Chapter 6: Biological Resources

Section A. Incomplete Biological Surveys and Baseline

Principle

CEQA requires that a biological baseline be established using site-specific, seasonally appropriate, and comprehensive surveys across the whole project area. Agencies may not rely on partial, late-season, or narrowly scoped assessments where sensitive habitats, regulated waters, or special-status species may be present. Without a full and accurate baseline, impacts cannot be meaningfully analyzed or mitigated. [A1]

Argument

The biological assessment relied upon for the Poverty Flats project evaluated only ~6 acres of a parcel of nearly 200 acres and was confined to the cultivation footprint, not the full parcel (Figure A1). Because vegetation was cleared on portions of the parcel before baseline surveys were conducted, the ~6-acre assessment focused largely on already-disturbed areas, while the remainder of the ~200-acre parcel received only a reconnaissance-level review. This skews the baseline by concealing habitat loss and understating potential impacts. [A10]. It did not include a comprehensive, multi-season floristic survey, did not conduct multi-season wildlife surveys, and performed no formal wetland delineation despite visible hydrologic features and mapped drainage corridors indicating potential regulated waters and riparian habitat. [A2] Public sources (U.S. Fish & Wildlife Service NWI mapping; historical accounts; satellite imagery) document riverine/seasonal waters on-parcel that were not incorporated into the baseline. [A8] Steep slopes (>30%)—a baseline factor closely tied to erosion/sediment delivery and biological risk—are omitted from the environmental setting. [A9]

A review by Graening & Associates (2023) corroborates that the larger parcel contains habitat conditions (hydrologic features, sensitive vegetation communities, potential wildlife corridors) that warrant delineation, species-level analysis, and seasonal follow-up studies; it flags the absence of multi-season surveys, incomplete parcel coverage, and failure to account for wetland/riparian connectivity. [A3]

CEQA does not permit agencies to extrapolate from a small subset and presume the absence of impacts elsewhere. Courts have repeatedly invalidated approvals where agencies relied on incomplete or deferred studies rather than a lawful baseline supported by substantial evidence—Sundstrom, Golden Door, Kings County Farm Bureau, and CBE v. SCAQMD. [A4]–[A7]

Because CEQA requires evaluation of the whole project area—not merely the construction envelope—the failure to establish a parcel-wide, seasonally robust baseline violates CEQA's thresholds for meaningful review. Absent full-site, multi-season biological assessments and formal delineation, the MND lacks substantial evidence regarding the presence or absence of sensitive species, wetlands, riparian areas, or wildlife movement corridors.

Conclusion

The project's biological baseline is fundamentally deficient: it relies on a partial, late-season survey of only ~6 acres and omits the vast majority of the parcel and its hydrologic features. Without site-wide, multi-season biological assessment and formal delineation, the County lacks substantial evidence to support findings of less-than-significant impact. The MND cannot be approved on this record.

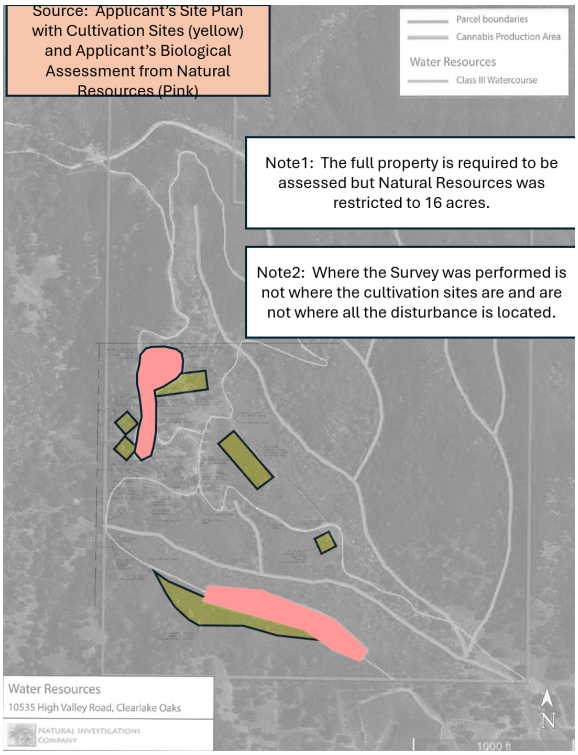

Figure A1: Overlay of the limited area of the Applicant's Biological Assessment performed by Natural Resources (pink) onto the cultivation sites depicted on the Applicant's Site Plan. Note: The ~200 acre parcel was supposed to be surveyed. Only a fraction of the area disturbed was surveyed by Natural Resources.

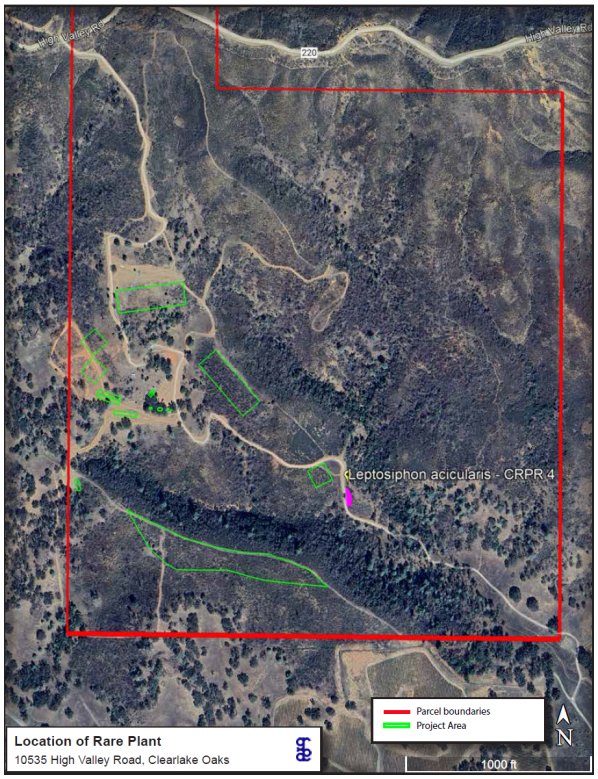

Figure A2: Graening and Associates denoting the Project Area studied (in green). The rest of the parcel was only studied at a reconnaissance level – insufficient for a parcel known to have sensitive species habitat, riparian corridors. No required seasonal follow-up studies performed.

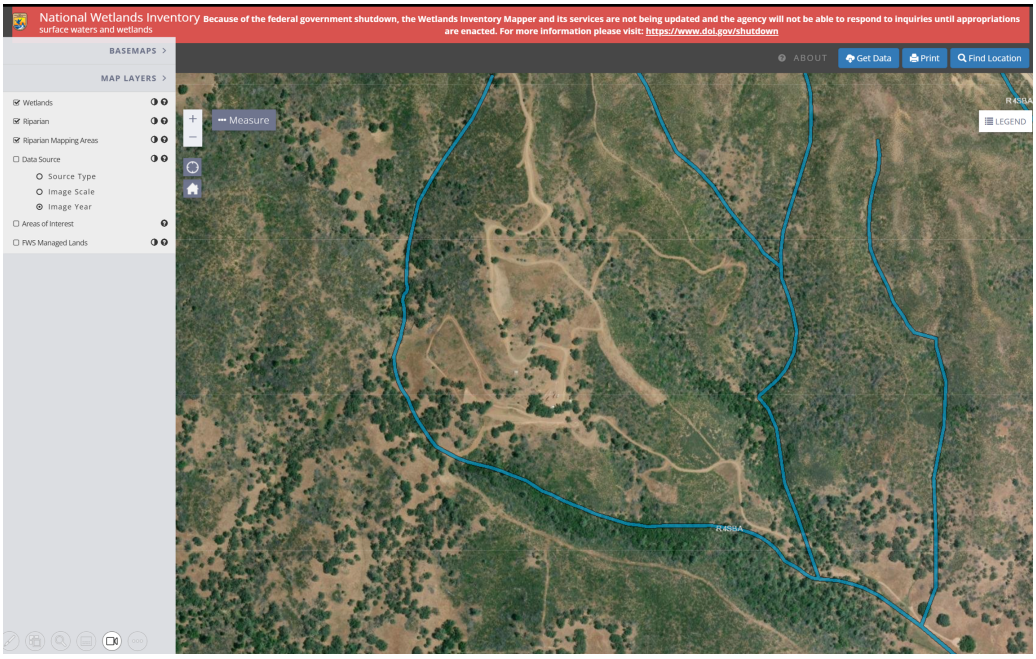

Figure A3: National Wetland Inventory Map of Poverty Flats [A8a]

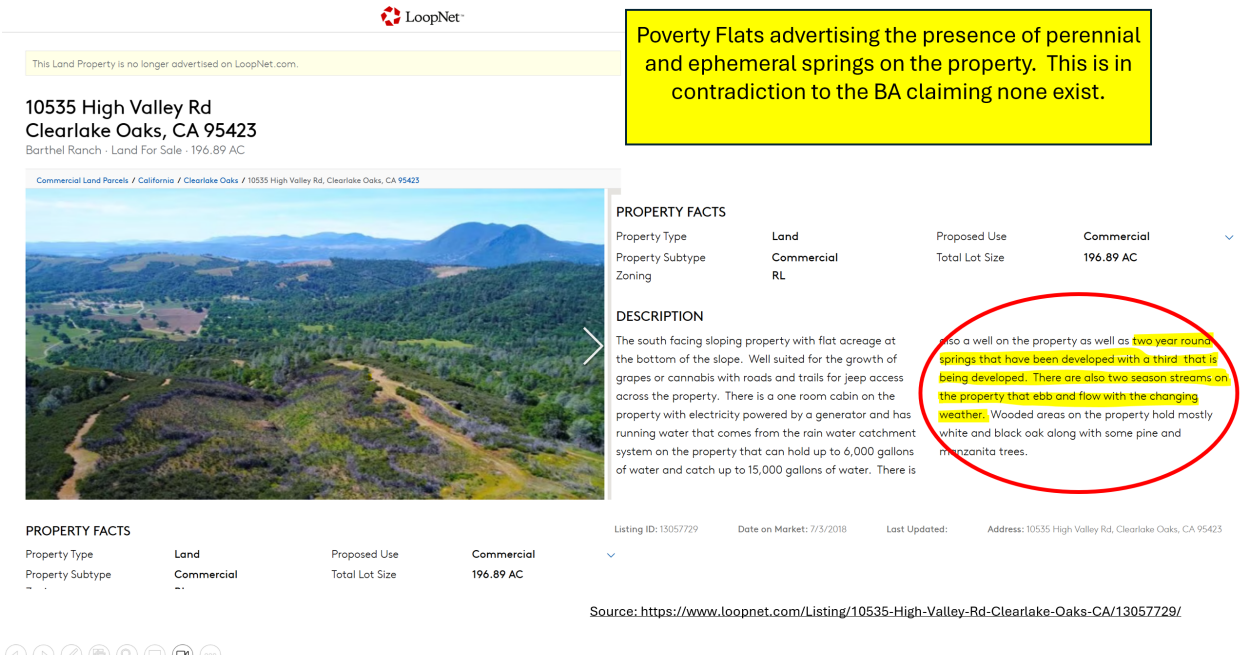

Figure A4: Page on Real Estate Slide from Loopnet.com advertising Poverty Flats Parcel. Note: Description clearly promotes the presence of perennial and ephemeral springs on the parcel. This is in contradiction to BA claims of no springs on the parcel.

Footnotes

[A1] CEQA Guidelines §§ 15063(d), 15125(a) (baseline must accurately describe environmental setting; sufficient information is required before approval).

[A2] Natural Investigations Co., *Biological Resources Assessment for Poverty Flats Project* (Nov. 3, 2020) (survey limited to ~6 acres; no wetland delineation; no multi-season surveys).

[A3] Graening & Associates, *Independent Biological Review of Poverty Flats Project* (2023) (lack of full-parcel coverage, seasonal data, and delineation needs).

[A4] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.

[A5] *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467.

[A6] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.

[A7] *Communities for a Better Environment v. South Coast AQMD* (2010) 48 Cal.4th 310.

[A8] Hydrologic features evidence set:

(a) USFWS National Wetlands Inventory (NWI) mapped riverine features within/adjacent to parcel https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/ ;

(b) Mauldin Papers 10/12/1949 by Julia Shaul 98/207 describing wetland, bogs and other features on what is now Poverty Flats property

c) Loopnet realestate marketing https://www.loopnet.com/Listing/10535-High-Valley-Rd-Clearlake-Oaks-CA/13057729/

[A9] See Chapter 9 (Slopes and Survey) regarding >30% slopes and erosion/sedimentation risk; incorporate topographic/slope mapping into the biological baseline description.

[A10] See Chapter 4 (Grading): vegetation removal and ground disturbance occurred prior to the 2024 survey, and the baseline must account for already-disturbed areas to avoid masking habitat loss and underestimating impacts. The ~6-acre survey focused on previously disturbed areas, while only reconnaissance-level review occurred on undisturbed portions of the ~200-acre parcel

Section B. Wetlands and Waters: Delineation Required but Not Performed

Principle

CEQA requires lead agencies to identify and analyze all surface waters, wetlands, and jurisdictional features within the project area before approving a Mitigated Negative Declaration. Federal Clean Water Act §§ 401 and 404, Fish & Game Code § 1602, and CEQA Guidelines § 15063 mandate that wetlands and streams be delineated, mapped, and evaluated for potential impacts before project approval. [B1]

Argument

Both the California Department of Fish and Wildlife (CDFW) and the Regional Water Quality Control Board (RWQCB) flagged the need for a wetland/stream delineation and related permitting. CDFW's March 18, 2024 comment requested a map with delineation of lakes, streams, and associated habitats and a hydrologic analysis of crossings under Fish & Game Code § 1602. [B2] The Central Valley RWQCB identified the potential need for Clean Water Act §§ 404/401 permits and stated that permitting determinations would depend on a delineation of wetlands and waters. [B3] In subsequent CDFW correspondence, the agency confirmed it has not conducted a site visit since 2020, has not received a complete Notification of Lake or Streambed Alteration (LSA), and only "intends to inspect" in the future—underscoring that no § 1602 authorization exists despite on-parcel hydrologic features. [B2a]

The project's own IS/MND materials acknowledge water resources onsite—including several Class III (ephemeral) drainages and one stream crossing—yet the document still relies on buffer/setback language and SWRCB Cannabis General Order compliance without presenting a formal delineation of jurisdictional features. [B4] This approach—

acknowledging water resources while declining to delineate them—precludes a meaningful analysis of impacts to wetlands, riparian habitat, erosion/sedimentation, and cumulative watershed effects. Where wetlands or waterways may be affected, CEQA requires the agency to conduct and disclose a delineation and account for permitting frameworks before approval; relying on assumptions or post-approval determinations is legally defective. Compounding this, on-the-ground evidence shows a culvert/stream-channel modification within a Class III drainage performed without an LSA Notification—direct proof that jurisdictional features are present and have been altered without required permits. [B8]

The record simultaneously asserts “no wetlands” while NWI maps riverine features, underscoring why a formal delineation is a threshold requirement. Multiple Class III drainages, a mapped stream crossing, and persistent spring/seasonal wet areas together trigger delineation under the Clean Water Act and Fish & Game Code § 1602. [B5] County Surveyor confirmation that GIS is inadequate for legal setbacks further illustrates why reliance on GIS buffers—absent surveyed delineation—fails CEQA’s substantial-evidence standard. [B6]

Because jurisdictional status is unknown, the applicant cannot demonstrate § 404/§ 401 certification or a § 1602 agreement. Likewise, CGP/SWPPP controls cannot be tailored without site-specific hydrologic inputs from a delineation (e.g., feature boundaries, connectivity, flow regime), so the IS/MND’s reliance on generic programmatic BMPs is not substantial evidence. [B7] The combination of (1) agency-identified delineation need, (2) no LSA Notification on file, and (3) documented physical alteration to a Class III drainage confirms both a regulatory compliance gap and an evidentiary gap that CEQA does not permit to be deferred. [B9]

Conclusion

By failing to perform or require a wetland and stream delineation despite CDFW requests and Water Board permitting triggers, the IS/MND violates CEQA’s requirement for a complete and accurate environmental setting. The record lacks the delineation-based evidence needed to determine whether impacts to wetlands, riparian areas, or waters of the state may occur. As a result, the project cannot be lawfully approved under a Mitigated Negative Declaration.

Footnotes

[B1] CEQA Guidelines §§ 15063(d), 15125(a); Clean Water Act §§ 401, 404; Fish & Game Code § 1602.

[B2] CDFW comment letter (Mar. 18, 2024, Kyle Stoner) requesting delineation of lakes/streams/associated habitats and hydrologic analysis of crossings under FGC § 1602. *(Attach the actual letter in Exhibits; per your compiled "Agency Comments" index.)*

[B3] Central Valley RWQCB comment (Sept. 2024) identifying potential need for CWA §§ 404/401 permits and noting determinations hinge on delineation. *(Attach the actual letter in Exhibits.)*

[B4] IS/MND (Revised Jan. 6, 2025): Figure 2 ("Water Resources on the Subject Parcel"); Item 24 ("Several Class III (ephemeral) drainages… one (1) stream crossing"); Hydrology text and HYD-3 referencing SWRCB Cannabis General Order WQ 2019-0001-DWQ—no formal delineation provided.

[B5] Regulatory triggers for delineation (authorities to be attached in Exhibits):
• USACE 1987 Wetlands Delineation Manual (and applicable Regional Supplement) — governs delineation of waters/wetlands for CWA § 404;
• 40 CFR § 230.3 / 33 CFR § 328 — definitions of "waters of the United States";
• Clean Water Act § 401 — water quality certification prerequisite to § 404 actions;
• Cal. Fish & Game Code § 1602 — Lake or Streambed Alteration Agreement required where a project may substantially divert or obstruct natural flow, or deposit material into, or modify the bed, channel, or bank of any river, stream, or lake;
• Evidence in the IS/MND acknowledging Class III drainages and a stream crossing indicates potential jurisdictional features that must be field-delineated before significance findings.

[B6] See Chapter 9 (Survey and Slope) — County Surveyor confirms GIS is inadequate for determining legal setbacks; surveyed boundaries are required where buffers/setbacks are tied to jurisdictional features.

[B7] Program requirements dependent on delineation:
• SWRCB Cannabis General Order WQ 2019-0001-DWQ and Construction General Permit (CGP) / SWPPP frameworks require site-specific hydrologic information (e.g., receiving waters, drainage mapping, discharge points, and controls sized to actual feature extents/flows);
• Without a jurisdictional delineation, the applicant cannot demonstrate § 404/§ 401 eligibility/coverage or a § 1602 agreement, and cannot produce SWPPP measures calibrated to on-parcel waters. *(Cite General Order and CGP in Exhibits; see IS/MND source list noting reliance on WQ 2019-0001-DWQ.)*

[B8] Letter from Kyle Stoner 09/22/2025 stating an LSA has not been performed.

[B9] See Chapter 4 on Grading.

Section C. Special-Status Species Baseline and Survey Deficiencies

Principle

CEQA requires a lawful biological baseline established with site-specific, seasonally appropriate, parcel-wide surveys. Agencies cannot rely on partial/late-season efforts where sensitive habitats or special-status species may be present. Without a complete baseline, impacts cannot be meaningfully analyzed or mitigated. [C1]

Argument

The IS/MND relies on a partial, late-season assessment of only ~16 acres within a ~200-acre parcel, confined to the assumed cultivation footprint rather than the whole property [C2]. It omits multi-season floristic and wildlife surveys and performs no formal wetland/stream delineation despite on-parcel hydrologic features and mapped drainage corridors. Public sources (e.g., NWI mapping, historic accounts, satellite imagery, sales materials) indicate riverine/seasonal waters that were not incorporated into the baseline. Steep slopes (>30%)—tied to erosion/sediment delivery and habitat risk—are omitted from the environmental setting. Previous vegetation clearing is excluded from the baseline, which conceals habitat loss. [C6]

These deficiencies are corroborated by the independent technical review, which identifies the lack of parcel-wide, multi-season surveys and hydrologic connectivity requiring delineation. [C3]

The record confirms suitable habitat for multiple taxa, yet the IS/MND never conducts parcel-wide, seasonally timed surveys for: Bald Eagle (confirmed on-site), migratory passerines (nesting birds), regional bats, and rare-plant potential [C5]. Photographic/video evidence documents a Bald Eagle on the parcel (Figure C1)—a fully protected raptor never disclosed or evaluated in the IS/MND [C4]. Unanalyzed impact pathways—operational noise (e.g., ≥~55 dB) and night lighting—further show that baseline surveys and mechanism-specific analysis are missing.

Because parcel-wide, multi-season surveys and delineation are absent, the County cannot lawfully reach less-than-significant conclusions. Generic “survey/consult/avoid” templates (e.g., BIO-1) do not substitute for a baseline and cannot fill evidentiary gaps at approval (for why such boilerplate is not enforceable mitigation, see Section E). [C2]

Figure C1: Screen capture of Bald Eagle on Poverty Flats property (June 4, 2025). Video courtesy of Randy Wilk. [C4]

Conclusion

Given the acknowledged habitat, documented eagle presence, and incomplete field work, the IS/MND lacks substantial evidence of the parcel's biological setting. CEQA requires a complete baseline before significance findings; that prerequisite is unmet. (Mitigation adequacy is addressed in Section E.) [C6]

Footnotes

[C1] CEQA Guidelines §§15063(d), 15125(a) (accurate environmental setting; sufficient information prior to approval).
[C2] IS/MND (Revised Jan. 6, 2025), Biological Resources, Mitigation Measure BIO-1 (generic pre-construction survey/"appropriate measures" language); see also CEQA §15070(b)(1) (substantial evidence at adoption) and §15126.2(a)/Appendix G (identify direct/indirect biological effects).
[C3] Graening & Associates, *Independent/Technical Biological Review* (2023/2024) (identifying lack of parcel-wide, multi-season surveys and hydrologic connectivity requiring delineation).
[C4] Evidence of Bald Eagle on parcel (June 4, 2025); Fish & Game Code §3511 (fully protected birds); Bald and Golden Eagle Protection Act, 16 U.S.C. §668.
[C5] CEQA Guidelines §15380 (scope of "special-status species"); migratory birds protected under MBTA, 16 U.S.C. §§703–712.

[C6] Cross-references: Section A (baseline scope/seasonality), Section B (wetland/stream delineation), Chapter 9 (slopes), Chapter 4 (grading/clearing).

Section D. Habitat Connectivity and Schindler Creek Corridor

Principle

CEQA requires analysis of wildlife movement, corridor function, and cumulative impacts to riparian and aquatic connectivity—regardless of whether an "official corridor map" exists. Lead agencies must consider whether a project would impede wildlife movement or degrade nursery, riparian, or aquatic habitats, and must evaluate cumulative effects on those functions. [D1][D2]

Argument

Corridor function and downstream linkage. Schindler Creek and its tributaries provide a natural movement pathway through the site, linking on-parcel habitat to downstream waters. This corridor function extends to species dependent on seasonal flows and riparian condition, including Clear Lake hitch and other aquatic/riparian taxa. Degradation of channel form, bank stability, or baseflow—whether from grading, vegetation removal, altered stormwater routing, or pumping—can reduce habitat continuity and impede movement. [D3][D4]

Cumulative corridor effects. CEQA requires disclosure and analysis of cumulative impacts to connectivity, including the combined effects of fencing, lighting, road improvements, grading, vegetation clearing, and increased sediment delivery to streams. The IS/MND does not analyze how these actions—considered together—could fragment habitat along Schindler Creek, increase fine sediment in pools and spawning/foraging areas, or narrow passage at constrictions. [D1][D5]

No corridor map ≠ no corridor. The absence of an officially designated "wildlife corridor" does not negate on-the-ground corridor function where natural features (a perennial/intermittent channel, adjacent riparian/woodland patches, and topographic swales) facilitate movement. CEQA still requires substantial evidence addressing movement pathways and barrier effects. [D2]

Slope-driven fragmentation and sedimentation. Steep slopes (>30% to over 50%) on and above channel segments accelerate erosion and sediment transport to watercourses when disturbed, degrading riparian structure and pool quality that support movement and foraging. This mechanism is especially relevant along tributary draws feeding Schindler Creek and should have been analyzed as part of corridor integrity. *(See Chapter 9 for slope mapping and thresholds.)* [D6]

Restoration investments at risk. Nearby or downstream sediment-reduction and habitat projects intended to restore connectivity can be undermined if project-related sediment inputs, channel modifications, or lighting/fencing fragmentation are not addressed up front. CEQA requires consideration of such program context when evaluating cumulative effects. [D1][D7]

Flow-dependent connectivity. Corridor function in Schindler Creek is partially baseflow-dependent. Unanalyzed groundwater extraction, the lack of a forbearance plan during critical periods, and the absence of a site-specific hydrologic delineation create uncertainty about seasonal flow persistence and passage conditions. *(Cross-reference Hydrology for quantitative analysis and Section B for delineation requirements.)* [D4][D8]

Conclusion

Because the IS/MND omits analysis of (1) cumulative corridor effects, (2) slope-driven riparian degradation and sedimentation, (3) downstream linkage implications (including species that rely on seasonal flows), and (4) flow-dependent connectivity tied to groundwater and stormwater routing, the record does not provide substantial evidence that the project would avoid significant impacts to wildlife movement and aquatic/riparian habitat continuity. These deficiencies must be remedied in the biological and hydrologic analyses before any less-than-significant finding can be supported.

Footnotes

[D1] CEQA Guidelines §15130 (cumulative impacts); §15126.2(a) (direct/indirect effects, including natural systems and ecological processes); §15064(b) (use of substantial evidence).
[D2] CEQA Guidelines Appendix G (Biological Resources) — would the project "interfere substantially with the movement of any native resident or migratory fish or wildlife species," or "impede the use of… nursery sites."
[D3] Public Resources Code §21083.05 (consideration of riparian areas and wetlands in significance criteria); Fish & Game Code §1602 (LSAA triggers for altering bed, bank, or channel).
[D4] Clean Water Act §§401/404 (permitting nexus for channel/wetland work and flow-related impacts) and CEQA Guidelines §15063(d)/§15125(a) (complete environmental setting, including hydrologic connectivity). *(See Section B regarding delineation as a threshold requirement.)*
[D5] CEQA Guidelines §15125(c) (relationship of the project to regional plans and programs) and §15126.4(a)(1) (mitigation must target the specific impact mechanism—here, sediment inputs and fragmentation—rather than rely on generic measures).
[D6] Cross-reference Chapter 9 (Slopes and Survey) for mapped gradients and erosion

susceptibility; CEQA Guidelines Appendix G (Hydrology/Water Quality) (erosion/sedimentation effects on water quality and aquatic habitat).
[D7] CEQA Guidelines §15131(c) (context for evaluating environmental consequences) and §15126.2(a) (consider how a project could affect ecological processes and ongoing restoration outcomes).
[D8] Cross-reference Hydrology chapter (groundwater extraction, seasonal forbearance, and baseflow) and Section B (wetland/stream delineation informing flow paths and setback design).

Section E. Biological Mitigation — Adequacy & Enforceability

Principle
Mitigation must be specific, enforceable, and supported by substantial evidence at approval—not left to future study or agency "consultation." CEQA allows performance-standard "deferral" only where the agency (1) states clear standards and (2) commits to specific, feasible measures that will achieve those standards. [E1]

Argument
BIO-1 is boilerplate, not enforceable mitigation. It requires a pre-construction survey and "appropriate measures" if nests are found, but does not define methods, qualifications, seasonal windows, objective, species-based buffers, monitoring, stop-work triggers, reporting, or adaptive management. That is impermissible post-approval deferral and fails CEQA's enforceability requirements. [E2][E6]

Courts have repeatedly rejected placeholder mitigation and post-approval deferral. In Sundstrom v. Mendocino County, the court invalidated an approval that postponed necessary studies, holding that CEQA does not permit agencies to defer critical analysis to the future [E2]. Building on that principle, Golden Door Properties v. San Diego confirmed that decisions cannot rest on inaccurate or assumed baselines or on vague mitigation language lacking concrete standards [E3]. Likewise, Kings County Farm Bureau v. Hanford held that agencies may not mask uncertainty with assumptions or unsupported offsets in lieu of substantial evidence [E4]. And in Communities for a Better Environment v. SCAQMD, the Supreme Court emphasized that mitigation must be real and enforceable—supported by substantial evidence at the time of approval, not left to later discretion [E5].

Programmatic BMPs ≠ species mitigation. Reliance on SWRCB Cannabis General Order WQ 2019-0001-DWQ or CGP/SWPPP language cannot substitute for species- and habitat-specific measures. Without a delineation and species-specific baseline (see Sections A–C), programmatic BMPs are not substantial evidence that biological impacts will be avoided. [E7]

Administrative reliance on "future agency consultation" is not enough. Consulting with CDFW "as needed," without **binding** standards (e.g., numeric buffers by species/season, monitoring frequency, stop-work criteria) is non-committal and unenforceable.

How CDD's mitigation fails CEQA's enforceability standard.
Rather than adopt specific, enforceable measures, CDD relied on vague "survey/consult/avoid" language that omits the essentials CEQA requires at approval. The mitigation provides no defined survey methods or seasonal windows, no qualifications for who conducts the work, and no objective, species-based buffer distances (including science-based adjustments for noise and night lighting). It establishes no monitoring frequency or reporting protocol, no clear enforcement or stop-work triggers, and no adaptive-management decision tree with performance standards if take risk persists. It also lacks post-construction verification (e.g., as-built buffers and restoration success criteria). By leaving these elements unspecified, the County substituted open-ended discretion for enforceable standards—contrary to CEQA §15126.4(a)(1) and the case law rejecting post-approval deferral. [E1][E6]

If the IS/MND also leans on programmatic water-quality BMPs (e.g., the Cannabis General Order or CGP/SWPPP) to imply biological protection, that reliance does not cure these defects: such frameworks are not species-specific biological mitigation and cannot supply the missing, evidence-based performance standards for special-status species. [E7]

Conclusion
Even if baseline deficiencies were cured, BIO-1 and related measures are not specific, enforceable, or supported by substantial evidence. CEQA §15126.4(a)(1) and the case law above require standards-based mitigation at approval; programmatic BMPs and open-ended "consultation" cannot carry an MND. The County cannot lawfully adopt the IS/MND on this record.

Footnotes
[E1] CEQA Guidelines §15126.4(a)(1) (specific, enforceable mitigation; limited performance-standard deferral), §15070(b)(1) (substantial evidence at adoption), PRC §21002.1(b) (feasible mitigation required).
[E2] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 (unlawful deferral of critical studies/mitigation).
[E3] *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467 (baseline/mitigation deficiencies).
[E4] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 (assumptions/offsets not substantial evidence).
[E5] *Communities for a Better Environment v. SCAQMD* (2010) 48 Cal.4th 310 (mitigation

must be real/enforceable).
[E6] IS/MND (Revised Jan. 6, 2025), Biological Resources, Mitigation Measure BIO-1 (pp. 29–31) (generic pre-construction survey/"appropriate measures" lacking methods, buffers, monitoring, adaptive management).
[E7] SWRCB Cannabis General Order WQ 2019-0001-DWQ; Construction General Permit (CGP) / SWPPP—programmatic water-quality BMPs are not species-specific biological mitigation and must be supplemented by enforceable, biology-based measures.

Section F. Cumulative Impacts and State Restoration Investments

Principle
CEQA requires agencies to evaluate cumulative impacts when a project's incremental contribution may combine with other past, present, or reasonably foreseeable actions to create significant environmental harm. This includes consideration of ongoing state-funded restoration, watershed recovery efforts, and habitat improvement projects in the region. [F1]

Argument
Schindler Creek and the larger Clear Lake watershed are the focus of substantial state investments to reduce harmful algal blooms (HABs), restore hydrologic function, and protect sensitive species and downstream communities. In September 2025, the State approved $13.62 million for 16 Blue Ribbon Committee (BRC) projects, including the $2.3 million for Clear Lake Keys POA Revitalization Project and UC Davis' Hypolimnetic Oxygenation System. These investments are predicated on reducing sediment and nutrient inputs from upstream disturbances and restoring watershed function. [F2]

The proposed project would involve grading and cultivation across steep, highly erodible slopes within the Schindler Creek watershed—an area already identified as contributing sediment and nutrient loading to the Oaks Arm/Keys. Disturbance of one acre or more triggers the State Water Resources Control Board Construction General Permit (CGP) and requires preparation of a Storm Water Pollution Prevention Plan (SWPPP) by a Qualified SWPPP Developer. Failure to demonstrate compliance undermines both state law and the BRC's HAB reduction strategy. [F3][F4]

Because the IS/MND neither includes a wetlands or stream delineation nor demonstrates CGP/SWPPP compliance informed by site-specific hydrology (see Section B), the analysis omits a critical connection between ground disturbance, watershed runoff, and cumulative degradation. CEQA requires a cumulative assessment that addresses how the project's sediment and nutrient contributions would interact with existing impairments and ongoing state restoration projects. Where a regulatory gap exists—as here, due to missing

delineation and absent enforceable runoff controls—CEQA requires preparation of an EIR rather than an MND. [F5]

Conclusion

By failing to account for state-funded restoration efforts and the project's cumulative contribution to watershed degradation, species decline, and HABs, the IS/MND violates CEQA's cumulative impact requirements. The absence of delineation-informed runoff analysis and CGP/SWPPP measures precludes reliance on a Mitigated Negative Declaration.

Footnotes

[F1] CEQA Guidelines §§15063(d)(2), 15130(a); Pub. Res. Code §21083(b)(2).
[F2] The Blue Ribbon Committee for the Rehabilitation of Clear Lake has allocated approximately $13 million in State funds to date (2021–2025) for nutrient-load reduction, habitat restoration, and UC Davis–led feasibility work on hypolimnetic oxygenation and related HAB interventions in the Oaks Arm. Schindler Creek—an impaired tributary feeding the Clearlake Oaks Keys—is included within the scope of these habitat restoration and nutrient-abatement efforts.

Source: California Natural Resources Agency and Blue Ribbon Committee funding summaries and meeting materials (2021–2025), as cited in County reports and State briefings describing cumulative allocations "over $13 million" to date.

[F3] Construction General Permit (CGP), SWRCB Order 2009-0009-DWQ as amended by 2010-0014-DWQ and 2012-0006-DWQ; California Water Code §§13260–13264.

[F4] Discussion of sediment and nutrient runoff impacts to Schindler Creek and the Oaks Arm/Keys in relation to BRC-funded watershed recovery efforts.

[F5] Clean Water Act §§1251–1387; Porter-Cologne Water Quality Control Act §13000 et seq.; CEQA Guidelines §§15063(d)(2), 15064, 15065.

Section G. Summary and Required Action

Principle

CEQA prohibits approval of a project based on an incomplete or inaccurate record. Where substantial evidence demonstrates that impacts may be significant, or where baseline data and mitigation are legally inadequate, the agency must deny the Mitigated Negative Declaration or proceed with preparation of an Environmental Impact Report.[G1]

Argument

The deficiencies identified in Sections A through F show that the Initial Study and MND do not meet CEQA's minimum legal standards. The baseline is incomplete because biological surveys covered only a small fraction of the parcel and omitted wetlands, waterways, seasonal habitat, and sensitive vegetation. No delineation of jurisdictional features was conducted despite agency requests, mapped hydrologic corridors, and triggers under state and federal law.

Special-status species—including Bald Eagle, Osprey, Peregrine Falcon, Clear Lake hitch, Western Pond Turtle, and multiple bat and bird species—were not adequately evaluated. Habitat connectivity and wildlife movement through the Schindler Creek corridor received no meaningful analysis. Mitigation measures rely on deferred surveys, undefined buffer areas, and non-binding language that violates CEQA's requirement for enforceable, evidence-based mitigation. Finally, the MND fails to address cumulative impacts to a watershed actively targeted for state-funded restoration, including investments intended to protect the Clear Lake hitch and reduce sediment and nutrient loading.

Individually and collectively, these omissions demonstrate a lack of substantial evidence and an invalid basis for adopting a Mitigated Negative Declaration. CEQA does not allow agencies to rely on assumptions, partial surveys, deferred mitigation, or incomplete records when evaluating potentially significant biological impacts.

Conclusion

Because the IS/MND fails to provide a lawful biological baseline, omits analysis of wetlands and special-status species, defers mitigation, ignores habitat connectivity, and excludes cumulative impacts to a state-funded restoration corridor, it cannot be approved under CEQA. The only legally defensible action is to deny the MND and decline to approve the project.

Footnotes

[G1] Pub. Res. Code §§21080(c), 21083(b); CEQA Guidelines §§15063, 15070, 15074(b), 15162; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 84.