

From: [Karen Suzanne Smith-Fulton](#)
To: [BOS Public Comment](#)
Subject: Re: Item Not on the September Agenda, Public Comment
Date: Wednesday, September 23, 2020 7:48:10 PM

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you Julie. I will try to hone it down by then.

Sent from my iPad

On Sep 23, 2020, at 8:33 AM, BOS Public Comment
<BOS.PublicComment@co.nevada.ca.us> wrote:

Hi Karen –

After reviewing your letter more closely, I realize that it is not something that could be easily read into the record within the 3 minutes timeframe. The Board members have received the entire message. If you still want to provide the information as public comment during the October 13 meeting, these are ways you could do so:

1. Call 1 (530) 270-3474 to join the meeting to speak during the public comment period (the time is noted on each agenda)
2. Send me a ‘shortened’ version that I could read into the record within the 3 minute timeframe
3. Attend the meeting in person to provide comments

Thanks!

Julie Patterson Hunter, CCB
Clerk of the Board

From: Karen Suzanne Smith-Fulton [REDACTED] >
Sent: Tuesday, September 22, 2020 9:11 AM
To: BOS Public Comment <BOS.PublicComment@co.nevada.ca.us>
Subject: Re: Item Not on the September Agenda, Public Comment

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Julie, because I cc'd Matt and Brian on the item, would there be any way the Chair and the Board could receive copies this week? Then have it read into the record at the next meeting?
Or should I just snail mail it?

Thank you,
Suzanne

Sent from my iPad

On Sep 22, 2020, at 8:59 AM, BOS Public Comment
<BOS.PublicComment@co.nevada.ca.us> wrote:

Me again – I can save it for the next meeting if you would like me to read it into the record on October 13? Julie

From: Karen Suzanne Smith-Fulton [REDACTED]
Sent: Tuesday, September 22, 2020 7:54 AM
To: BOS Public Comment <BOS.PublicComment@co.nevada.ca.us>
Cc: Matt Kelley <Matt.Kelley@co.nevada.ca.us>
Subject: Item Not on the September Agenda, Public Comment

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chair Hall, Members of the Board of Supervisors,

I am unable to attend today's meeting, but I request that this letter be read during the Items not on Agenda at 8:35a.m. pursuant to the Agenda. And I would like a return email that this was received.

Thank you.

Sincerely,

Suzanne Smith

September 22, 2020

Nevada County Board of Supervisors
950 Maidu Ave
Nevada City, CA. 95959
Via E-Mail

Item Not on the September Agenda, Public Comment

SUBJECT: INCONSISTENCIES WITH ZONING ORDINANCE IN THE PROPOSED REOPENING OF THE IDAHO MARYLAND MINE

Honorable Chair Hall and Members of the Board of Supervisors,

My name is Suzanne Smith, I have been a resident of Grass Valley since 2000. I am a retired planning consultant. I worked as a senior planner for Nevada County Planning for seven years and was appointed County Planning Commissioner in January 2011. In addition, prior to moving to Grass Valley, I worked for the County of Santa Cruz processing quarry permits and reclamation plans for eight years. I ask that you to review my research into the Zoning Ordinance requirements shown below regarding the processing of the application of the proposed reopening of the Idaho Maryland Mine.

As shown in the regulations copied below, Light Industrial Zoning (M1) is not a Zoning District consistent with the County Zoning Regulations for the reopening of the mine. The purpose for my concern is that many residents within the area of the proposed Idaho Maryland Mine purchased their homes, knowing that there existed nearby Light Industrial (M1) Zoning. Light Industrial uses do not include a mine that operates night and day with heavy haul trucks and potentially toxic dust. Now these residents of Nevada County find that the County is proposing to process an application for a Heavy Industrial Use, and will suffer the loss of property values to their homes and disruption to the rural quality of life ensured by both the County General Plan and Zoning Ordinance (see page 7 of this letter). All underlining in this review is mine.

Analysis

The following are quotes from the Zoning Ordinance's Land Use definitions and Use Charts for Light Industrial and Heavy Industrial Zoning.

Sec. L-II 2.5 Industrial Districts:

2. **M1 (Light Industrial).** The M1 District provides areas for the production, repairing, distribution, and warehousing of goods and equipment, along with supporting businesses and services. Uses should provide for buffering from adjacent land uses to

minimize incompatibility and should have convenient, controlled access to arterial or major collector roads without passing through residential areas.

3. **M2 (Heavy Industrial).** The purpose of the M2 District is similar to that of the M1 District, except that allowed uses are potentially more intensive and may generate greater impacts on adjacent land uses, public facilities and services, and the environment. (underline mine)

I have copied Table L-II 2.5.D from the Zoning Ordinance to show allowed uses in M1 and M2 Zoning Districts:

**Table L-II 2.5.D
Industrial Districts Allowable Uses and Permit Requirements**

Key to Land Use Permit Requirements:

- A** Allowed subject to zoning compliance and building permit issuance
- DP** Development Permit required per Section 5.5
- UP** Use Permit required per Section 5.6
- NP** Not Permitted
- NA** Not Applicable
- Varies** Refer to listed L-II Section for allowable uses and permit requirements

ALLOWABLE LAND USES (See Section L-II 1.4.D for Similar Uses)	BP	M 1	M 2	L-II Sections
Industrial Uses				
Light industrial including research and development, the manufacturing, production, repairing, distribution, fabrication, processing, wholesaling, and warehousing of a wide variety of goods.	DP	D P	D P	
Any other intensive industrial use not allowed in the BP or M1 Districts.	NP	N P	U P	
...				
Storage of explosives.	NP	U P	U P	
Storage and distribution of bulk petroleum products.	NP	U P	U P	

Light Industrial includes: research and development, the manufacturing, production, repairing, distribution, fabrication, processing, wholesaling, and warehousing of a wide variety of goods. Heavy Industrial includes: any other intensive industrial use not allowed in the M1 Districts.

Neither specifies mining as a use, however mining is a more intensive use than those listed in the M1 District, and as more intensive not an allowed use in the M1 Zoning

District. The State Surface and Mining Act, (SMARA) incorporated into the County Mining Ordinance by reference, defines mined lands and surface mining operations for subsurface operations as well. As discussed below, according to SMARA, it defines the entire Idaho Maryland surface (and some subsurface) lands as a mining site and therefore as a mining use.

“Mined lands include much more than just the area of active extraction of a surface mine, and all such areas must be accounted for in the reclamation plan for the project. A look at the “Article 2 Definitions” section of SMARA will help to clarify these broadly inclusive terms. SMARA 2729 defines “Mined Lands” as “the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and road appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located”. “Surface Mining Operations” are defined in SMARA 2735 as “all, or any part of, the process involved in the mining of minerals on mined lands by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:

- a. Inplace distillation or retorting or leaching.
- b. The production and disposal of mining waste
- c. Prospecting and exploratory activities. ”

(white paper by the State Department of Conservation, Office of Mine Reclamation, *How does SMARA Define “Mined Lands” and “Surface Mining Operations”?* by Leah Gardner, Staff Environmental Scientist)

In addition, *and perhaps most importantly*, Nevada County Zoning Ordinance Sec. L-II 3.22.B Surface Mining Permits and Reclamation Plans, Definitions, defines incompatible land uses to mining operations, including residential uses:

Nevada County Zoning Ordinance Sec. L-II 3.22.B Surface Mining Permits and Reclamation Plans, Definitions

8. **Incompatible Land Uses** - Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to **residential uses**, public facilities, geographically limited but impact intensive industrial, and commercial.

The Zoning Ordinance, Sec. L-II 3.22.B Surface Mining Permits and Reclamation Plans, Definitions, includes under the definition of Mined Lands language from SMARA:

9. **Mined Lands** - The surface, subsurface, and groundwater of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other

materials or property which result from, or are used in, surface mining operations are located.

Once again, the entire Idaho Maryland site is a mining use consistent with the M2 Zoning District, not an M1 Light Industrial facility.

Section L-II 1.4, Rules of Interpretation, of the Zoning Ordinance, allows for the Planning Director make a determination that a use not listed in the Use Table is allowable. However, the proposed 80 year mining permit application is not consistent with SMARA, is inconsistent with the Zoning Ordinance and Mining Ordinance, and does not meet the Goals, Objectives, and Policies, of the Nevada County General Plan (see page 6 of this letter), and, the regulatory requirements as stated by Section L-II 1.4 D. Zoning Land Use Interpretation, been not been met. Once again, underlining is my own.

D. Zoning District Land Use Interpretation. *If a proposed use of land is not listed in Article 2 (Zoning Districts), the Planning Director may determine the use to be allowable if the Director finds the use will:*

- 1. Be consistent with the goals, objectives, and policies of the Nevada County General Plan; and*
- 2. Meet the purpose and intent of the zoning district that is applied to the site; and*
- 3. Share characteristics common with those listed in the district and not be of greater intensity or density, generate greater impact on public facilities and services, or generate more environmental impact than the uses listed in the district; and*
- 4. Be treated in the same manner as the listed use including determining where it is allowed, what permits are required, and what standards affect its establishment.*

Determinations that specific unlisted uses are equivalent to listed uses will be recorded by the Planning Department, and will be incorporated into the ordinance when amendments to the ordinance are next considered.

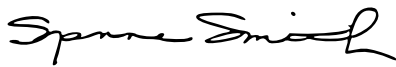
The Planning Director may forward questions concerning equivalent uses directly to the Planning Commission for determination at a public hearing.

According to Table L-II 2.5.D. of the Zoning Ordinance, *Industrial Districts Allowable Uses and Permit Requirements*, mining is not allowed within the M1 Zoning District and is a more intensive use than M1, Light Industrial, and according to the County Mining Ordinance the Idaho Maryland Mine uses encompass the entire mining site acreage. The project as an M1, Light Industrial use is inconsistent with the County Zoning Ordinance and SMARA.

I am also including below, the Required Findings for the approval of a Use Permit (also applicable to a Development Permit) according to Section L-II 5.5.2.C of the Zoning Regulations for Nevada County, key objectives of the County General Plan and Zoning Ordinance for your review and consideration for consistency with the County's Goals and Objectives, and the Zoning Ordinance's incorporation by reference of the California Surface Mining and Reclamation Act (SMARA).

I request a response to my research and to my conclusion.

Sincerely,

A handwritten signature in black ink that reads "Suzanne Smith". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Suzanne Smith

[REDACTED]
Grass Valley, CA 95945

cc: Members of the Board of Supervisors
Brian Foss, Planning Director
Matt Kelly, Senior Planner

Volume 1 - page I-1 of the Nevada County General Plan:

The County, in response to key issues affecting the County's quality of life, has established four central themes which articulate the vision for the development of the County:

1. Fostering a rural quality of life;
 2. Sustaining a quality environment;
 3. Development of a strong diversified, sustainable local economy;
- and
4. Planned land use patterns will determine the level of public services appropriate to the character, economy and environment of each region.

Section L-II 1.1 Authority and Purpose Nevada County Zoning Ordinance

The zoning ordinance is adopted in order to achieve the following objectives:

A. To serve as the primary tool to implement and ensure consistency with the goals, objectives, and policies of the Nevada County General Plan based upon the following central themes:

1. Fostering a rural quality of life.
2. Sustaining a quality environment.
3. Development of a strong diversified, sustainable local economy.
4. Planned land use patterns to determine the level of public services appropriate to the character, economy, and environment of each region.

Sec. L-II 3.22 Surface Mining Permits and Reclamation Plans C. Incorporation by Reference. The following are made a part of this Section by reference with the same force and effect as if the provisions therein were specifically and fully set out herein as those provisions and regulations may be amended from time to time, excepting that when the provisions of this Section are more restrictive than correlative State provisions, this Section shall prevail:

1. California's Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710 et seq.), hereinafter referred to as "SMARA."
2. Public Resources Code (PRC) Section 2207 (relating to annual reporting requirements)
3. State Mining and Geology Board regulations (hereinafter referred to as "State regulations") for surface mining and reclamation practice (California Code of Regulations [CCR], Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 et seq.)

Findings Required for Approval of a Development permit of Use Permit:

C. **Decision and Findings.** The ZA/PC shall approve, approve subject to 5.5.2:

1. The proposed use is consistent with the General Plan and its goals, objectives, and policies, with the General Plan Land Use Maps and with any Area or Specific Plan or development agreements in effect within the project area;
2. The proposed use is allowed within and is consistent with the purpose of the zoning district within which it is located;
3. The proposed use and any facilities meet all applicable provisions of this Code, including, without limitation, design and siting to meet the intent of the Site Development Standards mitigating the impact of development on environmentally sensitive resources;
4. The design of any facilities for the proposed use are consistent with the intent of the design goals, standards, and elements of this Chapter and will be compatible with the design of existing and anticipated future on-site uses and the uses of the nearby surrounding area;
5. The site for the proposed use is adequate in size and shape and location to accommodate the proposed use and all facilities needed for that use and reasonable expansion thereof, if any, and to make appropriate transitions to nearby properties and permitted uses thereon, without compromising site development standards;
6. The proposed use and facilities are compatible with, and not detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area;
7. Adequate provisions have been made for water and sanitation for the proposed use, and if available, for transition to public water and/sewer;
8. Highways, streets, and roads on and near the site are adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use and adequate provision has been made for project specific impacts and the cumulative effect traffic generated by the proposed use so that it will not create or add to an identified problem before construction of needed improvements for which a development fee has been established and imposed upon the project;
9. Adequate provisions have been made for emergency access to the site;
10. Adequate public facilities and public services exist or have been provided for within the project area which will be available to serve the project without decreasing services levels to other areas to ensure that the proposed use is not detrimental to the public welfare; and
11. All feasible mitigation measures have been imposed upon the project.
12. The conditions provided in the decision are deemed necessary to protect the public health, safety, and general welfare. Such conditions may include, but are not limited to:
 - a. Regulation of use, setbacks, buffers, fences, walls, vehicular ingress and egress, signs, noise, vibration, odors, the time of certain activities, duration of use, and time period within which the proposed use shall be established.