

Chapter 5– Procedural Issues

A. Environmental Baseline

Principle

CEQA requires a stable, accurate description of existing physical conditions as the baseline for analyzing impacts. The baseline must reflect actual conditions at the time review begins; misleading or hypothetical assumptions violate CEQA’s informational mandate. Inadequate baselines taint all downstream conclusions. [A1] [A2] [A3] [A4] [A5]

Argument

- Post-2018 Ranch Fire conditions (vegetative recovery, soil stability, canopy cover, invasive species presence) are not accurately documented; baseline assumes conditions that do not exist on the ground. [A5]
- Post-fire soils (hydrophobicity; reduced infiltration; increased erodibility) and loss of root cohesion were omitted, biasing hydrology/erosion and biology analyses.
- Access road conditions (width, grade, surface integrity, drainage features) are characterized aspirationally; CEQA prohibits use of future or improved conditions as baseline. [A3] [A4]
- Baseline errors propagate to traffic safety, evacuation feasibility, water availability (recharge/consumptive use), fire behavior, and biological buffers—rendering those findings unstable. [A8]
- The IS/MND relies on photographs and statements lacking dates, scale, or location metadata; CEQA requires verifiable description of existing conditions, not curated imagery.

Conclusion

Because the baseline is inaccurate and misleading, all impact findings rest on defective assumptions. CEQA does not allow adoption of an MND on this record. The County must deny the permit.

Footnotes – Section A

- [A1] CEQA Guidelines §15125(a).
- [A2] CEQA Guidelines §15125(b).

- [A3] *Communities for a Better Environment v. South Coast AQMD* (2010) 48 Cal.4th 310, 321–322.
- [A4] *Neighbors for Smart Rail v. Exposition Metro Line* (2013) 57 Cal.4th 439, 447–453.
- [A5] *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119–121.
- [A6] *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 731–733.
- [A7] CEQA Guidelines §15088.5(a)–(c).
- [A8] CEQA Guidelines §15151.

B. Cumulative Impacts

Principle

CEQA requires a good-faith, reasoned analysis of whether a project’s impacts are cumulatively considerable when viewed with past, present, and probable future projects. Agencies must identify related projects, define geographic/temporal scopes, and use a clear methodology; conclusory statements are inadequate. [B1] [B2] [B3] [B4] [B5]

Argument

- No defensible cumulative projects list for the High Valley watershed/road corridor, including cannabis and non-cannabis operations drawing from the same hydrogeologic unit and sharing evacuation routes.
- No defined geographic boundaries (e.g., basin/sub-basin) or temporal horizon; no method for aggregating water demand, traffic, or evacuation loads.
- Groundwater drawdown and well interference are inherently cumulative; the IS/MND lacks basin-wide water budgets, hydrographs, or drought-sequence analysis.
- Evacuation performance is cumulative by definition; the analysis ignores simultaneous area-wide demand under Red Flag conditions.
- Wildfire exposure, slope failure, and sediment yield to receiving waters all increase cumulatively post-fire; the document treats them in isolation.

Conclusion

Without a lawful cumulative analysis, the findings are unstable and not reliable. CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section B

- [B1] CEQA Guidelines §15130.
- [B2] CEQA Guidelines §15064(h).
- [B3] Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 721–727.
- [B4] Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1216–1220.
- [B5] Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 120–124.

C. Evacuation, Roadway & Wildfire Risk in a Very High FHSZ (See Chs. 2, 3 & 4)

Principle

In Very High Fire Hazard Severity Zones, CEQA requires evidence-based analysis of wildfire risk, evacuation feasibility, and emergency ingress/egress—evaluated against applicable fire-safe standards and actual road constraints. Scenario-based evacuation performance must be disclosed; conclusory assurances are inadequate. Agencies may not allow pre-CEQA grading that forecloses required analysis or nullifies pre-construction protections. [C1] [C2] [C3] [C4] [C5] [C6] [C7]

Argument

- No evacuation time/clearance modeling, no queue length analysis, no intersection control assumptions, and no apparatus–evacuee conflict assessment under Red Flag conditions. [C2] [C3]
- No disclosure of road inventory (measured widths at pinch points, shoulder condition, grade %, curve radii, sight distance), no comparison to State Fire Safe Regulations (dead-end limits, turnout spacing/size, hammerhead/turnaround geometry, gate clearances/signage). [C4] [C5]
- Single-egress ridgeline: no evaluation of plume-dominated fire behavior, ember cast/spotting, blocked segments, or shelter-in-place contingencies; no sensitivity to simultaneous multi-project evacuations. [C1] [C2]

- Reliance on labels such as “commercial driveway” substitutes semantics for compliance analysis; standards apply based on function and risk, not labels.
- Emergency access for responders is not quantified; no bi-directional flow analysis, staging areas, or ingress priority planning are disclosed.
- Early/illegal grading removed vegetation and altered fuel continuity without integrated fuel-modification plans, degrading margins of safety for evacuation and access. (See Ch. 4)
- No formal coordination record with CalFire/Fire Marshal on geometry compliance and evacuation performance; staff assurances are not a substitute for written standards-based analysis.

Conclusion

Wildfire/evacuation findings are unsupported by substantial evidence, and grading foreclosed required protections. CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section C

- [C1] CEQA Guidelines, Appendix G (Wildfire).
- [C2] CEQA Guidelines §15126.2(a).
- [C3] Sierra Watch v. County of Placer (2021) 69 Cal.App.5th 1, 17–31.
- [C4] 14 CCR §1273.00 et seq. (State Fire Safe Regulations).
- [C5] PRC §4290.
- [C6] CEQA Guidelines §15064.
- [C7] CEQA Guidelines §15004(a), (b)(2)(A)–(B).

D. Water Supply, Hydrology & Erosion (Evidence + Implementation) (See Chs. 7 & 4)

Principle

CEQA requires an evidence-based assessment of water availability and watershed effects, including drought resilience and cumulative demand. Hydrology/erosion controls must be implemented and verified under a compliant MMRP; deferral is allowed only with objective performance standards. Pre-CEQA grading that alters runoff or erodes slopes forecloses required analysis and protections. [D1] [D2] [D3] [D4] [D5]

Argument

- No pump tests with step-rate and constant-rate components; no specific capacity (gpm/ft), transmissivity, or storativity derivations; no drawdown/recovery curves; no interference analysis for nearby wells; no long-duration testing simulating operational demand. [D1]
- No water balance accounting for process water, sanitation, fire flows/reservoirs, and losses; no drought-period reliability analysis (multi-year sequences) or contingency supplies.
- No cumulative basin/sub-basin accounting: no hydrogeologic boundary delineation, no recharge estimates, no historical hydrograph trends, and no climate-adjusted recharge scenarios.
- Illegal/early grading increased runoff and sediment delivery potential: no RUSLE factors disclosed (K, LS, C, P), no outlet energy dissipation designs, no stabilized construction entrances or check dams documented. (See Ch. 4)
- Drainage Management Plan elements are missing/mislabeled; cross-references point to other projects; as-built certifications and inspection logs are absent.
- BMP implementation is unverified: no wattles/silt fence layouts with stationing; no post-storm inspection reports; no slope stabilization (hydroseed, tackifiers, blankets) records; no photo logs tied to dates/locations.
- No stand-alone MMRP adopted with responsibilities, timing (pre/during/post-construction), performance standards, and verification protocols. [D3] [D4] [D5]

Conclusion

Because water sufficiency is assumed and hydrology/erosion protections were neither implemented nor verified—and grading precluded required analysis—CEQA does not permit adoption of an MND. The County must deny the permit.

Footnotes – Section D

- [D1] Vineyard Area Citizens v. City of Rancho Cordova (2007) 40 Cal.4th 412, 432–434.
- [D2] CEQA Guidelines §15064.
- [D3] CEQA Guidelines §15126.4(a)(1)(B), (a)(2).
- [D4] PRC §21081.6(a)–(b); CEQA Guidelines §15074(d), §15097.
- [D5] CEQA Guidelines §15004(a), (b)(2)(A)–(B).

E. Tribal Cultural Resources: Consultation & Pre-Construction Protections (See Ch. 8)

Principle

Upon tribal request, AB 52 mandates timely, good-faith consultation and adoption of enforceable mitigation to avoid or substantially lessen TCR impacts. Confidentiality requires appropriate summaries for public disclosure; it does not permit withholding substantive protections. Pre-construction protocols must be in place before any disturbance. [E1] [E2] [E3] [E4] [E5]

Argument

- Consultation sequence defects: request-to-consult not honored; no meeting(s) noticed; no meaningful exchange of information on site sensitivity or avoidance; no consultation closure letter documenting outcomes. [E1]
- No enforceable mitigation identifying monitors with qualifications, stop-work authority, communication trees, and decision thresholds; no worker environmental awareness training (WEAP) curriculum or attendance logs.
- No inadvertent discovery plan with mapped buffers, notification steps, and re-initiation protocols; no chain-of-custody/curation commitments.
- Early/illegal grading prevented required pre-disturbance surveys/monitoring; potential TCR loci were disturbed without protocols in place. (See Ch. 4)
- No stand-alone MMRP for TCR measures specifying responsible parties, timing, performance standards (e.g., buffer distances), and verification. [E4] [E5]

Conclusion

Absent required consultation and enforceable pre-construction protections—and given grading that foreclosed TCR measures—CEQA does not permit adoption of an MND. The County must deny the permit.

Footnotes – Section E

- [E1] PRC §§21080.3.1–21080.3.2., Cliff Mota Contract with Poverty Flats IMG_5783.jpeg
- [E2] PRC §21074.
- [E3] PRC §§21084.2–21084.3.
- [E4] CEQA Guidelines §15064.5.
- [E5] CEQA Guidelines §15126.4(b)(3).

F. Mitigation Monitoring & Reporting Program (MMRP)

Principle

Mitigation may be adopted only if fully enforceable and accompanied by an MMRP adopted at project approval specifying responsibility, timing, performance standards, and verification. Deferred mitigation is unlawful unless strict performance standards and objective triggers guide later details. [F1] [F2] [F3] [F4] [F5]

Argument

- IS/MND includes scattered mitigation statements without a single adopted MMRP; no matrix of measures, timing, responsible parties, field verification, or reporting cadence.
- Pre-construction measures (biological surveys, TCR monitors, fencing) were not documented prior to disturbance; enforcement and corrective action procedures are undefined.
- Monitoring lacks measurable performance standards (e.g., sediment discharge thresholds, buffer widths, response times), rendering it unenforceable.

Conclusion

Mitigation is not shown to be enforceable, scheduled, or verified. CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section F

- [F1] PRC §21081.6(a)–(b).
- [F2] CEQA Guidelines §15074(d); §15097.
- [F3] CEQA Guidelines §15126.4(a)(2).
- [F4] CEQA Guidelines §15126.4(a)(1)(B).
- [F5] *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735–736; *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793–794.

G. Substantial Evidence & Analytic Route (Standards & Applications) (See Chs. 2, 3, 7 & 9)

Principle

“Substantial evidence” means facts, reasonable assumptions based on facts, and expert opinion supported by facts—not bare conclusions. Agencies must reveal the analytic route from data to findings and consider the IS/MND together with comments on the actually circulated version. Fact-based lay observations (photos,

measurements, logs) can constitute substantial evidence; undocumented assurances cannot. [G1] [G2] [G3] [G4] [G5]

Argument

- Road/evacuation (Chs. 2–3): “Adequate access” was asserted without field measurements (widths, grades, radii), dead-end compliance, turnout spacing, or evacuation performance; labels were substituted for standards-compliance analysis.
- Water/hydrology (Ch. 7): Adequacy was asserted without pump tests, hydrogeologic parameters, recharge estimates, or cumulative accounting; no drought-sequence reliability testing.
- Slope/surveys/setbacks (Ch. 9): Missing scale, datum, and professional seals make it impossible to verify setbacks or even property boundaries; topic conclusions that depend on setbacks (biology buffers, cultural avoidance, drainage) are therefore unreliable.
- Evidence rules for appellants: fact-based lay testimony—including dated photos with vantage points, simple tape-measure widths, smartphone clinometer grades, well logs with dates—constitutes substantial evidence; speculation does not. [G1] [G4]
- Staff assurances and undocumented “professional judgment” do not constitute substantial evidence without disclosed inputs, methods, and qualifications in the written record. [G2] [G6]

Conclusion

Because findings rest on unsupported assertions rather than disclosed data/methods—and basic geometry/setbacks cannot be verified—CEQA does not permit adoption of an MND. The County must deny the permit.

Footnotes – Section G

- [G1] CEQA Guidelines §15384; §15064(a), (b), (f)(1)–(5).
- [G2] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512–524.
- [G3] CEQA Guidelines §15074(b).
- [G4] *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928–930.
- [G5] CEQA Guidelines §15064.7.
- [G6] See Chapter 2 – Road Safety, Section G, subsections 2 and 3.

H. Substantive Changes Requiring Recirculation (April 25, 2025 IS/MND)

Principle

CEQA requires recirculation when a revised IS/MND adds significant new information or makes changes that may cause new or more severe impacts. Decisionmakers must consider the IS/MND together with comments on the actually circulated version; responsible/trustee agencies must be properly noticed. [H1] [H2] [H3] [H4] [H5] [H6]

Argument

- Timeline: Jan 6, 2025 IS/MND noticed Jan 6, 2024 – Feb 6, 2024 (these dates were documented incorrectly on the ISMND Memorandum; the correct year was 2025) referenced Grading Permit GR 25-01; the Apr 25, 2025 IS/MND removed GR 25-01 references—a substantive change affecting grading compliance and baseline assumptions. [H1] [H2]
- The version presented to the Planning Commission for action on May 22, 2025 differed from the version circulated for comment, violating the requirement to consider the document together with comments on the version actually circulated. [H2]
- Responsible/trustee agencies were not re-noticed of material edits; project terminology shifted from “immature plant nursery” to “immature plant propagation,” expanding activities and inputs without re-scoped analyses.

Conclusion

Material changes were made without lawful process, tainting public review. CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section H

- [H1] CEQA Guidelines §15073.5(a)–(b)(1), See 00-UP 23-09 IS-MND.pdf (Jan 6, 2025 version)
- [H2] CEQA Guidelines §15074(b)–(c), See 00-Draft Initial Study Mitigated Negative Declaration redlined UP23-29.pdf (Apr 25, 2025 version incorrectly identified as UP23-29; correct identifier is UP23-09), ISMND Side-by-Side Jan-Apr.pdf.
- [H3] CEQA Guidelines §15087(d).

- [H4] CEQA Guidelines §15162.
- [H5] CEQA Guidelines §15164.
- [H6] CEQA Guidelines §15088.

I. Project Documentation & “Whole of the Action” (Incl. Indemnification) (See Ch. 1)

Principle

CEQA requires a stable, accurate project description, proper incorporation by reference, and consideration of the actually circulated IS/MND with comments. Review must cover the whole of the action, including material agreements that condition implementation, enforcement, or termination. [I1] [I2] [I3] [I4] [I5]

Argument

- Unstable description: shift from “immature plant nursery” to “immature plant propagation” changes activities (lighting, water/chemicals, deliveries, staffing), yet topic analyses were not updated accordingly. [I3]
- Conflicting versions: grading-permit references inserted/removed between circulated and considered versions; no re-notice or recirculation. [I2] [I3]
- Incorporation gaps: technical materials (hydrology, DMP, surveys) were missing, mislabeled, or linked under another project; the public could not access the basis of the IS/MND. [I4]
- Indemnification agreement omitted: a material agreement bearing on implementation and enforcement was neither disclosed nor incorporated, obscuring the “whole of the action.” (See Ch. 1) [I5]
- Resulting prejudice: decisionmakers and the public could not evaluate the actual proposal or the enforceability of mitigation.

Conclusion

With an unstable description, conflicting versions, incomplete postings, and omission of a material agreement, the IS/MND fails CEQA’s disclosure requirements and the review of the whole of the action. The County must deny the permit.

Footnotes – Section I

- [I1] CEQA Guidelines §15151.

- [I2] CEQA Guidelines §15074(b), See 00-UP 23-09 IS-MND.pdf (Jan 6, 2025 version).
- [I3] CEQA Guidelines §15073.5(a)–(b), See 00-Draft Initial Study Mitigated Negative Declaration redlined UP23-29.pdf (Apr 25, 2025 version incorrectly identified as UP23-29; correct identifier is UP23-09).
- [I4] CEQA Guidelines §15150, See 00-Hydrology report and DMP.pdf
- [I5] CEQA Guidelines §15378(a).

J. Inconsistent Data & Unsupported Findings

Principle

CEQA requires a stable, accurate, and internally consistent record supported by substantial evidence showing a reasoned analytic route from evidence to conclusions. The April 25 IS/MND (a) removes the complex-permit framework, (b) retains high-impact infrastructure elements, and (c) offers no equivalency findings—a trio of conclusory, conflicting, and shifting elements that violate CEQA §§15073.5, 15074.1, 15125(a). These defects warrant recirculation or preparation of an EIR. [J1] [J2] [J3] [J4] [J5]

Argument

- Conflicting project data: grading volumes, cut/fill balances, workforce size, and trip generation fluctuate across versions and staff statements; each affects hydrology, biology, and evacuation outcomes.
- Terminology drift (“nursery” → “propagation”) generated analytical drift; screening tools and thresholds were not re-applied to the revised use case.
- Unsupported assumptions replace empirical surveys (e.g., roadway measurements), pump tests, and evacuation performance modeling; sensitivity to post-fire soils and single-egress conditions is absent.
- Initial Study numbers (IS23-20 vs. IS23-29) are inconsistently used in filings, CEQA uploads, notices, agency comments, and internal correspondence. The correct Initial Study number for the Poverty Flats project is IS 23-20. However, multiple County staff reports, attachments, and correspondence — especially within the April 25, 2025 “Draft Initial Study Mitigated Negative Declaration redlined UP 23-29.pdf” — mistakenly reference IS 23-29. This inconsistency appears repeatedly in project materials (emails, staff notes, and even the file title of the ISMND itself) [J6].
- Models and inputs are undisclosed (traffic/VMT, stormwater, noise); boundaries and parameters are not provided for third-party verification.

Conclusion

Because significance findings rest on conflicting data and unsupported assertions rather than substantial evidence and a transparent analytic route, CEQA does not permit adoption of an MND. The County must deny the permit.

Footnotes – Section J

- [J1] CEQA Guidelines §15151.
- [J2] CEQA Guidelines §15064(a)–(b), (f)(1)–(5).
- [J3] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512–524.
- [J4] *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118–123.
- [J5] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720–727.
- [J6] See 00-Staff Report Poverty Flats Ranch.pdf, See 00-Conditions of Approval.pdf, [EXTERNAL] RE_ UP 23-09; IS 23-29; GR 25-01 Poverty Flats Ranch.pdf, 2025-05-22 Max PC Slide IS 23-29.JPG, Legal UP 23-09.docx, [EXTERNAL] RE_ UP 23-09; IS 23-29; GR 25-01 Poverty Flats Ranch Kyle Stoner.pdf, [EXTERNAL] RE_ UP 23-09; IS 23-29; GR 25-01 Poverty Flats Ranch (PG&E).pdf, Agenda.pdf, Minutes.pdf.

K. PRA Production & Administrative Record Completeness

Principle

CEQA decisions must rest on a complete, accessible administrative record including materials relied upon and those submitted by agencies and the public. Documents incorporated by reference must be available. PRA obligations reinforce timely, intelligible disclosure. [K1] [K2] [K3] [K4] [K5]

Argument

- Missing or late-uploaded agency letters and public comments; composites without dates/metadata replaced originals; document identifiers inconsistent across postings [K6].
- Technical appendices (plans, surveys, hydrology/DMP) were missing, mislabeled, or inaccessible; cross-references pointed to unrelated projects.
- These gaps impeded meaningful review and prevented the Commission from considering the IS/MND with the actual comments and technical basis.

Conclusion

Because the administrative record is incomplete and not reliably accessible, CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section K

- [K1] PRC §21167.6(e).
- [K2] CEQA Guidelines §15074(b).
- [K3] CEQA Guidelines §15150.
- [K4] Gov. Code §§6253, 6253.1, 6253.9.
- [K5] CEQA Guidelines §15151.
- [K6] 00-Public Comment.pdf

L. Professional Seals, Surveys & Plan Legality (BPC Compliance)

Principle

Where impact conclusions depend on engineering design, grading, drainage, roadway geometry, or boundary/setback determinations, CEQA requires substantial evidence in the form of properly prepared and certified plans and surveys. Unsealed or uncertified documents are not reliable evidence. [L1] [L2] [L3] [L4]

Argument

- Site plans lack professional engineer/land surveyor seals and signatures; datum, scale, and boundary control are not shown; no certified ALTA/NSPS or equivalent survey in record [L5]
- Setback-dependent topics (biology buffers, cultural avoidance, drainage, glare/noise) cannot be verified without sealed plans and certified boundaries [L6]. Email from the planner to the applicant show no boundary survey as late as March 17, 2025, two months after the January ISMND was circulated for agency and public review [L7]. “2. THIS IS NOT A BOUNDARY SURVEY. HOWEVER, THIS IS NOT A BOUNDARY SURVEY. HOWEVER, WEST BOUNDARY INFORMATION BY STEWART LAND SERVICES, PLS 9644, DATED 02-09-2024. NORTHPOINT CONSULTING GROUP, INC. HAS NOT VERIFIED THIS PROPERTY BOUNDARY.” [L8]
- Road geometry (width/grade/radii) and drainage designs are presented without professional attestation; as-builts and inspection logs are missing.

Conclusion

Because critical plans and surveys are not sealed or certified as required, impact conclusions are unsupported by substantial evidence. CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section L

- [L1] Bus. & Prof. Code §6735; §6701 et seq.
- [L2] Bus. & Prof. Code §8726; §8700 et seq.
- [L3] Bus. & Prof. Code §8792.
- [L4] CEQA Guidelines §15384.
- [L5] See 00-Site Plans.pdf.
- [L6] See 00-Agency Comments.pdf.
- [L7] [EXTERNAL] RE_ UP 23-09, IS 23-20 Site Plans.pdf, [EXTERNAL] RE_ UP 23-09, IS 23-20 Site Plans (2).pdf.
- [L8] 241211 - BARTHEL - USE PERMIT.pdf.

M. Obstruction of Public Participation & Record Access by County Staff

Principle

CEQA guarantees meaningful public participation and an accessible, accurate record; agencies must provide timely access to materials relied upon and avoid practices that impede public review. PRA and Brown Act duties require timely availability of agenda materials and records distributed to decisionmakers. [M1] [M2] [M3] [M4] [M5] [M6]

Argument

- Withheld/late materials: full, dated agency letters and public comments not included in packet; composites/summaries without dates/metadata replaced originals, preventing verification. [M3]
- Broken links/firewalled documents: posted materials were inaccessible; requested copies not timely provided in accessible formats; responsive records unrelated to request [M4] [M5] [M7] [M8].
- Asymmetric access: not all public comments to the Planning Commission were provided to the Commission/public, while the applicant referenced withheld comments during presentation. [M3] [M6]

- Despite multiple documented requests, the County failed to produce essential records before the hearing, obstructing lawful access to environmental information and materially compromising the fairness of the process. The repetitive invocation of Government Code § 7922.535(a) extensions and the diversion of PRA responses through County Counsel constituted deliberate procedural delay that deprived the appellant and the public of their right to informed participation guaranteed by CEQA and the PRA. These omissions rise above clerical oversight and reflect systemic non-compliance with the disclosure duties that form the foundation of procedural fairness [M4].
- PRA inconsistency: similarly situated requesters received documents the appellant did not, despite seeking the same records. [M4]
- Version control: substantive edits appeared between circulated and considered IS/MND versions without re-notice or recirculation. [M2] [M3]
- Incorporation-by-reference gaps: referenced plans/surveys/hydrology/cultural protocols were unavailable or misindexed. [M5]
- Brown Act violation: materials provided to a majority of decisionmakers and the applicant were not simultaneously available to the public. [M6]
- Confidentiality misuse: TCR confidentiality requires appropriate summaries, not withholding entire communications later relied upon. [M1]

Conclusion

Because staff conduct impeded access necessary for informed comment, CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section M

- [M1] PRC §21082.3(c)(1), See 00-Agency Comments.pdf, See 00-Public Comments.pdf
- [M2] CEQA Guidelines §15073.5(a)–(b); §§15072–15073.
- [M3] CEQA Guidelines §15074(b).
- [M4] Gov. Code §§6253, 6253.1, 6253.9, Screenshot 2025-10-12 at 1.19.54 PM, Screenshot 2025-10-12 at 1.19.38 PM, See 00-Public Comments.pdf, 6.6 LawyerMarshaBurch_RePRAWoodProcessingIS23-10_LackOfResponse_06112025.pdf, Brad Johnson Fw_ Public Records Act request _ preservation request.pdf, PRA 25-136 Screenshot 2025-10-12 at 1.19.38 PM, PRA 25-136 Screenshot 2025-10-12 at 1.19.54 PM, PRA 25-194a California Public Records Act Request for Lake County.pdf (see PRA 25-194a

California Public Records Act Request for Lake County.pdf through PRA 25-194s California Public Records Act Request for Lake County.pdf), PRA 25-194t Closeout letter.pdf, PRA 25-194u Final Demand for Compliance Re_ Public Records Act Request – Poverty Flats Ranch, UP 23-09 .pdf, PRA 25-194v _EXTERNAL_ Final Demand for Compliance Re_ Public Records Act Request – Poverty Flats Ranch, UP 23-09.pdf, PRA 25-194w _EXTERNAL_ Final Demand for Compliance Re_ Public Records Act Request – Poverty Flats Ranch, UP 23-09, Final PRA Enforcement Letter.

- [M5] CEQA Guidelines §15150.
- [M6] Gov. Code §54957.5, Green Sheet Public Comments.pdf, Green sheets.pdf, More Green Sheet Comments.pdf
- [M7] GR22-12_Thu_Jun_26_2025_09-33-04.pdf.
- [M8] PRA responses PRA 25-134 The big PRA.pdf, PRA Responses.pdf

N. Piecemealing & Failure to Implement Mitigation (Illegal Grading)

—See Ch. 4

Principle

CEQA requires analysis of the whole of the action and prohibits piecemealing. Mitigation can support “less-than-significant” findings only if fully enforceable, timely implemented, and monitored under a compliant MMRP; agencies may not pre-commit or allow site disturbance that forecloses alternatives or mitigation before CEQA completion. [N1] [N2] [N3] [N4] [N5] [N6] [N7] [N8]

Argument

- Segmentation: grading and “site prep” treated as separate/ministerial while operations analyzed later, avoiding integrated analysis of evacuation, hydrology/erosion, biology, and cultural resources required together. [N1] [N2]
- Nullified mitigation: pre-disturbance measures (AB 52 monitors, WEAP training, nesting-bird surveys/buffers, fencing, slope/erosion BMPs, road geometry verification) could not be meaningfully performed once ground was disturbed.
- MMRP failure: no stand-alone MMRP adopted at approval; no evidence of implementation/verification (monitor logs, buffer maps, BMP layout/as-builts, inspection reports). [N4] [N5]
- Recirculation triggers: grading and scope/terminology changes (e.g., “nursery” → “propagation”) introduced new/more severe impacts; at least a fair argument of significance exists. [N6]

- Two phases of unlawful grading and lack of inspection: Phase 1 (before notifying CDD of intent) — no inspection; habitat/tree removal, soil exposure, watershed/erosion control disruption; Phase 2 (after expressing intent) — no documented inspection; continued disturbance without protections; both phases increase risks to Tribal/historical and biological resources and elevate erosion/sedimentation hazards. [N7] [N8]

Conclusion

Because the project was piecemealed and grading nullified mitigation and foreclosed required analysis, CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section N

- [N1] CEQA Guidelines §15378(a).
- [N2] Laurel Heights Improvement Assn. v. Regents of Univ. of Cal. (1988) 47 Cal.3d 376, 396–404.
- [N3] CEQA Guidelines §15004(a), (b)(2)(A)–(B).
- [N4] PRC §21081.6(a)–(b); CEQA Guidelines §15074(d), §15097.
- [N5] CEQA Guidelines §15126.4(a)(1)(B), (a)(2).
- [N6] CEQA Guidelines §15073.5(a)–(b); §§15162–15164.
- [N7] CEQA Guidelines §15065(a)(1); PRC §§21084.2–21084.3.
- [N8] CEQA Guidelines §15065(a)(4).

O. Staff Predisposition & Record Integrity (PRA Materials Only)

Principle

An agency commits prejudicial abuse of discretion when it fails to proceed in a manner required by law or when findings lack substantial evidence. CEQA requires a clear, stable, and accurate record that reveals the analytic route from facts to conclusions; the decision body must consider the IS/MND together with comments on the actually circulated version. Materials provided to decisionmakers must be simultaneously available to the public. [O1] [O2] [O3] [O4] [O5] [O6]

Argument

- Asymmetric access & coaching: planner sent public comments not in packet to applicant and advised which to “respond to,” giving one party an undisclosed advantage [M6]

- Predetermination cues: planner email seeking “as much support as we can to overturn the constant appeals” signals commitment to outcome over neutral fact-finding [O7].
- Applicant-supplied CEQA backbone: consultant sent planner a link to the IS/MND and attachments (including Hydrology Report), blurring the separation between neutral agency analysis and applicant advocacy (PRA Exhibit S1, 8/7/2024) [O8].
- Record access defects corroborated in PRA: broken links/firewalled docs, composites without dates/metadata, unequal distribution to applicant vs. public/Commission, and uneven fulfillment of PRA requests.

Conclusion

Because PRA materials show predisposition and record-control failures that frustrated CEQA’s informational mandate, CEQA does not permit adoption of an MND on this record. The County must deny the permit.

Footnotes – Section O

- [O1] PRC §21168.5.
- [O2] CEQA Guidelines §15151.
- [O3] CEQA Guidelines §15074(b).
- [O4] CEQA Guidelines §15150.
- [O5] Gov. Code §54957.5.
- [O6] Gov. Code §§6253, 6253.1, 6253.9.
- [O7] Max stating getting support.pdf
- [O8] Max email thread pre-notifying applicant with files for upcoming appeal.pdf