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October 11, 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

Community Development Department  
County of Lake  
Mireya G. Turner, Director  
255 N. Forbes Street, #330  
Lakeport, CA 95453  
mireya.turner@lakecountyca.gov

Re: Opposition to Community Development Department's Request For  
Continuance And Continuing CEQA Violations Associated With 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, Supervisors Simon, Green, and Pyska, and  
Director Turner:

On October 10, 2024, Thomas Lajcik and Margaux Kambara (Lajciks), Appellants challenging the Planning Commission's approval of the Highland Farms Cannabis Farm (UP 20-96) (Project) and adoption of its Mitigated Negative Declaration (MND) (IS 20-116), were informed by Mary Claybon, Associate Planner with the Lake County (County) Community Development Department (CDD), that CDD intends to request a second continuance of the matter at the October 22, 2024, Board of Supervisors (Board) hearing. ***Appellants oppose this request and further oppose CDD's continuing California Environmental Quality Act (CEQA) violations underlying this request as an abuse of discretion.***

CDD first requested a continuance at the August 13, 2024, Board meeting, which was granted. CDD claimed it needed more time to process and respond to Appellants' documentary evidence submitted in support of their appeal, despite having received the evidence more than 18 days prior to the August 13 hearing on July 26, 2024—a due date that had been set specifically by CDD and that Appellants struggled to meet in order to give CDD time to review the evidence (although this date turned out to be irrelevant). Appellants lodged their objections to this continuance in an email to CDD on August 12, 2024, shortly after CDD informed Appellants of the pending request. Appellants and counsel expressed the same objections to the Board at the August 13 hearing, summarized as follows: *the continuance severely prejudices Appellants, who had gone to great lengths and expense to prepare their appeal and have their legal counsel present in person, and prejudices the many*

*members of the public supporting the appeal and attending the meeting who also had gone to great lengths to attend in person.*

Appellants and counsel and several members of the public in attendance requested that the Board hear the appeal and public comment on the appeal even if it chose to continue the remainder of the matter to a later date, to try and mitigate this severe prejudice. The Board declined.

The same reasoning applies to this second continuance. Another continuance will severely prejudice Appellants, who have again gone to great lengths and expense to prepare their appeal and to have their legal counsel present at the October 22 hearing on what will again may be a mere possibility that the Board will agree to hear the appeal. A second continuance also will severely prejudice the many members of the public supporting the appeal, who must again go to great lengths to attend in person on the same possibility that the Board will agree to hear their substantive comments. Accordingly, if the Board refuses to hear the appeal and public comment on October 22, numerous County citizens will unfairly bear the burden of this prejudice.

Importantly here, CDD's intent and actions underlying this second request for continuance constitute an abuse of discretion under CEQA. (See, e.g., Pub. Resources Code, § 21168.5.) In its draft memorandum to the Board regarding this second request, CDD gives the following reasoning:

Since the August 9, 2024, [sic] Board of Supervisors meeting Staff and the applicant have sought clarification from the Department of Public Works, Department of Water Resources and the County Surveyor regarding the Highland Springs Road access, presence of serpentine soils, and setbacks to the waterways. The applicant has submitted a preliminary revised site plan, but notes that they also plan to provide an updated Biological Report and other documentation that has not been submitted at the time this Memorandum was prepared. As such, Staff requests an additional continuance to a date and time certain to allow the applicant to provide updated project documentation, and allow Staff review of the submitted materials.

Indeed, the applicant has submitted several documents to CDD since the August 13th Board hearing, including a serpentine dust mitigation plan; a letter from an engineering group acknowledging serpentine formations and soils onsite and discussing environmental issues associated with serpentine dust; revised site plans purporting to avoid wetlands; and a letter discussing this wetlands avoidance. Now it appears that the applicant wishes to submit additional biological resources analysis and nebulous "other documentation" that, apparently, CDD wants time to review outside any legitimate CEQA process. CEQA does not allow this.

A flawed negative declaration must be repaired *before* it has been adopted and the project approved. (See, e.g., California Governor's Office of Planning and Research (Dec. 2004), *Mitigated Negative Declarations, CEQA Technical Advice Series*, p. 5, available at [https://www.lci.ca.gov/docs/MND\\_Publication\\_2004.pdf](https://www.lci.ca.gov/docs/MND_Publication_2004.pdf) ["The project changes and mitigation measures must be agreed to or made by the proponent before the draft MND is circulated for public review and comment. In other words, the draft document must reflect the revised project, with changes and mitigation measures"].) CDD and the applicant cannot fix this MND *after* the fact, as is clearly being attempted here. Appellants have made a fair argument based on substantial evidence that there may be one or more significant environmental impacts that was not evaluated in the MND. Under these circumstances, CEQA requires the preparation of a full EIR. (See, e.g., *San Bernardino Valley Audubon Soc'y v. Metro. Water Dist.* (1999) 71 Cal.App.4th 382, 400; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 405, 414 ["... there is substantial evidence of a fair argument for potential significant environmental impact. Accordingly, we conclude that the trial court properly ordered the County to comply with CEQA by preparing an EIR"].)

Decades of CEQA caselaw dictate that an EIR is required here, as explained in detail in Appellants' July 25, 2024, letter to the Board and CDD. Moreover, conformity with a County requirement for something like a dust mitigation plan "does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects." (*Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 372, internal citations omitted.) Such is the case here. The documentation and Project changes that the applicant has placed in the administrative record to address environmental impacts associated with onsite serpentine areas and impacts to wetlands provide further proof that the MND fails to identify several significant impacts, and an EIR is required.

CDD and the applicant have had plenty of time to process and respond to Appellants' documentary evidence, which was their joint reasoning for requesting the first continuance. By October 22, they will have had 88 days. To be clear, CDD did not request a continuance to make and/or allow significant Project changes or prepare and/or review additional environmental analysis; indeed, either of these actions would violate CEQA. Certainly, the Board would not have granted a continuance grounds violating statelaw. It should similarly not be granted here.

In the months since the August 13 Board hearing, Appellants have compiled supplemental documentary evidence in support of their appeal. CDD is aware of this evidence—Appellants have attempted to obtain confirmation of another acceptable submission date from CDD to no avail. Thus, Appellants will submit this material to the Board in accordance with County Code section 21-58.36, which allows submission of "documentary evidence and/or written argument" in support of appeals "no later than 96 hours prior to the date at the time of the Public Hearing." CDD and the applicant may again

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jointly request a continuance to review and respond to this evidence. The Board should deny this request. Appellants have followed all County rules for appeals to the Board. County Zoning Ordinance Article 57, section 55.6 states: "Any public hearing conducted under this Article may be continued from time to time." It does not state that continuances should be granted ad nauseum. CDD intends to request a continuance for a "date and time certain." This request is identical to the previous request made by CDD. A date and time cannot be considered certain if it is repeatedly being moved. The average County citizen cannot be expected to keep up with these moving targets, which abuse the goodwill of the people of the County and the Board.

Appellants urge CDD to reverse course on its intent to request a second continuance and urge the Board to deny any continuance that is requested. If you have questions, please feel free to contact Casey Shorrock at (916) 446-7979 or [cshorrock@somachlaw.com](mailto:cshorrock@somachlaw.com).

Sincerely,

A handwritten signature in black ink that reads "Casey Shorrock". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Casey A. Shorrock  
Kelley M. Taber

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