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VIA ELECTRONIC MAIL ONLY

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255 N. Forbes St.
Lakeport, CA 95453

Re: Use Permit 20-22 / Initial Study IS 20-25 / Appeal AB 21-01

Dear Ms. Huchingson and County Supervisors:

I am writing on behalf of a group of owners in the Dohnery Ridge, Shadow Hills, Rim Ranch, Hidden Valley and Rancho Subdivisions who appealed the preliminary approval of the above-referenced use permit application. We wish to submit the following comments in appeal of the approval of the Initial Study and Use Permit application.

I. Biological Assessment

The Biological Assessment prepared by Pinecrest Environmental Consulting contains credible evidence that the project will have significant effects on the environment. It identifies eight known occurrences of special-status animals and twenty occurrences of special-status plants within 5 miles of the project site. A single survey to identify such plants and animals within the project site was conducted on February 15, 2020. The report acknowledges that wildlife activity was low due to the time of year and weather at the time of the survey, “wildlife activity was moderate to low due to the time of year and weather.” (Section 2.3). This statement makes clear that the survey was not taken at the appropriate time of the year. In addition, the survey was conducted at a time that is outside the blooming season for many of the special-status plants listed in the report. As such, the report cannot rule out the occurrence of special-status species within the project area. Further, the report can be taken as evidence that such species have a moderate likelihood to occur within the project area, which is stated in the report and not ruled out for the reasons stated above.

The report identifies a number of special-status plants and animals with a medium potential to occur within the project area. The special-status plants identified

with a medium potential to occur within the project area are listed below together with the blooming season for each species:

Plant Species	Blooming Season
Bent flowered fiddleneck	March to June
Colusa Layia	April to May
Hall's Harmonia	April to June
Pappose Tarplant	May to November
Pink Creamsacs	April to June
Small-flowered calycadenia	May to September

The biological survey that was conducted on February 15, 2020 did not fall within any of the blooming periods for the special-status plants that were identified with a medium likelihood to occur within the project area. Accordingly, the biological survey cannot be accepted as evidence that such species do not occur within the project site.

In addition, the report contains several important inconsistencies. Section 2.4 of the report states that there is one potential wetland on the project site. However, further evaluation was not conducted to determine whether the area meets the definition of a wetland. Accordingly, it cannot be ruled out that this area is, in fact, a wetland. Nevertheless, the table in Appendix A dismisses a number of plant species as having no potential to occur because "no suitable wetland habitat exists on site." This is not an accurate assessment as wetland habitat has not been ruled out.

Similarly, the text of the report indicates that chaparral habitat is present on site. (Section 2.2.2). However, the table in Appendix A rules out a number of plant species as having no potential to occur on site because there is no chaparral habitat on site.

The biological assessment is woefully inadequate based on the time of year the survey was conducted and the internal inconsistencies between the document text and Appendix A. The assessment certainly does not rule out potential significant environmental impacts. Indeed, it evidences a likelihood that the project will have significant environmental impacts due to the proximity of the special-status plants and animals to the project site, the findings of a medium potential for certain species to occur on the project site, and the survey not having been conducted at a time when the non-occurrence of such species would allow for them to be ruled out.

At a minimum, multiple further studies should be conducted at times that are appropriate according to the special-status species with known occurrences in the area.

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II. Mitigation Monitoring and Reporting Program Requirement

Public Resources Code section 21081.6 requires a mitigation monitoring and reporting program be adopted to ensure mitigation measures are fully enforceable. There are a number of categories for which mitigation measures are recommended but a mitigation monitoring and reporting program (“MMRP”) is not mentioned in the Initial Study. An MMRP is required under CEQA. Without an MMRP, to ensure ongoing compliance with the proposed mitigation measures the current mitigations are insufficient.

The project site is located in a residential area with homes all around it, which includes the Hidden Valley Lake neighborhood less than one quarter of a mile from the site, and the Dohnery Ridge subdivision, Shadow Hills subdivision, Rim Rock Ranch subdivision, and Ranchos subdivision which all share a property line with the project site. Ongoing impacts from noise, light, traffic, water consumption, air quality and greenhouse gas emissions are of paramount concern to the homeowners in the area. impact categories identified in the Initial Study that do not adequately provide for ongoing mitigation monitoring are discussed further below:

I(d) Aesthetics: The project is located in an area that is surrounded by dwellings and approximately a quarter of a mile from the Hidden Valley Lake neighborhood. The Initial Study correctly identifies substantial light as a significant impact. “Blackout screening” is the proposed measure to mitigate potential impacts from the light. However, the Initial Study proposes no measurable standards or ongoing monitoring to ensure the proposed mitigation remains effective in the future for the benefit of surrounding residents. Here, an MMRP should include measurable standards for light at the property boundaries.

III(a) Air Quality: This category acknowledges that the cultivation area is substantial in size at 395,000 sq. ft. and that there are dwellings located around the project site. The primary odor mitigation measure is separation distance. Again, the proposed mitigation measures do not adopt measurable air quality standards at the property line or ongoing monitoring requirements to ensure the surrounding dwellings are not subjected to poor air quality emanating from the project in the future. Odor filtration is the only proposed mitigation to permanently control impacts of odor on the surrounding areas, but there are no standards by which to measure the effectiveness of this mitigation.

VII(a) Greenhouse Gas Emissions and XVII(b) Transportation: To support the conclusion that the project presents a less than significant impact with respect to greenhouse gas emissions, the Initial Study states that the project will generate up to 4 daily trips. However, this is inconsistent with the post-construction cultivation activities listed on page 2 of the Initial Study and in the Staff Report dated April 22, 2021. The

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Initial Study states that daily vehicle trips will range between 20 and 40 and the Staff Report states daily vehicle trips will be between 40 and 80. Similarly, the daily vehicle trips identified under the Transportation category are significantly fewer than the estimate given for post-construction activities.

When these inconsistencies were pointed out before the Planning Commission, and traffic concerns were raised by the neighboring owners, the applicant simply offered to “tell people to drive slow.” If this can even be considered a mitigation measure, there is no way to monitor the mitigation measure or to impose an enforceable standard to which the applicant may be held in the future. A true mitigation measure should be formulated based on the daily vehicle trips identified in the Initial Study and Staff Report, and measurable standards that are capable of being monitored should be imposed.

Further, based on the increased traffic added by the project, the applicant should be made to pay its fair share of the applicable special district road tax. The applicant has verbally stated they will make contributions in the future, but such contributions should be imposed as a condition of approval.

III. Deferred Mitigation

Impact category IV(a) under Biological Resources acknowledges that the on-site assessment was conducted outside of the appropriate season. Nevertheless, the impact was deemed less than significant with mitigation despite there being limited information about the special-status plants and animals existing on the property.

In addition, the mitigation measure for this item requires a “follow up survey” to be conducted and provided to the Lake County Planning Department prior to a hearing and cultivation, and any recommendations from the survey are to be added as conditions of approval for the use permit.

Similarly, the mitigation measure set forth in X(b) Hydrology and Water Quality requires the applicant to conduct a new well test prior to public hearing. This category is particularly concerning given the history of a prior well going dry on this property and the significant projected water usage for the proposed operation. It is too early to conclude the impact is less than significant as further study, which should include a full water availability analysis, is needed to understand the potential impacts of this project on existing and future water availability in the area. However, the mitigation for this item simply requires the applicant to provide a further report prior to hearing.

These mitigation measures will constitute improper deferred mitigations, which are prohibited under the CEQA Guidelines [“Formulation of mitigation measures shall not be deferred until some future time.” (Guidelines § 15126.4(a)(1)(B))], if the

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appropriate studies are not conducted prior to a mitigated negative declaration or environmental impact report with appropriate mitigation measures fully set forth in such documents.

Section 15126.4(a)(1)(B) further provides exceptions to the general rule against deferred mitigation measures, “The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency: (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.” (Id.) There is no reason why it would be infeasible to conduct the further studies and formulate mitigation measures for the two categories discussed herein prior to approving a mitigated negative declaration or environmental impact report. As such, failure to complete such studies and incorporate fully formulated mitigation measures will be grounds to challenge the project approval in court.

IV. Energy

The Initial Study correctly states that the energy usage for the proposed facility is potentially significant. The proposed mitigation requires the applicant to provide energy calculations for the project prior to the hearing, and requires the total amperage needs to be within the energy calculations provided. This mitigation gives no consideration to the demands on the power grid or the potential impacts to the surrounding residents of adding this potentially significant use to the grid. The mitigation further fails to account for the increased noise and fuel consumption from generators during periods when power from the grid is unavailable. This mitigation measure is inadequate and incomplete for those reasons.

V. Criminal Activity

The County of Lake Cannabis Ordinance No. 3084 Section 4(h)(3) states as a basis for denying a conditional use permit, “[conviction] of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.” As evidenced in the attached Preliminary Report prepared by Officer Slates of the California Highway Patrol, stolen property was recovered on the subject property in March of last year (a photo of the stolen property on site is also enclosed). The report is still in a preliminary status and states that a follow up investigation is required. This investigation is ongoing. It is unknown whether arrests were made or will be made in the future.

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The potential criminal activity on the property is a basis to deny the application, and should, at a minimum, cause Staff to further investigate the status of the investigation. Stolen property on site is certainly concerning to the neighbors as it indicates a level of disregard for laws and regulations, and portends future disregard for mitigation measures, and other land use regulations at issue here.

VI. Exclusion Zone

The Initial Study states on page 2 that the project, “is not within an ‘exclusion overlay district.’” This is not accurate. Approximately 70 acres of the property is within an exclusion overlay district. This portion of the property cannot be used to calculate permissible cultivation area.

The outstanding issues related to this project are numerous and should be the subject of further study prior to approval of the Initial Study. If these issues remain unaddressed, the project approval will be susceptible to legal challenge due to its burden on the environment and surrounding residents.

Verv trulv yours.



Martin L. Hirsch

MLH:kh
enclosure
cc: clients