



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

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**NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memorandum**

MEETING DATE: January 25, 2022

TO: Board of Supervisors

FROM: **Brian Foss, Planning Director**

SUBJECT: Public Hearing to consider the Special Meeting of Nevada County Planning Commission's November 17, 2021 (3-1 (1 abstention) vote and recommendation for the Murty and Law General Plan Amendment and Rezone project including: 1.) Adopt the Negative Declaration (EIS21-0002); 2.) Approve the General Land Use Designation Map amendment from Rural (RUR) – 5 to Rural (RUR) – 20 (GPA21-0001); and 3.) Approve the Zoning District Map Amendment to rezone the subject parcel from Residential Agricultural (RA) – 5 with Planned Development (PD) to General Agricultural (AG) – 20 (District V).

RECOMMENDATION:

The Planning Commission, at their Special Meeting on November 17, 2021, voted 3-1 (1 abstention) to recommend that the Board of Supervisors take the following actions:

- I. **Environmental Action:** After reviewing and considering the proposed Negative Declaration (EIS21-0002), adopt the attached Resolution, approving the Negative Declaration (EIS21-0002), pursuant to Section 15074 of the California Environmental Quality Act Guidelines and making the findings contained within the attached Resolution (*Attachment 1*).
- II. **Project Action:** Approve the attached Resolution for the proposed General Plan Land Use Map Amendment (GPA21-0001) of Assessor Parcel Number: 034-160-001 from Rural-5 (RUR-5) to Rural-20 (RUR-20) based on findings contained within the attached Resolution (*Attachment 2*).

III. Project Action: Introduce, waive further reading and adopt the attached Ordinance approving the Zoning District Map Amendment (RZN21-0001) to amend Zoning District Map No. 64 to rezone Assessor Parcel Number: 034-160-001 from Residential Agricultural - 5 (RA-5) with Planned Development (PD) Combining District to General Agricultural - 20 (AG-20) based on the findings contained within the attached Ordinance (*Attachment 3*).

FUNDING: No budget amendments are required.

ATTACHMENTS:

1. Draft Resolution: Initial Study/ Negative Declaration
Exhibit A: October 8, 2021 Initial Study (EIS21-0002)
2. Draft Resolution: General Plan Amendment Exhibit
3. Draft Ordinance: Zoning Map Amendment Exhibit
4. Project Vicinity, Zoning and Public Notice Map
5. Site Plan
6. October 28, 2021 Planning Commission Staff Report (without attachments)
7. October 28, 2021 Staff Memorandum with Public Comments
8. November 17, 2021 Staff Memorandum with Public Comments
9. November 17, 2021 Staff Memorandum with Public Comments
10. Project Initial Distribution Public Comments Received
11. November 17, 2021 Draft Planning Commission Meeting Minutes

PROJECT DESCRIPTION: The project is a proposed General Plan Land Use Map Amendment and Zoning District Map Amendment to change the subject project site, located at 10460 Harmony Ridge Road from Rural (RUR) – 5 to Rural (RUR) – 20 and a Zoning District Map Amendment to change the Zoning District from Residential Agricultural (RA) – 5 with Planned Development (PD) to General Agricultural (AG) – 20. The project as proposed, does not include a proposal to develop the parcel and only seeks to change the existing General Plan Land Use Map and Zoning District Map.

Site Description, Project Location and Surrounding Land Uses: The undeveloped project site is located at 10460 Harmony Ridge Road within unincorporated western Nevada County of Nevada and is located approximately two miles northeast of the City of Nevada City. The subject parcel is further located northwest of Harmony Ridge Road, southeast of North Bloomfield Road and south of Cooper Road. Access to the subject parcel is by an

off-site easement leading from North Bloomfield Road to the project site. The project site is zoned Residential Agriculture – 5 Acre (RA-5) with a Planned Development Combining District (PD) and it has a Rural – 5 Acre (RUR – 5) General Plan designation. Surrounding parcels are similarly zoned with RA-5-PD and AG-10 to the north, south and west and REC to the east (Figure 1). Parcels to the south are developed with existing single-family residential uses.

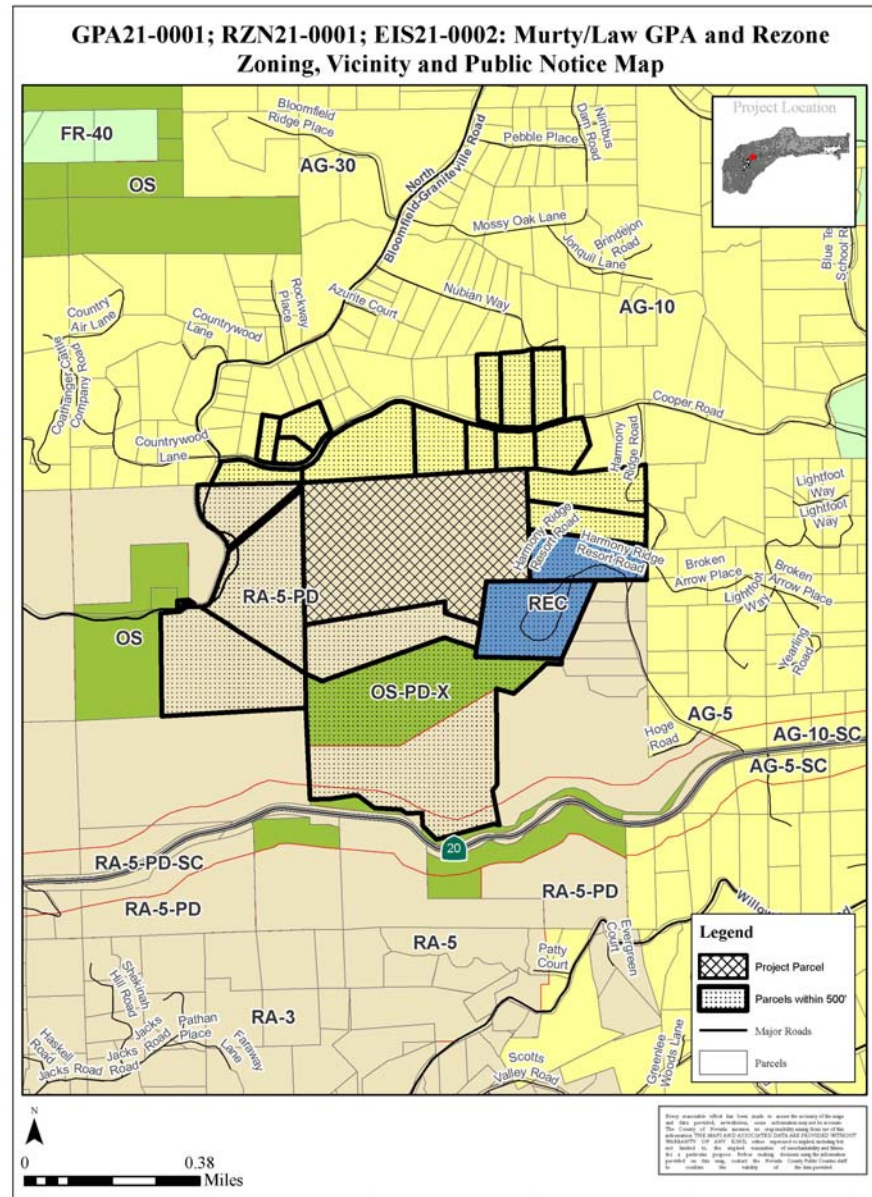


Figure 1 – Zoning, Vicinity & Public Notice Map

General Plan Amendment/Rezone:

The project site is zoned RA-5 and has a RUR-5 General Plan Land Use Map designation. The subject project site is currently zoned Residential Agriculture (RA-5) with Planned Development (PD) as shown on Zoning District Map 64 and has a RUR – 5 General Plan Land Use Designation. As shown in Figures 2 and 3, the applicant requests

to amend the General Plan Land Use Designation from RUR – 5 to RUR – 20 and amend the Zoning District Map from RA-5 – PD to AG-20. The subject parcel is approximately 91.01 acres in size and based on the current zoning of RA-5-PD, it would allow for a density of one (1) dwelling unit for every 5 acres, with an overall density of approximately 18 dwelling units.

Figure 2 – Proposed GPA Exhibit

It is assumed that the project site would be developed for residential uses, which are consistent with the General Agriculture Zoning District, along with the potential for commercial agriculture uses, including the potential for the cultivation of cannabis. The County does not impose landscaping, lighting or design review requirements on single-family development nor does the County enforce Conditions, Covenants and Restrictions (CC&Rs) of specific developments, which may require a specific design or color palate for future development of this site. A known subdivision map with CC&Rs did not create this parcel and therefore it is assumed that the County’s site development standards, (setbacks, height, fencing, impervious surfacing, etc.) will ensure that future development of this site is compatible with surrounding development.

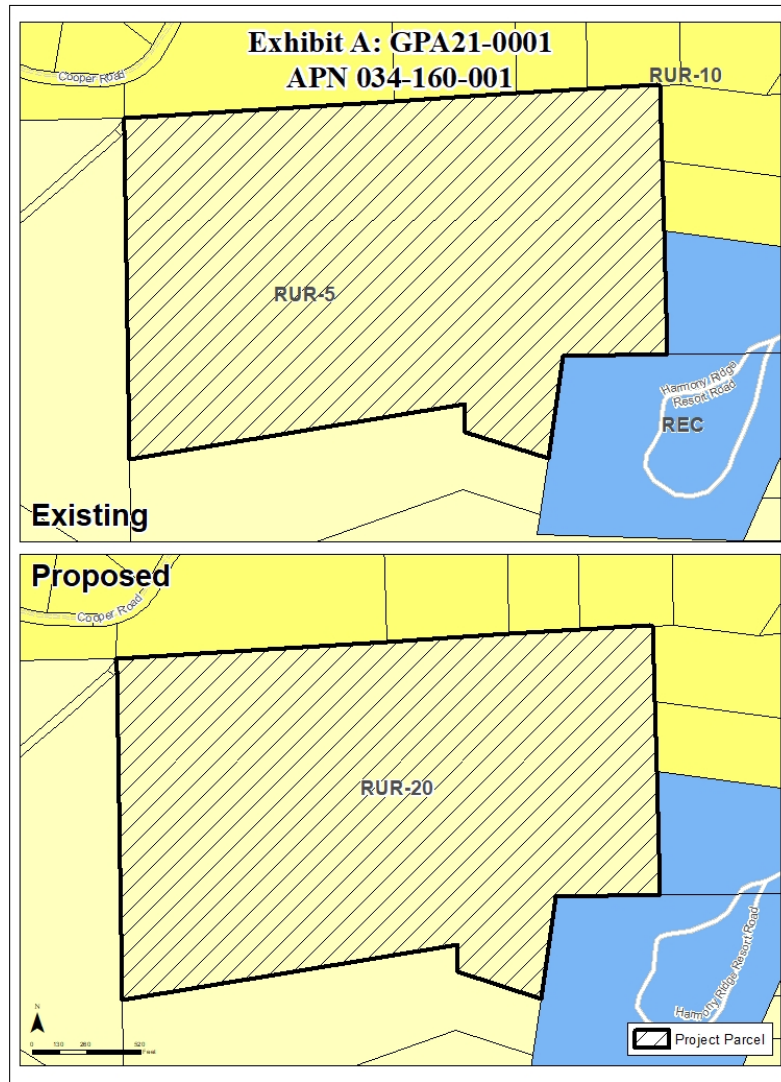
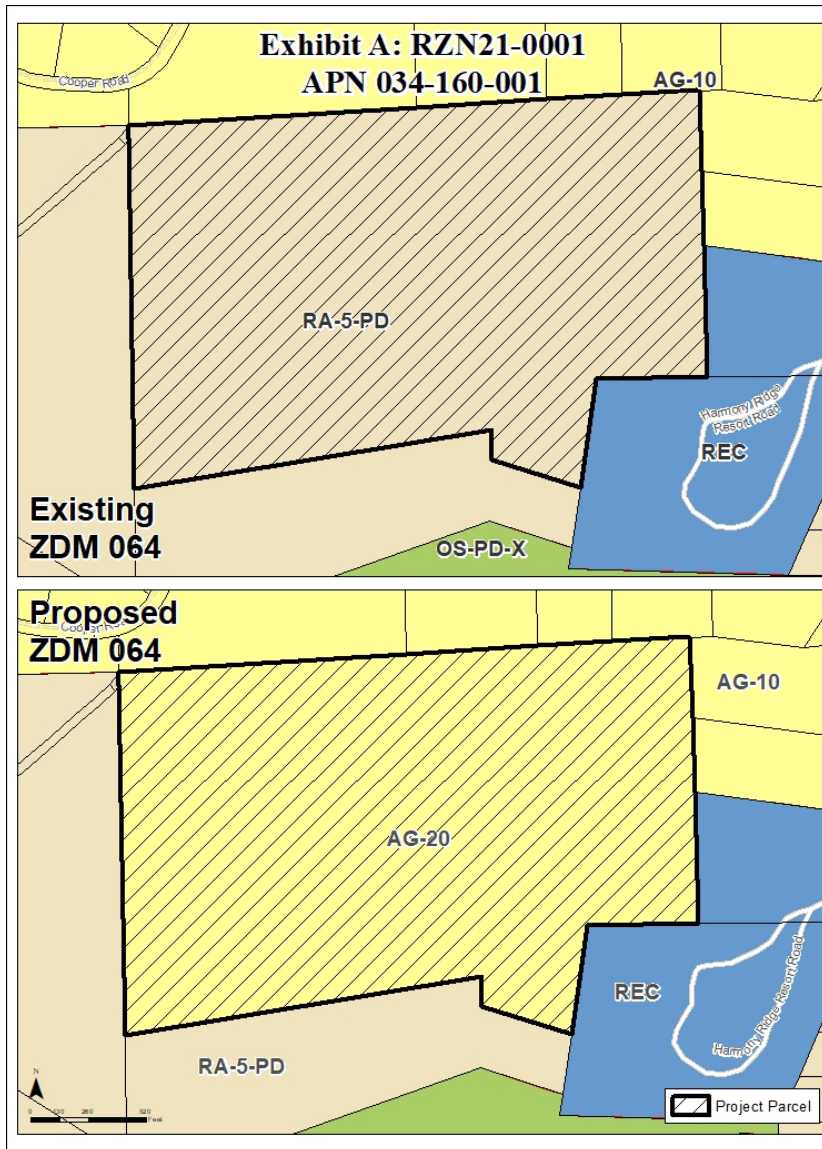


Figure 3 – Proposed ZDM Exhibit



The subject parcel is approximately 91.01 acres in size and based on the current zoning of RA-5-PD it would allow for an overall density of 18 dwelling units. If approved, the overall density of the project site would be reduced by 14 units and allow for up to 4 dwelling units at a density of 1 dwelling unit for every 20 acres, based on the proposed AG-20 zoning district. As proposed, the General Plan Land Use Map Amendment and Rezone would result in the potential loss of up to 14 housing units, which could affect the overall availability of housing within the County. While the proposed project does not include a proposal at this time to subdivide the parcel into a maximum of 18 parcels, the potential would exist to subdivide the

subject parcel in the future into a maximum of up to 4 parcels. From a future site development standard, it is anticipated that it may be somewhat difficult to subdivide the subject parcel into its maximum potential of 18 parcels, due to the project sites potential site development constraints including; areas of steep slopes, development of fire safe roads which meet County road standards, availability of septic and well capacity of each parcel, and the need for potential secondary access to a County maintained road.

While a subdivision of the subject project site is not proposed at this time, the applicant will be responsible for demonstrating that a future project can meet the County's comprehensive site development standards when proposing development including setbacks, fire safe road standards, legal access, building envelopes, demonstration of adequate water and sewage disposal capacity and impervious surface coverage. Furthermore, the project site is undeveloped and would be served by a water well and

septic system to support future residential and commercial agricultural uses, if the project is approved. Correspondence from the County Environmental Health Division (whom is responsible for permitting water wells and septic systems) states that they have no objection to the proposed General Plan Amendment and Rezone for this property and permits would be required for an individual well and septic system. Thus, as disused above, due to the subject parcels potential site development constraints, the likelihood of being able to subdivide the subject parcel into a maximum of 18 parcels would potentially be limited and therefore, the limiting of the subject parcel to be subdivided into parcels which are limited in size to 20 acres is likely the highest and best use of the property.

While the project as proposed does not include a proposal for development at this time, the applicant has stated that they intend to develop the project site for residential uses and potentially commercial agricultural uses including the potential cultivation of cannabis. As proposed, the potential cultivation of cannabis would be compatible with the proposed General Agricultural Zoning District (AG-20), which would allow for the cultivation of cannabis, upon the issuance of appropriate Land Use Development Permits and Building Permits, as outlined in Nevada County Land Use and Development Code, Section L-II 3.30 – Cannabis Cultivation. Furthermore, any future commercial agricultural uses, including the potential cultivation of cannabis would be required to meet all required site development standards and setbacks from any Sensitive Sites as further outlined in Section L-II 3.30 of the Nevada County Land Use and Development Code and would be required to be compatible with all surrounding zoning districts including Residential Agricultural (RA) which is located to the south and west and Recreation (REC) which is located to the east of the subject parcel.

ZONING AND GENERAL PLAN CONSISTENCY:

The subject parcel is zoned Residential Agricultural (RA-5) with the Planned Development (PD) Combining District and has a Rural (RUR-5) General Plan Land Use designation. Should this project be approved, the property's General Plan Land Use and Zoning would be changed to be generally consistent with the current zoning of much of the surrounding area in terms of the General Agricultural Zoning District and Rural General Plan Land Use Designation (RUR-20/AG-20). As required by General Plan Policy 2.6, the applicant has submitted an Economic Analysis which determined that the project would have a negligible impact to the County's jobs housing balance and that future investment by the property owner would increase overall assessed value of the project site. In turn the increased assessed value which would result in a increase in property tax revenue to the County and an increase in sales tax revenue for local business due the needs of a typical residence in the County over the current existing vacant parcel. As discussed above, the site will require some work to ensure it can meet current development standards in the RUR-20/AG-20 designations, but overall, the general use of the property as a residence or potential commercial agricultural uses is compatible with the area.

ENVIRONMENTAL REVIEW:

Future development of this property will be subject to applicable local, state and federal codes, standards, permitting requirements and regulations that are applicable to the type of redevelopment that might be proposed. The Planning Department prepared a project specific draft Initial Study for the project and found that this project will not result in a significant physical change to the environment. The draft Initial Study made a good faith effort to disclose anticipated future impacts of the redevelopment of this site. The draft initial study/proposed Negative Declaration was circulated for public comment between October 8 and October 27, 2021 (*Attachment 1*). The Notice of Availability/Notice of Intent to adopt a Negative Declaration was sent to several local and state responsible agencies as well as surrounding property owners. Since this project will not result in the physical disturbance to the environment and will make the General Land Use and Zoning for the subject property consistent with other surrounding land uses, staff has determined that a Negative Declaration is the appropriate document for this project. Staff therefore recommends that the Planning Commission provide a recommendation to the Board of Supervisors to adopt the draft Initial Study/proposed Negative Declaration for this project.

SUMMARY OF COMMENTS RECEIVED:

As part of the Initial Distribution of the project and during the November 17, 2021 public hearing before the Planning Commission, comments were submitted by neighboring property owners on the proposed project. For the consideration of the Board of Supervisors, staff has included a summary of these comments and a response is provided below.

B & W Resorts, Inc., Lee Auerbach, Carl Balistreri, Jim Ciaffoni, Maniko Dru Dadigan, and Menkin Nelson:

Comments were received which expressed concern with the proposed General Plan Amendment and Rezone and the potential use of the subject parcel for commercial agricultural purposes and the potential future cultivation of cannabis. The comments expressed included the following concerns: 1.) Potential legal access, 2.) Potential future cultivation of cannabis, 3.) Grading and dust, 4.) Groundwater contamination, 5.) Environmental impacts, 6.) Sensitive Sites, and 7.) Wildland fire impacts due to downed trees. Comments were also received from Menkin Nelson in support of the proposed project.

In reviewing the project description for the proposed project, many of the concerns, which have been outlined by neighboring property owners have been addressed in the Planning Commission Staff Report, proposed Negative Declaration and Memorandum dated November 17, 2021. The project as proposed is a General Plan Land Use Map Amendment to change the from Rural (RUR) – 5 to Rural (RUR) – 20 and to change the Zoning from Residential Agricultural (RA) – 5 with Planned Development (PD) to General Agricultural (AG) – 20.

As discussed throughout the Initial Study, it is anticipated that the use of the project site would be for residential purposes and may include commercial agricultural uses, including the potential cultivation of cannabis based on information within the submitted application. This has been included in the Initial Study for the benefit of the reader and to disclose the potential uses of the project site to the public, however, these uses could potentially change in the future and further analysis of these uses would be speculation within the Initial Study. As proposed, the project **does not include any proposed development** that would be subject to further CEQA analysis at this time. Pursuant to Public Resources Code § 21082.2, speculation is not substantial evidence that a project may have a significant impact on the environment that would require the preparation of an Environmental Impact Report. Future use will be subject to environmental review and as described throughout the Initial Study, future use may include, but is not limited to, residential, commercial, agricultural and/or cannabis cultivation.

If approved, the potential future cultivation of cannabis and other commercial agricultural uses, and residential uses would be generally compatible with the resultant General Agricultural Zoning District (AG-20). Furthermore, potential future uses would be subject to the site development requirements as outlined in Nevada County Land Use and Development Code, Section L-II 2.3 – Rural Districts and Section L-II 3.30 – Cannabis Cultivation, including the issuance of appropriate Land Use and Development entitlements and Building Permits. As part of the review of a Cannabis Cultivation permit, and as outlined in the Program Environmental Impact Report (PEIR) (SCH #2018082023) the PEIR analyzed an ordinance that created a ministerial permitting process for a variety of commercial cannabis activities, including indoor, mixed-light, and outdoor cultivation. The PEIR also identified mitigation measures to offset potentially significant impacts that were subsequently incorporated in development standards and requirements as outlined in Nevada County Land Use and Development Code, Section L-II 3.30 – Cannabis Cultivation. In addition, the PEIR also identified various codes within Nevada County Land Use and Development Code, Article 4 – Comprehensive Site Development Standards, which were implemented to reduce potential impacts to a less than significant level or minimize significant and unavoidable impacts to the extent feasible.

Pursuant to California Environmental Quality Act Guidelines § 15168(c)(4) to document the County's evaluation of the sites and proposed activities that are subject of permit applications for commercial cannabis cultivation, a checklist was developed, which was approved by the California Bureau of Cannabis Control. The checklist summarizes the potential effects of each proposed cannabis cultivation operation to determine whether the environmental effects of its operations are a subsequent activity within the scope of the PEIR. As outlined in the checklist, potential environmental impacts of a cannabis operation that were identified in the PEIR as mitigation measures, are included to ensure each commercial cannabis cultivation is in compliance with the mitigation measures and the appropriate County Land Use and Development Code Sections. In order for the County to issue either the Cannabis Cultivation Permit (CCP) or Administrative

Development Permit (ADP) as outlined under Nevada County Land Use and Development Code, Section L-II 3.30 – Cannabis Cultivation, the applicant or permittee must comply with each provision of the ordinance. Failure to comply will result in denial of the permit, or if failure occurs after the permit is issued, revocation of the permit. This checklist is provided to document whether the sought ministerial permit is a subsequent activity within the scope of the PEIR based upon the description of the cannabis cultivation operation. Furthermore, if the applicant pursues cultivation of cannabis, along with compliance with other local and state regulations, the County requires a Pre-Cultivation Inspection, which incorporates the Commercial Cannabis Inspection Checklist as approved by the California Bureau of Cannabis Control.

PLANNING COMMISSION ACTION:

At the Special Meeting of November 17, 2021, the Planning Commission held a duly noticed public hearing to consider the proposed project including the draft Negative Declaration, General Plan Land Use Map Amendment and the Zoning District Map Amendment. After taking public testimony and deliberating on the project, the Planning Commission, in considering the entire record before them, voted 3-1 (1 abstention) and recommended that the Board of Supervisors: 1.) Adopt the Negative Declaration (EIS21-0002); 2.) Approve the General Land Use Designation Map amendment from Rural (RUR) – 5 to Rural (RUR) – 20 (GPA21-0001); and 3.) Approve the Zoning District Map Amendment to rezone the subject parcel from Residential Agricultural (RA) – 5 with Planned Development (PD) to General Agricultural (AG) – 20.

SUMMARY:

The applicant is seeking to establish a Rural-20 General Plan Land Use Designation and a General Agricultural (AG-20) Zoning District on the site to convert the existing subject parcel into a parcel that would be utilized for residential uses along with the potential for commercial agricultural uses, including the potential for the cultivation of cannabis. The Planning Department has reviewed the proposed changes and found that no significant physical environmental impacts would occur as a result of this action and that the proposal to go to General Agricultural use would be generally consistent with other similar surrounding uses of the subject parcel. The Planning Commission has reviewed the proposed changes and found that no significant physical environmental impacts would occur as a result of this action. Therefore, based on the project’s consistency with the Nevada County General Plan and Zoning Ordinance, Staff recommends the Nevada County Board of Supervisors take the project actions described below and as further recommended by the Nevada County Planning Commission.

RECOMMENDATION: The Planning Commission has recommended that the Board of Supervisors take the following actions:

- II. Environmental Action: After reviewing and considering the proposed Negative Declaration (EIS21-0002), adopt the attached Resolution, approving the Negative

Declaration (EIS21-0002), pursuant to Section 15074 of the California Environmental Quality Act Guidelines and making the findings contained within the attached Resolution (*Attachment 1*).

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Item Initiated by: Matt Kelley, Senior Planner

Approved by: Brian Foss, Planning Director