

July 19, 2024

VIA E-MAIL

Board of Supervisors
COUNTY OF LAKE
255 North Forbes St
Lakeport, CA 95453

Re: **Board of Supervisors' Meeting – August 13, 2024**

Agenda Item: “Highland Farms, LP UP-20-96”

**APPLICANT’S RESPONSES AND REBUTTALS TO UNMERITORIOUS
APPEAL FROM PLANNING COMMISSION’S APPROVAL (AB 24-02)**

Dear Honorable Chair and Members of the Board of Supervisors of the County of Lake:

Our law firm has served as land use and environmental law counsel for this project on behalf of the applicants, and have enjoyed the opportunity of working with County Staff on this and other cannabis-related projects over the past three years. On behalf of our clients Highland Farms, LP, and Autumn Karcey, we respectfully write in support of the County Planning Commission’s approval for this well-planned and thoroughly-studied project, and to respond to - and refute-- the unfounded arguments superficially presented by the appellants.

In brief, the arguments raised by the appeal are without legal merit and are not supported by the evidence in the record – and do not warrant asking this Board to disregard the comprehensive review and analysis that has been performed over many months by the County Staff and more than 15 other responsible State and regional agencies involved in the detailed review and approvals for this project. Certainly the unsupported arguments raised in the appeal do not justify this Board overturning the Planning Commission’s well-considered approvals. Accordingly, the appeal should be denied.

The appeal by Thomas Lajcik and Margaux Kambara and Associates, file stamped May 28, 2024, purports to vaguely raise four (4) concerns:

- (1) “Serpentine soils and other [unidentified] environmental violations” --
- (2) “Traffic cumulative effect [allegedly] on Highland Springs Road”
- (3) [Allegedly] “Insufficient hydrology and biology report”
- (4) “Public land use” [inaccurate reference to park in the vicinity].

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All of those issues were previously, and fully, addressed in the County Staff Report, the 73-page Mitigated Negative Declaration (“MND”), and the Planning Commission’s hearing leading to the approval for the project. The appellants fail to produce competent evidence demonstrating even a fair argument that the proposed Project may have a potentially significant adverse impact on the environment.

Accordingly, it is entirely appropriate and necessary that the appeal be denied. The Court of Appeal recently affirmed County’s determination to approve a project and the sufficiency of a Mitigated Negative Declaration in very similar circumstances, *in Newtown Preservation Society v. County of El Dorado* (2021) 65 Cal.App.5th 771, 789: “[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence.” (*Joshua Tree Downtown Business Alliance v. County of San Bernardino, supra*, 1 Cal.App.5th at p. 691.)”

1. **“Serpentine Soil:”**

There is little in the way of substantial evidence to confirm the alleged presence of “serpentine soil” on the actual project site. To the contrary, the MND (at p. 23) expressly states: “[S]erpentine soils have not been found within the Project area or Project vicinity and would pose no threat of asbestos exposure during either the construction phase or the operational phase.”

Moreover, the MND (at p. 45) further confirms that “the Project Site is not listed as a site containing hazardous materials in the Department of Toxic Substances Control EnviroStor database or the State Water Resources Control Board’s GeoTracker database.”

The appellants fail to produce any substantial evidence to the contrary.

To the limited extent that the biological report indicated that some serpentine soil may exist off-site, on a small portion of the County Road providing access to the Project Site, that would be a pre-existing natural condition of the County’s property – not a condition created by the Project. As such, it is beyond the scope of the California Environmental Quality Act (“CEQA”). As the California Supreme Court has explained, CEQA is intended to study the impact of a proposed project on the environment –not the impact of the existing environment on the project. (*California Building Industry Ass’n v. Bay Area Air Quality Mgt. Dist.* (2015) 62 Cal.4th 369, 392: “[W]e hold that CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project’s future users or residents.”

And even if CEQA were deemed to be applicable to the naturally-existing area of serpentine soils outside the Project Site, there is still no substantial evidence in the record that those soils create a potentially significant adverse environmental impact or that an impact that could not be adequately mitigated to levels of insignificance.

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Serpentine soil is a soil type, or bedrock, produced by weathered ultramafic rock, composed of magnesium iron silicate, formed by metamorphosis of peridotite. Serpentine soils are highly erosive and prone to compaction, and may contain asbestos. It is fairly common in parts of Lake County, and the appropriate mitigation or avoidance of potential hazards associated with asbestos-containing soils are well understood. Those concerns can be fully eliminated or mitigated by feasible measures, such as limiting soil disturbance and covering or containing the soils when being moved. (See, e.g., *Leavenworth Audubon Adopt-a-Forest Alpine Lakes Protection Soc’y v. Ferraro*, (W.D. Wash. 1995) 881 F. Supp. 1482 [federal court approved environmental study by US Forest Service that provided for timber harvesting and road construction on steep slopes and scree hillsides containing serpentine soils and measures to minimize soil disturbance.].)

In this case, the only potential “disturbance” of the naturally-occurring serpentine soil in the area of the County Road might arise during the short two-week period for construction on the Project Site. And even during that limited time frame, existing and standard regulations would be in place to limit truck traffic and requiring the containment of dust and airborne particles.

2. “Traffic cumulative effect” on Highland Springs Road.

The appellants fail to provide or to even cite to any evidence in the record to support this claim, much less to specify or quantify the alleged “cumulative effect” of “traffic” on Highland Springs Road.

This part of the appeal ignores the express findings of the MND, at pages 59-60, confirming that the impacts of the Project, during both the construction phase and during the operational phase, would be “negligible” or “less than significant.” “The temporary increase in trips due to construction of the Project would not cause a significant change to roadway level of service. Impacts would be less than significant.”

3. [Allegedly] “Insufficient hydrology and biology report.”

The appellants fail to provide any detailed or meaningful criticism regarding these reports, much less any evidence demonstrating in what way the reports are allegedly “insufficient.”

The accompanying responses from the applicants’ expert consultants clearly demonstrate that these vague arguments have no merit. Multiple responsible agencies, in addition to several experienced and expert County agencies, reviewed these reports and found them satisfactory and compliant with applicable standards.

Arguments similar to this vague accusation were raised during the Planning Commission. County Staff and the applicants and the expert consultants thoroughly addressed and refuted

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those claims. We respectfully refer to and incorporate those responses in this letter, for the sake of brevity and avoiding redundancy

4. “Public land uses.”

This charge refers to a park allegedly located in the general vicinity of the Project Site, as clarified during the Planning Commission hearing. During that hearing, the County’s Community Development Director interrupted the meeting to specifically address this contention, identified the location of the Project Site and the “park in the vicinity” and explained to all that the location of the Project is compliant with County standards and does not violate any of the County’s adopted setback standards.

In conclusion, we respectfully submit – with appreciation – that the County Staff, the expert consultants, and the Planning Commission have all done a very comprehensive and thoughtful analysis of the proposed Project that fully complies with all applicable CEQA requirements as well as all State and local requirements. There is simply no merit to any of the vague and unsupported arguments proffered as grounds for appeal from the Planning Commission’s approvals.

We respectfully request that the Board deny and reject the appeal, and confirm the approvals for the Project. Thank you for your consideration..

Very truly yours,

RUTAN & TUCKER, LLP



David P. Lanferman

DPL:cm

cc: Lloyd Guintivano, County Counsel, *via email*
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