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FOREST UNLIMITED, TOWN HALL COALITION,
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WHOLISTICALLY EMERGING, COFFEE LANE
7 ALLIANCE, and JOHN STUPPIN

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SONOMA

10 FOREST UNLIMITED, a non-profit public benefit)
corporation, TOWN HALL COALITION, a non-)
11 profit public benefit corporation, COAST ACTION)
GROUP, a non-profit unincorporated association,)
12 NEW-OLD WAYS WHOLISTICALLY)
EMERGING, a non-profit unincorporated)
13 association, COFFEE LANE ALLIANCE, a non-)
profit unincorporated association, and JOHN)
14 STUPPIN, an individual,)

No. SCV-244332

Hearing Date: March 25, 2011
Hearing Time: 2:00 p.m.

Department: 17
Judge: Hon. René Chouteau
Complaint Filed: January 13, 2009

15 Petitioners and Plaintiffs,)

16 vs.)

17 SONOMA COUNTY BOARD OF)
SUPERVISORS, COUNTY OF SONOMA, and)
18 DOES I-XX, inclusive,)

19 Respondents and Defendants,)

20 and)

21 DOES XXI-C, inclusive,)

22 Real Parties in Interest and)
23 Defendants.)

24
25 **PETITIONERS' REPLY TRIAL BRIEF**
26
27
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1 I. INTRODUCTION

2 Petitioners Forest Unlimited, *et al.* (collectively, “petitioners”), demonstrated in their Opening
3 Trial Brief (“OTB”) that respondents County of Sonoma, *et al.* (collectively, “the County”) improperly
4 invoked a categorical exemption from the California Environmental Quality Act, Public Resources Code¹
5 sections 21000 *et seq.* (“CEQA”), and unlawfully adopted the subject comprehensive Grading, Drainage,
6 and Vineyard and Orchard Site Development Ordinance (the “Ordinance”) without performing *any*
7 environmental review, despite the Ordinance’s potentially significant environmental impacts caused by its
8 relaxation of standards in certain areas. “[I]t cannot be assumed that activities intended to protect or
9 preserve the environment are immune from environmental review.” *Davidon Homes v. City of San Jose*
10 (1997) 54 Cal.App.4th 106, 119. Here adoption of the Ordinance will relax current standards by (1)
11 newly allowing private road and drainage maintenance to occur without a permit; (2) limiting the
12 County’s ability to take local geologic circumstances in account in permitting; (3) allowing certain
13 developments in riparian setbacks; and (4) lowering soil compaction requirements. OTB at 6-7, 14-16.

14 The County variously argues that petitioners “d[id] not establish that the Ordinance, *as a whole*,
15 weakens prior environmental standards” and that “petitioners have failed to prove that the Ordinance
16 effected a *net* relaxation in environmental standards. . . .” Memorandum of Points and Authorities in
17 Opposition to Petition for Writ of Mandate and Complaint (“Opposition”), at 4, 20, 22, 23 (emphasis
18 added; some capitalization altered).² But whether or not the Ordinance’s many provisions *in the*
19 *aggregate* represent an increase or a decrease in environmental protection is irrelevant, because a *single*
20 decrease in environmental protection *in any one part of the Ordinance* renders the claimed exemptions
21 inapplicable. “[F]or projects that may cause both beneficial and adverse significant impacts on the
22 environment, preparation of an EIR is required because the consideration of feasible alternatives and
23 mitigation measures might result in changes to the project that decrease its adverse impacts on

24 _____
25 ¹ Undesignated references are to the Public Resources Code.

26 ² The County’s lament that petitioners’ “Opening Trial Brief” is mistitled because “CEQA
27 actions do not have trials” (Opposition at 4 fn. 2) ignores the fact that the Legislature has utilized the
28 terms “trial” and “hearing” interchangeably in describing merits hearings under CEQA. *See, e.g.*, §
21167.1(a) (noting preferential status of CEQA actions when “setting the action . . . for hearing or
trial”).

1 California's environment." *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th
2 1544, 1580.

3 Petitioners also demonstrated that the County violated CEQA by failing to consider the
4 "reasonably foreseeable indirect" environmental impacts of the Ordinance, including grading projects
5 permitted thereunder. CEQA Guidelines [14 C.C.R.; "Guidelines"] § 15064(d); OTB at 9-10, 17.
6 Finally, petitioners demonstrated that this Court must declare the Ordinance invalid under its "poison
7 pill" provision because the County erroneously designated all future grading permits issued under the
8 Ordinance³ to be ministerial. Administrative Record, Supplemental Volume, p. 1684 ("AR SV:1684")
9 ("poison pill" quotation); AR:I:98, 99-100 (operative text of Ordinance in §§ XIII(b), XIV(c)).
10
11

12 ³ The County states that "[p]etitioners incorrectly claim . . . that 'the Ordinance purports to
13 exempt from CEQA review all grading permits.'" Opposition at 7 (quoting OTB at 1 fn. 1) (brackets
14 omitted). Petitioners' statement is correct when quoted in its entirety:

15 The Ordinance purports to exempt from CEQA review **all grading permits issued**
16 **under the Ordinance**. Where a permit applicant chooses not to meet the Ordinance's
17 standards, the applicant may request a separate discretionary review. Administrative
18 Record, Volume I, page 54 ("AR I:54"); *see also* AR I:85, 87 (definitions of
19 "discretionary" and "ministerial" permit applications). The Ordinance's exemption of
20 *all other* grading permits from environmental review, however, plainly triggers CEQA
21 review, because as this Court previously ruled, "approval of a grading permit was not
22 always, or purely, ministerial" [under the prior grading ordinance regime]. *Coffee Lane*
23 *Alliance v. County of Sonoma . . . reprinted at* AR II:662

24 OTB at 1 fn. 1 (original brackets omitted; bold added); *see also* AR II:657-660. Discretionary permits
25 are not "permits issued under the Ordinance" because they are not subject to the Ordinance's standards.

26 The County later objects that in *Coffee Lane Alliance* this Court only found that "one particular
27 grading permit" was discretionary (Opposition at 15) and further argue that this Court never held that
28 "all grading permits were discretionary" (Opposition at 18; capitalization altered). The mere fact that a
single grading permit was found to be discretionary in *Coffee Lane Alliance* illustrates that the prior
permit system *was not wholly ministerial*, contrary to the County's claims, and that individual permit
approvals were potentially discretionary and therefore subject to CEQA.

Whether or not *all* prior grading permits were discretionary, the fact that a single permit was
found to be discretionary in *Coffee Lane Alliance* illustrates that the prior permit system provided room
for the exercise of judgment and was thus discretionary in part. Guidelines §§ 15357 ("'[d]iscretionary
project' means a project which requires the exercise of judgment. . . ."), 15268(d) ("'[w]here a project
involves an approval that contains elements of both a ministerial action and a discretionary action, the
project will be deemed to be discretionary").

1 their terms. [Citations.] Strict construction allows CEQA to be interpreted in a manner affording the
2 fullest possible environmental protections within the reasonable scope of statutory language. [Citations.]
3 It also comports with the statutory directive that exemptions may be provided only for projects which
4 have been determined not to have a significant environmental effect. (§ 21084, subd. (a); *Azusa, supra*,
5 52 Cal.App.4th at p. 1192).” *County of Amador v. El Dorado County Water Agency* (“*Amador*”) (1999)
6 76 Cal.App.4th 931, 966.

7 In *Azusa*, for example, the Court of Appeal reviewed the “unusual circumstances” exception to the
8 categorical exemptions (Guidelines section 15300.2(c)) and stated that “the question whether a particular
9 circumstance exists would normally be a factual issue, whereas the question whether that circumstance is
10 ‘unusual’ within the meaning of the significant effect exception would normally be an issue of law that
11 this court would review de novo.” *Azusa*, 52 Cal.App.4th at 1207. So too here, independent review of
12 the County’s claim that the “Ordinance does not in itself approve any construction activities” (AR I:98) is
13 appropriate because “the claim involves determining which environmental impacts are impacts caused by
14 the Ordinance for CEQA purposes.” OTB at 7.

15 2. The Substantial Evidence Standard of Review Is Not Toothless.

16 With regard to its factual findings, the County implies that automatic deference is appropriate.
17 Opposition at 10-11. False. “Substantial evidence challenges” under CEQA “are resolved much as
18 substantial evidence claims in any other setting.” *Amador*, 76 Cal.App.4th at 945-46. “‘Substantial
19 evidence’ is not ‘synonymous with “any” evidence. It must be reasonable, credible, and of solid value.’”⁴
20 *Los Angeles County Office of the Dist. Atty. v. Civil Svc. Com.* (1997) 55 Cal.App.4th 187, 198-99
21 (quoting *Kuhn v. Dep’t of General Svcs.* (1994) 22 Cal.App.4th 1627, 1633) (internal ellipses and some
22 quotation marks omitted). As the Guidelines elaborate, “Substantial evidence shall include facts,
23 reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Guidelines §
24 15384(b). “Argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly
25

26
27 ⁴*In re Scott* (2004) 119 Cal.App.4th 871, 898 (even “exceedingly deferential” “some evidence”
28 standard under *habeus corpus* review “does not convert a court reviewing the denial of parole into a
potted plant”).

1 erroneous or inaccurate . . . does not constitute substantial evidence.” *Id.*, subd. (a).

2 3. The County Bears the Burden of Proof to Sustain Application of
3 the Categorical Exemptions Claimed.

4 As petitioners explained, “because of language used in the particular exemptions invoked, *the*
5 *County has the burden of proof* to demonstrate that adoption of the Ordinance will certainly not have any
6 environmental impacts.” OTB at 7-8. The Guidelines sections 15307 and 15308 categorical exemptions
7 only apply where the agency’s actions will “assure” the enhancement of the environment; “a project is
8 only exempt from CEQA ‘where it can be seen with certainty that there is no possibility that the activity
9 in question may have a significant effect on the environment.’ (Guidelines, § 15061, subd. (b)(3).)”
10 *Dunn-Edwards Corp. v. Bay Area Air Qual. Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 657.⁵ The County’s
11 cases likewise hold that the agency “has the burden to demonstrate substantial evidence that the ordinance
12 fell within the exemptions” found in Guidelines sections 15307 and 15308. *Magan v. County of Kings*
13 (2002) 105 Cal.App.4th 468, 475. Thus, the County bears the burden of showing that the Ordinance will
14 “assure” the protection and enhancement of the environment. Guidelines §§ 15307, 15308.

15 The County argues that petitioners’ cases are inapposite because there the “agency produced *no*
16 evidence supporting its determination.” Opposition at 11. But this argument simply makes petitioners’
17 point: as shown below, here too the County has not produced any substantial evidence that the
18 Ordinance’s newly relaxed standards will enhance rather than reduce environmental protections. The
19 County only argues that the Ordinance enhances environmental protection in the aggregate, but as
20 discussed below this point, even if correct, is irrelevant. Petitioners need merely present a “reasonable
21 possibility that” the Ordinance “may have a significant effect on the environment, an[d the] exemption
22

23
24 ⁵ See also *Davidon*, 54 Cal.App.4th at 117 (under common sense exemption claimed here by
25 County, “[i]f legitimate questions can be raised about whether the project might have a significant
26 impact and there is any dispute about the possibility of such an impact, the agency cannot find . . . that
27 a project is exempt”); *California Unions for Reliable Energy v. Mojave Desert Air Quality*
28 *Management Dist.* (“CURE”) (2009) 178 Cal.App.4th 1225, 1245 (because Guidelines section 15308
uses the word “assure,” “[t]he [agency] has the burden of proof—there must be substantial evidence to
support this categorical exemption finding. In the *absence* of evidence that the negative environmental
effects of [a project] would *not* be significant, the exemption finding cannot be sustained”).

1 would be improper.” *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-06.

2 In sum, the County bears the burden of demonstrating substantial evidence that its Ordinance will
3 “assure” the protection of the environment. Petitioners are *not* required to submit substantial evidence
4 that the exemptions were improper; plaintiffs must merely show a “reasonable possibility” that adverse
5 impacts may result from approval. *Id.* The County is prohibited from rejecting petitioners’ arguments
6 “based on the fact there was no supporting data for plaintiffs’ claims,” because such a “rejection . . . is
7 predicated on lack of the very information which would be provided by an EIR.” *Dunn-Edwards*, 9
8 Cal.App.4th at 658. If the agency is “unable to produce evidence of *no* adverse impact,” the exemption
9 may not be invoked. *Id.*; *CURE*, 178 Cal.App.4th at 1245-46 (applying this *Dunn-Edwards* rule, which
10 arose in the common-sense exemption context, to Guidelines section 15307 and 15308 exemption claims;
11 plaintiffs presented “some evidence” of adverse impact; the fact that plaintiffs’ “evidence did not
12 necessarily require a finding that these adverse . . . effects would be *significant*” was irrelevant).

13 Finally, the County argues that petitioners’ lawsuit must be dismissed because petitioners failed to
14 describe the areas in which the Ordinance expands environmental protections and instead focused only on
15 areas in which protections were relaxed. Opposition at 13-14 fn. 4. Wrong. Whether the Ordinance
16 contains a few discrete areas with enhanced environmental protections is irrelevant, because the County
17 must show that *each and every changed provision in the Ordinance* represents an increase rather than a
18 *decrease* in environmental protections. *County Sanitation Dist. No. 2*, *supra*, 127 Cal.App.4th at 1580.
19 If some provisions “may cause” a “beneficial . . . impact[] on the environment” but others “may cause” an
20 “adverse significant impact[]”, preparation of an EIR is required because the consideration of feasible
21 alternatives and mitigation measures might result in changes to the project that decrease its adverse
22 impacts on California’s environment.” *Id.*; *see also Mountain Lion Found. v. Fish & Game Com.* (1997)
23 16 Cal.4th 105, 125-26 (finding it “more appropriate to view the . . . delisting” of Mojave ground squirrel
24 “as an activity separate from” broader California Endangered Species Act process for purposes of
25 application of Guidelines sections 15307 and 15308 exemptions; because delisting itself withdrew
26 protections, activity was not exempt, even though delisting was but one element of a broader statutory
27 scheme to protect the environment).

28 In short, whether or not the Ordinance *in the aggregate* represents an increase in environmental

1 protections is irrelevant, because under CEQA the County is required to consider alternatives to, and
2 mitigation measures for, *any individual provision that may have an adverse impact.*

3 4. The Fair Argument Standard Applies to Petitioners' Claims that
4 the Exceptions to the Exemptions Apply.

5 Petitioners also demonstrated that even assuming the categorical exemption was properly invoked,
6 the exceptions to the categorical exemptions apply. OTB at 17 (*quoting* Guidelines §§ 15300.2(b), (c)).
7 The “fair argument” standard applies to this claim. *Azusa*, 52 Cal.App.4th at 1202-04. Under the “fair
8 argument” standard, this Court must determine whether *petitioners* have presented substantial evidence
9 that the exception to the exemption applies; whether the County has presented contrary substantial
10 evidence is *irrelevant*. *E.g., Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.

11 In sum, the County bears the burden of demonstrating that adoption of the Ordinance will
12 “assure” the protection of the environment within the meaning of Guidelines sections 15307 and 15308.
13 Assuming contrary to fact and law that the County can carry this burden, this Court must then determine
14 whether petitioners have presented substantial evidence that an exception to the exemptions applies.

15 **B. The Exhaustion Requirement Is Inapplicable.**

16 The County argues that “[p]etitioners bear the burden of showing that the ‘exact issues’ they raise
17 in this judicial proceeding were first presented to the County prior to the close of the public hearing on
18 the Ordinance.” Opposition at 11. Wrong. Section 21177(a), which codifies the exhaustion of
19 administrative remedies requirement for CEQA proceedings, *does not apply* here. *Tomlinson v. County*
20 *of Alameda* (2010) 188 Cal.App.4th 1406, 1417-23; *Azusa*, 52 Cal.App.4th at 1209-11.

21 Section 21177(a) states that

22 [a]n action or proceeding shall not be brought pursuant to Section 21167 unless the alleged
23 grounds for noncompliance with this division were presented to the public agency orally or
24 in writing by any person *during the public comment period* provided by this division or
prior to the close of the *public hearing* on the project *before the issuance of the notice of*
determination.

25 (Emphasis added.) When an agency decides a project is exempt “CEQA does not provide for a public
26 comment period” and “there is no ‘public hearing . . . before the issuance of the notice of determination.’”
27 *Azusa*, 52 Cal.App.4th at 1210. The *Azusa* Court was therefore “unable to discern a requirement in
28 [section 21177] that a person contest an exemption determination before challenging it in court.” *Id.*

1 Notwithstanding *Azusa*, the court in *Hines v. California Coastal Commission* (2010) 186
2 Cal.App.4th 830, 855, held that the section 21177(a) exhaustion requirement applied to an exemption
3 determination. But *Hines* misinterprets CEQA. Section 21177(a)'s exhaustion requirement only applies
4 where there was a *CEQA-mandated* public comment period or public hearing specifically on CEQA
5 issues. *Azusa*, 52 Cal.App.4th at 1210. Other public meetings and hearings *do not suffice*.

6 The Court in *Tomlinson* corrected *Hines* and clarified this fundamental point. The Court “[relied]
7 upon the analysis of *Azusa* to hold that section 21177 [did] not apply” even though there had been two
8 county planning commission meetings on the challenged subdivision project and a public hearing before
9 the country board of supervisors, all three of which provided for public comment. *Tomlinson*, 188
10 Cal.App.4th at 1419 (concluding that the hearings “[were] not sufficient to invoke the requirements of
11 section 21177”). The *Tomlinson* Court was “persuaded . . . that the *Azusa* court’s construction of the
12 statutory language is correct,” i.e., that section 21177(a)'s exhaustion requirement only applies where
13 there was a *CEQA-mandated* public comment period or a public hearing before the issuance of a *notice of*
14 *determination*. *Id.* at 1422. “To the extent *Hines* is impliedly at odds with the holding in *Azusa*,” added
15 the Court, “we respectfully disagree.” *Id.*

16 Here, there was no CEQA-mandated public comment period, and a notice of exemption, not
17 determination, was issued. Therefore petitioners were not required to exhaust administrative remedies
18 before bringing this action. There is simply no “requirement in [section 21177] that a person contest an
19 exemption determination before challenging it in court.” *Azusa*, 52 Cal.App.4th at 1210.

20 Furthermore, even assuming *solely* for the sake of argument that petitioners *were* required to first
21 present to the County the issues raised in this judicial proceeding, they did so here. At the outset, the
22 County is wrong that parties must present to the agency “the exact legal contentions” they raise in a later
23 judicial proceeding. Opposition at 11. To the contrary, “less specificity is required to preserve an issue
24 for appeal in an administrative proceeding than in a judicial proceeding.”⁶ *Citizens Association for*
25

26 ⁶ While the *County of Inyo* Court reasoned that less specificity was be required because “parties
27 generally are not represented by counsel” in administrative proceedings, it did not hold – or even
28 intimate – that a higher bar applies when parties *are* represented by counsel, as here. 172 Cal.App.3d at
163. The standard for exhaustion is the same in *all* cases. See *Mani Bros.*, 153 Cal.App.4th at 1395.

1 *Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163. Moreover,
2 petitioners “need not have *personally* raised the issue[s]” presented by the lawsuit; the issues simply must
3 have been raised by *someone*. *Resources Defense Fund v. Local Agency Formation Commission* (1987)
4 191 Cal.App.3d 886, 894 (emphasis added).

5 Here, the impropriety of exempting the Ordinance from CEQA review – the main issue in this
6 case – was specifically raised by petitioners in the administrative proceedings. AR II:705, 707-08
7 (petitioners asserting that exemption did not apply as “standards are being relaxed and the environmental
8 and natural resources less protected in many respects by the Proposed . . . Ordinance as compared to the
9 current Grading Regulations”). This case is thus readily distinguishable from *Hines* and other CEQA
10 cases where a court held that a party failed to exhaust its administrative remedies. In *Hines*, for example,
11 there was nothing in the record “showing that appellants or others raised *any* issue as to the applicability
12 of the CEQA categorical exemption before or during [the administrative] proceedings.” 186 Cal.App.4th
13 at 855. Here, the County was clearly presented with “more than merely ‘a relatively few bland and
14 general references’ to the particular environmental deficiencies identified in this lawsuit and was thus
15 given the “opportunity to act and render the litigation unnecessary.” *Mani Bros. Real Estate Group v.*
16 *City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394, 1396 (citations omitted). The County’s failure
17 to adequately assess the environmental impacts of the Ordinance cannot be blamed on *petitioners*.

18 In sum, the exhaustion requirement of section 21177 is inapplicable here. And even if it did
19 apply, petitioners and others more than adequately presented to the County the issues raised herein.

20 III. ARGUMENT

21 A. Enactment of the Ordinance Is Subject to, Not Exempt From, CEQA.

22 CEQA applies “to [1] discretionary [2] projects [3] proposed to be carried out or approved by [4]
23 public agencies.” § 21080(a). The County concedes that (1) adoption of the Ordinance was
24 discretionary;⁷ (2) the County is a “public agency”; and (3) the Ordinance was “approved by” the County
25

26 ⁷ Permits issued *under* the Ordinance are discretionary as shown *infra* sections III(B)(2) and
27 (III)(E). The prior permit system was not wholly ministerial, contrary to the County’s claims; the
28 portions of the prior grading ordinance this Court ruled discretionary remain in the Ordinance. The
County concedes that *adoption of the Ordinance itself* was discretionary by not arguing to the contrary.

1 by failing to contest any of these elements in its Opposition. Adoption of the Ordinance also constitutes a
2 countywide grading “project” because grading is a “reasonably foreseeable indirect” consequence of the
3 Ordinance. OTB at 9-10; § 21065. Because the “project” for CEQA purposes includes the reasonably
4 foreseeable grading that will result from the Ordinance, the County should have – but failed to – consider
5 the environmental consequences that would result from that future grading.

6 The County argues that “[p]etitioners’ claim is without merit, because adoption of the Ordinance
7 does not ‘cause’ grading.” Opposition at 25 (quoting Guidelines § 15064(d)); *see also* AR I:98 (CEQA
8 exemptions apply because “th[e O]rdinance does not in itself approve any construction activities. . . .”).
9 But Guidelines section 15064(d) *specifically requires* the consideration of the “reasonably foreseeable
10 indirect physical changes in the environment” that “may be caused by the project” and the County’s
11 position that agencies need not consider the reasonably foreseeable consequences of their actions is
12 contrary to decades of CEQA law. *Bozung v. LAFCO* (1975) 18 Cal.3d 263, 281-84 (annexation
13 approval must consider reasonably foreseeable development that will result from annexation, even though
14 an “annexation approval” was just “another piece of paper” that did not itself approve development”).

15 “Project” refers to “the development or other activities that will result from the approval” and “not
16 the approval itself”; here the ‘project’ is the countywide grading enabled by the Ordinance, not the
17 passage of the Ordinance itself. *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149
18 Cal.App.4th 91, 106; *CURE*, 178 Cal.App.4th at 1241-42 (where air quality district adopted rule enabling
19 but not requiring road paving, “project” was resulting road paving, not adoption of rule). Here, for
20 example, the County’s Ordinance newly exempts private road maintenance from permit requirements, as
21 shown below. It is “reasonably foreseeable” that some County residents will now conduct private road
22 work that no longer requires a permit. § 21065. Because as shown below such road work may have
23 adverse environmental impacts, CEQA required the County to consider these “reasonably foreseeable
24 indirect consequences” before adopting of the Ordinance.

25 The County argues that *CURE* is inapplicable because it involved a “new rule” allowing paving
26 whereas “the County has regulated grading for decades.” Opposition at 25-26. Wrong. As shown below,
27 the Ordinance relaxes existing standards in several respects. The pertinent legal question is whether *any*
28 *provision of the Ordinance* weakens environmental protections. Just as *CURE* required the agency to

1 consider the environmental impacts of the paving foreseeably enabled by its new road-paving rule, and
2 just as *Bozung* required the agency to consider the environmental impacts of the development foreseeably
3 enabled by its annexation, so too here the County was required to consider the environmental impacts of
4 the private road work that the new road-paving exemption would foreseeably enable. *CURE*, 178
5 Cal.App.4th at 1241-42; *Bozung*, 18 Cal.3d at 281-84.

6 The County claims it need not have considered the environmental consequences of the Ordinance
7 because such “would erase CEQA’s longstanding exemptions for measures that assure the maintenance,
8 restoration, enhancement, or protection of a natural resource or the environment” and this Court’s role “is
9 not . . . to rewrite CEQA”. Opposition at 25. Wrong. CEQA requires consideration of the reasonably
10 foreseeable indirect consequences of an agency’s approval. The County’s insistence otherwise confirms
11 that its section 15307 and 15308 exemptions were improperly invoked.

12 Because the Ordinance’s relaxed standards may “cause a physical change in the environment” as
13 detailed below, its adoption was a CEQA “project.”

14 **B. Adoption of the Ordinance Is Not Exempt Under Sections 15307 and 15308.**

15 The County claims that the section 15307 and 15308 exemptions for measures assuring
16 environmental protection and enhancement insulated the Ordinance from CEQA review. Opposition at
17 26-29; AR I:98. Section 15308 exempts “actions taken by regulatory agencies, as authorized by state or
18 local ordinance, to *assure* the maintenance, restoration, enhancement, or protection of the environment
19 where the regulatory process involves procedures for protection of the environment. Construction
20 activities and relaxation of standards allowing environmental degradation are not included in this
21 exemption.” (Emphasis added.) Section 15307 makes minor textual modifications and adds an
22 illustrative example.

23 As shown above, the County must show substantial record evidence that its Ordinance would
24 “assure” protection of the environment to invoke these exemptions. *CURE*, 178 Cal.App.4th at 1245. As
25 shown below, the County failed to discharge this burden. In fact, the Ordinance *reduces* environmental
26 protections in at least four respects. Section XIII(B) of the Ordinance directs that if this Court should
27 hold the County’s claimed CEQA exemption invalid, the Ordinance would “automatically and
28 immediately” be “render[ed] . . . inoperative [and] suspended. . . .” AR I:98. Because the County’s

1 CEQA exemptions fail, this Court must set aside the Ordinance.

2 1. The Ordinance Contains New Roads and Drainage Exemptions.

3 The Ordinance contains “new exemptions for activities like private road and drainage
4 maintenance.” OTB at 14; AR I:240 (quotation), 47 (text of provision found in section 11.04.020(H)).
5 The County does not dispute that this is a new exemption. Opposition at 20-22 (arguing only that no
6 environmental impact would result from this new exemption). As shown above, the County was required
7 to consider the “reasonably foreseeable indirect effects” of this new exemption before adopting the
8 Ordinance. § 21065. It failed to do so. AR I:98 (County declaring “[O]rdinance . . . exempt from”
9 CEQA).

10 Prior to adoption of the Ordinance, County “grading regulations d[id] not have an exemption” for
11 such road maintenance. AR SV:1728 (comment of County’s Permit and Resource Management
12 Department (“PRMD”)). Then, road maintenance was subject to the “general require[ment of] a grading
13 permit” if it involved “a fill that exceeds 50 cubic yards on any one parcel.” AR I:422 (quotations);
14 accord AR SV:1728 (“if you[we]re moving more than 50 cubic yards of material . . . you d[id] need to
15 come in and get a permit”).

16 Incredibly, the County argues that this new *exemption* improves rather than weakens
17 environmental protection.⁸ Opposition at 21-22. The County cites *no* record evidence to support its
18 absurd claim, and none exists. Instead, the County claims that exempt road work is “subject to the
19 Ordinance’s 16 pages of substantive standards. . . .” Opposition at 21. But petitioners already refuted

20
21 ⁸ The County also argues that petitioners failed to exhaust this argument. As discussed above,
22 the exhaustion requirement does not apply to this case. Even if exhaustion were required, petitioners
23 met this requirement by personally asserting that relaxed protections rendered the claimed exemptions
24 inapplicable. AR II:707. Additionally, the record is replete with concerns that the new road exemption
25 will cause adverse environmental impacts, including avoidable siltation in streams. AR II:638 (federal
26 agency stating that “[m]aintenance or repair of private roads should not be granted an exemption from
27 the grading permit requirements” because “[r]oads are a known, major contributor of sediment to
28 watersheds throughout Sonoma County and this sediment is having significant [e]ffects [on] salmonid
habitats”); AR II:552 (public commenters noting that “the development and maintenance of private
roads . . . have been shown to be a major source of sedimentation in streams”); see also AR: SV:1730
(Supervisor Reilly observing that road maintenance “does have . . . in many areas, . . . tremendous
impact” and requesting further review of new exemption because “it’s a really important issue for
stream sedimentation” and “it’s certainly an issue for fish”).

1 this argument:

2 If *no* permit is required because a grading project is *exempt* from the permit requirement,
3 the County's ability to prevent environmental harm is plainly impaired, if not eviscerated
4 altogether. Record evidence casts grave doubt on PRMD's ability to enforce standards on
5 exempt projects. *See, e.g.*, AR I:426 (GOWG concerns over whether "standards can be
6 practically applied to projects that do not require a permit"); II:614-16 (citizen letter
7 stating that County's "ability to enforce protective standards [is] currently inadequate" and
8 referencing attached comments by PRMD manager noting "4300 enforcement cases
9 currently pending").

10 OTB at 14. Indeed, the road exemption was added to the Ordinance *because* PRMD could not ensure
11 compliance with permit requirements. AR SV:1712 (Supervisor Kelley advocating exemption and
12 discussing his "amus[ement]" with suggestions from the Department of Fish and Game that the County
13 "administer . . . oversight" of road maintenance activities because he "d[id]n't think [the County] could
14 . . . scrape up enough time or staff to deal with the maintenance of all private roads . . . and have some
15 oversight on them); *see also* AR SV:1732 (Supervisor Kelley advocating for road maintenance exemption
16 because PRMD does not "have the resources to . . . be able to enforce" permit requirements).

17 The County's response that petitioners "present no evidence that [the County's] enforcement
18 authority . . . is 'eviscerated altogether' in the absence of a permit" (Opposition at 22) ignores all of the
19 evidence discussed above. Moreover, as discussed, *the County bears the burden of proof to sustain its*
20 *application of the exemptions. CURE, supra*, 178 Cal.App.4th at 1245. Since it failed to discharge its
21 burden, its claimed exemptions fail.

22 If the County wishes this Court to hold that the exemption for private road work "*assure[dly]*"
23 *will not have any* potentially significant environmental impacts despite substantial record evidence that
24 (1) road maintenance causes adverse impacts, including but not limited to unnecessary siltation of streams
25 and a corresponding impact on salmonids (AR II:552, 638, 782-83; SV:1780); and (2) PRMD's lack of
26 resources prevents application of the Ordinance's substantive provisions to projects exempt from the
27 Ordinance (AR I:426, II:614-16, SV:1712, 1732), the County must point to substantial record evidence to
28 the contrary. Guidelines §§ 15307, 15308 (quotation). The County's failure to do so is fatal. § 21168.5.

2. The Ordinance Limits PRMD Discretion.

The Ordinance substantially limits the amount of discretion given PRMD in the issuance of
grading permits. This limitation of discretion may have environmental impacts because it may lead to

1 avoidable geologic errors. OTB at 14-16 (citing expert geologist testimony that limitations on PRMD
2 discretion in Ordinance may adversely affect environment). The County does *not* dispute petitioners'
3 argument that limitations on discretion may adversely affect the environment and instead argues *only* that
4 the Ordinance does not limit PRMD discretion because all permits were supposedly ministerial under the
5 prior grading permit regime. Opposition at 14-20. The County's argument directly conflicts with this
6 Court's holding in *Coffee Lane Alliance v. County of Sonoma* and therefore fails. AR II:657-663.

7 An approval is discretionary if it "requires the exercise of judgment or deliberation." Guidelines §
8 15357. Projects involving both discretionary and ministerial elements are "deemed to be discretionary"
9 (Guidelines § 15268(d)) and any "doubt whether a project is ministerial or discretionary should be
10 resolved in favor of the latter characterization." *Friends of Westwood v. City of Los Angeles*
11 ("*Westwood*") (1987) 191 Cal.App.3d 259, 271. The County argues that under the Guidelines
12 "[m]inisterial projects include issuance of building permits" but this is false. Opposition at 5 (*citing*
13 Guidelines § 15268(b)(1)); *cf. Westwood*, 191 Cal.App.3d at 269-70 (clarifying that the presumption that
14 building permits are ministerial is true "only where a precondition exists — the public entity must retain
15 no discretion in connection with issuance of the building permit. . . . [I]f the ordinances governing
16 building permits contain 'any discretionary provision' the presumption is not just dissolved; it simply
17 fails to come into existence") (quoting Guidelines § 15268(b)).

18 The County asserts that petitioners "claim that all grading permits were discretionary" under the
19 previous grading regime. Opposition at 14. Wrong. Petitioners *never* argued that "all grading permits
20 were discretionary" but simply quoted this Court's undisturbed holding that grading permits issued under
21 the prior system were "not always, or purely, ministerial." OTB at 1 fn. 2, 6, 14-16; AR II:660, 662.
22 Because *uncontroverted* expert geologist testimony shows that the Ordinance's limitations on this
23 discretion may have adverse environmental impacts, the County's claimed exemptions do not apply. AR
24 II:729-731.

25 The County argues that this Court in *Coffee Lane Alliance* merely found that "one particular
26 grading permit" was discretionary, not that all grading permits were discretionary. Opposition at 15-17.
27 But the County simply makes petitioners' point: petitioners do *not* argue that all previous permits were
28 discretionary but instead merely observe that (1) the prior grading permit regime provided an opportunity

1 for County officials to exercise their discretion to minimize environmental impacts, and (2) the Ordinance
2 reduces these opportunities for County staff to exercise protective discretion.

3 In *Coffee Lane Alliance*, this Court observed that

4 the plain language of the regulations . . . give the County significant discretion in
5 approving a grading permit (e.g., the County determines if designs must be modified if
6 delays occur that result in unforeseen weather-generated problems, and the County may
7 require professional inspection and testing by soils engineers in unspecified circumstances,
8 and the County may require the grading to conform to engineered grading if the County
9 has cause to believe that unspecified geologic factors may be involved).

10 AR II:658-69. Accordingly, this Court ruled that “approval of a grading permit is not always, or purely,
11 ministerial” and thus remanded for a determination whether the “particular grading permit” at issue “was
12 discretionary.” AR II:660, 662. Following remand, this Court held that the County “fail[ed] to show that
13 the permit at issue was entirely discretionary.” AR II:662.

14 The County argues that this Court’s holding that all grading permits were not ministerial was
15 superseded by the County’s Ordinance No. 5603, which declared that approvals of grading permits “are
16 determined to be ministerial projects.” Opposition at 16-17. The County argues that Guidelines section
17 15268(a) allows *it* to determine whether grading permits are ministerial.⁹ But the County’s “classification
18 of a certain approval process as ministerial is not conclusive. “The applicability of CEQA cannot be made
19 to depend upon the unfettered discretion of local agencies, for local agencies must act in accordance with
20 state guidelines and the objectives of CEQA.” *Westwood*, 191 Cal.App.3d at 270 (*quoting Day v. City of*
21 *Glendale* (1975) 51 Cal.App.3d 817, 822). This Court, not the County, determines the law.

22 Finally, the County argues that the 2007 California Building Code (“CBC”) did not contain the
23 particular provision in the 2001 California Building Code under which this Court found the County had

24 ⁹ The County also implies that this Court expressly contemplated that adoption of an ordinance
25 like Ordinance No. 5603 would render all grading permits ministerial. Opposition at 15-17. But this
26 Court merely pointed out that the County “could enact implementing regulations which could truly
27 make approval of a grading permit ministerial” by eliminating all discretion, but that the County *had*
28 *failed to do so*. AR II:659. The County also falsely states that this Court “held that” its *Coffee Lane*
Alliance determination and Ordinance No. 5603 “[we]re not inconsistent,” but this Court merely
“assumed” such consistency. Exhibit E to Respondents’ Request or Judicial Notice (“RJN Exh. E”) at
2. The County also fails to explain how petitioners could have “appeal[ed] this” putative “holding” in
light of the fact that this Court *actually* held that petitioners were entitled to attorneys’ fees for bringing
Coffee Lane Alliance. Opposition at 17; RJN Exh. E.

1 exercised discretion in *Coffee Lane Alliance*. Opposition at 15 (citing AR 2:1031). There is no record
2 evidence to support this bare assertion by the County’s counsel; page 1031 of the Administrative Record
3 does not mention the provision in question (CBC section 3309.9). The County also ignores the fact that
4 the other provisions in the prior ordinance whose “plain language” this Court ruled discretionary also
5 *remained* in the 2007 CBC (and indeed remain in the Ordinance to this day). AR II:732.

6 In sum, the Ordinance sought to convert a grading permit regime found by this Court to be “not
7 always, or purely, ministerial” (AR II:660, 662) into a system that was as ministerial as possible so as to
8 avoid the “burdensome delays” of CEQA review. AR I:99. One way the County accomplished this was
9 by restricting staff from making site visits and instead requiring evaluation of permit applications based
10 upon imprecise *regional* rather than local geologic references. OTB at 14-15 (citing AR II:730).
11 Reliance on such regional references for site-specific recommendations is improper and creates “the
12 potential for highly erroneous conclusions” and resulting environmental impact. AR I:241; II:677, 730;
13 *see also* Suppl. Admin. Rec. 3. Because the Ordinance relaxes environmental protections in this way, its
14 adoption was not exempt under Guidelines sections 15307 and 15308.

15 3. The Ordinance Allows Grading in Riparian Setbacks.

16 The Ordinance newly allows “vegetative filter strips” and “turnarounds for agricultural crops” to
17 be located within setbacks from streams and other watercourses. AR I:75-76; *see also* AR I:243 (staff
18 explaining this provision “helps to implement policy in the newly adopted General Plan”).¹⁰ As discussed
19 in petitioners’ opening brief, allowing such activities in setbacks may have dramatic environmental
20 consequences. OTB at 16 (citing AR:II:786).

21 The County claims that these new provisions represent an “expan[sion of] environmental
22 protections” because *no* setbacks were previously required. Opposition at 23 (citing AR I:243; SV:1762-
23

24 ¹⁰ Contrary to the County’s claim that petitioners “do not challenge the pond or lake setbacks”
25 (Opposition at 22), petitioners clearly stated in their opening brief that the Ordinance relaxed existing
26 standards by “newly allow[ing] ‘vegetated filter strips and equipment turnarounds’ to be installed in
27 certain required setbacks from streams *and other watercourses.*” OTB at 6-7 (brackets, ellipsis, and
28 citation omitted). By failing to respond to petitioners’ cited evidence that the pond and lake setbacks
may have new environmental impacts (AR II:786), the County conceded the merit of petitioners’
argument. *Lopez v. World Savings & Loan Assn.* (2003) 105 Cal.App.4th 729, 748 (where party
“failed to argue” an issue “in the trial court . . . the issue [w]as . . . waived”).

1 63). Therefore, in the County’s view, the setback provision represents a net increase in environmental
2 protection *even if it allows environmentally destructive activities in the setbacks*. This argument is
3 doubly mistaken. First, it is untrue that no setbacks were previously required. Prior to adoption of the
4 Ordinance, the County was already “getting . . . these . . . setbacks” from landowners. AR SV:1754; *see*
5 *also* AR:SV:1776 (County official discussing past practice regarding setbacks and commenting that
6 notwithstanding absence of *required* setback “my recommendation to people . . . is to allow a minimum
7 of 25 feet. . . and *everyone’s doing that*”). Because setbacks were already required by County officials,
8 their inclusion does not represent an expansion of environmental protections.

9 Second, as discussed above, the Ordinance dramatically limits staff discretion. Previously, staff
10 possessed the authority to “talk to [landowners] . . . about . . . setting . . . back” destructive features like
11 “avenue[s] right on top of [the] bank of a creek.” AR SV:1708. But now staff is forced to *allow*
12 equipment turnarounds in setbacks under the Ordinance.

13 Because the Ordinance introduces a new exception allowing environmentally destructive activities
14 in setbacks previously protected by County staff, the Guidelines sections 15307 and 15308 exceptions do
15 not apply.¹¹

16 4. The Ordinance Lowers Soil Compaction Requirements.

17 The Ordinance *reduces* the amount of soil compaction required for soils not intended to support
18 structures from ninety percent to either “the density specified by a soils engineer” or “the density
19 necessary for the intended use,” depending on depth. OTB at 16.

20 The County nonsensically argues that the “prior code . . . completely exempted fills not intended
21 to support structures from the 90 percent compaction standard” because that code “contained an
22 exemption for ‘Landscape . . . or agricultural work *where depth of soil disturbance is less than 4 feet.*’”
23 Opposition at 24 (internal brackets omitted). “Soil disturbance” of *more* “than 4 feet” was plainly not
24 exempt from the 90% compaction standard, contrary to the County’s claims.

25 The County states that “[a]gricultural soils . . . cannot be compacted to 90 percent without killing
26

27
28 ¹¹ The County again raises its meritless exhaustion argument. The exhaustion doctrine does not
apply here, and even assuming *arguendo* to the contrary, petitioners satisfied that doctrine, as shown.

1 the plants and roots that hold the soil and prevent erosion during rainstorms (AR 2:543). . . .” This
2 statement misrepresents the record. Page 543 of the Administrative Record only states, “the 90 percent
3 compaction requirements in the [Uniform Building Code] don’t really work for agricultural planting.” It
4 does *not* mention “killing plants and roots” or “prevent[ing] erosion during rainstorms.” County
5 Counsel’s embroidery is not substantial evidence. Guidelines § 15384(a).

6 The County argues that petitioners “misrepresent[ed] staff comments” by stating that “Staff, at a
7 public hearing, expressed concern over ‘the problems created’ by ‘uncompacted fill.’” Opposition at 24.
8 The County states that staff “actually expressed concern about fills intended to support structures and
9 showed a slide of uncompacted fill at a residential project.” *Id.* But there is no record evidence that the
10 concerns illustrated in staff’s slide – that uncompacted fill is liable to erode in a rainstorm and lead to
11 siltation – apply only to fills intended to support structures.

12 Because the County has failed to carry its burden to demonstrate that the reduction in compaction
13 requirements will “assure” the protection of the environment, the Guidelines sections 15307 and 15308
14 exemptions do not apply.¹²

15 **C. The Project Is Not Exempt Under the Common Sense Exemption**

16 The “common sense” exemption under section 15061(b)(3) applies only “where it can be seen
17 with certainty that there is no possibility” of an environmental impact. *Id.* Accordingly, “if a reasonable
18 argument is made to suggest a possibility that a project will cause a significant environmental impact, the
19 agency must refute that claim *to a certainty* before finding that the” common sense “exemption applies.”
20 *Davidon, supra*, 54 Cal.App.4th 106, 118 (emphasis supplied).

21 For the reasons discussed above, the Ordinance “may” have significant environmental impacts.
22 The practice of grading has significant environmental impacts (OTB at 3), and as discussed above the
23 relaxed standards in the Ordinance clearly pose significant impacts as well. Thus, the common sense
24 exemption does not apply for the same reasons that the Guidelines sections 15307 and 15308 exemptions
25 are improper.

26
27
28 ¹² The County again raises its meritless exhaustion argument. The exhaustion doctrine does not
apply here, and even assuming *arguendo* to the contrary, petitioners satisfied that doctrine, as shown.

1 **D. The Exceptions to the Exemptions Apply.**

2 The County argues petitioners have not put forth any substantial evidence that the exceptions to
3 the categorical exemptions (Guidelines sections 15300.2(b), (c)) apply. The County argues that the
4 exceptions are inapplicable because the Ordinance “tightened previous standards” and “did not approve
5 or cause any grading projects in the County.” The County is wrong on both counts – as shown above, the
6 Ordinance *relaxes* current standards in various areas, and the County simply misconstrued CEQA in
7 determining that it need not consider the reasonably foreseeable indirect environmental consequences of
8 adoption of the Ordinance, including the grading permitted thereunder, before approving the Ordinance.

9 **E. Grading Permits Are Not Only Ministerial; the Ordinance Must be Set Aside.**

10 Petitioners seek a declaratory judgment “that the Board’s determination that grading permits were
11 solely ministerial was invalid.” OTB at 18; *see* AR I:100 (text of Section XIV(c)). The County argues
12 that (1) petitioners did not request a declaratory judgment; and (2) petitioners have not cited any
13 discretionary provisions in the Ordinance. Incorrect. While the Ordinance does *limit* PRMD discretion,
14 as discussed in section III(B)(2), above, the Ordinance does not *eliminate* PRMD’s discretion.

15 First, petitioners’ Verified Petition for Writ of Mandate and Complaint for Declaratory and
16 Injunctive Relief and Attorneys’ Fees and Litigation Costs (“Ptn.”) clearly *did* “seek declaratory relief
17 declaring unlawful . . . any actions that implement the Grading Ordinance without full compliance with
18 CEQA and [Code of Civil Procedure] sections 1085 and 1094.5.” Ptn. at 2 ¶ 2, 14 ¶ 2 (relief requested).
19 Petitioners also claimed that the section of the Ordinance “declar[ing] that ‘the review of permit
20 applications . . . shall be a ministerial action’” was “contrary to law” because “the County does exercise
21 discretion in reviewing and approving grading permits subject to the . . . Ordinance.” Ptn. at 9 ¶ 25; *see*
22 *also* Ptn. at 13 ¶ 40 (“[t]he County’s issuance of grading and other permits *pursuant to* the . . . Ordinance
23 may involve the exercise of judgment or deliberation by the County”). For this reason, the County’s
24 observation that “[p]etitioners may not ask the Court to decide a different case than the one set forth in
25 their own Petition” is inapposite. Opposition at 29.

26 The County also argues that all permits issued under the Ordinance are in fact ministerial.
27 Opposition at 30. In response to petitioners’ point that the Ordinance is discretionary because it allows
28 PRMD to, among other things, require engineered plans and shorten permit time limits if a vaguely-

1 defined "geologic hazard" is present (OTB at 12 (*citing* AR I:45 (engineered plans), 58 (§
2 11.14.020(A)(1), (2); PRMD "may" shorten permit time limits where dangerous or hazardous conditions
3 are present)), the County falsely states that the Ordinance does not mention hazards. It does. *Id.*

4 Furthermore, section 11.12.010(A)(1), the Ordinance's verification requirement, is also
5 discretionary. AR I:55 (text), II:733 (expert geologist's opinion regarding discretion embodied in
6 verification requirement), 754 (DFG opining that required County "approval" of plans under Ordinance is
7 discretionary). OTB at 12. The County declines to respond to this expert testimony and instead merely
8 claims that "the enforcement provisions cited by [p]etitioners . . . apply after issuance of a permit, and do
9 not create discretion to modify or deny an application." Opposition at 30. But the verification
10 requirement plainly states that a "ministerial permit application *shall be approved*" only "when the permit
11 authority verifies that" certain conditions are present. AR I:55 (§ 11.12.010(A)(1)). Because verification
12 is a pre-issuance requirement and not an enforcement tool, this provision is not "exempt from CEQA,"
13 contrary to the County's claims.

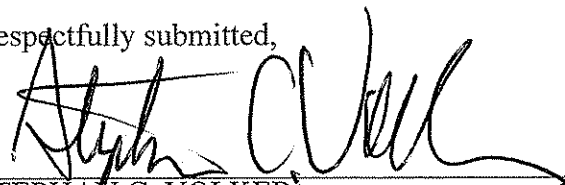
14 Because the Board mandated that any final court order "that any provision of . . . th[e O]rdinance
15 which the Board . . . intended to be ministerial is, in fact, discretionary" would have the effect of
16 "render[ing] th[e O]rdinance inoperative," this Court must set aside the Ordinance. AR I:100.

17 IV. CONCLUSION

18 As shown, the Board erred in finding (1) adoption of the Ordinance to be exempt from CEQA;
19 and (2) the permitting system established by the Ordinance to be solely ministerial. The Ordinance
20 provides that if either finding is invalid, the Ordinance must be invalidated. AR I:98, 99-100. Therefore,
21 this Court must set aside the Ordinance.

22 Dated: March 10, 2011

Respectfully submitted,



23
24
25 STEPHAN C. VOLKER
26 Attorney for Petitioners FOREST UNLIMITED, TOWN
27 HALL COALITION, COAST ACTION GROUP, NEW-
28 OLD WAYS WHOLISTICALLY EMERGING, COFFEE
LANE ALLIANCE, and JOHN STUPPIN

1 **PROOF OF SERVICE BY EMAIL, FACSIMILE AND U.S. POST**

2 I am a citizen of the United States of America; I am over the age of 18 years and not a party to the
3 within entitled action; my business address is 436 14th Street, Suite 1300, Oakland, CA 94612.

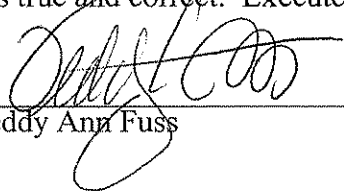
4 On March 10, 2011 I served a true copy of the following document entitled:

5 **PETITIONERS' REPLY TRIAL BRIEF**

6 in the above-captioned matter on each of the persons listed below by electronic mail transmission to the
7 email address listed below, electronic facsimile transmission to the facsimile number listed below and by
8 placing a true copy of said document in a prepaid envelope in the United States mail at Oakland,
9 California, addressed as follows:

9 Jeffrey M. Brax
10 Deputy County Counsel
11 Sonoma County Administration Center
12 575 Administrative Drive, Room 105A
13 Santa Rosa, CA 95403
14 email: JBRAX@sonoma-county.org
15 Fax: (707) 565-2624

16 I declare under penalty of perjury that the foregoing is true and correct. Executed on March 10,
17 2011 at Oakland, California.

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Teddy Ann Fuss