

MARSHA A. BURCH
LAW OFFICE

131 South Auburn Street
GRASS VALLEY, CA 95945

Telephone:
(530) 272-8411

www.marshaburchlawoffice.com

mburchlaw@gmail.com

August 21, 2025

Via email:

Board of Supervisors
County of Lake
255 N. Forbes Street
Lakeport, CA 95453
(email list under “cc” below)

Lloyd Guintivano, County Counsel
255 N Forbes Street
Lakeport, CA 95453
lloyd.guintivano@lakecountyca.gov

Laura Hall, Senior Planner
Community Development Department
County of Lake
255 N. Forbes Street
Lakeport, CA 95453
Laura.Hall@lakecountyca.gov

**Re: Appeal of Planning Commission Approval of AG Forest Wood Processing
Bioenergy Facility Major Use Permit UP 23-05, Initial Study/Mitigated
Negative Declaration IS 23-10; and

REQUEST FOR RESPONSE TO CALIFORNIA
PUBLIC RECORDS ACT REQUESTS**

Dear Honorable Supervisors, Mr. Guintivano, and Ms. Hall:

This office represents Larry Kahn, Barbara Morris, and a neighborhood organization with respect to the above-referenced appeal. Mr. Kahn appealed the County of Lake Planning Commission’s approval of the AG Forest Bioenergy Project, including the Commission’s approval of Major Use Permit UP 23-05, and adoption of the Initial Study/Mitigated Negative Declaration (“IS/MND”) IS 23-10 (collectively, the “Project”). Our original appeal letter was submitted on May 13, 2025, and that letter is attached for your reference.

This letter includes new information about the evidence in the record, the County's continued refusal to respond to records requests under the California Public Records Act, and the status of the investigation by the California Department of Water Resources ("DWR").

A. The County Continues to Violate the California Public Records Act.

This office has submitted three requests for records under the California Public Records Act (with two follow up requests asking why no documents were produced for several of the categories, and why there has been no privilege log provided for documents withheld), and we have received utter silence from the County. I have attempted to meet and confer with County Counsel's office, but that office has refused to respond to my request to meet and confer and has also refused to respond to my phone and email messages. Currently, the County is in open and flagrant violation of the Public Records Act for refusing to provide the required responses and to provide records.

Under the California Public Records Act (Gov. Code §§ 7920.000 et seq.), the County is required to make an initial determination within 10 calendar days of receiving a request as to whether it possess disclosable records, and to provide written notice of that determination. If "unusual circumstances" exist, any agency may extend this deadline by no more than 14 additional days but must provide written notice stating the specific reasons for the extension. After making that determination, the agency must make the records promptly available for inspection or provide copies without unreasonable delay. If any records are withheld, the agency must clearly identify each record withheld and the specific statutory exemption relied upon. At this point, the statutory deadlines have passed, and the agency is not in compliance. The County is now more than four and a half months late on our first request.

Importantly, the Supervisors should understand that allowing County staff to ignore our requests for public records needed to fully understand the circumstances surrounding the appeal, while at the same time moving forward with an appeal hearing in this matter, violates my clients' right to due process.

Our first request was sent on March 28, 2025. Among other things, that request sought a copy of the Williamson Act Contract for the Project site. The County administers the Williamson Act Program and continues to ignore this request and withhold an obviously public document. The County has also failed to provide documents in response to a request for staff and applicant correspondence over a *five-year period*, providing only a handful of emails. On June 11, 2025, I sent an email to six members of County staff, stating that a few emails and a letter from me were the only records that had been produced in response to my March 28, 2025 request, and asking for clarification and a response from the County, including a list of documents that were withheld with reasons for withholding. (A copy of my message is attached as Exhibit A.) That same day, on June 11, 2025, Mireya Turner responded to my email stating that she would "consider and

respond” to my email “soon.” On August 13, 2025, I sent a follow up message asking if anyone was going to respond to my June 11, 2025 message. Eight days later, I have received no response at all from the County.

Our second records request was sent on April 15, 2025. All of the documents requested in that letter relate to the status of the project site as a tax-payer-funded purchase that was required to be placed under a conservation easement. This is the issue DWR has requested additional time to address (Exhibit B), and the reason the Supervisors continued the last hearing. The County has been in communication with DWR about this issue, and yet the County has not provided a single document in response to our request.

The County has stated that there are responsive records that have been *withheld* because they are subject to various privileges. Here is the language from the County letter:

Please note, some records or information otherwise responsive to this request are not subject to disclosure on grounds that may include, but are not limited to: Cal. Gov. Code, § 7927.705 – Attorney Client Privilege; Cal. Code Civ. Proc., § 2018.010 et seq – Attorney Work Product Privilege; Cal. Gov. Code, § 7927.500 - Preliminary drafts not retained by the public agency in the ordinary course of business.

In my June 11, 2025 email, I requested that “for all documents withheld under a claim of privilege, please provide a description of the document along with the reasons for non-disclosure.” I provided the following analysis to the six County staff members who received my message, and they did not respond.

‘[T]he agency must describe “each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.” ’” [Citations.] “Conclusory or boilerplate assertions that merely recite the statutory standards are not sufficient.” (*Ibid.*) “A statement is ‘conclusory’ ... where no factual support is provided for an essential element of the claimed basis for withholding information.” (*Id.* at p. 83, fn. 13, italics omitted., 134 Cal.Rptr.3d 472.) *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 790 [267 Cal.Rptr.3d 32, 76], *as modified on denial of reh'g* (Aug. 25, 2020).

While our two requests were outstanding, we received documents from DWR revealing that Pawan Upadhyay had been in communication with DWR regarding the Project site (Exhibit C), so we sent an additional records request to the County on August 13, 2025. The ten-day period to respond to that request ends on August 25, 2025.

Even if we were to receive all of the responsive documents today, we would not have a meaningful chance to review them before the hearing on August 26, 2025. We request that the Supervisors provide a response to the Public Records Act requests we have submitted, as County

staff has not done so. If responses to our requests are not provided before a hearing on the appeal, we will be forced to file a petition for writ of mandate seeking a writ directing the County to comply. We will seek responses to our requests as well as attorneys' fees and costs.

B. The County does not have Authority to Lease the Project Site to the Applicant for a Biochar Facility.

This letter will reiterate much of what was included on this topic in our May 13, 2025 letter. The County did not comply with the terms of the grant funding used to purchase the Project site. The June hearing on this appeal was continued for the purpose of allowing DWR to investigate and work with the County to determine whether the terms of the funding would allow the County to lease the property to a private entity. In an email dated June 4, 2025, Elizabeth Bryson from DWR sent a message to Pawan Upadhyay stating that the "lease of the property to a private entity is likely not compatible with the bond source language and may create a tax issue." (Exhibit B.) Ms. Bryson went on to say that DWR needs to coordinate with the State Controller's Office ("SCO") and it would not likely conclude its consultation with SCO until the end of the summer. Our records request to DWR did not reveal evidence of the investigation occurring.

The history of the Project site is of tax-payer funded acquisition and failure to follow through on funding requirements. On August 28, 2003, the Lake County Flood Control District¹ (the County), entered into The State of California the Resources Agency Department of Water Resources Agreement between the State of California Department of Water Resources and Lake County Flood Control and Water Conservation District under the Flood Protection Corridor Program ("Grant Agreement"). Through this Grant Agreement, the Department of Water Resources ("DWR") provided over \$5 Million dollars to the County for the Flood Protection Corridor Program. The funds were used by the County for, among other things, the acquisition of property.

The parcel where the proposed Project is located was acquired by the County with the grant funds, and a portion of it (42.6 of the approximately 115 acres) is now under a purported "Lease" agreement between the County and the Scotts Valley Energy Corporation ("SVEC").

We submitted a Public Records Act request seeking documents related to the Grant Agreement and the acquisition of the Project site, and we were first informed that no responsive documents existed, suggesting that the County had failed to document the receipt of the millions in grant funds and the expenditure on the Project site. We were then informed before the June

¹ The District was created by special legislation (specifically, California Water Code Appendix Section 68-1 *et seq.*), and the Lake County Board of Supervisors serves as the ex officio Board of Directors of the District, and so the activities of the District are the activities of the County.

2025 Board hearing that the County is “looking” for responsive documents. Since that time, we have received *no communication or response* to our records request.

Section 3.B of the Grant Agreement States that the Flood Control District (“District”) “shall develop a program to acquire fee title...and restore wetland habitats and adjacent riparian and upland areas and improve water quality...” Section 3.K states that the District “shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever, all or any portion of the subject properties without prior permission from the State.” We requested documentation of the permission from the State for the County to lease the Project site to the applicant, and as noted above, we were told no documents existed, and then there was a claimed effort to look for the documents, which has resulted in no response or documents. We do not believe that the County requested or received permission from the State.

Section 3.M of the Grant Agreement states that where the District acquires fee title using grant funds, “an appropriate easement providing for non-structural flood benefits and wildlife habitat preservation shall be simultaneously conveyed to a regulatory or trustee agency or conservation group acceptable to the State.” Again, we have received nothing in response to our request for records, but our research into the title of the Project site reveals that the County never recorded the required conservation easement on the Project site after it was acquired with funding from the State’s taxpayers. Additionally, we made a records request to the California Department of Fish and Wildlife (“CDFW”) seeking all conservation easements recorded for the Middle Creek Restoration project and received two conservation easements placed on other parcels before the Project site was purchased in 2015. It is possible that another entity, such as a land trust, holds conservation easements over Middle Creek Restoration project properties, but it may not be until we obtain a writ of mandate requiring the County to respond to our records requests before we will know if such other easements exist.

The County’s lack of maintenance of the Project site and failure to comply with any of the requirements of the Grant Agreement is an ongoing breach of the Grant Agreement. Further, giving the applicant the use of a taxpayer funded property for \$100 per year, with no obligations for maintaining the property pursuant to the Grant Agreement, and no permission from the State, is an unconstitutional gift of public funds. (Cal. Constitution, Article XVI, Section 6.)

For these reasons, and because the June appeal hearing was continued for the purpose of allowing DWR and SCO to investigate this issue, the Board of Supervisors should not make any decisions regarding the Project until the County comes into compliance with the DWR Grant Agreement and its obligations under the State Constitution.

C. The Project is Not Appropriate for the Project Site and the Surrounding Land Uses and the Initial Study/Mitigated Negative Declaration Fails to Comply with CEQA.

Appellant refers here to Sections B through E of the May 13, 2025 letter in support of the appeal. That letter includes detailed discussion of the flaws in the Project review, and the lack of evidentiary support for the conclusions contained in the Initial Study/Mitigated Negative Declaration (“IS/MND”), the staff report, and the recommendations by staff.

The IS/MND is woefully inadequate, and the record contains evidence supporting a fair argument that the Project may have a significant impact on the environment, meaning that a full Environmental Impact Report is required.

There is no substantial evidence in the record to support the findings required for the issuance of a Major Use Permit, and the Project is inconsistent with the governing land use documents, including the General Plan.

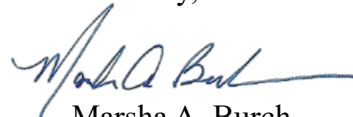
Given that the IS/MND failed to adequately consider or disclose the most serious environmental consequences of the Project, including the fact that the Project is part of a much larger project with multiple sites, complete failure to analyze air emissions during construction and operation, failure to measure baseline and sensitive receptors for noise impacts, and the omission of the credentials of design professionals, we respectfully request that the Supervisors insist upon a full and adequate environmental review.

D. Conclusion

We request that the Board of Supervisors continue the appeal hearing so that County staff can respond in good faith to the outstanding Public Records Act requests, and so DWR and SCO have an opportunity to fully investigate the use of the Project site.

If the Board determines to hear the appeal in violation of my clients’ right to due process, we request that the Board act to protect the public from a project that will harm the environment and be detrimental to human health, particularly those with homes near the Project site. A full Environmental Impact Report is required, and the Board should decline to consider the Project proposal until the appropriate environmental review has been completed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marsha A. Burch", with a stylized flourish at the end.

Marsha A. Burch
Attorney

[cc list on following page]

Lake County Board of Supervisors, et al.

August 21, 2025

Page 7 of 7

cc: Larry Kahn
Barbara Morris
helen.owen@lakecountyca.gov
Bruno.Sabatier@lakecountyca.gov
Eddie.Crandell@lakecountyca.gov
brad.Rasmussen@lakecountyca.gov
Jessica.Pyska@lakecountyca.gov
Nicole.Johnson@lakecountyca.gov