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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

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

Petitioner,

v.

COUNTY OF VENTURA, a political subdivision of the State of California, and DOES 1-25, inclusive,

Respondents.

Case No. 56-2019-00527815-CU-WM-VTA

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[CEQA Matter, Cal. Pub. Res. Code §§ 21000, *et seq.*; Violation of Government Code §§ 65855-65857; Violation of Due Process, Equal Protection, Vested Property Rights, and Regulatory Taking, under the California and United States Constitutions; Violation of Williamson Act Government Code §§ 51200–51297.4; Violation of Government Code § 65008; Violation of Pub. Res. Code §§ 2710 et seq.]

JMBM | Jeffer Mangels Butler & Mitchell LLP

Petitioner Ventura County Coalition of Labor, Agriculture, and Business ("Petitioner" or "CoLAB") seeks a writ of mandate and declaratory and injunctive relief against Respondent County of Ventura ("County" or "Respondent"), and alleges as follows:

I. INTRODUCTION

1. This Petition challenges the County's March 12, 2019 and March 19, 2019 decision to adopt the ordinance entitled, "County-Initiated Proposal to Amend the General Plan and Articles 2, 3, 4, 5, 9 and 18 of the Non-Coastal Zoning Ordinance (PL16-0127) to Establish a Habitat Connectivity and Wildlife Corridors Overlay Zone and a Critical Wildlife Passage Areas Overlay Zone, and to Adopt Regulations for These Areas; Find that the Proposed Amendments are Exempt from Environmental Review Under the California Environmental Quality Act." ("Ordinance"). The ostensible purpose of the Ordinance is to establish a wildlife corridor throughout the County. Despite the laudable purpose—and CoLAB supports reasonable efforts to minimize impacts to wildlife movement within the County—many of the Ordinance's regulations are legally flawed and scientifically unsupportable. Moreover, the Ordinance is fatally in conflict with the County's General Plan.

2. When it adopted the Ordinance, the County ignored the command of the California Environmental Quality Act ("CEQA") to weigh and evaluate the project's impacts across a broad spectrum of impact categories, to address those impacts through the imposition of feasible mitigation measures to reduce their significance, and to consider alternatives that could avoid or lessen significant impacts while accomplishing the basic objectives of the project. Had the County complied with CEQA here, that review would have provided the County's decision makers with a scientifically sound and accurate basis upon which to protect wildlife movement and corridors.

3. But the County conducted no environmental review whatsoever. Instead, the County made the erroneous and legally unsupportable determination that the Ordinance—which imposes stringent new zoning regulations over 163,000 acres of land within the County—is exempt from CEQA. As a result, the Ordinance likely will cause potentially significant environmental impacts, unintended consequences, and negative effects to property owners throughout the County. The Ordinance purports to improve countywide habitat connectivity between areas such as the Santa

Monica Mountains National Recreation Area and the Los Padres National Forest. But rather than conducting the necessary studies to ensure that effective and factually-supportable measures were taken, the County relied on outdated studies from over 13 years ago and made regulatory decisions based upon conjecture and speculation, in the hope evidence would later arise to justify those decisions—evidence that never materialized.

4. Had the County complied with CEQA, the significant environmental effects of the Ordinance—such as its impacts to wildfire hazards, mineral resources, agricultural resources, air quality, greenhouse gases, community character, and traffic and circulation—would have been identified, studied, and mitigated or avoided. In light of the region's long history of severe wildfires, including the recent fires that tragically devastated the region, the County's refusal to study and mitigate the increased wildfire risks the Ordinance poses is reckless, and cannot be allowed to stand.

5. The County also violated CEQA by unlawfully piecemealing its review of the Ordinance. The Ordinance was originally contemplated as part of a General Plan update, which is currently undergoing appropriate environmental review, including the preparation of an Environmental Impact Report ("EIR"). But to evade CEQA review, the County unlawfully segmented the Ordinance from the General Plan update and claimed the former was simply exempt from CEQA. The County further segmented the Ordinance, which applies only in the County's non-coastal zone, from similar proposed regulations intended for the coastal zone.

6. In addition to the CEQA violations, the County's Board of Supervisors ("Board") also failed to comply with Government Code §§ 65855 and 65857 by making significant changes to the Ordinance and acting on it without first referring the matter back to the Planning Commission.

7. The Ordinance also lacks a factual basis. Significant portions of the Ordinance are the product of arbitrary and capricious decision-making and are unsupported by substantial evidence. Rather than analyzing the scientific evidence or conducting an appropriate scientific inquiry and then making appropriate regulatory decisions on the basis of the facts, the County did the opposite: it made regulatory decisions first, and then engaged in a *post-hoc* scramble to find evidence to support those decisions. In fact, without notification or any documents providing a scientific analysis or reasoning, the County arbitrarily added and subtracted lands from the

Ordinance maps, without a defined procedure, before and after the Planning Commission hearing.

8. The Ordinance is facially void because it violates the due process rights of County residents, under both the state and federal constitutions, and contravenes principles of equal protection, as there was no rational basis for the County's decision to treat landowners within the arbitrarily-chosen overlay zones differently than other landowners within the County.

9. The Ordinance also amounts to a regulatory taking, given its impacts upon the reasonable and distinct investment-backed expectations of those it effects. Further, the Ordinance is both inconsistent with the General Plan and violates the Williamson Act.

10. Finally, the County violated the Surface Mining and Reclamation Act ("SMARA") due to failure to follow proper procedures involving state regulatory oversight authorities when mining resources are implicated.

11. Ultimately, rather than taking the required time to study the issues and generate an ordinance that would actually address the objectives of the County with regard to wildlife movement and habitat protection, the County instead hastily drafted and enacted an Ordinance in manner contrary to law and that does not even accomplish its desired objectives.

12. A writ of mandate is appropriate here to stop the enforcement and effectiveness of the Ordinance, at least until the County fulfills its basic CEQA duty of properly analyzing and mitigating the extensive significant environmental impacts identified in the record by countless members of the public, through comment letters and at public hearings. Declaratory relief also is appropriate to address the multiple conflicts with State and federal law.

II. THE PARTIES

13. Petitioner Ventura County Coalition of Labor, Agriculture, and Business is a 501(c)6 non-profit membership organization formed in 2010 to support land-based and industrial businesses including farming, ranching, oil, mining, and service, and to promote sensible and rational local government. CoLAB identifies and researches issues that impact businesses, and works with regulatory agencies, organizes stakeholders and proposes solutions to problems that impact Ventura County. CoLAB advocates for businesses through local regulation, providing expertise, research and educational campaigns to inform the public.

14. CoLAB and its members, including those members who own property and operate businesses in Ventura County, have beneficial, operational, environmental, educational, and scientific interests in the Project area. These interests are germane to CalCIMA's purpose and will be directly and adversely affected by the Project, which violates provisions of law as set forth in this Petition and which would cause irreversible harm to the natural environment. CoLAB and its members have a direct and beneficial interest in the County's compliance with CEQA, the CEQA Guidelines (14 CCR § 15000 et seq., "Guidelines"), and California State Planning and Zoning Law. Further, the maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental and other harms alleged herein.

15. Respondent County of Ventura is a county of the State of California existing under the Constitution of the State of California with the capacity to sue and be sued. As used herein, the term "County" includes, but is not limited to, the Board of Supervisors, the Planning Commission, County employees, agents, officers, boards, commissions, departments, and their members, all equally charged with complying with duties under the County Municipal Code, and with the laws of the State. The County is a political subdivision of the State of California, and is responsible for regulating and controlling land use in the territory of the County, including implementing and complying with the provisions of CEQA. The County is the "lead agency" for the purposes of Public Resources Code Section 21067, with principal responsibility for conducing environmental review of the proposed actions. The County has a duty to comply with CEQA and other state laws.

16. Petitioner does not know the true names or capacities, whether individual, corporate, associate or otherwise, of Respondent Does 1 through 25, inclusive, and therefore sues said Respondents under fictitious names. Petitioner will amend this Petition to show their true names and capacities when and if the same have been ascertained.

III. JURISDICTION, VENUE AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. This Court has jurisdiction under California Code of Civil Procedure sections 1094.5 and 1085 and Public Resources Code sections 21168, 21168.5, and 21168.9.

18. Venue is proper in this Court because the causes of action alleged in this Petition arose in Ventura County, and all parties are located or do business in Ventura County.

19. Petitioner complied with the requirements of Public Resources Code § 21167.5 and California Code of Civil Procedure § 388 by serving on Respondent County written notice of Petitioner's intention to commence this action on April 25, 2019. A copy of the proof of service is attached hereto as Exhibit A.

20. Petitioner has performed all conditions precedent to filing the instant action, and has exhausted any and all available administrative remedies to the extent required by law. Petitioner appeared before the County prior to the adoption of the Ordinance, submitted extensive written and oral comments, and objected to the approval of the Project.

21. Petitioner has no plain, speedy or adequate remedies in the ordinary course of the law unless this Court grants the requested writ of mandate and requires Respondent County to set aside its adoption of the Ordinance until appropriate CEQA review is undertaken.

IV. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

22. CEQA, Public Resources Code § 21000, *et seq.*, is based upon the principle that "the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern." (Pub. Res. Code § 21000(a).) In CEQA, the Legislature established procedures designed to achieve these goals—principally, the Environmental Impact Report ("EIR"). These procedures provide both for the determination and for full public disclosure of the potential adverse effects on the environment of projects that governmental agencies propose to approve, and require a description of feasible alternatives to such proposed projects and feasible mitigation measures to lessen their environmental harm. (Pub. Res. Code § 21002.)

23. CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment unless and until all feasible mitigation measures are employed to minimize that harm. (Pub. Res. Code §§ 21002, 21002.1(b).)

24. CEQA defines a project as "the whole of an action, which has a potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines § 15378(a).) In this case, the "project" as defined by the County is the passage of the Ordinance. The adoption of a zoning ordinance is a project

under CEQA. Enactment and amendment of zoning ordinances are specifically listed under examples of discretionary projects in CEQA. (Public Resources Code Section 21080(a).) The Staff Report also acknowledges that the Ordinance is a project. (March 12, 2019 Staff Report at pp. 15-16.) Also, Section 4.2 of the County's *Administrative Supplement to the State CEQA Guidelines* lists the enactment and amendment of zoning ordinances as "projects" subject to CEQA. Recent case law also makes it clear that a zoning ordinance is a project subject to CEQA if it may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103.) Because the Ordinance's purpose is to cause physical changes to the environment by changing how private and public land is managed, the adoption of the ordinance is subject to CEQA.

25. The failure either to comply with the substantive requirements of CEQA or to carry out the full CEQA procedures so that complete information as to a project's impacts is developed and publicly disclosed constitutes a prejudicial abuse of discretion that requires invalidation of the public agency action regardless of whether full compliance would have produced a different result. (Pub. Res. Code § 21005.) Agencies may not undertake actions that could potentially have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (CEQA Guidelines § 15004(b)(2).)

26. Section 4.1 of the County's *Administrative Supplement to the State CEQA Guidelines* states that "with all County-initiated projects environmental considerations should be incorporated into project conceptualization, design and planning at the earliest feasible time. All County agencies/departments governed by this Administrative Supplement shall not undertake a project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before the completion of CEQA compliance."

V. FACTS COMMON TO ALL CAUSES OF ACTION

A. PROCEDURAL HISTORY

27. In April 2011, the Board adopted revisions to the Ventura County Initial Study Assessment Guidelines ("Assessment Guidelines") that recognized habitat connectivity and wildlife

corridors as important considerations when evaluating potential impacts of discretionary development. As of 2011, the County evaluated impacts to wildlife movement corridors as part of the CEQA review process of discretionary projects and imposed mitigation measures where appropriate. The County's general plan, land use maps, non-coastal zoning ordinance ("NCZO"), Coastal Zoning Ordinance ("CZO"), subdivision ordinance, and assessment guidelines all (prior to the enactment of the Ordinance) provided opportunities for regulating impacts of discretionary actions to wildlife movement corridors.

28. In 2015, the Board approved a consultant contract for a comprehensive General Plan Update ("GPU") that included consultant work on a "Wildlife Corridors Program." The consultant hired to conduct the Wildlife Corridors Program was the same one hired to conduct the comprehensive GPU analysis. (Ventura County General Plan 2017 Annual Report at pages 15-16.)

29. The County originally intended to—and announced it would—conduct a "complete environmental review" of the Wildlife Corridors Program pursuant to CEQA: "After obtaining comments from all groups, including affected County agencies, property owners, and stakeholders, staff will finalize the draft documents, ***complete environmental review*** and conduct adoption hearings before the Planning Commission and the Board of Supervisors." (*Id*. at p. 16 [emphasis supplied].)

30. Subsequently, the Board "elected to complete this project ahead of the GPU schedule," and voted to sever the Ordinance from the General Plan process. In doing so, the County claimed that its enactment of the Ordinance was exempt from CEQA and abandoned the original intent for the project to undergo CEQA review. Petitioner is informed and believes and on that basis alleges the procedural maneuvering by the County to piecemeal and remove the Wildlife Corridors Program from the General Plan Update process was a direct effort to avoid CEQA review, for a project that plainly has potentially significant environmental impacts.

31. The Planning Commission considered a draft of the Ordinance at a nine-hour public hearing on January 31, 2019 at which hundreds of interested parties and stakeholders expressed their concerns with the Ordinance. The community was especially concerned with ensuring CEQA review, ensuring the accuracy of the mapping process and data, guaranteeing an appeals process to

address remaining inaccuracies in the mapping and any lack of fit of the regulations to a specific property or area, and clarifying and correcting certain problems in the Ordinance relating to fire hazards, security lighting, mapping errors and water features.

32. After close of the public hearing and deliberations, the Planning Commission voted to adopt a resolution recommending that the Board approve the Ordinance, subject to the Planning Division: (1) researching and providing information to the Board concerning specified issues; and (2) making certain revisions to the proposed amendments to the General Plan and NCZO for presentation to the Board. The Planning Commission also proposed eleven revisions to the Ordinance for consideration by the Board.

33. The Board considered the Ordinance and Planning Commission recommendations at a public hearing on March 12, 2019. Again, hundreds of citizens expressed their concerns regarding the Ordinance in written and oral comments.

34. The Board made several significant changes to the draft Ordinance on the day of the public hearing, including 1) increasing the buffer zone (where vegetation modification is severely limited) around water features from 100 feet to 200 feet, and 2) making significant changes to the maps and overlay zones created by the Ordinance, substantially increasing its coverage. The Board's revisions effected changes to the Ordinance that impacted hundreds of thousands of acres of land.

35. However, the County's representation and description of the scale of the Ordinance remained inaccurate and unstable. The areas included in the maps attached to the Staff Report included areas within the Coastal Zone. However, the Ordinance did not include amendments to the County's existing CZO. As explained in the Board of Supervisors' Staff Report and Draft Ordinance, the Ordinance would amend the both the County General Plan and the NCZO. The Staff Report and Draft Ordinance do not include a proposed amendment of the CZO, despite the inclusion of these areas in maps released to the public and the Board of Supervisors. Amending the CZO would require the approval of the California Coastal Commission, and environmental review associated with that approval. Nevertheless, the County included those areas in maps circulated the public, misrepresenting the scope and effect of the Ordinance.

36. Government Code section 65857, provides in respect to the adoption of zoning regulations that, "[t]he legislative body may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation, but the planning commission shall not be required to hold a public hearing thereon." However, here, the Board did not refer the matter back to the Planning Commission after making these major changes, as was required by Government Code section 65857. Instead, the County brought the revised Ordinance back before the Board for a final decision on March 19, 2019. The Board also refused to hear public comment in respect to the major proposed revisions.

37. Moreover, the County failed to provide notice to the public of the revisions to the Ordinance, leading to much substantial confusion. Even the March 19, 2019 staff report itself acknowledged that the last-minute changes to the Ordinance were significant, and required additional procedural steps: "Planning Division staff realized that" the changes made by the Board (adding thousands of acres to certain overlay zones while subtracting thousands of acres from other overlay zones) were so significant, that they would require "reconsideration of the approvals."

38. Nevertheless, the matter was never re-opened for public comment, and the public was not given an opportunity to consider, analyze, and opine on these important changes.

B. SUMMARY OF ORDINANCE

39. The principal regulations of the Ordinance are established through the implementation of overlay zones: the Habitat Connectivity and Wildlife Corridor ("HCWC") Overlay Zone and Critical Wildlife Passage Area ("CWPA") Overlay Zone.

1. Habitat Connectivity and Wildlife Corridor (HCWC) Overlay Zone

40. The asserted purpose of the HCWC Zone is to preserve functional connectivity of regional habitat linkages by minimizing the impacts of barriers, habitat fragmentation, and corridor chokepoints. In total, approximately 163,000 acres are designated as HCWC within the County.

41. The broad HCWC Zone, as maintained in the County GIS, imposes five major conditions upon development and/or use, applicable to new construction, reconstruction, addition,

modification, alteration, relocation, and replacement of structures, or alteration of a physical site, within all properties in the mapped HCWC Zone:

Surface Water Feature Buffers. Development of new structures, new uses of existing structures, or vegetation removal within 200 feet of a surface water feature (lake, pond, creek), as mapped by the National Wetlands Inventory, is prohibited without a discretionary Planned Development Permit from the County, triggering CEQA compliance.

Outdoor Nighttime Lighting. All outdoor lighting installed after the Ordinance effective date, and all existing lighting, within 1 year of the effective date of the Ordinance, must be (a) fully shielded fixtures, (b) shall have maximum installation heights (varies), (c) shall be restricted on the chromaticity scale, and (d) shall have a maximum brightness specifications (measured in lumens) per fixture. Other compliance criteria are required for security lighting, parking area lighting, outdoor recreation area lighting, service station lighting, wireless communication facility lighting, and greenhouse lighting. Non-compliant lighting must be turned off between 10 pm and sunrise.

Wildlife Crossing Structure Buffers. Vegetation removal within 300 feet of a high-functioning wildlife crossing structure or within 100 feet of a moderately-functioning wildlife crossing structure is prohibited without a Planned Development Permit, triggering CEQA compliance.

Invasive Plant Species. Invasive plants not commercially grown for agricultural markets may not be planted in the HCWC Zone.

Wildlife Impermeable Fencing. Wildlife Impermeable Fencing ("WIF") is defined as including one or more of the following design features, (a) greater than 60 inches above ground level, (b) electrified, or (c) solid walls or fencing or wrought iron, plastic mesh, woven wire, razor wire, chain link fencing. WIF on lots zoned as Open Space or Agricultural Exclusive, are restricted, and may only be permitted through either a ministerial or discretionary permitting process.

a. WIF may be permitted via the ministerial permitting process if (a) new fencing will not enclose more than 10 percent of a lot gross area containing no existing WIF, (b)

fencing will not enclose more than 10 percent of a lot gross area containing existing WIF, including new and existing WIF. WIF must have 24-inch unobstructed gaps every 50 feet to not qualify as an enclosure.

b. If not exempt or otherwise available through a ministerial permit process, WIF may be permitted via the discretionary permitting process by applying for a Planned Development Permit, triggering CEQA compliance.

2. Critical Wildlife Passage Area (CWPA) Overlay Zone

42. In addition to the HCWC Zone, the County has proposed three even more restrictive overlay zones in certain areas that it has deemed to be particularly "critical," the CWPAs. Because the three CWPA Zones are subsets of the HCWC Zone, properties located within CWPAs are also subject to 100% of the HCWC regulations.

43. The CWPA zones require that structures be sited in "compact development" patterns within individual lots, ostensibly preserving more space for species movement. The majority of properties in this area are already subject to a zoning limitation that restricts structures to only 5% of a lot in OS and AE zones. The compact development requirement restricts property owners within the CWPA zone from freely developing their properties. Instead, property owners are restricted to choose one location for the development of a primary structure (an undefined term). Any additional structures on the entire property must be located entirely within a 100 foot envelope of the existing primary structure, public road, trail or internal agricultural access road.

44. Three CWPAs (totaling approximately 10,901 acres) are identified on County map exhibits, all of which are contained within the County-designated HCWCs.

45. The CWPA Zone applies to these three areas:

The Oak View CWPA is 1,159 acres and is located on a ridgetop between Lake Casitas (to the west) and the City of Oakview (to the east).

The Simi Hills CWPA is 6,596 acres and is located in the mountainous region between Simi Valley (to the west) and Chatsworth/Canoga Park (to the east).

The Tierra Rejada CWPA is 3,146 acres and is located in the mountainous region between Moorpark (to the west) and Simi Valley (to the east).

46. The foregoing zones were arbitrarily created and chosen by County staff and consultants without first undergoing scientific studies to justify their designation. The boundaries and locations of the zones have no basis in fact or science, but instead, rely upon 8 vague, ambiguous, and arbitrary "Critical Wildlife Passage Area factors." These include, but are not limited to: (1) providing high quality habitat areas where wildlife moves; (2) proximity to urban development (narrow areas near cities or urban development are higher priorities, compared to lower priority rural areas with less development); (3) areas with native vegetation; (4) areas near water bodies; and (5) areas with functioning roadway crossings.

47. There are numerous areas within the County that meet the stated requirements for designation as CWPAs, but were not included; conversely, there are areas designated as CWPAs that do not meet the stated requirements for designations. For example, the Bell Canyon and Box Canyon areas in the Simi Hills CWPA are not near urban development, and yet they were included within the CWPA. Conversely, the Santa Rosa Valley meets all of the listed criteria and is also the narrowest part of the corridor, but was excluded at the last-minute due to political pressure from area residents on the district supervisor, and not due to any scientific basis.

48. County staff and consultants responsible for drafting the Ordinance first designated the three large CWPA zones and only later attempted to generate a *post-hoc* scientific and biological justification for the designations. That scientific justification never materialized, but that did not deter the County from adopting the designations anyway.

49. The most obvious example of the County's arbitrary and capricious decision-making involved the creation of the Tierra Rejada CWPA. No evidence supported Tierra Rejada's inclusion as a CWPA zone, but evidence existed that Tierra Rejada did not contain a primary species the Ordinance was intended to address. Further, serious concern existed regarding the impact of the corridor restrictions on agriculture in the Tierra Rejada Valley. Based on these factors, the Planning Commission recommended removal of Tierra Rejada Valley from the Ordinance. County Planning staff removed the Tierra Rejada CWPA zone from the proposed zoning maps when the Ordinance was presented for Board approval. However, the Board decided—on a whim and without any explanation—to add the Tierra Rejada CWPA back into the Ordinance, and subject to its restrictive

terms.

C. THE COUNTY FAILED TO COMPLY WITH CEQA

50. The County purported to justify its refusal to conduct CEQA review by relying upon three categorical exemptions, while providing essentially no legal or evidentiary support for those exemptions.

51. A memorandum from Environmental Consultants ECorp Consulting Inc. ("ECorp"), which was presented during the public comment period, provides a detailed analysis of the potential environmental impacts of the Ordinance, all of which are discussed in further detail below. Of particular concern, however, is the potentially devastating impact of the contribution of the Ordinance to wildfires, due to proposed restrictions on brush clearance that have not been properly studied or analyzed with adequate environmental review – a tragic oversight, especially in the aftermath of the destructive Thomas, Hill, and Woolsey fires.

1. Common Sense Exemption is Inapplicable

52. The first of the exemptions relied upon by the County is the so-called "common sense exemption" set forth in 14 California Code of Regulations, § 15061(b)(3) ("CEQA Guidelines"). The common sense exemption may only be employed where it is ***certain*** that there is ***no possibility*** a CEQA project may cause significant environmental impacts. Importantly, the decision to proceed under CEQA Guidelines § 15061(b)(3) must be supported by substantial record evidence, and the agency relying upon the exemption bears the burden of proving its applicability. In adopting the common sense exemption, the County failed to acknowledge the significant environmental impacts that will arise from the passage and enforcement of the Ordinance, and thereby failed to comply with the fundamental dictates of CEQA. In short, the County did not and cannot meet its burden of proving that there is ***no possibility*** of significant environmental impacts here.

53. The County's reliance on a "common sense" exemption to CEQA review is legally misinformed, and completely inadequate. The County's Ordinance will have several significant impacts on the environment—none of which have been analyzed—including, but not limited to 1) fire hazards, 2) traffic and circulation impacts, 3) air quality impacts, 4) impacts to agriculture, 5) impacts to mineral resources, 6) greenhouse gas impacts, and 7) community character. The

County entirely ignored its own Initial Study Assessment Guidelines, which set forth thresholds triggering environmental review under CEQA in dozens of different categories.

a. Fire Hazards

54. The entire region has been devastated by recent fires that have affected homes, businesses, communities, habitat, and even the very wildlife that the Ordinance is designed to protect. Yet, the Ordinance does not account for the fact that its provisions can lead to even more severe fires in the future, and tragically, preventing the ability of homeowners to protect their homes and properties. The Ordinance poses significant potential environmental impacts as to fire hazards.

55. Section 18 of the Assessment Guidelines states that projects located in High and Very High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas would have a significant fire hazard impact: "Fire hazard is defined as the potential loss of life and/or property due to fire. It is further defined as any thing or act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in fire prevention or suppression, or that interferes with the operation of the fire department, or the egress of occupants in the event of fire." "Projects located within High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas may have a significant fire hazard impact." (*Id.*)

56. Here, over 119,500 acres of the overlay zones (out of a total of 163,000 acres – or 73%) are within High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas. In light of the extensive, sensitive areas of the County included within the overlay zones, refusing to subject the Ordinance to environmental review is not only irresponsible, it is outright dangerous.

57. The County's Fire Protection District Hazard Abatement program calls for the clearing of brush, flammable vegetation, or combustible growth located within 100 feet of structures or buildings. The Ordinance would change the way vegetation is removed or managed in ways that will result in an increase in fire hazards and severity. Although the Assessment Guidelines focus on brush clearing within 100 feet of structures, required by Ventura County Fire, many landowners in these fire prone areas have taken the initiative to clear more areas, many at the direction of

insurance providers. Limitations on brush clearing in unincorporated areas (except for within 100 feet of structures) will change the potential fire regime in this area, exacerbating fire hazards for both humans and wildlife.

58. An uncontrolled wildfire, exacerbated by limitations in brush clearing, would have significant effects on wildlife and their habitat, even if the 100-foot buffer around structures caused no effects to structures or buildings.

59. The Ordinance also bans native vegetation removal within 200 feet of the edge of supposed surface water features. These surface water features were identified on a map that employed antiquated and unreliable satellite imagery. The County admitted throughout the administrative process that its maps were incorrect, and that they inadvertently included man-made concrete water containment structures. Although some of these errors have been corrected, others remain. This will cause confusion for landowners, who will be unable to determine the extent of these areas on their properties, or who might be burdened by inaccurate maps or the failure of the County to curate the maps according to the conditions existing on the ground.

60. Rules limiting brush clearance will increase the fire danger in communities in the urban interface zones, of which there are many in Ventura County (especially on the edges of the mapped corridors). The fire profile experienced in the Thomas, Hill, and Woolsey fires show a new pattern of erratic winds that drove flames and embers into housing subdivisions in the cities of Ventura, Santa Paula, Thousand Oaks, Westlake, Simi Valley, and Malibu and the unincorporated communities of Bell Canyon and Oak Park. With the exception of the City of Ventura, all of these communities, are directly adjacent to or within the wildlife corridors. These three fires ultimately scorched over 383,000 acres and burned 3,190 structures in three counties. The fires devastated oak trees, orchards, wildlife habitat, stream courses, and landscapes on unincorporated lands across the County. Over 72,500 acres of the 163,000 acres of designated wildlife corridors (44%) burned in the Thomas, Hill and Woolsey Fires.

61. Aside from the impacts to homeowners and business owners, the lack of environmental review can also affect the very wildlife that the Ordinance purports to protect. The recent fires devastated wildlife populations and their habitat, including a collared mountain lion P64

(cnn.com, 12/7/18). Recently, at least one other GPS-tracked mountain lion (P-74) was presumed dead, along with probable losses of bobcats as a result of the Woolsey fire (Sacramento Bee 11/15/18), which burned a wide swath through Santa Monica Mountains areas encompassed by the Ordinance. This example demonstrates that an uncontrolled wildfire, exacerbated by more stringent and widespread limitations on brush clearing, could have significant effects on wildlife habitat and protected species.

62. The Governor's Office of Planning and Research adopted, in 2018, comprehensive updates to the CEQA Guidelines and Appendices. This update included adding new impact categories to the checklist in Appendix G of CEQA. Notably, the most significant change to Appendix G is the addition of Wildfire as an environmental impact category. The new Wildfire section includes four questions pertaining to new development in Very High Fire Hazard Severity Zones focusing on whether a project would exacerbate wildfire risk, impair emergency response or evacuation plans, or risk exposing people or structures to floods and landslides.

63. The Ordinance has the potential to do ***all of these things***. And without the benefit of substantive CEQA analysis, the County, through the adoption of this untested Ordinance, will place lives and structures at greater risk. The impacts of climate change will exacerbate wildfire risks in the coming years, which only makes the abandonment of a CEQA analysis more dangerous.

b. <u>Impacts to Mineral Resources</u>

64. The Ordinance also poses potentially-significant impacts to mineral resources.

65. Section 3a of the Assessment Guidelines addresses the significance thresholds for impacts to mineral resources. The Ordinance poses the potential to interfere with existing mining operations and preclude extraction or access to identified mineral resources, exceeding the County's significance criteria.

66. Moreover, recognizing 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 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, or would 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.

67. Approximately 13,000 acres of the wildlife corridors are within the County's Mineral Resource Protection zone ("MRP"). These areas correspond with the State Mineral Land Classification of Mineral Resource Zone 2 ("MRZ-2"), areas of identified mineral resource significance. The analysis of available mineral resources in the County is set forth in Section 1.4 of the General Plan Resources Appendix.

68. 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.

69. The Ordinance 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). Additionally, the Ordinance 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 Ordinance—*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. These impacts to mining and the extraction of mineral resources will cause significant environmental effects.

70. The Ordinance could result in the loss of availability of a known mineral resource that would be of value to the region. Specifically, the Ordinance could result in the loss of availability of approximately 41% of the County's supply of classified MRZ-2 areas, some of which have been designated as significant mineral resource sectors, because the development and extraction of mineral resources is inherently incompatible with the goal of preserving wildlife habitat.

71. The Ordinance may also 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 Ordinance may 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.

72. The Ordinance also impacts areas located on or immediately adjacent to land zoned Mineral Resources Protection overlay zone; impacts areas adjacent to a principal access road to an existing aggregate Conditional Use Permit; and potentially hampers or precludes extraction of or access to the aggregate resources.

73. During the public comment period a memorandum prepared by ECorp was presented, showing that the Ordinance would overlay multiple mining properties (and their principal access roads), including properties that have conditional use permits. Accordingly, under the County Assessment Guidelines, the Ordinance 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." (Assessment Guidelines, p. 21, § D(1) [Threshold of Significance Criteria].)

74. The Project will also 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." (General Plan Resources Appendix, pp. 29, 42.) Accordingly, because the Project could hamper the extraction of designated MRZ-2 areas, the Project could result in a significant cumulative impact on mineral resources.

75. The Project will also impair the operation and expansion of existing mining properties in the County. For example, the Ordinance'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.

76. 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." (General Plan Goals, Policies, and Programs, pp. 16-17, § 1.4 [Mineral Resources] [emphasis added].) Here, the County recognizes the Ordinance is a discretionary "project" under CEQA. Furthermore, the Project proposes a General Plan amendment and the rezoning of thousands of acres of land that includes approximately 13,987 acres of state-classified "MRZ-2" areas. Accordingly, CEQA review "shall" be required.

77. The Ordinance has the potential to hamper or preclude extraction or access to aggregate resources within or adjacent to land zoned in the MRP overlay zone and would have a significant impact according to the Assessment Guidelines.

78. Indirect impacts to other resources would also occur if access to mineral resources was limited or precluded. For example, if access to local aggregate resources are limited or precluded, construction projects in the County would be forced to go outside of the region, potentially to Kern, Los Angeles, or San Bernardino counties or as far as Arizona or Nevada, to obtain aggregate materials.

79. Indirect impact from trucking in aggregate from outside of the region include transportation impacts from increased vehicle miles traveled, increases in air emissions (including potential health risks from diesel fuel emissions), increased greenhouse gas emissions, and increased noise from truck travel. (See discussion in sections d., e., and f., below).

80. Similar to the effects on agricultural resources (discussed below), the impacts on mineral resources are a black-and-white threshold issue. Because the overlay zones identified in the Ordinance obviously contain within them areas designated as MRZs, the County cannot simply ignore these significance thresholds.

c. <u>Impacts to Agricultural Resources</u>

81. The Ordinance also poses potential impacts to agricultural resources.

82. Section 5b of the Assessment Guidelines addresses the significance thresholds for impacts to agricultural resources. Pursuant to the Assessment Guidelines, any land use or project that is not defined as Agriculture or Agricultural Operations in the zoning ordinances ***must be evaluated for effects on adjacent classified farmland***. Analysis must be based on the distance between new non-agricultural structures or uses and any common lot boundary line adjacent to off-site classified farmland as defined in Section 5.a of the Assessment Guidelines.

83. Any project that is closer than the distances set forth in the Assessment Guidelines is deemed to have a potentially significant environmental effect on agricultural resources, unless justification exists for a waiver or deviation from these distances.

84. Approximately 44,800 acres in the corridors are zoned Agricultural Exclusive. Crop data accessed from the Ventura County Agricultural Commissioner reports show approximately 7,000 acres of planted commercial crops within the County mapped wildlife corridor, of which over 700 acres are in the CWPA zones. Analysis of the 2016 State of California Important Farmland Map shows that there are 13,530 acres classified as Prime, Statewide, Unique and Local farmland and 94,356 acres classified as grazing land. Therefore, the thresholds have been surpassed, and CEQA environmental review was required.

d. <u>Traffic and Circulation Impacts</u>

85. The Ordinance also poses potential impacts to traffic and circulation.

86. In respect to transportation impacts, the Assessment Guidelines call for an assessment as to whether the project would conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision(b). Section 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." (CEQA Guidelines, §15064.3.)

87. The impairment of the extraction of local mineral resources will also cause significant transportation impacts. (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."].)

88. As discussed in the General Plan Resources Appendix, a local shortage of aggregate will 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. This, in turn, will cause increased traffic impacts. 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. The Ordinance will preclude access to and development of mineral resources located within those corridors. Accordingly, the Project will increase the "amount and distance of automobile travel attributable" to the Project, thereby causing a significant environmental impact.

e. Air Quality and Greenhouse Gases

89. The Ordinance also poses potential impacts to air quality and greenhouse gases.

90. According to Section 1 of the Assessment Guidelines, projects should assess potential air quality impacts using the guidelines from the Ventura County Air Pollution Control District ("APCD"). Section 24 of the Assessment Guidelines provides that projects in the County must determine the project's potential for significant impacts related to climate change by:

> 1. Identifying and quantifying the greenhouse gas ("GHG") emissions from the project;
>
> 2. Assessing the significance of the impact on climate change; and,
>
> 3. If the impact is found to be significant, identify alternatives and/or mitigation measures that will reduce the impact below significance.

91. These guidelines establish emissions thresholds for federal and state pollutants of concern that, if exceeded, would result in a significant impact to the environment.

92. Similarly, 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?[1]

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

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?[2]

93. As explained in the General Plan Resources Appendix, the impairment of the extraction of local mineral resources will also cause significant impacts to air quality as a result of the additional vehicle miles travelled due to the lack of availability of mineral resources. Moreover, significant air emissions will result from the increased risk of uncontrolled wildfires, which release tons of reactive organic gases, nitrogen oxides, and particulate matter into the atmosphere.

f. <u>Community Character</u>

94. The Ordinance also poses potential impacts to community character.

95. Community Character is addressed in Section 25 of the Assessment Guidelines. Restrictions to agricultural land uses would result in changes to community character of the rural areas of the County.

96. The Ordinance exceeds the following thresholds in the Assessment Guidelines:

- ❖ A project that is inconsistent with any of the policies or development standards relating to community character of the Ventura County General Plan Goals, Policies and Programs or applicable Area Plan, is regarded as having a potentially significant environmental impact; and/or
- ❖ A project has the potential to have a significant impact on community character, if it either individually or cumulatively when combined with recently approved, current, and reasonably foreseeable probable future projects would introduce physical development that is incompatible

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

with existing land uses, architectural form or style, site design/layout, or density/parcel sizes within the community in which the project site is located.

97. A wildlife corridor is fundamentally incompatible with agricultural and rural community character. Moreover, the CWPA Overlay Zone, which restricts property owners from using the vast majority of their properties (due to the compact development requirements), is obviously "inconsistent with existing land uses [and] site design/layout" in the areas that are effected by the restriction.

g. Land Use and Planning

98. The Ordinance also poses potential impacts to land use and planning.

99. For land use and planning, the CEQA Guidelines provide two thresholds of significance, including whether the project 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.

100. Although the County Assessment 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.[3]

101. 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. 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 is inconsistent with these "Goals, Policies and Programs". Such an inconsistency constitutes a significant impact.

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

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

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."

h. Cumulative Impacts

103. The Ordinance also has the potential to cause significant cumulative impacts.

104. The CEQA Guidelines require an assessment as to whether the project has impacts that are individually limited, but cumulatively considerable.

105. The County is in the process of updating its General Plan, and as a part of that process, the County will complete an EIR. 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 has improperly piecemealed the Project from the ongoing update, which forecloses the consideration of the Project's potentially cumulative impacts.

106. 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 fire hazards, agricultural resources, mineral resources, transportation, air quality, and greenhouse gas emissions. Because of the various potential significant impacts identified above, any one of which is sufficient to trigger CEQA review, the County is unable to establish that "it can be seen with a ***certainty*** that there is ***no possibility*** that the activity in question may have a significant effect on the environment" (emphasis added).

2. The Class 7 and 8 Exemptions Are Inapplicable and the Wildlife Corridor Ordinance Is Subject to Several Exceptions to the Exemptions

107. Implicitly acknowledging that the "common sense" exemption is an entirely inappropriate basis to evade CEQA review here, the County also relied upon two additional exemptions: 1) CEQA Guidelines Section 15307: Actions by Regulatory Agencies for Protection of Natural Resources; and 2) CEQA Guidelines Section 15308: Actions by Regulatory Agencies for Protection of the Environment. However, the Ordinance not qualify for these additional exemptions.

Moreover, there are several exceptions to these exemptions that preclude the application of any CEQA exemption.

108. As an initial matter, because the County is not a "Regulatory Agency," these exemptions are therefore not available to the County. Moreover, projects involving the "protection of habitat" for wildlife are covered by Class 33 Exemptions, not Class 7 or 8, and are expressly limited to projects of 5 acres or less. By contrast, the Ordinance affects 163,000 acres of land. A categorical exemption is plainly not available here.

109. In addition, under CEQA Guidelines Section 15300.2, a lead agency may not rely upon a categorical exemption: (1) "for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances"; (2) "when the cumulative impact of successive projects of the same type in the same place, over time is significant"; or (3) "for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway".

a. <u>Exception to Exemption Based on Unusual Circumstances</u>

110. The standard of review for categorical exemptions and the unusual circumstances exception was articulated in the California Supreme Court's recent decision in *Berkeley Hillside Preservation v. City of Berkeley* (2016) 60 Cal.4th 1086. At the administrative level, a challenger must prove to the agency that 1) there are unusual circumstances, and 2) there is a reasonable possibility of a significant impact because of those circumstances. (*Id.*; *Respect Life South San Francisco v. City of South San Francisco* (2017) 15 Cal.App.5th 449.) Alternatively, a challenger may show that a project will have a significant environmental effect.

111. Here, at least three unusual circumstances preclude any of the categorical exemptions: 1) fires, 2) agricultural resources, and 3) mineral resources.

112. The recent fires that have ravaged the entire region have changed the landscape of thousands of acres that are within the overlay zones, and thousands more that are in grave danger. With climate change promising to exacerbate the conditions that give rise to even more wildfire damage in the coming years, it is not only irresponsible, but dangerous, for the County to have

adopted the Ordinance with a categorical exemptions while utterly ignoring the potential effects of the Ordinance on future fires, and the effects of past fires on the Ordinance.

113. As the California Supreme Court has stated, "when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency ***must*** analyze the potential impact of such hazards on future residents or users." (*Calif. Bldg. Industry Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal.4th 369, 377 (2015) [emphasis supplied].) Here, the County failed even to consider the degree to which the Ordinance may exacerbate recent and more severe fire conditions, in violation of CEQA's dictates.

114. Moreover, the large portions of land affected by the overlay zones that include areas with agricultural and mining resources also present unusual circumstances. Yet, the effects to these resources were not evaluated at all through the CEQA process.

115. Potential impacts to agricultural and mining resources (and the fact that the impacts exceed the thresholds of significance identified in the County's Assessment Guidelines) are addressed above. As alleged above, the impacts upon agriculture, and particularly, mining resources, also have ancillary environmental impacts on transportation, traffic and circulation, air quality, and greenhouse gases.

116. The unusual circumstances present here, and the potential for significant environmental impacts as a result of those circumstances, preclude reliance upon the exemptions claimed by the County.

b. <u>Exception to Exemption Based on Cumulative Impacts</u>

117. When the "cumulative impact of successive projects of the same type in the same place, over time is significant," a categorical exemption may not be used to avoid CEQA review.

118. In addition to the overlay zones at issue in this Ordinance, there are also similar preservation projects in the vicinity that need to be analyzed in conjunction with each other. Moreover, the General Plan Update will invariably include changes to the zoning of nearby areas, and the cumulative impacts of all of these zoning changes should have been analyzed together. The impacts of the past fires have not been analyzed at all in connection with this Ordinance. The future impacts of the Ordinance on wildfires has also been entirely ignored.

119. When this phenomenon is combined with the cumulative effects of other similar preservation zones, open spaces, and green belts in the area, which can prevent certain activities such as brush clearance, the problem is even further exacerbated. Further, the General Plan Update currently in process will provide new land use regulations and would have effects that, when considered in combination with the Ordinance, are cumulatively significant. These cumulative impacts constitute an exception to the exemptions claimed by the County.

c. Exception to Exemption Based on Scenic Highways

120. A categorical exemption may not be used in connection with "a project which may result in damage to scenic resources…within a highway officially designated as a state scenic highway."

121. In this case, Highway 33, which runs through the overlay zones created by the Ordinance, is a designated State scenic highway. The recent fires, and future fire risks that will be exacerbated by the Ordinance, contribute to risks of mudslides and land-stability issues that will result in damage to a State designated scenic highway. In addition, there are wildlife crossing structures contemplated throughout the region that may have effects on Highway 33, none of which have been analyzed under CEQA.

3. The County has Illegally Engaged in Piecemealing in Order to Evade CEQA Review

122. Separating the Ordinance from the General Plan Update to avoid CEQA review constitutes classic—and impermissible—piecemealing, particularly given the County's prior acknowledgment of the requirement for CEQA review when the General Plan encompassed the Ordinance, and CEQA review of other wildlife corridor projects.

123. Moreover, Petitioner is informed and believes and on that basis alleges that the County is also in the process of enacting a similar wildlife corridor ordinance applicable to the County's coastal areas. The County impermissible piecemealed its consideration of the current Ordinance from the coastal version.

D. THE COUNTY FAILED TO COMPLY WITH GOVERNMENT CODE §§ 65855 AND 65857

124. Government Code §65855 provides: "After the hearing, the planning commission shall render its decision in the form of a written recommendation to the legislative body. Such recommendation shall include the reasons for the recommendation, the relationship of the proposed ordinance or amendment to applicable general and specific plans, and shall be transmitted to the legislative body in such and manner as may be specified by the legislative body."

125. Government Code section 65857 states that the Board "may approve, modify or disapprove the recommendation of the planning commission; ***provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation*** …" (emphasis added).

126. At its hearing on March 12, 2019, the Board adopted several components of the Ordinance as proposed by staff, and as recommended by the Planning Commission.

127. However, the Board also directed staff to revise the proposed HCWC overlay zone map to remove all property located within the Los Padres National Forest (hundreds of thousands of acres of land). Within 15 days of the March 12, 2019 hearing, the Board also removed significant acreage from the Santa Rosa Valley and Oak Park neighborhoods, all within Supervisor Linda Parks' District 2, for questionable and not evidence-based reasons, including the likely influencing of the district's Supervisor through political pressure and donations of constituents in that area. Certain Santa Rosa Valley neighborhoods (approximately 278 acres on 59 parcels) were removed entirely from the HCWC overlay zone, including Andalusia Drive, Sumac Lane and Marvella Court, while others, like Rocky High Road with similar attributes in the same area were not.

128. The Board also allowed additional acreage to be added to the Oak View CWPA (specifically, the Ventura Oaks RV Park, offering vacation and low income rental spaces). Also, acreage was added to the Simi Hills CWPA by request of Boeing, which created a significant change in the corridor configuration adding passage around the Bell Canyon residential subdivision (within the Simi Hills CWPA) that was not contemplated by the Planning Commission. The County did

not consider the removal of residential lots in the Bell Canyon subdivision after this change, and did not provide a scientific reason why they were not removed.

129. The Board continued its consideration of the proposed amendment to Article 18 of the Zoning Ordinance until March 19, 2019 at 9:30 a.m., to allow staff sufficient time to make the significant changes to the overlay map requested by the Board.

130. However, the Board did not lawfully adopt the revised HCWC overlay zone map on March 19, because it did not comply with State law requiring review of the proposed modifications to the Ordinance by the County's Planning Commission pursuant to Government Code section 65857.

131. The revision of the HCWC overlay zone map to remove all property located within the Los Padres National Forest was a significant modification to the Ordinance as recommended by the Planning Commission, which was not considered by the Planning Commission during its hearing on the Ordinance on January 31, 2019. In addition, the acreage added to the Oakview CWPA including the Ventura Oaks RV Park, and significant acreage removed from the Santa Rosa Valley in a critical, narrow choke point in the corridor, was not considered by the Planning Commission during its hearing on the Ordinance on January 31, 2019.

132. Failure to refer the issue to the Planning Commission for report and recommendation violates Government Code section 65857.

133. The draft Ordinance considered by the Planning Commission at its January 31 hearing included within the HCWC overlay zone hundreds of thousands of acres located within the Los Padres National Forest, comprising most of the Sierra Madre – Castaic regional wildlife corridor mapped in the Missing Linkages study on which the Ordinance is based. (See Exhibit 3 to January 31, 2019 Planning Commission Staff Report).

134. During the hearing, the Commission considered requests by residents of Lockwood Valley to remove their property from the HCWC overlay zone. The Commission ultimately recommended that the Board adopt the Ordinance with a revised map of the HCWC overlay zone that removes private property in the Lockwood Valley neighborhood, and directed Planning staff to make those revisions to the map. (See Letter from Planning Division Director K. Prillhart to Ventura

County Board of Supervisors, March 12, 2019, pp. 11-12).

135. The Planning Commission did not consider, much less recommend, the far more drastic step of removing the entire National Forest from the application of the Ordinance.

136. The revised map prepared by Planning staff removed only a small portion of the Sierra Madre – Castaic corridor in the vicinity of Lockwood Valley, leaving the great majority of the HCWC overlay zone within the Los Padres National Forest intact. (See Board of Supervisors Agenda, March 12, 2019, Item 31, Exhibits 17, 20.)

137. In revising the HCWC map, Planning staff specifically sought to retain as much of the National Forest as possible, outside of the private landholdings in Lockwood Valley, because these areas are "considered as important components of the regional wildlife linkages and thus should be retained" (Letter from Planning Division Director K. Prillhart to Ventura County Board of Supervisors, March 12, 2019, p. 12).

138. At its March 12, 2019 hearing, the Board directed staff to prepare a revised HCWC overlay map excluding not just property within the Lockwood Valley neighborhood, but all property within the Los Padres National Forest (including private inholdings).

139. The current overlay zone map, as revised in response to the Board's direction, represents a massive modification to the Ordinance as recommended by the Planning Commission.

140. It removes, for the first time, hundreds of thousands of acres within the Los Padres National Forest, including nearly all of the Sierra Madre – Castaic regional wildlife corridor (see Exhibit 2 to January 31, 2019 Planning Commission Staff Report).

141. This modification clearly was not considered by the Planning Commission and was not referred to the Commission for report and recommendation pursuant to Government Code section 65857.

142. Chairman Bennett's explanation of the modification highlights the reasons why further input from the Planning Commission was needed. Chairman Bennett stated during the March 12 hearing that removing all areas within the Los Padres National Forest from the HCWC overlay zone is appropriate because these areas constitute habitat for wildlife but do not constitute part of a corridor through which wildlife moves to reach other habitat, and thus it is not necessary for the

Ordinance to protect them.

143. This statement is mistaken in two important respects. First, wildlife does move through the Sierra Madre – Castaic regional wildlife corridor within the Los Padres National Forest; that is precisely the reason the area was mapped as a regional wildlife corridor in the 2001 Missing Linkages study and the 2008 South Coast Missing Linkages study that the Ordinance and HCWC boundaries are explicitly based upon. (See January 31, 2019 Staff Report, pp. 4-5.) Second, the goals of the Ordinance include protecting wildlife habitat used by wildlife, not just preserving opportunities for movement between areas of such habitat. (Id., p. 3.)

144. For both these reasons, removing the Los Padres National Forest from the HCWC overlay zone represents a major departure from the approach taken in developing the Ordinance, and one that required further study by the Planning Commission.

145. The Planning Commission, in its re-evaluation of that portion of the HCWC overlay, should have also evaluated whether other lands should be removed for similar reasons – an analysis that was never performed.

146. Failure to follow the process required by law undermines the goals of the Ordinance and renders the County's actions violative of Government Code section 65857.

E. <u>THE WILDLIFE CORRIDOR ORDINANCE LACKS ANY FACTUAL BASIS, IS ARBITRARY AND CAPRICIOUS AND IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE</u>

147. Given the lack of CEQA review, the County's failure to support its regulations with any scientific or factual basis is hardly surprising. Instead, the Ordinance is arbitrary and capricious, and not supported by substantial evidence.

148. The Ordinance relies upon studies over 13 years old, with no updates, rendering the resulting regulations questionable at best. The studies utilized outdated technology that misidentified vegetation types critical to the delineation of functioning wildlife corridors. Thus, the studies that form the scientific, biological, and evidentiary basis for the Ordinance are both inaccurate and outdated. This, in and of itself, is fatal to the Ordinance.

149. The Ordinance includes numerous errors that mar the mapping of the overlay zones.

These mapping errors include water features, vegetation classifications, outdated road density calculations, and general overlay zone boundaries. The County's decisions to include a 200-foot buffer around surface water features, rather than the current County-wide 100 foot buffer, and to establish the compact development standards within in the CWPAs, were arbitrary and capricious and lacking in evidentiary support, particularly given the serious and significant errors that suffused the maps County staff employed.

1. *Post-Hoc* Rationalization of Decisions Made with Zero Evidentiary Support

150. The County went about drafting the Ordinance in the exact opposite way that it should have, which resulted in several inaccuracies and problems with how the boundaries of the overlay zones were drawn. In particular, County staff first identified the areas it wanted to protect, with no evidence, then attempted to locate evidence to support the decisions that it had already made. Staff's original designations were adopted into the Ordinance regardless of whether or not the science supported the original decisions.

151. Sadly, this is not merely speculation. This methodology has been confirmed by emails recently uncovered through a Public Records Act request submitted on CoLAB's behalf.

152. One such email from a County consultant working on the Ordinance to a Wildlife Ecologist at the National Park Service provides, in relevant part:

> …I am still working on the Ventura County Wildlife Corridor Project as a consultant (yay!). I am writing the Staff Report for the Planning Commission Hearing that I believe is scheduled for May. In reading the research available online, ***it's obvious the biggest obstacle to movement are the freeways which the County has no control over. But, I'm hopeful that by showing that animal movement is happening in VC that we can convince the Board that small increases in regulations on fencing, lighting, buffers from streams and roadway crossings and the clustering of development in certain critical areas are justified.*** We are still trying to finalize the ordinance—but I am hoping you can help me with some info/data needs for the report. NPS has great info online on the mountain lions moving mostly through LA County. I seemed to remember that in your presentation to the Planning Division, you had animal movement data specific to Ventura County.
>
> Can we discuss using some of your data? Ideally if we could use your spatial data to make our own maps, this would be easiest and best. But if you don't feel comfortable sharing your GPS data, maybe you can share images/figures of maps with animal point observations you/NPS has made? ***I'd like to reference or even show this data as a justification for the regulations in the ordinance.*** I'd like to show the animal movement that is happening in Ventura County—specifically in the Tierra Rejada

> Valley, Bell Canyon, Box Canyon, and the Santa Susana Knolls if possible. Do you know of animal movement data in the Oak View area? These are the areas we have pinpointed as being critical to movement within the County unincorporated areas.
>
> [Figure Omitted.]
>
> …This figure mainly shows movement in LA County and eastern VC. Do you have data that shows north-south movement through the Tierra Rejada Valley for any wildlife?

153. This email is remarkable for three reasons. First, it is a direct admission that County consultants and/or staff (the same person who drafted the staff report) drafted the Ordinance—including the boundaries of the overlay zones—first, and then tried to provide a post-hoc rationalization.

154. Second, it acknowledges that development of individual properties does not constitute a primary barrier to animal movement: "it's obvious the biggest obstacle to movement are the freeways which the County has no control over." The email admits that the measures that are the heart of the current Ordinance do nothing to address the real problem; rather, they are just secondary or tertiary considerations that they hope to "convince" the Board are "justified." This email makes clear that the measures are not "justified" on the basis of any evidence in the record, which confirm the "obvious" fact that the freeways (which the County cannot control) are the real barrier to wildlife movement. Rather, the staff was forced to propose measures that are both more restrictive on property owners, and less effective to promote wildlife movement.

155. Third, it is evident from the map attached to the email that the Tierra Rejada valley does not have any evidence of mountain lions. It is also obvious that the County staff had no evidence regarding Tierra Rejada, and was hoping that this outside consultant from the National Park Service would be able to help provide something staff could use as a justification after the fact. That evidentiary support either did not exist or was never provided. Indeed, at the Planning Commission hearing, the County showed another map that confirms that there was no evidence found of mountain lions crossing through the Tierra Rejada Valley.

156. More generally, the Ordinance's drafters and proponents are the same ones who acknowledge that its regulations relating to fencing, lighting, buffers, and clustered development are ineffective in solving the real problem of animal movement, which would necessarily involve

doing something about the freeways. Importantly, however, freeways and roads are not within the power of the County's regulations.

157. To make matters worse, even the regulations for those factors the County was able to affect were formulated in an evidentiary vacuum and, as drafted, do not achieve their purported primary purpose, and will not assist wildlife movement.

158. Rather than gathering the scientific evidence first, and developing the overlay zones on that basis, the County did the precise opposite. Staff identified the protection zones first, and then only later tried to find scientific evidence to fit those zones retroactively.

159. This is anathema to any scientifically or factually rigorous method, to the planning process, and to sound public policy, and highlights the need and importance of conducting the appropriate CEQA review in this case, when the planning effort can respond to and incorporate environmental concerns.

2. <u>Outdated Maps from Studies Done in 2001, 2005, and 2006</u>

160. There were two linkage connections mapped by South Coast Wildlands ("SCW") that apply to the Ordinance: Sierra Madre-Castaic (primarily in the Los padres national Forest), and Santa Monica-Sierra Madre (primarily in the southern half of the County).

161. The reports for these two connections were finalized in 2005 and 2006, over 13 years ago. SCW anticipated that the resulting linkage plan documents would be used as planning-level tools and would not be regulatory in nature. As such, linkage documents were published with the following caveat: "Results and information in this report are advisory and intended to assist local jurisdictions, agencies, organizations, and property owner in making decisions regarding protection of ecological resources and habitat connectivity in the area." Indeed, the models have pixelated boundaries (not intended to be regulatory boundaries), where the County simply smoothed out and filled in areas (many of which are highly developed with very little conservation value), even though there were viable options for the corridor to exclude these areas. Specifically, the County chose to "fill in" developed areas of Bell Canyon, Box Canyon and Long Canyon/Sycamore Village that were not included in the studies.

162. The boundary lines developed by the SCW report were created through a pre-2005

landscape permeability analysis, a GIS modeling effort, but were never subjected to a thorough field verification effort or even a land use evaluations using up-to-date aerial photography.

163. Furthermore, the original GIS modeling effort was based in part upon data and mapping that was known even at the time to be incomplete and inaccurate. This is troubling because current land use, development, changes to landscape, and other potential impediments over the last 15+ years to the proposed corridor area have not been evaluated or considered in developing the draft ordinance and the maps do not represent the current, real time state of the habitats that are intended to be the focus of the Ordinance.

164. The linkage designs that resulted from the modeling for the two connections were intended to provide a starting point for conservation implementation and evaluation.

165. The modeling efforts to construct the linkages were flawed and outdated. While many of these analytical techniques may have been appropriate at the time they were conducted, almost 15 years have passed since the corridor models were developed, with no updates to the models themselves. Variables in the permeability analysis such as road density and land cover/use have changed since 2005 and 2006. New data sources would affect the preferences and distribution of species and thus the location and utility of these corridors. For example, the road density data used as an input to the permeability model is clearly outdated, as the corridor models do not account for the roads that have been built since that time or existing roads that have been widened or paved since the model was developed back in the early 2000s.

166. Also, the studies are premised on the presumption that agricultural uses are at odds with habitat ecologies the Ordinance purports to protect. Indeed, Table 2 of the Report ranks "Agriculture" as among the highest non-permeable parameters for many of the species studied, ranking "Agriculture" as a 9, almost as impermeable to species as "Urban" zones ranked as a 10. In many places the Report recommends that existing agricultural lands be restored to native habitat. It is inexplicable that thousands of acres of rich agricultural lands are included in the HCWC when it is clear that the authors of the study did not believe these lands provide quality habitat for wildlife passage.

167. Because no environmental review of the Ordinance has taken place, there has been

no recent review of the methodology or adequacy of the scientific assumptions that the County has made in drafting its Ordinance.

168. Put differently, though the Ordinance is meant to protect wildlife corridors and movement, there is no evidence that the County's proposal will do so. Indeed, ECorp's scientific analysis presented during the public comment period shows several problems with the County's methodology and analysis, demonstrating the need for a proper scientific analysis by the County (which CEQA also necessitates).

169. To identify surface water feature buffers within the overlay maps, the County relied exclusively on the National Wetlands Inventory maps. These maps have many known data issues – even to the extent of misidentifying swimming pools (Thatcher School), horse riding arenas (Soule Road, Ojai), mulch piles (Soule Road, Ojai) and concrete foundations (throughout map) as "surface waters," even though the definition of surface waters under the Ordinance is NOT to include man-made water features.

170. While the Ordinance does outline a process for appealing the County's mislabeling and misidentification of features, the process is both costly and time consuming, and is to be fully borne by the land owner (except for the first hour of staff time). These costs include the a biological assessment report, all staff time beyond the first hour, and any other studies or data that the Planning Staff may demand (hydrology studies, historical land use studies, geological surveys, additional biological surveys, etc.). These costs are substantial and can quickly add up into the tens of thousands of dollars.

171. The County, rather than subjecting the Ordinance to CEQA review as legally required, opted to use outdated and inaccurate studies as the basis for its decisions, and on top of that, made additional regulatory decisions (such as the inclusion of certain areas within the CWPAs) with NO evidentiary support whatsoever, hoping to find evidence after the fact to "justify" the regulatory proposals of the Ordinance.

3. <u>The Ordinance Does Not and Cannot Achieve Its Stated Purpose</u>

172. The Ordinance is fatally infected by the lack of currency of the data on which it relies, the *post-hoc* search for data to support a pre-ordained conclusion, and the arbitrary and haphazard

application of the proposed regulations.

173. Among other actions, the Planning Commission's removal of areas such as Tierra Rejada from the Ordinance was, in fact, one of the only data-driven actions taken throughout this entire process: available information indicated, for example that no mountain lions were present in that area, and policies intended to promote the movement of that species therefore did not apply. This is partly due to the Tierra Rejada Valley being a rich agricultural area unsuitable for significant wildlife movement. Yet the Board of Supervisors, on the whim of its Chair, opted to include Tierra Rejada for no discernable reason.

174. Even in the areas that arguably might benefit from regulation to promote wildlife movement, the staff and consultants drafting the Ordinance admit, as discussed above, the measures actually developed were not data-driven, and ultimately are ineffective in any case absent regulations regarding highways and freeways, which are outside of the County's regulatory jurisdiction.

175. Further, as the maps provided to the public and County decisionmakers include the Coastal Zone, the County's assessment of the effect of the Ordinance appears to assume regulations within the Coastal Zone that largely correspond to those in non-coastal areas, to facilitate movement from the coast to the inland mountain ranges. Thus, the failure to include the Coastal Zone within the Ordinance not only misrepresents its scope, but also deprives any assessment of the overall effect of the Ordinance of substantial evidentiary support.

176. As such, not only does the Ordinance not achieve its stated objectives, but unless a thorough CEQA review is undertaken (which necessarily would involve an analysis of all aspects of the wildlife corridors, inside and outside of the Coastal Zone), it will be unable to achieve its stated purpose.

F. THE COUNTY VIOLATED COUNTY RESIDENTS' DUE PROCESS RIGHTS

177. The California Constitution provides that, "a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws." (Cal. Const. Art. 1, § 7(a).)

178. The United States Constitution also provides that a state cannot "deprive any person of life, liberty, or property, without due process of law." (United States Constitution, amend. XIV, § 1.)

179. The County violated has violated due process for four reasons: 1) non-responsiveness and delay in connection with a Public Records Act request that was submitted on behalf of CoLAB, depriving the public of proper notice of the true information and reasoning in connection with the Ordinance; 2) failure to re-open the matter for public comment after the Board made major changes to the Ordinance, and related failure to send the matter back to the Planning Commission when changes were made at Board level; 3) failure to provide notice to important stakeholders, and 4) failure to provide for a proper appeal process as it pertains to errors in mapping made by the County in the Ordinance, and shifting the burden of proper mapping to property owners.

1. <u>Delay and Non-Responsiveness to Public Records Act Request</u>

180. A Public Records Act request was submitted on CoLAB's behalf in September 2018 to obtain documents that would better explain the process by which the County arrived at the seemingly unsupported regulations contained in the Ordinance.

181. ***The County delayed its response by more than 5 months***, providing a very sparse and incomplete response on February 15, 2019—***after*** the Planning Commission hearing on the Ordinance.

182. Because the responsive documents were provided ***after*** the Planning Commission hearing and less than one month before the Board hearing, CoLAB (and the rest of the public) did not have time to review and analyze the documents it received, and was totally unable to provide informed comments at the Planning Commission phase.

183. After the documents were finally produced (just weeks before the Board hearing, and still incomplete), CoLAB requested a continuance of the Board hearing so that it could review the produced documents, which contain critical evidence relating to the lack of scientific support for the overlay zones and proposed regulations in the Ordinance (a prime example being the email from County consultants/staff discussed above admitting that the main barriers to wildlife movements are roads and highways, and that the measures in the Ordinance will do nothing to help that, and

admitting that decisions were made in CWPA zones without ***any*** supporting evidence).

184. The County's failure to continue the hearing deprived CoLAB, and the broader public, of the ability to review the documents provided and provide meaningful comment.

2. Significant Changes to Ordinance Made at Board Level Without Public Comment or Planning Commission Review

185. The Board made significant changes to the Ordinance, after the close of public comment, which the public never got an opportunity to opine on.

186. Specifically, the Board directed staff to revise the proposed HCWC Zone map to remove all property located within the Los Padres National Forest (hundreds of thousands of acres of land). In addition they revised the Oak View CWPA map and removed significant lands from the Santa Rosa Valley choke point and the high-density Oak Park subdivision.

187. This should have been referred to the Planning Commission pursuant to Government Code section 65857, as discussed above. This would have allowed the public an opportunity to comment, and more importantly, give the public a chance to see if there are other territories included within those overlay zones with similar characteristics, that could have been excluded as well.

188. Despite this not happening, the Board had another opportunity to at least open this matter to the public because the relevant changes to the overlay zone maps would not be effectuated until the March 19, 2019 hearing (1 week after the March 12 hearing when the decision was made).

189. The Board, instead, made these major changes to the Ordinance without ***ever*** opening the matter for public comment. Thus, the public was denied of notice and an opportunity to be heard, despite the County having ample opportunity to do so.

3. Failure to Provide Notice to Important Stakeholders

190. Several comment letters were submitted to the County expressing the fact that property owners were not given notice that their own properties would be included within one or more of the overlay zones. In this regard, those property owners were denied notice and an opportunity to be heard.

4. Appeals Process for County's Own Mapping Errors is Lacking

191. The Planning Commission recognized, due to overwhelming evidence presented to

it in public comment, that there are flaws with the ways that the Ordinance identifies many water features, vegetation, and overlay zone boundaries.

192. Yet, the Ordinance does not provide an administrative appeal process that feasibly allows a property owner to address errors or circumstances specific to that property without significant expense.

193. As to surface water features, for example, property owners seeking reconsideration of those designations are responsible for all costs (including hiring a biologist, planning consultant, and a surveyor, among other things), except for the "first hour" of staff time.

194. Also, the decision is made by the Planning Director and there is no indication regarding whether administrative appeal is available.

195. In addition to shifting the burden and cost to the property owner to have improperly designated features to be properly designated, the lack of administrative appeals deprives property owners of due process. It also fails to provide a route for recurring policy or regulatory problems to achieve adequate exposure to elected decisionmakers.

196. The burden of bearing the cost to hire a biologist to convince the County that its designations are wrong (or that they need modification) will be prohibitive for many property owners, and at the public comment stage, recommended that this cost-burden should be replaced by a low fixed fee (which was rejected in the final version of the Ordinance). This cost-shifting is all the more inappropriate and alarming given the number and extent of errors in mapping to which ***staff have admitted*** throughout the process of adoption of the Ordinance.

197. In addition, the Surface Water Feature Buffer map in the GIS layer was not adopted as an exhibit to the Ordinance. Instead, the definition of Surface Water Feature is as follows:

> Surface Water Feature - An area containing a stream (including intermittent and ephemeral), creek, river, wetland, seep, or pond, the riparian habitat area associated with the feature, as well as a development buffer area that is 200 feet as measured from the farthest extent of the surface water feature and its associated riparian area. The data used to designate the areas are obtained from the U.S. Fish and Wildlife Service National Wetlands Inventory Dataset. ***Areas designated as surface water features are shown on the "Surface Water Feature Buffer'' map within the Planning GIS Wildlife Corridor layer of the County of Ventura - County View Geographic Information System (GIS), as may be amended by the Planning Director.*** The term surface water feature does not include ponds, lakes, marshes, wetlands or agricultural water impoundments or associated riparian habitat areas that

are legally established and human-made. [Emphasis supplied]

198. The Planning Director thus has unbridled discretion to make changes to the GIS mapping, with no notice to effected property owners, violating due process rights of owners, who are not given notice or an opportunity to be heard regarding any changes.

199. Had the County simply conducted the legally required CEQA analysis, these mapping errors would have been avoided in the first place (and finalized the appropriate GIS maps, which could have and should have been added as an exhibit to the Ordinance). To add insult to injury, the County has now made its own resulting mapping errors the problem of property owners within the County, in clear violation of their due process rights.

G. THE ORDINANCE VIOLATES EQUAL PROTECTION

200. The California Constitution provides that, "a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws." Cal. Const. Art. 1, § 7(a).

201. The U.S. Constitution also prohibits the denial of equal protection through the fourteenth amendment. United States Constitution, amend. XIV, § 1, and 42 USC § 1983.

202. The County must have a rational basis for treating those property owners whose properties are located within the overlay zones differently than property owners whose properties are located outside of the overlay zones.

203. The rational basis test requires that the classification be a demonstrably effective means for furthering some actual valid government interest. (*E.g., City of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 440.)

204. The County, rather than conducting a CEQA analysis to properly analyze where, how big, and how intense the proposed overlay zones should be, decided to skip any scientific review, and proceed to drafting the proposed Ordinance, based on a more than a decade-old study, that was never meant to serve as the foundation for an Ordinance of this magnitude.

205. The County's methodology was flawed, the overlay zones were improperly mapped, and that the Ordinance improperly, and without a rational basis, includes properties that have not been shown to assist in attaining the goals of the Ordinance.

206. Specifically, the County identified 4 objectives for designating overlay zones:

1. Minimizing habitat fragmentation within designated habitat connectivity corridors.
2. Maintaining corridor widths or enhancing corridor "chokepoints" (defined as "narrow, impacted, or otherwise tenuous wildlife movement corridor or linkage") to facilitate species movement between natural areas.
3. Minimizing direct physical barriers to wildlife movement (e.g. fences, roads).
4. Minimizing indirect barriers to wildlife movement (e.g., lighting, human presence, noise, vegetation degradation, domestic animals (dogs, cats)).

207. Yet, the County did no parcel-by-parcel analysis, and no study (beyond the reviewing the outdated SCW reports) to determine which parcels within the County meet these criteria, and which do not.

208. As a result, there are many properties that meet these criteria that are not in any overlay zone, and there are properties that do not meet these criteria that have been improperly included within the overlay zones.

209. There is no rational basis for treating the overlay zones differently than other similarly situated unincorporated areas of the County, because the appropriate analyses were never undertaken at all. By definition, this means that the Ordinance lacks a rational basis.

H. THE ORDINANCE EFFECTUATES A REGULATORY TAKING

210. Under *Penn Central Transportation Company v. City of New York* (1978) 438 US 104, even if a governmental regulation does not cause a physical invasion or deprive a landowner of all economically beneficial use, it may nonetheless go too far in placing what should be a public burden on private shoulders.

211. *Penn Central* established an *ad-hoc*, fact-based inquiry that addresses three factors to be used in determining whether this type of regulatory taking has occurred: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the nature of the governmental action. (*Id.* at 124.)

212. Most disturbingly, the County will require property owners in three areas designated as Critical Wildlife Passage Areas (Tierra Rejada Valley, Oak View and Simi Hills) to choose one

spot on their properties to build structures, and any additional development must be located within a 100 foot envelope of that primary structure, rendering vast swaths of property completely unusable land. The only limited exception to this would be if an applicant applied for a discretionary permit requiring an expensive and time-consuming environmental analysis.

213. The Critical Wildlife Passage Areas are subject to extreme regulations controlling brush clearance as well as rebuilding after wildfires.

214. As to the first factor, the economic impact of these regulations will vary from property to property, but with a regulation as extreme as the deprivation of the use of the majority of one's land for structures and certain designated uses, the impacts are severe. This is more akin to a "conservation easement" (which would obviously require compensation) than to an overlay zone.

215. As to the second factor, the investment-backed expectations of the owners in the CWPA zones were, obviously, that they would be able to use the entirety of their properties for legal purposes. The forced clustering of structures within the property, along with the fencing prohibitions and lighting regulations, deprives property owners of the right to enjoy their properties, as was the expectation when the properties were purchased.

216. As to the third factor, the government action in this case specifically calls out the overlay zones for these overreaching regulations. There is an unexplained, irrational, arbitrary and capricious designation of these overlay zones without any scientific backing or CEQA review. County cannot point to a scientific analysis that was conducted in recent years (the basis for the study was made in 2006), that took into effect the recent fires, and that was based on scientific principles. As such, the government action has no scientific or legal foundation.

217. The three factors of the *Penn Central* test are therefore easily satisfied, and the Ordinance effectuates a regulatory taking upon those in the overlay zones.

I. THE ORDINANCE IS INCONSISTENT WITH THE GENERAL PLAN

218. Section 65860 of the Government Code requires consistency between zoning ordinances and a general plan. "Consisten[cy] with the general plan" can be found only if a local agency has adopted a General Plan and the various land uses the ordinance authorizes are compatible with the objectives, policies, general land uses, and programs specified in the plan.

219. Here, the Ordinance would result in fundamental conflicts with at least three of the fundamental policy frameworks of the General Plan: mineral resources, fire hazards, and agriculture, precluding a finding of consistency between the Ordinance and the General Plan.

1. Mineral Resources

220. The Ordinance would reduce access to mineral resources, conflicting with the General Plan.

221. The County's classified and designated mineral resources are protected by goals, policies and programs for mineral resources established in section 1.4 of the County's General Plan. These resources are depicted in the County's Resource Protection Map and Mineral Resources Protection Overlay Zones. *Id.*, Fig. 1b.

222. As detailed in a technical analysis submitted into the record by CalCIMA, the Ordinance would include vast acreages of mineral resources that have been both classified and designated by the state, including approximately 13,000 acres of state-classified mineral resource zone (MRZ-2) areas—approximately 41 percent of the County's supply—included within the area of the Ordinance. The area affected by the Ordinance will also include portions of these MRZ-2 areas that have been designated as regionally significant mineral resource sectors, as well as multiple active mining properties.

223. The inclusion of these classified and designated mineral resources and mining properties in the Ordinances has the potential to significantly impair and unreasonably delay the extraction of these resources, in addition to the operation and expansion of mining properties, thereby increasing the overall costs of developing mineral resources. Furthermore, the restrictions on the removal of vegetation could limit development of these important mineral resources, which requires surface disturbance, including the removal of native vegetation. Additionally, the extensive restrictions on "surface water features" could impair both river and in-stream mining activities, as well as mineral resources that include such features.

224. Also, the Ordinance 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.

225. The plain language of the Ordinance which does not exempt mining, and in fact threatens it, conflicts with the General Plan.

2. Fire Hazards

226. Section 2.13 of the Hazards Appendix to the General Plan addresses fire hazards. As stated therein, "Ventura County is subject to a wide range of fire hazards throughout the year." § 2.13.1. Figure 2.13.1 demonstrates the history of 82 fires that each have consumed over-1,000 acres in the County since 1953, not including the more recent Thomas, Rye, and Creek Fires that collectively burned 383,000 acres and 3,190 structures in three Counties, including Ventura. Figures 2.13.2-a and -b of that section demonstrate the large proportion of the County that has historically burned. Petitioner is informed and believes, and on that basis alleges, over 135,000 acres of the corridors are located within designated fire hazard areas.

227. Consistent with this established history of severe fires, the General Plan contains a policy framework related to fire protection. § 2.13.1–2.13.3. Also, the County's Fire Protection District Hazard Abatement program calls for the clearing of brush, flammable vegetation, or combustible growth located within 100 feet of structures or buildings. However, among other provisions of the Ordinance, the new and strict limits on vegetation modification conflict with this fundamental health- and safety-related policy framework.

228. The primary goals are minimizing the risk of loss of life, injury, and physical and economic damage from fires; and ensuring development in high-fire hazard areas "is designed and constructed in a manner that minimizes the risk from fire hazards." *Id.*, § 2.13.1. However, the Ordinance enacts severe restrictions on vegetation removal or modification that run contrary to this central goal.

229. For example, section 8109.4.8.3.2 of the Ordinance purports to exempt vegetation modification that is imposed as a condition of approval or federal or State law; however, the provision otherwise limits vegetation modification to a cumulative 10 percent of the lot area located

within a water feature. As defined in the Ordinance, a water feature comprises the body of water itself, such as a stream, as well as a 200-foot buffer area. § 8102-0. But the County—by its own admission—identified surface water features for the purposes of the Ordinance using antiquated and unreliable satellite imagery that Petitioner is informed and believes is substantially over-inclusive.

230. Further, technical information upon which the County purported to rely demonstrates that areas designated by the Ordinance as wildlife corridors, such as Tierra Rejada, do not even contain the kinds of animals the Ordinance was intended to protect, such as California mountain lions. These mapping inaccuracies vastly and erroneously increase the areas within which these limitations apply, prohibiting systematic fuel modification in areas where the General Plan technical data and policy indicate that modification is historically needed.

231. The Ordinance would permit continued growth of brush and limit the ability of property owners to mitigate its effects and prevent or slow the spread of the kinds of severe fires to which the area is generally prone. These limitations substantially increase the fire risk to structures, people and property, and also substantially increase the corresponding risk of economic harm, in a manner that directly conflicts with the General Plan policy framework regarding fire hazards.

3. Agriculture

232. Sections 1.6.1 to 1.6.3 of the General Plan provide goals, policies and programs related to agricultural uses. Chief among the goals is preservation and protection of agricultural lands as non-renewal resources, as well as encouraging the continuation and development of facilities and programs that support agricultural production, and improving the economic viability of agriculture in the County.

233. The goals articulated in section 1.6.1 are threefold:

1. Preserve and protect agricultural lands as a nonrenewable resource to assure the continued availability of such lands for the production of food, fiber and ornamentals.

2. Encourage the continuation and development of facilities and programs that support agricultural production and enhance the marketing of County grown agricultural products.

3. Improve the economic viability of agriculture through policies that support

agriculture as an integral business to the County."

234. Here, livestock operations are not exempt from requirements that place livestock at increased risk of attack and loss, particularly if the Ordinance achieves its goal of facilitating the movement of predatory species such as mountain lions. Livestock raising and sales generates substantial economic activity in the County and in the State: according to the State Department of Conservation, the sale of cattle and calves ranks third in dollar amounts among agricultural commodities in the State.

235. The majority of fencing used to enclose agricultural crops and livestock qualifies as wildlife impermeable fencing.

236. The Ordinance would substantially limit the ability of those raising and/or grazing livestock from enclosing their properties to protect them from escape or predation. The Ordinance limits the total area subject to enclosure to ten percent of properties in which no such fencing exists *ex ante*, or where fencing does exist, to no more than ten percent additional enclosed area. Outside of those limits, a discretionary Planned Development Permit would be required. Under the Ordinance, the County would no longer have a ministerial duty to approve those improvements and secure livestock and associated material from animals or from the general public.

237. This shift is all the more problematic given the specific program in the General Plan to protect specific features of agricultural operations and incorporate those protections into the General Plan. As stated in Section 1.6.3, Program 2 requires the County to:

> develop and implement standards governing development adjacent to agricultural uses. The standards should ***address fencing and spray buffers between agricultural areas and residences***, off-site flood control measures, siltation control from grading operations and the development of a standard County-imposed entitlement condition which notifies new property owners of County and State laws protecting agricultural operations. ***After the development of standards, they could be added as policies into the General Plan to guide future land use decisions***. [Emphasis supplied.]

238. The Ordinance specifically undercuts this fundamental policy framework of the General Plan—which was adopted specifically to protect agricultural uses and prevent the effects of their loss—and is therefore inconsistent, in violation of Government Code section 65008.

J. THE COUNTY FAILED TO COMPLY WITH THE SURFACE MINING AND RECLAMATION ACT

239. The County was required by law to comply with the Surface Mining and Reclamation Act because of the Project's inclusion of more than 13,000 acres of valuable mineral resources that (i) have been classified by the California Division of Mines and Geology (renamed the California Geological Survey in 2006), and (ii) subsequently designated as "regionally significant" by the State Mining and Geology Board .

240. In January 2019, the State Geologist sent a letter reminding the County of its obligations under SMARA, including the required preparation and transmittal of a Statement of Reasons prior to any final action on the Project.

241. The County responded, asserting that it was not obligated to comply with SMARA. The State Geologist then sent a second letter to the County, restating that SMARA compliance was in fact required.

242. However, the County rejected its obligations and nevertheless approved the Project in violation sections 2762(d)(1) and 2763(a) of SMARA.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate Under Public Resources Code § 21168.5 and California Code of Civil Procedure § 1085 and/or 1094.5 - Violation of CEQA)

243. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

244. In connection with its issuance of the Notice of Exemption claiming the common sense exemption under CEQA Guidelines § 15061(b)(3) and conservation exemptions under CEQA Guidelines §§ 15307 and 15308, Respondent County abused its discretion, did not proceed in the manner required by law, failed to make required findings, and failed to act on the basis of substantial evidence.

245. The County failed to conduct an adequate environmental review process for the Project. Respondent's failures constitute violations of the California Environmental Quality Act.

246. Significant or potentially-significant impacts arising from the Project were not

adequately identified, analyzed or mitigated. Respondent failed to appropriately analyze the Project's potential environmental impacts.

247. Respondent failed to adequately respond to numerous public comments relating to environmental concerns including fire hazards, mineral resources, agricultural resources, traffic and circulation, greenhouse gases, air quality, cumulative impacts, and community character.

248. The so-called "common sense exemption" under CEQA, set forth in CEQA Guidelines § 15061(b)(3), may only be employed where it is ***certain*** that there is ***no possibility*** the project may cause significant environmental impacts. The decision to proceed under CEQA Guidelines § 15061(b)(3) must be supported by substantial record evidence. The agency relying upon the exemption bears the burden of proving its applicability. *See Davidon Homes v. City of San Jose*, 54 Cal. App. 4th 106 (1997).

249. The County is unable to meet its burden that it is a ***certainty*** that there is ***no possibility*** of significant environmental impacts.

250. Furthermore, the exemptions are subject to multiple exceptions due to unusual circumstances, cumulative impacts, and scenic highways.

251. Moreover, the County has violated CEQA because it has engaged in illegal project-splitting (piecemealing), because it separated the Ordinance from the General Plan Update in order to evade CEQA review.

252. Each of the failings above is exacerbated by the misrepresentation of the scope of the Ordinance—specifically, the lack of clarity regarding the relationship of the Ordinance to the Coastal Zone and its resulting effectiveness—and the resulting failure to evaluate "the whole of the action," as required by CEQA Guidelines section 15378(a).

253. Petitioner as well as members of the general public will suffer irreparable harm if the relief requested herein is not granted and the Ordinance is allowed to go into effect in the absence of a full and adequate CEQA analysis and absent compliance with all other applicable provisions of CEQA.

SECOND CAUSE OF ACTION

(Petition for Writ of Mandate Under California Code of Civil Procedure § 1085 and/or 1094.5 - Violation of Government Code §§ 65855 and 65857)

254. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

255. Government Code §65855 provides: "After the hearing, the planning commission shall render its decision in the form of a written recommendation to the legislative body. Such recommendation shall include the reasons for the recommendation, the relationship of the proposed ordinance or amendment to applicable general and specific plans, and shall be transmitted to the legislative body in such and manner as may be specified by the legislative body."

256. Government Code section 65857 states that the Board "may approve, modify or disapprove the recommendation of the planning commission; provided that any modification of the proposed ordinance or amendment by the legislative body not previously considered by the planning commission during its hearing, shall first be referred to the planning commission for report and recommendation … ."

257. The Board made significant changes to the Ordinance that were not considered by the Planning Commission, and proceeded directly to approval of the Ordinance, in direct violation of Government Code §65855 and 65857.

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

THIRD CAUSE OF ACTION

(Declaratory Relief Under Code of Civil Procedure § 1060 – Violation of Due Process, Equal Protection, Vested Property Rights, and Regulatory Taking, under the California and United States Constitutions)

259. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

260. Petitioner has exhausted all applicable nonjudicial remedies.

261. An actual and substantial controversy exists between Petitioner and the County over the lawfulness of the County's Ordinance.

262. For the reasons previously stated, Petitioner asserts that the County's actions, including adopting the Wildlife Corridor Ordinance: 1) violate CEQA, 2) violate Government Code §65855 and §65857, 3) violate County residents' right to due process under the California and U.S. Constitutions, 4) violate equal protection under the California and U.S. Constitutions, 5) violate vested property rights under the California and U.S. Constitutions, and 6) constitute a regulatory taking under *Penn Central*.

263. On information and belief, the County asserts that its actions, and the Wildlife Corridor Ordinance, do not violate any of the above.

264. Therefore, declaratory relief is appropriate.

FOURTH CAUSE OF ACTION

(Petition for Writ of Mandate Under California Code of Civil Procedure § 1085 – Ordinance is Arbitrary and Capricious)

265. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

266. Given the lack of CEQA review, the County failed to support its regulations with any scientific or factual basis. Instead, the Ordinance is arbitrary and capricious, and not supported by substantial evidence.

267. The evidence for the Ordinance comprises studies over 13 years old, with no updates, rendering the resulting regulations questionable at best. Thus, the studies that form the scientific, biological, and evidentiary basis for the Ordinance are both inaccurate and outdated.

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

FIFTH CAUSE OF ACTION

(Civil Rights Violations – 42 U.S.C. 1983)

269. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

270. For the reasons previously stated, Petitioner asserts that the County's actions, including adopting the Wildlife Corridor Ordinance: 1) violate CEQA, 2) violate Government Code §65855 and §65857, 3) violate County residents' right to due process under the California and U.S. Constitutions, 4) violate equal protection under the California and U.S. Constitutions, 5) violate vested property rights under the California and U.S. Constitutions, and 6) constitute a regulatory taking under *Penn Central*.

271. By virtue of the foregoing, the County, acting under the color of the laws of the State of California, and the laws, regulations and customs of the County, deprived Petitioner of the rights and privileges secured by the United States Constitution and laws.

272. Petitioner is entitled to attorneys' fees pursuant to 42 USC § 1988.

SIXTH CAUSE OF ACTION

(Petition for Writ of Mandate Under California Code of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief Under Code of Civil Procedure § 1060 -- Inconsistency with General Plan - Violation of Government Code § 65008)

273. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

274. Section 65860 of the Government Code requires consistency between zoning ordinances and a general plan. "Consisten[cy] with the general plan" can be found only if a local agency has adopted and General Plan and the various land uses the ordinance authorizes are compatible with the objectives, policies, general land uses, and programs specified in the plan.

275. Here, the Ordinance would result in fundamental conflicts with at least three of the fundamental policy frameworks of the General Plan: mineral resources, hazards, and agriculture, precluding a finding of consistency between the Ordinance and the General Plan.

276. Petitioner as well as members of the general public will suffer irreparable harm if the

relief requested herein is not granted and the Ordinance is allowed to go into effect in the absence of a full and adequate CEQA analysis and absent compliance with the Government Code requirements.

SEVENTH CAUSE OF ACTION

(Petition for Writ of Mandate Under California Code of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief Under Code of Civil Procedure § 1060 -- Violation of the Williamson Act – Government Code §§ 51200–51297.4)

277. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

278. The California Land Conservation Act of 1965 (the "Williamson Act"; Govt. Code § 51200–51297.4) provides, among other things, that cities and counties may enter into self-renewing contracts with private landowners that restrict parcels of land to agricultural or related open space use. Govt. Code §§ 51201, 51240, 51242(a), 51244. In exchange for limiting the use of the contracted property, landowners receive reductions in property tax assessments, because the assessments are based on farming production or open space use, instead of full market value. Qualifying uses include not only crop production, but also livestock raising, and can also include mineral extraction. Govt. Code § 51201(a)(3), 51238.2. Measures that would have the effect of reducing such production or compromising the long-term productivity, or would impair existing or reasonably foreseeable agricultural uses, violate the law. *See* Govt. Code § 51238.1(a)(1)–(3). Further, the act provides landowners a right of action against a breaching City or County. Govt. Code § 51251.

279. Here, the Ordinance purports to exempt certain agricultural activities from the restrictions otherwise imposed, including vegetation modification. *See*, *e.g.*, Ordinance § 8109-4.8.3.2.f and g, 8109-4.8.3.7.b. However, livestock operations are not exempt from requirements that place their livestock at increased risk of attack and loss, particularly if the Ordinance achieves its goal of facilitating the movement of predatory species such as mountain lions, and that movement results in closer proximity to agricultural operations, including livestock raising. Livestock raising and sales generates substantial economic activity in the County and in the State.

280. The Ordinance defines "wildlife impermeable fencing" as any fence higher than 60 inches, is electrified in any fashion, or is constructed of certain materials that prevent free passage of wildlife "with little or no interference." Ordinance § 8102-0. Petitioner is informed and believes the majority of fencing used to enclose agricultural crops and livestock qualifies as wildlife impermeable fencing according to the terms of the Ordinance.

281. The Ordinance would substantially limit the ability of those raising and/or grazing livestock from enclosing their properties to protect them from escape or predation, particularly in the HCWC zone. The Ordinance limits the total area subject to enclosure to ten percent of properties in which no such fencing exists *ex ante*, or where fencing does exist, to no more than ten percent additional enclosed area. *Id*., subd. b. Outside of those limits, a discretionary Planned Development Permit would be required. *Id*., subd. c. Under the Ordinance, the County would no longer have a ministerial duty to approve that fencing, and denials of such requests would result in the inability of landowners to accommodate foreseeable increases in livestock production, in addition to the creation of a greater threat of predation or escape of existing and future livestock inventory, and would expose properties to a higher risk of theft, in violation of the Williamson Act.

282. In addition to livestock, to the extent mineral extraction operates under Williamson Act contract in the County and is located within the area subject to the Ordinance, the failure of the Ordinance to exempt such operations from the restrictions of the ordinance violate the Williamson Act. Further, wildlife impermeable fencing and vegetation modification are not exempt with respect to mining activities. *See* Ordinance § 8109-4.8.3.2. Additionally, the Ordinance's extensive restrictions on "surface water features" do not exempt surface mining operations and could impair both river and in-stream mining activities, as well as mineral resources that include such features. *Id.*

283. The Ordinance would result in the inability of landowners to continue existing mining operations or accommodate foreseeable increases or expansion of mining activities, in violation of the Williamson Act.

284. Petitioner as well as members of the general public will suffer irreparable harm if the relief requested herein is not granted and the Ordinance is allowed to go into effect in the absence

of a full and adequate CEQA analysis and absent compliance with the Government Code requirements.

EIGHTH CAUSE OF ACTION

(Petition for Writ of Mandate Under California Code of Civil Procedure § 1085 and/or 1094.5; Declaratory Relief Under Code of Civil Procedure § 1060 -- Violation of Surface Mining and Reclamation Act, Pub. Res. Code §§ 2710 et seq.)

285. Petitioner hereby incorporates by this reference the allegations of all previous paragraphs of this Petition as though fully set forth herein.

286. The Surface Mining and Reclamation Act ("SMARA") requires local agencies with land use jurisdiction over state-classified and -designated mineral resources to prepare and transmit a Statement of Reasons specifying its proposed purpose for a project to the State Geologist and SMGB, prior to permitting a use which would threaten the potential to extract minerals in that area. (Pub. Res. Code § 2762(d)(1).)

287. In addition, if the proposed use includes *designated* mineral resources (as opposed to only *classified* resources), the local agency must include in its Statement of Reasons an analysis balancing mineral values against alternative land uses that considered the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction. (Pub. Res. Code § 2763(a).)

288. Despite the Ordinance's inclusion of approximately 13,000 acres of classified and designated mineral resources, and two letters from the State Geologist reminding the County of its affirmative obligations under SMARA, including the preparation and transmittal of a Statement of Reasons, the County rejected its duties and nevertheless approved the Ordinance.

289. The County's approval of the Ordinance without complying with its duties under SMARA constitutes a prejudicial abuse of process and discretion for which there is no other adequate remedy at law available to Petitioner.

290. Further, to the extent the County concluded that the Ordinance would not threaten the potential to extract the 13,000+ acres of classified and designated mineral resources included therein, that conclusion constitutes a prejudicial abuse of process and discretion for which there is

no other adequate remedy at law available to Petitioner.

291. If the County is not enjoined from implementing the Ordinance, Petitioner and the public will suffer irreparable harm.

292. Petitioner desires a judicial declaration and determination of the parties' respective rights and duties in respect to the Ordinance. A judicial declaration is necessary and appropriate at this time to eliminate uncertainties and controversies regarding the matters alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioner pray for relief as follows:

1. For a peremptory writ of mandate directing Respondent to set aside the Notice of Exemption, and its adoption of the Ordinance in reliance upon the identified categorical exemptions, and to hold further required public hearings after giving public notice in the manner required by law, in order to come into full compliance with CEQA;

2. For a temporary stay, temporary restraining order, and preliminary and permanent injunction restraining Respondent and their respective agents, servants and employees from taking any action to implement the Wildlife Corridor Ordinance pending full compliance with CEQA and other state and local laws;

3. For a declaration that the County's actions, specifically in enacting the Wildlife Corridor Ordinance, 1) violate CEQA, 2) violate Government Code §65855 and §65857, 3) violate County residents' right to due process under the California and U.S. Constitutions, 4) violate equal protection under the California and U.S. Constitutions, 5) violate vested property rights under the California and U.S. Constitutions, 6) constitute a regulatory taking under *Penn Central*, 7) violate the Williamson Act, and 8) violate SMARA;

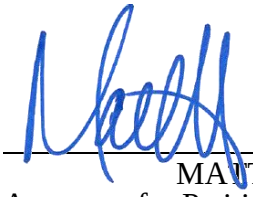
4. For costs of suit in this action;

5. For reasonable attorneys' fees, including as authorized by Code of Civil Procedure § 1021.5, 42 USC 1988, and other provisions of law; and

6. For such other and further relief as the Court deems just and proper.

DATED: April 25, 2019

JEFFER MANGELS BUTLER & MITCHELL LLP
BENJAMIN M. REZNIK
MATTHEW D. HINKS
SEENA M. SAMIMI
NEILL E. BROWER

By: 
MATTHEW D. HINKS
Attorneys for Petitioner VENTURA COUNTY COALITION OF LABOR, AGRICULTURE, AND BUSINESS

JMBM | Jeffer Mangels Butler & Mitchell LLP

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF VENTURA

I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and know its contents.

I am the Executive Director of Petitioner, VENTURA COUNTY COALITION OF LABOR, AGRICULTURE, AND BUSINESS, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 24 2019, at Ventura, California.

Lynn D. Gray
Print Name of Signatory

Signature

EXHIBIT A

PROOF OF SERVICE

Ventura County Coalition of Labor, Agriculture, and Business v. County of Ventura, et al.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On April 25, 2019, I served true copies of the following document(s) described as **NOTICE OF INTENT TO FILE CEQA PETITION** as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2019, at Los Angeles, California.

Sasha Peters

JMBM | Jeffer Mangels Butler & Mitchell LLP

SERVICE LIST

County Clerk
County of Ventura
800 S Victoria Ave.
4th Floor
Ventura, CA 93009