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(EXEMPT FROM FILING FEES [Gov. Code, § 6103].)

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

12 CALIFORNIA CONSTRUCTION AND)
INDUSTRIAL MATERIALS)
13 ASSOCIATION, a non-profit)
organization,)

No. 56-2019-00527805-CU-WM-VTA

NOTICE OF ENTRY OF JUDGMENT

[CEQA CASE: Pub. Resources Code, § 21000 et seq.]

15 Petitioner,

16 vs.

18 COUNTY OF VENTURA, a public)
entity; and DOES 1-25, inclusive,)

20 Respondent.)
21 _____)

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on April 12, 2022, the Judgment attached as
24 Exhibit 1 hereto was entered in the above-captioned proceeding.

25 TIFFANY N. NORTH
County Counsel, County of Ventura

26 Dated: April 22, 2022

27 By Franchesca S. Verdin
FRANCHESCA S. VERDIN
Assistant County Counsel
Attorneys for Respondent County of Ventura

Ventura Superior Court Accepted through eDelivery submitted 04-22-2022 at 11:32:38 AM

EXHIBIT 1

Ventura Superior Court Accepted through eDelivery submitted 04-22-2022 at 11:32:38 AM

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SUPERIOR COURT
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APR 12 2022

BRENDA L. MCCORMICK
Executive Officer and Clerk
By: ELIZABETH MULLER Deputy

(EXEMPT FROM FILING
FEES [Gov. Code, § 6103].)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

CALIFORNIA CONSTRUCTION AND
INDUSTRIAL MATERIALS
ASSOCIATION, a non-profit
organization,

Petitioner,

vs.

COUNTY OF VENTURA, a public
entity; and DOES 1-25, inclusive,

Respondent.

No. 56-2019-00527805-CU-WM-VTA
[PROPOSED] JUDGMENT
[CEQA CASE: Pub. Resources Code,
§ 21000 et seq.]

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JUDGMENT

On November 9, 2021, in the above-entitled court, the petition for writ of mandate and complaint for declaratory and injunctive relief, filed April 25, 2019 ("Petition"), by petitioner California Construction and Industrial Materials Association ("CalCIMA") was heard in Department 40, the Honorable Mark S. Borrell, presiding. The matter was taken under submission.

The court filed its tentative decision, which was also its proposed statement of decision, on February 4, 2022, denying CalCIMA's Petition and ordering all claims stated therein dismissed. CalCIMA subsequently filed a statement of principal controverted issues, request for statement of decision, and objections to proposed statement of decision on February 22, 2022 ("Statement of Controverted Issues"). Respondent County of Ventura ("County") filed a response to the Statement of Controverted Issues on March 4, 2022. Intervenors Los Padres Forest Watch, Defenders of Wildlife, Center for Biological Diversity, and National Parks Conservation Association also filed a response to the Statement of Controverted Issues on March 4, 2022.

On March 14, 2022, the court filed a minute order adopting, without change, its February 4, 2022 proposed statement of decision as its statement of decision, and directing the clerk to serve the minute order and statement of decision on the parties. A copy of the court's March 14, 2022, minute order and statement of decision is attached as Exhibit A hereto and incorporated herein by this reference.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. CalCIMA is not entitled to any relief on the Petition;
2. The Petition is denied and all claims stated therein dismissed;
3. Judgment is entered in favor of the County;
4. County is the prevailing party and shall have and recover its costs, as shall

be determined by a timely filed memorandum of costs.

Dated: 4/4/22


HONORABLE MARK S. BORRELL
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A
SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 03/14/2022

TIME: 04:13:00 PM

DEPT: 40

JUDICIAL OFFICER PRESIDING: Mark Borrell

CLERK: Art Alvara

REPORTER/ERM:

CASE NO: 56-2019-00527805-CU-WM-VTA

CASE TITLE: CA Construction vs. County of Ventura

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

On February 4, 2022, the court issued its tentative decision in this matter and gave notice that the tentative decision would serve as the court's proposed statement of decision. Subsequently, Petitioner timely filed its request for statement of decision on controverted issues it contends were not adequately addressed in the proposed statement. (See Calif. Rules of Ct., rule 3.1590, subdivision (c)(4).)

The court has considered the matters raised in Petitioner's statement of controverted issues, as well as the responses thereto filed by the County and Interveners. The court is satisfied that the lengthy statement of decision proposed by the court is legally sufficient and does comply with Code of Civil Procedure section 632.

"Upon the timely request of one of the parties in a non-jury trial, a trial court is required to render a statement of decision addressing the factual and legal bases for its decision as to each of the principal controverted issues of the case." (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125.) "[A] statement of decision is required only to set out ultimate findings rather than evidentiary ones." (*Antelope Valley Groundwater Cases* (2020) 58 Cal.App.5th 343, 265.) An "ultimate fact" is "a core fact, such as an essential element of a claim." (*Id.*, 58 Cal.App.5th at p. 265, citing *Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513; internal quotes omitted.) Consequently, in preparing a statement of decision, a trial court is not required to go "point by point" to the issues raised in the request. (*Id.*, 58 Cal.App.5th at p. 265, citing *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379-1380; internal quotes omitted.) Similarly, in drafting a statement of decision "courts need not cite every case parties mention." (*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 585.)

Therefore, the court has adopted without change the proposed statement of decision as its statement of decision.

The clerk is direct to serve this minute order and the statement of decision on the parties.

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Ventura
800 South Victoria Avenue
Ventura, CA 93009

SHORT TITLE: CA Construction vs. County of Ventura

CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)

CASE NUMBER:
56-2019-00527805-CU-WM-VTA

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 03/15/2022.

Clerk of the Court, by: *Colin Calloway*, Deputy

LEROY SMITH
COUNTY COUNSEL
800 S VICTORIA AVENUE, *412 1800*
VENTURA, CA 93009

KERRY SHAPIRO
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Shapiro, Seena Samimi
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CLERK'S CERTIFICATE OF SERVICE BY MAIL

Ventura Superior Court Accepted through eDelivery submitted 04-22-2022 at 11:32:38 AM

VENTURA
SUPERIOR COURT
FILED

MAR 14 2022

BRENDA L. McGORMICK
Executive Officer and Clerk
By: [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

CALIFORNIA CONSTRUCTION AND
INDUSTRIAL MATERIALS
ASSOCIATION,

Petitioner,

vs.

COUNTY OF VENTURA,

Respondent.

) Case No.: 56-2019-00527805-CU-WM-VTA

) STATEMENT OF DECISION

California Construction and Industrial Materials Association ("Petitioner") petitions for a writ of mandate. Petitioner contends that respondent, County of Ventura ("County"), ran afoul of the Surface Mining Reclamation Act ("SMARA"), the California Environmental Quality Act ("CEQA"), and other laws in adopting a land use ordinance intended to preserve wildlife corridors in less-developed areas of the county. Specifically, Petitioner has stated causes of action for a writ of mandate and declaratory relief based on: (1) alleged violations of SMARA, and, in particular, the public disclosure provisions of Public Resource sections 2762 and 2763; (2) alleged violations of subdivision (a) of Government Code § 65860, which concerns consistency between ordinances and general plans; and (3) alleged violations of CEQA centering on the County's finding that the project was exempt from environmental review.

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1 The County disputes the key allegations of the petition, and it urges the court to deny the
2 petition.

3 Los Padres ForestWatch, Defenders of Wildlife, Center for Biological Diversity, and
4 National Parks Conservation Association (collectively, "Intervenors") have intervened in the
5 action. These intervenors side with the County on the CEQA issues.

6 This case and another¹ have been consolidated for the purposes of the certification of the
7 administrative record ("AR") and for oral argument but for no other purpose. The court will
8 issue separate judgments in each case.

9 The court rendered a tentative decision and gave notice that the tentative decision would
10 also serve as the proposed statement of decision. Subsequently, Petitioner requested the court
11 make additional findings. The request was denied by separate minute order.

12 SUMMARY

13 On March 12, 2019, by a vote of 3-2, the County Board of Supervisors ("Board")
14 approved the Habitat Connectivity and Wildlife Corridor Project ("the Project"). Generally, the
15 purpose of the Project was to "discourage" development within an approximately 163,000 acre
16 overlay zone to permit mountain lions and other wildlife to move more freely throughout the less
17 developed areas of the county. The Project was implemented through the adoption of an
18 ordinance entitled, "County-Initiated Proposal to Amend the General Plan and Articles 2, 3, 4, 5,
19 9, and 18 of the Non-Coastal Zoning Ordinance (PL16-0127) to Establish a Habitat Connectivity
20 and Wildlife Corridors Overlay Zone and a Critical Wildlife Passage Areas Overlay Zone, and to
21 Adopt Regulations for These Areas; Find that the Proposed Amendments are Exempt from
22 Environmental Review Under the California Environmental Quality Act" ("the Ordinance").²

23 Petitioner challenges the Ordinance on several grounds. First, Petitioner contends that
24 the County violated SMARA by failing to prepare a "statement of the reasons" prior to adopting
25 the Ordinance. Petitioner argues that the Project fell within those provisions of SMARA that

26
27 ¹ VC Coalition of Labor Agriculture and Business vs. County of Ventura, Case No. 56-2019-00527815-CU-WM-VTA.

28 ² What is referred to as "the Ordinance" is actually two separate ordinances passed on March 12, 2019 and March 19, 2019. The parties interchangeably refer to "the Ordinance" and "the Ordinances." The court here uses the singular form to refer to both.

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1 require public disclosure of a statement of reasons before permitting a land use that threatens the
2 potential extraction of mineral resources, which Petitioner asserts the Project does.

3 Second, Petitioner contends that the County has violated CEQA in that:

- 4 • The County improperly split the Project from the General Plan Update and thereby
- 5 engaged in illegal "piecemealing."
- 6 • The Project is not exempt from CEQA review under the Class 7 and Class 8 exemptions
- 7 because those exemptions do not apply by their own terms, but even if they do, an
- 8 exception to the exemptions applies because there is a reasonable possibility of adverse
- 9 impacts due to unusual circumstances.
- 10 • The County improperly relied on the "common sense" exemption because it is not certain
- 11 the Project has no possibility of having a significant effect on the environment.

12 The County denies any impropriety occurred in adopting the Ordinance and urges the
13 court to deny the petition. It argues that it was not required to prepare a statement of reasons
14 under SMARA because substantial evidence supports the County's determination that the Project
15 is not a use that would threaten the potential to extract minerals. Alternatively, the County says
16 that Petitioner is not entitled to a writ of mandate on the SMARA claim because Petitioner has
17 failed to establish prejudice. The County also argues that Petitioner's asserted CEQA violations
18 lack merit because:

- 19 • There is no "piecemealing" violation because Project and the General Plan Update are
- 20 separate projects under CEQA.
- 21 • The Project is exempt from CEQA review under the Class 7, Class 8, and common sense
- 22 exemptions, and that substantial evidence supports the County's findings as to each
- 23 exemption.
- 24 • The unusual circumstances exception to the categorial exemptions does not apply.

25 Finally, the County asserts that Petitioner has forfeited the second cause of action (for an
26 alleged violation of Government Code section 65860) because Petitioner did not address this
27 claim in its opening brief.

28 ///

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REQUEST FOR JUDICIAL NOTICE

1
2 *1. Petitioner's Request for Judicial Notice in Support of the Opening Brief*

3 Petitioner requests judicial notice of the petition for writ of mandate and complaint filed
4 by intervenor Center for Biological Diversity in *Center for Biological Diversity, et al. v. County*
5 *of Los Angeles, et al.*, Los Angeles Superior Court Case No. 19STCP01610 in 2019. The County
6 objects on several grounds, including that the pleadings in that other case are not relevant.

7 It is fundamental that a court only considers relevant evidence. (See Evid. Code, § 350.)
8 Therefore, a court may decline to take judicial notice of matters that are not relevant. (*Arce v.*
9 *Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.) Petitioner has not
10 demonstrated any relevance to this action of the pleadings in an unrelated case concerning a
11 different development project in a different county. The only connection between the two cases
12 is that an intervenor here, the Center for Biological Diversity, is the plaintiff there. Petitioner
13 hopes to show that the Center for Biological Diversity will, at some later time, pressure the
14 County to increase scrutiny of permit applications for surface mining operations because it has
15 previously challenged the Los Angeles County development project based on allegations of
16 habitat conservation. But whether a given person or entity advocates for or against a
17 governmental action is not probative of any issue now before the court. It may be assumed that
18 intervenors and Petitioner will continue to advocate on behalf of their respective interests. The
19 existence of that advocacy does not have a tendency in reason to show how the County may act
20 in the future. Therefore, this request for judicial notice is denied.

21 *2. The County's Request for Judicial Notice*

22 The County requests judicial notice of Assembly Bill No. 3551 (Chapter 1097, of
23 Statutes of 1990) and records from the legislative history of that bill.

24 Judicial notice may be taken because, first, this case raises the application of certain
25 CEQA exemptions and, second, the petition raises non-CEQA claims.

26 The County correctly asserts that its Exhibit A is subject to judicial notice as a record of
27 an official act. (See Evid. Code, § 452, subd. (c).) It also persuasively argues that its Exhibits B-
28 E are subject to judicial notice because they are legislative committee reports and analyses. (See

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1 *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th
2 26, 39.) Each of the items is relevant to Petitioner’s SMARA claim because each concerns the
3 code section Petitioner accuses the County of violating.

4 Accordingly, the County’s request for judicial notice is granted.

5 3. *Petitioner’s Request for Judicial Notice in Support of the Reply Brief*

6 Petitioner requests judicial notice of California Department of Fish and Wildlife’s
7 January 22, 2021 letter to Ventura County Planning Division regarding “Pacific Rock Quarry
8 Expansion Project, Draft Environmental Impact Report, SCH #2017081052, Ventura County.”

9 To the extent Petitioner seeks judicial notice of this item in connection with its CEQA
10 claim, this item cannot be considered because it post-dates the County’s approval of the Project,
11 and, thus, was unavailable when the County made its CEQA determinations. “Extra-record
12 evidence is admissible under this exception only in those rare instances in which (1) the evidence
13 in question existed *before* the agency made its decision, and (2) it was not possible in the
14 exercise of reasonable diligence to present this evidence to the agency *before* the decision was
15 made so that it could be considered and included in the administrative record.” (*Western States
16 Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578, italics in original.) Here, the
17 County adopted the Ordinance, and thereby approved the Project, in March 2019. (See, e.g., AR
18 00010.) The letter in question is dated January 2021. Therefore, to the extent Petitioner requests
19 judicial notice of this letter in connection with the CEQA claim, the request for judicial notice is
20 denied.

21 To the extent Petitioner seeks judicial notice of this item in connection with its SMARA
22 claim, it has not explained its failure to request judicial notice when it submitted its opening
23 brief. Generally, evidence raised for the first time in a reply brief will not be considered, unless
24 an excuse or reason is proffered for failing to submit them sooner, since considering such
25 evidence would deprive the other party of the opportunity to respond. (See *Lady v. Palen* (1936)
26 12 Cal.App.2d 3, 5; see also *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.) Therefore,
27 the court exercises its discretion to decline judicial notice on the SMARA claim.

28 Accordingly, Petitioner’s rebuttal request for judicial notice is denied.

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FORFEITURE OF THE SECOND CAUSE OF ACTION

1 The County contends that Petitioner has forfeited its second cause of action – which
 2 asserts an improper conflict between the Ordinance and the County’s General Plan --by failing to
 3 substantively address this claim in its opening brief, citing *Holden v. City of San Diego* (2019) 43
 4 Cal.App.5th 404, 418 (“*Holden*”). Petitioner disagrees. In its reply brief, Petitioner argues that
 5 there has been no forfeiture and mentions, for the first time, Government Code section 65680.
 6

7 *Holden* provides useful guidance in assessing these arguments. The Court of Appeal
 8 there analyzed the forfeiture issue this way:

9 Finally, although Holden's opening brief alludes to his claim in the trial court that
 10 City did not comply with Government Code section 65863 in approving the
 11 Project, we conclude that Holden waived or forfeited that argument both in the
 12 trial court and on appeal. “When an appellant fails to raise a point, or asserts it
 13 but fails to support it with reasoned argument and citations to authority, we treat
 14 the point as waived.” [Citation.] Alternatively stated, “[w]here a point is merely
 15 asserted by [appellant] without any [substantive] argument of or authority for its
 16 proposition, it is deemed to be without foundation and requires no discussion.”
 17 [Citation.] “Issues do not have a life of their own: if they are not raised or
 18 supported by [substantive] argument or citation to authority, we consider the
 19 issues waived.” [Citations.] The record shows that Holden raised Government
 20 Code section 65863 in the trial court only in a footnote in his opening brief and
 21 without any substantive legal analysis. . . . Holden neither quoted the relevant
 22 language of that statute nor provided any substantive legal analysis showing that
 23 City was required to comply with that statutory provision and failed to do so.
 24 Because Holden did not adequately raise and discuss the Government Code
 25 section 65863 issue in the trial court, he is precluded from raising that issue on
 26 appeal. [Citation.]

27 (43 Cal.App.5th pp. 418–419.)

28 Petitioner’s second cause of action is based on an alleged violation of Government Code
 section 65680. That section is not mentioned or discussed in Petitioner’s opening brief. This
 fact is confirmed by the absence to any reference to Government Code section 65680 in
 Petitioner’s table of authorities in its opening brief. Although Petitioner’s opening brief
 discusses the requirement that certain *permits* must be consistent with the General Plan, it does
 not discuss any obligation that the *Ordinance* be consistent with the General Plan. Applying the
 principles discussed in *Holden* here, it is clear that the second cause of action has been forfeited.

Therefore, the second cause of action of the petition is ordered dismissed.

BACKGROUND

(a) Permitting Requirements Before the Ordinance

Before the adoption of the Ordinance, the General Plan required, and still requires, the following with respect to surface mining and related conditional use permits (“CUPs”):

- The Non-Coastal Zoning Ordinance (“NCZO”) requires CUPs for all mineral resource development. (AR 13598; 13608-09.)
- The General Plan requires CUPs meet General Permit Approval Standards. The permits shall be granted if all billed fees and charges for processing the application request have been paid, and all of the specified standards are met, subject to some discretionary exemptions. Under those standards, the applicant must demonstrate that:
 - The proposed development is consistent with the intent and provisions of the County’s General Plan and of Division 8, Chapters and 2, of the Ventura County Ordinance Code;
 - The proposed development is compatible with the character of surrounding, legally established development;
 - The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses;
 - The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare;
 - The proposed development is compatible with existing and potential land uses in the general area where the development is to be located (CUPs only);
 - The proposed development will occur on a legal lot; and
 - The proposed development is approved in accordance with CEQA and all other applicable laws.

(AR 13836.)

- The General Plan Goals, Policies, and Programs require the following:
 - Applications for *mineral resource development* shall be reviewed to assure minimal disturbance to the environment and to assure that lands are reclaimed for appropriate uses which provide for and protect the public health, safety and welfare.
 - *Mining operations* shall comply with the requirements of the County Zoning Ordinance and standard conditions, and state laws and guidelines relating to mining and reclamation.
 - All *discretionary permits* for in-river *mining* shall be conditioned to incorporate all feasible measures to mitigate flooding and erosion impacts as well as impacts

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to water resources, biological resources, and beach sediment transport.

- o Petroleum exploration and production shall comply with the requirements of the County Zoning Ordinance and standard conditions, and state laws and guidelines relating to oil and gas exploration and production.
- o As existing petroleum permits are modified, they shall be conditioned so that production will be subject to appropriate environmental and jurisdictional review.
- o All General Plan amendments, zone changes, and discretionary developments shall be evaluated for their individual and cumulative impacts on access to and extraction of recognized mineral resources, in compliance with the California Environmental Quality Act.
- o Mineral Resource Areas may be established, in whole or part, in accordance with the following criteria:
 - Any area designated by the State Board of Mines and Geology as an area of statewide or regional significance pursuant to the provisions of the Surface Mining and Reclamation Act of 1975.
 - Any area covered by a *discretionary permit* (e.g., a CUP) for mining of aggregate minerals determined to be of Statewide or regional significance.
- o *Discretionary development* within a Mineral Resource Area shall be subject to the provisions of the Mineral Resource Protection (MRP) Overlay Zone, and is prohibited if the use will significantly hamper or preclude access to or the extraction of mineral resources.

(AR 13938.)

(b) The Ordinance

Among other things, the Ordinance describes two overlay zones, which are defined in separate sections of the Ordinance. The first of those sections defines the Habitat Connectivity and Wildlife Corridors Overlay Zone (“HCWC zone”) as follows:

Section 8104-7.7 – Habitat Connectivity and Wildlife Corridors Overlay Zone

The general purposes of the Habitat Connectivity and Wildlife Corridors overlay zone are to preserve *functional connectivity* for wildlife and *vegetation* throughout the overlay zone by minimizing direct and indirect barriers, minimizing loss of *vegetation* and habitat fragmentation and minimizing impacts to those areas that are narrow, impacted or otherwise tenuous with respect to wildlife movement. More specifically, the purposes of the Habitat Connectivity and Wildlife Corridors overlay zone include the following:

- a. Minimize the indirect impacts to wildlife created by *outdoor lighting*, such as disorientation of nocturnal species and the disruption of mating, feeding, migrating, and the predator-prey balance.

- b. Preserve the *functional connectivity* and habitat quality of *surface water features*, due to the vital role they play in providing refuge and resources for wildlife.
- c. Protect and enhance *wildlife crossing structures* to help facilitate safe wildlife passage.
- d. Minimize the introduction of *invasive plants*, which can increase fire risk, reduce water availability, accelerate erosion and flooding, and diminish biodiversity within an ecosystem.
- e. Minimize *wildlife impermeable fencing*, which can create barriers to food and water, shelter, and breeding access to unrelated members of the same species needed to maintain genetic diversity.

The second section defines a “Critical Wildlife Passage Areas Overlay Zone” (“CWPA zone”). That section reads:

Section 8104-7.8 – Critical Wildlife Passage Areas Overlay Zone

There are three critical wildlife passage areas that are located entirely within the boundaries of the larger Habitat Connectivity and Wildlife Corridors overlay zone. These areas are particularly critical for facilitating wildlife movement due to any of the following: (1) the existence of intact native habitat or other habitat with important beneficial values for wildlife; (2) proximity to water bodies or ridgelines; (3) proximity to critical roadway crossings; (4) likelihood of encroachment by future development which could easily disturb wildlife movement and plant dispersal; or (5) presence of non-urbanized or undeveloped lands within a geographic location that connects core habitats at the regional scale.

(AR 00211-12.)

(The HCWC and CWPA zones are at times referred to herein collectively as the “overlay zones.”)

The Ordinance also amends Article 9, Section 8109-4 of the NCZO by adding new Section 8109-4.8, captioned “Habitat Connectivity and Wildlife Corridors Overlay Zone,” and Section 8109-4.9, captioned “Critical Wildlife Passage Areas Overlay Zone.” (AR 00214-30.) Section 8109.4.8.1, regarding the HCWC zone, governs applicability. (AR 00214-15.) That section states in relevant part:

- d. If a proposed land use or *structure* requires a discretionary permit or modification thereto under a section of this Chapter other than Sec. 8109-4.8, no additional discretionary permit or Zoning Clearance shall be required for the

1 proposed land use or *structure* pursuant to this Sec. 8109-4.8. Instead, applicable
2 standards, requirements and procedures of this Sec. 8109-4.8 shall be incorporated
3 into the processing of the application for, and the substantive terms and conditions
4 of, the discretionary permit or modification that is otherwise required by this
5 Chapter.

(AR 00215.)

6 Section 8109.4.8.2, concerning the HCWC zone, governs outdoor lighting, and
7 generally imposes limitations on certain type of lighting, and the brightness and colors of
8 lighting permitted. (AR 00215-21.) Exempt from these standards are temporary or
9 intermittent outdoor night lighting necessary to conduct surface mining operations or oil
10 and gas exploration and production, regardless of the location or number of lights used
11 intermittently (with intermittent defined as 31-90 calendar days within any 12-month
12 period). (AR 00216.) Lighting for oil and gas operations and surface mining operations
13 “may deviate from the above-stated standard and requirements” if “a lighting plan [is]
14 approved by the County during the discretionary permitting process for the subject facility
15 or operation” and is “designed and operated to minimize impacts on wildlife passage to the
16 extent feasible.” (AR 00220-21.)

17 Section 8109.4.8.3, applying to the HCWC zone, governs wildlife crossing structures,
18 surface water features, vegetation modification, wildlife impermeable fencing, and permitting.
19 (AR 00221-30.) There are no specific requirements or exemptions applicable only to surface
20 mining or oil and gas exploration within this section.

21 Section 8109.4.9 pertains only to the CWPA zone. It imposes more restrictive
22 requirements. (AR 00230-37.) Section 8109.4.1 governs applicability, and it contains the same
23 discretionary permit/modification language applicable more broadly to the HCWC zone, as set
24 forth above in Section 8104.8.1(d). (AR 00231-32.) Section 8109.4.2 sets forth exemptions,
25 although none specifically applies to surface mining or oil and gas exploration. (AR 00232-34.)
26 Section 8109.4.9.3 sets forth permitting requirements for development. (AR 00234-36.)
27 Likewise, Section 8109-4.9.4 sets forth the discretionary permit application and approval
28 standards applicable whenever a discretionary permit or modification thereto is required to
authorize development pursuant to this Section 8109-4.9. (AR 00236-37.)

SMARA

Petitioner contends that the County violated SMARA by failing to prepare a “statement of reasons,” even after the County was requested to do so by the State Geologist. Petitioner further contends that the court’s review of the alleged SMARA violation is de novo because the County’s “failure to comply with mandatory procedural requirements under SMARA amounts to a failure to proceed in the manner required by law [and] presents a pure issue of law.” (Pet. Open. Brief, p. 12.)

The County denies there is a SMARA violation. It argues that SMARA does not apply because the applicable statutes only require a statement of reasons in conjunction with a land use decision “permitting a use that would threaten the potential to extract minerals in that area.” The County contends that its adoption of the Ordinance was not “permitting a use” and that, even if it was, that use does not “threaten the potential to extract minerals.” Further, it asserts that Petitioner has not established that it has been prejudiced by the alleged SMARA violation and that a showing of prejudice is necessary before a traditional writ of mandate may issue. Finally, the County contends that review of the SMARA claim is the deferential standard under Code of Civil Procedure section 1085.

For the reasons stated below, the court finds that review of the County’s interpretation of the applicable statutory language is de novo, that the adoption of the Ordinance was “permitting a use” as that phrase is used in those statutes, that this court’s review of the factual question of whether that use threatened potential extraction of minerals is deferential, that the County’s determination that the provisions of the Ordinance do not threaten potential extraction of minerals is supported by substantial evidence, and that even if there was a SMARA violation, Petitioner has not demonstrated prejudice from that violation.

1. Standard of Review

The parties disagree on the standard applicable to this court’s review of the alleged SMARA violation. The parties agree that, procedurally, Petitioner’s SMARA claim is made under Code of Civil Procedure section 1085, seeking a traditional writ of mandate.

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1 Petitioner cites *Cleveland National Forest Foundation v. County of San Diego* (2019) 37
 2 Cal.App.5th 1021 for the proposition that this court's review of the SMARA claim is de novo.
 3 The issue in that case "turn[ed] on the interpretation of [a section] of the Map Act: what the
 4 Legislature meant by" certain language used in the statute. (*Cleveland National Forest
 5 Foundation v. County of San Diego, supra*, 37 Cal.App.5th 1021, 1040–1041.) The Court of
 6 Appeal there stated the standard applicable to the review of that issue: "A reviewing court
 7 exercises independent judgment on pure questions of law, including the interpretation of statutes
 8 and judicial precedent." (*Ibid.*) Otherwise, "writ review requires substantial deference to the
 9 agency's findings." (*Id.*, 37 Cal.App.5th at p. 1040.)

10 Here, Petitioner is correct in asserting that the court's interpretation of the applicable
 11 statutory language – i.e., what the Legislature meant by "permitting a use" – is a pure question of
 12 law, which the court determines through the exercise of its independent judgment. That is, no
 13 deference is paid to the County's interpretation of the statutory language. But the County is
 14 correct that the factual question – whether that use threatens the potential extraction of minerals
 15 – is governed by the deferential standard. That standard has been stated this way:

16 "The standard of review for traditional mandamus (Code Civ. Proc. § 1085), calls
 17 for the trial court to determine whether ' "the agency's decision was arbitrary,
 18 capricious or entirely lacking in evidentiary support, contrary to established
 19 public policy, unlawful, or procedurally unfair." ' [Citation.] Under this
 20 deferential standard of review, the court's role is to 'ensure that the administrative
 21 agency has adequately considered all relevant factors, and has demonstrated a
 22 rational connection between those factors, the choices made, and the purposes of
 23 the enabling statute.' [Citations.] [Citation.] " ' "Although mandate will not lie
 24 to control a public agency's discretion, that is to say, force the exercise of
 25 discretion in a particular manner, it will lie to correct abuses of discretion.
 26 [Citation.] In determining whether an agency has abused its discretion, the court
 27 may not substitute its judgment for that of the agency, and if reasonable minds
 28 may disagree as to the wisdom of the agency's action, its determination must be
 upheld. [Citation.]" [Citation.]' " [Citation.]

(*Nowicki v. Contra Costa County Employees' Retirement Association* (2021) 67
 Cal.App.5th 736, 746.)

What can be gleaned from this precedent is that (1) review of the County's interpretation
 of what the statutory language "permitting a use" means by is de novo (i.e., the court exercises

its independent judgment); and (2) the factual dispute over whether the adoption of the Ordinance will threaten the potential extraction of minerals is deferential and determined under the substantial evidence standard.

Having determined the appropriate standards of review, the court will now address the parties' substantive contentions.

2. *Meaning of "Permitting a Use"*

Petitioner asserts that the County's adoption of the Ordinance violated the provisions of SMARA that require an agency produce a "statement of reasons" under certain circumstances. Specifically, those provisions are found in Public Resources Code, section 2762, subdivision (d) and section 2763, subdivision (a). The former applies to areas that the State Geologist has determined contain mineral deposits that are of regional or statewide significance and the lead agency has designated that area in its general plan as having important minerals to be protected. The latter concerns areas that have been designated by the State Mining and Geology Board ("SMGB") as an area of regional significance, and the lead agency has designated that area in its general plan as having important minerals to be protected. The County does not dispute that the overlay zones span an area meeting both descriptions.

For an area falling into either or both of these descriptions, SMARA requires that "prior to permitting a use" that would "threaten the potential to extract minerals in that area" the lead agency (here, the County) must prepare a statement specifying its reasons for permitting the proposed use. (Pub. Res. Code, § § 2762, subd. (d), and 2763, subd. (a).) Such a statement is sometimes referred to as a "statement of reasons." It is disputed whether the County's adoption of the Ordinance was "permitting a use" and, if it was, whether that use threatens the potential to extract minerals in the overlay zones.

Both sides agree that there is no published authority clarifying the meaning of the phrase "permitting a use" as used in these statutes.³ The County contends that its adoption of the

³ SMARA does define the noun "permit." As used in the act, "permit" means "any authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations." (Pub. Resources Code, § 2732.5.) This definition is not helpful here; neither side argues that the phrase "permitting a use" is limited to authorizations or approvals allowing surface mining operations.

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1 Ordinance did not amount to “permitting a use” because the type of “use” contemplated by the
2 Legislature in enacting SMARA was limited to permitting a “specific development – such as
3 residential subdivisions or commercial uses” (Opp., p. 9) and not the “adoption of general land
4 use legislation” (*id.*, p. 10). Petitioner, conversely, argues that “the Ordinance permits a ‘use’
5 because it changes the regulations governing the use of land throughout” the overlay zones.
6 (Reply, p. 7.)

7 The County’s attempt to restrict these provisions of SMARA to decisions permitting
8 specific developments is unpersuasive. This argument reads too much into the statutes. The few
9 passages from the legislative history cited by the County are not compelling.

10 The court concludes the statutory language is best understood this way: SMARA
11 requires a statement of reasons in the context of land use permitting decisions and, as the County
12 acknowledges, the principal function of the Ordinance is to modify the requirements for permits
13 necessary for uses in and around the overlay zones. Changes in these permitting requirements
14 could theoretically impact the extraction of mineral resources by affecting whether, for example,
15 permits necessary to conduct those activities are granted. That is, changing the rules under which
16 permits are issued can ultimately determine which uses *are* permitted. If, under the new
17 permitting procedures, permits needed to conduct surface mining operations were denied on a
18 widespread basis or issued under terms impractical to meet, then it could be said that the new
19 procedures “threaten” the potential extraction of minerals.⁴

20 Finding that the adoption of the Ordinance constituted “permitting a use” within the
21 meaning of SMARA is consistent with the State Geologist’s recommendation that the County
22 prepare a statement of reasons. Although not binding on the court, an administrative agency’s
23 interpretation of statutory language that it is charged with enforcing is entitled to consideration.
24 (*Dunn v. County of Santa Barbara (2006)* 135 Cal.App.4th 1281, 1289.) While the basis for the
25 agency’s conclusion is not explained in the record and that omission undermines the weight of
26 the opinion, the State Geologist’s opinion is nevertheless entitled to some credit, and it plainly

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4 Whether the Ordinance *would* have that effect is addressed in the next section.

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1 implies a broader meaning of the “permitting a use” phrase than that urged by the County.

2 For these reasons, the court finds that the adoption of the Ordinance constituted
3 “permitting a use” within the meaning of SMARA.

4 3. *Threaten the Potential Extraction of Minerals*

5 The County determined that the adoption of the Ordinance did not threaten the potential
6 extraction of minerals and, therefore, no statement of reasons was required. Under the applicable
7 standard of review, this factual determination is entitled to deference and must be upheld if it is
8 supported by substantial evidence in the administrative record.

9 As discussed above, an agency’s obligation to prepare a statement of reasons is only
10 triggered under SMARA if the use permitted “*would* threaten the potential to extract minerals.”
11 (Emphasis added.) Petitioner argues that the restrictions imposed by the Ordinance do threaten
12 the potential extraction of minerals by creating regulatory obstacles that would make it more
13 difficult or impossible to obtain CUPs necessary for mineral resource extraction projects. It also
14 contends that provisions of the Ordinance concerning fencing, vegetation and lighting will
15 similarly threaten mining operations. The County disputes these contentions. It asserts that
16 substantial record evidence supports its finding that the Ordinance does not threaten the potential
17 extraction of minerals.

18 A. *Impact of Ordinance on the Issuance of CUPs*

19 Petitioner’s argument goes this way: The County requires a CUP for surface mining, and
20 CUPs may be denied in the County’s discretion based on a number of grounds, including that the
21 operation is not consistent with the intent and provisions of the General Plan. (Citing AR 13598-
22 99, 13834-35, 13835-36, § § 8111-1.2.1(a)-(e).) The County amended the General Plan to
23 include new maps delineating, for the first time, the overlay zones, as well as Project-related
24 nomenclature and definitions. (Citing AR 00003(1); 00005-08; 01172-75.) These amendments
25 significantly change the standards for CUP surface mining applications, which must show the
26 proposed activities are “compatible” with and not “harmful” or “detrimental” to the use of the
27 Project area as a habitat for wildlife. (Citing AR 13836, § 8111-1.2.1a(a)-(e).) According to
28 Petitioner, this makes it more likely that CUP applications for mineral extraction projects will be

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1 denied, which in turn “threatens” the potential extraction of mineral resources. The focus of the
 2 Project is to discourage development and increase the burden of permitting new development.
 3 (Citing AR 00004.) This is exacerbated by new conservation-focused, Project-related provisions
 4 added to the County’s Biological Resource Goals, Policies, and Programs, including new
 5 findings providing that habitat loss/fragmentation are leading threats to biodiversity. (Citing AR
 6 00003, 01171.) The County added a new policy that requires decision makers evaluating a
 7 discretionary CUP to weigh the “project-specific and cumulative impacts on the movement of
 8 wildlife at a range of spatial scales including local scales (e.g., hundreds of feet) and regional
 9 scales (e.g., tens of miles).” (Citing AR 01173.) Thus, because mineral extraction projects
 10 require roads, cause noise (including noise from blasting activities), and often require nighttime
 11 lighting, Petitioner argues that it is reasonably likely to be more difficult for such projects to be
 12 deemed “consistent” with these new Biological Resource Goals, Policies, and Programs. (Citing
 13 AR 13836, § 8111-1.2.1.1a.) This process is further complicated by the need for decision
 14 makers to now consider the cumulative and “regional” impacts that a single mine will have on
 15 the new HCWC and the wildlife that use the Project area as habitat, says Petitioner.

16 The County disputes these contentions. Specifically, the County asserts that the
 17 Ordinance will not substantively change the existing discretionary CUP permitting standards.
 18 The County contends that even before the Ordinance was adopted, the County retained the
 19 discretion to deny a CUP that threatened biological resources.

20 Petitioner is correct that the Ordinance will impact the CUP permitting requirements for
 21 mining operations. Although existing permitting standards will continue to apply to mining CUP
 22 applications after implementation of the Ordinance (see AR 13598, 13608-09, 13836, 13938
 23 [existing permitting requirements and standards]; AR 00215, 00236-37 [will use existing
 24 permitting standards in general]), the new purposes set forth in the Ordinance will be
 25 incorporated into the review of CUP applications. (See AR 00215 [“applicable standards,
 26 requirements and procedures of this Sec. 8109-4.8 shall be incorporated into the processing of
 27 the application for, and the substantive terms and conditions of, the discretionary permit or
 28 modification that is otherwise required by this Chapter”], AR 00236-37.) The Ordinance states a

1 new purpose will be added to the HCWC overlay zone: “to preserve *functional connectivity* for
 2 wildlife and *vegetation* throughout the overlay zone by minimizing direct and indirect barriers,
 3 minimizing loss of *vegetation* and habitat fragmentation.” (AR 00211.) Specifically, the
 4 Ordinance will add the following purposes to the HCWC overlay zone: minimize indirect
 5 impacts to wildlife created through outdoor lighting, preserve functional connectivity and habitat
 6 quality of surface water, protect and enhance wildlife crossing structures, minimize the
 7 introduction of invasive plants, and minimize wildlife impermeable fencing. (AR 00211-12.)
 8 Under the Ordinance, when evaluating CUP applications, the decisionmaker must consider “the
 9 development’s potential project-specific and cumulative impacts on the movement of wildlife at
 10 a range of spatial scales including local scales (e.g., hundreds of feet) and regional scales (e.g.,
 11 tens of miles).” (AR 01173.)

12 Petitioner argues that CUPs for mining activities will be scrutinized more harshly due to
 13 the new wildlife-preserving purposes, causing future applications to be denied or throttled with
 14 impractical restrictions. But Petitioner has not demonstrated with record evidence that county
 15 officials will exercise the discretion vested in them arbitrarily or prohibitively. It does not follow
 16 that simply because an applicant for a mining-related CUP may have to satisfy new or additional
 17 requirements that the viability of the mining operations has been threatened. That is, the
 18 assumed fact that getting a CUP may be more difficult does not necessarily mean that a CUP will
 19 not be issued or that it would only be issued on terms which would be prohibitively restrictive.

20 Petitioner insists that surface mining and mineral extraction is inherently incompatible
 21 with a wildlife corridor and, consequently, that it is foreseeable that mining-related CUPs will
 22 not be issued. Implicit in this argument is the assumption that denial of CUP applications for
 23 mineral extraction operations in the overlay zones is a foregone conclusion under the Ordinance.
 24 This assertion is supported only by speculation. Even before the adoption of the Ordinance,
 25 review of CUP mining applications required measures to protect biological resources.⁵ For

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 27 ⁵ The existing permitting standards require the applicant to demonstrate: that the proposed development is
 28 consistent with the intent and provisions of the General Plan and Division 8, Chapters 1 and 2 of the Ventura County
 Ordinance Code; that proposed development is compatible with the surrounding, legally established development;
 that the proposed development would not be obnoxious or harmful, or impair the utility of neighboring properties or
 uses; that the proposed development would not be detrimental to the public interest, health, safety, convenience, or

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1 example, the existing standards already require CUP mining applications “assure minimal
 2 disturbance of the environment” and incorporate “all feasible measures” to mitigate impacts to
 3 biological resources. (AR 13938.) These requirements could have been used in the same
 4 prohibitive way that Petitioner fears the new requirements will be used, but it is evident from the
 5 existence of current mining operations that the County has not exercised its discretion under
 6 existing law in a manner that prohibits those operations. Moreover, contrary to Petitioner’s
 7 assertion, the Designation of Regionally Significant Construction Aggregate Resource Areas in
 8 the Western Ventura County and Simi Production-Consumption Regions (“Designation”) defines
 9 “incompatible” as “[I]and uses inherently incompatible with mining and/or which require a high
 10 public or private investment in structures, land improvements, and landscaping, and which would
 11 prevent mining because of the higher economic value of the land and its improvements.” (AR
 12 02089.) Listed examples include high density residential, low density residential with high unit
 13 value, public facilities, intensive industrial, and commercial. (AR 02089.) The Ordinance does
 14 not create or authorize a land use falling into any of these categories. The Designation defines
 15 “compatible” as “[I]and uses inherently compatible with mining and/or which require a low
 16 public or private investment in structures, land improvements, and landscaping, and which would
 17 allow mining because of the low economic value of the land and its improvements.” (AR
 18 02089.) Listed examples of land uses that are compatible with mining include very low-density
 19 residential, extensive industrial, recreation, agricultural, silvicultural, grazing, and open space.
 20 (AR 02090.) These land uses are more akin to a wildlife corridor than those defined as
 21 “incompatible.”

22 Petitioner also argues that mining requires (1) vehicle traffic that produces noise, and (2)
 23 can require lighting during hours of darkness. These impacts will, according to Petitioner,
 24 necessarily run afoul of the Ordinance’s purposes. However, again, Petitioner cites nothing in
 25 the record to show, and Petitioner fails to otherwise explain how, these considerations will
 26 necessarily mean that mining operations will not be permitted. The provisions of the Ordinance

27
 28 welfare; that the proposed development is compatible with the existing and potential land uses in the general area
 where the development is to be located; that the proposed development will occur on a legal lot; and that the
 proposed development is approved in accordance with CEQA and all other applicable laws. (AR 13836.)

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1 do not categorically prohibit traffic, noise, or lighting in the overlay zones.

2 Petitioner argues that the Ordinance will make mining more costly, which in turn will
3 make it less profitable, and that the profitability of potential mineral extraction is considered in
4 SMARA land use designations. (AR 02032-34.) Petitioner contends that “designation status is
5 not always permanent” and that the SMGB may terminate a designation status when said status
6 “is no longer necessary or appropriate.” (AR 02039.) But there is nothing in the record that
7 supports an inference that a termination decision is to any degree likely. The fact that a change
8 in designation status is possible does not established that it *would* occur and that it *would*
9 threaten mining operations.⁶

10 For these reasons, Petitioner has not established that the Ordinance will impact the
11 issuance of mining-related CUP applications to an extent that it would threaten the potential
12 extraction of minerals.

13 *B. Fencing*

14 Petitioner argues that one of the two critical linkages, the Santa Monica – Sierra Madre
15 connection, overlies the Santa Clara River, which is the location of most of the County’s sand
16 and gravel extraction sites. This area has been identified as being of “special importance” for
17 wildlife passage. Petitioner contends that sand and gravel mining in this area will necessarily
18 require the installation of fencing and that the fencing provisions of the Ordinance will threaten
19 sand and gravel extraction in that area. This argument lacks merit. The Ordinance does not
20 completely prohibit fencing; rather, the Ordinance requires most fencing to be wildlife
21 permeable, and it limits the use of impermeable fencing to 10% of the gross lot size. (AR 00221-
22 29.) Petitioner proffers no argument or evidence to show that a requirement of 90% wildlife
23 permeable fencing will greatly interfere with sand and gravel mining along the Santa Clara
24

25 ⁶ In its reply papers, Petitioner argues that a mining expansion project in another county, which is undergoing
26 environmental review, got back comments earlier this year from California Department of Fish and Wildlife stating
27 that the parcels occur within the wildlife corridor overlay zone, and as a result, the project could be seen to have
28 specific impacts on the mountain lion population due to “increasing human presence, traffic, noise, air pollutants and
dust, artificial lighting, and will significant and permanently reduce the width of the existing wildlife corridor.” This
argument is based solely on Petitioner’s request for judicial notice submitted with the reply, which the court has
denied. Therefore, the facts supporting this contention have not been established, and the contention is, therefore,
not addressed by the court.

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1 River. Thus, the County did not abuse its discretion in finding the fencing regulations do not
2 threaten the potential extraction of minerals.

3 *C. Vegetation*

4 Petitioner argues that developing a quarry necessarily involves the removal of vegetation,
5 which will prevent wildlife from traversing through the “excavated and fenced-off area” for the
6 duration of the mining, which can be as long as 100 years. (Pet. Open. Brief, p. 20:21-26.) But
7 Petitioner fails to demonstrate that the Ordinance would categorically prohibit the removal of
8 vegetation for this purpose. As discussed below, the Ordinance places limitations on vegetation
9 modification and prohibits the intentional planting of invasive plants. (AR 00221-25.) Petitioner
10 does not demonstrate how these limitations would threaten the potential to extract minerals.

11 *D. Lighting*

12 Petitioner objects to the Ordinance’s lighting standards and nighttime lighting
13 requirements. However, Petitioner cites no evidence in the record as to how much lighting is
14 required for mining. That is, Petitioner has not shown that the lighting provisions of the
15 Ordinance will substantially interfere with mining operations. The lighting regulations exempt
16 mining’s temporary nighttime lights, and only impose brightness limitations on permanent
17 lighting. (AR 00215-21.) Moreover, applicants may request deviations from the lighting
18 standards as part of their application for a CUP. (AR 00221.) The County did not abuse its
19 discretion in determining these restrictions would not threaten the potential to extract minerals.

20 *E. State Geologist's Recommendation*

21 In determining whether the County was required to prepare a statement of reasons, the
22 court has considered the recommendation of State Geologist to the effect that the County should
23 prepare a statement of reasons. That recommendation, and the implied finding that the County’s
24 actions would threaten the potential extraction of minerals, is not binding on the court, however.
25 Like Petitioner, the State Geologist failed to identify a compelling reason to conclude that the
26 County was required to prepare a statement of reasons. It is not enough for Petitioner to show
27 that the Geologist disagreed with the County. On the factual question of whether the Ordinance
28 would threaten the potential extraction of minerals, the County’s determination is entitled to

1 deference and will not be reversed if that conclusion is rationally reached based on substantial
2 evidence. Here, it was.

3 For these reasons, the court concludes that no violation of SMARA has been proved.

4 4. Prejudice

5 As an additional reason to deny Petitioner’s SMARA claim, the County contends that
6 Petitioner must show prejudice in order to obtain a writ of mandate. The County is correct.
7 Before a writ of traditional mandamus will issue against a public agency under Code of Civil
8 Procedure section 1085, the petitioner must show prejudice resulted from the public agency's
9 action. (*California Public Records Research, Inc. v. County of Stanislaus* (2016) 246
10 Cal.App.4th 1432, 1449.)

11 The County asserts that there has been no prejudice because SMARA merely provides
12 the SGMB an opportunity to comment on a statement of reasons prepared by a lead agency, but
13 neither Public Resources Code section 2762 nor section 2763 (nor any other provision in
14 SMARA) authorizes the state to overrule or condition a lead agency’s land use decision on that
15 basis. The County states that it explained its position to the State Geologist, and there would be
16 nothing gained by reiterating those points in a statement of reasons. The County also asserts that
17 there was a two-year legislative review process that provided Petitioner and the public with an
18 opportunity to comment.

19 Petitioner contends that it has been prejudiced because the County has not publicly
20 declared its statement of reasons and discussed each of the adverse impacts to mineral resources
21 required by Public Resources Code, section 2763, subdivision (a). It cites *Neighbors for Smart*
22 *Rail v. Expo Metro Line Const. Authority* (2013) 57 Cal.4th 439, 463, *Sierra Club v. State Board*
23 *of Forestry* (1994) 7 Cal.4th 1215, 1236-37, and *Association of Irrigated Residents v. County of*
24 *Madera* (2003) 107 Cal.App.4th 1383 for the proposition that depriving the public and decision-
25 makers of relevant information about a project’s likely adverse impacts constitutes a prejudicial
26 abuse of discretion.

27 The cases relied upon by Petitioner apply CEQA, not SMARA. *Neighbors for Smart Rail*
28 recognizes the general rule that in a CEQA action, “[a]n omission in an EIR’s significant impacts

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1 analysis is deemed prejudicial if it deprived the public and decision makers of substantial
 2 relevant information about the project's likely adverse impacts.” (*Neighbors for Smart Rail*,
 3 *supra*, 57 Cal.4th at p. 463.) Likewise, *Sierra Club* and *Association of Irrigated Residents* are
 4 CEQA cases applying the rule that an omission in an EIR is prejudicial under CEQA. (*Sierra*
 5 *Club, supra*, 7 Cal.4th at pp. 1236-37; *Association of Irrigated Residents, supra*, 107 Cal.App.4th
 6 at p. 1391.)

7 Petitioner’s comparison of a statement of reasons under SMARA and an EIR under
 8 CEQA is not persuasive. Under CEQA, the failure to disclose such information in the EIR is
 9 expressly declared a prejudicial abuse of discretion by statute. (See Pub. Res. Code, § 21005,
 10 subd. (a) [“The Legislature finds and declares that it is the policy of the state that noncompliance
 11 with the information disclosure provisions of this division which precludes relevant information
 12 from being presented to the public agency . . . may constitute a prejudicial abuse of discretion
 13 within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome
 14 would have resulted if the public agency had complied with those provisions”].) However, there
 15 is no similar statutory provision in SMARA. Moreover, a SMARA statement of reasons requires
 16 much less information than a CEQA EIR. (Compare Pub. Res. Code, § § 21061, 21100, 21100.1
 17 [required contents of CEQA EIR] with Pub. Res. Code, § 2762, subd. (d) [required contents of
 18 SMARA Statement of Reasons].) Therefore, the authorities cited by Petitioner are
 19 distinguishable.

20 Petitioner’s argument regarding the absence of a public process lacks merit. As the
 21 County correctly notes, there has been no prejudice because SMARA merely provides the
 22 SGMB an opportunity to comment on a statement of reasons prepared by a lead agency, but
 23 neither Public Resources Code section 2762 nor section 2763 (nor any other provision in
 24 SMARA) authorizes the state to overrule or condition a lead agency’s land use decision on that
 25 basis. In other words, there is no basis to conclude that had the County issued a statement of
 26 reasons and engaged in the public process under SMARA, the outcome would be any different.
 27 True, there might have been a public vetting of the County’s statement of reasons, but the
 28 administrative record shows that there *was* a public process and the State Geologist *did* weigh in.

1 (See, e.g., AR 00579-08146 [documents, transcripts, etc. re: public hearing on 3/12/19] & 04500-
2 01 [letter from the State Geologist].) None of this altered the County’s resolve to adopt the
3 Ordinance, and it is unlikely that the preparation of a statement of reasons would have had that
4 effect.

5 In light of the foregoing, Petitioner has failed to demonstrate prejudice. For this and the
6 other reasons stated above, Petitioner’s SMARA claim is without merit and the petition for a writ
7 of mandate on that claim is denied.

8 CEQA

9 Petitioner asserts the County’s adoption of the Ordinance violated CEQA in several
10 respects. Petitioner argues that the County improperly split the Ordinance from the General Plan,
11 and, in doing so, it contends that the County violated the prohibition on “piecemealing” CEQA
12 projects. Petitioner also argues that the County erroneously found the Project was exempt from
13 CEQA. The County disputes these contentions.

14 *I. CEQA Overview*

15 The California Supreme Court has summarized the provisions of CEQA this way:

16 CEQA was enacted to advance four related purposes: to (1) inform the
17 government and public about a proposed activity's potential environmental
18 impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent
19 environmental damage by requiring project changes via alternatives or mitigation
20 measures when feasible; and (4) disclose to the public the rationale for
governmental approval of a project that may significantly impact the
environment. [Citation.]

21 To further these goals, CEQA requires that agencies follow a three-step process
22 when planning an activity that could fall within its scope. [Citations.] First, the
23 public agency must determine whether a proposed activity is a “project,” i.e., an
24 activity that is undertaken, supported, or approved by a public agency and that
“may cause either a direct physical change in the environment, or a reasonably
25 foreseeable indirect physical change in the environment.” [Citation.]
26 Second, if the proposed activity is a project, the agency must next decide whether
27 the project is exempt from the CEQA review process under either a statutory
28 exemption [citation] or a categorical exemption set forth in the CEQA Guidelines
[citation]. If the agency determines the project is not exempt, it must then decide
whether the project may have a significant environmental effect. And where the
project will not have such an effect, the agency “must ‘adopt a negative
declaration to that effect.’ ” [Citation.]

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1 Third, if the agency finds the project “may have a significant effect on the
 2 environment,” it must prepare an EIR before approving the project. [Citation.]
 3 Given the statute's text, and its purpose of informing the public about potential
 4 environmental consequences, it is quite clear that an EIR is required even if the
 5 project's ultimate effect on the environment is far from certain. [Citation.]
 6 Determining environmental significance “calls for careful judgment on the part of
 7 the public agency involved, based to the extent possible on scientific and factual
 8 data.” [Citation.] The Guidelines encourage public agencies to develop and
 9 publish “thresholds of significance” [citation], which generally promote
 10 predictability and efficiency when the agencies determine whether to prepare an
 11 EIR. [Citation.]

12 (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.*
 13 (2015) 62 Cal.4th 369, 382–383.)

14 2. Piecemealing

15 Petitioner contends that the County has violated the prohibition against
 16 “piecemealing” CEQA projects. “The foremost principle under CEQA is that the
 17 Legislature intended the act ‘to be interpreted in such manner as to afford the fullest
 18 possible protection to the environment within the reasonable scope of the statutory
 19 language.’” (*Laurel Heights Improvement Assn. v. Regents of University of California*
 20 (1988) 47 Cal.3d 376, 390, 253 (*Laurel Heights*)). “With narrow exceptions, CEQA
 21 requires an EIR whenever a public agency proposes to approve or to carry out a project
 22 that may have a significant effect on the environment.” (*Laurel Heights, supra*, 47
 23 Cal.3d at p. 390.)

24 “ ‘There is no dispute that CEQA forbids “piecemeal” review of the significant
 25 environmental impacts of a project.’ [Citation.]” (*Aptos Council v. County of Santa Cruz*
 26 (2017) 10 Cal.App.5th 266, 277–278 (*Aptos Council*), quoting *Berkeley Keep Jets Over*
 27 *the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358.)

28 “ ‘Project’ is a term of art.” (*Banning Ranch Conservancy v. City of Newport*
Beach (2012) 211 Cal.App.4th 1209, 1220 (*Banning Ranch*)). “CEQA ‘projects’ include
 activities undertaken by public agencies that cause direct physical changes to the
 environment. (§ 21065.) What constitutes a project is given a broad interpretation.
 [Citation.] A project refers to ‘the whole of an action’ (Cal. Code Regs., tit. 14, § 15378,

1 subd. (a)), not each individual component [citation].” (*County of Ventura v. City of*
 2 *Moorpark* (2018) 24 Cal.App.5th 377, 385.)

3 The framework of analysis, crafted in *Laurel Heights* and *Banning Ranch* among
 4 other cases, was summarized in *Aptos Council* this way:

5 Courts have found that agencies improperly piecemealed environmental review of
 6 projects in various situations. “First, there may be improper piecemealing when
 7 the purpose of the reviewed project is to be the first step toward future
 8 development.” (*Banning Ranch, supra*, 211 Cal.App.4th at p. 1223.) For
 9 example, in *Laurel Heights*, the Supreme Court determined the University of
 10 California, San Francisco improperly piecemealed environmental review of the
 11 relocation of its pharmacy school to a building in the Laurel Heights
 12 neighborhood of San Francisco. The EIR acknowledged the university would
 13 occupy the entire Laurel Heights building when the remainder of the space
 14 became available. (*Laurel Heights, supra*, 47 Cal.3d at p. 396.) It also estimated
 how many faculty, staff, and students would populate the entire building at full
 occupancy. The EIR, however, failed to discuss additional environmental effects
 that would result from the university's use of the remaining building space. (*Id.* at
 p. 393.) The Supreme Court found the university improperly piecemealed
 environmental review, because it was “indisputable that the future expansion and
 general type of future use [was] reasonably foreseeable.” (*Id.* at p. 396.)

15 Additionally, “there may be improper piecemealing when the reviewed project
 16 legally compels or practically presumes completion of another action.” (*Banning*
 17 *Ranch, supra*, 211 Cal.App.4th at p. 1223.) For example, in [*Tuolumne County*
 18 *Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th
 19 1214, 1226], the appellate court determined the City of Sonora improperly
 20 piecemealed review of the building of a shopping center and the widening of a
 21 street, because the widening of the street was a condition precedent to the
 22 development. [Citation.]

23 There is no piecemealing, however, when “projects have different proponents,
 24 serve different purposes, or can be implemented independently.” (*Banning Ranch,*
 25 *supra*, 211 Cal.App.4th at p. 1223.)

(*Aptos Council, supra*, 10 Cal.App.5th at pp. 279-280, footnotes omitted.)

26 Petitioner argues that the County violated CEQA by improperly splitting the Project
 27 between coastal and noncoastal areas. Specifically, Petitioner argues:

28 The Project maps show two corridors that extend from inland areas of the County
 to the coast. AR 5; 1142; 1149-50. The Planning Department Staff Report stated
 that the coastal portions of the corridors were a part of the Project. AR 1101-02.
 Yet the Project amended only the NCZO [Noncoastal Zone Ordinance], as

EXHIBIT A

1 discussed above, but not the Coastal Zoning Ordinance (“CZO”).

2 (Pet. Open. Brief, p. 24.)

3 The County denies that there is a piecemealing violation. It contends that it was
4 required to separately analyze the coastal zone ordinance (“CZO”) amendments from the
5 Project because a specific CEQA exemption applies only to the CZO amendments, and
6 not to those portions of the Project falling outside the coastal zone.

7 The County is correct. Generally, the Coastal Act charges the Coastal Commission with
8 responsibility for overseeing development with the coastal zone. The Coastal Act requires each
9 local government to prepare a local coastal plan (“LCP”) governing land use for the portion of
10 the coastal zone within its jurisdiction. (Pub. Resources Code, § 30500, subd. (a).) An LCP
11 consists of land use plans, zoning ordinances, and zoning district maps, among other things.
12 (Pub. Resources Code, § 30108.6.) The Commission must certify that a proposed LCP conforms
13 with the Coastal Act before the local government can adopt it. (Pub. Resources Code, §§ 30512,
14 30513.)

15 CEQA does not apply to activities and approvals of a local government, such as the
16 County, where those activities and approvals are necessary for the preparation of adoption of an
17 LCP. (Pub. Resources Code, § 21080.9.) Because that review process is the functional
18 equivalent of CEQA review (see *Strother v. California Coastal Com.* (2009) 173 Cal.App.4th
19 873, 877), CEQA exempts such activities and approvals from the CEQA environmental review
20 process. (Pub. Resource Code, § 21080.5.) It is the Coastal Commission—not the County—that
21 must comply with CEQA under Public Resources Code section 21080.9. (CEQA Guidelines,
22 § 15265, subd. (c).)

23 Because the County’s amendment of the CZO was exempted from the CEQA review
24 process, it follows that the policy behind the prohibition on piecemealing does not come into
25 play here. That is, the County did not take a single project *otherwise subject to CEQA review as*
26 *a whole* and attempt to mitigate its impact and avoid that review by dividing into small parts.
27 The process for environmental review was fundamentally different as between the NCZO and
28 the CZO, and the County’s handling them separately was both appropriate and necessary.

1 For these reasons, there is no improper piecemealing of the Project. The court next
2 addresses Petitioner’s contention that the County erred in finding the Project exempt from the
3 environmental review provisions of CEQA.

4 3. *Categorical Exemptions (Class 7 & Class 8)*

5 The County found that CEQA review was not required because the Project fell into the
6 Class 7 and Class 8 exemptions. These are “categorical exemptions” established in CEQA
7 Guidelines sections 15307 and 15308. “When a project comes within a categorical exemption,
8 no environmental review is required unless the project falls within an exception to the categorical
9 exemption.” (*Aptos Residents Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1046.)
10 “Although categorical exemptions are construed narrowly, [a court’s] review of an agency’s
11 decision that a project falls within a categorical exemption is deferential,” and a court determines
12 “only whether that decision is supported by substantial evidence.” (*Ibid.*) “Under CEQA,
13 ‘substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert
14 opinion supported by fact’ and ‘is not argument, speculation, unsubstantiated opinion or
15 narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic
16 impacts that do not contribute to, or are not caused by, physical impacts on the environment.’
17 [Citation.]” (*Id.*, pp. 1046–1047, quoting from Pub. Resources Code, § 21080, subd. (e).)
18 Substantial evidence is “evidence of ponderable legal significance that is reasonable in nature,
19 credible, and of solid value, to support the agency's decision.” (*Protect Tustin Ranch v. City of*
20 *Tustin* (2021) 70 Cal.App.5th 951, 960.) “If an agency has established that a project comes
21 within a categorical exemption, the burden shifts to the party challenging the exemption to show
22 that it falls into one of the exceptions. [Citation.]” (*North Coast Rivers Alliance v. Westlands*
23 *Water Dist.* (2014) 227 Cal.App.4th 832, 851–852.)

24 The Class 7 exemption states:

25 Class 7 consists of actions taken by regulatory agencies as authorized by state law
26 or local ordinance to assure the maintenance, restoration, or enhancement of a
27 *natural resource* where the regulatory process involves procedures for protection
28 of the environment. Examples include but are not limited to wildlife preservation
activities of the State Department of Fish and Game. Construction activities are
not included in this exemption.

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1 (CEQA Guidelines, § 15307, emphasis added.)

2 The Class 8 exemption states:

3 Class 8 consists of actions taken by regulatory agencies, as authorized by state or
4 local ordinance, to assure the maintenance, restoration, enhancement, or
5 protection of the *environment* where the regulatory process involves procedures
6 for protection of the environment. Construction activities and relaxation of
standards allowing environmental degradation are not included in this exemption.

7 (CEQA Guidelines, § 15308, emphasis added.)

8 Interpreting the meaning of the phrase “actions ... to assure the maintenance, restoration,
9 or enhancement” as it is used in the Class 7 and Class 8 exemptions, the Court of Appeal in *Save*
10 *Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 707 observed:

11 Case law is instructive as to which actions fall within these exemptions, and
12 which do not. The prohibition of an activity that evidence shows is associated
13 with “environmental problems, [such as] the contamination of farmland,”
14 constitutes an action to assure “protection of the environment.” (*Magan v. County*
15 *of Kings* (2002) 105 Cal.App.4th 468, 476, [ordinance phasing out “the land
16 application of sewage sludge” fell within class 8 exemption].) By contrast,
17 actions that remove existing wildlife protections, authorize and regulate hunting,
18 or relax existing environmental safeguards do not assure the maintenance,
19 restoration, or enhancement of the environment. (See *Mountain Lion Foundation*
20 *v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125 (*Mountain Lion*) [action that
21 “removes rather than secures ... protections [of animal species]” does not fall
22 within class 7 or class 8 exemption]; *Wildlife Alive v. Chickering* (1976) 18
23 Cal.3d 190, 205 (*Chickering*) [setting of hunting seasons does not fall within class
24 7 [fn.] exemption because such an action “cannot fairly or readily be
25 characterized as a preservation activity in a strict sense”]; *International*
26 *Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116
27 Cal.App.3d 265, 276 (*International Longshoremen's*) [amendment doubling the
28 allowable emissions of gases the Legislature has determined are dangerous
substances did not fall within class 7 or class 8 exemption[fn.]].)

23 The appellate court in *Save Our Big Trees* concluded:

24 These legal guideposts indicate that, consistent with its plain language, the phrase
25 “actions ... to assure the maintenance, restoration, or enhancement” embraces
26 projects that combat environmental harm, but not those that diminish existing
27 environmental protections.

28 (*Save Our Big Trees v. City of Santa Cruz, supra*, 241 Cal.App.4th 694, 707.)

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1 As will be explained below, applying these principles here, the court finds that the
2 County has met its burden to show that the Class 7 and Class 8 exemptions apply and that
3 Petitioner has not met its burden to establish an exception to those exemptions.

4 *(a) County's Burden to Show Exemption Applies*

5 The County argues that substantial evidence supports its determination that the Project
6 fell within both the Class 7 and Class 8 exemptions. It correctly notes that CEQA and the
7 County's Assessment Guidelines identify impacts on wildlife movement and wildlife corridors
8 as environmental impacts. Appendix G to the CEQA Guidelines recognizes impacts on wildlife
9 movement and wildlife corridors as environmental impacts.⁷ (See CEQA Guidelines, appen. G,
10 § IV, subd. (d), p. 360 ["Would the project: [] Interfere substantially with the movement of any
11 native resident or migratory fish or wildlife species or with established native resident or
12 migratory wildlife corridors, or impede the use of native wildlife nursery sites?"].) Similarly, the
13 County's Assessment Guidelines discuss habitat connectivity as an environmental impact. (See,
14 e.g., AR 14239 ["A project would impact habitat connectivity if it would: (a) remove habitat
15 within a wildlife movement corridor; (b) isolate habitat; (c) construct or create barriers that
16 impede fish and/or wildlife movement, migration or long term connectivity; or (d) intimidate fish
17 or wildlife via the introduction of noise, light, development or increased human presence"].)

18 The County's determination that the Project would benefit the environment is based on
19 substantial evidence in the record showing: preserving geographic connections among protected
20 areas enables wildlife and plant populations to access necessary resources; these connections are
21 a crucial component of protecting the County's biological diversity; movement through habitats
22 is often essential for wildlife survival; isolated wildlife populations may survive for a limited
23 time, but will be vulnerable to die off due to diseases, periodic loss of food resources, and
24 inbreeding; and preservation of biological resources requires that plant and animal species be
25 able to successfully move through the areas of the County that contain the habitats they depend
26 on. (AR 01111-30 [Planning Commission Staff Report dated 1/31/19]; AR 01628 [slideshow];

27
28 ⁷ "Appendix G of the CEQA Guidelines is an 'Environmental Checklist Form' that may be used in determining whether a project could have a significant effect on the environment and whether it is necessary to prepare a negative declaration or an EIR." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896.)

1 AR 02203-41 [Dr. Seth Riley’s slideshow presentation to the Board of Supervisors; [Dr. Mark
 2 Ogonowski’s slideshow presentation to the Board of Supervisors]; AR 03808 [letter from The
 3 Nature Conservancy to the Board of Supervisors]; AR 04515 [letter from National Wildlife
 4 Federation to the Planning Commission; AR 04519-20 [letter from Conejo Open Space
 5 Conservation Agency to the Board of Supervisors]; AR 04529 [letter from Friends of the Santa
 6 Clara River to the Board of Supervisors]; AR 04548-51 [letter from U.S. Fish & Wildlife Service
 7 to the Board of Supervisors]; AR 04734 [letter from National Wildlife Federation to the Board of
 8 Supervisors]; AR 00616-17 [testimony]; 00921-23 [testimony]; AR 08160-61 [testimony]; AR
 9 009100-03 [testimony]; AR 1111-30 [Planning Commission Staff Report 1/31/19]; AR 01642-88
 10 [slideshow for 1/31/19 meeting]; AR 02731-44 [slideshow for 3/12/19 meeting].) Record
 11 evidence includes studies and other documents citing the need to preserve wildlife corridors and
 12 provide support for the establishment of developmental standards that are compatible with
 13 wildlife movement. (AR 01510-13 [bibliography]; AR 09850-13521, 04551-04669, 10074-89,
 14 10584-91, 10567-76, 09580-97, 10385-10413, 01492-01509, 10292-10372, 10711-61, 10525-33,
 15 10090-10105, 09988-99, 10131-43 [multiple studies, reports, etc.])

16 The record also contains extensive testimony and comments from wildlife biologists,
 17 researchers, conservation groups and others describing the environmental issues and how the
 18 Project would protect wildlife corridors and benefit the broader environment. (AR 00659:22-
 19 00675:9, 00679:23-00689:14, 00690:5- 00697:25, 00847:3-00848:9, 00887:1-00888:9,
 20 00921:23-00923:3, 00923:17-00924:20, 08172:17-08191:16, 01463-68 [testimony]; AR 02203-
 21 41, 02758-02806 [slideshows]; AR 02823-33, 3804-06, 3808, 03810-04476, 03810-04476,
 22 04506-09, 04529, 04546, 04547-04669, 04671, 04729-34, 04737-49, 04798-06415 [comments,
 23 reports, etc.]; 09423-48 [slideshow].) Intervenors, likewise, are correct that the record is replete
 24 with evidence supporting the County’s reliance on the categorical exemptions. (E.g., AR 10644-
 25 10710 [*“Missing Linkages”* report].)

26 This is substantial evidence supporting the County’s determination that the Class 7
 27 exemption applies because it rationally leads to a conclusion that the Project will assure the
 28 maintenance, restoration, or enhancement of a natural resource where the regulatory process

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1 involves procedures for protection of the environment. This is also substantial evidence
 2 supporting the County's finding that the Class 8 exemption applies because it rationally leads to
 3 a conclusion that the Project is an action authorized by county ordinance to assure the
 4 maintenance, restoration, enhancement, or protection of the environment where the regulatory
 5 process involves procedures for protection of the environment. (Compare *Magan v. County of*
 6 *Kings* (2002) 105 Cal.App.4th 468, 475–476.)

7 Nevertheless, Petitioner contends "the County failed to consider the Project's impacts
 8 upon the availability of mineral resources and the potential indirect effects of the unavailability of
 9 local resources" and "[i]nstead, the County speculated that the Project's impacts are 'expected to
 10 be beneficial.' AR 4." (Pet. Open. Brief, p. 30.) Petitioner states that the County "cannot skip
 11 CEQA altogether and use its lack of CEQA analysis as a basis to dismiss concerns regarding
 12 potential impacts." (*Id.*, p. 31.)

13 However, this argument fails to persuade in the context of analyzing the County's initial
 14 burden to show that the Class 7 and Class 8 exemptions apply. That is because the County's
 15 initial burden is merely to show that substantial evidence supports its finding that the exemptions
 16 apply. Whether a project may potentially have an adverse effect on the environment is not at
 17 issue when deciding whether substantial evidence supports the use of a categorical exemption in
 18 the first instance, since projects can still be subject to a categorical exemption "notwithstanding
 19 their *potential* effect on the environment." (*Berkeley Hillside Preservation v. City of Berkeley*
 20 (2015) 60 Cal.4th 1086, 1102 (*Berkeley Hillside*), emphasis in original.) Rather, the question of
 21 whether the Project will cause a significant environmental impact is an issue to be addressed in
 22 determining whether an exception to the exemption applied for unusual circumstances
 23 exception.⁸

24 Therefore, the County has met its burden to show, through substantial evidence, that the
 25 Project falls within the Class 7 and Class 8 categorical exemptions.⁹ This shifts the burden to

26
 27 ⁸ The applicability of the unusual circumstances exception is discussed in the next section.

28 ⁹ In a footnote to its opening brief, at p. 30, Petitioner purports to "incorporate[] CoLAB's arguments regarding the use of the class 7 and 8 exemptions." CoLAB discussed those exemptions at pages 21-30 of its opening brief. The court set pagination limits for Petitioner's opening briefs of 30 pages. (See Minute Order, 4/8/21.) Petitioner's opening brief is 35 pages. Including the materials Petitioner would incorporate by reference, Petitioner's opening

1 Petitioner to show an exception to these exemptions apply.

2 (b) *Petitioner's Burden to Show an Exception Applies*

3 "A categorical exemption shall not be used for an activity where there is a reasonable
4 possibility that the activity will have a significant effect on the environment due to unusual
5 circumstances." (Cal. Code Regs., tit. 14, § 15300.2.) Petitioners have the burden of producing
6 evidence supporting this exception. (*Berkeley Hillside*, 60 Cal.4th at p. 1105.)

7 [T]o establish the unusual circumstances exception, it is not enough for a
8 challenger merely to provide substantial evidence that the project *may* have a
9 significant effect on the environment, because that is the inquiry CEQA requires
10 absent an exemption. (§ 21151.) Such a showing is inadequate to overcome the
11 Secretary's determination that the typical effects of a project within an exempt
12 class are not significant for CEQA purposes. On the other hand, evidence that the
13 project *will* have a significant effect *does* tend to prove that some circumstance of
14 the project is unusual. An agency presented with such evidence must determine,
15 based on the entire record before it—including contrary evidence regarding
16 significant environmental effects—whether there is an unusual circumstance that
17 justifies removing the project from the exempt class.

18 (*Berkeley Hillside* at p. 1105, emphasis in original.)

19 A party opposing the application of a categorical exemption may establish an unusual
20 circumstance without evidence of an environmental effect, by showing two things: (1) "that the
21 project has some feature that distinguishes it from others in the exempt class, such as its size or
22 location"; and (2) there is "a reasonable possibility of a significant effect due to that unusual
23 circumstance." (*Berkeley Hillside* at p. 1105.) Alternatively, the party opposing the exemption
24 may carry its burden "with evidence that the project will have a significant environmental
25 effect." (*Ibid.*)

26 The two-element test stated in *Berkeley Hillside* was recently summarized in *Protect*
27 *Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 961–962:

28 "Whether a particular project presents circumstances that are unusual for projects
in an exempt class is an essentially factual inquiry, 'founded 'on the application
of the fact-finding tribunal's experience with the mainsprings of human conduct.'
" [Citation.] Accordingly, as to this question, the agency serves as 'the finder

brief would exceed the pagination limit ordered by the court. It did not obtain leave to file a brief in excess of the
ordered pagination limit. Therefore, the court declines Petitioner's request to incorporate arguments made outside of
the four-corners of its briefs. (See *York v. City of Los Angeles* (2019) 33 Cal.App.5th 1178, 1188.)

1 of fact' [citation], and a reviewing court should apply the traditional substantial
 2 evidence standard [A]fter resolving all evidentiary conflicts in the agency's
 3 favor and indulging in all legitimate and reasonable inferences to uphold the
 4 agency's finding, [the court] must affirm [the agency's] finding if there is any
 5 substantial evidence, contradicted or uncontradicted, to support it." [Citation.]

6 "As to whether there is 'a reasonable possibility' that an unusual circumstance
 7 will produce 'a significant effect on the environment' [citation], a different
 8 approach is appropriate, both by the agency making the determination and by
 9 reviewing courts." [Citation.] The agency applies a fair argument standard,
 10 meaning it reviews the evidence to see if there is a fair argument of a reasonable
 11 possibility the project will have a significant effect on the environment.
 12 [Citation.] If there is substantial evidence of a reasonable possibility the project
 13 will have such an effect, the agency may not rely on the exemption even if there is
 14 evidence to the contrary. [Citation.]

15 A reviewing court " 'determine[s] whether substantial evidence support[s] the
 16 agency's conclusion as to whether the prescribed "fair argument" could be made.'
 17 " [Citation.] If it " 'perceives substantial evidence" ' " that there is a reasonable
 18 possibility the project will have a significant environmental impact, but the
 19 agency relied on the exemption, " ' "the agency's action is to be set aside because
 20 the agency abused its discretion by failing to proceeding "in a manner required by
 21 law." ' " [Citation.]

22 The other way of establishing unusual circumstances stated in *Berkeley Hillside* was
 23 summarized in *World Business Academy v. California State Lands Commission* (2018) 24
 25 Cal.App.5th 476, 499:

26 Alternatively, the party advocating for application of the unusual circumstances
 27 exception may make a heightened, one-element showing: that the project will
 28 have a significant environmental effect. [Citation.] If a project will have a
 significant environmental effect, that project necessarily presents unusual
 circumstances and the party does not need to separately establish that some
 feature of the project distinguishes it from others in the exempt class. [Citation.]
 [A court applies] the deferential substantial evidence review when reviewing this
 one-step alternative for proving the exception. [Citation.]

First, Petitioner contends that they have satisfied the single-element test. Petitioner
 states, "the Project is presumed under the County's IS Guidelines to have a 'significant adverse
 impact on the environment' because it is (i) 'located on ... land zoned Mineral Resource
 Protection (MRP) overlay zone [and] adjacent to a principal access road to an existing aggregate
 Conditional Use Permit (CUP)'; and (ii) 'has the potential to hamper or preclude extraction of or

1 access to the aggregate resources'" (Pet. Open. Brief, p. 32.)

2 This argument lacks merit. The mere fact that the Project area is located in part in the
3 Mineral Resource Protection ("MRP") overlay zone and adjacent to access roads to an existing
4 CUP does not, without more, suggest that the Project will have a significant effect on the
5 environment. Nor has Petitioner shown that there is no substantial evidence to support the
6 County's determination that the Project does not have the potential to hamper or preclude access
7 to the mineral resources. (See discussion *supra* regarding the SMARA claim.)

8 Next, Petitioner asserts that it has met the two-element test. It asserts that "the size and
9 location of the Project constitute an unusual circumstance because the Project far exceeds the
10 size of projects in its exemption class, none of which have the potential to overlie nearly as many
11 acres of mineral resources." (Pet. Open. Brief, p. 34.) Specifically, Petitioner states:

12 The overall size of the Project is massive (over 163,000 acres), and the location
13 includes and overlies over 10,000 acres of mineral resources that were previously
14 classified and designated by the State of California. AR 5; 2135 (figure depicting
15 HCWC overlaid upon Mineral Resources Zones, as discussed on AR 2127). Each
16 of these issues independently qualifies as an unusual circumstance.

(Pet. Reply Brief, p. 25.)

17 Petitioner does not persuasively explain why the size of the Project distinguishes it from
18 other projects that would qualify for the Class 7 or Class 8 exemptions and, further, to cite to
19 evidence in the record demonstrating that distinction. (See *Protect Tustin Ranch v. City of Tustin*
20 (2021) 70 Cal.App.5th 951, 962; *World Business Academy v. California State Lands*
21 *Commission, supra*, 24 Cal.App.5th at pp. 503–504.) Petitioner does not advance a persuasive
22 comparison to the five-acre limit of the Class 33 exemption: Petitioner compares "apples to
23 oranges." The Class 33 exemption concerns small habitat restoration projects. (Cal. Code Regs.,
24 tit. 14, § 15333.) The examples provided in the CEQA Guidelines, although not exhaustive,
25 clearly show that the Class 33 exemption is limited to small projects involving actions
26 affirmatively undertaken to restore the environment. The focus of that exemption is not at play
27 here.

28 ///

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1 Petitioner cites four cases it contends support its contention that both the size and location
 2 of the Project are “unusual circumstances.” Those cases, however, do little to advance
 3 Petitioner’s cause. In the first case, *Save the Plastic Bag Coalition v. County of Marin* (2013)
 4 218 Cal.App.4th 209, there was no discussion of the unusual circumstances exemption, and the
 5 Court of Appeal held that the Class 7 and Class 8 exemptions were properly found to apply. In
 6 the second case, *Save the Plastic Bag Coalition v. City and County of San Francisco* (2013) 222
 7 Cal.App.4th 863, the Court of Appeal found that the exemption was properly applied and that the
 8 petitioner had failed to carry its burden with respect to the unusual circumstances exception. In
 9 the third case, *Main San Gabriel Basin Watermaster v. State Water Resources Control Bd.*
 10 (1993) 12 Cal.App.4th 1371, 1384, the Court of Appeal expressly stated that it was not
 11 considering the Class 7 and Class 8 exemptions because its decision rested on another issue. In
 12 the fourth case, *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, the Court of Appeal
 13 found that the county met its burden to show the Class 8 exemption applied and that appellant
 14 failed to meet his burden to establish an exception.¹⁰

15 In addition, Petitioner refers to the conservation projects in other jurisdictions—SEA in
 16 Los Angeles County, RTP/SCS in Southern California, National Forest Resource Management
 17 Plans, the MSHCP in Riverside, the San Diego Multiple Species Conservation Plan, and the
 18 Orange County Central and Coastal Subregional National Community Conservation Plan—and
 19 asserts that the existence of these other projects highlights “why the Project and the County’s
 20 approval process was unusual,” since those other projects underwent environmental review.

21 The reference to these other projects fails to make Petitioner’s point. First, Petitioner
 22 incorrectly suggests that SEA underwent environmental review; it did not. (See AR 02172-73.¹¹)

23
 24 ¹⁰ If anything, *Magan* mitigates against Petitioner’s position. There, the disputed ordinance phased out and
 25 ultimately prohibited the application of sewage sludge on land anywhere in the unincorporated area of Kings
 26 County. (*Magan v. County of Kings, supra*, 105 Cal.App.4th at p. 471.) It is a fair inference that the unincorporated
 27 area of the whole of Kings County is greater than 163,000 acres and includes more than 10,000 acres of mineral
 28 resources.

¹¹ The addendum and website referenced by Petitioner’s counsel sets forth an addendum, stating that there was no
 environmental review or EIR for that project because none of the conditions in CEQA Guidelines, section 15162,
 are present. The cited addendum states in relevant part: “No major revisions of the Certified EIR are required as no
 new significant environmental effects have been identified, nor has a substantial increase in the severity of
 previously identified significant effects been identified, nor have any substantial changes occurred with respect to
 the circumstances under which the project was undertaken. [¶] The project does not propose to change the impacts

1 As for the other projects, the cited portions of the record either do not explain the scope of those
2 other projects or do not disclose that the projects are far greater in scope. (AR 01891, 02172-73
3 [stating that the SEA does not change the General Plan’s prior EIR, without explaining the scope
4 of SEA], AR 02175 [stating that the RTP/SCS is a regional transportation plan], AR 02146 [no
5 explanation of the scope of the MSHCP], AR 02164-68 [list of hyperlinks from a website with
6 no substantive information], AR 02169-71 [Orange County’s project involves permanently
7 protected open space].) Therefore, Petitioner has not shown that these other projects are
8 analogous to the Project in this case.¹²

9 As for the fact that the acreage in the Project includes areas already classified as an MRP
10 overlay zone, the court should consider, and has considered, whether the project is consistent
11 with the surrounding zoning and land uses. (See *Citizens for Environmental Responsibility v.*
12 *State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 586.) However, as discussed in
13 connection with the SMARA claim, Petitioner has not demonstrated that the Project is
14 incompatible with mining. As discussed above, under the definitions stated in the Designation,
15 the Project is “consistent” with the surrounding land uses. Petitioner fails to cite any authority or
16 offer a reasoned explanation supporting its assertion that the fact that the Project encompasses
17 areas rich in mineral resources constitutes an unusual circumstance.

18 Therefore, Petitioner has not shown that the Project presents an unusual circumstance that
19 distinguishes it from other projects falling within the Class 7 and Class 8 exemptions. However,
20 even if the court were to find that the size and location of the Project were collectively an
21 unusual circumstance, it would not disturb the County’s finding that there is no “fair argument”
22 that those conditions give rise to a reasonable possibility of a significant effect on the

24 previously analyzed within the Certified EIR. The proposed amendments to the General Plan are consistent with the
25 Certified EIR analyses. . . .” (AR 02172-73; also available at [https://planning.lacounty.gov/site/sea/wp-
content/uploads/2018/09/H-ADDENDUM.pdf](https://planning.lacounty.gov/site/sea/wp-content/uploads/2018/09/H-ADDENDUM.pdf) [addendum for SEA]; see also Exhibit 10 of Petitioners’ counsel’s
letter.)

26 ¹² Petitioners’ counsel argued, in a letter to the County, that Riverside County determined that its Multiple Species
27 Habitat Conservation Plan (“MSHCP”) surpassed its threshold of significance for impact to mining operations, and
28 therefore that county issued an EIR. (AR 04697, 04706-08.) The facts cited by counsel in the letter are outside the
record. In any event, the Riverside MSHCP is easily distinguished from the Project here because the Riverside
MSHCP completely sets aside some land previously zoned for mineral resource mining to instead be used solely for
conservation.

1 environment due to unusual circumstances because, for reasons stated above in connection with
2 the SMARA claim and below in connection with the common sense exemption, that finding is
3 supported by substantial evidence.

4 Therefore, Petitioner has not met its burden to establish an exception to the Class 7 and
5 Class 8 categorical exemptions. It follows that the Project is not subject to environmental review
6 under CEQA. This conclusion is sufficient to deny the petition.

7 *4. Common Sense Exemption*

8 In addition to finding that the Project was subject to the Class 7 and Class 8 exemptions,
9 the County found the "common sense" exemption applied. Petitioner disagrees.

10 "A project that qualifies for neither a statutory nor a categorical exemption may
11 nonetheless be found exempt under what is sometimes called the 'common sense' exemption."
12 (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380 ("*Muzzy*
13 *Ranch*").) A project is subject to this exemption "[w]here it can be seen with certainty that there
14 is no possibility that the activity in question may have a significant effect on the environment."
15 (*Ibid*; CEQA Guidelines, § 15061, subd. (b)(3).) "Determining whether a project qualifies for
16 the common sense exemption need not necessarily be preceded by detailed or extensive
17 factfinding. Evidence appropriate to the CEQA stage in issue is all that is required." (*Muzzy*
18 *Ranch*, 41 Cal.4th at p. 388.)

19 Where the agency relies on the common sense exemption, it must provide the support for
20 its decision before the burden shifts to the challenger. (*Davidon Homes v. City of San Jose*
21 (1997) 54 Cal.App.4th 106, 116 ("*Davidon*").) The agency bears the burden to produce
22 "substantial evidence supporting its exemption decision." (*Id.*, at p. 119.) "An agency's duty to
23 provide such factual support 'is all the more important where the record shows, as it does here,
24 that opponents of the project have raised arguments regarding possible significant environmental
25 impacts.'" (*Muzzy Ranch*, 41 Cal.4th at p. 386, quoting *Davidon*.) "[T]he showing required of a
26 party challenging an exemption under Guidelines section 15061, subdivision (b)(3) is slight,
27 since that exemption requires the agency to be *certain* that there is *no possibility* the project may
28 cause significant environmental impacts." (*Davidon*, 54 Cal.App.4th at p. 116.) "If legitimate

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1 questions can be raised about whether the project might have a significant impact and there is
2 any dispute about the possibility of such an impact, the agency cannot find with certainty that a
3 project is exempt.” (*Ibid.*, italics in original.)

4 In finding that the Project was subject to the common sense exemption, the County
5 found:

6 [T]o the extent the project affects the environment, the effect is expected to be
7 beneficial since the proposed project is intended to protect biological resources,
8 by including limits on vegetation removal, buffers created for surface water
9 features and wildlife crossing structures, limits on the intentional planting of
10 invasive plants, and the requirement for compact development in critical areas
11 within the habitat linkages. In addition, staff has determined that the project does
12 not result in the direct or indirect loss of agricultural soils or create any land use
13 incompatibility issues with agricultural operations, as this project does not include
14 any structures or uses, and agricultural operations are generally excluded from the
15 proposed regulations.

16 (AR 1131-32]

17 Petitioner argues that “the County’s conclusion that there is ‘no possibility’ the Project
18 will have a significant effect on the environment cannot be sustained because it is based solely
19 upon the County’s views as to the ‘expected’ environmental benefits of the Project without also
20 considering its potential downsides.” (Pet. Open. Brief, p. 26.) That is, Petitioner contends that
21 the County only focused on the positive environment impacts and never seriously considered the
22 adverse environmental affects the Project might have from its effect on mining operations.

23 In support of this argument, Petitioner cites *Davidon*, with the explanation that the
24 County committed “the same error” that the lead agency made there. That error was described
25 by the Court of Appeal this way:

26 In this case the City's action was supported only by a conclusory recital in the
27 preamble of the Ordinance that the project was exempt under [the common sense
28 exemption]. *There is no indication that any preliminary environmental review
was conducted before the exemption decision was made.* The agency produced no
evidence to support its decision and we find no mention of CEQA in the various
staff reports. A determination which has the effect of dispensing with further
environmental review at the earliest possible stage requires something more. We
conclude the agency's exemption determination must be supported by evidence in
the record demonstrating that the agency considered possible environmental

1 impacts in reaching its decision.

2 (*Davidon*, 54 Cal. App. 4th at pp. 116-117, emphasis added.)

3 Here, unlike *Davidon*, the County conducted an extensive preliminary environmental
4 review before the exemption decision was made. In fact, County Planning Division Staff
5 considered and responded to Petitioner's specific concerns in a six-page memorandum. (AR
6 2820-25.) Among other things, staff concluded: that the Ordinance would not prohibit removal
7 of native vegetation for surface mining operations, that the County already considered potential
8 environmental impacts on wildlife and wildlife movement in issuing discretionary permits
9 affecting surface mining operations, and that the Ordinance's regulation of lighting in connection
10 with mining operations were consistent with existing Planning Department practices. (*Ibid.*)

11 Next, Petitioner contends that the Project *would have* an adverse environmental impact
12 on mineral resources. It observes that Appendix "G" to the CEQA Guidelines identifies two
13 mineral resource-related thresholds of significance that a lead agency must consider. The first is:
14 "Would the project result in the loss of availability of a known mineral resource that would be of
15 value to the region and the residents of the state?" (Guidelines, Appx. G, XII(a)-(b). The second
16 is: "Would the project result in the loss of availability of a locally-important mineral resource
17 recovery site delineated on a local general plan, specific plan or other land use plan?" (*Ibid.*)
18 Petitioner also notes that the County's Assessment Guidelines include two thresholds of
19 significance that relate to mining activities. (See AR 14226.) Under the Assessment
20 Guidelines, any project in the MRP overlay zone "which has the potential to hamper or preclude
21 extraction of or access to the aggregate resources, shall be considered to have a significant
22 adverse impact on the environment." (*Ibid.*)

23 The Appendix "G" inquiries and the County's thresholds of significance require the "loss
24 of availability" of a mineral resource or an impediment to the extraction of minerals. The
25 County found that the Project had no adverse impact on mining operations and, thus, there is no
26 possibility that the Project could have a significant effect on the environment. Petitioner fails to
27 establish that the County's conclusion is without substantial evidence.

28 ///

EXHIBIT A

1 Petitioner argues, "For the same reasons why the Project will threaten the extraction of
2 mineral resources in the context of SMARA, . . . the Project will also result in at least one
3 significant environmental impact." (Pet. Open. Brief, p. 28.) But, as noted above, Petitioner
4 failed to demonstrate in connection with the SMARA claim that the Ordinance would adversely
5 impact mining operations.

6 The County, on the other hand, asserts that the record evidence supports its determination
7 that the Project was covered by the common sense exemption. The evidence cited by the County
8 shows:

- 9 • The Project does not authorize any new land use or development activities that were not
10 previously allowed. (AR 00009-00249.)
- 11 • The Project regulates development in a manner that is compatible with, and minimizes
12 impacts to, wildlife movement and wildlife corridors which mining projects were already
13 required to do consistent with CEQA, the County's General Plan, and the County's
14 Assessment Guidelines. (AR 00009-00249; 01110-31.)
- 15 • The Project addresses a regulatory gap in County land use policy for protection of
16 biological resources by requiring a discretionary permit for certain land use development
17 activities previously exempt or allowed with a ministerial permit without consideration
18 for their impacts on wildlife movement and wildlife corridors. (AR 01131, 09216-17,
19 09406.)
- 20 • The Project's development standards were based on extensive research, scientific studies,
21 and other evidence demonstrating both the need to protect wildlife corridors and the types
22 of development that are more likely than others to imperil wildlife populations and plant
23 species. (AR 01110-31, 01492-1509, 01510-13.)
- 24 • Mining projects were already conditioned to mitigate such impacts. (AR 01742, 02820-
25 27, 14517-30, 14650-62, 14696-751, 14773, 14779-790, 14888-95.)

26 This is substantial evidence supporting the County's finding of the common sense
27 exemption. Therefore, the Project was exempt from CEQA review by operation of the common
28 sense exemption.

CONCLUSION

For these reasons, the petition is denied, and the claims stated therein are ordered
dismissed.

EXHIBIT A

1 Counsel for the County is directed to prepare, serve and lodge a proposed judgment
2 pursuant to California Rules of Court, rule 3.1590, subdivision (f).

3 The clerk is directed to serve this statement of decision upon the parties.

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5 Dated: March 14, 2022

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MARK S. BORRELL
Judge of the Superior Court

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EXHIBIT A

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

Case Number: 56-2019-00527805-CU-WM-VTA

Case Title: California Construction and Industrial Materials Assoc. v. County of Ventura

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

STATEMENT OF DECISION

On the following named parties:

Tiffany North
Jeffrey Barnes
Franchesca Verdin
800 So. Victoria Avenue, L/C 1830
Ventura, CA 93009

Jeffrey Mangels
Benjamin Reznick
Kerry Shapiro
Seena Samimi
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

Michael Robinson Dorn
Brett Korte
University of CA, Irvine School of Law
P.O. Box 5479
Irvine, CA 92616

Kerry Shapiro
Matthew Hinks
Martin P. Sratte
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111

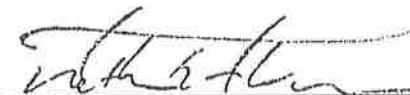
 BY PERSONAL SERVICE: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on at a.m./p.m.

 X BY MAIL: I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

 BY FACSIMILE: I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above with no notice of error at from telephone number .

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on 3/15 , 2022 at Ventura, California.

BRENDA L. McCORMICK, Superior Court
Executive Officer and Clerk

By: 
Arthur T. Alvara,
Court Judicial Secretary

Ventura Superior Court Accepted through eDelivery submitted 04-22-2022 at 11:32:38 AM

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am a resident of or employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. I am employed by the County of Ventura (County) and my business address is County Counsel's Office, 800 South Victoria Avenue, L/C #1830, Ventura, California 93009.

On March 21, 2022, I served the within [PROPOSED] JUDGMENT on:

Benjamin M. Reznick
Seena Max Samimi
Neill Brower
Jeffer Mangels Butler & Mitchell LLP
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BMR@jmbm.com; nb4@jmbm.com; SXS@jmbm.com

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Michael Robinson-Dorn
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by electronic service. Based on a court order, a court rule or an agreement of the parties to accept electronic service, I electronically served said documents from to the above-named person(s) at the electronic address(es) as indicated above.

by standard County mail practice. I enclosed a true copy of each of said documents in a sealed envelope addressed to the above-named person(s) as indicated above, and placed the envelope for collection and mailing following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully paid.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 21, 2022, at Ventura, California.


Jennifer Talmadge

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am a resident of or employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. I am employed by the County of Ventura (County) and my business address is County Counsel's Office, 800 South Victoria Avenue, L/C #1830, Ventura, California 93009.

On April 22, 2022, I served the within NOTICE OF ENTRY OF JUDGMENT:

Benjamin M. Reznick
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- by electronic service.** Based on a court order, a court rule or an agreement of the parties to accept electronic service, I electronically served said documents from to the above-named person(s) at the electronic address(es) as indicated above.
- by standard County mail practice.** I enclosed a true copy of each of said documents in a sealed envelope addressed to the above-named person(s) as indicated above, and placed the envelope for collection and mailing following ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully paid.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 22, 2022, at Ventura, California.

Jennifer Talmadge

Jennifer Talmadge