram).

ASUR 5.0 paragraph 5 reads, "The great majority of mine tunneling in barren rock for the Idaho-Maryland Mine Project is expected to occur in the meta-andesite porphyrite "Brunswick Block". No asbestos was detected by PLM in samples from the meta-andesite porphyrite lithology. Asbestos was detected in six of the eighteen samples by TEM methods and the eighteen samples averaged 0.26 TEM structures per nanogram (s/ng) or 0.002% PCM asbestos by weight." Here again the conversion to PCM is unwarranted, since OEHHA's PCM conversion only applies to air monitoring samples. The TEM data sheets provide a calculated asbestos percentage, which averages to 0.192% asbestos by weight in the porphyrite samples. At this concentration, in the daily mining of 1,500 tons there would be 2.88 tons of asbestos. However, using the inferior PLM quantification technique there would appear to be no asbestos at all.

Similarly, Table 2 of the Vergence report illustrates the superiority of TEM to PLM analyses in the comparison of two results from the same core sample. The 1.1 foot-long core from hole #I 19-13, which was from a depth of 5090.50 feet to 5091.60 feet, was analyzed using both TEM

and PLM. The less reliable PLM method did not detect any asbestos but the TEM method detected 2.0% asbestos. The average asbestos content in the two TEM-evaluated samples of serpentinite was 2.8%.

The proposal to use PLM for compliance purposes may be convenient, but there is a big difference between PLM results and TEM results. TEM is preferred for asbestos quantification because it is able to detect smaller particles. A comparison between PLM and TEM results shows that there are a lot of asbestos fibers in the rock that are too small to be detected using PLM. Choosing to use PLM is, in effect, choosing not to see the asbestos.

Asbestos has been found in all of the kinds of rocks that were analyzed from the site (porphyrite, diabase, sand tailings, unmineralized serpentinite, weakly ankeritized diabase/serpentinite, ankeritized serpentinite, and serpentinite). With only a relatively few samples having been analyzed, there is no way to know how much asbestos is present in a given untested rock sample, but every fragment of rock or soil from the mine or the mine tailings could contain asbestos. When those rocks are broken or that soil is driven on or otherwise disturbed, asbestos fibers could be released to the air in unknown concentrations. Once airborne, tiny asbestos fibers can potentially travel many miles.

There is at least one serious mistake in the TEM lab reports. The sheet for sample Y962990 lists a “Calculated Asbestos Concentration (Weight %)” for chrysotile asbestos as .075% (29 million fibers per gram), so there is obviously an error in the reporting of the total as <0.001 %. The percentage of total asbestos can’t be less than the percentage of a particular kind of asbestos.

Page 14, item 7 says that records of all analytical test work will be kept for a minimum of 7 years. Since asbestos related diseases often do not show up for 40 years or more, 7 years is not long enough for recordkeeping. Instead, the records should be kept (at least in electronic form) until at least 40 years after the mine closes.

Page 8, item 3 says, “Lithological units and gold mineralization will be adequately sampled and tested for naturally occurring asbestos….” The term “adequately sampled” is meaningless. Item 3 also includes some vague phrasing about testing using PLM and TEM. Is every sample to be tested both ways? How often? Also, in addition to converting TEM results to PCM with OEHHA’s conversion formula, the TEM results should be reported and available to the public.

The ASUR Plan should include measures to prevent secondary asbestos emissions from workers’ clothing and shoes. Historically, family members of individuals who have worked in mines where naturally occurring asbestos is present have been exposed to asbestos from the workers’ clothing and shoes, resulting in asbestosis and mesothelioma. Asbestos exposures to the general public could also occur if workers carry asbestos-containing soil on their shoes and clothing into local places of business, such as restaurants, retail stores, fitness centers, etc. Showering on-site and changing shoes and changing and washing clothing at the end of a worker’s shift is one way to prevent this type of secondary exposure. Alternatively, workers could wear protective suits and shoes that stay on-site. The manner of keeping asbestos from

leaving the site on workers' clothes, shoes and persons could be considered an airborne toxics mitigation measure.

The publication cited in the ASUR Plan, "NIOSH (2019). *Dust control handbook for industrial minerals mining and processing. Second edition*. https://doi.org/10.26616/NIOSHPUB2019124" discusses additional options for dust control, including the use of wind fences, fixed water spray systems and crust-forming agents, and covering inactive areas with clean gravel. The discussion of dome enclosures on page 357 of that document in particular should be reviewed (large ones can span a thousand feet and they can withstand 90-mph winds and heavy ice loads). Such technologies should be discussed/evaluated in the DEIR

As the tunnels progress and more samples are tested for asbestos, an ever-increasing knowledge base will develop. There should be a way to refine the ASUR Plan and reassess the project periodically. As a precedent, Teichert Aggregates has a 5-year conditional use permit review requirement for their Martis Valley operation near Truckee. If it is found that asbestos emissions are great enough to create a significant health risk, there should be a way to put the project on hold for as long as necessary to find ways to bring the asbestos emissions down, such as through additional or new technologies. It would be short-sighted to commit to the ASUR Plan for the entire life of the mine based on the few samples that have been tested so far. As time passes, technology advances. There may be a way to quickly monitor for asbestos emissions or assess the asbestos content of the rock body in the future. Control technology also advances, and someday there may be ways to further reduce the release of microscopic airborne asbestos fibers into the community.

Some of the gold veins are known to be hosted entirely in serpentinite. The NSAQMD recommends considering leaving those veins untouched for at least 40 years, by which time emission control technology is likely to have improved. Electrostatic mist screens, for example, show promise among emerging technologies.

Water

The Water Supply Assessment (WSA) is important because an abundant supply of water is necessary for the control of dust and toxics such as silica and asbestos. Unfortunately, it does not include enough detail to evaluate its accuracy. There should be an itemized list, or inventory, of water usage features so that reviewers can check to see if key elements are being overlooked or mischaracterized.

The water usage estimates are based on usage at "buildout." The document considers the first 10 years as the "construction" period because that is when the waste material is being deposited and compacted as engineered fill at the Centennial and Brunswick sites. It reads, "Because this WSA is assessing the impacts at buildout of the Proposed Project, the water demand during construction will not be included in buildout water demands." However, the buildout phase is not when the project would use the most water. That is, unless the eventual off-site compaction of engineered fill were to be included in water usage, that would increase the buildout consumption, especially since it would require an abundance of water due to the

presence of asbestos in the fill and the resulting requirement to comply with the Asbestos Airborne Toxic Control Measures for all fill placement activities (not discussed in the DEIR).

The DEIR estimates 5,700 gpd of potable water for sinks, toilets, showers and laundry. It would be important to have adequate shower capacity at the facility for the hundreds of anticipated employees. Workers in the mine would continually be subject to air saturated with moisture to the point of it dripping off their clothing (the DEIR specifies that there would be 100% saturation of the air in the mine). Dust laden with asbestos and other toxic substances would stick to skin, hair and clothing. Workers should not be allowed to leave the site with asbestos dust on their bodies, clothes or shoes because they would carry the asbestos dust into public places or home to people they live with.

A key question regarding water use assumptions is if the non-potable water would be of high enough quality to use for “100 percent saturation of air” (estimated at 40,000 gpd). If it has elevated levels of natural contaminants (such as arsenic, mercury and other heavy metals, iron and manganese) or if it has too much of the proposed water treatment and ore processing chemicals, it may not be suitable for employees to breathe. Water pumped from the mine would contain numerous substances including sodium hypochlorite (bleach), ammonia (partly from detonation of 1,860 lbs/day of ANFO explosive), potassium permanganate, sulfuric acid, sodium hydroxide, sodium bisulfite, assorted lubricants and petroleum products lost from equipment, and reagents including Aerofloat 208 (odor of alcohol and sulfur), Aerophine 3418A, Aerofroth 70-MIBC (odor of alcohol), Magnfloc 10 and Scaletrol PDC9401.

The ASUR Plan proposes that unpaved areas will be watered for dust suppression every 2 hours, which should be considered carefully in the WSA. The NSAQMD is concerned that the water budgeted for the project might not be adequate to meet the dust control requirements. Since the dust contains asbestos, silica and numerous other toxic substances, adequate dust control is necessary. There should never be a situation where dust control is compromised because of water usage restrictions, particularly in the summer months when the potential for dust generation is greatest.

https://www.epa.gov/sites/default/files/2019-04/documents/mr_guidanceforapplicationfordustcontrolpermit.pdf contains some “rules of thumb” for estimating water usage. For example, grading uses approximately 10,000 gal/acre per day; 30 gallons is required for each cubic yard moved; and pre-wetting areas to be disturbed requires 1 acre-foot of water (325,851 gal) per acre of land. The Health Risk Assessment (page 3) says that 104 acres are to be disturbed.

A lot of water is also needed for grinding mills, crushers, conveyors, conveyor transfer points and drop points to control emissions of dust and asbestos.

Agency Official Sam Longmire, Northern Sierra Air Quality Management District

Attachment 6

Rise Response to NSAQMD letter

dated April 12th 2022

which resulted in retraction of Agency Letter 12 of the FEIR

MITCHELL CHADWICK

G. Braiden Chadwick
bchadwick@mitchellchadwick.com
916-462-8886
916-788-0290 Fax

April 12, 2022

VIA EMAIL AND U.S. MAIL

Gretchen Bennitt, Executive Director
Northern Sierra Air Quality Management District
200 Litton Drive, Suite 320
Grass Valley, CA 95945
gretchenb@myairdistrict.com

Re: NSAQMD Comments on Draft EIR for Idaho-Maryland Mine

Dear Ms. Bennitt:

I recently received a copy of the unsigned comment letter ("Comment Letter") sent by the Northern Sierra Air Quality Management District ("NSAQMD") on the Draft EIR for the Idaho-Maryland Mine project ("Project"). The tone and substance of the Comment Letter is simply outrageous and, for the reasons outlined below, the letter must be immediately retracted by the District.[1]

The aggressive and combative tone of the Comment Letter is the same seen in project opposition letters from environmental pressure groups, even though the letter is on the letterhead of the NSAQMD, which is supposed to be an *unbiased and neutral* governmental agency. Based on the Comment Letter's tone and use of needless fear-mongering statements, the unnamed author of the letter appears to be a Project opponent, may be coordinating with environmental pressure groups, and is using his/her public office for personal purposes to harm the Project and my client.

Perhaps most damningly, the Comment Letter outright dismisses the Office of Environmental Health Hazard Assessment ("OEHHA") Guidelines methods for analysis of asbestos risk, demands a risk analysis method that is *not* found in statute or regulation, and would overstate risk by 320x. The Comment Letter goes out of its way to purposefully present information out of context and present the Project in the worst light. Based on our research, the NSAQMD has never sent a comment letter with these types of baseless statements or requirements for other land use projects located in the same ultramafic geologic zones where asbestos-containing rock could be present (e.g. the Dorsey Marketplace project). In most projects approved in the last 20 years in this same geologic area, the NSAQMD had little to no comments and never sent

[1] Notably, the Comment Letter was sent without attribution to the author.

anything resembling the obviously anti-project letter received on the Idaho Maryland Mine Project. This different and exceptionally harsh treatment for my client's Project is not only striking evidence of bias and inappropriate use of governmental authority, but is a blatant violation of the equal protection clause of the U.S. Constitution. The Comment Letter also constitutes actionable libel under California Law, based on the false statements which are beyond the scope of the NSAQMD's official role.

My client has no objection to receiving legitimate, and objective comments from the NSAQMD on the Project DEIR, but my client will not willingly tolerate a comment letter that is biased, based on knowingly false statements, requires testing methods that contradict California law, treats my client differently than other land use projects in the District, and reads as if written by a project opponent. If this false and biased Comment Letter is not retracted and is allowed to become part of the public record for the Project DEIR, it will cause significant harm to my client's interest. As such, I demand the following: 1) a meeting within one week with Executive Director, Gretchin Bennitt; and 2) that the NSAQMD immediately retract its April 4, 2022 letter, replacing it with one using the standardized OEHHA Guidelines.

If the NSAQMD will not willingly retract its false and outrageous letter, please be advised that Rise Gold will be forced to immediately file a Writ of Mandamus based on the reasons stated in this letter. In connection with the potential need to file a Writ, please see Rise Gold's Public Records Act request (enclosed as Attachment 1), which requests all communications by NSAQMD staff related to the Project that was sent to or from other NSAQMD staff, project opponents, other governmental agencies, or any other parties. Further Rise is requesting communications by the author(s) of the Comment Letter on personal email accounts, social media platforms on all public and personal devices. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 623, 629.) Finally, as evidence of the equal protection violation, Rise is requesting all NSAQMD comment letters sent on land use projects within the mapped ultramafic geologic zone since the year 2000.

I. The Comment Letter Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

The NSAQMD has not submitted comments and demands similar to the Comment Letter similarly-situated projects involving significant earthmoving within the same ultramafic zone where naturally occurring asbestos is expected, and treats all other such projects in a very different manner. As an example, the Dorsey Marketplace project (approved by Grass Valley in April, 2020), involved the excavation and placement of 80,600 tons of historic mine waste in an area of Ultramafic Rock where naturally occurring asbestos was expected. (See Dorsey Marketplace FEIR [SCH #2016022053] Appendix J-3A, pp. x, 33.) The Final EIR for the Dorsey Marketplace incorporates an "Asbestos Dust Mitigation Plan" that was deemed sufficient by NSAQMD to mitigate all risks of airborne asbestos. The FEIR states "[t]he Asbestos Dust

Mitigation Plan reflects the NSAQMD's standard approach and conditions for construction activity where NOA is likely to occur."

Notably, the Dust Mitigation Plan for the Dorsey Marketplace project did not require bulk testing of rock for asbestos using polarized light microscopy ("PLM"), transmission electron microscope ("TEM") or any other testing method, did not require air monitoring, and simply relied on wetting of surfaces and stockpiles to mitigate dust. (See Dorsey Marketplace Dust Mitigation Plan, Sections 4-5.) The Dorsey Marketplace project did not even include asbestos in its health risk assessment (which was not commented on at all by the District), as was conservatively done for Rise Gold's project. Nonetheless, the NSAQMD did not submit an aggressive comment letter on the EIR (as was recently done for Rise's project) decrying the lack of testing, or finding fault with any of the testing methods used in the health risk assessment. [For the Dorsey Marketplace project, also involving significant earthmoving activity in an Ultramafic Rock, no PLM or TEM testing was done (Rise did both types of testing), the health risk assessment ("HRA") did not assess asbestos risk (Rise's EIR included an HRA that looked at asbestos risk); wetting of the surface was deemed sufficient mitigation for asbestos risk, but somehow no comment letter was sent in on the EIR.]

Rise has gone above and beyond what was done for the Dorsey Marketplace project, as Rise's Project includes required bulk testing consistent with ARB Method 435, and has even tested and analyzed multiple rock samples to better understand the effectiveness of mitigation and likely project impacts. None of this type of testing was done for Dorsey Marketplace, and the District did not require ongoing testing, yet the NSAQMD submitted no comments on the DEIR.

Similar to the Dorsey Marketplace, the Ridge Village project in Grass Valley was located within an area containing naturally occurring asbestos. (Ridge Village MND, p. 20.) However, no health risk assessment was performed, and the NSAQMD appeared to be satisfied with preparation of an Asbestos Air Quality Dust Mitigation Plan as mitigation for any asbestos risk. As stated on page 21 of the Ridge Village MND, the required measures to achieve a "less than significant" impact level for asbestos dust include the following:

A. Track-out prevention and control measures;
B. Control for traffic on on-site unpaved roads, parking lots, and staging areas;
C. Control of earthmoving activities;
D. Control for Off-site Transportation;
E. Post Construction Stabilization of Disturbed Areas;
F. Air Monitoring for Asbestos;
G. Frequency Reporting; and,
H. Recordkeeping and Reporting Requirements

(Ridge Village MND, p. 21.) The asbestos testing, and mitigation methods proposed by Rise go far above and beyond those required for the Ridge Village project, beginning with the fact that Rise actually performed an HRA (the Ridge Village MND did not perform an HRA). Nonetheless, NSAQMD did not object to the Ridge Village MND, did not ask for any testing, did not demand an HRA, and to our knowledge the District submitted no comment letter.

As another example of the unequal negative treatment that the NSAQMD has committed against my client, is the McKenna Residential Subdivision (approved by Grass Valley in 2021) which is also located in the same ultramafic rock zone and involves significant ground-disturbing activity. Nonetheless, no health risk assessment was performed (let alone an HRA that analyzes asbestos-related risk, as was done by Rise for its EIR), and no testing of rock for asbestos was required in the MND. As above, NSAQMD did not object to the Mckenna Residential Subdivision MND, did not ask for testing, did not demand an HRA, and to our knowledge submitted no comment letter.

We are aware of at least 30 other land use projects approved in Grass Valley within mapped ultramafic rock areas that have been approved since 2000, and with the attached Public Records Act request, demand copies of all NSAQMD comment letters on these projects. Based on our research thus far, the NSAQMD has never once submitted comments similar to those sent for the Rise Gold Project on any other project that proposed ground disturbance within the mapped ultramafic zone.

Given NSAQMD's history of dealing with asbestos issues on other similarly-situated local projects, the very different approach for the Idaho Maryland Mine project shows that NSAQMD is singling out Rise for special negative treatment in the hope of killing the Project and consequently harming my client's interests. As you may be aware, when a local government intentionally treats an individual or project differently from others similarly situated, and there is no rational basis for the difference in treatment, that treatment constitutes an equal protection violation. (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564–565.) Further, the U.S. Supreme Court has explained that the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. (*Sioux City Bridge Co. v. Dakota County* (1923) 260 U.S. 441, 445.)

II. The Comment Letter ignores NSAQMD own published thresholds and instead focuses on fear tactics because the Comment Letter is clearly a project opposition letter – not a neutral agency comment letter.

The published NSAQMD threshold of significance for health risk assessments is 10 in 1 million cancer risk, yet instead of discussing the Project in comparison to that official threshold, the

Comment Letter strays into the number of TEM structures per gram to make the Project sound scary and dangerous to the public. Instead of using the 10 in 1 million threshold, here is what the Comment Letter states:

> *Laboratory testing in November 2021 of seven dominant types of rock from the site discovered asbestos in every type, with an average of 594,625,000 asbestos fibers per gram. For perspective, a new penny weighs 2.5 grams. Based on the recent tests of 40 rock samples and 2 previous rock samples, in a penny's mass of average mine rock there are well over a billion asbestos fibers.*

The count of TEM structures in rock is irrelevant to the NSAQMD health threshold without modelled air concentrations and conversion to equivalent phase contrast microscopy ("PCM") units, and the author of the letter is clearly more concerned with creating public fear than performing his/her public duty of objectively and fairly administering official NSAQMD thresholds of significance. This type of language is especially injurious to my client's interest because Project opponents will surely point to the above speculative language as official NSAQMD policy in potential future lawsuits against the Project, when TEM structures in rock are not directly relevant to health risk assessments and bear no relation to any published threshold of significance.

As another example, the NSAQMD Comment Letter states as follows:

> *Every fragment of rock or soil from the mine or the mine tailings could contain asbestos. When those rocks are broken or that soil is driven on or otherwise disturbed, asbestos fibers could be released to the air in unknown concentrations. Once airborne, tiny asbestos fibers can potentially travel many miles. Chrysotile fibers tend to be smaller than amphibole fibers, making them more likely to become airborne and be transported great distances in the wind. Depending on weather conditions, they could be inhaled or deposited on surfaces in all parts of Nevada County for the 80-year duration of the project.*

If every fragment in the meta-volcanic, plutonic, and ultramafic rocks in the mine area could contain asbestos then we would see this same language included in the NSAQMD comment letter for every project proposed for most of western Nevada County. However, we expect that our Public Records Act request will show that this type of inflammatory language has never been used before in an official NSAQMD CEQA comment letter for projects in the ultramafic zone let alone the enormous area with similar geology as the mine. We have reviewed the records for several recent projects in similar geologic zones and the NSAQMD has either taken a very gentle approach or had no comments at all. This provides further evidence that the Rise Gold Project is receiving special negative treatment by NSAQMD and is suffering an actionable violation of equal protection under the U.S. Constitution.

III. The HRA's analysis of asbestos risk follows the OEHHA Guidelines, which the author of the Comment Letter either misunderstands and/or mischaracterizes.

The Comment Letter states as follows:

> *None of the DEIR's discussions regarding PCM conversions are valid. PCM cannot be used as a reporting metric, a compliance verification mechanism or a replacement for other methods of asbestos investigation. PCM asbestos conversion is not a concept that applies outside the world of asbestos air monitoring.*

Contrary to the District's Comment Letter, Phase Contrast Microscopy (PCM) equivalent units are the *required* and the *only* acceptable method to calculate health risk under OEHHA guidelines. (See OEHHA Air Toxics Hot Spots Program Guidance Manual, Appendix C, p. C-1.) The unit risk factor for asbestos fibers provided in the OEHHA Risk Assessment Guidelines is 1.9x10-4 in units of (100 **PCM** fibers/m3)$^{-1}$. While the author of the letter states that the DEIR is incorrect in converting TEM to PCM for cancer risk purposes in the HRA, the OEHHA Guidelines clearly state as follows:

> TEM measurements cannot be directly related to the cancer potency factors because the studies upon which OEHHA's risk assessment was based used PCM analysis. **Thus, the TEM measurements must be converted to PCM-equivalent units** … To convert PCM fibers to TEM structures or vice versa use the following relationship: 1 PCM Fiber = 320 TEM structures.

(See OEHHA Air Toxics Hot Spots Program Guidance Manual, Appendix C, p. C-1 to C-2.)

Unlike the District's ignorant statement regarding PCM, the EIR specifically uses the method stated above, **sourced directly from OEHHA Guidelines**. Specifically, Rise's consultants estimated the number of structures of asbestos in air using the TEM method and modelled and converted to equivalent PCB fibers per gram count using the methods and conversion ratio stated in the OEHHA Guidelines. The author of the Comment Letter has either failed to read the OEHHA Guidelines or does not fully understand their application. While the Comment Letter accuses Rise's consultants of making up novel methods, the EIR has direct OEHHA support for its methods, while the author of the Comment Letter is requesting an arbitrary new analysis technique that has no basis in law or regulation, has not undergone rulemaking or public review, and is designed to exaggerate project impacts.

IV. The unnamed Comment Letter author tries to seek support from an unnamed CARB staffer for its arguments, but misstates and misunderstands the actual approach taken by the EIR

The Comment Letter author supposedly reached out to CARB regarding the approach taken by the EIR but apparently misstated the method used in the EIR.[2] The comments from CARB staff actually support the method used in the EIR. Specifically, the email from an unknown staff member at CARB states as follows:

> *The PLM and TEM analyses in this DEIR were done on bulk samples (rocks), and the asbestos concentrations are reported in weight percent. It is not known how many asbestos fibers can be generated (and become airborne) from a given mass of asbestos-containing rock material. So there is no known conversion factor for the asbestos weight % (by TEM analysis of a rock sample) that can be used to estimate the number of PCM fibers/m^3 applicable for the Hot Spots risk assessment equation.*

In fact, the asbestos concentrations used for the HRA were structures per gram, not weight percentage, **so the entire premise of NSAQMD's correspondence with CARB is incorrect**. Nonetheless, the unnamed CARB staff member concluded that there is no known conversion factor for TEM asbestos weight percentage to estimate PCM fibers per cubic meter for HRA purposes. We agree with this statement, as **the correct method per OEHHA is to convert TEM structures per gram to equivalent PCM fibers, *which is exactly what was done in the EIR*.**

The Comment Letter seems to be confused about what method to use for asbestos risk analysis, other than the general belief that whatever method was used by the EIR must be incorrect. While in one part of the Comment Letter NSAQMD concurs with CARB that analysis of asbestos risk using TEM weight percentage is invalid, the Comment Letter's ultimate solution in a later part of the letter states that Rise must take more samples and then use TEM asbestos by weight. This is a direct contradiction of the earlier arguments in the Comment Letter. See the relevant language below, which directly contradicts the quote conversation with CARB staff:

> *NSAQMD recommends that the notion of PCM conversion should be thrown out because using OEHHA's air sampling PCM conversion formula for rock samples has the effect of making it look like there is less asbestos present than TEM laboratory work has demonstrated to be the case.* ***Instead, the project's risk***

[2] The Comment Letter curiously does not provide a citation and does not name the staff member at CARB who is responsible for the supposed comments. Pursuant to the attached Public Records Act Request, this information must be disclosed, as we will be discussing these comments with CARB as well.

should be evaluated based on many more samples being gathered, and evaluated using TEM asbestos by weight.

What the Comment Letter author appears to be asking for is the complete omission of the OEHHA Guidelines TEM to PCM conversion factor (1 PCM Fiber = 320 TEM structures) because that will greatly exaggerate the perceived cancer risk (by 320x) and harm the chance of Project approval. If this proposed method were implemented county-wide, no project would ever meet the NSAQMD thresholds and nothing could be approved. The Comment Letter's suggested methodology directly contradicts the OEHHA Guidelines, has no scientific or legal basis, and must be retracted from the public record.

V. The NSAQMD attacks the OEHHA Guidelines for asbestos risk assessment, which is beyond the legal role of an NSAQMD officer.

The Comment Letter provides the following commentary on the OEHHA risk factor for asbestos fibers:

> *The Office of Environmental Health Hazard Assessment (OEHHA) approach to asbestos risk assessment under AB2588 (the Air Toxics Hot Spots Act) is currently based only on a person's risk of developing mesothelioma. It does not provide any assessment of risk of developing other types of asbestos-related diseases such as asbestosis (an inflammatory condition affecting the lungs that can cause shortness of breath, coughing, and permanent lung damage), pleural plaques (changes in the membranes surrounding the lung), pleural thickening, benign pleural effusions (abnormal collections of fluid between the thin layers of tissue lining the lungs and the wall of the chest cavity) and assorted cancers of the lung, larynx, pharynx, stomach, colorectum and ovary.*

While it is typical in project opposition group letters to see criticism of state standards, we are surprised to see this approach in a letter from the NSAQMD. As you know, OEHHA is the lead state agency for the assessment of health risks posed by environmental contaminants. As such, the NSAQMD's role in commenting on the EIR is to review the analysis in light of the OEHHA standards, not comment on how the author personally believes the standards are invalid and inadequate.

VI. The NSAQMD Comment Letter constitutes Defamation and must be retracted

The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.) Civil Code section 45 provides, "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which

exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code, § 45.)

In this case, the Comment Letter satisfies all elements of a defamatory statement, as it is: 1) a publication (once this letter is released to the public); 2) false (the Comment Letter's statements regarding the Project and the applicable thresholds are provably false); 3) defamatory (the Comment Letter defames the Project by creating an exaggerated fear of health risk); 4) unprivileged (the statements are not subject to the normal governmental privilege because they criticize official governmental standards based on personal opinion rather than apply the applicable standards (*Copp v. Paxton* (1996) 45 Cal.App.4th 829, 843) – moreover, we believe that the PRA may disclose other unofficial motivations behind the Comment Letter); and 5) the Comment Letter will absolutely cause harm to the Project by potentially resulting in non-approval or significant public opposition based on exaggerated fear of health impacts.

VII. The NSAQMD's comment on the water supply assessment is inappropriate as NSAQMD is not an expert agency regarding water supply

The Comment Letter closes with several pages arguing that the water supply assessment is inadequate. As you may know, the water supply assessment was approved by the Nevada Irrigation District ("NID") on February 10, 2022, which agency is an expert in water supply. The fact that the NSAQMD is commenting on NID's water supply assessment is remarkable, given NSAQMD's lack of expertise in water supply. The Comment Letter author's unusual decision to comment on water supply for two pages is yet another piece of evidence showing the bias that the author of the Comment Letter has against the Project. Whereas for many projects located in the ultramafic rock zone, the NSAQMD stays silent or is satisfied with minimal mitigation measures far less than what is proposed in the EIR, the NSAQMD was for some reason motivated to review and comment on the water supply assessment for the Project – claiming that it is inadequate. This evidence of unusual interest in this particular project by itself tells the story behind the absurd tone and content of the Comment Letter.

VIII. Conclusion

In conclusion, the Comment Letter must be retracted as it fails to apply proper asbestos risk thresholds set forth by the District or OEHHA, constitutes an inflammatory attack on the Project by an opponent rather than a neutral review by an agency, represents a violation of equal protection rights under the U.S. Constitution based on review of NSAQMD comment letters on other projects, and is actionable under California law as defamation.

Given the tone of the Comment Letter, and the complete abandonment of District thresholds of significance and California OEHHA protocols, I am confident that you did not personally review the Comment Letter nor would it have been sanctioned by your office. Prior to taking any

action, we would like to opportunity to meet and discuss how this situation can be remedied. Please provide available dates for an in-person meeting with you, and feel free to call if you have any questions about this letter or the Project.

Best regards,

MITCHELL CHADWICK LLP

G. Braiden Chadwick

ATTACHMENT 1

MITCHELL CHADWICK

G. Braiden Chadwick
bchadwick@mitchellchadwick.com
916-462-8886
916-788-0290 Fax

April 12, 2022

VIA U.S. AND ELECTRONIC MAIL

Gretchen Bennitt, Air Pollution Control Officer
Northern Sierra Air Quality Management District
200 Litton Dr., Suite 320
Grass Valley, CA 95945
gretchen@myairdistrict.com

Re: Public Records Request – NSAQMD Comments on Draft EIR for Idaho Maryland Mine

Dear Ms. Bennitt:

Pursuant to the California Public Records Act, California Government Code §§ 6250 *et seq.* (the "Act"), I am hereby making the following request for documents.

If you choose to deny any part of this request, please cite the specific statutory exceptions upon which your denial is based. If a document is withheld, please provide the following information: (1) the date of the document; (2) the general nature of the document; (3) the identity and title of the author; (4) the identity and title of the recipient(s), including those who may have received "blind" copies; and (5) the specific reason(s) why it is being withheld.

As required by the Act, please inform me of your determination within ten days.

Definitions

As used in this request, "writing" shall include audio recordings of public meetings and any "writing," as that term is defined by Gov't Code § 6252(g). Thus, "writing" means:

> …any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Furthermore, per the California Supreme Court, "writing" includes voicemail, electronic mail, text messages, calendars, and other communications held by public employees in personal

accounts and relating to public business. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 623, 629.)

As used in this request, "relating to" shall mean describing, evidencing, proving, tending to prove, mentioning, containing, concerning, opining about, commenting upon, pertaining to, analyzing, or otherwise discussing directly or indirectly.

Documents Requested

- Any and all documents, communications, notes, emails, memoranda, and other writings between NSAQMD staff and CARB staff or NSAQMD staff and OEHHA staff relating to the Project.

- Any and all documents, communications, notes, memoranda, and other writings between NSAQMD staff relating to the April 4, 2022 Comment Letter for the Idaho-Maryland Gold Mine Project.

- Any and all communications, messages, and posts by NSAQMD staff on personal email accounts, social media platforms on all public and personal devices (including text messages on phones and tablets) relating to the Project.

- Any and all comment letters sent by the NSAQMD to the City of Grass Valley or other governmental agency, and any responses from said agencies regarding the following projects:

    - McKenna Residential Subdivision;
    - Chapa De Indian Health Administration Office;
    - Ridge Village;
    - Dorsey Marketplace;
    - Milco Development Project;
    - Community Recovery Resources Center for Hope Project;
    - Gold Country Village;
    - Loma Rica Ranch Specific Plan;
    - DeMartini Manufactured Cabins;

- Ridge Meadows Development;
- Joel Leroy Jordan Tentative Map;
- Grass Valley Self Storage Addition;
- Chapa-De Indian Health Program Inc.;
- DeMartini RV Dealership;
- Sierra Terrace;
- Berg Heights Subdivision;
- Litton Retail Center;
- Moule Paint and Glass;
- Weaver Automotive Center Relocation;
- Highlands Development;
- Sierra Nevada Hospital Expansion Project;
- Chapa-De Indian Health Clinic;
- Old Barn Self Storage.

If possible, I request that these records be delivered to me in an electronic form. In the event that records are not available electronically, my preference would be to have copies made of all responsive documents, and for those copies to be mailed to me. If the cost is expected to exceed $500.00, please notify me, at either bchadwick@mitchellchadwick.com or (916) 462-8888, when these documents are available so that I may arrange a time to visit your offices and review the documents. Please contact me if you have any questions regarding this request.

Sincerely,

MITCHELL CHADWICK LLP

G. Braiden Chadwick

Attachment 7

Fault Management Plan

Appendix H.2 of the IMM DEIR

Project No. 5279.02
January 16, 2020

Rise Grass Valley, Inc.
333 Crown Point Circle, Suite 215
Grass Valley, CA 95945

Attention: Ben Mossman, President

Reference: **Idaho-Maryland Mine Project – Portion of Brunswick Industrial Site**
12381 Brunswick Road and 12301 Millsite Road
APNs 006-441-034 and 009-630-039
Grass Valley, California 95945

Subject: **Management Plan for Potential Seismic Hazards**

Dear Mr. Mossman,

This letter summarizes NV5's review of a previously-designated building setback associated with a fault zone crossing a portion of the Brunswick Industrial Site. The 119-acre Brunswick Industrial Site is located on the southwest corner of Brunswick Road and East Bennett Road, approximately ½ mile southeast of the Grass Valley city limits in unincorporated Nevada County, California, and is part of the Idaho-Maryland Mine Project (the Project).

The fault zone addressed herein crosses a portion of the Brunswick Industrial Site, specifically APNs 006-441-034 and 009-630-039, which are located at 12381 Brunswick Road and 12301 Millsite Road. For the purposes of this letter the two subject parcels are referred to as the "Site" or "subject site".

The Project is to include development of industrial facilities associated with proposed underground hard rock mining operations. Because construction is proposed within an area on the site designated as a building setback fault zone (herein referred to as "fault zone"), the Nevada County Community Development Agency (CDA) required the preparation of a management plan pursuant to Land Use and Development Code (LUDC) Section L-II 4.3.8 – Earthquake Faults & Seismically Sensitive Areas, to facilitate Project review and permitting.

The conclusions and recommendations presented herein are based on our understanding of the proposed development, the findings of geotechnical investigation, review of published geologic and soil survey maps, and our experience in the area. Our opinion is that the subject fault zone does not qualify as a seismically active area and therefore the proposed Project development within the identified fault zone is feasible without mitigation or restriction, provided that the recommendations of the Geotechnical Engineering Report (NV5; November 18, 2019) are incorporated into the Project plans and specifications.

1.0 INTRODUCTION

According to the Nevada County Planning Department property title records, an inferred fault alignment and a 200-foot building setback zone on each side of the inferred alignment passes through the subject site. The fault line and setback are recorded on Final Map 85-7 (Book 7 of Subdivisions at page 75) prepared by A.W. Beeson & Associates, Inc. (Beeson; January 1987) for the previously-proposed BET Acres Subdivision (Attachment A).

According to the map prepared by Beeson (1987), the recorded fault alignment is based on an "Anderson Geotechnical Report." The report was likely prepared by Anderson Geotechnical Consultants, Inc. (Anderson), who performed other geotechnical investigations in the area during this time. The report was not located by public records review and was not available from the firm that subsequently acquired Anderson.

NV5 performed a geotechnical engineering recommendations and provided geotechnical engineering recommendations for the Project in *Geotechnical Engineering Report, Idaho-Maryland Mine Project – Brunswick Industrial Site* (November 18, 2019). The geotechnical engineering investigation included a site reconnaissance and literature review pertaining to soil conditions and site geology, and a subsurface investigation and laboratory testing program.

2.0 PURPOSE

This management plan was prepared pursuant to Nevada County LUDC Sec. L-II 4.3.8 to address potential seismic hazards associated with the previously-identified fault alignment. Section L-II 4.3.8.C requires a management plan for development projects that will result in disturbance within seismically active areas, which are defined in Section L-II 4.3.8.B as areas determined to be within a seismic hazard zone or to have the potential to suffer ground rupture from active faults by the State Division of Mines and Geology.

3.0 SCOPE

To prepare this management plan, we reviewed published geologic literature pertaining to the site and surrounding area and the findings of our geotechnical engineering report for the Project.

4.0 SITE DESCRIPTION

The 119-acre Brunswick Industrial Site is located on the southwest corner of Brunswick Road and East Bennett Road, approximately ½ mile southeast of the Grass Valley city limits in unincorporated Nevada County, California, and is part of the Idaho-Maryland Mine Project (the Project). The fault zone addressed herein crosses a portion of the Brunswick Industrial Site, specifically APNs 006-441-034 and 009-630-039, which are located at 12381 Brunswick Road and 12301 Millsite Road. For the purposes of this letter the two subject parcels (comprising approximately 31.16 acres) are referred to as the "Site" or "subject site".

The Site sits in a valley created by the South Fork of Wolf Creek, and is bordered by Brunswick Road to the east, East Bennett Road to the north, predominantly vacant industrial properties to the south and southwest, and undeveloped land to the west and southwest.

At the time of our investigation, the Site consisted of generally flat-lying fill surfaces around the New Brunswick mine shaft, former sawmill landings, and gently to moderately sloping open space and forested areas around a pond and dam. Deep fill was present in the vicinity of the New Brunswick shaft and ore bin.

The South Fork of Wolf Creek is contained within an approximately 48-inch diameter corrugated metal pipe (CMP) culvert as it enters the Site. The creek discharges back into its natural channel within the site, continuing northwestward along the southwestern border of the property.

As shown on Map 85-7, the inferred fault alignment crosses the subject site from the south side of the pond near the southern site boundary and trends approximately 350 degrees towards the intersection of East Bennett Road from New Brunswick Court near the northern site boundary (Figure 1). The New Brunswick shaft is located approximately 150-feet west of the inferred fault alignment within the 200-foot setback zone.

5.0 PROPOSED IMPROVEMENTS

NV5 reviewed a Grading Plan (Sheet B-1) prepared by Nevada City Engineering, Inc. (and several sheets prepared by Rise Grass Valley, Inc. (November 2019), including an Infrastructure Plan (Sheet B101), Biological and Cultural Summary Map (Sheet B102), Infrastructure Details (Sheet B103) and Section Views (Sheet B104). Based on our review of these site plans, we understand that the proposed project improvements will likely include the construction of:

- New light-loaded and heavily-loaded structures to support industrial mining activities;
- Regrading of a portion of the dam;
- Retrofitting and expansion of the existing New Brunswick shaft;
- Construction of a new service shaft and headframe;
- Construction of a storm water detention pond;
- Construction of an engineered fill for future industrial development; and
- Associated infrastructure elements including earth retaining structures.

Appurtenant construction will include asphalt concrete paved roads and parking areas and underground utilities. Grading for the project will include cut and fill for building pads, roadways, surface and subsurface drainage improvements and underground utilities.

6.0 PREVIOUS SITE INVESTIGATIONS

NV5 requested public records from the County of Nevada; however, the “Anderson Geotechnical Report” referenced on Map 85-7 was not available. A geotechnical report for a neighboring East Bennett Street Property to the north (Anderson; May 12, 1986) was identified (Attachment B). NV5 reviewed the Anderson (1986) report, which states that Anderson performed a previous geotechnical reconnaissance (February 26, 1986) and references a fault on the subject site:

> “The fault that was addressed in our initial Geotechnical Reconnaissance (dated 26 February 1986) as crossing near lot 2 appears to be present on the northern most

part of the lot. The age of this fault in on the order of 100 million years and any potential risk of movement is so slight that it should not affect single family residential construction. We recommend that any construction be set back at least 200 feet from the fault (the approximate location of the fault is shown in our previous work, Geotechnical Reconnaissance)." (Anderson, 1986)

7.0 GEOLOGY ANS SEISMICITY

The Site is located within a region underlain by a complex assemblage of igneous and metamorphic rocks in the western foothills of the Sierra Nevada. The regional structure of the foothills is characterized by the north-northwest trending Foothills Fault System, a feature formed during the Mesozoic era (between approximately 65 million and 248 million years ago) in a compressional tectonic environment. A change to an extensional tectonic environment during the late Cenozoic (approximately within the last 30 million years), resulted in normal faulting which has occurred coincident with some segments of the older faults near the Site.

According to the Geologic Map of the Chico Quadrangle, California (California Department of Conservation, Division of Mines and Geology, 1992) the Site is underlain by massive diabase. A northwest trending liniment of the Grass Valley Fault Zone is approximately located or inferred along Brunswick Road east of the site (Figure 2). The Grass Valley Fault Zone is not considered active. Metavolcanic rock is mapped on the east side of Brunswick Road and the fault. Both of these units are associated with the Mesozoic Lake Combie Complex. The upslope area to the south and southwest of the Site is mapped as Miocene to Pliocene volcanics, predominantly andesitic pyroclastic rocks, which cover the fault that contacts the massive diabase and metavolcanic rocks. The Mesozoic era spans the period of time between 250 and 65 million years before present and the Miocene to Pliocene epochs span the period of time between 23 and 2.6 million years before present.

The Geologic Map of the Grass Valley - Colfax Area (A. Tuminas, 1983) presents the findings of a more detailed local study. According to this geologic map, an inferred fault trends north-northwest through the property approximately along the eastern shore of the pond and passing through the northern Site boundary. Four rock units are mapped as underlying the Site. The eastern portion of the Site (and fault) is mapped as early Mesozoic Lake Combie metavolcanic rock. The northern and western sloping flanks of the Site are mapped as early Mesozoic Lake Combie massive diabase. The lower valley portions encompassing the South Fork of Wolf Creek is mapped as Quaternary alluvium (i.e., water-lain sediments deposited in the past 2 million years). Tertiary clastic strata of the volcanic Mehrten formation is mapped in the upslope areas to the south and southwest of the Site. The Quaternary alluvium and Mehrten formation both cover the fault that contacts the older Lake Combie massive diabase and metavolcanic rocks.

The Fault Activity Map of California (2010) (http://maps.conservation.ca.gov/cgs/fam/), prepared by the California Department of Conservation, California Geological Survey (CGS), indicates that the Site is located within the Foothills Fault System. The Foothills Fault System is designated as a Type C fault zone, with low seismicity and a low rate of recurrence. The Foothills Fault System has been assigned a moment magnitude of 6.5. The nearest mapped active portion of the Foothill Fault System is approximately 25 miles northwest of the site on the Cleveland Hill Fault.

We also reviewed the CGS Open File Report 96-08, Probabilistic Seismic Hazard Assessment for the State of California, the 2002 update entitled California Fault Parameters, and the Official Maps of Earthquake Fault Zones delineated by the CGS through December 2010 (http://www.quake.ca.gov/gmaps/WH/regulatorymaps.htm). The 1997 edition of CGS Special Publication 42, Fault Rupture Hazard Zones in California, describes active faults and fault zones (activity within 11,000 years), as part of the Alquist-Priolo Earthquake Fault Zoning Act. The maps and documents all indicate **the site is not located within an (Alquist-Priolo) active fault zone.**

8.0 CONCLUSIONS

The following conclusions and opinions are based on the findings of our geotechnical engineering investigation, our review of local geologic conditions and literature, and our experience in the area.

1. According to Map 85-7, the New Brunswick shaft is located approximately 150 feet west of the fault and within the 200-foot building setback associated with the inferred fault alignment. Because the proposed Project includes development of industrial facilities associated with underground mining operations utilizing the New Brunswick shaft, construction within the building setback fault zone is necessary and unavoidable. There is no alternatively feasible location that would have less impact on the Site and surrounding areas.
2. The inferred fault alignment identified by Anderson at the Site is mapped as a north-northwest trending liniment of the Grass Valley Fault Zone, a subset within the regional Foothills Fault System. The Foothills Fault System formed during the Mesozoic era (between approximately 65 million and 248 million years ago). The Grass Valley Fault Zone is not considered active, and the Foothills Fault System is designated as a Type C fault zone, with low seismicity and a low rate of recurrence.
3. The CGS Special Publication 42, Fault Rupture Hazard Zones in California, describes active faults and fault zones (activity within 11,000 years), as part of the Alquist-Priolo Earthquake Fault Zoning Act. The site is not located within a currently designated Alquist-Priolo Earthquake Fault Zone, and no known surface expression of an active fault has been identified at the Site. Fault rupture through the site, therefore, is not considered likely.
4. It is our opinion that the subject fault, identified on the property in Map 85-7, does not qualify as a seismically active area as defined by Nevada County LUDC Sec. L-II 4.3.8.B.
5. It is our opinion that the proposed Project development within the designated building setback fault zone are generally feasible from a geotechnical engineering standpoint, provided that the recommendations presented in the Project geotechnical engineering report (NV5; November 18, 2019) are incorporated into the Project plans.

9.0 LIMITATIONS

Our professional services were performed consistent with the generally accepted geotechnical engineering principles and practices employed in northern California. No warranty, expressed or implied, is made or intended in connection with our work.

These services were performed consistent with NV5's agreement with our client. We are not responsible for the impacts of any changes in standards, practices, or regulations subsequent to performance of our services. We do not warrant the accuracy of information supplied by others, or the use of segregated portions of this report. This report is solely for the use of our client unless noted otherwise. Any reliance on this report by a third party is at the party's sole risk.

The findings of this report are valid as of the present date. Changes in the conditions of the property can occur with the passage of time. The changes may be due to natural processes or to the works of man, on the subject site or adjacent properties. If changes are made to the nature or design of the project as described in this report, then the conclusions and recommendations presented in this report should be considered invalid by all parties. Only our firm can determine the validity of the conclusions and recommendations presented in this report. Therefore, we should be allowed to review all project changes and prepare written responses with regards to their impacts on our conclusions and recommendations. The recommendations presented in this report should not be relied upon after a period of two years from the issue date without our review.

Please contact us if you have any questions regarding our findings or the conclusions and recommendations presented in this letter.

Sincerely,

NV5

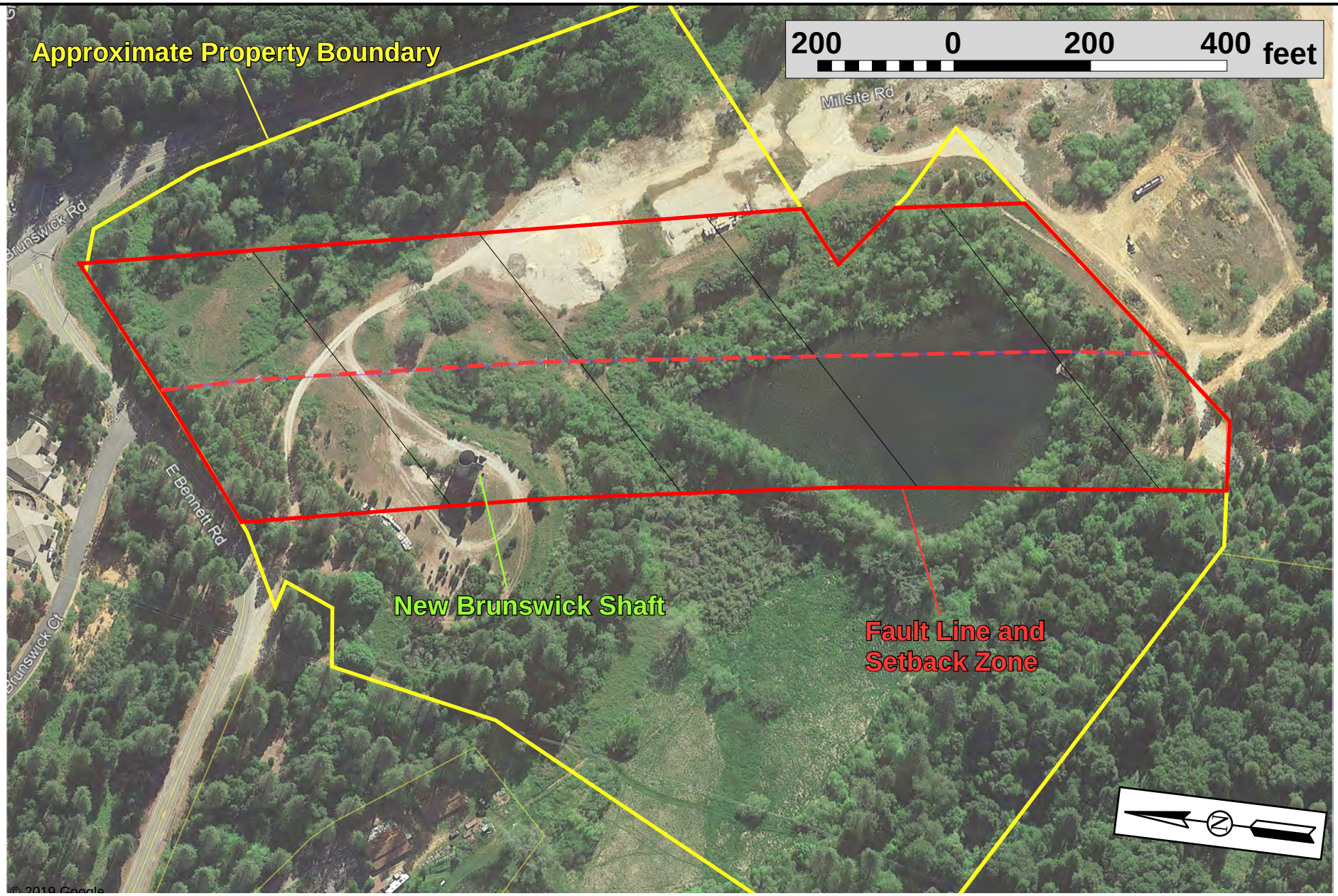
Daniel A. Vieira, P.G. 9725
Project Geologist

Chuck Kull, G.E. 2359
Principal Engineer

attachments: Figure 1, Site Map
Figure 2, Site Geology Map
Attachment A- BET Acres Map 85-7; A.W. Beeson & Associates, January 1987
Attachment B- *East Bennett Street Property*, Geotechnical Investigation; Anderson Geotechnical Consultants, Inc., May 12, 1986

copies: PDF to Rise Grass Valley Inc. /Attn: Ben Mossman, ceo@risegoldcorp.com
PDF to Rise Grass Valley Inc. /Attn: Tessa Brinkman, tbrinkman.peng@gmail.com

F:\1 Projects\5279 Idaho-Maryland Mine\02 Geotechnical\01 Brunswick Site\Fault Management Plan\5279.02 IMM Project Brunswick Site_Fault Zone Management Plan.docx



Reference: Google Earth Imagery, Imagery Date 5/17/2018, Accessed 1/10/2020 Scale:1" =200'

NV5
792 Searls Avenue, Nevada City, California, 95959
PHONE: 530-478-1305, FAX: 530-478-1019

SITE MAP

Project Name: Idaho-Maryland Mine Project – Portion of Brunswick Industrial Site

Location: 12381 Brunswick Road and 12301 Millsite Road, Grass Valley, California

Project No.: 5279.02

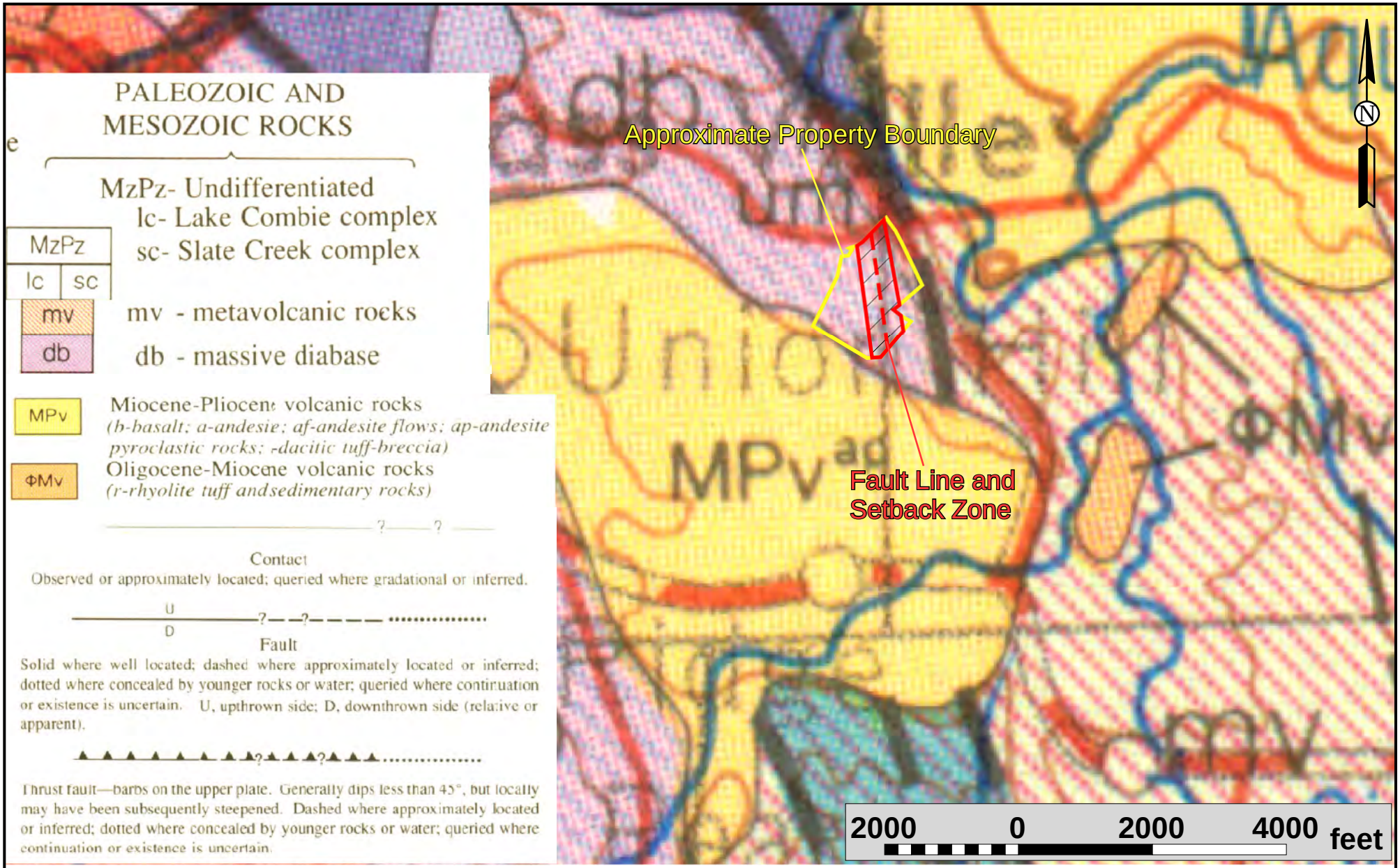
Date: January 2020

Drawn By: DAV

Checked By: JMM

FIGURE

1



Reference: Geologic Map of the Chico Quadrangle, California (California Department of Conservation, Division of Mines and Geology, 1992) Scale:1" =2000'

NV5
792 Searls Avenue, Nevada City, California, 95959
PHONE: 530-478-1305, FAX: 530-478-1019

SITE GEOLOGY MAP

Project Name: Idaho-Maryland Mine Project – Portion of Brunswick Industrial Site

Location: 12381 Brunswick Road and 12301 Millsite Road, Grass Valley, California

Project No.: 5279.02

Date: January 2020

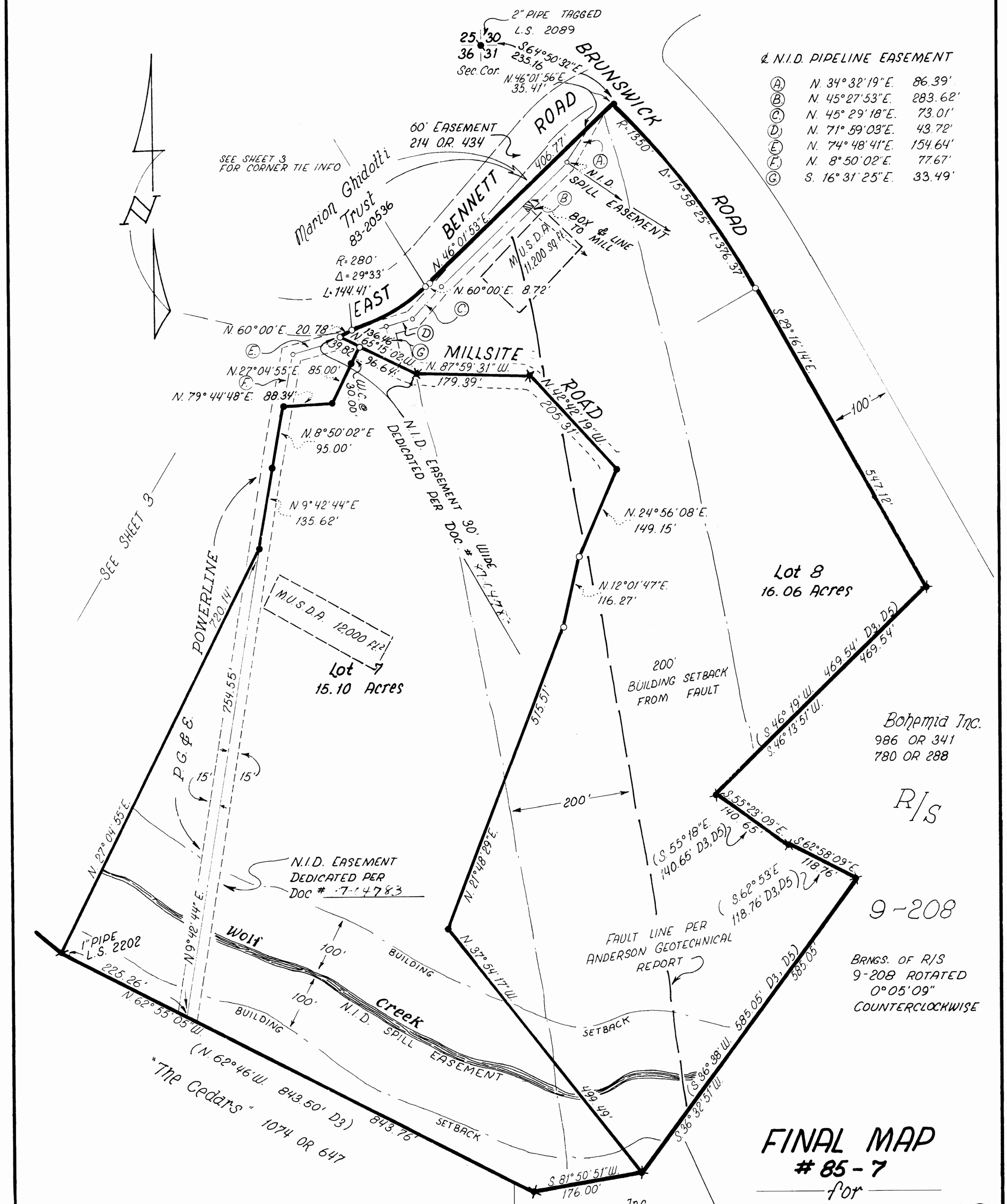
Drawn By: DAV

Checked By: JMM

FIGURE

2

Sht 7 — 7.5 — 4-4



NOTES

1. Mine shafts may be located within the boundaries of this subdivision. All potential property owners should verify such locations prior to purchase.
2. Access to Lots 6, 7 and 8 restricted to Millsite road.
3. A soils report is required for each of the lots south of East Bennett Road (Lots 6, 7 and 8) prior to obtaining a building permit.

FINAL MAP #85-7

for

BET ACRES

Being portions of the S.E. 1/4 of Sec. 25, the N.E. 1/4 of Sec. 36, T16N., R.8E. and the N.W. 1/4 of Sec. 31 T16N. R.9E. M.D.B. & M.

In the unincorporated territory of

THE COUNTY OF NEVADA

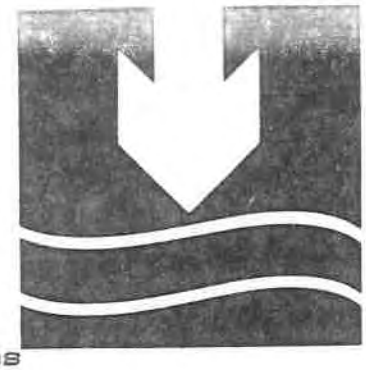
January 1987 — Scale 1"=100'

A.W. Beeson & Assoc. Inc.

Sheet 4 of 4

ER-1499

File No. 1818-1
12 May 1986



ANDERSON
GEOTECHNICAL
CONSULTANTS, INC.

file copy

Erickson, Bouma, and Toms
c/o Erica Erickson
353 Clay Street
Nevada City, California 95959

RECEIVED
MAY 13 1986
NEVADA COUNTY
PLANNING DEPARTMENT

Subject: East Bennett Street Property
East Bennett Street and Brunswick Road
Nevada County, California
GEOTECHNICAL INVESTIGATION

Gentlepersons:

An additional geotechnical investigation of 5 proposed residential lots on the north side of East Bennett Street near Brunswick Road has been completed. The purpose of our investigation was to locate any possible geologic hazzards due to past mining activity at the old Brunswick Mine. This investigation was perfomed in conjunction with our previous Geotechnical Reconnaissance (dated 26 Feb uary 1986) in which we recommended that additional studies take place to locate buried shafts, tunnels, and adits and find buildable areas on each residential lot. No additional work was performed on lots 6, 7, and 8. These lots are to have geotechnical investigations performed on an individual basis at a later date.

To complete our additional investigation, six test borings were excavated, at least one per lot, and a review of previous underground surveys was performed. The underground survey map was provided to us by Al Beeson, who obtained it from the

property owners. The underground map was produced by plotting underground data on a topographic base map produced in 1920 when the Brunswick Mine was still active. Using this map we were able to dertermine where the old mine structures (headworks, mills, pipelines, tailings piles) were located in relation to the site. The 1920 base map also shows the locations of old ditches, prospects, adits, and shafts. We were also able to determine the depth beneath the ground surface of the shafts and tunnels in the area. An extensive surface reconnaissance and a review of old (1962) aerial photos was also completed.

The locations of the test borings is shown on Figure 1. In the test borings, we found no evidence of near surface tunnels or voids within the depths drilled (20 to 35 feet). In choosing the locations of the test borings, we utilized spots that were unlikely to be the location of any tunnels (according to the 1920 map). Logs of the six test borings are shown on Figures 2 through 7. The locations of the borings on Figure 1 is only approximate as they were located by referencing from topographic features.

RESULTS AND CONCLUSIONS

The results of our study indicate that single family residences can be built on select areas on each of the five lots. On Figure 1, we have plotted appropriate building envelopes on each lot. These buiding areas have been selected to minimize the risk of experiencing problems from past mining activities at the site.

We recommend that residential construction be avoided on the tailings piles on lots 2 and 4. Although most of the tailings have been removed (reused for agregate and/or fill off the site), constructing on the remaining tailings could prove difficult. Home sites on the tailings are also considered undesirable. Lots

File No. 1818-1

12 May 1986

2 and 4 have enough area that is not on the tailings to provide sufficient building areas.

The fault that was addressed in our initial Geotechnical Reconnnaissance (dated 26 Febuary 1986) as crossing near lot 2 apperars to be present on the northern most part of the lot. The age of this fault is on the order of 100 million years and any potential risk of movement is so slight that it should not effect single family residential construction. We recommend that any constuction be set back at least 200 feet from the fault (the approximate location of the fault is shown in our previous work, Geotechnical Reconnnaissance).

Soil conditions at the site, other than the tailings piles, are suitible for conventional residential foundation systems if footings are properly designed and constructed.

Sincerely,

ANDERSON GEOTECHNICAL CONSULTANTS, INC.

Eric C. Schwarz

Gery F. Anderson

C.E. 25387

E.G. 163

copies: 2 to Al Beeson

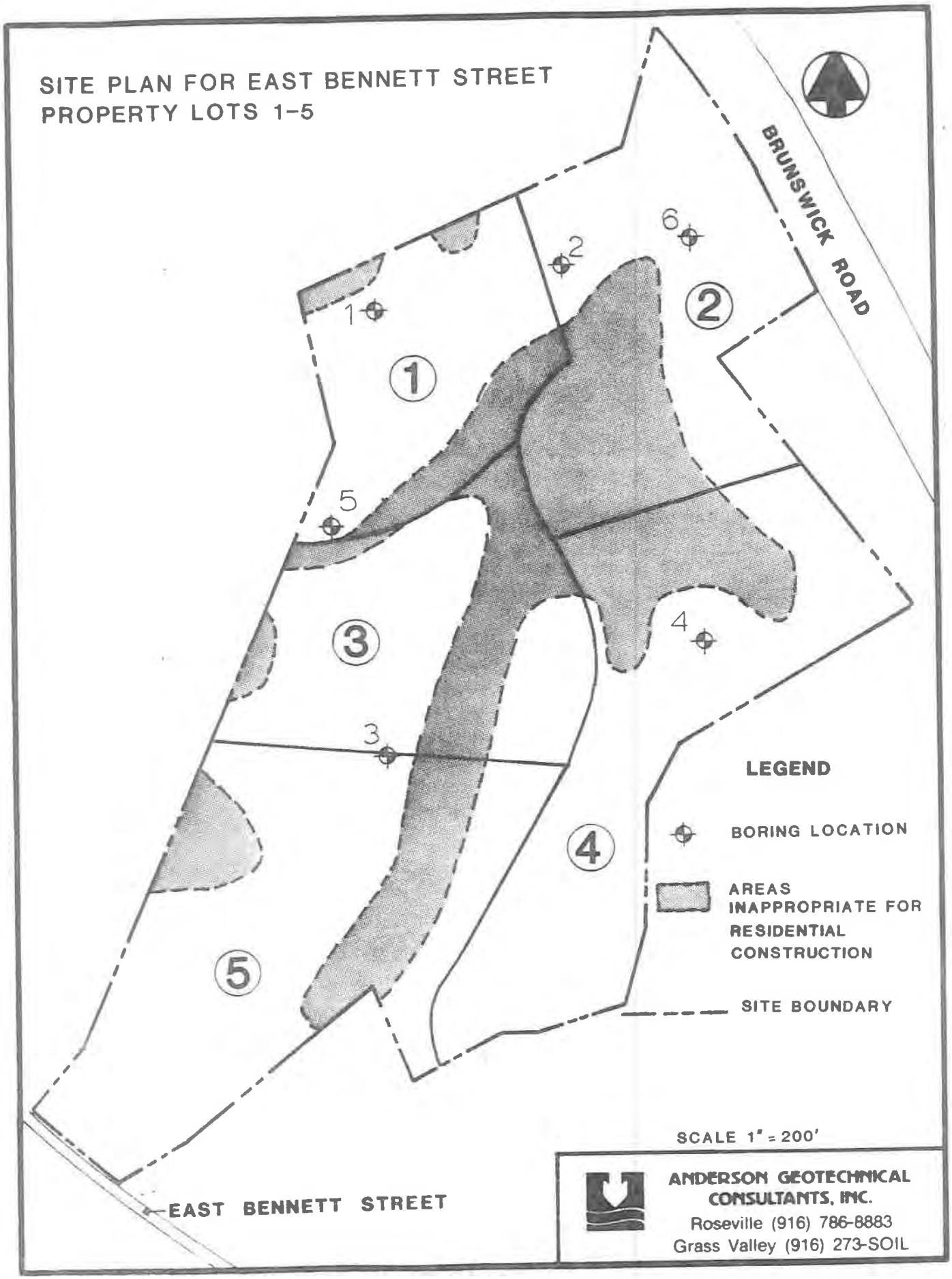
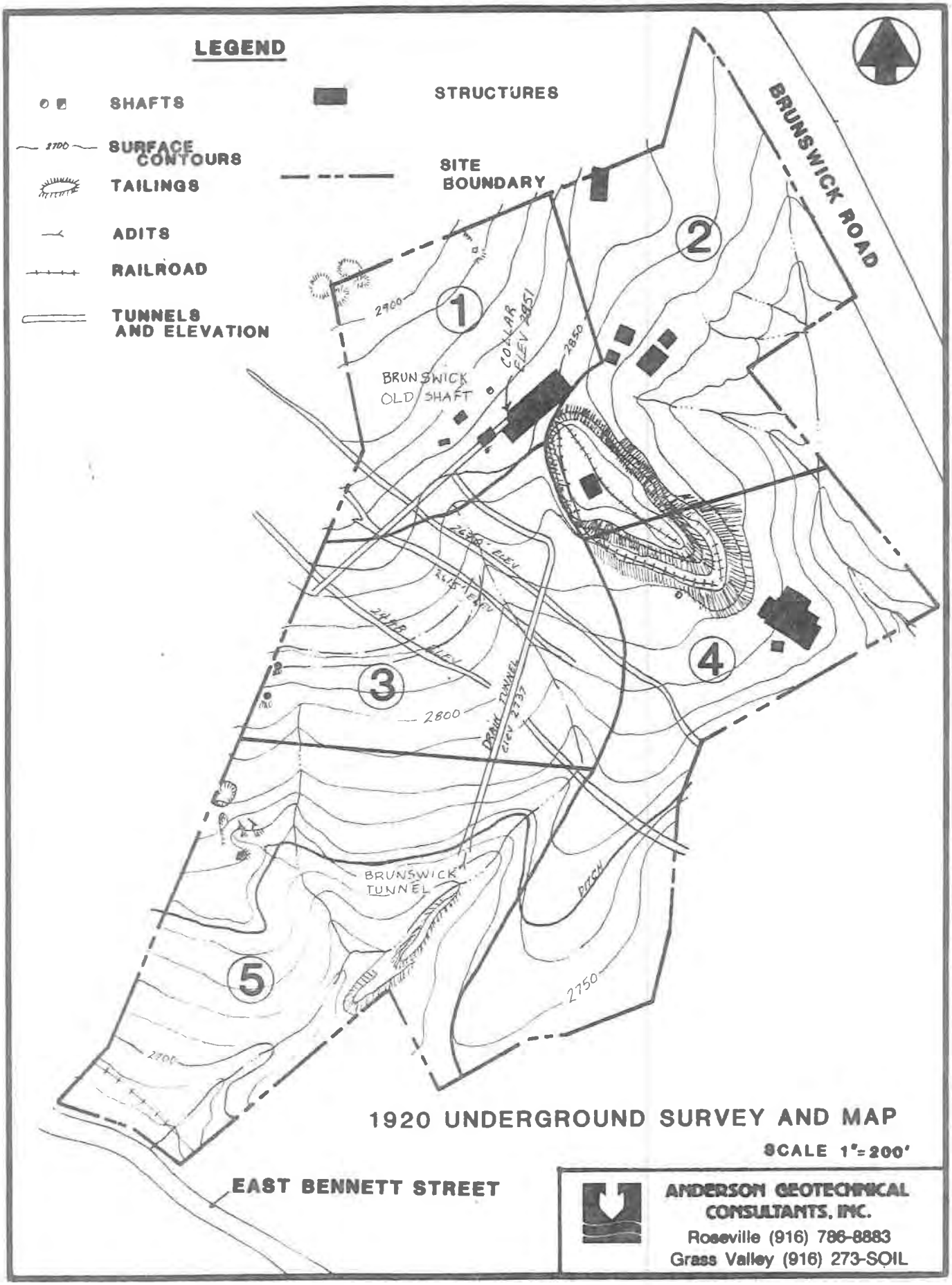

SITE PLAN FOR EAST BENNETT STREET
PROPERTY LOTS 1-5
BRUNSWICK ROAD
EAST BENNETT STREET
1
2
3
4
5
6
LEGEND
BORING LOCATION
AREAS INAPPROPRIATE FOR RESIDENTIAL CONSTRUCTION
SITE BOUNDARY
SCALE 1" = 200'
ANDERSON GEOTECHNICAL CONSULTANTS, INC.
Roseville (916) 786-8883
Grass Valley (916) 273-SOIL

Fig. 1



EAST BENNETT STREET PROPERTY LOTS 1-5

Fig. 2

FIELD EXPLORATION AND LABORATORY TESTING

Six test borings were drilled at the project site under the supervision of an engineer to determine the type, location, and uniformity of the underlying soil and to locate any possible underground workings in the area. Relatively undisturbed soil samples were obtained as the borings were advanced, the purpose of the exploration being to determine if the locations drilled would be suitible for residential counstruction. Logs of the six test borings, graphically depicting the materials encountered, are shown as Figures 3 through 8. The maximum depth penetrated by the borings was 35 feet.

The borings were drilled with a Mobile B-34 truck-mounted drill rig, using 4-inch diameter continuous flight augers. Undisturbed soil sampling was accomplished with a 2-inch O.D. sampler. The sampling tool was driven into the ground by the force of a 140 pound hammer dropping 30 inches. Undisturbed samples were examined in the field to determine the type of material encountered.

No laboratory tests were performed on soil samples taken from the test borings. The results of penetration tests aided in the determination of soil and rock stratums encountered.

File No 1818-1

LOG OF BORING NO. 1

Date Drilled: 4/25/86 Surface Elevation: Unknown

DEPTH IN FEET	SAMPLE NO.	LOG & LOCATION OF SAMPLE	BLOWS/FT.	WATER LEVEL	DESCRIPTION	UNIFIED SOIL CLASSIFICATION	DRY DENSITY P.C.F.	MOISTURE CONTENT, %
5	1-1		13		Brown, ton, moist, very loose clayey SILT FILL Some rocks up to 3 inches	ML		
					Red slightly moist, moderately dense SILT	ML		
10	1-2		30		Completely weathered metavolcanic rock has some rock texture; breaks into fine SILT tan/orange Fairly easy drilling			
15					Highly weathered metavolcanic rock More tan, less orange A little harder drilling from 15 feet on down continuing to 30 feet			
20								
25								
30					Boring terminated at 30 feet			

ANDERSON GEOTECHNICAL CONSULTANTS

Figure 3

File No. 1818-1

LOG OF BORING NO. 2

Date Drilled: 4/25/86 Surface Elevation: Unknown

DEPTH IN FEET	SAMPLE NO.	LOG & LOCATION OF SAMPLE	BLOWS/FT	WATER LEVEL	DESCRIPTION	UNIFIED SOIL CLASSIFICATION	DRY DENSITY p.c.f.	MOISTURE CONTENT, %
					Red brown orange, very moist, fine SILT	SML		
	2-1		11		Tan orange, completely weathered metavolcanic rock			
					Isolated hard rock at 4 feet			
5	2-2		63		More tan, less orange, highly weathered metavolcanic rock			
					Has some rock texture, consistency of SILT when broken			
10					Highly to moderately weathered metavolcanic rock			
					Slow but steady drilling to 25 feet			
15								
20								
25					Boring terminated at 25 feet			

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Figure 4

File No. 1818-1

LOG OF BORING NO. 3

Date Drilled: 4/25/86

Surface Elevation: Unknown

DEPTH IN FEET	SAMPLE NO.	LOG & LOCATION OF SAMPLE	BLOWS/FT	WATER LEVEL	DESCRIPTION	UNIFIED SOIL CLASSIFICATION	DRY DENSITY p.c.f.	MOISTURE CONTENT %
					Red brown, moist, loose SILT	ML		
	3-1		8		Orange tan, completely weathered metavolcanic rock, has some rock texture-silty consistency when broken			
5					More tan in color			
					Soft, easy drilling			
	3-2		30					
10					Very easy drilling			
					More moisture			
					More clayey SILT in cuttings			
15								
20								
25								
					Break in log			
35					Boring terminated at 35 feet			

ANDERSON GEOTECHNICAL CONSULTANTS

Figure 5

File No 1818-1

LOG OF BORING NO. 4

Date Drilled: 4/25/86 Surface Elevation: Unknown

DEPTH IN FEET	SAMPLE NO	LOG & LOCATION OF SAMPLE	BLOWS/FT	WATER LEVEL	DESCRIPTION	UNIFIED SOIL CLASSIFICATION	DRY DENSITY P.C.F.	MOISTURE CONTENT, %
					Some gravel on roadway	GM		
					Red brown, moist, loose SILT, little SAND	ML		
5	4-1		20		Completely weathered metavolcanic rock has some rock texture, breaks into fine SILT with little clay Easy drilling straight to 30 feet			
10								
15								
20								
25								
30					Boring terminated at 30 feet in steady drilling			

ANDERSON GEOTECHNICAL CONSULTANTS

Figure 6

File No 1818-1

LOG OF BORING NO. 5

Date Drilled: 4/25/86 Surface Elevation: Unknown

DEPTH IN FEET	SAMPLE NO.	LOG & LOCATION OF SAMPLE	BLOWS/FT.	WATER LEVEL	DESCRIPTION	UNIFIED SOIL CLASSIFICATION	DRY DENSITY p.c.f.	MOISTURE CONTENT, %
					Rock and gravel tailings	Rocks		
					Red brown, moist, loose SILT little Sand	ML		
5					Orange tan, completely weathered metavolcanic rock has SILTY with some clay texture when broken			
10								
15					Harder slightly weathered metavolcanic rock at 17 approximately 17 feet			
					Harder drilling			
20					Boring terminated at 20 feet			

ANDERSON GEOTECHNICAL CONSULTANTS Figure 7

File No. 1818-1

LOG OF BORING NO. 6

Date Drilled: 4/25/86

Surface Elevation: Unknown

DEPTH IN FEET	SAMPLE NO.	LOG & LOCATION OF SAMPLE	BLOWS/FT.	WATER LEVEL	DESCRIPTION	UNIFIED SOIL CLASSIFICATION	DRY DENSITY p.c.f.	MOISTURE CONTENT %
					Grey, dense, trailings Rock up to 4 inches Mainly rock and gravel, little sand	GP		
5					Red orange brown, moist, loose SILT	ML		
					Orange tan completely weathered rock Fairly easy drilling			
10								
15					Somewhat harder drilling to 30 feet			
20								
25								
30					Boring terminated at 30 feet			

ANDERSON GEOTECHNICAL CONSULTANTS

Figure 8

Sht 7

SURVEYOR'S CERTIFICATE:

This Final Map for BET ACRES represents a survey which is true and complete as shown, made by me or under my direction in conformance with the requirements of the Subdivision Map Act and local ordinances in January 1987, and the monuments are of a character and occupy the positions as shown and are sufficient to enable the survey to be retraced.

A.W. Beeson
A.W. BEESON L.S. 3224

COUNTY SURVEYOR'S CERTIFICATE:

This Final Map has been examined by me, and the subdivision shown is substantially the same as it appeared on the Tentative Map and any approved alterations thereof and provisions of the Subdivision Map Act and local ordinances applicable at the time of the approval of the Tentative Map have been complied with and I am satisfied that this Final Map is technically correct this 23 day of FEB. 1987

Wesley W. Zachary
~~WESLEY~~ W. ZACHARY R.C.E. 19284

COUNTY RECORDER'S CERTIFICATE:

I Bruce C. Bolinger, hereby certify that Inter-County Title certificate no. 82246 was filed with this office, and that this plat map was accepted for record, and recorded in Book 7 of Subdivisions at Page 75 Document No 87-04782 at 3:00 p.m. on this 24th day of February 1987

DOC # 87 04782

FEE: $ 12.00 pd

Bruce C. Bolinger
BRUCE C. BOLINGER

By: Frances Burr
DEPUTY

TAX COLLECTOR'S CERTIFICATE:

I. E. Christina Dabis, the official computing redemptions for the County of Nevada, State of California, do hereby certify that according to the records of my office, there are no liens for unpaid taxes or special assessments collected as taxes against the lands subdivided hereon, except taxes or assessments not yet due and payable, but constituting a lien is paid.

E Christina Dabis
E. CHRISTINA DABIS
NEVADA COUNTY TAX COLLECTOR

BOARD OF SUPERVISOR'S CERTIFICATE:

This is to certify that the Board of Supervisors of the County of Nevada, State of California, by a motion adopted at a meeting held on the 23rd day of FEBRUARY 1987, did approve for filing this map of the BET ACRES property consisting of 4 sheets, and accepted for public use item 1 offered for dedication above. All provisions of the Subdivision Map Act and local ordinances have been complied with regarding deposits this 23RD day of FEBRUARY 1987

CHAIRMAN OF THE BOARD

Cathy Thompson
CLERK OF THE BOARD

OWNER'S CERTIFICATE:

The undersigned, being the only persons representing any record title interest in the herein subdivided lands, do hereby consent to the preparation and recording of this Final Map and offer for dedication and do hereby dedicate to the County of Nevada the following:

ITEM 1: For any and all Public road and Utility purposes, those areas shown as East Bennett rd. Areas A, B and C, excepting therefrom minerals below 150' with the right to mine without disturbing the surface.

Mary Bouma
MARY BOUMA

Erica Erickson
ERICA ERICKSON

William Toms
WILLIAM TOMS

STATE OF CALIFORNIA } SS.
COUNTY OF _____ }

On this 5th day of February 1987 Before me, the undersigned, a Notary Public, State of California, duly commissioned and sworn, personally appeared Mary Bouma, Erica Erickson and William Toms. Known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written

a Notary
NOTARY PUBLIC IN AND FOR SAID COUNTY & STATE

MY COMMISSION EXPIRES July 5, 1990

EASEMENTS OF RECORD OF WHICH EXACT LOCATION CAN NOT BE DETERMINED

1. Idaho Maryland Mines to Normile, (now Walker) Pipeline Esmt. 224 OR 286
2. Matteson to Central Calif. Electric Co. overhead wires, 100 DEEDS 418 & 96 DEEDS 470

REFERENCE DEEDS:

D1 Bulgrin, 85-14691
D2 Bohemia Inc., 504 OR 129
D3 Bouma, Erickson & Toms 83-20536
D4 "The Cedars" 1074 OR 647
D5 Bohemia (Brunswick Timber) 986 OR 341 & 780 OR 284, 288.

REFERENCE MAPS:

R1 3 Sub. 13, "Cordell Estates" Ingram, R.C.E. 9927 1968

FINAL MAP
#85-7
for
BET ACRES

Being portions of the S.E. 1/4 of Sec. 25, the N.E 1/4 of Sec. 36 T.16N., R.8E., and the N.W. 1/4 of Sec. 31. T.16N. R.9E., M.D.B. & M.
In the unincorporated territory of
THE COUNTY OF NEVADA

January 1987 Scale 1"=100'
A.W. Beeson & Assoc. Inc.

Sheet 1 of 4

ER-1499

sub 7 7.5 2-4

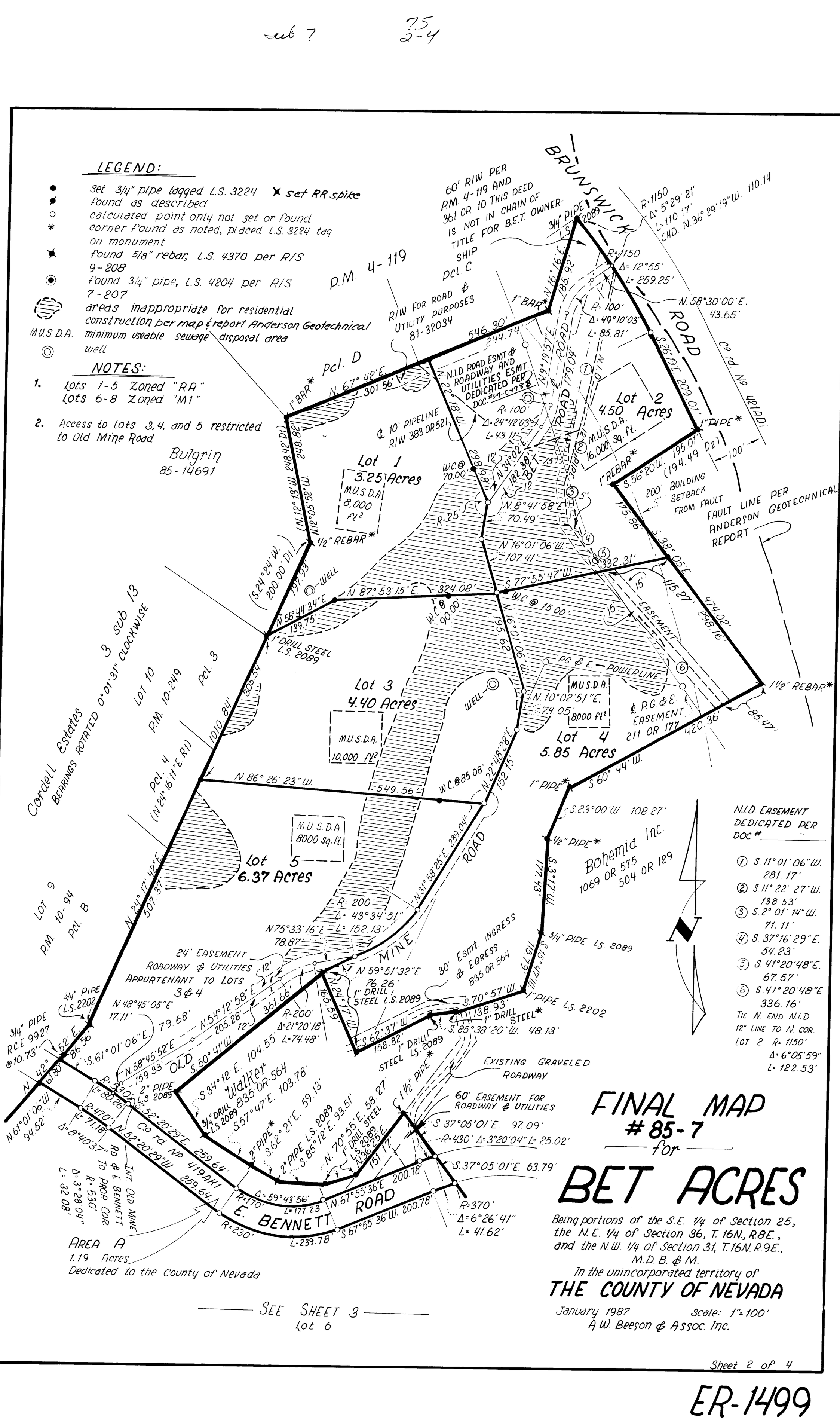
LEGEND:

- ● Set 3/4" pipe tagged L.S. 3224 ✖ set RR spike
- ◕ found as described
- ○ calculated point only not set or found
- ✱ corner found as noted, placed L.S. 3224 tag on monument
- ✱ found 5/8" rebar, L.S. 4370 per R/S 9-208
- ◉ found 3/4" pipe, L.S. 4204 per R/S 7-207
- ▨ areas inappropriate for residential construction per map & report Anderson Geotechnical
- M.U.S.D.A. minimum useable sewage disposal area
- ◎ well

NOTES:

1. Lots 1-5 Zoned "RA"
   Lots 6-8 Zoned "M1"
2. Access to lots 3, 4, and 5 restricted to Old Mine Road

Bulgrin
85-14691



SEE SHEET 3
Lot 6

FINAL MAP #85-7
for
BET ACRES

Being portions of the S.E. 1/4 of Section 25, the N.E. 1/4 of Section 36, T. 16N., R.8E., and the N.W. 1/4 of Section 31, T.16N. R.9E., M.D.B. & M.
In the unincorporated territory of
THE COUNTY OF NEVADA

January 1987 Scale: 1"=100'
A.W. Beeson & Assoc. Inc.

ER-1499

ER-1499

See Sheet 2

Lot 5

Sdlerd
528 OR 66

McAdmiel
679 OR 179

N. 42° 52' E.

1" PIPE
L.S. 2202

N. 47° 33' 55" W.
(N. 47° 21' W)
708.35' (D3, D4)
708.93'

347.47'

S 61° 01' 06" E.
94.52'

EAST BENNETT ROAD
Co. Rd. No. 419A (K)

R = 470'
Δ = 8° 40' 37"
L = 71.18'

S. 52° 20' 29" E. 259.64'

R = 230
Δ = 59° 43' 56"
L = 239.78'

N. 67° 55' 36" E. 200.78'

R = 370'
Δ = 6° 26' 41"
L = 41.62'

N 81° 56' 51" E.
176.18'

S. 37° 04' 19" E.
35.64'

S. 35° 33' 06" W.
206.60'

N. 35° 37' 33" W.
117.64'

M.U.S.D.A.
10,000 Ft²

Wolf

BUILDING

(N.I.D. SPILL EASEMENT)

100'

100'

BUILDING

Rogers
955-633

RIS 7-207
ROTATED 0° 05' 54"
COUNTERCLOCKWISE

N.I.D SPILL EASEMENT
DEDICATED PER
DOC # [illegible]

S. 65° 38' 54" E.
490.77'

Lot 6
21.81 Ac.
(SEE NOTES SHEET 4)

S. 35° 42' 54" E.
109.29'

S. 44° 04' 06" W.
43.10

S. 63° 02' 54" E.
194.84'

N. 42° 55' 06" E.
168.26'

N. 38° 28' 54" W. 264.05'

N. 53° 41' 54" W.
300.00'

S. 77° 26' 43" E.
251.65'

N. 75° 33' 32" W.
423.11'

EAST BENNETT ROAD
AREA B & C DEDICATED
TO COUNTY OF NEVADA

AREA C.
SEE DETAIL TO
LEFT BELOW

AREA B.
0.048 Acres

S. 75° 33' 32" E. 58.81'

S. 69° 52' 04" E. 55.84'

R = 730'
Δ = 7° 35' 34"
L = 96.74'

S. 75° 33' 32" E. 25.55'

S. 74° 12' 27" E. 23.63'

R = 280'
Δ = 5° 44' 23"
L = 28.05'

S. 75° 33' 32" E. 80.57'

N. 60° 00' E. 30.47'

S. 65° 15' 02" E. 39.82'

R = 970'
Δ = 1° 08' 49"
L = 19.42'

R = 970'
L = 10.10'
Δ = 0° 35' 48"

N.I.D. ROAD
EASEMENT
DEDICATED PER
DOC # [illegible]

S. 27° 04' 55" W.
85.00'

S. 79° 44' 48" W.
88.34'

S. 8° 50' 02" W.
95.00'

S. 9° 42' 44" W.
135.62'

15'

15'

N.I.D. EASEMENT DEDICATED
PER DOC # [illegible]

Lot 7

720.14'

SEE SHEET 4

S. 27° 04' 55" W.

1" PIPE
L.S. 2202

600.53'

SETBACK

N. 50° 00' 39" W.

1" PIPE
L.S. 2202

489.96'

N. 66° 40' W.

"The Cedars"
1074 OR 647

Creek

SETBACK

N

AREA B

S. 75° 33' 32" E.
25.55'

R = 970'
Δ = 0° 35' 48"
L = 10.10'

S. 75° 33' 32" E

N. 74° 12' 27" W.
23.63'

S 15° 47' 33" W

AREA C
28.81 Ft²

61.75'

R = 280' Δ = 5° 44' 23" L = 28.05'

S. 75° 33' 32" E.

N 10° 03' 10" E.

N 15° 01' 45" E

N 15° 47' 33" E

DETAIL C
Scale 1" = 10'

BASIS OF BEARINGS:

Monuments recovered along the boundary of the Bouma, Erickson and Toms Property as decribed in that Decree of Distribution filed as Doc. # 83-20536

FINAL MAP
85-7
for
BET ACRES

Being portions of the S.E. 1/4 of Sec. 25, the N.E. 1/4 of Sec. 36, T.16N., R.8E., and the N.W. 1/4 of Sec. 31, T.16N. R.9E. M.D.B.&M.
In the unincorporated territory of
THE COUNTY OF NEVADA

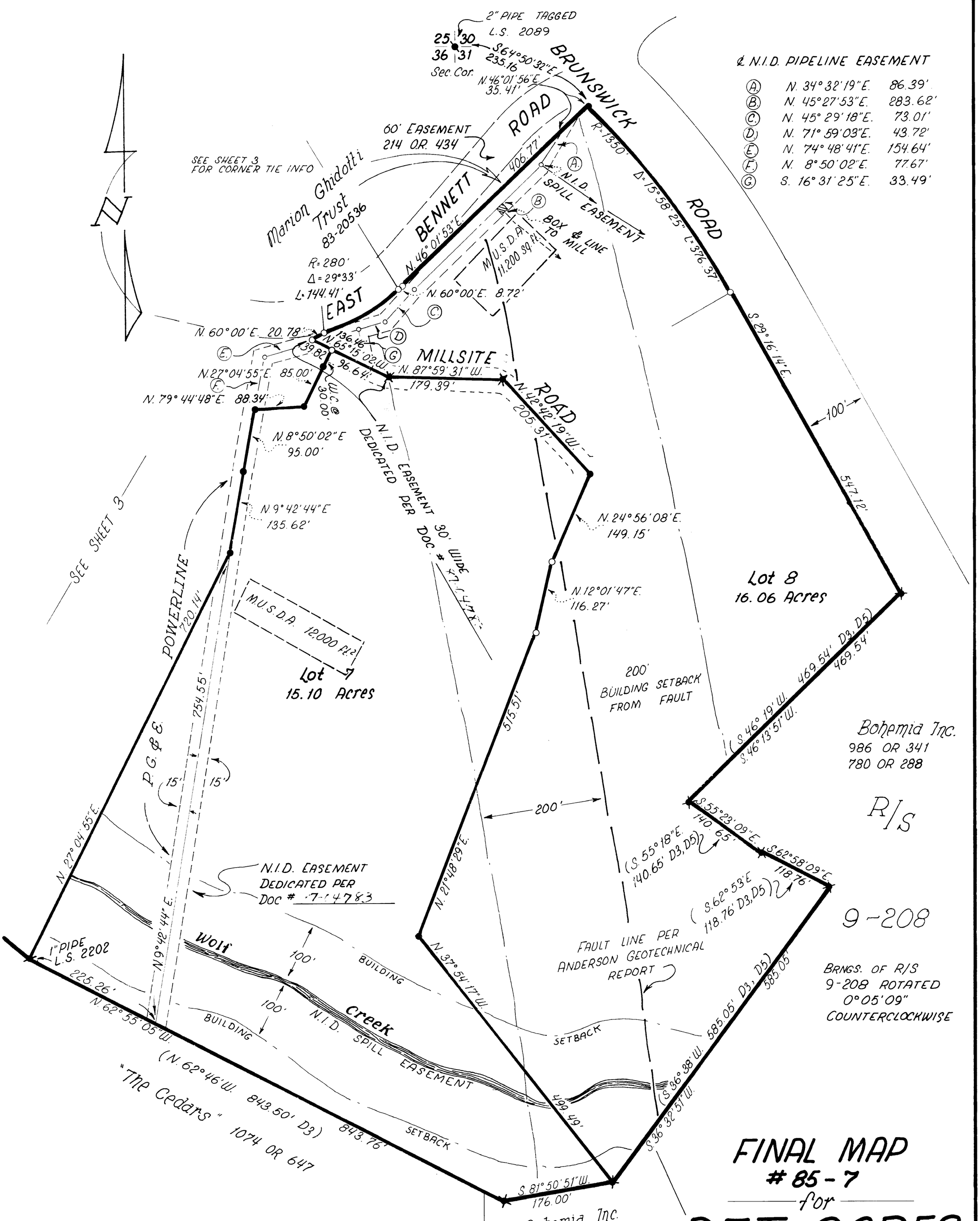
Jan 1987 Scale: 1" = 100'
A.W. Beeson & Assoc. Inc.

Sheet 3 of 4

25 3-4

Su 7

Sht 7 7.5 4-4



N.I.D. PIPELINE EASEMENT

A	N. 34°32'19" E.	86.39'
B	N. 45°27'53" E.	283.62'
C	N. 45°29'18" E.	73.01'
D	N. 71°59'03" E.	43.72'
E	N. 74°48'41" E.	154.64'
F	N. 8°50'02" E.	77.67'
G	S. 16°31'25" E.	33.49'

NOTES

1. Mine shafts may be located within the boundaries of this subdivision. All potential property owners should verify such locations prior to purchase.
2. Access to Lots 6, 7 and 8 restricted to Millsite road.
3. A soils report is required for each of the lots south of East Bennett Road (Lots 6, 7 and 8) prior to obtaining a building permit.

FINAL MAP #85-7

for

BET ACRES

Being portions of the S.E. 1/4 of Sec. 25, the N.E. 1/4 of Sec. 36, T16N., R.8E. and the N.W. 1/4 of Sec. 31 T16N. R.9E. M.D.B. & M.

In the unincorporated territory of

THE COUNTY OF NEVADA

January 1987 Scale 1"=100'

A.W Beeson & Assoc. Inc.

Sheet 4 of 4

ER-1499

Attachment 8

Charles Brock Comment Letter

Received May 8th 2023

Received 5/8/2023
by Zachary Ruybal

4/25/23

RECEIVED
MAY 08 2023
NEVADA COUNTY
PLANNING DEPARTMENT

Comments OPPOSING CERTIFICATION of Final Environmental Impact Report(FEIR), and OPPOSING APPROVAL of a Conditional Use Permit to reopen the Idaho Maryland Mine

Submitted by: Charles W. Brock P.O. Box 269, Nevada City Ca. 95959; 530.362.0490

1. FEIR pgs. 8606, 8607 and 8608 (attached) state that mitigation measures for "temporary and PERMANENT ground disturbing activities" of "jurisdictional waters/wetlands that cannot be avoided" at the Brunswick and Centennial locations can be mitigated by payment of "an in-lieu fee or off-site wetland creation...or purchase of habitat credits". Rise Gold's Use permit application requests variances to the County's 100' riparian setback and permission to exceed 30% slope limits within these areas. Destruction of local riparian habitat has been strongly opposed by the Wolf Creek Alliance, and clearly violates Nevada County General Plan Objective 17.1 and Policies 17.11.3., 17.14, and 17.24.
2. FEIR pg. 5233 identifies the "overall (Brunswick) project site" as being located in the Foothills Fault System, which is designated a "Type C fault zone", with low seismicity and a low rate of recurrence...the nearest mapped active portion of the Foothill Fault System is approximately 25 miles northwest of the overall project site on the Cleveland Hill Fault". (Also see NV5 January 16, 2020 'Management Plan for Potential Seismic Hazards'.) FEIR pgs. 7196 & 7197 address Rise Gold's request to amend the County Final Map #85-7 for Bet Acres and remove the fault line and its 200' building setback on each side. The County concludes, citing NV5 Engineering and citation of their 11/18/19 (outdated) Geotechnical Report, that a "SIGNIFICANT IMPACT could occur without mitigation." Out of an abundance of caution the County consults with another engineering firm and concludes that building on the Brunswick site is feasible as long as building plans are approved by the Nevada County Building Department. Anderson Geotechnical, a local respected engineering firm was responsible for placing said fault line and setback notations on this final map. The fault line runs approximately 150' from the mine's main shaft and directly through the middle of the water treatment pond and its earthen dam. Please also note that in 1975, a damaging earthquake (magnitude range 5 to 6) occurred 10km south of Oroville, within the Foothill Fault System. (see attached August 1978 article in "California Geology'). Said article also identifies "damaging earthquakes" in 1909 and 1888 about 15 km northeast of Nevada City.
3. Potential for Collapse of shallow near surface workings "NOT FORMALLY CLOSED" (DEIR pp. 4.6-44 to 4.6-49), are referred to frequently in the context of mine dewatering, generally concluding they are a low risk for collapse. FEIR page 195 in Master Response 29 states "All near surface mine workings were specifically evaluated by NV5 in the Geotech Review of Near Surface Features, as shown in Table 4 of Appendix H.6. This statement is contradicted numerous times throughout the DEIR, FEIR and Technical Reports! However, the FEIR on pg. 195 states "near surface features are generally more susceptible to subsidence and collapse". A far greater risk

exists for collapse of admittedly unknown and non-engineered closure of near surface workings. DEIR pg. 4.6-13 states: "some near-surface features were historically closed without engineering design or agency oversight." "NV5 states near-surface mine features ...are generally more susceptible to subsidence and collapse than are deeper mine workings and may be located in weaker materials (soil and weathered rock). They recommend potential remediation ie. closure for all near surface mine features". The heightened risk of near surface workings collapse exist today, without any mine operations active, and are admittedly unknown. In their 11/18/19 Geotechnical Report on page 35, ppg. 8, NV5 states "Possible historic mining excavation not detected during our investigation may impact the proposed improvements." And, "Our investigation did not include evaluating the subject site for presence of historic mining features or hazardous materials. In 1998 a private residence built in BET acres (same map as Brunswick Mine Site) suffered a major collapse and sinkhole beneath the house during a period of HEAVY RAIN STORMS. I have spoken recently with the neighbor of the adjacent property who says he has two developing smaller "sinkholes" on his property today. As well, Geotechnical Assessment of near Surface Mine Features prepared by NV5 for Rise Gold, dated June 11, 2020 (outdated), on pg. 8 makes the following statements: "for paved locations where water level in the mine workings is present at depths less than 100 ft. and no records of physical closure are known", and "the ground surface at these locations should be surveyed prior to dewatering so that the locations can be monitored for possible future settlement", and "features were previously closed, no formal record of physical closure was identified" , and "This evaluation does not eliminate the possibility of future settlement at these historical excavation locations". It should also be noted that the same Geotechnical Report states on pg. 7, "Based on information provided by Rise, ...", and then later states in the same report on pg. 10: "We do not warrant the accuracy of information supplied by others". Let it not be forgotten that NV5 Engineering is under the employ of Rise Gold.

One is left to wonder how many unknown, improperly closed near surface workings exist on the mine site? Out of an abundance of caution I include herewith pgs. 4.5-9 and 4.5-19, 20, 21 and 22 of Holdrege and Kull's (now NV5), 10/18/2008 DEIR which speaks with far greater concerns regarding seismicity and unstable soils at the Brunswick Mine site. Couple concern for potential near surface collapse with the County Planning's admitted concern of potential "SIGNIFICANT IMPACT" of seismic issues, and the advisability of certifying the EIR becomes even more questionable.

4. FEIR Chapter 2 pg . 2-6 Master Response #3 states..."the County may revoke a Use Permit for the following reasons: #5. The permit was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application for the permit." Attached herewith see GPA/ Zone Change Application, Applicant's Variance Justification, Project Information Questionnaire, and Mineral Exploration and/or Extraction Environmental Assessment, all four of which are part of Rise's Use Permit Application. I note on the attached documents numerous errors and/or misrepresentations which beg the question "Why bother to approve the Use Permit when the application itself contains so many misrepresentations, omissions and errors?" Hopefully the FEIR will not be certified and Use Permit approval will be moot.

5. Throughout the FEIR "Response to Comments" on pgs. 365, 1014, 1050, 5309, 5318, 3341, 5344, 5346, 5375, and 63 more times, County staff remarks "this comment will be provided to the County decision makers" or alternately, " these comments have been noted for the record and forwarded to the decision makers for their consideration". If each and every one of these noted items have not been forwarded to County decision makers, the FEIR should not be certified.
6. FEIR pg. 147 (Ch. 2-74), the mitigation measure providing treated water, applies to only 30 properties. Clearly, this physical activity, the noise from which is one of the FEIR's UNMITIGABLE SIGNIFICANT ENVIRONMENTAL IMPAC TS, undeniably contributes to significant loss of property values. The admission of said Environmental Impact represents a long term physical change which at the very least encompasses all of the mineral rights areas (should more well production be lost), and clearly IS a violation of CEQA.
7. NV5's Geotechnical Engineering Report dated November 18, 2019, (see #2 above), states on pg. 12: "we do not anticipate that the proposed project will result in the destruction, covering, or modification of any unique geological and/or physical features". Please see attached NV5 "Management Plan for Potential Seismic Hazards" (1/16/2020)(outdated) and the attached "SITE MAP' which is actually an aerial photograph of the existing on site pond, showing "Fault Line" running through the middle of said pond and its dam. Perhaps NV5 and Rise meant to say here that this fault line won't exist once they get the County to rerecord the existing Final Map, with the fault line and setback requirements removed. Risks represented throughout the FEIR and Technical Reports are regularly overlooked, brushed aside or just misrepresented.
8. FEIR pg. 8661 re. security/surety bonding, plus bonding requirements outlined in the County General Plan and permit process, far exceed Rise Gold's ability to pay! As stated on FEIR pg. 8661 "Implementation Schedule", bonding must be provided "Prior to commencement of mining operations." See attached analyses by Tim Ogburn (retired DTSC Administrator and Past Chairperson of Placer County Planning Commission), and Randy Newsom (retired Federal Bankruptcy Judge)addressing this vital issue. Also attached is Surety Bonding Industry information which notes qualifications for underwriting as "bonding capacity, credit and character". Given Mr. Mossman's record in Canada one can reasonably call into question his ability to secure adequate required bonding/surety on the character requirement alone.
9. Rise Gold Financial limitations. See attached analysis by Randy Newsome, retired Federal Bankruptcy Judge.
10. Add Management Plans + Variances + 3 Significant Unmitigable Environmental impacts + zoning change (which would render land use even more out of keeping with the General Plan) + Management Plan for development to allow violation of setback requirement in riparian zone + allowing work in areas of "steep slope in excess of 30%" + Subdivision Map Amendment and Management Plan to remove Fault zone from Final Map (all above noted in Planning Department "Project Description" of IMM) + unknown soil conditions + whatever is yet to be resolved with DTSC the at Centennial site and one has significant "Cumulative Impacts" placing the FEIR in obvious violation of CEQA and rendering it UNCERTIFIABLE and extremely risky on many levels! (Please also see Shute, Mihaly & Wineberger's response to FEIR dated 3/20/23, sent to County Planning Department regarding Cumulative Impacts).

11. Inadequate ASBESTOS and AIR QUALITY mitigation. See Shute, Mihaly & Wineberger letter, and attached "Mine Waste and Asbestos Impacts Comments on the Final EIR prepared by CEA Foundation, March 14, 2023", and attached: 1) Mitigated Daily Airborn Emmissions Chart (from DEIR Table 4.3-19, pg. 366 w/notes prepared by Jeff Kane MD, 2) Table 4.3-5 NSAQMD Thresholds chart, DEIR pg. 333, and 3) Table 4.3-6 of DEIR, pg. 334, and "Public Comments" of local scientist and past GV Planning Commissioner Jim Bair which include detailed DEIR and FEIR referenced notations.
12. General Plan Policy 17.14 states "Already existing development - commercial, residential and community – as well as undeveloped private lands, shall be protected from adverse environmental effects caused by mining through enforced use permit conditions and mitigation measures, OR DENIAL OF THE PROJECTS. The County shall be the enforcement agency." The FEIR identifies three SIGNIFICANT ENVIRONMENTAL IMPACTS that cannot be mitigated: Aesthetics , Noise and Traffic/Circulation. Asbestos should have been a fourth. FEIR pg. 132 states that Section 3 of the DEIR subjectively proffers that mine materials will likely be classified "Group C'. In fact, and as is the case throughout the FEIR we learn that surface and soils testing will have to be done during the course of construction/operation.
13. General Plan. Chapters 1, 4, 9, 14, 17, and 18 all provide arguments for denial of certification of the FEIR.
14. FEIR pg. 117 states "A Groundwater Monitoring Plan (GMP) is required for the Project under Mitigation Measure 4.8-2(a). It also states "the GPM is designed to provide sufficient time to predict adverse impacts" and "if necessary, provide an immediate water supply". The same plan states "groundwater-level information...shall be collected on a quarterly basis". Obviously, the timing structure of this plan is seriously flawed. PG. 147 of FEIR states "no groundwater level measurements have been completed since 2007, which creates some uncertainty to the predicted impact ...of water column in domestic wells." A Groundwater Monitoring Program does not reduce the project's groundwater impacts to a less-than-significant level. FEIR pg. 151 even more outrageously states, "water quality impacts to domestic wells are speculative impacts that do not require analysis under CEQA." One need only review the widespread water quality and well damage that occurred at the Siskon Mine in North San Juan to realize the absurdity of this statement!
15. Technical Reports incorporated throughout the Draft and Final EIR all contain expiration dates that predates issuance of both DEIR and FEIR. Specific wording "The findings of this report are valid as of the present date. The recommendations presented in this report should not be relied upon after a period of two years from the issue date without our review." All technical reports are out of date and should have been current for County Staff to rely on this vital data for the multitude of decisions made throughout the CEQA environmental review process. That said, these documents reveal significant geotechnical concerns/challenges from undocumented soils and fill material (sawdust), to stability of steep cut slopes and potential for naturally occurring asbestos that represent engineering challenges. The overwhelming magnitude of risks imposed by this mine project represent a challenge to the County, which given the inadequacies of the EIR process alone, appear to be well beyond the management capabilities of County staff, and specter of an 80 year use permit.

16. FEIR pg.132 states in Master Response 10 "the DEIR adequately evaluated the Brunswick fill". This statement is directly contradicted on pg. 11 of NV5 Geotechnical Report of the Brunswick Industrial Site dated 11/18/19 (outdated), where it states "The presence of undocumented fill materials in portions of previously graded areas" and "In general, existing undocumented fill should not be relied upon to support proposed improvements."
17. Variance Application for "steep slope"(slope gradients that exceed 30%) work is inadequately dealt with in the NV5 "Steep Slope and Sediment Control Management Plan" dated 1/2/20 (attached herewith)(Outdated). There are several statements of interest in this report: "The gently sloping surfaces along the valley floor were covered with thick vegetation and we could not evaluate the nature of the material in this area." And, "Due to the proposed development and existing site topography, there is no alternatively feasible location(s) on the subject property that would have less impact on the Site and surrounding areas." [Feeble justification for proceeding with the project at all!] "Deep fill was apparent in the vicinity of the New Brunswick Mine workings". And, "no feasible alternatives were identified ...that could avoid these environmentally sensitive resource areas." [Translate: Sacrifice environmentally sensitive areas.] "Regardless of the erosion control measures in place, some erosion and sediment transport from the graded areas should be anticipated", and "...periodic maintenance may be required to maintain and/or rebuild segments of improvements constructed on steep slopes due to future slope instabilities, erosion and mass wasting." And, "Our scope of services did not include an evaluation of the Site for the presence of hazardous materials. (DEIR pg. 498. There was a cyanide plant at the Brunswick site.). And, "Pre-existing soil conditions and/or substandard construction may cause future drainage issues at the site. We can assume no responsibility for the future performance of trail or drainage improvements." [Both the local Nisenan Tribe(see letter attached), and Wolf Creek Alliance have addressed concerns for the watershed and natural areas, including So. Wolf Creek watershed, below the Brunswick Industrial Site'.] FEIR pg. 7886 in Response to Comment Ind. 775 relies on a Preliminary Drainage Analysis prepared by Nevada City Engineering in 2019 (DEIR at pg. 4.8-75), to conclude that the project would not significantly alter drainage patterns, and in so doing seems to contradict itself. Again after the same Steep Slope Management Plan states "We do not warrant the accuracy of information supplied by others". Seems the right and left hands of these environmental documents have no idea what the other is doing!
18. DEIR pg. 4.4-89; implement Best Management Practices During Construction
19. DEIR pgs. 105 & 486 state "No equipment for vehicle maintenance or refueling shall occur within the 50-foot and 100-foot non-disturbance buffers. The contractor shall immediately contain and clean up any petroleum or other chemical spills with absorbent materials such as sawdust or kitty litter. For other hazardous materials follow the cleanup instructions on the label." Accidents will happen. The EIR fails to note how much kitty litter will be kept on hand.

MITIGATION MONITORING AND REPORTING PROGRAM
Idaho-Maryland Mine Project

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		grass, rose clover, winter and spring vetch, and wild oats shall not be used as they displace native species.			
		4.4-3(c) *To the extent feasible, as determined by the qualified biologist in coordination with the Corps, the project shall be designed to avoid and minimize adverse effects to waters of the U.S. or jurisdictional waters of the State of California within the project area. Prior to initiation of ground-disturbing activities, a Section 404 permit for fill of any jurisdictional wetlands within the Centennial Industrial Site and Brunswick Area shall be acquired, and mitigation for impacts to jurisdictional waters that cannot be avoided shall conform with the Corps "no-net-loss" policy, be provided at a minimum 1:1 ratio and be based on the final impact acreages verified by the Corps. Mitigation for impacts to both federal and State jurisdictional waters shall be addressed using these guidelines. Compensatory mitigation can include but is not limited to the following: onsite and/or offsite wetland creation and/or restoration, purchase or placement of conservation easements, payment of an in-lieu fee, and/or purchase of mitigation credits at an approved Corps wetland mitigation or conservation bank.* *The applicant must also obtain a water quality certification from the RWQCB under*	Nevada County Planning Department U.S. Army Corps of Engineers (USACE) Central Valley Regional Water Quality Control Board (RWQCB)	Prior to initiation of ground-disturbing activities	

MITIGATION MONITORING AND REPORTING PROGRAM
Idaho-Maryland Mine Project

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		Section 401 of the Clean Water Act (CWA). Written verification of the Section 404 permit and the Section 401 water quality certification shall be submitted to the Nevada County Planning Department.			
		4.4-3(d) *Prior to initiating of ground disturbing activities within the non-disturbance buffers for aquatic resources on the Centennial Industrial Site and Brunswick Area, the applicant shall apply for a Section 1600 Lake or Streambed Alteration Agreement from CDFW. Impacts to CDFW 1600 jurisdictional areas shall be outlined in the application and are expected to be in substantial conformance with the impacts to biological resources outlined in this EIR (see Tables 4.4-9 through 4.4-11). Impacts for each activity shall be broken down by temporary and permanent, and a description of the proposed mitigation for biological resource impacts shall be outlined per activity and then by temporary and permanent. Minimization and avoidance measures within jurisdictional areas shall be proposed as appropriate and may include: preconstruction species surveys and reporting, protective fencing around avoided biological resources, worker environmental awareness training, seeding disturbed areas immediately adjacent to riparian areas with native seed, and installation of project-specific storm water BMPs. Mitigation may include restoration or enhancement of*	Nevada County Planning Department CDFW	Prior to initiation of ground disturbing activities within the non-disturbance buffers for aquatic resources on the Centennial Industrial Site and Brunswick Area	

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MITIGATION MONITORING AND REPORTING PROGRAM
Idaho-Maryland Mine Project

Impact Number	Impact	Mitigation Measures	Monitoring Agency	Implementation Schedule	Sign-off
		jurisdictional resources on- or off-site, purchase of habitat credits from an agency-approved mitigation/conservation bank, off-site or on-site conservation easements, working with a local land trust to preserve aquatic or riparian areas, or any other method acceptable to CDFW. Mitigation shall be provided at a minimum 1:1 ratio. *A site revegetation plan would be required to be developed and approved by CDFW as part of a Streambed Alteration Agreement permit condition and native trees planned for removal with a diameter at breast height of 4 inches or greater would need to be mitigated for through planting of native riparian trees within adjacent stream zones not being impacted by the Idaho-Maryland Mine Project, with clear success criteria identified, monitoring and reporting required, and corrective actions to be taken if mitigation measures do not meet the proposed success criteria.* *Written verification of the Section 1600 Lake or Streambed Alteration Agreement shall be submitted to the Nevada County Planning Department.*	Admitted, RISK!		
4.4-6	Cumulative loss of habitat for special-status species.	*4.4-6* *Implement Mitigation Measures 4.4-1(a-b), 4.4-2 (a-g), and 4.4-3(a-d).*	See Mitigation Measures 4.4-1(a-b), 4.4-2 (a-g), and 4.4-3(a-d)	See Mitigation Measures 4.4-1(a-b), 4.4-2 (a-g), and 4.4-3(a-d)	

86 03

NV5

Project No. 5279.02
January 16, 2020

Rise Grass Valley, Inc.
333 Crown Point Circle, Suite 215
Grass Valley, CA 95945

Attention: Ben Mossman, President

Reference: **Idaho-Maryland Mine Project – Portion of Brunswick Industrial Site**
12381 Brunswick Road and 12301 Millsite Road
APNs 006-441-034 and 009-630-039
Grass Valley, California 95945

Subject: **Management Plan for Potential Seismic Hazards**

Dear Mr. Mossman,

This letter summarizes NV5's review of a previously-designated building setback associated with a fault zone crossing a portion of the Brunswick Industrial Site. The 119-acre Brunswick Industrial Site is located on the southwest corner of Brunswick Road and East Bennett Road, approximately ½ mile southeast of the Grass Valley city limits in unincorporated Nevada County, California, and is part of the Idaho-Maryland Mine Project (the Project).

The fault zone addressed herein crosses a portion of the Brunswick Industrial Site, specifically APNs 006-441-034 and 009-630-039, which are located at 12381 Brunswick Road and 12301 Millsite Road. For the purposes of this letter the two subject parcels are referred to as the "Site" or "subject site".

The Project is to include development of industrial facilities associated with proposed underground hard rock mining operations. Because construction is proposed within an area on the site designated as a building setback fault zone (herein referred to as "fault zone"), the Nevada County Community Development Agency (CDA) required the preparation of a management plan pursuant to Land Use and Development Code (LUDC) Section L-II 4.3.8 – Earthquake Faults & Seismically Sensitive Areas, to facilitate Project review and permitting.

The conclusions and recommendations presented herein are based on our understanding of the proposed development, the findings of geotechnical investigation, review of published geologic and soil survey maps, and our experience in the area. Our opinion is that the subject fault zone does not qualify as a seismically active area and therefore the proposed Project development within the identified fault zone is feasible without mitigation or restriction, provided that the recommendations of the Geotechnical Engineering Report (NV5; November 18, 2019) are incorporated into the Project plans and specifications.

1.0 INTRODUCTION

According to the Nevada County Planning Department property title records, an inferred fault alignment and a 200-foot building setback zone on each side of the inferred alignment passes through the subject site. The fault line and setback are recorded on Final Map 85-7 (Book 7 of Subdivisions at page 75) prepared by A.W. Beeson & Associates, Inc. (Beeson; January 1987) for the previously-proposed BET Acres Subdivision (Attachment A).

According to the map prepared by Beeson (1987), the recorded fault alignment is based on an "Anderson Geotechnical Report." The report was likely prepared by Anderson Geotechnical Consultants, Inc. (Anderson), who performed other geotechnical investigations in the area during this time. The report was not located by public records review and was not available from the firm that subsequently acquired Anderson.

NV5 performed a geotechnical engineering recommendations and provided geotechnical engineering recommendations for the Project in *Geotechnical Engineering Report, Idaho-Maryland Mine Project – Brunswick Industrial Site* (November 18, 2019). The geotechnical engineering investigation included a site reconnaissance and literature review pertaining to soil conditions and site geology, and a subsurface investigation and laboratory testing program.

2.0 PURPOSE

This management plan was prepared pursuant to Nevada County LUDC Sec. L-II 4.3.8 to address potential seismic hazards associated with the previously-identified fault alignment. Section L-II 4.3.8.C requires a management plan for development projects that will result in disturbance within seismically active areas, which are defined in Section L-II 4.3.8.B as areas determined to be within a seismic hazard zone or to have the potential to suffer ground rupture from active faults by the State Division of Mines and Geology.

3.0 SCOPE

To prepare this management plan, we reviewed published geologic literature pertaining to the site and surrounding area and the findings of our geotechnical engineering report for the Project.

4.0 SITE DESCRIPTION

The 119-acre Brunswick Industrial Site is located on the southwest corner of Brunswick Road and East Bennett Road, approximately ½ mile southeast of the Grass Valley city limits in unincorporated Nevada County, California, and is part of the Idaho-Maryland Mine Project (the Project). The fault zone addressed herein crosses a portion of the Brunswick Industrial Site, specifically APNs 006-441-034 and 009-630-039, which are located at 12381 Brunswick Road and 12301 Millsite Road. For the purposes of this letter the two subject parcels (comprising approximately 31.16 acres) are referred to as the "Site" or "subject site".

The Site sits in a valley created by the South Fork of Wolf Creek, and is bordered by Brunswick Road to the east, East Bennett Road to the north, predominantly vacant industrial properties to the south and southwest, and undeveloped land to the west and southwest.

At the time of our investigation, the Site consisted of generally flat-lying fill surfaces around the New Brunswick mine shaft, former sawmill landings, and gently to moderately sloping open space and forested areas around a pond and dam. Deep fill was present in the vicinity of the New Brunswick shaft and ore bin.

The South Fork of Wolf Creek is contained within an approximately 48-inch diameter corrugated metal pipe (CMP) culvert as it enters the Site. The creek discharges back into its natural channel within the site, continuing northwestward along the southwestern border of the property.

when did it become inferred

As shown on Map 85-7, the inferred fault alignment crosses the subject site from the south side of the pond near the southern site boundary and trends approximately 350 degrees towards the intersection of East Bennett Road from New Brunswick Court near the northern site boundary (Figure 1). The New Brunswick shaft is located approximately 150-feet west of the inferred fault alignment within the 200-foot setback zone.

5.0 PROPOSED IMPROVEMENTS

NV5 reviewed a Grading Plan (Sheet B-1) prepared by Nevada City Engineering, Inc. (and several sheets prepared by Rise Grass Valley, Inc. (November 2019), including an Infrastructure Plan (Sheet B101), Biological and Cultural Summary Map (Sheet B102), Infrastructure Details (Sheet B103) and Section Views (Sheet B104). Based on our review of these site plans, we understand that the proposed project improvements will likely include the construction of:

- New light-loaded and heavily-loaded structures to support industrial mining activities;
- Regrading of a portion of the dam;
- Retrofitting and expansion of the existing New Brunswick shaft;
- Construction of a new service shaft and headframe;
- Construction of a storm water detention pond;
- Construction of an engineered fill for future industrial development; and
- Associated infrastructure elements including earth retaining structures.

Appurtenant construction will include asphalt concrete paved roads and parking areas and underground utilities. Grading for the project will include cut and fill for building pads, roadways, surface and subsurface drainage improvements and underground utilities.

6.0 PREVIOUS SITE INVESTIGATIONS

NV5 requested public records from the County of Nevada; however, the "Anderson Geotechnical Report" referenced on Map 85-7 was not available. A geotechnical report for a neighboring East Bennett Street Property to the north (Anderson; May 12, 1986) was identified (Attachment B). NV5 reviewed the Anderson (1986) report, which states that Anderson performed a previous geotechnical reconnaissance (February 26, 1986) and references a fault on the subject site:

SEE ANDERSON LETTER IN ATTACHMENT # 2 AND PACKAGE

> "The fault that was addressed in our initial Geotechnical Reconnaissance (dated 26 February 1986) as crossing near lot 2 appears to be present on the northern most

part of the lot. The age of this fault in on the order of 100 million years and any potential risk of movement is so slight that it should not affect single family residential construction. We recommend that any construction be set back at least 200 feet from the fault (the approximate location of the fault is shown in our previous work, Geotechnical Reconnaissance)." (Anderson, 1986)

7.0 GEOLOGY ANS SEISMICITY

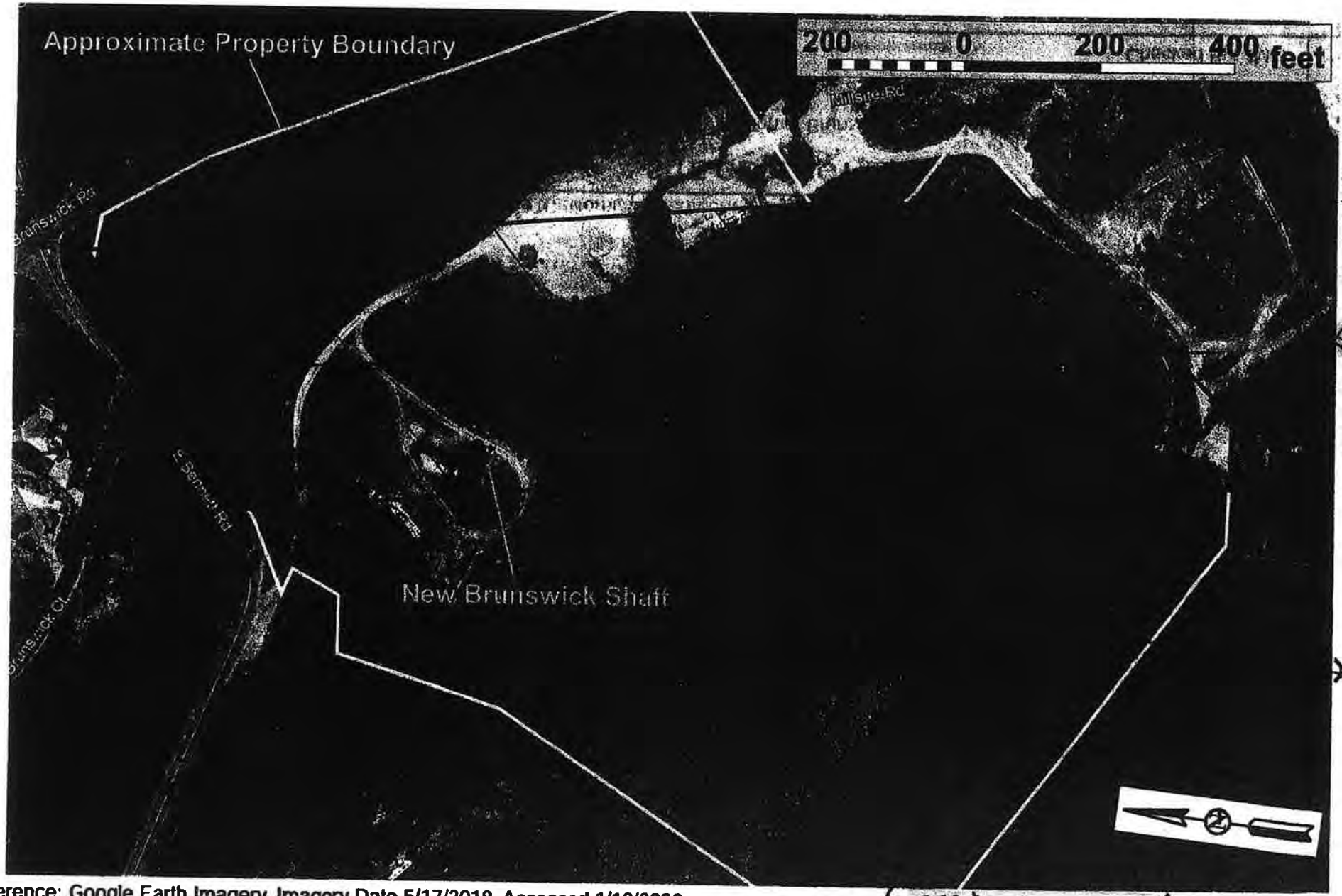
The Site is located within a region underlain by a complex assemblage of igneous and metamorphic rocks in the western foothills of the Sierra Nevada. The regional structure of the foothills is characterized by the north-northwest trending Foothills Fault System, a feature formed during the Mesozoic era (between approximately 65 million and 248 million years ago) in a compressional tectonic environment. A change to an extensional tectonic environment during the late Cenozoic (approximately within the last 30 million years), resulted in normal faulting which has occurred coincident with some segments of the older faults near the Site.

According to the Geologic Map of the Chico Quadrangle, California (California Department of Conservation, Division of Mines and Geology, 1992) the Site is underlain by massive diabase. A northwest trending liniment of the Grass Valley Fault Zone is approximately located or inferred along Brunswick Road east of the site (Figure 2). The Grass Valley Fault Zone is not considered active. Metavolcanic rock is mapped on the east side of Brunswick Road and the fault. Both of these units are associated with the Mesozoic Lake Combie Complex. The upslope area to the south and southwest of the Site is mapped as Miocene to Pliocene volcanics, predominantly andesitic pyroclastic rocks, which cover the fault that contacts the massive diabase and metavolcanic rocks. The Mesozoic era spans the period of time between 250 and 65 million years before present and the Miocene to Pliocene epochs span the period of time between 23 and 2.6 million years before present.

The Geologic Map of the Grass Valley - Colfax Area (A. Tuminas, 1983) presents the findings of a more detailed local study. According to this geologic map, an inferred fault trends north-northwest through the property approximately along the eastern shore of the pond and passing through the northern Site boundary. Four rock units are mapped as underlying the Site. The eastern portion of the Site (and fault) is mapped as early Mesozoic Lake Combie metavolcanic rock. The northern and western sloping flanks of the Site are mapped as early Mesozoic Lake Combie massive diabase. The lower valley portions encompassing the South Fork of Wolf Creek is mapped as Quaternary alluvium (i.e., water-lain sediments deposited in the past 2 million years). Tertiary clastic strata of the volcanic Mehrten formation is mapped in the upslope areas to the south and southwest of the Site. The Quaternary alluvium and Mehrten formation both cover the fault that contacts the older Lake Combie massive diabase and metavolcanic rocks.

The Fault Activity Map of California (2010) (http://maps.conservation.ca.gov/cgs/fam/), prepared by the California Department of Conservation, California Geological Survey (CGS), indicates that the Site is located within the Foothills Fault System. The Foothills Fault System is designated as a Type C fault zone, with low seismicity and a low rate of recurrence. The Foothills Fault System has been assigned a moment magnitude of 6.5. The nearest mapped active portion of the Foothill Fault System is approximately 25 miles northwest of the site on the Cleveland Hill Fault.

Includes Oroville
CLEVELAND HILL FAULT
Algust - Priolo !



Reference: Google Earth Imagery, Imagery Date 5/17/2018, Accessed 1/10/2020

*SEE FAULT LINE RUNNING THRU MIDDLE OF POND & DAM.

Scale:1" =200'

NV5
192 Sierra Avenue, Nevada City, California, 95959
PHONE: 530-478-1305, FAX: 530-478-1619

SITE MAP

Project Name: Idaho-Maryland Mine Project – Portion of Brunswick Industrial Site

Location: 12381 Brunswick Road and 12301 Millsite Road, Grass Valley, California

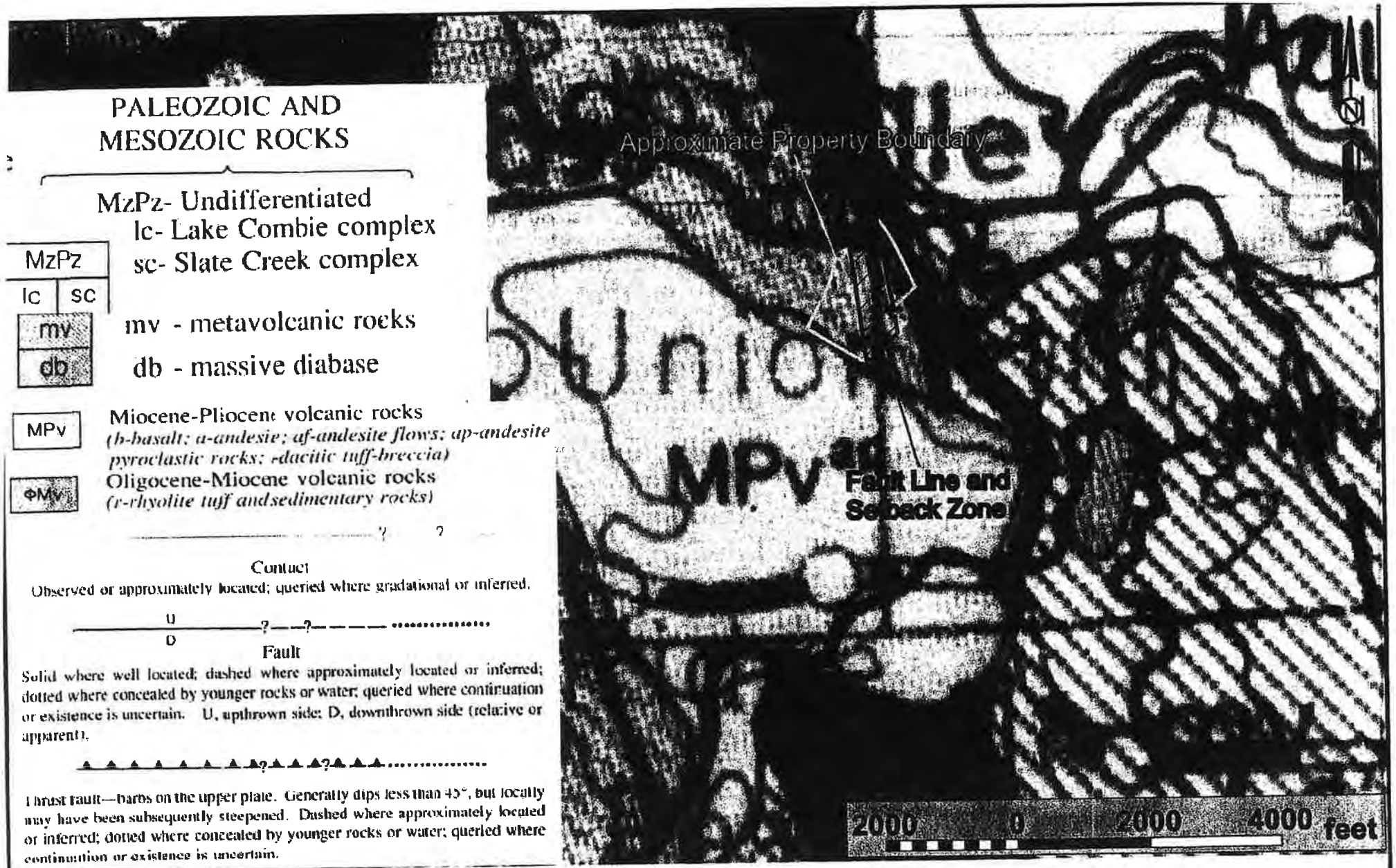
Project No.: 5279.02

Date: January 2020

Drawn By: DAV

Checked By: JMM

FIGURE 1



Reference: Geologic Map of the Chico Quadrangle, California (California Department of Conservation, Division of Mines and Geology, 1992) Scale:1" =2000'

NV5
792 Searls Avenue, Nevada City, California, 95959
PHONE: 530-478-1300, FAX: 530-478-1919

SITE GEOLOGY MAP

FIGURE 2

Project Name: Idaho-Maryland Mine Project – Portion of Brunswick Industrial Site

Location: 12381 Brunswick Road and 12301 Millsite Road, Grass Valley, California

Project No.: 5279.02

Date: January 2020

Drawn By: DAV

Checked By: JMM

GEOLOGY—Foundation of the present; key to California's future.

CALIFORNIA GEOLOGY

August 1978

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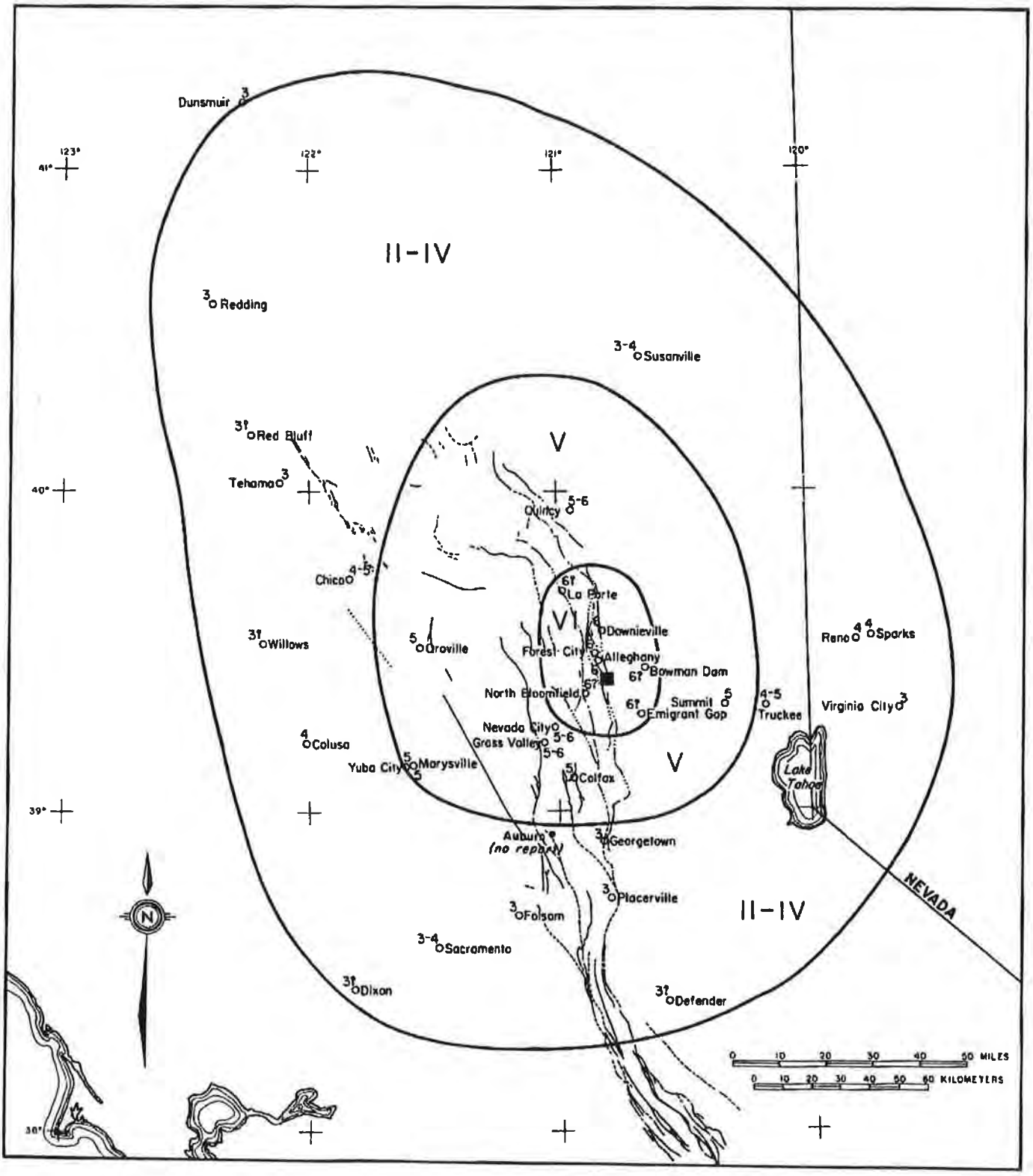
SEISMICITY AND CRUSTAL MOVEMENT — FOOTHILLS FAULT SYSTEM



In the SIERRA NEVADA . . . .

SEISMICITY

OF THE

FOOTHILLS FAULT SYSTEM

BETWEEN

FOLSOM AND OROVILLE, CALIFORNIA

By

CHRIS H. CRAMER, TOUSSON R. TOPPOZADA, AND DAVID L. PARKE
California Division of Mines and Geology

This article was published as a "Letter to the Editor" in the Bulletin of the Seismological Society of America v. 68, no. 1, pp. 245–249, February 1978....*Editor*

INTRODUCTION

The Foothills fault system, between Folsom and Oroville, is bound on the east by the northward trending Melones fault zone and on the west by the northwestward trending Bear Mountain fault zone. Recent studies have revealed more extensive Late Cenozoic faulting then previously recognized within the northern Sierra Nevada, including portions of the Foothills fault system (Alt and others, 1977; Schwartz and others, 1977). Damaging earthquakes, in the magnitude range 5 to 6, have occurred within this portion of the Foothills fault system in 1975, 10 km south of Oroville, and in 1909 and 1888 about 15 km northeast of Nevada City (figure 1, front cover). This article summarizes evidence from microearthquake surveys, from historical earthquake reports, and from geodetic surveys that the Foothills fault system is active between Oroville and Folsom.

SEISMICITY BETWEEN OROVILLE AND FOLSOM

Bear Mountain Fault Zone

Following the 1975 Oroville earthquake, improved regional seismograph coverage has led to the detection of several magnitude ~ 1.0 microearthquakes along the western or Bear Mountain zone of the Foothills fault system north of Auburn. Between December 1975 and March 1977, seven such events were recorded. Marks and Lindh (1977) located two events southeast of Honcut and one event east of Marysville (figure 1). The northern two events occurred on December 19, 1975 and January 1, 1976, while the southern event occurred on May 3, 1976. Marks and Lindh (1977) also located a magnitude 2.1 earthquake 10 km east of Honcut which occurred on February 13, 1976. Cramer and Sherburne (1977) reported two events near Smartville that occurred on August 21, 1976 and September 2, 1976. Finally Eaton and others (1977) located an event east of Honcut which occurred on February 7, 1977. The hypocentral parameters for these seven events are listed in table 1.

TABLE 1. KNOWN MICROEARTHQUAKE ACTIVITY IN SIERRA FOOTHILLS BETWEEN HONCUT AND FOLSOM FOR THE PERIOD DECEMBER 1975 THROUGH JULY 1977*

Date (yr.mo.day)	*Time (UT) (hr.min.)*	*Lat N*	*Long W*	*Depth*	*Magnitude*
	Bear Mountain Zone				
75 12 19	19 14	39°17.06'	121°29.28'	~ 18 km	1.3
76 01 01	10 22	39°17.45'	121°29.30'	~ 18 km	0.7
76 02 13	23 13	39°21.97'	121°22.20'	~ 7 km	2.1
76 05 03	12 16	39°08.25'	121°23.72'	~ 15 km	1.1
76 08 21	01 31	39°13.82'	121°18.08'	< 5 km	0.8
76 09 02	18 00	39°13.64'	121°19.46'	< 5 km	1.3
77 02 07	14 49	39°19.83'	121°22.80'	~ 4 km	1.3
	Melones Zone				
76 11 19	05 11	38°54.60'	120°57.14'	~ 10 km	1.1
77 05 15	18 44	39°16.7'	121°05.3'	~ 9 km	1.1

*Microearthquakes that occurred in the Rocklin pluton are not listed in this table, they are listed in Cramer and others (1977).

Melones Fault Zone

Besides the three damaging earthquakes mentioned in the introduction, other earthquake activity points toward the Melones zone as being active. Cloud (1976) lists felt reports of earthquakes near Nevada City as far back as 1867. Also listed by Cloud are two magnitude ~ 3.0 events instrumentally located along and to the west of the Melones zone. The first occurred about 20 km northeast of Auburn on March 12, 1950, and the second about 15 km southwest of Nevada City on October 5, 1960 (figure 1). Eaton and others, (1977) and Eaton and Conens (1977) detected two magnitude ~ 1.0 events on the Melones zone using a recently installed regional seismograph network. The hypocentral parame-

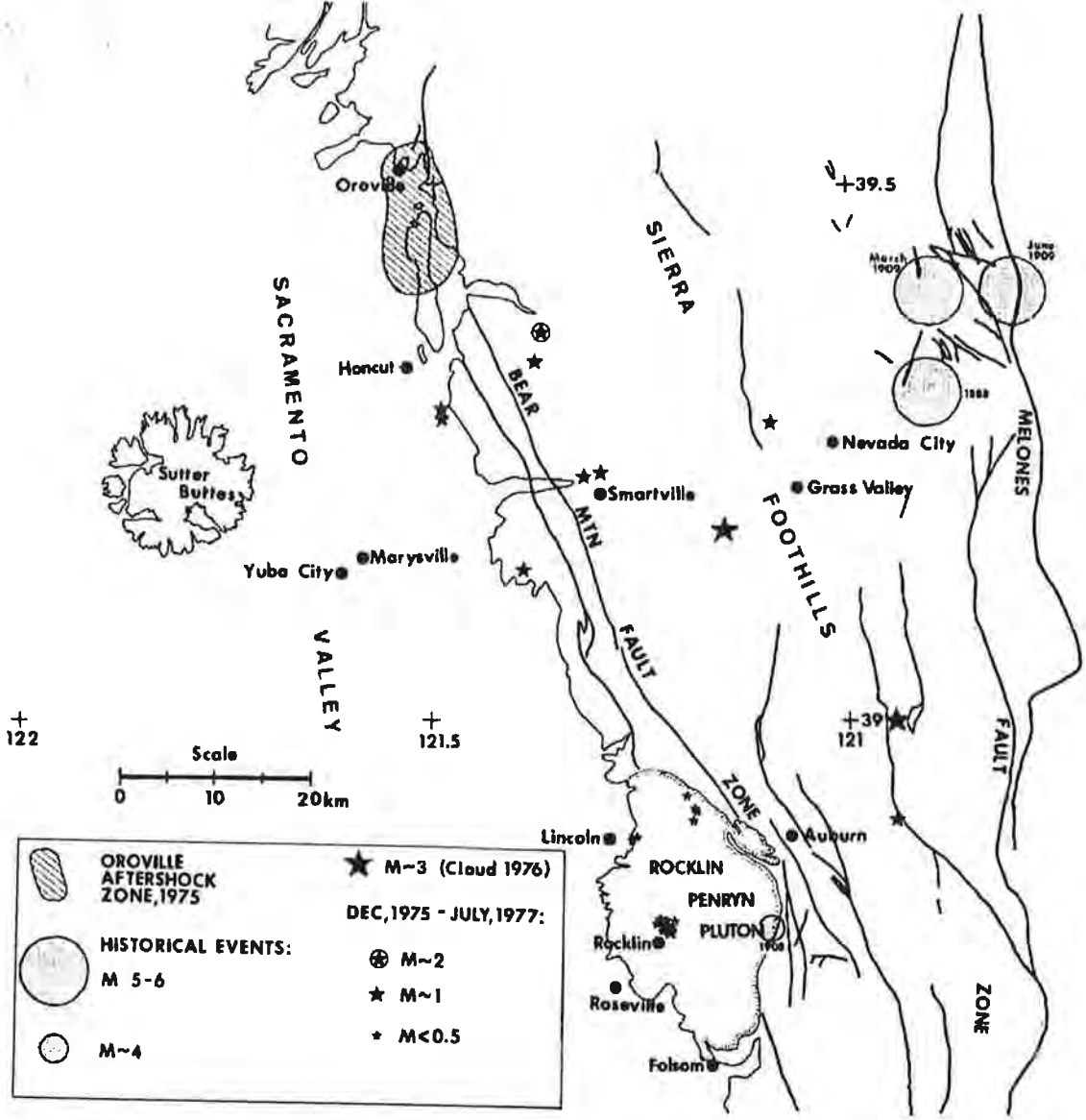


Figure 1. Map of northern part of Foothills fault system showing known earthquake activity between Oroville and Folsom. The contact to the west of the Bear Mountain fault zone is the boundary between the Sacramento Valley and the Sierra foothills. Hachured line indicates boundary between the Rocklin–Penryn pluton and metavolcanic rocks of the foothills. The 1888, 1908, and 1909 earthquakes were researched by CDMG; for the 1908 and 1909 events see Toppozada and others (1978).

ters for these two events are also listed in table 1. The first event occurred 10 km east of Auburn on February 7, 1977 and the second 7 km west of Nevada City on May 15, 1977 (figure 1).

DETAILED STUDIES NEAR ROCKLIN

Two microearthquake investigations have been conducted in the vicinity of Rocklin, California. The first by McNally and others (1978) discovered microearthquake activity within the Rocklin–Penryn pluton. During that survey, microearthquakes ($M \leq 1$) were concentrated in a cluster of activity near the town of Rocklin with two additional events near Lincoln (figure 1). The second microearthquake survey by Cramer and Sherburne (1977) confirmed the presence of the cluster of activity near Rocklin and detected additional microearthquakes ($M < 0$) near the northern edge of the pluton (figure 1). Continued monitoring by Eaton and others (1977) and Eaton and Conens (1977) using a regional telemetered network showed ongoing activity within the cluster near Rocklin, the largest being two magnitude 1.6 events.

Composite focal mechanisms based on P-wave first motions for both the Rocklin cluster of activity and the four events near the northern edge of the Rocklin–Penryn pluton indicate normal faulting, down to the east, on fault planes trending about N10°W with dips of 55° to 70° to the east (Cramer and others, 1977; McNally and others, 1978). This trend is compatible with the regional fault trend of the Sierra foothills. P-wave first motion data from the magnitude 1.1 event east of Auburn (Eaton and others 1977) also indicates normal faulting, down to the east, and is compatible with the composite mechanisms for the Rocklin pluton activity. This sense of down to the east motion on a normal fault is also compatible with geologic observations elsewhere along the Foothills fault system (Drew Smith, CDMG Geologist, oral communication; Alt and others 1977; Schwartz and others 1977).

Reports of felt earthquakes near Rocklin are rare (Townley and Allen, 1939; Bolt and Miller, 1975). Cloud (1976), in his review of the seismicity of the area, reported only three historical events that may have occurred near Rocklin. The three events are a February 23, 1885 event, an April 21, 1892 event reported as felt in Newcastle (5 km SW of Auburn, and a May 30, 1908 event reported as felt in Folsom and Represa (Townley and Allen, 1939). A search of old newspapers by one of the authors (D.L.P.) produced newspaper accounts for the 1908 event. The two earlier events were reported in the newspaper accounts as felt only at Newcastle, which is between Rocklin and Auburn. Figure 2 shows an isoseismal map for the 1908 event based on the newspaper accounts. A maximum reported intensity of IV–V and a total felt area of about 10,000 km² suggest a Richter mag-

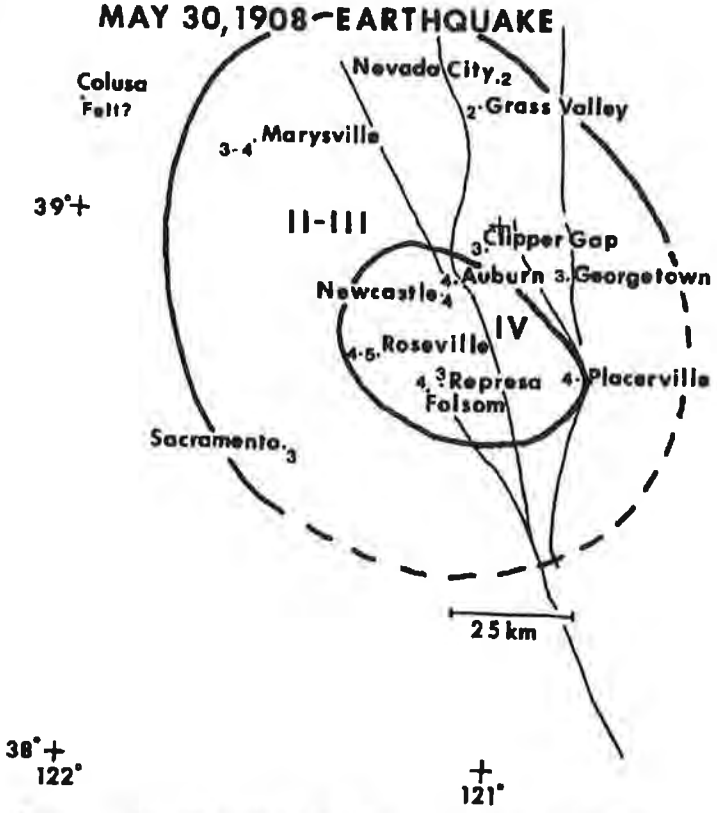


Figure 2. Isoseismal map of the May 30, 1908 earthquake showing Modified Mercalli intensity data determined from newspaper reports and the II and IV isoseismals. The generalized Foothills fault system in the Auburn area is shown in the background.

nitude of about 4 for this earthquake. Although the epicenter cannot be precisely defined, the intensity IV contour suggests that the event occurred on the Foothills fault system between Auburn and Folsom in proximity to the recent microearthquake activity near Rocklin. The epicenter for this event shown in figure 1 corresponds to the center of the intensity IV contour in figure 2.

DISCUSSION

Microearthquake studies in the Sierra foothills since late 1975 have revealed a pattern of ongoing low level seismicity between Oroville and Folsom. The occurrence of several magnitude ~1.0 events during this time period suggest that this portion of the Foothills fault system is active. Historical earthquake reports and instrumental earthquake locations also support this conclusion.

Detailed investigations in the vicinity of Auburn, California have shown microearthquake activity within the Rocklin–Penryn pluton. The main cluster of activity is in the middle of the pluton and is confined to an extremely small source volume. Another cluster of very small events is near the northern margin of the pluton where the Foothills fault system abuts the pluton. Composite focal mechanisms for events within the pluton as well as for one event east of Auburn are compatible with regional geology and trends of the Foothills fault system. These results suggest that the Rocklin–Penryn pluton is presently being deformed by the same regional stress pattern that caused Cenozoic movements elsewhere on the Foothills fault system. The isoseismals of a 1908 earthquake suggest that macroseismic activity has also occurred on the Foothills fault system in the vicinity of Rocklin.

Bennett and others, (1977) presented independent evidence of ongoing crustal movement based on first–order level lines between Roseville and Reno. The leveling data show episodic changes in elevation which approximately coincide with the Bear Mountain and the Melones zones of the Foothills fault system. As with earthquake data, the leveling shows that larger movements are occurring on the Melones fault zone than on the Bear Mountain fault zone.

ACKNOWLEDGMENTS

We would like to thank William U. Savage of Woodward–Clyde Consultants for sending us copies of newspaper accounts for the historical earthquakes. Gary Bates, student intern from the University of California at Davis, assisted in evaluating the historical newspaper accounts.

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Nevada County, California County Code

TITLE 3 LAND USE AND DEVELOPMENT CODE

CHAPTER II: ZONING REGULATIONS

ARTICLE 4 COMPREHENSIVE SITE DEVELOPMENT STANDARDS

Division 4.3 Resource Standards

Sec. L-II 4.3.8 Earthquake Faults & Seismically Sensitive Areas

A. **Purpose.** To minimize the impact of earthquakes and seismic hazard on people and development.

B. **Definitions.**

1. **Seismically Active Areas** - Areas determined to be within a seismic hazard zone or to have the potential to suffer ground rupture from active faults by the State Division of Mines and Geology.

C. **Standards.**

1. Projects shall be approved only when they are not within the defined area, unless the resource can be protected consistent with paragraph 2 below.

2. If the above standard effectively precludes development of the project, a Management Plan shall be prepared by a certified engineering geologist or civil engineer that minimizes safety impacts associated with the project. The Management Plan shall include a Geotechnical Report that includes the following:

a. Existing soils and geologic conditions, including location and chronology of local faults and epicenters, relationship of the site to said faults and epicenters, and other environmental factors, including rainfall, slopes, water table, vegetation, etc. that might affect soils and geologic conditions.

b. Conclusions of potential seismic hazards relative to the specific intended land use.

c. Recommended construction and/or land use restrictions that will avoid the hazard or lessen the hazard to an acceptable level, including construction techniques, building heights, site preparation measures, building setbacks, etc.

Where the Report determines that a seismic hazard does exist, conclusions and recommendations to lessen the seismic hazard shall be incorporated into the conditions of approval of the project. Where the Report determines that the seismic hazard cannot be lessened to an acceptable level, the project shall be denied.

File No. 1818-1
12 May 1986

GEOTECHNICAL CONSULTANTS, INC.

SEE PG 3

Erickson, Bouma, and Toms
c/o Erica Erickson
353 Clay Street
Nevada City, California 95959

Subject: East Bennett Street Property
East Bennett Street and Brunswick Road
Nevada County, California
GEOTECHNICAL INVESTIGATION

Gentlepersons:

An additional geotechnical investigation of 5 proposed residential lots on the north side of East Bennett Street near Brunswick Road has been completed. The purpose of our investigation was to locate any possible geologic hazzards due to past mining activity at the old Brunswick Mine. This investigation was perfomed in conjunction with our previous Geotechnical Reconnaissance (dated 26 Feb uary 1986) in which we recommended that additional studies take place to locate buried shafts, tunnels, and adits and find buildable areas on each residential lot. No additional work was performed on lots 6, 7, and 8. These lots are to have geotechnical investigations performed on an individual basis at a later date.

To complete our additional investigation, six test borings were excavated, at least one per lot, and a review of previous underground surveys was performed. The underground survey map was provided to us by Al Beeson, who obtained it from the

property owners. The underground map was produced by plotting underground data on a topographic base map produced in 1920 when the Brunswick Mine was still active. Using this map we were able to dertermine where the old mine structures (headworks, mills, pipelines, tailings piles) were located in relation to the site. The 1920 base map also shows the locations of old ditches, prospects, adits, and shafts. We were also able to determine the depth beneath the ground surface of the shafts and tunnels in the area. An extensive surface reconnaissance and a review of old (1962) aerial photos was also completed.

The locations of the test borings is shown on Figure 1. In the test borings, we found no evidence of near surface tunnels or voids within the depths drilled (20 to 35 feet). In choosing the locations of the test borings, we utilized spots that were unlikely to be the location of any tunnels (according to the 1920 map). Logs of the six test borings are shown on Figures 2 through 7. The locations of the borings on Figure 1 is only approximate as they were located by referencing from topographic features.

RESULTS AND CONCLUSIONS

The results of our study indicate that single family residences can be built on select areas on each of the five lots. On Figure 1, we have plotted appropriate building envelopes on each lot. These buiding areas have been selected to minimize the risk of experiencing problems from past mining activities at the site.

We recommend that residential construction be avoided on the tailings piles on lots 2 and 4. Although most of the tailings have been removed (reused for agregate and/or fill off the site), constructing on the remaining tailings could prove difficult. Home sites on the tailings are also considered undesirable. Lots

File No. 1818-1
12 May 1986

2 and 4 have enough area that is not on the tailings to provide sufficient building areas.

The fault that was addressed in our initial Geotechnical Reconnnaissance (dated 26 Febuary 1986) as crossing near lot 2 apperars to be present on the northern most part of the lot. The age of this fault is on the order of 100 million years and any potential risk of movement is so slight that it should not effect single family residential construction. We recommend that any constuction be set back at least 200 feet from the fault (the approximate location of the fault is shown in our previous work, Geotechnical Reconnnaissance).

Soil conditions at the site, other than the tailings piles, are suitible for conventional residential foundation systems if footings are properly designed and constructed.

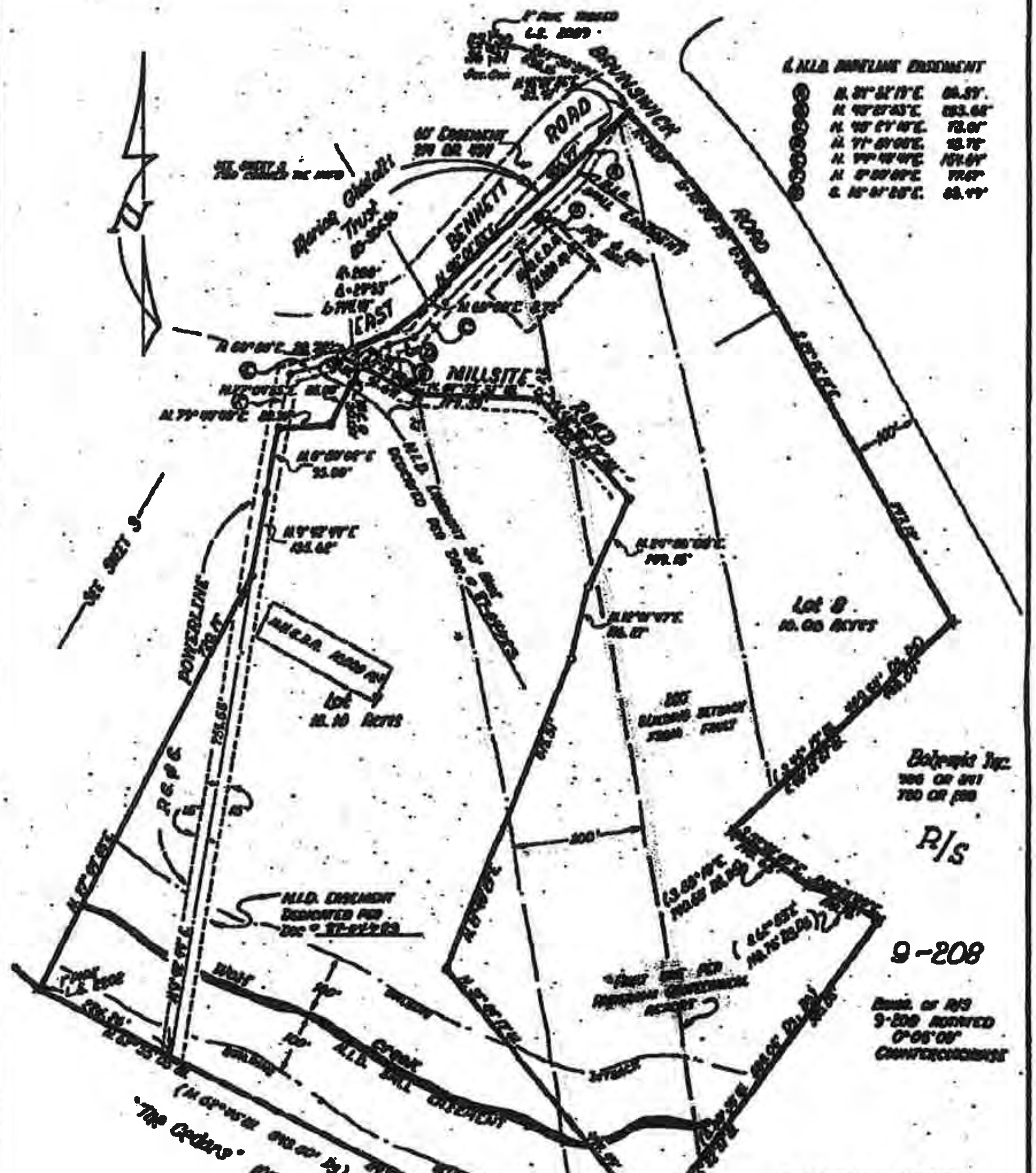
Sincerely,

ANDERSON GEOTECHNICAL CONSULTANTS, INC.

Eric C. Schwarz

Gery F. Anderson
C.E. 25387
E.G. 163

copies: 2 to Al Beeson



NOTES

1. Mine shafts may be located within the boundaries of this subdivision. All potential property owners should verify such locations prior to purchase.
2. Access to Lots 6, 7 and 8 restricted to Millsite road.
3. A soils report is required for each of the lots south of East Bennett Road (Lots 6, 7 and 8) prior to obtaining a building permit.

FINAL MAP
85-7
for
BET ACRES

Being portions of the S.E. 1/4 of Sec. 25, the N.E. 1/4 of Sec. 36, T16N, R8E and the N.W. 1/4 of Sec. 31 T16N, R9E. M.D.B.& M.
In the unincorporated territory of
THE COUNTY OF NEVADA

January 1987 Scale 1"=100'
Bob Barson & Assoc. Inc.

Sheet 4 of 4

ER-1499

which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance (PRC Section 21060.5).

The courts have affirmed this understanding. In the case *City of Hayward v. Board of Trustees of the California State University*, the First District Court of Appeal affirmed that the focus of CEQA analysis should be limited to physical environmental impacts related to a project.[2] The court held that, "The need for additional fire protection services is not an *environmental* impact that CEQA requires a Project Proponent to mitigate."

The commenter does not explain how the project's power consumption or transportation of explosives would result in public services demand that would necessitate the need for new or physically altered governmental facilities, thus potentially causing an environmental impact.

Response to Comment Ind 577-14

The project does not propose any trucking along Highway 174. Please see Master Response 10 - Explosives, Reagents, and Brunswick Fill.

Response to Comment Ind 577-15

Please see Chapter 4.6 of the DEIR and Master Response 29 – Near Surface Workings, and Master Response 7 – Location of Future Mining Areas.

Response to Comment Ind 577-16

Please see Chapter 4.6 of the DEIR and Master Response 29 – Near Surface Workings.

Response to Comment Ind 577-17

Please see Chapter 4.6 of the DEIR regarding seismicity of the project area.

The magnitude of the energy released during mining excavations by rock removal and rock placement is much smaller than the magnitude of energy activation required to trigger the release of a local pre-Holocene fault. No analysis was performed nor is necessary, as there is no potential for inducement of seismic activity on these faults from the proposed mining activity. Please see NV5 Memo attached to the Final EIR as Appendix P.

Response to Comment Ind 577-18

As discussed in Section 4.5-1 of the DEIR, based upon this substantial evidence in the record, the project includes a request to amend the Final Map for Bet Acres recorded in February 1987 in Book 7 of Subdivision Maps at Page 75 to remove the "200' Building Setback From Fault", as shown on Sheet 4 of Final Map #85.

In addition, a management plan was prepared pursuant to Nevada County LUDC Section L-II 4.3.8 to address potential seismic hazards associated with the previously-identified inferred fault alignment. It is NV5's professional opinion that the subject fault, identified on the property in Map 85-7, does not qualify as a seismically active area as defined by Nevada County LUDC Section L-II 4.3.8.B, and the proposed project development within the designated building setback fault zone is generally feasible from a geotechnical engineering standpoint. ECM, the County's independent peer review consultant for this project, concurred with NV5's professional opinion, after reviewing the data.

[2] First District Court of Appeal. *City of Hayward v. Board of Trustees of the California State University.* (November 30, 2015) 242 Cal.App.4th 833.

While the analysis shows that an active fault likely does not exist, out of an abundance of caution, the County has concluded that a significant impact could occur without mitigation. Mitigation Measure 4.6-1 requires that prior to approval of Improvement Plans, the design recommendations from the Brunswick Industrial Site Geotechnical Report (November 18, 2019) shall be incorporated into the Plans to the satisfaction of the Nevada County Building Department. The rezoning and map amendments would be considered at the same hearing as the other entitlements for the project, and contrary to the commenter's suggestion, there is no requirement that such approvals be heard at a separate hearing.

- AND VARIANCE?

Response to Comment Ind 577-19

In addition to settlement in the water treatment pond, the water treatment plant includes media filtration. Please see Appendix K.4 of the DEIR. The treated mine water discharge will be required to meet regulatory requirements for total suspended solids. Please see Master Response 35 – Discharge to South Fork Wolf Creek.

As stated on Page 4.8-70 of the DEIR, at the Brunswick Industrial Site, a detention basin would be constructed at the downstream toe of the engineered fill placement slopes, above South Fork Wolf Creek. The detention basin for the Brunswick Industrial Site is sized to detain storm flows to compensate for the quantity of treated mine water discharged to South Fork Wolf Creek, in addition to compensating for increased runoff from potential future industrial development of the site. During larger storm events, the proposed detention pond on the Brunswick Industrial Site would reduce the peak flows within South Fork Wolf Creek by much more than 5.6 cfs, as shown in Table 4.8-4. Thus, under project conditions, the overall peak storm flows would be lower than they are under existing conditions and therefore would not contribute to increased flooding downstream.

Response to Comment Ind 577-20

Please see Master Response 1 - Non-EIR/Administrative Issues, and Master Response 2 – Social and Economic Impacts.

As discussed on page 10 of Appendix N of the DEIR, the proposed project will have a surplus of water from the natural groundwater flow into the ground workings. Once the initial dewatering is completed, approximately 1,224,000 gallons per day are estimated to be pumped to the surface on an on-going basis to maintain the dewatered mine. The groundwater consumed during operations is estimated to be 84,000 gpd. As stated on page 2 of Appendix N, the mine would have a positive effect on water supply. NID could adjust its flows upstream to use the extra water available downstream if it desired to. The construction of a reservoir large enough to impound this quantity at the project site is not realistic nor feasible and would likely cause additional environmental impacts due to disturbance of other resources on the surface.

Response to Comment Ind 577-21

Please see Master Response 3 – Operator Responsibility.

Attachment 9

Rise Letter to Planning Commission regarding Staff Report

Dated May 5th 2023

MITCHELL CHADWICK

G. Braiden Chadwick
bchadwick@mitchellchadwick.com
916-462-8886
916-788-0290 Fax

May 5, 2023

VIA U.S. MAIL

Nevada County
Planning Commission
950 Maidu Avenue, Suite 170
PO Box 599002
Nevada City, CA 95959-7902

Re: Request for Revised Staff Recommendation for the Idaho-Maryland Mine Project

Dear Commissioners:

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

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

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

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

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

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

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

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

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

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

[3] IMM-DEIR at p. 57.

[4] Pub. Resources Code §§21002–21002.1, 21004; 14 Cal Code Regs §15002 subd. (a).

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

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

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

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

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

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

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

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

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

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

b. Nevertheless, the Project Meets Every Required Variance Finding

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

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[6] Rise asks the Commission to impose a condition of approval to this end.

[7] Nevada County Code Sec. L-II 4.2.4

[8] *Id.*

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

[10] Nevada County Zoning Regulation Sec. L-II 5.7.

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

[12] *Id.*

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

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

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

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

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

[13] *Id.* at p. 1.

[14] *Id.* at p. 2.

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

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

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

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

[15] *Id.*

[16] *Id.* at p. 5.

[17] *Id.*

[18] *Id.*

[19] *Id* at p.6.

[20] *Id.* at p.5.

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

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

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

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

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

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[21] Nevada County Code Sec. L-II 3.21 [Subsurface Mining].

[22] *Id.*

[23] Rise Variance Application at p. 6

[24] *Id.*

[25] *Id.* at p.7.

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

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

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

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

[27] See Nevada County LUDC, Article 4, Comprehensive Site Development Standards.

[28] *Id.*

[29] Nevada County General Plan, Volume I – Pages 1-38, 1-39.

[30] *Id.*

[31] Nevada County General Plan, Volume I – Page 17-3.

[32] Nevada County General Plan, Volume I – Page 1-3 Emphasis Added.

minimize the potential conflicts with surrounding land uses.[33] As such, granting the variance is consistent with the Nevada County General Plan.

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

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

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

The variance, as proposed by Rise, is a small departure from many uses common in the County including 140 to160 foot tall communications towers. Other variance projects are justified in simple one or two-page documents with very little detail, in comparison to the Project's eleven-page document detailing justification with specificity.[36] As discussed above, the County previously justified height variances based on dubious special circumstances where the justification for a variance was that the land was "relatively flat" or because it was "nearby local amenities." The Variance Justification for the Project provided more than adequate information, detailing and answering every question, and when asked by the County, was expanded with even more detail.[37] The last-minute conclusion reached in the Staff Report raises the threshold for variance findings to an unreasonable level for the Project, and Option A treats the Project inconsistently with previous projects approved by the County, denying Rise equal protection under the law. As you may be aware, when a local government intentionally treats an individual or project differently from others similarly situated, and there is no rational basis for the difference in treatment, that treatment constitutes an equal protection violation. (*Village of Willowbrook v. Olech* (2000) 528 U.S. 562, 564–565.) Further, the U.S. Supreme Court has

[33] IMM-DEIR at p. 731.

[34] Rise Variance Application at p. 11

[35] *Id.*

[36] see Lone Oak Apartments Variance Application; Rise Variance Application.

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

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

D. The IMM Project Is Consistent with the General Plan

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

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

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

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

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

[39] IMM-Staff Report at p. 82.

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

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

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

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

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

[40] Nevada County General Plan, Volume I – Page 1-28.

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

[42] IMM-Staff Report at p. 11.

[43] IMM-Staff Report at p. 92.

[44] IMM-DEIR at p. 724-731.

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

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

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

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

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

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

[45] IMM-Staff Report at p. 83.

[46] Nevada County General Plan, Volume I – Page 1-28

[47] IMM-Staff Report. at p. 33.

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

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

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

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

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

[48] *Id.* at p. 84.

[49] Nevada County General Plan, Volume I – Page 17-5

[50] IMM-Staff Report at p.84.

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

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

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

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

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[51] Boca Quarry-Staff Report at p. 20.

[52] Boca Quarry-Staff Report at p. 53.

[53] Boca Quarry-Staff Report at p. 58.

[54] IMM-DEIR at p. 237.

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

Best regards,

MITCHELL CHADWICK LLP

G. Braiden Chadwick

Cc: Katharine Elliot, County Counsel
Brian Foss, Planning Director