

# Appeal AB 21-05

Major Use Permit 19-36

Initial Study 19-56

Applicant: Lake Vista Farms, LLC

Property Owners: Brian D. Pensack &  
Garrett W. Burdick

Appellant: David R. Hughes



Presented by  
Michael Vincent McGinnis, PhD  
Principal Planner  
Community Development  
Department





# Appeal AB 21-05

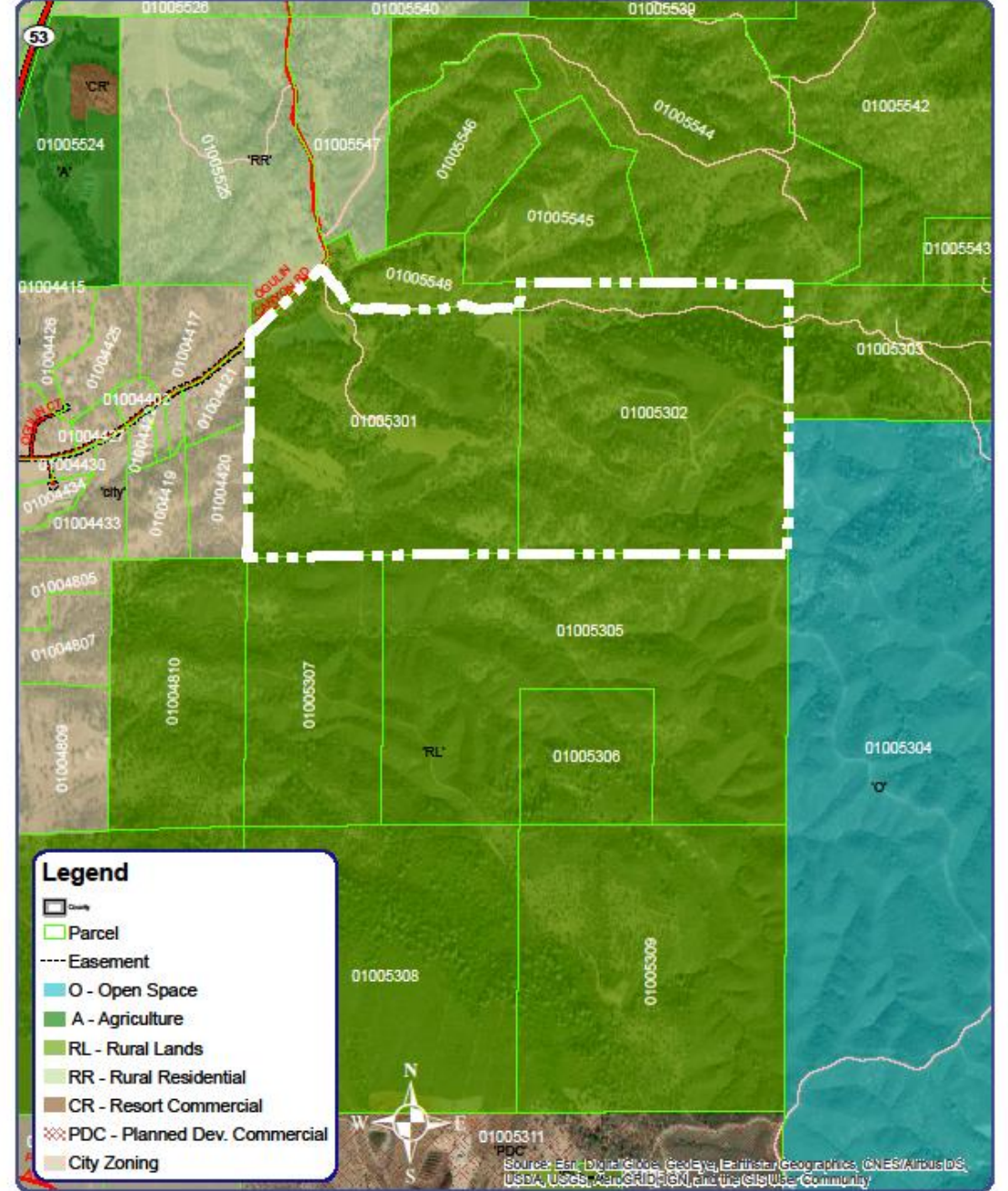
## Address

2050 and 2122 Ogulin Road  
Clearlake, CA 95422

## APNs

010-053-01 and 02

The project site is accessed by a gravel driveway from Ogulin Canyon Road through an existing security gate. The pre-existing agriculture activities covered over 18 acres. Other land uses on the project site include residential, timberland, grazing.



Lake County, CA

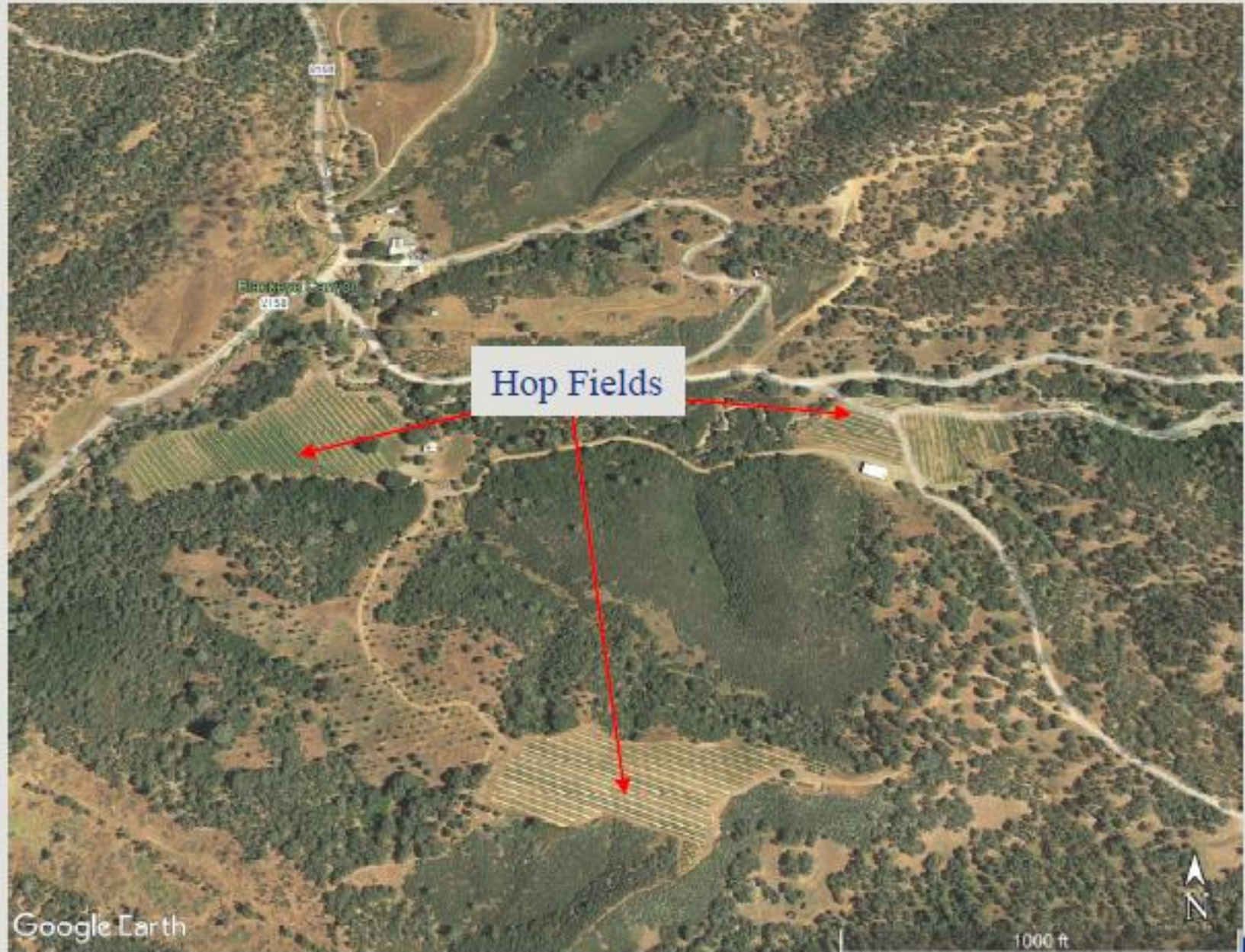
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# Project Parcel History

- Former hops farm, operated as Hops-Meister Farms
- Cultivated approximately 13.6-acres of hops beginning in about 2009

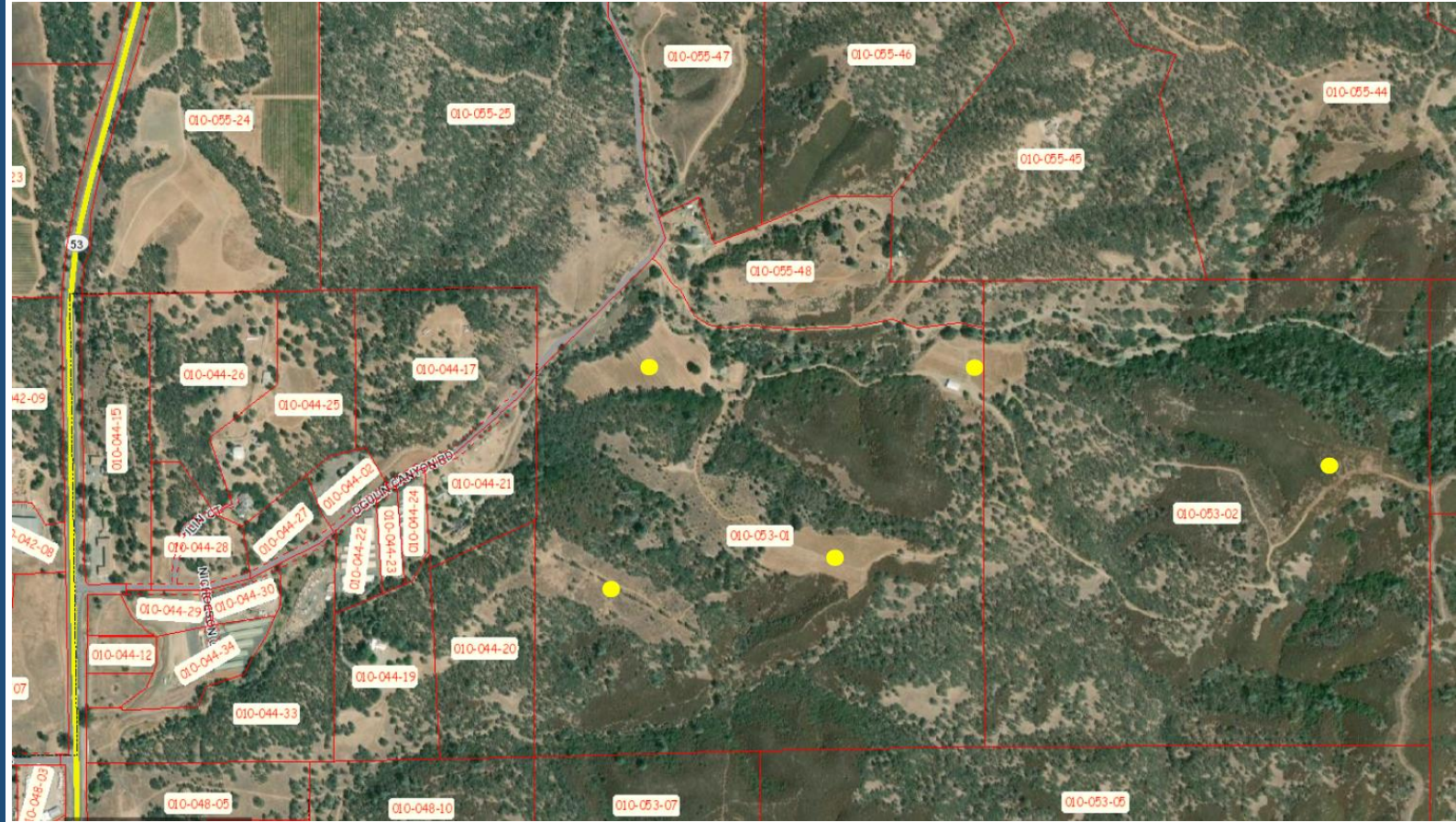




# The combined parcel area is

- approximately 302.4 acres;
- within the boundary of the Shorelines Communities Area Plan;
- within the City of Clearlake's Sphere of Influence/City Limits.

A letter of support from the City of Clearlake was issued on February 24, 2020.



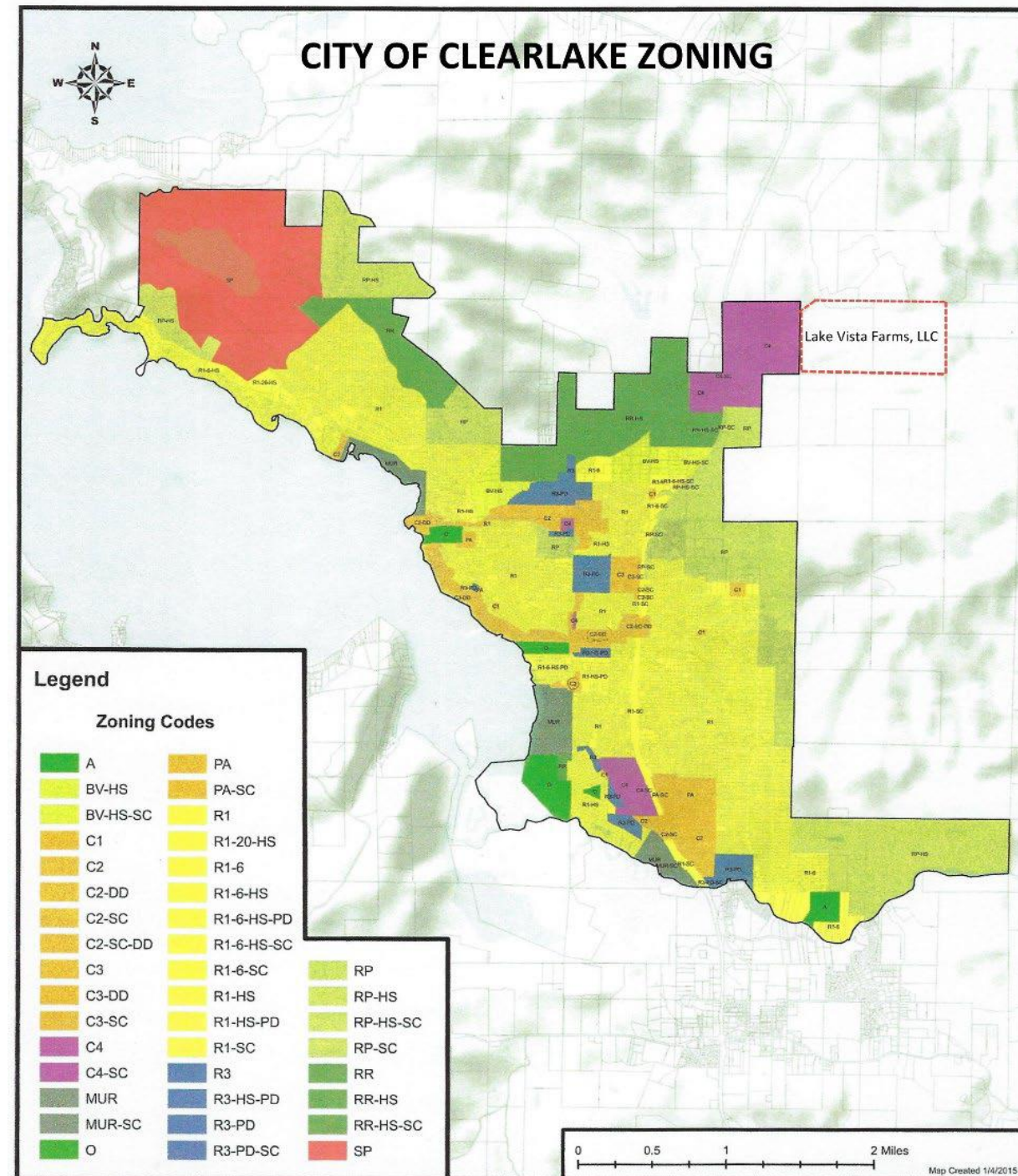
**Aerial Photo of Subject Site (yellow circles are proposed cultivation sites)**



**Cannabis cultivation is prohibited within 1,000 feet of a City of Clearlake's Sphere of Influence unless the applicant can provide a letter of support from the City.**

A **letter of support** from the City of Clearlake was issued on **February 24, 2020**.

*Email from Mr. Alan D. Flora, City Manager of City of Clearlake, to CDD Staff member McGinnis dated March 30, 2022 implied no change in the status of the letter the City provided the applicant.*



**Early Activation (EA) approved on February 28, 2020 by the County Zoning Administrator.**

- **Fifteen (15) A-Type 3 “outdoor” licenses** totaling 816,750 sq. ft. cultivation (18.75 acres) and 653,400 sq. ft. of total canopy (15 acres) on five (5) sites:
  - Sites A through D would include temporary 20’ x 100’ (2,000 square feet) **hoop-houses**.
- Portable toilets, trash enclosures, vegetation waste storage areas, 2,500-gallon water storage tanks at five cultivation areas, Conex shipping containers and/or 8’x 8’ storage sheds (or similar) for storage
- **A 1.5 acres onsite nursery** within an existing barn and shade structures
- **One (1) renovated 10’ x 30’ shipping container** to house security equipment and camera monitors
- **6’ tall security wire fencing** that will be secured by locked gates and that will enclose cultivation areas.

Site		Site Acres	Cultivation Area		Canopy Area		Temporary Hoop Houses	
			Acres	Sq. Ft.	Acres	Sq. Ft.	Units	Sq. Ft.
<b>A</b>	Northwestern Hops Field	5.09	5.09	221,795	4.07	177,436	99	178,200
<b>B</b>	Southwest Clearing	6.56	6.56	285,865	5.25	228,692	128	230,400
<b>C</b>	Northeast Hops Field	1.45	1.45	63,126	1.16	50,501	29	52,200
<b>D</b>	Central Hops Field	3.72	3.72	162,248	2.98	129,798	73	131,400
<b>E</b>	Chaparral Clearing	7.83	1.92	83,716	1.54	66,973	38	68,400
<b>Total</b>		24.65	18.75	816,750	15.00	653,400	367	660,600

# VIOLATIONS

**May 7 & 14, 2020** Site inspections of 2050 Ogulin Canyon included staff members from the Dept. of Agriculture, Cal Cannabis Inspector, and County Code Enforcement (AW Fernand noted in *Accela*).

The Code Enforcement Division of the County of Lake's CDD cited the lessee with **Notice of Violation and Stop Work Order on May 13, 2020.**

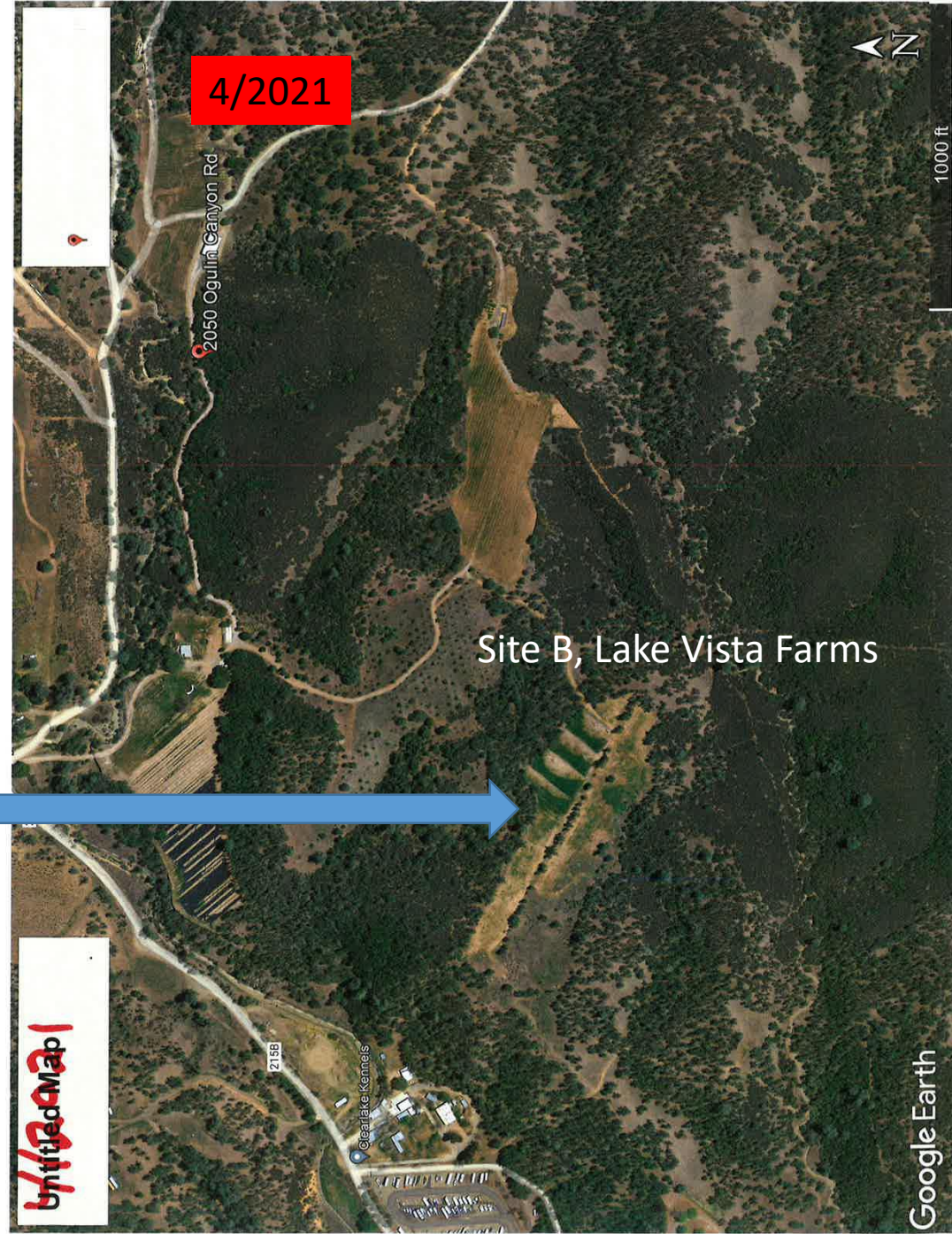
## ***Multiple violations of the EA 20-22:***

- the construction of 56 rows hoop houses on Site A (approximately 7 acres);
- the grading and terracing of **1,315 CY** of Site B;
- oak tree removal; and,
- The presence of cannabis plants.
- People living in Ag Exempt barn on site.
- No permits for the above actions, and violation of Conditions for EA (No State Cultivation License as of March 2022; Applicant also needs permits from CDFW and CA State Water Board)





2050 Ogulin Canyon RD



*The proposed cultivation area 'Site B' was graded & terraced*



# Abatement

- ❑ On August 5, 2021 the applicant submitted a letter describing a Resolution to address the Violations to Staff. The applicant **coordinated with the Staff to identify and implement corrective actions**, including:
  - the removal of the hoop houses,
  - preparation of engineered grading plans,
  - stabilization of the illegal grading area, and
  - installation of storm water management controls to prevent erosion.
- ❖ **The Plan and associated actions to mitigate the violations were cleared by the CDD on August 8, 2021.**
- ❑ No cultivation activities have occurred at the project site since the revocation of the Early Activation.



# Supporting Reports and Plans:

- Project Description
- Site Plans
- Property Management Plan
- Biological Report
- Cultural Resources Report
- Site Management Plan
- Supplemental and Supporting Documentation
- Site Photos and Mapping
- Tree and Vegetation plan
- Grading Plans
- Hydrology Report, Drought Management Plan, and Well Reports

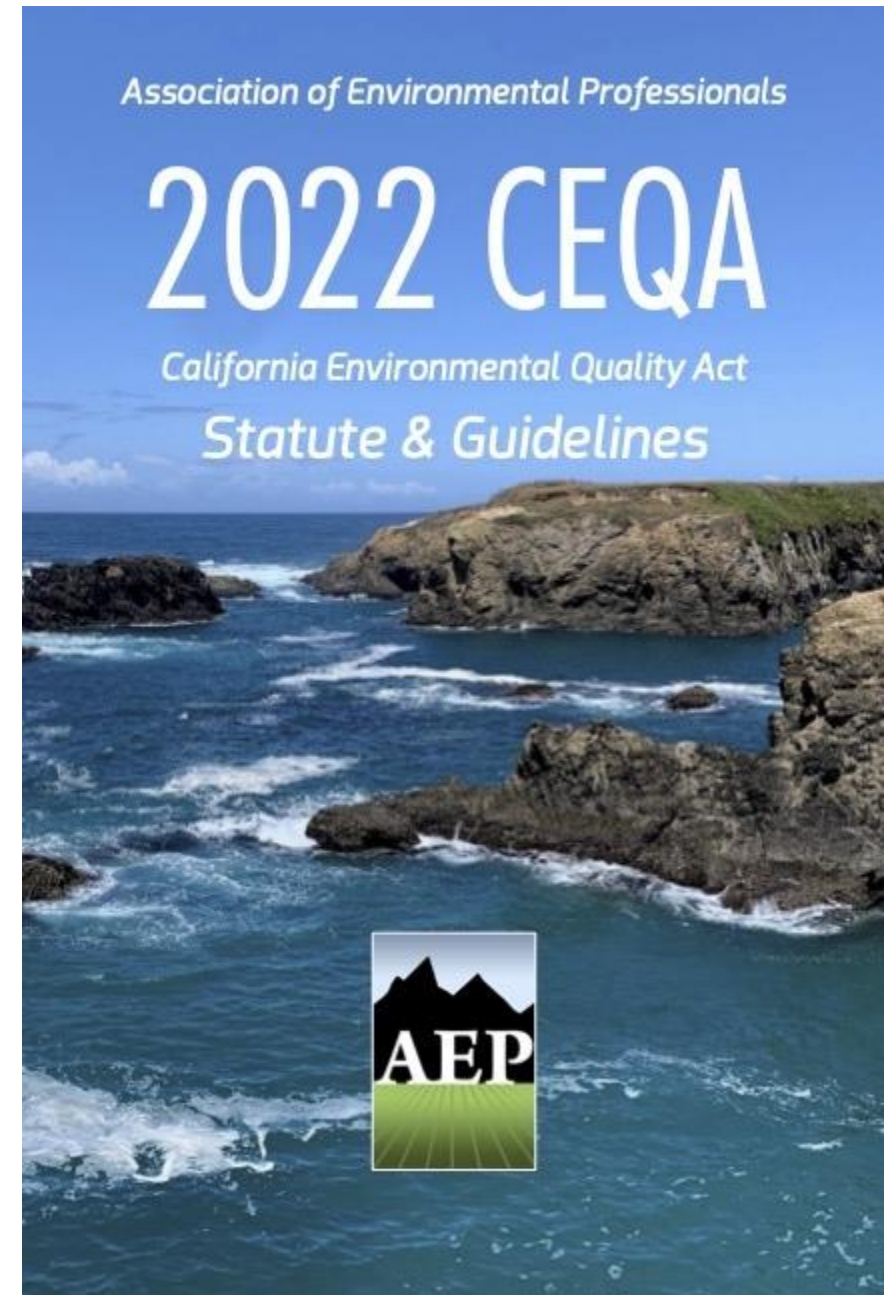




# CEQA Initial Study 19-56:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hydrology and Water Quality
- Noise
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems

The IS includes Mitigation measures to avoid or reduce the adverse impacts to a less than significant level.





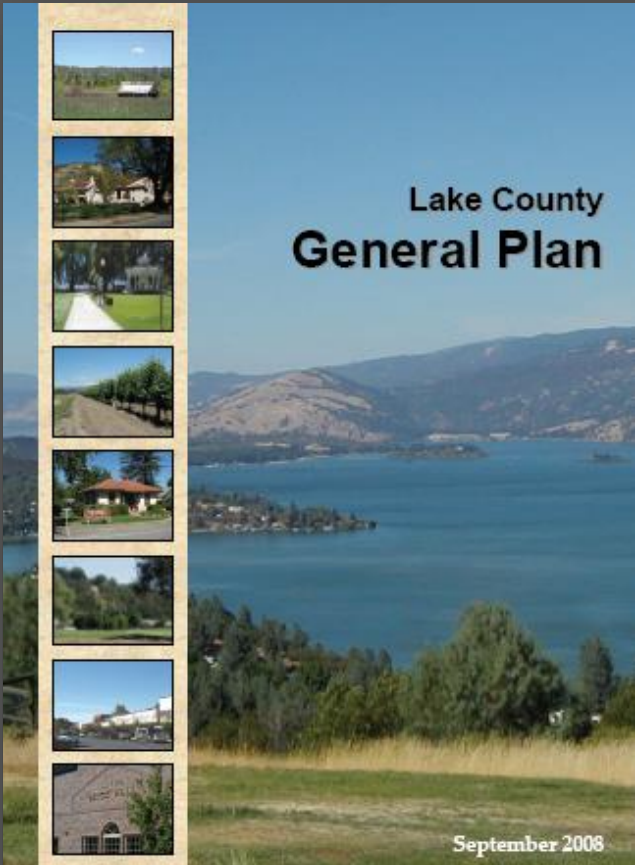
# Biological Assessment

A Biological Site Assessment was prepared by Natural Investigations Co..

The Assessment concluded that the project area does not include any state or federally-designated critical habitat, and there are no sensitive natural communities within the project area.

- The project is designed to maintain riparian buffers and grading setbacks of 100 feet.
- All cultivation sites are designed to maintain setbacks from drainages and ponds. No development will occur within the drainage buffers and setbacks.
- Erosion control measures to control erosion and sedimentation during construction and operation are identified within the Development Site Plans and in the Property Management Plan. *Erosion control measures include: swales, stockpile management, road and parking lot management, and sediment management.*





# Project Analysis

- County General Plan Conformance
  - Shorelines Communities Area Plan
- The City of Clearlake's Sphere of Influence /City Limits
- County Zoning Ordinance Conformance



# Existing and Proposed Water Demand

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- **Daily demand for hops is almost twice that of cannabis**
- **Water demand for cannabis is less than prior farming activities**

	<b>Area (Acres)</b>	<b>Demand per Acre (gallons)</b>	<b>Daily Demand (gallons)</b>	<b>Yearly Demand (acre-feet)</b>
Hops-Meister Farms	13.6	5,800	78,880	43.6
Lake Vista Farms	15.0	3,000	45,000	24.9
		Difference	-33,800	-18.7



# Project Water Supply and Demand

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- Cultivation distributed between 5 fields
- Each field has a deep, high yielding well
- Well yield sufficient to meet demand

Location	Date Drilled	Well Depth (ft)	Screen Depth (ft)	Yield (gpm)	Daily Yield (gallons)	Canopy Area (acres)	Daily Demand (gallons)	% of Yield
Northwestern Hops Field	7/2011	240	200-240	60	86,400	4.07	12,210	14.1%
Southwest Clearing	4/2020	340	240-340	300	432,000	5.25	15,750	3.6%
Northeast Hops Field	11/2004	114	74-114	60	86,400	1.16	3,480	4.0%
Central Hops Field	6/2013	358	272-358	200	288,000	2.98	8,940	3.1%
Chaparral Clearing	6/2006	400	340-400	100	144,000	1.54	4,620	3.2%



## Summary of Water Use

- Demand –45,000 gallons per day or 24.9 acre-feet per year.
- Net demand is -18.7 acre-feet per year because Lake Vista Farms is replacing an agricultural project with much higher water demands
- Total well capacity – 5 wells, 720 gpm or 1,036,800 gallons per day
- Demand is only 4.3% of the project's wells capacity
- The nearest well is over 1,300 feet away, so no impact to drawdown of adjacent wells is expected
- Recharge over the project parcel exceeds the demand for both average and dry years.
- The project's demand is 1.8% of Burns Valley Groundwater Basin usable storage capacity



# Project Analysis

“Does the project have impacts that are individually limited, but cumulatively considerable...?”



Documented  
Environmental  
Impact Pathways  
of Cannabis





# Cumulative Impacts

**Water Use** – The applicant's Hydrology Analysis evaluated cumulative impacts of all area wells. No adverse cumulative impact from this project's area wells.

**Pesticide Use** – The applicant indicates that only biorational pesticides will be used. This is consistent with State Regulations and rigid testing of cannabis plants that the State undertakes for quality assurance.

## **Air Pollution**

- Air filtration systems required in all buildings.
- Diesel generators are prohibited.
- Burning cannabis plant material on site is prohibited.
- Dust mitigation is required during and after construction.

# Cumulative Impacts (Con't)

**Water Pollution** – Erosion control measures are required through Best Management Practices. Site disturbance 'out of season' is prohibited.

**Energy Use** – No new power is needed. Existing power on site is adequate for the project. No grid issues at this location or vicinity.

**Land Cover Change** – The project may impact 35 acres of the 504 acre site. There are no other permitted cultivation sites in proximity to this project.



ZONING ORDINANCE



2021

# Project Analysis

## ***Article 51.4 – Use Permit – Findings for Approval***

6 findings must be met in Article 51.4

3 findings must be met in Article 27.11(at)

Neighbors within 725 feet were notified of this proposal

*Staff received adverse comments on the project application and CEQA analysis related to the environmental review of water use and groundwater recharge.*

ZONING ORDINANCE



2021

# Project Analysis

## *Article 51.4 – Use Permit – Findings for Approval*

1. That the use will not be detrimental to the health, safety, morals, comfort and general welfare of the neighborhood...
2. That the site is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed...
3. That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.



ZONING ORDINANCE



2021

# Project Analysis

## ***Article 51.4 – Use Permit – Findings for Approval***

4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.

6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exist on the site.

ZONING ORDINANCE



2021

# Project Analysis

## ***Article 27.11(at) Cannabis – Findings for Approval***

1. The use complies with development standards in Article 27.
2. The applicant is qualified to make the application
3. The application complies with the qualifications for a permit found in Article 27.



On **November 18, 2021** the Use Permit was approved by the Lake County Planning Commission (PC) with Conditions of Approval.

An Appeal (AB 21-05) to the Board of Supervisors was filed by the appellant on **November 24, 2021**.

# Project Summary and Analysis

- *Letter of Support* from City of Clearlake dated February 24, 2020
- *Early Activation* (EA) approved on **February 28, 2020**
- *Notice of Violation and Stop Work Order* dated **May 14, 2020** for **property located at 2050 Ogulin Canyon Road, Clearlake, CA, APN 010-053-01.**
  - Pursuant to *Lake County Code, Chapter 5-14. SEQ.* Order is given to commence abatement (e.g., removal) of said nuisance, and/or code violation(s) within seven (7) days of the date of the notice and correct the conditions described (in *Case Number CMP20-00032*).
- The Plans and associated actions to mitigate the violations were cleared by the CDD on **August 8, 2021**



BOS approves *Ordinance No. 3112 Section 49.2 Permit Ineligibility* in September 2021: “Additionally, no Responsible Person(s) associated with the premises subject to said violation(s) shall be eligible for a County permit for Cannabis Operations of any kind for a period of no less than ten (10) years”

- *Ordinance No. 3112 took effect in October 2021*
- *Use Permit* approved by PC on November 18, 2021
- *Appeal* of PC decision was filed to the BOS on November 24, 2021
- *Continuance* issued by BOS because of failure to properly notice the appellant on March 22, 2022

**ANALYSIS:** **Ordinance No. 3112 Section 49.2 Permit Ineligibility** is not relevant to the Lake Vista Farms, LLC application due to the fact that the Plans and associated actions to mitigate the Violations were cleared by the CDD on **August 8, 2021**

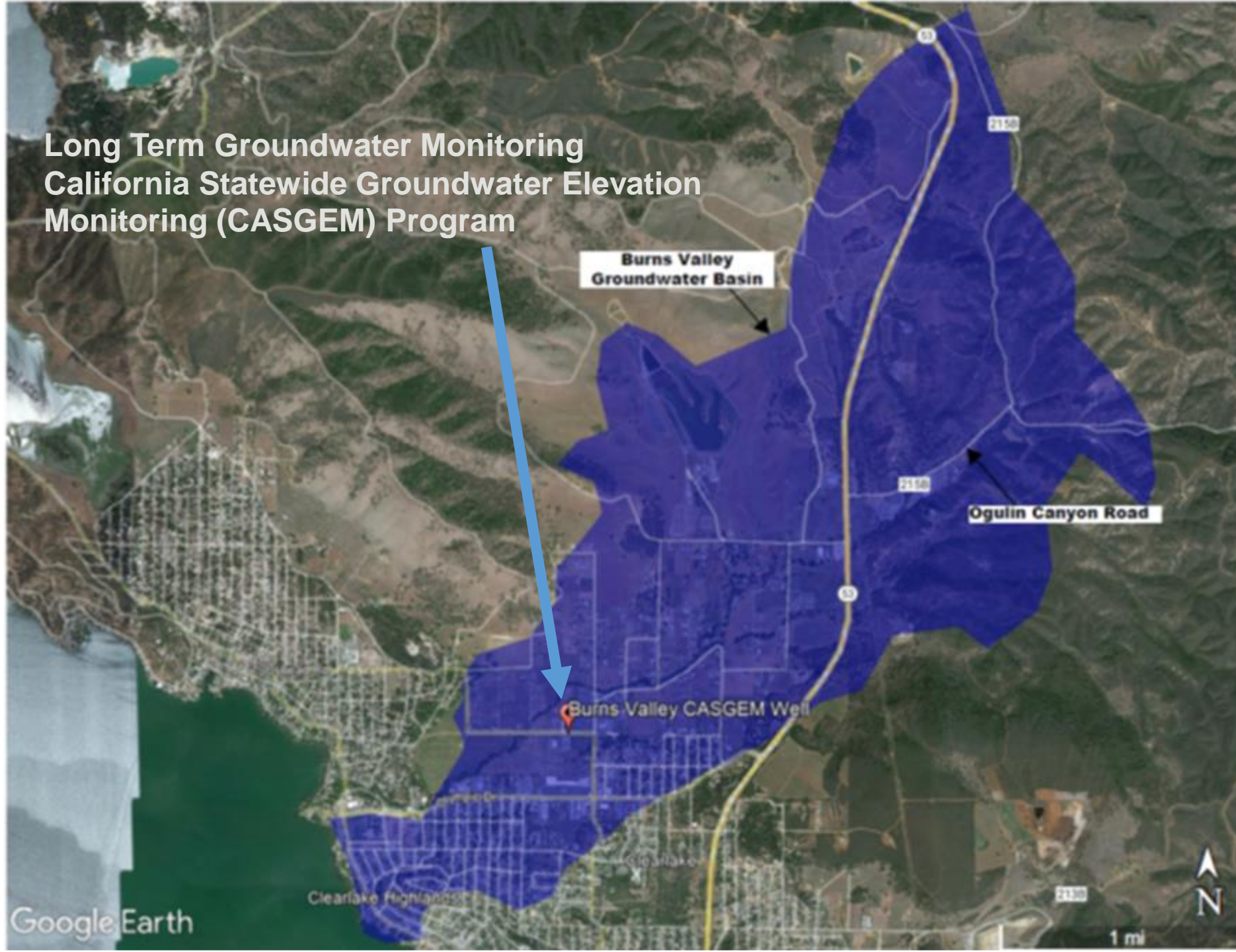
# Appeal

## *The appellant maintains that:*

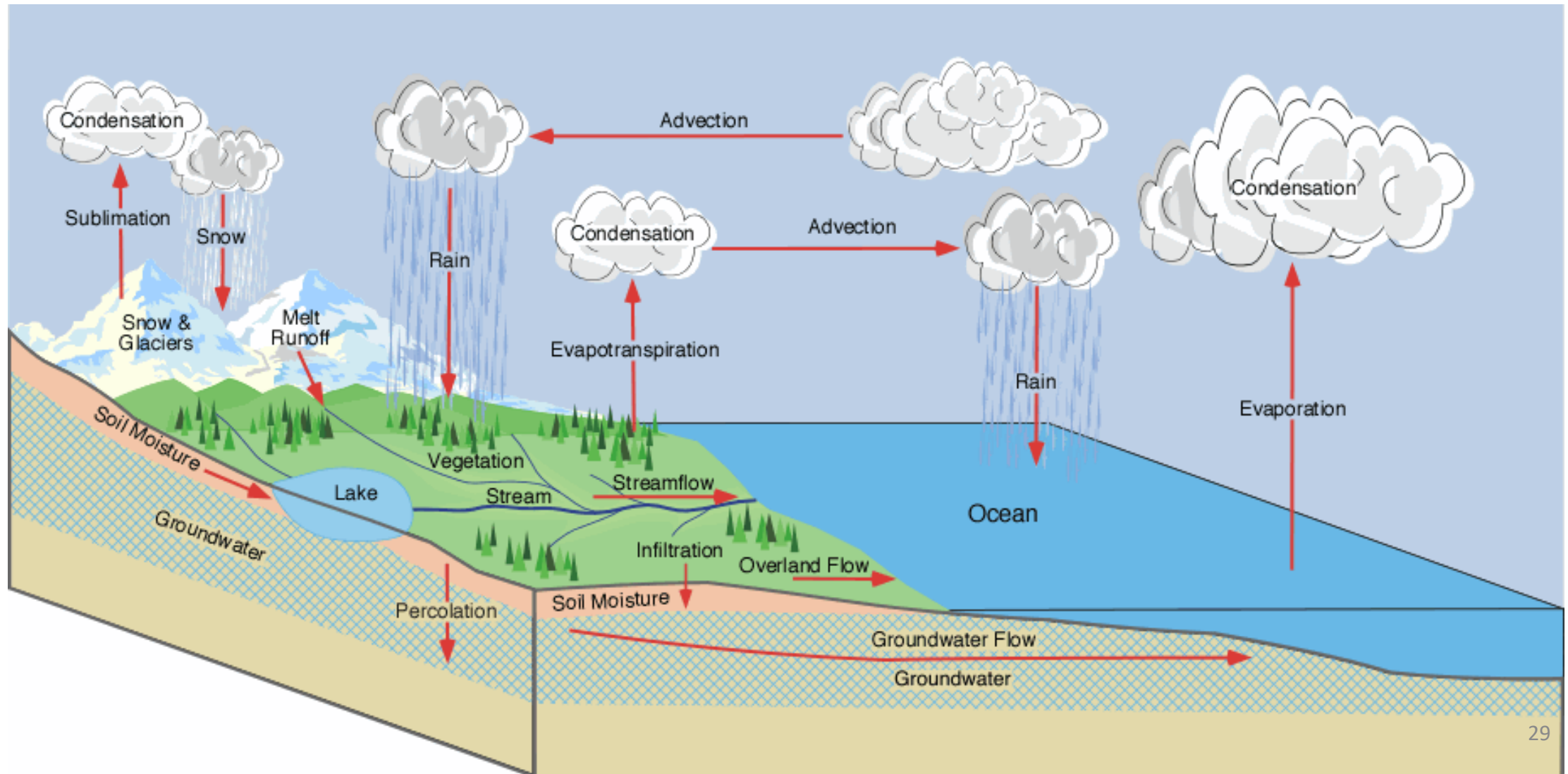
- *the development of existing grape vineyards and additional approved cannabis operations contribute to biological impacts associated with water demand, water use, and the capacity of the groundwater system to recharge;*
- *the proposed water use for the cultivation of cannabis in said property would have cumulative impacts on water demand, water use and capacity of the groundwater system to recharge.*
- *the capacity of the groundwater to store and recharge water during the current drought remains unaddressed in the environmental review.*
- *the site area is within the County's required 1000-foot setback from the City of Clearlake's Sphere of Influence/City Limits*



**Long Term Groundwater Monitoring  
California Statewide Groundwater Elevation  
Monitoring (CASGEM) Program**



**Hydrological modeling** According to Sorooshian et al. (2008), a model is a **simplified representation of real world system**. The best model is the one which give results close to reality with the use of least parameters and model complexity. Models are mainly used for predicting system behavior and understanding various hydrological processes, such as groundwater recharge rates.





# Water Use Analysis



- The **Applicant** submitted a technical memorandum [completed by Northpoint consulting] that supplements the hydrological report and describes potential *cumulative impacts* associated with ground water use for the project.
  - Existing and foreseeable projects were also evaluated by the Applicant's consultant.
  - The analysis also includes an analysis of estimates for groundwater use and recharge across the basin for other water users, among other water use issues.
- The **Appellant** submitted a letter from his consultant, EBA Engineering, that does not offer an alternative analysis of cumulative impacts, ground water use or recharge rates.
  - The Appellant's consultant focuses on a critical review of Northpoint's methodology; the data used (including the types of pumping test used to estimate water well yield); the storage capacity estimates; the current groundwater elevations; recharge rates; and, the cumulative impact analysis.

# Burns Valley Existing Water Demand

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From: *Technical Memorandum on Water Use* produced for the Applicant

## **Vineyards**

- 450± acres, 0.5 acre-ft per year, 225 acre-feet per year

## **Orchards**

- 150± acres, 2.2 acre-ft per year, 330 acre-feet per year

## **Residential (not served by a water company)**

- 120± residential parcels not in a water district
- 300 gallons per day per residence (EPA)
- 40 acre-ft per year

**Total Existing Demand: 595 acre-feet per year**



# Burns Valley Demand from Cannabis Projects – Potential future cultivation

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## County\*

- Up to 20± acres of potential new outdoor cultivation
- Demand 33.1 acre-feet per year (180 days/year)

## City\*

- Up to 20± acres of mixed-light/indoor cultivation
- Demand 55.2 acre-feet per year (300 days/year)

**Total Potential Demand: 88.3 acre-feet per year**

\*These are considered conservative (high) estimates and don't consider market costs and the ability to develop potential projects. These estimate don't account for cannabis replacing existing agriculture activities.

From: *Technical Memorandum on Water Use* produced for the Applicant

# Appellant's Response to the Applicant's *Technical Memorandum for Water Use* (4/8/22)

- The statement that the hops water use would be more than the proposed cannabis operation is not possible to determine without long-duration pumping tests and historical groundwater monitoring;
- The project's water demand estimate should be revised to include all future water usages (e.g., employees, etc)
- Information is lacking regarding current groundwater elevations in relation to the measurements taken during drilling. Overdraft conditions may have occurred.
- The Applicant's use of air lift tests overestimate actual well yield.
- Storage capacity estimates used in the applicant's water analysis should be updated with respect to aquifer storage capacity (i.e., pumping tests)
- The applicant's analysis does not take into account hydrological processes that affect recharge under severe drought conditions (e.g., the lack of runoff and/flooding).
- The applicant's assessment does not take into account or assess the potential surface water-groundwater interaction.

# Staff recommends that the Board of Supervisors:

Deny the Appeal (AB 21-05); uphold the Planning Commission's decision to approve the Use Permit (UP 19-36) and adopt Initial Study / Mitigated Negative Declaration (IS 19-56).





# Questions & Comments

