

Kerry Shapiro
kshapiro@jmbm.com

Two Embarcadero Center, 5th Floor
San Francisco, California 94111-3813
(415) 398-8080 (415) 398-5584 Fax
www.jmbm.com

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BY EMAIL

Ventura County Planning Commission
Hall of Administration
Resource Management Agency/Planning
Division
Attn: Meighan Batinica
800 S. Victoria Ave., L#1740
Ventura, CA 93009-1740
E-Mail: meighan.batinica@ventura.org

Re: Habitat Connectivity and Wildlife Corridor project

Dear Ms. Batinica:

As attorneys for and on behalf of the California Construction and Industrial Materials Association ("CalCIMA"), we hereby submit the following comments for project "PL16-0127", through which the County of Ventura ("County") proposes to amend its General Plan and Non-Coastal Zoning Ordinance to establish (i) a Habitat Connectivity and Wildlife Corridors Overlay Zone, and (ii) a Critical Wildlife Passage Areas Overlay Zone ("Project").

CalCIMA is a trade association for the construction and industrial material industries in California, which include aggregate, industrial minerals, and ready mixed concrete producers. These producers provide people and businesses with cement, concrete, and other materials used to build and repair California's homes, schools, roads, airports, bridges and other public infrastructure. CalCIMA serves its members and the public by providing information on aggregates, industrial minerals, and ready mixed concrete; supplying safety, technical, and compliance training; and addressing legislative, regulatory, and judicial matters that affect the building materials industry. CalCIMA has members who operate mines in the County and hold title to valuable mining properties and rights in the County.

As discussed below, the County's proposed approval of the Project absent any environmental review in accordance with the California Environmental Quality Act ("CEQA"), based on certain asserted CEQA exemptions, would constitute an abuse of discretion because:

- the "unusual circumstances" exception precludes the County's use of such CEQA exemptions;

- the evidence shows the Project will result in significant environmental impacts;
- the County's approval of the Project would violate the Surface Mining and Reclamation Act ("SMARA") and the Government Code;
- the County's conclusion regarding the "common sense" CEQA exemption lacks evidentiary support;
- the County improperly concludes that a project with an "expected environmental benefit" does not require environmental review; and
- the cumulative impacts exception precludes the County's use of a CEQA exemption.

Accordingly, the County should either (1) 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 (2) refrain from considering the Project at this time, and, instead, analyze the Project's environmental impacts in an environmental impact report ("EIR"). Please place a copy of this letter in the administrative record for the Project.

I. THE PROJECT MAY IMPACT THE COUNTY'S MINERAL RESOURCES

In 1981, multiple areas of the County were classified as MRZ-2 areas by the California Division of Mines and Geology,¹ renamed the California Geological Survey in 2006.² MRZ-2 areas are areas of land in which known economic mineral deposits are located.³

In 1982, 10 "sectors" of the County's MRZ-2 areas were designated as regionally significant mineral resource areas by the California State Mining and Geology Board (Sectors A-

¹ Special Report 145, Mineral Land Classification of Ventura County, Parts I-III (January 1981) (<https://www.conservation.ca.gov/cgs/mineral-resources/mineral-land-classification-smara>, ftp://ftp.consrv.ca.gov/pub/dmg/pubs/sr/SR_145/SR_145_Text.pdf, ftp://ftp.consrv.ca.gov/pub/dmg/pubs/sr/SR_145/) ("Exhibit 1").

² <https://www.conservation.ca.gov/cgs/about/history>.

³ California Surface Mining and Reclamation Policies and Procedures, Guidelines for Classification and Designation of Mineral Lands (<https://www.conservation.ca.gov/smgf/Guidelines/Documents/ClassDesig.pdf>) ("Exhibit 2").

J), which led to the preparation of maps depicting the locations of these areas.⁴ An EIR was certified in conjunction with the designation of these 10 sectors.⁵

The County's classified and designated mineral resources are protected under SMARA.⁶ These resources are also protected by "Goals, Policies and Programs" for mineral resources in the County's General Plan⁷ and the County's Resource Protection Map and Mineral Resources Protection Overlay Zones.⁸

As detailed in the attached memorandum from ECORP Consulting, Inc. ("ECORP"), the Project would include vast acreages of mineral resources that have been both classified and designated by the state. For example, the ECORP memorandum identifies approximately 13,987 acres of state-classified MRZ-2 areas that will be included within the Project.⁹ This amounts to approximately 41% of the County's supply of classified MRZ-2 areas. Moreover, the Project will also include portions of these MRZ-2 areas that have been designated as regionally significant mineral resource sectors.¹⁰ Additionally, the Project will include multiple mining properties.¹¹

The inclusion of these classified and designated mineral resources and mining properties in the Project has the potential to significantly impair and unreasonably delay the

⁴ SMARA Designation Report No. 2, Designation of Regionally Significant Construction Aggregate Resources Areas in the Western Ventura County and Simi Production-Consumption Regions (March 1982) (<https://www.conservation.ca.gov/smgb/reports/Pages/Designation-Reports.aspx>, https://www.conservation.ca.gov/smgb/reports/Documents/Designation_Reports/SMARA%20Designation%20Report%20No.%202.pdf, https://www.conservation.ca.gov/smgb/reports/Documents/Designation_Reports/DR2_82-1_Plate1.pdf, https://www.conservation.ca.gov/smgb/reports/Documents/Designation_Reports/DR2_82-1_Plate2.pdf) ("**Exhibit 3**"); *see also* Map Sheet 52, Aggregate Sustainability in California (Updated 2018) (https://www.conservation.ca.gov/cgs/Documents/Publications/MS_52_California_Aggregates_Map_201807.pdf, https://www.conservation.ca.gov/cgs/Documents/Publications/MS_52_California_Aggregates_Report_201807.pdf) ("**Exhibit 4**").

⁵ Exhibit 3, p. 7.

⁶ Pub. Res. Code §§ 2710 et seq.

⁷ General Plan Goals, Policies, and Programs, pp. 16-17, § 1.4 [Mineral Resources].

⁸ General Plan Goals, Policies, and Programs, p. 30, Figure 1b [Resources Protection Map (South Half)].

⁹ ECORP Memorandum, p. 2, Table 1 ("**Exhibit 5**").

¹⁰ Exhibit 3, § C. pp. 7-11 and Exhibits 1-2 attached thereto [depicting Sectors A-J].

¹¹ Exhibit 5, p. 6, Table 2 and Figure 4.

extraction of these resources, in addition to the operation and expansion of mining properties, thereby increasing the overall costs of developing mineral resources. For example, the Project's lighting restrictions could affect nighttime mining operations, which often occur at night to reduce daytime transportation impacts. Furthermore, the Project's restrictions on the removal of vegetation could also serve as a limitation, if not a de facto ban, on development of these important mineral resources, which requires surface disturbance, including the removal of native vegetation. Additionally, the Project's extensive restrictions on "surface water features" could impair both river and in-stream mining activities, as well as mineral resources that include such features.

Perhaps most importantly, the Project could significantly impair and potentially preclude the extraction of the County's classified and designated mineral resources, and the operation and expansion of mining properties, because the purpose of the Project—*i.e.*, the conservation of wildlife habitat, including wildlife habitat and corridors—is inherently incompatible with the development of mineral resources, which requires surface disturbances prior to the extraction of mineral resources located thereunder.

As further discussed below, the Project appears similar to the Riverside County Multiple Species Habitat Conservation Plan ("Riverside MSHCP") and other similar projects, all of which were subjected to a detailed public review process that included the preparation of an EIR in accordance with CEQA. Importantly, the EIR for the Riverside MSHCP concluded that impacts to mineral resources, including the rezoning of MRZ-2 areas for conservation purposes, constituted a cumulatively significant impact.¹²

Similarly, here, the Project could also result in significant and cumulative impacts to mineral resources that warrant careful analysis and consideration by the County. This consideration must be completed in accordance with CEQA.

Notably, the County General Plan plainly states that, "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."¹³ Thus, there should be no dispute that the Project, which proposes a General Plan amendment and the rezoning of approximately 520,000 acres of land for conservation purposes,¹⁴ requires environmental review in accordance with CEQA.

¹² Riverside MSHCP, EIR/EIR, Section 5., Cumulative Impacts, p. 5.1-9 (http://wrcrca.conserveriverside.com/wrcrca/Permit_Docs/MSHCP_Docs/volume4/Vol4-Sec5.pdf) ("Exhibit 6").

¹³ General Plan Goals, Policies, and Programs, pp. 16-17, § 1.4 [Mineral Resources].

¹⁴ Staff Report, p. 7, § C.

II. COMMENTS

A. The County's Assertion that the Project is Exempt from CEQA is Arbitrary and Capricious and not Supported by Substantial Evidence

The Staff Report for the Project acknowledges that project "PL16-0127" constitutes a "project" under CEQA.¹⁵ However, the County nevertheless asserts that the Project is exempt from CEQA.¹⁶ The County cites three exemptions in support of its conclusion. Those three exemptions are:

- 1) The "common sense" exemption (15061(b)(3));¹⁷
- 2) Actions by Regulatory Agencies to Protect Natural Resources (14 CCR § 15307);¹⁸ and
- 3) Actions by Regulatory Agencies to Protect Environment (14 CCR § 15308).¹⁹

In addition, the County also asserts that the "unusual circumstances" exception to CEQA exemptions does not apply.²⁰ However, as discussed below, the County's conclusions that (i) the Project is exempt from CEQA, and (ii) that the unusual circumstances exception does not apply, are not supported by the evidence.

B. The Unusual Circumstances Exception Precludes the County's Use of a CEQA Exemption

"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."²¹ The "unusual circumstances" exception is set forth at 14 CCR § 15300.2(c) ("CEQA Guidelines" or "Guidelines") and was examined by the California Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2016) 60 Cal.4th 1086 ("*Berkeley Hillside*").

¹⁵ Staff Report, p. 32, § B., ¶ 1 ["Accordingly, the proposed GP and NCZO amendments are considered a CEQA 'project'."]

¹⁶ Staff Report, pp. 32-33, § B.

¹⁷ Staff Report, pp. 32-33; *see also Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380 [referring to 15061(b)(3) as the "common sense exemption".]

¹⁸ Staff Report, p. 33, ¶ 2.

¹⁹ Staff Report, p. 33, ¶ 2.

²⁰ Staff Report, p. 33, ¶ 3.

²¹ 14 CCR § 15300.2(c); *Berkeley Hillside Preservation v. City of Berkeley* (2016) 60 Cal.4th 1086 ("*Berkeley Hillside*").

As the Court explained in *Berkeley Hillside*, there are two approaches that can be used to show unusual circumstances. If unusual circumstances are demonstrated, the lead agency cannot proceed based on a CEQA exemption.

The first approach utilizes a two-part test that requires a party to show: (1) the project has some feature that distinguishes it from others in the exempt class, such as its size or location; and (2) a reasonable possibility of a significant effect due to that unusual circumstance.²² This approach will be referred to herein as the "Two-Part Test".

The second approach only requires a party to show that a project will have a significant environmental effect.²³ This approach will be referred to herein as the "One-Part Test".

As discussed below, the evidence shows that the unusual circumstances exception applies here, under both the One-Part Test and the Two-Part Test, referenced above. Accordingly, the County is precluded from approving the Project based on a CEQA exemption.

1. The Project Presents Unusual Circumstances

The first part of the Two-Part Test requires a party to show a project the project has some feature that distinguishes it from others in the exempt class, such as its size or location.²⁴

Here, the County proposes to rezone approximately 520,000 acres of land for conservation purposes.²⁵ The proposed rezoning of such a massive amount of land, without completing any environmental review in accordance with CEQA, is, on its face, unusual. Additionally, the County's inclusion in the Project of approximately 13,897 acres of valuable mineral deposits that have previously been (i) classified by the California State Geologist as "MRZ-2" areas and (ii) designated as having regional significance, constitutes an unusual circumstance pursuant to Guidelines § 15300.2(c).

²² *Berkeley Hillside*, 60 Cal.4th at 1105 ["A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance."]

²³ *Berkeley Hillside*, 60 Cal.4th at 1105 ["Alternatively, under our reading of the guideline, a party may establish an unusual circumstances with evidence that the project will have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.' (Guidelines, § 15300.2, subd. (c).)" (Emphasis added).]

²⁴ *Berkeley Hillside*, 60 Cal.4th at 1105.

²⁵ Staff Report, p. 7, § C.

Furthermore, these unusual circumstances are exacerbated by the County's use of informal reports as a basis for the Project and its improper piecemealing of the Project from its ongoing General Plan update.

a) The Inclusion of State-Classified MRZ-2 Areas and State-Designated Mineral Resource Sectors Within the Project would Conflict with the Surface Mining and Reclamation Act and Constitutes an Unusual Circumstance

If approved, the Project has the potential to significantly impair and unreasonably delay the extraction of these resources and the operation and expansion of mining properties, thereby increasing the costs of developing mineral resources. Additionally, the Project may even preclude the extraction of the County's classified and designated mineral resources, and the operation and expansion of mining properties, because the purpose of the Project—*i.e.*, the conservation of wildlife habitat, including wildlife habitat and corridors—is inherently incompatible with the development of mineral resources, which requires surface disturbances prior to the extraction of mineral resources located thereunder.

(1) The Project Includes Approximately 13,987 Acres of State-Classified MRZ-2 Areas and Portions of State-Designated Mineral Resource Sectors

Through the enactment of the SMARA, the Legislature declared as follows:

- "the extraction of minerals is essential to the economic well-being of the state and to the needs of the society";
- "the production and development of local mineral resources that help maintain a strong economy and that are necessary to build the state's infrastructure are vital to reducing transportation emissions that result from the distribution of hundreds of millions of tons of construction aggregates that are used annually in building and maintaining the state;"
- the state "needs ... to provide local governments, metropolitan planning organizations, and other relevant planning agencies with the information necessary to identify and protect mineral resources within general plans"; and
- "the state's mineral resources are vital, finite, and important natural resources and the responsible protection and development of these mineral resources is vital to a sustainable California".²⁶

²⁶ Pub. Res. Code § 2711(a).

In recognition of the foregoing, "the [California State Mining and Geology Board] may, by regulation adopted after a public hearing, designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area."²⁷

The reference to "areas of statewide or regional significance" in the excerpt above is defined as follows:

- "'Area of regional significance' means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in a particular region of the state within which the minerals are located and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local significance."²⁸
- "'Area of statewide significance' means an area designated by the board pursuant to Section 2790 which is known to contain a deposit of minerals, the extraction of which is judged to be of prime importance in meeting future needs for minerals in the state and which, if prematurely developed for alternate incompatible land uses, could result in the permanent loss of minerals that are of more than local or regional significance."²⁹

As previously discussed, multiple areas of the County were classified as MRZ-2 areas by the California Division of Mines and Geology in 1981.³⁰ The County discusses the importance of safeguarding these areas in the County Initial Study Assessment Guidelines ("County CEQA Guidelines"):

Mineral Resource Zone 2 (MRZ-2) – Areas where adequate information indicates that significant mineral deposits are present or where it is judged that a high likelihood for their presence exists. This zone shall be applied to known mineral deposits or where well-developed lines of reasoning, based upon economic

²⁷ Pub. Res. Code § 2790.

²⁸ Pub. Res. Code § 2726.

²⁹ Pub. Res. Code § 2727.

³⁰ Exhibit 1.

geologic principles and adequate data, demonstrate that the likelihood for occurrence of significant mineral deposits is high.³¹

Thereafter, in 1982, 10 "sectors" of the County's MRZ-2 areas were designated as regionally significant mineral resource areas by the California State Mining and Geology Board (Sectors A-J), which led to the preparation of maps depicting the locations of these areas.³² An EIR was adopted in conjunction with the designation of these 10 sectors.³³

As detailed in the attached memorandum from ECORP Consulting, Inc. ("ECORP"), the Project would include vast acreages of mineral resources that have been both classified and designated by the state. As shown in Table 1, below, approximately 13,987 acres of state-classified MRZ-2 areas will be included within the Project.³⁴ This amounts to approximately 41% of the County's supply of classified MRZ-2 areas.

Table 1 - Ventura County Mineral Resource Zones Area Impacted by Proposed Wildlife Corridors

Proposed Wildlife Corridor	MRZ-1 Acres	MRZ-2 Acres	MRZ-3 Acres	MRZ-3a Acres	MRZ-4 Acres	Not MRZ	Grand Total
Santa Monica—Sierra Madre	26,634	13,897	61,503	5,518	3,705	1,131	112,388
Sierra Madre--Castaic	30,378	--	17,699	2,561	5,411	260,017	316,066
Ventura River	--	-	20	612	--	2	634
Total Within Wildlife Corridors	57,012	13,897	79,222	8,691	9,116	261,150	429,088
Outside Wildlife Corridor	149,900	19,816	153,386	31,742	34,817	--	389,661
County Grand Total	206,912	33,713	232,608	40,433	43,932	261,150	818,748

Source: ECORP GIS (11/2018)

Moreover, the Project will also include portions of MRZ-2 sectors that have been designated as regionally significant mineral resource areas.³⁵ Accordingly, the Project's impacts to mineral resources warrant careful analysis and consideration by the County—consideration must be completed in accordance with CEQA—and present unusual circumstances.

(2) The Project is Inconsistent with the Surface Mining and Reclamation Act

As explained in the County CEQA Guidelines, SMARA "was enacted in 1975 ... to safeguard access to mineral resources of regional and statewide significance in the face of

³¹ County CEQA Guidelines, p. 21, § B.

³² Exhibit 3; *see also* General Plan Resources Appendix, p. 25 ["Hearings were held in January of 1982 and the official maps identifying the areas so designated were sent to the County in June of 1982."]

³³ Exhibit 3, p. 7.

³⁴ Exhibit 5, p. 2, Table 1.

³⁵ Exhibit 3, § C. pp. 7-11 and Exhibits 1-2 attached thereto [depicting Sectors A-J].

competing land uses and urban expansion."³⁶ Despite the County's recognition of the importance of safeguarding mineral resources from incompatible uses, in accordance with the underlying principles of SMARA, the County is proposing to overlay vast swaths of classified and designated mineral resources without even considering the consequences.

However, the County's plan to summarily disregard the Project's potential impacts to approximately 41% of the County's supply of classified MRZ-2 areas, some of which have been designated as regionally significant mineral resource sectors, along with the related local and regional implications would violate SMARA. Accordingly, the Project presents unusual circumstances that preclude the County's use of a CEQA exemption.

Indeed, once a significant mineral resource sector has been designated, SMARA requires a lead agency with jurisdiction over the sector to "Emphasize the conservation and development of the identified mineral deposits", among other things.³⁷ Despite this legislative mandate, it appears the County has decided to place the conservation of wildlife corridors above the conservation of mineral resources. If so, the County must first analyze and disclose the potential implications of its decision in a public process.

(3) The Project is Inconsistent with the County's General Plan Policies Intended to Protect Mineral Resources

As the County explains in its General Plan, a zoning ordinance "shall be consistent" with the general plan, including the applicable objectives and policies.³⁸ The General Plan "Goals, Policies and Programs" for mineral resources provide as follows:

- "Aggregates represent the other significant type of mineral resource extracted within the County. Aggregates include sand, gravel and rock which are used for fill, construction-grade concrete and riprap, among others. Although many sand and gravel sites exist throughout the County, most of the extraction sites are located in and along the Santa Clara River bed. Transportation, being a major cost in this industry, dictates that extraction sites be in close to areas of use and demand. For this reason, it is important to utilize close-in aggregate resources before urbanization precludes their extraction."
- "The aggregate resource areas (see the Resources Appendix) are based on Mineral Resource Zone maps developed by the State Division of Mines and Geology. These maps were prepared in response to the Surface

³⁶ County CEQA Guidelines, p. 21, § B; Pub. Res. Code §§ 2710 et seq.

³⁷ Pub. Res. Code § 2762(a)(3).

³⁸ General Plan Goals, Policies, and Programs, p. 3 [Determining Consistency with General Plan] (citing Gov. Code § 66473.5).

Mining and Reclamation Act of 1975 (SMARA). This Act mandated that aggregate resources throughout the State be mapped so that local governments could make land use decisions in light of the presence of the resources and the need to preserve access to them. SMARA's basic objectives are to ensure proper reclamation of mineral land and safeguard access to mineral resources of regional and statewide significance in the face of competing land uses and urban expansion. Its initial focus was on aggregate necessary for construction grade concrete."

- "Manage mineral resources in a manner which effectively plans for the access to, development and conservation of mineral resources for existing and future generations."
- "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."
- "Discretionary development within a Mineral Resource Area (see Resource Protection Map) 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."³⁹

As mentioned in the bullet point immediately above, the General Plan includes a Resource Protection Map and a Mineral Resources Protection Overlay Zone.⁴⁰ The General Plan also includes a Resources Appendix, which provides as follows:

- "A review of Figure 1.4.1 reveals that there is relatively little land within the County which is known to have significant deposits of construction grade aggregate (those classified as MRZ2). MRZ-2 areas have been 'designated' by the State as areas that should be subject to special management regulations through the General Plan of local jurisdictions."
- "Ventura County contains valuable aggregate and petroleum resources which are vital to the physical and economic development of the County. These resources warrant protection to ensure their continued availability."

³⁹ General Plan Goals, Policies, and Programs, pp. 16-17, § 1.4 [Mineral Resources].

⁴⁰ General Plan Goals, Policies, and Programs, p. 30, Figure 1b [Resources Protection Map (South Half)]; *see also* County CEQA Guidelines, p. 21, § B.

Identification of these resources and adoption of a mineral resource protection zone could provide this protection."⁴¹

As previously discussed, the attached memorandum from ECORP includes several figures that depict the locations of the state-classified MRZ-2 areas, some of which have been designated as regionally significant mineral resource sectors.⁴² Those figures also depict the areas of mineral resources that would be overlaid with wildlife corridors, if the Project were approved. Thus, the approval of the Project could impair and unreasonably delay the extraction of approximately 41% of MRZ-2 areas in the entire County, because the development of mineral resources is inherently incompatible with the purpose of a wildlife corridor. Accordingly, the approval of the Project would be contrary to the County's General Plan policies, goals, and objectives listed above, which were the result of detailed technical studies, including studies and research performed by the State Geologist and the State Mining and Geology Board.

(4) The County CEQA Guidelines Require the County to Consult with the Department of Conservation California Geological Survey

The County CEQA Guidelines prescribe a "methodology" for use by the County when considering a project's impacts to MRZ-2 areas. The methodology provides as follows:

If the subject property is located on or adjacent to land zoned [Mineral Resource Protection (MRP) overlay zone] or containing an aggregate CUP, then the Division of Mines and Geology should be consulted and should review the project application. Significance must be determined on a case-by-case basis by the Planning Director.⁴³

The Staff Report does not indicate whether the County has consulted with the Division of Mines and Geology (renamed the California Geological Survey in 2006), as required by the County CEQA Guidelines. Such a consultation is certainly necessary here, given that the County proposes to overlay approximately 41% of its MRZ-2 areas with a wildlife corridor.

Similarly, because the Project would include the rezoning of state-designated mineral resource sectors for wildlife conservation purposes, the County must first provide to the Department of Conservation a statement specifying its proposed reasons for approving the Project.⁴⁴

⁴¹ General Plan Resources Appendix, pp. 29, 42.

⁴² Exhibit 3, § C. pp. 7-11 and Exhibits 1-2 attached thereto [depicting Sectors A-J].

⁴³ County CEQA Guidelines, p. 22, § E.

⁴⁴ Pub. Res. Code § 2762(d)(1).

b) The Environmental Impacts of Other Similar Wildlife Corridor Projects have been Analyzed in an EIR Prior to Approval

The Project appears similar to the Riverside County Multiple Species Habitat Conservation Plan ("Riverside MSHCP"). For example, one of the goals of the Riverside MSHCP was to develop "critical linkages".⁴⁵ Similarly, here, the Project is intended to protect "missing linkages".⁴⁶

However, a significant distinction between the Project and the Riverside MSHCP is that the Riverside MSHCP was the result of a detailed public process that was subjected to environmental review in accordance with CEQA and supported by detailed scientific and technical studies.⁴⁷ Indeed, the Riverside MSHCP EIR included a thorough evaluation of the impacts to mineral resources, including the loss of MRZ-2 areas that were to be incorporated into the MSHCP, which were determined to be cumulatively significant.⁴⁸ Here, no such analysis has occurred. Rather, the impetus for the Project is a 2001 report, Missing Linkages: Restoring Connectivity to the California Landscape,⁴⁹ but, that report is neither a regulatory document, nor a technical report.

Although the report suggests the creation of certain wildlife corridors in various cities and counties, it does not alleviate a local agency's obligation under CEQA to consider the related environmental impacts. Accordingly, it would be arbitrary and capricious for the County to utilize a CEQA exemption in support of its proposed legislative action, which would rezone and encumber "approximately 7,395 parcels totaling approximately 520,000 acres" with wildlife corridors.⁵⁰ The Project, which the County acknowledges is a "project" under CEQA,⁵¹ should be based on relevant technical and scientific studies and subjected to environmental review and public comment in accordance with CEQA, just like the Riverside MSHCP, the San Diego Multiple Species Conservation Plan,⁵² the Orange County Central and Coastal Subregion Natural Community Conservation Plan,⁵³ and other similar plans.

⁴⁵ Discover the Natural Wonders of Riverside County, p. 5 (https://www.wrc-rca.org/archivecdn/Permit_Docs/Discover_the_Wonders.pdf) ("Exhibit 7").

⁴⁶ See, e.g., Staff Report, pp. 2-5, § 5.

⁴⁷ See Riverside MSHCP environmental documents, including the EIR, mitigation nexus analysis, and species surveys, among other things ("Exhibit 8").

⁴⁸ Exhibit 6, p. 5.1-9.

⁴⁹ Staff Report, p. 3, § B.

⁵⁰ Staff Report, p. 7, § C.

⁵¹ Staff Report, p. 32, § B, ¶ 1.

⁵² <https://www.sandiegocounty.gov/content/sdc/pds/mscp/sc.html>.

⁵³ <https://occonservation.org/about-ncc/> ("Exhibit 9").

Moreover, the County's discussion in the Staff Report of a second report, South Coast Missing Linkages ("SCML"), which the County states was "incorporated" into a third report, California Essential Habitat Connectivity Project ("CEHCP"), does not support the County's use of a CEQA exemption.⁵⁴ Nor does the County's discussion of other projects that have "incorporated" and "included" aspects of SCML and CEHCP, as the County suggests.⁵⁵ To the contrary, the County's references to these other projects shows why the County must prepare an EIR.

For example, the County references the County of Los Angeles Significant Ecological Areas ("SEA") and states that the County of Los Angeles "included" the SCML in the SEA.⁵⁶ However, there, the County of Los Angeles approved the SEA project after first analyzing its environmental impacts in an EIR pursuant to CEQA; the EIR prepared in conjunction with its general plan update.⁵⁷ Furthermore, any linkage or corridor allegedly "included" into the SEA was limited to land subject to the jurisdiction of the County of Los Angeles—not land located within the County of Ventura.

Similarly, the County also discusses the 2012-2035 Regional Transportation Project/Sustainable Communities Strategy ("RTP/SCS") of the Southern California Association of Governments ("SCAG") and states that SCAG "incorporated" the SCML into the RTP/SCS.⁵⁸ However, there, SCAG completed environmental review in accordance with CEQA and certified an EIR for the RTP/SCS.⁵⁹

In addition, in the Staff Report, the County discusses the Resources Management Plans of the following four National Forests: Los Padres, Angeles, San Bernardino, and Cleveland.⁶⁰ However, these National Forests all adopted environmental impact statements in accordance with the National Environmental Policy Act ("NEPA") for their respective Resources Management Plans.⁶¹

After the County's discussion of the projects approved by the County of Los Angeles, SCAG, and the National Forests (all of whom completed full environmental review in accordance with CEQA and NEPA), the County references page 18 of its General Plan in an apparent effort to suggest that the County previously analyzed the environmental impacts of

⁵⁴ Staff Report, pp. 4-5.

⁵⁵ Staff Report, pp. 4-5, three bullet points.

⁵⁶ Staff Report, pp. 4-5, bullet point 1.

⁵⁷ Addendum to EIR, ¶ 1-2 (<http://planning.lacounty.gov/site/sea/wp-content/uploads/2018/09/H-ADDENDUM.pdf>) ("Exhibit 10").

⁵⁸ Staff Report, p. 5, bullet point 2.

⁵⁹ Final EIR (<http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx>) ("Exhibit 11").

⁶⁰ Staff Report, p. 5, bullet point 3.

⁶¹ <https://www.fs.usda.gov/main/sbnf/landmanagement/planning> ("Exhibit 12").

establishing wildlife corridors in the County.⁶² However, the County's citation to one sentence from page 18 of the General Plan has no relevance to the County's legal obligation to analyze the impacts of its proposed legislative action to rezone land and create wildlife corridors. Furthermore, if the County were proposing to "tier" from some other previously certified environmental document, it would have to inform the public and comply with the applicable provisions of CEQA.

Any purported "incorporation" or "inclusion" of the SCML or the CEHCP into projects approved by the County of Los Angeles, SCAG, and the National Forests, as suggested by the County, relates only to activities—such as the establishment of a wildlife corridor—that occurred within areas of land subject to the jurisdiction of those agencies. Thus, the approval of those projects does not constitute an approval of a wildlife corridor in the County of Ventura. Nor does the fact that several non-regulatory reports previously recommended the creation of a wildlife corridor, because those reports are not environmental documents certified in accordance with CEQA and are not a substitute for the same. Furthermore, the fact that the agencies discussed above prepared the highest level of environmental documents under CEQA and NEPA, as opposed to relying on an exemption, demonstrates that the County should too.

The County's attempt to rely upon informal reports, instead of detailed scientific and technical studies subjected to public review in accordance with CEQA, constitutes an unusual circumstance pursuant to Guidelines § 15300.2(c).

c) The County is Improperly Piecemealing this Project from its Ongoing General Plan Update

As the County acknowledges in the Staff Report, the County Board of Supervisors originally contemplated the creation of wildlife corridors in 2015, in conjunction with a "comprehensive General Plan Update".⁶³ The General Plan update is presently ongoing.⁶⁴ Furthermore, in January 2017, the County Board of Supervisors added that:

The [Project] will be determined through a process that includes technical reviews, preparation of text amendments, an extensive public outreach program involving a range of stakeholder groups, environmental review, and public hearings.⁶⁵

⁶² Staff Report, p. 5.

⁶³ Staff Report, p. 9, § d.

⁶⁴ January 14, 2019 Notice of Preparation of Draft EIR for Ventura County 2040 General Plan Update (https://vc2040.org/images/VC2040_Notice_of_Preparation.pdf).

⁶⁵ County Board of Supervisors January 24, 2017 Report, p. 2, § A, ¶ 1 (emphasis added) (<http://bosagenda.countyofventura.org/sirepub/cache/2/enjsjomqyc2zav2ywggpp3pk/10206630118201909161582.PDF>).

Despite what the County previously told the public, it is now trying to segment the wildlife corridors from the larger "project" under CEQA—*i.e.*, the General Plan update—into a smaller project, even though the General Plan update is ongoing.

As the California Supreme Court has explained, "environmental considerations do not become submerged by chopping a large project into many little ones—each with minimal potential impact on the environment—which cumulatively may have disastrous consequences."⁶⁶ Here, the piecemealing of the Project from the General Plan update, so that the County can attempt to approve the Project based on a CEQA exemption, separate and apart from the ongoing General Plan update, is a violation of CEQA.

The County's deliberate segmentation of the wildlife corridors from its ongoing General Plan update, after previously representing to the public that the corridors would be "comprehensively" analyzed as a component of the General Plan update, constitutes poor planning. Similarly, the County's action also constitutes an unusual circumstance pursuant to Guidelines § 15300.2(c) that precludes the County's use of a CEQA exemption and also suggests that the Project is being rushed forward for political motives.⁶⁷

2. The Evidence Shows the Project will have Significant Environmental Effects

Appendix G of the CEQA Guidelines sets forth the 20 categories of resources protected under CEQA.⁶⁸ Thus, during the CEQA environmental review process, a lead agency must consider the impacts a project will have on each of those 20 categories. To assist agencies with that process, Appendix G provides thresholds of significance for each of the 20 categories. Additionally, the County has developed its own CEQA Guidelines, which also include thresholds of significance.⁶⁹

As previously discussed, there are two approaches that can be used to show unusual circumstances, which are being referred to herein as the "Two-Part Test" and the "One-Part Test". The second-part of the Two-Part Test requires a party to show a reasonable possibility that a project will have a significant effect as a result of an unusual circumstance.⁷⁰

⁶⁶ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396 (citing *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284).

⁶⁷ In addition to constituting unusual circumstances, the issues discussed in the foregoing section also constitute separate and independent violations of CEQA.

⁶⁸ The CEQA Guidelines thresholds of significance discussed below reflect the recent changes adopted by the California Natural Resources Agency, which went into effect on December 28, 2018 (http://resources.ca.gov/ceqa/docs/2018_CEQA_FINAL_TEXT_122818.pdf).

⁶⁹ https://docs.vcrma.org/images/pdf/planning/ceqa/current_ISAG.pdf

⁷⁰ *Berkeley Hillside*, 60 Cal.4th at 1105 ["A party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project

The One-Part Test only requires a party to show that a project will have a significant environmental effect.⁷¹

As discussed below, the evidence shows the Project will have significant environmental effects, including significant environmental effects as a result of the Project's unusual circumstances, discussed above, including the Project's inclusion of approximately 41% of the County's supply of classified MRZ-2 areas.⁷²

a) Mineral Resources

In recognition of the underlying policies and purpose of SMARA, the CEQA Guidelines provide the following two thresholds of significance for mineral resources, which ask whether a project would:

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?
- b) Result in the loss of availability of a locally-important mineral resources recovery site delineated on a local general plan, specific plan, or other land use plan?⁷³

Similarly, the County CEQA Guidelines provide the following two thresholds of significance for mineral resources:

- 1. Any land use or project activity which is proposed to be located on or immediately adjacent to land zoned Mineral Resources Protection (MRP) overlay zone, or adjacent to a principal access road to an existing aggregate Conditional Use Permit (CUP), and which has the potential to hamper or preclude extraction of or access to the aggregate resources, shall be considered to have a significant adverse impact on the environment.

has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance."]

⁷¹ *Berkeley Hillside*, 60 Cal.4th at 1105 ["Alternatively, under our reading of the guideline, a party may establish an unusual circumstances with evidence that the project will have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.' (Guidelines, § 15300.2, subd. (c).)" (Emphasis added).]

⁷² This discussion is not intended to constitute an exhaustive analysis of every potential impact the Project will cause.

⁷³ CEQA Guidelines, App. G, § XII(a)-(b) [Mineral Resources].

2. A project would have a cumulative impact on aggregate resources if when considered with other pending and recently approved projects in the area, hampers or precludes extraction or access to identified resources.^{74 75}

A total of 154,683 acres of the proposed Santa Monica-Sierra Madre and Sierra Madre-Castaic Regional Wildlife Corridors are within state-classified MRZs. Further, Approximately 13,500 acres of the proposed Wildlife corridors are within the County's Mineral Resources Protection overlay zone. These areas correspond with the State Mineral Land Classification of MRZ-2 areas. An additional 82,404 acres of the proposed corridors overlay MRZ-3 areas, which contain known or inferred mineral resources. The analysis of available mineral resources in the County is set forth in Section 1.4 of the General Plan Resources Appendix.

Included therein is the County's analysis of its local sources of aggregate and the estimated demand for aggregate over the next 50 years. That analysis considered and relied upon the sections of state-classified and designated mineral resources located within the County. Accordingly, the County must consider how the rezoning of those mineral resources for wildlife conservation purposes would affect the County's prior conclusions regarding supply and demand.

As previously discussed above, the Project has the potential to impair and unreasonably delay the extraction of these resources and the operation and expansion of mining properties, thereby increasing the costs of developing mineral resources (which itself can cause impair the development of mineral resources).⁷⁶ Additionally, the Project may even preclude the extraction of the County's classified and designated mineral resources, and the operation and expansion of mining properties, because the purpose of the Project—*i.e.*, the conservation of wildlife habitat, including wildlife habitat and corridors—is inherently incompatible with the development of mineral resources, which requires surface disturbances prior to the extraction of mineral resources located thereunder.⁷⁷ As discussed below, these impacts to mining and the extraction of mineral resources will causes significant environmental effects.

First, regarding CEQA Guidelines threshold of significance a), above, the Project could result in the loss of availability of a known mineral resource that would be of value to the region. Specifically, the Project could result in the loss of availability of approximately 41% of

⁷⁴ County CEQA Guidelines, p. 21, § D(1)-(2) [Threshold of Significance Criteria] (emphasis added).

⁷⁵ County "CEQA Public Information Brochure" [explaining that the "environment" that "will be affected by a proposed project" includes "minerals"] (https://docs.vcrma.org/images/pdf/planning/brochures/ceqa_3-08.pdf).

⁷⁶ Permitting, Economic Value and Mining in the United States, SNL Metals & Mining ("Exhibit 13").

⁷⁷ Exhibit 5, p. 7 [Conclusions].

the County's supply of classified MRZ-2 areas,⁷⁸ some of which have been designated as significant mineral resource sectors,⁷⁹ because the development and extraction of mineral resources is inherently incompatible with the goal of preserving wildlife habitat.⁸⁰

Second, regarding CEQA Guidelines threshold of significance b), above, the Project could result in the loss of availability of a locally-important mineral resources recovery site delineated on a local general plan, specific plan, or other land use plan. Specifically, the Project could result in the loss of availability of mineral resources presently protected by the County's Resource Protection Map and Mineral Resources Protection Overlay Zones—*i.e.*, local land use plans.⁸¹ The Project may also result in the loss of availability of mineral resources delineated on Map Sheet 52.⁸²

Third, regarding County CEQA Guidelines threshold of significance 1., above, the Project would (i) be located on or immediately adjacent to land zoned Mineral Resources Protection overlay zone, (ii) be adjacent to a principal access road to an existing aggregate Conditional Use Permit, and (iii) potentially hamper or preclude extraction of or access to the aggregate resources. As discussed in the attached ECORP memorandum, the Project would overlay multiple mining properties (and their principal access roads), including properties that have conditional use permits.⁸³ Accordingly, under the County CEQA Guidelines, the Project is *presumed* to have a significant impact: "Any land use or project activity which is proposed to be located on or immediately adjacent to land zoned Mineral Resources Protection (MRP) overlay zone ... shall be considered to have a significant adverse impact on the environment."⁸⁴

Fourth, regarding County CEQA Guidelines threshold of significance 2., above, the Project could have a cumulative impact on aggregate resources because it would hamper or preclude extraction or access to identified resources. As the County explains in the General Plan Resources Appendix, "there is relatively little land within the County which is known to have significant deposits of construction grade aggregate (those classified as MRZ2). MRZ-2 areas have been 'designated' by the State as areas that should be subject to special management regulations through the General Plan of local jurisdictions."⁸⁵ Accordingly, because the Project

⁷⁸ Exhibit 5, p. 2, Table 1.

⁷⁹ Exhibit 4.

⁸⁰ See January 19, 2017 letter from CalCIMA to the County, respectfully requesting that the County consider how the Project may impact mineral resources, including the ability to extract the state-designated mineral resources located within the overall area of the Project.

⁸¹ General Plan Goals, Policies, and Programs, p. 30, Figure 1b [Resources Protection Map (South Half)]; *see also* County CEQA Guidelines, p. 21, § B.

⁸² Exhibit 3; *see also* Exhibit 4.

⁸³ Exhibit 5, p. 6, Table 2 [mining property CUPs overlaid by Project] and Figure 4.

⁸⁴ County CEQA Guidelines, p. 21, § D(1) [Threshold of Significance Criteria] (emphasis added).

⁸⁵ General Plan Resources Appendix, pp. 29, 42.

could hamper the extraction of designated MRZ-2 areas, the Project could result in a significant cumulative impact on mineral resources.

Fifth, the Project could impair the operation and expansion of existing mining properties in the County.⁸⁶ For example, the Project's imposition of nighttime lighting restrictions would impair nighttime operations, which often occur at night to reduce transportation impacts. Similarly, the Project's restrictions on the removal of vegetation would serve as a barrier to mining, which requires surface disturbance, including the removal of native vegetation. Additionally, the Project's restrictions on "surface water features" could potentially impair or preclude river and in-stream mining activities.

The General Plan "Goals, Policies and Programs" for mineral resources states that: "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."⁸⁷ Here, the County recognizes the Project is a discretionary "project" under CEQA. Furthermore, the Project proposes a General Plan amendment and the rezoning of approximately 520,000 acres of land that includes approximately 13,987 acres of state-classified "MRZ-2" areas. Accordingly, CEQA review "shall" be required.^{88 89}

b) Transportation

For transportation, the CEQA Guidelines provides four thresholds of significance, including the following:

- b) Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision(b)?⁹⁰

⁸⁶ See "Project Objective", p. 3, ¶ 1.4, stating that a "critical" purpose of the project is to "minimize impacts of mining ... operations and other large scale operations with the [Habitat Conservation Overlay Zone] by avoiding disturbance to significant connectivity features" (<http://bosagenda.countyofventura.org/sirepub/cache/2/fpmxnlsec1gkqknwuhq0wr5a/102066801272019120557729.PDF>).

⁸⁷ General Plan Goals, Policies, and Programs, pp. 16-17, § 1.4 [Mineral Resources] (emphasis added).

⁸⁸ Although the discussion of mineral resources herein focuses on aggregate, the discussion applies equally to oil and gas and the Project's impacts to the County's oil and gas resources.

⁸⁹ CalCIMA hereby incorporates by this reference the comments set forth in the October 9, 2018 letter submitted by the Pacific Legal Foundation, including those comments regarding unconstitutional takings.

⁹⁰ CEQA Guidelines, App. G, § XVII(b) [Transportation].

CEQA Guidelines §15064.3(b) reflects the state's recent shift towards assessing transportation impacts in terms of vehicle miles traveled ("VMT") and directs a lead agency to consider whether a project would increase the "amount and distance of automobile travel attributable to a project."⁹¹

As explained in the General Plan Resources Appendix, the impairment of the extraction of local mineral resources can cause significant transportation impacts.⁹² CalCIMA recognizes the importance of this concept, which it refers to as "Distance Matters".

The idea of Distance Matters is that, "Transporting from shorter distances protects the environment and reduces traffic."⁹³ The benefits of transporting aggregates shorter distances include the following:

- "CalTrans estimates a current average hauling distance of 50 miles. If the trip length can be reduced by even 15 miles, then diesel fuel consumption can be reduced by 44 million gallons annually, and truck emissions by 835 tons per year. Traffic congestion would be reduced. And an estimated \$705 million per year would be saved on material transportation costs."
- "Most aggregates are transported by truck. The cost of trucking aggregates increases 15 cents per ton for every mile hauled. Given that even one mile of a six lane highway requires over 110,000 tons of aggregates, each mile of transport would add one-half million dollars to the base cost of the aggregates for such a project."⁹⁴

As discussed in the General Plan Resources Appendix, a local shortage of aggregate could require the transport of aggregate from other state jurisdictions, such as Kern, Los Angeles, or San Bernardino Counties, or even beyond state lines Arizona or Nevada.⁹⁵

⁹¹ CEQA Guidelines, §15064.3.

⁹² General Plan Resources Appendix, pp. 31-33 [Hauling Impacts] ["Transporting the material raises costs. It also contributes to traffic impacts, particularly if surface streets must be used."]

⁹³ <http://www.distancematters.org/whydistancematters.asp> ("Exhibit 14").

⁹⁴ Exhibit 14; *see also* March 2018 Memorandum from the California Department of Transportation re: 2018 Aggregate Resource Policy Statement and Tools (http://www.calcima.org/files/c_1_aggregate%20resources_policy.pdf) ("Exhibit 15"); A Note on the Environmental Costs of Aggregates, Working Paper 994, P. Berck, Department of Agricultural and Resources Economics and Policy Division of Agriculture and Natural Resources, University of California at Berkeley (January 2005) http://www.academia.edu/3155445/A_Note_on_the_Environmental_Costs_of_Aggregates ("Exhibit 16").

⁹⁵ Exhibit 5, p. 7.

This, in turn, could cause increased traffic impacts. Here, the Project calls for the rezoning of approximately 41% of the County's supply of classified MRZ-2 areas, to allow for the establishment of wildlife corridors. Because the purpose of the corridors is to preserve natural habitat, the Project could preclude the access to and development of mineral resources located within those corridors. If so, aggregate would have to be transported to the County from other jurisdictions. Accordingly, the Project could increase the "amount and distance of automobile travel attributable" to the Project, thereby causing a significant environmental impact.⁹⁶

c) Greenhouse Gas Emissions and Air Quality

For (i) greenhouse gas emissions and (ii) air quality, the CEQA Guidelines provide two and four thresholds of significance, respectively, including the following which ask whether the project would:

- a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?⁹⁷
- b) Result in a cumulatively considerable new increase of any net pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?
- c) Expose sensitive receptors to substantial pollutant concentrations?
- d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?⁹⁸

For greenhouse gas emissions, the County CEQA Guidelines refer to the CEQA Guidelines for greenhouse gas emissions, including threshold (a), shown above.⁹⁹ For air quality, the County CEQA Guidelines utilize the Ventura County Air Pollution Control District Air Quality Assessment Guidelines,¹⁰⁰ which are similar to thresholds of significance set forth in the CEQA Guidelines, including (b)-(d), shown above.¹⁰¹

⁹⁶ CEQA Guidelines, §15064.3.

⁹⁷ CEQA Guidelines, App. G, § XIII(a) [Greenhouse Gas Emissions].

⁹⁸ CEQA Guidelines, App. G, § III(b)-(d) [Air Quality].

⁹⁹ County CEQA Guidelines, p. 136, § B [Threshold of Significance Criteria].

¹⁰⁰ County CEQA Guidelines, p. 7, § C [Threshold of Significance Criteria].

¹⁰¹ Ventura County Air Pollution Control District Air Quality Assessment Guidelines, pp. 3-1—3-7, § 3 [Air Quality Significance Thresholds] ([http://www.vcapcd.org/environmental-review.htm#What are the Ventura County Air Quality Assessment Guidelines](http://www.vcapcd.org/environmental-review.htm#What%20are%20the%20Ventura%20County%20Air%20Quality%20Assessment%20Guidelines), <http://www.vcapcd.org/pubs/Planning/VCAQGuidelines.pdf>).

As explained in the General Plan Resources Appendix, the impairment of the extraction of local mineral resources can also cause significant impacts cause impacts to air quality.¹⁰² This concept is another component of Distance Matters:

- "California's infrastructure projects have a carbon footprint. Construction materials that build California's roads, mass transit, single family homes and high-density smart growth--all depend on large quantities of construction aggregates (sand and gravel) transported to job sites by heavy-duty trucks. Reducing the distances these trucks travel is a key strategy in reducing greenhouse gases and reducing the state's carbon footprint."
- "Decreasing the distance aggregate is shipped by an average of 15 miles across the state, saving 44 million gallons of diesel fuel, would also reduce tail pipe emissions by 835.4 tons a year of pollutants regulated by the state Air Resources board that are linked to incidents of cancer, asthma and other serious health problems. (Sources: CalTrans analysis, based on the California Air Resources Board emission factors estimates and assuming an average 55 to 60 miles per hour speed and a reduction of 282 million miles of truck travel.)"¹⁰³

As discussed in the preceding section, the Project could require the transport of aggregate from sources located in other jurisdictions, which, in turn, could cause significant transportation impacts. This could also result in significant impacts to air quality and greenhouse gas impacts caused by the transport of aggregate by truck across longer distances. Accordingly, the Project has the potential to cause significant air quality and greenhouse gas impacts.

d) Land Use and Planning

For land use and planning, the CEQA Guidelines provide two thresholds of significance, including the following which asks whether the project would:

- b) Would cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose or avoiding or mitigating an environmental effect?¹⁰⁴

¹⁰² General Plan Resources Appendix, pp. 31-33 [Hauling Impacts] ["Transporting the material raises costs. It also contributes to traffic impacts, particularly if surface streets must be used. Energy consumption rises and with it air pollution"; "The problem, however, would be the costs of hauling aggregate over such long distances and the attendant impacts from its transport."]

¹⁰³ Exhibit 14.

¹⁰⁴ CEQA Guidelines, App. G, § XI(b) [Land Use and Planning].

Although the County CEQA Guidelines do not provide specific thresholds of significance for land use and planning, the General Plan recognizes that a zoning ordinance "shall be consistent" with the general plan, including the applicable objectives and policies.¹⁰⁵

As previously discussed, the General Plan includes "Goals, Policies and Programs" for mineral resources, which include goals and programs intended to safeguard access to and the extraction of mineral resources.¹⁰⁶ Because the Project calls for the rezoning of land presently protected by the County's Resource Protection Map and Mineral Resources Protection Overlay Zones, to allow for establishment of wildlife protection corridors, the Project appears inconsistent with these "Goals, Policies and Programs". Such an inconsistency would constitute a significant impact under the thresholds of significance referenced above.

Furthermore, as stated in the County CEQA Guidelines, a zoning ordinance "shall be consistent" with applicable General Plan objectives and policies.¹⁰⁷ Here, the County has made no effort to consider the Project's consistency with applicable provisions of the General Plan. Nor has the County considered the Project's consistency with SMARA.

Instead, the County has limited its consideration to only "General Plan goals and policies intended to promote the protection of biological resources and wildlife connectivity in particular."¹⁰⁸ However, the County's ignorance of applicable goals and policies, except goals and policies related to biological resources, constitutes a violation of CEQA, SMARA, and the Government Code.

e) Wildfires

For wildfire impacts, the CEQA Guidelines, as of December 28, 2018, now provides the following four thresholds of significance, including the following which ask whether a project would:

- b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

¹⁰⁵ General Plan Goals, Policies, and Programs, p. 3 [Determining Consistency with General Plan] (citing Gov. Code § 66473.5).

¹⁰⁶ General Plan Goals, Policies, and Programs, pp. 16-17, § 1.4 [Mineral Resources].

¹⁰⁷ General Plan Goals, Policies, and Programs, p. 3 [Determining Consistency with General Plan] (citing Gov. Code § 66473.5).

¹⁰⁸ Staff Report, pp. 35-36, § 3 ["The proposed amendment is consistent with the Ventura County General Plan"].

- d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result, as a result of run-off, post-fire slope instability, or drainage changes.¹⁰⁹

Similarly, the County CEQA Guidelines for wildlife provide as follows:

Ventura County Building Code, Article III Section 702A identifies High Fire Hazard Areas/Fire Hazard Severity Zones as “geographical areas in unincorporated Ventura County designated by the Ventura County Fire Protection District pursuant to California Public Resources Codes Sections 4201 through 4204 and classified as Very High, High, or Moderate in State Responsibility Areas or as Local Agency Very High Fire Hazard Severity Zones designated pursuant to California Government Code, Sections 51175 through 51189. See California Fire Code Article 86. The California Code of Regulations, Title 14, Section 1280, entitles the maps of these geographical areas as "Maps of the Fire Hazard Severity Zones in the State Responsibility Area of California."

The Fire Code also defines Hazardous Watershed Fire Areas as a location within 500 feet of a forest or brush, grass, or grain covered land, exclusive of small individual lots or parcels of land located outside of a brush, forest, or grass covered area.

Projects located within High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas may have a significant fire hazard impact. The fire hazard impact can be mitigated by compliance with Building and Safety requirements for structures and the Fire Protection District Hazard Abatement program which calls for the clearing of brush, flammable vegetation, or combustible growth located within 100 feet of structures or buildings. Projects not located within High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas will not have a significant impact.¹¹⁰

After the recent wildfires that have ravaged the County, one would expect the County to consider the Project's potential impacts to wildfire. However, the County has not completed such an analysis.

¹⁰⁹ CEQA Guidelines, App. G, § XX(b), (d) [Wildfire].

¹¹⁰ County CEQA Guidelines, pp. 105-106, § D [Threshold of Significance Criteria].

f) Cumulative Impacts

For cumulative impacts, the CEQA Guidelines provide the following thresholds of significance:

- b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects)¹¹¹

For cumulative impacts, the County CEQA Guidelines refer to the CEQA Guidelines.¹¹²

As previously discussed, the County is in the process of updating its General Plan. As a part of that process, the County will complete an EIR.¹¹³ Within that EIR is where the County should analyze the full scope of the Project's environmental impacts, including potential cumulative impacts, and how those impacts may be affected or increased when coupled with the range of other activities and changes proposed in the update. Instead, the County is improperly piecemealing the Project from the ongoing update, which forecloses the consideration of the Project's potential cumulative impacts. This constitutes a violation of CEQA.

Furthermore, for the reasons set forth above, the Project will cause significant cumulative impacts to multiple categories of resources included in Appendix G of the CEQA Guidelines, including mineral resources, transportation, air quality, and greenhouse gas emissions.¹¹⁴

3. The County Must Acknowledge that there is a Reasonable Possibility of an Environmental Effect and Prepare an EIR for the Project

As previously discussed, there are two approaches that can be used to show unusual circumstances, which are being referred to herein as the "Two-Part Test" and the "One-Part Test". If the unusual circumstances exception applies, a lead agency is precluded from invoking a CEQA exemption.

¹¹¹ CEQA Guidelines, App. G, § XXI(b) [Mandatory Findings of Significance]; *see also* CEQA Guidelines § 15355.

¹¹² County CEQA Guidelines, p. 217, § B [Threshold of Significance Criteria].

¹¹³ January 14, 2019 Notice of Preparation of Draft EIR for Ventura County 2040 General Plan Update (https://vc2040.org/images/VC2040_Notice_of_Preparation.pdf).

¹¹⁴ In addition to the information discussed above, CalCIMA hereby incorporates by this reference the two separate ECORP Memoranda, dated January 28, 2019, submitted to the County on behalf of the Ventura County Coalition of Labor, Agriculture, and Business ("CoLAB").

The Two-Part Test requires a party to show: (1) the project has some feature that distinguishes it from others in the exempt class, such as its size or location; and (2) a reasonable possibility of a significant effect due to that unusual circumstance.¹¹⁵

The One-Part Test only requires a party to show that a project will have a significant environmental effect.¹¹⁶ The party only needs to present a "fair argument".¹¹⁷

First, there is a fair argument that the Project will have a significant environmental effect, as previously above. When considering this information, the County should not seek to "resolve conflicts" in the evidence; rather, the agency should merely inquire whether the record "reveals a fair argument".¹¹⁸ This information is sufficient to show at least one significant environmental effect that will be caused by the Project, which precludes the County's use of a CEQA exemption.

Second, and to the extent it is necessary, the evidence shows that the Project presents unusual circumstances. As previously discussed above, the Project would include approximately 13,501 acres of state-classified MRZ-2 areas, which constitutes approximately 41% of all MRZ-2 areas in the County. The Project would also include critical mineral resource sectors that have been designated by the State Mining and Geology Board.¹¹⁹ This information is sufficient to demonstrate unusual circumstances.

CalCIMA disagrees with the County's conclusion that "there is no substantial evidence identified by staff ... to support a finding of unusual circumstances".¹²⁰ Furthermore, the County's conclusion is specious, given that the County's (i) General Plan, (ii) General Plan Resources Appendix, and (iii) CEQA Guidelines, all discuss various actions the County has previously taken for the specific purpose of protecting mineral resources, such as (i) the adoption of a Mineral Resource Protection overlay zone to protect mineral resources, and (ii) the creation of Goals, Policies and Programs" for mineral resources, none of which is discussed in the Staff Report.

The evidence shows that the Project will have significant environmental effects, including environmental effects as a result of the Project's unusual circumstances. Accordingly,

¹¹⁵ *Berkeley Hillside*, 60 Cal.4th at 1105.

¹¹⁶ *Berkeley Hillside*, 60 Cal.4th at 1105.

¹¹⁷ *Berkeley Hillside*, 60 Cal.4th at 1115 (citing CEQA Guidelines § 15300.2(c)) ["Accordingly, where there are 'unusual circumstances,' it is appropriate for agencies to apply the fair argument standard in determining whether 'there is a reasonable possibility of a significant effect on the environment due to unusual circumstances.'"]

¹¹⁸ *Berkeley Hillside* at 1104; *see also* County Administrative Supplement to County CEQA Guidelines, p. 19, § 8.1.

¹¹⁹ Exhibit 3.

¹²⁰ Staff Report, p. 33, ¶ 3.

the County is precluded from approving the Project based on any of the three exemptions cited in the Staff Report.¹²¹

C. The County's Conclusion Regarding the "Common Sense" Exemption Lacks Evidentiary Support

As previously discussed, the County has acknowledged that the Project constitutes a "project" under CEQA;¹²² but, the County asserts that the Project is exempt from CEQA.¹²³ The County cites three exemptions in support of its conclusion, including the "common sense" exemption set forth in CEQA Guidelines § 15061(b)(3)).¹²⁴

The "common sense" exemption is set forth at CEQA Guidelines § 15061(b)(3) and requires a lead agency to "conclude with certainty that there is no possibility that the activity in question may have a significant effect on the environment".

"[W]hether a particular activity qualifies for the common sense exemption presents an issue of fact, that the agency invoking the exemption has the burden of demonstrative it applies."¹²⁵ "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision."¹²⁶ The agency's determination must be supported by "substantial evidence".¹²⁷

"An agency's obligation to produce substantial evidence supporting its exemption decision is all the more important where the records shows, as it does here, that opponents of the project have raised arguments regarding possible significant environmental impacts."¹²⁸ "An agency obviously cannot declare 'with certainty that there is no possibility that the activity in question may have a significant effect on the environment' if it has not considered the facts of the matter."¹²⁹

¹²¹ Staff Report, pp. 32-33, ¶ 2 [citing the exemptions set forth at the following sections of the CEQA Guidelines (i) 15061(b)(3); (ii) 15307; and (iii) 15308].

¹²² Staff Report, p. 32, § B., ¶ 1 ["Accordingly, the proposed GP and NCZO amendments are considered a CEQA 'project'."]

¹²³ Staff Report, pp. 32-33, § B.

¹²⁴ Staff Report, pp. 32-33; *see also Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380 [referring to 15061(b)(3) as the "common sense exemption".]

¹²⁵ *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386 ("Muzzy Ranch").

¹²⁶ *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117 ("Davidon").

¹²⁷ *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 511.

¹²⁸ *Davidon* at 117.

¹²⁹ *Muzzy Ranch* at 387 (internal citation omitted).

As previously discussed above, when the Project is considered in the context of the thresholds of significance set forth in the CEQA Guidelines and the County CEQA Guidelines, the evidence shows the Project will, or, at the least, a reasonable possibility the Project will, have an environmental effect. Furthermore, the above discussion shows that the County has not seriously considered the potential impacts of the Project. Accordingly, the County's reliance on the common sense exemption would constitute an abuse of discretion.

D. The County has Incorrectly Concluded that a Project Intended to Benefit the Environmental Cannot also Have a Significant Environmental Effect

In addition to the "common sense" exemption, the County also asserts that the Project is exempt from CEQA based on the exemptions set forth in CEQA Guidelines §§ 15307 and 15308, entitled "Actions by Regulatory Agencies to Protect Natural Resources" and "Actions by Regulatory Agencies to Protect Environment", respectively.¹³⁰

The County bases its invocation of these two exemptions based on its conclusion that, "the effect is expected to be beneficial".¹³¹ However, the County incorrectly concludes that a project is exempt from CEQA merely because of an "expected benefit." As courts have explained, a project that benefits the environment may nevertheless have a significant environment impact that requires the preparation of an EIR.

For example, in *Wildlife Alive v. Chickering* (1976) 17 Cal.3d 190 ("*Wildlife Alive*"), the California Supreme Court struck down the invocation of the common sense exemption by the California Fish and Game Commission ("Commission"). The Commission invoked the exemption in conjunction with its approval of a hunting season intended to protect black bears. As the Court explained, "We conclude that the setting of hunting and fishing seasons has the potential for a significant environmental impact, both favorable and unfavorable. There inheres in the fixing of hunting seasons and the issuance of hunting permits a serious risk of overkill and depletion of the affected species. When the impact may be either adverse or beneficial, it is particularly appropriate to apply CEQA which is carefully conceived for the purpose of increasing the likelihood that the environmental effects will be beneficial rather than adverse."¹³²

In *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, the invocation of the common sense exemption by the Bay Area Air Quality Management District ("BAAQMD") was struck down in conjunction with its approval of regulations tightening emission standards for volatile organic compounds. Similarly, in *California Unions for Reliable Energy v. Mojave Desert Air Quality Management Dist.* (2009) 178 Cal.App.4th 1225, the invocation of the common sense exemption by the Mojave Desert Air

¹³⁰ Staff Report, p. 33, ¶ 2.

¹³¹ Staff Report, p. 33, ¶ 2.

¹³² *Wildlife Alive* at 206.

Quality Management District ("MDAQMD") was struck down in conjunction with its approval of a plan to reduce air pollution.

Furthermore, the cases discussed above demonstrate that the exemptions set forth in CEQA Guidelines §§ 15307 and 15308, entitled "Actions by Regulatory Agencies to Protect Natural Resources" and "Actions by Regulatory Agencies to Protect Environment", are reserved for state "regulatory agencies" such as the Commission, BAAQMD, and MDAQMD. Accordingly, it would be inappropriate for the County to rely upon either of these exemptions.

Notwithstanding any potential benefits that the Project may have, the evidence discussed above, demonstrates the Project will have an environmental effect. Accordingly, the County is precluded from relying upon the exemptions set forth in CEQA Guidelines §§ 15307 and 15308.

E. The Cumulative Impacts Exception also Precludes the Use of a CEQA Exemption

The County's findings in the Staff Report do not mention the cumulative impacts exception to CEQA exemptions.¹³³ The cumulative impacts exception is set forth at CEQA Guidelines § 15300.2(b) and renders an exemption "inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant."

As previously discussed above, the Project could result in cumulatively significant impacts. Accordingly, the County is precluded from relying on a CEQA exemption.

III. CONCLUSION

CEQA requires lead agencies to thoughtfully consider the impacts that a project may have upon the 20 categories of resources set forth within Appendix G of the CEQA Guidelines. If an agency determines, after careful consideration and analysis based on technical and scientific data, and the evaluation of project alternatives and potential mitigation measures that could reduce a project's impacts, that the approval of a project is warranted notwithstanding any significant impacts that will be caused by the project, the agency can decide to adopt a statement of overriding considerations.

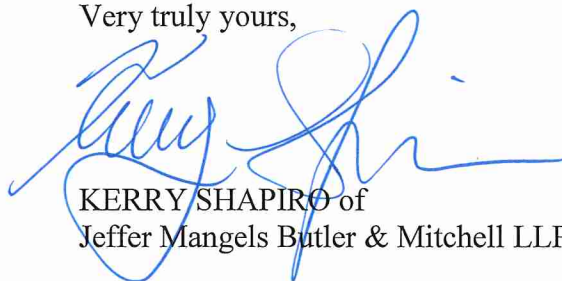
However, none of this has occurred here. If the County desires to approve the Project notwithstanding the related impacts to mineral resources, the County must do so in accordance with the rules of CEQA and cannot rely on an exemption.

Based on the foregoing, CalCIMA urges the County to consider how the Project may impact mineral resources, including impacts on the extraction of state-designated mineral resources located within the overall area of the Project, as CalCIMA previously requested in its

¹³³ Staff Report, p. 32-33.

January 19, 2017 letter. CalCIMA also requests that the County consult with the California Geological Survey and the State Mining and Geology Board, as required by the County CEQA Guidelines.¹³⁴

Very truly yours,



KERRY SHAPIRO of
Jeffer Mangels Butler & Mitchell LLP

Attachments

cc: California Geological Survey
State Mining and Geology Board
Gary W. Hambly, CalCIMA

¹³⁴ County CEQA Guidelines, p. 22, § E.

Index of Exhibits to
CalCIMA Comment Letter

January 28, 2019

Exhibit	Description
1.	Special Report 145, Mineral Land Classification of Ventura County, Parts I-III (January 1981)
2.	California Surface Mining and Reclamation Policies and Procedures, Guidelines for Classification and Designation of Mineral Lands
3.	SMARA Designation Report No. 2, Designation of Regionally Significant Construction Aggregate Resources Areas in the Western Ventura County and Simi Production-Consumption Regions (March 1982)
4.	Map Sheet 52, Aggregate Sustainability in California (Updated 2018)
5.	ECORP Memorandum
6.	Riverside MSHCP, EIR/EIR, Section 5., Cumulative Impacts
7.	Discover the Natural Wonders of Riverside County
8.	Riverside MSHCP environmental documents, including EIR, mitigation nexus analysis, and species surveys, among other things
9.	Orange County Central and Coastal Subregion Natural Community Conservation Plan
10.	County of Los Angeles Significant Ecological Areas, Addendum to EIR
11.	SCAG 2012-2035 Regional Transportation Project/Sustainable Communities Strategy, Final EIR
12.	National Forests, Resource Management Plans
13.	Permitting, Economic Value and Mining in the United States, SNL Metals & Mining
14.	CALCIMA_ Distance Matters_ Why Distance Matters
15.	March 2018 Memorandum from the California Department of Transportation re: 2018 Aggregate Resource Policy Statement and Tools
16.	A Note on the Environmental Costs of Aggregates, Working Paper 994, P. Berck, Department of Agricultural and Resources Economics and Policy Division of Agriculture and Natural Resources, University of California at Berkeley (January 2005)