

## **PL 25-198 Poverty Flats UP 23-09 IS 23-20**

### **Chapter 4 Grading – Grading Non-Compliance and Mitigation Nullification**

#### **A. Ministerial vs. Discretionary; Accurate, Stable, Finite Record**

##### **Principle**

The ISMND discusses the need for a complex grading permit for the project [A1]. CEQA doesn't apply to truly ministerial approvals; it does apply once discretionary permitting is implicated or foreseeable. Where a complex (discretionary) grading permit is recognized, analyzed, then removed before adoption, the agency must maintain an accurate, stable, finite project description and recirculate if substantial revisions/new information would deprive the public of meaningful comment [A2]. Project applicant violated Lake County Code by grading without appropriate permits and within scope of project documentation [A3].

##### **Argument — What the Record Shows**

###### **1. Baseline & Early Disturbance (2018–2021)**

- Historical images show the property as a mostly undeveloped, natural landscape with dirt roads and trails until the Mendocino Complex Fire in August 2018 (Figure B1). Post-fire imagery shows substantial remaining vegetation and intact landforms, including native oak trees and chaparral on premises (Figure B2). It also shows the property unchanged since before the fire-- contradicting applicant's claim that part of the cannabis area he wants to develop was used as a firebreak and dozed after the Complex fire, and that there would be no cutting or filling [A4].



Figure B1: Google Earth Pro image of Poverty Flats property July 2, 2018 showing trees, vegetation, and landscape prior to Mendocino Complex Fire.





Figure B2: Google Earth Pro image of Poverty Flats Property September 10, 2019 showing trees, vegetation, and landscape after the Mendocino Complex Fire. A5]

- By April 18, 2021 aeriels (Figure B3) capture grading/trenching and tree removal before any grading permit or Lake Streambed Alteration Agreement, while applicant emails seek permits for canopy preparation after grading began [A5]. Applicant stated that CalFire graded fire breaks after the Mendocino Complex Fire but aerial imagery shows otherwise [A6].

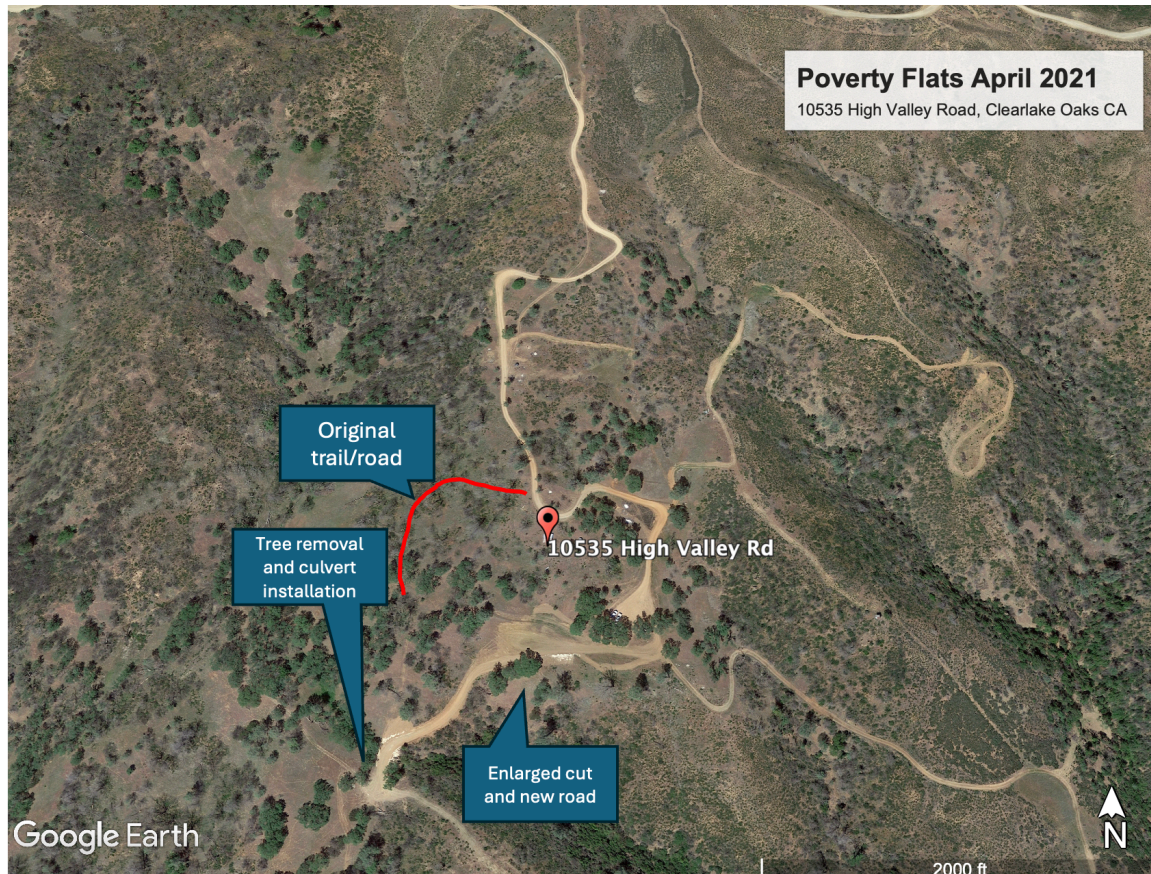


Figure B3: Google Earth Pro image of Poverty Flats Property April 18, 2021 showing original trail/road (red line), removal for culvert installation area, and enlarged cuts and new road.

## 2. GR22-12 (Ministerial) — Text vs. Field Conditions (2022)

- Permit GR22-12 “with conditions” (issued 4/14/2022) authorizes “clearing and maintenance of existing firebreak” and “road maintenance/widening to 4290 only in <20% slopes and areas wide enough” with “minimal soil disturbance.” Public Records Request returned no requested copy of permit conditions. [A7]
- Subsequent imagery and cultural documentation show pad cuts, widened benches, and ~3-ft trenches aligned to cultivation areas—characteristic of complex grading, not ministerial maintenance. [A8] (Figures B4, B5, B6)





Photograph 1. Overview of planned grow area in Project Area. View south.



Photograph 2. Overview of planned grow area in Project Area. View east.



Photograph 3. Overview of planned grow area.



Photograph 4. Overview of waterline trench.

Figure B4: Cultural Resources Assessment for the Cannabis Cultivation Operation at 10535 High Valley Road, Clearlake, Lake County, California,” Natural Investigations Company, December 2023.  
(Confidential archaeological data omitted pursuant to Government Code §6254.10 and ARPA §9(a)).

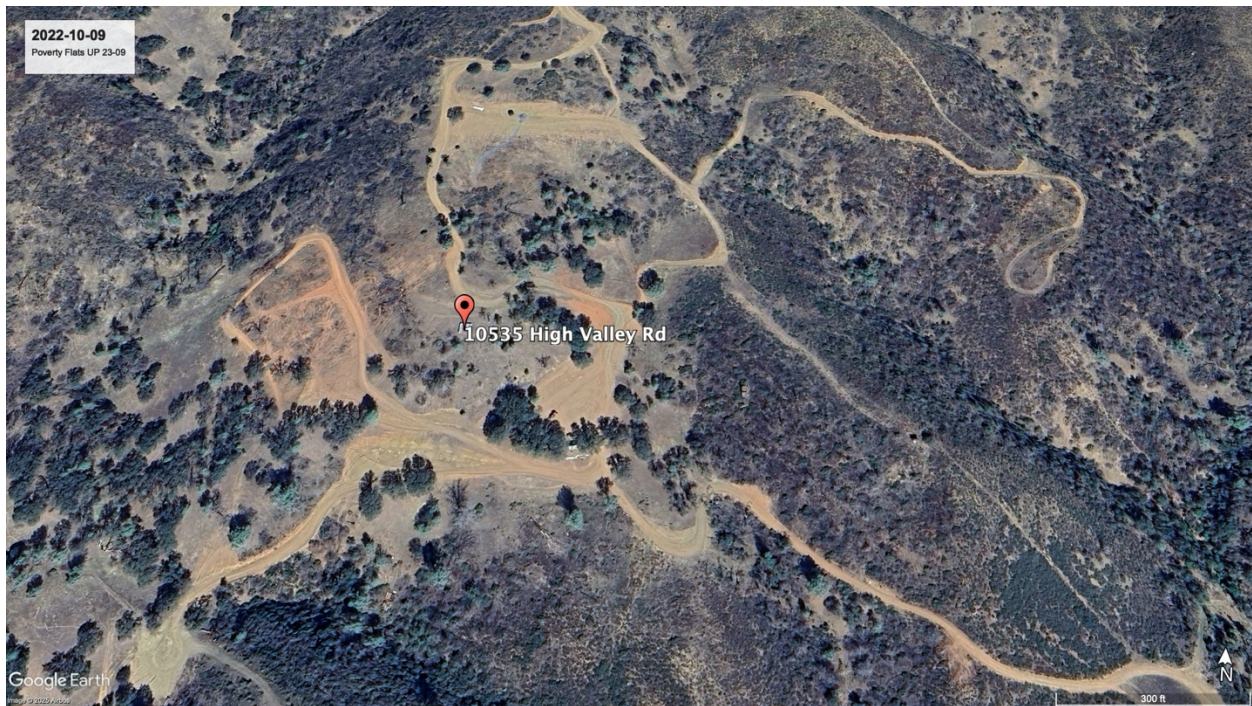


Figure B5: Google Earth Pro image of Poverty Flats Property on October 9, 2022 showing six months of continued grading under ministerial permit GR 22-12.





Figure B6: Comparison of aerial images show healthy trees removed and new roads and benching on property.

- Tribal Historic Preservation Officer met with project applicant on October 30, 2023 but no agreement was reached on contract to oversee ground disturbance activities that could negatively affect cultural resources. [A9]
- The Preliminary Grading Plan, dated October 17, 2023, clearly shows the site layout and cultivation areas for the cannabis project and documents solar arrays, electrical panels, and water line trenching locations. [A10]





Figure B7: Shows deep trenching for waterlines and deep cuts and bench into steeply sloped land.

### 3. County Recognizes Complexity; Then Removes It (Dec 2024–Apr 2025)

- The county discusses the grading activity and attempts to incorporate the grading that has been done “*A complex grading process will be necessary for this project, and management is currently exploring options to incorporate the grading permit.*” [A11].
- Complex Grading Permit GR25-01 was issued January 9, 2025 for ~7,450 CY earthwork, culvert/trenching [A12]. The ISMND dated January 6, 2025 incorporates the complex permit and references an existing 18" HDPE culvert [A13]. This is the version that was uploaded to CEQA on January 9, 2025 with the Preliminary Grading Plans and other documents.
- On January 9, 2025 staff email requests voiding GR25-01. [A14]

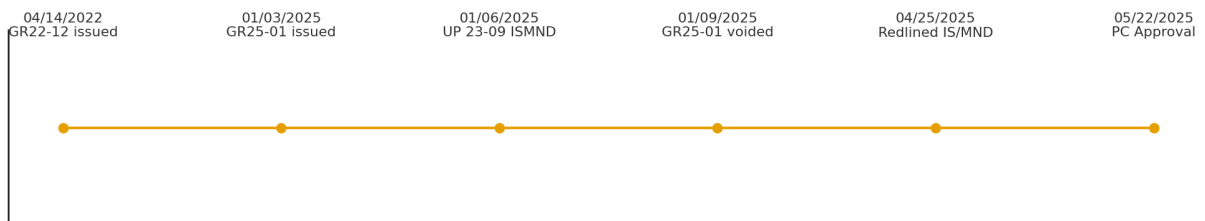


Figure B8: Timeline of permit mishandling that should have triggered ISMND recirculation.

- March 24, 2025 Email from Tod Elliott to Max Stockton citing Sec.30-17. - Exemptions 30-17.4.13 Grading for water well pads or utilities [A15]. This additional and separate grading activity should have been incorporated in the total of the project and constitutes a piecemealing of the project components which violates several CEQA guidelines [A16].
- May 22, 2025 Planning packet presents a redlined IS/MND [A17] omitting GR25-01 while retaining intensive infrastructure descriptions—a material change from circulation to adoption. That redlined version dated April 25, 2025 was subsequently reworked to incorporate the changes and uploaded to CEQA on May 27, 2025 without the reference to GR 25-01 and without the Preliminary Grading Plans [A1].

#### 4. “Fire Suppression” vs. Irrigation Narrative; PRA Gaps (2024–2025)

- Internal email (6/2/2025) asserts trenching occurred “under a valid well permit for... fire suppression/water supply” [A18]—yet no inspection report was produced in response to PRA [A19].
- Applicant/consultant submittals and plan legends depict water lines, risers, and irrigation infrastructure for cultivation—not purely fire suppression [A10].
- PRA responses failed to provide records substantiating key County claims (prior ag activity; inspection notes; trench approvals).

#### 5. Cultural/Tribal, Biological, Fire, Hydrology, Erosion Consequences

- Cultural/Tribal: Cultural assessment documents heavy machinery grading and ~3-ft trenches; no tribal monitoring agreement was executed [A8]. Tribal Historical Preservation Officer stated in an email July 24, 2025 that he has not been contacted for grading—nullifying TCR-1 mitigation [A20].
- Biological: Early biological work flagged ephemeral channels, survey windows, and permitting needs (SAA/CWA) before ground disturbance—undercut by unpermitted grading/trenching. The ISMND states “the BA did note that construction activities or tree removal activities could impact special-status bird species. Therefore, if construction activities or tree removal activities (if any) occur during the nesting season (February through August), a pre-construction survey for the presence of special-status bird species and nesting bird species should occur.” - nullification of BIO-1 mitigation. [A21]
- Hydrology/Schindler Creek: Public complaints (6/6/2024) warned of potential Hitch habitat impact; trenching/culverts intersect drainage paths. [A22]



- **Hydrology & Water Quality (Impact WQ-1/WQ-2):** The unpermitted/ministerial-only grading altered on-site drainage patterns, increased runoff rates and volumes, and introduced uncontrolled sediment sources by removing vegetation and compacting pads/roads without the complex-permit BMPs and inspections disclosed in the circulated IS/MND. These changes invalidate the hydrologic assumptions underlying the April IS/MND and constitute significant new information requiring recirculation (Guidelines §15073.5). Absent reinstatement of the complex-permit framework (or equivalent enforceable measures) to size culverts, stabilize outlets, and control erosion, substantial evidence does not support a less-than-significant finding for hydrology and water quality [A23].
- **Fire/4290:** GR22-12 invoked 4290 but expressly limited work to <20% slopes with minimal disturbance; the later “fire suppression trench” claim is inconsistent with irrigation-labeled plans and missing inspection documentation.
- **Erosion Controls:** The Preliminary Grading Plans identified a licensed civil engineer and general contractor responsible for implementation and certifying erosion-control measures. Site disturbance proceeded without their documented participation, inspection logs, or certification, rendering the grading unpermitted under County Code §30-6 and inconsistent with CEQA’s enforceable mitigation framework.



Figure B9: Google Earth Pro image of Poverty Flats Property on May 1, 2024 showing two years of continued grading under ministerial permit GR 22-12 stating “minimal soil disturbance”.

## **Conclusion — Basis for Denial**

The County's handling of the Poverty Flats project represents a pattern of material misrepresentation and procedural failure that undermines the integrity of the CEQA process. By recognizing complex grading (GR25-01) within *UP 23-09 ISMND.pdf* and then voiding and omitting that permit framework at adoption, the County effectively segmented a discretionary component, destabilized the project description, and nullified enforceable mitigation measures tied to erosion control, hydrology, fire safety, biological resources, and Tribal Cultural Resources.

The record demonstrates repeated departures from required professional oversight, inconsistent or falsified statements in staff reports, and the selective removal of evidence from the environmental record. These actions prevented meaningful public participation and violated CEQA's fundamental requirement of a stable, accurate, and transparent project description.

Because the environmental review was corrupted by omissions, unverified claims, and procedural irregularities, the Board cannot lawfully rely on the adopted ISMND as substantial evidence. The appropriate remedy is not recirculation but denial—the project, as processed, fails to meet the minimum statutory requirements for environmental disclosure, mitigation enforceability, and public safety.

Accordingly, the Board should deny the project approval in its entirety, direct staff to correct the record, and require any future application to undergo a new, truthful, and comprehensive review consistent with CEQA, Public Resources Code §§ 21000–21092, and Title 14 CCR §§ 15125–15164.

## **Footnotes for Section A**

[A1] See [00] UP 23-09 ISMND.PDF (dated January 6, 2025); Draft Initial Study Mitigated Negative Declaration redlined UP23-29.pdf (dated April 25, 2025 and incorrectly identified as UP23-29; correct identifier is UP23-09).

[A2] CEQA Guidelines §§15073.5 (Recirculation of a Negative Declaration Prior to Adoption); CEQA Guidelines §§15074.1 (Mitigation Substitution / Equivalency Requirement); CEQA Guidelines §§15125(a) (Accurate, Stable, and Finite Project Description).

[A3] Lake County Code, Ch. 30, §30-3(b)(d)(e)(g); §30-5(a)(b)(d)(f), 30-8(8.1), §30-9.

[A4] RE\_[EXTERNAL] medical cannabis\_ to Katherine.pdf (no cutting or filling).



[A5] Re\_ [EXTERNAL] medical cannabis\_ to Katherine.pdf (applicant intent to clear/grade for canopy and County response re: permits).

[A6] Re\_ [EXTERNAL] Re\_ PRA Request for Information.pdf.

[A7] GR22-12.pdf (“Description of Work: Clearing and maintenance of existing firebreak, maintenance of existing property access road including widening to comply to 4290. This widening is to [be] conducted in area enough to support the width with minimal soil disturbance.”); PRA 25-145 (Submitted 6/18/25: “Please supply the Approved with Conditions details for grading permit GR22-12. I would like a copy of the conditions that apply to this permit”; Acknowledged 6/18/25; Closed 6/26/25; Tech Review 8/5/25: “The Conditions of Approval do not exist. If you have any questions, please direct them to our Planning division or Tod Elliott”).

[A8] Cultural Resources Assessment for the Cannabis Cultivation Operation at 10535 High Valley Road, Clearlake, Lake County, California,” Natural Investigations Company, December 2023.

(Confidential archaeological data omitted pursuant to Government Code §6254.10 and ARPA §9(a)).

[A9] Cliff Mota Contract with Poverty Flats IMG\_5783.jpeg (site-visit but no agreement).

[A10] 6 - Preliminary Grading Plans.pdf; Site Plans.pdf (waterlines/risers; irrigation infrastructure; trench routing).

[A11] [EXTERNAL] FW\_ UP 23-09, IS 23-20, GR 25-01 Invoice for Grading review.pdf (County emails acknowledging the need for complex grading; issuance trail).

[A12] GR 25-01.pdf

[A13] See [00] UP 23-09 ISMND.PDF, p. 2 (1/6/2025 IS/MND: GR25-01 referenced; ~7,450 CY; existing 18" HDPE culvert).

[A14] Void GR 25-01 Invoice.pdf (void request on 1/9/2025; attachment GR25-01.pdf).

[A15] 10535 High Valley Road.pdf.

[A16] CEQA Guidelines §15378 - Definition of “Project” (evaluate the entire activity); CEQA Guidelines §15063(a) (An Initial Study must consider the “whole of the action.”); Guidelines §15065(a)(1) (Significant effects trigger an EIR when the project “has the potential to substantially degrade the environment... either individually or cumulatively.”); Guidelines §15165 (Related activities that are part of a single project must be evaluated together, even if undertaken by different agencies or at different times.); Laurel Heights Improvement Ass’n v. Regents of Univ. of California (1988) 47 Cal.3d 376; Bozung v. Local Agency

Formation Commission (1975) 13 Cal.3d 263; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.

[A17] See [00] Draft Initial Study Mitigated Negative Declaration redlined UP23-29.pdf (dated April 25, 2025 and incorrectly identified as UP23-29; correct identifier is UP23-09), See [00] Staff Report Poverty Flats Ranch.pdf (April packet omitting GR25-01, also referenced the incorrect IS number IS 23-29; correct IS number is IS 23-20).

[A18] 10535 High Valley.pdf

[A19] Open.gov PRA requests PRA 25-114 (I would like to receive a copy of the notes on the grading permit that were made by the grading inspector on July 1, 2024 that explained the trenching on the property as being for fire suppression per the memorandum written and submitted May 22, 2025 by Mireya Turner to the Planning Commission calendar for the meeting held on May 22, 2025 regarding approval of the use permit for UP23-09 Poverty Flats.) Negative Exhibit – Not Found in the Record; PRA 25-134 (...Inspection Report with comments by Tod Elliot on trenching done for fire suppression under applicant's well permit; a summary of the inspection report will not satisfy this request...) County could not/did not produce an official inspection report. Negative Exhibit– Not Found in the Record.

[A20] Some light ready for you all.pdf (Elem THPO email: no contact for grading).

[A21] 3 Nov 2020 BR 10535 HVR by Natural Investigations.pdf; 2a - Biological Resources Assessment.pdf; 2b - Botanical Survey Report.pdf.

[A22] ComplaintOriginalSubmission - COMP-61015.pdf (Schindler Creek/Hitch concern).

[A23] CEQA Guidelines §§15125(a), 15074(b); Appendix G.

## **Figures**

[B1] 2018-Jul Poverty Flats Google Earth.pdf

[B2] 2019-Sep Poverty Flats Google Earth.pdf

[B3] 2021-Apr Poverty Flats Google Earth.pdf

[B4] Natural Investigations Company, *Cultural Resources Assessment for the Cannabis Cultivation Operation at 10535 High Valley Road*, December 2023, p. 15 (confidential data redacted under Gov. Code §6254.10).

[B5] 2022-10-09 Poverty Flats Google Earth Pro.jpg



[B6] Comparison of images shows healthy tree removal, new roads, and benching; Source: Maria Kann and Associates, Presentation Slide: [filename.pptx, slide #]. Annotated by appellant

[B7] 2024-05-01 Poverty Flats Deep Cuts and Trenching Google Earth Pro.jpg

[B8] Demonstrative Exhibit (summary aid)

[B9] 2024-05-01 Poverty Flats Google Earth Pro.jpg