

Master Executive Summary – Poverty Flats UP 23-09

Appeal PL 25-1989

Chapter 1 – BLM and Indemnification

This chapter documents how the Poverty Flats permit approval violates CEQA, undermines lawful governance, and exposes the County to significant legal risk. It demonstrates a systemic pattern of misconduct in which staff issued permits requiring trespass across federally managed lands, concealed material facts from decisionmakers, and relied on indemnification agreements concocted without Board approval. These practices provide no legal protection and instead reflect administrative overreach. For more detail, please see Chapter X in the Poverty Flats Appeal Attachment.

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). Federal law requires express authorization for commercial use of these roads, and BLM has confirmed that no such authorization will be granted. Federal case law makes clear that no prescriptive easement or local access claim can override federal authority. In short, lawful access does not exist — making the project infeasible under CEQA. This is first and foremost a land use and land rights issue; cannabis only exacerbates the illegality.

County Liability and Indemnification

By issuing permits with knowledge that lawful access cannot be obtained, the County risks both criminal and civil liability. Trespass across federal lands is a crime, just as trespass under California Penal Code §§602 et seq. is a crime under state law. This principle is not in dispute: California recognizes federal trespass as unlawful conduct.

Indemnification agreements, repeatedly used since 2020, do not legalize trespass or shield the County from liability. Instead, they document that the County was aware of the illegality yet proceeded anyway. Their use reflects not legal prudence but part of a broader pattern of misconduct.

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.

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.

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.

Remedy

The cumulative record establishes:

- Lawful access is missing and cannot be obtained.
- The County knew of this defect and attempted to evade it through indemnification and omission.
- Decisionmakers were obstructed and misled.

- Staff acted outside their authority, depriving elected officials of their lawful role.
- Federal authorities confirmed the illegality and its uniqueness to Lake County.
- Neighboring counties deny such projects as infeasible.

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

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.

For sources, detailed findings, figures, and citations supporting this summary, please see Chapter 1 - BLM and Indemnification in the attachments.

Chapter 2 - Road Safety Executive Summary

The Poverty Flats 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 legally required analysis of roadway safety and emergency access. CEQA’s implementing regulations never eliminated safety review: Appendix G still 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.

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.

Against this backdrop, the record contains substantial, un rebutted 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.

The Appellant’s § 4290 compliance analysis confirms these deficiencies with measurements, mapping, crash overlays, and photographic evidence. 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.

Legal risk follows from these errors. 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.

For sources, detailed findings, figures, and citations supporting this summary, please see Chapter 2 - Road Safety in the attachments.

Chapter 3 - Fire Safety

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.

For Poverty Flats, the record demonstrates that §4290 was not applied to the traveled route as it is actually used in an emergency. The 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.

Equally important, 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.

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.

Despite these known constraints, 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. On this record, the fair-argument standard is easily met: substantial evidence shows the project may exacerbate evacuation hazards on a corridor that already fails §4290's minimums.

CEQA does not permit approval under a Mitigated Negative Declaration in these circumstances. The Board's legally defensible course is to deny the permit. If the applicant elects to return, an Environmental Impact Report must be required to evaluate the entire traveled route 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. Until then, approving operations without demonstrated, whole-route compliance and evacuation feasibility would be a prejudicial abuse of discretion and an avoidable life-safety risk.

For sources, detailed findings, figures, and citations supporting this summary, please see Chapter 3 - Fire Safety in the attachments.

Chapter 4 - Grading Non-Compliance and Mitigation Nullification

The record shows a consistent pattern: 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 GR25-0 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.

Six days later, 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.

Legally, this is classic 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 (Guidelines §15073.5). 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 (Guidelines §15074.1). None appear. The result is a project description that is not accurate, stable, and finite (Guidelines §15125(a)).

The practical fallout is 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.

For sources, detailed findings, figures, and citations supporting this summary, please see Chapter 4 - Grading Non-Compliance and Mitigation Nullification in the attachments.

Chapter 5 - Procedural Issues

The Poverty Flats Ranch project 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.

The County further failed to conduct a lawful cumulative analysis under CEQA §15130. 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.

The procedural record also 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 §15073.5. 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.

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.

Finally, 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.

Conclusion

The Poverty Flats Ranch 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. Because these procedural violations strike at the foundation of CEQA’s informational and participatory guarantees, the Board of Supervisors must grant Appeal PL 25-198 and deny the project permit.

For sources, detailed findings, figures, and citations supporting this summary, please see Chapter 5 – Procedural Issues in the attachments.

Chapter 6 – Biological Resources

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.

Baseline deficiencies. 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.

Waters, wetlands, and delineation. 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.

Special-status species and survey scope. The parcel contains suitable habitat for multiple protected taxa. 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.

Habitat connectivity and Schindler Creek corridor. Schindler Creek and its tributaries function as a movement and habitat corridor. 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.

Mitigation adequacy and enforceability. 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.

Cumulative effects and state investments. 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.

Bottom line. 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.

For the full evidentiary analysis, figures (including survey-area overlays and hydrologic mapping), species authorities, mitigation law, and complete citations, please refer to Chapter 6 — Biological of this appeal.

Chapter 7 -Hydrology & Water Supply

The hydrologic record for the Poverty Flats 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.

Despite this, the hydrology report relies on generalized assumptions, recycled boilerplate text from other projects, and vague conclusions not supported by field data. 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.

Compounding these flaws, 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.

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.

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. Similarly, the mitigation monitoring and reporting program lacks technical detail, enforcement mechanisms, and quantitative thresholds for curtailment or scale-back.

The cumulative impacts evaluation is also 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.”

The record further 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.

Finally, claims that SGMA non-coverage excuses deeper analysis are incorrect as a matter of law. SGMA status does not supplant CEQA’s requirement to demonstrate long-term, reliable supply under both normal and drought-year conditions. The California Supreme Court in *Vineyard v. Rancho Cordova* mandates proof of reliability in dry and multiple-dry-year scenarios. No such demonstration appears in the record.

Collectively, these deficiencies 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.

For sources, detailed findings, figures, and citations supporting this summary, please see Chapter 7 – Hydrology & Water Supply in the attachments.

Chapter 8 - Cultural Resources and Tribal Consultation

The administrative record for the Poverty Flats Ranch project (UP 23-09 / IS 23-20) 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) pursuant to PRC § 21082.3(d)(1).

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 required by PRC §§ 21080.3.1–21080.3.2, violating the express statutory prohibition against adopting an MND before consultation has been fully resolved.

Rather than correcting this deficiency, 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 fatal procedural error (*Pit River Tribe v. County of Fresno* (2006); *Madera Oversight Coalition v. County of Madera* (2011); *California Clean Energy Comm’n v. County of San Diego* (2014); *Golden Door Properties v. County of San Diego* (2020)).

The County further 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. In fact, no continuing dialogue, memorandum of understanding, or mitigation discussion occurred.

Finally, 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. By accepting this inaccurate assessment and excluding verified tribal participation in field review, the County adopted a false environmental baseline in violation of CEQA Guideline § 15125(a) and failed to identify or evaluate significant tribal cultural resources under § 15064.5.

Taken together, these actions demonstrate that the County did not fulfill its legal responsibilities to consult, disclose, and mitigate impacts on tribal cultural resources. Consultation with the Elem Indian Colony was initiated but never completed; consultation duties were unlawfully delegated; the Planning Commission was misinformed; and the cultural record was factually unsound. For these reasons, the Mitigated Negative Declaration cannot stand. To remedy these violations, the County must set aside the MND and recirculate the environmental document or prepare a full EIR that incorporates verified government-to-government consultation, Elem Tribal participation, and accurate documentation of cultural resources consistent with CEQA and AB 52.

For more information, see Chapter 8 – Cultural Resources and Tribal Consultation.

Chapter 9 - Slopes & Survey

This chapter demonstrates that the Poverty Flats 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.

Steep Slopes Are Dispositive.

The project’s own 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. Under the Water Boards’ cannabis framework, anything above thirty percent defeats “Low Risk” claims 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—something the IS/MND neither discloses nor analyzes. Because CEQA forbids curing fundamental eligibility and siting flaws after approval, the Tier-2 premise fails as a matter of law. The appropriate action on this record is denial of the Major Use Permit. If the applicant seeks any alternative approach, that would be a new or substantially revised project that must proceed via EIR.

The “Flat Ridgetop” Narrative Is Rebutted by the Project’s Own Maps.

The IS/MND repeatedly claims the cultivation sites are “flat, ridgetop areas” with little risk from landslides or runoff. That 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. USDA soil mapping corroborates severe erosion potential across the identified slope bands. In short, the graphics the County relied upon place the project squarely on slopes that demand a different hydrology/erosion analysis and different performance standards than those assumed.

The Mapping Base Is Not Survey-Grade—and That Matters Here.

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. 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. 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.

Why These Defects Are Prejudicial Under CEQA.

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. Those are not minor technicalities; they go to the heart of whether impacts were lawfully analyzed and whether any adopted conditions could be enforced.

Required Outcome.

Given the presence of $\geq 50\%$ 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. Any future attempt to pursue a different regulatory pathway or geometry constitutes a new or substantially revised project and must begin with a full EIR that (1) fixes the project description to a stamped survey; (2) classifies risk based on actual slope distributions, including the $\geq 50\%$ prohibition; and (3) commits to enforceable, numeric performance standards and monitoring tailored to steep-slope hydrology and erosion conditions.

For more information see Chapter 9 - Slopes and Survey.

Chapter 10 - Undefined Solar / Electrical Component

The April 25 2025 *Initial Study / Mitigated Negative Declaration* (ISMND) for Poverty Flats Ranch 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.

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.

No electrical-load analysis or comparison between solar generation and operational demand was performed. The County accepted unsubstantiated assurances that a small 5.5 kW array could power irrigation pumps, lighting, and security systems. This assumption is technically implausible and unsupported by substantial evidence, violating CEQA Guidelines §15124 and §15126.2.

The ISMND also 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.

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. 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 of CEQA §15086 and §15126.2.

The same solar-generator design deficiencies appear across multiple High Valley cannabis projects, yet the County performed no cumulative analysis under §15130. The ISMND also 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.

Conclusion

Because the IS 23-20 ISMND lacks any verifiable data or consultation regarding its solar and generator systems, the project description is not “stable, accurate, or finite.” The County’s approval rests on false and incomplete disclosure of energy infrastructure and safety implications. These deficiencies violate CEQA Guidelines §§15124, 15126.2, and 15130. Accordingly, the Board of Supervisors should grant Appeal PL 25-198 and deny the project for failure to meet CEQA’s standards for informed environmental review.

For detailed evidence and page-specific citations, see Chapter 10 – Undefined Solar / Electrical Component.

Chapter 11 - Septic System

The record for the Poverty Flats Ranch UP 23-09 / IS 23-20 project fails to demonstrate the existence of a feasible, code-compliant onsite wastewater treatment system (OWTS) to support proposed indoor operations. The Initial Study/Mitigated Negative Declaration (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.

The absence of any sited septic system makes meaningful environmental review impossible. Without knowing where an OWTS or leach field would be placed, the County could not evaluate soils, slopes, groundwater separation, setbacks, or proximity to wetlands and streams. This omission is not a post-approval detail but an informational failure that prevents agencies and the public from understanding potential impacts. The project description is also 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.

Even aside from siting, 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.

These omissions are prejudicial because they eliminate the factual basis needed for any significance determination. 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.

A complete and legally adequate record would 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.

Because the project description is incomplete and the required evidence was not before decision-makers, the MND cannot lawfully support approval. 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. The appropriate corrective action is to set aside the Major Use Permit and IS/MND or to require recirculation or preparation of a full EIR addressing septic feasibility, system design, and associated environmental effects.

For further analysis, supporting exhibits, and code references, readers are directed to Chapter 11 – Septic System in the full appeal record.

Chapter 12 - Project Well (Legal / CEQA Focus)

This chapter evaluates whether 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. It does not. The record shows misclassification, documentation gaps, and non-compliance with mandatory standards, rendering the approval legally insufficient and unsupported by substantial evidence.

1) Misclassification Drives the Legal Error

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.

2) Missing, Project-Specific Proof of Compliance with Bulletin 74 / Water Code

The file cites general obligations to “comply,” but lacks verifiable, project-specific evidence for the well as actually used:

- **Construction and sanitary sealing:** No demonstrated annular seal depths/materials, surface pad, or sanitary seal details consistent with industrial/public use. The well was sealed without witness from lake County Environmental Health, contrary to County regulation.
- **Conversion/destruction:** If the well changed status, the record lacks required conversion permits or destruction/sealing approvals.
- **Location/protection:** No substantiation of required separations from contamination sources and runoff controls for an industrial/public well.

Because Bulletin 74 and Water Code impose mandatory standards, these are legal defects, not technical preferences.

3) County Ordinance / Permitting and Documentation Gaps

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.

Generic links and conclusory statements cannot substitute for substantial evidence in the administrative record.

4) Record Items Undercut the Findings

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.

5) CEQA: Failure to Proceed in the Manner Required by Law

CEQA requires accurate description and substantial evidence. Here:

- The misclassification 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.

6) Basis for Denial — Not Curable Without New Review

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

1. **Misclassification concealed the governing standards**, violating CEQA’s accurate project description requirement and invalidating the analytical scope.
2. **Absent construction/sealing documentation** means no demonstrated compliance with Bulletin 74 / Water Code / County ordinance—there is no substantial evidence supporting adequacy.

3. **No valid permit or approvals for the actual (industrial/public) use**—the well cannot lawfully serve the Project as approved.
4. **No analysis of legal feasibility**—CEQA forbids approvals predicated on infrastructure that is non-compliant or legally uncertain.
5. **Conclusions in lieu of documentation**—hyperlinks and assurances do not meet CEQA’s evidentiary standard.

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. For detailed analysis, citations, and record references, see Chapter 12 - Project Well.