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Attorneys for Respondent County of Ventura

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

VENTURA COUNTY COALITION OF LABOR, AGRICULTURE, AND BUSINESS, a non-profit membership organization, Petitioner, vs. COUNTY OF VENTURA, a public entity; and DOES 1-25, inclusive, Respondent.	No. 56-2019-00527815-CU-WM-VTA NOTICE OF ENTRY OF JUDGMENT [CEQA CASE: Pub. Resources Code, § 21000 et seq.]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

Dated: April 22, 2022

TIFFANY N. NORTH
County Counsel, County of Ventura

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

EXHIBIT 1

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Attorneys for Respondent County of Ventura

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

VENTURA COUNTY COALITION OF LABOR, AGRICULTURE, AND BUSINESS, a non-profit membership organization,

Petitioner,

vs.

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

Respondent.

No. 56-2019-00527815-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 first amended petition for writ of mandate and complaint for declaratory and injunctive relief, for the action filed April 25, 2019 ("Petition"), by petitioner Ventura County Coalition of Labor, Agriculture and Business ("CoLAB") 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 CoLAB's Petition and ordering all claims stated therein dismissed. CoLAB subsequently filed a statement of principal controverted issues and request for 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. CoLAB 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

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 03/14/2022 TIME: 04:10:00 PM DEPT: 40

JUDICIAL OFFICER PRESIDING: Mark Borrell
CLERK: Art Alvara
REPORTER/ERM:

CASE NO: 56-2019-00527815-CU-WM-VTA
CASE TITLE: VC Coalition of Labor 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 Intervenors. 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: VC Coalition of Labor vs. County of Ventura

CLERK'S CERTIFICATE OF SERVICE BY MAIL (Minute Order)	CASE NUMBER: 56-2019-00527815-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: _____, Deputy

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Two Embarcadero Center, 5th Fl.
San Francisco, CA 94111

CLERK'S CERTIFICATE OF SERVICE BY MAIL

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

VENTURA COUNTY COALITION OF LABOR AGRICULTURE AND BUSINESS, Petitioner, vs. COUNTY OF VENTURA, Respondent, LOS PADRES FORESTWATCH, DEFENDERS OF WILDLIFE, CENTER FOR BIOLOGICAL DIVERSITY, and NATIONAL PARKS CONSERVATION ASSOCIATION, Intervenors.	Case No.: 56-2019-00527815-CU-WM-VTA STATEMENT OF DECISION

Ventura County Coalition of Labor, Agriculture and Business ("Petitioner") petitions for a writ of mandate. Through its first amended petition, Petitioner contends that Respondent, County of Ventura ("County"), ran afoul of a number of 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 the California Environmental Quality Act ("CEQA"); (2) alleged violations

of Government Code sections 65855 and 65857 of the State Planning and Zoning Law; (3) a constitutional claim that the subject ordinance is arbitrary and capricious; (4) alleged violations of Government Code section 65008 (inconsistency with General Plan); (5) alleged violations of the Williamson Act (Gov. Code, § § 51200-51297.4); and (6) alleged violations of the Surface Mining and Reclamation Act ("SMARA") (Pub. Res. Code, § 2710 et seq.).

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

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

This case and another[1] have been consolidated for the purposes of the certification of the administrative record ("AR") and for oral argument but for no other purpose. The court will issue separate judgments in each case.

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

SUMMARY

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

[1] CA Construction vs. County of Ventura, Case No. 56-2019-00527805-CU-WM-VTA.

Environmental Review Under the California Environmental Quality Act" ("the Ordinance").[2]

Petitioner challenges the Ordinance on several grounds. First, Petitioner contends that the County has violated the provisions of CEQA in that:

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

In addition, Petitioner argues that the Ordinance's fencing regulations constitute an unlawful taking.

Finally, Petitioner asserts that the County violated State Planning and Zoning Law, and Government Code section 65855, *et seq.*, which concern how local governments enact zoning ordinances.

The County denies any impropriety occurred in adopting the Ordinance and urges the court to deny the petition. It contends that Petitioner's asserted CEQA violations lack merit. Specifically, the County contends:

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

The County also argues the Petitioner has waived its other arguments.

[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.

The Intervenors also ask the court to deny the petition. Intervenors argue that substantial evidence supports the County's use of the Class 7 and Class 8 exemptions.

Requests for Judicial Notice

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

Petitioner requests judicial notice of County Board of Supervisors Resolution No. 20-106, dated September 15, 2020, adopting the 2040 General Plan Update. The County opposes this request by arguing that there is no basis for considering this evidence because it did not exist at the time the County adopted the Ordinance.

The objection has merit. Sometimes extra-record evidence is admissible when a CEQA claim challenges the finding of an exemption, but not typically. "Extra-record evidence is admissible under this exception only in those rare instances in which (1) the evidence in question existed *before* the agency made its decision, and (2) it was not possible in the exercise of reasonable diligence to present this evidence to the agency *before* the decision was made so that it could be considered and included in the administrative record." (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 578, italics in original.) Here, the County adopted the Ordinance in March 2019 (*e.g.*, see AR 00010), and the resolution of which notice is sought was adopted in September 2020 – roughly 18 months later. Since the resolution did not exist at the time the CEQA determination was made, it cannot be considered for purposes of analyzing the CEQA claim.

Therefore, this request for judicial notice is denied.

2. The County's Request for Judicial Notice

The County requests judicial notice of Ventura County Fire Protection District Ordinance No. 30, adopted by the Board of Directors of Ventura County Fire Protection District on October 25, 2016.

The County persuasively argues that this ordinance is subject to judicial notice as a regulation and legislative enactment. (See Evid. Code, § 452, subd. (b).) Further, this ordinance is relevant because it was cited by speakers and commentators during public hearings. As noted above, although typically extra-record evidence is not permitted in CEQA cases, it may be in

limited circumstances.

Here, the fire protection ordinance is admissible for a limited purpose: as background information to put into context the comments of those who referred to it in the administrative record. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at pp. 578–579, citing with approval *Asarco, Inc. v. U.S. Environmental Protection Agency* (9th Cir. 1980) 616 F.2d 1153, 1160.)

Therefore, the County's request for judicial notice is granted.

3. Petitioner's Request for Judicial Notice in Its Reply Brief

Petitioner requests judicial notice of the County of Ventura – Resource Management Agency – Planning Division – Planning Commission Packet for a September 2, 2021 hearing.

This document did not exist when the County approved the Project in March 2019. Thus, it is not subject to judicial notice in this CEQA action. (See *Western States Petroleum Ass'n v. Super. Ct., supra,* 9 Cal.4th at pp. 578-79.) In addition, Petitioner does not explain why judicial notice of this item was not requested in its opening brief. Generally, evidence offered for the first time in a reply brief will not be considered, unless an excuse or reason is given for failing to submit the evidence sooner, since considering post-opposition evidence would deprive the other party of the opportunity to respond. (See *Lady v. Palen* (1936) 12 Cal.App.2d 3, 5; see also *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

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

FORFEITURE OF THIRD, FOURTH, FIFTH, AND SIXTH CAUSES OF ACTION

The County contends that Petitioner has forfeited its third, fourth, fifth, and sixth causes of action by failing to substantively address these claims in its opening brief, citing *Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 418 ("*Holden*"). Petitioner disagrees. It argues that there has been no forfeiture, that it is entitled to declaratory relief based on a CEQA violation, and that it has not forfeited its fifth and sixth causes of action because Petitioner "join[ed] the brief and arguments of CalCIMA in connection with these claims."[3]

[3] "CalCIMA" is the petitioner in the partially consolidated case.

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

> Finally, although Holden's opening brief alludes to his claim in the trial court that City did not comply with Government Code section 65863 in approving the Project, we conclude that Holden waived or forfeited that argument both in the trial court and on appeal. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." [Citation.] Alternatively stated, "[w]here a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." [Citation.] "Issues do not have a life of their own: if they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived." [Citations.] The record shows that Holden raised Government Code section 65863 in the trial court only in a footnote in his opening brief and without any substantive legal analysis. . . . Holden neither quoted the relevant language of that statute nor provided any substantive legal analysis showing that City was required to comply with that statutory provision and failed to do so. Because Holden did not adequately raise and discuss the Government Code section 65863 issue in the trial court, he is precluded from raising that issue on appeal. [Citation.]
>
> (43 Cal.App.5th at pp. 418–419.)

The third cause of action is captioned "Ordinance is Arbitrary and Capricious." It alleges that the Ordinance is "not supported by substantial evidence, and violates the due process and equal protection rights of residents." (First Am. Pet., ¶ 248.) Petitioner's opening brief does not include any references to the phrases "arbitrary and capricious," "due process," or "equal protection." It did argue that the Ordinance amounted to an unconstitutional taking, but that constitutional claim is based on a legal theory distinct from any pleaded in the third cause of action. The third cause of action is forfeited.

The fourth cause of action is one based on Government Code section 65008 for an alleged violation of section 65860. This is to be distinguished from the second cause of action based on Government Code sections 65855 and 65857. Government Code section 65008 prohibits a local agency from discriminating in its land use decisions based on, for example, demographics, financing method, familial status, occupation, or income. Government Code section 65860 requires consistency between a county's zoning ordinances and its general plan.

The table of authorities to Petitioner's opening and reply briefs confirm that neither section 65008 nor section 65860 of the Government Code is mentioned in either. (There are references to section 65855 and 65857, but those sections pertain to the second cause of action.) Therefore, the fourth cause of action is forfeited.

Next, the County argues that Petitioner has forfeited the fifth cause of action, which seeks relief under the Williamson Act (Gov. Code, § § 51200-51297.4). Petitioner acknowledges in its reply brief that it has abandoned this cause of action. (Reply at p. 29, fn. 13.)

Finally, Petitioner disputes that it has forfeited its sixth cause of action, alleging a violation of SMARA. This cause of action was not specifically addressed in Petitioner's opening brief. However, in its reply brief, Petitioner asserts that it joined in CalCIMA's brief in the partially-consolidated action and, in particular, that it joined in the arguments made by CalCIMA with respect to SMARA. This assertion, however, is not borne out by the record. The only joinder in Petitioner's opening brief related *solely* to the unusual circumstances exception to CEQA categorical exemptions. (Opening Brief, p. 28, fn. 7.) Therefore, Petitioner did not join in CalCIMA's SMARA arguments.

Moreover, Petitioner may not raise new issues in its reply brief by joining in CalCIMA's SMARA arguments. As noted above, matters raised for the first time in a reply brief will generally not be considered, unless an excuse or reason is proffered for failing to submit them sooner. No such excuse or reason has been stated here. As a result, the sixth cause of action has been forfeited.

Having disposed of these preliminary matters, the court now turns to the heart of the parties' dispute.

BACKGROUND

(a) Permitting Requirements Before the Ordinance

Before the adoption of the Ordinance, the County's 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. (AR 13836.) 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. (*Ibid.*) Under those standards, the applicant must demonstrate that:

  a. 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;
  b. The proposed development is compatible with the character of surrounding, legally established development;
  c. The proposed development would not be obnoxious or harmful, or impair the utility of neighboring property or uses;
  d. The proposed development would not be detrimental to the public interest, health, safety, convenience, or welfare;
  e. The proposed development is compatible with existing and potential land uses in the general area where the development is to be located (CUPs only);
  f. The proposed development will occur on a legal lot; and
  g. The proposed development is approved in accordance with CEQA and all other applicable laws. (*Ibid.*)

- The General Plan Goals, Policies, and Programs require the following (AR 13938, emphasis in original):

  "1. 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."
  "2. *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."
  "3. 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 to water resources, biological resources, and beach sediment transport."
  "4. 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."
  "5. As existing petroleum permits are modified, they shall be conditioned so that production will be subject to appropriate environmental and jurisdictional review."
  "6. 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."

"7. 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."

"8. *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."

(b) The Ordinance

Among other things, the Ordinance defined two overlay zones, which are described in separate sections of the Ordinance. The first of those sections, which defines the Habitat Connectivity and Wildlife Corridors Overlay Zone ("HCWC zone"), reads 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, which defines a "Critical Wildlife Passage Areas Overlay Zone" ("CWPA zone"), 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 proposed land use or *structure* pursuant to this Sec. 8109-4.8. Instead, applicable standards, requirements and procedures of this Sec. 8109-4.8 shall be incorporated into the processing of the application for, and the substantive terms and conditions of, the discretionary permit or modification that is otherwise required by this Chapter.
>
> (AR 00215, emphasis in original.)

Section 8109.4.8.2, concerning the HCWC zone, governs outdoor lighting, and generally imposes limitations on certain type of lighting, and the brightness and colors of lighting permitted. (AR 00215-21.) Exempt from these standards are temporary or intermittent outdoor night lighting necessary to conduct surface mining operations or oil and gas exploration and production, regardless of the location or number of lights used

intermittently (with intermittent defined as 31-90 calendar days within any 12-month period). (AR 00216.) Lighting for oil and gas operations and surface mining operations "may deviate from the above-stated standard and requirements" if "a lighting plan [is] approved by the County during the discretionary permitting process for the subject facility or operation" and is "designed and operated to minimize impacts on wildlife passage to the extent feasible." (AR 00220-21.)

Section 8109.4.8.3, applying to the HCWC zone, governs wildlife crossing structures, surface water features, vegetation modification, wildlife impermeable fencing, and permitting. (AR 00221-30.)

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

CEQA

Petitioner contends the County's adoption of the Ordinance violated CEQA in several respects. Petitioner argues that the County improperly split the Ordinance from the General Plan, and it contends that in doing so the County violated the prohibition on "piecemealing" CEQA projects. Petitioner also argues that the County erroneously found the Project was exempt from CEQA. The County disputes these contentions.

1. CEQA Overview

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

> CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent

environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment. [Citation.]

To further these goals, CEQA requires that agencies follow a three-step process when planning an activity that could fall within its scope. [Citations.] First, the public agency must determine whether a proposed activity is a "project," i.e., an 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 foreseeable indirect physical change in the environment." [Citation.]

Second, if the proposed activity is a project, the agency must next decide whether the project is exempt from the CEQA review process under either a statutory 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.]

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

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

2. *Piecemealing*

Petitioner contends that the County has violated the prohibition against "piecemealing" CEQA projects. "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, 253 (*Laurel Heights*).) "With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to

carry out a project that may have a significant effect on the environment." (*Laurel Heights, supra,* 47 Cal.3d at p. 390.)

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

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

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

> Courts have found that agencies improperly piecemealed environmental review of projects in various situations. "First, there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development." (*Banning Ranch, supra,* 211 Cal.App.4th at p. 1223.) For example, in *Laurel Heights*, the Supreme Court determined the University of California, San Francisco improperly piecemealed environmental review of the relocation of its pharmacy school to a building in the Laurel Heights neighborhood of San Francisco. The EIR acknowledged the university would occupy the entire Laurel Heights building when the remainder of the space 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.)
>
> Additionally, "there may be improper piecemealing when the reviewed project legally compels or practically presumes completion of another action." (*Banning Ranch, supra*, 211 Cal.App.4th at p. 1223.) For example, in [*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1226], the appellate court determined the City of Sonora improperly piecemealed review of the building of a shopping center and the widening of a

> street, because the widening of the street was a condition precedent to the development. [Citation.]
>
> There is no piecemealing, however, when "projects have different proponents, serve different purposes, or can be implemented independently." (*Banning Ranch, supra*, 211 Cal.App.4th at p. 1223.)
>
> (*Aptos Council, supra*, 10 Cal.App.5th at pp. 279-280, footnotes omitted.)

COLAB argues that the County violated CEQA by improperly piecemealing the Project from the General Plan Update, which the County approved approximately 18 months after approving the Project. Specifically, COLAB argues:

> In 2017, the Board directed the Planning Division to prepare regulations to improve habitat connectivity throughout the County. [AR 1082.] Things did not go according to plan, as the Board then "elected to complete this project ahead of the GPU schedule," and claimed several CEQA exemptions in order to avoid environmental review for the Ordinance, which the County had expressly promised to perform in 2017. [AR 53332 ("staff will finalize the draft documents [and] complete environmental review" before the public hearings.)]
>
> (Pet. Open. Brief, p. 30.)

COLAB contends that the Ordinance and the General Plan were "originally unified processes" that "were intended to provide a comprehensive system of policy and regulatory controls for land use, open space, wildlife conservation, and safety, among other concerns." In support of this contention COLAB cites to, among other things, the administrative record at page 1269, which is a letter from Kimberly L, Prillhart, Director of the County's Planning Division, to the Board of Supervisors, dated January 24,2017. This correspondence was prepared in anticipation of a hearing "to elicit Board direction regarding the specific components of the work program (scope of work) for protecting habitat connectivity and wildlife movement corridors in the County's General Plan (GP) and Non-Coastal Zoning Ordinance (NCZO)." [AR 1270.] It discussed certain "regulatory tools" that could be used to protect wildlife movement corridors.

This included:

> 1. Overlay/Resource Protection Map. A map could be adopted that formalizes the geographic extent of the habitat connectivity and wildlife movement corridors. This map could be placed in the General Plan as a "resource protection area" map and in the Non-Coastal Zoning Ordinance (NCZO) as a zoning overlay.

2. General Plan Goals and Policies. A set of goals and policies could be adopted that provide policy direction for managing development within the wildlife habitat connectivity corridor. Updated technical information could also be incorporated into the Technical Appendix. There could be both broad policies covering the entire corridor as well as more specific policies applicable to development and land use activities that are currently exempt from permit review.

3. Non-Coastal Zoning Ordinance (NCZO) Development Standards. NCZO development standards would clarify *how* to implement General Plan policies within wildlife corridors. It is anticipated that a set of basic NCZO development standards would address critical development issues within the entire overlay zone. Such standards could manage the location of development within a lot (e.g. whether structures are dispersed or clustered), or other barriers to wildlife movement. In addition, a specialized set of NCZO standards could be prepared that would be applicable to development and land use activities that are currently ministerial or exempt from permit review. These standards would address issues such as lighting, noise, setbacks from riparian and wildlife corridors, the removal of native vegetation, the design of fences, and the planting of invasive plants.

(AR 1477-1478.)[4]

The County denies the asserted piecemeal violation. It argues that "the Project and 2040 General Plan Update serve different purposes, operate independently of each other and can be implemented separately." The County asserts, "The purpose of the Project is very specific – to improve and preserve habitat connectivity throughout the County's mapped wildlife movement corridors by developing regulations and new permitting requirements." On the other hand, says the County, "the purpose of the 2040 General Plan project was to complete a comprehensive, once-in-a-generation update to the County's general plan." It adds that adoption of the General Plan was legally mandated, whereas the Ordinance was not, and thus adoption of one did not necessitate the adoption of the other.

Numerous CEQA cases have considered the issue of when distinct activities are properly deemed to be separate projects. First, in *Del Mar Terrace Conservancy, Inc. v. City Council*

[4] Also see testimony at AR 009215-16: "PLANNING DIRECTOR KIMBERLY PRILLHART: There's already a goal in the General Plan that says you need to protect wildlife migration corridors. And the board has already said these corridors are the ones that are mapped, and that's how we get at it through the discretionary permit. So you'll only get at it if you're doing a subdivision, if you're doing an oil permit, if you're doing a mining permit, if you are – those big discretionary projects. That's how we look at it. And that framework is already set through the General Plan."

(1992) 10 Cal.App.4th 712, 736 (disapproved of on other grounds in *Western States Petroleum Assn. v. Super. Ct.*, *supra*, 9 Cal.4th 559), the court held that an EIR for one section of a proposed state highway did not need to include a potential subsequent extension of the highway in part because the proposed highway section had "substantial independent utility." The appellate court found that, since it would connect two logical terminus points and relieve local traffic congestion, it had "local utility" independent of the full highway.

In *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 237, the Court of Appeal relied on *Del Mar Terrace* in holding that a proposed water transfer was a project separate from a broader water supply agreement because the transfer had "significant independent or local utility" and would be implemented with or without the broader water supply agreement.

Other courts have used similar reasoning when finding that the project under review was separate from a related project. For example, in *Communities for a Better Environment v. City of Richmond* (2010) 184 CalApp.4th 70, the Court of Appeal held that a refinery upgrade and the construction of a pipeline that would export excess hydrogen from the upgraded refinery were separate projects. The court reasoned that the refinery upgrade did not depend on the pipeline, and the two projects were "independently justified" and would serve distinct purposes.

In *Banning Ranch, supra*, the Court of Appeal held that a proposed park and access-road project was separate from a proposed residential development project that would use the same access road because they would serve different purposes and the park project could be implemented by the city with or without the residential project.

In *Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 46 ("*Paulek*"), the Court of Appeal held that a new "emergency outlet extension" project was a separate project from two other parts of a dam improvement project (specifically, a remediation of the dam's foundation and replacement of the facility's existing outlet tower). (See *Paulek*, 231 Cal.App.4th at pp. 38 & 45-47.) The court concluded that there was no basis in the administrative record to conclude that the emergency outlet extension is a "reasonably foreseeable consequence" of the dam remediation and lower rebuilding projects. (*Id.*, at p. 46.)

The court found inapplicable those authorities that require separate activities be reviewed together where the second activity is a "future expansion" of the first. The court held that there was no basis to conclude that the emergency outlet extension was an "integral part of the same project" as the dam remediation and outlet tower lower replacement projects. (*Id.*, at p. 47.) The court explained: "[T]he principal purpose of the dam remediation and outlet tower reconstruction—to improve the ability of the Perris Lake facility itself to withstand seismic events—is different from, and does not depend on, the functioning of the emergency outlet extension, the purpose of which is to transport water out of the lake and safely downstream from the dam, should it be necessary to do so." (*Ibid.*)

Here, Petitioner is correct that at one point preservation of wildlife corridors was a goal which was intended to be advanced through the framework of the General Plan. However, Petitioner fails to persuasively argue why that fact alone supports the finding of a piecemealing violation. Although there is an undeniable historical connection between the General Plan and the Ordinance, the broad objective of the General Plan is, in the words of *Paulek*, "different from, and does not depend on" the more focused purpose of the Ordinance. Thus, the adoption of the Ordinance cannot be viewed as a "first step" toward passage of the General Plan – the County was required to adopt a general plan on a myriad of topics irrespective of whether it adopted the Ordinance or not. That is, one was not a foreseeable consequence of the other.

Petitioner's reliance on *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252 ("*Nelson*") is not persuasive, as that case is distinguishable from the facts presented here. In *Nelson*, the Court of Appeal held that the entire CEQA project for a proposed surface mining operation needed to include not only the mining operations, but also the reclamation plan that is legally mandated for any surface mining operation under SMARA. (*Nelson*, *supra*, 190 Cal.App.4th, at p. 272.) Stated differently, the surface mining project could not operate independently from the reclamation plan, and therefore, both needed to be included in the definition of the project. Here, in contrast, neither the Project nor the General Plan Update is a legal prerequisite for the other. As a result, the reasoning of *Nelson* does not apply.

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Petitioner's reliance on *Association for a Cleaner Environment* (2004) 116 Cal.App.4th 629 also does not persuade. There, the agency decided to transfer an on-campus firing range to another location and separately decided to close and remove the firing range and to engage in lead contamination cleanup. The appellate court concluded that "the closure and removal of the MJC Range, the cleanup activity, and the transfer of shooting range activity and classes to another range are all part of a single, coordinated endeavor. As a result, those activities constitute the whole of the action that we consider for purposes of determining the existence of a 'project' for purposes of CEQA." (116 Cal.App.4th at p. 639.) Here, however, the General Plan Update and the Project are not part of a single, coordinated endeavor.

Finally, Petitioner's reliance on *Tuolumne County Citizens for Responsible Growth, Inc., supra,* is misplaced because that case, too, is factually distinguishable. The question presented in *Tuolumne County* was whether a road realignment was part of a project to develop a home improvement store. Of note, "the road realignment was added as a condition to the approval of the home improvement center project." (155 Cal.App.4th at p. 1231.) The Court of Appeal held that both the road realignment and the store development were part of one project for several reasons, including (a) "the approval of the home improvement center project is conditioned upon completion of the road realignment"; (b) "the road realignment is a step that [the store] must take to achieve its objective" of building a store; and (c) the independence of the road realignment on the one hand, and the store development on the other, "was brought to an end when the road realignment was added as a condition to the approval of the home improvement center project," at which time "the road realignment became 'a contemplated future part of' completing the home improvement center. ([Citation].)" (155 Cal.App.4th at pp. 1226-27.) Here, in contrast, the Project is not conditioned on completion of the General Plan Update (or vice versa), the Project is not a step that must be taken to achieve the objective of approving the General Plan Update (or vice versa), and the General Plan Update and the Project are not dependent on each other.

The court finds the General Plan Update was properly evaluated separately from the Project because the two activities serve different purposes, operate independently of one another, and can be implemented separately. The Project's purpose is very specific: to improve and

preserve habitat connectivity in the wildlife corridor by developing regulations and permitting requirements, and to further implement existing General Plan policies and close regulatory gaps that pre-date the Project. The Project was not required to implement any new policies proposed for inclusion in the General Plan Update. The two activities do not presume completion of another, and do not legally compel one another. The fact that the County, at one time, contemplated processing the two projects together does not mean that the County violated CEQA when it ultimately decided to consider the Project separately ahead of the adoption of General Plan Update.

For these reasons, there is no improper piecemeal of the Project. The court will next consider whether the Project was exempt from CEQA's environmental review process.

3. Categorical Exemptions (Class 7 & Class 8)

The County found that CEQA review was not required because the Project fell into the Class 7 and Class 8 exemptions. The Class 7 and Class 8 exemptions are "categorical exemptions" established in CEQA Guidelines sections 15307 and 15308. "When a project comes within a categorical exemption, no environmental review is required unless the project falls within an exception to the categorical exemption." (*Aptos Residents Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1046.) "Although categorical exemptions are construed narrowly, [a court's] review of an agency's decision that a project falls within a categorical exemption is deferential," and a court determines "only whether that decision is supported by substantial evidence." (*Ibid.*) "Under CEQA, 'substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact' and 'is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.' [Citation.]" (*Id.*, pp. 1046–1047, quoting from Pub. Resources Code, § 21080, subd. (e).) Substantial evidence is "evidence of ponderable legal significance that is reasonable in nature, credible, and of solid value, to support the agency's decision." (*Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 960.) "If an agency has established that a project comes within a categorical exemption, the burden shifts to

the party challenging the exemption to show that it falls into one of the exceptions. [Citation]." (*North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 851–852.)

The County contends that the Project comes within the Class 7 and Class 8 exemptions. Petitioners contend otherwise.[5]

The Class 7 exemption states:

> Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a *natural resource* where the regulatory process involves procedures for protection 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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> (CEQA Guidelines, § 15307, emphasis added.)

The Class 8 exemption states:

> Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the *environment* where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.
>
> (CEQA Guidelines, § 15308, emphasis added.)

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

> Case law is instructive as to which actions fall within these exemptions, and which do not. The prohibition of an activity that evidence shows is associated with "environmental problems, [such as] the contamination of farmland," constitutes an action to assure "protection of the environment." (*Magan v. County*

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[5] Petitioner also argues that the Class 7 and Class 8 exemptions cannot apply because the Class 33 exemption controls to the exclusion of those other exemptions. The Class 33 exemption concerns small habitat restoration projects. (Cal. Code Regs., tit. 14, § 15333.) It is limited to projects that do not exceed five acres. The project at issue here greatly exceeds that limitation. Petitioner contends the Class 7 and 8 exemptions are not applicable to the Project because the Class 33 exemption was intended to be the *only* categorial exemption governing habitat projects and the Project encompasses too large an area to be exempt under the Class 33 exemption. But, as County correctly asserts, the examples provided in the CEQA Guidelines, although not exhaustive, clearly show that the Class 33 exemption is limited to small projects involving actions affirmatively undertaken to restore the environment. The focus of that exemption is not at play here. Therefore, the existence of the Class 33 exemption does not imply an intent to preclude the Class 7 or Class 8 exemptions from applying to the type of project presented here.

> *of Kings* (2002) 105 Cal.App.4th 468, 476, [ordinance phasing out "the land application of sewage sludge" fell within class 8 exemption].) By contrast, actions that remove existing wildlife protections, authorize and regulate hunting, or relax existing environmental safeguards do not assure the maintenance, restoration, or enhancement of the environment. (See *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125 (*Mountain Lion*) [action that "removes rather than secures ... protections [of animal species]" does not fall within class 7 or class 8 exemption]; *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205 (*Chickering*) [setting of hunting seasons does not fall within class 7 [fn.] exemption because such an action "cannot fairly or readily be characterized as a preservation activity in a strict sense"]; *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265, 276 (*International Longshoremen's*) [amendment doubling the allowable emissions of gases the Legislature has determined are dangerous substances did not fall within class 7 or class 8 exemption[fn.]].)
>
> The appellate court in *Save Our Big Trees* concluded:
>
> These legal guideposts indicate that, consistent with its plain language, the phrase "actions ... to assure the maintenance, restoration, or enhancement" embraces projects that combat environmental harm, but not those that diminish existing environmental protections.
>
> (*Save Our Big Trees v. City of Santa Cruz, supra,* 241 Cal.App.4th 694, 707.)

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

(a) County's Burden to Show Exemption Applies

The County argues that substantial evidence supports its determination that the Project falls within both the Class 7 and Class 8 exemptions. It correctly notes that CEQA and the County's Assessment Guidelines identify impacts on wildlife movement and wildlife corridors as environmental impacts. Appendix G to the CEQA Guidelines recognizes impacts on wildlife movement and wildlife corridors as environmental impacts.[6] (See CEQA Guidelines, appen. G, § IV, subd. (d), p. 360 ["Would the project: [] Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or

[6] "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.)

migratory wildlife corridors, or impede the use of native wildlife nursery sites?"].) Similarly, the County's Assessment Guidelines discuss habitat connectivity as an environmental impact. (See, e.g., AR 14239 ["A project would impact habitat connectivity if it would: (a) remove habitat within a wildlife movement corridor; (b) isolate habitat; (c) construct or create barriers that impede fish and/or wildlife movement, migration or long term connectivity; or (d) intimidate fish or wildlife via the introduction of noise, light, development or increased human presence"].)

The County's determination that the Project would benefit the environment is based on substantial evidence in the record showing: preserving geographic connections among protected areas enables wildlife and plant populations to access necessary resources; these connections are a crucial component of protecting the County's biological diversity; movement through habitats is often essential for wildlife survival; isolated wildlife populations may survive for a limited time, but will be vulnerable to die off due to diseases, periodic loss of food resources, and inbreeding; and preservation of biological resources requires that plant and animal species be able to successfully move through the areas of the County that contain the habitats they depend on. (AR 01111-30 [Planning Commission Staff Report dated 1/31/19]; AR 01628 [slideshow]; AR 02203-41 [Dr. Seth Riley's slideshow presentation to the Board of Supervisors; [Dr. Mark Ogonowski's slideshow presentation to the Board of Supervisors]; AR 03808 [letter from The Nature Conservancy to the Board of Supervisors]; AR 04515 [letter from National Wildlife Federation to the Planning Commission; AR 04519-20 [letter from Conejo Open Space Conservation Agency to the Board of Supervisors]; AR 04529 [letter from Friends of the Santa Clara River to the Board of Supervisors]; AR 04548-51 [letter from U.S. Fish & Wildlife Service to the Board of Supervisors]; AR 04734 [letter from National Wildlife Federation to the Board of Supervisors]; AR 00616-17 [testimony]; AR 00921-23 [testimony]; AR 08160-61 [testimony]; AR 009100-03 [testimony]; AR 1111-30 [Planning Commission Staff Report 1/31/19]; AR 01642-88 [slideshow for 1/31/19 meeting]; AR 02731-44 [slideshow for 3/12/19 meeting].) Record evidence includes studies and other documents citing the need to preserve wildlife corridors and provide support for the establishment of developmental standards that are compatible with wildlife movement. (AR 01510-13 [bibliography]; AR 09850-13521, 04551-

04669, 10074-89, 10584-91, 10567-76, 09580-97, 10385-10413, 01492-01509, 10292-10372, 10711-61, 10525-33, 10090-10105, 09988-99, 10131-43 [multiple studies, reports, etc.].)

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

This is substantial evidence supporting the County's determination that the Class 7 exemption applies because it rationally leads to a conclusion that the Project will assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. This is also substantial evidence supporting the County's finding that the Class 8 exemption applies because it rationally leads to a conclusion that the Project is an action authorized by county ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. (Compare *Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 475–476.)

Therefore, the County has met its burden to show, through substantial evidence, that the Project falls within the Class 7 and Class 8 categorical exemptions. This shifts the burden to Petitioner to show an exception to these exemptions apply.

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

"A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Cal. Code Regs., tit. 14, § 15300.2.) Petitioners have the burden of producing

evidence supporting this exception. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (*Berkeley Hillside*).)

> [T]o establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project *may* have a significant effect on the environment, because that is the inquiry CEQA requires absent an exemption. (§ 21151.) Such a showing is inadequate to overcome the Secretary's determination that the typical effects of a project within an exempt class are not significant for CEQA purposes. On the other hand, evidence that the project *will* have a significant effect *does* tend to prove that some circumstance of the project is unusual. An agency presented with such evidence must determine, based on the entire record before it—including contrary evidence regarding significant environmental effects—whether there is an unusual circumstance that justifies removing the project from the exempt class.
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> (*Berkeley Hillside* at p. 1105, emphasis in original.)

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

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

> "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 of fact' [citation], and a reviewing court should apply the traditional substantial evidence standard .... [A]fter resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, [the court] must affirm [the agency's] finding if there is any substantial evidence, contradicted or uncontradicted, to support it." [Citation.]
>
> "As to whether there is 'a reasonable possibility' that an unusual circumstance will produce 'a significant effect on the environment' [citation], a different approach is appropriate, both by the agency making the determination and by reviewing courts." [Citation.] The agency applies a fair argument standard, meaning it reviews the evidence to see if there is a fair argument of a reasonable

> possibility the project will have a significant effect on the environment. [Citation.] If there is substantial evidence of a reasonable possibility the project will have such an effect, the agency may not rely on the exemption even if there is evidence to the contrary. [Citation.]
>
> A reviewing court " 'determine[s] whether substantial evidence support[s] the agency's conclusion as to whether the prescribed "fair argument" could be made.' " [Citation.] If it " ' "perceives substantial evidence" ' " that there is a reasonable possibility the project will have a significant environmental impact, but the agency relied on the exemption, " ' "the agency's action is to be set aside because the agency abused its discretion by failing to proceeding "in a manner required by law." ' " [Citation.]

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

> Alternatively, the party advocating for application of the unusual circumstances exception may make a heightened, one-element showing: that the project will 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.]

Implicit in Petitioner's briefs is the assumption that the less demanding two-element burden applies. (E.g., see Reply, p. 16.) Petitioner offers no significant analysis to support that conclusion. The County, on the other hand, argues that the more deferential single-element burden applies. In some regards, both are correct.

Petitioner argues there are "two *distinct* unusual circumstances." (Pet. Open. Brief, p. 28, emphasis in original.) First, they contend that the Project is "unusual" in size when compared with the typical project to which the Class 7 and Class 8 exemptions would apply. Second, Petitioner asserts that the Project will have a significant environmental effect owing to what it contends is the increased risk of wildland fire.

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With respect to the size of the area covered by the Project, the appropriate analysis is the two-element test.[7] Petitioner does not persuasively explain why the size of the Project distinguishes it from other projects that would qualify for the Class 7 or Class 8 exemptions and, further, to cite to evidence in the record demonstrating that distinction. (See *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 962; *World Business Academy v. California State Lands Commission, supra*, 24 Cal.App.5th at pp. 503–504.) Petitioner does not advance a compelling comparison to the five-acre limit of the Class 33 exemption: Petitioner compares "apples to oranges." As noted above, the focus of the Class 33 exemption is distinct from the object of the Project.

Petitioner's second point is that the Project will aggravate the risk of wildland fire, resulting in a significant environmental effect. The single-element standard applies to this contention because, framed this way, Petitioner is simply arguing that the Project will encourage fires and fires will impact the environment. Nevertheless, Petitioner off-handedly seems to link the size of the project – which it argues is an unusually large one – with the risk of wildland fires, and from these assertions Petitioner concludes that there is a fair argument the Project will produce significant environmental effect. (See Pet. Open. Brief, p. 29, and Reply, p. 17.) However, even if one assumes that the Project's acreage is an unusual circumstance – a conclusion Petitioner has not substantiated – the court still must find that Petitioner has not met its burden under the two-element test. Here is why.

"The existence and significance of an environmental effect must be measured from the 'baseline,' or state of the environment absent the project." (*World Business Academy v. California State Lands Commission, supra*, 24 Cal.App.5th at p. 500.) It goes without saying that wildland fires occur in California with unsettling frequency and increasing severity. Petitioner does not argue otherwise. (See Pet. Open. Brief, p. 28 ["the recent and ongoing problem of devasting fires throughout the region . . . and have changed the landscape of thousands of acres that are within the overlay zones"].) Petitioner contends – and it is

[7] That is because the mere fact that the Project covers a lot of ground does not necessarily mean it is not categorically exempt.

Petitioner's burden to demonstrate – that there is a fair argument that the Project will heighten that risk. Petitioner's argument that it will centers on provisions of the Ordinance that regulate brush clearance.

Petitioner states the argument this way:

> Here, there can be no doubt that the fire hazards [presented by the Ordinance] above present a reasonable possibility of a significant effect on the environment. Objectively speaking, there is no legitimate dispute regarding the fact that the Ordinance makes it ***more difficult and burdensome*** to manage wildfires. The imposition of permit requirements for brush clearance, the restrictions that allow only hand-tools to clear brush under many circumstances, and the inability to clear vegetation within 200 feet of water features, all serve to increase the risk of potential wildfires. [AR 512-515.]
>
> (Pet. Open. Brief, p. 29, emphasis in original.)

The County disputes the assertion that the provisions of the Ordinance will significantly deter brush clearing and promote wildfires. It cites several exceptions to the permitting requirements for brush clearing under the Ordinance. It observes that several "vegetation modification" activities for fire prevention are exempted, including:

- As required by federal or state law (Ordinance, Section 8109-4.8.3.2., subd. (k));
- As required or permitted by the Ventura County Fire Protection District (*id.*, subd. (k)); and
- Up to ten percent of acreage within a surface water feature per year (*id.*, subd. (b)).

The County also cites testimony of Battalion Chief Gary Monday. (Commencing at AR 8318.) Chief Monday testified that presently some property owners are required to clear brush up to 200 feet under an ordinance which is not associated with the Project, and that other ordinance allows the Fire Protection District to require up to 300 feet of brush clearance. (AR 8323.) He stated that the provisions of the Ordinance were crafted with input from the Fire Protection District and would not keep the district "from being able to continue [its] prescribed fire operation at all, or the landowner from doing it with the burn permit process" or other clearance mechanisms. (AR 8319, 8329.)

In rebuttal, Petitioner argues that the existence of certain exceptions allowing some brush clearing for fire prevention "does not defeat the fact that the purpose and effect of the Ordinance is and will be to limit brush clearance." (Reply, p. 17.) It then points out limitations to each of the exceptions and asserts that the burden of the permitting process and the restriction on the use of heavy equipment will discourage property owners from clearing "dangerous brush" which, in turn, "will only make fire dangers more pronounced." (*Ibid.*) The only record evidence cited in support of this conclusion is Chief Monday's comment, "it's difficult just to get most people to do 100 feet" of brush clearing. (AR 8330.)

Said another way, according to Petitioner, "the Ordinance diminishes the efficacy of and compliance with brush clearance, and therefore increases the risk of fire hazards." (Reply, p. 19.) In support of this contention, Petitioner cites AR 797-798 – which is the testimony of a landowner dissatisfied with enforcement of *current* brush clearing requirements and the impact of non-compliance on insurance rates – and AR 8327-8331 – which is the testimony of Chief Monday, summarized above. This evidence does not support the proposition for which it was cited.

Although the "fair argument" test is not a high bar for an opponent of a categorical exemption to clear, the test must be met with substantial evidence in the record. Speculation, conjecture, and supposition are not substantial evidence that a fair argument exists. (See Pub. Resources Code, § 21080, subd. (e).) The evidence cited by Petitioner fails to suggest that the provisions of the Ordinance or the manner in which those provisions will be enforced might result in a significant increase in the number or severity of wildland fires when compared to the pre-Ordinance baseline. The Ordinance vests in the Fire Prevention District the discretion to allow brush clearing – as does existing law – that in the well-informed judgment of those fire professionals is appropriate for fire prevention. There is not a scintilla of evidence cited in the record that suggests that discretion will be exercised in a manner that would be contrary to the fire district's fundamental mission of preventing wildfires.

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Additional evidence was cited by Petitioner in connection with its analysis of the common sense exception. That additional evidence is discussed in the next section. However, even considering that other evidence with respect to the Class 7 and Class 8 exemptions, the court would still find that Petitioner has not shown that an exception to the categorical exemptions applies.

For these reasons, it has not been demonstrated that the County improperly found the Class 7 and Class 8 exemptions applied. This finding is sufficient to warrant the denial of the amended petition.

4. Common Sense Exemption

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

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

Where the agency relies on the common sense exemption, it must provide the support for its decision before the burden shifts to the challenger. (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116 ("*Davidon*").) The agency bears the burden to produce "substantial evidence supporting its exemption decision." (*Id.*, at p. 119.) "An agency's duty to provide such factual support 'is all the more important where the record shows, as it does here, that opponents of the project have raised arguments regarding possible significant environmental impacts.' " (*Muzzy Ranch,* 41 Cal.4th at p. 386, quoting *Davidon.*) "[T]he showing required of a party challenging an exemption under Guidelines section 15061, subdivision (b)(3) is slight,

since that exemption requires the agency to be *certain* that there is *no possibility* the project may cause significant environmental impacts." (*Davidon*, 54 Cal.App.4th at p. 116, emphasis in original.) "If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Ibid.*, italics in original.)

In concluding that the Project was subject to the common sense exemption, the County found:

> [T]o the extent the project affects the environment, the effect is expected to be beneficial since the proposed project is intended to protect biological resources, by including limits on vegetation removal, buffers created for surface water features and wildlife crossing structures, limits on the intentional planting of invasive plants, and the requirement for compact development in critical areas within the habitat linkages. In addition, staff has determined that the project does not result in the direct or indirect loss of agricultural soils or create any land use incompatibility issues with agricultural operations, as this project does not include any structures or uses, and agricultural operations are generally excluded from the proposed regulations.
>
> (AR 1131-32]

In defense of this finding, the County offers these points and citations to record evidence:

- "[T]he Project itself does not introduce any new land use or development activities than were not previously allowed (AR 9-249)";
- "[T]he Project regulates development in a manner that is compatible with, and minimizes impacts to, wildlife movement and wildlife corridors (*Id.*; 1110-31)";
- "[T]he development standards are based on extensive research, scientific studies, and other evidence demonstrating both the need to protect wildlife corridors and the types of development that are more likely than others to imperil wildlife populations and plant species (*Id.*; AR 1492-509; 1510-13)";
- "[T]he Project exempts most commercial agricultural activities from nearly all regulations (AR 216, § 8109-4.8.2.2.d; 223-24, § 8109-4.8.3.2.f, g, l; 225, § 8109-4.8.3.3.a; 229 § 8109-4.8.3.7.a, b, and c; 232, § 8109-4.9.2.c, f, and m.)";
- "[T]he Project exempts brush clearance for fire prevention purposes and many other vegetation modification activities (AR 222, § 8109-4.8.3.2.a, b, f, g, h, i, j, k, m, p, q, and r)"; and

- "[T]he Project fills a regulatory gap in County land use policy for the protection of biological resources (AR 1131; 9216:13-9217:17)."

(County Opp., p. 24.)

The evidence cited by the County is substantial evidence supporting the finding that the common sense exemption applied. The cited evidence shows that the Project would largely affect the permitting process. (See AR 09114, 09356.) Even if these permitting standards make the permitting process more expensive and susceptible to challenges from environmental groups, such matters are not *environmental impacts* and, therefore, they do not establish a ground for CEQA review.[8]

Petitioner contends that the County has not met its burden because there is evidence in the record of the Project's significant adverse impact on the environment. The court in the previous section found a similar contention unpersuasive. However, Petitioner cites to additional record evidence in opposition to the common sense exemption. That evidence is, therefore, considered here.

The first document cited by Petitioner is a memorandum from a retained consultant, ECorp Consulting. The author of that report states that the Project has the potential to increase fire hazards and cause adverse air quality/greenhouse gas impacts, interfere with extraction of mineral resources and corresponding transportation issues (from trucking in outside mineral resources), and interfere with farming resources and related changes to rural community character. (AR 001839-43.)

The County contends that consultant's memorandum does not support Petitioner's argument because it consists only of conclusory statements and unexplained opinions. The court agrees. The author of the memorandum states, for example, "[t]he Ordinance would change the way vegetation is removed or managed and could result in an increase in fire hazard." (AR 1840.) The nature of this purported change is not identified nor does the author state in any meaningful way how the change would exacerbate the risk of wildland fire. This omission is

[8] See Pub. Resources Code, § 21080, subd. (e)(2); Cal. Code Regs., tit. 14, § 15382 ["An economic or social change by itself shall not be considered a significant effect on the environment"].

critical, as the author's conclusion is not intuitive: The Ordinance exempts brush clearance for fire prevention when required or permitted by the Fire Prevention District, for example. (See, AR 00222-225, 00229, 00232.) As a further example, it is asserted that the Ordinance would "hamper or preclude extraction of or access to the aggregate resources." (AR 1841.) The basis for this assertion is not explained.

Nonetheless, in its reply brief, Petitioner argues that the County has failed to persuasively address the risk of fire. It points to evidence in the record given on behalf of the Central Ventura County Fire Safe Council. (AR 840-841.) In testimony before the Board, a representative of that entity asked the County "not [to] increase any *financial burden* on the landowners to maintain a reasonable level of safety from wildfires." (AR 840, emphasis added.) He urged that property owners "should be able to clear flammable vegetation using acceptable, good management practices to the outer parameter of their lands and commercial orchards or any other commercial plantings, the safe separation distance is dependent upon the orientation of the slope, the vegetation height and density and other recognized safety factors." (AR 841.) This would appear to be principally in response to the provision of the Ordinance requiring certain brush clearing for fire prevention be "performed with hand-operated tools and without heavy equipment." (AR 224, § 8109-4.8.3.2.k.) The assumption is that the Ordinance will make it more expensive to clear vegetation for fire prevention. However, as noted above, brush clearing for fire prevention is to some extent exempted from the Ordinance and, although the Ordinance may prohibit the use of "heavy equipment" to do so in some circumstances, the financial burden imposed by that restriction is a non-CEQA concern. (See Pub. Resources Code, § 21080, subd. (e)(2); Cal. Code Regs., tit. 14, § 15382.)

Petitioner further argues that the County cannot rule out the possibility that the Project will have a significant environmental impact because it has not considered its own Assessment Guidelines. It suggests that the Project exceeds the Assessment Guidelines "in numerous areas" citing "AR 1812-2202; 1839-1843 (expert report setting forth the Assessment Guidelines standards, and how the Ordinance surpasses them for fire, mineral resources, and others); 2837-2838; 4679-4725; 6433-6480]." (Pet. Open. Brief, p. 20.)

The cited evidence includes the entirety of the Assessment Guidelines, as well as letters and reports submitted on Petitioner's behalf. (AR 01812-2202, 02837-38, 04679-4725, 06433-80.) Among these is the ECorp memorandum which, as discussed above, makes conclusory assertions regarding fire hazards and corresponding air quality and greenhouse gas issues, etc., without supporting analysis or evidence. (AR 001839-43.) The memorandum includes references to the Assessment Guidelines, but these are little more than complaints that the Assessment Guidelines have been ignored and/or violated, without meaningful explanation as to how the Assessment Guidelines have allegedly been ignored or violated. (See, e.g., AR 01822, 01825, 01826, 06460.)

The only specific references to purported violations of the Assessment Guidelines are contained in correspondence from Petitioner's counsel. (AR 1822-1838.) Counsel wrote that the Ordinance exceeds the Assessment Guidelines in seven discrete areas: fire hazards, impacts on mineral resources, impacts on agricultural resources, air quality, greenhouse gases, community character, and traffic and circulation impacts. (*Ibid.*) The argument advanced concerning the risk of fire inaccurately portray the provisions of the Ordinance. Counsel's assertion that the Project exceeds the Assessment Guidelines for mining lacks merit because the applicable threshold of significance for mining only applies if the project "has the potential to hamper or preclude extraction of or access to the aggregate resources." (AR 14226.) However, Petitioner has not demonstrated that the Project has that potential.[9] For the same reasons, the Project does not violate the Assessment Guidelines thresholds of significance for air quality, greenhouse gases, traffic and circulation.

The contention in counsel's letter that the Project exceeds the Assessment Guidelines thresholds of significance for impacts to agricultural resources is unpersuasive because most agricultural operations are exempt under the Ordinance. (AR 00223-24, 00232-33.) Moreover,

[9] Petitioner's counsel argued, in a letter to the County, that Riverside County determined that its Multiple Species Habitat Conservation Plan ("MSHCP") surpassed its threshold of significance for impact to mining operations, and 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 set aside some land previously zoned for mineral resource mining to instead be used solely for conservation.

the Ordinance merely specifies the types of fencing, lighting, structures, etc. that can be developed within the corridor and makes such new developments subject to a specific permitting process. (AR 00009-00249.) The Assessment Guidelines' thresholds of significance for effects on adjacent classified farmland are "based on the distance between new non-agricultural structures or uses and any common lot boundary line adjacent to off-site classified farmland." (AR 014254.) The Project itself does not call for the creation of any new non-agricultural structure. The Project does not create the sort of adjacent land use that could trigger the threshold of significance analysis in the Assessment Guidelines. For the same reasons, counsel's argument about community character is unavailing. Counsel asserted that the Project violates the Assessment Guidelines thresholds of significance for community character because "[r]estrictions to agricultural land uses would result in changes to community character of the rural areas of the County." (AR 01831.) Counsel further contended that a wildlife corridor "is incompatible with agricultural and rural community character" and the Ordinance would restrict property owners from using half of their property, which necessarily is inconsistent with community character (AR 01832), but nothing in the letter, the Ordinance, or the record lends credence to these conclusions.

Petitioner also argues that three staff reports are proof that the County ignored its Assessment Guidelines. (AR 00290-94, 01080-1141.) Petitioner says these documents show that the County did not address the Assessment Guideline's thresholds of significance during the corresponding public meetings. But Petitioner offers no authority for the proposition that CEQA requires a lead agency to expressly consider its assessment guidelines during public meetings.

The County persuasively argues that substantial record evidence shows that it appropriately determined that the Project was covered by the common sense exemption.

For these reasons, the court finds that the Project was not subject to CEQA review by operation of the Class 7, Class 8 and common sense exemptions.

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CONSTITUTIONAL TAKINGS CLAIM

In the original petition, Petitioner pleaded a cause of action for regulatory taking under the California and United States Constitutions. Specifically, the third cause of action was styled by Petitioner as one for "Declaratory Relief Under Civil Procedure § 1060 – Violation of Due Process, Equal Protection, Vested Property Rights, and Regulatory Taking, under the California and United States Constitutions." (Petition., pp. 51:24-52:12.) In support of that claim, Petitioner alleged that "[f]or the reasons previously stated, Petitioner asserts that the County's actions, including adopting the Wildlife Corridor Ordinance: . . . 5) violate vested property rights under the California and U.S. Constitutions, and 6) constitute a taking under *Penn Central*." (Petition, ¶ 262.) In addition, Petitioner asserted a fifth cause of action for "Civil Rights Violation – 42 U.S.C. 1983." (Petition, p. 53:1-14.) It repeated the same supporting allegation that it asserted in support of the original third cause of action. (Petition, ¶ 270.)

However, the cause of action for regulatory taking (and the other alleged constitutional taking violations) was omitted from the operative petition, the First Amended Petition ("FAP"). In the *amended* petition, the third cause of action alleges a constitutional violation but not one under the taking clauses of either the federal or state constitution. Rather, the operative third cause of action is said to be one for a "Writ of Mandate Under California Code of Civil Procedure § 1085; Declaratory Relief Under Code of Civil Procedure § 1060 – Ordinance is Arbitrary and Capricious."[10] (FAP, p. 50:1-18.) To support the claim for "arbitrary and capricious" governmental action, Petitioner alleged in the amended petition:

- "Given the lack of CEQA review, the County failed to support its regulations with any scientific or factual basis. Instead, the Ordinance is arbitrary and capricious, and not supported by substantial evidence, and violates the due process and equal protection rights of residents." (FAP, ¶ 248.)

- "The evidence for the Ordinance comprises of studies over 13 years old, with no updates, rendering the resulting regulations questionable at best. Thus, the studies that form the scientific, biological, and evidentiary basis for the Ordinance are both inaccurate and outdated." (FAP, ¶ 249.)

[10] This claim was previously alleged as the fourth cause of action in the original petition.

- "Petitioner as well as members of the general public will suffer irreparable harm if the relief requested herein is not granted and the Ordinance is allowed to go into effect in the absence of a full and adequate CEQA analysis and absent compliance with the Government Code requirements." (FAP, ¶ 250.)

- Furthermore, while the prayer for relief in the original petition expressly referenced the takings claim, the prayer for relief in the FAP has omitted that reference. The FAP makes no mention of a takings claim.

These allegations give no indication that a taking claim is intended. Undeterred, Petitioner now argues that the Project's fencing regulations constitute a taking under the U.S. and California Constitutions. (Pet. Open. Brief, pp. 32:11-33:27.) However, that contention is outside the allegations stated in the FAP and, therefore, is not properly before the court. It is well established that an amended pleading supersedes the original one. (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130–1131.) Therefore, the original petition "ceases to have any effect either as a pleading or as a basis for judgment." (See *ibid.*) The court will not order relief on a ground which is not raised in the pleadings.

CLAIM FOR VIOLATION OF THE STATE PLANNING AND ZONING LAW

Petitioner contends that on March 12, 2019, the Board directed staff to revise the overlay zone map to remove all property within the Los Padres National Forest (citing AR 00290-94). It further contends that in doing so the Board did not comply with the State Planning and Zoning Law. Specifically, Petitioner says the Board ignored Government Code section 65857, which it argues required that the issue first be referred to the Planning Commission for report and recommendation.

The overlay zone which was part of the Project as it was considered by the Planning Commission on January 31, 2019, included area located within the Lockwood Valley and the Los Padres National Forest. (AR 01142.) At that time, the Commission heard requests from Lockwood Valley residents to remove their properties from the overlay zone. The Commission ultimately recommended that the Board remove *the Lockwood Valley* from the overlay zone. (AR 01090-91.) However, the Commission did not discuss or recommend the more substantial step of removing the *entire* Los Padres National Forest from the overlay zone. (AR 08156-8698.) That is, planning staff removed only the Lockwood Valley, leaving the rest of Los Padres

National Forest in the overlay zone. (AR 01091.) Later, at its March 12, 2019 hearing, the Board directed staff to prepare a revised overlay map excluding *all* of the Los Padres National Forest. (AR 00290-94.)

The essential elements for a claim for violation of the State Planning and Zoning Law are: (1) improper admission or rejection of evidence or an error, irregularity, informality, neglect, or omission as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure subject to this title; (2) that the error was prejudicial; (3) that the party complaining or appealing suffered substantial injury from that error; and (4) that a different result would have been probable if the error had not occurred. (See Gov. Code, § 65010, subd. (b); see also *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 917 [noting that the petitioner made no attempt to show that the defective notice was prejudicial, caused substantial injury to anyone, or that a different result was probable absent the defect].) Here, Petitioner has not established the third element of its claim.

The evidence shows that in conjunction with the Planning Commission hearing on January 31, 2019, Petitioner submitted a letter to the Commission requesting that all of the Los Padres National Forest be removed from the overlay zone. (AR 004480.) Specifically, Petitioner asked that "[a]ll properties in the National Forest, including the Lockwood Valley should be exempt from this ordinance." (*Ibid.*) In other words, Petitioner is now crying foul because the Board did precisely what Petitioner asked the Board to do. Consequently, Petitioner has not shown "that the [alleged] error was prejudicial and that [it] suffered substantial injury from that error." (See Gov. Code, § 65010, subd. (b).) Petitioner's claim under the State Planning and Zoning Law is dismissed.

CONCLUSION

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

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

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

Dated: March 14, 2022

MARK S. BORRELL
Judge of the Superior Court

EXHIBIT A

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

Case Number: 56-2019-00527815-CU-WM-VTA
Case Title: **Ventura County Coalition of Labor Agriculture and Business 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

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
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
BMR@jmbm.com; *nb4@jmbm.com*;
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Kerry Shapiro
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[X] **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.

[X] **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.

[X] (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
Jennifer Talmadge

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 on:

Benjamin M. Reznick
Seena Max Samimi
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Michael Robinson-Dorn
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mrobinson-dorn@law.uci.edu;
bkorte.clinic@law.uci.edu

[ ] **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.

[X] **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.

[X] (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