SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

500 CAPITOL MALL, SUITE 1000, SACRAMENTO, CA 95814
OFFICE: 916-446-7979 FAX: 916-446-8199
SOMACHLAW.COM

August 8, 2024

Via Email Only

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

Re: Reply to Applicant's July 19, 2024 Responses and Rebuttals to Appeal of Planning Commission's Approval of Highland Farms Cannabis Farm (UP 20-96) and Adoption of its Mitigated Negative Declaration (IS 20-116)

Dear Chairman Sabatier, Vice Chair Crandell, and Supervisors Simon, Green, and Pyska:

As explained previously, Somach Simmons & Dunn represents Thomas Lajcik and Margaux Kambara (Lajciks), owners and residents of the property at 6451 Ridge Road, Lakeport. On May 28, 2024, the Lajciks filed an appeal with Lake County (County) challenging the Planning Commission's approval of the Highland Farms Cannabis Farm (UP 20-96) (Project) and adoption of the associated Mitigated Negative Declaration (MND) (IS 20-116). On July 19, 2024, the applicant, Highland Farms, LP, submitted a letter to the Board responding to and rebutting the Lajciks' appeal, labeling it "unmeritorious." On July 26, 2024 (July 26 Letter), the Lajciks submitted a compendium of supplemental material to the Board in support of their appeal. We now submit a reply to the applicant's July 19 responses and rebuttals to the appeal.

In the applicant's July 19 letter, the applicant asserts that the Lajciks lack "substantial evidence" supporting some of the bases for their appeal and that there is "no merit to any of the vague and unsupported arguments proffered as ground for appeal from the Planning Commission's approvals." We acknowledge that the applicant and its legal counsel did not have the benefit of the Lajciks' July 26 supplemental material when preparing its July 19 letter. The Lajciks have since submitted ample evidence and support for their appeal, in the form of:

- A seven-page letter including legal and factual support for the appeal;
- Eight attachments to that letter consisting of 47 pages of supporting documentation including graphics, factual analyses, expert input, data, citations to County documents and state rules and regulations, and references to additional supporting materials;

- Twenty-two exhibits to the attachments containing 234 pages of additional support including everything from state and federal rules and regulatory guidance to expert scientific information; and
- Additional evidence emailed to the Board on August 7, 2024, regarding serpentine formations onsite.

This material sufficiently supports the Lajciks' appeal and provides more than enough evidence to support a fair argument that the Project *may* have a significant effect on the environment, which is the low threshold that must be met under the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et seq.) for determining whether an environmental impact report (EIR) must be prepared instead of a negative declaration. (See Cal. Code Regs., tit. 14 [CEQA Guidelines], § 15070, subd. (a)); *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 957; *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 75; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1139.)

Accordingly, the applicant's reliance on *Newtown Preservation Society v. County of El Dorado* (2021) 65 Cal.App.5th 771 is misplaced. In *Newtown Preservation Society*, petitioner "fail[ed] to identify *any* factual foundation" for their claim related to wildfire hazards. (*Id*. at p. 789, emphasis added.) Here, however, the Lajciks have identified a substantial body of evidence supporting their arguments that the Project will have several significant environmental impacts that go unanalyzed in the MND. For example, per the enumerated concerns in the applicant's July 19 letter, the Lajciks have provided expert factual support that serpentine formations and soils exist onsite, which the Project will disrupt. County-generated maps show that serpentine formations and soils exist on and around the Project's access roads. (July 26 Letter, Attach. A, pp. 2-3 [Figs. A1, A2].) Additionally, these soils and the several special-status species that occur within them were identified by local experts who have previously performed similar work for the County. (*Id*., Attach. B, pp. 2-3.) Information coming directly from the County and its own experts most assuredly constitutes sufficient factual support and not simply "[a] lay person's opinion based on technical information that requires expertise" (*Newton Preservation Society*, *supra*, at p. 789), which may not always constitute adequate evidence but certainly can, depending on circumstances.

This example, of course, is non-exclusive. The material submitted by the Lajciks in support of their appeal contains many more substantive facts demonstrating the environmental impacts of the Project that went unanalyzed in the MND. The fair argument standard is unequivocally met here. At this stage, preparation of an EIR is the only legitimate path forward under CEQA for the Project. (See, e.g., *Protect Niles*, *supra*, at p. 1148, fn. 10 [lead agency has a "responsibility to initially prepare an EIR if there is a fair argument of a significant environmental impact"].)

To briefly address the applicant's use of other case law in its July 19 letter, we offer the following. *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 392, does 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," but that premise does not obviate the County's obligation here to analyze the Project's air quality and human health impacts on the general public (e.g., recreationists at the adjacent Highland Springs Recreation Area) and construction workers from the disruption of serpentine soils. The applicant misuses this case to present a very distorted interpretation of CEQA's requirements. Just because serpentine soils pre-exist and are "not a condition created by the Project" does not mean they can be ignored. The serpentine formations and soils that exist onsite are a part of the "physical environmental conditions in the vicinity of the project," i.e., a baseline condition, "by which a lead agency determines whether an impact is significant." (CEQA Guidelines, § 15125.) When a project impacts the physical conditions of the environment, as will occur here when the access road is constructed over serpentine formations and soils, the CEQA document must analyze the severity of that environmental impact to determine its significance. (See, e.g., Guidelines, § 15064.) "All phases of Project planning, implementation, and operation must be considered …" (*id*., § 15063, subd. (a)(1)), including construction and operation of necessary access roads. That did not occur here. Moreover, it does not matter whether those impacts last two weeks[1] or two years, they must be discussed.

Leavenworth Audubon Adopt-a-Forest Alpine Lakes Protection Society v. Ferraro (W.D. Wash. 1995) 881 F.Supp. 1482 is a federal case that does not apply in a CEQA context. Nevertheless, the Lajciks have not and are not arguing that there exist no mitigation measures that might ameliorate the impacts and risks associated with serpentine soils and airborne naturally occurring asbestos. Two County departments, in their comments on the Project, suggest some type of related action—to stop work and prepare an Asbestos Dust Mitigation Plan prior to issuance of a grading permit should grading occur grading in a mapped Naturally Occurring Asbestos Area. However, these potential actions do not qualify as mitigation under CEQA. CEQA requires mitigation "be fully enforceable through permit conditions, agreements, or other legally-binding instruments" and include performance standards. (CEQA Guidelines, § 15126.4, subds. (a)(1)(B), (a)(2).) These potential actions are not included in the Project's Conditions of Approval or a Mitigation Monitoring and Reporting Plan (see, e.g., id., § 15097), nor is it explained in the MND or elsewhere how these actions

[1] The applicant asserts that construction of the portion of the access road that contain serpentine formations and soils would last only two-weeks. This timeframe, however, is not established anywhere in MND, the Planning Commission Staff Report, or the Project Conditions of Approval. Thus, there is no legal mechanism that would limit construction, and thereby limit airborne asbestos from disrupted serpentine, to two weeks; not that such a limitation obviates CEQA review. Notwithstanding, the Lajciks point out that there is no evidence that the roadway will be constructed to state standards for areas with naturally occurring asbestos, potentially creating air quality and human health impacts for the life of the Project. (July 26 Letter, Attach. A, p. 8.)

would result in lessening the impact. CEQA requires more. This impact must be disclosed and discussed in a CEQA document, which here is an EIR, and properly mitigated.

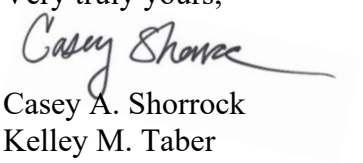
The Lajciks also disagree with the inference in the applicant's July 19 letter, when discussing hydrology and the biological reports prepared for the Project, that all CEQA responsible agencies found the MND and its technical reports "satisfactory and compliant with applicable standards." To the contrary, the State Department of Cannabis Control (DCC), in its comment letter dated May 7, 2024, pointed out several inadequacies of the MND, particularly its regulatory setting, environmental setting, impact analysis and methodology, which the DCC asserted lacked substantial evidence to support impact conclusions. (See July 26 Letter, Attach. I, p. 1.) The DCC further contended that the MND omitted analysis of cumulative impacts associated with groundwater, noise, transportation, and odor. (See July 26 Letter, Attach. C, p. 1.) These are major criticisms by a permitting state agency that go unacknowledged by the applicant but cannot be ignored by the County. The DCC's comments validate and support the Lajciks' arguments and evidence. Indeed, the applicant's own biologist validates the Lajciks' biological resource arguments, stating in a technical memorandum included as part of the MND:

> …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 watercourse appear to preclude access to any potential cultivation areas on the north parcel without having to transit through wetlands or watercourses…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. 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…"
>
> (See July 26 Letter, Attach. B, p. 8.)

As stated and demonstrated by the Lajciks in their July 26 appeal material, the Project's environmental analysis violates CEQA as well as local and state regulations and orders. If the Project is to proceed, an EIR must be prepared to comply with CEQA, and the Project must be redesigned to comply with local and state regulations and orders. Nothing in the applicant's July 19 letter changes this reality.

If you have questions, please feel free to contact Casey Shorrock at (916) 449-7979 or cshorrock@somachlaw.com.

Very truly yours,



Casey A. Shorrock
Kelley M. Taber

cc: Johanna DeLong, Assistant Clerk (johanna.delong@lakecountyca.gov)
Mary Claybon, Associate Planner (mary.claybon@lakecountyca.gov)