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January 9, 2025

Via Email Only

Board of Supervisors
County of Lake
c/o Clerk of the Board
255 N. Forbes Street
Lakeport, CA 95453
clerkoftheboard@lakecountyca.gov

Re: Supplemental Documentary Evidence in Support of Appeal of Approval of
Highland Farms Cannabis Farm (UP 20-96) and Adoption of its MND
(IS 20-116)

Dear Chairman Crandell, Vice-Chair Rasmussen, and Supervisors Owen, Pyska, and Sabatier:

This letter provides and transmits supplemental documentary evidence to the Lake County (County) Community Development Department (CDD) and the Board of Supervisors (Board) in support of the Appellants Thomas Lajcik's and Margaux Kambara's ("Lajciks" or "Appellants") appeal challenging the Planning Commission's approval of the Highland Farms Cannabis Farm (UP 20-96) (Project) and adoption of its Mitigated Negative Declaration (MND) (IS 20-116). This letter incorporates by reference all prior communication and evidentiary submissions to the County, including:

1. May 28, 2024 Appeal;
2. July 26, 2024 Letter and Submission of Documentary Evidence in Support of Appeal plus Attachments and Exhibits to Attachments;
3. August 8, 2024 Letter Replying to Applicant's July 19, 2024 Letter;
4. August 12, 2024 Email Opposing CDD's Intent to Request Continuance at August 13, 2024 Board Hearing;
5. October 11, 2024 Letter Opposing CDD's Intent to Request Second Continuance at October 22, 2024 Board Hearing and its Ongoing Violations of California Environmental Quality Act (CEQA);

6. October 14, 2024 Letter and Submission of Supplemental Documentary Evidence in Support of Appeal plus Attachments and Exhibits to Attachments; and
7. October 16, 2024 Letter Replying to Applicant's October 11, 2024 Letter to the Board.

For the Board's convenience, these incorporated materials are available in chronological order at [1-9-25 Submittal to Board re Appeal of Highland Farms Cannabis Project](#). In these prior submissions, Appellants provided the Board substantial evidence that the Project may result in significant environmental impacts that were not evaluated in the MND, including impacts associated with and to: Project disruption of serpentine formations and soils (air quality, special-status species, etc.); jurisdictional wetlands and waterways; groundwater and water supply; cumulative traffic and roadway safety on Highland Springs Road; noise; odor; and recreation. Appellants also have provided substantial evidence that the Project will violate the County Cannabis Ordinance's 1,000-foot setback requirement from public lands *and* its requirement that cannabis processing facilities front and have direct access to a paved state or county maintained road, as well as violate State Minimum Fire Safe Regulations for dead-end roads and State Water Resources Control Board's Cannabis Cultivation General Order requirements for wetland setbacks. In this submission, Appellants provide additional substantial evidence that the Project may result in significant environmental impacts associated with and from serpentine formations and soils; aesthetic resources; land use; jurisdictional wetlands and waterways; and wildfire risks, as well as additional evidence that the Project will violate the 1,000-foot setback requirement.

Appellants also submitted two Public Record Act (PRA) requests to the County—the first just after filing the Appeal and the second on October 18, 2024. The second PRA request yielded two rolling responsive submissions from the County: (1) documents and other material; and (2) communications that were screened by County Counsel. For more details, please refer to an email from Julie Canard, CDD's Helpline Technician, attached hereto and included herein as **Exhibit 1**. As part of its rolling submissions in response to Appellants' second PRA request, the County included an email from the applicant to CDD dated September 6, 2024, that contained a link to a video recording of a Zoom meeting held between the applicant team, including Autumn Karcey (representative for applicant Highland Farms, LP), Sarah Bodnar (consultant to applicant), James Anderson (legal counsel to applicant), and CDD's Mary Claybon that occurred on August 30, 2024. That email is attached hereto and included herein as **Exhibit 2**. A transcript of that video recording is attached hereto and included herein as **Exhibit 3**.¹ The video file is also submitted as part of

¹ The transcript was prepared using online transcription service Otter.ai. Participants were all aware that the meeting was being recorded. (See Exh. 3, 3:19-20; 48:13-15.) The email containing a link to a recording of the meeting, along with a passcode for accessing the recording, was knowingly and voluntarily sent to CDD by the applicant (see Exh. 2) and was reviewed by County Counsel prior to release to Appellants (see Exh. 1).

Lake County Board of Supervisors

RE: Supplemental Documentary Evidence in Support of Appeal of Approval of Highland Farms Cannabis Farm and Adoption of MND (IS 20-116)

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this letter at [1-9-25 Submittal to Board re Appeal of Highland Farms Cannabis Project](#). Appellants request that the County download this audio file and include it in the Project's administrative record. Some of the information exchanged between CDD and the applicant during the August 30, 2024, meeting raises questions about improper ex parte communications regarding the Appeal and the prejudicial effect of those communications.

In November 2024, after the most recent Board hearing on the Appeal held on October 22, 2024, at the urging of the Board, Appellants met with the applicant to determine what, if any, common ground could be reached. While the details of that meeting are protected by a confidentiality agreement, the outcome was such that, unfortunately, not enough common ground exists for an agreement between the parties.

In the remainder of this letter, Appellants provide legal arguments rebutting CDD's intended recommendation that the Board order the Project be remanded to the Planning Commission and that the MND be revised and recirculated, as well as additional supplemental documentary evidence in support of the Appeal.

CDD's Recommendation to Revise and Recirculate the MND and Remand the Project to the Planning Commission Violates CEQA and Is Not Legally Supported – An EIR Is Required

On December 30, 2024, CDD's Mary Claybon called Appellants to inform them that CDD intends to recommend to the Board that it that remand the Project to the Planning Commission and that the MND be revised and recirculated for public review, and that this action would, in essence, moot the Appeal. Explained below, CDD is mistaken, and this recommendation is not supported by any known authority.

At this stage, CEQA requires that an EIR be prepared for the Project. Appellants have explained this requirement to the Board, most recently in their October 14, 2024, letter (see pp. 4-6). There, and in a prior July 26, 2024, submission, Appellants provided legal and regulatory authority, including case law and guidance from the California Governor's Office of Planning and Research (OPR), demonstrating that an EIR must be prepared when an approved project and adopted negative declaration have been challenged and the challenger makes a "fair argument" based on any amount of credible substantial evidence that the project *may* result in a significant environmental impact that was not analyzed in the negative declaration. (See, e.g., *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 957; *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 75; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1139; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 576; *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 370; OPR (2004), CEQA Technical Advice Series on Mitigated Negative Declarations, § II.) Appellants have made that fair argument and provided ample substantial evidence demonstrating that the Project would result in additional

significant environmental impacts not previously analyzed, including additional supplemental evidence provided with this submission (see below).

CDD has acknowledged that the MND is inadequate for numerous reasons, including, but not limited to, the omission of analysis of the construction and use of the primary access road as part of the Project; the omission of any impact discussion associated with serpentine formations and soils that occur onsite and will be disturbed by the Project; the omission of analysis of the construction and use of the emergency access road as part of the Project; the omission of floristic surveys; numerous Project design changes; etc. (See, e.g., Exh. 3, 13:29-34; 14:28-34; 15:10-16; 19:1-38; 34:7-9; 44:27-29, 37-39.) CDD also acknowledged that additional environmental review is required. (*Id.*, 13:29-34.) On this point, Appellants and the County agree. Appellants disagree, however, that the MND can simply be revised and recirculated. The window to revise and recirculate the MND closed once the Project was approved and the MND was adopted by the Planning Commission; now, if the applicant wishes to proceed with the Project, an EIR must be prepared. This will be the remedy that the court orders if the County proceeds to revise and recirculate the MND, as CDD recommends, and if the action is challenged by Appellants or any of the other many community members who have objected to the Project's inadequate environmental review and ordinance violations.

The Board should not reflexively accept CDD's recommendation here—the department has a documented history of procedural mistakes. (See, e.g., Board Findings of Fact and Decision prepared for another matter, attached hereto and included herein as **Exhibit 4**.) Moreover, CDD acknowledged that there is no clear pathway for remand to the Planning Commission and MND revision/recirculation (Exh. 3, 15:4-9; 74:4-12; 77:7-10), a fact also acknowledged by Senior Deputy County Counsel Nicole Johnson during a phone conversation on December 13, 2024, where she stated that the Board does not regularly remand, but, if it were to remand, it would need to grant the Appeal. Applicant's legal counsel likewise acknowledged there is no clear pathway for remand. (*Id.*, 14:13-28.) CDD could recall just one instance when the Board remanded a Project to the Planning Commission—the “project identified as UP 20-90 [Cresta]”—but under very different circumstances. (*Id.*, 14:31-40; 15:1-2.) With that project, there was an automatic denial and automatic appeal of the Planning Commission's decision because of unique circumstances, resulting in remand. (*Ibid.*) Here, there is no automatic denial or appeal. A quorum was assembled when the Planning Commission knowingly and unanimously approved the Project and adopted its MND, faulty as it was, leaving it up to the Board to act in its capacity as the ultimate arbiter of this Appeal.

Appellants know of no statute, guideline, rule, regulation, or ordinance provision that allows the Appeal to be mooted and then the Project be remanded to the Planning Commission and the MND be revised/recirculated, nor has CDD or County Counsel offered

any. Pursuant to section 58.35 of Article 58 of the County's Zoning Ordinance, the Board may take one of the following actions:

Within forty-five (45) days after the close of the hearing, the Board of Supervisors may sustain or overturn a decision of the Planning Commission which is being appealed, or may grant or modify a permit subject to specified conditions it imposes, or may revoke or deny a permit.

This provision allows the Board to grant or deny the Appeal (i.e., overturn or sustain the Planning Commission's approval of the Project) or modify or revoke a permit, but it does not allow an Appeal to be mooted, nor does it permit remand (see, e.g., Exh. 3, 14:13-20 [applicant's legal counsel stating that he is not aware of "anything in the County Code" that allows remand]), certainly not without first granting the Appeal, as indicated by County Counsel Johnson. Importantly, while the Appeal stayed the Planning Commission's discretionary approval to issue a major use permit for the Project "until such time as the appeal has been acted on as hereinafter set forth" (Zoning Ord., § 58.32), it did not obviate that approval. That is to say, the Project is still approved for issuance of a major use permit, despite that the permit may not yet have been issued, and the current MND will remain adopted, until such time as approval and adoption are overturned by the Board pursuant to section 58.35 of the Zoning Ordinance.

If the County wishes now to further review the Project's environmental impacts, as CDD admits must occur here (see, e.g., Exh. 3, 13:29-34), and reconsider the redesigned Project for approval, the Board must overturn the existing Project approval and grant the Appeal. (Zoning Ord., § 58.35.) Any other determination, at this juncture, creates additional legal and procedural uncertainties for all parties. If the Board further opts to remand the Project to the Planning Commission, despite no clear supporting authority, it should provide clear direction on the procedure and order the preparation of an EIR to ensure that the County complies with CEQA and to prevent further waste of public and private resources.

Notably, mooting (or denying) the Appeal while remanding to the Planning Commission is not only unlawful but also greatly prejudices Appellants, who have spent countless hours and resources on this Appeal in an attempt to protect their neighboring property rights and shared community and environmental values, and denies them procedural due process and a fair hearing. (See, e.g., *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 615; *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 558; Code Civ. Proc., § 1094.5, subd. (b).) Trapping Appellants in a loop where they are returned to "square one, with more lengthy and burdensome administrative proceedings ... and more appeals" is manifestly unfair. (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1051 [imposition of agency's excessive procedural costs constitutes violation of due process].) If Appellants must exhaust their administrative remedies by properly participating in the County's appeal process (see, e.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 527), then the County must conduct a proper process.

Additional Supplemental Documentary Evidence Further Supports the Appeal

The Cultivation Area Is Within 1,000 Feet of Public Lands, Including the Regularly Used Quarry Trail

It appears that CDD is unsure whether the Project meets the 1,000-foot Cannabis Ordinance setback requirement and unsure even of the current setback distance. (Exh. 3, 39:6-7, 13-14 [Mary Claybon: “I am intrigued to know more about a reduction from the 1000 to 200 foot set back”].) To clarify, the current Cannabis Ordinance requires all cultivation areas be setback 1,000 feet from public lands (§ 27.13), broadly defined as “lands, where, because of development or other actions, it is clear that the public is invited to use such locations as places of recreation and other destination activities, including but not limited to, hiking, birdwatching, equestrian activities, and camping” and “all State and County parks” (Ord. No. 3096, § 21-68.4, subd. (p)(31); see also § 21-68.4, subd. (at)1.v.c.) This setback requirement comports with County findings, articulated in section 21-72.1, subdivision (h), of Ordinance No. 2997 (2013)² that support separating cannabis cultivation from areas where families and children may recreate:

Cultivation of marijuana at locations or premises in close proximity of ... parks ... creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations pose heightened risks that juveniles will be involved or endangered; therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children.

Ordinance No. 2997 goes on to state that “standards are needed to limit incompatible uses on smaller lots and protect public safety and welfare.” (§ 27-72.1, subd. (p).)

As Appellants have explained in several submissions to the Board, Highland Springs Regional Park abuts the Project site property line—sharing a property line and essentially surrounding the property on several sides. Highland Springs Regional Park is a “State [or] County park[]” that qualifies as a public land under the County’s definition. Highland Springs Regional Park is regularly used by the community, including families with children. The nearest Project cultivation area to the Park boundary is approximately 150 feet away. Quarry Trail, located within the Park, runs adjacent and parallel to the Project site and also comes within approximately 150 feet of the nearest Project cultivation area. The Project simply does not meet the 1,000-foot setback requirement.

² Available at <https://www.lakecountycalifornia.gov/DocumentCenter/View/1795/Ordinance-2997---Cultivation-of-Marijuana-PDF>.

At the Project’s Planning Commission hearing on May 23, 2024, CDD mistakenly advised the Commission that the Project’s cultivation areas met the 1,000-foot setback requirement. In support of CDD’s advice, Director Turner read the definition of public lands to the Planning Commission; however, Director Turner read only a partial definition—she failing to convey to the Commission that “all State and County parks are public lands.” CDD Director Turner further stated to the Planning Commission: “We took a look at the map of the trail system of Highland Springs, and the active trails that are used or offered for the public to access are not within that 1,000-foot setback.” CDD is incorrect. Quarry Trail is an active trail, and it comes within 150 feet of the Project cannabis cultivation. CDD thus failed to consider a pivotal element of the setback requirement and misrepresented the County’s trail system to the Planning Commission, perhaps unknowingly, but a misrepresentation nevertheless. The Planning Commission then voted to approve the Project with this incorrect information and flawed advice. This critical error in and of itself warrants overturning the Commission’s approval of the Project.

There has been much discussion by the County and applicant about Quarry Trail—whether it exists, whether it is used, whether it is maintained, whether it is publicly available, etc. Appellants wish to clear up any confusion. Quarry Trail is a regularly used public trail within Highland Springs Regional Park that meets the County’s definition of public lands. The public is invited to use Quarry Trail—there are published and publicly posted maps and brochures showing Quarry Trail.³ (For evidence and more details, see Attachment D (Supplement) [pp. 3-5] to Appellants’ October 14, 2024, letter to the Board.) Quarry Trail is clearly marked by signs and well delineated, including where it runs adjacent and parallel to the Project site. (*Ibid.*) Quarry Trail is not new—it shows up on older maps used by the County and Highland Springs Trail Volunteers (HSTV), a 2012 version which is attached hereto and included herein as **Exhibit 5**⁴ (see also *ibid.*), and has been maintained by HSTV for more than 14 years pursuant to a Memorandum of Understanding (MOU) between the Lake County Horse Council—HSTV’s parent organization—and the County Water Resources Department, attached hereto and included herein as **Exhibit 6**, preceded by a copy of the email from the Water Resources Department transmitting the MOU. Further, Quarry Trail is regularly used for hiking and equestrian activities—two of the recreational activities expressly listed in the County’s definition of public lands—and is regularly traversed by families with

³ The trail maps posted in Highland Springs Recreation Area kiosks, and the trail brochures offered at the County building, were first published in the spring of 2024 by the Tribal Eco-Restoration Alliance (TERA) with the assistance of HSTV. The original intent of the TERA maps was to identify trails within HSRA that tribal elders with mobility issues could use safely to enjoy and collect culturally important plants. The initial maps did not include all the trails and had several other errors. HSTV corrected those errors in consultation with the Lake County Water Protection District (LCWPD) on December 3, 2024. LCWPD approved the corrections to the maps and gave permission for the corrected maps and brochures to be posted in the Highland Springs Recreation Area kiosks.

⁴ 2012 map (see date in lower left) prepared by HSTV in consultation with the County showing the full extent of Quarry Trail.

children. Quarry Trail is located well within 1,000 feet of the Project's cannabis cultivation areas—coming as close as approximately 150 feet from one cultivation area. (For evidence and more details, see Attachment D (Supplement) [p. 3] to Appellants' October 14, 2024, letter to the Board.) Although the Cannabis Ordinance does not require the presence of a trail for an area to be considered public lands, here, one exists.

Accordingly, the Project would violate the 1,000-foot Cannabis Ordinance setback requirement. Based on this violation alone the Board can and should grant the Appeal and overturn Project approval. The County cannot allow a Project to so blatantly violate a critical ordinance provision in a manner that threatens the public's safety and the Project's security (discussed more below). What is the point of adopting an ordinance if the County refuses to enforce compliance in the exact situation for which the ordinance was intended?

As part of its campaign to attempt to discredit and undermine Appellants, the applicant has filed a trespassing claim with the County Sheriff alleging that Appellant Tom Lajcik (and others) traversed onto Project property when hiking Quarry Trail. Mr. Lajcik vehemently denies this allegation. He has never trespassed on Project property and the applicant provides no evidence showing otherwise. Mr. Lajcik is addressing these unfounded allegations with the County Sheriff and other applicable County departments.

The Project Would Create Land Use Conflicts that Must Be Analyzed in an EIR

The trespassing allegation, albeit groundless, highlights just how proximate Quarry Trail is to the Project site and cultivation areas. Quarry Trail abuts the Project property's boundary. There are no signs or other indicators separating the public trail and surrounding public land from the private property. A hiker could easily inadvertently wander from Quarry Trail onto the Project site, creating a security risk for the Project and a safety risk for the public. Even if a trail user stays squarely on the path, because of the increase in elevation of the trail from the Project site, hikers and equestrians have a direct line of sight to the cultivation areas. There are inherent safety and security concerns when community members, including families with children, recreate so close to a fully visible, large-scale cannabis cultivation operation. As stated by the County: "[c]ultivation of marijuana at locations or premises in close proximity of ... parks ... creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles ... standards are needed to limit incompatible uses." (Ord. No. 2997, § 27-72.1, subds. (h), (p).) Certainly, the Board can agree that this kind of proximity and visual connection between a regularly used public trail and cannabis cultivation creates a serious land use conflict that the 1,000-foot setback serves to prevent.

The County, in its environmental review of the Project, must disclose the "physical environmental conditions ... from both a *local* and regional perspective." (Cal. Code Regs., tit. 14 [CEQA Guidelines], § 15125, subd. (a)(1), emphasis added.) "An existing conditions baseline shall not include hypothetical conditions ... as the baseline." (*Id.*, subd. (a)(3).)

Community use of Quarry Trail is actual, not hypothetical, and must be acknowledged and discussed in an EIR if the Project is to proceed. What is hypothetical is the applicant's insistence that the Quarry Trail does not exist near the Project site because it is not formally approved⁵ by the County, despite that it appears on published maps and public signage and is utilized regularly by the community. (For more details, see Appellants' October 16, 2024, letter to the Board, pp. 9-10.)

The Project Would Result in Aesthetic Resource Impacts that Must Be Analyzed in an EIR

As explained, the Project's cannabis cultivation area is within direct line of sight of the regularly used Quarry Trail. Where trail users currently have views of relatively undeveloped open space land from publicly accessible vantage points, under the Project those views would be eliminated and replaced with views of (and odors associated with) mass cannabis cultivation. This change would substantially degrade the existing visual and aesthetic character of Quarry Trail and its surroundings. This aspect of the Project, amongst others, undermines one of the key priorities of Vision 2028 that this Board approved: "Market Lake County as a premier California outdoor recreation destination."⁶

The MND does not account for this local view nor analyze how the Project would impact it. (MND, p. 19.) CEQA, under these circumstances, requires that this impact be analyzed in an EIR. (See CEQA Guidelines, appen. G, § I; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 937-939 ["As on other CEQA topics, the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic"; "[a]n EIR must be done on the proposed project"].)

The Project Would Exacerbate Hazards Associated with an Existing Condition by Disrupting Serpentine Formations and Soils that Must Be Analyzed in an EIR

The County and applicant now acknowledge that serpentine formations and soils exist on the Project site (see, e.g., Exh. 3, 44:38-41; 45:1-7), despite the MND incorrectly stating otherwise (MND, p. 44). As explained in prior Appellant submissions to the Board, significant impacts associated with the disruption of serpentine formations and soils located on the Project site must be addressed in an EIR. These impacts include the release of serpentine dust and the potential release of naturally occurring asbestos into the air during Project construction and operation and associated effects to human health and the adjacent Highland Springs Reservoir, the potential destruction of special-status plant species that are

⁵ Notably, nowhere in the County's definition of public lands does it say that a trail must be formally approved by the County. Notwithstanding, the County's MOU with HSTV to maintain Quarry Trail evidences County involvement with and awareness of the trail.

⁶ See <https://www.lakecountyca.gov/169/Vision-2028>.

known to occur within serpentine formations and soils,⁷ and impacts to the serpentine formations itself, as a sensitive habitat.

Per the applicant, the existing use of the Project's primary access roadway by hikers and equestrians currently causes the harmful release of serpentine dust into the air. (Exh. 3, 28:17-23 ["Well, when you walk or run horses on a road like this and kick up the dust, people who are immediately inhaling the dust are the people who are highest danger."]; see also *id.*, 29:23-41; 30:15-31.) Without proper mitigation during construction and operation, such as adequate road surfacing, the Project will exacerbate this existing condition, specifically for Project employees, but also for the community. While "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users ... when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future ... users." (*Cal. Bldg. Industry Assoc. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 377-378.) This impact must be analyzed in an EIR.

The Project Would Result in Impacts to Wetlands and Watercourses that
Must Be Analyzed in an EIR

In the August 30, 2024, meeting between the applicant and CDD, the applicant represented to CDD that a wetland delineation is not required (Exh. 3, 40:12-23; 41:17-18), but that is incorrect. The Central Valley Regional Water Quality Control Board (Regional Water Board), after being contacted by Appellants regarding the Project's impacts to wetlands and waterways that were not considered in the MND, required the applicant to redesign the Project to avoid these features. (*Id.*, 41:18-44:2.) The Regional Water Board is now requiring a full wetland delineation using U.S. Army Corps of Engineers methodology, as explained in

⁷ It is significant that, in a letter to Appellants, attached hereto and included herein as **Exhibit 7**, Project biologist Pinecrest Research Corporation confirms that "the road leading from Highland Springs Road to APN 007-006-35" was not studied, thereby any special-status plant species therein were likewise not studied. If the applicant has since had the access road parcels surveyed for special-status plant species, then Appellants would be interested to review the results. In any event, those surveys likely would have occurred outside of the bloom seasons for serpentine-specific plant species. CDD contends that two floristic surveys within the appropriate survey season for the special-status plant species (when plants are most likely to bloom) must be prepared (Exh. 3, 19:1-3), despite the applicant's contention that no special-status plant species exist within the serpentine area and its egregious suggestion that Karen Sullivan, a respected local plant expert engaged periodically by the County for her local expertise, may have fabricated evidence of special-status plants that naturally grow onsite (*id.*, 20:24-26 [Autumn Karcey: "I wouldn't put it past her to plant something up there and take a picture of it and walk away. Whatever she says, not valid."]). It is best practice, however, to perform three floristic surveys, "e.g., in early, mid, and late-season ... to capture the floristic diversity at a level necessary to determine if special status plants are present." (California Department of Fish and Wildlife (Mar. 20, 2018), *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*, pp. 5-6, available at <https://wildlife.ca.gov/Conservation/Survey-Protocols>.) For serpentine, this timing corresponds to approximately March-April (early), April-May (middle), and May-June (late).

a recent email to Appellants, attached hereto and included herein as **Exhibit 8**. In this email exchange, Appellants explain to the Regional Water Board that, even after a Project redesign, the Project would encroach on and impact wetlands and/or waterways, as evidenced in part by aerial imagery prepared by a local expert. This imagery was included in Attachment B (pp. 1-5) to Appellants' October 14, 2024 submission to the Board, and is attached hereto and included herein for the Board's convenience as **Exhibit 9**. The Regional Water Board clearly agrees with Appellants that more investigation and analysis of potential significant impacts to onsite wetlands is required. Thus, contrary to a statement made by the applicant to CDD regarding communications with the Regional Water Board, Appellants have not been "spreading a lot of misinformation." (*Id.*, 68:1-2.) In actuality, Appellants have been appropriately communicating with the Regional Water Board about a critical concern to the community and, clearly, the state. These impacts to wetlands and/or waterways must be addressed in an EIR.

The Project Would Increase Wildfire Ignition Risks that Must Be Analyzed in an EIR

Pursuant to the recent court holding in *People ex rel. Bonta v. County of Lake* (2024) 105 Cal.App.5th 1222, a case challenging the County's approval of the Guenoc Valley Mixed-Use Planned Development Project, CEQA environmental analysis "must sufficiently discuss the project's potential adverse effect of human-cause ignitions and analyze in some detail how the project's design (or mitigation measures) alleviates such risks" for areas located within State Responsibility Area very high fire hazard severity zones. (*Id.*, at p. 1235.) The Project would be located within one such area (MND, p. 66) and would introduce activities that would increase wildfire ignition risks during construction and operation, including the use of spark-producing construction equipment" (*id.*, p. 67), the use of operational equipment (*id.*, p. 19), and daily operational truck traffic (*id.*, p. 59). In the last three years, there have been two fires on Highland Springs Road—both at permitted cannabis grow sites. One was at Highland Springs Road and Rodello Road, and the second was at 9200 Highland Springs Road. Both fires ultimately were contained but the one at Rodell Road resulted in the loss of structures. These fires demonstrate that cannabis cultivation can result in increased ignition risks.

Exacerbating wildfire risks is the current "Local State of Emergency due to Pervasive Tree Mortality" declared by the Board after years of "extreme drought, groundwater depletion, and multi-species bark beetle infestation led to widespread tree mortality across the county."⁸ This tree mortality has created "ghost forests"—entire stands of dead and dying trees and copious amounts of deadfall waiting to ignite. One of these ghost forests is located directly between the Quarry Trail and the cultivation site within Highland Springs Regional Park. The fuel load there is enormous. The forest floor is littered with dead logs blown over in storms in 2023 and 2024. Google Earth imagery of that area of the Park taken in 2023

⁸ See <https://www.lakecountycal.gov/1748/Tree-Mortality-Program>.

shows a copious number of trees blown over in the same direction on County-owned parcels. The MND does not adequately address this existing fuel source or human-caused ignition sources and associated wildfire risks and impacts, but any EIR prepared for the Project should.

The Status and Use of the Primary and Emergency Access Roads and the Project's Processing Component Must be Determined and Properly Analyzed in an EIR

Per CDD, "it is a requirement for the [P]roject that it has direct County-maintained road access or a recorded deeded easement." (Exh. 3, 22:22-24 [Mary Claybon].) The primary access road described in the MND and shown in all subsequent materials reviewed by Appellants has yet to be verified as a legitimate access point for the Project. Per CDD, the County has "lost a large part of [its] documents and historical data," so it is unknown how the County and applicant will be able to determine road access. (*Id.*, 27:9-16, 28-35; see also 31:26-30; 46:36-37; 48:28-30.) Indeed, much of the August 30, 2024, meeting between the applicant and CDD was spent discussing the many uncertainties surrounding this access road. The Project should never have been approved without reliable access, and the approval should be overturned for this additional reason.

In light of these uncertainties, CDD and the applicant contemplated another major Project redesign where Amber Ridge Court is used as primary access for the site, instead of for emergency access only, as was previously proposed by the applicant (although not analyzed in the MND, in violation of CEQA). (Exh. 3, pp. 49-50.) Both parties admit that the use of Amber Ridge Court would increase traffic through residential areas and is "going to upset the neighbors more." (*Id.*, 49:22-33.) This is yet another major uncertainty of the Project presenting potentially significant impacts that would need to be studied in an EIR. This dramatic change also calls into question the stability of the Project's description, providing another reason why an EIR is required here. An "unstable project description draws a red herring across the path of public input." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 198; see also *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454 ["only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives"].)

Adding to the instability of the Project's description is the applicant's withdrawal of its application for a Cannabis Processor License. At the August 30, 2024, meeting between CDD and the applicant, the applicant asked about a variance for the Cannabis Processor License in order to process cannabis onsite without having direct access to Highland Springs Road, which would ordinarily result in a violation of the County Cannabis Ordinance, section 27.13(aaa)4.i, when a Cannabis Processor License has been issued but a project will operate cannabis processing facilities on a parcel that does not "front and have direct access to a paved State or County maintained road" Although both the applicant and CDD

acknowledged the County's requirement for a Cannabis Processor License for processing cannabis onsite and constructing a processing building (Exh. 3, 51:1-7, 21-41; 52:8-41), CDD proceeded to claim, confusingly and without offering any supporting authority, that a cannabis operation can include a processing building without obtaining a Cannabis Processor License. (*Id.*, pp. 57-61.) This makes no sense. CDD's interpretation contravenes the plain language of the County's Cannabis Ordinance, which, as explained in Appellants' October 16, 2024, letter to the Board (pp. 10-11), requires a Cannabis Processor License to construct a processing building, one of which still appears on the most recently published site plans for the Project.

Until a legitimate primary access road for the Project has been identified, verified, and fully analyzed in an EIR, and until the County enforces the requirements in its Cannabis Ordinance that the Project obtain a Cannabis Processor License and ensure that processing activities are conducted on a parcel that fronts and has direct access to Highland Springs Road, the Project cannot be approved. Accordingly, the Board must grant the Appeal and require an EIR be prepared, if the Project is to proceed.

**The Planning Commission Abused Its Discretion in Making
Use Permit Findings for the Project**

County Zoning Code, chapter 21, section 51.4 requires the Planning Commission to make certain findings when approving a major use permit, as it did for the Project. The required findings include:

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.
2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.
3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.
4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.
6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.

None of these findings can be made for the Project, as demonstrated by the totality of the substantial evidence and legal authority submitted to the Board by Appellants: (1) the Project would be detrimental to the health and general welfare of neighbors to the Project site, and of the County, in regard to airborne serpentine soil, wildfire risks, safety issues with proximity of public lands to cannabis cultivation, etc.; (2) the Project site is not adequate in location to accommodate the type of use approved because it abuts public lands; (3) Highland Springs Road is not reasonably adequate to safely accommodate Project truck traffic; (4) groundwater supply may not be adequate to serve the Project nor may there be enough police protection to serve the Project given its proximity to a regularly used public trail and the County's findings that such proximity increases the likelihood of criminality; and (5) the Project does not conform to at least one provision of chapter 21 of the Code—the one being discussed here. The Planning Commission's use permit findings⁹ are not supported by substantial evidence and therefore result in an abuse of discretion. (See, e.g., *Georgetown Preservation Society, supra*, 30 Cal.App.5th at p. 371.) The Board must correct this abuse of discretion by overturning the Planning Commission's decision and granting the appeal.

If you have questions, please feel free to contact Casey Shorrock at (916) 446-7979 or cshorrock@somachlaw.com.

Sincerely,

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⁹ Refer to CDD's May 23, 2024, staff report to the Planning Commission, pages 23-24, for the major use permit findings.