



Memorandum

County of Ventura • Resource Management Agency • Planning Division

800 S. Victoria Avenue, Ventura, CA 93009-1740 • (805) 654-2478 • vcrma.org/divisions/planning

Date: March 11, 2019

To: Board of Supervisors

From: Planning Division Staff

Subject: Response to Comments From California Construction and Industrial Materials Association

This memorandum responds to comments from the California Construction and Industrial Materials Association (CalCIMA) set forth in letters from its legal counsel Kerry Shapiro, Jeffers Mangels Butler & Mitchell LLP, dated January 28 and March 8, 2019. The following italicized CalCIMA comments (which are restated verbatim) are from the March 8, 2019 letter.

1. CalCIMA Comment

“Generally speaking, the Project, which would implement habitat corridor overlay zones intended to prevent surface disturbances and the development of land included therein, could serve as a de facto ban on surface mining activities, which require land disturbances and the removal of native vegetation”

Planning Division Response

The Planning Division disagrees with this comment's conclusion. The proposed amendments to the Ventura County Non-Coastal Zoning Ordinance (NCZO) do not ban or prohibit land disturbance or the removal of native vegetation associated with surface mining or any other land use. While the proposed amendments include a new discretionary permitting requirement for certain new vegetation modification and new development near mapped surface water features and wildlife crossing structures, new and expanded surface mining projects will continue to be permitted through the County's existing discretionary permitting process per the status quo. As required by the County's *existing* General Plan and Initial Study Assessment Guidelines used to implement the California Environmental Quality Act (CEQA), the County *currently* considers the potential environmental impacts (i.e., lighting, noise, traffic, vegetation removal) that discretionary projects could have on biological resources and wildlife movement within the same wildlife movement corridors that will constitute the proposed overlay zones. Over the past several years the County has reviewed and permitted

numerous surface mining projects taking into account these potential impacts to biological and wildlife movement. The primary purpose of the County's habitat connectivity project is to include a discretionary permitting requirement that would apply to other types of projects that could adversely impact wildlife movement.

2. CalCIMA Comment

"The Project could impair, delay, or even preclude the operation and expansion of existing and future surface mining operations, which could also unreasonably increase the costs of such activities"

Planning Division Response

The Planning Division disagrees with this comment's conclusion. The comment does not cite to any provision in the proposed NCZO amendments to support its contention let alone explain how the provision would have the stated detrimental effects on surface mining operations. Again, the proposed amendments do not impose any new permitting requirements on surface mining operations, nor do they impose any operational standard or requirement that could "unreasonably increase the costs of such activities" compared to the status quo.

3. CalCIMA Comment

"The Project's buffer areas that would preclude land disturbance adjacent to and within 'surface water features,' such as streams and rivers, could impede the use of water from these sources in surface mining operations, and could also preclude river and in-stream mining"

Planning Division Response

The Planning Division disagrees with this comment's conclusion. The proposed NCZO amendments do not "preclude" land disturbance anywhere, including within mapped surface water features. Rather, the proposed NCZO amendments include a discretionary permitting requirement for certain new vegetation modification and new development proposed within mapped surface water features. Because new and expanded surface mining projects already require a discretionary permit under the NCZO, the proposed NCZO amendments would not impose any new discretionary permitting requirement on surface mining projects. Moreover, the proposed NCZO amendments contain an exemption from the surface water feature-related regulations for development, including "in-stream mining," "to the extent dependent upon being located within a surface water feature." (NCZO ¶ 8109-4.8.3.2m.) In addition, the proposed NCZO amendments do not contain any operational standards or requirements that will affect a surface mine operator's ability to perform grading or other land disturbances adjacent to or within surface water features.

4. CalCIMA Comment

“The Project’s lighting restrictions could impede nighttime operations, which often occur to reduce daytime transportation impacts”

Planning Division Response

The Planning Division disagrees with this comment’s conclusion. The proposed amendments include an exemption for intermittent outdoor lighting utilized by surface mining operations. (NCZO ¶ 8109-4.8.2.2d.) While the proposed NCZO amendments include specific outdoor lighting standards and requirements, surface mining projects may deviate from them. (NCZO ¶ 8109-4.8.2.4b(11).) Instead of being subject to specific standards and requirements, the outdoor lighting utilized by surface mining projects must be set forth in lighting plans, and the lighting “shall be designed and operated to minimize impacts on wildlife passage to the extent feasible.” (Id.) These requirements are consistent with the County’s current practice in reviewing and permitting outdoor lighting associated with surface mining projects pursuant to CEQA and the existing General Plan.

5. CalCIMA Comment

“The Project’s restrictions on the removal of native vegetation could serve as a barrier to surface mining, which requires the removal of such vegetation”

Planning Division Response

The Planning Division disagrees with this comment’s conclusion. The proposed NCZO amendments do not prohibit the removal of native vegetation anywhere, including within mapped surface water features. Rather, the proposed NCZO amendments include a discretionary permitting requirement for certain new development proposed within mapped surface water features and near mapped surface water features. Because surface mining projects already require a discretionary permit under the NCZO, the proposed NCZO amendments would not impose any new discretionary permitting requirement on surface mining projects. In addition, the proposed NCZO amendments do not contain any operational standards or requirements that will affect a surface mine operator’s ability to perform vegetation removal.

6. CalCIMA Comment

“The County’s approval of the Project would violate and be inconsistent with SMARA, including sections 2762(d)(1) and 2763, which require lead agencies to consult with the California Geological Survey prior to legislative zoning actions that would affect mineral resources that have been classified or designated by the state”

Planning Division Response

By letter dated March 4, 2019, the Planning Division notified the Office of the State Geologist of the proposed habitat connectivity project. As stated in this attached letter, the Planning Division has determined that the proposed project does not constitute "a use that would threaten the potential to extract minerals in that area" pursuant to Public Resources Code section 2762(d)(1) or 2763.

7. CalCIMA Comment

"The County's approval of the Project would violate the Government Code, including section 65860, which requires zoning ordinances to be consistent with applicable provisions of a lead agency's general plan"

Planning Division Response

The Planning Division disagrees with this comment's conclusion. The County's existing General Plan contains provisions that both recognize the importance of conserving mineral resources *and* conserving biological resources and wildlife movement. These two objectives are not mutually-exclusive. To the contrary, as explained above, the County has been successfully implemented both objectives for several years during its review and permitting of multiple surface mining projects. The County's General Plan- and NCZO-designated mineral resource protection areas (i.e., Mineral Resource Protection Overlay Zone) are not classified and zoned exclusively for mineral resources development.

8. CalCIMA Comment

"The County's approval of the Project would violate CEQA because the evidence shows the Project will have significant and cumulatively significant environmental impacts to mineral resources and other protected resource categories such as transportation, air quality and greenhouse gas emissions, land use, and wildfires"

Planning Division Response

The Planning Division disagrees with this comment's conclusion. The County has determined that the proposed habitat connectivity project is categorically exempt from CEQA under CEQA's Class 7 and 8 exemptions as actions for the protection of natural resources and the environment. The administrative record contains a plethora of substantial evidence supporting the County's use of these exemptions. In contrast, no substantial evidence has been presented establishing that the habitat connectivity project would create any significant environmental impact, or that the County's use of the exemptions is otherwise unfounded. Note that under CEQA, "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous

or inaccurate” does not constitute substantial evidence of a significant environmental impact. (CEQA Guidelines ¶ 15384(a).)

9. CalCIMA Comment

“Despite the fact that the County is presently processing an update of its General Plan, which will include the preparation of an EIR, the County has proposed to separately approve this Project without any CEQA review. However, there is no reasonable basis to exclude the Project from the comprehensive General Plan update. This piecemeal type of review constitutes poor planning and violates CEQA. The County should analyze the Project as a component of its General Plan update, as it previously said it would.”

Planning Division Response

The Planning Division disagrees with this comment’s conclusion. The County’s habitat connectivity project is separate and distinct from the County’s pending General Plan Update. The habitat connectivity project was conceived of before the County initiated the General Plan Update, consists primarily of amendments to the County’s zoning ordinance, and implements a goal to preserve and protect wildlife migration corridors contained in the County’s *existing* General Plan. (See General Plan, Goals, Policies & Programs, Biological Resources, Goal 1.5.1.)

10. CalCIMA Comment

“Furthermore, the Project, as proposed, is incomplete. As explained in the Board of Supervisors Staff Report and Draft Ordinance, the Project proposes to amend the (i) County General Plan and (ii) Non-Coastal Zoning Ordinance (“NCZO”). Noticeably absent from the Staff Report and Draft Ordinance, however, is a proposed amendment of the Coastal Zoning Ordinance (“CZO”). In fact, neither the Staff Report, nor the Draft Ordinance even mention the CZO.”

Planning Division Response

The County’s habitat connectivity project consists of amendments to the County’s NCZO, and not to the County’s separate Coastal Zoning Ordinance which establishes land use rules for the County’s coastal zone. The County is currently updating its CZO and Coastal Area Plan to address, among other things, habitat connectivity issues.

11. CalCIMA Comment

“Accordingly, CalCIMA again requests that the County either (i) revise the Project to avoid any overlap onto and impacts to mineral resources previously identified by the state or County, and all mining properties; or (ii) complete the following actions prior to approval of the Project:

- *exclude existing and future surface mining activities, in entirety, from the surface water feature land disturbance buffer areas;*
- *exclude existing and future surface mining activities, in entirety, from the restrictions regarding the removal of native vegetation;*
- *exclude existing and future surface mining activities, in entirety, from lighting restrictions, and not just on a limited "temporary or intermittent" basis;*
- *analyze the Project as a component of the County's ongoing General Plan update, which will include the preparation of an environmental impact report ("EIR");*
- *consult with the California Geological Survey during the General Plan update CEQA process regarding the Project's potential impacts to classified and designated mineral resources."*

Planning Division Response

Areas of the unincorporated County with known economic mineral resources have for many years overlapped with areas of the County within recognized wildlife movement corridors. The importance of and need to preserve both the County's mineral resources and biological resources are recognized under the County's existing General Plan and state law. Land use regulations intended to preserve both types of resources are not mutually-exclusive. As explained above, the proposed NCZO amendments will have little, if any, effect on the County's permitting and regulation of surface mining operations as compared to the status quo. Surface mining projects already require a discretionary permit under the NCZO, and outdoor lighting used for surface mining operations are not subject to the specific lighting standards and requirements being proposed. Consequently, Planning Division staff does not believe it is necessary or appropriate to exclude known mineral resource areas, and/or existing surface mining operations, from the proposed habitat connectivity overlay zone, or to categorically exclude any such geographic areas from the project's proposed regulations. The County's General Plan- and NCZO-designated mineral resource protection areas (i.e., Mineral Resource Protection Overlay Zone) are not classified and zoned exclusively for mineral resources development. The County has determined that the habitat connectivity project is categorically exempt from CEQA, has received no substantial evidence showing the exemption does not apply, and thus no environmental impact report is required.

county of ventura

March 4, 2019

Timothy McCrink, Acting State Geologist
State of California Natural Resources Agency
Department of Conservation
Office of the State Geologist
801 K Street, MS 12-30
Sacramento, CA 95814

RE: Ventura County Habitat Connectivity and Wildlife Corridor Project PL16-0127

Dear Mr. McCrink:

The Planning Division reviewed your comment letter, dated January 31, 2019 (attached), regarding the County's proposal to amend its General Plan and its Non-Coastal Zoning Ordinance (NCZO) to establish a Habitat Connectivity and Wildlife Corridors Overlay Zone and a Critical Wildlife Passage Areas Overlay Zone (hereafter referred to as the "Amendment").

The Amendment consists of land use standards for certain outdoor lighting, vegetation removal, wildlife impermeable fencing, and siting of certain development located in specified locations within the designated Overlay Zones to minimize land use impacts to wildlife movement. While the Amendment will impose a new discretionary permitting requirement for certain types of new wildlife impermeable fencing and development in certain locations within the Overlay Zones, mineral resource extraction projects will continue to be permitted through the County's existing discretionary permitting process applicable to these projects. In addition, the Amendment's specific outdoor lighting standards will not apply to mineral resource extraction projects.

The County has adopted a Mineral Resources Protection Overlay Zone (MRP Zone) consistent with the California Geological Survey MRZ-2 Zone classification. Under County's current General Plan and NCZO, mineral resource extraction projects are subject to a discretionary permitting process which requires the County's granting of a Conditional Use Permit (CUP) following environmental review under CEQA. While the Amendment will, in some instances, require a discretionary permit for certain development and new wildlife impermeable fencing that now only requires a ministerial permit, the Amendment will not impose any new permitting requirements on mineral resource extraction projects. Nor will the Amendment impose any new operational limitations or requirements on such projects.



The Amendment is not considered a "permitted use" that threatens the potential to extract mineral resources. Accordingly, the Amendment has been processed by County staff in the same general manner as other General Plan amendments and NCZO text amendments. The configuration of the Overlay Zones is based on research and mapping first initiated in 2001 and additional work conducted in 2005-06 to identify critical linkages in Southern California. Based on this data, evaluation of impacts to wildlife corridor areas has been part of the County's discretionary review and CEQA processes since at least as early as 2010. This wildlife impact review has been applied to mineral resource extraction projects and will continue to be applied to these projects with or without the Amendment.

The County General Plan and NCZO include provisions for management of mineral resources of statewide and regional significance. General Plan policies provide for the protection of, and access to, mineral resources. The NCZO includes specific permitting requirements and development standards for the extraction of mineral resources. The Amendment will not change such General Plan policies or development standards or permitting requirements. As the Amendment is not a mineral resource management policy and is not considered a project that would threaten the potential for extraction of these resources, the Amendment does not constitute a project that requires a statement specifying a reason for its permitting under California Public Resources Code section 2762 or 2763.

Should you have any questions please feel free to contact me via email at brian.mccarthy@ventura.org or by telephone at (805) 654-5037.

Sincerely,



Brian McCarthy
Mining Program Manager

c:

Kim Prillhart, Resource Management Agency Director
Shelley Sussman, Case Planner
Kim Uhlich, Case Planner

Attachment:

Letter, dated January 31, 2019, from Timothy McCrink, Acting State Geologist, State of California Natural Resources Agency | Department of Conservation,