APPLICANT'S VARIANCE JUSTIFICATION

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Pursuant to Sec. L-II 5.7 of Zoning Regulations, and Sec. L-XVI 2.6 Fire Safe Regulations (if applicable), of the County Land Use and Development Code, the following listed findings must be made by the hearing body in order to grant a variance. Please provide written explanation of why your request satisfies the required findings (attach a separate sheet for this information if necessary):

1. **The variance, if granted, does not constitute the granting of a special privilege inconsistent with the limitations placed on other properties in the vicinity and in the same zoning district in which the subject property is located, because:**

The variance does not grant a special privilege inconsistent with the limitations placed on other properties in the vicinity in the same zoning district as the property, because those properties with the same zoning district would also need to seek a variance to construct facilities taller than 45 feet, as are necessary to conduct underground gold mining operations. Per County Code Sec. L-II 5.7 (Variances), the term "District" refers to the zoning district in which the property is located. In this case, the Brunswick site comprises the entire M1-SP zoning district, and is surrounded by residential uses that are in different (residential) zoning districts. As further stated in the County zoning code, "Subsurface mining is allowed in all base districts subject to approval of a Use Permit … [and] [s]urface access to subsurface mining, including vent and escape shafts, is allowed in the AG, FR, M1, M2, P, and PD base districts subject to approval of a Use Permit." (Nevada County Code Sec. L-II 3.21 Subsurface Mining.) Subsurface access to underground mining operations is allowed in the same zoning as the property (M1), and would also require the same process (approval of a variance) to be granted for the headframe necessary for an underground mine on those other properties.

The taller structures are necessary to implement a modern gold mine. To be able to efficiently and safely execute the underground mining activities allowed on-site under the M1 zoning (with the ME designation), certain structures must be taller than 45 feet, which is the height limit under the current M1 zoning. Specifically, the main headframe is designed to be 165-feet tall, which is consistent with modern headframe designs for underground mines. Headframes smaller than 45 feet are not feasible, and would not allow for a modern subsurface gold mine. Likewise, the headframe for the service shaft is proposed to be 80-ft tall, and two hoist buildings associated with the mine shafts would be 50-feet tall. The Process Plant building requires a height of 64 feet to accommodate and fully enclose machinery required for mineral processing. Thus, the variance is necessary to implement those activities that are allowed within the Light Industrial (M1) with Mineral Extraction Combining District (M1-ME). The grant of a height variance does not constitute a special privilege unavailable to others in the vicinity in the same zoning district, because other properties in the project's district or in the vicinity that are zoned M1 would need these same general height of structures to extract and process gold ore. As those other properties in the project's district and vicinity would need to obtain the same variance to conduct a use permitted (with a use permit) in the M1 zone, a variance is not a special privilege and would be required for underground mining on any M1-zone property where valuable gold could be mined.

The area's predominant residential and industrial uses typically do not require structures taller than 45 feet and therefore do not require a height variance, because the structures commonly associated with residential and industrial uses, can generally be built in conformance with the 45-foot height requirements to allow the property owner to engage in the land uses allowed on the property. In contrast, the height variance here is necessary to construct and operate a modern onsite underground

mine (as allowed with a use permit in the M1 zone), for the necessary taller headframe and associated hoist structures that are commonly and safely used in mineral extraction operations. As a result, strict application of height restrictions of the M1 district do not generally limit residential and most industrial uses, but would severely limit the Project's otherwise permitted mineral extraction. Therefore, the requested height variance does not confer a special privilege inconsistent with limitations placed on other properties in the same vicinity and zone, but merely allows the property owner to conduct an allowed use on the property.

The County regularly allows construction of structures that are taller than the maximum height allowed by the underlying zoning in many zones across the County where an otherwise allowed use requires accommodation. The following zoning designations have a building height limit of 45 feet or less.

- Public (45');[1]
- R3 (35');[2]
- RA (35');[3]
- BP, M1, M2 (45');[4] and
- AG, AE, FR, and TPZ (45').[5]

Below are examples of recent projects falling within the above zoning designations that have either been approved, are in review, or have otherwise been considered for approval by the County, all of which include a similar requested height variance that exceeds the County's 35- or 45-foot height limit for the subject zone:

PROJECTS THAT HAVE BEEN APPROVED:

(1) Project CUP17-0018 - Approved on December 5, 2017[6]:
- County approved a use permit for a new 160-foot cell tower.
- 17030 Austin Way, Truckee, CA 96161
- Zoning: AG-20
- Zoning Height: 45 feet
- Requested / Approved Height: 160 feet

(2) Project U 15-007 – Approved on June 23, 2015:[7]
- County approved a use permit for a 140-foot communication tower.
- 12077 Forest Lake Place, Colfax, CA 95713
- Zoning: RA-5
- Zoning Height: 35 feet
- Requested / Approved Height: 140 feet

(3) Project PLN21-0232 – August 17, 2021:
- County approved a Variance to height limits for a 38-foot 10 3/8-inch tall Senior Housing facility (Lone Oak Apartments).

[1] County Code, Title 3, Chapter II, Article 2, section 2.6.G
[2] County Code, Table L-II 2.2.2.C
[3] County Code, Table L-II 2.2.1.C
[4] County Code, Table L-II 2.5.E
[5] County Code, Table L-II 2.3.E
[6] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=049060001000
[7] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=021660054000

- 10528 Broken Oak Court, Penn Valley CA 95946
- Zoning: R3-RH-SP
- Zoning Height: 35 feet
- Requested / Approved Height: 38 feet 10 & 3/8 inches

PROJECTS CURRENTLY IN REVIEW OR THAT HAVE BEEN APPROVED:

(1) Project CUP23-0002 & Project PLN23-0023: [8]
- Use Permit to remove and replace an existing 40' cell tower with a 90' monopine cell tower.
- 22258 Juniper Street, Floriston, CA, 96111
- Zoning: TPZ-160
- Zoning Height: 45 feet
- Requested Height: 90 feet

(2) Project CUP19-0012: [9]
- CUP for a new 155-foot-tall telecommunications tower and 1,600 square foot equipment facility.
- 18888 Tyler Foote Crossing Road, Nevada City, CA 95959
- Zoning: FR-40
- Zoning Height: 45 feet
- Requested Height: 155 feet

(3) Project CUP18-0014: [10]
- CUP for a new 105-foot monopine cell tower site located near the intersection of State Highway 49 and Tyler Foote Crossing Road for Verizon Wireless and one additional carrier.
- 10212 Tyler Foote Crossing Road, Nevada City, CA 95959
- Zoning: AE-30
- Zoning Height: 45 feet
- Requested Height: 105 feet

(4) Project CUP20-0003: [11]
- CUP for construction and operation of a new 160-foot tall monopine cell tower.
- 11645 Ridge Road, Grass Valley, CA 95945
- Zoning: Public
- Zoning Height: 45 feet
- Requested Height: 160 feet

(5) Project CUP17-0017: [12]
- CUP for a new 125-foot tall cell tower.
- 20596 Golden Bear Drive, Grass Valley, CA 95949
- Zoning: AE-40

[8] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=048130026000
[9] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=061260012000
[10] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=060400002000
[11] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=035250001000
[12] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=054250001000

- Zoning Height: 45 feet
- Requested Height: 125 feet
    - Finalized building permit for the tower was issued: Permit # 180476.

(6) Project CUP17-0016:[13]

- CUP for a proposed 110-foot cell tower.
- 13083 Wild Life Lane, Grass Valley, CA 95945
- Zoning: AG-10
- Zoning Height: 45 feet
- Requested Height: 110 feet

(7) Project CUP17-0015 & PLN 17-0073:[14]

- CUP for a new 130-foot-tall cell tower.
- 19406 Burning Bush Road, Nevada City, CA 95959
- Zoning: FR-40
- Zoning Height: 45 feet
- Requested Height: 130 feet

(8) Project AP 15-009 - December 22, 2015:[15]

- Request to Amend an Approved Permit (Non-minor) for an extension of 15 feet to an existing cell tower.
- 10260 Soda Springs Road, Soda Springs, CA
- Zoning: FR-40
- Zoning Height: 45 feet
- Requested Height: 104 feet (15 feet are being added to the existing 89-foot mono-pine).

(9) Project AV 00-002 – March 22, 2000:[16]

- Request for a variance and a use permit proposing to erect a 180-foot transmission tower.
- 11475 Caroline Lane, Nevada City CA 95959
- Zoning: RA-5
- Zoning Height: 35 feet
- Requested Height: 180 feet

(10) Project U 14-004 – August 6, 2014:[17]

- County received and still has a CUP open from, for a new 114-foot monopine and a 11x16 foot unmanned pre-fabricated equipment shelter.
- 10434 Bethel Glen Court, Grass Valley, CA
- Zoning: AG-5
- Zoning Height: 45 feet
- Requested Height: 114 feet

2. There are special circumstances applicable to the subject property including size, shape,

[13] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=012720045000
[14] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=034090003000
[15] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=047440018000
[16] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=039020044000
[17] https://reports.nevcounty.net/property/rdPage.aspx?rdReport=parcel.ParcelReport&APN=056180066000

topography, location or surroundings and because of these circumstances, the strict application of the provisions of this Chapter would deprive the subject property of privileges enjoyed by other properties in the vicinity and in the same zoning classification, because:

The Brunswick Industrial Site is a unique property due to its location above an identified gold resource and the existing infrastructure (i.e. Brunswick Shaft) providing the only access to this resource. The property's size, location, and access to local roadways provides the ancillary characteristics necessary to support a project of this size and importance. Given the unique suitability of the Project site for underground gold mining, strict application of the 45-foot height limitation would deprive the property of privileges enjoyed by other properties in the vicinity, i.e., the privilege of utilizing the property as it historically been used for this same use, which is its best and highest use allowed under its current zoning. The Brunswick Industrial Site contains the historic Idaho-Maryland Gold Mine, which would uniquely provide jobs, add to the local economy and supply local taxes. From 1866 to 1956, this mine produced 2,414,000 ounces of gold, equivalent to 4.7 billion dollars in today's gold price. A shaft already exists on the Brunswick site, which can be reused, allowing faster and more economic development of the mine. The Brunswick site is 119 acres in size, which unlike most other properties in the project vicinity, is large enough to allow a modern headframe and associated mine processing facilities and structures without undue nuisance to neighboring properties. Finally, the Brunswick site includes an already-constructed processing pond and contains a portion of South Fork of Wolf Creek. Both the pond and the creek are integral to the mine project, as the pond is necessary for water treatment, and the creek is necessary for a point of clean, treated water exit from the property. With its unique characteristics, the Brunswick site is the only site that can reasonably serve as an access point and processing facility for extracting the mineral resources owned by the applicant. Given the special circumstances of the Brunswick site, including location of a valuable gold deposit, large property size conducive to underground mining, and pre-existing features useful for underground mining, strict application of the zoning code's height limitation would deprive the property owner of using the property for its best and highest use, which privilege is enjoyed by neighboring property owners.

Notably, the County previously allowed a 135-foot tall headframe on the property. Since suspending operations in 1956, an 85-foot concrete silo remains as a legal, nonconforming structure at the Brunswick Industrial Site. The existence of an 85-foot concrete silo on the property, which is already 40 feet taller than the 45-foot height limitation, is an additional special circumstance applicable to the property.

Mineral resources on the Project site are also unique and are of a quality, quantity, accessibility, and close proximity for processing facilities allowing for a feasible mining operation. Other surrounding properties and properties under identical zone classifications do not have sufficient mineral resources and associated conditions that would make a mining operation feasible. The neighboring property owners are able to enjoy the full and efficient use of their respective properties, because, as discussed above, the 45-foot height limitation of the M1 district generally does not restrict residential uses and most industrial uses. Here, the Applicant seeks a variance to allow it to continue to enjoy the historic full and efficient use of the property, which includes extraction of minerals and associated hoisting and processing. The taller headframe and associated hoisting facilities are essential to efficient and safe mineral extraction activities, just as residential-type and industrial-type structures are essential to the efficient residential/industrial use of the surrounding properties.

Other properties with the same zoning would need to use the same general height of headframe and other facilities taller than the 45-foot height to operate a modern gold mine, and therefore would also need to obtain a height variance if economic qualities of gold were found on those other similarly-zoned properties.

Finally, other properties throughout the County have regularly been granted variances and permits for cellular towers, buildings and other structures that are substantially taller than the underlying zoning allows. The strict application of the maximum zoning code height would deprive the property owner the right to beneficially use the property, similar to the examples provided above.

3. **The variance does not authorize a use not otherwise authorized by the zoning district in which the property is located, because:**

Underground mining is allowed in the zoning district where the property is located; therefore, the variance would not allow a use that is not authorized within the subject zoning district (M1-ME). With the rezone, the historic and proposed use (gold mining and processing and the reclamation) would be an authorized use within the Light Industrial (M1) with Mineral Extraction Combining District (M1-ME), provided that a use permit is approved by the County. Increasing the allowed building height would not allow for an unauthorized land use, as underground mining is allowed by the applicable zoning (M1-ME) where a use permit is approved. As stated in the County Code "*Subsurface mining is allowed in all base districts subject to approval of a Use Permit. Surface access to subsurface mining, including vent and escape shafts, is allowed in the AG, FR, M1, M2, P, and PD base districts subject to approval of a Use Permit.*" (County Code Section L-II 3.21 [Subsurface Mining].) As such, underground mining is allowed in the M1 zoning district, and the variance will not allow a use otherwise not allowed in this district.

Nearly 70 years ago, the Idaho-Maryland Gold Mine used a 135-foot-tall headframe, which stood atop of the still-existing 85-foot concrete silo located at the Brunswick Industrial Site. The 85-foot concrete silo has remained in place, representing the property's historic mining use. The planned 165-foot headframe will be used with a friction hoist, which will safely assist miners going to and from the subsurface mineshafts, as the prior 135-foot headframe did as late as 1956. Additionally, since the gold mineralization is deeper than it was 70 years ago, the 165-foot headframe is necessary to successfully produce roughly 1,000 tons per day (365,000 tons per year) of gold mineralization. Since the property has been historically and is currently zoned for subsurface mining, the only way to safely and adequately conduct subsurface mining on the property is with the 165-foot headframe. The height variance is appropriate because the variance simply facilitates a structure required for a use already authorized within the zoning district.

4. **The granting of the variance does not, under circumstances and conditions applied in the particular case, adversely affect the public health, safety, or welfare, the integrity and character of the District, nor the utility and value of nearby property, because:**

As discussed below, the granting of the variance will not, under the current circumstances and conditions, adversely affect the public health, safety, or welfare, or the integrity and character of the District, and will not affect the utility or value of nearby property.

The granting of the variance will not adversely affect the integrity and character of the District, because the underground mining use facilitated by granting of the variance is entirely consistent with the character and history of the property and the surrounding properties and uses. As used in County Code

Sec. L-II 5.7 (Variances), the term "District" refers to the zoning district in which the property is located. In this case, the Brunswick site comprises the entire M1-SP zoning district, and is surrounded by residential uses that are in different (residential) zoning districts. The past use of the district (the Brunswick site) was underground mining, then used as the site for an industrial sawmill and hauling operation, and most recently as the site of mineral exploration using drill rigs. The variance would allow taller structures on the property and thereby allow an underground mining operation to operate onsite. The proposed mining structures that exceed the 45-foot height limitation are consistent with the historic character of the property and the zoning district as the site of a gold mine, and the industrial sawmill use. Moreover, the site already contains an 85-foot-tall headframe, thus the variance would only create an incremental increase in the height of existing mining-related structures onsite, which new structures would be consistent with the site's historic and existing character and integrity.

The height of Project structures, as allowed by the variance, will not adversely affect the health or safety of persons residing or working in the neighborhood, because such structures mirror the historic and existing structures on site and will be subject to all applicable safety standards. In the context of the variance findings, public health, safety or welfare generally refers to the protection and wellbeing of the public. The increased building heights are designed, constructed, and will be operated in compliance with the Occupational Safety and Health Administration (OSHA) requirements, zoning standards, the County building code, the Health and Safety code, Nevada County Consolidated Fire District rules, and other applicable County and State regulations, including conditions of approval imposed by the Conditional Use Permit. Compliance with these laws and regulations, which were designed for the protection and wellbeing of the public, 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. Further, the requested variance would not adversely affect the public welfare for reasons that include the following:

1) There is already a historic 85-foot tall concrete silo at the proposed location of the Brunswick headframe on the Property; therefore, the taller proposed structures have historically been, and continue to be, consistent with the existing neighborhood character that includes visible, tall mining-related structures;

2) The structures at the Brunswick headframe will be set back more than 330 feet from the nearest property not owned by the Applicant, and are at a lower elevation than the adjacent road grade, further reducing the visual impact from the public view;

3) Where the potential for adverse effects to adjacent properties is identified as having the potential to occur, the Final Environmental Impact Report (EIR) contains mitigation measures (see MM 4.1-2) to ensure that such effects are avoided or sufficiently minimized so as not to adversely affect the public health, safety, or welfare, the integrity and character of the District, nor the utility and value of nearby property. Such mitigation measures include strategically planting landscape trees to screen the Project's elements when the trees reach maturity. As evidenced by the photo above, strategic planting of trees will block the 165-foot tall headframe. Given the need to conduct one year of groundwater monitoring, and the need to obtain ancillary permits from the California Department of Fish and Wildlife, Army Corps of Engineers and other state/federal agencies, prior to mine operation and construction of some mine-related facilities, the headframe will likely not be constructed until 4 or more years after approval, allowing time for screening trees and cover to grow - obscuring public views of the headframe; and

4) The site is not located within a State Scenic Highway, and the site does not contain any rock outcroppings or historic buildings, the proposed Project would not result in any significant impacts related to substantial damage of trees, rock outcroppings, or historic buildings within a State Scenic Highway.

While the EIR does conclude that aesthetic impacts related to the Project, including the taller structures allowed by the variance, would be significant and unavoidable for purposes of the California Environmental Quality Act (CEQA), the finding required under the County Code for granting a variance is distinct from the CEQA impact conclusion. The County has determined that while the Project as a whole would cause significant impacts related to scenic resources, granting of the variance would not adversely affect the public health, safety, or welfare, the integrity and character of the District, nor the utility and value of nearby property. The granting of a variance for structures up to 165 feet in height rather than the existing 85 feet in height will result in somewhat greater visibility of the Project facilities from surrounding properties and roadways; however, no detriment to public welfare or injury to property or improvements is expected, given the character of the area, the large size of the Brunswick property (i.e., 119 acres), the existing setbacks from nearby development, the ample sight distances, greater than 600 feet, between the headframe and hoist facilities and the nearest existing housing, and the various deed notices and disclosures recorded on subdivision maps and deeds of neighboring properties notifying buyers of property that sensory nuisances are present and that they understand that the mine and industrial uses exist on the property (see e.g. Beaver Drive CC&RS and Plot Map). Therefore, the variance would not allow a use that would adversely affect the public health, safety, or welfare; the integrity and character of the district; nor the utility and value of nearby property.

5. The variance is consistent with the Nevada County General Plan because:

Table 1.4 of the Nevada County General Plan provides that the maximum building height for Industrial Zones (including the M1 zone where the Brunswick site is located) is 45 feet; however, footnote 2 (applicable to the height limit in the Industrial Zones), provides that "Discretionary and administrative permits will be required for special uses that would need to exceed the allowable height." (Nevada County General Plan, Volume I – Pages 1-38, 1-39.) In this case, the variance would be a discretionary permit required for a special use (underground mining) to allow exceedance of the 45-foot height limit. As such, if the County approves a variance for the structures that exceed the General Plan's 45-foot height limit, such structures will be consistent with General Plan's requirement that structures in excess of 45-feet in the M1 zone receive a discretionary permit (variance) to allow the excess height. Notable, this property has had an existing 85-foot concrete silo on the property for nearly 70 years, if not longer.

Additionally, Goal 17.1 of the General Plan provides that the County should "Recognize and protect valuable mineral resources for current and future generations in a manner that does not create land use conflicts." (Nevada County General Plan, Volume I – Page 17-3.) It goes on to state that: "resource based land uses (timber, **mining**, farming, and ranching) continue to be significant in terms of the extent of such uses and the continuity of their function in the County's economy." (Nevada County General Plan, Volume I – Page 1-3.) In this case, granting of the variance recognizes and protects the importance of the valuable resource on the Project site by allowing the necessary infrastructure providing access those valuable mineral resources, as well as recognizing the importance on the economy such mining operations will have. Additionally, as discussed in Section 4.9 of the EIR, the Project would not create a land use conflict, and as discussed throughout the EIR, the Project will be required to comply with numerous mitigation measures and conditions of approval that minimize potential conflicts with surrounding land uses.

The increased building heights would be designed, constructed, and operated in compliance with the Occupational Safety and Health Administration (OSHA) requirements, zoning standards, the County building code, the health and safety code, Nevada County Consolidated Fire District rules, and other applicable County and state regulations. In addition, the project building heights would comply with the *Nevada County Airport Land Use Compatibility Plan* (NCALUCP). The project site is partially within Zones D and E of the NCALUCP. For Zone D, airspace review is required for objects greater than 3,207 feet mean sea level (msl) (See Table 2A of the NCALUCP). The tallest point of the project site (the 165-foot-tall headframe building) would be at 2,912 feet msl. In addition, the project is not a noise-sensitive use, would not pose a hazard to flight, and would not exceed the density requirements; therefore, the project would comply with the requirements of the NCALUCP for Zones D and E. The proposed project would be required to be reviewed by the Airport Land Use Commission because, among other reasons, it would include new development of buildings more than 100 feet tall in Zones D and E (See Policy 1.4.3 of the NCALUCP).

Regarding aesthetics, site visibility would be limited by the surrounding trees and topography and would be consistent with the industrial nature of the surrounding area. General Plan Goal 18.1 states that the County should "*Promote and provide for aesthetic design in new development which reflects existing character*." Given that the Project site was historically used for mining operations and currently has an 80-foot tall headframe structure, which used to be as tall as 135-feet, the tall mining-related structures that would be allowed under a variance would be consistent with the General Plan as they would have an aesthetic that reflects the existing character of the Property.

6. **The variance is the minimum departure from the requirements of this ordinance necessary to grant relief to the applicant, because:**

The building heights are the minimum required to make the mining operations feasible and ensure the safe operation and movement of personnel and equipment. A new headframe building will be constructed at the location of the existing Brunswick Shaft and concrete silo. In order to safely access the underground workings and place rock into the concrete silo the headframe must be a height of 165 feet. The new Service Shaft headframe requires a height of 80 feet in order to allow hoisting of cages to transport people, materials, and equipment to and from the underground mine. Hoist buildings for the Brunswick and Service shafts must be 50 feet in height to accommodate the hoist and hoist cable for the headframes. The Process Plant building requires a height of 64 feet to allow sufficient noise insulation and the necessary machinery for the backfill plant to be installed and for an overhead hoist system to be installed in the building to install, replace, and maintain process equipment. While shorter structures were considered, they do not meet the operational needs of the Project to develop a modern and efficient underground mining operation. Taller structures were also considered, but the Applicant has proposed the shortest industry-standard mining structures that meet Project objectives. Accordingly, the heights requested by the variance represent the minimum departure from the requirements of this ordinance necessary to grant relief to the Applicant.

Headframes used in modern mining operations range from 100-200 feet tall. For example, Butte Montana currently has 14 remaining headframes, all of which range from 100-200 feet tall. The 165-foot requested height variance does not come close to some headframes, such as Canada's K2 headframe, measuring at 311 feet tall, nearly twice the height of the requested variance. Since the early 1900s, headframes began exceeding 100 feet in height, and since modern technology, heights have continued to increase.

7. ***(Applicable only to variances to fire protection measures, i.e., side and rear yard setbacks*) The granting of a variance provides the same practical effect of fire protection because the following substitute measures have been incorporated into the project:**

Not applicable.