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December 5, 2025

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

Re: Response to Appeal of Planning Commission's Approval of Poverty Flats Use Permit (UP 25-1989) Appeal PL 25-1989

Dear Chair Crandell and Supervisors:

This firm represents applicants Kurt Barthel and Robert Barthel (together, the "Barthels"), owners of the property known as "Poverty Flats Ranch", a nearly 200-acre property located off High Valley Road near Clearlake Oaks (hereafter the "Ranch"). The Barthels, whose family has owned the Ranch for decades, applied for, and on May 22, 2025 the Lake County Planning Commission approved, a Major Use Permit (PL-25-68, the "MUP") for a commercial cannabis cultivation project encompassing approximately 5.69 acres on the Ranch (the "Project"). More specifically, the Project proposes outdoor cultivation within existing agricultural fields, with drying and storage to occur within a 2,400 s/f processing building. By any standard, the Project would be a modest, simple operation of the type that the County has routinely approved.

Even so, an opposition collective, a group focused on extinguishing commercial cannabis in Lake County (the "Appellant"), has focused its attention on the Project with the intent to reverse the Planning Commission's prior approval. Toward this objective, on the eve of the original hearing date for this appeal in October, the Appellant performed a classic "document dump" and submitted nearly a ream's worth of comments in opposition to the Project. We will kindly refer to this document dump as the Appellant's "Comments".

The following high-level observations regarding the Appellant's Comments are worth noting here:

- First, the Comments appear to make heavy use of comments submitted in opposition to other projects. As is often the case for cut-and-paste jobs, some of the comments do not relate to the Project.

- Second, the Comments appear to also make heavy use of AI. Some of the tell-tale signs include language structure and incorrect case citations. This suggests that the Appellant thinks that word count is more persuasive than content.

- Third, the Comments, while intended to relate to the Project, are clearly part of a larger campaign. In this regard, the Comments are recycled for application here, and the Board can expect the same to occur for subsequent projects.

- Fourth, the Comments amount to a great deal of hand-waiving seemingly intended to distract the Board from relatively simple underlying CEQA concepts that favor the Planning Commission's decision to approve the Project.

This letter, accompanied by comprehensive responses prepared by NorthPoint Consulting Group (the "NorthPoint Responses"), focuses on this last point – as much as the Appellant invokes CEQA in their Comments, they fail to clearly articulate the correct legal standards that must guide the Board's decision. We do that here.

When Does CEQA Requires Adoption of a Negative Declaration/Mitigated Declaration? CEQA states that a lead agency ***must*** prepare a negative declaration or mitigated negative declaration if "[t]he initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment" or the initial study identifies potentially significant effects, but the proposed mitigated negative declaration would avoid or mitigate these effects to a point where clearly no significant effect would occur. (Cal. Code of Regulations, Title 14 § 15070(a),(b) (emphasis added).)[1]

What Is The "Fair Argument" Standard? When reviewing a challenge to a lead agency's adoption of a negative declaration or mitigated negative declaration, a court will evaluate whether any "substantial evidence" in the administrative record supports a "fair argument" that the project may have a significant effect on the environment. (CEQA Guidelines § 15064(f); see, e.g., *Save the Plastic Bag Coalition v City of Manhattan Beach* (2011) 52 Cal.4th 155, 171; *Jensen v City of Santa Rosa* (2018) 23 Cal.App. 5th 877, 886; *Clews Land & Livestock v City of San Diego* (2017) 19 Cal.App. 5th 161, 198.)

What is Substantial Evidence? "Substantial evidence" consists of:

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

[1] The CEQA Guidelines are located at California Code of Regulations Title 14, section 15000 et seq. and will hereinafter be referred to and cited as the "CEQA Guidelines."

(CEQA Guidelines § 15384(b).)

Substantial evidence cannot be:

- Argument;
- Speculation;
- Unsubstantiated opinion or narrative; or,
- Inaccurate or uncredible evidence.

(CEQA Guidelines §§ 15064(f)(5); 15384(a).) Substantial evidence also does not include personal, non-expert observations on technical matters. (See *Protect Niles v. City of Fremont* (2018) 25 Cal.App. 5th 1129, 1139.)

Can An EIR Be Required For Controversial Projects? No. Public controversy regarding an alleged environmental impact cannot, in itself, require the preparation of an EIR, nor can the "mere possibility" of an adverse impact on a few people as opposed to the environment. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App. 4th 903, 929.)

Applied to the Project, when it adopted the Initial Study and Mitigated Negative Declaration ("IS/MND") for the Project, the County Planning Commission correctly determined that no substantial evidence in the record supports a fair argument that the Project may have a significant effect on the environment. As shown in the accompanying NorthPoint responses, no part of the Appellant's Comments constitutes substantial evidence supporting the fair argument standard. On this basis and on the basis of all the evidence in the record, the Board should deny the appeal and affirm the Planning Commission's approval.

To bring things back into perspective, we point out again that the Project is a simple outdoor cultivation site located on 5.69 acres in the middle of the nearly 200-acre Ranch. You, the County Supervisors, have approved similar small operations and may have even visited similar operations. As a matter of common sense, you know that no such operation could produce more than 300 pages' worth of environmental impacts. Fortunately, the data also shows that the Project will not have a significant effect on the environment.

Given this, the questions before the Board are really matters of policy: Will the Board stand by its adopted ordinances allowing cannabis operations like the Project? Will the Board deal fairly with an applicant that has dutifully worked on its application over years, meeting all requirements specified in County Code? Will the Board allow others to prevent a longtime landowner from making a lawful productive use of his land? Will the Board honor the Planning Commission's reasoned approval of a project? These are important questions that require the Board's wisdom and foresight. We ask that the Board answer these questions in the direction of denying the appeal.

As noted, this letter is accompanied by the NorthPoint Responses. These Responses are organized in the same structure and document as the "Master Executive Summary" submitted by the Appellant.

* * *

Sincerely,

Bradley B. Johnson, Esq.
Everview Ltd.

Response to Appellants' Claims (Chapters 1 through 12)

Poverty Flats UP 23-09 Appeal PL 25-1989

December 5, 2025

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Introduction

This document provides summary responses to the Appellants' claims. To be as succinct as possible, responses were incorporated into the Master Summary provided by the Appellant.

Contributors to the responses include:

Annje Dodd, PHD, PE is a registered professional engineer with over 30 years of experience in civil engineering, water resources, hydrology, environmental engineering and land use. Dr. Dodd's experience includes teaching, practicing, and modeling surface and groundwater hydrology, water supply and demand studies, and CEQA compliance. In addition, Dr. Dodd worked as a Traffic Safety Engineer for Caltrans.

Praj White, PE is a registered professional engineer with over 25 years of experience working on transportation and infrastructure related projects. Mr. White attended the University of Alaska at Anchorage where he received his BS Degree in Civil Engineering with an emphasis in Transportation Engineering. Mr. White's experience includes working for Caltrans as a Transportation Engineer leading operational and safety improvement projects in northern California. Mr. White worked as the City Engineer for the City of Ferndale for approximately 7 years leading accessibility and roadway improvement projects and conducted dozens of rural road evaluations throughout northern California

Geo Graening, PhD Ph.D., M.S.E. Dr. Graening holds a PhD in Biological Sciences and a Master of Science in Biological and Agricultural Engineering. Dr. Graening was an adjunct Professor at California State University at Sacramento for 10 years, and was an active researcher in the area of conservation biology; his publication list is available online at http://www.csus.edu/indiv/g/graeningg/pubs.htm. Dr. Graening is also a Certified Arborist (ISA # WE-6725A). Dr. Graening has 24 years of experience in environmental assessment, including previous employment with The Nature Conservancy, Tetra Tech Inc., and CH2M Hill, Inc.

James Anderson, Esq. is a land use and environmental attorney with nearly 10 years of experience advising clients on compliance with state and local land use regulations. Mr. Anderson has particular expertise in the commercial cannabis sector, where, working with Mr. Johnson, Mr. Anderson obtained approval of one of the largest commercial cannabis operations in California, as well as approval of some of the very first commercial licenses approved by the state.

Chapter 1 – BLM and Indemnification

Appellants' Claim: This chapter asserts that the Poverty Flats permit approval violates CEQA, undermines lawful governance, and exposes the County to significant legal risk. Appellants assert that staff issued permits requiring trespass across federally managed lands, concealed material facts from decisionmakers, and relied on indemnification agreements concocted without Board approval. For more detail, please see Chapter X in the Poverty Flats Appeal Attachment.

> **Response:** There is no merit to Appellant's claims. County staff have complied with all applicable procedures in their review of this Project and the related appeal.

Appellants' Claim: Federal Access Barrier. The Poverty Flats site can only be reached by trespassing across the Lake Berryessa Snow Mountain National Monument, administered by the Bureau of Land Management (BLM). Appellants assert that federal law requires express authorization for commercial use of these roads. Appellants assert that lawful access does not exist — making the project infeasible under CEQA.

> **Response:** It was disclosed in the IS/MND that access to the Poverty Flats Project would be accessed by a private driveway off High Valley Road, including detailed directions regarding the access route from Clearlake Oaks.
>
> Federal law does not require express authorization to travel over a county road. Right-of-Way (ROW) Authorization from BLM[1] is NOT required for casual activities such as driving over existing roads. BLM requires a ROW permit for projects that wish to build a project on public land or conduct any activity that would involve appreciable disturbance or damage.
>
> The Poverty Flats Project is not on Federal Land. A portion of High Valley Road, a county-maintained road, traverses through a BLM parcel. Although cannabis is federally illegal, it is legal in California, and it is transported all over California across federally owned land without permits or authorization from the federal government.
>
> Moreover, federal law is evolving regarding cannabis, including but not limited to scaling back of enforcement on state-sanctioned commercial cannabis activity. Additionally, the federal government is currently considering rescheduling cannabis, which would have

[1] BLM ROW

profound implications going forward.

It should also be pointed out that the Appellants inaccurately cite two cases to support their argument that CEQA requires denial if legal access is missing:

- Friends of B Street v. City of Hayward

Response: This case was in regard to a large commercial/retail redevelopment of several city blocks. The City of Hayward tried to approve a downtown development without clearly identifying the actual access routes and without analyzing traffic and circulation impacts associated with those access points. A project's environmental review must describe its actual access arrangement and evaluate the impacts of that access. A vague or hypothetical access plan violates CEQA. This is not the case for the Poverty Flats Project, the IS/MND described the project's access and evaluated potential impacts.

- San Joaquin Raptor Rescue Center v. County of Merced

Response: This case was in regard to a Subdivision and evaluation of potentially significant impacts associated with access, including: Increased traffic from a single access road, unsafe site distances, emergency vehicle access limitations, inadequate circulation, and what type of access the subdivision relies on. This is not the case for the Poverty Flats Project, the potential impacts were evaluated within the IS/MND.

Appellants' Claim: County Liability and Indemnification. Appellants assert that by issuing permits with knowledge that lawful access cannot be obtained, the County risks both criminal and civil liability.

Response: The response above addresses Appellants' comments here. The County is not authorizing a "federal trespass" but rather allowing the use of a county-maintained public road for legal commercial activities.

To put this in perspective, as of late 2025, 24 states and the District of Columbia have legalized cannabis for recreational use, and 40 states have comprehensive medical cannabis programs. There are over 16,000 active state and local cannabis cultivation licenses nationwide. Lake County has a "hold harmless and indemnification agreement" for operators that is consistent with other state and local jurisdictions nationwide. The operator assumes all the risk associated with operating a cannabis cultivation business and minimizes the risk by abiding by state and local regulations.

Appellants' Claim: Omission and Obstruction. The record reflects a pattern of omission and obstruction across multiple cannabis permits, with Poverty Flats as one example. In this case, the CEQA record omitted critical facts, including BLM denial letters and the indemnification agreements — a problem also documented in several other MNDs. Requests for Review were not sent to BLM in past permits, even though one was transmitted for Poverty Flats.

Decisionmakers were misled during hearings, denied access to key documents, and told they lacked authority to deny permits on federal access grounds. This occurred both in Poverty Flats and in other hearings. At the same time, staff issued permits in other cases that required unlawful federal trespass. While Poverty Flats is still under appeal, the pattern demonstrates that staff have repeatedly bypassed lawful oversight.

This misconduct deprived the Planning Commission and the Board of their role as decisionmakers under CEQA and their governing role under state law, reducing their function to ratifying staff decisions rather than exercising independent judgment.

Response: The Appellants make vague accusations at the county of violations of certain laws, the extent of which the Applicant cannot comment on. However, to the extent these allegations involve the Poverty Flats Project, the Applicant denies these allegations. For instance, in contrast to the Appellants' accusations, County staff included BLM on the agency referral list and the comments from BLM were included in the "Agency Comments.PDF" provided to the Planning Commission at the May 2025 hearing.

Appellants' Claim: Overreach and Hypocrisy. The indemnification agreement (IA) is a contract concocted without Board approval, reflecting administrative overreach. Government Code vests the authority to bind the County exclusively in the Board of Supervisors, yet staff unilaterally adopted and enforced indemnification agreements.

At the same time, staff told the Planning Commission and the Board that they lacked authority to act on federal illegality. This is the essence of hypocrisy: staff exercised powers they claimed were unavailable to elected officials. The result is not lawful administration, but policy-making by contract — a role reserved exclusively for the Board.

Response: The Applicant does not comment on the County's internal operations or its interpretation of its rights or obligations, however, to the extent that it is relevant, the Applicant disputes the Appellants' accusations about the indemnification agreement.

Appellants' Claim: Lake County as an Outlier. BLM has confirmed that this access problem arises only in Lake County. Other counties within its jurisdiction, including Mendocino, Humboldt, and Sonoma, do not approve projects dependent on unlawful federal access. Mendocino County expressly denied a cultivation permit (AP_2018-0061) when access required crossing federal land. By contrast, Lake County has advanced permits despite the federal barrier, setting itself apart as an outlier.

Response: The basis of Appellants' claim appears to be based on a conversation with a single individual working at BLM as an Assistant Field Manager at the Ukiah Field Office. The Appellants utilize an email they wrote to the Assistant Field Manager as proof of their claims, which is not substantial evidence (Figure 1).

The Appellants refer to a single Mendocino County permit that was denied, without detail on why it was denied and how it relates to Lake County. However, denial of a project by another jurisdiction with different local rules and regulations is not substantial evidence.

Lake County is not an outlier. A quick search of approved cannabis projects in both Humboldt and Trinity demonstrated multiple permit approvals for projects that require direct access via roads maintained by the National Forest Service. The Applicant can provide examples if requested.

I want to thank you for taking the time to discuss our concerns and thank you for sending both documents. I have a follow-on questions and comments from our conversation.

You mentioned both Mendocino County and Sonoma County cannabis permitting programs categorically deny cannabis permits where the applicant needs to cross federal lands to get to their project site and to your knowledge Lake County is the only one that continues to grant permits under the same or similar scenario. Do you happen to have contacts or recommendations in either Mendocino or Sonoma County that I may discuss their policy further?

Also, as we discussed, I am considering contacting the US District Attorney's office to get them to weigh in on the topic. If successful, I think it will go a long way changing the mindset of Lake County. The County already has an ordinance requiring applicants to get permission to cross property they do not own. It seems strange that Lake County would treat the federal government property any differently. Even though I believe BLM is in the right, and all case law I could find clearly shows the BLM is in the right, sometimes it takes having the same message come through on legal letterhead to get the County's attention. I plan to frame it as a general property right question but I will confer with my team to see if they want to include getting the US District Attorney's position on the indemnification topic you brought up that Lake County tries to use to shield itself from liability. I'll keep you posted.

Also, as an FYI, after doing some research on the topic of road ownership, it looks like—even if the County owns or maintains the road—the federal government still retains full authority to enforce its laws on any portion that crosses BLM land. Ownership of the road doesn't override federal jurisdiction. For example, the U.S. Forest Service exercises similar authority on its segments of High Valley Road, including closing gates across the road during emergencies without needing County permission—The USFS, at best, just provides notice to the County. It seems clear that federal land management agencies aren't obligated to defer to County control in these situations. I hope this information proves useful—based on what I've found, it seems you're on solid ground to assert federal authority over activities on BLM land if you so choose, regardless of who maintains the road.

Finally I know these are incredibly challenging times for federal agencies, especially BLM, and I just want to say how much we admire the work you and your colleagues are doing under such pressure. Your dedication really makes a difference on the ground. The community really appreciates your efforts.

Warm Regards,
Thomas Lajcik
[redacted]

Figure 1. Letter from Appellants to BLM Field Office

Appellants' Claim: Lawful access is missing and cannot be obtained.

Response: See the above responses. The Project will use County-maintained public roads for access which is legal.

Appellants' Claim: The County knew of this defect and attempted to evade it through indemnification and omission.

Response: The Applicant has no comment on the alleged "omission" and "evasion" however, the record does not indicate or show any such activities, nor does the Appellant point to any factual or legal background for these allegations. As such, these should be disregarded.

Appellants' Claim: Decisionmakers were obstructed and misled.

Response: The Applicant has no comment on the alleged "obstruction" however, the record does not indicate or show any such activities, nor does the Appellant point to any factual or legal background for these allegations. As such, these should be disregarded.

Appellants' Claim: Staff acted outside their authority, depriving elected officials of their lawful role.

Response: The Applicant has no comment on the alleged scope of the County staff's authority, however, the record does not indicate or show any such activities, nor does the

Appellant point to any factual or legal background for these allegations. As such, these should be disregarded.

Appellants' Claim: Federal authorities confirmed the illegality and its uniqueness to Lake County.

Response: As stated above, cannabis is federally illegal so there is no "uniqueness" vis-à-vis Lake County.

Appellants' Claim: Neighboring counties deny such projects as infeasible.

Response: This is untrue. Counties across California have authorized cannabis projects that require access across federal land, including Humboldt and Trinity Counties, and even Lake County.

Appellants' Claim: Under CEQA, a project requiring unlawful federal trespass cannot be approved. The only legally defensible remedy is to reverse the Poverty Flats permit.

Response: Appellants cite no legal authority supporting this contention, because there is none. There is no portion of CEQA that relates to alleged "federal trespass".

Appellants' Claim: If the Board does not correct this error, it will not remain a matter of departmental misconduct. By leaving the approval in place, the Board will effectively ratify these actions as County policy. Reversal is therefore necessary not only to cure an unlawful approval under CEQA, but also to preserve the integrity of the County's governance and prevent administrative overreach from being institutionalized.

Response: The Applicant has no comment on the alleged scope of the misconduct, however, the record does not indicate or show any such activities, nor does the Appellant point to any factual or legal background for these allegations. As such, these should be disregarded.

Chapter 2 - Road Safety Executive Summary

Appellants' Claim: This chapter asserts that the record demonstrates that Lake County's current approach to transportation under CEQA incorrectly substitutes a greenhouse-gas screening tool (Vehicle Miles Traveled, or "VMT") for the analysis of roadway safety and emergency access. Appendix G requires agencies to analyze whether a project would substantially increase hazards due to design features (e.g., sharp curves, steep grades, inadequate width) or result in inadequate emergency access. Shifting to VMT for climate analysis in 2018 did not relieve the County of its duty to address traffic safety or evacuation.

Response: The Appellants refer to two sections in the IS/MND, both of which were properly analyzed in the IS/MND.

1) IS/MND Section XVII.d. states, "*Would the project substantially increase hazards due to geometric design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).*"

   The purpose of this section is to identify and mitigate potential safety risks created or exacerbated by a proposed projects design. The goal is to identify design elements that could increase the risk of accidents for users of High Valley Road. Examples of these features include sharp curves, dangerous intersections, inadequate sight distances, or incompatible uses (e.g., farm equipment on a high-speed road).

   The Poverty Flats project does not propose any changes to the High Valley Road alignment or other features, does not result in the introduction of any obstacles, nor does it involve incompatible uses that could increase traffic hazards. Farm equipment used in cultivation activities would be transported to the Project site as needed and will not need to be operated on High Valley Road or other county or state roadways.

   The VMT threshold is used as a screening tool in place of Level of Service (LOS = a measure of the operating conditions experienced by drivers). VMT was not used to evaluate roadway design elements in the case of the analysis of the proposed project.

2) IS/MND Section XVII.e., "*Would the project result in inadequate emergency access?*"

   The purpose of this section is to identify and mitigate whether the project would result in inadequate emergency access for police, fire, and medical services. The goal is to identify and prevent situations where new development might hinder the response times of fire, police, medical, and other emergency personnel.

   The Poverty Flats project does not propose any changes to road alignment or other features and does not result in the introduction of any obstacles that might hinder emergency access along High Valley Road.

   The proposed 2,400 square foot building would trigger compliance with Section 4290 associated with on-site access roads to accommodate emergency access to this new structure. A mitigation measure, WDF-1, is included that requires Section 4290 compliance with the on-site access to the proposed building.

Moreover, the IS/MND does not "replace" road safety analysis with a VMT analysis. CEQA Appendix G (which is used to evaluate environmental impacts for almost all projects) has a threshold of significance associated with CEQA Guidelines section 15064.3(b) which requires an analysis of VMT. As discussed above, the IS/MND analyzes and address concerns with road safety and emergency access.

Appellants' Claim: In practice, the IS/MND for Poverty Flats screened transportation impacts out because the project generates fewer than 110 daily trips, borrowing a VMT threshold intended to screen greenhouse-gas effects—not safety risks. That threshold was then used program-wide in Lake County cannabis permitting. Because no single project crossed 110 trips per day, none received a geometric-design or evacuation analysis, no corridor-level traffic was tallied, and no cumulative baseline was ever established for High Valley Road—even though it is the sole ingress/egress for residents, workers, and emergency responders. CEQA case law is clear that cumulative analysis cannot be illusory or artificially narrow; where incremental effects may be cumulatively considerable, an EIR is required.

Response: The main employees for the Poverty Flats Project are the property owners who already use the road. They expect to hire up to 7 seasonal helpers, for a total of up to 9 employees. This number of employees and associated trips are already accounted for under the current land use and zoning of the property (RL-Rural Lands), which already allows for the following agricultural uses that can be conducted without first obtaining a Use Permit:

- Agricultural uses include crop and tree farming, livestock grazing, animal husbandry, apiaries, aviaries.

There is no limit to the size of agricultural activity. Unlike general agriculture, the County placed limitations to the amount of outdoor cannabis that can be cultivated, limiting cannabis canopy to only 1-acre of outdoor cannabis canopy per 20-acres of parcel size. The project parcel is 196.7 acres, limiting cultivation of cannabis to under 10 acres (project proposes less than this). General agriculture could be ten-times the amount for cannabis, thus, likely requiring many more seasonal employees than proposed.

High Valley Road is a low-volume, county-maintained road and is typical of rural roads throughout northern California. High Valley Road is classified as a two-lane, Major Local Road and is identified as an Existing Evacuation Route by the Lake County Fire Safe Council from State Route 20 at Clearlake Oaks to State Route 20 north of Lucerne (highlighted in Figure 2). Users of the road, including the Poverty Flats Applicants who have owned and worked on the property since 1978, have indicated that there is very little traffic currently using High Valley Road.

The Transportation & Circulation Element (Chapter 6) of the Lake County General Plan establishes the goals, policies, and implementation programs for Roads and Highways in Lake County.

Per the General Plan, "*County maintained roadways should be improved and maintained to provide an adequate peak period Level of Service (LOS) of "C" or better for existing and anticipated traffic volumes <u>if roadway upgrades are feasible</u>* (emphasis added)*, such as roadway widening, addition of lanes via re-striping, and other safety and operational improvements. The County shall allow a limited number of County roadway segments to operate at a level of service of "E" or better <u>where improving the segment to LOS C are deemed infeasible due to cost, negative community and/or environmental impacts, and constructability issues</u>* (emphasis added)".

AASHTO and Caltrans utilize the Level of Service (LOS) metric to quantify the service quality and capacity of roadways. LOS is broken into six categories, "A" through "F", where LOS "A" is free-flow conditions and LOS "F" is over capacity, resulting in stop-and-go traffic. LOS "E" is considered the operational capacity of the road.

Although the Poverty Flats Project screened out as a small project and the potential impacts of the project were addressed appropriately in the IS/MND, the Applicant asked Mr. Praj White, a

licensed civil engineer with over 25 years of experience working on transportation and infrastructure related projects, to address the Appellants comments regarding the capacity of High Valley Road. The results are summarized below.

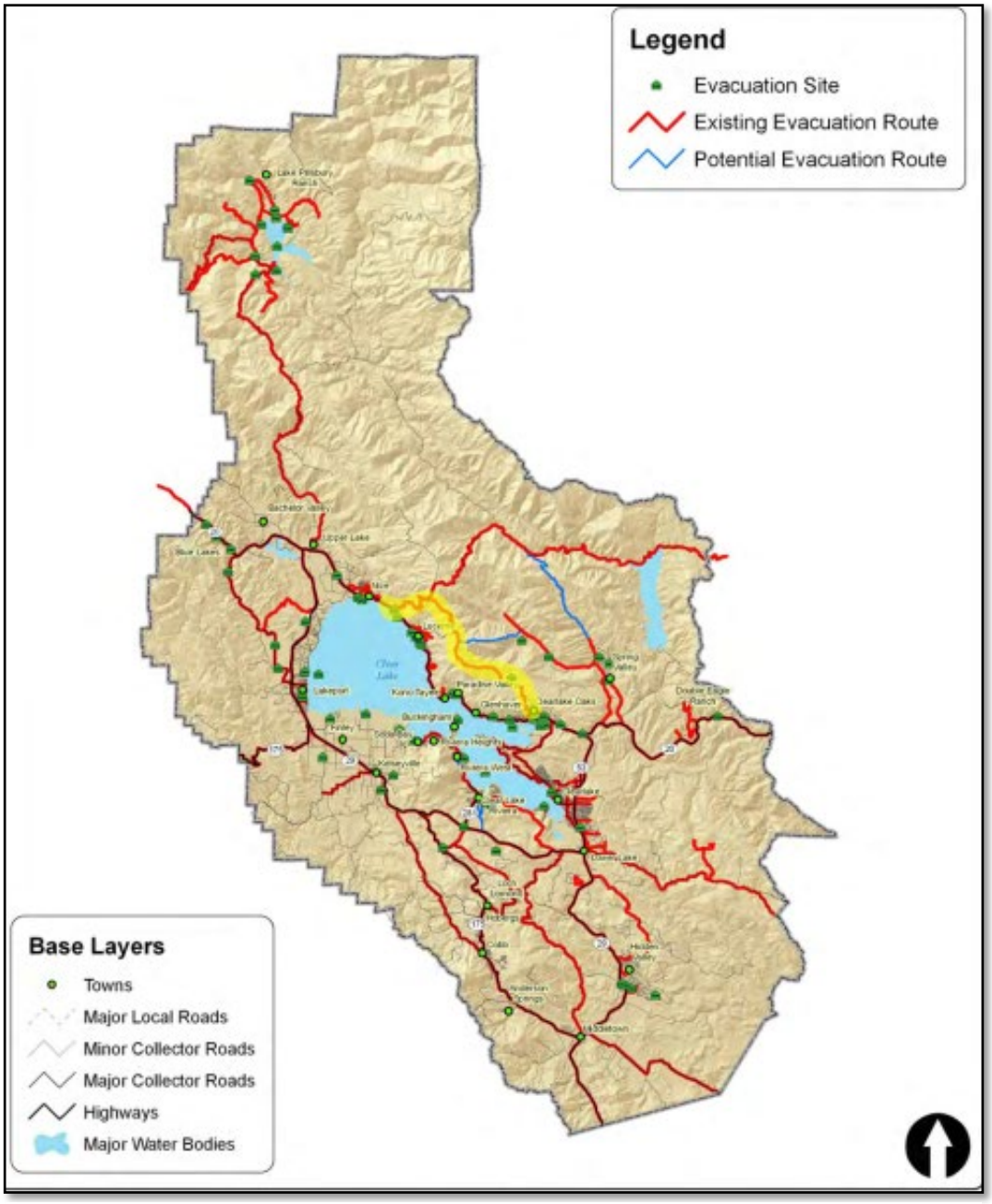


Figure 2. Lake County Evacuation Routes

The Highway Capacity Manual, developed by the National Transportation Research Board, is used by engineers to estimate roadway capacity. Under ideal conditions, the capacity of a two-lane, rural road is 2,800 passenger cars per hour (both directions). Adjusting for conditions on High Valley Road (e.g., mountainous terrain, no passing, less than 12-foot lanes, narrow shoulders, etc.), the road capacity under LOS "C" and LOS "E" were determined (Table 1). The existing daily trip volumes were obtained from Caltrans and are also included in Table 1.

Currently, based on traffic volumes provided by Caltrans, High Valley Road is operating at 29%

capacity for LOS "C" and at 6% capacity for LOS "E".

The Poverty Flats project proposes up to 9 employees during peak season operations, with an estimated peak hourly trip rate of 9 vehicle trips and the total daily trip rate of 20 vehicle trips (with deliveries). The hourly rate is likely conservative (high) as employees would be expected very early (sunrise) and leaving late (closer to sunset), outside of typical commuter peak-trip-time periods. Under LOS "E" conditions, which is the estimated capacity of High Valley Road, the project represents a contribution of only 1% of the peak hour trips, supporting the fact the project was screened out as a small project.

Table 1. High Valley Road LOS "C" Operational Summary

	LOS "C"		Project % of Hourly	Current Conditions (Source: Caltrans)		Current % of LOS "C"
Location	**Peak Hourly**	**Daily**		**Daily**	**Peak Hourly**	
Hwy 20 to Dwinell Drive	170	2,115	5%	553	45	27%
Beyond Dwinell Drive	200	2,500	5%	700	55	29%

Table 2. High Valley Road Capacity Summary

	LOS "E"		Project % of Hourly	Current % of Capacity (LOS "E")
Location	**Peak Hourly**	**Daily**		
Hwy 20 to Dwinell Drive	825	10,300	1%	5%
Beyond Dwinell Drive	975	12,200	1%	6%

With regards to cumulative impacts. Brassfield and Monte Cristo vineyards/wineries are existing and have been in operation for over 20 years. During the Monte Cristo appeal presentation (Note: the Monte Cristo project was approved by the Board of Supervisors) the Monte Cristo project demonstrated a REDUCTION in peak hour trips. The existing High Valley Oaks project has only 2 regular employees and 1 or 2 seasonal. The High Valley Oaks project, combined with the Poverty Flats project, are a small fraction of existing and each contribute traffic at the same scale and is consistent with activities that are principally permitted on these parcels (single family home with ADU, agriculture, and agriculture housing).

There are to known cannabis projects with pending Use Permits: Hypnotic and Lemon Glow. If approved, these projects would be an additional 5 regular employees and up to 25 seasonal employees. This would add an additional 10 regular trips and another 50 trips during seasonal activities or 60 daily trips at peak, if approved. Cumulatively, with these two projects, High Valley Road would continue to operate better than LOS "C".

Finally, the IS/MND addresses concerns about potential road hazards. As noted in the Transportation analysis, the Project will not introduce any new hazards to High Valley Road. Appellants' claims that there may be hazards introduced due to increased use of the roadway is not substantial evidence because it assumes Project-related traffic will be hazardous. This cannot be substantial evidence supporting a fair argument because it is unsubstantiated opinion. (See CEQA Guidelines §§ 15064(f)(5); 15384(a).)

Appellants' Claim: The appellants assert that there is substantial evidence that High Valley Road is hazardous and fails to meet minimum fire-safe and safety design standards. Responsible-agency comments (CHP), expert correspondence and hearing testimony, Planning Commission deliberations, staff acknowledgments, and consistent resident documentation all point in the same direction: narrow widths with pinch points well below two 10-foot lanes; steep sustained grades

exceeding safe operating slopes; substandard inside curve radii—including a hairpin turn that repeatedly immobilizes delivery trucks; restricted sight distance at a downgrade curve near the school; and segments that do not provide an all-weather surface capable of supporting emergency apparatus. These are not abstract code citations; they are field-verified conditions that directly affect life safety, response times, and evacuation reliability.

Response: Refer to responses above and responses to Chapter 3.

The Lake County General Plan identifies policy to comply with County Road Standards. Specifically, Policy T-1.2 (Figure 3). The road standards are guidance for future improvements or new roads and are taken into consideration when planning

Policy T-1.2 ***Compliance with County Road Standards***

Roads should be improved and constructed to the design standards recommended by the County Department of Public Works, as shown in Table 6-1, Lake County Road Design and Construction Standards. Road design standards shall be based on the American Association of State Highway and Transportation Officials (AASHTO) standards, and supplemented by California Department of Transportation (Caltrans) and County standards.

Table 6-1. Lake County Road Standards

	Minor Arterial	Major Collector	Minor Collector	Local
Design Speed	60 mph	50 mph	40 mph	30 mph
Number of Lanes	2-4	2-4	2	2
Lane Width	12	12 ft	11ft	11 ft
Right-of-Way Width	60	50 ft (min)	50 ft	50 ft
Maximum Grade	12%	12%	12%	16%

Figure 3. Lake County General Plan Policy

implementation measures.

The Appellants utilized comments, regarding High Valley Road, made by a CHP officer on the Sourz application and comments by technical experts and the Planning Commission regarding the appeal for the Sourz project. The nature of these comments was based on the extreme scope and size of the Sourz project (80 acres of canopy, 5 acres of nursery, and 110,000 square feet of new processing structures). Additional comments from other project hearings were also included in Chapter 3. The comments show concern about increases in traffic, traffic congestion, semi-trucks getting stuck at the sharp bend, emergency access, safety, and a poorly maintained road, however, these are only speculation and unsubstantiated opinions and are not substantial evidence under CEQA. (See CEQA Guidelines §§ 15064(f)(5); 15384(a).)

There have been a lot of comments and discussion regarding the sharp turn and large trucks getting stuck. However, using the Appellants' own evidence: the relevant question is whether the project will increase hazards, not whether project-related hazards have occurred in the past. The Poverty Flats project does not propose the use of semi-trucks and is not of the scale or size to require the use of semi-trucks. The largest truck anticipated is a 26-foot box truck (typical delivery truck). Thus, in this case, the project would not pose an increase of semi-trucks getting stuck at the hairpin turn. Also, it is misleading that the sharp turn repeatedly immobilizes "delivery" trucks when it is large semi-trucks that get stuck. A vehicle tracking analysis was done by Mr. Praj White, PE, which demonstrates a 26-foot box truck can safely navigate the sharp turn (Figure 4).

Appellants' Claim: The Appellant's provide measurements, mapping, crash overlays, and

photographic evidence (not prepared by a licensed or certified professional) to assert project deficiencies. Under CEQA's "fair argument" standard, once substantial evidence shows a project may exacerbate hazards, an EIR is required unless the agency adopts effective, enforceable mitigation. They assert that the IS/MND does neither and it omits the corridor-wide safety analysis, offers no enforceable plan or timeline to correct violations on the only access route, and relies on generalized assurances that have not materialized into projects, funding, or designs.

Response: Refer to responses above and in responses to Chapter 3.

Figure 4. Turning Radius - 26' Box Truck

Appellants' Claim: The Appellant's uses there data data (not prepared by a licensed or certified professional) to assert § 4290 compliance deficiencies. Under CEQA's "fair argument" standard, once substantial evidence shows a project may exacerbate hazards, an EIR is required unless the agency adopts effective, enforceable mitigation. The IS/MND does neither. It omits the corridor-wide safety analysis, offers no enforceable plan or timeline to correct violations on the only access route, and relies on generalized assurances that have not materialized into projects, funding, or designs.

Response: Refer to responses above and in responses to Chapter 3.

The Appellants provide a traffic incident/accident analysis that is misleading and does not follow traffic safety engineering standards. The protocol is to conduct a collision analysis over the most recent 5-year period. A collision is defined as a forceful impact between two or more moving or stationary objects such as a vehicle, pedestrian, animal, or roadside object. The incidents by the Appellants consisted of multiple "non-collisions" and included semi-trucks jack-knifing at the sharp bend road, road flooding, and complaints.

Collision data is typically measured against statewide averages when determining if roadway improvements are warranted based on safety concerns. The types of collisions and traffic volumes are considered in this assessment. Driver errors, flooding, and phoned in complaints are not considered when conducting a collision analysis.

Collision rates for High Valley Road were calculated based on records available from the California Highway Patrol as published in the California Crash Reporting System (CCRS[2]) for the most current 5-year period (2021 through 2025). There were nine (9) reported collisions (Table 3) on High Valley Road, which translates to a collision rate of 1.17 collisions per vehicle miles (c/mvm). The statewide average collision rate for similar facilities, as indicated in the most recent 2023 Crash Data on California State Highways[3], by the California Department of Transportation (Caltrans). The statewide average collision rate for two-lane roadways in a rural environment is 0.96 c/mvm. The collision rate on High Valley Road is slightly over the statewide average, which is common for low volume roads in Lake County. However, of the 9 collisions, 6 were a result of hitting an object due to driver error, 2 were a result of driving under the influence (DUI), and 1 was the result of pedestrian error. There is no apparent trend in collisions over the last 5-years (Figure 5).

The information provided by the Appellants shows measurements of High Valley Road, the Lake County parcel viewer with slope overlay, mapped locations of incidents, estimates of the hairpin turn radius, and photos of vehicles navigating the hairpin turn. However, none of this is substantial evidence of a fair argument that the Project would exacerbate hazards on High Valley Road because none of these indicate that the Project has a component that would increase hazards due to Project design features, or through the addition of new incompatible uses. Appellants fail in this regard because their argument fails to show how the small amount of increased traffic (as discussed in the IS/MND) is incompatible with current uses or would add a hazard to High Valley Road.

With respect to CEQA, Appellants identify no "facts, reasonable assumptions predicated upon facts, or expert opinion supported by facts" demonstrating that Project-generated traffic will create or exacerbate hazards such as collisions. (CEQA Guidelines, § 15064(f)(5).) Instead, they rely on unsubstantial opinions that, as a matter of law, cannot constitute substantial evidence under the "fair argument" standard (CEQA Guidelines, §§ 15064(f)(5), 15384(a)), as well as on facts unrelated to the Project.

Most of the comments cited were related to concerns associated with prior or unrelated projects that also utilize High Valley Road, particularly the Sourz project, where the condition of the roadway and the specific traffic characteristics of that project were central issues during the appeal of Sourz. Many of these comments focus on traffic associated with Sourz—including significantly higher daily trip counts and large truck usage—and assert potential impacts to High Valley Road based on those conditions. These comments have little relevance here. The Project does not involve large trucks and would generate far fewer daily trips. Accordingly, its traffic characteristics are far more aligned with existing, typical uses of High Valley Road than with the unrelated projects on which Appellants rely.

[2] California Crash Reporting System

[3] 2023 Crash Data on California State Highways

Table 3. 5-Year Collision Data on High Valley Road

Collision Date	Type	Type	Injury	Primary Road	Secondary Road	Cause
1/27/2025	Overturned	Overturn	Fatality	High Valley	High Valley	DUI
7/8/2025	Hit Object	Fence	No Injuries	High Valley	Warrens	Driving too fast
3/28/2024	Hit Object	Mailbox	Injury	High Valley	Dwinell	Improper turning
3/5/2023	Hit Object	Fence	No Injuries	High Valley	Warrens	Improper turning
4/8/2023	Hit Object	Embankment	No Injuries	High Valley	Mt View	Improper turning
12/26/2023	Hit Object	Fence	No Injuries	High Valley	Warrens	Improper turning
12/21/2022	Hit Object	Guy Wire	Injury	High Valley	Dwinell Dr	DUI
9/19/2021	Hit Object	Power Pole	No Injury	High Valley	SR-20	Improper turning
11/27/2021	Pedestrian	Pedestrian	Injury	High Valley	Cerrito	Pedestrian at fault

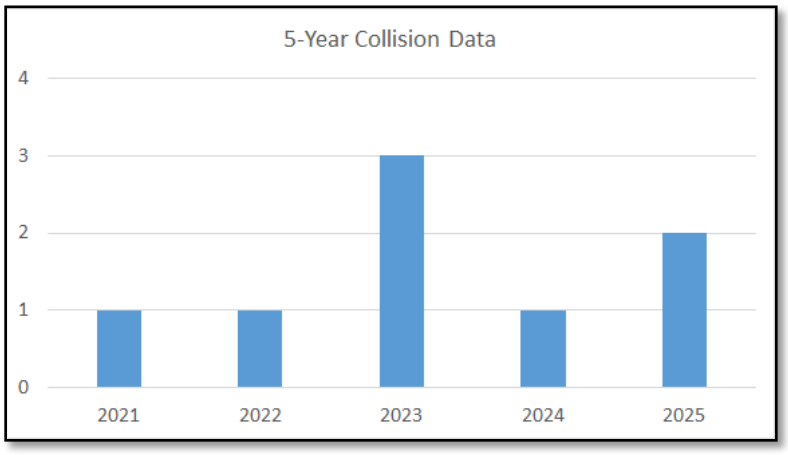


Figure 5. Graph of # of collisions over the last 5-years.

Appellants' Claim: The Appellants assert that ther is legal ris by misusing a GHG screen to avoid safety analysis, omitting cumulative evaluation, disregarding responsible-agency warnings and technical evidence, and applying inapplicable driveway standards, the County has not proceeded in the manner CEQA requires. The result is an IS/MND that is vulnerable to challenge and likely to be set aside. Given the substantial evidence of significant roadway-safety and evacuation hazards—and the absence of any enforceable mitigation—the only legally defensible path is to deny the permit. CEQA does not allow approval of a project under an IS/MND where fair argument exists that roadway deficiencies may cause or exacerbate life-safety risks. If the Applicant elects to reapply, an Environmental Impact Report must be required—one that fully evaluates roadway geometry, emergency access, evacuation performance, and cumulative corridor conditions on High Valley Road under applicable State and national safety standards.

In sum, the current record shows that High Valley Road's existing deficiencies—width, grade, curvature, sight distance, and pavement/surface—are well documented, repeatedly observed in the field, and materially aggravated by additional project traffic. CEQA does not allow approval on the theory that the road is "already unsafe" and a few more trips "won't matter." Where conditions are substandard and evacuation is at issue, incremental risk is significant as a matter of law and practice. The Board should set aside the IS/MND and deny the permit.

Response: Refer to responses above and responses to Chapter 3.

As discussed herein, the Appellants have failed to demonstrate a fair argument that the

proposed project would cause an impact, as demonstrated in the IS/MND.

The Appellants accuse a "pattern of prejudicial behavior at Planning Commission hearings" and imply that comments by a former Public Works Director regarding High Valley Road during the Sourz appeal regarding plans of using cannabis tax funds to use for road mitigations associated with projects like "Sourz" and "Brassfield"; comments from the County Surveyor regarding fixing the hairpin turn in the future; comments from the Community Development Director regarding Public Works presenting a five-year road management plan, misrepresent assurances of future potential projects on High Valley Road and constitutes prejudicial abuse of discretion. In addition, the Appellants claim that County Counsel advice was inaccurate and prejudicial regarding recommendations to the Planning Commission on how to address future foreseeable projects on High Valley Road.

The Appellants suggest that comments made by the Planning Commissioners stating that denying approval of Poverty Flats due to existing conditions on High Valley Road would be "unfair to the applicant" is prejudicial and contrary to law. As discussed herein, comments relating to previous projects proposed on High Valley Road are largely irrelevant to the approval of the current Project, as these involved different facts and components. As to comments relating to the actions or statements of the Planning Commission relating to this Project, the Applicant strongly disputes these assertions.

Chapter 3 - Fire Safety

Appellants' Claim: This chapter asserts that wildfire safety in Lake County hinges on one overriding principle: people must be able to evacuate while fire apparatus simultaneously enters. California's State Minimum Fire Safe Regulations (PRC §4290; 14 CCR §§1270.00 et seq.) were written precisely for that reality. They establish minimum, enforceable standards—lane width, grade, turning radius, and all-weather load capacity—so evacuation and emergency response can occur at the same time, under duress. CEQA, in turn, requires agencies to identify and analyze wildfire hazards, including evacuation feasibility, and to avoid approval on conclusory assurances when substantial evidence shows risk.

They assert that §4290 was not applied to High Valley Road as it is actually used in an emergency. They claim the project analysis was confined to on-site segments, even though the only way in and out is High Valley Road. That omission matters because High Valley Road controls life-safety outcomes. It is narrow, steep, and curved in ways that constrain two-way flow, and portions lack an engineered, all-weather surface capable of supporting emergency apparatus. The project description itself acknowledges substandard dimensions (e.g., a 16-foot "private driveway" with a 15-foot gate), yet the environmental document recasts the access as a "commercial driveway"—a category §4290 does not recognize for commercial operations—instead of evaluating it as a road subject to two 10-foot lanes, ≤16% grades, ≥50-foot inside turning radii, and a 40,000-lb all-weather surface. Misclassifying the access lowers the safety bar on paper while leaving real-world constraints unaddressed.

Response: The Appellants assert that High Valley Road, a County maintained road, does not meet Section 4290 (Section 4290) road standards and therefore violates CEQA. The purpose of Section 4290 is to establish statewide minimum fire safety regulations for **new** residential, commercial, and industrial building construction in specified areas and applies to the project specific development, in this case the access on the Poverty Flats' parcel NOT High Valley Road in its entirety. Section 4290 compliance (in this case) is triggered when the proposed 2,400 square foot building is constructed. The purpose of meeting Section 4290 road standards onsite is to allow for adequate fire equipment access to address a structure fire associated with the

proposed 2,400 square foot building.

There is not a CEQA Appendix G section that explicitly requires a project to meet Section 4290 road standards. However, CEQA requires that a project must demonstrate whether it would expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires; impair emergency response or an evacuation plan; or exacerbate fire risk. In this case, the Project IS/MND conducted an evaluation and, due to the Project's small size, small increase in traffic, and design features, it would not cause an impact if *onsite access* (as opposed to the entirety of High Valley Road) meets Section 4290 standards to allow for *onsite* fire access. This was included as a mitigation measure in the IS/MND so that in the event of a wildfire, fire personnel would be able to more easily access the Project site.

Further, as stated, the Project does not include the addition of any features into High Valley Road or incompatible uses, such that the Project would expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires; impair emergency response or an evacuation plan; or exacerbate fire risk. The simple fact is that the Project seeks to add minimal additional trips on High Valley Road only during specific times of year, and these trips would be consistent with existing uses, and not exceed the capacity of High Valley Road.

Access standards for a cannabis use permit, Article 27(at)ii(p) Access Standards, applies only to onsite driveways and not county roads.

The project was routed to CalFire for review and no concerns were raised by CalFire regarding High Valley Road. These comments were provided to the Planning Commission at the May 2025 hearing.

High Valley Road is classified as a Major Local Road and is identified as an Existing Evacuation Route by the Lake County Fire Safe Council from State Route 20 at Clearlake Oaks to State Route 20 north of Lucerne (Figure 2). The Appellant provides no evidence that High Valley Road poses a fire hazard or that the Poverty Flats project would result in a significant increase in traffic to create a bottleneck during fire evacuations. As provided in the IS/MND, the project screened out as a small project and was determined that the addition of up to 9 employees would not represent a significant impact to the evacuation route on High Valley Road and that there would be adequate access to emergency vehicles via High Valley Road during long-term operation.

As discussed above in Chapter 2, to address the Appellant's comments regarding capacity, High Valley Road is currently operating well under capacity. The capacity to operate at Level of Service C (stable operations, acceptable level of flow) is between 170 and 200 vehicles per hour. Level of Service E defines the capacity of the road and represents operations at near capacity, which is between 825 and 975 vehicles per hour. The project proposes up to 9 workers onsite during peak season, which represents only 1% of the road capacity.

The CalFire review provided project specific comments relating to fire storage, road standards, and defensible space around proposed structures. All of which have been addressed. The project proposes to implement adequate firefighting and fire suppression equipment (water lines and fire risers), including the installation of a minimum of 12,500 gallons of water storage tanks specifically designated for fire suppression associated with the proposed buildings per NFPA 1142 standards.

CalFire crews utilized the existing onsite roads during the 2018 fire. In addition, a slope analysis was conducted by a licensed engineer, and the slopes of the onsite road access to the proposed building are all less than 20% (Figure 6). Slopes greater than 16% will be graveled to meet

Section 4290 requirements.

Given the above, contrary to Appellants' claims, the IS/MND did analyze the Project for compliance with Section 4290 standards, and provided Project-specific mitigation. Therefore, Appellants' arguments regarding compliance with CEQA are irrelevant and should be disregarded.

What is more, in addition to the information in the IS/MND, the Appellants acknowledge the importance of the ridge on High Valley Road to fire personnel for combatting fires. Fire crews are able to access the ridge and fight fires as was demonstrated during the 2018 fire, which the Appellant corroborates in Chapter 3 stating: "*[f]irefighters successfully used this ridgeline during the Mendocino Complex Fire (2018), the Forks Fire(1996), and the Glenhaven Fire (2024) to stage back burns, conduct aerial retardant drops, and prevent downhill spread into populated areas*". In other words, Appellants on one hand claim that High Valley Road is inadequate pursuant to Section 4290 in the case of a fire emergency, especially in regard to the minimal Project-specific traffic, but then also acknowledge that High Valley Road was adequate access for firefighters to address several recent fires. These contradictory statements by Appellants indicate a fundamental flaw in their reasoning, and do not support their arguments.

It should also be noted that the Appellants inappropriately utilized slopes from Lake County Web GIS as roadway slope estimates for the Project site and High Valley Road. The slopes calculated for Lake County Web GIS are not appropriate to utilize for the determination of roadway slopes as they are based on a digital terrain layer and not the actual roadway alignment, which is how road slopes are determined for engineering purposes.

Appellants' Claim: The Appellants assert that the site sits on or adjacent to the High Valley ridgeline, a corridor the County has long identified as a strategic fuel break used to stage back burns, conduct aerial drops, and hold fire from dropping into populated areas. That strategic function depends on the ridgeline remaining largely undeveloped; introducing commercial structures there forces responders to defend the project itself, diverting resources down a noncompliant access and complicating suppression tactics exactly when minutes matter.

Response: The proposed cultivation area represents only 3.1% of the entire parcel area. In addition, the project proposes to implement adequate firefighting and fire suppression equipment (water lines and fire risers), including the installation of a minimum of 12,500 gallons of water storage tanks specifically designated for fire suppression associated with the proposed buildings per NFPA 1142 standards.

In review comments on the project, CalFire did not identify any concerns related to the project and the ridge. The Appellants claim that the project would interfere with fire control on the ridge is unsubstantiated.

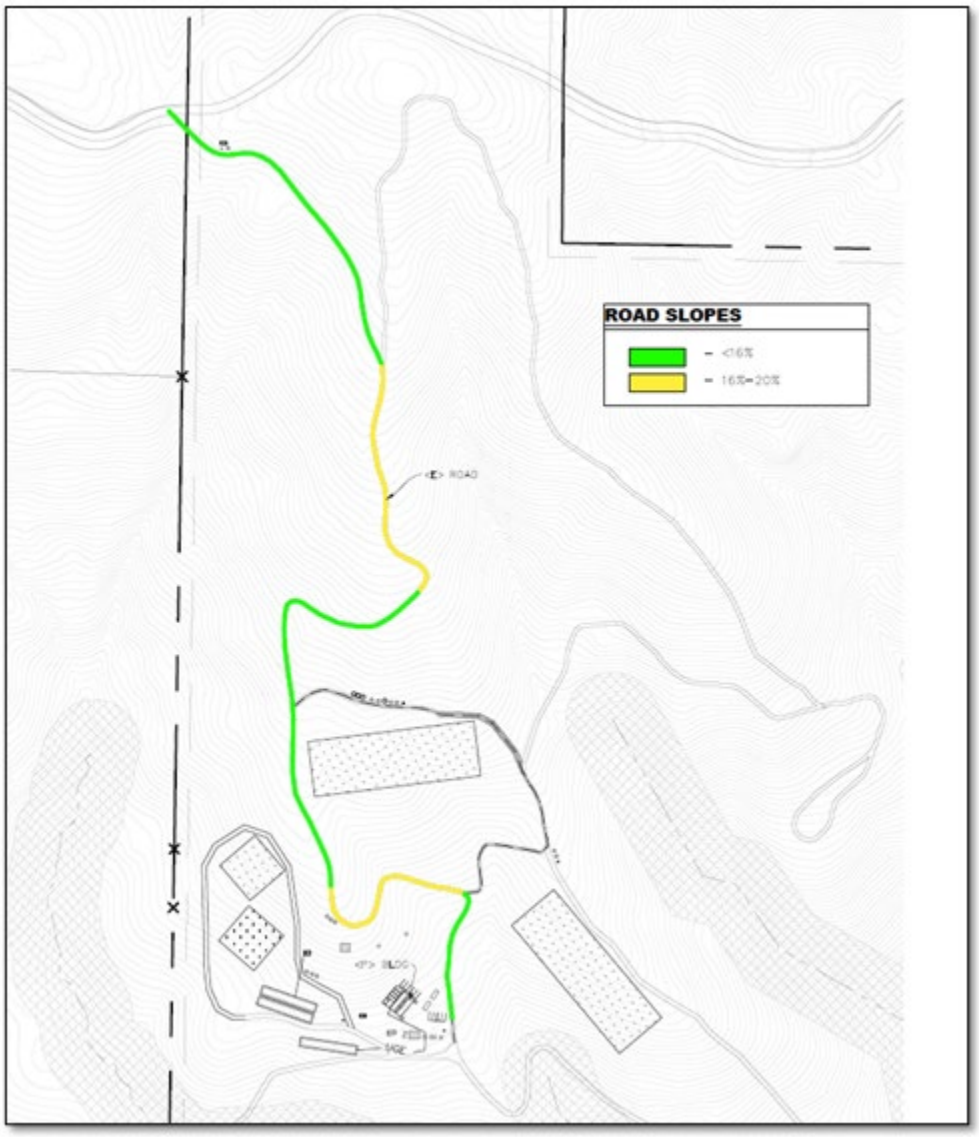


Figure 6. Onsite driveway slopes.

Appellants' Claim: The Appellants assert that during major incidents, High Valley Road has also functioned as a prohibited dead end. Federal closures and locked gates on the upper corridor convert it into an extended, one-way trap measured in miles, contrary to §4290's strict dead-end length limits for commercial uses. In practice, that means evacuees and incoming apparatus must share the same narrow path, magnifying the risk of gridlock, delays, and injury.

Response: As discussed above, the County identifies High Valley Road as a Major Local Road and is identified as an Existing Evacuation Route by the Lake County Fire Safe Council from State Route 20 at Clearlake Oaks to State Route 20 north of Lucerne.

The Appellants claim that High Valley Road becomes a de facto dead end, it could have the result of stranding Project-related traffic from the Project site and other properties behind the gate but provide no evidence to substantiate this claim.

The Appellants claim that responders are forced to share the same narrow route with evacuating vehicles, creating foreseeable blockages and delays, again without substantiation. In fact, the Appellants contradict this with evidence that CalFire successfully accessed the ridge via

High Valley Road during the most recent fires.

The Appellants identify the critical importance of High Valley Road during past wildfire events (Mendocino Complex Fire, the Forks Fire, and the Glen Haven Fire) and that it has demonstrated the critical importance of High Valley Road as a strategic evacuation and containment line.

Appellants' Claim: The Appellants assert that the Initial Study/MND offered "no significant impact" conclusions on wildfire and evacuation without conducting a route-specific evacuation analysis. A daily VMT screening threshold—appropriate for greenhouse-gas analysis—was used in place of the evacuation modeling CEQA calls for: no clearance times, no bottleneck/queue assessment, no conflict analysis for responder ingress versus civilian egress, and no testing of scenarios that have already occurred here, including legal closures under Penal Code §409.5 that can bar civilian travel beyond property lines during active operations. The assert there is a fair-argument based on substantial evidence that the project may exacerbate evacuation hazards on a corridor that already fails §4290's minimums.

Response: Refer to responses above. The VMT threshold is used as a screening tool in place of Level of Service and, due to the size of the project, the project screened out in the IS/MND as a small project with respect to VMT. This is supported above by the presentation of Level of Service in response to the Appellant. As discussed above, Level of Service E defines the capacity of the road and represents operations at near capacity, which is between 825 and 975 vehicles per hour. The project proposes up to 9 workers onsite during peak season, which represents only 1% of the peak hour road capacity.

The Appellant fails to provide substantial evidence, and contradictory to what the Appellants state, the fair argument standard is not met.

Appellants' Claim: The Appellants assert that CEQA does not permit approval under a Mitigated Negative Declaration in the above circumstances and that the Board's should deny the permit and the Applicant prepare an EIR to evaluate High Valley Road for §4290 compliance; to analyze evacuation performance under realistic fire scenarios, including closure conditions; and to address the strategic-ridgeline conflicts that development would create. They assert that otherwise the decision would be a prejudicial abuse of discretion and an avoidable life-safety risk.

Response: The Appellants calls for further studies without providing factual support because the contentions cannot be substantial evidence. (Parker Shattuck Neighbors, supra 222 Cal. App. 4th at 786.)

CEQA Guidelines §15064(f)(5): "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Chapter 4 - Grading

Appellants' Claim: This chapter asserts that the substantial, cannabis-oriented grading was carried out and proposed under the cover of a ministerial permit that was expressly limited to "minimal ground disturbance," while the Initial Study/MND acknowledged the need for a complex, discretionary grading permit—and then quietly dropped that requirement at adoption. The applicant's effort to attribute the extensive disturbance to CalFire is contradicted by aerial imagery, which documents cultivation-driven grading (vegetation scraping, root removal, benching, roadway widening, and drainage improvements) undertaken to prepare canopy areas. On April 14, 2022, the County issued GR22-12—a simple, ministerial grading authorization—despite the scope of site preparation contemplated for cannabis cultivation. By December 2024, the County itself recognized the activity as complex by issuing GR25-01 on January 3, 2025 for roughly 7,450 cubic yards of earthwork, culvert installation, and trenching; the January 6, 2025 IS/MND incorporated that complex permit into the project description, aligning mitigation, inspections, and monitoring with a discretionary framework.

Response: This is an unsubstantiated accusation that is not supported by the record. The Applicant applied for and obtained GR22-12 on April 18, 2022, prior to submitting the application for the Poverty Flats project. The description on the application was for the work described in Figure 7, taken directly from GR22-12.

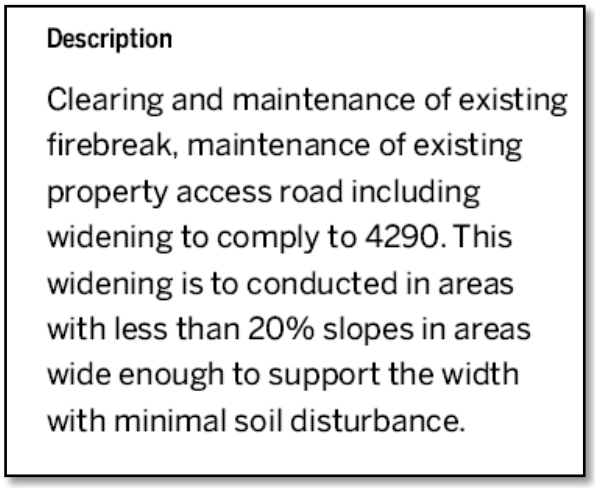


Figure 7. Screen capture of project description from issued GR22-12

The work was associated with an approved grading permit and not associated with the proposed cannabis project. The work was inspected and approved by County staff. No violations were observed.

In regard to GR25-01, the Appellants' assertion that the "County itself recognized the activity as complex grading by issuing GR25-01" is blatantly false. GR25-01 was prematurely issued for the proposed Preliminary Grading Plan submitted with the Poverty Flats application, which has an estimated cut and fill volume of 7,450 cubic yards. When County staff realized this, they rescinded GR25-01. The proposed Preliminary Grading Plan was included in the IS/MND analysis.

Upon approval of the Poverty Flats Project, a final-engineered grading plan will be prepared to support an application for a Complex Grading permit. The IS/MND clearly states that the Applicant is required to obtain a Complex Grading permit prior to commencing any onsite grading for the proposed Poverty Flats Project.

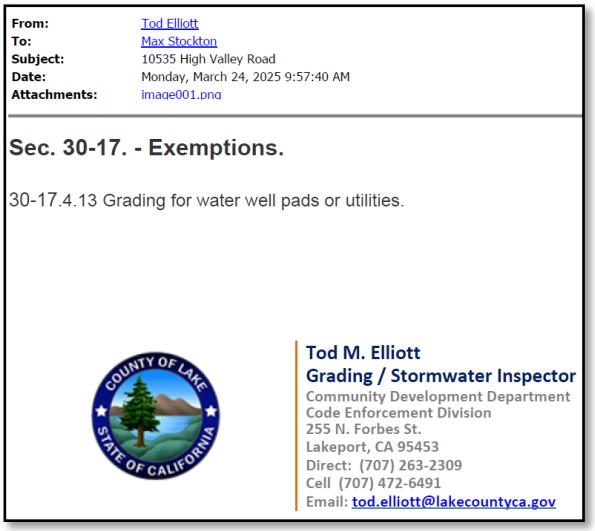
Appellants' Claim: The appellants claim that on January 9, 2025, the County voided GR25-01. The record still reflects the applicant's stated intent to grade in furtherance of cannabis cultivation, but the April 25, 2025 IS/MND presented to the Planning Commission removed references to the complex permit entirely, as if ministerial mechanisms could substitute for discretionary oversight. On May 22, 2025, the Commission adopted that April IS/MND and approved the project. This sequence leaves the CEQA record inaccurate and unstable: a project initially described with a complex-grading component essential to mitigation and enforcement was ultimately approved without it, even though the need for canopy-preparatory grading remained integral to the use.

Response: While the reference to permit number GR25-01 was crossed out in the revised IS/MND, the evaluation of the proposed Complex Grading was still analyzed in the IS/MND.

Appellants' Claim: The Appellants assert that this is piecemealing. Foreseeable discretionary grading—central to achieving the project's purpose—was shifted behind a ministerial label that cannot lawfully carry it. Removing the complex-permit framework between circulation and adoption constitutes significant new information or a substantial revision requiring recirculation. To the extent the County intended ministerial steps or informal practices to replace conditions embedded in the complex permit (inspector triggers, slope and staging controls, BMP verification, work-window and survey enforcement), CEQA required explicit equivalency findings. None appear. The result is a project description that is not accurate, stable, and finite.

Response: No piecemealing occurred, the proposed Complex Grading was analyzed in the IS/MND.

In regard to comments suggesting piecemealing, in Chapter 4, the Appellants state, "*March 24, 2025 Email from Tod Elliott to Max Stockton citing Sec.30-17. - Exemptions 30-17.4.13 Grading for water well pads or utilities [A15]. This additional and separate grading activity should have been incorporated in the total of the project and constitutes a piecemealing of the project*


From: Tod Elliott
To: Max Stockton
Subject: 10535 High Valley Road
Date: Monday, March 24, 2025 9:57:40 AM
Attachments: image001.png

Sec. 30-17. - Exemptions.

30-17.4.13 Grading for water well pads or utilities.

Tod M. Elliott
Grading / Stormwater Inspector
Community Development Department
Code Enforcement Division
255 N. Forbes St.
Lakeport, CA 95453
Direct: (707) 263-2309
Cell (707) 472-6491
Email: tod.elliott@lakecountyca.gov

Figure 8. Reference [A15] email correspondence.

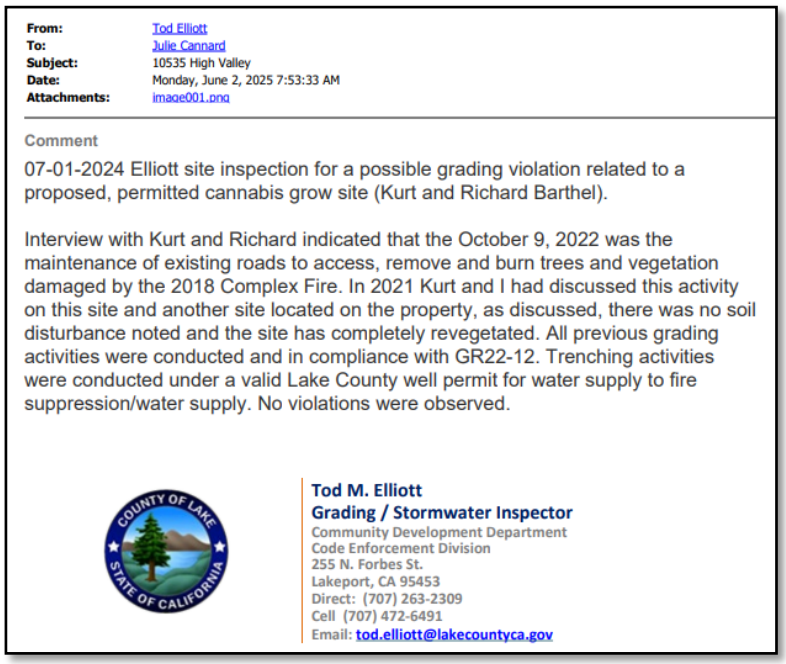
components which violates several CEQA guidelines [A16]". A screen capture of [A15] is provided in Figure 8. Reference [A16] is a list of code numbers. The work that was conducted by the Applicant and was conducted to repair an existing, leaking waterline. Thus, the Appellants' allegations are related to a separate, ministerial permit unrelated to the Project that the Property owner conducted to repair a water line within the existing road grade, which was conducted concurrently with the approval of the permit. Because this component is

separate from the Project, it is not piecemealing as alleged by the Appellants. California law allows ministerial actions (those with no discretion) to be approved and conducted even while a larger discretionary project is still undergoing CEQA review. This is because CEQA only applies to discretionary decisions. CEQA does not apply to ministerial actions. (See Pub. Res. Code § 21080(b)(1) and CEQA Guidelines § 15268.)

Appellants' Claim: The Appellants assert that the that key mitigation measures lose enforceability right where they matter most. Cultural/TCR monitoring during ground disturbance, biological pre-activity surveys and buffered work windows, and fire-safety/4290-related slope and access controls all depend on a discretionary permit's conditions and inspection regime. Likewise, hydrology and erosion measures—culvert sizing, drainage alignments, and BMPs—require inspector sign-off and MMRP tracking. With the complex-grading framework voided and omitted at approval, those safeguards become largely aspirational, not binding.

Response: See responses above and responses to Chapter 2 and Chapter 3 and responses to Cultural resources in Chapter 8. The grading was conducted, inspected, and approved under a valid grading permit (Figure 9).

The proposed Complex Grading was evaluated in the IS/MND with mitigation measures incorporated to mitigate impacts to less than significant, including measures to protect tribal, cultural, biological, water resources, etc.



From: Tod Elliott
To: Julie Cannard
Subject: 10535 High Valley
Date: Monday, June 2, 2025 7:53:33 AM
Attachments: image001.png

Comment

07-01-2024 Elliott site inspection for a possible grading violation related to a proposed, permitted cannabis grow site (Kurt and Richard Barthel).

Interview with Kurt and Richard indicated that the October 9, 2022 was the maintenance of existing roads to access, remove and burn trees and vegetation damaged by the 2018 Complex Fire. In 2021 Kurt and I had discussed this activity on this site and another site located on the property, as discussed, there was no soil disturbance noted and the site has completely revegetated. All previous grading activities were conducted and in compliance with GR22-12. Trenching activities were conducted under a valid Lake County well permit for water supply to fire suppression/water supply. No violations were observed.

Tod M. Elliott
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Community Development Department
Code Enforcement Division
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Direct: (707) 263-2309
Cell (707) 472-6491
Email: tod.elliott@lakecountyca.gov

Figure 9. Inspection report (Appellants reference A18)

Chapter 5 - Procedural

Appellants' Claim: This chapter asserts that the record reveals pervasive procedural failures under the California Environmental Quality Act (CEQA) that invalidate the County's adoption of the April 25 2025 Initial Study / Mitigated Negative Declaration (IS/MND). From the earliest stages, the County relied on an inaccurate environmental baseline, missing technical data, and unstable project documentation. Baseline conditions after the 2018 Ranch Fire were never substantiated with field evidence. Instead, the IS/MND assumed post-rehabilitation conditions that did not exist, disregarding erosion potential, vegetation recovery, and road geometry. These errors propagated through every impact category, tainting findings for hydrology, fire safety, and biology.

> **Response:** As shown by the responses provided to address the Appellants comments in each chapter (above and below) this is an unsubstantiated statement. Baseline conditions were developed based on reports and findings of technical experts and analyzed within the IS/MND.

Appellants' Claim: The Appellants asser that the County further failed to conduct a lawful cumulative analysis under CEQA. Projects in the same High Valley watershed drawing from shared aquifers and evacuation routes were ignored, and no cumulative water-balance or evacuation performance modeling was provided. Similarly, no scenario-based evacuation study or roadway compliance assessment was ever performed despite the site's Very High Fire Hazard Severity Zone designation. Reliance on unverified assumptions in place of field measurements rendered the analysis speculative and unlawful.

> **Response:** As shown by the responses provided to address the Appellants comments in each chapter (above and below) this is an unsubstantiated statement. Baseline conditions were developed based on reports and findings of technical experts and analyzed within the IS/MND.

Appellants' Claim: The Appellants assert that the procedural record shows that the IS/MND was materially altered between the version circulated for agency and public review (January 6 2025) and the version approved by the Planning Commission (April 25 2025). The later version deleted all references to Complex Grading Permit GR 25-01 and changed the project description from "immature plant nursery" to "immature plant propagation." These were substantive revisions requiring recirculation under CEQA Guidelines. The County nonetheless proceeded to approval without re-notice or re-evaluation, depriving agencies and the public of the opportunity to comment on the actual project before it was approved.

> **Response:** The IS/MND was revised and recirculated in January 2025 (1/9/2025 through 2/7/2025), including an explanation as why the revision and recirculation was necessary, as shown on the State Clearinghouse CEQAnet Web Portal (https://ceqanet.lci.ca.gov/2025010264).
>
> County staff made minor revisions to the IS/MND prior to presenting the IS/MND to the Planning Commission (IS/MND dated April 25, 2025). The Appellants provided a side-by-side comparison (https://countyoflake.legistar.com/View.ashx?M=F&ID=14870336&GUID=5A9FA9F5-D3A4-43F6-BA58-C63D19292CED) summarizing the revisions, all of which were minor in nature. Under CEQA Guidelines §15073.5(b), recirculation is NOT required if revisions include only minor technical changes, clarifications, amplifications, and insignificant modifications. The April 25, 2025 version that was approved by the Planning Commission approved was uploaded to the State Clearinghouse with the Notice of Determination (https://ceqanet.lci.ca.gov/2025010264/2).

Appellants' Claim: The Appellants assert that procedural irregularities extended to consultation, mitigation, and public access. The record lacks documentation of required AB 52 tribal consultation or enforceable pre-construction cultural resource protections. No stand-alone Mitigation Monitoring and Reporting Program (MMRP) was adopted, leaving mitigation measures unenforceable and unverified. Technical reports, survey data, and comment letters were missing or mislabeled in the public file. Public Records Act (PRA) responses were incomplete, and critical correspondence was withheld or selectively shared with the applicant, obstructing informed participation. These failures violate CEQA's core mandate of transparency and informed decision-making.

Response: As shown by the responses provided within each chapter (above and below) this is an unsubstantiated statement. Mitigation measures were adopted as part of the Conditions of Approval. Refer to Chapter 8 for AB 52 tribal consultation information.

CEQA Guidelines § 21081.6(a) states that a lead agency shall adopt either a reporting or monitoring program OR conditions of approval, in order to mitigate significant effects to the environment. In this case the County incorporated and adopted the mitigation measures from the IS/MND within the Conditions of Approval for the Poverty Flats project.

The Appellants claim "technical reports, survey data, and comment letters were missing or mislabeled in the public file" without identifying what information was missing or mislabeled and how such information would be required to be public for purposes of Project approval, or its informational purpose. In other words, Appellants fail to show how the County violated CEQA. As such, this comment should be disregarded.

Appellants' comments relating to the PRA, and the County's alleged failure to comply with the PRA, are beyond the scope of this appeal and Project approval. In regard to the Project, the Applicant provided all required information to the County, and the County provided all required information to the public such that the Project approval before the Planning Commission complied with the mandates of CEQA. The Applicant has no control or authority over the County or the ability to participate in the PRA, nor do the Appellants make clear which information is missing, and how such information would be required to be public for purposes of Project approval, or its informational purpose. In other words, Appellants fail to show how the County violated CEQA, especially in regard to PRA responses. As such, this comment should be disregarded.

Appellants' Claim: The Appellants assert that multiple staff communications and file versions show inconsistent Initial Study identifiers—using "IS 23-29" instead of the correct "IS 23-20"—further undermining the stability of the administrative record. Plans in the record lack professional engineer and surveyor seals, contrary to Business and Professions Code requirements, leaving basic geometric and boundary information unverifiable.

Response: The Appellant identified the mis-labeling of the IS/MND at the Planning Commission, however, the use of UP 23-29 rather than UP 23-09 in the title. However, the correct UP 23-09 was used within the document and in the titles of the documents uploaded to the State Clearinghouse (links provided above).

The site plans and preliminary grading plans were prepared under the direction of licensed engineer(s), per County requirements. Per the Business and Professions Code requirements, an engineer's seal is not required on planning level documents.

Appellants' Claim: The Appellants assert that the record is procedurally defective at every stage: baseline establishment, cumulative analysis, recirculation, consultation, record completeness, and

mitigation enforcement. The County's handling of this project constitutes a failure to proceed in the manner required by law.

Response: County staff did a detailed CEQA analysis, accurately representing baseline conditions and level of analysis required for a project of this type and size.

The purpose of an IS/MND is to identify potentially significant impacts and incorporate mitigation measures, if necessary, to mitigate impacts to a less than significant level. This study went through multiple levels of review, both at the local and state level, as well as public comment before being adopted by the Planning Commission. The reviewing agencies with the opportunity to review and comment are shown in Figure 8.

As demonstrated in the responses provided throughout this document, this is an unsubstantiated statement, and the Board of Supervisors should uphold the decision of the Planning Commission and the recommendations of the Community Development Department to deny Appeal PL 25-198.

State Review Period Start	1/9/2025
State Review Period End	2/7/2025
State Reviewing Agencies	California Air Resources Board (ARB), California Department of Cannabis Control (DCC), California Department of Fish and Wildlife, Cannabis Program (CDFW), California Department of Fish and Wildlife, Northern and Eureka Region 1 (CDFW), California Department of Forestry and Fire Protection (CAL FIRE), California Department of Parks and Recreation, California Department of Pesticide Regulation (DPR), California Department of Resources Recycling and Recovery, California Department of Toxic Substances Control (DTSC), California Department of Water Resources (DWR), California Governor's Office of Emergency Services (OES), California Highway Patrol (CHP), California Native American Heritage Commission (NAHC), California Natural Resources Agency, California State Lands Commission (SLC), Central Valley Flood Protection Board, Department of Food and Agriculture (CDFA), Office of Historic Preservation, State Water Resources Control Board, Division of Drinking Water, State Water Resources Control Board, Division of Water Quality, State Water Resources Control Board, Division of Water Rights, California Department of Fish and Wildlife, North Central Region 2 (CDFW), California Regional Water Quality Control Board, Central Valley Sacramento Region 5 (RWQCB)
State Reviewing Agency Comments	California Department of Fish and Wildlife, North Central Region 2 (CDFW), California Regional Water Quality Control Board, Central Valley Sacramento Region 5 (RWQCB)
Development Types	Commercial (Commercial Cannabis Cultivation)(Sq. Ft. 247800, Acres 196.7, Employees 6)
Local Actions	Use Permit
Project Issues	Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Noise, Transportation, Tribal Cultural Resources
Public Review Period Start	1/6/2025
Public Review Period End	2/6/2025

Figure 10. Screen capture of the state CEQAnet web portal showing review agencies.

Chapter 6 – Biological Resources

Appellants' Claim: This chapter asserts that the record does not contain a lawful biological baseline for the Poverty Flats project. The biological work relied on by the County examined roughly six acres within a parcel nearly 200 acres in size—and much of that limited survey effort occurred on ground that had already been cleared. The remainder of the parcel received only reconnaissance-level review. As a result, the baseline omits disturbed-area habitat loss and leaves the bulk of the property's habitats, species, and hydrologic features unevaluated. That omission distorts impact analysis and precludes substantial-evidence findings under CEQA. See Chapter 6 — Biological for citations, figures, and supporting exhibits.

Response: Two reports were prepared by Graening and Associates, LLC: a Biological Resources Assessment (BRA) and a Botany Survey Report (BSR) both dated May 2024.

Graening and Associates, LLC Qualifications:

G.O. GRAENING, Ph.D., M.S.E. Dr. Graening holds a PhD in Biological Sciences and a Master of Science in Biological and Agricultural Engineering. Dr. Graening was an adjunct Professor at California State University at Sacramento for 10 years, and was an active researcher in the area of conservation biology; his publication list is available online at http://www.csus.edu/indiv/g/graeningg/pubs.htm. Dr. Graening is also a Certified Arborist (ISA # WE-6725A). Dr. Graening has 24 years of experience in environmental assessment, including previous employment with The Nature Conservancy, Tetra Tech Inc., and CH2M Hill, Inc.

TIMOTHY R. D. NOSAL, M.S. Mr. Nosal holds a B.S. and M.S. in Biological Sciences. Mr. Nosal has statewide experience performing sensitive plant and animal surveys in addition to terrestrial vegetation investigations. Mr. Nosal has over 25 years of experience in botanical surveys, environmental assessment, and teaching with employers that include California Department of Fish and Wildlife, State Water Resources Control Board, American River College, MTI College and Pacific Municipal Consultants. Mr. Nosal has intensive experience with the flora of the Pine Hill region, including leading numerous field trips exploring the botany of the region, co-authoring a fuel management plan for Pine Hill, and a Master's thesis on Stebbins's morning glory (Calystegia stebbinsii), an endangered plant of this region.

The methodologies utilized in preparation of the BRA and BSR follow all standard practices and procedures necessary in preparing CEQA level BRAs and BSRs, which include review of multiple databases (USGS, USFWS, USDA, CNDDB, CDFW, etc.), aerial imagery (current and historical), prior studies, site specific field surveys guided by research and the proposed project areas. The BRA and BSR included research to identify potential status species to occur in the area and then site-specific field surveys that focus on the potential areas of disturbance associated with the proposed project.

The study area was determined based on the location of the project elements and proposed areas of disturbance (grading areas, structure locations, roads, staging/storage, etc.).

Appellants' Claim: The Appellants assert there are deficiencies in the project's baseline. CEQA requires a complete, accurate description of the environmental setting before significance findings are made. Here, the survey footprint was narrow, seasonally limited, and confined largely to previously disturbed areas, while the undisturbed majority of the parcel was not subjected to parcel-wide, seasonally appropriate, species-level surveys. The practical effect is that habitat already removed is not carried into the baseline (masking loss), and habitats outside the six-acre

focus area are treated as if constraints are absent. This is not a technical quibble: an incomplete baseline cannot support reliable conclusions about impacts, nor can it be cured by generic "pre-construction survey" language.

Response: As discussed above, the BRA and BSR appropriately covered and analyzed the potential impacts of the proposed project. The Impact Analysis in each study stated that, "*No special status species have a moderate or high potential to occur in the Project Areas. Special status animals have a moderate potential to occur in the ephemeral channels. However, the areas were designed with setbacks of at least 100 feet from all channels. No direct impacts to special status animals are expected from implementation of the proposed project. Special-status bird species were reported in databases (CNDDB and USFWS) in the vicinity of the Project Areas. The Project Areas, and adjacent trees and utility poles, contain suitable nesting habitat for various bird species. If construction activities are conducted during the nesting season, nesting birds could be directly impacted by tree removal and indirectly impacted by noise, vibration, and other construction related disturbance. Therefore, Project construction is considered a potentially significant adverse impact to nesting birds*". Therefore, the addition of the following mitigation measure was included to mitigate these potential impacts:

> **BIO-1:** If Project activities occur during the bird nesting season (February through August), a qualified biologist shall conduct a pre-construction survey for the presence of special-status bird species or any nesting bird species within 500 feet of the proposed construction areas.
>
> If the qualified biologist identifies any active nests within 500 feet of the proposed construction areas, CDFW and/or USFWS, as applicable, shall be consulted to develop appropriate measures to avoid "take" of active nests and establish appropriate avoidance measures.

Appellants' Claim: The Appellants assert that the record acknowledges multiple Class III drainages and at least one stream crossing on or adjacent to the site. Public mapping and on-parcel conditions indicate riparian/seasonal waters and hydrologic connectivity to Schindler Creek. Yet no formal wetland/stream delineation was performed prior to approval. Without delineation, the County cannot determine jurisdictional status, setbacks, or tailored controls (e.g., SWPPP measures sized to actual features and flows), and cannot lawfully conclude that riparian and aquatic resources will be protected under a Mitigated Negative Declaration. CEQA and related permitting frameworks require this analysis up front. Recent CDFW correspondence confirms no site visit since 2020 and no Lake or Streambed Alteration (LSA) Notification on file. Field evidence of a culvert/stream-channel modification within a Class III drainage further demonstrates that jurisdictional features are present and have already been altered without required permits—underscoring why delineation and permitting cannot be deferred to post-approval.

Response: The project is set back 100 feet from all onsite Class III drainages. A site visit was conducted recently (October 2025) by California Department of Fish and Wildlife staff, no issues associated with the proposed project were identified during this site visit. The BRA did not identify any water resources within the proposed project areas and stated, "*the project areas have been designed with 100-foot setbacks from channels and are situated on flat ridgetops. Because of these avoidance measures, no direct impacts to water resources will occur*". In addition, the BRA stated, "*Potential adverse impacts to water resources could occur during operation of cultivation activities resources by discharge of sediment or other pollutants (fertilizers, pesticides, human waste, etc.) into receiving waterbodies. However, the project proponent must file a Notice of Intent and enroll in Cannabis Cultivation Order WQ 2019-0001-DWQ. Compliance with this Order will ensure that cultivation operations will not significantly*

impact water resources by using a combination of Best Management Practices (BMPs), buffer zones, sediment and erosion controls, site management plans, inspections and reporting, and regulatory oversight".

A Lake and Streambed Alteration (LSA) Notification application has been prepared and will be finalized once the project is approved by the County. The LSA is not a requirement of the County Use Permit, but it is a requirement to obtain state licensing for cannabis cultivation. The Applicant for Poverty Flats invited CDFW staff to conduct a site visit which was completed in October 2025. No issues were identified during the site visit. The Applicant will finalize the notification with CDFW once the project is approved by the County.

In Chapter 6 the Appellants make the assertion that just because there are Class III drainages adjacent to the project areas and that the National Wetlands Inventory identifies a stream on the southern portion of the property that a formal wetland delineation is required. However, the Appellants provide no evidence or technical proof of wetlands within the proposed project areas. The Poverty Flats technical expert that prepared the BRA conducted a thorough analysis, and based in their expert opinion, no wetlands and no potential for wetlands occur within the proposed project areas.

Appellants fail to point to any site-specific factual support that demonstrates that there are wetlands within Project area and is not substantial evidence. (See CEQA Guidelines §15064(f)(5).) Additionally, calls for further investigation is not substantial evidence, much less substantial evidence of an adverse impact (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal. App. 4th 768, 786.).

Appellants' Claim: The Appellants claim that the parcel contains suitable habitat for multiple protected taxa (not supported by a licensed or certified professional). Photographic evidence documents Bald Eagle presence on the property, yet the Initial Study/MND does not disclose or analyze eagle-specific risks (e.g., noise, lighting, activity timing) or other taxa that require seasonally timed, protocol-based surveys. Reliance on late-season reconnaissance and a narrow footprint means the record lacks affirmative evidence of absence—or presence—across most of the site. In CEQA practice, that is a baseline problem, not a mitigation detail.

Response: The Appellants provide a blurry image of a bird at an unknown location. The Applicants and property owners of Poverty Flats did not / have not given permission to access the property to take images or videos.

Special status species were called out by the CNDDB and USFWS, as is standard practice. Bald eagle is not on the special-status species table because it was not reported by CNDDB in the 9-quad query (600 square miles), which is the standard query distance around a project site. The bald eagle was delisted from the Endangered Species Act, so it does not show up on the USFWS species list. The BRA identified that the Project Areas, and adjacent trees and utility poles, contain suitable nesting habitat for various bird species. If construction activities are conducted during the nesting season, nesting birds could be directly impacted by tree removal (no tree removal is proposed) and indirectly impacted by noise, vibration, and other construction related disturbance. Therefore, Project construction is considered a potentially significant adverse impact to nesting birds and Mitigation Measure BIO-1 (see above) addresses this. If a bald eagle is nesting within the survey area in the future, it would be detected during the pre-construction survey.

Appellants' Claim: The Appellants claim that Schindler Creek and its tributaries function as a movement and habitat corridor (not supported by a licensed or certified professional).

Disturbance on steep, erodible slopes above these channels can elevate sediment delivery, degrade riparian structure, and impair pool quality and passage. Fencing and lighting can fragment movement paths. None of these corridor-integrity mechanisms are analyzed cumulatively in the record, despite CEQA's requirement to evaluate combined effects from grading, roads, vegetation removal, lighting, and operational activity.

Response: The Appellants assertions here are conclusory with no specific factual background or supporting evidence, and therefore, cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).).

A Preliminary Grading Plan and Erosion Control Plan was submitted with the Use Permit Application and analyzed within the IS/MND. Numerous measures to protect water resources are discussed that are either incorporated by law (e.g. Lake County Zoning and Grading Ordinances) or as Mitigation Measures.

Although cannabis projects are required to enroll in the Water Board Cannabis General Order and grading projects are required to comply with the Lake County Grading regulations, compliance was incorporated as a mitigation measure. The mitigation measures are included below for easy reference.

BIO-2: All work should incorporate erosion control measures consistent with Lake County Grading Regulations and the State Water Resources Control Board Order No. WQ 2019-001-DWQ.

GEO-1: Excavation, filling, vegetation clearing, or other disturbance of the soil shall not occur between October 15 and April 15 unless authorized by the Community Development Department Director. The actual dates of this defined grading period may be adjusted according to weather and soil conditions at the discretion of the Community Development Director.

GEO-2: The permit holder shall monitor the site during the rainy season (October 15 – April 15), including post-installation, application of BMPs, erosion control maintenance, and other improvements as needed.

GEO-3: If greater than fifty (50) cubic yards of soil are moved, a Grading Permit shall be required as part of this Project. The Project design shall incorporate Best Management Practices (BMPs) to the maximum extent practicable to prevent or reduce the discharge of all construction or post-construction pollutants into the County storm drainage system. BMPs typically include scheduling of activities, erosion and sediment control, operation and maintenance procedures, and other measures in accordance with Chapters 29 and 30 of the Lake County Code.

Appellants' Claim: The Appellants claim that the principal biological mitigation (e.g., "pre-construction survey/appropriate measures") is boilerplate. It lacks defined methods, qualifications, seasonal windows, objective species-specific buffers (including adjustments for noise and night lighting), monitoring frequency, public reporting, stop-work triggers, adaptive-management standards, and post-construction verification. CEQA allows limited performance-standard deferral only when the agency states clear, enforceable standards and commits to measures capable of meeting them. That threshold is not met. Nor can programmatic water-quality BMPs (e.g., the Cannabis General Order or CGP/SWPPP) substitute for species- and habitat-specific biological mitigation.

Response: The Appellants assertions here are conclusory with no specific factual background or supporting evidence, and therefore, cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).).

Pre-construction survey mitigation measures are common practices to mitigate potential impacts and has an enforceable component of utilizing a qualified biologist, defines the scope of the survey area, requires consultation with CDFW and/or USFWS to develop appropriate measures to avoid a "take", and identifies when the surveys need to occur.

CEQA requires agencies to evaluate a project's actual environmental effects, and part of that evaluation includes recognizing existing regulations that will reduce or avoid impacts. Agencies must consider "existing regulatory standards, permit requirements, and adopted mitigation programs" when determining the significance of project impacts.

Appellants' Claim: The Appellants claim that the project sits within a watershed targeted by state and regional investments intended to reduce harmful algal blooms and restore hydrologic function. Those efforts depend on limiting new sediment and nutrient inputs from steep, disturbed terrain. Absent delineation-informed runoff analysis and enforceable controls, the record does not disclose how project disturbance would interact with existing impairments and downstream restoration work—another gap that defeats reliance on an MND.

Response: The Appellants assertions here are conclusory with no specific factual background or supporting evidence of the Project's impacts related to these assertions, and therefore, cannot be substantial evidence. (See CEQA Guidelines § 15064(f)(5).).

Appellants' Claim: Bottom line. The Appellants claim that when the survey footprint omits most of the parcel; when prior clearing is not integrated into the baseline; when documented alterations to Class III streams occurred without an LSA Notification and agency site verification remains pending; when waters and wetlands are not delineated; when special-status species, corridor integrity, and cumulative watershed mechanisms are left untested; and when mitigation is non-specific and non-enforceable—CEQA does not permit approval based on a Mitigated Negative Declaration The legally defensible action is to reject the MND on the present record.

Response: The Appellants misrepresent the scope and purpose of CEQA and how the project was analyzed within the IS/MND. As discussed above and within the technical studies and documentation prepared for Poverty Flats, the proper project footprint was studied and evaluated.

The majority of the comments above by the Appellants relate to a technical scientific matter, are not made by an expert in the area, and therefore is not substantial evidence. (See *Protect Niles, supra,* 25 Cal. App. 5th at 1139.)

The Appellants calls for further studies without providing factual support for the contentions cannot be substantial evidence. (Parker Shattuck Neighbors, supra 222 Cal. App. 4th at 786.)

CEQA Guidelines §15064(f)(5): "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Chapter 7 - Hydrology & Water Supply

Appellants' Claim: This chaper asserts that the hydrologic record for the project contains multiple, unreconciled deficiencies that preclude CEQA compliance and undermine any conclusion of no significant impact. High Valley's water system is already under hydrologic stress: multiple monitored wells in the basin show declining groundwater levels; neighbors have reported drying wells over multiple years; and springs that historically flowed have ceased as irrigation and drought pressures intensified. The record includes expert observations documenting confined aquifer behavior with narrow water-bearing zones and lateral recharge pathways that make the basin highly sensitive to new withdrawals, especially at higher elevations.

Response: The Appellants use discussions and information regarding the High Valley Groundwater Basin provided as part of the Sourz and the Monte Cristo appeals as evidence to suggest that the Poverty Flats water use would have an impact on the High Valley Groundwater Basin. The Appellants make faulty conclusions based on a misunderstanding of the information regarding the local geology and groundwater formations.

It should be noted that Sourz was an 80-acre outdoor cannabis and processing project whose proposed footprint covered almost the entire valley. The Monte Cristo project proposed 22-acres of outdoor cannabis on the southern ridge of the valley. The Sourz project was denied by the Board of Supervisors while the Monte Cristo project was approved by the Board.

The well associated with the Poverty Flats project is NOT in the same aquifer system as the Sourz or Monte Cristo wells, thus using information from these projects is misleading. The Appellants utilize comments on different projects out of context and without providing evidence or factual support. The comments are speculation and unsubstantiated opinions and are not substantial evidence under CEQA. (See CEQA Guidelines §§ 15064(f)(5); 15384(a).)

The Hydrology Report that was prepared for Poverty Flats was prepared by the same licensed professional the Appellant cites on other projects, including the Sourz appeal. The Appellant misuses the information provided by this licensed professional, who included an evaluation of impacts to surrounding wells within the same groundwater formation and approximate recharge area as the Poverty Flats well.

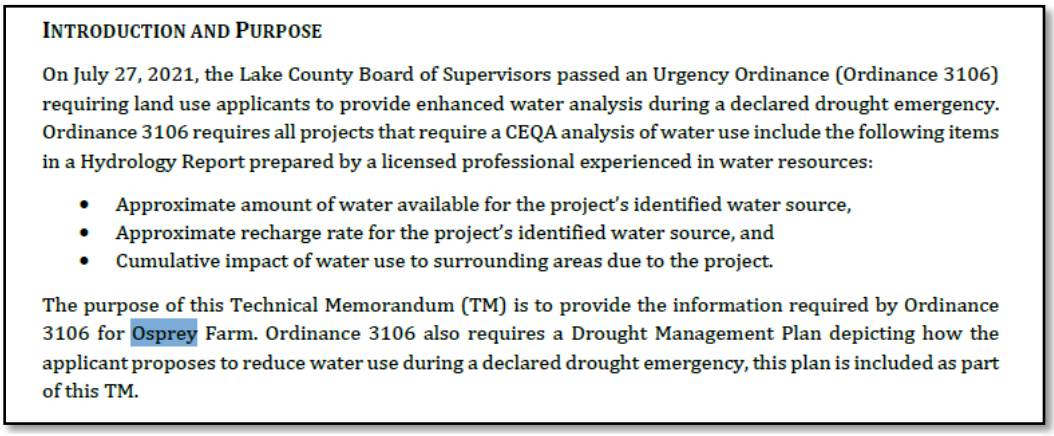
The Appellants fail to identify any site-specific factual or technical support to demonstrate there is an impact associated with Poverty Flats' water use. The Appellants' assertions relate to a technical scientific matter, and are not made by an expert in the area and is therefore not substantial evidence. In addition, the Appellants' calls for further studies without providing factual support cannot be substantial evidence (Parker Shattuck Neighbors, supra 222 Cal. App. 4th at 786.).

The Poverty Flats Hydrology Report includes a review and discussion of potential wells within 0.5 miles of the Poverty Flats well and in the same water bearing formation. The only well within this area is a well associated with approved UP 20-21 for outdoor cannabis cultivation, which is in the same water bearing formation and recharge area, was included in the cumulative impact analysis.

Argument, speculation, unsubstantiated opinion or narrative asserted by the Appellants do not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants claim that the hydrology report relies on generalized assumptions, recycled boilerplate text from other projects, and vague conclusions not supported by field data (not supported by a licensed or certified professional). The report incorrectly identifies the project as "Osprey Farm" in several sections, imports well reports from unrelated sites, and mirrors the structure and language of prior hydrology filings nearly word-for-word. These errors signal a failure to conduct site-specific analysis and heighten concern that underlying assumptions, equations, and projected outcomes were not tailored to conditions at Poverty Flats.

Response: This is misleading and irrelevant. The term "Osprey Farm" is unintentionally mentioned only one time, at the very beginning of the report within the introduction describing the Lake County Ordinance 3106 (Figure 11).



INTRODUCTION AND PURPOSE

On July 27, 2021, the Lake County Board of Supervisors passed an Urgency Ordinance (Ordinance 3106) requiring land use applicants to provide enhanced water analysis during a declared drought emergency. Ordinance 3106 requires all projects that require a CEQA analysis of water use include the following items in a Hydrology Report prepared by a licensed professional experienced in water resources:

- Approximate amount of water available for the project's identified water source,
- Approximate recharge rate for the project's identified water source, and
- Cumulative impact of water use to surrounding areas due to the project.

The purpose of this Technical Memorandum (TM) is to provide the information required by Ordinance 3106 for Osprey Farm. Ordinance 3106 also requires a Drought Management Plan depicting how the applicant proposes to reduce water use during a declared drought emergency, this plan is included as part of this TM.

Figure 11. Screen capture from Project's Hydrology Report.

The Appellants mention the use of boilerplate language used in the reports from Poverty Flats and the adjacent High Valley Oaks (UP 20-21) project, which are in the same formation and within in a geologic area with the same features. In addition, both reports were prepared by the same licensed professional. Incorporating information factual to both projects does not negate substantial evidence.

CEQA does not require perfection. Instead, the courts apply the "prejudicial error" standard. Insubstantial or de minimis errors are not prejudicial and do not invalidate an approval. These include minor wording mistakes, technical mistakes that don't hide information, small data inconsistencies that don't change conclusions, and harmless procedural omissions. There are multiple cases supporting this.

Appellants' Claim: The Appellants claim that the record lacks a calibrated pump test, transmissivity and storativity data, static water levels at drilling, drought-year modeling, connectivity testing, baseline hydrographs, and a complete well inventory. Without this information, no evidence-based analysis of drawdown, interference, basin storage, or recharge capacity can be made. Assertions that the well will produce reliably based on a short air-lift test are inadequate, especially when the same engineer has previously criticized such testing as overstating capacity and omitting critical aquifer data. The proposed storage volume—approximately 79,000 gallons—is only a few days' supply and does not demonstrate long-term reliability.

Response: See responses above. The Appellants make these assertions without evidence that the Poverty Flats water use would have an impact. The Poverty Flats Hydrology Report provides a detailed analysis of water use, impacts to surrounding wells, and recharge during drought conditions. The report concluded, "*Since there is sufficient groundwater supply and annual recharge to meet the project's demand during average and dry years, the project is situated in*

an area of extremely low population and well densities, there is little impact to surrounding wells – with the implementation of water monitoring, reporting, conservation measures, and drought management practices, the proposed project water use would not have a cumulative impact on the surrounding area".

Argument, speculation, unsubstantiated opinion or narrative asserted by the Appellants do not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants claim that water demand is also underestimated and inconsistently presented. The project claims a 180-day growing season but divides estimated water usage into two 117-day periods, an unexplained and mathematically incorrect assumption that calls data reliability into question. The filing also omits the project's springs, catchment details, and rainfall-based supply estimates from the analysis, despite referencing their existence elsewhere. No evidence shows that the Regional Water Board has cleared potential catchment use, and no calculations demonstrate how rain capture would integrate with supply or drought contingencies.

Response: There was a minor typographical error in the table's title presenting the estimated demand. The demand was determined based on the typical outdoor cultivation seasons in Lake County are about 150 days, an 180-day season was used as a conservative estimate. In the Hydrology Report, estimated projected monthly water use based on vegetative (65% or 117 days) and flowering (35% or 63 days), which totals 180 days.

The State Water Board's Cannabis Cultivation Policy, adopted pursuant to California Water Code section 13149 and applied to commercial cannabis cultivators under California Code of Regulations, title 4, section 16304, subdivision (a)(1), requires all cannabis cultivators to obtain a water right from the State Water Board before diverting from a surface water or subterranean stream for cannabis cultivation purposes. A water right is not required for rainwater catchment.

Appellants' Claim: The Appellants claim that mitigation and contingency measures are framed as future possibilities—reducing canopy, adding storage, seeking an alternative source—but they name no triggers, permits, timelines, or enforceable commitments. CEQA requires binding conditions with performance standards, monitoring protocols, and remedies, not aspirational lists.

Response: The Applicant disputes this assertion. As required by Ordinance 3106, the project included a Drought Management Plan depicting how the applicant proposes to reduce water during a declared drought emergency. The project includes Conditions of Approval (Mitigation Measures HYD-1 through HYD-3) that require the project to conduct seasonal static water level monitoring, conduct metering of water use, and adhere to measures in the Drought Management Plan. If groundwater levels drop significantly, a revised Water Management Plan is required, including revised water budget and water mitigation strategies, for review and approval prior to continuing operation. For easy reference, the Mitigation Measures are provided below.

HYD-1: The applicant shall conduct seasonal static water level monitoring. The water level in each of the used wells shall be measured and recorded once in the Spring, prior to cultivation activities, and once in the fall, after cultivation is complete for the season. Records shall be kept and reported to the County and state agencies as part of the Project's annual reporting requirements.

HYD-2: The applicant shall have a meter to measure the amount of water pumped on each well. The applicant shall take weekly recordings of the amount of water used during

extraction. In addition, water levels of each well shall be monitored weekly during well usage. Records of weekly water levels in each well shall be kept, and elevations shall be reported to the County and state agencies as part of the Project's annual reporting requirements. If water levels are dropping significantly, a revised Water Management Plan, including a revised water budget and water mitigation strategies, shall be prepared and submitted to the County for review and approval prior to continuing operation.

HYD-3: The applicant shall adhere to the measures described in the Drought Management Plan (Hydrology Report, 2023) during periods of a declared drought emergency. In addition, in the event that a well is unable to supply required water for the Project, the applicant shall either (1) reduce the amount of cultivation and/or length of cultivation season, as appropriate, (2) install additional water storage, (3) implement a rainwater catchment system, or (4) develop an alternative, legal water source in coordination with Lake County and Water Resource agencies. In no event shall water be diverted from surface waters.

Appellants' Claim: The Appellants claim that mitigation monitoring and reporting program lacks technical detail, enforcement mechanisms, and quantitative thresholds for curtailment or scale-back.

Response: This is speculative and the Appellants provide no evidence supporting this assertion.

Appellants' Claim: The Appellants claim that cumulative impacts evaluation is deficient. The project's tally of cannabis sites within one and three miles is not accompanied by any data on well depth, yield, pumping rates, storage capacity, recharge area, or demand totals. Large users in High Valley, including Brassfield Estate Vineyards, are excluded altogether. No dry- or multiple-dry-year cumulative modeling is performed, and the analysis does not incorporate neighbor wells, basin-wide withdrawals, or interference scenarios. These omissions directly contravene CEQA's cumulative impact requirements and recent guidance from the Department of Cannabis Control, which identifies groundwater diversion and basin interaction as issues of "particular importance."

Response: This is speculative. There is no evidence provided by the Appellants that these cannabis sites have wells in the same formation as the Poverty Flats well. A cumulative impact and surrounding well analysis were conducted within in the Poverty Flats Hydrology Report. The cumulative water demand in the recharge area was estimated to be 16 acre-feet per year (AFY). Recharge was estimated as 31.3 AFY during the driest year on record. The recharge area was determined based on topography and the screened depth of the project well and nearest well at High Valley Oaks. Also, information from the water use and well performance over the last five years from the neighboring High Valley Oaks project was used to support the analysis and conclusions provided in the Poverty Flats Hydrology Report.

It should be noted that the demand estimate is very conservative. The estimate is based on an 180-day outdoor cultivation season. The outdoor season in Lake County is typically shorter, between 120 to 150-days. Also, the project has applied for 5.69 acres of canopy within 5.69 acres of cultivation area. When aisle space is taken into account, the actual canopy area achievable will be between 60% and 70% of the cultivation area or up to about 4-acres of canopy.

The conservative estimate, based on canopy, is 3.65 million gallons per year (11.2 AFY) with a maximum daily demand of about 27,850 gallons during peak season. Taking out the conservativeness, by reducing to a 150-day season and 70% of the cultivation area to allow for aisle space, the demand estimate reduces by 40% to about 2.12 million gallons per year (6.5 AFY) and a maximum daily of 16,500 gallons. The irrigation storage proposed, 79,000 gallons, accounts for over 4 days of storage during peak season. There will also be an additional 15,000

gallons of fire water storage.

The Poverty Flats Hydrology Report demonstrated no cumulative impact for a conservative scenario, while the project will operate at a much lesser scale of water use.

The Poverty Flats engineer estimated (and presented to the Planning Commission) the radius of influence of the Poverty Flats well, which is about 350 feet. The closest neighboring well is over 2,500 feet away.

Since there is sufficient groundwater supply and annual recharge to meet the project's demand during average and dry years, the project is situated in an area of extremely low population and well densities, there is little impact to surrounding wells – with the implementation of water monitoring, reporting, conservation measures, and drought management practices, the proposed project water use would not have a cumulative impact on the surrounding area.

Appellants' Claim: The Appellants claim that the record contains internal inconsistencies. The IS/MND in some places describes a single well as the project's source and in others refers to multiple wells. These contradictions affect analysis of drawdown, demand, monitoring, and mitigation obligations. Without a clear, stable, and finite description of groundwater sources, no accurate assessment can occur. A CEQA document must be internally consistent and align with its technical studies; here, it does not.

Response: The project description in the IS/MND clearly states that irrigation will be sourced from an existing groundwater well (Figure 11). As discussed above, CEQA does not require perfection. Instead, the courts apply the "prejudicial error" standard. Insubstantial or de minimis errors are not prejudicial and do not invalidate an approval. These include minor wording mistakes, technical mistakes that don't hide information, small data inconsistencies that don't change conclusions, and harmless procedural omissions. There are multiple cases supporting this.

The Project proposes to use the following:

- Up to 247,800 sq. ft. of outdoor canopy area (5.69 acres) within cultivation area of approximately 5.69 acres;
  - Cultivation could also occur in temporary agricultural exempt hoop-houses, if the requirements of Ordinance No. 3132 are met.
- Up to 8,700 sq. ft. of ancillary plant propagation areas in greenhouses;
- A 2,400 sq. ft. processing building with an ADA restroom;
- Security fence around the cultivation area, 6 ft. high wire fences, constructed of heavy gauge wire fence (or similar), with steel gates and padlocks, and a security system at each cultivation area;
- Irrigation water sourced from an existing groundwater well;
- Water storage in up to twenty-five (25) 3,000-gallon water tanks and one (1) 4,000-gallon water tank (total of 79,000 gallons of water storage);
- A minimum of 12,500 gallons of designated fire suppression water storage and fire risers;

Figure 12. Screen capture from IS/MND project description.

Appellants' Claim: The Appellents claim that referring to the fact that the nearby groundwater basin is a low priority basin is used as an excuse to not conduct a deeper analysis is incorrect as a matter of law. SGMA status does not supplant CEQA's requirement to demonstrate long-term, reliable supply under dry and multiple-dry-year scenarios.

Response: See responses above. This is speculative and no evidence to the contrary was provided. The record demonstrates more than sufficient recharge to meet the demand during the driest year on record.

Appellants' Claim: The Appelloants assert that these are deficiencies that leave the County with no substantial evidence to support a finding of no significant hydrologic impact or a reliable long-term water supply. The omissions, inconsistencies, and recycled content require denial of the Major Use

Permit. Any attempt to revise the record after approval would trigger preparation of a full Environmental Impact Report due to the material analytical gaps and changes required.

Response: See responses above.

The comments above by the Appellants relate to a technical scientific matter, are not made by an expert in the area, and therefore is not substantial evidence. (See *Protect Niles, supra,* 25 Cal. App. 5th at 1139.)

The Appellants calls for further studies without providing factual support for the contentions cannot be substantial evidence. (Parker Shattuck Neighbors, supra 222 Cal. App. 4th at 786.)

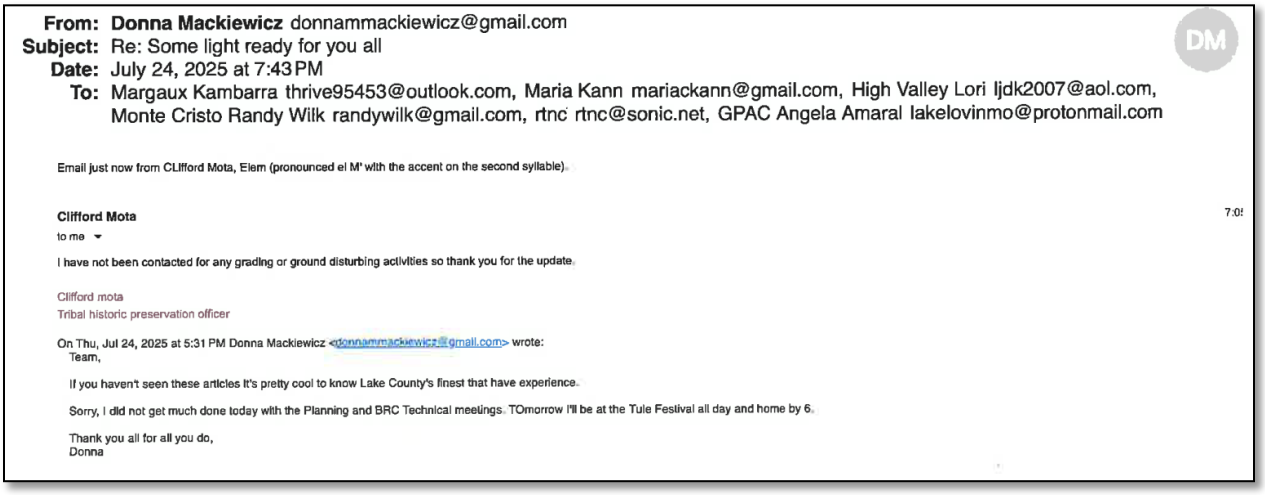
CEQA Guidelines §15064(f)(5): "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Chapter 8 - Cultural Resources and Tribal Consultation

Appellants' Claim: This chapter asserts that the administrative record for the project reveals multiple procedural and substantive violations of Assembly Bill 52 (AB 52) and the California Environmental Quality Act (CEQA). Although Lake County initiated contact with the Elem Indian Colony, the record confirms that consultation was not completed in good faith, that the County misrepresented the outcome to the Planning Commission, that consultation responsibilities were improperly delegated to the project applicant, and that the cultural baseline relied upon in the Mitigated Negative Declaration (MND) was ethnographically inaccurate and incomplete. Collectively, these deficiencies amount to a prejudicial abuse of discretion and require recirculation or preparation of a full Environmental Impact Report (EIR).

Consultation under AB 52 began when Tribal Historic Preservation Officer (THPO) Clifford Mota of the Elem Indian Colony participated in a site visit with the project applicant. No agreement or mitigation measures were reached, and when grading later commenced, Mr. Mota confirmed by email that he had not been notified of any grading or ground-disturbing activities following his site visit and non-agreement. This failure to re-engage the Tribe after initial contact demonstrates that the County did not complete the government-to-government dialogue, violating the express statutory prohibition against adopting an MND before consultation has been fully resolved.

Response: This is a misrepresentation of the record. The Appellant is referring to an email they sent to the THPO on July 24, 2025 (Figure 12). As discussed in Chapter 4, grading activities were conducted under an approved grading permit (GR22-12) and were not associated with UP 23-09 and the AB52 consultation conducted as part of processing of UP 23-09. GR22-12 did not require tribal notification.



From: **Donna Mackiewicz** donnammackiewicz@gmail.com
Subject: Re: Some light ready for you all
Date: July 24, 2025 at 7:43 PM
To: Margaux Kambarra thrive95453@outlook.com, Maria Kann mariackann@gmail.com, High Valley Lori ljdk2007@aol.com, Monte Cristo Randy Wilk randywilk@gmail.com, rtnc rtnc@sonic.net, GPAC Angela Amaral lakelovinmo@protonmail.com

DM

Email just now from CLifford Mota, Elem (pronounced el M' with the accent on the second syllable).

Clifford Mota 7:0

to me

I have not been contacted for any grading or ground disturbing activities so thank you for the update.

Clifford mota
Tribal historic preservation officer

On Thu, Jul 24, 2025 at 5:31 PM Donna Mackiewicz <donnammackiewicz@gmail.com> wrote:
Team,

If you haven't seen these articles It's pretty cool to know Lake County's finest that have experience.

Sorry, I did not get much done today with the Planning and BRC Technical meetings. TOmorrow I'll be at the Tule Festival all day and home by 6.

Thank you all for all you do,
Donna

Figure 13. Email correspondence referenced by the Appellant.

Appellants' Claim: The Appellants assert that the County relied on a mitigation measure in the April 25 2025 ISMND directing the applicant to conduct "tribal sensitivity training." By substituting a private training exercise for formal consultation, the County abdicated its legal obligation to lead sovereign-to-sovereign discussions. AB 52 and CEQA require that consultation be conducted by the lead agency, not the applicant, and courts have repeatedly held that delegating such duties constitutes a procedural error.

Response: This is a misrepresentation of the record. The County sent notification as described on page 15 of the IS/MND "*The proposed project was sent to Notification of the project was sent to Big Valley Rancheria, Cortina Rancheria, Elem Colony, Koi Nation, Mishewal-Wappo, Middletown Rancheria, Redwood Valley Rancheria, Robinson Rancheria, Scotts Valley Band of Pomo Indians, Habematolel Pomo of Upper Lake Tribe, and Yocha Dehe Wintun Nation on December 20th, 2023. Two tribes responded, not requesting consultation, and as of the date of this document, no further responses have been received and no consultation has been formally requested*."

On page 69, the IS/MND goes on to say, "*The Proposed project was sent to Big Valley Rancheria, Cortina Rancheria, Elem Colony, Koi Nation, Mishewal-Wappo, Middletown Rancheria, Redwood Valley Rancheria, Robinson Rancheria, Scotts Valley Band of Pomo Indians, Hopland Band of Pomo Indians, Habematolel Pomo of Upper Lake Tribe, and Yocha Dehe Wintun Nation on December 20th, 2023. No adverse comments have been received, and no formal requests for consultation have been submitted to date; however, Elem Tribe contacted former staff involved in this project via telephone. Staff coordinated a meeting between the applicant and Tribe, which occurred on January 8, 2024. An agreement was not reached between the two parties. The consultation process concluded on the same day.*"

The Applicant agreed to meet with THPO, Clifford Mota, onsite to facilitate a site tour. Monitoring was discussed during this visit, and the following mitigation measure was incorporated into the IS/MND. The Applicant intends to contract with the Elem THPO to provide the required training as required by TCR-1.

Mitigation Measure TCR-1: All on-site personnel of the project shall receive tribal cultural resource sensitivity training prior to initiation of ground disturbance activities on the project. The training must be according to the standards of the NAHC or the culturally affiliated tribe(s). Training will address the potential for exposing subsurface resources and

procedures if a potential resource is identified. The training will also provide a process for notification of discoveries to culturally affiliated tribes, protection, treatment, care and handling of tribal cultural resources discovered or disturbed during ground disturbance activities of the Project. Tribal monitors will be required to participate in any necessary environmental and/or safety awareness training prior to engaging in any tribal monitoring activities for the project.

In addition, the Applicant has signed a Cultural Monitoring Agreement with the Elem Indian Colony of Pomo Indians.

Appellants' Claim: The Appellants assert that the County compounded these errors at the May 22 2025 Planning Commission hearing, where staff presented a slide titled "AB 52 Tribal Notification" stating that "consultation with Elem Colony was conducted on January 8 2024 and concluded the same day," with "no agreement reached". This public statement misrepresented an incomplete, single-day contact as a finished consultation process, misleading decision-makers and the public into believing the County had met its statutory obligations. The Appellants assert that no continuing dialogue, memorandum of understanding, or mitigation discussion occurred.

Response: See discussion above. The Applicant initiated the site visit immediately and the mitigation measure above resulting from the site visit was incorporated into the record.

Appellants' claim that the County and the Applicant failed to follow the procedures established in CEQA for tribal consultation. Applicant disputes this claim. As established in the relevant statutory provisions, Public Resources Code sections 21080.3.1, 21080.3.2 and 21082.3, the County consulted with the local Tribes and incorporated a mitigation measure as requested. Specifically, as far as consultation is concerned, the consultation is "concluded" when the parties agree to measures to mitigate or avoid potentially significant effects. (Pub. Resources Code § 21080.3.2(b)(1).) Here, the County consulted with the Tribes, a site visit was performed with a Tribal Representative and the Applicant, and a mitigation measure was crafted and incorporated in the IS/MND to address potential concerns and mitigate potentially significant environmental effects. As such, AB 52 consultation was performed and concluded properly, and the Appellants' contentions otherwise should be disregarded

Appellants' Claim: The Appellants assert that the Natural Investigations 2023 Cultural Assessment upon which the County relied is ethnographically incorrect. It identified the Patwin as the cultural group associated with the project area, contrary to historical and tribal sources confirming the Elem Pomo as the ancestral inhabitants [A10]. The report also omitted recognized tribal cultural resources including Schindler Creek (Cawb-die), a Clear Lake hitch spawning ground; High Valley, a traditional multi-tribal gathering area; and Timber Road, a historic travel route linking inland and coastal tribes. The Appellants assert that by accepting this assessment and excluding verified tribal participation in field review, the County adopted a false environmental baseline and failed to identify or evaluate significant tribal cultural resources.

Response: As stated above, the required Tribes were consulted, and provided mitigation measures to address concerns of potentially significant environmental impacts. Appellants fail to cite authority showing that failing to mention a Tribe in the excerpts of the Cultural Resources Report is a significant impact, especially considering the Tribe in question conducted the site visit and helped develop the mitigation measure. As such, this comment should be disregarded.

Appellants make references to numerous tribal cultural resources that they allege exist or occur on the Project site. However, Appellants fail to cite any authority demonstrating these resources exist on the Project site. Moreover, Appellants are not tribal cultural resource experts, members

of the local Tribe, or demonstrate any expertise in this field. As such, this is unsubstantiated opinion and cannot be substantial evidence. (See CEQA Guidelines §§ 15064(f)(5); 15384(a).)

Chapter 9 - Slopes & Survey

Appellants' Claim: This chapter asserts that the application rests on two foundational errors that independently require denial of the Major Use Permit and, at minimum, a full Environmental Impact Report (EIR): (1) the project is sited on steep terrain—including areas at or above fifty percent slope—while the record repeatedly characterizes the cultivation footprint as "flat, ridgetop"; and (2) the County accepted an imprecise, non-survey mapping base for a location-dependent project, even after its own County Surveyor and the Bureau of Land Management (BLM) called for a professional boundary survey. Together, these defects render the IS/MND's significance findings speculative and unenforceable.

Response: As noted on the site plans, a boundary survey was conducted by Stewart Land Services, a licensed land surveyor (PLS 9644). Also, the mapped topography on the site plans is based on the NOAA Digital Coast Lidar dataset, which is high-resolution (6 inches) topographic data which allows for detailed, location-based analysis and slope determination.

BLM's comment is (see Agency Comments), "*We <u>recommend</u> that permit applicants adjacent to or near BLM lands have their parcels surveyed by a professional land surveyor so that their operations do not trespass upon or cause impacts to federal lands*". This is only a recommendation. As the cultivation areas are greater than 1,500 ft west of BLM land, there is no likelihood of trespass.

Appellants' Claim: The Appellants assert that the project materials acknowledge an average slope near forty percent and describe south- and southwest-facing montane topography. The site plans confirm the cultivation pads, access roads, and fencing lines are not on level ridgetop benches but drape across hillslopes with close contour spacing, indicating steep grades. New slope evidence shows portions of the proposed disturbed polygons intersecting fifty percent or greater slopes (not supported by a licensed or certified professional).

Response: See response above. Slopes for the Project were determined based on detailed, site-specific topographic mapping by a licensed engineering firm. Appellant makes this ascertain without evidence of any kind to the contrary.

Appellants' Claim: The Appellants assert that the Water Boards' cannabis framework, anything above thirty percent does not meet "Low Risk" designation and triggers heightened controls; slopes at or above fifty percent foreclose Tier-2 enrollment altogether unless the applicant pursues a separate, site-specific discharge permit pathway.

Because CEQA forbids curing fundamental eligibility and siting flaws after approval, the Tier-2 premise fails as a matter of law. They recommend appropriate action denial and preparation of an EIR.

Response: Water Board staff determined the tier level for enrollment, this is outside of Lake County's jurisdiction.

Appellants' Claim: The Appellants assert that the IS/MND repeatedly claims the cultivation sites are "flat, ridgetop areas" with little risk from landslides or runoff. They assert that the claim is contradicted by the mapped placements of pads and roads on the south and southwest faces below the ridge crest, where steep grades would require cut/fill and slope-length breaks to function. The use generalized USDA soil mapping to opine that there is severe erosion potential

across the identified slope bands. They assert that the County GIS slope maps place the project squarely on slopes that demand a different hydrology/erosion analysis and different performance standards than those assumed (not supported by a licensed or certified professional).

Response: See responses above.

Appellants' Claim: They assert that the base mapping is not survey grade and that this is a location-dependent project. Buffers, enrollment eligibility, grading limits, and interjurisdictional boundaries all rise or fall on where the lines are. Yet the IS/MND figures and plan sheets rely on the County's parcel viewer GIS base and expressly disclaim boundary survey control. They state that the County Surveyor has already told the Community Development Department that parcel-viewer linework is not acceptable to establish legal boundaries or setbacks and directed the use of course-and-distance legal descriptions with a professional survey. They state that BLM—concerned about federal land adjacency—likewise required a survey to prevent off parcel disturbance. Overlay comparisons in the record indicate at least two cultivation sites are not fully contained within the subject parcel, raising both setback violations and potential trespass. Without a stamped boundary and topographic survey, the County cannot credibly assert that disturbance areas lie on the correct parcel, outside required buffers, or beyond federal property (not supported by a licensed or certified professional).

Response: See responses above.

Appellants' Claim: The Appellants assert that CEQA requires an accurate, stable, and finite project description and forbids speculative significance findings. Here, the central predicates for the IS/MND's "less-than-significant" conclusions—flat ridgetop siting, low-risk enrollment, and buffer compliance—are not supported by substantial evidence. The unresolved contradictions between the narrative and the maps, combined with the survey deficiencies, make it impossible to verify basic eligibility (e.g., Tier-2 availability), to size and enforce slope-responsive mitigation, or to confirm buffer and ownership geometry. They assert that these are not minor technicalities; they go to the heart of whether impacts were lawfully analyzed and whether any adopted conditions could be enforced (not supported by a licensed or certified professional).

Response: See responses above. The site was surveyed by a licensed land surveyor. The mapping provided by the Appellant is incorrect and relies on County GIS data, which is inaccurate.

Appellants' Claim: The Appellants assert that given the presence of ≥50% slopes within the proposed disturbance, the absence of a certified boundary/topographic survey despite repeated agency direction, and the clear mismatch between the IS/MND narrative and the project's own drawings, the County must deny the Major Use Permit and require the project to prepare an EIR (not supported by a licensed or certified professional).

Response: See responses above.

CEQA Guidelines §15064(f)(5): "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Chapter 10 - Undefined Solar / Electrical Component

Appellants' Claim: This chapter asserts that the April 25 2025 ISMND) presents a fundamentally unstable and incomplete description of the project's solar and electrical systems. It describes the operation as "solar powered with a generator back-up," yet provides no technical data defining capacity, configuration, interconnection, or load requirements. They assert that in a remote, off-grid location

where PG&E service is unavailable, this omission conceals the true scale of generator reliance and prevents meaningful evaluation of air-quality, fire-risk, and energy-supply impacts. The assert that no electrical-load analysis or comparison between solar generation and operational demand was performed. They assert that County accepted unsubstantiated assurances that a small 5.5 kW array could power irrigation pumps, lighting, and security systems and that this assumption is technically implausible and unsupported by substantial evidence, violating CEQA (not supported by a licensed or certified professional).

Response: This is speculative. Appellant makes this ascertain without evidence of any kind to the contrary. The project is only allowed to use a generator for backup purposes and proposes onsite solar for all other purposes. The project does not propose using a generator for anything other than backup purposes as described in the IS/MND.

Appellants' Claim: The Appellants assert that the ISMND omits evaluation of generator emissions, conduit trenching, or solar-array siting within a Very High Fire Hazard Severity Zone—each a foreseeable source of environmental impact.

Response: This is speculative. Appellant makes this ascertain without evidence of any kind to the contrary.

Appellants' Claim: The Appellants assert that the County's disclosure mischaracterizes the project as "solar powered" while downplaying continuous generator use, resulting in an inaccurate portrayal of operational emissions and fire-safety risks. They assert that the required agency consultations with Cal Fire and the Lake County Air Quality Management District never occurred, and no review was documented for fire ignition hazards or generator exhaust emissions. These omissions constitute procedural and analytical violations.

Response: This is speculative. Appellant makes this ascertain without evidence of any kind to the contrary. The project does not propose continuous generator use. County staff sent out referrals for comment on the project to both CalFire and the Lake County Air Quality Management District.

Appellants' Claim: The Appellants assert that the solar-generator design deficiencies appear across multiple High Valley cannabis projects, yet the County performed no cumulative analysis. They assert that the ISMND fails to ensure emergency power for irrigation or fire-suppression systems during PG&E Public Safety Power Shutoff (PSPS) events. Site and grading plans show multiple solar arrays, electrical panels, and conduit trenches that were never analyzed for construction or vegetation impacts — nullifying adopted mitigation measures for fire safety, biological resources, and cultural protection.

Response: This is speculative. Appellant makes this ascertain without evidence of any kind to the contrary.

Appellants' Claim: The Appellants assert that because the ISMND lacks verifiable data or consultation regarding its solar and generator systems, the project description is not "stable, accurate, or finite." They assert that the County's approval rests on false and incomplete disclosure of energy infrastructure and safety implications. These deficiencies violate CEQA Guidelines. They suggest the Board deny the the project.

Response: This is speculative. Appellant makes this ascertain without evidence of any kind to the contrary. Potential solar array locations were included on the site plans. The project, as described with solar power and a backup generator, was sent out to both the Chief Building Official and the CalFire for review and comment and no concerns were identified.

CEQA Guidelines §15064(f)(5): "Argument, speculation, unsubstantiated opinion or narrative, or

evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Chapter 11 – Onsite Septic System

Appellants' Claim: This chapter asserts that the record fails to demonstrate the existence of a feasible, code-compliant onsite wastewater treatment system (OWTS) to support proposed indoor operations. The IS/MND proceeds without identifying either the location and condition of the existing, fire-damaged septic system or the design and placement of a proposed replacement leach field yet concludes that septic impacts would be "less than significant." Because these essential facts were missing at the time of project approval, the decision rests on deferral rather than on substantial evidence, rendering the MND legally inadequate. A defensible outcome would have been to deny the Major Use Permit or to set aside the approval pending proper analysis.

Response: Projects are not required to demonstrate a code-compliant OWTS in the IS/MND. Specifically, the IS/MND evaluates, "Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?"

It was identified in the IS/MND that the Project would include a septic system, "*The proposed 2,400-sq. ft. processing facility would include an ADA-compliant restroom for employee use. Construction of this facility would warrant plumbing and the installation of a septic system. Per discussions with Environmental Health Division, the applicant would likely apply for a new septic permit, in addition to the Major Repair Permit, to repair the old system and install the proposed new system. Prior to installation, the applicant would be required to obtain a permit and complete a Site Evaluation through the Environmental Health Division. The permit and Site Evaluation process would ensure that the proposed type and size of the septic system, which has not yet been designed, would be appropriate and suitable for the property topography, soils, size, and vegetation. This would include a septic suitability investigation, complete with test pits to understand soil profiles, slope gradient and direction, etc.*". It is reasonable to assume that the septic system would be in the vicinity of the proposed structure and designed according to the County's OWTS standards.

Construction of the 2,400 square foot building for processing triggers the requirement for ADA-compliant restrooms and the need for a septic system. If a processing building is not constructed, a septic system would not be required.

The IS/MND states that if the Applicant chooses not to build the processing building OR if the Site Evaluation demonstrates unsuitability for a septic system, then there would be no processing onsite.

The IS/MND concluded that the Project would not have soils incapable of supporting an onsite wastewater treatment system because the Proposed project would obtain a Major Repair Permit and Site Evaluation through the Environmental Health Division, which would require onsite testing and determination of soil suitability, otherwise, the Proposed project would continue operating on portable restrooms. Therefore, a less than significant impact would occur.

Appellants' Claim: The Appellants assert that without specifying the exact location of the OWTS or leach field, the County could not evaluate soils, slopes, groundwater separation, setbacks, or proximity to wetlands and streams. They assert that this omission is not a post-approval detail but an informational failure that prevents agencies and the public from understanding potential impacts and the project description is unstable and binary: the record contemplates either (a) installing a new system to enable

indoor processing or (b) abandoning indoor operations if the system proves infeasible. CEQA requires analysis of the whole of the project at the time of approval; alternative outcomes of this magnitude demanded recirculation prior to action.

Response: See responses above. The OWTS would be designed and permitted as part of the building permit application process for the 2,400 square foot building and would be required to follow all Lake County rules and regulations, which are well known and established. This information was provided in the IS/MND as part of the analysis and significance determination.

The Appellants' claim is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellant asserts that the project fails to demonstrate compliance with basic building and plumbing standards. Occupied workrooms cannot lawfully rely on portable toilets. The California Plumbing and Building Codes, along with workplace sanitation regulations, require functioning, code-compliant sanitary facilities connected to an approved OWTS or equivalent. Because septic feasibility and location remain unknown, the record fails to show that indoor processing areas can be legally occupied or operated. In addition, the record ignores the physical and environmental consequences of disturbing or replacing the legacy, fire-damaged system, which likely involves excavation, grading, erosion potential, and possible contamination requiring mitigation.

Response: The 2,400 square-foot building cannot be constructed without an approved building permit. An approved building permit requires a permitted OWTS, thus, the project would be in compliance with approved building permits.

The Appellants' claim is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants assert that these omissions are prejudicial because they eliminate the factual basis needed for any significance determination. They assert that the IS/MND defers septic feasibility to a later stage, promising to determine details after approval—an approach CEQA expressly forbids when the deferred study defines whether an impact is significant. This deferral also leads to operational uncertainty: the County's "if infeasible, abandon indoor processing" contingency changes the project's scope without analyzing downstream or cumulative effects such as altered wastewater volumes, worker facilities, and haul patterns.

Response: See responses above.

Allowed uses, without a use permit, on the property, under the current zoning of the property (RL – Rural Lands), allow for a single-family dwelling, second unit, and farm labor quarters; all of which would require an OWTS. The proposed OWTS to support two full-time employees is of the same magnitude as what is already principally permitted onsite.

If the 2,400 square foot building is not constructed, the Project will continue to operate lawfully using portable restrooms. It is the construction and use of the 2,400 square foot building for processing that triggers the requirement of restrooms with a permitted OWTS. The project approval and operation are not contingent upon building the 2,400 square foot building.

The Appellants' claim is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants assert that the record should have included: (1) mapped locations of both the damaged and proposed systems with setbacks to wells, streams, wetlands, and property lines; (2) site-specific data on soils, percolation, groundwater separation, and slope to confirm feasible design and disturbance limits; (3) a California Plumbing Code/Building Code fixture count and workplace

sanitation analysis tied to a verified OWTS connection; (4) a decommissioning and impact plan for the legacy system; and (5) a downstream and cumulative water-quality analysis consistent with the Basin Plan and State OWTS Policy. None of these elements appear in the IS/MND, leaving its "less-than-significant" conclusion without factual foundation.

Response: The Appellants claim is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants assert that the project description was incomplete and the required evidence was not before decision-makers, the MND cannot lawfully support approval. They assert that conditioning future studies or septic determinations cannot cure this defect; CEQA requires substantial evidence before approval. The record's unstable description, missing technical data, and unverified assumptions regarding sanitary infrastructure collectively demonstrate that the County approved a project without analyzing a feasible or lawful wastewater system. They suggest the Board deny the project and require an EIR because of the septic system.

Response: The Appellants claim is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Chapter 12 - Project Well

Appellants' Claim: This chapter asserts wether the Project's on-site well was lawfully classified, permitted, constructed, sealed, and operated under California Water Code, DWR Bulletin 74 (Well Standards), and County ordinances, and whether the administrative record contains substantial evidence supporting the County's CEQA findings. They assert that the well was misclassified, there are gaps in the well documentation, and that there was non-compliance with mandatory standards, rendering the approval legally insufficient and unsupported by substantial evidence.

Response: See below.

Appellants' Claim: The Appellants assert the Project treated the well as domestic/low-intensity when the foreseeable use is industrial/public (project-serving). That misclassification is not a labeling issue—it defines the governing standards (sanitary seal design, construction details, setbacks, surface protection, reporting, and operating approvals). By analyzing the wrong class, the County narrowed the regulatory lens, bypassed mandatory criteria, and violated CEQA's requirement for an accurate, stable, and finite project description.

Response: The project well was drilled, constructed, and permitted for the correct use following proper well drilling standards (Bulletin 74/Water Code) by a licensed well driller.

- The well was drilled, constructed, and permitted as an "Irrigation" well by a licensed well driller.
- The well permit was issued by the County Environmental Health Department on May 22, 2022.
- Project does not propose industrial uses (e.g., washing, extraction, etc.). Proposed uses are agricultural or ancillary to agricultural activities.

Appellants' Claim: The Appellants assert that there is missing proof of Compliance with Bulletin 74 / Water Code and that the file cites general obligations to "comply," but lacks verifiable, project-specific evidence for the well as actually used.

Response: See responses above and below.

Appellants' Claim: The Appellants assert that there is no demonstrated annular seal depths/materials, surface pad, or sanitary seal details consistent with industrial/public use.

Response: The well was permitted by the County and installed by a licensed well driller following required standards. The well is not an industrial well.

Appellants' Claim: The Appellants assert that if the well changed status, the record lacks required conversion permits or destruction/sealing approvals.

Response: This is incorrect and speculative.

Appellants' Claim: The Appellants assert that there is no substantiation of required separations from contamination sources and runoff controls for an industrial/public well.

Response: This is incorrect and speculative. Well buffer zone is included on the site maps submitted with the Use Permit and no sources are within the buffer.

Appellants' Claim: The Appellants assert that Bulletin 74 and Water Code impose mandatory standards, these are legal defects, not technical preferences.

Response: Noted. Applicant disagrees with the statement, "legal defects".

Appellants' Claim: The Appellants assert that County ordinance incorporates Bulletin 74 and relevant Water Code provisions. Yet the record does not contain complete, signed, project-specific:

- Well construction and completion reports (logs, lithology, seal details, methods, materials);
- Operating approvals commensurate with industrial/public service (treatment, backflow prevention, security/maintenance);
- Environmental Health sign-offs scaled to the Project's demand profile; and
- Enforceable permit conditions matched to the correct classification.

The Appellants assert that generic links and conclusory statements cannot substitute for substantial evidence in the administrative record.

Response: This is incorrect and speculative. The well was drilled by a licensed well driller with an approved County well permit.

Appellants' Claim: The Appellants assert that references to Hydrology, Well Completion, and historical materials raise unresolved questions about use, production, and compliance status. Rather than reconcile those inconsistencies with documentation, the approval relies on conclusions without underlying proof. CEQA does not permit conclusory findings where technical, verifiable evidence is required for water supply/public health.

Response: This is speculative and is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants assert the following:

- The well is misclassified as an irrigation well and this truncates the analysis and masks the applicable regulatory framework.
- The County did not show its work for Bulletin 74/Water Code compliance (construction, sealing, conversion/destruction, protection).
- Reliance on generalized "will comply" assertions is not substantial evidence. These defects are prejudicial because they foreclose informed decision-making on a core public-health utility.

Response: This is speculative and is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

Appellants' Claim: The Appellants suggest denial for the following:

These are foundational legal defects requiring denial of the Major Use Permit in its current form:

- The Appellants assert misclassification concealed the governing standards, violating CEQA's accurate project description requirement and invalidating the analytical scope.

  Response: This is speculative and is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

- The Appellants assert Absent construction/sealing documentation means no demonstrated compliance with Bulletin 74 / Water Code / County ordinance—there is no substantial evidence supporting adequacy.

  Response: This is speculative and is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

- The Appellants assert No valid permit or approvals for the actual (industrial/public) use—the well cannot lawfully serve the Project as approved.

  Response: This is incorrect and speculative.

- The Appellants assert No analysis of legal feasibility—CEQA forbids approvals predicated on infrastructure that is non-compliant or legally uncertain.

  Response: This is speculative and is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).

- The Appellants assert conclusions in lieu of documentation—hyperlinks and assurances do not meet CEQA's evidentiary standard.

  Response: Noted.

Appellants' Claim: The Appellants assert that because these errors go to the core legal and factual foundation of the approval, they cannot be cured by post-approval conditions or clerical fixes. The proper remedy is denial. Any reconsideration would require a new application, new CEQA review (EIR or equivalent), and complete regulatory compliance with correct well classification and full substantiation.

Response: This is speculative and is not substantial evidence as it contains no fact supporting the claim (CEQA Guidelines §15064(f)(5)).