SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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

October 16, 2024

***Via Email Only***

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

Re: Appeal of Approval of Highland Farms Cannabis Farm (UP 20-96) and Adoption of its MND (IS 20-116) – Reply to Applicant's October 11, 2024, submission to the Board of Supervisors

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

This letter provides replies to the applicant Highland Farms' material included in its October 11, 2024, submittal to the Lake County (County) Board of Supervisors (Board) regarding the appeal 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). The material being replied to in this letter includes: (1) October 11, 2024, Revised Project Description; (2) October 11, 2024, Project Summary and Clarifications (including revisions to the initial study and new mitigation); (3) October 11, 2024, Technical Memorandum in Response to Appeal Comments Regarding Groundwater/Water Supply/Water Availability Analysis; (4) October 8, 2024, Technical Memorandum containing a Biological Survey of the Alternate Access Road (Amber Ridge Court); and (5) an October 11, 2024, letter from applicant's legal counsel responding to Appellants Thomas Lajcik's and Margaux Kambara's (Lajicks) appeal and July 26, 2024, submission documentary evidence in support of the appeal.

The remainder of the material submitted on October 11 by the applicant had already been submitted to the County and was addressed in the Lajciks' October 14, 2024, submission to the Board of supplemental documentary evidence in support of the appeal, and in the October 11, 2024, letter to the Community Development Department (CDD) and the Board opposing CDD's second request to continue the matter to a later hearing date and its ongoing violations of the California Environmental Quality Act (CEQA). The Lajciks generally refute

the allegations made and conclusions reached by the applicant in its materials submitted to the Board on October 11. However, to facilitate the Board's review, the Lajciks only reply to select portions of these materials. Any absence of an express refutation or reply to any one allegation or conclusion does not denote agreement with that allegation or conclusion.

**The Applicant Misconstrues CEQA—Appellants' Substantial Evidence Supports a "Fair Argument" that the Project May Result in Significant Environmental Impacts**

In its response letter dated October 11, 2024, the applicant repeatedly claims that the Lajciks' evidence is not substantial and is conclusory and/or speculative, and therefore does not support a "fair argument" that there may be a significant impact on the environment not addressed in the MND. The applicant, however, misapplies the "fair argument" standard, seemingly confusing it with the burden of proof required by a lead agency when certifying or adopting a CEQA document. The Lajciks need not provide expert opinion evidence, although they do in several instances. (*City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 410-411.) For example, appellants' geologic evaluation identifying a serpentine area onsite, included as part of the October 14, 2024, submission to the Board (see Exhibits to Attach. A Supplement) was prepared by Miller Pacific Engineering Group and certified by an engineering geologist. Appellant's identification of special-status plant species in the serpentine area, included as part of the July 26, 2024, submission (see Attach. B) was conducted by Ed Dearing and Karen Sullivan, both local botany and plant experts relied on by the County, the California Native Plant Society, and other entities; notably, with qualifications that the applicant "does not dispute." (Applicant's Oct. 11 Response Letter, p. 29.) The Lajciks also highlight statements made by one of the Project's biologists indicating the Project will impact wetlands on the northern parcel. (See Appellants' Jul. 24 submission, Attach. B).

Further, the Lajciks are not required to assess environmental impacts or suggest and analyze the effectiveness of mitigation measures—that is the lead agency's job. Nor does evidence presented by the Lajciks need to be dispositive, it only needs to demonstrate the mere possibility that a potentially significant Project impact not discussed in the MND exists. Indeed, the "fair argument" standard is flexible and allows personal observations for non-technical matters like odor and local roadway safety concerns (included in previous submissions to the Board) to constitute substantial evidence. (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal. App. 3d 872, 882; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1152.) As stated in the July 26 submission, the "fair argument" standard presents a " 'low threshold' test for requiring the preparation of an EIR…. ' " (*Protect Niles* at 1139, some internal quotations omitted.) This low threshold "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. [Citations.]" (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317.) "[T]he fair argument standard purposely sets a low threshold of evidence in order to maximize environmental protections

and thereby fulfill the purposes inherent in CEQA." (*Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 371.)

There must be "no credible evidence" in the record demonstrating that a project *may* result in a significant environmental impact to uphold a lead agency's decision to not prepare an EIR. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-13171318; *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 576; *Georgetown Preservation Society*, *supra*, 30 Cal.App.5th at 370.) Here, the Lacjiks and others have submitted ample credible evidence that the Project may significantly impact serpentine formations, special-status plant species endemic to serpentine formations and soils observed onsite by experts, air quality and human health (from naturally occurring asbestos and odor), wetlands, roadway safety, etc. Nothing provided by the applicant after the Project was approved obviates this evidence. Even if it did, under the "fair argument" test, when "such evidence is found, it cannot be overcome by substantial evidence to the contrary." (*San Bernardino Valley Audubon Soc'y v. Metro. Water Dist.* (1999) 71 Cal.App.4th 382, 389; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399-1400; *Citizens' Com. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1167-1169.) Essentially, once the "fair argument" standard is met, as it is here, the MND cannot be cured by post-hoc analysis and mitigation measures.

In its October 11 response letter, the applicant repeatedly cites *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768 to support the opinion that the Lajciks are merely calling for further investigation and such calls do not constitute substantial evidence. The situation here, however, is considerably distinguished from *Parker Shattuck*. In that case, the petitioner that was challenging a negative declaration called for further investigation of the effect of contaminated soils on future residents and workers at a housing development. Petitioner relied solely on existing data in the record and governmental recommendations for additional studies as its evidence and did not place new evidence into the record. Conversely here, the Lajciks have placed an abundance of new substantial evidence into the record demonstrating that the Project may result in additional significant environmental impacts (e.g., expert surveys and analysis, personal observations, mapping, photographs). Accordingly, the Lajciks appropriately call for an EIR to be prepared in accordance with CEQA to identify and analyze these impacts.

## The Applicant Attempts to Analyze the Entire Project in Smaller Parts, in Violation of CEQA

<u>Use and Construction of the Access Road is a Part of the Project and Will Result in Impacts</u>

Instead of properly acknowledging that the access road is an integral part of the Project and Project site, the applicant advances the fallacy that this roadway, which connects the Project's cultivation and processing areas to Highland Springs Road for the up to 52 daily

Project trips, and which will eventually require significant construction, is not included in the Project site. The applicant simultaneously acknowledges that roadway improvements are included as part of the Project description in the MND. This defies logic.

The access road is an essential requirement for Project cannabis cultivation and processing. This road and the parcels on which it resides are contiguous with areas where cultivation and processing will occur. Thus, it is connected geographically and by use and subject matter to the cannabis cultivation and processing area, it is required for Project operation, and it requires County approvals as part of the Project. (*POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 75.) It matters not that it resides on parcels owned by the County. Nothing in CEQA precludes an integral project component from being included in a Project site because it is not owned by the applicant. Indeed, the applicant does not own the land upon which cultivation and processing would occur. Access roads are ordinarily included as part of Project sites in CEQA documents, particularly when they will undergo construction solely for the Project.

Nevertheless, here, this is a distinction without a difference. CEQA requires that all Project-related actions be analyzed together, as explained in the Lacjiks' July 26 submission. A Lead Agency must fully analyze "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment … ." (CEQA Guidelines, § 15378, subd. (a); see also, e.g., *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222; *Assn. for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 637.) The use and construction of the access road are parts of the Project that would result in a direct physical change in the environment, and the MND fails to adequately analyze either action.

The dirt-and-rock access road traversing serpentine formations will be used in its current condition prior to construction for up to three years with 52 vehicle trips per day, all or most of which appear to be truck trips (MND, p. 24), crossing serpentine soils and formations. The applicant confirms as much. (See Applicant's Oct. 11 Response Letter, p. 15.) This use is likely to result in potentially significant impacts. Per the applicant's consultant Summit: "…the County Air Quality Management District has identified that there are areas of serpentine soil on the County owned portion of the driveway which leads to the project site…[t]he driveway is currently unpaved, and in it's [sic] existing condition, vehicle traffic on the road risks creating airborne serpentine material." (Applicant's Aug. 9, 2024, Letter from Summit, p. 2.) The Lacjiks agree with the applicant's consultant and add that the increased use of the access road may also impact current users. As explained in the applicant's October 11 Project Summary and Clarifications, on page 2: "this road services a residence and several parcels…." CEQA requires that the potential impact of the Project's increased use on these existing users be evaluated. Would this increased use associated with 52 Project vehicle trips per day be incompatible with existing uses and substantially increase

hazards (see, e.g., MND, p. 59)? Would it compromise the emergency access of residential users (*ibid*.)? 52 is a lot of truck trips. It is reasonable to assume that this increase in roadway usage would impede the access of other existing users. (CEQA Guidelines, § 15384(b) ["substantial evidence" under CEQA includes "reasonable assumptions predicated upon facts"].)

Then, during Stage 2 of the Project, the access road would be improved. The applicant appears confused about CEQA's analytical burden here and seems to argue that, because it deems the access road not part of the official Project site, impacts to special-status plant species resulting from roadway construction need not be analyzed. (Applicant's Oct. 11 Response Letter, p. 29.) This is incorrect. CEQA requires that these impacts be analyzed alongside all other Project impacts. The applicant also seems to argue that, because the roadway will not be widened, there would be no impact to special-status plant species located on or aside the roadway. This is unlikely. Construction will involve the use of heavy equipment, extensive earth moving, staging areas, workers, etc. Even without roadway widening, construction would destroy serpentine formations and habitat and special-status species that are known to occur on or near portions of the roadway where construction would occur. (See Appellants' Jul. 26 submission, Attach. B.) This is precisely why CEQA documents regularly include mitigation establishing construction buffer zones to avoid special-status plant species. However, here, the narrowness of the access road likely would preclude buffer zones, so avoidance may not be possible and other mitigation would be required.

The applicant, moreover, fails to directly address the surveys conducted by local experts during which individual special-status plant species were geo-mapped within the known serpentine area planned for access road use and construction. (See Appellants' Jul. 26 submission, Attach. B.) As stated, the applicant "does not dispute the qualifications of the individuals who purportedly conducted field surveys for plant species." (Applicant's Oct. 11 Response Letter, p. 29.) Notably, the applicant does not demonstrate that appellants' field surveys are inaccurate; instead, the applicant again appears to argue that this road is not part of the Project site and on that basis further argues, incorrectly of course, that impact analysis is not necessary. It is reasonable to assume that the unmitigated grading and surfacing of 1,057 linear feet of narrow roadway through a serpentine area might impact special-status plants and habitat that occurs on and near that road. Substantial evidence supports a fair argument that road construction will have potentially significant impacts. (CEQA Guidelines, § 15384(b).)

In sum, the use and construction of this access road is a part of the Project, and associated Project impacts must be analyzed in an EIR. The applicant's submission of a serpentine dust mitigation plan is not a substitute for CEQA-required analysis of significant impacts. (See, e.g., *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 372 [conformity with a County departmental requirement to prepare 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"].) If anything, it highlights the fact that serpentine dust possibly containing naturally occurring asbestos has the potential to create significant impacts to air quality and human health, a fact seemingly acknowledged by the applicant's own consultant. This impact and feasible mitigation must be analyzed in an EIR and circulated to the public and decision-makers for their review. The applicant is putting the cart before the horse by tacitly promoting this dust plan as effective mitigation under CEQA when no actual CEQA analysis or mitigation for serpentine dust has been conducted and adopted by the County.

Use and Construction of an Emergency Access Road is a Part of the Project and Will Result in Impacts

The applicant now adds a new Project component that was not included in the MND—the use of the Project site as an emergency access road via Amber Ridge Court (or Amber Ridge Road, depending on which applicant document you review). The applicant confirms that it "committed to allowing neighbors on Amber Ridge Court access through the Project site as a concession to neighbor's comments regarding wildfire safety" (Applicant's Oct. 11 Response Letter, p. 61; see also Applicant's Oct. 11 Project Summary and Clarifications, p. 2 ["[t]he existing driveway from the proposed project to Amber Ridge Court will only be used for emergency access…"]), going so far as to hire a consultant to prepare a biological survey of the 3,900 feet of emergency access roadway. The consultant found that the emergency access roadway is located near or on jurisdictional waters and a wetland. (Applicant's Oct. 8 Tech. Memo re Biological Survey of the Alternate Access Road, p. 2.) The consultant then provided a short, conclusory impact analysis of special-status species, wetlands, etc. This cursory, post-hoc analysis does not satisfy CEQA. The improvement and use of this emergency access roadway must be included in the CEQA document prior to Project approval and before public review of the document, as explained below and in prior Appellant submissions. Any EIR prepared for the Project must include and adequately analyze this part of the Project.

Notably, the survey performed for the 3,900-feet of emergency access road was not conducted according to California Department of Fish and Wildlife (CDFW) protocol, which requires that botanical field surveys be performed "at the times of the year when plants will be both evident and identifiable," not at the end of a long, hot, dry summer, as occurred here. (CDFW (Mar. 2018), *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*, p. 5, available online at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline.)

**A Formal Wetland Delineation is Required**

Only after the appeal was filed, and after CEQA review was presumably complete and the Project approved, did the applicant consult with the State Water Resources Control Board (SWRCB) about jurisdictional waters on the Project site. (See Applicant's Oct. 11 Project Summary and Clarifications, p. 5.) Having previously misrepresented the scope of jurisdictional waters onsite, the applicant then revised the Project in an apparent attempt to avoid these waters. (*Ibid*.) Consulting with SWRCB is a good starting point that should have occurred prior to public review of the MND so that decision-makers and the public were properly informed. (See, e.g., CEQA Guidelines, § 15002(a)(1)); see also 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 ["...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…the draft document must reflect the revised project, with changes and mitigation measures"]). The belated consultation, however, does not forestall the need for a formal U.S. Army Corps of Engineers (USACE)-certified wetland delineation expert using USACE methodology to perform a delineation. (See Appellant's Oct. 11 submission, Attach. B Supplement.)

The applicant rejects the necessity for a wetland delineation and notes that "there is no requirement that wetland surveys are conducted during wet years only, this would preclude any project with potential wetlands from being developed in drought years." (Applicant's Oct. 11 Response Letter, p. 33.) The Lajciks do not suggest such a requirement—they merely highlight the fact that the biological surveys performed for the Project have all occurred during times of drought. Delineations performed by a USACE-certified expert using USACE methodology account for drought conditions. To our knowledge, SWRCB staff have not conducted a physical site survey, nor have they seen the new evidence submitted by the Lajciks on October 14. That evidence contains aerial images with schematic overlays demonstrating that onsite wetlands, and/or possibly onsite jurisdictional waters, are larger in scope than were analyzed in the MND and would be impacted by the Project (even the revised Project). (*Ibid*.) These images comport with a Project biologist's opinion that the Project cannot avoid wetlands on the northern parcel of the Project site. CEQA requires that these potentially significant impacts to wetlands and/or jurisdictional waters be sufficiently analyzed in an EIR, not in a hasty fashion in some post-hoc Project summary that prevents any meaningful review by the Planning Commission and the public.

**CEQA Requires Baseline Conditions Be Considered when Analyzing Impacts**

The applicant, in its October 11 response letter (p. 47) and a previous July 19, 2024, letter to the Board, appears to be claiming that existing conditions, such as current roadway hazards on Highland Springs Road and serpentine soils onsite, are not conditions created by

the Project and therefore need not be considered when analyzing Project impacts. This is incorrect. As stated in the Lajciks' August 8 letter, "… a lead agency determines whether an impact is significant" according to baseline conditions. (CEQA Guidelines, § 15125.) For example, if the baseline condition includes roadway hazards on Highland Springs Road, as it does here, then the CEQA document must analyze a project's potential to increase those hazards or create new ones. As explained in Appellants' Oct. 14 Attachment C supplement, the concern is not that trucks associated with the Project will be put at risk but that other motorists and recreationists on and near the Project site will be put at further risk by an increase in roadway hazards and public health risks resulting from the Project's 52 new truck trips per day that would occur on Highland Springs Road and the unpaved Project access road. This is discussed in more detail below.

**CEQA Requires Feasible Mitigation for Impacts Even If That Mitigation May Be Solely Within the County's Authority**

In criticizing the Lajciks' substantial evidence demonstrating the Project's potential for significant cumulative roadway safety impacts, the applicant "agrees that speed signs and other traffic warnings should be installed" on Highland Springs Road, then goes on to state that "Highland cannot install traffic signs on the County's behalf." (Applicant's Oct. 11 Response Letter, p. 47.) CEQA does not require mitigation to be within the complete control of the applicant. CEQA only requires that mitigation be feasible, fully enforceable, and able to be imposed by the lead agency. (CEQA Guidelines, § 15041.) Here, installation of additional traffic signs on Highland Springs Road is feasible, especially if funded by the applicant. Installation of these signs can be imposed by the County, as both the CEQA lead agency and the agency charged with installing roadway signs on Highland Springs Road, and would be fully enforceable as a measure included in a mitigation monitoring and reporting plan (MMRP), which would be required alongside any EIR prepared for the Project. (CEQA Guidelines, § 15097.) The Lajciks appreciate the applicant's agreement that additional traffic signs are warranted on Highland Springs Road, but more is required here.

Nearby residents, including the Lajciks and local commenters on the appeal (e.g., Anne and Dale Carnathan, Dana Adams, Highland Springs Trails Volunteers, Julie Barnett, Karen Sullivan, Lucinda Wilson, Michelle Scully, Sierra Baker, Ted and Becky Horat) report through personal observations that safety is a serious concern on Highland Springs Road. (See, e.g., *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1152 ["fact-based comments by residents support a fair argument that the Project would have a significant adverse impact on traffic…"].) These residents convey, amongst other concerns: "multiple accidents related to speed…on Highland Springs Road" and that "[s]everal of the curves are not negotiable by larger, longer vehicles without using more than one lane of the road on those blind corners" (Anne and Dale Carnathan); that Highland Springs Road "is in poor condition, not regularly patrolled, and poses significant safety risks" (Dana Adams); vehicle crashes into "trees and fences constantly" (Sierra Baker); and "so many wrecks" on the "blind

corner" at Highland Springs Road just past Bell Hill Road requiring the extraction of injured persons from vehicles and that "2 trucks and trailers can NOT pass each other without driving off the road and in some areas this is not possible due to no 'shoulder'" (Ted and Becky Horat). "It would be extremely dangerous to add any more traffic, especially large trucks that would be used to construct and operate a commercial cannabis grow" (Ted and Becky Horat).

The community would further appreciate, and requests, a formal commitment via an MMRP to install much-needed traffic signs and improve portions of Highland Springs Road that would be particularly impacted by Project traffic to mitigate roadway safety issues associated with the 52 additional vehicle trips per day imposed by the Project.

**The Applicant Fails to Acknowledge the Public Trail and Hunting Area within 1,000 Feet of the Cultivation Area and the Resultant Violation of the County's Cannabis Ordinance**

In both their July 26 and October 11 submission, the Lajciks provide substantial evidence that at least one public trail—the Quarry Trail—and public hunting areas exist within the 1,000-foot buffer zone from the Project's cannabis cultivation area required by Lake County Cannabis Ordinance Article 27, section 27.13(at)1.v. It would appear the applicant is not very familiar with this area, because it insists that Quarry Trail is merely a "proposed" trail and does not yet exist. (Oct. 11 Response Letter, p. 53.) Quarry Trail, and the area around the trail, have been used for years by locals for hiking, bird watching, and hunting, amongst other things. Some community members access Quarry Trail every week (see, e.g., comment submission from Greg Pope). Quarry Trail, at certain points, abuts the Project's cultivation area. Karen Sullivan, a member of the Mount Konocti County Park Master Plan committee, the Konocti Regional Trails Master Plan Committee, the Highland Springs Trails Volunteers, and the recent Lake County Parks, Recreation and Trails Master Plan Committee, in her public comment on the appeal has the following to say about the proximity of Quarry Trail to the Project's cultivation area:

> I have extensive knowledge of the terrain, trails and flora at Highland Springs Recreation Area (HSRA). I started with trail maintenance in the early 1990's and in 2001, I was part of a volunteer group invited by Bob Lossius, at the then County Department of Flood Control, to help develop a park-wide trail system. Our group, the Highland Springs Trails Volunteers (HSTV) have been working on recovering those trails and fire roads and keeping them open for 3 decades. We have collaborated with all the department managers and program coordinators to present date. We found county property survey markers, submitted GPS data on all trails to the county, did fundraising for, and installed trail signs, and recently, worked with TERA to provide an accurate trail map. As a founding member of the Lake County Horse Council (LCHC), we also did trail repair by attaining a grant to repair the rutted Lake Trail. The LCHC in 2010, at the request of

> Director Scott DeLeon, also wrote a Highland Springs Recreation Area Master Management plan for the park, as none existed. The HSTV has been on every boundary line on the HSRC property and we have left much blood sweat and tears on the trails. The Trails Volunteers have also reported trash dumped in creeks, and reported illegal camping, ORV damage and cannabis grows. We have strived to be positive stewards of the park.
>
> We cleared and GPSed the Quarry trail, which in two directions, leads directly to the proposed grow site. We cleared and GPSed both Lone Pine and Loco trails. Lone Pine touches and parallels Udding Road, and Loco trail crosses Udding Road. These trails have had maintenance and GPS tracking data given to the county for 17 years. Why isn't the County enforcing the 1000 ft. set back to public lands? By definition, and in the county Ordinance, "All State and County Parks are public lands." Quarry trail also follows a stream than [sic] drains the proposed grow site wetlands and empties into Highland Creek.

As demonstrated, these areas are County-owned parks, making them "public lands" by the applicable definition put forth in County Ordinance No. 3096. They are also locations where the public are clearly invited to recreate (hike, hunt, ride horses, etc.), as evidenced by onsite mapping and signage shown in photographs in Appellants' October 14 submission, and via online promotion (see Attach. D Supplement), and by testimonials of knowledgeable locals like Karen Sullivan. Consequently, this recreation area fulfills the County's definition for "public lands" requiring this setback in two ways. In any event, nowhere in the County's definition of "public lands" does it state that trails qualifying for this definition must be formally approved or adopted by the County. That the "public is invited to use" them through some "development or other actions" is enough. That standard is met here, the 1,000-foot setback applies, and the Project violates it.

**The Project Still Includes Processor Facilities and Activities Requiring a Cannabis Processor License and Therefore Still Violates Article 27, Section 27.13(aaa) of the County's Cannabis Ordinance**

The Project will process cannabis in a manner that requires a Cannabis Processor License under County Ordinance Article 27, Section 27.13(aaa). The applicant will construct "a prefabricated…two-story processing building" to be used for cannabis drying and "storage," amongst other things. (Applicant's Oct. 11 Revised Project Description; MND, p. 3.) The construction of a processing building and the storage of harvested cannabis is not allowed with a Commercial Cannabis Cultivation permit. As stated by the applicant, Section 27.13(at)(1)(ii)(k) of the County Cannabis Ordinance allows "[c]annabis processing such as drying, curing, grading, packaging, or trimming" as part of a Commercial Cannabis Cultivation permit. To construct a building for this purpose and store cannabis, the applicant must obtain a Cannabis Processor License.

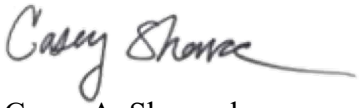
As explained in County Ordinance Article 27, Section 27.13(aaa), a Cannabis Processor License requires an "enclosed building" (§ 27.13(aaa)4.ii) for processing. It also expressly allows the "[s]torage of harvested cannabis." (§ 27.13(aaa)3.v.) The exclusion of storage from the particularized list of allowable uses under the Commercial Cannabis Cultivation permit, and its inclusion in that same list under the Cannabis Processor License, means cannabis storage is not allowable under a Commercial Cannabis Cultivation permit. A list of specific items in a statute, regulation, or rule is presumed to be exclusive. (*In re J.W.* (2002) 229 Cal.4th 200, 209 ["the expression of one thing in a statute ordinarily implies the exclusion of other things"].) "It is an elementary rule of construction that the expression of one excludes the other." (*In re Pardue's Estate* (1937) 22 Cal.App.2d 178, 180-181.)

It appears, when faced with a clear violation of the County's Cannabis Ordinance, the applicant is trying to inappropriately shoehorn cannabis processing facilities and activities only allowed with a Cannabis Processor License into a Commercial Cannabis Cultivation permit, but the shoe does not fit. The County must require a Cannabis Processor License for the Project or require that the applicant redesign and redefine its Project and Project activities to exclude a cannabis processing building and to disallow cannabis storage. The County must give effect to the language in its ordinances.

Accordingly, under the applicable County Ordinance Article 27, Section 27.13(aaa)4.i, "[t]he parcel where the processor activity is located shall front and have direct access to a paved State or County maintained road." Here, as explained in prior submittals, the parcel on which the Project's processing facility and activities will be located does not "front" Highland Springs Road—several parcels separate it from the roadway. Nor is direct access to Highland Springs Road achievable without allowing the Project's processing facility and activities to occur on a County-owned parcel. (See Applicant's Oct. 11 Response Letter, p. 7.) Thus, the Project in its current form, as requiring a Cannabis Processor License, violates the County's Cannabis Ordinance.

If you have questions, please feel free to contact Casey Shorrock at (916) 446-7979 or cshorrock@somachlaw.com.

Sincerely,



Casey A. Shorrock
Kelley M. Taber

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