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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

GERALD B. DELUCCHI, as Trustee, etc.,

Plaintiff and Appellant,

v.

COUNTY OF COLUSA et al.,

Defendants and Respondents.

C069632

(Super. Ct. No. CV23826)

Appellant Gerald B. DeLucchi, individually and as trustee for the Gerald B. DeLucchi Living Trust, dated February 27, 1998 (DeLucchi), appeals from the trial court's judgment denying his petition for writ of traditional or administrative mandamus (Code Civ. Proc., §§ 1085, 1094.5) and complaint for injunctive relief. The lawsuit challenged actions of the County of Colusa and its Board of Supervisors (the County) in adopting a Resolution abandoning (vacating) purported public rights-of-way under the

Streets and Highways Code (Sts. & Hy. Code, § 8300 et seq.¹) and in concluding the abandonment was exempt and not subject to review under the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.). DeLucchi contends the abandonment is invalid under the Streets and Highways Code because the County did not find that the purported rights-of-way were not suitable for nonmotorized transportation and there is no substantial evidence that the rights-of-way are unnecessary for present or prospective use or that the abandonment is of benefit to the public. He contends the abandonment violates CEQA because the abandonment is a project and is not exempt.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

DeLucchi purchased the subject property in 1996. He uses the property as a private duck hunting club. Individuals seeking membership in the club enter into an agreement with DeLucchi and pay an annual seasonal rental fee for the membership.

The property is approximately 60 acres in Colusa County in proximity to Lurline Avenue to the south, Maxwell-Colusa Highway to the north, Two-mile Road to the west, and Four-mile Road to the east. It was part of a subdivision map recorded in 1910 known as the Maxwell Unit of the Sacramento Valley Irrigation Project (SVIP). The DeLucchi Property includes a portion of Lot 923 of the SVIP. In conjunction with the recording of the SVIP Map, the then-owner dedicated, and the County arguably accepted, miles of public rights-of-way providing access to the mapped parcels, including Lot 923.² The

¹ Undesignated statutory references are to the Streets and Highways Code in effect at the relevant times.

“ ‘Vacation’ means the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.” (§ 8309.) The terms “abandment” and “vacation” are used interchangeably herein.

² The County disputes whether it ever accepted the rights-of-way and refers to them as “purported public rights-of-way.” Nevertheless, as the County acknowledges, their

purported public rights-of-way provided routes to the DeLucchi Property from the Maxwell-Colusa Highway and Two-mile Road, which are county-maintained roads.

In 1986, the federal Department of Fish and Wildlife Service (DFWS) recorded a Waterfowl Habitat Conservation Easement, maintaining a substantial portion of the DeLucchi Property as a wildlife habitat but permitting duck hunting on the property.

Before buying the property, which was previously called the Heljik property, DeLucchi obtained a title report. In a verified complaint DeLucchi filed in 2009 in an unrelated matter we discuss *post*, DeLucchi stated: “After reviewing the Title Report [he] realized there was no recorded road access to the Heljik Property which would allow a purchaser of the Heljik Property access to said real property.”³ DeLucchi was informed by the vice president/general manager of the Gunnersfield Property “that access to the Heljik Property historically crossed the [neighboring] Gunnersfield Property and the RDC [Rare Duck Club] Property. [DeLucchi] was further advised that he would only need to cross the Gunnersfeld Property and the RDC Property to reach the Heljik Property.” In August 1996, DeLucchi executed written agreements with the owners of the Gunnersfeld and RDC properties for private right of access across those properties “in perpetuity.”

In 2005, DeLucchi began having disputes with his neighbors over the private access to his property. He filed two lawsuits against neighboring landowners, asserting

validity is not at issue in this appeal because section 8308 permits abandonment of “purported” public rights-of-way.

³ In 2009, DeLucchi filed a verified complaint against neighboring landowners over *private* access, which is not the subject of this appeal. The trial court and this court granted judicial notice of the complaint. A verified complaint in one action is competent evidence against the pleader in another case as an admission, though it may not constitute an estoppel. (*Jogani v. Jogani* (2006) 141 Cal.App.4th 158, 175.) The verified complaint in 2009 indicates DeLucchi did not consider himself entitled to use any of what he now claims are public rights-of-way. We discuss this in more detail, *post*.

private rights of access across their properties to get to his property.⁴ He submitted a declaration in one of the lawsuits, attesting that due to deprivation of the private access by the landowners with whom he had agreements, he and his duck club members were forced to use less desirable private access across other private property pursuant to an oral agreement by that landowner, Paul Richter. DeLucchi stated the access over Richter's property required a two-mile hike or the use of all-terrain vehicles.

In 2009, the trial court issued preliminary injunctions in the two lawsuits over private access, allowing DeLucchi limited access pursuant to the private agreements while the actions were pending.

In 2010, DeLucchi filed a new complaint in Colusa County Superior Court (the SVI Lawsuit) against neighboring landowners and the County, seeking to protect access to his property along the purported *public* rights-of-way.⁵ The complaint alleged the 1910 recording of the SVI map in the county records constituted acceptance of the roadways shown on the map, whether or not they represented existing roads, as public highways. DeLucchi's causes of action against the County sought quiet title and declaratory relief of the right of the public to use those purported public rights-of-way which did and/or could provide access to the DeLucchi Property from the Maxwell-Colusa Highway and Two-mile Road. In the SVI suit, DeLucchi claimed he had used the purported *public* rights-of-way all along, but only after the dispute with neighbors did the neighbors put up gates across land that DeLucchi claims were within the public rights-of-way.

After DeLucchi filed the SVI lawsuit, the County Department of Public Works made a recommendation to the Board of Supervisors that the Board vacate the purported public rights-of-way at issue in the lawsuit. Public works cited three public benefits. The

⁴ Colusa County Superior Court Nos. CV23399 and CV23714.

⁵ Colusa County Superior Court No. CV23754.

primary public benefit was the avoidance of litigation costs the County would incur as a defendant in DeLucchi's lawsuit. As an "additional public benefit," Public Works wrote that "vacating the purported public rights-of-way will assist in removing the County as a likely arbiter of future disputes between landowners regarding the purported public rights-of-way and property access." As a third public benefit, Public Works wrote, "Further, the vacation of the identified purported public-rights-of way will better ensure that the agricultural and recreational uses of the affected parcels remain unchanged over time. This land use and zoning code designation goal is an important aspect of the County's overall long term land use policies favoring longstanding agricultural land use with incidental duck club recreational use when agricultural activities are out of season."

Subsequent to the recommendation, the County gave notice under section 8320⁶ that it would abandon the purported public rights-of-way that were the subject of the DeLucchi dispute.⁷

The County held public hearings on the matter. DeLucchi opposed abandonment in writing and in person at the hearings.

Thereafter, the County issued a Notice of Exemption from CEQA, stating "the project consists of abandoning approximately 26.29 miles of purported public easements created in 1910 by the [SVI] Company Subdivision Map," and the project was exempt from CEQA under CEQA Regulations (Cal. Code Regs., tit. 14 (hereafter Guidelines))

⁶ Section 8320 provides in part: "(a) The legislative body of a local agency may initiate a proceeding [to abandon rights-of-way].... [¶] (1) On its own initiative, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter."

⁷ The abandonment does not cover all purported public rights-of-way in the SVI map, but only those that were the subject of DeLucchi's lawsuit.

sections 15061, subdivision (b)(2)-(3),⁸ and 15321, subdivision (a),⁹ because, “No physical changes are proposed with the abandonment so no significant effects to the environment will result from the project. The easements have never been developed with any county infrastructure or utilized for public (county) purposes. The project is considered an enforcement action by a regulatory agency.”

On February 8, 2011, the County adopted Resolution No. 11-006, vacating (abandoning) the “purported public rights-of-way” under section 8324¹⁰ and stating the abandonment was exempt from CEQA.

The Resolution contained findings for the County’s determination that the purported public rights-of-way were unnecessary for prospective public use, including:

⁸ Guidelines section 15061 provides in pertinent part: “(b) A project is exempt from CEQA if: ... [¶] (2) The project is exempt pursuant to a categorical exemption [Guidelines section 15300 et seq.] and the application of that categorical exemption is not barred by one of the exceptions set forth in [Guidelines] Section 15300.2. [¶] (3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Subdivision (b)(3) is often referred to as the “common sense” exemption.

⁹ Guidelines section 15321 states in pertinent part: “Class 21 consists of: [¶] (a) Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. Such actions include, but are not limited to, the following: [¶] ... [¶] (2) The adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.”

¹⁰ Section 8324 states: “(a) At the hearing, the legislative body shall hear the evidence offered by persons interested. [¶] (b) If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement....”

the general public does not use the purported rights of way as public roads or highways and has never done so; the purported public rights-of-way do not lead to any public land or to places the general public would have a right to travel; property owners in the area, including DeLucchi, relied on private easements to access their property; a number of the purported public rights-of-way intersect irrigation canals, water supply conveyances, drainage ditches, or farm fields used for rice production; the purported public rights-of-way are located in an area designated as Agriculture General in the General Plan and zoned Exclusive Agriculture in the County Zoning Code; the purported public rights-of-way do not connect any two county roads nor any roads anticipated to receive formal or informal designation by the County; some of the purported public rights-of-way are discontinuous and are not linked to the other purported public rights-of-way; the County of Colusa Transportation Plan did not show current or proposed public use of the purported public rights-of-way; the County of Colusa Circulation Element did not identify any of the purported public rights-of-way as an existing part of the county circulation plan or as proposed new roadway; the General Plan did not provide for any development in the area; and there was no indication of future need for a public road in the area; which has historically been used for the same agricultural and duck hunting purposes since 1910.

The Resolution further stated the County found that vacating the rights-of-way “will benefit the public” based on the following findings:

“1. Because existing litigation against the County of Colusa is based upon the existence of the purported public rights-of-way, vacating the purported public rights-of-way will assist the County of Colusa in removing itself from the lawsuit, thereby reducing legal fees and costs. Further, if the County of Colusa is removed from the lawsuit, it will eliminate the potential threat of an attorney’s fee award against it. In light of the fact that the purported public rights-of-way are unnecessary for current and

prospective public use, incurring the costs of litigation defense and exposing the County of Colusa to a potential attorney's fees award is directly contrary to the public interest.

"2. Vacating the purported public rights-of-way will assist the County of Colusa in removing itself as a likely arbiter of future disputes between landowners regarding the purported public rights-of-way.

"3. Vacating the purported public rights-of-way will assist in ensuring that the agricultural and recreational uses in the affected area remain unchanged over time. The General Plan and Zoning Code designation of the area are important aspects of the County of Colusa's overall long term land use policies, which favor longstanding agricultural land use with incidental duck club recreational use when agricultural production is not occurring.

"4. Assuming the general public has the right to access the purported public rights-of-way as alleged by Mr. Delucchi in his current lawsuit against the County of Colusa, the following findings further support the conclusion that vacating the purported public rights-of-way will benefit the public: [¶] [Vacating will assist in preventing the general public from traveling into areas that pose hazards to farming and duck hunting; preventing damage to environmentally sensitive areas including habitat for waterfowl; preventing theft; protecting productive use of farmland; and protecting public safety - the intersections of the purported public rights-of-way and county roads in the area are not safe for general public travel and the purported public rights-of-way are not " 'all-weather roads and pose a danger to travelers thereon during certain times of the year.' "].¹¹

¹¹ The County did not cite the cost of maintenance of the rights-of-way. We note that "a county has no statutory duty to maintain public roads that have not been accepted into the county highway system by resolution of the board of supervisors. [Citation.]" (*Hanshaw v. Long Valley Road Assn.* (2004) 116 Cal.App.4th 471, 479-480.)

On March 11, 2011, DeLucchi filed the pleading at issue in this appeal -- a petition for writ of mandate and complaint for injunctive relief -- against the County, asking the trial court to compel the County to set aside Resolution No. 11-006, to comply with CEQA, and asking the court to award damages of \$775,000 plus costs and attorney fees. The pleading asserts four counts: (1) failure to evaluate significant traffic impacts under CEQA; (2) failure to evaluate impacts on biological resources; (3) abuse of discretion in determining, without substantial evidence, that abandonment benefits the public and has no significant environmental effect; and (4) arbitrary, capricious and fraudulent conduct, in that avoidance of lawsuits is per se an invalid justification.

Both sides requested judicial notice of documents not in the administrative record. The trial court granted judicial notice, except as to five of DeLucchi's documents.¹²

After a hearing, the trial court issued a judgment on October 3, 2011, stating that substantial evidence demonstrated the abandonment was not a CEQA project and was exempt under the "common sense" exemption (Guidelines, § 15061, subd. (b)(3); see fn. 8, *ante*) and the categorical Class 21 exemption (Guidelines, §§ 15061, subd. (b)(2), 15321; see fns. 8 and 9, *ante*). The judgment added that DeLucchi bore the burden of producing substantial evidence that the "unusual circumstances" exception to exemptions under Guidelines section 15300.2, subdivision (c),¹³ applies to the abandonment, and the

¹² DeLucchi's appellate brief sets forth some facts with reference to documents that are in the clerk's transcript but were not part of the administrative record and were denied judicial notice by the trial court, including documents related to a wildlife conservation easement between DeLucchi and the federal government. DeLucchi filed in this court a request for judicial notice of the same documents for which he sought judicial notice in the trial court. We granted the request only as to those documents of which the trial court granted judicial notice. We disregard the others.

¹³ The unusual circumstance exception set forth in Guidelines section 15300.2, subdivision (c), provides: "Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

Board of Supervisors could easily have found that DeLucchi's evidence was self-serving and contrived. The judgment further stated that substantial evidence demonstrated that the County's action complied with the Streets and Highways Code. The trial court accordingly denied the writ petition, dismissed the complaint for injunctive relief, and entered judgment in favor of the County and Board of Supervisors.

DISCUSSION

II. Abandonment of Public Rights of Way

A. Standard of Review

DeLucchi pursues both traditional mandamus (Code Civ. Proc., § 1085¹⁴) and administrative mandamus (Code Civ. Proc., § 1094.5¹⁵). On appeal, we review the agency's decision, not the trial court's decision. (*Mount Shasta Bioregional Ecology*

¹⁴ Code of Civil Procedure section 1085, subdivision (a), provides: "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station...."

¹⁵ Code of Civil Procedure section 1094.5 provides in part: "(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury.... [¶] (b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. [¶] (c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record."

Center v. County of Siskiyou (2012) 210 Cal.App.4th 184, 195 [in mandamus actions, we review the agency’s decision, not that of the trial court].)

Generally, a county’s decision to abandon rights-of-way pursuant to section 8320 is a *legislative* decision subject to traditional or ordinary mandamus. (*Citizens for Improved Sorrento Access, Inc. v. City of San Diego* (2004) 118 Cal.App.4th 808, 814; *Heist v. County of Colusa* (1984) 163 Cal.App.3d 841, 845-848 (*Heist*).) In such cases, our review is limited to an inquiry into whether the action was arbitrary, capricious or entirely lacking in evidentiary support. (*Citizens for Improved Sorrento Access*, at p. 814; *Heist*, at p. 846.)

However, this court has recognized that a distinction *may* exist when the party opposing the abandonment has a direct property interest in the abandoned road as an abutting property owner. (*Heist, supra*, 163 Cal.App.3d at p. 847, citing *Ratchford v. County of Sonoma* (1972) 22 Cal.App.3d 1056, 1062, 1067-1068 (*Ratchford*).) In *Ratchford*, a property owner sought a writ of certiorari regarding a county’s abandonment of a small triangular portion of a public road on which a corner of a neighbor’s residence was situated on the ground that the county lacked jurisdiction to abandon the portion of the road in question. (*Ratchford*, at pp. 1059, 1062.) The *Ratchford* court held that the abandonment of a portion of a road where opposition is filed by someone with a direct property interest by virtue of being an abutting land owner is a “judicial” decision, not a legislative decision. (*Id.* at pp. 1066-1069.) From this, DeLucchi, as an abutting land owner, contends that the substantial evidence standard applied in *Ratchford* also applies here.

The County, on the other hand, contends that the more deferential standard applicable to legislative acts applies here. The County points out that *Ratchford* is distinguishable because that case involved certiorari, in which the central issue was whether the county had jurisdiction to abandon the portion of the road at issue. Thus, citing *Pitts v. Perluss* (1962) 58 Cal.2d 824, 833, the County contends the appropriate

standard is whether their action was “ ‘arbitrary, capricious, or entirely lacking in evidentiary support, or whether it has failed to follow the procedure and give the notices required by law.’ ”

“ ‘There are subtle differences in the scopes of judicial review for ordinary and administrative mandate. In general, when review is sought by means of ordinary mandate the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support; when review is sought by means of administrative mandate the inquiry is directed to whether substantial evidence supports the decision.’ ” (*McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1786; see also *Golden Drugs Co., Inc. v. Maxwell-Jolly* (2009) 179 Cal.App.4th 1455, 1466.) However, we need not belabor which form of mandate is appropriate where the result is not affected by distinction between the standards of review. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1641, fn. 10.)

We conclude DeLucchi’s challenge to the abandonment fails under any standard of review.

B. Nonmotorized Transportation Facilities

For the first time, DeLucchi contends in his opening brief on appeal that the abandonment is void “on its face” because there was no finding by the County that the purported public rights-of-way cannot be used for nonmotorized transportation. He cites section 892, which states, “(a) *Rights-of-way established for other purposes* by cities, counties, or local agencies shall not be abandoned unless the governing body determines that the rights-of-way or parts thereof are not useful as a nonmotorized transportation facility.” (Italics added.) A nonmotorized transportation facility is “a facility designed primarily for the use of pedestrians, bicyclists, or equestrians. It may be designed primarily for one or more of those uses.” (§ 887.) Section 8314 says, “Section 892 applies to a street, highway, or public service easement vacated pursuant to this part [the Public Streets, Highways, and Service Easements Vacation Law].”

The County argues DeLucchi is barred from raising the issue of nonmotorized transport by the doctrine of failure to exhaust administrative remedies or by forfeiture, because the issue was never raised at the administrative level.¹⁶ In opposition, DeLucchi's reply brief argues that sections 892 and 8314 placed the burden on the County to bring up the matter of nonmotorized transportation facility, such that the County's failure to do so renders the abandonment void "on its face," relieving DeLucchi from having to bring it up. DeLucchi goes on to argue that even if he should have raised it at the County hearings, we should exercise our discretion to address an issue for the first time on appeal that is solely a question of law based upon *undisputed facts*.

However, the "undisputed fact," as DeLucchi sees it, is that the County's Resolution failed to include an express finding about nonmotorized transportation, and the "question of law," as DeLucchi sees it, is whether the County's failure expressly to include a finding regarding nonmotorized transportation in the Resolution renders the abandonment void on its face.

DeLucci cites no authority for the proposition that the Resolution had to include an express finding about nonmotorized transport or that the failure to do so renders the abandonment void "on its face." Instead, he cites section 8324, which says, "At the hearing, the legislative body *shall hear the evidence offered by the persons interested*" (§ 8324, subd. (a), italics added), and "[i]f the legislative body finds, *from all the evidence submitted*, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement...." (§ 8324, subd. (b).) As can be seen by the italicized text, section 8324 obligates the Board only to hear the evidence presented by interested persons and make

¹⁶ The County also points out that DeLucchi did not make this argument in the trial court either.

the finding that the road is unnecessary for present or prospective public use based on all of the evidence submitted. Furthermore, section 8324 requires only that a determination be made; it does not require an express finding regarding nonmotorized transportation. To the contrary, the statutory provisions in section 8324 presume interested parties will present evidence. In our view, this includes relevant evidence concerning the present and prospective use of the facility for nonmotorized transportation, i.e., use by pedestrians, bicyclists or equestrians.

Moreover we doubt whether section 892, subdivision (a), even has application here. The subject of section 892 is the abandonment of “[r]ights-of-way established for other purposes,” i.e., purposes other than nonmotorized transportation facilities. Given this wording and its placement in the article pertaining to the establishment of bicycle systems,¹⁷ it seems plain that section 892 was intended to require governing bodies to consider whether rights-of-way designed for vehicular or motorized traffic could be used as a nonmotorized facility before abandoning the right-of-way. The rights-of-way here, however, were purportedly accepted in 1910, at a time when motorized vehicles were rare and still in the early stages of development; consequently, they cannot be said to be “rights-of-way established for” purposes other than nonmotorized use. Assuming they were accepted by the County in 1910 as public rights-of-way, these rights-of-way had to have been accepted primarily for nonmotorized use. The Legislature has not required special consideration related to the abandonment of rights-of-way designed primarily for

¹⁷ Section 890 states the legislative intent of the article in which section 892 appears. Section 890 states: “It is the intent of the Legislature, in enacting this article, to establish a bicycle transportation system. It is the further intent of the Legislature that this transportation system shall be designed and developed to achieve the functional commuting needs of the employee, student, business person, and shopper as the foremost consideration in route selection, to have the physical safety of the bicyclist and bicyclist’s property as a major planning component, and to have the capacity to accommodate bicyclists of all ages and skills.”

nonmotorized use other than the general requirements under section 8324, subdivision (b), that the right-of-way is unnecessary for present or prospective public use.

In any event, we conclude the issues of whether the purported public rights-of-way could be useful as a nonmotorized transportation facility, i.e., useful by bicyclist, pedestrians, or equestrians -- issues which clearly present questions of fact, not law -- was forfeited because those issues were not raised at the Board hearing, nor was evidence specific to those issues presented by interested parties, when those factual matters could have been developed. Thus, the bar here is not exhaustion of administrative remedies, but “a corollary principle to the doctrine that administrative remedies must be exhausted. That principle is: a litigant must *fully present its arguments and evidence* at the administrative hearing. ‘ “Before seeking judicial review a party must show that he has made a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings.” ’ [Citation.] ‘The requirement that a litigant present his or her arguments and evidence fully at the administrative hearing level is analogous to the doctrine of exhaustion of administrative remedies, though it is based on different policies.’ (1 Cal. Administrative Mandamus: Laying the Foundation at the Administrative Hearing (Cont.Ed.Bar 3d ed. 2003) § 3.49, p. 82 ([Cal.] Administrative Mandamus).)” (*In re Electric Refund Cases* (2010) 184 Cal.App.4th 1490, 1502, italics added.)

Unlike exhaustion of administrative remedies, which is a jurisdictional requirement (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589 (*Tahoe Vista*)) subject to review de novo (*Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 873), forfeiture for failure to preserve issues affords some discretion to the reviewing body. The forfeiture doctrine “does not bar a reviewing court from considering an issue not raised before the agency when circumstances warrant (e.g., when an injustice would result). . . .” (Cal. Administrative Hearing Practice

(Cont.Ed.Bar 2d ed. 2013) § 8.108, p. 8-69, citing *Hormel v. Helvering* (1941 312 U.S. 552, 557 [85 L.Ed. 1037, 1041], *Greenblatt v. Munro* (1958) 161 Cal.App.2d 596, 606.)

Although courts have discretion in this area of law, courts are disinclined to address issues related to an unraised ground that requires factual analysis and input from that administrative body. (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1021.) Accordingly, we are not inclined to allow DeLucchi to seek reversal based on a factual matter which he failed to raise at the administrative level.

C. Public Use/Public Benefit

To abandon a public right-of-way, the County must find that: (1) the right-of-way is unnecessary for present and prospective public use (§ 8324, subd. (b); see fn. 11, *ante*), and (2) the abandonment is in the public interest. (*Heist, supra*, 163 Cal.App.3d at pp. 848-849.)

1. Necessity for Present or Prospective Public Use

DeLucchi argues there is no substantial evidence that the rights-of-way are unnecessary for present or prospective public use, as required by section 8324. We disagree.

The following is substantial evidence supporting the County's finding that the purported public rights-of-way are not necessary for present or prospective public use:

1. The rights-of-way did not lead to any public land that the general public would have reason to travel and did not connect to any county-maintained roads. Many were discontinuous and did not provide linkage to other rights-of-way. Many did not have roads within them and ran through irrigation ditches, water conveyances, drainage ditches, and rice fields that often prevented passage.

2. Landowners in the area, including DeLucchi, relied on private easements to access their property.

3. For the past 100 years, the land had been used for agriculture and recreational duck hunting and would continue to be used for those purposes, and there were no

proposed or approved plans for development for which the rights-of-way would be useful.

4. Neither the County nor the general public used the rights-of-way before the abandonment proceedings.

DeLucchi argues there is evidence that the general public used the purported public rights-of-way. Even if the substantial evidence standard of review allows for consideration of conflicting evidence in this context, DeLucchi's evidence does not warrant reversal of the judgment.

DeLucchi argues some of the landowners placed gates to prevent passage by "trespassers" and travel by "trespassers" was public use. However, when considered in total, the evidence supported abandonment; occasional trespassing does not compel a finding that the rights-of-way were necessary for present or prospective public use.

DeLucchi claims he used some of the purported public rights-of-way "over the years," as asserted for example in letters from DeLucchi's attorney to the County. While it seems clear that DeLucchi tried to use the purported public rights-of-way in 2010, there is no substantial evidence that he ever used or wanted to use the purported public rights-of-way before disputes arose about his private access rights. Indeed, DeLucchi's assertions of prior use or attempted use before the 2010 filing of the SVI lawsuit are refuted by the admissions he made in 2009 in his verified complaint in the lawsuits over private easements, of which the trial court took judicial notice, that he needed those private easements because he had no other way to get to his property. In the verified complaint, DeLucchi also admitted he bought the property with the understanding that "there was no recorded road access" to the property, and he would have to rely on private easements. These statements in DeLucchi's verified pleading in the prior action are competent evidence against him in this action. (*Jogani v. Jogani, supra*, 141 Cal.App.4th at pp. 174-176.)

Three hundred form letters were submitted from persons¹⁸ who purportedly previously traveled to, or in the future intended to travel to, DeLucchi's private duck hunting club. The County would have been well within its discretion to find these letters self-serving and contrived or otherwise give them little weight, given their boilerplate nature.¹⁹

The County stated in the Resolution that these letters "do not establish public use of the purported public rights-of-way." The County observed that the letters "are focused on an access to the Delucchi [*sic*] property, not property open to the general public, and the majority of the letters are from persons who have never been to the Delucchi [*sic*] property. Mr. Delucchi [*sic*] even testified that he did not know many of the people that signed letters opposing the vacation."

Moreover, a reading of the letters reveals the "writers" never said they had used or needed to use the purported public rights-of-way. Necessity in this context means that

¹⁸ Some of these form letters bear the signatures of multiple people.

¹⁹ All of the letters were undated. They all read as follows:

"Dear Colusa County Supervisors: [¶] I oppose the efforts of the Board of Supervisors to abandon rights of way within the [SVI] Company's Maxwell Unit surrounding the property of Mr. Gerald DeLucchi. I do not believe that the abandonment is fair, is necessary or provides any benefit to the public. As a member of the public who has traveled on a number of occasions in the past to Mr. DeLucchi's property, prior to the current access disputes, I am concerned that the abandonment of all public access will deprive me (and Mr. DeLucchi) of the ability to access the property in the future. It is my understanding that the rights of way the County seeks to abandon have existed for 100 years and that Mr. DeLucchi is actually representing the rights of the public in assuring that the public may enjoy those rights of way. [¶] Although I will be unable to attend the Board meeting of January 25, 2011, I submit this opposition for consideration by the Board and expect that the Board members will vote against the proposed abandonment and NOT act to purposefully landlock property but will resolve to protect public rights rather than give them away. Eliminating these rights of way would severely damage the public ability to enjoy access to Mr. DeLucchi's property in favor of gifting valuable rights to neighboring property owners. This cannot be permitted to occur."

the rights-of-way must be “ ‘essential’ or ‘needed for the continuing existence or functioning of something.’ ” (*Citizens for Improved Sorrento Access, Inc. v. City of San Diego, supra*, 118 Cal.App.4th at p. 815.) Thus, even assuming the letters should be given weight, they do not establish the necessity of maintaining the purported public rights-of-way or negate the substantial evidence upon which the County relied.²⁰

We conclude there is substantial evidence supporting the County’s finding that the purported public rights-of-way were not necessary for present or prospective public use.

2. Public Benefit

DeLucchi next argues the abandonment achieved no “ ‘public benefit,’ ” or if there is a public benefit, that benefit is incidental to the “ ‘controlling purpose’ ” of transferring title to private land owners whose land would otherwise be subject to the purported public rights-of-way. DeLucchi also argues that avoidance of litigation costs cannot constitute the public benefit needed to justify an abandonment. We disagree.

Besides the statutory requirement that the county find the purported public rights-of-way unnecessary for public use, “[c]ase law has imposed a second condition upon the abandoning of a public road; the abandonment must be in the public interest. [Citation.]” (*Heist v. County of Colusa, supra*, 163 Cal.App.3d at p. 849.) A determination by the board of supervisors as to what constitutes the public interest is legislative in nature. (*Ibid.*)

DeLucchi, advocating less deference to this legislative decision, again relies on *Ratchford*. The *Ratchford* court said that in certiorari the reviewing court would not

²⁰ Because the letters fail to establish necessity, we need not address the issue of whether use of the purported rights-of-way by DeLucchi’s duck hunters to access DeLucchi’s private property in connection with their membership in DeLucchi’s private duck hunting club is a public use, although we observe this use is clearly distinguishable from the use in *Hanshaw v. Long Valley Road Assn., supra*, 116 Cal.App.4th 171, the sole case upon which DeLucchi relies for the proposition that access to his duck hunter club membership constitutes a public use.

consider the weight of conflicting evidence as to jurisdictional facts and “[i]t is also recognized ‘that as a general legal proposition, in the absence of fraud or collusion, the decision by the city council of what constitutes public interest or convenience in a matter of...[vacation of a city street] is legislative in character, and that a determination by the city council of such a question is conclusive. [Citations.]’ ” (*Ratchford, supra*, 22 Cal.App.3d at pp. 1073-1074.) However, the court went on to write, “Nevertheless,... ‘if we were to assume the true role to be that, upon the mere recital in the ordinance of abandonment that the public interest or convenience so required, the decision by the city council, as expressed in its ordinance, becomes final and conclusive, and beyond the reach of judicial inquiry, nothing would prevent the city council...from effectually closing [a street] in its entire length, nor a similar body in the city of New York from closing Wall Street.’ [Citation.]” (*Id.* at p. 1074.)

However, this court more recently reiterated, “In the absence of fraud or collusion, a determination by the board as to what constitutes the public interest is legislative in nature and conclusive. [Citation.]” (*Heist, supra*, 163 Cal.App.3d at p. 849.) Accordingly, the County’s decision is accorded deference but is not beyond the reach of judicial inquiry. And in this case, there is no evidence of fraud or collusion. We could end our analysis there, but we will address DeLucchi’s arguments and note the substantial evidence supporting the County’s determination of public benefit.

Without evidence of fraud or collusion, DeLucchi contends the “ ‘controlling purpose’ ” of the abandonment was to transfer title to the purported public rights-of-way to private parties. Any additional benefits identified by the County, DeLucchi argues, “were merely incidental to that controlling purpose.”

DeLucchi relies on *Constantine v. City of Sunnyvale* (1949) 91 Cal.App.2d 278, for the proposition that a road may not be abandoned unless the controlling purpose of the abandonment is the public benefit. (*Id.* at p. 282.) In *Constantine*, an inverse condemnation action, the plaintiff alleged the city acted fraudulently by closing a portion

of a street for the purpose of benefiting a company that had a facility abutting the street. (*Id.* at pp. 279-280.) Acknowledging that a street may not be vacated for exclusive private use, the *Constantine* court went on to observe, “if an abutting property owner is benefited by closing a street such order may be a mere incident if the controlling purpose was the convenience of the general public and, as in this case, their safety.” (*Id.* at p. 282.) In our view, any benefit to private landowners in the instant case was incidental to the public benefit, which was the controlling purpose of the abandonment.

In *Heist*, this court held that relieving the county of the responsibility for maintenance of the road was a sufficient public interest to rebut a claim of fraud related to the abandonment of the road, and the fact that others requested the closure or would benefit by the abandonment did not in itself establish fraud of collusion. (*Heist, supra*, 163 Cal.App.3d at p. 849.)

The court in *Ratchford* made the same point. “[T]he fact the proponent of the abandonment of a county highway or of the vacating of a city street may benefit from that action does not of itself show fraud or collusion. [Citations.]” (*Ratchford, supra*, 22 Cal.App.3d at p. 1076.) However, the *Ratchford* court held that, since the record failed to reveal any public benefit or interest in the abandonment, and the evidence failed to show the right-of-way was not necessary for prospective use, the abandonment was invalid. (*Id.* at p. 1077.) The *Ratchford* court said an “argument -- that the public interest would be served if the board of supervisors rid the county of maintenance and tort liability for unnecessary roads --...founders on the fact that the right of way in question is not a county highway. Moreover, if it were, the abandonment of a small triangle, not improved with a roadway, would not affect those criteria.” (*Id.* at p. 1076, fn. 9.) Thus, *Ratchford* did not discount that possibility that avoidance of tort liability could constitute a public benefit. Moreover, as we have noted, the *Ratchford* invalidation of the abandonment is distinguishable from the instant case because in *Ratchford* there was evidence from the county’s own planning commission of possible future use.

DeLucchi contends the avoidance of the predictable litigation costs here is not a public benefit that can justify abandonment. He contends that the “permissible” public benefits to be achieved through abandonment of a road are “linked to matters involving convenience, maintenance, public safety, etc. concerning use of the rights-of-way to be abandoned.” But DeLucchi cites no authority supporting the proposition that a direct linkage is required, and we see no reason to extend judicial doctrine requiring a showing of public benefit to require such a linkage. A benefit to the public is a benefit to the public regardless of whether there is a direct link to use of the right-of-way.

DeLucchi claims he negated the public benefit of avoiding litigation costs by offering to dismiss the County from his SVI lawsuit in return for a promise by the County to be bound by whatever the court decided in the SVI lawsuit. However, this meant the County would be stuck with a result reached in the litigation without its input -- a result that would be based on the input of the other litigants. That result might not necessarily be in the interest of the public represented by the County. The County could not delegate its responsibility to the public it serves to the adversarial parties.

Moreover, the County’s Resolution stated the public interest was not only in avoiding litigation costs of the SVI lawsuit, but also in removing the County as a “likely arbiter of future disputes” about the rights-of-way. Given the contentious nature of the relationship between DeLucchi and his neighbors, on-going disputes were likely, and the County was not required to accept DeLucchi’s empty assurances the County would not be drawn into those disputes or ignore the prospect that other land owners might seek to draw the County into those disputes.

DeLucchi contends that because the abandonment deprives him of all public access to his property, it amounts to a taking for which he is entitled to compensation. This, DeLucchi asserts, must be taken into consideration in deciding whether there is substantial evidence of public benefit. If DeLucchi intends by this argument to suggest the litigation costs the County sought to avoid by the abandonment will be offset and

exceeded by further litigation, we conclude this possible future event and the speculative nature of the outcome does not negate the substantial evidence of public benefit in the record before us.²¹

In addition to the avoidance of litigation costs and county embroilment in landowner disputes, the County found that public safety is promoted by the abandonment. There is substantial evidence supporting this finding at least to those purported rights-of-way where public safety is at risk. For example, some of the purported rights-of-way run through areas where agriculture and duck hunting activities take place, jeopardizing the safety of members of the public who might travel those purported rights-of-way; there is no lighting; some purported rights-of-way run next to irrigation ditches; one of the purported rights-of-way runs adjacent to a crop dusting airstrip; some intersections of county roads and the purported rights-of-way are not safe for general public travel.

We conclude DeLucchi fails to show grounds for reversal based on public benefit and further conclude there is substantial evidence supporting the abandonment under the Streets and Highways Code.

III. CEQA

DeLucchi argues the County violated CEQA by finding the abandonment exempt from environmental review. We agree with the trial court. The abandonment was not a project and if it was, it is exempt.

A. Legal Framework

CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 379 (*Muzzy Ranch*); *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143

²¹ We take no position on DeLucchi's claim he is entitled to compensation.

Cal.App.4th 173, 183-184 (*Cal. Farm*.) The implementing regulations or Guidelines (§ 15000 et seq.) establish a three-tier process. (*Muzzy Ranch, supra*, 41 Cal.4th at p. 380.) First, the agency conducts a preliminary review to determine whether an action is a “project” subject to CEQA review. (*Ibid.*) Second, if it is a “project” subject to CEQA, the agency determines whether it is exempt by statute, by regulation, or by the “ ‘commonsense’ ” exemption that applies “ ‘[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.’ ” (*Ibid.*; see fn. 8, *ante.*) If it is exempt, no further environmental review is needed, and the agency prepares a notice of exemption. (*Muzzy Ranch*, at p. 380.) If it is not exempt, the agency must conduct an initial study to determine if the project may have a significant effect on the environment. (*Ibid.*) If there is no substantial evidence of significant effect, the agency prepares a “ ‘negative declaration.’ ” (*Id.* at pp. 380-381.) The third tier applies if there is evidence of significant effect, in which case the project must undergo a full environmental impact report. (*Id.* at p. 381.)

“[Public Resources Code] Section 21168.5^[22] is the CEQA standard of review for traditional mandamus actions. [Public Resources Code] Section 21168^[23] governs

²² Public Resources Code section 21168.5 provides: “In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.”

²³ Public Resources Code section 21168 provides: “Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure. [¶] In any such action, the court shall not exercise its independent judgment on the

administrative mandamus proceedings. ‘The distinction between these two provisions “is rarely significant. In either case, the issue before the...court is whether the agency abused its discretion.”’ [Citation.]” (*Cal. Farm, supra*, 143 Cal.App.4th at p. 185, fn. 6.) “ ‘Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.’ [Citation.] We apply this same standard on appeal, reviewing the agency’s action, not the trial court’s decision. [Citation.]” (*Id.* at p. 185.)

“Where the specific issue is whether the [public agency] correctly determined a project fell within a categorical exemption, we must first determine as a matter of law the scope of the exemption and then determine if substantial evidence supports the agency’s factual finding that the project fell within the exemption. [Citations.] The...agency has the burden to demonstrate such substantial evidence. [Citations.]” (*Cal. Farm, supra*, 143 Cal.App.4th at p. 185.) If the agency meets this burden, the burden shifts to the party challenging the exemption to show the project is not exempt because it falls within a regulatory exception to the exemption. (*Id.* at p. 186.)

“Where the agency fails to demonstrate the project is within a categorically exempt class, the project may nevertheless be exempt from CEQA if ‘ “it can be seen with certainty” that [the] project will not have a significant effect on the environment. [Citations.]’ ... The Guidelines cover this concept in section 15061, subdivision (b)(3), [fn. 8, *ante*], called the commonsense exemption.... [It] provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act. [¶] This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility

evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.”

of causing a significant effect, the activity will not be subject to CEQA.’ [Citations.]” (*Cal. Farm, supra*, 143 Cal.App.4th at p. 186.)

“In the case of the commonsense exemption, the agency has the burden to ‘provide the support for its decision before the burden shifts to the challenger.... ‘[T]he agency’s exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.’ [Citations.]” (*Cal. Farm, supra*, 143 Cal.App.4th at p. 186.)

“A remote or outlandish possibility of an environmental impact will not remove a project from the commonsense exemption, but if legitimate, reasonable questions can be raised about whether the project might have a significant impact, the agency cannot find with certainty the project is exempt. [Citation.] The commonsense exemption is ‘reserved for those “obviously exempt” projects, “where its absolute and precise language clearly applies.”’ [Citation.]” (*Cal. Farm, supra*, 143 Cal.App.4th at p. 194.)

B. CEQA Project

DeLucchi argues the abandonment is a “project” under CEQA. We disagree.

An action is a “project” only if the activity may cause a direct, or reasonably foreseeable indirect, physical change in the environment. (Pub. Resources Code, § 21065; Guidelines, § 15378, subd. (a).) For indirect change, there must be a “necessary step in a chain of events which would culminate in physical impact on the environment.” (*Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795, questioned on other grounds in *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 918.)

Here, the record shows that no potential direct or indirect change in the environment will result from the abandonment of the purported public rights-of-way, which the County never opened or maintained as county roads. As noted, the rights-of-way did not lead to any public land; the rights-of-way do not connect any two county roads; some of them are discontinuous and fail to provide linkages to other rights-of-way;

they are on private land used for private purposes of rice production and duck hunting; and some are impassable for many months of the year. The rights-of-way “do not benefit any potential future circulation connections between Two-Mile Road and San Jose Road given the historic and consistent pattern of land use development around the two publicly maintained access roads.” The abandonment produces no physical changes. It changes nothing; rather, it maintains the status quo.

DeLucchi contends the County conceded the abandonment was a CEQA project, because in concluding abandonment was for the public benefit the County’s Resolution stated, “Vacating the purported public rights-of-way will prevent damage to environmentally sensitive areas associated with increased public access to private use farm roads, rice fields, and/or irrigation canals and ditches. The area around the purported public rights-of-way includes habitat for waterfowl and other upland species.” DeLucchi contends it does not matter that the impact on the environment is positive rather than negative. In support of this proposition, he quotes from *Cal. Farm*, where in holding that conversion of agricultural property into a wetland habitat was a project, “the administrative record reflects the State Agencies consistently took the position the loss of agricultural land was not itself an adverse environmental impact, but the State Agencies do not point us to any evidence in the record showing they considered the potential environmental impacts from the management plan and the construction and maintenance of this new habitat. ‘[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]’ ... There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.” (*Cal. Farm, supra*, 143 Cal.App.4th at p. 196.) Here, however, the County’s action did not involve any new construction or maintenance activity, as was the case in *Cal. Farm*. Here, the benefit came from maintaining the status quo.

DeLucchi contends abandonment of public rights-of-way has the potential for a *direct* change in the environment, because the only public access to DeLucchi’s property

no longer exists, and any member of the public who wants to get there must now change their driving pattern. However, DeLucchi cites no evidence in the record to support this contention. He claims there is evidence in the record showing that the public used the public rights-of-way and that the abandonment would alter their traffic pattern. He cites letters from his invitees, which as we have noted, do not say they used the purported public rights-of-way, as opposed to the private access, to get to DeLucchi's property. (See fn. 19, *ante*.) Absent evidence in the record that the purported public rights-of-way were actually used by the "writers" of the letters, we cannot conclude that the abandonment will *change* their driving patterns.

DeLucchi also cites comments made by citizens at the public hearing, but it is unclear whether they used the purported public rights-of-way, as opposed to the private easements, to access DeLucchi's property.

DeLucchi argues abandonment has the potential to cause *indirect* change in the physical environment, because the landowners will be able to do whatever they want with their property and will not have to maintain it clear for passage. However, since the County has never assumed any control over the purported public rights-of-way or sought to control the actions of the property owners, the abandonment will not be a "necessary step in a chain of events which would culminate in physical impact on the environment." (*Fullerton Joint Union High School Dist. v. State Bd. of Education, supra*, 32 Cal.3d at p. 795.) Moreover, this argument relies on speculation that the owners will stop maintaining rights-of-way they were never required to maintain or make unspecified and uncertain physical changes that will somehow affect the environment, but speculation about what the land owners might do does not make the abandonment a project.

DeLucchi argues abandonment has the potential to cause indirect change in the physical environment making up the conservation wildlife easements, which he claims require him to perform various management activities. However, the wildlife easements mainly require DeLucchi to leave things alone (though they allow him and his invitees to

hunt ducks). DeLucchi cites “Grant Agreements” which assertedly impose affirmative duties on him but, as noted by the County, those agreements are not part of the administrative record, and DeLucchi’s request for judicial notice of those documents was denied both by the trial court and by this court.

DeLucchi cites *County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089, 1105-1107 (*County of Amador*), as holding that abandonment of a road is a “project” under CEQA. There, however, the city road was being vacated as part of a municipal services agreement (MSA) in order to provide access to a proposed casino hotel resort. In addition to the road abandonment, the MSA included commitments by the City to remodel a fire station to accommodate around the clock staff (*id.* at pp. 1093, 1108), and improvements to the water and sewer infrastructure to accommodate the proposed casino resort. (*Id.* at pp. 1109-1111.) This court said the MSA was a project squarely within the definition of Guidelines section 15378, subdivision (a)(1), which specifically defines “ ‘project’ ” to include “ ‘public works construction and related activities, clearing or grading of land [and] improvements to existing public structures....’ ” (*Id.* at p. 1100.) This court further concluded that the road abandonment component of the MSA was subject to CEQA review because it had a direct physical impact in increased traffic to a new, large casino hotel. (*Id.* at p. 1107.) Likewise, the remodel of the fire station and the public works improvements related to water and sewer would either produce direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (*Id.* at pp. 1095, 1101.)

The instant case is very different from *County of Amador*. Here, like in cases this court distinguished in *County of Amador*, there is no municipal project associated with the action taken by the County. (*County of Amador, supra*, 149 Cal.App.4th at p. 1101.) And the evidence in the record before us discloses no impact on traffic. Substantial evidence demonstrates the abandonment maintains the status quo.

We conclude the abandonment was not a “project” under CEQA.

C. Common Sense Exemption²⁴

Assuming for the sake of argument the abandonment was a CEQA project, the common sense exemption clearly applies. This exemption applies where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Guidelines, § 15061, subd. (b)(3); see fn. 8, *ante*.) The County has the initial burden of demonstrating evidence supporting the application of the exemption, but detailed or extensive factfinding is not necessary. (*Muzzy Ranch, supra*, 41 Cal.4th at p. 388.) Once the agency demonstrates applicability of the exemption, the opposing party has the burden to raise legitimate questions about whether the activity may have significant impacts. (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117.) However, the opponent must do more than show “any possibility of an environmental impact, however remote or outlandish...” (*Id.* at p. 118.)

Here, substantial evidence supports the County’s determination that the abandonment would not impact the environment. As we have noted, the abandonment did not result in any physical change to the environment; it merely maintained the status quo.

DeLucchi argues the common sense exemption is inapplicable. He repeats here his view that his evidence showed the abandonment may have a significant impact on the environment. We have already rejected that view and see no reason to repeat it here.

We conclude there was no CEQA violation.

²⁴ The County also argues the abandonment is exempt because it is an enforcement action by a regulatory agency. We need not address this exemption because the common sense exception so clearly applies.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

MURRAY, J.

We concur:

RAYE, P. J.

MAURO, J.