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October 11, 2024

Lake County Board of Supervisors
255 N Forbes Street
Lakeport, CA 95453

Re: Response to Appeal of Planning Commission's Approval of Highland Farm Use Permit (UP 20-96) and Adoption of Mitigated Negative Declaration (IS 20-116)

Honorable Chair and Members of the Board:

This firm represents Highland Farms, LP ("Highland") in the above-noted matter. The Project at issue in this appeal generally consists of an application for numerous outdoor cannabis cultivation licenses, several mixed-light cannabis cultivation licenses, and a cannabis distribution license (collectively referred to herein as the "Project"). On May 23, 2024, the Lake County ("County") Planning Commission ("Planning Commission") approved the Project and adopted the Initial Study and Mitigated Negative Declaration ("MND"), and now that approval is being appealed to the Board.

Introduction and Project Background

Highland is part of a group of cannabis projects located in the County that strive to cultivate, produce, process, and manufacture world-class cannabis and cannabis products. This group has worked closely with the County for many years, and proudly provides high paying skilled jobs for local employees, while raising awareness of the County as a location for premier cannabis operations. The ethos of this group, including Highland, is to produce the cleanest and most environmentally friendly products and the Project proponents are keenly aware that this requirement begins at the farm and is therefore committed to operating in the most conscientious manner possible.

Highland originally submitted the Project application in 2021. In summary, the Project will occur in rural Lake County and includes seven parcels, although Project operations will only occur on three parcels (collectively the seven parcels are referred to as the "Property" while the three parcels containing cannabis cultivation and Project operations are referred to as the "Project site"). In fact, the Property includes over 500 acres, but Project site will only utilize approximately 27 acres which is only about five percent of the entire Property. The remaining Property will be maintained in its natural state. The Project includes cannabis cultivation, but also includes the construction of structures associated with cannabis processing and distribution, ancillary outbuildings and feature, and upgrades to the roads that lead to the Project.

The original Project application included all items required by the County Code. The County, through the Community Development Department ("CDD") asked for additional materials, clarifications, and

studies. For several years, Highland worked with CDD staff to address concerns, conduct additional studies, and modify the Project parameters in order to address concerns and comments raised during this process. After several years, the Project came before the Planning Commission for approval, which was granted on May 23, 2024.

On May 28, 2024, opponents to the Project, Thomas Lajcik and Margaux Kambara (collectively “Appellants”), appealed the Planning Commission’s approval of the Project’s use permits, and the adoption of the MND. The Appellants generally alleged that the County violated the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) (“CEQA”), violated County ordinances, and violated state law in approving the Project.

Subsequently, on July 26, 2024, Appellants, through their attorneys of record, submitted a 287-page letter further clarifying their opposition to the Project (“July Letter”).

The main thrust of the Appellants’ July Letter is that the County violated CEQA through the Project approval. Primarily, the argument is that the County failed to properly analyze, assess and mitigate “significant environmental impacts” as defined in CEQA. There are two parts to the Appellants’ CEQA claims.

1. First, Appellants raise a procedural argument alleging that the County failed to properly analyze the whole of the Project either by not addressing certain geographic portions of the Project or by failing to analyze impacts, such as to certain species or the neighboring individuals.
2. Secondly, the Appellants argue that there is a “fair argument” based on the whole of the record, that there is “substantial evidence” that the Project will result in “significant environmental” impacts.

Due to these alleged CEQA violations, the Appellant argues that an Environmental Impact Report (“EIR”) is required.

This correspondence responds to the arguments raised in the July Letter.

Due to the length and the detail of the Project MND, the supporting documents, and the July Letter, this correspondence strives to organize all the information in a manner in that easily refutes Appellants’ arguments in the same order in which the July Letter presents its arguments. To the extent possible, this correspondence will maintain shortforms, citations and acronyms, so that it can easily be referenced against the July Letter.

This correspondence will begin with a general introduction to the legal issues raised in the July Letter, and then move sequentially through the various sections of the July Letter discussing each section in



turn. Through this correspondence, we will demonstrate that the arguments and contentions raised in the July Letter are legally deficient, and that the County acted appropriately in approving the Project and adopting the MND.

CEQA Principles

CEQA is a landmark environmental statute that requires lead agencies, here the County, to prepare environmental analysis of discretionary projects, in order to identify, mitigate or avoid significant effects to the environment. (See Pub. Res. Code § 21002.1.) The “heart” of CEQA is an EIR, which is intended to identify, mitigate, or avoid significant environmental impacts, and propose alternatives to a project. (*Ibid.*)

However, a lead agency is not required to prepare an EIR for every discretionary project. A lead agency **must** prepare a Negative or Mitigated Negative Declaration if “[t]he initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment” or the initial study identifies potentially significant effects, but the proposed mitigated negative declaration would avoid or mitigate these effects to a point where clearly no significant effect would occur. (California Code of Regulations Title 14 § 15070(a),(b) (emphasis added).)¹ In other words, a lead agency is required to prepare a mitigated negative declaration unless there are significant environmental impacts that cannot be mitigated to a less than significant level. This is the case here.

When challenging the decision to prepare a mitigated negative declaration, opponents must present a “fair argument” that “substantial evidence” in the record indicates that there a project may cause “significant impacts.” (See CEQA Guidelines § 15064(f).) “Substantial evidence” is specifically defined within CEQA, the CEQA Guidelines, and associated case law. “Substantial evidence” consists of:

- ☐ Facts;
- ☐ Reasonable assumptions predicated on facts; or,
- ☐ Expert opinions supported by facts.

(CEQA Guidelines § 15384(b).)

Substantial evidence **cannot be**:

- ☐ Argument;
- ☐ Speculation;
- ☐ unsubstantiated opinion or narrative; or,
- ☐ inaccurate or uncredible evidence.

¹ The CEQA Guidelines are located at California Code of Regulations Title 14, section 15000 *et seq.* and will hereinafter be referred to and cited as the “CEQA Guidelines.”



(CEQA Guidelines §§ 15064(f)(5); 15384(a).)

Substantial evidence also cannot be:

- Personal observations on technical matters. (See *Protect Niles v. City of Fremont* (2018) 25 Cal. App. 5th 1129, 1139.)

Likewise, a “significant impact” is defined as:

- “...a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.”

(CEQA Guidelines § 15382.)

Another important note is that public controversy over an alleged environmental impact cannot, in itself, require the preparation of an EIR, nor can the “mere possibility” of adverse impact on a few people as opposed to the environment. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 929.)

An initial study and mitigated negative declaration does not need to disclose sufficient evidence to support each and every one of its findings, otherwise an initial study would become a “full-blown” EIR and the possibilities of a mitigated negative declaration would be redundant. (See *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1378.) Even if the initial study fails to cite evidentiary support for its findings, opposition to the initial study must demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact. (*Id.* at p. 1379.)

These CEQA principles are critical to keep in mind when reviewing Appellants’ arguments relating to the MND and the insistence of the preparation of an EIR. In many instances, Appellants alleged fair arguments are unsubstantiated, nonexpert opinions, that do not meet the requirements of the fair argument standard. Moreover, allegations that the MND did not analyze certain aspects of the Project are equally unfounded, as there are a multitude of studies, surveys, and documents supporting the County’s determination to adopt the MND.

With these CEQA principles in mind, this letter now will turn to each of the Appellants’ argument and provide responses. The July Letter contains an introduction with general CEQA principles, and summaries of arguments that are more fully described in Attachments A through H. This correspondence will first address some arguments in the July Letter’s introduction, and then will address the information in each of the Attachments. In some instances, each of the Appellants’



comments will be addresses individually, and in some instances, Appellants' arguments will be grouped together and addressed in a single response.

* * *

The MND Identifies, Assess and Mitigates Significant Environmental Impacts of the Project

The July Letter lists several impacts which it alleges the MND does not identify, assess, or mitigate. These impacts are:

- ☐ Serpentine soils;
- ☐ Special status species;
- ☐ Wetlands;
- ☐ Groundwater and water supply;
- ☐ Cumulative traffic and Roadway Safety;
- ☐ Noise;
- ☐ Odor; and,
- ☐ Recreation.

(July Letter at pp. 2-3.)

In general, the July Letter alleges that the MND fails to either study the particular impact, failed to properly assess the impact, and/or failed to mitigate the impact. The July Letter than contains several Attachments with particular arguments for each impact. This response, therefore, will address each of these arguments in its discussion of the respective Attachment below. However, as a preliminary note, the MND does, in fact and contrary to Appellants' arguments, properly address and mitigate each of the impacts listed above.

An EIR Is Not Required

The July Letter argues that based on the facts presented, the "fair argument" standard is met, and that an EIR must be prepared. (July Letter at pp. 4-6.) This is simply not the case.

As described above, and conspicuously absent from the July Letter, and MND ***must*** be prepared when there are either no significant impacts to the environment , or any potential impacts can be mitigated to a less than significant level. (CEQA Guidelines § 15070(a),(b).) The July Letter Attachments do not contain substantial evidence that there will be significant impacts on the environment.



The July Letter goes on to argue that there are not feasible mitigation measures or alternatives to lessen the environmental impacts, citing CEQA Guidelines sections 15126.4 and 15126.6, as well as Public Resources Code section 21002. (July Letter at pp. 5-6). Public Resources Code section 21002 is a general discussion of mitigation, and CEQA Guidelines sections 15126.4 and 15126.6 apply to the preparation of an EIR, not an MND. In fact, an MND is not required to propose alternatives at all. (See CEQA Guidelines § 15071.) It is unclear if Appellants argue for alternatives because of a fundamental misunderstanding of CEQA, or in order to confuse the discussion of the MND. As for mitigations, as described more fully below in this response, there are adequate Project mitigations that reduce potential impacts to less than significant levels.

The July Letter also argues that there are cumulative impacts, and that the Department of Cannabis Control (“DCC”) as a responsible agency under CEQA, requested a discussion of cumulative impacts. (July Letter at p. 6.) Addressing the DCC comment letter, contrary to the claims of the Appellants, the DCC did not, with any particularity recommend the preparation of the EIR. (See Agency Comments at pdf pp. 27-30.) Moreover, The July Letter, when discussing cumulative impacts, does not with any particularity discuss which cumulative impacts would cause significant impacts, the July Letter simply concludes “[h]ere, the Project would result in cumulatively considerable impacts (i.e. traffic and roadway safety) and adverse impacts to human health (i.e., airborne asbestos from serpentine soils), this the County must require an EIR...” (July Letter at p. 6.) This is simply a conclusory statement that does not meet the fair argument standard, and is not substantial evidence. (See CEQA Guidelines § 15064(f)(5).)

The Project Does Not Violate County Ordinances and State Regulations

The July Letter goes on to state that the Project would violate certain County ordinances and state laws, and cannot be approved. This is also untrue. Each of these claims is discussed below.

Lake County Cannabis Ordinance, Article 27, section 27.13.

Article 27, section 27.13(at)1.v

Appellants correctly cite to County Ordinance 27.13(at)- which does indeed require cannabis cultivation be more than 1,000 feet from “public lands.” (July Letter at p. 6.) However, the claim that Highland Springs Regional Park’s boundaries prohibit cannabis cultivation is misplaced. By failing to properly analyze the definition of “public lands” for purpose of this County Code provision, Appellants confuse the law and misapply this County Code provision. “Public lands” for purpose of Article 27. In 2020, the Lake County Board of Supervisors enacted Ordinance 3096, which clarified the term “public lands” and stated:

For purposes of setback limitations on commercial cannabis cultivation, 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, bird-watching, equestrian activities, and camping. All State and County parks are public lands.

As discussed further in response to Appellants' Attachment D, the Project cannabis cultivation is well over 1,000 feet from Highland Springs Park, and there are no trails or destinations within 1,000 feet that the public use as a destination for recreation, as established in Ordinance 3096 above. Appellants' argument that the Project cannabis cultivation is within 1,000 feet of "public lands" does not represent the most current County requirements, and therefore must be disregarded.

Article 27, section 27.13(aaa)4.i

Appellants' next argument pertains to the requirements that processing permits require facilities to "front and have direct access to a paved State or County maintained road." This is correct. However, Highland is abandoning its processing permit application, as the processing permit application was made in error. The cultivation permits allow for the "processing" of cannabis, such as drying and trimming, so a cannabis processing permit is not required. (See Lake County Code section 27.13(at)(1)(ii)(k).) The frontage requirements for a processing permit are not likewise required for cultivation permits, so Appellants' argument on this point is moot. Additionally, as discussed elsewhere in this response, Highland meets the road and access requirements for cultivation permits.

State Minimum Fire Safe Regulations

Appellants' next argument is that the Project does not meet the minimum dead end road length for the state Fire Safe Regulations. This argument is addressed further below in response to Attachment F. However, in summary, the Project does not exceed the state Fire Safe Regulations road length.

State Water Resources Control Board Cannabis Cultivation General Order

Appellants' next argument is that the Project violated the State Water Resources Control Board Cannabis Cultivation General Order ("General Order") because cultivation areas are within 100 feet of seasonal wetlands. This argument is addressed further below in response to Attachment G, however, in summary the Project maintains all Project components with a 100-foot setback from all identified wetlands.

* * *

With the general responses to the July Letter introduction addressed above, this response will; now address each of the July Letter Attachments. Where possible and convenient, this response will maintain citations, although all of the Attachment's figures are omitted for formatting.



HIGHLAND'S RESPOSNE TO ATTACHMENT A
SERPENTINE FORMATIONS AND SOIL ON THE PROJECT SITE

In order to facilitate review of the Appellants' arguments and contention from the July Letter, the following table sets out these arguments or contentions, and provides Highland's response in the adjacent column.

Appellants' Statement	Highland's Response
<p>A. The MND Incorrectly Claims that Serpentine Formations and Soils Do Not Exist on the Project Site</p> <p>1. The California Environmental Quality Act (CEQA) Initial Study and Mitigated Negative Declaration (MND) for the Highland Farms cannabis farm (Project) incorrectly claims that the Project site and area do not contain "any identified areas of serpentine soils or ultramafic rock, and risk of asbestos exposure during construction is minimal." (MND, pp. 23, 44.) In actuality, a large portion of the access road through County property that is included as part of the Project contains serpentine formations and soils, discussed below.</p>	<p>The MND does correctly state that the Project site does not contain any identified area of serpentine soil. The statement that the access road contains serpentine formations is a conclusory statement, and not substantial evidence as it contains no facts supporting its claim. (CEQA Guidelines § 15064(f)(5).)</p>
<p>B. The Project Site Includes an Access Road through County-Owned Parcels, and the Access Road Contains Serpentine Formations and Soils.</p> <p>1. As its primary access, the Project would use an access road from the proposed cultivation area to Highland Springs Road. (MND, p. 4 ["The Property is accessed from Highland Springs Rd. by a private access roadway."]; see also May 23,</p>	<p>This is correct and contains citations from the MND and staff report.</p>

<p>2024, Planning Commission Staff Report [PC Staff Report], p. 7 [“The Property is accessed from Highland Springs Rd. by a private deeded access roadway.”].)</p> <p>2. The Project would include road improvements (grading, graveling, etc.) on a “portion of a deeded access road (1,057 linear feet) that connects Highland Springs Rd. to the Property entrance (located across [County-owned] APNs 007-043-04 and 007-043-01)” (PC Staff Report, p. 6; MND, p. 3.)</p>	
<p>3. These County-owned parcels (007-043-04 and 007-043-01) are a part of the Project site, specifically the portions containing the access road where road improvements would be made as part of the Project. (See MND, pp. 5 [listing “roadway improvements” as part the Project’s “Stage 2”], 6 [fig. 3, Stage 2 Site Plan, showing affected roadways including access road]; PC Staff Report, p. 6-7 [“A portion of the deeded access road (1,057 linear feet) that connects Highland Springs Rd. to the Property entrance (located across APNs 007-043-04 and 007-043-01) would be graded and improved”; “The Proposed Project also includes the improvement of the existing gravel access road.”].)</p>	<p>Highland disputes the claim that the County-owned parcels are part of the “Project site” which is not defined. The road improvements are part of the Project as described in the MND and the preliminary civil plans in the Project application submission in a document titled “Combined Roadwork and Culvert Volumes.”</p>
<p>4. Within and around a portion of this access road and its right-of-way, where roadway use and construction would occur, serpentine formations and soils exist. The 2020 Biological Resources Assessment (BRA) prepared for the Project by Pinecrest Environmental Consulting (PEC) (see,</p>	<p>Highland responds that the MND page 28 cited by Appellants does not contain any information relating to serpentine soils, but does confirm biological surveys throughout the Project site.</p>



<p>e.g., MND, p. 28) states that “there is a small amount of serpentine mapped onsite in the far southeast corner near Highland Springs Road, and offsite to the northwest (Appendix F).” (BRA, pp. 9, 12, 13 [PDF file, 1 pp. 11, 13, 14].) Appendix F of the BRA (p. 55 [PDF file [footnote omitted], p. 56]) contains a Serpentine Soil Map showing serpentine formations near the entrance of Highland Springs Road within the two County parcels where road improvements for site access would occur.</p>	<p>Highland agrees that the BRA does note “[t]here are no serpentine soils onsite, however there are some serpentine soils near the west bank of Highland Springs Reservoir, and also offsite to the northwest approximately 0.25 miles.” (BRA p.12.)</p> <p>Highland also agrees that BRA Appendix F does show some serpentine containing soils near Highland Springs Reservoir. However, this does not indicate that serpentine soils containing asbestos occur on all roads used by the Project, or that Project use of the roads would or could disturb serpentine soils and/or lead to airborne asbestos, and thus cause a significant impact. These, therefore, are conclusory statements that cannot be substantial evidence. (CEQA Guidelines § 15064(f)(5).)</p>
<p>5. Lake County’s Parcel Viewer shows a large swath of serpentine soils across parcels 007-043-04 and 007-043-01, specifically overlapping the proposed location of access road construction and use included as part of the Project. See Figure A1 below for a screenshot of the Viewer—the green areas represent the serpentine soils data layer.</p> <p>[Footnote and Figure A1 omitted]</p>	<p>Highland responds that the Lake County Parcel Viewer, using the serpentine soil layer, does indicate that there may be serpentine soils near the intersection of Highland Springs Road and the Project access road, but potentially only on APN 007-043-01 and not on the Project access road on APN 007-043-04 as claimed by Appellants. However, these layers are based on USDA surveys, which Appellant themselves note in a subsequent comment may not be accurate and are “generalizations of major soil types in the area.” (See July Letter Attachment A, p. 3.)</p>
<p>6. Additional evidence exists of serpentine soils at this location. The 2022 Biological Memorandum (BM) prepared by AES-Montrose (AES) for the Project identifies that “[l]eather oak-chamise-Yerba Santa chaparral occurs within the Project Site where road improvements are proposed.” (BM, p. 8, fig. 3 [PDF file, p. 88].) Leather oak is one of the strongest indicator species for serpentine—indeed it primarily grows in the wild in only serpentine soils. (See, e.g.,</p>	<p>Highland agrees with the statement and citation from the 2022 Biological Assessment prepared by AES-Montrose (“AES”).</p> <p>Highland responds that the citations provided by Appellant also indicate that these species discussed in this comment occur outside serpentine soils: “[i]n the wild, <i>Quercus durata</i> usually grows in serpentine soils, often with manzanita in the chaparral of the Coast Ranges from Klamath to San Luis Obispo... In the garden this plant does not require serpentine soil.” (July Letter</p>



<p>California Native Plant Society [CNPS] (2024), Leather Oak, <i>Quercus durata</i>, available online at https://calscape.org/Quercus-durata-(Leather-Oak), 3 EXH003 et seq.; id., Marin Chapter (2024), December Plant of the Month, <i>Quercus durata</i>, Leather Oak, available online at https://cnpsmarin.org/december-2012-plant-of-the-month/, EXH-005 et seq.)</p>	<p>EXH003.)“Leather oak, <i>Quercus durata</i>, is common and <i>nearly always</i> [but not always] found on serpentine-derived soils.” (July Letter EXH0045).</p> <p>These citations merely show that some plants noted near the intersection of Highland Springs Road and the Project access road sometimes grow in serpentine containing soils. There is no indication that this is the case here, nor is there any indication that this demonstrates that these soils contain asbestos that can be disturbed a cause significant environmental impacts. Again, these comments are speculation about soil types and composition that have no factual support, and cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this comment and indicate these species do not exist where Appellants claim they do.</p>
<p>7. Furthermore, whiteleaf manzanita indicates the presence of serpentine soils and it also was identified on the privately owned parcels where road improvements are planned. (BM, p. 8 [PDF file, p. 88].)</p>	<p>Highland responds by agreeing with the citation to the Biological Memorandum, but repeats its comment directly above. Again, these comments are speculation about soil types and composition that have no factual support, and cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>8. More than half of the 1,057 linear feet of roadway located on County land to be improved and used by the Project crosses serpentine formations and soils. Appellants measured the distance of the access road on County property containing serpentine formations and soils using a measuring wheel and found that approximately 606 feet of the road crosses serpentine soils (see Figure A2).</p>	<p>Highland initially responds by disputing the 1,057 and 606 linear feet claimed by Appellants as these do not reference the civil plans or the MND, and were not conducted by an engineer or anyone with an engineering background, nor an is there any indication anyone with expertise in serpentine soils participated. Highland further responds by noting that Figure A2 is an enlarged version of the Lake County Parcel Viewer with a serpentine soil filter applied. Much like the above comment, this parcel viewer is based on</p>



<p>[Figure A2 omitted]</p>	<p>USDA data, which as the Appellant states may not be accurate and are “generalizations of major soil types in the area.” (See July Letter Attachment A, p. 3.) As such, these are unsubstantiated statements regarding soil type and composition, without factual support and cannot be substantial evidence may not be accurate and are “generalizations of major soil types in the area.” (See CEQA Guidelines § 15064(f)(5).)</p>
<p>9. This portion of the Project site also contains special-status species found in serpentine formations and soils that would be disturbed by the project, discussed in Attachment B.</p>	<p>Highland responds that this comment is conclusory, and cannot be substantial evidence, and to the extent that there are alleged special-status species in the area, this comment will be further addressed in response to Attachment B.</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this comment and indicate these species do not exist where Appellants claim they do.</p>
<p>10. Moreover, additional areas on the Project site likely contain serpentine soils. The biological reports prepared for the site improperly interpreted the USDA Soil Survey Maps. Soil survey maps referenced by PEC are generalizations of the major soil types in each area but do not include every type of soil within a particular sector. (See Figure A3, USDA Warning Message Describing Limitations of the Survey Maps.) USDA’s warning states:</p> <p>“Warning: Soil Map may not be valid at this scale ... Mapping of soils is done at a particular scale. The soil surveys that comprise your AOI were mapped at 1:24,000. The design of map units and the level of detail shown in the resulting soil</p>	<p>Highland response noting its above response relating to the accuracy of USDA data.</p> <p>Appellants conclude that, based on potential inaccuracies in soil classifications, it is likely that serpentine soils may be disturbed, and further studies are required. Using Appellants’ own logic, it is equally conceivable that there is no serpentine soil on the Project site, and therefore no potential impact. Regardless, as outlined in the MND and associated documents, there is not serpentine soil on the Project site.</p> <p>Additionally, the County does not require soil samples as part of the application process.</p>



<p>map are dependent on that map scale. Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale ...”</p> <p>Therefore, the absence of a soil type in a USDA soil map section does not mean that soil type will not be found in that section. PEC’s misinterpretation of the information contributed to the erroneous conclusion that serpentine soils do not exist in the Project area. (See BRA, p. 9 [“There are no special soil types such as serpentine or hardpan in the vicinity of the proposed cultivation areas, although there is a small amount of serpentine mapped onsite in the far southeast corner near Highland Springs Road, and offsite to the northwest.”] [PDF file, p. 10].) Given that 108,000 cubic yards of material are planned to be disturbed in other areas that likely include serpentine soils, additional investigation is required. (PC Staff Report, p. 8.)</p> <p>[Figure A3 omitted]</p>	<p>Further, alleging potential inaccuracies in surveys and studies conducted by experts is speculation, with no factual basis, and cannot be substantial evidence supporting a fair argument. (See CEQA Guidelines § 15064(f)(5).) Additionally, calls for further investigation is not substantial evidence, much less substantial evidence of an adverse impact. (<i>Parker Shattuck Neighbors v. Berkeley City Council</i> (2013) 222 Cal. App. 4th 768, 786.)</p>
<p>11. Despite the many discussions of serpentine soils throughout the MND and its biological studies (the word “serpentine” is included at least 76 times in the Project’s biological studies), not once was the existence of serpentine soils onsite identified and analyzed. At the Planning Commission hearing on the Project, the applicant’s consultant was adamant that there are no serpentine soils onsite and that the issue was extensively studied. Yet,</p>	<p>Highland responds and concurs that the word “serpentine” is included numerous times in the MND and supporting documents. This fact, contrary to Appellants’ contention, is indicative of the fact that numerous scientists and professionals surveyed and studied the property and found no serpentine soils on the Project site.</p>



<p>overwhelming substantial evidence shows serpentine formations and soils indeed exist onsite. This is a major oversight that calls into question the accuracy of the entirety of the biological resources analysis. It is a fatal flaw in the environmental review.</p>	<p>Appellants attempt to downplay or dismiss the level of surveys conducted on soils at the Project. However, there have been numerous studies that have not located serpentine soils including:</p> <ul style="list-style-type: none"> □ Pinecrest Environmental Consulting Inc., Biological Resource Assessment prepared, December 9, 2020. Based on a site survey the BRA concluded “[t]here are no special soil types such as serpentine or hardpan in the vicinity of the proposed cultivation areas, although there is a small amount of serpentine mapped onsite in the far southeast corner near Highland Springs Road, and offsite to the northwest.” (BRA at p. 9.) Moreover, the BRA notes in several other locations that there is no serpentine outcrop habitat on site. □ AES-Montrose Biological Memorandum, February 11, 2022. □ Lake County Air Quality Management District, Comment Letter, September 7, 2023. Notes that there are no serpentine soils mapped on the Project site. □ Lake County GIS viewer [there are no mapped serpentine soils on the Project site]. <p>Despite the above-listed studies and reports, Appellants claim that there is “overwhelming substantial evidence” showing serpentine formations in the Project area. As discussed thus far in this response, Appellants fail to point to any site-specific factual support that demonstrates that there is serpentine soil in the Project area. This comment, again, is hyperbole and argumentative, and cannot legally be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>C. Project Construction and Operation Will Disturb Serpentine Formations and Soils</p>	<p>Highland responds to this comment by confirming that the Project would grade the access roadway pursuant to the County Grading Ordinance and</p>



<p>1. The Project would require extensive construction of the portion of the access roadway containing documented serpentine formations and soils.</p> <p>a. “[G]rading would likely need to take place to upgrade a segment of the access road connecting Highland Springs Rd. to the property entrance, which is expected to have a cut volume of 6,167 cubic yards and a fill of 372 cubic yards.” (MND, p. 8.)</p> <p>b. The access roadway would be graded, “with an approximate slope of 0% to a maximum of 15% ... [to be] 20 feet wide with unobstructed vertical clearance and 14 feet of unobstructed horizontal clearance at the gate.” (PC Staff Report, p. 7.) Further, “[a] 6-inch gravel layer would be added to the entire length for erosion and dust control.” (Ibid.)</p>	<p>applicable state law, although characterizing it as “extensive construction:” is argumentative. Moreover, there is no substantial evidence provided that the grading will occur on serpentine formation and soils. Therefore, this statement is conclusory and argumentative and cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>2. Prior to completion of this work, which would occur during Stage 2 of the Project, planned for approximately two to three years after the onset of Project Stage 1 (MND, p. 4), the Project would result in up to 52 vehicle trips per day (MND, p. 24) across the unimproved, existing access road through County-owned property.</p>	<p>Highland agrees with this comment and the citations to the MND.</p>
<p>3. After completion of the Stage 2 access road improvements, those 52 daily vehicle trips would occur along the improved roadway.</p>	<p>Highland agrees with this comment and the citations to the MND.</p>



<p>D. Construction Impacts: Airborne Asbestos and Health Effects</p> <p>1. The expansive improvements of the access roadway would result in disturbance of the serpentine formations and soils and associated special-status species, with significant adverse impacts.</p>	<p>This statement is conclusory with no specific factual background, and therefore, cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p> <p>Assuming, <i>arguendo</i>, that there is serpentine formation in the Project access road, Highland is required to grade pursuant to the County grading ordinance which contains specific measures for dust control, even with the presence of serpentine formations. (See e.g. County Code Sec. 30-16.9.) As stated in the MND, this dust control measure would address any potential impacts.</p>
<p>2. Serpentine and ultramafic rock, when in dust form, contain significant quantities of naturally occurring asbestos. (See California Air Resources Board [CARB], Naturally-Occurring Asbestos General Information, available online at https://ww2.arb.ca.gov/sites/default/files/classic/toxics/asbestos/general.pdf, EXH-009 et seq.) The principal impact of disturbing serpentine rocks and soils is releasing toxic asbestos into the air. (Ibid.; MND, p. 23.) Asbestos is a known human carcinogen and cause of mesothelioma (membrane cancer) amongst other ailments such as asbestosis and lung cancer. (CARB, Fact Sheet #1, Health Information on Asbestos, available online at https://ww2.arb.ca.gov/sites/default/files/classic/toxics/asbestos/1health.pdf, EXH-011 et seq.; see also, Lake County Air Quality Management District [LCAQMD], et al., Naturally Occurring Asbestos in Serpentine Soils Education Program, available online at https://ucanr.edu/sites/uclakecounty/files/64827.pdf, EXH-013 et seq. [“20-plus years may pass before [asbestos-related] disease appears”].) Per the U.S. Environmental Protection Agency (EPA) and the State of California, there is no safe level of asbestos. (See Cal. Office of Environmental Health Hazard Assessment [OEHHA] (2000), Asbestos Fact</p>	<p>The large majority of this comment relates to general studies indicating the health effects of asbestos. Highland does not dispute these studies, or otherwise allege that asbestos does not pose a risk to health.</p> <p>However, Highland notes that general citations to studies indicating asbestos is harmful to human health are not substantial evidence that the <i>Project</i> will have impacts on the environment, as required by CEQA. (See CEQA Guidelines § 15064.) As such, these cited studies are not substantial evidence.</p> <p>In response to the comment, Highland notes that there are no facts provided for the conclusion that construction workers would be exposed to “significant” amounts of asbestos during construction work. Appellants have not met the fair argument standard by citing general studies and by providing facts that are not specific to the Project site, while also making the conclusory leap that construction will result in airborne asbestos. (See CEQA Guidelines § 15064(f)(5).)</p>



Sheet – Information on Health Risks from Exposures to Asbestos, available online at <https://oehha.ca.gov/air/asbestos-fact-sheet-information-health-risks-exposures-asbestos>, EXH-039 et seq.; see also, ABC News (2024), EPA Bans Remaining Uses of Cancer-Causing Asbestos in the US, available online at <https://abcnews.go.com/Politics/epa-bans-remaining-cancer-causing-asbestos/story?id=108248383>, EXH-041 et seq. [quoting EPA Administrator Michael Regan, “ ‘But the science is clear and settled,’ Regan added. ‘There is simply no safe level of exposure to asbestos.’ ”]; Occupational Safety and Health Administration [OSHA], Asbestos, available online at <https://www.osha.gov/asbestos>, EXH-045 et seq. [“There is no ‘safe’ level of asbestos fiber. Asbestos exposures as short in duration as a few days have caused mesothelioma in humans.”].)

Construction workers would be exposed to significant amounts of airborne asbestos during the “six to nine months” of roadway construction. (MND, p. 8.) Because there is no safe exposure to asbestos and exposure regularly results in significant health problems, including cancer, EPA and CARB suggest several measures to mitigate the dangerous inhalation of naturally occurring asbestos during construction. (See EPA (Mar. 2008), Naturally Occurring Asbestos: Approaches for Reducing Exposure, available online at https://archive.epa.gov/region9/toxic/web/pdf/noa_factsheet.pdf, EXH-049 et seq.; CARB, Fact Sheet #3, Ways to Control Naturally-Occurring Asbestos Dust, available online at <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/asbestos/3control.pdf>, EXH-057 et seq.)



<p>3. In response to the County’s Review for Sufficiency, LCAQMD, in an email from the County’s Air Quality Engineer to County Assistant Planner Mary Claybon dated September 7, 2023, stated: “The LCAQMD and the State of California Air Resources regulate surfacing and construction activities involving serpentine ... If serpentine is discovered or is present during the course of grading or construction, all work shall stop until an approved serpentine dust control plan is in place”</p>	<p>Highland has no response to this comment and agrees with the citation. Highland has provided a dust mitigation plan. Typically dust mitigation plans are submitted with building permits, but due to this perceived controversy, Highland has done so early in an effort to address this comment.</p>
<p>4. The public, especially recreationists in the adjacent Highland Springs Recreation Area (hikers, horseback riders, bicyclists, dog walkers, boaters, etc.) would be exposed to airborne asbestos during roadway construction (drivers on Highland Springs Road may also be exposed). Several hiking trails used by the public, including children, exist in the immediate vicinity of roadway construction. The Lone Pine Loop Trail in the Highland Springs Recreation Area is less than 100 feet from the access road as is the Lake Loop Trail. Other trails on or near the access road include the Loco Trail, which crosses the access road, and the Pine Loop Trail, which parallels the access road for approximately 800 feet. Parking turnouts for recreationists to access the western shore of Highland Springs Reservoir are directly across from the access road entrance (approx. 25 feet away) and the reservoir itself where recreationists boat and swim is just 500 feet away. (See Lake County Parcel Viewer; see also Figure A4, from the Highland Springs Trails GPS Mapping Project, June 2018.)</p> <p>[Figure A4 omitted]</p>	<p>Highland responds to this comment initially by stating, as above, that the alleged asbestos exposure is speculative, and not based on any facts in the record. As with the comments above, Appellants have failed to provide sufficient, nonconclusory facts showing that:</p> <ol style="list-style-type: none"> 1. There are serpentine formations in the Project access road discussed here; 2. That the serpentine soils contain asbestos; 3. That use of the access road would disturb asbestos; and, 4. airborne asbestos would or could cause health effects for construction workers. <p>Again, this line of conclusory allegations cannot be substantial evidence, as it is speculative, conclusory, and not based on facts in the record.</p> <p>(CEQA Guidelines § 15064(f)(5).)</p> <p>Further, Highland points out that Appellants argument is that there is public use of, or near, the Project access road, which Appellants claim contains serpentine soil with asbestos that can cause human health effects. Assuming the Appellants allegations are true, <i>arguendo</i>, if the Project does not conduct</p>



	<p>roadway improvements including new gravel, and eventual paving, then the public stands to be at continued risk for asbestos exposure from this very area. In other words, the Project development is the only way that members of the public that use this area will be protected from further alleged exposure to asbestos in this area. If Appellants cared for the safety of the recreational users of this area, they would support the Project and its upgrades to the local roads.</p>
<p>5. This exposure could result in significant health problems for the public, including cancer, particularly in children who are more susceptible to the effects of asbestos exposure. (Lake County AQMD, <i>supra</i> [“Children Need Extra Protection [from naturally occurring asbestos]”]; University of California, Division of Agriculture and Natural Resources (Aug. 2009), Facts about Serpentine Rock and Soil Containing Asbestos in California, available at https://anrcatalog.ucanr.edu/pdf/8399.pdf, p. 3, EXH-059 et seq.)</p>	<p>Highland responds by again repeating that the alleged exposure to asbestos is speculative and not based on any facts in the record.</p> <p>Highland does not dispute the cited material relating to exposure in children, however, this is speculative, not related to the Project. As above Appellants fails to explain how this specific citation is substantial evidence of Project-related impacts on the environment. This is not substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>6. Construction of access road improvements also would destroy or damage special status plant species that are known to occur onsite and others that are commonly found in serpentine soils (discussed below).</p>	<p>Highland will respond to this comment further below in response to Appellants other comments on this point.</p> <p>However, for purposes of this comment, Appellants have not demonstrated how construction of the access road would impact or affect alleged special status species or provided any factual support. There is no discussion of how Project activities would destroy or damage special status plant species or even which species these are. As such, this statement is conclusory and speculative and cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this</p>



	comment and indicate these species do not exist where Appellants claim they do.
<p>E. Pre-Construction Impacts: Airborne Asbestos and Health Effects</p> <p>1. The use of the unimproved, uncovered access road on County property for up to three years prior to roadway improvements would result in significant impacts and is prohibited without mitigation.</p>	Appellants have not demonstrated how the use of the Project access road would lead to significant impacts. This is conclusory and speculative. (See CEQA Guidelines § 15064(f)(5).)
<p>2. Use of the existing road would expose Project workers and the public (explained above) to daily excessive asbestos dust released by the 52 daily vehicle trips driving over serpentine formations and soils, in addition to the many large vehicles that will cross the roadway during construction of Stage 1 of the Project.</p>	Appellants have not demonstrated how the use of the Project access road would lead to significant impacts. This is conclusory and speculative. (See CEQA Guidelines § 15064(f)(5).)
<p>3. CARB prohibits the use of serpentine or ultramafic rock for unpaved surfacing in areas where public exposure may occur. (Cal. Code Regs., tit. 17, § 93106.) CARB also restricts the percentage of serpentine allowed in surfacing material to 0.25 percent and requires dust control mitigation measures for roadways producing airborne asbestos. (Id., §§ 93105, 93106.) Use of a public roadway, as would occur here, presumes public exposure. Recreationists at the adjacent Highland Springs Recreation Area and on other nearby trails (and to some extent passersby on Highland Springs Road)</p>	Highland notes, initially, that the cited legal authorities: 14 CCR sections 93105 and 93106 do not stand for the proposition for which Appellants claim. These regulations do not outright prohibit the use of ultramafic rock for unpaved road surfaces. Instead, these regulations require local air quality districts to enforce certain requirements for grading in areas with ultramafic rock. For instance, if grading in areas with ultramafic rock, certain regulatory authorities must be notified, and other control measures must be put in place, such as wetting the road during the grading activities. (See e.g. 14 CCR § 93105(d)(1)(B)(1).) In other words, it is possible to grade on ultramafic rock.



<p>would be exposed to airborne asbestos from the serpentine laden roadway.</p>	<p>Further, and conspicuously unmentioned by the Appellants, conditions in the MND exist to address these very concerns. For instance, mitigations measures AQ-1 through AQ-6, and WDF-3 all include measures to address dust generation. (See MND at pp. 24, 67.) Moreover, AQ-1 would require Highland to obtain LCAQMD permits to operate and construct, which likely would include further measures to reduce dust.</p> <p>Also, Highland further disputes the presumptions that the road is “serpentine laden” and that the use of this road would expose the public to asbestos, as discussed in length above, this claim is speculative and conclusory.</p>
<p>4. As well, the increased use of this access road would destroy or damage special status plant species that are known to occur onsite and others that are commonly found in serpentine soils and may be present onsite (discussed above).</p>	<p>Highland will address this comment further in discussion of special status species below. However, for purposes of this comment, Appellants provide no factual basis for this claim, and as such, it is conclusory and speculative and cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this comment and indicate these species do not exist where Appellants claim they do.</p>
<p>F. Operational Impacts: Airborne Asbestos and Health Effects</p> <p>1. Mitigation Measure AQ-5 requiring some kind of sealed surface for the access roadway is inadequate. (MND, p. 24.) It does not account for the serpentine soils on the access road and the specialty requirements for properly sealing serpentine soils. Likewise for AQ-6, which allows graveling of some driveway and parking surfaces. Both measures must be</p>	<p>Highland responds to this comment first by repeating that Appellants have provided no facts conclusively demonstrating that there are serpentine soils on the Project site or the access road. Moreover, Appellants do not describe with any detail why AQ-5 and AQ-6 are inadequate, why these mitigation measures do not address dust concerns, or how the implementation of these mitigation measures would not reduce any potentially significant impact.</p>



reassessed in light of the serpentine formations and soils that are known to exist on the Project site.	
2. CARB requires paving serpentine roadway surfaces located near paved public roadways (like Highland Springs Road) (see Cal. Code Regs., tit. 17, §§ 93105, 93106) and provides specific paving and sealing measures for maximum effectiveness (CARB, Fact Sheet #3, supra, EXH-057 et seq.). The MND does not demonstrate that the access road will be sealed to CARB standards for naturally occurring asbestos. There is no mitigation for this imminent significant impact.	<p>Highland responds by referencing its response above regarding 17 CCR sections 93105 and 93106.</p> <p>Highland also responds that it is aware of paving and sealing measures for roadways. Highland would proceed with all grading and paving pursuant to all County ordinances and state laws.</p> <p>Appellant has not provided facts supporting its contention that there is naturally occurring asbestos on the access road. Highland would pave according to state law as required for the specific area. General allegations that Highland would not follow state laws is speculative and not substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
3. Furthermore, regardless of roadway sealing, Project traffic likely would disturb serpentine rocks and soils still present in the roadway shoulder.	There is no evidence cited, nor any materials in the MND or associated materials that indicate that traffic would utilize unpaved shoulders during Project operations. This is speculative and conclusory, and as such cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)
<p>G. The Project Would Violate County General Plan Policies Related to Serpentine Dust</p> <p>1. County General Plan Chapter 7, Health and Safety, includes three mandatory policies requiring dust control and inspection measures for construction and development in areas with naturally occurring asbestos: Policies HS-1.6 (Serpentine Dust Mitigation), HS-3.10 (Dust Suppression</p>	Highland has no response for this comment and agrees with the citations.



During Construction), and HS-3.11 (Asbestos Inspection During Construction).	
<p>2. The MND does not discuss these policies nor do mitigation or conditions of approval require that the applicant adhere to these policies. In fact, nothing in the record, from what Appellants have seen, even acknowledges the presence of serpentine soils onsite (see ¶ B.11 above). The County must ensure that the Project complies with these policies.</p>	<p>Highland responds by pointing out that scientists who surveyed the Project site, and County agencies in response to requests for comments stated that there were no serpentine formations on the Project site. As stated above, the following were results of surveys for serpentine soils:</p> <ul style="list-style-type: none"> □ Pinecrest Environmental Consulting Inc., Biological Resource Assessment prepared, December 9, 2020. Based on a site survey the BRA concluded “[t]here are no special soil types such as serpentine or hardpan in the vicinity of the proposed cultivation areas, although there is a small amount of serpentine mapped onsite in the far southeast corner near Highland Springs Road, and offsite to the northwest.” (BRA at p. 9.) Moreover, the BRA notes in several other locations that there is no serpentine outcrop habitat on site. □ AES-Montrose Biological Memorandum, February 11, 2022, Attachment C NRCS Custom Soils Report for the Subject Property. □ Lake County Air Quality Management District, Comment Letter, September 7, 2023. Notes that there are no serpentine soils mapped on the Project site. <p>However, if serpentine soils are discovered on the Project site or during Project buildout, Highland would be legally required to comply with County General Plan policies and would do so. The statement that a Project is not in compliance with inapplicable policies or requirements cannot be substantial evidence because it is speculative. (See CEQA Guidelines § 15064(f)(5).)</p>



<p>H. Additional Environmental Review Must Be Performed and Mitigation Provided to Lessen Significant Impacts</p> <p>1. The County must perform additional environmental review that includes an accurate and robust discussion of the serpentine soils on the Project site that will be disturbed by the Project.</p>	<p>Calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors, supra</i> 222 Cal. App. 4th at 786.)</p>
<p>2. Another ground survey must be conducted on all affected parcels (County and privately owned) to investigate the presence of serpentine formations and soils and associated special-status species plants (see Attach. B).</p> <p>a. The biological reports concluded that the parcels where these formations exist are outside of the scope of the assessment, but this is incorrect. (See, e.g., BRA, pp. 4 [PDF file, p. 5] [Table 1 listing only the privately owned parcels], 70 [Mar. 31, 2021 memorandum regarding early season plant survey for only two privately owned parcels]; BM, pp. 1 [PDF file, p. 81] [“Project Site refers only to those areas within the Subject Property with the potential to be impacted by the Proposed Project (i.e., Cultivation Areas, buildings, roadways improvement, graded areas, etc.) that total 27.7 acres”].) The record clearly demonstrates that the portions of the access road traversing County-owned parcels where serpentine formation and soils exist are a part of the Project site (PC Staff Report, p. 6 [“A portion of the access road (1,057 linear feet) that connects Highland Springs Rd. to the Property entrance (located across APNs 007-043-04 and 007-043-01) would be graded and improved in accordance with Public</p>	<p>Calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors, supra</i> 222 Cal. App. 4th at 786.)</p> <p>Highland conducted surveys on the Project site including all cultivation and ancillary areas. The MND does analyze the impacts to the Project access road. The Project disturbances to the Project access road, to the extent they exist, is limited to grading in already disturbed and utilized roadway. (See MND at p. 7.)</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this comment and indicate these species do not exist where Appellants claim they do.</p>



Resource [sic] Code (PRC) 4290 to provide adequate site access.”)].	
3. Mitigation must be included to avoid the damaging impacts associated with disturbance of serpentine soils (discussed above) and to ensure that the access road is properly surfaced. The Project also must comply with all rules and regulations specific to asbestos, including County policies. (See, e.g., Cal. Code Regs., tit. 17, § 93105 [Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations]; id., tit. 8, § 1529 [Asbestos].) These rules and regulations must be disclosed and discussed in the Project’s CEQA document.	Highland responds by incorporating its prior responses regarding the conclusion of serpentine soils, proper surfacing of the access road, and the discussions of 17 CCR sections 93105 and 93106. No further response is necessary for this comment.
4. Mitigation is also required to avoid or minimize impacts to special-status plant species that occur or could occur in these same areas. (See Attach. B.)	<p>Highland will address this comment in response to the July Letter Attachment B.</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this comment and indicate these species do not exist where Appellants claim they do.</p>



HIGHLAND'S RESPONSE TO ATTACHMENT B
INACCURATE, INADEQUATE, AND INCOMPLETE BIOLOGY AND HYDROLOGY/WATER REPORTS RESULT IN
FLAWED MND

Appellants' Statement	Highland's Response
<p>A. The Biology Reports/MND Failed to Assess the Entirety of the Project Site</p> <p>1. These biological studies performed for the Project included up to five field surveys, none of which appear to cover the County-owned parcels where the access road will be used and eventually improved (see Attach. A) and none of which included protocol-level species surveys. (See, e.g., MND, p. 3; BRA, p. 4 [PDF file, p. 5], BM, fig. 3 [PDF file, p. 84].) The varying studies, not all of which are correctly reflected in the MND, make it a challenge to easily determine what surveys were conducted and when/where they occurred. Accordingly, Appellants prepared the following chart to provide a summary of surveys allegedly performed on specific parcels with sensitive habitat and special—status species (Y = Yes, survey done; N = No, survey not done).</p> <p>[Footnote and table omitted]</p>	<p>Highland responds that the biological surveys and reports were correctly included in the MND, and the MND's conclusions relating to biological matters reflects all reports and addendums to those reports. Highland agrees with the Appellants listing of the various biological surveys. Further, Highland conducted all biological surveys required by the County Cannabis Ordinance and CEQA, and disagrees with the Appellants apparent argument that more protocol-level surveys are required.</p> <p>In response to the allegation that the biological surveys did not cover the County owned parcel, Highland responds that the Project's use of the County-owned parcel is limited to the access roadway, which is already disturbed and therefore has no biological resources. Subsequent biological surveys of these areas have been conducted and are submitted to the County with this response document. These surveys and reports address Appellants' comment.</p>
<p>B. The Biology Reports/MND Failed to Assess Impacts to Special-Status Species Within Serpentine Habitat</p> <p>1. As explained in Attachment A and just above, the MND and its biological reports did not assess the area of the Project site with serpentine formations and soils.</p>	<p>The MND addresses the entire Project site. The access road on the County-owned property is only used for Project access, and there will be no disturbance outside the already-disturbed roadway. Moreover, as discussed at length above, there is no factual support that the access road on the County-owned property contains serpentine soils.</p>



<p>2. However, “many of these [serpentine] formations contain special-status plant species (Appendix C).” (BRA, p. 13 [PDF file, p. 14].) The BRA lists more than 28 special status species that are found in serpentine habitats, including Lake County stonecrop (<i>Sedella leiocarpa</i>) and Lake County western flax (<i>Hesperolinon didymocarpum</i>) (BRA, appen. A, p. 36 [PDF file, p. 37]), both of which are considered federally and state designated endangered species.</p>	<p>In response to Appellants comments, Highland points out that the quote from the BRA is taken out of context. The full quote states:</p> <p>“[a]dditionally, although the majority of the project property does not contain serpentine soil, some of the land adjacent to the property has serpentine containing soils (Appendix F), and many of these formations contain special-status plant species (Appendix C).”</p> <p>(BRA at p. 13)</p> <p>Appellants’ convenient choice of quotation seems to indicate that they argue there are serpentine soils on the Project site with special status species. However, taking the full quote into consideration, it is clear the BRA concludes the opposite, thst there are no special status species on the project site, especially those associated with serpentine soils. In fact, the BRA states:</p> <p>“No special-status animal species were observed onsite during the survey performed in May 2020. There are no special-status animal species with CNDDB polygons that overlap with the project parcel...”</p> <p>(<i>Ibid.</i>)</p> <p>This is confirmed in subsequent biological assessments which state:</p> <ul style="list-style-type: none"> □ “No special status plant species were positively identified in the project area.” (Pinecrest Environmental Consulting, Results of Special Status Plant Survey, May 23, 2021 [referencing results of plant surveys].
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	<ul style="list-style-type: none"> □ “Special-status species were not observed during the May 26, 2021 survey, or during the surveys completed in support of the PEC reports.” (AES-Montrose, Highland Farm Cannabis Cultivation Biological Memo, February 11, 2022, at p. 9.) □ “No special-status plants were observed during the survey. No occurrence of small-flowered calycadenia and Napa bluecurls were observed within the Proposed Project site. Additionally, none of the remaining four special status plant species identified as having potential to occur within the Subject Property were observed, including bent-flowered fiddleneck (<i>Amsinckia lunaris</i>), Brandegee’s eriastrum (<i>Eriastrum brandegeae</i>), glandular western flax (<i>Hesperolinon adenophyllum</i>), and Colusa layia (<i>Layia septentrionalis</i>).” (AES-Montrose, Highland Farm Cannabis Cultivation Technical Memorandum Bloom Survey Results, February 11, 2022, at p. 9.) <p>The point being that over several years, and numerous biological surveys, no special status species were ever detected.</p> <p>Appellants’ choice of a few quotations from the biological reports obfuscates the actual results. At the same time the Appellants misinterpret and misquote Project biological documents, they provide no facts support their allegations that there are special status species present at the Project site.</p> <p>Given the foregoing, Appellants’ comments here are not substantial evidence because they misquote and misrepresent factual background on the Project. (CEQA Guidelines § 15064(f)(5).)</p>
<p>3. “California’s [serpentine] soils support a very high proportion of the State’s rare plants.” (USDA (2005),</p>	<p>Highland has no response to this comment. It is a citation to a general scientific article, not applicable to the Project site or the Project in general.</p>



<p>Serpentine Endemism In The California Flora: A Database Of Serpentine Affinity, Madrono (vol. 52, No. 4, pp. 222-257), available online at https://www.fs.usda.gov/wildflowers/beauty/serpentine/center/documents/Safford_etal_2005_Serpentine_Endemism.pdf, EXH-065 et seq.)</p>	
<p>4. An out-of-season botanical survey performed by a local botanist and native plant expert identified several special-status species within these serpentine formations at the entrance to the Project site. (See map and photographs below, Figures B1 to B6.) These species were geo-tagged within the Project site, near or on the access road going through County property. Additionally, several other potential special status species have been identified that will require a flowering season study to confirm their rare plant status. Other special status species are known to exist on this formation and require a flowering season study for proper identification.</p> <p>a. Ed Dearing is a local botanist and naturalist and member of CNPS (California Native Plant Society). He is an expert on native plants in California and, in particular, Lake County. For more than 50 years, Mr. Dearing has performed botanical surveys across the state. Upon County request, he conducted several botanical surveys, including surveys for Highland Springs Regional Park and Konocti Regional Park. He has led several botanical tours and hikes throughout Lake County for government agencies, botanical researchers, CNPS members, the Sierra Club, as well as plant and nature enthusiasts. Mr.</p>	<p>Highland responds that it does not dispute the qualifications of the individuals who purportedly conducted field surveys for plant species.</p> <p>Highland does respond that Figure B1 (not reproduced here for clarity) identifies special listed species purportedly near where the Project access road meets Highland Springs Road. There is no indication or factual support that these plants occur on the “Project site” and Highland disagrees that these plants occur on the Project site as defined in the MND. The proposed road developments are to decrease the slope of an existing road and does not widen the already disturbed roadway.</p> <p>Moreover, subsequent biological assessments prepared in response to Appellants’ comments and provided with this response address this comment and indicate these species do not exist where Appellants claim they do.</p> <p>Highland further responds that there is no discussion or factual support of whether or how Project activities would potential impact these species. The fact that special status species exist near Project activities does not automatically create the potential for impacts.</p> <p>Calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors, supra</i> 222 Cal. App. 4th at 786.)</p>



Dearing has published several articles for CNPS showcasing flora in Lake County.

b. Karen Sullivan is a native plant specialist in Lake County and member of CNPS. She has collaborated with Ed Dearing for more than 30 years, collecting data on Lake County native plants, and working with Mr. Dearing on the Konocti Regional Park botanical survey and the Highland Springs botanical surveys. She also collaborated with Mr. Dearing on the botanical hikes and tours for the Sierra Club and Highland Springs Trail Volunteers. Ms. Sullivan and her colleague Kim Riley provided plant photos and their descriptions displayed at park visitor information kiosks in Highland Springs Recreation Area (aka Highland Springs Regional Park). She currently operates a native plant nursery, consults, and grows native plants in cooperation with the Lake County Resource Conservation District. Her experience as a state licensed nursery owner required her to accurately identify and label native plants. She is involved with the Tribal Eco-restoration Alliance (TERA) and works with TERA to identify plants in Highland Springs Regional Park that are culturally important to tribal communities in the area. In addition to extensive knowledge of native plants, Ms. Sullivan is a founding member of Highland Springs Trails Volunteers. Founded in the early 2000's, the group formed to recover trails and perform the GPS mapping of more than 30 miles of trails in Highland Springs Regional Park. Ms. Sullivan is also a founding member of Lake County Horse Council and at the request of Lake County Public Works Director Scott DeLeon, she and her



<p>colleague Kim Riley authored the 2010 Highland Springs Resource Management Plan for the County</p> <p>c. Ed Dearing and Karen Sullivan are very familiar with the serpentine outcrop at the entrance to the Project site (aka Udding Road). As early as 2009, Mr. Dearing identified several endangered species on the serpentine outcrop on Udding Road. Highland Springs Trail Volunteers re-routed the trail to protect the habitat.</p> <p>[Figures B1-B6 omitted]</p>	
<p>5. Mitigation is required to avoid or minimize disturbance to these special-status species that are protected by federal and state law. Measures should include protocol-level, preconstruction surveys to identify all species, buffers to avoid disturbance, relocation if avoidance is not feasible, or compensation for any species destroyed by Project construction or operation if relocation is not feasible. These are standard CEQA mitigation measures for special-status plant species</p>	<p>Highland responds again that calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors, supra</i> 222 Cal. App. 4th at 786.)</p> <p>The further claims that proposed avoidance or buffers are “standard CEQA mitigations” is a legal conclusion unsupported by any authority and should be disregarded and is not substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>C. The Biology Reports/MND Failed to Identify Potential Impacts to Other Special Status Species</p> <p>1. The AES BM failed to identify Konocti manzanita (<i>Arctostaphylos manzanita ssp.elegans</i>) on the site, despite its prevalence in the region and despite the parcels containing chaparral that hosts the species. (BM, p. 10 [PDF file, p. 90].)</p>	<p>In response, Highland draws attention to the Pinecrest Biological Resource Assessment (BRA) which, based on research, found the nearest reported Konocti manzanita (<i>Arctostaphylos manzanita ssp.elegans</i>) to be 0.3 miles east of the Project area near highland Springs Recreation Area. (See BRA at p. 6.) Moreover, Pinecrest conducted a field survey, and found no special status species including Konocti manzanita, although it was seen south of the Project area. (<i>Id.</i> at p. 13.)</p>



<p>A protocol-level survey is required to determine if Konocti manzanita occurs onsite.</p>	<p>The AES BM reviewed the Pinecrest BRA, and assessed the potential for Konocti manzanita to occur onsite and found no suitable habitat. (See BM Table 1 at p. 10.)</p> <p>Appellants either failed to review Project environmental documents or are insisting on further surveys for a plant that two biological field surveys and multiple reviews failed to identify or find on the Project site, which is not substantial evidence. (<i>Parker Shattuck Neighbors, supra</i> 222 Cal. App. 4th at 786.)</p> <p>The argumentative conclusion that the Konocti manzanita can occur on the Project site despite a dearth of factual support, and contrary evidence, is not substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>2. During the County’s Review for Sufficiency, in an email from Lake County Community Development Resource Planning to Mary Claybon, dated August 29, 2023, Resource Planner Katherine Schaefer made the following recommendation as it pertains to the identification of special plant species Konocti Manzanita and Quercus Dumosa and the disturbance of chaparral: “The FMP indicates (pg. 17, 20) low brush/shrub removal will occur when necessary. The location should be identified so it is shown not to conflict with this finding” To date, the locations of the special-status species and the areas of disturbance have not been correlated.</p>	<p>Highland responds and reincorporates response to the above comment relating to Konocti manzanita.</p> <p>As an initial note, Konocti manzanita does not occur on the Project site, so any shrub removal will, by definition, not impact Konocti manzanita. Secondary, the shrub removal will be conducted in accordance with local, state and federal laws, and the Konocti manzanita cannot and will not be impacted.</p>
<p>3. The BRA and MND failed to assess potential impacts to the Foothill yellowlegged frog, despite its native habitat type being present onsite (watercourses, wetlands). A protocol-level survey is required to determine if the Foothill yellow-legged frog or its habitat occurs onsite</p>	<p>Highland initially notes that the Foothill yellow-legged frog is not a listed or candidate species in the Northwest Clade, which includes Lake County. (See 14 CCR § 670.5(a)(3).)</p>



	<p>Despite this, both the BRA and MND address the Foothill yellow-legged frog. The BRA Appendix A stated that there is low potential for the Yellow-legged frog on the Project site. (See BRA Appendix A at p. 41.) The BM prepared by AES-Montrose came to the same conclusion. (See BM Table 1 at p. 12.)</p> <p>Without potential for the yellow-legged frog to occur on the Project site, and with no detection of the yellow-legged frog, there is no need for a protocol level survey or mitigation.</p> <p>Moreover, this comment by Appellants relates to a technical scientific matter, and is not made by an expert in the area, and therefore is not substantial evidence. (See <i>Protect Niles</i>, <i>supra</i>, 25 Cal. App. 5th at 1139.) Highland further responds that calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors</i>, <i>supra</i>, 222 Cal. App. 4th at 786.)</p>
<p>4. The MND states: “There are no observations of golden eagle within 10 miles of the Project Site.” (MND, p. 29.) However, in 2023 and 2024, golden eagles were observed directly north of the Project site and at the entrance to Highland Springs Road, as stated by members of the public at the Planning Commission hearing on the Project. An additional survey is required to assess potential for onsite occurrences of, or habitat for, this special-status species.</p>	<p>Members of the public may have made observations of bird species, but there is no way to confirm the sightings in 2023 or 2024 by nonexperts in the identification of Golden Eagles. Therefore, Highland responds again that calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors</i>, <i>supra</i> 222 Cal. App. 4th at 786.)</p> <p>Moreover, as stated in the MND:</p> <p>“[a]dditionally, marginal and minimal foraging habitat for migratory and special-status birds such as golden eagle (<i>Aquila chrysaetos</i>) and prairie falcon (<i>Falco mexicanus</i>) occurs within the Project Site. The Proposed Project would not change the overall undeveloped nature of the Property and does not</p>



	<p>include development of approximately 96% of the undeveloped habitat on the Property.”</p> <p>(MND at p. 29)</p> <p>Therefore, even assuming that Golden Eagles were sighted in the Project vicinity (which cannot be confirmed), the Project will only develop a small portion of the over 500 acres of property, most of which would be maintained to provide continued foraging habitat for Golden Eagles.</p> <p>As such, Appellants have failed to show how the Project could cause a significant impact to any potential Golden Eagle(s).</p>
5. Mitigation is required to avoid or minimize disturbance to these special-status species that are protected by federal and state law. (See ¶ B.4 above.)	<p>Highland responds by referencing and reincorporating its responses for the foregoing comments relating to biological surveys and species. Moreover, Highland directs Appellants’ attention to the MND which, contrary to this comment, does have mitigation measures relating to the special-status species (See e.g. MND at pp. 29-32).</p>
<p>D. The Biology Reports/MND Fail to Protect Wetlands Because They Do Not Require a Wetland Delineation and Ignore Project Biologist Recommendations</p> <p>1. Wetlands exist onsite. (BRA, pp. 9, 11, 13 [PDF file, pp. 5,12,14].) To comply with the Federal Clean Water Act (CWA), a “protocol-level wetland delineation must be performed to verify the precise extent of wetlands onsite.” (Comment letter from Redbud Audubon Society [Audubon Letter], p. 1.) A wetland delineation using U.S. Army Corps of Engineers (USACE) protocol is required to determine both</p>	<p>Highland confirms that the citations provided by the Appellants are correct, and that there are references to wetlands within the biological documents and MND itself.</p> <p>In response to Appellants comments, however, Highland states that neither the comment letter from the Redbud Audubon Society nor the July Letter cite to and Federal Clean Water Act requirement that would require a formal wetland delineation. The County Cannabis Ordinance, likewise, has no requirement for a formal wetland delineation. As such, Highland complied with all legal requirements when citing the Project. As there is no legal citation</p>



<p>the extent of the wetland and whether Project activities may impact wetlands subject to USACE and CWA jurisdiction. (Mar. 31, 2021, Memo. from PEC re. “Results of early-season special-status plant survey at Lake County APN 007-006-35 & 007-006-34,” p. 2 [PDF file, p. 71].)</p>	<p>or factual background indicating there is a mandate for a formal wetland delineation, this statement is conclusory and cannot be substantial evidence.</p>
<p>2. Instead of a wetland delineation performed by and USACE-certified wetland delineation expert, a substandard survey was conducted for the Project site during extreme drought years—May 2021 and June 2022. (National Integrated Drought Information System [NIDIS] (2021), Drought Status Update and 2020 Recap for California-Nevada, available online at https://www.drought.gov/drought-status-updates/drought-status-update-and-2020-recapcalifornia-nevada, EXH-101 et seq.; see also, California Department of Water Resources [DWR] (2022), New Water Year Begins Amid Preparations for Continued Drought, available online at https://water.ca.gov/News/News-Releases/2022/Oct-22/New-Water-Year-Begins-AmidPreparations-for-Continued-Drought, EXH-105 et seq.) Conducting a survey during extreme drought years where seasonal wetlands would have shrunk considerably and where wetland and wetland boundary indicators are difficult to determine, and without the expertise of a certified wetland delineator, results in critically flawed analysis in the MND. (See, e.g., USACE (Jan. 1987), Corps of Engineers Wetlands Delineation Manual, pp. 5, 84-86, available online at https://www.nae.usace.army.mil/Portals/74/docs/regulatory/JurisdictionalLimits/wlman87.pdf, EXH-107 et seq. [seasonal wetlands requires specialty assessment during dry times]; State Water Resources Control Board [SWRCB] (Mar. 1, 2011), Technical Memorandum No. 4: Wetland Identification and Delineation, pp. 15-19, available online at https://www.waterboards.ca.gov/water_issues/programs/</p>	<p>Highland responds that there is no requirement that wetland surveys are conducted during wet years only, this would preclude any project with potential wetlands from being developed in drought years. Further, the characterization of the wetland inventories and surveys as “substandard” is pejorative to the professionals who conducted the work, and unfairly discounts the work conducted in preparation of the MND.</p> <p>Highland further responds that the potential wetlands identified have all been avoided and have sufficient setbacks established.</p>



<p>cwa401/docs/wrapp/techmemo4.pdf, EXH-117 et seq. [wetland conditions during dry seasons are difficult to resolve and require specialty assessment].)</p>	
<p>3. The MND’s wetland mitigation measure does not address this critical flaw. BIO-1 states, “prior to construction activities, a qualified biologist shall survey the potential seasonal wetland and Class II and III watercourses within 200 feet of the Project Site.” (MND, p. 30.) This mitigation is inadequate. It does not include a protocol-level wetland delineation performed by a USACE-certified specialist. It does not contain adequate criteria for determining actual wetland boundaries during drought or require wetland assessments be made during the times of year when wetlands will be at their full capacity. Therefore, the mitigation’s requirement for “setbacks from wetlands” is ineffective because those setbacks will be based on inaccurate, reduced wetland boundaries.</p>	<p>Highland responds by reiterating and reincorporating responses relating to wetland delineations. This comment is also conclusory because it presupposes biologists conducting surveys will do soon “inaccurate, reduced wetland boundaries.” There is no support for this contention, and as such, is not substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>4. The County, furthermore, ignored the Project biologist’s recommendation to not cultivate on the northern parcel, where a large portion of the Project will occur, because the 100-foot setbacks required in the MND would not ensure wetlands would not be impacted. Per the subsequent memorandum prepared by PEC on May 23, 2001 (pp. 1-2 [PDF file, pp. 75-76]), included as part of the BRA:</p> <p>“Due to the configuration of wetlands and watercourses onsite, we do not believe it is feasible to cultivate on the majority of the north parcel. The configuration of potential wetlands, and the existence of three branches of jurisdictional</p>	<p>Highland responds that the biologists findings were indeed recommendations, and Highland worked with the same biologists to site and design the cultivation areas on the north parcel. These cultivation areas adhere to the setback requirements, and therefore there is no potential for environmental impacts.</p> <p>Additionally, Highland draws Appellants attention to subsequent biological surveys which concluded:</p> <p>“[s]easonal wetlands and riparian habitat do not occur within Project Site boundaries. Setbacks for aquatic resources included on the site plan design are</p>



<p>watercourse appear to preclude access to any potential cultivation areas on the north parcel without having to transit through wetlands or watercourses. Potential wetlands and watercourses shown in the original BA that are in the same hydrological drainage can be assumed to be connected even if they are not shown as such in the original BA, making access to any potential cultivation areas in the north parcel problematic ...</p> <p>In addition, State Water Quality Control Board Cannabis General Order requires 100-foot setbacks from wetlands, and it would be difficult to avoid any discharge of sediment into any setback area while grading the top of the two hills on the north parcel due to the small size of these potential cultivation areas. [See Attachment G for more on this violation.] In addition, there is a high diversity of native species on the tops of the hills, most of the native species diversity on the parcel is concentrated in these wetlands and hills ... Our recommendation is to limit cultivation to the south parcel and to restore the wetlands in the north parcel.”</p>	<p>consistent with those identified in the State Water Resources Control Board Requirements for Cannabis Cultivation”</p> <p>(BM at p. 7.)</p> <p>Therefore, subsequent biologist reviewing Pinecrest’s BRA and also conducting their own field surveys found no such evidence.</p>
<p>5. Moreover, the County claims, in response to comments made in the Audubon Letter, that the use of onsite groundwater would not impact onsite wetlands because the depth of the onsite well, in addition to setbacks, would ensure no impacts. The County, however, does not point to any evidence in the record supporting this inference. Wetlands are a “groundwater dependent ecosystem.” (California Department of Fish and Wildlife [CDFW] (June 2019), CDFW Groundwater Program, Fish & Wildlife Groundwater Planning Considerations, Freshwater Wetlands, p. 3, available</p>	<p>Appellants’ argument is unavailing because the claim that wetlands on site are connected to wetlands is an opinion on a technical matter made by a nonexpert, and cannot be substantial evidence. (See <i>Protect Niles, supra</i>, 25 Cal. App. 5th at p. 1139.)</p>



<p>online at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=170170&inline, EXH-123 et seq.)</p>	
<p>E. The Biology Reports Rely on Data for a Different Project Site</p> <p>1. Despite several assurances by the applicant and the County that the documents were thoroughly reviewed by staff, legal and biological consultants, a simple look at the documents shows that large portions of resource material relied upon by AES does not apply to the Project site but instead to a site in the mountains above Nice on the other side of Clear Lake. For example:</p> <ul style="list-style-type: none"> • AES Appendix A [PDF file, p. 103]: Letter from U.S. Fish and Wildlife Service (USFWS) re. consultation (p. 1) for “Project Name: =Artemis Farmz.” Artemis Farmz is located near Nice and Lucerne. • AES Appendix A [PDF file, p. 106]: same USFWS consultation, “Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/@39.12770485,-122.81968101299238,14z” whereas this location shows Artemiz Farms near Nice. • AES Appendix B [PDF file, p. 110]: National Wetlands Inventory Map showing Gilbert Creek, which is located in the mountains behind Nice near Artemis Farmz. • AES Appendix C [PDF file, p. 112]: USDA National Resources Conservation Service (NRCS) Custom Soil Map showing Gilbert Creek near Artemiz Farms. 	<p>Highland responds that this was an oversight in preparing the multiple biology reports, and does not influence or pertain to the contents of the reports themselves or the MND.</p>



<ul style="list-style-type: none"> • AES Appendix C [PDF file, p. 120]: USDA NRCS Custom Soil Resource Report showing map of Gilbert Creek near Artemiz Farms. 	
<p>F. The Project Would Conflict with County General Plan Policies Intended to Protect Biological Resources</p> <p>1. County General Plan Chapter 9, Open Space, Conservation and Recreation, includes several mandatory policies limiting development in environmentally sensitive areas and near or on sensitive habit and sensitive-status species: Policies OSC-1.1 (Protection of Rare and Endangered Species), OSC-1.2 (Development in Environmentally Sensitive Areas), OSC-1.9 (Open Space Buffers), OSC-1.15 (Protect Natural Resources).</p>	<p>In response Highland points out that Appellants have not identified why or how the Project development would conflict with the County General Plan policies listed here. To the contrary the MND addresses the very concerns of Appellants and complies with these General Plan policies. For instance, these include mitigations such as BIO-3 which requires nesting bird surveys (in response to Appellants’ concerns about General Plan Policy OSC-1.1), or the 100-foot Project setbacks for wetlands and watercourses (in response to Appellants’ concerns about General Plan Policy OSC-1.9.) Put bluntly, Appellants fail to indicate specifically why the Project conflicts with these General Plan policies, and therefore, this argument fails to be substantial evidence. (See CEQA Guidelines § 15064(f)(5).)</p>
<p>2. The Project would conflict with these policies, yet the MND does not discuss these policies or the Project’s inherent conflict with them, despite the initial study question requiring such a discussion. (MND, pp. 28 [“Would the project: ... conflict with any local policies or ordinances protecting biological resources ... ?”], 33 [no discussion].) The MND also does not offer mitigation for remedying these policy conflicts.</p>	<p>Highland responds by stating that Appellants’ naked assertion that the Project conflicts with General Plan policies is conclusory and does not contain any factual support, or specifically identify any General Plan policies that would be violated and described how they would be violated. Moreover, and contrary to Appellants’ contentions, as discussed above, the Project does in fact comply with the General Plan policies generally cited by Appellants. As such, this comment is not substantial evidence.</p>
<p>G. The Hydrology Study and Water Availability Analysis Are Incomplete</p> <p>1. A Hydrology Study and Water Availability Analysis (WAA) were prepared for the Project. (See MND, pp. 15, 49.) Neither</p>	<p>Highland generally agrees that the hydrology study did not assess impacts to an alleged neighboring spring. Appellants’ assertion that there is evidence of hydrologic connectivity between Project wells and an alleged surface water spring is unavailing. As discussed below, this is a technical issue, and lay</p>



<p>assessed impacts to the neighboring spring nearest to the Project site. This is a critical omission given that the Project will drawdown the aquifer up to 15 feet (MND, p. 49), and evidence exists that there is connectivity to a neighboring spring, discussed below.</p>	<p>opinions or observations on this matter cannot be substantial evidence. (See <i>Protect Niles, supra</i>, 25 Cal. App. 5th at p. 1139.)</p>
<p>2. At the Planning Commission hearing, the applicant's civil engineer stated that surface water feeds springs and, because the Project is not diverting surface water, it is not affecting springs. However, this is inaccurate logic. A neighbor submitted a written comment to the County prior to the hearing, and made the same comment at the hearing, that his perennial spring, upon which for decades he relies for his livelihood, went dry during the last months of the last year of the historic drought. His spring is fed by both surface water and groundwater. The WAA relies on the ability of surface water to recharge groundwater through precipitation (primarily rainfall) for enough quantity of groundwater to serve the Project. (WAA, pp. 5-8.) However, during drought years, groundwater recharge is reduced and water table levels become low. (See, e.g., Lake County's Drought Management Plan Update (Apr. 12, 2021), p. 1.) If there is not enough groundwater recharge, and as a result water tables get too low, then there may not be enough water in the aquifer to support the Project and maintain necessary flows in neighboring springs.</p>	<p>Highland responds that the statements regarding a neighboring spring are technical in nature, and lay observations or opinions on it cannot be substantial evidence. (See <i>Protect Niles, supra</i>, 25 Cal. App. 5th at p. 1139, see also <i>Newtown Pres. Soc'y v. Cnty. of El Dorado</i> (2021) 65 Cal. App. 5th 771, 789 [dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence].)</p> <p>Appellants have provided no technical or scientific studies to support their bare assertion that this alleged spring is "fed by both surface and groundwater" and that "if water gets too low, then there may not be enough water in the aquifer to support the Project and maintain necessary flows in neighboring springs." This is speculation without any support, and as such as a matter of law cannot be substantial evidence. (CEQA Guidelines § 15064(f)(5).)</p> <p>Additionally, even though Appellants' arguments cannot legally constitute substantial evidence, Highland responds that its hydrologic studies have shown that there is ample groundwater recharge to support Project water and surrounding uses. The Water Availability Analysis on this point states:</p> <p>"The total estimated water demand for the Facility is 22.7 acre-feet per year, which represents 36% of the conservatively estimated 62.5 acre-feet per year of groundwater recharge potential for the project site. The water demand of the Facility does not surpass its estimated precipitation recharge potential</p>



	<p>which suggests that there would be no impacts to other facilities in the cumulative impact area.”</p> <p>(Summit Engineering, Water Availability Analysis, Highland Farms LP (January 20, 2022) at p.6.)</p> <p>A further hydrologic study prepared in response to Appellants’ comments on this point is provided in addition to this response and its findings are incorporated herein, and address this comment.</p>
<p>3. Indeed, any aquifer drawdown may impact the availability of spring water on adjacent properties. This impact must be evaluated. The WAA fails to look at this impact entirely, despite the fact that the neighboring spring at issue is within the Project’s cumulative impact area (see WAA, enc. A) and despite the assumed connectivity between the aquifer and the spring (discussed above).</p>	<p>Highland responds by referencing and reincorporating its response to the previous comment. Additionally, Highland notes that the “assumed” connectivity between the Project groundwater aquifer and the nearby spring is conclusory, not based on any factual support, and is based on lay opinion of a technical matter. As such, this comment is not substantial evidence. (See CEQA Guidelines § 15064(f)(5); see also <i>Protect Niles</i>, <i>supra</i>, 25 Cal. App. 5th at p. 1139.)</p>
<p>4. The WAA also does not appear to account for the slope of the terrain and overall basin topography and runoff when calculating groundwater recharge and absorption (see Figure G1).</p> <p>[Figure G1 omitted]</p>	<p>Appellants fails to explain why this comment is relevant, or why terrain slope has any impact on groundwater recharge. Moreover, there is no indication that the slope of the terrain can cause a significant impact vis-à-vis alleged or potential impacts to neighboring waters. As such, this statement is unsupported and is not substantial evidence.</p>
<p>5. The WAA estimates that cannabis cultivation and process will require 22.7 acre feet per year, to be derived from a groundwater well. (PC Staff Report, p. 12.) Much of this water would be required during summer months and during dry years, when area groundwater fed spring flows are reduced or</p>	<p>Highland agrees with the cited water consumption estimates. However, calls for further studies without providing factual support for the contentions cannot be substantial evidence. (<i>Parker Shattuck Neighbors</i>, <i>supra</i> 222 Cal. App. 4th at 786.)</p>



stop altogether. This potentially critical issue needs to be investigated and addressed in the MND.	
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HIGHLAND'S RESPONSE TO ATTACHMENT C
INADEQUATE AND INACCURATE CUMULATIVE IMPACTS ANALYSIS

Appellants' Statement	Highland's Response
<p>A. Department of Cannabis Control Requests Cumulative Impacts Analysis</p> <p>1. In its letter dated May 7, 2024, the Department of Cannabis Control (DCC) comments:</p> <p>The IS/MND would be improved by acknowledging and analyzing the potential for cumulative impacts resulting from the Project coupled with other commercial cannabis business projects being processed by the County and any other reasonably foreseeable projects in Lake County that could contribute to cumulative impacts similar to those of the Project.</p> <p>(DCC Letter, p. 3.)</p> <p>The topics that the DCC regards as important to cumulatively consider include, but are not limited to:</p> <ul style="list-style-type: none"> • cumulative impacts from groundwater diversion on the health of the underlying aquifer, including impacts on other users and impacts on stream-related resources connected to the aquifer; • cumulative impacts related to noise; • cumulative impacts related to transportation; and 	<p>Highland responds that this statement does reflect a portion of the comment from the DCC as a Responsible Agency reviewing the MND.</p>



<ul style="list-style-type: none">• cumulative impacts related to air quality and objectionable odors.” (<i>Ibid.</i>)																			
2. We agree with DCC that the MND must consider, at least, these impacts in a cumulative setting. Attachment D discusses Project-related noise and odor impacts, and Attachment B discusses Project-related groundwater impacts. Below we discuss cumulative traffic impacts.	Highland responds by stating that, as discussed herein, the MND and associated documents do consider cumulative impacts where necessary and warranted. This response will address these Appellants’ comments on cumulative impacts individually.																		
<p>B. Cumulative Traffic Impacts</p> <p>1. Per the MND, page 70, Figures 12 and 13, show five other cannabis operations using Highland Springs Road for access to their sites. The cumulative projects in the area include but are not limited to the following:</p> <p>[</p> <table><tr><td>Permit Number</td><td>Project</td><td>Address</td></tr><tr><td>MUP 21-13</td><td>Delux CA LLC</td><td>1209 Vernal Drive</td></tr><tr><td>MUP 19-15</td><td>Wellness I</td><td>6751 Ridge Rd.</td></tr><tr><td>MUP 22-11</td><td>Wellness Ranch II</td><td>6751 Ridge Rd.</td></tr><tr><td>MUP 20-57</td><td>WFPS</td><td>6051 Ridge Rd.</td></tr><tr><td>MUP 20-96</td><td>Highland Farms</td><td>7522 Highland Springs Rd.</td></tr></table>	Permit Number	Project	Address	MUP 21-13	Delux CA LLC	1209 Vernal Drive	MUP 19-15	Wellness I	6751 Ridge Rd.	MUP 22-11	Wellness Ranch II	6751 Ridge Rd.	MUP 20-57	WFPS	6051 Ridge Rd.	MUP 20-96	Highland Farms	7522 Highland Springs Rd.	Highland responds that the MND page 70, Figures 12 and 13 do not show that five other cannabis operations use Highland Springs Road for access to their sites. This portion of the MND simply identifies that there are several cannabis projects within a one-mile and three-mile radius. It is unclear where Appellants obtained the information on the number of cannabis projects using Highland Springs Road.
Permit Number	Project	Address																	
MUP 21-13	Delux CA LLC	1209 Vernal Drive																	
MUP 19-15	Wellness I	6751 Ridge Rd.																	
MUP 22-11	Wellness Ranch II	6751 Ridge Rd.																	
MUP 20-57	WFPS	6051 Ridge Rd.																	
MUP 20-96	Highland Farms	7522 Highland Springs Rd.																	



MUP 20-82	Big Property Management	9200 Highland Springs Rd.		
<p>2. The Project will contribute to significant cumulative traffic impacts that are unacknowledged in the MND, as explained below. Already, there has been a dramatic increase in traffic on Highland Springs Road since cannabis operations started. In addition to increased passenger automotive traffic, there is a large increase in heavy trucks and trucks towing trailers on Highland Springs Road. These trucks are wide and take up more of the road than passenger cars and cannot slow down or turn as quickly.</p>				<p>Highland responds that claiming that the Project will “contribute significantly” to traffic impacts, and that there has been a dramatic increase in traffic on Highland Springs Road since cannabis operations started are conclusory, and unsupported by any factual background, and therefore are not substantial evidence.</p> <p>Moreover, the MND does address traffic impacts, and finds that the Project will not result in a substantial increase in traffic for the area. (MND at p. 60.)</p>
<p>3. The cumulative effect of this traffic in conjunction with Project traffic will negatively impact access to recreational areas, which contravenes County planning directives and economic goals for tourism, which seek to increase tourism and its associated economy—not decrease it. The Draft Lake County Parks, Recreation, & Trails Master Plan promotes a goal reflecting community vision: “Identify and create parks, ... trails with regional destination allure to attract visitors to Lake County to bolster the local economy.” (Master Plan, pp. iii, 2.7.) Continuing, the Master Plan observes, “Lake County is experiencing increased tourism, which should be considered when imagining the future of parks, recreation, and trails.” (Id., p. 2-3.)</p>				<p>Highland responds that the claims in this comment are conclusory and unsupported by any factual background.</p> <p>The Appellant cites generally to the Draft Lake County Parks Recreation & Trails Master Plan. However, these citations do not concern traffic, how traffic can impact parks, or even Project-specific impacts. There is no analysis on how the cited portions of the County Parks Recreation & Trails Master Plan relate to any potential Project-specific environmental impact. General citations to an inapplicable planning document are not substantial evidence.</p>



<p>The Master Plan references the economic development potential of County parks, including Highland Springs Recreation Area, which translates to more visitors to County parks:</p> <ul style="list-style-type: none">• “There is significant resident interest in experiencing nature and getting close to the water for nature-focused activities. This is also a key driver for tourism in Lake County.” (Master Plan, pp. 3.18, C-17.)• “Many communities are seeking to grow their outdoor recreation and tourism economy, invest in their downtowns, and conserve natural lands. Outdoor recreation is a major potential source for growing the local economy. Encouraging activities that foster environmentally friendly community development, includes: Creating or expanding trail networks to attract overnight visitors and new businesses and foster use by local residents.” (Master Plan, p. A-28.)	
<p>4. The addition of Highland Farms traffic of 52 trips per day will increase vehicle trips on Highland Springs Road in a manner that will increase the cumulative effect of cannabis operations and create a potentially significant cumulative impact that requires analysis. Below is a table demonstrating the increase.</p> <p>[Table omitted for formatting]</p> <p>Moreover, the MND misleadingly compares the Project’s traffic on Highland Springs Road to traffic on State Route 29.</p>	<p>As an initial note, the omitted table indicates that the nearby cannabis projects, including the Project, that purportedly use Highland Springs Road will result in a total of 124 trips per day, and 152 peak hour trips.</p> <p>Again, Appellants provide no citation to any authority or factual background on how Appellants reached these traffic numbers, and without citation or factual background, it is impossible for Highland to authenticate these presented numbers.</p> <p>Additionally, impacts to traffic in CEQA are now calculated using vehicle miles traveled (“VMT”), and not the level of service (“LOS”) that</p>



<p>(MND, p. 60.) This comparison is inapposite. State Route 29 is more than 4.25 miles from the Project and, as a major arterial roadway through the County, can handle traffic increases. Highland Springs Road, however, is a much narrower, curvier, rural roadway that cannot safely handle the same traffic increases as State Route 29. Comparing the two roadways presents a false equivalency that hides the actual impact of the Project.</p>	<p>Appellant seems to be referencing. The MND properly analyzes VMT and addresses the potential environmental impacts from vehicle use. (See MND p. 60.)</p>
<p>C. Cumulative Roadway Safety Concerns</p> <p>1. Furthermore, the portion of Highland Springs Road that will be used by Project traffic currently lacks several basic safety features, making the road unsafe for motorists and recreationists trying to enjoy Highland Springs Recreation Area. The cumulative effect of the additional traffic from the cannabis operation increases the risk to an already dangerous situation. These include the following.</p> <p>a. No speed limit signs on the entire length of Highland Springs Road. Other roads, including those less travelled, branching off State Highway 29 have speed limit signs, yet Highland Springs Road lacks this basic safety feature. (See Figure C1.) Signage should be installed.</p> <p>[Figure C1 omitted]</p> <p>b. Highland Springs Road, as it goes through Highland Springs Recreation Area, has little or no shoulder and no shoulder markings. Recreationists walk, ride bicycles, and horseback</p>	<p>Highland responds that it takes motorists and pedestrian concerns seriously and requires its employees to always maintain strict compliance with traffic laws.</p> <p>While Highland Springs Road may lack certain traffic features, it is a County-maintained public road, and has been approved for use in this Project. Highland agrees that speed signs and other traffic warnings should be installed, and the County may install such signs as a result of this appeal hearing. Taking the foregoing into account however, Highland cannot install traffic signs on the County's behalf. Appellants comments on this topic are not substantial evidence of a potential environmental impact.</p> <p>Further, Highland states that the impacts described in this comment are preexisting conditions. CEQA analyzes a project's impacts on the environment, and not the environment's impact on a project. (<i>California Building Industry Ass'n v. Bay Area Air Quality Mgt. Dist.</i> (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.])</p>



<p>ride on the road. While East Highland Springs Road has centerline markings identifying it as a two-lane road and signage advising drivers that pedestrians and equestrians are on the road, Highland Springs Road has no centerline markings or signage. Similarly, while northbound motorists leaving the park see caution signage for tractors on the road, there is no caution signage for southbound motorists entering the park advising motorists that recreationists are on the road. (See Figure C2.) Signage should be installed.</p> <p>[Figure C2 omitted]</p> <p>c. The two-mile paved portion of Highland Springs Road within Highland Springs Recreation Area and the approximately four-mile unpaved portion of the road between Highland Springs Recreation Area and the County line has several blind curves. There is no signage cautioning drivers of this hazard. (See Figure C3.) Signage should be installed.</p> <p>d. The two-mile paved portion of Highland Springs Road, within Highland Springs Recreation Area above the reservoir between mile markers MM 4.29 and MM6.37, does not meet state width requirements for a two-lane road. (See California Department of Transportation [Caltrans] (2020), Highway Design Manual, § 301.1, available online at https://dot.ca.gov/-/media/dot-media/programs/design/documents/hdm-complete-12312020a11y.pdf, EXH-129 et seq. [“For conventional State highways with posted speeds less than or equal to 40 miles per hour and AADTT (truck volume) less than 250 per lane that are in</p>	<p>Given that these roadway conditions already exist, and the Project does not otherwise exacerbate or change road conditions, this comment is not substantial evidence of a significant impact.</p>
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urban, city or town centers (rural main streets), the minimum lane width shall be 11 feet. The preferred lane width is 12 feet.”].) (See Figure C4.) Additionally, it lacks markings to suggest to a driver that they are on a two lane road. Markings should be installed. However, if proper markings are added, the road width will be further narrowed and not comply with Caltrans requirements, be more dangerous, and potentially require a reduction in speed to mitigate safety issues.

[Figure C4 omitted]

Consequently, drivers from either direction regularly drive over the center of the road as if on a single lane road, dangerously facing oncoming traffic head on. Lack of speed limit signs, narrow shoulders, sharp/blind curves and no lane markings create known traffic safety risks. (See Federal Highway Administration, Mitigation Strategies for Design Exceptions, available online at https://safety.fhwa.dot.gov/geometric/pubs/mitigationstrategies/chapter3/3_lanewidth.cfm EXH-177 et seq. [discusses an increase in lane-departures on narrow roads and roads with narrow shoulders].)

e. The fork that splits East Highland Springs Road from Highland Springs Road is particularly confusing and dangerous. (See Figures C5 and C6.) It is an unusual convergence of three single lane roads using three different forks in close proximity. Drivers going downhill on Highland Springs Road cannot see drivers going uphill due to the sharp curve blocking the view. Simultaneously, drivers going



<p>downhill on Highland Springs Road must cross oncoming traffic going to Highland Springs Recreation Area's main entrance. Also, drivers exiting from the main entrance must merge with drivers going downhill from Highland Springs Road. There is no signage or lane markings to help drivers safely negotiate the intersection. (See Figure C6.) Signage and lane markings should be installed, at a minimum, although a junction redesign likely would be the necessary solution to sufficiently mitigate safety impacts.</p> <p>[Figures C5 and C6 omitted]</p>	
<p>The Project's permit should be denied until the County properly addresses the traffic safety deficiencies on Highland Springs Road and the cumulative effects of the increased traffic from cannabis growers and park goers.</p>	<p>Highland responds by stating that this comment is a conclusion, and not substantial evidence. (CEQA Guidelines § 15064(f)(5).)</p>



HIGHLAND'S RESPONSE TO ATTACHMENT D
INADEQUATE SETBACK FROM PUBLIC LANDS AND VIOLATION OF COUNTY CANNABIS CULTIVATION
ORDINANCE

Appellants' Statement	Highland's Response
<p>A. Lake County Cannabis Cultivation Ordinance Prohibits Commercial Cannabis Cultivation within 1,000 Feet of Public Lands</p> <p>1. Lake County Zoning Ordinance Article 27, section 27.13(at)1.v (p. 27-120) states: "Commercial cannabis cultivation is prohibited within a [sic] 1,000 feet of ... Public lands"</p> <p>2. This prohibition was approved as part of the 2019 Commercial Cannabis Cultivation Ordinance No. 3084.</p>	Highland agrees with this citation.
<p>B. Public Lands Include State and Public Parks Per County Ordinance</p> <p>1. County Ordinance No. 3096 updated the definition of Public Lands subject to this prohibition to include all state and county parks:</p> <p>Public 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. Additionally, all State and County parks are public lands. (See also Figure D1.)</p>	Highland agrees with this citation.



<p>[Figure D1 omitted]</p>	
<p>3 C. Highland Springs Recreation Area Adjacent to the Project Site Is a Public Park and Therefore a Public Land Subject to the 1,000-Foot Prohibition</p> <p>1. County parcel 007-043-07, adjoining the applicant’s cultivation sites, is part of Highland Springs Recreation Area (aka Highland Springs Regional Park or Highland Springs Park)—a regional public park owned by the Lake County Watershed Protection District, a political subdivision of the state, and managed by the Lake County Water Resources Department, a division of the County. The County refers to it as a park on its website (see https://www.lakecountycyca.gov/Facilities/Facility/Details/Highland-Springs-Park-66). Being a State or County park is sufficient for the land to be defined as “public land” per County Ordinance No. 3096 and for the 1,000-foot setback for cannabis cultivation to apply.</p>	<p>Highland responds that County parcel 007-043-07 is not identified as being a part of Highland Springs Regional Park, and Appellants provide no precise citation that this parcel is included as part of the park. County staff, in reviewing this Project, have not identified this parcel as being part of Highland Springs Regional Park.</p> <p>Moreover, Ordinance 3096 cited by Appellants narrows the definition of “public land” to those areas “where, because of devilmint or other actions, it is clear that the public is invited to use such locations as places of recreation and other destination activities...”</p> <p>County parcel 007-043-07 is undeveloped and impassible in most areas, and is not used as a “park” for purposes of Ordinance 3096. The parcel is largely overgrown, and has no trail or other feature that “invites” the public to use it. As such, it is not “public land” for purposes of the County Cannabis Ordinance.</p>
<p>D. The Project Is Sited Within 1,000 Feet of Public Lands—Highland Springs Regional Park—and Therefore Violates the Prohibition</p> <p>1. The Lake County Parcel Viewer shows County parcel 007-043-007, part of the Highland Springs Recreation Area, adjoining several of the parcels within the Project site, including parcels 007-006-34, 007-006-35, and 007-046-040. (See Figure D2.) The vast majority of the proposed cannabis</p>	<p>Highland responds by reiterating and reincorporating the above comment regarding County parcel 007-043-07 and Ordinance 3096.</p>



operation is proposed to take place on those three parcels, and a large portion would take place within the 1,000-foot setback zone. (See Figure D3.)	
[Figures D2 and D3 omitted]	
2. Accordingly, the Project violates the County’s prohibition of siting cannabis cultivation within 1,000 feet of public lands.	Highland responds by reiterating and reincorporating the above comment regarding County parcel 007-043-07 and Ordinance 3096.
E. Placing the Project Within 1,000 Feet of Public Lands Would Cause Potential Significant Environmental Effects Impacts to Recreation and Recreational Facilities	Highland disagrees with the contention that Ordinance 3096 states or stands for the propositions that: “inadequate setbacks from cannabis cultivation can discourage the use of nearby public lands, which may result in the increased use of other public lands and associated accelerated deterioration of facilities at those other public lands.” Appellants provide no basis for this assertion.
1. As indicated in County Ordinance No. 3096, Clarification of Definition of Public Lands regarding Commercial Cannabis Cultivation, inadequate setbacks from cannabis cultivation can discourage the use of nearby public lands, which may result in the increased use of other public lands and associated accelerated deterioration of facilities at those other public lands.	
2. Highland Springs Regional Park has a long-standing trail network that parallels the Project’s southern property line—namely the Quarry Trail and the Dead Horse Trail. The Quarry Trail runs within a few feet of the Project’s property line for nearly the entire width of the cultivation area. The County promotes the use of these trails in its brochures. The trails have been part of the approved KRT (Konocti Regional Trails) Master Plan for decades and are also part of the Draft Lake County Parks, Recreation and Trails Master Plan to	Highland responds by stating that these trails are <i>proposed</i> trails and do not exist yet. As such, the Project is not within 1,000 feet of any existing trail. As shown in all of the Appellants’ figures relating to these trails they are proposed. Figure D4, taken from the BLM and Lake County MOU from 2004 shows the Quarry trail as proposed, as does Figure D7 from the Draft Lake County Parks, Recreation and Trails Master Plan currently under review.



<p>interconnect trails from Highland Springs Road to Middletown. (See Figures D4 through D7 below.)</p> <p>[Figures D4 through D7 omitted]</p>	<p>As such, for the purposes of Ordinance 3096 these proposed trails do not qualify as “public lands” requiring a setback, because they are only proposed and do not yet exist.</p>
<p>Noise Impacts</p> <p>3. Noise during Project construction may result in significant impacts to recreationists at the adjacent Highland Springs Recreation Area and Highland Springs Regional Park. The MND inaccurately states that “there are no sensitive noise receptors within one mile of the Project site.” (MND, p. 55.) However, recreational park users are ordinarily considered sensitive receptors, and the County considers parks sensitive receptors. A park and park users occur within a mile of the Project site—actually, within 20 feet of proposed roadway construction. The MND does not include a construction noise study or any quantified analysis demonstrating what noise levels might be like at these public parks during Project construction, nor does it offer adequate mitigation to reduce the variety of construction noise that would occur.</p> <p>[footnote 5 omitted]</p>	<p>Highland responds that the MND acknowledges noise impacts from construction, but as with almost every project that includes construction, it is understood to be a temporary impact. The MND addresses this very fact by stating:</p> <p>“Construction of the Proposed Project may result in short-term increases in the ambient noise environment. Construction would be limited to the hours of 7:30 a.m. to 6:00 p.m. Monday through Saturday. Truck trips are estimated to be 89 trips for Stage 1 construction and between 150 and 175 for full buildout over the course of Stage 2 construction activities (approximately six to nine months); however, this would be a temporary disturbance that would not represent the ambient noise levels during operation. Operational activities may result in a slight increase in the ambient noise environment (e.g. truck trips, air filtration system). However, noise generated from the Proposed Project would be limited to the business hours of operation: 8:00 a.m. to 7:00 p.m. with deliveries and pickups restricted to the hours of 9:00 a.m. to 7:00 p.m. Monday through Saturday and Sunday from 12:00 p.m. to 5:00 p.m. Due to the rural nature of the Project Site and the lack of residences in the immediate vicinity, the potential increase in noise generation is not expected to be substantial. However, noise that exceeds County standards would be considered a significant impact. Implementation of the requirements of the Lake County Zoning Ordinance Section 21-41.11 would minimize the potential for sleep disturbance and would reduce the potential for noise to result in a nuisance.”</p> <p>(MND at p. 55.)</p>



	Moreover, contrary to Appellants statement, the MND contains mitigation tailored specifically to noise impact . (See NOI-1 and NOI-2 at MND p. 55.)
<p>Odor Impacts</p> <p>4. The MND acknowledges that odor may be a problem, even claiming the Project includes an Air Quality Management Plan to address it (discussed below), but then fails to properly analyze potential odor effects on recreationists at the adjacent Highland Springs Recreation Area and fails to explain exactly how the Plan will address odor impacts. (MND, pp. 26-27.) Large-scale cannabis cultivation is known to produce strong and far-reaching odors, from both the plants themselves, especially during flowering, and from products, like manure, used in cultivation. (See, e.g., Processing Magazine (Oct. 28, 2022), Cannabis is here to stay, its unpleasant odors are not, available at https://www.processingmagazine.com/material-handlingdry-wet/filtration-separation/article/21282544/cannabis-is-here-to-stay-its-unpleasant-odors-arent, EXH-183 et seq.)</p>	<p>Highland responds by stating that the MND does state that a property management plan will be prepared, which will address impacts from cannabis odor. (MND at p. 23.)</p> <p>Despite Appellants’ claims otherwise, Highland has indeed provided detailed descriptions of odor eliminating procedures and mechanisms. The Farm Management Plan (“FMP”) contains numerous provisions relating to odor control, just a few of the most relevant are quoted below:</p> <p>“Odors from the processing facility will be managed using carbon filters and a ventilation system within the buildings. Filters will be changed every quarter in accordance with Highland Farm’s air filtration SOP. Outdoor odors will be managed by planting fragrant native flowering vegetation surrounding the cultivation area.”</p> <p>(FMP at p. 21.)</p> <p>“Any residences within 1,000 feet of the property boundaries will receive [the Community Liaison/Emergency Contact] information directly before project implementation. The Community Liaison/Emergency Contacts will be responsible for responding to or employing someone to respond to all odor complaints 24 hours a day, seven days a week, including holidays. It is highly encouraged that neighboring residents contact the above Community Liaison/Emergency Contacts to resolve any operational problems before reaching out to any County Officials/Staff. When an odor complaint is received, the Community Liaison/Emergency Contacts will immediately take</p>



	<p>action to eliminate the odor as soon as possible. The first step will determine the odor source from which the complaint was received (cultivation area, processing facility, or other). Then the best mitigation method will be implemented depending on the source. Some mitigation methods include windscreens, upgrading odor control filtration systems/ventilation systems, or installing additional odor control equipment.”</p> <p>(FMP at pp. 31-2.)</p> <p>“To help reduce odor impacts from this project, native vegetation will be maintained on the property to mask off-site odor drift. In addition, the future processing facility, which will hold dried/drying cannabis plants, will install fans and carbon filters/air scrubbers to prevent odors from leaving the premises during all processing phases.”</p> <p>(FMP at p. 33)</p> <p>The FMP is incorporated and included as part of the MND. (MND at p. 15.)</p> <p>So, contrary to the Appellants’ contention, there are numerous odor mitigation measures incorporated into the MND. Furthermore, Appellants’ citation to a single article relating to cannabis does not have any information that is specific to this Project, and demonstrates that this Project’s odor would be a significant impact.</p>
5. The MND includes no odor-control mitigation measures and states only that “Potential odors would be minimized, as the processing facilities would be equipped with air circulation fans, passive carbon filtration, windscreens, and native vegetation maintenance to mask odors from cannabis	<p>Highland responds by reiterating and reincorporating its response to the above comment relating to odor.</p>



<p>cultivation and processing.” (MND, p. 27.) Supposedly the Project includes an “Air Quality Management Plan” (ibid.) yet there is no legally binding mechanism to ensure its preparation—no mitigation measure or condition of approval requires it. It does not even appear in the project description as part of the Project. Nor does the MND state anywhere what will be in this Plan and how it will effectively mitigate and manage odor issues associated with cannabis cultivation. The applicant’s Farm Management Plan (p. 22) states that “Outdoor odors will be managed by planting fragrant native flowering vegetation surrounding the cultivation area” However, this strategy is fundamentally flawed since the native plants in the area, fragrant or otherwise, flower in the spring before cannabis cultivation odors are at their strongest. And, again, there is no legally binding mechanism to enforce this measure.</p>	<p>Highland also adds that the Project occurs in a remote rural area, and odors would be mitigated by the distance to the nearest receptor, which is thousands of feet away.</p> <p>Appellants have failed to show how the Project odors would in fact be detectable or offensive to any nearby receptors. Moreover the “mere possibility” of adverse impact on a few people as opposed to the environment does not warrant the preparation of an EIR. (<i>Pocket Protectors</i>, <i>supra</i>, 124 Cal. App. 4th at 929.)</p>
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HIGHLAND'S RESPONSE TO ATTACHMENT E INADEQUATE PROJECT ALTERNATIVES

The Appellants' Attachment E alleges that the MND failed to analyze Project alternatives. Highland will respond to these comments in a narrative fashion, instead of by individual comments as with the other Attachments thus far.

Appellants first contention is that the Project could be located in alternate locations, that would lessen the alleged environmental impacts listed throughout the July Letter. Appellants even provide a list of "suitable" alternate locations.

As an initial response, Highland states that the Property is General Plan-designated and zoned in such a way that the Property is a suitable location for the Project, and cannabis cultivation is allowable on the Project site.

Moreover, Appellants fail to list specifically why the Property is less desirable or appropriate than the list of properties they provide, other than the frivolous claims made throughout the July Letter already addressed in this response. Also, Appellants correctly do not cite to any statute, CEQA or otherwise, or local ordinance that requires an analysis of alternate locations- because no such requirement exists. In other words, there is no legal mandate for Highland to consider alternate cultivation locations, and Appellants make no legal argument for the validity of these contentions.

As stated, at the outset, Highland is committed to excellence, promoting and supporting the County and its citizens, and environmentalism. The Property as selected specifically for its unique features that both provide excellent opportunities to cultivate cannabis, and also avoid environmental impacts. As such, Highland will not consider alternate locations.

Appellants next make a single comment that the Project can be reduced in size to avoid alleged impacts. As an initial response, Highland points out that it has already scaled down its original size due to comments from the County. Also, Highland draws attention to its responses throughout this letter addressing environmental concerns and demonstrating that the Appellants' alleged impacts, are nonexistent. As such, Highland has already avoided potential environmental impacts and will not reduce the Project any further.

HIGHLAND'S RESPONSE TO ATTACHMENT F
VIOLATION OF STATE MINIMUM FIRE SAFE REGULATIONS

Appellants' Statement	Highland's Response
<p>A. State Minimum Fire Safe Regulations Require Dead-End Roads on the Project Site to Stay Within Certain Lengths</p> <p>1. Title 14, division 1.5, chapter 7, section 1273.08 of the California Code of Regulations, promulgated pursuant to Legislative mandate in Public Resources Code section 4290, requires dead-end roads on parcels zoned for 20 acres or more within a Very High Fire Severity Zone in a State Responsibility Area to not exceed 5,280 feet, as part of State Minimum Fire Safe Regulations. (See also Cal. Code Regs., tit. 14, § 1270.02, subd. (a).)</p>	<p>Highland agrees with this citation.</p>
<p>2. The Project site is located within a Very High Fire Severity Zone in a State Responsibility Area (MND, p. 45) and zoned primarily as RL (Rural Lands) with minimum allowable parcel sizes of 20 acres (see Lake County Zoning Ordinance, art. 7, § 7.12).</p>	<p>Highland agrees with this comment.</p>
<p>B. The Project's Access Road Is a Dead-End Road and Would Exceed the Allowable Length, Therefore Violating State Minimum Fire Safe Regulations</p> <p>1. Access to the property will be achieved by a portion of the access road on County property (1,057 feet) connecting Highland Springs Road to the property entrance and the</p>	<p>Highland responds that the <i>primary</i> access to the Property is through the access road that connects to Highland Springs Road. As stated in the MND, there is additional access on Amber Ridge Road, and the MND even notes that some of the Project parcels are located on Amber Ridge Road (also known as Amber Ridge Court). (See e.g. MND at pp. 1, 2, 59.) As stated in the MND, Amber Ridge Court is, and always has been, an access route to the Project site through an easement.</p>



<p>additional 6,500-foot-long private access roadway—totaling approximately 7,500 feet of roadway. (PC Staff Report, p. 6.)</p>	
<p>2. The MND incorrectly states that the access road connects to Amber Ridge Court (aka Amber Ridge Road). (MND, p. 59.) Per the Lake County Parcel Viewer, Amber Ridge Court does not connect to the access road. More than 2,000 feet of wetland and grassland separate the two roads. (See Figure F1.)</p> <p>[Figure F1 omitted]</p>	<p>Highland responds by reiterating and reincorporating the above comment.</p> <p>Highland further responds by stating that there are numerous internal roads and routes that connect Amber Ridge Court with the Project access road. Figure F1, omitted here for formatting, shows a straight line from the Project access road to Amber Ridge Court, which is not how the internal Project roads connect the two. Moreover Figure F2 only depicts the cannabis cultivation sites and is not intended to illustrate all internal routes.</p> <p>Further studies and design plans to be submitted to the County indicate and show the alternate routes used for access of Amber Ridge Court from the Project site.</p>
<p>3. There are no documented plans to connect the two roads. The applicant’s site plan only depicts “ATV paths” inside the grassland/wetland areas. (See Figure F2.) The majority of these paths are contained inside secured cultivation areas. (See Figure F2.) Nothing in the record demonstrates that the access road will be connected to Amber Ridge Court in a manner that precludes it from being considered a dead-end road. Indeed, the applicant has publicly acknowledged that the Project site is not connected to Amber Ridge Court in as much as the applicant has discussed connecting it for emergency egress (see below).</p>	<p>Highland responds first by reiterating and reincorporating the above comments regarding internal Project roads.</p> <p>Secondarily, Appellants contention that “[n]othing in the record demonstrates that the access road will be connected to Amber Ridge Court in a manner that precludes it from being considered a dead-end road” is both incorrect, and a conclusory statement. As disused above, the MND states that Amber Ridge Court is an access route. Moreover, Appellants provide no explanation why the connections preclude the roads from being considered dead end roads. The Appellants make general conclusions without any legal or factual support.</p>



<p>4. At the Planning Commission hearing, the applicant stated that it wants to connect the parcel to Amber Ridge Court for emergency egress. However, this emergency egress is not discussed as part of the Project in the MND or PC Staff Report, and it would be problematic. To achieve secondary egress to the nearest non-dead-end road, Highland Springs Road, from Amber Ridge Court, the applicant would have to traverse through Donovan Valley on Amber Ridge Court, Vernal Drive, and Ridge Road. Each of these roads themselves do not meet State Minimum Fire Safe Regulations. They do not meet the requirements for road width (Cal. Code Regs., tit. 14, § 1273.01, subds. a, b), road grade (id., § 1273.03, subds. a, b) or road radius (id., § 1273.04). Neither the applicant nor County have shared any plans to make the required improvements to these other roads.</p>	<p>Highland responds by stating that Appellants take the meaning and statements before the Planning Commission out of context.</p> <p>At the Planning Commission hearing, Highland committed to <i>allowing</i> neighbors on Amber Ridge Court access through the Project site as a concession to neighbor's comments regarding wildfire safety. This was done as a sign of good faith in an attempt to work with concerned neighbors. Highland is under no obligation to do this, but as it is committed to working with neighboring property owners, it believed this was the best course of action.</p>
<p>5. Until connected to Amber Ridge Court, the private access road is considered a dead-end road. Accordingly, the Project would violate title 14, division 1.5, chapter 7, section 1273.08 of the California Code of Regulations.</p>	<p>Highland responds by reiterating and reincorporating the above comments, the Project access road is not a dead-end road.</p>



HIGHLAND'S RESPONSE TO ATTACHMENT G
VIOLATION OF STATE CANNABIS CULTIVATION GENERAL ORDER

Appellants' Statement	Highland's Response
<p>A. The Project Violates the SWRCB Cannabis Cultivation General Order</p> <p>1. The SWRCB Cannabis Cultivation General Order (adopted Nov. 7, 2023), Cannabis Cultivation Policy Attachment A, Definitions and Requirements for Cannabis Cultivation, mandate a 100-foot setback from intermittent (i.e., seasonal) wetlands. (SWRCB, General Order, Attach. A, p. 28 [General Requirement No. 37], available online at https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/cannabis_attach_a_clean_version.pdf, EXH-193 et seq.)</p>	<p>Highland agrees with this comment.</p>
<p>2. However, as explained above in Attachment B, paragraph D.4, the Project biologist established that the Project would not be able to adhere to setback requirements because “it would be difficult to avoid any discharge of sediment into any setback area while grading the top of the two hills on the north parcel due to the small size of these potential cultivation area.”</p>	<p>Highland reiterates and reincorporates its responses from the comment above that:</p> <p>“[s]etbacks for aquatic resources included on the site plan design are consistent with those identified in the State Water Resources Control Board Requirements for Cannabis Cultivation...”</p> <p>(BM at p. 9.)</p> <p>As such, Highland will indeed adhere to setback requirements, which are also depicted in all the relevant updated site plans.</p>



3. The biologist went on to recommend that Project cultivation be limited to the south parcel only and that wetlands on the north parcel be restored. This Project change did not occur.	Highland reiterates and reincorporates its responses from the comment directly above.
4. Additional evidence demonstrates that wetland boundaries were underestimated (see Attach. B), therefore, any setbacks from these boundaries prescribed in MND Mitigation Measure BIO-1 would be even more inadequate than assumed by the Project biologist.	Highland responds that the citation to Appellants' Attachment B contains no specificity, and the responses to Attachment B are reiterated and are incorporated here.
5. Consequently, the Project cannot adhere to the 100-foot setback requirement of the state Cannabis Cultivation General Order and will violate the Order.	Highland reiterates and reincorporates its responses from the comment directly above.



HIGHLAND'S RESPONSE TO ATTACHMENT H
INCORRECT AND UNVERIFIED EASEMENTS AND VIOLATION OF COUNTY
CANNABIS CULTIVATION ORDINANCE

Instead of responding to each individual comment in Attachment H, Highland will respond to all of them in narrative fashion. The County's assessment that there was a deeded easement for the Project access road was indeed incorrect and based on confusion with the recorded documents.

However, the access road, where it travels through the County owned parcel, is a "public road" for purposes of the County Cannabis Ordinance, as correctly stated by Appellants. (See July Letter Attachment A at p. 8.) Moreover, the County will grant Highland an "Access to Right License" as part of the conditions of approval to further comply with the County Cannabis Ordinance.

As for Appellants' comments relating to the processing permit application, and frontage on a paved state or county-maintained road per the County Cannabis Ordinance, Highland is abandoning its processing permit application, so this requirement no longer applies and therefore the comments are moot.

HIGHLAND'S RESPONSE TO ATTACHMENT I
MISCELLANEOUS OTHER MND ERRORS, OMISSIONS, AND CONCERNS

Appellants' Statement	Highland's Response
<p>A. As stated by the DCC in its comment letter on the Project (dated May 7, 2024), the MND's "regulatory setting, environmental setting, impact analysis and methodology" all require more substantial evidence "to support all impacts conclusions in the checklist, including the sources relied upon to make conclusions." (DCC Letter, p. 2.) The DCC also commented that "[i]n several instances throughout the document, mitigation measures are not sufficiently specific to establish how such measures would minimize significant adverse impacts as a result of Proposed Project activities." (Ibid.) Additionally, per the DCC, the MND's project description required more detail. (Ibid.) The DCC is the state agency charged with overseeing cannabis operations and a Responsible Agency under CEQA informing the County that the MND's project description, environmental analysis, and mitigation are insufficient under CEQA. (Id., p. 1.) The DCC further asserts that, without amendments, it cannot rely on the MND for its CEQA needs as a Responsible Agency when processing the "annual cultivation licenses from DCC" required by the Project.</p>	<p>As an initial note, as set out above, the MND is not required to be the equivalent of an EIR, and does not need the same level of detail. (<i>Gentry, supra</i>, 36 Cal. App. 4th at 1378.) It appears that the DCC is requiring the informational equivalent of an EIR in this comment.</p> <p>Highland responds that as a Responsible Agency, the DCC's comments are advisory only to its areas of expertise. (See e.g. CEQA Guidelines §15086.) The DCC is certainly not expert in all matters included in the MND as seems to be suggested by Appelleants. Moreover, the DCC did not identify any items it considered to be a potential environmental effect. (<i>Id.</i> subd. (d); see also CEQA Guidelines § 15096 (b)(2).) Additionally, if the DCC believed the MND was as insufficient as claimed by Appellants, the Department is free to take it to court to litigate the adequacy. (<i>Id.</i> subd.(e)(1).)</p> <p>In addition to the above, the County and Highland took the DCC's comments into consideration. Moreover, Appellants' contention that the DCC stated it could not "rely" on the MND not exist within the DCC's comment letter. This appears to be an attempt by Appellants to inflate the urgency of the DCC comment letter.</p>
<p>B. The MND, in its "Project Location(s)" section (p. 1), fails to identify the County owned parcels upon which a large portion of the access road will be constructed and used. This</p>	<p>The Project access road is not part of the Project site, and is adequacy discussed in the MND.</p>

is a problematic omission because it confuses the scope of the Project site, which clearly involves those parcels. (See Attach. A.)	
C. The MND fails to identify the full zoning designations for the affected parcels, labeling them all as “RL-Rural Lands” (p. 1) and omitting the remainder zoning identification, i.e., RL-WW (Waterway) and RL-B5. This is a problematic omission because these specialized zoning districts come with additional restrictions that require discussion and design consideration. For example, parcels 007-006-27 and 007-057-02 are zoned WW, which prohibits development activity within riparian corridors. (See Lake County Zoning Ordinance, art. 37, § 37.4.)	Highland responds that the zoning is discussed adequately. Moreover, the zoning discussed in the two example parcels 007-006-27 and 007-057-02 is irrelevant because as discussed, these parcels are used for clustering and will contain no Project development (See e.g. MND at p. 3.).
D. As explained in Attachment F, paragraph B.4, the applicant has publicly stated that it wants to connect the parcel to Amber Ridge Court for emergency egress. This emergency egress is a foreseeable part of the Project (given the applicant’s public admission) and must be included as part of the Project and analyzed accordingly. Use of the roadways required for this emergency egress (Amber Ridge Court, Vernal Drive, and Ridge Road) may have impacts not already considered, such as to wetlands and sensitive species (see Attach. B) or associated with serpentine formations and soils (see Attach. A).	Highland reiterates and reincorporates its response from above. The connection between the Project access road and Amber Ridge Court exists already, and its public statements at the Planning Commission were a concession to allow neighbors on Amber Ridge Court to utilize this route for emergency egress.
E. The MND fails to discuss the emerging data demonstrating the alarming levels of pesticides found in legal cannabis products. A recent investigation showed that more than half of the legal cannabis products tested had “concentrations of	Highland responds initially that its priority is to produce the highest quality product possible, and only uses pest control mechanisms that are healthy and legal.



<p>pesticides either above levels the state allows or at levels that exceed federal standards for tobacco.” (Los Angeles Times (June 14, 2024), The dirty secret of legal weed, available online at https://www.latimes.com/0000018fcfbf-dd1e-a39f-efbff2500000-123, EXH-199 et seq.) “The contaminants include chemicals tied to cancer, liver failure, thyroid disease and genetic and neurologic harm to users and unborn children ... Some individual products contained as many as two dozen pesticides.” (Ibid.) The MND does not discuss the application of pesticides and it does not list and discuss all the statutes, rules, and regulations that apply to the use of pesticides in cannabis cultivation. Nor does it offer mitigation to minimize pesticide impacts that might (and apparently will) occur, in spite of rules and regulations.</p>	<p>Appellants’ contention here appears to be that Highland will use illegal pesticides, and then fails to analyze the impacts of this illegal use. A base allegation of illegal action, with a general citation to an article with no connection to the Project or Highland, is completely false, irrelevant, and insulting to the Applicant. Allegations of hypothetical illegal activity is not substantial evidence. (CEQA Guidelines § 15064(f)(5).)</p>
<p>F. The MND states: “The Proposed Project would not change the overall undeveloped nature of the Property and does not include development of approximately 96% of the undeveloped habitat on the Property.” (MND, p. 29). This statement is misleading because it does not account for disturbance to nearly 100% of the grassland/wetland area and sensitive serpentine habitat, where many special-status species either occur or could occur.</p>	<p>Highland responds that the MND’s statement is not misleading and does represent the low impact of the Project.</p>



CONCLUSION

As stated at the outset, Highland is committed to high quality cannabis cultivation, supporting its partner Lake County, and protecting the environment. Therefore, Highland respectfully requests that the Board of Supervisors take its responses above into consideration, deny Appellants' appeal, and approve the Project and adopt the MND.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'James I. Anderson', with a long horizontal flourish extending to the right.

James I. Anderson, Esq.

Everview Ltd.

Attorneys for Applicant Highland Farms LP