Filed 5/22/19 Los Padres Forestwatch v. County of Ventura CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

LOS PADRES FORESTWATCH et al., Plaintiffs and Appellants, v. COUNTY OF VENTURA, Defendant and Respondent; CARBON CALIFORNIA COMPANY, LLC, et al. Real Parties in Interest.	2d Civil No. B291481 (Super. Ct. No. 56-2015-00474693-CU-WM-VTA) ORDER MODIFYING OPINION [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on May 1, 2019, be modified as follows:

1. On the counsel page which follows Appendix B, delete the second paragraph beginning with "No appearance by

Respondent, County of Ventura" and insert: "Leroy Smith, County Counsel and Jeffrey E. Barnes, Assistant County Counsel for Respondent, County of Ventura."

There is no change in judgment.

Filed 5/1/19 Los Padres Forestwatch v. County of Ventura CA2/6 (unmodified opinion)

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Los Padres Forestwatch et al. brought a California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.) action challenging a 2015 conditional use permit (CUP) authorizing the continued operation of existing oil and gas wells and the addition of new wells. The project had previously been

approved by a 1978 environmental impact report (EIR), a 1984 focused EIR, and a 1983 mitigated negative declaration (MND). Ventura County (County) approved the 2015 project based on an EIR addendum. The trial court denied relief.

Los Padres Forestwatch et al. appeal from a judgment denying their petition. They contend that, instead of an EIR addendum for the 2015 project, CEQA requires the preparation of a subsequent EIR as to drill site 7. They claim that substantial evidence supports a fair argument that, as to drill site 7, proposed changes in the project might have significant environmental impacts concerning a hiking trail, flooding, water quality, and endangered species. Appellants also claim that, for no legitimate reason, County deleted previously imposed mitigation measures designed to protect against oil-spill hazards. We affirm.

Factual and Procedural Background[1]

In February 1976 County modified CUP-3344 to allow "drilling and production from six [oil and gas] wells on a single drill site located along Santa Paula Creek on the Ferndale Ranch" in Ventura County's Upper Ojai Valley. The Ventura County Planning Commission (Planning Commission) adopted a negative declaration for the project.

The Ferndale Ranch was owned by Lawrence Barker, Jr. In February 1975 "Argo Petroleum Corporation [(Argo)] informed the County that it had acquired operating rights on the Ferndale Ranch." Argo's "Ferndale Ranch Lease Area . . . encompasse[d] approximately 791 acres." Argo requested that the CUP be further modified to allow the drilling of 30 more wells on five

[1] The factual predicate for this appeal is based upon an administrative record comprising over 11,000 pages.

additional drill sites in the Ferndale Ranch Lease area. In June 1978 an EIR (the 1978 EIR) was prepared by the Ventura County Environmental Resource Agency. In July 1978 the Planning Commission certified the 1978 EIR and approved the requested modification of the CUP (the 1978 CUP). As a result, Argo was allowed to drill a total of 36 wells on six drill sites.

In 1982 Argo requested that the 1978 CUP be modified to permit a new drill site (drill site 7) and to transfer the location of 17 approved wells that had not yet been drilled. "[T]en wells would be transferred to . . . new Drill Site No. 7. . . . [T]he total number of wells for the entire permit area would remain at 36."

In 1983 an MND (the 1983 MND) was approved for the proposed project. Thomas Aquinas College, an adjacent landowner, appealed to the Ventura County Board of Supervisors (Board). It "contend[ed] that the [1983 MND] did not adequately address the environmental impact of the proposed project." The Board "directed that a focused Environmental Impact Report be prepared" that would address "only a traffic alternatives analysis."

The focused EIR (FEIR) is dated October 4, 1984. In a letter to the Ventura County Resource Management Agency, the company that prepared the FEIR stated: "This report is a <u>focused EIR</u> that <u>only</u> addresses the environmental consequences of providing access to Argo Petroleum's Ferndale Ranch lease. It does not address the actual drilling and production of oil from the proposed new wells. The Board of Supervisors previously found that this was adequately addressed in the [1983] Mitigated Negative Declaration for the project."

The 1983 MND was attached as an appendix to the 1984 FEIR. The FEIR stated, "[T]his focused EIR is intended to be

used in conjunction with the previously prepared [1983] Mitigated Negative Declaration, which together address the full range of environmental effects associated with the proposed project." The 1983 MND listed 20 mitigation measures.

In 1985 the Board certified the1984 FEIR and approved a modification of the 1978 CUP to allow a total of 36 wells (14 existing and 22 additional wells) on the seven drill sites. (The modified CUP is hereafter referred to as the 1985 CUP.) As Appendix A to this opinion, we attach a map showing the location of drill sites 1, 2, 3 and 7. This map is taken from a 1983 traffic noise study that was attached to the 1984 FEIR. As Appendix B, we attach a copy of a photograph of drill site 7 as it appeared in 2015.

In 1987 the ownership of the wells was transferred from Argo to real party in interest Seneca Resources Corporation. "In 2008, the operations were transferred to Vintage Production California ("Vintage"), a subsidiary of Occidental Petroleum Corporation."

The drilling period for the 36 wells expired in October 2011. The 1985 CUP was due to expire in February 2015. In October 2013 Vintage applied to renew the 1985 CUP and extend the drilling period "for another term of 30 years, to Feb 7, 2045." While Vintage's application was pending, its assets were merged into a new corporation, California Resources Corporation (California Resources).

Vintage requested permission for the "drilling . . . and placement into production of 19 new oil and gas wells on four existing drilling pads (Drill Sites 1, 2, 3 and 7)," as well as "[t]he continued operation of 17 existing oil and gas wells located" on the same four drilling pads. Thus, the number of wells would

remain at 36. The 19 new wells had been previously approved, but were "not installed within the time period for drilling specified in the permit. Since the time period for drilling the 19 . . . wells [had] expired, a modification of the permit [was] required for any drilling activities." "The proposed project involve[d] the continued use of existing oil and gas facilities, including drilling pads. The only new facilities would be additional oil wells."

Drill site 7 has three existing wells that "have been in operation for more than two decades. No grading, expansion or other alteration of this pad [was] proposed other than the installation of . . . 5 new wells." "The graded pad that comprises Drillsite #7 encompasses 1.83 acres." It was designed to accommodate 10 wells.

The Planning Director, County's "initial decision-making authority for the requested CUP," granted CUP PL13-0150 authorizing the 2015 project. He approved an EIR addendum. The addendum noted that it had been "prepared as [a] supplemental environmental document to the certified Environmental Impact Report . . . prepared for the proposed project." (Italics omitted.) According to the addendum, the certified EIR consisted of the 1978 EIR and the 1984 FEIR. A "Mitigated Negative Declaration [i.e., the 1983 MND] [was] incorporated into the . . . 1984 certified EIR." The addendum observed, "The proposed drilling of 19 new wells does not include any physical change to the land outside of the existing . . . drilling pads."

The Planning Director's decision was appealed to the Planning Commission. After a public hearing, "the Planning Commission voted unanimously . . . to . . . grant the requested

CUP, approve the EIR Addendum and deny the appeal in its entirety."

Appellants appealed the Planning Commission's decision to the Board. After a public hearing in October 2015, the Board granted CUP PL13-0150 (hereafter the 2015 CUP) approving the project. It considered the 2015 CUP to be a "modified permit authoriz[ing] additional oil and gas exploration and production activities within an existing oil field." The 2015 CUP expires in March 2045. The Board approved "the EIR Addendum prepared for the proposed project as satisfying the environmental review requirements of CEQA." It directed that "[n]o more than five new wells shall be installed on Drill Site #7." The Board denied appellants' appeal "in its entirety."

In November 2015 appellants filed a petition for a writ of mandate challenging the Board's approval of the 19 new wells. Appellants contended that, instead of preparing an EIR Addendum, County was required to "prepare and certify a legally adequate Subsequent or Supplemental EIR for the Project."

In February 2017 Carbon California Company, LLC (Carbon California), acquired California Resources' interest in the project. In March 2017 Carbon California was substituted as real party in interest in place of California Resources.

In its 30-page order denying appellants' petition, the trial court concluded that substantial evidence supports the Board's determination that changes in the project or its circumstances were not substantial enough to require a subsequent EIR.

Applicable CEQA Law

"The central purpose of CEQA is to ensure that agencies and the public are adequately informed of the environmental effects of proposed agency action." (*Friends of the College of San*

Mateo Gardens v. San Mateo County Community College Dist. (2016) 1 Cal.5th 937, 951 (*Friends I*).) "Under CEQA and its implementing guidelines,[2] an agency generally conducts an initial study to determine 'if the project may have a significant effect on the environment.' [Citation.] If there is substantial evidence that the project may have a significant effect on the environment, then the agency must prepare and certify an EIR before approving the project. [Citations.] On the other hand, no EIR is required if the initial study reveals that 'there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.' [Citation.] The agency instead prepares a negative declaration . . . . Even when an initial study shows a project may have significant environmental effects, an EIR is not always required. The public agency may instead prepare a mitigated negative declaration (MND) if '(1) revisions in the project plans . . . before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.' [Citation.]" (*Id*. at p. 945.)[3]

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[2] The CEQA Guidelines are found in California Code of Regulations, title 14, sections 15000-15387. "These guidelines . . . are 'central to the statutory scheme' . . . . [W]e afford the Guidelines 'great weight' unless a provision is 'clearly unauthorized or erroneous under the statute.' [Citation.]" (*Friends I*, *supra*, 1 Cal.5th at p. 954.)

[3] "'The [CEQA] Guidelines . . . define project as "the whole of an action, which has a potential for resulting in either a direct

"CEQA's subsequent review provisions apply when [as here] an agency modifies a project after it has certified an EIR or has adopted a negative or mitigated negative declaration. . . . [T]hese provisions require the agency to prepare a subsequent EIR or negative declaration under certain circumstances. [Citation.] They also allow the agency to prepare an addendum, rather than a subsequent EIR or negative declaration, if only 'minor technical changes or additions are necessary or none of the conditions described in [CEQA Guidelines] Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.' [Citation.]" (*Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2017) 11 Cal.App.5th 596, 604, fn. omitted (*Friends II*).)

"CEQA Guidelines section 15162 provides that no subsequent EIR is required either '[w]hen an EIR has [previously] been certified *or* [when] a negative declaration [has previously been] adopted for a project,' unless there are substantial changes to a project or its circumstances that will require major revisions to the existing EIR or negative declaration. [Citations.]"[4] (*Friends I*, *supra*, 1 Cal.5th at pp. 945-

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physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: [¶] . . . [¶] (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." ([CEQA] Guidelines, § 15378, subd. (a)(3).) Under CEQA, ""Project" is given a broad interpretation . . . to maximize protection of the environment."" [Citation.]" (*California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 187.)

[4] The full text of CEQA Guidelines section 15162 is as follows: "(a) When an EIR has been certified or a negative

946, all brackets except last brackets in original.) "[A]n agency that proposes changes to a previously approved project must

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declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following: [¶] (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; [¶] (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant, environmental effects or a substantial increase in the severity of previously identified significant effects; or [¶] (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following: [¶] (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration; [¶] (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR; [¶] (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or [¶] (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative."

determine whether the changes are '[s]ubstantial' and 'will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.' [Citation.] If the proposed changes meet that standard, then a subsequent or supplemental EIR is required." (*Id.* at p. 950.)

Standard of Review

"An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: The appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.]" (*Vineyard Area Citizens for Responsible Growth*, *Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.)

Where, as here, there is an initial environmental document, the court's first step is to determine "whether [the] initial environmental document remains relevant despite changed plans or circumstances." (*Friends I*, *supra*, 1 Cal.5th at pp. 952-953.) This is "a question for the agency to answer in the first instance, drawing on its particular expertise. [Citation.] A court's task on review is then to decide whether the agency's determination is supported by substantial evidence; the court's job ""is not to weigh conflicting evidence and determine who has the better argument."" [Citation.]" (*Id.* at p. 953.)

"Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Pub. Res. Code § 21082.2, subd. (c).) "Argument, speculation, unsubstantiated opinion or narrative, evidence

which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence." (*Ibid.*)

If substantial evidence supports the agency's determination that an initial environmental document remains relevant, the reviewing court's "next - and critical - step is to determine whether the agency has properly determined *how* to comply with its obligations [under CEQA's subsequent review] provisions. In particular, where, as here, the agency has determined that project changes will not require 'major revisions' to its initial environmental document, such that no subsequent or supplemental EIR is required, the reviewing court must then proceed to ask whether substantial evidence supports that determination." (*Friends I*, *supra*, 1 Cal.5th at p. 953.)

"[I]f a project was originally approved by an EIR, we affirm the agency's determination whether a subsequent or supplemental EIR is required when the determination is supported by substantial evidence, even if there is other evidence to the contrary. [Citations.] [¶] But once we have determined that the subsequent review provisions apply to a project approved through a negative declaration [or MND], our application of the standard of review changes and is less deferential to the agency. . . . [A] negative declaration [or MND] requires a major revision—i.e., a subsequent EIR or mitigated negative declaration—whenever there is substantial evidence to support *a fair argument* that proposed changes 'might have a significant environmental impact not previously considered in connection with the project as originally approved.' [Citations.]" (*Friends II*, *supra*, 11 Cal.App.5th at p. 607, italics added.)

The "Fair Argument" Standard of Review Applies to Non-Traffic Environmental Impacts Relating to Drill Site 7

As to the first step of appellate review, appellants concede that substantial evidence supports County's determination that the initial environmental documents remain relevant. (*Friends I*, *supra*, 1 Cal.5th at pp. 952-953.) Appellants "agree that the Project is not a new project requiring wholly new environmental review" and "that the 1983 MND remains relevant to the activities at Drill Site 7."

As to the second step, the question is whether the drill-site-7 project was approved by an EIR or an MND. Real Party in Interest Carbon California contends that "the 1984 [F]EIR is the final CEQA document for drill site 7, not the 1983 MND." (Capitalization and bold omitted.) Therefore, the fair argument standard of review is inapplicable. The trial court agreed with Carbon California. It applied the deferential substantial evidence standard instead of the fair argument standard.

Appellants claim that the "fair argument" standard of review applies to drill site 7 because "the impacts associated with oil drilling and operations at drill site 7 have never been analyzed in an EIR. . . . The only environmental review document that includes an analysis of impacts at drill site 7 is a mitigated negative declaration adopted in 1983."

We agree with appellants that the fair argument standard is the proper standard of review. The 1978 EIR was limited to an analysis of the environmental impact of drilling 36 wells on drill sites 1-6. It did not consider the environmental impact of drilling eight wells on drill site 7. The oil drilling and operations on drill site 7 were approved by the 1983 MND, not the 1984 FEIR. The company that prepared the 1984 FEIR stated: "This report is a

focused EIR that only addresses the environmental consequences of providing access to Argo Petroleum's Ferndale Ranch lease. It does not address the actual drilling and production of oil from the proposed new wells. The Board of Supervisors previously found that this was adequately addressed in the Mitigated Negative Declaration for the project." The 1984 FEIR noted: "On October 4, 1983 the Ventura County Board of Supervisors upheld the appeal by Thomas Aquinas College and determined that a focused EIR should address traffic and circulation alternatives. The Board directed that this EIR need not address the actual drilling and production of oil and gas, but only the potential for significant environmental impacts because of the expected traffic related to drilling and production activities. . . . [¶] In accordance with the Board's October 4, 1983, decision, the objective of this focused EIR is a comparative analysis of all reasonably feasible alternative access roads that may be available to serve oil related traffic associated with Argo Petroleum's revised drilling program for its Ferndale Ranch lease. The intent is to provide decision-makers with sufficient information to select the environmentally superior access alternative."

Only two parts of the 1984 FEIR contained an environmental impact analysis. They are entitled, "Environmental Impact Analysis of Access Alternatives" and "Environmental Impact Analysis of Entrance Alternatives." Other environmental impacts were not analyzed.

The 1984 FEIR cautioned, "[T]his focused EIR is intended to be used in conjunction with the previously prepared [1983] Mitigated Negative Declaration, which together address the full range of environmental effects associated with the proposed

project." The 1983 MND was attached as an appendix to the 1984 FEIR. Because the 1983 MND is the sole document that considered non-traffic environmental impacts relating to the drill-site-7 project, the fair argument standard of review applies to non-traffic environmental impacts of proposed changes to the project. Only non-traffic impacts are at issue in this appeal.

Drill Site 7: Fair Argument Analysis of Appellants' Contentions

Appellants argue that the "impacts at drill site 7 must be analyzed in a subsequent EIR." (Bold and some capitalization omitted.) Appellants have the burden of showing that "there is substantial evidence to support a fair argument that proposed changes [i.e., the continued operation of three wells and the drilling of five new wells on drill site 7,] 'might have a significant environmental impact *not previously considered* in connection with the project as originally approved [by the 1983 MND].'" (*Friends II*, *supra*, 11 Cal.App.5th at p. 607, italics added; see *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1207 ["'[A]n appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness'"].)

If an environmental impact was previously considered, a subsequent EIR is not required. "[N]egative declarations, like EIRs, are entitled to a presumption of finality." (*Friends I*, *supra*, 1 Cal.5th at p. 958, fn. 6.) "'The purpose behind the requirement of a subsequent or supplemental EIR or negative declaration is to explore environmental impacts not considered in the original environmental document. . . . The event of a change in a project is not an occasion to revisit environmental concerns laid to rest in the original analysis. Only changed circumstances . . . are at issue.' [Citations.]" (*Id*. at pp. 949-950.)

Appellants "claim that, due to changes in circumstances, changes in the project and new information, there are previously unstudied, potentially significant environmental effects [as to drill site 7] that were not addressed in the 1983 MND." Appellants "do not challenge the adequacy or propriety of the County's earlier approvals for the facility."

Santa Paula Canyon Trail

The Santa Paula Trail runs alongside drill site 7. (See Appendix B.) Appellants contend that there is substantial evidence to support a fair argument that the drill-site-7 project might have a significant impact on hikers using the trail. This impact is not a "new, and previously unstudied, potentially significant environmental effect[]." (*Friends I*, *supra*, 1 Cal.5th at p. 959.) It was considered in connection with the project as originally approved by the 1983 MND. Such consideration occurred at page 2 of the "Discussion of Environmental Impacts and Mitigations" (hereafter 1983 Environmental Discussion) prepared by the Planning Division and attached to the 1983 MND as Attachment "F."

The 1983 MND must be considered together with the 1983 Environmental Discussion. Before listing its mitigation measures, the 1983 MND states, "Please refer to Initial Study and Discussion for further details on potentially significant effects and mitigation measures."

Although the impact on hikers was previously considered in the 1983 Environmental Discussion, appellants argue that a subsequent EIR is necessary because County failed to enforce a 1983 MND mitigation measure requiring that production equipment on drill site 7 be *fully* screened by landscaping so that hikers on the Santa Paula Trail would not see it. Neither the

1983 MND nor the 1983 Environmental Discussion require that the equipment be fully screened by landscaping. The 1983 MND says it "[r]equire[s] *landscaping or screening* of drill sites and production facilities." (Italics added.) The 1983 Environmental Discussion states: "Drill Site Nos. 1 and 7 are clearly visible to hikers utilizing the Santa Paula Creek Trail. . . . The visual impacts can be mitigated to an insignificant level by imposition of standard oil development conditions which would: (1) *authorize the Planning Director to require fencing, landscaping, and/or screening of drill sites and production facilities*." (Italics added.) The 1985 CUP is the first document to use the "fully screen" language, but it does not require that the production equipment be fully screened by landscaping. It provides, "All drill sites shall be landscaped so as to fully screen production equipment . . . *to the extent which the Planning Director determines is reasonably feasible*." (Italics added.) Thus, the landscaping/screening issue was left to the Planning Director's discretion.

The administrative record contains photographs showing that, until 2015, Drill Site 7 was neither screened nor landscaped. At a hearing before the Board on October 20, 2015 (2015 Board Hearing), Brian Baca, the Planning Division's Commercial and Industrial Permits Manager, said: "[T]here's a condition [of the 1985 CUP] that says that sites should be screened so that you don't look at the oil facilities to the extent determined reasonably feasible by the planning director. Well, the former planning director found the site in its current condition to be fine, and that was what was reasonably feasible." Baca continued: "[T]here is an approved landscaping plan for drill pad number seven. There is no planting inside the fence on that approved landscaping plan. All the planting is on the

outside of the public trail . . . . [T]he entire bank outside the public trail is all vegetated." (See Appendix B.)

In an October 15, 2015 letter to the Board, appellants complained that California Resources had recently "installed thousands of feet of green screening along the chain link fence at Drill Sites #1 and #7, in lieu of landscaping. . . . [T]he screening does not meet the letter or the intent of previous mitigation measures requiring complete screening with landscaping. On the contrary, this newly-installed screening creates a 'tunnel' effect for hikers walking along the trail at Drill Site #7, and has already become a magnet for graffiti." The letter includes photographs of the newly-installed screening with graffiti scrawled on it.

Appellants claim: "The County's failure to enforce [this] mitigation condition[] [i.e., landscaping to fully screen production equipment,] is a changed circumstance that magnifies the severity of the Project's impacts on recreation and requires preparation of a subsequent EIR." "Instead of enforcing this condition, the County has waived it and deemed the applicant in compliance when it is not." "The County's actions are akin to deleting a mitigation measure."

"Mitigating conditions are not mere expressions of hope." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) *In Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 359, the court held as follows concerning the deletion of a mitigation measure: "[W]hen an earlier adopted mitigation measure has been deleted, the deference provided to governing bodies with respect to land use planning decisions must be tempered by the presumption that the governing body

adopted the mitigation measure in the first place only after due investigation and consideration. We therefore hold that a governing body must state a legitimate reason for deleting an earlier adopted mitigation measure, and must support that statement of reason with substantial evidence. If no legitimate reason for the deletion has been stated, or if the evidence does not support the governing body's finding, the land-use plan, as modified by the deletion or deletions, is invalid and cannot be enforced."

County did not delete the landscaping/screening mitigation measure. Instead of deleting it, the 2015 CUP provides an enforcement mechanism to assure compliance with the measure. The 2015 CUP incorporates the landscaping provision of the 1985 CUP except that, consistent with the 1983 MND and 1983 Environmental Discussion, it omits the word "fully" in the 1985 CUP's sentence, "All drill sites . . . shall be landscaped so as to *fully* screen production equipment . . . to the extent which the Planning Director determines is reasonably feasible." (Italics added.) To enforce the landscaping provision, the 2015 CUP provides: "Permittee shall submit a landscape plan to the Planning Division for review and approval. [¶] . . . The Permittee shall obtain approval of the landscape plan prior to the issuance of a zoning clearance for use inauguration. [¶] . . . The County Planning Division staff has the authority to conduct periodic site inspections to ensure the Permittee's ongoing compliance with this condition."

At the 2015 Board hearing, a representative of California Resources said: "[W]e're in compliance with our Landscaping Plan, but we'd be happy to work with Staff on a new Landscaping Plan if it's your Board's desire to remove the [recently-installed

screening and] . . . establish some kind of shrubbery along the edge of the fence. We would be open to working with Staff to make that happen."

Appellants argue that the "mitigation for visual impacts to hikers" is "weaken[ed]" by the 2015 CUP's omission of "'fully'" in the 1985 CUP's requirement that the permittee "fully screen production equipment . . . to the extent which the Planning Director determines is reasonably feasible." We see no meaningful distinction between "fully screen production equipment" and "screen production equipment." In either case, the equipment will be screened "to the extent which the Planning Director deems to be reasonably feasible."

Appellants contend that a subsequent EIR is required because of a change of circumstances caused by the permittee's failure to relocate the Santa Paula Trail. The 1983 MND does not mention the relocation of the trail. But in the 1983 Environmental Discussion attached to the MND, the Planning Division recommends "that the applicant be required to cooperate with the surface owners, including Thomas Aquinas College, and the U.S. Forest Service to establish a new hiking trail." The 1985 CUP provides: "The permittee shall cooperate with Thomas Aquinas College, the Ferndale Ranch . . . and the U.S. Forest Service to establish a permanent hiking trail in the Santa Paula Canyon. In the meantime, the permittee shall reconstruct and maintain a temporary hiking trail in the vicinity of Drill Site Nos. 1 and 7."

The permittee constructed and has maintained a temporary hiking trail in the vicinity of drill sites 1 and 7. (See Appendix B.) But a new, permanent hiking trail has not been established. However, the 1985 CUP did not require the permittee to

establish a new, permanent trail. It required the permittee, which was not a surface owner of the land around drill sites 1 and 7, to "cooperate" with the surface owners and the U.S. Forest Service to establish such a trail. Appellants have not cited any evidence showing a failure to cooperate by the permittee. Condition 42 of the 2015 CUP incorporates the same hiking-trail provision as the 1985 CUP, so this provision remains in force. Thus, the absence of a new, permanent hiking trail is not a change of circumstances requiring a subsequent EIR.

Flooding and Water Quality

Appellants argue, "The drilling and operation of five new oil wells on Drill Site 7, and 30-year extension of operation of existing wells on this site, would result in 'previously unstudied and potentially significant environmental effects'" related to flooding, the water quality of Santa Paula Creek, and endangered Southern Steelhead Trout.

The flooding and water quality issues are interrelated. Flooding of drill site 7 could pollute the Santa Paula Creek. These issues are not "new, and previously unstudied, potentially significant environmental effects." (*Friends I*, *supra*, 1 Cal.5th at p. 959.) They were considered in connection with the project as originally approved by the 1983 MND, which authorized 10 wells on Drill Site 7. The 2015 CUP, on the other hand, authorized only eight wells (three existing plus five new wells). Thus, the use allowed under the 2015 CUP is less intensive than the use allowed under the 1983 MND and 1985 CUP.

As to flooding, the 1983 Environmental Discussion states: "The proposed Drill Site No. 7 is located as close as 20 feet to the main bank of Santa Paula Creek. The drill pad elevation is 2-6 feet below the 100 year flood level. In order to avoid potential

flooding problems and the resulting pollution of Santa Paula Creek, the applicant proposes to construct an eight foot high earthen berm covered with native rock rip-rap. In order to mitigate flooding impacts to an insignificant level, Public Works recommends conditions which would: (1) require the permittee to submit detailed grading information including hydrological and hydraulic calculations; (2) require the permittee to obtain a grading permit; and (3) prohibit the applicant from obstructing natural drainage courses."

Not only was the flooding issue previously considered, but the likelihood of flooding is so remote that it cannot reasonably be considered a potentially significant environmental effect. At the 2015 Board hearing, Brian Baca of the Planning Division stated: "[T]he highest flood level that occurred in the last 80 years was in 2005. . . . [W]e have a full photographic record of drill site seven and its performance during the . . . flood . . . . It was untouched, both the riprap . . . and the pad itself." According to a 2015 report prepared by appellants' expert, Blue Tomorrow, LLC (Blue Tomorrow), "The 2005 water year had the highest recorded precipitation in the area with 60.69 inches . . . . A total of 22.91 inches fell during a 96 hour period from January 7 through January 11, 2005. The total rainfall measured on January 10, 2005 was 7.16 inches, with a peak intensity of 2.05 inches for the hour between 7:00-8:00 a.m."

An October 14, 2015 memorandum from Brian Baca to the Board notes: "Licensed Civil Engineers from the Development and Inspection Services Division and the Watershed Protection District reviewed the October 1, 2015 report on Hydrologic Considerations of [the 2015 CUP]. [This is the report prepared by Blue Tomorrow.] The technical analysis and report's

conclusions demonstrate that the existing Drill Site No. 7 pad is not adversely flooded by Santa Paula Creek in storm events that range from a 2-year storm to a 500-year storm."

Appellants argue that Blue Tomorrow "conclude[d] that flood waters could exceed the elevation of Drill Site 7 *during* 200-year flood instances or potentially smaller events if there is bulking or debris flow." (Italics added.) This argument is misleading. In support of the argument, appellants cite pages 4887 and 4899 of volume 7 of the administrative record. These pages are part of Blue Tomorrow's 2015 report. At page 4899, Blue Tomorrow opines, "Stage height [water elevation] may only exceed the [drill site 7] elevation *at cross-section #12* under the extreme flow events of discharge *greater* than Q200 [*greater* than a 200-year event, not *during* a 200-year event], n[channel roughness coefficient, Manning's n]=0.05. However, in the case of bulking or a debris flow, a less[e]r magnitude event may overtop [drill site 7] as can be surmised from the fact that the Q25 [25-year event] discharge [at cross-section #12] is only 6 feet below [drill site 7]." (Italics added.) A map at page 4897 shows the location of the different cross-sections. Cross-section #12 is outside the boundary of the drill-site-7 pad. As to the cross-sections within the drill-site-7 pad (cross-sections #2 through #10), a chart at page 4900 shows that, at n=0.05 and n=0.07, the water elevation is less than the drill-site-7 elevation even during a 500-year event.

Appellants allege: "[D]uring the 2005 storms, the Santa Paula Creek channel shifted away from Drill Site 7, but that shift is most likely temporary. [Citation.] The Blue Tomorrow report identified the high likelihood that the channel could move again during a future storm event, bringing it closer to Drill Site 7 and

demonstrating the instability of the creek channel. [Citation.] This could result in flooding-induced water quality impacts that were not analyzed in the 1983 MND." In support of their allegation, appellants cite only page 4889 of volume 7 of the administrative record. At this page Blue Tomorrow states: "Following the 2005 storm event . . . , the low flow channel [we assume this refers to the Santa Paula Creek when its flow rate is low] shifted approximately 225 feet from the south bank to the north bank (away from [drill site 7]) where it is currently located. These shifts in the low flow channel location are common to this type of morphological regime, and there is a high expectation that the low flow channel will swing back to the south. The large peak discharges and plentiful headwater sediment production, combined with the bedrock outcrops and vegetation, create diverse channel and habitat characteristics throughout the watershed."

Blue Tomorrow engages in speculation when it opines that "there is a high expectation that the low flow channel will swing back to the south." It does not explain how or when this shift will occur or the probability of the shift. Why is there "a high expectation" of such a southward shift? Why not a further shift to the north, away from drill site 7? "'Where an expert bases his conclusion upon assumptions which are not supported by the record, . . . or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value.' [Citation.]" (*Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 563.)

Moreover, Blue Tomorrow does not opine, as appellants speculatively opine in their opening brief, that such a future southward shift in the low flow channel "could result in flooding-

induced water quality impacts" at drill site 7. If such a future southward shift could increase the likelihood of flooding, then the 225-foot shift away from drill site 7 in 2005 is a changed circumstance that would appear to reduce the likelihood of flooding.

Condition 72 of the 2015 CUP further reduces the likelihood of flooding. It provides for the shutdown of the facility in the event of an impending flood emergency: "The Permittee shall shut down oil production activities as directed by the County of Ventura in the event of a flood emergency that would affect the subject facilities. [¶] . . . The Permittee shall submit a report of each flood emergency shut down to the Planning Division. . . . [¶] . . . [¶] . . . The County Building Inspector, Public Works Grading Inspector, Fire Marshall, and/or Planning Division staff has the authority to conduct periodic site inspections to ensure the Permittee's ongoing compliance with this condition."

As to the water quality of Santa Paula Creek, the 1983 Environmental Discussion observes: "Some degradation of the adjacent Santa Paula Creek is possible due to oil spills, or storm water carrying materials off-site, or the rupturing of the flow line between proposed Drill Site No. 7 and the oil and gas production facility located at Drill Site No. 1. Standard conditions would require that a berm be constructed around the drill site to ensure that any spills are contained on site. Storm damage to Drill Site No. 7 would be mitigated by construction of an eight foot high earthen berm covered with rip-rap . . . . The applicant proposes to minimize danger of pipe rupturing by placing an expansion loop on the flow line to relieve stress caused by earth movement or temperature expansion of the metal pipe. In addition, at each

end of the flow line the applicant will install an isolation block valve and a check valve to reduce any accidental spill to a minimum. In order to mitigate surface water pollution impacts to an insignificant level, Public Works recommends imposition of a condition which would require the permittee to submit design plans for the flowline."

A February 2015 memorandum from a Public Works Agency engineering geologist states: "[On Drill Site 7] [t]he [three] existing oil wells are, and the [five] new oil wells will be, constructed with the concrete basins (well cellars) required by the California Division of Oil and Gas and Geothermal Resources . . . regulations that prevent the loss or spillage of petroleum, including during storm events. . . . There is no record of a spill involving the existing three wells . . . located on Drillsite # 7 in the past two decades. In any case, the Drillsite #7 pad is constructed with a perimeter berm to control runoff from the pad floor. [¶] . . . [¶] Based on the above discussion, no substantial effect on water quality is anticipated."

Appellants argue that a subsequent EIR is required because "[t]he 1983 MND did not discuss or authorize the inclusion of a drain pipe from Drill Site 7 into Santa Paula Creek, resulting in an unstudied existing significant impact." Appendix B to this opinion shows the location of the drain pipe. In its report, Blue Tomorrow said the drain "consists of two parts: 1) a 6 inch diameter pipe with a valve that goes from inside the fenced area [of drill site 7] to outside of [drill site 7], and 2) a 24 inch diameter culvert located outside of [drill site 7] into which the 6 inch pipe discharges. The 24 inch culvert discharges directly into the Santa Paula Creek approximately 53 feet downslope." As-built plans for drill site 7 refer to the drain pipe as a "storm

drain," i.e., a system designed to carry away excess rainwater. The plans specify that "a 24 [inch] slide gate shall be installed on the inlet end."

There is no substantial evidence to support a fair argument that the installation of the drain pipe might have a significant environmental impact. At the 2015 Board hearing, Kath McCooney, a civil engineer, stated: "Right on the original plans and existing today is a control flap to shut-off and not allow the water to exit the site. . . . In addition to that [the permittee] has constructed an additional b[e]rm and an additional control valve. So they have redundant methods of stopping discharge." Brian Baca told the Board: "[Y]es [the control flap] is there. That's part of the engineered facility. . . . And the idea is that you control runoff . . . off the site and you check it before you release it to the creek."

In their reply brief, appellants assert that "this drainage contradicts the conditions of approval requiring surface water be kept on-site." In support of their assertion, appellants cite page 7984 of volume 11 of the administrative record. This page is part of a December 1989 modification of CUP-3344. The page contains Condition 65, which provides: "Each drill site shall be designed to contain any accidental *leakage* on site. . . . The *spill* containment system shall be maintain[ed] in good condition at all times." (Italics added.) Thus, Condition 65 does not require, as appellants' claim, that "surface water be kept on-site." It requires that the drill sites be designed to contain an oil spill. Condition 65 provides that "[t]his may be accomplished by constructing a minimum 12 inch earthen berm around the site . . . or by grading the site in such a way that all drainage flows toward the well cellars, a catch basin, or safety sump."

Southern Steelhead Trout

The 1983 Environmental Discussion does not consider the impact of drill site 7 on endangered Southern Steelhead Trout. Appellants assert: "The demise of the Southern steelhead in the Project area during the 1970s and 1980s has been documented. [Citation.] The population of this species reemerged in Santa Paula Creek and other waterways in the Santa Clara River watershed after 1985." We take judicial notice that the fish was not listed as an endangered species in Southern California until 1997. (See http://articles.latimes.com/1997/aug/12/news/mn-21798.) Santa Paula Creek was designated a "critical habitat for steelhead trout."

Appellants claim, "[T]here is substantial evidence to support a fair argument that the Project may have significant water quality impacts adversely impacting Southern steelhead." Therefore, "[t]he County must prepare a subsequent EIR to analyze the potentially significant water quality impacts at Drill Site 7 and the resultant impacts to steelhead recovery."

This is a water quality issue. As discussed in the prior section of this opinion, water quality is not a previously unstudied issue. Furthermore, we have explained why the 2015 project does not significantly affect water quality.

Appellants claim that the United States "Forest Service recommends a 200-meter, or 656-foot, setback from streams and riparian habitat to protect steelhead." The drill-site-7-pad does not meet this standard. Appellants argue, "While this [the 200-meter setback] is not a required setback, without additional analysis of a safe setback distance, . . . there is substantial evidence to support a fair argument that the Project may have

significant water quality impacts adversely impacting Southern steelhead."

We disagree. In support of their argument, appellants cite volume 14, page 9854 of the administrative record. This page is part of a Final Environmental Impact Statement (FEIS) that analyzes "the potential effects of implementing each of eight alternative leasing scenarios for management of the Federal oil and gas estate on lands administered by Los Padres National Forest . . . ." The "USDA Forest Service" is designated as the "Lead Agency." The FEIS states: "Accidental spillage of petroleum products or other toxic materials can directly kill fish. . . . The BLM [Bureau of Land Management] Standard Lease Terms give the government authority to move proposed activities up to 200 meters (656 feet). This is a sufficient distance to avoid all streams and riparian habitats when locating oil and gas activities." Thus, the FEIS does not recommend a 200-meter setback in all cases. It merely observes that, in BLM leases, the government's authority to move proposed oil and gas activities up to 200 meters is "sufficient" to avoid adverse impacts to fish. The FEIS does not take into account characteristics peculiar to drill site 7 that are designed to avoid pollution of the Santa Paula Creek, e.g., the construction of a berm around the pad.

In 2015 the Planning Division staff said: "As indicated in the attached memoranda from the Public Works Agency, the oil wells [on drill site 7] will be installed in accordance with the creek setback standards established in Section 8107-5.6 of the County Non-Coastal Zoning Ordinance." The attached Public Works Agency memorandum noted that the "proposed project" on Drill Site 7 includes a "100-foot setback" from the "'Top of Bank' of Santa Paula Creek as determined by the Watershed Protection

District. The top of bank is four vertical feet above the 50-year storm water mark . . . . The placement of the wells with this setback is adequate to prevent undue risk of water pollution or impairment of flood control interests."

Appellants contend, "Where there has been no previous analysis of impacts to endangered species recently found to occupy a project site, as is the case here, subsequent environmental review is required." In support of their contention, appellants cite *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041,1066 (*Moss*), and *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357, 364 (*Mira Monte*). Neither case shows that the discovery of an endangered species requires a subsequent EIR to assess the environmental impact of the project on that species. In *Moss* the court concluded that "substantial evidence supports the Board's finding that further review of the project's impacts on the population of [recently discovered] coastal cutthroat trout is required" because "the 1995 report of the Department of Fish and Game indicates activities that may occur in connection with the project have the potential to result in significant impacts to this species." (*Moss*, *supra*, at p. 1066.) Here, in contrast, there is no substantial evidence to support a fair argument that the drill-site-7 project may have a significant impact on Southern Steelhead Trout. In *Mira Monte* the court held that a subsequent or supplemental EIR was required because a proposed encroachment on wetlands had not been considered in the EIR and the encroachment "involved a new significant effect because it eliminated a portion of the wetlands thereby restricting the range of a rare or endangered plant." (*Mira Monte*, *supra*, at p. 364.) There is no

substantial evidence that the drill-site-7 project may restrict the range of Southern Steelhead Trout.

California Condors

Appellants assert: "A fair argument exists that the [drill-site-7] Project would have adverse impacts on [endangered] California condors." The "[United States Fish and Wildlife Service (USFWS)]-designated critical habitat for the condor abuts the Project's Drill Site 7."

The 1978 EIR concluded: "The location of the drill sites [sites 1-6, not site 7] are factors which tend to reduce the impact of the project on nesting and roosting Condors in the area. It should be noted, however, that any activity beyond the proposed sites could have severe adverse impacts on this endangered species."

The 1983 MND did not mention condors. Appellants assert that this omission was "presumably because condors were removed from the wild in the 1980s." The condor was reintroduced into the wild in 1992. Appellants claim, "USFWS telemetry data indicates three active condor roosting sites within 0.5 miles of Drill Site 7." But the Planning Division staff were "unable to confirm the existence of a condor nesting or roosting site located within one-half mile of the proposed new oil wells."

In a July 18, 2013 letter to the Planning Division, USFWS said that well pads can be a source of "micro-trash" ingested by condors. The micro-trash, "in combination with hair and other natural items, become compacted in the birds' digestive tract and can lead to death." Examples of micro-trash are "small items [such] as screws, nuts, washers, nails, coins, rags, small electrical components, small pieces of plastic, glass or wire." At the 2015 Board hearing Brian Baca stated that, according to USFWS,

since 2008 "only one condor chick has died of microtrash ingestion and . . . that . . . death is not tied to the oil industry . . . any way that they could see." Baca continued, "Fish and Wildlife Service will tell you, there's no evidence that a condor adult has ever been injured or killed by operating oil equipment or as a result of oil operations."

There is no substantial evidence to support a fair argument that the drill-site-7 project might produce a significant environmental effect relating to California condors. Steve Kirkland, the USFWS California Condor Field Coordinator, visited drill site 7. In October 2015 he wrote an email to Brian Baca stating: "[W]e found that the measures to protect the California condor, recommended by the Ventura Fish and Wildlife Office [of USFWS], in its July 18, 2013 letter to the County, are being implemented, or were discussed in detail at the site visit and the operator agreed to implement them. At this time we do not recommend any additional actions beyond those identified in the July 18, 2013 letter. [¶] . . . Additional wells placed on existing and operating pads [such as drill site 7] do not pose any additional threats to condors, as long as the protective measures are being implemented and maintained."

The 2015 CUP contains numerous protective measures designed "[t]o avoid significant impacts to [condors] during drilling and ongoing operation of approved wells and facilities." Brian Baca told the Board that the 2015 CUP includes 22 of the 23 measures recommended by USFWS in its July 18, 2013 letter. The one omitted measure "is actually a land use policy" that, according to USFWS, does not apply to drill site 7.

Appellants note that the 2015 CUP "failed to incorporate USFWS conditions regarding fire prevention (measure 19)."

Measure 19 provides, "The potential for human-caused wildfires will be minimized by use of shields, mats, or other fire-prevention methods when grinding or welding. Fire response equipment, including water, extinguishers, and shovels will be available for fire suppression." The omission of measure 19 is insignificant in view of the 2015 CUP's seven-page section IV, which is entitled, "Ventura County Fire Protection District . . . Conditions."

Alleged Deletion of Oil-Spill-Hazard-Mitigation Measures: Automatic Shut-Off Valves and Suspension Bridge

The 1978 EIR observed that a "proposed new shipping line for oil would necessitate crossing Santa Paula Creek . . . and, therefore, could be exposed to possible breakage and spillage of contents during flood conditions . . . if line breakage happened along the creek." The 1978 EIR continued: "The applicant will install automatic safety valves on the shipping line so that the maximum amount of oil that could be spilled into Santa Paula Creek, in the event of pipeline breakage, would be 45 barrels (1,890 gallons). In addition, a properly designed suspension bridge would reduce the likelihood of pipeline breakage from flooding."

The 1978 CUP required "[t]hat in the event that a proposed oil pipeline is installed across the Santa Paula Creek . . . , automatic shut-off valves shall be installed within said pipeline, *on each side of the waterway*, to reduce the amount of oil that would be released, if the pipe should fail." (Italics added.) The 1978 CUP did not require the construction of a suspension bridge over the creek.

An oil pipeline was installed across the creek, but a suspension bridge was not constructed. Shut-off valves were installed, but they were not automatic. Appellants argue, "The

failure to impose a measure previously required to mitigate a significant adverse impact must be analyzed in a subsequent EIR." Therefore, the failure to construct a suspension bridge and install automatic shut-off valves must be analyzed in a subsequent EIR. "Once adopted as mitigation measures, the County could not legally remove them without conducting an EIR and making findings that the previously imposed mitigation measures were no longer necessary or feasible."

Automatic Shut-Off Valves

County did not remove the requirement of automatic shut-off valves. In an October 2015 memorandum to the Board, the Planning Division said, "The applicant has included in the project description the installation of pressure-sensing equipment that would automatically shut down all operations and oil flow on the Ferndale Lease in the event of a break in the pipeline suspended over Santa Paula Creek." Condition 71 of the 2015 CUP provides: "The Permittee shall install and maintain an automatic shutoff system on the existing pipeline that crosses Santa Paula Creek. [¶] . . . The Permittee shall submit photograph documentation of the installed automatic field shutoff system to the Planning Division for review and approval. [¶] . . . The Permittee shall obtain []Planning Division approval of the shutoff system installation prior to the issuance of the zoning clearance for use inauguration. [¶] . . . The County Building Inspector, Public Works Grading Inspector, Fire Marshall, and/or Planning Division staff has the authority to conduct periodic site inspections to ensure the Permittee's ongoing compliance with this condition." In view of the enforcement mechanism for Condition 71, we reject appellants' claim "that enforcement of Condition No. 71 will be speculative, at best."

Thus, the 2015 CUP assures that automatic shut-off valves will be installed. We agree with the trial court that "[t]he installation of these automatic shut-off valves will adequately address any minor risk of a spill."

Appellants argue that Condition 71 of the 2015 CUP does not "fully incorporate the 1978 EIR's requirement" that automatic shutoff valves "be installed on *both* sides of Santa Paula Creek." "Nor did the County provide a reason for not imposing automatic shutoff valves on both sides of the pipeline, as required in the 1978 EIR." "The removal of the 1978 EIR mitigation requirement for automatic shutoff valves on both sides of the creek, without preparation of a subsequent EIR, violates CEQA."

The 1978 EIR did not require automatic shutoff valves on both sides of the creek. It required "automatic safety valves on the shipping line so that the maximum amount of oil that could be spilled into Santa Paula Creek, in the event of pipeline breakage, would be 45 barrels." The 1978 CUP, not the 1978 EIR, required that the valves "be installed . . . on each side of the waterway."

There is no evidence that the automatic shut-off system to be installed pursuant to the 2015 CUP will be less effective than the automatic shut-off valves required by the 1978 CUP. Because of advances in technology since 1978, one would expect that a 2015 shut-off system would be superior to a 1978 system. At the 2015 Board hearing, a representative of California Resources said, "[W]e have agreed to . . . have an automatic shut-off system that not only shut-offs [*sic*] that pipeline [over the creek], it shuts off our [oil] field for the Ferndale lease. That way we can limit

and minimize anything that could potentially get into the creek in the event of an unfortunate incident."

The 2015 shut-off system appears to be safer than the automatic shut-off valves on both sides of the creek required by the 1978 CUP. The valves would shut down only the pipeline over the creek. If a break in that pipeline occurred and the shut-off valve closest to the pumping station malfunctioned, oil would pour unabated into the creek. The shut-off system to be installed pursuant to the 2015 CUP would prevent this from happening. As the Planning Division said, it would "automatically shut down all operations and oil flow on the Ferndale Lease in the event of a break in the pipeline suspended over Santa Paula Creek." We therefore reject appellants' claim that a subsequent EIR is necessary because the 2015 CUP does not require automatic shut-off valves on both sides of the creek.

Suspension Bridge

As to the suspension bridge, the trial court stated that it "does not read the suspension bridge language in the 1978 EIR as a mitigation requirement." "The [1978] EIR merely observed that 'a properly designed suspension bridge would reduce the likelihood of pipeline breakage from flooding.' [Citation.] The County interpreted [this observation] as a statement but not a requirement, and the [1978] permit did not require a suspension bridge." When Brian Baca was asked by the Board about the suspension bridge, he responded, "[I]t's sort of a statement, but it doesn't say, you shall do it. And then the conditions of approval for that [1978] permit do[] . . . not include the suspension bridge."

We agree with the trial court's interpretation of the 1978 EIR. The statement about the suspension bridge was an observation, not a required mitigation measure. Thus, the

absence of a suspension bridge does not mandate the preparation of a subsequent EIR.

Disposition

The judgment is affirmed. Real Parties in Interest shall recover their costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

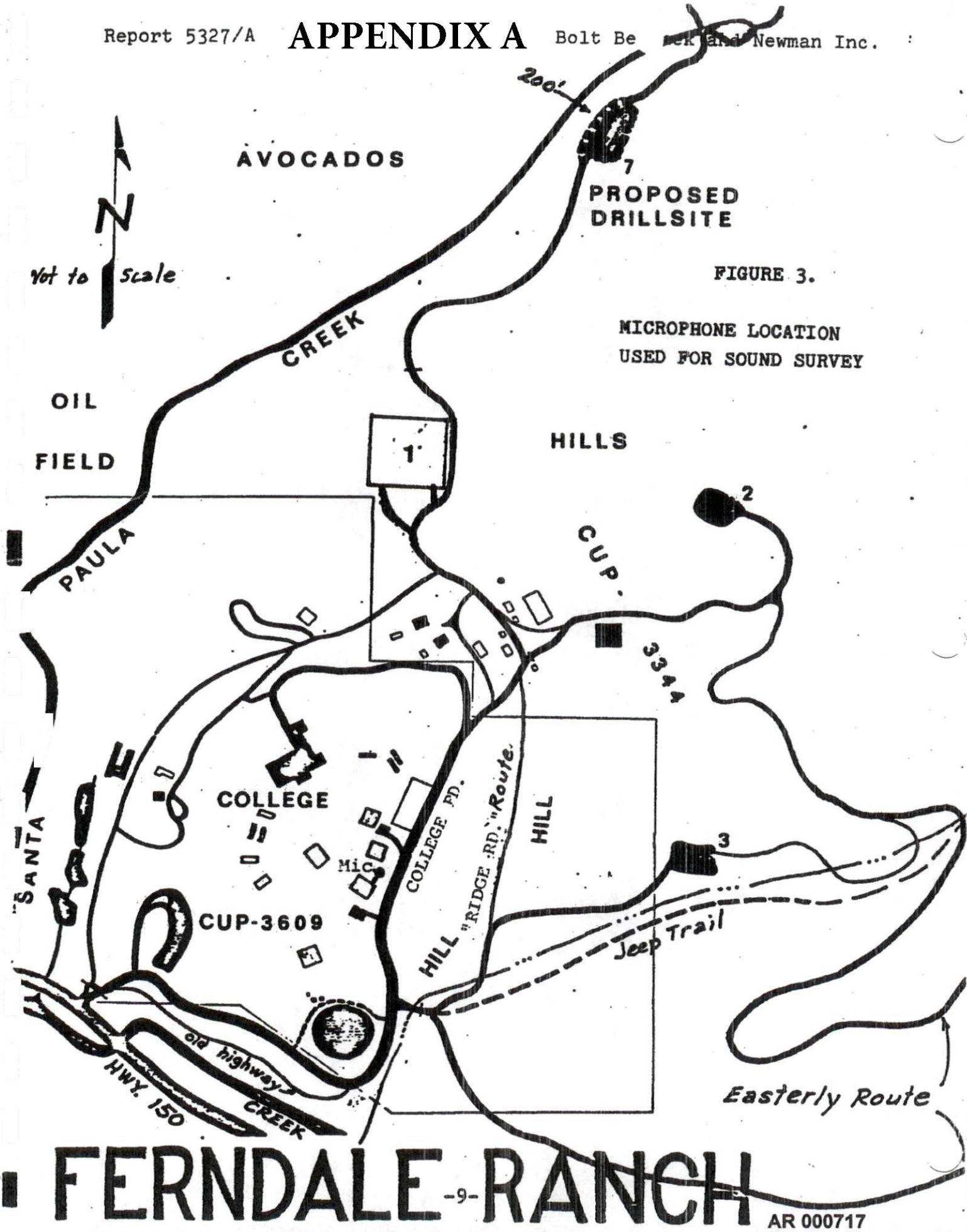
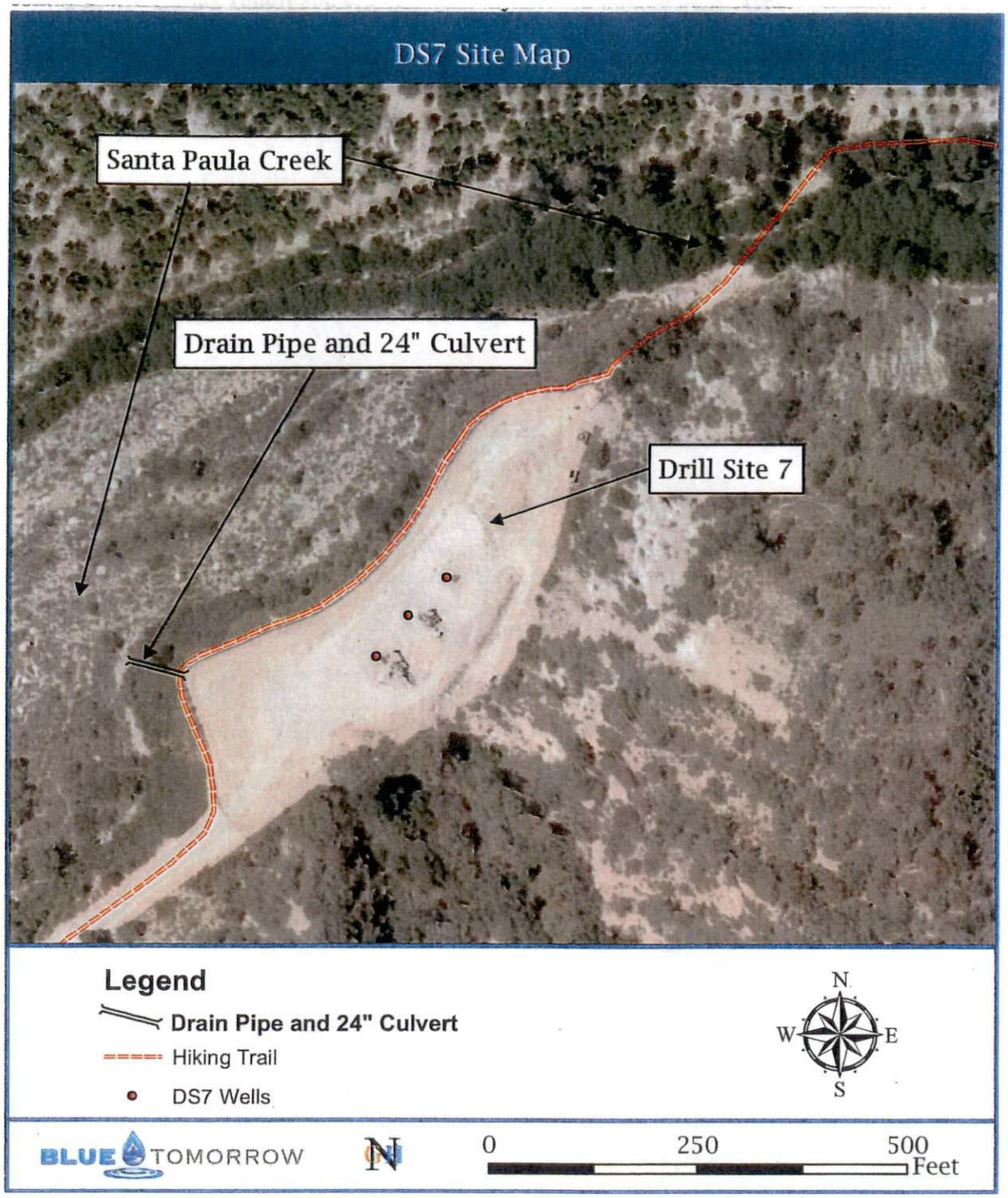


FIGURE 3.

MICROPHONE LOCATION
USED FOR SOUND SURVEY

APPENDIX B


DS7 Site Map
Santa Paula Creek
Drain Pipe and 24" Culvert
Drill Site 7
Legend
Drain Pipe and 24" Culvert
Hiking Trail
DS7 Wells
N
W
E
S
BLUE TOMORROW
N
0
250
500
Feet

Kevin G. DeNoce, Judge

Superior Court County of Ventura

Chatten-Brown, Carstens & Minteer and Douglas Carstens, Amy Minteer, Michelle Black for Plaintiffs and Appellants.

No appearance by Respondent, County of Ventura.

Alston & Bird and Jeffrey D. Dintzer, Matthew Wickersham for Real Party in Interest Carbon California Company, LLC.