



**COUNTY OF NEVADA  
COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT**

950 MAIDU AVENUE, SUITE 170, PO BOX 599002, NEVADA CITY,  
CA 95959-7902 (530) 265-1222 <http://mynevadacounty.com>

Trisha Tillotson  
Community Development Agency Director

Brian Foss  
Planning Director

MEMORANDUM

October 28, 2021

**TO:** Planning Commission

**FROM:** Matt Kelley, Senior Planner *AK*

**HEARING DATE:** October 28, 2021

**SUBJECT:** PLN21-0051; GPA21-0001; RZN21-0001; EIS21-0002; Murty/Law:  
Request for Continuance and Public Comments Received.

Dear Commissioners,

Due to a noticing error, the Planning Department is requesting a continuance of the October 28, 2021 public hearing for the Murty/Law General Plan and Rezone project. The notice failed to acknowledge that the meeting would be held remotely. Due to the next two regularly scheduled meetings being holidays, staff would request a special meeting on November 18, 2021 and will re-notice the public hearing for that date. In addition staff has received three public comment letters after completion of the project staff report. Staff would request that the Planning Commission include these public comments as a part of the public record and take them into consideration when taking action on the project. Staff will provide a response to the public comments received as a part of the continued public hearing.

Today's meeting will still be held to allow the Planning Commission to conduct its regular business.

Enclosures:  
Three Public Comment Letters

October 17, 2021

To; Matt Kelley

Nevada County Planning Department

950 Maidu Avenue, Suite 170

Nevada City, CA 95959

From;

Carl Balistreri

17007 Cooper Rd APN 034-160-025

Nevada City, Ca 9595

RE; Project 10460 Harmony ridge road APN 034-160 - 001

Hello Matt,

My concerns with this general plan change concern the water being used this year by the cultivation taking place on the parcel requesting the zoning change.

When a zoning plan is considered, the density sometimes deals with the amount of water each parcel will use. The typical household will use between 300 and 500 gallons per day.

General agriculture uses thousands of gallons per day.

On my parcel is a water shed pond created in 1960 using Federal Tax Credits to create wildlife habitat for migrating water fowl. In the 40 years I have lived on this parcel the summer time water level has been the same every year but not this year. Pumping of ground water on the subject property has caused the summer time level of the pond to decrease by 3 feet thus far this year. The pond is habitat for turtles, frogs, fish as well as a stopover for 4 species of migrating water fowl. The water use is devastating this ecosystem. Federal and State authorities should be notified and made aware of the effects on this water shed as well as Nevada County Environmental Health

In addition I have a granny unit on my parcel in which the county approved the pond as sufficient auxiliary water storage for the granny unit without having an alternate storage tank. In 1997 the neighbors on the adjoining parcel also got approval from the county to use the pond on my parcel as their fire protect storage for their granny unit. Fire Marshall of the Forty-Niner Fire district approved the use of the pond for firefighting and required a recorded easement for its use to access the water. I feel the fire district should be made aware of the depletion of their firefighting water source.

I have attached a copy of the recorded document allowing use of the pond water for fire fighting purposes.

Thank You,



Carl Balistreri

(408)799-5912

January 30, 1997

To: FORTY-NINER FIRE DISTRICT  
Post Office Box 354  
Nevada City, Ca. 95959

Attn. David Ray, Fire Marshall

From: Carl Salvatore Balistreri  
17007 Cooper Rd.  
Nevada City, Ca. 95959  
(916) 265-3828

Re: Use of Pond Water Storage for Fire Fighting Purposes

Dear David,

It is my understanding that Rick and Suzanne Anzlec have spoken to you regarding the use of the pond water for fighting fire on their property.

As I told you many years ago, when I installed the first Fire Department hook-up, this water source was for fire protection for all properties in this area.

I am more than happy to oblige anyone to use this water source for fire protection purposes for as long as it is viable.

Please put this letter in your records and feel free to submit copies of it to any other fire district which may have need for this fire protection water source now or at any time in the future.

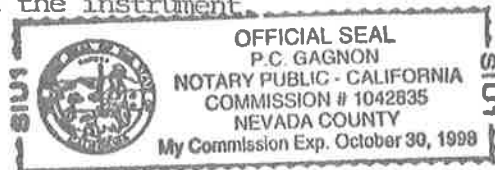
Respectfully,



Carl Salvatore Balistreri  
A.P.N. 34-160-25

State of California  
County of Nevada

On January 31, 1997, before me, P. C. Gagnon, a Notary Public in and for said State, personally appeared Carl Salvatore Balistreri, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.  
Witness my hand and official seal.





**NOTICE OF AVAILABILITY FOR PUBLIC REVIEW AND NOTICE OF INTENT TO ADOPT A PROPOSED NEGATIVE DECLARATION FOR THE MURTY AND LAW GENERAL PLAN AMENDMENT AND REZONE PROJECT (PLN21-0051; GPA21-0001; RZN21-0001; EIS21-0002)**

NOTICE IS HEREBY GIVEN that the County of Nevada, as a lead agency, is circulating for public review a Draft Initial Study/Negative Declaration (IS/ND) in accordance with the California Environmental Quality Act (CEQA) for the proposed Murty and Law General Plan Amendment and Rezone Project.

**PROJECT LOCATION:** 10460 Harmony Ridge Road within unincorporated Western Nevada County – located approximately 2.0 miles northeast of the City of Nevada City. The subject parcel is further located northwest of Harmony Ridge Road, southeast of North Bloomfield Road and south of Cooper Road. **Assessor Parcel Number:** 034-160-001.

**PROJECT DESCRIPTION: Adoption of a Negative Declaration for the Murty and Law General Plan Amendment and Rezone.** The project is a proposed General Plan Land Use Map Amendment and Zoning District Map Amendment to change the subject project site, located at 10460 Harmony Ridge Road from Rural (RUR) – 5 to Rural (RUR) – 20 and a Zoning District Map Amendment to change the Zoning District from Residential Agriculture (RA) – 5 with Planned Development (PD) to General Agriculture (AG) – 20. The project as proposed, does not include a proposal to develop the parcel and only seeks to change the existing General Plan Land Use Map and Zoning District Map.

**PUBLIC REVIEW:** As a lead agency, in accordance with CEQA, Nevada County is distributing the Draft IS/ND to interested public and regulatory authorities for review and comment. Nevada County is inviting comments and concerns regarding the IS/ND during the public review period spanning **October 8, 2021 to October 27, 2021 at 5:00 p.m.**

**DOCUMENT AVAILABILITY:** The Draft Initial Study/Negative Declaration is available for review on Nevada County's website at <https://www.mynevadacounty.com/994/Environmental-Documents>. Hardcopies may be reviewed at the Nevada County Planning Department, 950 Maidu Avenue, Suite 170, Nevada City, CA 95959.

Written comments should be sent to the following address: Matt Kelley, Senior Planner, Nevada County Planning Department, 950 Maidu Avenue, Suite 170, Nevada City, CA 95959, Phone: 530-265-1423 - Email: [matt.kelley@co.nevada.ca.us](mailto:matt.kelley@co.nevada.ca.us) on or before **October 27, 2021 at 5:00 p.m.**

By: Shelley Romriell, Clerk of the Planning Commission

PUBLISH: October 8, 2021

THE UNION

MAILING: October 8, 2021

ON OR BEFORE

October 26, 2021

Matt Kelley  
Nevada County Planning Department  
950 Maidu Ave., Suite 170  
Nevada City, CA 95959

Re: Oct. 28 Planning Commission Meeting Agenda Item  
General Plan Land Use Map/ Zoning District Map Amendment

Dear Mr. Kelley:

I, Jim Ciaffoni, have been the property owner of three parcels located about 1000' east of the parcel in question for the past 30 years. I am writing as an interested, adjacent property owner, and as a Registered Civil Engineer experienced in the planning, design, and management of private and public water systems. I have extensive experience in environmental permitting of these systems, and the application of CEQA in particular.

I also have been the president of our local homeowners association, Harmony Ridge Road Association, for about 20 years, which has made me familiar with many neighborhood concerns, one of which is precarious, hit-and-miss groundwater well production, especially along the upper portions of Harmony Ridge, and in the Blue Tent, Cooper Road, and North Bloomfield Road areas. However, I am not speaking on this subject in that capacity, authorization not having been discussed in an open meeting, only to state my extensive exposure to local conditions.

I believe that surrounding property owners, and the public in general, were deprived of any meaningful input to proposed commercial marijuana operations concerning groundwater impacts when the Nevada County Cultivation Ordinance (NCCO) was passed.

I note that the EIR prepared for the County as part of the passage of the NCCO identified the possibility of significant impacts to groundwater "availability". As an aside, I add that groundwater "quality" could also be affected if the groundwater level of a surrounding well were to drop into a lower seasonal operating range. Yet, the County opted to completely disregard the interests of surrounding property owners by citing some unspecified economic, social, legal, technological, and "other" benefits in its Statement of Overriding Considerations.

I understand, and the Initial Study belabors the point, that this proposed action is a legislative action only, and not a specific development proposal, suggesting that future, proposed physical development of the rezoned property will be adequately addressed at the building permit stage. However, we all know that building permit issuance, with the associated planning and environmental health department reviews, are purely ministerial processes, requiring no public notification/hearing or opportunity for comments. In the real world, an adjacent property will catch wind of a building permit after it has been issued, practically speaking, too late, as the "horse will have already left the barn".

I would like to think that the way the County overlooked the public's rights under CEQA was simply an oversight, and I would like to suggest a remedy to the problem.

I am requesting this Commission to direct your Planning Department to bring forward for consideration by the Commission a proposed amendment to the NCCO, offering alternative means to ensure surrounding property owners will have their say, by the requirement of a User or Conditional Use Permit, or some other similar mechanism. As we go forward, the omission of the fundamental right of surrounding property owners to protect such an essential resource as water, the essence of life, is going to take center stage regarding the NCCO.

I think that concludes my concerns. Thank you for receiving my comments.

Yours truly,

Jim Ciaffoni  
17180 Broken Arrow Place & 10605 Harmony Ridge Road  
Nevada City, CA 95959

**LEE L. AUERBACH**  
**ATTORNEY AT LAW**

P.O. Box 1129 | Nevada City, California 95959 | 530-264-7640 | [AuerbachLee@gmail.com](mailto:AuerbachLee@gmail.com)

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October 27, 2021

Via Email

Matt Kelley  
Senior Planner  
Nevada County Planning Department  
950 Maidu Avenue, Suite 170  
Nevada City, CA 95959

Re: Comments on Draft Initial Study/Negative Declaration for the Murty and Law General Plan Amendment and Rezone Project

Dear Mr. Kelley:

On behalf of the undersigned interested parties and myself, I respectfully submit the following comments on the County of Nevada's ("County") Draft Initial Study and Negative Declaration ("IS/ND") for the proposed Murty and Law General Plan Amendment and Rezone Project (the "Project").

As explained below, in connection with the IS/ND the County failed to comply with several mandates of the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code §§ 21000, *et seq.* Under the facts and circumstances, an environmental impact report ("EIR") must be prepared to adequately analyze the Project's ultimate, potentially significant, adverse environmental effects.<sup>1</sup> Substantial evidence – including the County's own prior findings respecting impacts associated with cannabis cultivation – supports a fair argument that the cultivation that foreseeably will result from Project approval may have a significant impact on the environment, particularly with respect to groundwater depletion.

Approval of the Project by the County Board of Supervisors in reliance on the IS/ND would violate CEQA for at least six reasons. First, the County improperly focuses its analysis on the environmental impact of the legislative process rather than the ultimate activity for which the Project application (the "Application") is made. Second, the County improperly attempts to defer environmental review of foreseeable impacts to later developmental stages when no such review will occur. Third, the County fails to show an adequate basis for its findings. Fourth, approval would contradict the County's previous determination that cannabis production on parcels zoned RA is infeasible. Fifth, substantial evidence supports a fair argument that the Project may have a significant effect on groundwater supplies, recharge and management, either standing alone or cumulatively. Finally, the County failed to meet notice requirements.

Before turning to these issues, it bears mention that Nevada County and California as a whole are suffering an unprecedented drought. As these comments were being prepared, the California Department of Water Resources reported that the 2021 water year was the driest in

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<sup>1</sup> Alternatively, the County could issue a mitigated negative declaration modifying the Project to allow the land use amendment but not the zoning amendment or substantially limiting potential agricultural activities and/or the volume of groundwater extracted for agricultural purposes such that impacts are avoided or reduced to a less than significant level. Cal. Pub. Res. Code § 21064.5; 14 Cal. Code Regs § 15063(a).

nearly a century. That same week California Governor Gavin Newsom declared a drought emergency for the entire state and urged all residents to step up water conservation efforts. In light of these developments, projects like the present one which would exacerbate the depletion of water supplies warrant heightened scrutiny.

A. The County Improperly Focuses Its Analysis on the Environmental Impacts of the Legislative Process Itself

Throughout the IS/ND, the County describes the Project as a "legislative action" which in itself would have less than a significant impact on the environment. For example, in its Impact Discussion on Hydrology/Water Quality, the County asserts that the "*action necessary to amend* the land use and zoning designations for the subject project site would [sic] less than a significant impact on water quality or waste discharge." IS/ND at 4 (Emphasis added.)

There is no debate that the legislative process standing alone has minimal, if any, environmental impacts. But that is immaterial. The question under CEQA is whether by rezoning the subject property and/or amending the General Plan, reasonably foreseeable indirect physical changes to the environment will result. The County improperly fails to address such impacts with respect to groundwater.

For purposes of CEQA, a "project" is defined as comprising "the whole of an action" that has the potential to result in a direct or reasonably foreseeable indirect physical change in the environment. 14 Cal. Code Regs §15378(a). The term "project" refers to the *ultimate activity* for which approval is sought. *Id.* §15378(c). The lead agency must describe the project to encompass the entirety of the activity that likely will follow approval. This ensures that all potential impacts of a proposed project will be examined before it is approved. *Id.* §§15378(a),(d).

Accordingly, a lead agency may not limit environmental disclosure by ignoring the development or other activity that ultimately will result from an initial approval. *See Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1200 (local agency cannot argue that approval of regulation is not a project "merely because further decisions must be made' before the activities directly causing environmental change will occur"); *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 (piecemeal review of development of infrastructure for undeveloped site resulting in negative declaration was improper, even though future developments of the site would be examined in later EIRs, because infrastructure extension was approved to allow site to be developed). Otherwise, applicants would be incentivized to submit projects piecemeal in stages calculated to avoid or minimize environmental review, as applicants Murty and Law (together, "Applicants") appear to have attempted here.

While Applicants have elected not to submit a development plan, their Application, past conduct and Applicant Murty's statements to third parties make clear that their ultimate objective is commercial cannabis cultivation. Indeed, almost immediately after acquiring the parcel in 2020, Applicants cultivated a large quantity of cannabis unlawfully on the property. See photo below and Memo from B & W Resorts, Inc. and Lee Auerbach to Community Development Agency dated March 23, 2021 at p. 2, incorporated herein by reference. If Applicants subdivide and sell some or all of the units, it is foreseeable they will market the units as potential cannabis grow sites if the parcel is rezoned AG. Apart from potential cannabis cultivation, Applicants offer no rationale for their rezoning request. As cannabis cultivation is a "reasonably foreseeable" – if not certain – consequence of approval, its impacts must be considered in the County's evaluation of the Application.



Aerial view of cannabis cultivation on subject parcel, Fall 2020

B. The County Improperly Attempts to Defer Consideration of Foreseeable Environmental Impacts to Groundwater

In its Impact Discussion respecting Hydrology/Water Quality, the County suggests that the foreseeable, indirect environmental impacts of the Project can be addressed at a later juncture. IS/ND at 21. It states, “[f]uture development on the site, including permitting for the potential future cultivation of cannabis would be subject to building permit issuance and compliance with the California Building Code along with any required annual cannabis licensing inspections.” *Id.* This attempt to “kick the can down the road” is unavailing for two reasons. First, it is not permitted by CEQA. Second, there is no requirement or provision for an environmental impact review with respect to groundwater or otherwise in connection with a building permit or cannabis cultivation permit.

1. CEQA Requires that the Current Environment Review Encompass All Foreseeable Stages through the End Result of the Project

Although a project ultimately may go through several approval stages, the environmental review accompanying the first discretionary approval must evaluate the impacts of the ultimate development that will flow from that approval. This prevents agencies from chopping a large project into little ones, each with a minimal impact on the environment, to avoid full environmental disclosure. See 14 Cal. Code Regs §15003(h); *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. See also *California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1249.

As stated in a leading treatise:

[A] general plan amendment or rezoning to accommodate a development project is only an initial step in the approval process. Even though further discretionary approvals may be required before development can occur, *the agency's environmental review must extend to the development envisioned by the initial approvals.* It is irrelevant that the development may not receive all necessary entitlements or may not be built. Piecemeal environmental review that ignores the environmental impacts of the end result is not permitted.



CEB OnLAW, Practice Under the California Environmental Quality Act, § 6.31 (2021) (emphasis added) (*citing Christward Ministry v Superior Court* (1986) 184 Cal.App.3d 180, 193 (EIR should have been required for general plan amendment designating existing landfill site to permit various waste-disposal activities even though EIR would be required later if use permits were actually sought for such activities); *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 251 (county violated CEQA by preparing negative declaration for rezoning and reserving preparation of EIR until later stage of approval); *Citizens Ass'n for Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 167 (county improperly prepared negative declaration for general plan amendment and rezoning for proposed shopping center followed by later negative declaration for subdivision map and road abandonment for same project, because, by bifurcating review, county failed to examine potential impacts of entire development).

2. The County's Suggestion that Environmental Impacts to Groundwater Will Be Assessed in the Future Is Illusory

The requirements for a commercial cannabis cultivation license are set forth in the Nevada County Cannabis Cultivation Ordinance ("NCCO"), Nevada County Code § L-II 3.30. Nowhere in the NCCO is there any provision for an assessment of environmental impacts to groundwater or otherwise in connection with the application for a commercial cannabis cultivation permit. Nor is there any provision for such a review in the building code. Thus, the County's suggestion that environmental impacts related to the Project's ultimate objective can or will be addressed at a later developmental stage is fiction. Those impacts must be addressed now.

C. The County Provides an Insufficient Factual Basis for a Determination to Issue a Negative Declaration

Where, as here, an initial study checklist is used to provide the lead agency's findings for a negative declaration, the checklist must be supported by evidence in the administrative record. Although findings relating to the Project's impacts may be shown in a checklist, to provide an adequate basis for judicial review, an initial study should disclose the data or evidence supporting the study's environmental findings. *Citizens Ass'n for Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the court rejected a negative declaration that was supported only by a bare-bones environmental checklist. There was no indication in the record of the source or content of the data that county staff relied on in preparing the checklist, nor was there an explanation of the initial study's conclusion that potentially significant impacts would be fully mitigated. Describing the checklist as a "token observance" of CEQA requirements, the court held that a lead agency has a duty to investigate potential impacts and provide support for a negative declaration. The record must demonstrate, and not simply assume, that significant impacts will not occur. This prevents a lead agency from providing a superficial analysis of a project's potential impacts in the initial study and then defending its decision to adopt a negative declaration by pointing to the absence of evidence of any significant environmental impacts. The County failed to meet this standard here.

Subsequent to the *Sundstrom* decision, the CEQA Guidelines were amended to provide that the impact findings in an initial study checklist or other form must be briefly explained to show there is some evidence to support the entries. 14 Cal. Code Regs §15063(d)(3). The explanation "may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration." *Id.* The County supplies neither.

In addition, the environmental checklist form in CEQA Guidelines Appendix G includes instructions requiring that an initial study explain the basis for findings that the project's impacts will be less than significant. With respect to groundwater supplies, recharge and management, in particular, the County supplies none.

1. The "Reference Sources" Cited Contain No Substance

As support for its finding that the Project would have "less than significant impact" to groundwater supplies, the IS/ND cites two, purported reference sources in its Appendix: "A. Planning Department" and "D. Building Department." The Planning Department's circular reference to itself and its bare bones reference to a sister agency are insufficient under CEQA as they do not reference an information source such as a map, photographs, earlier EIR or negative declaration.

The County's failure to reference an earlier EIR is not surprising. The EIR it finalized only two years ago in connection with the NCCO found that commercial cannabis cultivation would cause significant, unavoidable, detrimental impacts to groundwater. See Sections D, E, below.

2. The Impact Discussions on Hydrology/Water Quality and Utilities/Service Systems Fall Short As They Do Not Substantively Address Impacts on Groundwater Supplies, Groundwater Recharge or Sustainable Groundwater Management

In lieu of a meaningful citation to sources of information, the County could have supplied a narrative discussion on the potential impacts of Applicants' foreseeable future development, including commercial cannabis production. 14 Cal. Code Regs §15063(d)(3). For most of the potential environmental issues, the County *does* provide such a narrative. See, e.g., IS/ND at 10 (anticipated impacts to air quality "will be minor when taken in context with the size and scope of the property and the anticipated future use for residential and agricultural purposes"); 17 (anticipated that development of future residential and agricultural uses on the project site would result in small but incremental increases in CO<sub>2</sub> levels from the new vehicle trips to this site as well as from minor construction activities"); and 24 ("While construction activities to develop the project site will result in some increases in noise, construction noise is temporary in nature...."). However, as to the potential impacts of future development on groundwater supplies, recharge and management, the County's discussion is silent.

The County's checklist for Hydrology/Water Quality appropriately includes the critical question of whether the proposed project would "Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin." However, the Impact Discussion at page 21 fails even to mention these issues. Its bald conclusion that the Project will result in "less than a significant impact" pertains only to "water quality or waste discharge." *No conclusion whatsoever is stated as to groundwater supplies, recharge or management.*

As the County's checklist identifies groundwater supplies, recharge and management as environmental issues that must be addressed, the IS/ND fails by the County's own standards to meet CEQA requirements.

D. Project Approval Would Run Afoul of the County's Prior Findings that Environmental Issues Make Cannabis Production on RA Zone Parcels Infeasible

The County extensively evaluated environmental impacts related to cannabis cultivation in the final EIR and underlying documents, studies and analyses which preceded the enactment of the NCCO in 2019.<sup>2</sup> There, the County's stated objectives included "defin[ing] specific zones within the County in which production of commercial cannabis cultivation will be allowed" and "defin[ing] within the specific zones, the total area of commercial cannabis cultivation that will be allowed." <https://www.mynevadacounty.com/DocumentCenter/View/27167/ORD18-2-EIR18-0001-Cannabis-PC-SR>, Attachment 1 at 39. According to the Findings, a total of 27,207 parcels zoned AG, AE and FR then existed within the County. *Id.* at 82.

The County ultimately determined that with respect to cultivation on those parcels zoned AG, AE and FR, unavoidable, significant environmental impacts on groundwater supply, recharge and management, among other physical conditions, were outweighed by certain economic, legal, social, technological and other benefits. Statement of Overriding Considerations, Section V.B. of the EIR CEQA Findings, *id.* at 89-91.

Significantly, the County considered and rejected a project alternative that would have permitted cannabis cultivation in parcels zoned RA, including the Applicants' parcel, in addition to parcels zoned AG, AE and FR. The County concluded that also allowing cultivation in RA zones was *infeasible* in that it "would not meet the project objectives aimed at protection of the environment and reduction of potential cannabis cultivation nuisances." *Id.* at 84.

It is a fundamental legal tenet that one cannot achieve indirectly that which cannot be achieved directly. Allowing Applicants or others who own parcels in RA zones to rezone those parcels to AG so as to permit cannabis cultivation would contravene the County's prior determination that cannabis cultivation in those zones is infeasible. Moreover, approving the Application would set a precedent that could lead to a flood of rezoning applications posing the potential to increase the total number of parcels subject to cultivation by approximately 76%. *Id.* Applicants, who purchased the subject parcel after the NCCO was enacted, should not be treated differently than any other owner of an RA-zoned parcel.

In any event, the County's previous finding that environmental impacts make cannabis cultivation on RA zone parcels infeasible further necessitates an EIR for the current Project or a mitigated negative declaration that precludes rezoning and/or cannabis cultivation.

E. Substantial Evidence Supports a Fair Argument that the Project, Including Foreseeable, Cannabis Cultivation, May have a Significant Effect on the Environment

Under CEQA, an EIR is required where substantial evidence supports a fair argument that a project may have a significant environmental impact. Cal. Pub. Res. Code § 21080(c)(2); Cal. Code Regs 14, §§ 15064, 15382. That threshold easily is met here.

The County needs to look no further than its own Planning Commission Staff Report prepared in connection with the adoption of the NCCO for evidence respecting the potential impacts of cannabis cultivation. There, under the heading "Hydrology and Water Quality," the County states:

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<sup>2</sup> Notably, the County prepared an EIR in connection with the NCCO even though its enactment, like the current Project, could be deemed a "legislative action."

The project could substantially deplete groundwater supplies such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level.

*Cumulative Impact:* The project would result in an increase in demand for local groundwater resources that could contribute to cumulative groundwater supply and impacts in areas of the County with limited groundwater resources (e.g., fractured bedrock conditions). In addition, the potential decrease of water infiltration due to development of accessory structures combined with the cumulative increase in groundwater use being unknown at this time, the potential impacts would be cumulatively considerable and significant and unavoidable.

<https://www.mynevadacounty.com/DocumentCenter/View/27167/ORD18-2-EIR18-0001-Cannabis-PC-SR> at p. 20.

Similarly, under the heading “Utilities and Service Systems,” the Staff Report states:

The project would utilize groundwater supply for commercial cannabis irrigation. Neither the County nor the State has governing rules that would give one overlying groundwater user an advantage over a new overlying groundwater user for cannabis cultivation purposes. Neither the County nor the State have a mechanism in place to track or monitor groundwater production in individual wells. As such, commercial cannabis operations could result in overdrafting of local groundwater aquifers.

*Cumulative Impact:* The project would increase the demand for groundwater within the Nevada Irrigation service area, and it is unknown whether the public water service providers would have adequate water supply to meet future development needs and potential commercial cannabis operations located within their service boundaries, and the existing ground water supply for some cultivation sites may be inadequate, the proposed ordinance’s contribution to water supply would be cumulatively considerable and significant and unavoidable.

*Id.* at 21.<sup>3</sup>

The “considerable and significant and unavoidable” impacts described above may be amplified if the current Project is approved. That approval will facilitate the foreseeable – if not inevitable – addition of up to 40,000 square feet of cannabis cultivation (10,000 square feet for each of four potential units). This may result in further overdrafting of groundwater supplies, including the groundwater relied upon for domestic uses on adjacent and nearby properties owned by the undersigned property owners and others – including water supplied to dozens of campsites and other facilities at the abutting Harmony Ridge Resort. It also may result in a further drop in the water level of the groundwater-fed pond on the on the Balistreri property (APN 34-160-25), the sole source of water available on Cooper Road for fire suppression, during a period in which wildfire activity is on the rise.

Moreover, subsequent to the issuance of the above-referenced Staff Report, drought conditions and long-term forecasts have worsened. As noted above, within the few days

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<sup>3</sup> The Staff Report also identified potential, unavoidable environmental impacts related to aesthetics, forestry resources, air quality and greenhouse gas emissions, and transportation and traffic. *Id.* at 19-21. These also warrant an EIR or appropriate mitigated negative declaration.

preceding the issuance of these comments, the California Department of Water Resources reported that the 2021 water year was the driest since 1924. On October 19, 2021, Governor Newsom issued a proclamation extending the drought emergency statewide and asked residents to redouble their water conservation efforts. Two months earlier, the UN-backed Intergovernmental Panel on Climate Change reported that the Western U.S. may be entering a "drought era." See <https://www.bloomberg.com/news/articles/2021-08-12/california-drought-a-dry-season-is-turning-into-drought-era>. These pronouncements and the data on which they are based constitute further substantive evidence supporting a fair argument that the Project may have a significant effect on the environment.

Finally, a mandatory finding of significance – and preparation of an EIR – is required when a project's potential impacts are individually limited but cumulatively considerable. "Cumulatively considerable" means that the increased effects of a project are considerable when viewed in connection with the effects of past, current, and probable future projects. Pub. Res. Code §21083(b)(2); 14 Cal. Code Regs §15065(a)(3). Inasmuch as the County declared in connection with the NCCO that the cumulative impact of commercial cannabis cultivation is considerable, a project that foreseeably will result in an increase in cultivation and its impacts also must be viewed as cumulatively considerable, triggering the requirement for an EIR.

F. The County Failed to Complete the IS/ND within the Required Time Period and Its Hearing Notice is Defective

Public Res. Code § 21151.5(a) requires local agencies to complete and adopt negative declarations within 180 days after acceptance of the application requesting project approval. Here, the Application is dated January 20, 2021. It was accepted by the County no later than March 9, 2021, when it was distributed for review and comment. Accordingly, the IS/ND was required to be adopted no later than September 5, 2021. In addition, the Notice of Public Hearing mailed to interested parties on or about October 8, 2021 is defective in that it states incorrectly that the hearing will take place in the Supervisors' Chambers rather than online.

Conclusion

For all of the foregoing reasons, the undersigned respectfully request that the County reject the IS/ND and prepare an EIR or, in the alternative, prepare a mitigated negative declaration with limitations designed to avoid potential impacts or reduce them to a less than significant level.

Sincerely,



Lee Auerbach  
10522 Harmony Ridge Road



Leah Leddy  
10522 Harmony Ridge Road

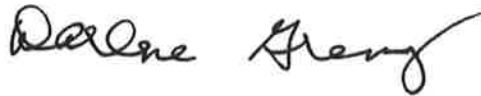
(signatures continued on next page)

Matt Kelley  
Page 9

  
Carl Balistreri  
17007 Cooper Road



Matthew Duerst and Michelle Duerst  
10742 Harmony Ridge Rd



Darlene Grenz  
16910 Cooper Road

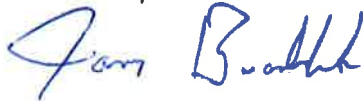


Rick Partridge  
17404 Cooper Road



Ed Simone  
17145 Cooper Road

Jim Braddock  
16578 Cooper Road



Eric Nielsen and Judy Nielsen  
16348 Cooper Road



Joan Scafidi and Paul Scafidi  
17230 Cooper Road

