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May 2, 2022

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

Re: ***Agenda Item 6.11: Appeal of Planning Commission Approval of Major Use Permit 19-36 and IS/MND 19-56 – Lake Vista Farms, LLC***
Applicant's Response to April 8, 2022 EBA Report Re: Water Supply/Demand

Dear Chair Crandell and Supervisors:

This letter and the attached Technical Memorandum prepared by NorthPoint Consulting Group Inc. are submitted on behalf of applicant Lake Vista Farms, LLC in response to the report dated April 8, 2022 prepared by EBA Engineering regarding water supply and demand ("EBA Report").

Please excuse the timing of this response; the applicant's representatives did not receive a copy of the EBA Report from Staff until April 27, 2022, shortly after Staff received the Report from the appellant. This response was prepared as quickly thereafter as possible.

This letter and the following materials are organized as follows:

PART I Executive Summary
PART II Technical Memorandum
PART III Legal Memorandum

We appreciate the Board's consideration of this response, and respectfully request that the Board adopt Staff's recommendation to (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

PART I – EXECUTIVE SUMMARY

PART I - EXECUTIVE SUMMARY

Key Points	• The Project would replace a hops farm, and would use less water than the hops farm. • The hops farm utilized on-site wells and did not impact any streams or nearby wells. • EBA failed to review all available hydrology data for the Project. • EBA contradicts its own study methodology in hydrology reports that EBA has submitted to the County in support of other projects. • The EBA Report does not assert that the Project may result in significant impacts. • The EBA Report does not assert that the Project IS/MND is inadequate or that it improperly analyzes the Project's water impacts, and does not change any impact conclusions in the IS/MND. • The Board may still properly adopt the IS/MND.
What Is The EBA Report?	The "EBA Report" was submitted by the appellant to Staff on or around April 27, 2022. The EBA Report "reviews" the August 19, 2021 Hydrogeologic Report that was prepared for the Project by NorthPoint Consulting Group, Inc. ("NorthPoint").
What Are The Main Conclusions Of The EBA Report?	The EBA Report asserts the following: 1. The Project's groundwater use "may further exacerbate" potential impacts from regional groundwater pumping. (EBA Report, p. 6.) 2. The Project's groundwater use "may cause streamflow depletion in nearby surface waters and may cause nearby wells to go dry." (EBA Report, p. 6.) 3. Additional study should be performed to "validate" the groundwater basin's ability to meet the Project's water demands. (EBA Report, pp. 6, 7.) 4. "In EBA's opinion", NorthPoint's method of estimating aquifer recharge is "inappropriate". (EBA Report, p. 6.)
What Are The Main Problems With The EBA Report?	• Disregards environmental baseline. EBA ignores the fact that the Project will use less water than the environmental baseline, which was the prior hops farm. • Fails to consider all hydrologic data developed for the Project. The EBA Report states that it reviews only NorthPoint's August 19, 2021 Hydrogeologic Report. EBA failed to review (1) the August 2021 Project Drought Management Plan; (2) NorthPoint's February 2022 supplemental technical memorandum; and (3) the additional information provided by NorthPoint at the hearing on April 12, 2022. • Fails to support its claims regarding potential impacts to streamflow and nearby wells. EBA failed to identify any specific streams or nearby wells that could be impacted by the Project. The Project site was previously operated as a hops farm, and no evidence exists of streamflow depletion or impacts to nearby wells. • Contradicts EBA's own practices regarding the extent of analysis required to assess potential hydrologic impacts.
Does the EBA Report Claim That The Project May Have Significant Impacts?	No. The EBA Report does not assert that the Project may result in significant impacts to water resources. The EBA Report expresses the author's opinion that a different analytical method should have been utilized to prepare the August 18, 2021 Hydrogeologic Report.
Can the Board Still Approve the Project IS/MND?	Yes. The EBA Report does not constitute "substantial evidence" that the Project may have a significant impact because (1) the Report does not assert that the Project may have significant impacts; (2) EBA failed to analyze all available data; (3) the Report fails to adequately explain how the Project might have a significant impact; and (4) because EBA contradicts its own practices in other hydrology studies that EBA has prepared for other projects in the County. The IS/MND's impact conclusions remain valid.

PART II – TECHNICAL MEMORANDUM

NORTHPOINT
CONSULTING GROUP, INC.

TECHNICAL MEMORANDUM

To: Bradley Johnson, Esq., Everview Ltd.

From: Annjanette Dodd, PhD, CA PE #77756 Exp. 6/30/2023

Date: May 2, 2022

Subject: Response to Review of August 19, 2021 Technical Memorandum Prepared for 2050 & 2122 Ogulin Canyon Road, Clearlake, California 95422 by EBA Engineering dated April 8, 2022

The purpose of this Technical Memorandum (TM) is to respond to review comments provided by EBA Engineering (EBA) on the Groundwater Hydrology Technical Memorandum prepared for UP 19-36 on August 19, 2021 by NorthPoint Consulting Group (NorthPoint). EBA was contracted by the appellant of UP 19-36 to comment on the August 19, 2021 TM.

1. Major Deficiencies in EBA Report

A. EBA Did Not Review or Analyze all Available Hydrology Data Regarding the Project. The EBA Report states that the conclusions presented "are based solely on information made available to (them) by others, and includes professional interpretations based on limited research and data". EBA did not review all hydrology data for the Project, including (1) the Project Drought Management Plan dated August 2021; (2) the supplemental technical memorandum prepared by NorthPoint and submitted to the Lake County (County) Community Development Department (CDD) on February 3, 2022; or (3) the additional information provided at the hearing on April 12, 2022. As such, EBA's analysis is incomplete and speculative.

B. EBA Did not Identify Specific Data Regarding Appellant's Wells, or Explain How the Project Might Impact Appellant's Wells. Appellant's main argument on appeal is that the appellant sees, "nothing that indicates the cannabis uses ARE NOT impacting our wells". EBA provides no information or comments regarding the appellant's wells, which, during a hearing at the City of Clearlake and the April 12, 2022 Board of Supervisor's meeting, were identified as shallow wells (less than 100-feet deep). These wells are located in the shallow alluvial aquifer and are more directly influenced by lack of rain than the deeper wells associated with the project.

2. Responses to Specific EBA Comments

A. Comment Topic: Project Baseline

EBA Comment 1: *It should be noted that the scope of this letter is not to recreate the work performed by NorthPoint and therefore this review is limited in the evaluation of the findings. For example, the findings in the NorthPoint Report suggest that "the proposed cannabis cultivation would use less water compared to farming hops and would have less impact on the surrounding area". This statement alludes to a conclusion that any impacts to the surrounding area would be less than previous operations, although this is impossible to determine without long-duration pumping tests and historical groundwater elevation monitoring given the respective time durations of both operations. Thus, an evaluation of the validity of the aforementioned statement is beyond the scope of this review. With that being said, the following sections present the results of our review and a discussion of the applicability of the hydrologic and hydrogeologic methods presented in the NorthPoint Report.*

NorthPoint Response 1: EBA does not dispute that the Project would replace a hops farm, which is the confirmed environmental baseline use. As has been demonstrated in the IS/MND and technical memorandum prepared by NorthPoint, the baseline water use is greater than the water use proposed under the Project. Accordingly, as a matter of law, the Project cannot have significant water use impacts. NorthPoint's technical analyses for the Project provides further confirmation of this fact.

B. <u>Comment Topic: Project Water Demand</u>

EBA Comment 1: *NorthPoint estimated cannabis water demand at six gallons per day (GPO) per plant and assumed 500 plants per acre, which provides an approximately 9.5-foot by 9.5-foot square for each plant. For the 15-acre project, the daily demand (assumed to be maximum) was estimated to be 45,000 gallons per day (GPO) or cumulatively 31.5 gallons per minute (gpm). Please note that the gpm listed is based on 24 hours of continuous pumping which is not reasonable or advisable. Two growing season durations were evaluated (120 days and 180 days) which yielded an annual water demand between 16.6 and 24.9 acre-feet per year (AF/yr), or approximately 5,400,000 to 8,100,000 gallons per year. It is unclear why different growing season durations were presented. From an annual perspective, these values are considered to be reasonable for the cannabis cultivation methods described within the NorthPoint Report. However, irrigation requirements are well understood to vary throughout a cultivation season based on growth stage of the plant (i.e. development stage, vegetative stage, flowering stage, etc.) and seasonal variables throughout the year which affect the evapotranspiration of the plant.*

NorthPoint Response 1: Length of season depends on the cultivator, type of plant, weather, etc. It makes sense to present a variable cultivation season, however, the longer season was used for evaluation purposes. EBA does not disagree with the estimates and variables utilized by NorthPoint.

EBA Comment 2: *The NorthPoint Report does not include employee water demand for human consumption, lavatories, hand washing, and non-irrigation related agricultural demands. Information is not provided regarding planned staffing or water consumption. If drinking water and/or restroom facilities are to be provided on-site, a Public Water System permit should be applied for and obtained if at least 25 employees will be on-site for at least 60 days per year to conform to the California Waterworks Standards from Title 22 of the California Code of Regulations. Based on EBA's understanding of cannabis cultivation operations, EBA expects that more than 25 personnel will be needed to administer the 15 acres of cannabis, especially during the initial planting and harvest phases. It is currently unknown if bottled drinking water and portable toilets are proposed or if bathroom facilities are to be constructed. The only improvements illustrated on the Site Map are an existing barn and five polygons for the proposed cannabis grow areas. Therefore, additional information providing a complete project description should be provided and the project water demand estimate should be revised to include all future water usage.*

NorthPoint Response 2: EBA incorrectly states the legal requirements for a Public Water System. The California Health and Safety Code Section 116275 defines a "Public water system" to mean "a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year." Provision of on-site restroom facilities, contrary to EBA's statement, does not fall within the scope of Public Water System requirements. Further, the Project does not propose to provide water for human consumption through pipes or other constructed conveyances. Finally, this comment is beyond the scope of the requirements of Urgency Ordinance 3106 for which the TM was prepared. No additional response required.

C. Comment Topic: Water Source and Supply

EBA Comment 1: *It is reported that five wells will be used on the property. The five wells were installed in 2006, 2011, 2013, and 2020, with an additional well being installed at an unknown date (illegible) but perhaps in 2014 (1075331). EBA reviewed the well logs included in the Report which are described to provide a combined yield of 720 gallons per minute (GPM) based on air lift testing after drilling. Long-duration pumping tests with corresponding groundwater elevation measurements do not appear to have been performed. It should also be noted that at least one additional well is listed for the property (1093073) which was also drilled in 2006, although this well is not included in the report. It is unclear why the six additional wells were drilled over the period of 10 years unless the existing well(s) were not producing enough for the existing uses (i.e., hops) or were seasonally running dry. As such, information is lacking regarding current groundwater elevations in relation to the previous measurements taken during drilling which would demonstrate that overdraft conditions have not occurred or are not occurring.*

NorthPoint Response 1: As presented at the April 12, 2022 Board of Supervisors (BOS) meeting, the well tests were performed by Pollack and Sons Pump January 31, 2022 through February 2, 2022 (Attachment 1). These tests indicate that the wells have not lost capacity, have sufficient yield to meet the Project's demand, and groundwater levels have not dropped compared to the original well logs (Table 1). Regarding the well EBA mentions, WCR #1093073, this well was not included because the Applicant has been unable to identify its location on the Project site. The reason why there are multiple wells onsite is not due to lack of groundwater, but due location of the cultivation areas and the need to have the water source near each cultivation area. The fields are about 0.25 miles apart.

Table 1. Comparison of well log data with 2022 pump test results.

Location	Date Drilled	Well Depth (ft)	Screen Depth (ft)	Static Water Level (ft)		Yield (gpm)		Water Level (ft)	
				Well Log	2022 Pump Test	Well Log	2022 Pump Test*	4 hr	24 hr
Northwestern Hops Field	7/2011	240	200-240	150+	150	60	38+	200	150
Southwest Clearing	4/2020	340	240-340	173	175	300	150+	260	175
Northeast Hops Field	11/2004	114	74-114	68	70	60	38+	85	70

* Yield limited by size of pump used to conduct test. Driller noted the wells would yield more with a larger pump.

EBA Comment 2: *Per the five provided Well Completion Reports (WCRs), all yield tests were conducted by the water well driller using the air-lift method with a maximum duration of 2 hours. This method uses the application of air to displace groundwater from the well to the ground surface to estimate the well yield and often draws groundwater levels down to the bottom of the well. Thus, the yield value noted on the WCR is essentially a maximum estimate of yield assuming complete drawdown conditions prior to any previous pumping, and therefore air lift tests generally overestimate actual well yield, as is clearly stated on each WCR: "May not be representative of a well's long-term yield." While air-lift testing provides an initial indication of potential well yield, EBA would not consider this data sufficient to estimate long-term well yield under the proposed project scenario. Where long-term groundwater water supply comes into question, or where externalities to other potential beneficial uses of groundwater are not well understood, a longer duration pumping test is generally recommended.*

NorthPoint Response 2: Refer to response above.

D. Comment Topic: Irrigation and Water Storage

EBA Comment 1: *The NorthPoint Report describes that irrigation water will be pumped from each well to a 2,500-gallon water storage tank, adjacent to each well, and then delivered to a drip irrigation system. Assuming a total of five 2,500-gallon tanks would be installed, this would yield a daily storage volume of 25,000 gallons or approximately 55% of the average daily demand. Storage capacity is generally recommended to be adequate for at least one day of water supply.*

NorthPoint Response 1: Noted. No response required.

E. Comment Topic: Groundwater Basin Information and Hydrology

EBA Comment 1: *NorthPoint cites from the California Department of Water Resources (DWR) Bulletin 118 (DWR, 2003) that the storage capacity of the BVGB is 4,000 AF with a usable storage capacity of 1,400 AF. Upon review of Bulletin 118, it appears that these estimates were first written in 1960 as a part of the Northeastern Counties Investigation - Bulletin 58 (DWR, 1960). Although these values may have been cited in different reports, these storage capacity estimates should be updated with respect to aquifer storage capacity (i.e., pumping tests). This is particularly significant given that the NorthPoint Report utilized a comparison of the estimated future water demand relative to the usable storage capacity as a means to evaluate the cumulative impact of the proposed project on groundwater resources. An estimate of storage capacity for the CLCFGB is not provided although one of the project wells is located in that basin. The significance of this is unknown.*

NorthPoint Response 1: This was discussed in the February 3, 2022 TM as follows: "Groundwater storage capacity is estimated to be 4,000 acre-feet based on an area of 1,000 acres, a saturated thickness of 50 feet, and a specific yield of 8 percent, which represents only the Alluvium Formation and does not account for groundwater storage capacity in the deeper Lower Lake Formation. Thus, the usable storage capacity is most likely an underestimate of the overall capacity of the BVGB, which has a surface area of 2,900 acres."

The storage capacity was estimated using by review of the aerial extent of the geologic formations in the BVGB (mapped by Hearn et al., 1995) and the geologic logs from Well Completion Reports (WCRs) within the basin. The alluvial formation covers an area of about 2,300 acres, has a thickness of about 68 feet, using a specific yield of 8%, the storage capacity of the alluvial formation is about 12,500 AF, much bigger than that reported by Bulletin 118. In addition, in review of the WCRs it is noted that wells drilled in the basement rock of BVGB generally have substantially higher yields than wells drilled in the lower-lying alluvium.

F. Comment Topic: Recharge Rate

EBA Comment 1: *NorthPoint used the National Resources Conservation Service Curve Number Method (CNM) to estimate annual groundwater recharge. Pre-project versus post-project recharge analysis was not conducted. The CNM generates runoff estimates for single storm events based on rainfall, land use, and soil characteristics. From the original documentation, prepared by Mockus in 1964, where the rainfall-runoff relation was proposed in Chapter 10 of the CSC National Engineering, the intent of the CNM is restricted to a single storm event.*

[EQUATIONS NOT REPRODUCED]

Assuming that F (the actual retention) is the depth of water available for recharge, it can be shown that the precipitation depth must be greater than Ia in order for runoff and actual retention to occur. For instance, if

the curve number is 70, if the Ia term is equal to 0.86 inches, and if the precipitation depth is 1 inch, the runoff would go to zero per Equation 3 and the actual retention would be a negative value per Equation 2. On a storm-by-storm basis, the methods shown above provide reasonable values for runoff and actual retention for instances where the precipitation depth of the storm is greater than the initial abstraction.

When the CNM is applied for a year-long timestep (as was done by NorthPoint), the fundamental relationship between the initial abstraction, precipitation, and runoff is lost, because the value entered for the precipitation depth is significantly greater than the initial abstraction which is defined for a single storm event alone. NorthPoint's methodology to reduce the initial abstraction by one half further exacerbates this because NorthPoint assumes that the first half of the initial abstraction becomes recharge and the second half of the initial abstraction represents evapotranspiration losses (only 0.43 inches per year). In EBA's experience, this estimate of actual evapotranspiration (ETA) is considered atypically low. This methodology inconsistent with the original definition of the term by Mockus in 1964, where the initial abstraction is a sum of the losses before runoff begins, which include interception, surface storage, and soil moisture retention.

Simply put, the CNM is therefore inaccurate when it is applied on an annual timestep. This is apparent when comparing the NorthPoint recharge values provided for a drought year compared to a normal year, which were 228 AF and 328 AF, respectively. The drought year calculation estimates that 44.6% of rainfall becomes recharge and under the average year only 14.9% of rainfall becomes recharge. As such, the presented calculus indicates that three times more precipitation becomes recharge during droughts at the project site. This is contrary to the frequently observed correlation of drought with lower groundwater surface elevations because of less recharge from rainfall. Furthermore, NorthPoint calculates that 2.9 inches of rainwater are available for recharge if it rains a total of 6.5 inches in the recharge area whereas it also estimates that 4.1 inches (only 1.2 more inches) are available for recharge if it rains 27.5 inches in the recharge area. This calculation forms the basis of the NorthPoint's statement that, 'The project recharge area of 954 acres would need just under 1-inch of rain per year to meet the project's demands." EBA respectively disagrees with this statement because it does not accurately account for hydrologic processes that affect recharge under severe drought conditions. It is well understood that aquifer recharge generally occurs during consistent intense storm events that produce runoff and/or flooding.

NorthPoint Response 1: This is a matter regarding professional opinion when estimating groundwater recharge. NorthPoint respectfully disagrees with EBA. There are differing professional opinions on ways to estimate recharge, including the level of modeling detail. Even though the CNM method was developed for evaluating single storm evets, this method is a valid method to quantify recharge at the scale and level of detail required to evaluate individual projects. In addition, NorthPoint conservatively modeled recharge rates by utilizing only the contributing recharge area associated with the project, not the entire groundwater basin (954 acres versus 4,000 acres) and an estimate of precipitation during a dry year as 6.5 inches. Precipitation during the 2021 water year (October 2020 through September 2021), a period of severe drought, was 9.32 inches. To date, the precipitation has totaled 14.9 inches (October 2021 through March 2021). (Source: NOA Climate Data Online, Clearlake Oakes 5.0, NE, CA US)

NorthPoint checked this methodology compared to other professionals. Although determined for humid basins in the east, the USGS (USGS Fact Sheet 2007-3007) estimated long-term average recharge to be between 10 and 66 percent of precipitation. This would equate to 52 AF - 341 AF of annual recharge during a dry year and 219 AF – 1,143 AF during a wet year. The recharge estimates for the Project fall within these ranges and the proposed project demand, 24.9 AF per year, is less than the range in estimates of recharge during a dry year.

G. Comment Topic: Cumulative Impact to Surrounding Areas

EBA Comment 1: T*he NorthPoint Report concludes that the proposed project would not likely have a cumulative impact on the surrounding area based on the following lines of evidence:*

1. The previous irrigation demands from hops cultivation are greater than the proposed future cannabis cultivation irrigation demands;
2. The proposed project's annual water demand is 1.8 percent of the usable storage capacity; and
3. The proposed project's annual water demand represents a relatively small portion of groundwater recharge from rainfall within the 954-acre recharge area delineated by NorthPoint in the study.

As previously discussed, EBA does not consider the methods used to estimate storage capacity and groundwater recharge to be reasonable for the intended purpose of the evaluation. Additionally, the NorthPoint Report's assessment of potential cumulative impact to surrounding areas does not assess the potential for induced drawdown in nearby off-site wells and streamflow depletion as a result of potential surface water-groundwater interaction. Performance of a pumping test of adequate duration to estimate aquifer parameters would be necessary to build a better understanding of cumulative impacts. Additionally, the NorthPoint evaluation of cumulative impacts does not consider the proposed project coupled with the groundwater demands of nearby projects, and other reasonably foreseeable projects in the vicinity that could contribute to cumulative impacts similar to those of the proposed project.

NorthPoint Response 1: Refer to responses above. NorthPoint respectfully disagrees with EBA regarding recharge estimates. The storage capacity was provided in Bulletin 118, and, as discussed above, is an underestimate of storage.

Importantly, EBA suggests that additional analyses are required to ascertain impacts even though EBA has itself not performed such additional analyses when performing similar studies for other projects in the County. EBA has made similar conclusions regarding cumulative impacts without assessing potential for long-term drawdown or streamflow depletion. EBA appears to be calling for a level of analysis that EBA itself has deemed unnecessary when performing hydrology analysis in support of other projects in the County.

NorthPoint **did, in fact,** conduct an analysis of cumulative impacts associated with the proposed Project coupled with the demands of nearby projects, and other reasonably foreseeable projects in the vicinity.

3. Conclusions

EBA Comment: *It is EBA's professional opinion that the following additional information should be required prior to approval of the project:*

- *EBA Comment: Environmental impacts from regional groundwater pumping may induce long-term irreversible consequences on BVGB groundwater sustainability. The proposed approximately 8,100,000 gallons per year of groundwater extraction may further exacerbate these potential consequences. An evaluation of the cumulative impacts of this project, along with other projects in the area should be integrated into the Report.*

NorthPoint Response: EBA provides no evidence of this statement. Cumulative impacts were evaluated for the project.

- *EBA Comment: Groundwater extraction at the proposed magnitude may cause streamflow depletion in nearby surface waters and may cause nearby wells to go dry. Additional assessment should be conducted to evaluate these potential impacts. It is EBA's opinion that*

an appropriately designed pumping test would be necessary to adequately evaluate these concerns.

NorthPoint Response: There is no evidence that the wells are hydrologically connected to Burns Valley Creek. The project wells are drilled through shale and sandstone and not located in the upper alluvium. When the wells were recently tested, confirming the well yields, burns valley creek was dry.

- *EBA Comment: The hydrogeologic formation's ability to provide sufficient groundwater to meet proposed project demands over a planning horizon (including employee and other groundwater uses) should be validated and the aquifer's response to long-duration groundwater production should be characterized using formation-specific methods. This characterization should include an evaluation of the magnitudes and extents of pumping influences from all five wells over an appropriate time horizon (such as the expected project lifetime).*

NorthPoint Response: Baseline agricultural conditions and well testing demonstrate sufficient water availability. NorthPoint also presented long term monitoring results in the BVGB that demonstrate a trend of annual recharge in the BVGB (CASGEM well data). In addition, the project proposes a monitoring plan over the lifetime of the project to provide continued assessment of the capacity of all of the project's wells. Refer to the Drought Management Plan.

- *EBA Comment: NorthPoint's utilization of the CNM on an annual timestep to estimate aquifer recharge is, in EBA's opinion, an inappropriate utilization of the method. Additional work should be performed to properly characterize aquifer recharge at the project site, and to estimate pre-project and post-project recharge variability during normal and drought conditions.*

NorthPoint Response: Respectfully, NorthPoint disagrees with EBA. Refer to responses above.

- *EBA Comment: Provide an estimate of hydrogeologic parameters of the formation (transmissivity and storativity) based on the pumping test and recovery data. Ninety percent of aquifer recovery after pumping the maximum daily demand should be used as a general rule of thumb before the next pumping cycle begins.*

NorthPoint Response: Baseline agricultural conditions and well testing demonstrate sufficient water availability. In addition, the project proposes a monitoring plan over the lifetime of the project to provide continued assessment of the capacity of all of the project's wells. Refer to the Drought Management Plan.

- *EBA Comment: The use of the 1960 DWR estimate for the BVGB storage capacity should be revisited, and a storage capacity estimate should be provided for the CLCFGB. Revise estimate of cumulative impact area storage capacity given information obtained during pumping tests described above.*

NorthPoint Response: As discussed above, the storage capacity provided by the 1960 DWR reference is low. Using the low estimate, it was concluded that there is sufficient storage capacity.

- *EBA Comment: A maximum daily demand (which includes any additional employee water usage) should be developed and utilized in this evaluation in addition to evaluation of the magnitudes and extents of pumping influences from all five wells over an appropriate time horizon (such as the expected project lifetime).*

NorthPoint Response: The project does not propose new employee restroom facilities and would rely on bottled water and portable toilets. The project is located at a site where baseline agricultural activities have occurred and demonstrated sufficient water capacity.

- *EBA Comment: Groundwater elevation measurements should be taken and compared to groundwater elevations measured by the well driller at time of drilling to better characterize the potential for aquifer overdraft.*

NorthPoint Response: See responses above. Well testing has been done for the project. In addition, the project proposes a monitoring plan over the lifetime of the project to provide continued assessment of the capacity of all of the project's wells. Refer to the Drought Management Plan.

- *EBA Comment: Additional storage to allow for flexibility in pumping, thereby not exacerbating drawdown or over pumping in one area should be considered.*

NorthPoint Response: Noted.

Attachments:

1) **Pump Test Results**

POLLACK & SONS PUMP

707.987.0917
19280 Deer Hill
Hidden Valley Lake
CA., 95467

"Your one stop water shop 24 hours"
Iron and Chlorine Removal
Softeners • Filters • Pumps • Tanks

LAKE VISTA

Name OGDEN CANY. Phone

Address 2122 OGDEN CANYON Rd. City Clearlake

State CA Zip Date 2-1-22 2-2-22

WATER ANALYSIS

Hardness (lime) gpg. . . . . Iron (rust) ppm

Manganese ppm. . . . . PH (acid)

Gal Per Min. . . 38 . . GPM . . . . . .

Well Depth. . . . 114' . . . . . Casing Size 4½ PVC

Static Level. . 70' . . . . . .

Before Pumping. . 70' . . . . . .

After Pumping 2 HRS. 80' . . . . . 4 HRS. 85' . . . . . 24 HRS. 70' . . . .

Water Supply Garden ☒ Private Well ☐ 100% recovery

EXISTING EQUIPMENT

COMMENTS/RECOMMENDATIONS

Will pump more with lower pump

POLLACK & SONS PUMP

707.987.0917
19280 Deer Hill
Hidden Valley Lake
CA., 95467

"Your one stop water shop 24 hours"
Iron and Chlorine Removal
Softeners • Filters • Pumps • Tanks

LAKE USTA

Name OGOLIN CAMPO Phone

Address 2050 OGOLIN RD City Clear lake

State CA Zip Date 2-1-22 2-2-22

WATER ANALYSIS

Hardness (lime) gpg. . . . . Iron (rust) ppm

Manganese ppm. . . . . PH (acid)

Gal Per Min. . . 38 GPM . . . . . .

Well Depth. . . 240 . . . . . Casing Size 4½ PVC

Static Level. . . . 150 . . . . . .

Before Pumping. . 150 . . . . . .

After Pumping 2 HRS. 180' . . . 4 HRS. 200' . . . . . 24 HRS. 150' . .

Water Supply Garden ☒ Private Well ☐ 100% RECOVERY

EXISTING EQUIPMENT

COMMENTS/RECOMMENDATIONS

Will pump more w/ larger pump

POLLACK & SONS PUMP

707.987.0917
19280 Deer Hill
Hidden Valley Lake
CA., 95467

"Your one stop water shop 24 hours"
Iron and Chlorine Removal
Softeners • Filters • Pumps • Tanks

Name LYLE USTA Phone
Address 2050 OSWIN CAVE RD City CLEARLAKE
State CA Zip Date 1-31-21 2-1-22

WATER ANALYSIS

Hardness (lime) gpg / Iron (rust) ppm /
Manganese ppm / PH (acid) /
Gal Per Min 150 ++
Well Depth 340' Casing Size 6" PVC
Static Level 175'
Before Pumping 175'
After Pumping 2 HRS 210' 4 HRS 260' 24 HRS 175'
Water Supply Garden ☒ Private Well ☐

EXISTING EQUIPMENT

100% Recovery

COMMENTS/RECOMMENDATIONS

add pkg mech once at lower pkg

(new well)

PART III – LEGAL MEMORANDUM

Everview

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MEMORANDUM

TO: Lake County Board of Supervisors

FROM: Bradley B. Johnson, Esq.

RE: Whether the April 8, 2022 "EBA Report" Constitutes Substantial Evidence Supporting A Fair Argument That The Lake Vista Farms, LLC Project May Have A Significant Impact On Water Resources

DATE: May 2, 2022

1. Introduction

The Initial Study/Mitigated Negative Declaration ("IS/MND") that the County prepared and circulated for the Lake Vista Farms, LLC Project ("Project") concludes that the Project will have a less than significant impact on groundwater supplies and groundwater recharge. (IS/MND, pp. 21-22.) This determination is based on (1) the fact that the Project will use approximately 42% less water than the environmental baseline, which is a hops farm; and (2) a Hydrogeologic Report and a Drought Management Plan prepared by NorthPoint Consulting Group Inc. ("NorthPoint"), both dated August 2021. NorthPoint also submitted supplemental technical data supporting the IS/MND's determination in February and April 2022.

On or about April 27, 2022, Project appellant David Hughes submitted a report prepared by EBA Engineering, dated April 8, 2022 ("EBA Report"). The EBA Report "reviews" the August 2021 Hydrogeologic Report prepared for the Project. Appellant Hughes commissioned the EBA Report to support his claims that the Project will impact surrounding groundwater supplies.

This legal memorandum analyzes whether, under the applicable provisions of the California Environmental Quality Act ("CEQA") and the CEQA Guidelines, the EBA Report constitutes "substantial evidence" supporting a fair argument that the Project may have a significant impact on water resources.

2. Short Answer

The EBA Report does not constitute "substantial evidence" supporting a fair argument that the Project may have a significant impact on water resources under Public Resources Code Sections 21080(e) and 21082.2(c), and CEQA Guidelines Sections 15064(f)(5) and 15384, for the following reasons:

- The EBA Report does not state or suggest that the Project may have a significant impact on water resources, nor does the EBA Report state or suggest that the IS/MND's less-than-significant determination is incorrect.
- The EBA Report does not account for the applicable environmental baseline, which is a hops farm. The EBA Report does not account for the fact that the Project site was operated as a hops farm without

impacting any streams or nearby wells, nor for the fact that the Project would use approximately 42% less water than the hops farm.

- The EBA Report is based on incomplete data. The Report states that it reviewed only the August 2021 Hydrogeologic Report, and further states that its conclusions "are based solely on information made available to us by others, and includes professional interpretations based on limited research and data." (EBA Report, p. 7.) EBA failed to analyze (1) the August 2021 Project Drought Management Plan; (2) NorthPoint's February 2022 supplemental technical memorandum; and (3) the additional information provided by NorthPoint at the hearing on April 12, 2022.
- The EBA Report's assertion that additional study is necessary to assess the Project's impacts on the groundwater basin and recharge rate is, as a matter of law, not substantial evidence that the Project may have a significant impact.
- The EBA Report does not specify any streams or nearby wells that could be impacted by the Project, nor does the EBA Report explain why the Project would impact those features, particularly given that the Project will use approximately 42% less water than the baseline use.
- The EBA Report lacks credibility to the extent that EBA advocates for more extensive study and analysis than EBA has performed for hydrogeologic studies that EBA has prepared for other projects in the County.

The Board of Supervisors may, consistent with CEQA, proceed to adopt the Project IS/MND.

3. Analysis

A. When Is An EIR Required Instead Of A Negative Declaration?

A lead agency is required to prepare an EIR, rather than a negative declaration or mitigated negative declaration, when substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (Pub. Resources Code § 21151; CEQA Guidelines § 15064(a)(1), (f)(1); *Quail Botanical Gardens Found., Inc. v City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002; see also *Georgetown Preservation Soc'y v County of El Dorado* (2018) 30 Cal.App.5th 358, 371.) This is known as the "fair argument" rule.

If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. (See *Save the Agoura Cornell Knoll v City of Agoura Hills* (2020) 46 Cal.App.5th 665, 689, 696; *Georgetown Preservation Soc'y v County of El Dorado* (2018) 30 Cal.App.5th 358, 373.)

The fair argument rule does not mean, however, that the lead agency has no discretion concerning the quality of the evidence or the determination of significance. The agency must consider the entire record and decide whether the information relating to potential impacts is "substantial evidence" sufficient to support a "fair argument" that the impacts may occur and whether the identified impacts should be considered "significant". (Pub. Resources Code §§ 21080(c)–(d), 21082.2; see also CEQA Guidelines §§ 15064(f), 15384(a); *Sierra Club v Department of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370.)

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B. What Is "Substantial Evidence"?

The CEQA Guidelines define "substantial evidence" as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (CEQA Guidelines § 15384(a).)

Under Public Resources Code Sections 21080(e) and 21082.2(c) and CEQA Guidelines Sections 15064(f)(5) and 15384, the following constitute substantial evidence:

- Facts;
- Reasonable assumptions predicated on facts; and
- Expert opinions supported by facts.

Under the same sections, the following do not constitute substantial evidence:

- Argument;
- Speculation;
- Unsubstantiated opinion or narrative;
- Clearly inaccurate or erroneous evidence; and
- Evidence that is not credible.

An agency's determination whether information in the record constitutes "substantial evidence" boils down to a determination not only that the information is relevant and material but also that it is sufficiently reliable to have solid evidentiary value. As noted above, the lead agency retains discretion to evaluate the quality of the evidence and to determine whether the evidence constitutes "substantial evidence" in light of the entire record.

C. When Is An Expert Report Not "Substantial Evidence"?

Not all reports or information submitted by "experts" constitutes "substantial evidence" within the meaning of CEQA. For example:

Lack of Factual Foundation. Expert reports are not substantial evidence when they lack adequate factual foundation. In other words, where an expert report is based on no data or incomplete data, the report does not constitute substantial evidence. (See *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 Cal.App.3d 130, 157 (testimony by real estate agent on potential decline in nearby property values was properly rejected as imprecise opinion without supporting verifiable data, such as comparable sales); *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it was based on inadequate foundation of specific information about project); *Citizens Comm. to Save Our Village v City of Claremont* (1995) 37 Cal.App.4th 1157, 1170 (no factual foundation for architect's letter claiming historically significant landscape plan had been implemented on project site).

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Lack of Specificity. Expert reports are not substantial evidence when they lack specificity or fail to explain why a project might cause a significant impact. (*Rominger v County of Colusa* (2014) 229 Cal.App.4th 690 (expert's opinion that mitigation for odors might be inadequate is too vague to amount to substantial evidence); *Parker Shattuck Neighbors v Berkeley City Council* (2013) 222 Cal.App.4th 768 (expert's suggestion that further investigation undertaken "is not evidence, much less substantial evidence, of an adverse impact"); *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 Cal.App.3d 130, 157 (agency could disregard comments from expert that amounted to "irrelevant generalization, too vague and nonspecific to amount to substantial evidence of anything"); *Association for Protection of Envt'l Values v City of Ukiah* (1991) 2 Cal.App.4th 720 (geologist opinion on possible soil instability was not substantial evidence of adverse impact because it did not conflict with specific evidence that building's foundation had been properly engineered).

Bias and Lack of Credibility. A lead agency may reject expert opinion because of the expert's interest in the matter. (*Citizens Ass'n for Sensible Dev. v County of Inyo* (1985) 172 Cal.App.3d 151, 173; *Brentwood Ass'n for No Drilling, Inc. v City of Los Angeles* (1982) 134 Cal.App.3d 491, 502.) A lead agency also has authority to discount evidence provided by an expert on the ground that it is not credible. (*Bowman v City of Berkeley* (2004) 122 Cal.App.4th 572, 583.)

D. Why Is The EBA Report Not Substantial Evidence?

The EBA Report does not constitute substantial evidence indicating that the Project may have significant impacts for the following reasons:

The EBA Report Lacks Factual Foundation. The EBA Report states that it reviews only NorthPoint's August 2021 Hydrogeologic Report. EBA did not review the entire record related to the Project's potential water usage, including (1) the August 2021 Project Drought Management Plan; (2) NorthPoint's February 2022 supplemental technical memorandum; and (3) the additional information provided by NorthPoint at the hearing on April 12, 2022. EBA admits that it based its Report on "information made available to [EBA] by others, and includes professional interpretations based on limited research and data." (EBA Report, p. 7.) EBA's conclusions, accordingly, are incomplete and speculative. (See *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 Cal.App.3d 130, 157; *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422; *Citizens Comm. to Save Our Village v City of Claremont* (1995) 37 Cal.App.4th 1157, 1170.)

The EBA Report Lacks Specificity. The EBA Report asserts that the Project may impact nearby streams and wells, but fails to identify which streams and wells might be impacted, and fails to explain how the Project would impact those features. EBA also fails to explain how the Project, which will use approximately 42% less water than the baseline hops farm, will result in such impacts when the hops farm did not. EBA's assertion in this regard is generalized speculation. (See *Rominger v County of Colusa* (2014) 229 Cal.App.4th 690; *Parker Shattuck Neighbors v Berkeley City Council* (2013) 222 Cal.App.4th 768; *Lucas Valley Homeowners Ass'n v County of Marin* (1991) 233 Cal.App.3d 130, 157; *Association for Protection of Envt'l Values v City of Ukiah* (1991) 2 Cal.App.4th 720.)

Further, while the EBA Report critiques NorthPoint's analytical method, EBA does not present an alternative assessment of the Project's water demand or the groundwater basin's recharge rate. Thus, while EBA may disagree with how NorthPoint reached its determination, EBA offers no alternate determination showing that

the Project may instead result in significant impacts. EBA's demand for more analysis is not itself evidence, much less substantial evidence, of a significant impact.

EBA Lacks Credibility. While EBA is a credible firm, its Report regarding the Project lacks credibility because EBA calls for much more extensive testing and modeling than EBA itself has deemed necessary when submitting hydrogeologic reports supporting other cannabis projects in the County. In this regard, EBA appears biased against the Project, and the EBA Report may be dismissed as a consequence. (See *Citizens Ass'n for Sensible Dev. v County of Inyo* (1985) 172 Cal.App.3d 151, 173; *Brentwood Ass'n for No Drilling, Inc. v City of Los Angeles* (1982) 134 Cal.App.3d 491, 502; *Bowman v City of Berkeley* (2004) 122 Cal.App.4th 572, 583.)

4. Conclusion

The EBA Report, on the whole, offers generalized and speculative assertions regarding the Project's potential to impact groundwater resources. Its assertions, to the extent the Report can be understood to assert that the Project may have a significant impact on groundwater resources, are invalidated by the fact that the Project will use approximately 42% less water than the baseline hops farm, and by the fact that the prior hops farm use did not result in the impacts that EBA speculates may occur as a result of the Project.

Moreover, while the EBA Report critiques NorthPoint's analytical method, the EBA Report does not conduct its own assessment nor present an alternative assessment of the Project's water usage or groundwater basin recharge. Consequently, EBA disagrees with NorthPoint's approach, but EBA offers no substantial evidence showing that NorthPoint's conclusions are incorrect or that the Project may have a significant impact. In fact, the EBA Report does not even assert that the Project may have a significant impact.

Given the foregoing, the Board of Supervisors may, under CEQA, proceed to adopt the IS/MND notwithstanding the EBA Report.

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