

via electronic mail to: [johanna.peelen@lakecountyca.gov](mailto:johanna.peelen@lakecountyca.gov)

May 9, 2022

Chair Crandell and Members of the Board of Supervisors  
County of Lake  
255 North Forbes Street  
Lakeport, CA 95453

**Re: *Lake Vista Farms, LLC Major Use Permit 19-36 and IS/MND 19-56***  
***Applicant's Response to Board Questions Raised At 5/3/22 Hearing***

Dear Chair Crandell and Supervisors:

Thank you for your continued consideration of the Lake Vista Farms, LLC project ("Project"). We submit this letter and the attached materials to provide more detailed responses to the important questions raised by the Board at the May 3 hearing on the Project. This letter and the following materials are organized as follows:

<b>Section</b>	<b>Topic</b>
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- |   |                                                                   |
|---|-------------------------------------------------------------------|
| 1 | Project Timeline, Including Notice of Violation                   |
| 2 | Project Compliance With County Requirements And Findings          |
| 3 | Current Condition Of The Project Site                             |
| 4 | Whether The Project IS/MND Evaluated The Impacts Of Prior Grading |
| 5 | Attention To Cultural Resources                                   |
| 6 | Cultivation Area Data Consistency                                 |
| 7 | Applicability of Ordinance 3112                                   |
| 8 | Other Agency Permits/Approvals                                    |

We appreciate the Board's consideration of this response, and respectfully request that the Board (1) deny the Appeal (AB 21-05); and (2) uphold the Planning Commission's decision to approve the Use Permit (UP 19-36) and adopt the Initial Study / Mitigated Negative Declaration (IS 19-56).

Thank you again for your attention to this matter.

Sincerely,



Bradley B. Johnson, Esq.

**Everview Ltd.**

cc: Mary Darby, Director, Community Development Department  
Michael McGinnis, Community Development Department  
Anita E. Grant, Esq., County Counsel  
Client Team

**EXECUTIVE SUMMARY**

**EXECUTIVE SUMMARY**

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The Lake Vista Farms, LLC Project team has compiled responses to each of the concerns and questions raised by the Board of Supervisors at the May 3, 2022 hearing on the Project. This Executive Summary provides short responses to each concern or question. Detailed responses follow.

**SECTION 1**

Section 1 provides a detailed timeline for the Project, from application in September 2019 to approval by the Planning Commission in November 2021. This timeline includes key dates and actions relating to the Notice of Violation that was issued in May 2020.

**SECTION 2**

Section 2 addresses the concern that the Project does not satisfy all applicable County requirements, and/or that the Board cannot make all required findings necessary to approve the Project.

**SHORT RESPONSE:** The Project satisfies all applicable County requirements, and, as determined by the Planning Commission and CDD Staff, all required findings can be made in support of approving the Project. In short, the Project complies with all elements and requirements under the County Code, the City of Clearlake has issued and reconfirmed its support, the IS/MND shows that all potential impacts have been mitigated to a less than significant level, the Project will reduce baseline water use on the site, and there are no active violations regarding the Project.

**SECTION 3**

Section 3 addresses the concern that CDD Staff have not verified the current condition of the Project site following Staff’s clearance of the prior violation in August 2020.

**SHORT RESPONSE:** The Project site, including the areas impacted by grading in May 2020, is secure and in pristine condition. No cannabis cultivation has occurred on the site since May 2020. The Project site is clean and erosion control measures, including groundcover, are in place. The site, house, and agricultural buildings are vacant and unoccupied. The driveway access gate is secure and locked.

**SECTION 4**

Section 4 addresses the concern that the Initial Study/Mitigated Negative Declaration (“IS/MND”) prepared for the Project failed to analyze the impacts associated with the grading work that occurred on the Project site in May 2020.

**SHORT RESPONSE:** The IS/MND expressly analyzed the Project site as impacted by the May 2020 grading activities. Further, under the California Environmental Quality Act (“CEQA”), even activities that may have been conducted in violation of applicable rules or zoning regulations are properly considered part of the environmental baseline. Such activities should not be excluded as part of a project’s baseline analysis, and conditions existing as a result of illegal activities do not require separate analysis.

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**EXECUTIVE SUMMARY**

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**SECTION 5**

Section 5 addresses the concern that no cultural resources assessment was conducted before the Project site was graded in May 2020, and that grading activities may have impacted cultural resources.

**SHORT RESPONSE:** The Project site, including the areas impacted by grading in May 2020, were fully analyzed for potential cultural resources in July and August 2019. Natural Investigations Company, Inc. (“NIC”) concluded that the Project does not have the potential to cause a significant impact on any resource that currently qualifies as a historical resource, or that has been recommended eligible for listing in the California Register of Historic Resources, and that no additional cultural resources work was necessary for the Project. NIC additionally contacted all five Tribes identified by the Native American Heritage Commission as potentially having knowledge of the Project site. Of the five Tribes contacted, four did not request consultation. One, the Koi Nation of Northern California, requested consultation, toured the Project site, and determined that no cultural resources were present at the site.

**SECTION 6**

Section 6 addresses the concern that the Project cultivation area had been modified or varied through the Project’s review process, such that the final Project approval documents contained “inconsistent” figures.

**SHORT RESPONSE:** The Project cultivation area, environmental study area, and canopy area figures have remained consistent through the Project development. Even though the Project requests a maximum 15 acres of canopy area, the IS/MND, including the Biological Resources Study and the Cultural Resources Study, analyzed a larger area, approximately 27.9 acres, in order to provide the most conservative assessment of potential impacts. Thus, for example, for Project Site A, the IS/MND analyzed an area of 6 acres, although the Project will only impact approximately 5.09 acres (this is the “Cultivation Area”), and within the Cultivation Area, the Canopy Area will encompass approximately 4.07 acres.

**SECTION 7**

Section 7 addresses the question of whether and to what extent Ordinance No. 3112, which the Board of Supervisors adopted on September 21, 2021, applies to the Project.

**SHORT RESPONSE:** Ordinance No. 3112 does not apply to the Project because, as stated by CDD Staff with concurrence by County Counsel, the Project violation occurred in May 2020 and was fully abated and cleared by CDD Staff in August 2021, before Ordinance No. 3112 became effective on October 21, 2021. Further, California law prohibits ordinances from having retroactive effect unless an ordinance includes an express retroactivity provision. Because Ordinance No. 3112 does not include such a provision, it cannot be applied retroactively to the Project.

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## **EXECUTIVE SUMMARY**

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### **SECTION 8**

Section 8 addresses the concern that cultivation activities had been initiated under the Early Activation permit in May 2020 without other required agency approvals.

**SHORT RESPONSE:** All required agency approvals were in place prior to the commence of grading and cultivation activities on the Project site in May 2020. Specifically, the California Department of Fish and Wildlife (“CDFW”) approved a Lake and Streambed Alteration Agreement in August 2019, following a site visit by CDFW staff. The Project site was also enrolled for coverage under the State Water Board’s Cannabis General Order in August 2019.

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**SECTION 1: PROJECT TIMELINE, INCLUDING NOTICE OF VIOLATION**

## **SECTION 1: LAKE VISTA FARMS, LLC PROJECT DEVELOPMENT TIMELINE**

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The below provides a detailed timeline for the Project, from application in September 2019 to approval by the Planning Commission in November 2021. This timeline includes key dates and actions relating to the Notice of Violation that was issued in May 2020.

### **SEPTEMBER 2019**

- **Lake Vista Farms (LVF) Use Permit application submitted to County - September 2019.**
- **Application documents and technical studies prepared and submitted to the County:**
  - Application form, Project Description and Findings
  - Site Plans
  - Property Management Plan, Site Management Plan and Nitrogen Management Plan
  - Biological Report
  - Cultural Resources Report
  - Site Photos and Mapping
  - Well Reports
  - State Water Board Enrollment (8-2019)
  - CDFW LSA (8-2019) - site visit with CDFW Officer Kyle Stoner prior to obtaining LSA

### **OCTOBER-NOVEMBER 2019**

- **County Incomplete letter - 10-30-19.**
- **Tribal outreach and on-site meeting with Koi Nation of Northern California – 11-18-2019.**

### **DECEMBER 2019**

- **LVF incomplete letter response packet submitted to County - 12-12-19.**

### **FEBRUARY 2020**

- **UP application deemed complete; EA issued - 2-28-20 – Met with County Resource Planner Peggy Barthel on 2/28/2020, who confirmed that no grading permit was required for site grubbing; met with Scott DeLeon on the same day, received verbal concurrence, since area was previously disturbed by agriculture activities through ag permit).**
- **Letter of support from City of Clearlake regarding the setback February 2020.**

### **MAY 2020**

- **Notice of Violation and Stop Work Order, revocation of Early Activation - 5-13-20.**
- **Within 7 days after the NOV, the hoop houses were removed, stabilizing earthwork had been performed to graded areas, stormwater management controls had been installed, and Project team members provided two different remediation proposals to CDD Staff**
- **No cultivation activities at the project site since May of 2020.**
- **Applicant submits Grading Remediation Plans and Permit**

### **AUGUST 2020**

- **County clears Notice of Violation and Stop Work Order.**

### **JUNE-JULY 2021**

- **CEQA ISMND Circulation Period was 6/8/21 to 7/12/21.**
- **CEQA Clearinghouse Link: <https://ceqanet.opr.ca.gov/2021060178> -**
- **Applicant agreed to mitigation measures listed in CEQA ISMND.**

## **SECTION 1: LAKE VISTA FARMS, LLC PROJECT DEVELOPMENT TIMELINE**

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### **AUGUST 2021**

- Supplemental Hydrology Report submitted (followed by additional data in February 2022)
- Drought Management Plan submitted.

### **SEPTEMBER 2021**

- Although CDD Staff cleared the Notice of Violation in August 2020, CDD Staff additionally required a Grading Violation Clearance permit in September 2021. The applicant submitted plans, paid the permit fee, and County staff inspected the Project site twice. County staff finally issued the Grading Violation Clearance Permit on September 8, 2021.
- Drought Management Plan submitted.

### **NOVEMBER 2021**

- Planning Commission voted to approve Project after making all required findings – 11-10-21
- Appeal Filed



**SECTION 2:** PROJECT COMPLIANCE WITH COUNTY REQUIREMENTS  
AND FINDINGS

## **SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

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**ISSUE:** Concern was raised that the Project does not satisfy all applicable County requirements, and/or that the Board cannot make all required findings necessary to approve the Project.

**SHORT RESPONSE:** The Project satisfies all applicable County requirements, and, as determined by the Planning Commission and CDD Staff, all required findings can be made in support of approving the Project. In short, the Project complies with all elements and requirements under the County Code, the City of Clearlake has issued and reconfirmed its support, the IS/MND shows that all potential impacts have been mitigated to a less than significant level, the Project will reduce baseline water use on the site, and there are no active violations regarding the Project.

### **DISCUSSION:**

The Project complies with all County requirements under the County Code, and all findings required for approval of the requested major use permit can be met.

The below provides (1) the Planning Commission's CEQA findings; (2) the Planning Commission's Use Permit findings; (3) CDD Staff's recommended findings, as prepared for the Board's May 3 hearing; and (4) an matrix showing the Project's compliance with additional County requirements.

#### **(1) FINAL PLANNING COMMISSION CEQA FINDINGS:**

- Potential environmental impacts related to aesthetics can be mitigated to less than significant levels with the implementation of mitigation measure AES-1.
- Potential air quality impacts can be mitigated to less than significant levels with the implementation of mitigation measures AQ-1, AQ-2, AQ-3, AQ-4, AQ-5, AQ-6, and AQ-7.
- Potential biological impacts can be mitigated to less than significant levels with the implementation of mitigation measures BIO-1, BIO-2, and BIO-3.
- Potential environmental impacts related to cultural and Tribal resources can be mitigated to less than significant levels with the implementation of mitigation measures CUL-1, CUL-2, and CUL-3.
- Potential noise impacts can be mitigated to less than significant levels with the implementation of mitigation measures NOI-1 and NOI-2.
- This project is consistent with land uses in the vicinity.
- This project is consistent with the Lake County General Plan, Shoreline Communities Area Plan and the Lake County Zoning Ordinance.
- As mitigated through specific conditions of approval, this project will result in less than significant environmental impacts (Attachment 3).

#### **(2) FINAL PLANNING COMMISSION USE PERMIT APPROVAL FINDINGS:**

- The establishment, maintenance, or operation of the permitted use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing and working in the neighborhood, or detrimental to property and improvements, and the general welfare of the County.
- The site is adequate in size, shape, locations, and physical characteristics to accommodate the type of use and level of development proposed.

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

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- The streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the proposed use.
- There are adequate services to serve the project.
- This project is consistent with the Lake County General Plan, Shoreline Communities Area Plan, and Lake County Zoning Ordinance.
- No violation of Chapter 5, 17, 21, 23 or 26 of the Lake County Code currently exists on this property, with a condition of approval implemented.
- The proposed use complies with all development standards described in Chapter 21, Article 27, Section 1.i.
- The applicant is qualified to make the application described in Chapter 21, Article 27, Section 1.ii.(g).
- The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii.(i)

**(3) FINDINGS FROM MAY 3, 2022 STAFF REPORT TO BOARD OF SUPERVISORS**

**Article 51.4, Major Use Permits, Findings Required for Approval**

- **1. That the establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.**
  - Response: Commercial Cannabis Cultivation Operation is a permitted use in the “RL” Rural Lands Zoning District as well as the “A” Agricultural district upon issuance of a Major Use Permit pursuant to Article 27 of the Lake County Zoning Ordinance. Prior to the applicant constructing any type of structure(s), the applicant shall obtain the necessary permits from the appropriate Federal, State and/or Local government agencies.
  - The environmental analysis (EXHIBIT A9 - INITIAL STUDY) determined that the use would not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood as all potential impacts have been reduced to less than significant with the incorporated mitigation measures and Conditions of Approval. Potential impacts identified relate to air quality, biological resources, cultural/tribal/geologic resources, noise and wildfire. Additionally, the Community Development Department would conduct Annual Compliance Monitoring Inspections during the cultivation season to ensure compliance with the approved Property Management Plan and Conditions of Approval, as discussed in detail in the planning commission report dated November 18, 2021.
- **2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.**
  - Response: The project site is the former Hops-Meister Farm that included the cultivation of approximately 13.6 acres of hops beginning in 2009. The site has been developed to include farming and agricultural support facilities, including a 1,200 square foot residence, septic system, barn, accessory structures, multiple wells, and irrigation facilities. The said property includes 816,750 square feet of cannabis cultivation and 653,400 square feet canopy coverage. This canopy area represents 4.96% of the 302.40 total acre site. The pre-existing agricultural activities covered a site area of over 18 acres. Other land uses on said property include residential, timberland, and grazing land use activities. The project complies with the

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

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20 acres of land to one acre of canopy stipulation. A deed restriction on each parcel is required for the approved permit Lake Vista Farms, LLC UP 19-36.

- **3. That the streets, highways, and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.**
  - Response: The project takes access via a gravel driveway from Ogulin Canyon Road through an existing security gate.
- **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.**
  - Response: This application was routed to all of the affected public and private service providers including Public Works, Special Districts, Environmental Health, and PG&E, and to all area Tribes. Relevant comments may be found in EXHIBIT A3 - 11.18.21 STAFF REPORT, PLANNING COMMISSION MINUTES, AGENCY AND PUBLIC COMMENTARY. No comments were received that would affect a substantial adverse impact determination.
  - The appellant submitted a written description of why the appellant believes the Planning Commission erred in its decision to approve this land use permit and CEQA review (IS/MND). The appellants cited several specific aspects of the PC’s decision as being deficient. The appellant maintains that the development of existing grape vineyards on other parcels and existing approved cannabis operations contribute to biological impacts associated with water demand, water use, and the capacity of the groundwater system to recharge, and that 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 appellant maintains that the capacity of the groundwater to store and recharge water during the current drought remains unaddressed in the environmental review.
- **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.**
  - Response: This project is a permitted use in accordance to the Rural Lands (RL) zoning district within the County of Lake’s Commercial Cannabis ordinance. The project, as conditioned, meets all requirements and development standards of the Zoning Ordinance. The General Plan and the Shoreline Community Area Plan do not have any provisions for commercial cannabis, but both plans do have provisions for economic development and related policies that the project is consistent with (Please refer to the Staff Report from 11.18.21, section VI Project Analysis).
- **6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.**
  - Response: Violations of the County of Lake were remediated as of August 8, 2021. Please refer to EXHIBITS A14 and A13, respectively, VIOLATIONS and REMEDIATION for full details on violation remediation. The Community Development Department has no record of current violations of Chapters 5, 17, 21, 23 or 26 of the Lake County Code for this property.
  - Article 27, sub. (at); Three Required Findings for Commercial Cannabis Approval

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**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

In addition to the findings required for a Major Use Permit, the following findings are required for approval of a cannabis specific Use Permit:

- **The proposed use complies with all development standards described in Chapter 21, Article 27, Section 1.i.**
  - Response: The Planning Commission found that the project was in compliance with all applicable standards and criteria or could be brought to full compliance with conditions of approval (Please refer to the Staff Report from 11.18.21, section IX Approval Criteria).
- **2. The applicant is qualified to make the application described in Chapter 21, Article 27, Section 1.ii.(g).**
  - Response: The applicant has passed ‘live scan’ and is the owner of the property. The applicant is qualified to make this application.
- **3. The application complies with the qualifications for a permit described in Chapter 21, Article 27, Section 1.ii.(i).**
  - Response: The application was determined to be complete and in compliance with the requirements set out in Article 27, Section 1.ii.(i) are met.

**(4) COMPLIANCE WITH ADDITIONAL COUNTY REQUIREMENTS**

The below matrix demonstrates the Project’s compliance with other applicable County requirements. Some of these requirements are captured in the above findings.

REQUIREMENT	COMPLIANCE STATUS
A person interested in applying for a cannabis cultivation use permit shall be enrolled with the applicable Regional Water Quality Control Board or State Water Resources Control Board for water quality protection programs as of the effective date of this ordinance or written verification from the appropriate board that enrollment is not necessary.	<b>In compliance.</b>  Lake Vista Farms, LLC is enrolled in the State Water Resources Control Board Cannabis Cultivation Program as of August 2019.
Applicants shall schedule and pay the fee for a pre-application conference with the Department prior to the submittal of an application for a use permit.	<b>In compliance.</b>  Lake Vista Farms, LLC applied for and completed the Lake County Community Development Department Pre-Application process in July 2019.
Permit application supplemental information.	<b>In compliance.</b>  Lake Vista Farms, LLC has completed the Lake County Supplemental Data Questionnaire.
Project description: The project description shall provide adequate information to evaluate the impacts of the proposed project and consists of three parts: a site plan, written description section, and a property management section.	<b>In compliance.</b>  See the Project Description, the Property Management Plan, and related documentation for a detailed project description.

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REQUIREMENT	COMPLIANCE STATUS
<p>Site Plan: A site plan is a graphic representation of the project consisting of maps, site plans, or drawings prepared by a design professional consistent with the requirements of the Department pursuant to Article 55.5.</p>	<p><b>In compliance.</b></p> <p>The project Engineer has prepared detailed site plans, existing conditions plans, proposed conditions plan, topographic and preliminary grading plans, and security plans. These plans have been submitted to Lake County.</p>
<p>Written Description: A written section which shall support the graphic representations and shall, at a minimum, include:</p> <ul style="list-style-type: none"> <li>(a) A project description;</li> <li>(b) The present zoning;</li> <li>(c) A list and description of all uses shown on the site plan;</li> <li>(d) A development schedule indicating the approximate date when construction of the project can be expected to begin and be completed for each phase of the project; including the permit phase;</li> <li>(e) A statement of Lake Vista Farms, LLC’s proposal for solid waste disposal, vegetative waste disposal, storm water management, growing medium management, fish and wildlife protection, water resources protection, energy use, water use, pest management, fertilizer use, property management, grading, organic farming, and protection of cultural resources;</li> <li>(f) Quantitative data for the development including but not limited to: Gross and net acreage; the approximate dimensions and location of structures for each district or area; employee statistics; support services required; traffic generation data based on anticipated uses; parking and loading requirements; and outdoor storage requirements based on anticipated uses;</li> </ul>	<p><b>In compliance.</b></p> <p>This Project Description includes the current General Plan and Zoning information.</p> <ul style="list-style-type: none"> <li>• The completed County Application Form - Supplemental Questionnaire sheets include a development schedule.</li> <li>• The Lake Vista Farms, LLC Property Management Plan addresses and describes a wide array of operational procedures and provides information regarding the Lake Vista Farms, LLC procedures for solid waste disposal, vegetative waste disposal, storm water management, growing medium management, fish and wildlife protection, water resources protection, energy use, water use, pest management, fertilizer use, property management, grading, organic farming, and protection of cultural resources.</li> <li>• Information concerning acreage, dimensions and location of grow sites, traffic generation data, parking and loading locations, and outdoor storage facilities based on anticipated uses is also provided.</li> </ul>
<p>Property Management Plan: All permittees shall prepare a Property Management Plan. The intent of said plan is to identify and locate all existing cannabis and non-cannabis related uses on the property, identify and locate all proposed cannabis and non-cannabis related uses on the property, and describe how all cannabis and non-cannabis related uses will be managed in the future. The property management plan shall demonstrate how the operation of the commercial cannabis cultivation site will not harm the public health, safety, and welfare or the natural environment of Lake County.</p>	<p><b>In Compliance.</b></p> <p>See Lake Vista Farms, LLC Property Management Plan.</p>

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

REQUIREMENT	COMPLIANCE STATUS
<p><u>Use Permit Suggested Findings - Article 51, Section 51.4 (a) 1- 6 Lake County Zoning Ordinance:</u></p> <p>(a) The Lake County Planning Commission may only approve or conditionally approve a Major Use Permit if all the following findings are made:</p> <p>1. <u>That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental to property and improvements in the neighborhood or the general welfare of the County.</u></p>	<ul style="list-style-type: none"> <li>• As described herein, the establishment, maintenance, and operation of the proposed Lake Vista Farms, LLC cultivation project will not be detrimental to the health, safety, morals, comfort, and general welfare of persons residing or working in the neighborhood of the proposed use. The proposed cultivation improvements are isolated, proposed to be located on previously farmed or cleared areas, and have been designed to minimize detrimental impacts and conflicts with people residing and working in the area, property and improvements in the neighborhood or the general welfare of the County.</li> <li>• The cannabis cultivation project will be developed to Lake County Code standards and will provide for a high level of security and safety consistent with the County regulations.</li> <li>• The cultivation sites will be situated in previously farmed and cleared areas of the 302.45-acre parcel(s). The cultivation areas will be laid out to maximize property line setback distances from adjoining properties and structures in order to minimize perceived detrimental health, safety, morals, comfort, and general welfare impacts to people in the neighborhood and the region.</li> <li>• The location of the two parcels north of the City of Clearlake is very rural in nature, isolated, and in a low population density area. These factors will also minimize detrimental health, safety, morals, comfort, and general welfare impacts to people in the neighborhood and the region.</li> <li>• The cannabis cultivation laws of the State of California and the County of Lake have been approved by the voters or elected decision makers and seem to reflect the morality of a majority of the state’s voters and Lake County region as it relates to cannabis cultivation projects.</li> <li>• The goal with regard to development of the Lake Vista Farms, LLC cannabis cultivation project is to be sensitive to the community’s morality, comfort, and the general welfare of the Clearlake area by developing and operating state-of-the-art cannabis cultivation activities in secure settings in order to minimize detrimental impacts.</li> </ul>
<p><u>Use Permit Suggested Findings - Article 51, Section 51.4 (a) 1- 6 Lake County Zoning Ordinance:</u></p>	<ul style="list-style-type: none"> <li>• The subject site meets the minimum lot size for cannabis cultivation projects within the RL zoning district as adopted by the Lake County Board of</li> </ul>

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REQUIREMENT	COMPLIANCE STATUS
<p>(a) The Lake County Planning Commission may only approve or conditionally approve a Major Use Permit if all the following findings are made:</p> <p>2. <i>That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.</i></p>	<p>Supervisors and within that context is adequate in terms of size, shape, location and physical characteristics to accommodate the type of use and level of development proposed.</p> <ul style="list-style-type: none"> <li>• The subject parcels have a combined size of 302.45 acres and as such provides for sufficient land area for development of 15 acres of canopy area (302.45 acres/20 acre density = 15 acres of canopy). Related cannabis processing activities will take place within secure location site facilities as shown on the site plans.</li> <li>• The subject properties have sufficient width and depth to accommodate the cultivation areas and meet the required setbacks. A request for a reduced setback adjacent to the City of Clearlake has been considered and approved. The cultivation site will be located in an area beyond the normal view of people traveling on Ogulin Canyon Road, and cannot be easily viewed from adjacent properties, consistent with the intent of the Zoning Ordinance.</li> <li>• The Ogulin Canyon Road site is entirely appropriate to accommodate the cannabis cultivation project involving the propagation and growing of plant materials within the existing or imported soil, along with the application of irrigation water and organic fertilizers.</li> <li>• The subject site and use is consistent with existing adjoining and nearby land uses.</li> <li>• The project is to be developed with the canopy area in accordance with the County Cannabis Ordinance. This generate revenues for the County of Lake.</li> <li>• The location of the land is in a low density area, the proposed use is compatible with similar surrounding land use activity.</li> <li>• The subject cultivation sites are proposed in areas that were previously farmed with hops or cleared for other agricultural purposes.</li> <li>• The subject parcel is developed with a house, septic system, well, water storage, and PG&amp;E power. There is good year-round access to the site. The existing agricultural structures will provide sufficient area for the processing and storage activities in safe and secure locations.</li> </ul>
<p>Use Permit Suggested Findings - Article 51, Section 51.4 (a) 1- 6 Lake County Zoning Ordinance:</p>	<ul style="list-style-type: none"> <li>• The subject site is located on the south side of Ogulin Canyon Road which is considered by the Lake County General Plan as a local road. Chapter</li> </ul>



**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

REQUIREMENT	COMPLIANCE STATUS
<p>(a) The Lake County Planning Commission may only approve or conditionally approve a Major Use Permit if all the following findings are made:</p> <p>3. <i>That the streets, highways and pedestrian facilities are reasonably adequate to safely accommodate the specific proposed use.</i></p>	<p>6 of the Lake County General Plan – the Transportation and Circulation Element indicates that local roads feed into minor collectors and community travel routes and collectors of traffic from local roads providing access to higher density residential areas, local commercial facilities, neighborhood parks and schools.</p> <ul style="list-style-type: none"> <li>• The initial portion of Ogulin Canyon Road (2/3 mile) is within the City of Clearlake. The City of Clearlake General Plan Circulation Element Figure 4.1. Circulation Map identifies Ogulin Canyon Road as a <u>basic street</u>. The Clearlake General Plan Circulation Element contains a number of Goals and Policies regarding the City Street system, however there does not appear to be any policy applying specifically to Ogulin Canyon Road.</li> <li>• Ogulin Canyon Road is in moderate condition, it is paved for about 2/3 miles east of Hwy 53 and transitions to gravel for a distance of .35 miles to the project driveway entry. There is very light traffic generated by surrounding land uses and as such there is good visibility and sight distance conditions.</li> <li>• The subject site is provided with road-based driveway access from Ogulin Canyon Road into an existing parking area near the house.</li> <li>• The adjacent street and pedestrian facilities are reasonably adequate to safely accommodate the proposed cultivation facilities and the anticipated traffic that may be generated, as indicated in the traffic engineers report.</li> <li>• The proposed cultivation project is set back over 100 feet from Ogulin Canyon Road in a manner that minimizes visual impacts on the parcels natural and scenic resources.</li> <li>• Roadway signing, and speed limit signs have been posted in accordance with County standards.</li> </ul>
<p>Use Permit Suggested Findings - Article 51, Section 51.4 (a) 1- 6 Lake County Zoning Ordinance:</p> <p>(a) The Lake County Planning Commission may only approve or conditionally approve a Major Use Permit if all the following findings are made:</p> <p>4. <i>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.</i></p>	<ul style="list-style-type: none"> <li>• The property is currently developed with a single-family dwelling. There is a history of public and private service delivery in the area. Public services include fire protection provided by the Lake County Fire District and Cal Fire, water supply to be provided from existing private wells on the subject site, wastewater disposal as provided by the existing septic tank and leach field area, and police protection as provided by the Lake County Sheriff's Department and the Clearlake Police department through mutual aid. These public and</li> </ul>

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

REQUIREMENT	COMPLIANCE STATUS
	<p>private services will continue to be available to the subject site and will be adequate to serve the proposed cannabis cultivation facilities.</p> <ul style="list-style-type: none"> <li>• Lake County has developed and adopted a cannabis cultivation taxing structure that is intended to generate significant tax revenue that will benefit County Departments in the provision of adequate public services including but not limited to general government services and the Sheriff’s Department law enforcement services.</li> <li>• Applicants for cannabis cultivation Major Use Permit’s such as Lake Vista Farms, LLC are required to pay significant land-use application fees to cover the costs of the Lake County Community Development Department’s processing services and other County services. Building permit and plan check application fees are also required under some circumstances to cover the cost associated with review of building plans and issuance of permits.</li> <li>• Other fees for permits and services are charged by the County/State in order to cover the cost of providing services including for required background checks, and if needed - grading permits, water quality permits, streambed alteration agreements, driveway curb cut permits, septic permits, fire mitigation expenses, school impact fees, etc.</li> </ul>
<p>Use Permit Suggested Findings - Article 51, Section 51.4 (a) 1- 6 Lake County Zoning Ordinance:</p> <p>(a) The Lake County Planning Commission may only approve or conditionally approve a Major Use Permit if all the following findings are made:</p> <p>5. <i>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.</i></p>	<ul style="list-style-type: none"> <li>• The project is in conformance with the applicable provisions and policies of the Lake County Zoning Ordinance and the Lake County General Plan. The subject site is designated by the Lake County General Plan as Rural Lands.</li> <li>• The Lake County General Plan contains many goals and policies concerning economic development including - Goal LU – 1. <i>To encourage the overall economic and social growth of the County while maintaining its quality-of-life standards.</i> The Lake Vista Farms, LLC project is consistent with this Lake County General Plan Goal in that a fundamental premise of the facility and its operations is to cultivate a legal crop, which will generate business income and regional employment opportunities, just like all other farming operations. This operation will support and enhance the overall economic and social growth of the County. The Rural Lands General Plan Designation of the site mentions <i>“important</i></li> </ul>

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

REQUIREMENT	COMPLIANCE STATUS
	<p><i>groundwater recharge functions. As watershed lands, these lands function to collect precipitation and provide for important filtering of water to improve water quality". The Lake Vista Farms, LLC site design and storm water management activities will enhance and support this General Plan Policy.</i></p> <ul style="list-style-type: none"> <li>• The project will be operated in accordance with Lake County General Plan policies regarding maintenance of on-site drainage features to promote groundwater recharge functions and to properly manage the natural infrastructure of the watershed. There will be minimal ground disturbance activity and grading, the parking areas and access driveway will be provided with base rock-pervious surfaces to facilitate rainwater absorption. Maintaining the oak woodland environment and minimizing water runoff impacts are important operational goals of this project.</li> <li>• Lake County General Plan Land-Use Goal LU – 4 is <i>to maintain economic vitality and promote the development of commercial uses that are compatible with surrounding land uses and meet the present and future needs of Lake County residents, the regional community and visitors.</i> The proposed project with its footprint within previously cultivated areas, isolated site location, and minimal impervious surfaces, is compatible with the existing and surrounding low density land uses and will help meet the current and future needs of Lake County residents, the regional community, and visitors to the area.</li> <li>• General Plan Land-Use Goal LU – 6 is <i>to maintain a healthy and diverse local economy that meets the present and future employment, shopping, recreational, and service needs of Lake County.</i> The development of an outdoor cultivation project is consistent with this goal. The farm business income, the generation and payment of County taxes, the increased expenditure of the owners and employees disposable income within Lake County, will all help enhance and maintain a healthy local economy and produce jobs. The turn over of local business revenue expended locally will help meet the employment, retail, recreational, and service’s needs of the region.</li> <li>• Lake County General Plan Policy LU – 6.1 <i>promotes the development of a diversified economic base by continuing to promote agriculture, recreation services and commercial</i></li> </ul>

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

REQUIREMENT	COMPLIANCE STATUS
	<p><i>development.</i> Over the years Lake County has encouraged and supported agricultural, recreational and commercial/resort development and business operations. The proposed Lake Vista Farms, LLC project is consistent with these past actions and promotes the agricultural sector with a well-designed project. The project is consistent with other facilities that have been approved and operated in Lake County.</p> <ul style="list-style-type: none"> <li>• The Lake County Comprehensive Economic Development Strategy (CEDS) 2016 vision is to achieve a sustainable, resilient, and prosperous economy that provides opportunity for an economically and socially diverse labor force and entrepreneurs that are educated, trained and prepared for future changes while protecting our rural agriculture-based quality of life and environment and providing a stable base for quality public services and programs. The 2016 CEDS provides a snap shot of the economic situation in Lake County. The economy of Lake County is based on tourism and agriculture. Important trends to note are the large increases in the self-employment sector, and an ongoing resurgence in agricultural employment. Lake County recreation and tourism is based on the lakes, the outdoors, fine wines and good food, good customer service, and a lifestyle still grounded in agriculture. Opportunities in this regard include promotion of sustainable agricultural practices and ag tourism attraction activities. The Land Use Element of the Lake County General Plan has additional policies that promote key industries including Agri-tourism (Policy LU-6.8). The proposed Lake Vista Farms, LLC outdoor cultivation project should help support Agri-tourism and will help the County meet its goals of communicating the area’s amenities and attributes and could help meet or exceed the potential for increased tourism and enhanced visitor experiences.</li> </ul>
<p>Use Permit Suggested Findings - Article 51, Section 51.4 (a) 1- 6 Lake County Zoning Ordinance:            (a) The Lake County Planning Commission may only approve or conditionally approve a Major Use Permit if all the following findings are made:</p>	<p>The proposed project Lake Vista Farms, LLC outdoor cultivation project on Ogulin Canyon Road is not affected by any existing known violations of Chapters 5, 17, 21, 23, or 26 of the Lake County Code.</p>

**SECTION 2: COMPLIANCE WITH COUNTY REQUIREMENTS AND FINDINGS**

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REQUIREMENT	COMPLIANCE STATUS
<p>6. <i>That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from a public health, safety or general welfare basis.</i></p>	

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**SECTION 3:      CURRENT CONDITION OF THE PROJECT SITE**

**SECTION 3: CURRENT CONDITION OF THE PROJECT SITE**

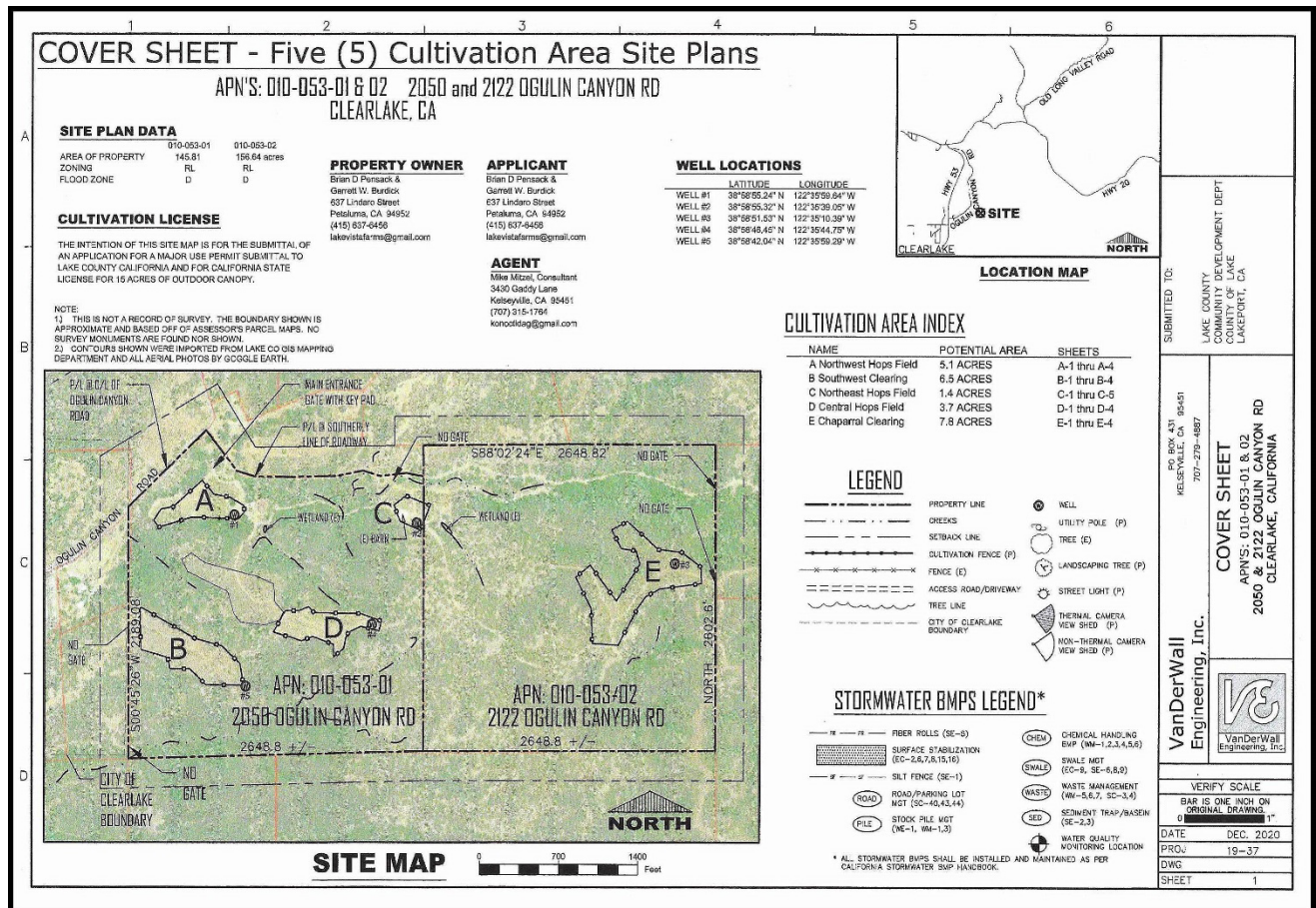
**ISSUE:** Concern was raised that CDD Staff have not verified the current condition of the Project site following Staff's clearance of the prior violation in August 2020.

**SHORT RESPONSE:** The Project site, including the areas impacted by grading in May 2020, is secure and in pristine condition. No cannabis cultivation has occurred on the site since May 2020. The Project site is clean and erosion control measures, including groundcover, are in place. The site, house, and agricultural buildings are vacant and unoccupied. The driveway access gate is secure and locked.

**DISCUSSION:**

As CDD Staff confirmed in August 2020, the Project Applicant has fully remediated the unauthorized grading that occurred in May 2020, installed erosion control measures, and secured the Project site. The property now looks very similar to the way that it looked when the Major Use Permit application was filed with Lake County in September 2019. All refuse, materials, and trash have been hauled off and properly disposed of. The site, house, and agricultural buildings are vacant and unoccupied. The driveway access gate is secure and locked.

The site plan below depicts the Project's five cultivation areas within the Project site. Current photographs depicting each cultivation area follow.



**SECTION 3: CURRENT CONDITION OF THE PROJECT SITE**

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The following photos were taken on Saturday May 7, 2022

**Northwest Hops Field - Site A**





**SECTION 3: CURRENT CONDITION OF THE PROJECT SITE**

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**Southwest Clearing - Site B**



**SECTION 3: CURRENT CONDITION OF THE PROJECT SITE**

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**Northeast Hops Field - Site C**



**SECTION 3: CURRENT CONDITION OF THE PROJECT SITE**

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**Central Hops Field – Site D**



**Chaparral Clearing - Site E**



**SECTION 4:**      WHETHER THE PROJECT IS/MND EVALUATED THE  
IMPACTS OF PRIOR GRADING



**SECTION 4: WHETHER THE PROJECT IS/MND EVALUATED THE IMPACTS OF PRIOR GRADING**

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**ISSUE:** Concern was raised that the Initial Study/Mitigated Negative Declaration (“IS/MND”) prepared for the Project failed to analyze the impacts associated with the grading work that occurred on the Project site in May 2020.

**SHORT RESPONSE:** The IS/MND expressly analyzed the Project site as impacted by the May 2020 grading activities. Further, under the California Environmental Quality Act (“CEQA”), even activities that may have been conducted in violation of applicable rules or zoning regulations are properly considered part of the environmental baseline. Such activities should not be excluded as part of a project’s baseline analysis, and conditions existing as a result of illegal activities do not require separate analysis.

**DISCUSSION:**

As outlined in detail in Section 1 – Project Timeline and Section 3 – Background Information Regarding Prior Violation, former lessee-operators conducted grading activities and constructed temporary hoop houses on the Project site in May 2020 in violation of County regulations and the Project’s Early Activation (“EA”) permit.

**1. IS/MND Discussion Related to Prior Grading**

The Project IS/MND, which is dated October 7, 2021 (long after the grading activities/hoop house construction occurred in May 2020), directly addresses the cited grading activities and hoop house construction. The IS/MND states the following in its “Environmental Setting/Existing Conditions” discussion:

A permit for Early Activation of Use, EA 20-22, of the proposed Major Use Permit UP 19-36, was approved by the Lake County Community Development Department on February 28, 2020 to allow commercial outdoor cultivation within a cultivation area of up to 640,332 square feet (14.7 acres) and a maximum canopy area of 479,160 square feet (11 acres) at the project site beginning April 1, 2020. The applicant’s lessee subsequently constructed hoop houses on Site A and graded approximately 56,640 square feet of the eastern portion of Site B to create flat areas for cultivation. The Lake County Community Development Department cited the applicant with a Notice of Violation of EA 20-22 and a Stop Work Order and on May 13, 2020 revoked EA 20-22. To address the violation, the applicant coordinated with the Community Development Department staff to identify immediate corrective actions, which included removal of the cited hoop houses on Site A, stabilization of Site B, and installation of stormwater management controls to prevent erosion and runoff from the graded areas on Site B. No further cannabis cultivation has occurred at the project site since the revocation of EA 20-22.

(IS/MND, p. 2.) The IS/MND in this way properly accounted for the Project site’s existing conditions and included the effects of the prior grading and hoop house construction as part of the applicable environmental baseline.

**2. CEQA Rules Regarding Prior Violations/Illegal Activity**

The courts have consistently held that project conditions that exist as a result of prior illegal activity are properly considered part of the CEQA environmental baseline. In other words, when analyzing a proposed project’s potential environmental impacts, the project impacts must be compared to existing conditions,

#### **SECTION 4: WHETHER THE PROJECT IS/MND EVALUATED THE IMPACTS OF PRIOR GRADING**

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even if existing conditions were caused by illegal activity, and not conditions that existed prior to the illegal activity. For example:

- In ***Riverwatch v County of San Diego*** (1999) 76 Cal.App.4th 1428, 1451, the court held that the proper baseline under CEQA is the existing condition of the site, even if that condition may be the result of prior illegal activity. In *Riverwatch*, part of a proposed mining site had been illegally disturbed; project opponents argued that the EIR should treat conditions that existed before the illegal conduct as the baseline. The court rejected this argument, noting that illegal conduct is subject to enforcement action and that it would place an undue burden on EIR preparers to determine the merits of illegal conduct claims. The court explained that an EIR is not "the appropriate forum for determining the nature and consequences of a prior conduct of a project applicant."
- Similarly, in ***Eureka Citizens for Responsible Gov't v City of Eureka*** (2007) 147 Cal.App.4th 357, 371, the court rejected claims that an EIR project description must consider claims of prior code or zoning violations, citing the holding from *Riverwatch* that an EIR is not the proper forum for resolving claims of improper conduct.
- Further, in ***Banning Ranch Conservancy v City of Newport Beach*** (2012) 211 Cal.App.4th 1209, 1233, the court held that the proper baseline for assessing impacts to habitat was the existing condition of the site, even if the condition of the site may have been degraded by illegal mowing. (See also *Fat v County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277 (upholding agency's discretion to use existing conditions baseline in adopting negative declaration for use permit for privately owned airport that had been operating without county authorization for 30 years and had not previously been reviewed under CEQA).

As noted above, the IS/MND is dated October 2021, more than a year after the grading and hoop house construction occurred in May 2020, and more than a year after those activities were fully remediated as confirmed by the County in August 2020. The IS/MND properly accounted for the Project site's existing conditions and included the effects of the prior grading and hoop house construction as part of the applicable environmental baseline.

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**SECTION 5:**      ATTENTION TO CULTURAL RESOURCES

## **SECTION 5: ATTENTION TO CULTURAL RESOURCES**

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**ISSUE:** Concern was raised that no cultural resources assessment was conducted before the Project site was graded in May 2020, and that grading activities may have impacted cultural resources.

**SHORT RESPONSE:** The Project site, including the areas impacted by grading in May 2020, were fully analyzed for potential cultural resources in July and August 2019. Natural Investigations Company, Inc. (“NIC”) concluded that the Project does not have the potential to cause a significant impact on any resource that currently qualifies as a historical resource, or that has been recommended eligible for listing in the California Register of Historic Resources, and that no additional cultural resources work was necessary for the Project. NIC additionally contacted all five Tribes identified by the Native American Heritage Commission as potentially having knowledge of the Project site. Of the five Tribes contacted, four did not request consultation. One, the Koi Nation of Northern California, requested consultation, toured the Project site, and determined that no cultural resources were present at the site.

### **DISCUSSION:**

As outlined in detail in Section 1 – Project Timeline and Section 3 – Background Information Regarding Prior Violation, former lessee-operators conducted grading activities and constructed temporary hoop houses on the Project site in May 2020 in violation of County regulations and the Project’s Early Activation (“EA”) permit.

Importantly, outreach to local Tribes and a cultural resources assessment covering the entire Project site, including the graded area, occurred prior to the grading in May 2020. These

#### **1. Cultural Resources Assessment**

Natural Investigations Company, Inc. (“NIC”) prepared a Cultural Resources Assessment for the Project, dated August 13, 2019.

NIC complied with CEQA’s cultural resource and historical resource guidelines in preparing the Assessment, and the Assessment follows the standards set out in *Archaeological Resource Management Reports: Recommended Contents and Format* by the California Office of Historic Preservation (1990). (Assessment, pp. 1, 3.) A literature search was completed by the Northwest Information Center on August 2, 2019. The Native American Heritage Commission indicated by letter that their Sacred Lands File search failed to indicate the presence of Native American sacred lands within the immediate Project vicinity. NIC conducted an intensive-level pedestrian survey of the Project area on July 15, 2019. (Assessment, p. ii.) The surveys included the areas affected by grading in May 2020.

Five prior studies have been conducted within the project area, while an additional four studies are on file at the Northwest Information Center within a 0.25-mile search radius. No cultural resources have been previously recorded within the Project area. NIC identified four prehistoric isolates and one historic-era archaeological site were identified during the survey. Isolates do not qualify as a historical resource for listing in the California Register of Historic Resources (CRHR). One historic-era building was also identified during the survey (house). The house is not involved with nor will it be impacted by the proposed activities; therefore, it does not qualify as a historical resource for purposes of this report and is not listed in the CRHR. (Assessment, p. ii.)

**SECTION 5: ATTENTION TO CULTURAL RESOURCES**

NIC concluded, based on its research and fieldwork, that the Project does not have the potential to cause a significant impact on any resource that currently qualifies as a historical resource, or that has been recommended eligible for listing in the CRHR. (Assessment, p. 23.) NIC further concluded that, based on the results of NIC’s records search, field survey, and assessment of potential direct or indirect Project impacts, no additional cultural resources work is recommended for the Project. (Assessment, p. 23.)

**2. Outreach to Local Tribes**

In connection with preparing its Assessment, NIC initiated outreach to local Tribes in October 2019. As directed by the Native American Heritage Commission (by letter dated July 28, 2019), NIC contacted all Tribes identified by the Commission as potentially having knowledge of the Project site. The table below summarizes this outreach effort and its results.

<b>Contact Name</b>	<b>Date Letter Sent</b>	<b>Date of Follow-Up</b>	<b>Comments/Concerns/Recommendations</b>
Big Valley Band of Pomo Indians Anthony Jack, Chairperson 2726 Mission Rancheria Rd. Lakeport, CA 95453 ajack@big-valley.net (707) 263-3924 Ext. 103 (707) 263-3977 Fax	10-29-2019	11-18-2019 12-05-2019	Mr. Jack was not available. Messages were left on his answering machine requesting information on the Project.
Elem Indian Colony Pomo Tribe Augustin Garcia, Chairperson P.O. Box 757/16170 Main Street Lower Lake, CA 95457 a.garcia@elemindiancolony.org (707) 994-3400 (707) 994-3408	10-29-2019	11-18-2019	Mr. Garcia was not available. A message was left on his answering machine requesting information on the Project.
Koi Nation of Northern California Darin Beltran, Chairperson P.O. Box 3162 Santa Rosa, CA 95402 kn@koination.com (707) 758-7408	10-29-2019		Mr. Dino Beltran of the Koi Nation responded to an email request for information on 10-30-2019. Call was returned on 10-31-2019. Mr. Beltran said that he would like to visit the Project location to get a better sense of its sensitivity for tribal cultural resources. He provided a number of dates that he was available to visit. Followed up with Mr. Beltran via email on 11-11-2019 after getting approval from the landowner for Mr. Beltran to visit the site. It was decided that Mr. Beltran would accompany Natural Archaeologist, Dylan Stapleton, on the field survey which took place on 11-18-2019.

**SECTION 5: ATTENTION TO CULTURAL RESOURCES**

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Middletown Rancheria Jose Simon III, Chairperson P.O. Box 1035 Middletown, CA 95461 sshope@middletownrancheria.com (707) 987-3670 Office	10-29-2019	11-18-2019 12-05-2019	Mr. Simon was not available. Messages were left on his answering machine requesting information on the Project.
Mishewal-Wappo Tribe of Alexander Valley Scott Gabaldon, Chairperson 2275 Silk Road Windsor, CA 95492 scottg@mishewalwappotribe.com (707) 494-9159 Office	10-29-2019	11-18-2019	Spoke with Mr. Gabaldon over the phone. He said that the Project Area is outside of the tribe's territory and referred us to the Koi Nation for more information on its tribal resource sensitivity.

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**SECTION 6:      CULTIVATION AREA DATA CONSISTENCY**

## SECTION 6: CULTIVATION AREA CONSISTENCY

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**ISSUE:** Concern was raised that the Project cultivation area had been modified or varied through the Project’s review process, such that the final Project approval documents contained “inconsistent” figures.

**SHORT RESPONSE:** The Project cultivation area, environmental study area, and canopy area figures have remained consistent through the Project development. Even though the Project requests a maximum 15 acres of canopy area, the IS/MND, including the Biological Resources Study and the Cultural Resources Study, analyzed a larger area, approximately 27.9 acres, in order to provide the most conservative assessment of potential impacts. Thus, for example, for Project Site A, the IS/MND analyzed an area of 6 acres, although the Project will only impact approximately 5.09 acres (this is the “Cultivation Area”), and within the Cultivation Area, the Canopy Area will encompass approximately 4.07 acres.

### DISCUSSION:

The Project cultivation area, environmental study area, and canopy area figures have remained consistent through the Project development.

The IS/MND explains that the six Project cultivation areas were selected following completion of the Biological Resources Study, and that a larger area was assessed than would ultimately be disturbed as part of the Project. The IS/MND states as follows:

A Biological Site Assessment for the project site, dated August 22, 2019, was prepared by Natural Investigations Co. (Natural Investigations Co., 2019). The Biological Site Assessment identified up to 28.8 acres, represented by six (6) distinct fields (sites), that are suited for cultivation. These fields were selected based on several key factors including setbacks from watercourses and other sensitive natural resources, the use of previously cleared and/or developed agricultural areas, level to moderate sloping topography, existing access roads, access to a water source, and access to existing irrigation systems. The proposed project is to cultivate 15 acres of canopy at five (5) of the fields, referred to as Sites A through E, as discussed below. Although Sites A through E have a combined area of 25.8 acres, the total canopy would be limited to 15 acres. The proposed cannabis cultivation activities are to be co-located on the subject parcels in compliance with County regulations (refer to Attachment A – Development Site Plans).

(IS/MND, p. 3.)

The area analyzed, cultivation area, and canopy area are summarized in the table below.

Site	Name	Area studied in IS/MND	Actual Cultivation Area	Canopy Area
A	Northwestern Hops Field	6.0	5.09	4.07
B	Southwest Clearing	6.5	6.56	5.25
C	Northeast Hops Field	3.4	1.45	1.16
D	Central Hops Field	4.2	3.72	2.98
E	Chaparral Clearing	7.8	1.92	1.54
	<b>TOTALS</b>	<b>27.9</b>	<b>18.75</b>	<b>15.00</b>

(See IS/MND, p.3)

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**SECTION 7:      APPLICABILITY OF ORDINANCE NO. 3112**

**SECTION 7: APPLICABILITY OF ORDINANCE 3112**

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**ISSUE:** A question was raised regarding whether and to what extent Ordinance No. 3112, which the Board of Supervisors adopted on September 21, 2021, applies to the Project.

**SHORT RESPONSE:** Ordinance No. 3112 does not apply to the Project because, as stated by CDD Staff with concurrence by County Counsel, the Project violation occurred in May 2020 and was fully abated and cleared by CDD Staff in August 2021, before Ordinance No. 3112 became effective on October 21, 2021. Further, California law prohibits ordinances from having retroactive effect unless an ordinance includes an express retroactivity provision. Because Ordinance No. 3112 does not include such a provision, it cannot be applied retroactively to the Project.

**DISCUSSION:**

As outlined in detail in Section 1 – Project Timeline and Section 3 – Background Information Regarding Prior Violation, former lessee-operators conducted grading activities and constructed temporary hoop houses on the Project site in May 2020 in violation of County regulations and the Project’s Early Activation (“EA”) permit. County CDD Staff cleared the violation and abatement actions on August 8, 2021.

**1. What Is Ordinance No. 3112?**

Ordinance No. 3112 amended certain provisions of Article VII of Chapter 13 of the County Code, relating to administrative fines and penalties. As noted above, the Board adopted the Ordinance on September 21, 2021. Ordinance 3112 became effective 30 days thereafter. (Gov. Code 25123.)

**2. How Is Ordinance No. 3112 Relevant to the Project?**

Ordinance No. 3112 amended Section 13-49 of the County Code relating to “Administrative Penalties for Failure to Maintain Required County Permit(s) for Cannabis Operations, Engaging in Cannabis Operations Beyond the Scope of an Existing County Permit and/or Engaging in Cannabis Operations While a Permit Application is Pending But Not Approved”.

In particular, Section 13-49.2 includes the following provision:

**Permit Ineligibility.** 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.

The question has been raised whether this provision bars the Project applicant from receiving the Major Use Permit requested as part of the Project.

**3. Staff and County Counsel Position**

At the May 3, 2022 hearing on the Project, Staff stated that Ordinance No. 3112, including the “Permit Ineligibility” provision, does not apply to the Project because the Notice of Violation issued in May 2021 was fully abated and cleared on August 8, 2021, prior to the date that the Board adopted Ordinance No. 3112, and prior to the date that ordinance became effective (30 days after adoption – October 21, 2021). County Counsel concurred with Staff.

**4. California Law Generally Prohibits Retroactive Effect Absent Express Retroactivity Provision**

Staff and County Counsel’s determination that Ordinance No. 3112 does not apply to the Project is consistent with California law governing the retroactivity of ordinances and other legislative enactments.

Absent “an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application.” (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209.) There must be “ ‘express language or clear and unavoidable implication negativ[ing] the presumption’ “ of nonretroactivity. (*Id.* at p. 1208, quoting *Glavinich v. Commonwealth Land Title Ins. Co.* (1984) 163 Cal.App.3d 263, 272; see also *Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 230.) “The point of the rule disfavoring retroactivity is to avoid the unfairness that attends changing the law after action has been taken in justifiable reliance on the former law. [Citation.]” (*Mahon v. Safeco Title Ins. Co.* (1988) 199 Cal.App.3d 616, 620–621.) The courts have expressly applied the foregoing principles to local land use ordinances. (See, e.g., *City of Monterrey v. Carrnshimba* (2013) 215 Cal.App.4th 1068.)

Here, Ordinance No. 3112 states that it “shall take effect on the 21<sup>st</sup> day of October, 2021”. (Ordinance No. 3112, § 4.) The Ordinance does not state or suggest that it applies retroactively, i.e., to violations that occurred prior to its adoption. As a result, Ordinance No. 3112 as a matter of law only applies to violations that occurred on or after October 21, 2021. Because the violation concerning the Project occurred in May 2021 and was fully cleared by CDD staff in August 2021, and no Project-related violations have occurred on or after October 21, 2021, Ordinance No. 3112 does not apply to the Project.

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**SECTION 8: OTHER AGENCY PERMITS/APPROVALS**

## **SECTION 8: OTHER AGENCY APPROVALS**

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**ISSUE:** Concern was raised that cultivation activities had been initiated under the Early Activation permit in May 2020 without other required agency approvals.

**SHORT RESPONSE:** All required agency approvals were in place prior to the commence of grading and cultivation activities on the Project site in May 2020. Specifically, the California Department of Fish and Wildlife (“CDFW”) approved a Lake and Streambed Alteration Agreement in August 2019, following a site visit by CDFW staff. The Project site was also enrolled for coverage under the State Water Board’s Cannabis General Order in August 2019.

### **DISCUSSION:**

In addition to local approvals, outdoor cannabis cultivation projects are required to (1) obtain a Lake and Streambed Alteration Agreement (“LSAA”) from CDFW or obtain CDFW concurrence that no LSAA is necessary; and (2) enroll for coverage under the State Water Board’s Cannabis General Order.

Both requirements were in place prior to grading and cultivation activities in May 2020. CDFW approved an LSAA for the Project in August 2019 following a site visit by CDFW staff. The Project site was successfully enrolled for coverage under the State Water Board’s Cannabis General Order following submittal of a site management plan and a nitrogen plan in August 2019.

\* \* \*