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### California Land Use & Development Law Report



A court upheld an ordinance that restricted development standards in designated overlay zones to protect wildlife corridors, finding that it did not establish a "use" that would be subject to certain requirements of the Surface Mining and Reclamation Act (SMARA).

The court also upheld the County's reliance on CEQA exemptions for the protection of a natural resource and the environment. It held that the Class 7 exemption requires only protection of a natural resource, not protection of the entire environment, and that a potential for environmental impacts was not sufficient to defeat an exemption. [\*California Construction and Industrial Materials Association v. County of Ventura\*](#), 97 Cal. App. 5th 1 (2023).

The County of Ventura enacted an ordinance creating two overlay zones designed to preserve wildlife corridors. The overlay zones were applied to rural areas, including those in which extraction of minerals could occur. The County found the project exempt from CEQA. Two associations sued, claiming the ordinance violated both SMARA and CEQA. The court rejected all claims.

SMARA requires that, prior to "permitting a use" that would threaten the potential to extract minerals, the County must submit a statement specifying its reasons to the state for review. The court agreed with the County that the wildlife corridor ordinance was not subject to this requirement. In discussing what the Legislature meant by "permitting a use," the court concluded that had the Legislature intended to include changes in permitting requirements, it would have said so. Further, "permitting a use" did not mean simply changing permitting requirements that may have the potential for changing what uses are permitted. The court also rejected the project opponents' argument that the ordinance permits a "use" consisting of a wildlife corridor, noting that the use is by wildlife. "We are confident that wildlife is loath to seek permission from the County." The ordinance only set standards for future developments that might otherwise interfere with wildlife movement, which was not a use. Finally, the opponents could not show prejudice. "Nothing in the record shows it is reasonably probably that the Project Opponents would have obtained a more favorable result had the County issued a statement of reasons."

The court then addressed the CEQA claims. The County relied on the common sense CEQA exemption, where it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment, and on the Class 7 and Class 8 categorical exemptions, which apply to actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of a natural resource or the environment.

The court found that there was ample evidence to support the exemptions, including reports regarding the need to preserve wildlife corridors. It rejected the opponents' argument that mining activity would be diverted elsewhere, since nothing in the ordinance prohibited the extraction of minerals. It also ruled that the exemptions do not require a showing that the project will protect the entire environment; Class 7 requires only protection of "a natural resource."

The court also addressed the opponents' reliance on *Wildlife Alive v. Chickering*, 18 Cal. 3d 190 (1976), which stated that a reasonable possibility of a significant effect made an exemption improper. *Wildlife Alive* was disapproved in *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal. 4th 1086, 1102 (2015), in which the California Supreme Court concluded "the Legislature, through the Guidelines, intended to enumerate classes of projects that *are* exempt from CEQA because, notwithstanding their *potential* effect on the environment, they already 'have been determined not to have a significant effect on the environment.'" Accordingly, the potential for a significant impact was not relevant; instead, the court is to review whether the decision that the project fits within the category is supported by substantial evidence. The court then rejected the argument that unusual circumstances established an exception that precluded application of the exemptions. The opponents cited no evidence that the project was significantly larger than other projects in its class. Also, while the opponents pointed out that the project overlays 10,000 acres of classified mineral resources, they cited no evidence that other projects in Classes 7 and 8 do not overlay similar resources.

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