Superior Court of California

County of Los Angeles

Department 32

CHIQUITA CANYON, LLC, Petitioner, v. COUNTY OF LOS ANGELES, et al. Respondents.	Case No.: BS 171262 Hearing Date: June 22, 2020 **DECISION ON PETITION FOR WRIT OF MANDATE: GRANTED IN PART AND DENIED IN PART**

Background

Petitioner Chiquita Canyon, LLC ("Petitioner") petitions for a writ of administrative mandate directing Respondents County of Los Angeles and Los Angeles County Board of Supervisors ("Respondents" or "County") to set aside conditions 9, 23, 29, 37, 38-39, 40, 43(D), 43(G), 48, 79(B)(6), 111, 115 through 124, and 126 in Petitioner's conditional use permit for the Chiquita Canyon Landfill ("Landfill").

Judicial Notice; Motion to Augment Record

Respondents' Request for Judicial Notice, Exhibits 1-3 – Granted.

Respondents' Motion to Augment the Administrative Record with Declaration of Principal Engineer Vander Vis – Granted.

Factual and Procedural Background

The Landfill and July 2011 CUP Application

Petitioner owns and operates the Landfill, located at 29201 Henry Mayo Drive, in the unincorporated community of Castaic. The Landfill is a Class III waste disposal facility, which accepts non-hazardous residential and commercial solid wastes. (AR 5-7, 24.) County first approved the Landfill pursuant to a conditional use permit in 1965. The permit was subsequently extended and revised on four separate occasions, in 1977, 1982, 1997, and 2017. (AR 7 ¶ 16.) At issue before the court is the 2017 conditional use permit ("CUP").

The Landfill is situated in a canyon on 639 acres of mostly hilly terrain. As described by the Board of Supervisors in its findings: "Most of the site is mountainous, with elevations ranging from approximately 950 feet above sea level near the south property line, to a high of approximately 1,640 feet near the north property line. The Project Site fronts State Highway 126, the portion known as Henry Mayo Drive, on the south side. The intersection of Wolcott Way and Henry Mayo Drive forms the southeast corner of the Project Site." (AR 5-6 ¶ 5.)

"The existing residential community of Val Verde is located to the northwest of the Project Site. The nearest residence is located on Roosevelt Avenue in the south part of Val Verde and is approximately 500 feet from the Project Site and approximately 1,100 feet from the developed area of the Project Site. Steep hillsides separate the Project Site from Val Verde." (AR 7 ¶ 14.)

In July 2011, Petitioner submitted a CUP application seeking to continue operation of the Landfill. In the application, Petitioner sought to expand the Landfill's existing waste footprint laterally from 257 acres to 400 acres; increase the maximum elevation from 1,430 feet to 1,573 feet; and increase daily disposal limits from 6,000 tons per day of waste to 12,000 tons per day. Petitioner also sought approval for development of a household hazardous waste facility, continued operation of the landfill gas-to-energy

facility ("LFGTE"), and new facilities and design features. (AR 5 ¶ 4; see also AR 277 [map of existing and proposed landfill footprint], 10242-44, 34421-22 [design plans].)

County's CEQA Review and Approval of the CUP with Conditions

In November 2011, County published a Notice of Preparation of a Draft Environmental Impact Report for the Landfill project. Subsequently, on July 10, 2014, November 9, 2016, and February 2017, County completed the Draft Environmental Impact Report ("DEIR" - AR 238- 2301), Partially Recirculated Draft Environmental Impact Report ("PRDEIR" - AR 2302-3393), and Final Environmental Impact Report ("FEIR" - AR 3394-6306), respectively. (AR 14948-49.) Collectively, these documents may be referred to as the EIR.

The EIR found that the Landfill project would create environmental impacts to geology and hydrology, surface water drainage, biological resources, cultural and paleontological resources, air quality, GHG emissions, and climate change. A Mitigation Monitoring and Reporting Program ("MMRP") was prepared to mitigate the impacts, except for certain impacts related to air quality, GHG emissions, and climate change, which could not be mitigated to a less than significant level. (See e.g. AR 114-154, 155-237.) As a result of those remaining significant unavoidable impacts, County prepared and adopted CEQA Findings of Fact and a Statement of Overriding Considerations ("SOC") for the project.[1] (AR 9 ¶ 23, 155-237.)

Concurrently with finalization of the FEIR in 2017, staff of the County Department of Regional Planning ("DRP") submitted a proposed CUP to the Planning Commission for approval. (AR 9887-10027.) DRP's recommendations imposed various fees and operating conditions on the Landfill. (See AR 9888-9947, 3423-30, 3938.) Petitioner objected to certain fees and operating conditions before the Planning Commission. (See AR 10085-120; 12207-12298 [March 1, 2017 letter re: fees]; 14956-57 [hearing transcript].)

[1] In its opening brief, Petitioner indicates that the EIR withstood legal challenge in the trial court. (See OB at 11, fn. 3, citing *Val Verde Association, et al. v. County of Los Angeles,* LASC Case No. BS170715.) In opposition, Respondents indicate that the judgment in the CEQA action is currently on appeal and, thus, is not final. (Oppo. 8, fn. 2, citing COA Case No. B302885.)

On March 1, 2017, the Regional Planning Commission held a public hearing on the CUP. (AR 9200- 9204, 16253-58.) The hearing was continued to April 19, 2017, due to large number of speakers and Commission's need to review the supplemental materials. (AR 10, ¶ 28; 16257.) At the conclusion of the April 19, 2017 hearing, the Commission approved the CUP as recommended by staff, with several modifications. (AR 10-11; 16260-68.)

Thereafter, Petitioner and several community-interest groups separately appealed the Planning Commission's approval to the Board of Supervisors ("Board"). (AR 11; 12980-13023.) Petitioner argued that certain fees and exactions violated the Mitigation Fee Act and other constitutional limitations, and that the operational conditions were unjustified. (See e.g. AR 12980-81, 13217-13240 [June 21, 2017 appeal letter].) DRP and the Department of Public Works ("DPW") submitted a written response to Petitioner's appeal. (See AR 13024-13049.)

On June 27, 2017, the Board held a public hearing on the appeals. (AR 12971-13023.) At the conclusion of the public's testimony, the Board certified the FEIR, adopted the CEQA findings, SOC and MMRP, and indicated its intent to deny the appeals. (AR 4; 11; 12928-34; 12945-51.) It instructed County Counsel to prepare final findings and conditions for the Board's consideration, including modifications to the conditions approved by the Commission. (AR 11; 12945-51.)

On July 25, 2017, following preparation of revised findings by County Counsel and incorporation of all revisions to the CUP, the Board denied the appeals, certified FEIR, adopted the CEQA findings, SOC, MMRP, and adopted the project as revised. (AR 1.) County filed a Notice of Determination on July 25, 2017. (AR 1.)

Board made numerous findings relevant to the CUP conditions, including the following: "Over the course of proceedings for the CUP/OTP application, Regional Planning staff ('Staff') received approximately 2,000 letters, emails, and oral testimony from both proponents and opponents to the Project regarding the environmental review and the Project in general. Many of the commenters submitted multiple comments in writing and at hearings held regarding the environmental review. The

most frequent concerns expressed by the public and by other agencies were potential impacts to public health, air quality, odors, traffic, environmental justice issues, biological resources, greenhouse gases, the CUP 89-081 conditions, and a 1997 agreement between the Val Verde community and the previous operator of Chiquita Canyon Landfill, property values, project alternatives, and water quality. The Final EIR contains detailed topical responses to 34 of the most common topics and specific responses to each of the public comments. The Project conditions, an Implementation and Monitoring Program ('IMP'), and the MMRP include requirements that address community concerns." (AR 9 ¶ 24.)

"The Board finds that the Project conditions of approval, the IMP, and MMRP are designed to ensure that the landfill is operated in a way that avoids or mitigates potential nuisance, traffic and visual impacts to surrounding communities, including those within the CSD [Castaic Area Community Standards District], and to ensure that the landfill operates safely and efficiently." (AR 12 ¶ 37.)

"Project conditions require the permittee to pay fees that will be used to offset impacts to the County and its residents associated with operation of a landfill and disposal of waste, by funding programs and activities that enhance Countywide disposal capacity, mitigate landfill impacts in the unincorporated County areas, fund environmental, educational, and quality of life programs in unincorporated areas surrounding the landfill, and promote source reduction and recycling programs and the development of Conversion Technology facilities that benefit the Santa Clarita Valley and the County, and assist the County with meeting its goals and requirements for waste diversion and organics recycling." (AR 12-13 ¶ 38.)

Petitioner Files Letter of Protest

On October 13, 2017, Petitioner informed County by letter that it protests certain fees imposed by the 2017 CUP pursuant to the Mitigation Fee Act. (See 3AC ¶ 50; Answer ¶ 50.)

Writ Proceedings

On October 20, 2017, Petitioner filed a verified petition for writ of administrative mandate and complaint against County challenging the legality of numerous conditions of the CUP. On August 9, 2019, Petitioner filed its operative third amended petition and complaint ("petition" or "3AC").

On November 13, 2019, after a hearing, the court (Judge Daniel Murphy) ruled that County is equitably estopped from asserting in this writ action, based on *Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470 and related cases, that Petitioner forfeited its right to challenge operational conditions in Petitioner's CUP for the Landfill. (See RJN Exh. 2.)

On January 31, 2020, after a hearing, the court entered the parties' joint stipulation on briefing limits and claim presentation. The court set a hearing on the petition for writ of mandate in count 14 and related declaratory and injunctive relief in counts 1, 3, 4, 5, and 9. The court indicated that Petitioner's remaining claims (counts 2, 6-7, 8, 10-11, and 12-13) would be heard before an individual calendar department after resolution of the writ proceeding. (See Local Rules 2.8(d) and 2.9.)

On February 21, 2020, Petitioner filed its opening brief ("OB") in support of the writ petition. On May 7, 2020, Respondents lodged a digital copy of the administrative record. On May 8, 2020, Respondents filed their opposition ("Oppo."). On May 29, 2020, Petitioner filed its reply.

Standard of Review

The writ petition is brought pursuant to CCP section 1094.5. (3AC ¶¶ 214-220.) "The issuance of a conditional use permit is a quasi-judicial administrative action, which the trial court reviews under *administrative* mandamus procedures pursuant to Code of Civil Procedure section 1094.5.... [T]he trial court reviews the whole administrative record to determine whether the agency's findings are supported by substantial evidence and whether the agency committed any errors of law. [Citations.]" (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1005.)

Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (*California Youth Authority v. State Personnel Board* (2002) 104 Cal. App. 4th 575, 584-85), or evidence of ponderable legal significance which is reasonable in nature, credible and of solid value. (*Mohilef v. Janovici* (1996) 51 Cal. App. 4th 267, 305 n. 28.) "Courts may reverse an [administrative] decision only if, based on the evidence ..., a reasonable person could not reach the conclusion reached by the agency." (*Sierra Club v. California Coastal Com.* (1993) 12 Cal.App.4th 602, 610; see also *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1244.)

"'In the context of an administrative hearing, relevant personal observations are evidence. For example, an adjacent property owner may testify to traffic conditions based upon personal knowledge.' [Citations.] However, ... '[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence....'" (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274.)

The petitioner seeking administrative mandamus has the burden of proof and must cite to the administrative record to support its contentions. (See *Bixby v. Pierno* (1971) 4 Cal. 3d 130, 143; *Steele v. Los Angeles County Civil Service Commission*, (1958) 166 Cal. App. 2d 129, 137; see also *Alford v.* Pierno (1972) 27 Cal.App.3d 682, 691 ["[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion."].)

Petitioner's burden under CCP section 1094.5 is important; the administrative record in this case is nearly 35,000 pages. "[A] trial court must afford a strong presumption of correctness concerning the administrative findings." (See *Fukuda v. City of Angels* (1999) 20 Cal. 4th 805, 817.) The court is not required to search the record to ascertain whether it supports an appellant's contentions, nor make the parties' arguments for them. (*Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1, 14.) A reviewing court "will not act as counsel for either party ... and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors

not pointed out in the briefs." (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742.) When an appellant challenges "'the sufficiency of the evidence, all material evidence on the point must be set forth and not merely [its] own evidence." (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317; see also *County of San Diego v. Assessment Appeals Bd. No. 2* (1983) 148 Cal.App.3d 548, 554; *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 113.)

On questions of law arising in mandate proceedings, the court exercises its independent judgment. (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

Analysis

Waiver of Challenge to Certain Conditions

Petitioner's opening brief does not discuss conditions 28, 34-36, 42, and 109. Petitioner has waived any challenges to those six conditions. (*Nelson v. Avondale HOA* (2009) 172 Cal.App.4th 857, 862-863 [argument waived if not raised or adequately briefed]; see Reply Appendix A.)

County's Police Powers, and Obligation to Issue Findings to Grant or Deny a CUP

Respondents assert "County is vested with broad discretionary powers to determine what conditions are suitable to address the Landfill's integration into the community." (Oppo. 13.) While that is true, County's exercise of discretion must be reasonable and is subject to judicial review pursuant to CCP section 1094.5.

California Constitution, article XI, section 7 provides that "a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." "'Land use regulation in California has historically been a function of local government under the grant of police power contained in California Constitution, article XI, section 7.'" (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 782.) "The 'inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders.'" (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1116.)

Landfills raise site-specific concerns such as potential noise, traffic, odor, air pollution, and congestion effects on neighboring properties. (See e.g. Pub. Res. Code § 40000(b).) County does not allow landfills by right and may impose conditions of approval. (See LACC § 22.16.030(C)(1).)

To grant a CUP, County must make certain findings, including that: "The requested use at the location proposed will not: a. Adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area; b. Be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site; and c. Jeopardize, endanger, or otherwise constitute a menace to the public health, safety, or general welfare." (LACC § 22.158.050(B)(2); see Resp. RJN Exh. 3.) County must also find that the proposed site "is adequately served ... By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate." (LACC § 22.158.050(B)(4)(a).) County may impose "conditions to ensure that the approval will be in accordance with the findings required by the application." (LACC § 22.158.060.)

CCP section 1094.5 also requires Board to issue sufficient findings to support its decision. In *Topanga Assn. for a Scenic Community v. County of Los Angeles,* (1974) 11 Cal. 3d 506, 515, the Supreme Court held that "implicit in ... section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order."[2] "Administrative agency findings are generally permitted considerable latitude with regard to their precision, formality, and matters reasonably implied therein" but must allow for "meaningful judicial review." (*Southern Pacific Transportation Co. v. State Bd. of Equalization* (1987) 191 Cal.App.3d 938, 954; *Glendale Memorial Hosp. & Health Center v. Department of Mental Health* (2001) 91 Cal.App.4th 129, 139.)

The court reviews the administrative findings of the agency, in this case the Board of Supervisors. Petitioner and Respondents regularly refer to analyses of County staff as if they were the Board's

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[2] Although Petitioner did not cite *Topanga* in the opening brief, it made arguments about the sufficiency of Board's findings. (See e.g. OB 9-10 and 18:11-5.) Also, in the writ petition, Petitioner alleged that "the findings do not expose the 'analytic route' that the Board took from the evidence available to its ultimate conclusion." (3AC ¶ 216.)

findings. (See e.g. OB 22:24-27 and 23:13-15; Oppo. 26:15-17; AR 13024-13036.) It appears that Board granted the CUP, and denied Petitioner's administrative appeal, consistent with staff's recommendations. (See AR 10-11 ¶¶ 25-32; see *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 701-702 ["Findings may consist of adopting the recommendations in a staff report."].) While the County staff analyses are not administrative findings, they may explain or supplement the findings made by Board.

Relevance of CEQA Findings to Board's Approval of CUP with Conditions

Petitioner argues throughout its opening brief that "Board's findings that the challenged conditions in Chiquita's permit were needed ... are contrary to the FEIR." (See e.g. OB 11-12.) Petitioner contends that many environmental impacts were found by the FEIR to be "either not significant or mitigated below any significance by mitigation measures," and that this precluded some conditions imposed by County. (OB 11-12.) Respondents challenge this reasoning. (Oppo. 13.)

Petitioner cites no legal authority that CEQA findings of significance were necessary for County to impose conditions of approval on the Landfill. Petitioner also does not show that findings of significance or non-significance for purposes of CEQA must be applied rigidly or mechanically to non-CEQA land use decisions. Indeed, under CEQA, "a less than significant impact does not necessarily mean no impact at all." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 899; see also *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 206 ["'CEQA grants agencies discretion to develop their own thresholds of significance'"].) Moreover, conditions may have been imposed by Board to mitigate significant impacts (e.g. air quality, GHG emissions, and climate change) or to enable the Board to make the necessary findings under County Code section 22.158.050.

Nonetheless, as Respondents admit, the EIR and evidence from the CEQA proceedings inform County's CUP decision. (Oppo. 13:20-22.) The CEQA findings are relevant to this writ petition, but are not necessarily dispositive.

Operational Conditions

Petitioner contends that the Board prejudicially abused its discretion in approving conditions 23, 29, 38-39, 40, 43(D), 48, 43(G), 37, and 126. (OB 9-16.)

Condition 23 (Tonnage Limitation)

Condition 23 imposes daily, monthly, and annual tonnage limitations on the Landfill, and caps the total amount of waste to be received by the Landfill to 60 million tons. (AR 36-37; 43, ¶ 38.) It allows Chiquita to take in a daily average of 6,616 tons per day ("tpd") of solid waste through December 31, 2024. Starting January 1, 2025, until the termination of the CUP, the intake amount is reduced to 3,411 tons per day. (AR 37.) Condition 23 also limits Chiquita to taking in 2,358 tpd of beneficial reuse materials over the life of the permit. (AR 36-37, 23.)

Board found that the conditions of approval, including the tonnage limits, "are designed to ensure that the landfill is operated in a way that avoids or mitigates potential nuisance, traffic and visual impacts to surrounding communities, including those within the CSD [Castaic Area Community Standards District], and to ensure that the landfill operates safely and efficiently." (AR 12 ¶ 37; see also AR 10 ¶ 26.)

Limits on Solid Waste through December 31, 2024

Petitioner contends that "the County fails to point to substantial evidence of the need for such restrictions." (OB 12.) Petitioner cites to statements by DRP staff and in the FEIR that the environmental impacts from Petitioner's proposed waste disposal capacity of 12,000 tpd would be mitigated by mitigation measures mandated by the FEIR, and that "overall impacts would be generally the same" as an alternate project in which 6,000 tpd are received. (OB 12:2-20, citing AR 10259, 3938.)

As a preliminary matter, a tonnage limit for a landfill is a local land use restriction that falls with the discretion of local government to avoid potential nuisances. (See e.g. Pub. Res. Code § 40053.) Petitioner does not dispute that County could impose some tonnage limit. The tonnage limit is discretionary with County and depends on various factors, including the location of the Landfill in relation

to existing or planned residential or business development. Further, Petitioner cites no authority that the tonnage limit must stay the same for the life of the Landfill permit.

To the extent Petitioner challenges the sufficiency of Board's findings for Condition 23 under *Topanga*, Petitioner does not persuasively develop the argument in its writ briefs. In any event, the court finds sufficient explanation from Board that the condition is "designed to ensure that the landfill is operated in a way that avoids or mitigates potential nuisance, traffic and visual impacts to surrounding communities, including those within the CSD." (AR 12 ¶ 37; see also AR 10 ¶ 26 and AR 13 ¶ 40.) Reading Board's decision as a whole, Board's findings reasonably disclose that Board believed that the tonnage limits would avoid or mitigate potential nuisance (including odor and air quality), traffic, and visual impacts to surrounding communities.

Petitioner's evidentiary arguments for Condition 23 are incomplete and unpersuasive. The burden is on Petitioner, not County, to discuss the administrative record comprehensively and show that no substantial evidence supports Board's finding. If Petitioner fails to do so, then the Board's findings are presumed to be correct. (See *Fukuda, supra,* 20 Cal. 4th at 817; *Inyo Citizens for Better Planning, supra,* 180 Cal.App.4th at 14; *Citizens for a Megaplex-Free Alameda, supra,* 149 Cal.App.4th at 113.) A less than significant impact for purposes of CEQA does not necessarily mean that the project will have no impact, or that the amount of waste processed each day is irrelevant to the impacts on the community or the necessary conditions of approval. Indeed, Petitioner's own citation to the FEIR states that the lower 6,000 tpd project "would result in fewer truck trips and fewer acres of disturbance" compared to the 12,000 tpd project. (AR 3938.) Elsewhere, the FEIR also states that Alternative B, which maintained waste limits of 6,000 tpd, would lessen potential environmental impacts compared to the proposed project and "generally reduce the intensity of impacts to the area immediately around the landfill in comparison to the Project." (AR 227.)

In opposition, Respondents cite evidence that supports Condition 23's limitations on waste disposal. (Oppo 12-12.) There are several existing, and some planned, residential communities in close

proximity to the Landfill, some as close as 500 feet. (Oppo. 20; see AR 6-7, 3542-44.) The proposed Landfill led to site-specific and non-speculative observations, testimony, and comments with respect to potential noise, traffic, odor, air pollution, and congestion effects on neighboring properties. (See e.g. AR 10034-66; 10257-58; 34105; see also AR 11035 [odor survey noting "landfill sourced odors" on one sampling date]; AR 898, 4279, 15460-62, 16366 [examples of odor comments]; AR 4445, 4739, 14982, 15053, 17065 [traffic and truck comments]; AR 888, 899-900, 3888-93 [evidence of impacts on views]; AR 8944, 5885 [SCAQMD comments].) From 2014 through 2016, the South Coast Air Quality Management District ("SCAQMD") received over 200 complaints per year about odors coming from the Landfill. (AR 8944.) SCAQMD, which is the agency with expertise and regulatory authority over air quality and odor, provided comments in the CEQA process that suggest odor complaints could be an ongoing issue as the Landfill and surrounding community expand. (AR 5885.)[3] This and other evidence, not discussed by Petitioner, supports Board's decision to impose tonnage limits on the Landfill.

The initial limit of 6,616 tpd of solid waste through December 31, 2024, is somewhat greater than the status quo from the prior permit, which allowed the operator to dispose up to 6,000 tpd of solid waste. (See e.g. AR 2331, 11287.) Given the non-speculative community comments about impacts related to noise, odor, traffic, air quality, or views, and also the CEQA findings of significant impacts on air quality, GHG emissions, and climate change, it seems reasonable that Board would seek to maintain the status quo in terms of tonnage limits or decrease tonnage limits to reduce impacts on the community.

In the opening brief, Petitioner argued that the "drastic limitation on the Landfill's core function will harm thousands of customers." (OB 12.) However, Petitioner did not cite any evidence to support this contention. Thus, the contention is rejected.

[3] "SCAQMD staff is concerned that the expansion of the landfill would increase the proximity of active working surfaces of the landfill to existing receptors, resulting in increased odor complaints and potential Rule 402 Nuisance violations, which would be a potentially significant impact." (Ibid.) "SCAQMD staff believes that the number of complaints may increase substantially due to the increased tonnage and expanded operations...." (Ibid.)

In reply, Petitioner contends that the "Landfill was specifically cited as needing an expansion to continue to provide for the County's waste management needs." (Reply 8, citing AR 9208-11.) Petitioner refers to an advocacy letter of its attorney to the Regional Planning Commission, not to any County documents showing a determination that an expansion of the Landfill is necessary. The cited evidence does not show that County was bound by any planning documents to increase the operational limits of the Landfill.

Substantial evidence supports the limitations on solid waste tonnage in Condition 23 through December 31, 2024.

Limits on Solid Waste starting January 1, 2025

Petitioner contends that "the even more stringent limit imposed on Chiquita starting in 2025... has no basis in the record." (OB 13; see Reply 7-8.) Petitioner cites to the FEIR to argue that the tonnage decrease starting in 2025 will not allow County to meet its waste disposal needs. (OB 13:10-18, citing AR 228.) The cited evidence only suggests that the reduced tonnage limit "would not be *as effective* at meeting the long term disposal needs of the County" as the proposed project. (AR 228 [emphasis added].) This evidence does not show that Board was required to maintain or increase tonnage limits to meet the County's waste disposal needs.

Petitioner suggests that Board did not comply with *Topanga* with respect to the tonnage limit starting 2025 because Board provided "no rationale in the record showing how this will either meet the County's need for disposal capacity or what Landfill impacts are sought to be reduced by this measure, or by how much." (OB 13:14-16.) As discussed above, Board sufficiently identified the Landfill impacts sought to be reduced by Condition 23. Petitioner cites no authority that Board was required to make findings about County-wide disposal needs to approve this condition, or about "how much" the condition would reduce impacts. Moreover, although additional findings from Board for the tonnage limits starting 2025 might have been helpful, the court cannot say that Board's findings are inadequate. The reductions imposed in 2025 would necessarily help reduce or mitigate the noise, traffic, odor, air pollution, and

congestion effects on neighboring properties discussed above. Substantial evidence, summarized above, supports that those impacts could occur through the life of the Landfill. (See e.g. AR 10034-66; 10257-58; 34105; 11035; 898; 4279; 15460-62; 16366; 4445; 4739; 14982; 15053; 899-900; 3888-93; 8944; 5885.)

Under CCP section 1094.5, the burden is on Petitioner to show, by citation to the record, that the tonnage limit is unreasonable. Although Petitioner refers to the tonnage limit as "drastic," it fails to cite to evidence suggesting that the tonnage limit starting 2025 will have a detrimental effect on the Landfill operations or was otherwise an unreasonable exercise of County's authority to prevent or mitigate potential nuisances. (See Pub. Res. Code § 40053.)

Petitioner does not show that Board prejudicially abused its discretion in approving the limitations on solid waste tonnage in Condition 23 starting January 1, 2025. Substantial evidence supports that part of the condition.[4]

Limits on Beneficial Reuse Materials

With respect to the limits on beneficial reuse materials, Board made the following finding: "Materials that are source separated and diverted for use at the landfill for beneficial purposes are considered beneficial use and not solid waste. However, only those materials appropriate for the specific use and, in accordance with engineering, industry guidelines, or other standard practices in accordance with Title 14 California Code of Regulations section 20686, may be characterized as beneficial use. The Board finds that the conditions limits on beneficial use materials are consistent with the amount that is appropriate for such uses." (AR 13, ¶ 42.) As Petitioner indicates, Board followed the recommendation of DRP and DPW staff to impose this limit on beneficial reuse materials "to avoid allowing the applicant to

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[4] In opposition, Respondents contend that Condition 23's tonnage restrictions are also consistent with state and County goals for reduction of waste. (Oppo. 14.) In reply, Petitioner contends that Board did not justify Condition 23 based on these policies and that the court "may not affirm an agency's action on a basis not embraced by the agency itself." (Reply 7; *S. Cal. Edison Co. v. PUC* (2000) 85 Cal.App.4th 1086, 1111.) Because the court affirms Condition 23 on other grounds, the court need not decide these issues.

classify materials as 'beneficial use' that exceed the amount needed for specific uses." (See OB 12, citing AR 13027.)

Petitioner challenges Board's findings by arguing that "the record shows that Chiquita responsibly uses such materials, classifies them appropriately, and uses such materials for safer Landfill operations. (See AR 008542, 008547, 008548, 008553, 008556, 008566.)" (OB 13.) Petitioner cites to a report prepared by a solid waste consultant, for Petitioner, "to evaluate the landfill's performance, and to develop an opinion regarding their use of the diverted waste (beneficial reuse) material." (AR 8545.) The consultant found that the Landfill used beneficial reuse materials in compliance with pertinent regulations. He also found that the surrounding environment and community benefited from the Landfill's use of beneficial reuse material, including from increased regulatory compliance compared to other landfills. (AR 8547-8566.)

Respondents dispute Petitioner's consultant's conclusion that there was a correlation between the amount of material that Petitioner classified as beneficial use and a low incidence of regulatory issues as compared with other landfills. (Oppo. 16, fn. 5.) Having reviewed the report, the court cannot say that the consultant's analysis was so compelling that Board was required to find a correlation between the amount of beneficial use materials at the Landfill and Petitioner's regulatory compliance record. The report includes evidence that could be interpreted to contradict the correlation found by the consultant. For instance, Calabasas, Puente Hills and Scholl Canyon landfills used significantly less beneficial use material than the Landfill but had compliance records comparable to Petitioner's. (Ibid., citing AR 8552.)

As noted in opposition, the consultant also found that Petitioner's Landfill used more beneficial use materials per ton of solid waste than any other landfill in the county of Los Angeles between 2011 and 2015. (Oppo. 15; see AR 8545; 8547; 8550.) It classified 40% of the total tonnage received at the Landfill as "non-landfilled" material, which includes about 35% for beneficial use. (AR 8545, 8552.) The report indicates that while the Landfill had the third largest "landfilled tonnage" from 2011-2015 in the county, it accounted for 51% of all non-landfilled tonnage in the county for that same period, substantially

more than any other landfill. (AR 8547-8550.) Given the large amount of beneficial use materials processed by the Landfill compared to other landfills in LA County, Board could reasonably conclude that Petitioner was not using such materials as efficiently as it could.

Respondents argue that "overuse or inefficient use of beneficial use material does not serve the goals of recycling and diversion, as set forth in the Integrated Waste Management Act." (Oppo. 15; see Pub. Res. Code §§ 40180, 40124 [defining "recycling" and "diversion"].) The court agrees with that statement. Petitioner does not argue to the contrary.

The CUP limits beneficial use to approximately 26% of the total tonnage received through 2024. Twenty-six percent brings the Landfill more in line with ratios of several other landfills in the area with respect to non-landfilled tonnage. (AR 8545, 8552.) It was reasonable for Board, and within its discretion, to seek to limit the beneficial use materials at the Landfill to a proportionate amount that is more consistent with other landfills in the County.[5]

Substantial evidence supports the limitations on beneficial use materials in Condition 23.

Condition 29 (Landfill Elevation Limitation)

Condition 29 limits the Landfill's elevation to the same limit in its previous permit: 1,430 feet. (AR 41.) The Board found that the conditions of approval were designed, in part, to avoid "visual impacts" to surrounding communities, and County staff also reasoned that impacts to visual resources justified this height limitation. (AR 12 ¶ 37; AR 13028; see also AR 10259.)

Petitioner challenges Condition 29 by arguing that "the County's own FEIR determined that: (1) there would be no significant visual impacts from Chiquita's proposed project; (2) no views of significant

[5] After January 1, 2025, the limit on beneficial use would be similar to Petitioner's ratio of landfilled to non-landfilled tonnage from 2011-2015 (around 40%). In reply, Petitioner argues that "there is no rational basis for these different limits." (Reply 9.) However, the amount of beneficial reuse material allowed before and after January 1, 2025 would be the same. (AR 36-37, 23.) The increase in the ratio of beneficial reuse materials is a result of a *decrease* in the amount of solid waste allowed starting January 1, 2025. Since the allotted amount of beneficial reuse materials remains the same, the change in ratio does not undermine Board's findings.

ridgelines would be significantly impacted; (3) there are no scenic vistas in the Landfill area; and (4) the Landfill's topography and location within a canyon would protect against any potential visual impacts. (AR 003549, 003888-003889, 003897.)" (OB 13-14.) Petitioner's record citations do not show that Board prejudicially abused its discretion. As discussed, a less than significant impact for purposes of CEQA does not mean that the project will have no impact.

Condition 29 is supported by evidence, including from the EIR, showing that the Landfill elevation does create visual impacts. (See e.g. AR 888, 899-900, 3888-93.) Santa Clarita Valley Area Plan ("SCVAP") designates SR 126 highway, which passes south of the Landfill, as a scenic route. (AR 3888.) From outside, the Landfill is screened by the ridgeline by most, but not all views. (AR 3889.) The EIR determined that the proposed project would be visible from residential areas to the north and east of the Landfill, Valencia Travel Village, Chiquito Canyon Road, and by travelers on State Route 126. Visual sensitivity from these areas ranges from moderately high to high. (AR 3890, 3893-94; see also AR 3903-3914 [photos with simulated view of proposed project].)[6] Further, as the Landfill fills and increases in height, the active working face will be at higher elevations, and thus the working face and the night lighting associated with it will have the potential to be more visible. (AR 3896-97.)

Although the EIR concluded that impacts to visual resources would not be significant for purposes of CEQA, substantial evidence shows that visual impacts do exist. Therefore, it was reasonable for the County to limit the elevation of the Landfill to also address aesthetic impacts. Substantial evidence supports Condition 29.

Conditions 38-39 (Landfill Termination Requirements)

Conditions 38 and 39 require Petitioner to terminate operations once any of three limits are met: (1) the grant term of 30 years has been reached (2) the Landfill receives 60 million tons of material; or (3)

[6] As an example, for the potential impact on views from State Route 126, the EIR stated: "The hillsides are visually pleasing, but are not highly distinctive. Thus the level of vividness of this view is average or moderate.... SR-126 is a First Priority scenic route that carries high volumes of traffic; however, because travelers along this segment of the highway are moving at high speeds, this view is visible for only brief periods of time. The overall visual sensitivity of this view is moderate." (AR 3893-94.)

the height limit of 1,430 feet is reached. (AR 43-44.) Board found that these conditions were "necessary." (AR 18 ¶ 59.) County staff reasoned that a 30-year time limit was appropriate "because this provides a date certain to the community as to the maximum length of this grant." (AR 13029.) Staff reasoned that "the overall tonnage limit of 60 million tons is the amount of material that can be placed within the Limits of Fill with the 1,430- foot height limit, if the Landfill is operated efficiently." (Ibid.)

Petitioner implies that Board did not provide sufficient findings to support Conditions 38-39, stating that "Board found that these limits were necessary, but never stated why." (OB 14.) However, it can be inferred that Board adopted the reasoning of County staff for the termination conditions. (See AR 13029; see also AR 10 ¶ 26 [referring to staff recommendations].) Moreover, Board's decision to place a time limit on the operation of the Landfill is explained by other findings in the decision, including about community concerns and about unavoidable impacts on air quality, GHG emissions, and climate change. (See e.g. AR 9-10 ¶¶ 23-24.)

Apparently, Petitioner contends that *none* of the three termination requirements is justified. (OB 14:7-19; Reply 9.) However, Petitioner does not dispute Staff's comment that 60 million tons of waste is the amount that could reasonably fit under the height limitation of 1,430 feet. (Ibid.) Thus, Petitioner's challenge to Conditions 38-39 is unpersuasive for the same reasons discussed above as to Condition 29, which imposes the 1,430-foot height limit.

Petitioner contends that "if the justification for the tonnage restriction was indeed height, then the height limit would accomplish the objective and the tonnage restriction could only assure a premature closing of the Landfill unconnected to any impact." (OB 14.) Although the height limit may have been a sufficient termination trigger, the court cannot say it was unreasonable for County to impose a similar trigger based on waste volume, especially where Petitioner cites no evidence to dispute staff's rationale that 60 million tons would likely fill the 1,430 height limit.

Petitioner's challenge to the 30-year time limit is unclear. Since Board had the power to deny the CUP altogether, and received substantial opposition to the Landfill, it seems entirely reasonable for Board

to impose some outer time limit for the CUP. Petitioner fails to show otherwise. As discussed above and in opposition, substantial evidence supports that community members had ongoing and non-speculative concerns about the Landfill, including with respect to odor and truck traffic. (See Oppo. 18, fn. 6 and 7 [citing comments about odor and traffic from Landfill]; see also AR 898, 4279, 15460-62, 16366 [examples of odor comments]; AR 4445, 4739, 14982, 15053, 17065 [traffic and truck comments]; see also AR 8944, 5855 [SCAQMD comments].) This evidence supports Board's decision to impose both time and operational limits on the extension of the Landfill.

The landfill termination requirements in Conditions 38 and 39 are supported by substantial evidence. Board provided sufficient findings to support these conditions.

Condition 40 (Operating Hours Restriction)

Condition 40 limits the Landfill to daytime operations, with narrow exceptions. Through December 2024, the Landfill may operate from 3:00 am to 7:00 pm and accept waste from 4:00 am to 5:00 pm, Monday through Saturday. Effective 2025, the Landfill may operate from 4:00 am to 7:00 pm, and accept waste from 5:00 am to 5:00 pm, Monday through Saturday. (AR 44-45.) Board approved Condition 40 to minimize impacts of the Landfill on surrounding communities, including with respect to noise. (AR 9-10 ¶¶ 24-26 and 12 ¶ 37; see also AR 13029-30.)

Petitioner contends that the FEIR "demonstrated ... that under a 24/7 operating scenario, there would be insignificant noise impacts." (OB 14-15, citing AR 3877.) Although this finding from the FEIR is relevant to the Board's decision, it is not dispositive. As discussed above, under CEQA, a less than significant impact does not necessarily mean no impact at all. The Landfill will generate noise from construction and operations. (AR 3876-77.) The Landfill will operate as close as 1,200 feet from an existing residential area, and new residential developments are being constructed or are planned for construction in close proximity to the Landfill. (AR 3877, 3541-44.)

Petitioner contends, without citing evidence, that "nighttime noise impacts ... were never complained about or otherwise shown to exist." (OB 5.) Petitioner contends that "it must comply with the

Los Angeles County Code, which prohibits certain levels of noise during the nighttime hours. (L.A. County Code, § 12.08.)" (OB 15.) As Petitioner does not comprehensively discuss the evidence, these arguments are not persuasive. Despite the County noise regulation, residents have, in fact, complained of noise impacts from the Landfill. (See AR 858 [resident can hear the Landfill in the middle of the night]; AR 4594 [Val Verde residents have complained of noise during "sleeping hours."].) "It is appropriate and even necessary for the [agency] to consider the interest of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of neighbors may constitute substantial evidence on this issue." (*Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 973.) Because the Landfill is located in a populated area whose density will only increase, it was reasonable for the County to balance the competing interests, including with respect to potential noise impacts, and limit the Landfill's hours of operation.

Other than referring to a lack of operating hour limits in the prior CUP (see Reply 10), Petitioner does not cite any evidence that the restrictions on operating hours would have a detrimental effect on the Landfill operations. The CUP does allow the hours of operation to be extended in limited circumstances (e.g. to receive inert debris to accommodate special projects that generate construction debris at nighttime, or for preservation of public health and safety). (AR 45.) Condition 40 is supported by substantial evidence.

Condition 43(D) (Prohibition of Materials for Use as Cover)

Trash received at the Landfill must be covered by other material on a daily basis for health and safety purposes. (See AR 3796.) Condition 43(D) prohibits the Landfill from using nine separate materials as cover for solid waste. (AR 46-47.) Specifically, Condition 43(D) states that "green waste, automobile shredder waste, cement kiln dust, dredge spoils, foundry sands, processed exploration waste from oil wells and contaminated sites, production waste, shredded tires, and foam shall not be used as daily, intermediate, or Final Cover at the Landfill." (AR 46-47.)

County staff reasoned that Condition 43(D) "is necessary and appropriate to minimize impacts to the surrounding communities including (but not limited to) dust and odor, even though such materials may be permitted under state and federal law." (AR 13030.) The Board adopted that reasoning. (AR 9-10 ¶¶ 24-26 and 12 ¶ 37.)[7]

In the opening brief, Petitioner challenged Condition 43(D) as to all nine prohibited materials. (OB 15.) However, Petitioner failed to exhaust administrative remedies except as to treated auto shredder waste (TASW). (Oppo. 20, citing AR 10116, 12244-5, 12981, 13217-300.) "The petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 536.) Petitioner has not cited any evidence that it exhausted administrative remedies with respect to Condition 43(D) for materials other than TASW. (Reply 10.) Petitioner also withdrew its challenge to Condition 43(D) except with respect to TASW. (Reply Appendix A.)

Petitioner contends that Condition 43(D) is not supported by substantial evidence because "the FEIR assumed that [the Landfill] would accept all nine materials that this condition seeks to prohibit and found no significant impacts related to Chiquita's use of these materials." (OB 15, citing 3499.) Petitioner contends that the only evidence supporting Condition 43(D) "is a stray comment on an early version of the EIR which stated that some unidentified studies determined that emissions from the use of treated autoshredder waste may result in adverse impacts." (Ibid., citing AR 18461.)

In opposition, Respondents point out that there are several existing, and some planned, residential communities in close proximity to the Landfill, some as close as 500 feet. (Oppo. 20; see AR 6-7, 3542-44.) Neighbors expressed concerns about treated auto-shredder waste residue being blown and carried into the residential areas. (AR 891, 900, 10667; 33775.) For instance, a Nancy Carder of Castaic commented that treated auto shredder waste (TASW) "is allowed to contain 50 mg/l lead when

[7] In the opening brief and reply, Petitioner does not develop an argument with respect to the sufficiency of Board's findings with respect to this condition. (OB 15; Reply 10.)

the hazardous waste level for lead is 5 mg/l..... If it is used as daily cover, the metals are subject to dispersal by the wind, and these elevated lead levels are a potential health concern." (AR 10667.)

In addition, as noted by Respondents, the record contains evidence that pre-processing of TASW is not always be done correctly to remove harmful materials. (See AR 4139-40, 17085-510 [SA Recycling, LLC, a recycling company that sends its treated auto-shredder waste to the Landfill was prosecuted by the Los Angeles County District Attorney's Office for shipping to the Landfill improperly treated autoshredder waste, contaminated with lead, zinc, and/or cadmium (LASC Case No. BC458943); the case was ultimately disposed through a stipulated judgment].)

The FEIR's response to comments about TASW provides additional information relevant to Petitioner's challenge to Condition 43(D). (AR 4138-4140.) According to the FEIR, "commenters indicated concern that TASW is very permeable to rainwater and contains contamination elements of its own." (Id. at 4138.) "TASW is one of 11 types of ADC [alternative daily cover] materials that are allowed by CalRecycle" and state regulations. (Ibid.) "TASW ... is regulated by DTSC [Department of Toxic Substances Control]. As the regulatory agency in charge of TASW, DTSC controls the determination of TASW as a nonhazardous or hazardous waste. Currently, automobile shredders are allowed, under a DTSC conditional authorization, to treat TASW and to dispose of it as non-hazardous waste, under specified conditions. DTSC is currently evaluating the existing conditional authorization provided to automobile shredders. If DTSC ultimately makes the determination that TASW should no longer be classified as non-hazardous waste, [the Landfill] would no longer accept TASW for disposal or for use as ADC." (Ibid.)

Although the FEIR found no significant impact from the use of TASW as cover, the FEIR also discloses that TASW must be treated properly to ensure it is not hazardous. In imposing Condition 43(D), the Board could reasonably weigh the benefits of using TASW as cover against the community concerns about TASW and risks of improper processing of harmful materials. Board could also reasonably consider the proximity of existing and planned residential communities.

In reply, Petitioner's sole response to the opposition is that "untreated, or poorly treated, autoshredder waste is by definition not 'treated autoshredder waste.'" (Reply 10.) Thus, Petitioner does not dispute that mistakes are made in treating autoshredder waste, a fact that County could reasonably consider given the close proximity of the Landfill to residences.

Condition 43(D), as applied to TASW, is supported by substantial evidence. Petitioner did not exhaust its administrative remedies with respect to its challenge to the other materials prohibited for use as cover in Condition 43(D). Nor did Petitioner develop an argument that Board made insufficient findings for Condition 43(D).

Condition 48 (Prohibition on Acceptance of Certain Waste Materials)

Similar to Condition 43(D), Condition 48 prohibits Petitioner from accepting, processing, or disposing various materials, including TASW, at the Landfill. (AR 49.) Board and County staff justified this condition for the same reasons as stated above for Condition 43(D). (AR 13030; AR 9-10 ¶¶ 24-26 and 12 ¶ 37.)

Condition 48 is supported by evidence of County's and community's concerns about Landfill's acceptance of auto-shredder waste that has been improperly treated and its potential impact on the groundwater. (See AR 891, 900, 902, 10667, 4138-40, 4680, 10749.) The court cannot say these concerns were unreasonable given evidence that TASW is a hazardous waste if not treated properly. As noted, in prohibiting TASW, Board could also reasonably consider that proximity of existing and planned residential communities. As discussed, the finding of non-significance for purposes of CEQA is not dispositive.

Condition 48, as applied to TASW, is supported by substantial evidence. Petitioner did not develop an argument that Board prejudicially abuse its discretion with respect to its findings for Condition 48.

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Condition 43(G) (Pre-Processing of Out-of-Area Waste)

Condition 43(G) directs, with exceptions, that all waste from outside of the Santa Clarita Valley be pre-processed "or undergo front-end recovery methods" before coming to the Landfill to remove all beneficial reuse materials and construction and demolition debris. (AR 47.) As discussed in detail *infra*, Condition 43(G) is preempted by the state Integrated Waste Management Act. The court need not decide whether Board's findings for Condition 43(G) are supported by substantial evidence.[8]

Condition 37 (Five-Year Review)

Condition 37 requires that the CUP be reviewed and subject to revision every five years to consider whether more stringent requirements should be placed upon the Landfill. (AR 43.) The periodic review process requires Petitioner to submit information to the Department of Regional Planning ("DRP"). The review is adjudicated by a hearing officer, whose decision may be appealed to the Regional Planning Commission. (AR 43.) The Board determined that this condition was necessary to consider changing circumstances, waste disposal needs of the County, and better environmental control systems or management practices that might significantly improve Landfill operations. (AR 18 ¶ 59.)

Petitioner contends that Condition 37 is not supported by the record because the Landfill "is already regulated ... under different permits by sophisticated environmental agencies ... [and] those requirements are already incorporated by reference in the CUP." (OB 16.) That the Landfill is regulated by various agencies does not show that Condition 37 is unreasonable.

The periodic review requirement was a reasonable exercise of Board's discretion. The FEIR found that the Landfill project will cause significant and unavoidable impacts on GHG emissions and climate change, even after implementation of mitigation measures. (AR 221-2.) Condition 37 is consistent with mitigation measure GHG-1, which required Petitioner to provide reports to DRP every five years to "evaluate consistency of landfill operations with current state and county GHG emission

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[8] Petitioner seems to contend that Board did not make sufficient findings to justify Condition 43(G). (OB 16:3-7.) Board sufficiently explained why it included Condition 43(G), as indicated below with respect to preemption. (See AR 46-47, 13030, 13034.)

reduction plans." (AR 222.) Periodic review of the CUP is also in line with the County's stated goals for waste reduction and diversion. (AR 34022-94.)

Substantial evidence supports Condition 37. Petitioner fails to show that Board prejudicially abused its discretion in imposing this condition.

Condition 126 (Legislation)

Condition 126 requires that Petitioner work with the County "to seek amendment of existing laws and regulations" related to the State's waste management goals. (AR 82.) Petitioner contends that "the Board made no specific findings about this requirement, and nothing in the Staff reports provide any justification for it." (OB 16.) The court agrees. (See AR 4-21; see also AR 13024-13037.) In opposition, Respondents cite no findings or other justification for Condition 126. (Oppo. 21.)

Petitioner also contends that Condition 126 is unconstitutional because it compels Petitioner to engage in speech to "work towards the County's own waste management agenda." (OB 16.) "The government may not prohibit the dissemination of ideas that it disfavors, nor compel the endorsement of ideas that it approves." (*Knox v. Service Employees Intern. Union, Local 1000* (2012) 567 U.S. 298, 309.) Because Condition 126 compels Petitioner to endorse specific government policies and ideas, it is unconstitutional.

In opposition, Respondents do not respond to and apparently concede Petitioner's constitutional argument with respect to Condition 126. (See Oppo. 21:11-13; see *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].) Contrary to Respondents' argument, Condition 126 does compel Petitioner to "endorse County's position." There is no difference between requiring Petitioner to start this process anew or "continue" to seek amendment of laws; either one is a requirement to support the County.

Board issued no findings that support Condition 126. Moreover, Condition 126 is unconstitutional. Because of the constitutional defect, the court finds no reason to remand for Board to issue findings in support of Condition 126.

Mitigation Fee Act

Petitioner contends that various fees and exactions imposed by the CUP violate the Mitigation Fee Act because there is no reasonable relationship between the fees and impacts from the Landfill. (OB 17-28.)

Summary of Relevant Law

The Mitigation Fee Act, codified at sections 66000-66025 of the Government Code, "sets forth procedures for protesting the imposition of fees and other monetary exactions imposed on a development by a local agency." (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 864.) "[T]he Act was passed by the Legislature 'in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.'" (Ibid.)

"The Mitigation Fee Act requires the local agency to identify the purpose of the fee and the use to which the fee will be put. (§ 66001, subd. (a)(1) and (2).) The local agency must also determine that both 'the fee's use' and 'the need for the public facility' are reasonably related to the type of development project on which the fee is imposed. (§ 66001, subd. (a)(3) and (4).) In addition, the local agency must 'determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.' (§ 66001, subd. (b).) 'Public facilities' are defined as including 'public improvements, public services, and community amenities.' (§ 66000, subd. (d).)" (*Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561.)

The "reasonable relationship" standard in the Mitigation Fee Act adopts U.S. Supreme Court takings jurisprudence establishing that governmental exactions and fees imposed in permits must have an "essential nexus" between a legitimate government end and the fee, and that the amount of any fee must be "roughly proportional" to the impact of the project. (*Ehrlich, supra* at 866 [discussing *Dolan v. City of Tigard* (1994) 512 U.S. 374 and *Nollan v. Cal. Coastal Com.* (1987) 483 U.S. 825].)

Case law under the Mitigation Fee Act and its Takings Clause standard require the government to clear two hurdles for an exaction to be valid. First, the government must establish an "essential nexus" between the burden created by the project and the purpose of the fee. "[U]nless the permit condition serves the same governmental purpose as the development ban [i.e. denial of the permit], the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.'" (*Nollan, supra* at 837; *Ehrlich, supra* at 869-870.) Second, if there is such a nexus, the fee must be "roughly proportional" to the burden created by the project. While no "precise mathematical calculation is required" the agency must "'make some effort to quantify its findings in support of the [fee]' beyond mere conclusory statements that it will mitigate or offset some anticipated burden created by the project." (*Ehrlich, supra* at 871-73.)

Ehrlich is instructive. "There, the owner of a private recreational facility, whose parcel was restrictively zoned for commercial recreational use, sought a zoning change to build condominiums. The city agreed to rezone the property but required an in-lieu fee of $280,000 for the development of new recreational facilities elsewhere. The court found the requisite nexus between the loss of recreational facilities and the imposition of an in-lieu mitigation fee to develop new ones. However, the court concluded that the amount of the fee was not roughly proportional to the impact of the zoning change." (See *Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 230-231 [summarizing *Ehrlich*].)

"The court noted the lack of 'individualized findings' to establish a connection between the amount of the fee and the loss of the restrictive zoning on the parcel. The city argued that the fee was partial compensation for the loss of $800,000 in recreational improvements on the property. However, the court pointed out that the impact to be mitigated was the loss of the restrictive zoning not the loss of recreational improvements on the property. The city also asserted that if it had denied the zoning change, four new private tennis courts would have been built.... The court again found the amount of the fee unjustified because the cost of private courts would have been paid by the members of the private

club, and the general public would not have had access to them." (*Ocean Harbor House, supra* at 230-231 [discussing *Ehrlich*].)

"The court opined, however, that the city could impose a fee that was 'tied more closely to the actual impact of the land-use change the city granted plaintiff,' such as a fee to help defray the administrative cost of rezoning other property for commercial recreational use, or a fee to mitigate a decrease in the city's ability to attract private recreational development and defray the costs of inducing such development." (*Ocean Harbor House, supra* at 230-231 [discussing *Ehrlich*].) The high Court remanded the case to the City "to make specific findings supported by substantial evidence—that is, the city 'must make some effort to quantify its findings' supporting any fee, beyond 'conclusory statements,' although '[n]o precise mathematical calculation is required' either by the takings clause or the Act." (*Ehrlich, supra* at 885.)

Condition 115 (Waste Reduction and Diversion Program Fees)

Condition 115 requires Petitioner to pay on a monthly basis a fee of $0.25 per ton of solid waste disposed or received at the Landfill. The fee shall be used to fund "the implementation and enhancement of waste reduction and diversion programs, including, but not limited to, conducting document/paper shredding and waste tire collection events in unincorporated County areas." (AR 75.)

Board justified the permit fees generally as follows: "Project conditions require the permittee to pay fees that will be used to offset impacts to the County and its residents associated with operation of a landfill and disposal of waste, by funding programs and activities that enhance Countywide disposal capacity, mitigate landfill impacts in the unincorporated County areas, fund environmental, educational, and quality of life programs in unincorporated areas surrounding the landfill, and promote source reduction and recycling programs and the development of Conversion Technology facilities that benefit the Santa Clarita Valley and the County, and assist the County with meeting its goals and requirements for waste diversion and organics recycling." (AR 12-13 ¶ 38.)

County staff justified Condition 115 as follows: "State law requires the County and other jurisdictions to divert at least 50% of all waste to recycling and beneficial use; it also sets goals of up to 75% diversion, and it imposes penalties against the County for failing to meet these requirements.... The generators of the waste are residents and businesses. These are the same people for whom the Landfill ultimately provides services and at whom the waste reduction and diversion programs will be aimed. When waste is disposed in the Landfill this results in revenue to the applicant, by way of service fees that are ultimately paid by the waste generators. The costs of these services include indirect costs, such as the costs incurred by local jurisdictions to meet diversion goals." (AR 13034.)

Staff's comments apparently refer to AB 1383 (Short-Lived Climate Pollutants law), which imposes significant targets for the statewide reduction of organic waste disposal. (AR 2543; Health. & Saf. Code § 39730.6.) AB 1383 also directed CalRecycle to adopt regulations to achieve these targets, which in turn, imposed requirements on local jurisdictions such as the County to divert organic waste from landfills. (Pub. Resources Code § 42652.5.)

Petitioner contends that "Chiquita is not a waste generator; in fact, it's the opposite—the Landfill facilitates waste reduction and diversion through its recycling of huge quantities of beneficial reuse materials ...." (OB 19, citing AR 3943.) Petitioner contends that "County cannot show that Chiquita's expansion hinders waste reduction and diversion programs, thereby failing to show the requisite nexus between a Landfill impact and the purpose of this fee." (Ibid.)

Contrary to Petitioner's position, to satisfy the nexus requirement County did not need to show that the Landfill "hinders waste reduction and diversion programs." In *Nollan*, "the heart of the takings analysis ... lay in the presence (or absence) of a *link* between the commission's power to deny the Nollans a development permit altogether, and its power to impose a condition on its issuance that furthers the *same end* as an outright prohibition on development." (*Ehrlich*, *supra*, 12 Cal.4th at 877.) Outright

denial of the Landfill permit would further various ends, including avoidance of impacts on the local community.[9]

Petitioner, which has the burden under CCP section 1094.5, does not show that Condition 115 lacks an essential nexus. As noted by Board in its findings, a purpose of the fee conditions is to "offset" or "mitigate" impacts of the Landfill. (AR 12.) While the Landfill may not generate waste itself, it receives waste and, as found in the EIR, creates significant impacts on air quality. (See e.g. AR 114-154, 155-237, 3775-3823 [discussion of air quality impacts].) Further, as discussed above with respect to operational conditions, there is substantial evidence that the Landfill would have some impacts on nearby residents over the 30-year extension (e.g. noise, odor, traffic, view impacts), even if such impacts were not found significant for purposes of CEQA. (See e.g. AR 10034-66 [comments]; 11035 [odor survey]; AR 898, 4279, 15460-62, 16366 [odor comments]; AR 4445, 4739, 14982, 15053, 17065 [traffic and truck comments]; AR 888, 899-900, 3888-93 [impacts on views]; AR 8944, 5885 [SCAQMD comments].)

Over the life of the Landfill, implementation and enhancement of waste reduction and diversion programs (Condition 115), could reduce the amount of waste that is landfilled and thereby reduce the impacts resulting from operating a landfill. Petitioner cites no evidence to the contrary. (See OB 19, citing AR 3943 and Reply 11-13, citing AR 3933, 3931.) The essential nexus requirement is satisfied for Condition 115.

In reply, Petitioner contends that "the same impacts will generally occur whether Chiquita's doors are open or not." (Reply 12.) However, as discussed above, substantial evidence supports that the Landfill would have local impacts on nearby residents, including with respect to air quality, noise, odor, traffic, and views, over the 30-year extension. Even assuming *arguendo* that non-local impacts on climate change or GHG emissions would simply be transferred to another landfill, the local impacts could be avoided by denial of the Landfill permit.

[9] Of course, denial of the permit would also prevent County from pursuing waste disposal objectives at the Landfill.

Petitioner also contends that "any argument that these programs will in the future somehow reduce 'quality of life' impacts of landfills is too attenuated from this Landfill to pass muster under the MFA." (Reply 12, citing *Surfside Colony, Ltd. V. Cal. Coastal Com.* (1991) 226 Cal.App.3d 1260, 1270.) *Surfside* is factually distinguishable because, unlike in that case, Condition 115 does not depend on nonsite-specific or generalized studies. Petitioner does not dispute, with evidence, that the waste reduction and diversion programs funded by Condition 115 could, over the 30-year extension, lead to a meaningful reduction in waste disposed of at the Landfill, which could mitigate the local impacts. Petitioner admits that the Landfill processes a substantial percentage of the solid waste management needs of Los Angeles County. (See 3AC ¶ 2; see also AR 13 ¶ 39, 14 ¶ 47.) Thus, waste reduction and diversion programs that reduce County-wide waste could be expected to reduce waste received at the Landfill.

However, in addition to a nexus, County was also required to show that the fee is "roughly proportional" to the burden created by the project. While no "precise mathematical calculation is required" the agency must "'make some effort to ***quantify*** its findings in support of the [fee]' ***beyond mere conclusory statements*** that it will mitigate or offset some anticipated burden created by the project." (*Ehrlich, supra* at 871-73 [emphasis added].) The Supreme Court's use of the word "quantify" is important. The agency must perform some factual analysis or calculation, even if not precise, to satisfy the proportionality requirement.

Petitioner contends that "the County makes no effort to quantify Chiquita's supposed impact and relate it to costs of the programs allegedly needed." (OB 19.) In the opposition brief, Respondents do not address this argument with respect to many of the challenged fees, including Condition 115. (See Oppo. 22-27; see *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].) The court has not found in the record, and Respondents have not cited, any findings or analysis by the Board or County staff that show how the $0.25 per ton fee in Condition 115 is roughly proportional to the purported impacts that the fee was

intended to offset or mitigate. Accordingly, for this reason, Respondents violated the Mitigation Fee Act. Because it appears possible that Board could make proportionality findings supported by substantial evidence for Condition 115, either for the specific fee amount stated or in some other amount determined by the Board, the court will remand the case for further proceedings and Board findings. (See *Ehrlich*, *supra* at 885.)

Conditions 117-118 (Out-of-Area Waste Fees)

Condition 117 imposes an escalating fee on Petitioner for each ton of waste accepted at the Landfill originating outside of the Santa Clarita Valley Area (starting at $1.32 per ton and increasing to $5.28 per ton as more waste is accepted), and a flat fee of $6.67 per ton for waste originating outside of Los Angeles County. (AR 75-76.) The fees will be divided between a "Landfill Mitigation Program Account" and an "Alternative-to-Landfilling Technology Account." (Ibid.) Condition 118 would reduce the Condition 117 fee by 50% if Petitioner were to construct and operate a Conversion Technology facility. (AR 77.)

Assuming without deciding that there was a nexus for Conditions 117-118, County was also required to show that the fees are "roughly proportional" to the burden created by the Landfill. County and Board failed to do so. Accordingly, County violated the Mitigation Fee Act. Moreover, as discussed in detail *infra*, Conditions 117-118 are preempted by the state Integrated Waste Management Act. Because the conditions are preempted, the court need not decide whether County and Board could make additional findings under the Mitigation Fee Act.

Condition 119 (Alternative Technology Research Fee)

Condition 119 requires Petitioner to pay $200,000 annually, not to exceed $3 million, to research, promote, and develop "alternatives to Landfill and incineration processes ... that are most appropriate for Southern California from an environmental and economic perspective." (AR 79.) Board and County staff justified this condition on similar grounds as summarized above for Conditions 115, 117-118. (AR 13035.)

Petitioner contends that there is no nexus for Condition 119 because the Landfill "the Landfill does not impede the research, promotion, or development of alternative technologies." (OB 21-22.) Petitioner incorrectly frames the issue. As discussed, the nexus analysis focuses on whether the condition "furthers the *same end* as an outright prohibition on development." (*Ehrlich, supra*, 12 Cal.4th at 877.) The Landfill receives waste and would result in certain impacts, including to nearby residents, as discussed above for Condition 115. As found by the Board and by County staff, Condition 119 is intended to mitigate such impacts by encouraging development of future alternatives to landfills. (AR 19, 13034-35.)

Petitioner, which has the burden under section 1094.5, has not cited to any evidence that the program funded by Condition 119 is not reasonably designed to mitigate or offset the Landfill impacts, including air quality and the other local impacts discussed above. (See OB 20-22.) In opposition, Respondents cite evidence that waste reduction and alternative technologies, including conversion technology, reduce the amount of waste that is disposed in a landfill and thereby reduce the impacts from operation of a landfill. (See Oppo. 22-24; see e.g. AR 755-759; 2592-2601 [waste reduction and alternative technologies]; 4839-4844 [GHG emissions]; 33378-79.) Condition 119 could be expected to reduce the amount of waste disposed of at the Landfill, and thereby reduce local impacts in Santa Clarita Valley. Accordingly, the essential nexus requirement is satisfied for Condition 119.

However, County was also required to show that the fees are "roughly proportional" to the burden created by the Landfill. County and Board failed to do so. Respondents do not address this point, and do not cite any findings or analysis with respect to the proportionality requirement. (See Oppo. 22-24.) Accordingly, Respondents violated the Mitigation Fee Act with respect to Condition 119. Because it appears possible that Board could make proportionality findings supported by substantial evidence for Condition 119, either for the specific fee amount stated or in some other amount determined by the Board, the court will remand the case for further proceedings. (See *Ehrlich, supra* at 885.)

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Condition 116 (Disaster Debris Removal Fee)

Condition 116 requires that Petitioner pay an $0.08 per ton fee to fund the "administration, implementation, and enhancement of disaster debris removal activities in Val Verde, Castaic, and other unincorporated areas of the County surrounding the Landfill, including providing waste disposal and collection service vouchers to assist residents in clean-up activities." (AR 75.)

In addition, Board's general findings related to fees (see AR 12-13 ¶ 38 and AR 19), County staff justified Condition 116 as follows: "[T]he communities surrounding the Landfill experience a disproportionate share of burden of the Landfill's impacts. In the event of a disaster, the Landfill will receive fees from accepting debris and pursuant to Condition 22 may even be permitted to accept increased tonnage amounts in the event of a declared emergency. The fee in Condition [116] will help pay for the costs of debris removal in the communities that are shouldering the bulk of impacts associated with transporting the disaster debris from the rest of the County." (AR 13034.)

Petitioner contends that there is no nexus between a Landfill impact and Condition 116 because the Landfill "does not create disasters" and "does not create the need to clean up any disaster debris in the surrounding community." (OB 20.) In opposition, Respondents contend that there is a nexus because "the Landfill will reap benefits from accepting additional waste [during a disaster], but community will suffer increased traffic, noise, and air quality impacts." (Oppo. 24.)

As Petitioner indicates, in the event of a disaster the Landfill could receive a "temporary tonnage limit increase" to accept additional waste. (OB 20; see also AR 36-38 [conditions 23 and 24].) Although neither party cites evidence on point, it seems theoretically possible that such tonnage increase could lead to temporary impacts on the local community, such as additional traffic, noise, or air quality impacts. However, the fee from Condition 116 would not be used to mitigate such temporary increases in impacts caused by the Landfill during a disaster. Rather, as stated by Respondents, the fee would be use for "disaster clean-up" in the local communities. There appears to be no evidence, and none was cited by County staff or in Respondents' opposition, that the Landfill operations would contribute to the need for

disaster clean-up in the local communities. The likelihood of a local disaster requiring debris cleanup is the same whether the Landfill is open or not. Thus, the nexus requirement is not satisfied.

County was also required to show that the fee is "roughly proportional" to the burden created by the Landfill. County and Board failed to do so. Respondents do not address this point, and do not cite any findings or analysis with respect to the proportionality requirement for Condition 116. (See Oppo. 24.) Accordingly, County violated the Mitigation Fee Act with respect to Condition 116.

Condition 120 (Natural Habitat and Parkland Fee)

This condition requires Petitioner to contribute an annual fee of $0.50 per ton of solid waste disposed at the Landfill during the preceding year to fund the acquisition and development of natural habitat and parkland within the Santa Clarita Valley. All funds generated by the fee "shall be spent for park and recreational purposes." (AR 79.)

County staff reasoned, in part, that "this fee will mitigate the loss of open space and habitat resulting from the operation of the landfill." (AR 13035.) The Landfill is located on private property. In the EIR, County found that the Landfill would not "would not conflict with, any applicable local plan or policy including general plans, specific plans, the Los Angeles County Integrated Waste Management Plan (CIWMP), zoning ordinances, and habitat conservation plans," and the Landfill project "would not encourage growth in the area." (OB 22, citing AR 161, 223.) From this conclusion in the EIR, it stands to reason that the Landfill operations would not cause any loss of open space or habitat. In opposition, Respondents do not show otherwise with citation to the record. (See Oppo. 24, citing AR 34110 [Executive Summary of County Climate Action Plan discussing Land Conservation and Tree Planting].) It appears from the parties' record citations that there is no substantial evidence that the Landfill will cause a loss of open space or habitat.

County staff also justified Condition 120 as a means to offset "quality of life impacts which are disproportionately felt by residents of the Santa Clarita Valley." (AR 13035.) As discussed above, there is evidence that the Landfill will have some impacts on local residents with respect to noise, odor, traffic,

air quality, or views, even if such impacts were deemed insignificant for purposes of CEQA. However, there is no apparent connection between those impacts and the natural habitat and parkland that would be purchased with the fees from Condition 120. In opposition, Respondents do not explain or cite evidence showing how the purchase of natural habitat and parkland would mitigate impacts related to noise, odor, traffic, air quality, or views. (See Oppo. 24, citing AR 34110.) Thus, the nexus requirement is not satisfied for Condition 120.

County was also required to show that the fee is "roughly proportional" to the burden created by the Landfill. County and Board failed to do so. Respondents do not address this point, and do not cite any findings or analysis with respect to the proportionality requirement for Condition 120. (See Oppo. 24.) Accordingly, County violated the Mitigation Fee Act with respect to Condition 120.

Condition 121 (Road Improvement Fee)

Condition 121 requires Petitioner to pay a fee of $0.50 per ton of solid waste disposed at the Landfill to provide funding for road improvements in the Val Verde, Castaic, and other unincorporated areas of the County surrounding the Landfill. (AR 79.) In addition to Board's general findings related to fees, County staff justified Condition 121 as follows: "The thousands of truck trips coming into the facility ... affect road conditions. These heavy trucks do cause wear and tear on the roads and increased traffic congestion, and are specifically coming into the region because of the landfill use." (AR 13036.)

In the opening brief, Petitioner contends that there is no nexus because "the FEIR determined that any traffic impacts from Chiquita would be less than significant." (OB 22, citing AR 3454.) Petitioner also cites to Board's finding that "the Project Site is adequately served by highways or streets of sufficient width and improved as necessary to carry the kind and quantity of vehicle traffic the landfill use would generate, and by other public or private service facilities as are required." (OB 23, citing AR 16.)

Petitioner has not shown a lack of nexus between Condition 121 and Landfill impacts. As discussed above, a less than significant impact for purposes of CEQA does not necessarily mean no impact at all. As discussed in opposition, the Santa Clarita Valley Area Plan ("SCVAP") recommends

collection of traffic impact fees from developers in Santa Clarita Valley to fund roadways. (Oppo. 25; see AR 33828, 33847.) From 2011-2016, the Landfill averaged from a low of 342 truck trips per day (2012) to a high of 567 truck trips per day (2016). (AR 3476.) The truck trips include collection vehicles carrying an average of 10 tons of waste and transfer trucks carrying an average of 22 tons. (AR 3470.) Several intersections near the Landfill operate at level-of-service ("LOS") levels of E or F during peak hours. (AR 530; 534.) The LOS levels are even worse under projected growth and development conditions. (AR 554.) Traffic and diesel emissions from the Landfill were a significant concern for many residents. (AR 4445; 4739; 5561; 5575; 11481; 14964; 14973; 14982; 15053; 15062; 17065.) Considering the size of the trucks and the number of trips per day, it was reasonable for County and Board to conclude that the Landfill would cause wear and tear on local roads. Moreover, there was substantial evidence that the Landfill would have some impact on traffic congestion. Thus, as Petitioner concedes in reply, the nexus requirement is satisfied for Condition 121. (Reply 11:21-23 and 14:5-7.)

However, County was also required to show that the fee is "roughly proportional" to the burden created by the Landfill. County and Board failed to do so and violated the MFA. Respondents do not meaningfully address this issue in opposition. (See Oppo. 25.) While Respondents attempt to show how many passenger car equivalents may travel to the Landfill on any given day (Oppo. 25:6-16), they do not cite any findings or evidence that $0.50 per ton of waste intake is proportional to the road improvements required by that impact. The court also has not found any proportionality analysis or findings for Condition 121. Because it appears possible that Board could make proportionality findings supported by substantial evidence for Condition 121, either for the specific fee amount stated or in some other amount determined by the Board, the court will remand the case for further proceedings. (See *Ehrlich, supra* at 885.)

Condition 122 (Planning Studies Fee)

Condition 122 requires that Chiquita pay $50,000 every other year to fund "planning studies, including, but not limited to neighborhood planning studies for Val Verde, Castaic, and the unincorporated

Santa Clarita Valley, as determined by the Director of Regional Planning." (AR 79.) In addition to Board's general findings related to fees, Staff defended the fee by arguing that "this is a thirty-year use grant" and "in that time" DRP "intends to conduct studies and plans . . . to address in part, impacts caused by the neighboring landfill." (AR 13036.)

In the Board findings and County staff's analyses, Respondents failed to show a nexus between Condition 122 and impacts created by the Landfill. As concluded by the Board, the Landfill's design is adequate "as is required to integrate the Project into the surrounding area." (AR 16 ¶ 51.) Similarly, as found in the EIR, the Landfill would not have any land use impacts requiring mitigation. (AR 161-162.) Although it is true that the Landfill could operate for up to 30 years, Board and County staff did not identify any anticipated changes to the Landfill operations that would justify the need for planning studies. Respondents' assertion that the planning studies would be "geared towards improving quality of life of the residents" is vague and lacks citation to evidence. (Oppo. 25-26.) The nexus requirement is not met as to Condition 122.

County was also required to show that the fee is "roughly proportional" to the burden created by the Landfill. County and Board failed to do so. Respondents do not address this point, and do not cite any findings or analysis with respect to the proportionality requirement for Condition 122. (See Oppo. 25-26.) Accordingly, County violated the Mitigation Fee Act with respect to Condition 122.

From Respondents' terse opposition and the findings and evidence discussed above, the court concludes that there is no likelihood that Board could issue findings under the MFA as to Condition 122 and no basis for further proceedings under *Ehrlich*. (See Oppo. 25-26.) Nonetheless, that remand issue seems close for this condition. Respondents may elaborate on their position at the hearing.

Condition 123 (Community Benefit and Environmental Education Trust Fund)

Condition 123 requires Petitioner to pay $1.00 per ton of solid waste disposed at the Landfill "to fund environmental, educational, and quality of life programs in the Val Verde, Castaic, and other unincorporated areas of the County surrounding the Landfill, and to fund regional public facilities that

serve this area." (AR 80.) In addition to Board's general findings related to fees, County staff justified this fee as follows: "On average, the environmental impacts of a landfill can last for more than 100 years after a landfill is closed. Consequently, the imposed fees help to relieve the neighboring communities from the burdens through the enhancement of community of life." (AR 13036.)

Board's findings and County staff's analyses do not show a sufficient nexus for Condition 123. As noted by Petitioner, the EIR determined that the Landfill's continued operations would not significantly increase local employment or otherwise encourage growth, impacts which may otherwise require greater public programs or public facilities. (OB 24; AR 223.) Although the Landfill could potentially subject local residents "to odor and other air quality impacts, traffic and noise" and impacts on views (see Oppo. 26:14-15), it is unclear how "environmental, educational, and quality of life programs" or "regional public facilities" could possibly mitigate such impacts. In justifying Condition 123, Board relied on some unspecified quality-of-life impact that must be mitigated through "enhancement of community of life." However, Board cannot show an essential nexus without specifying and explaining, even if imprecisely, the burden to be mitigated. Board's nexus findings for Condition 123 violate *Topanga* and the Mitigation Fee Act.

Even if some nexus could be found for Condition 123, County was also required to show that the fee is "roughly proportional" to the burden created by the Landfill. County and Board failed to do so. Board's findings and County staff's appeal response do not identify what programs or public facilities would even be needed, how much such things would cost, or how such costs are proportional to the alleged Landfill impacts. (See AR 12-13, 19, 13036.) Accordingly, County violated the Mitigation Fee Act.

In opposition, Respondents cite to evidence that Petitioner or its predecessor privately agreed to pay into a community benefit fund for the Val Verde and Castaic communities; that Petitioner asserted that such monies would not be paid if County imposed a fee pursuant to Condition 123; and that the $1.00 per ton required by Condition 123 "is in line with" Petitioner's private $.80 per ton community

commitment. (Oppo. 26-27; see e.g. AR 10092-93, 18311-16, 31142-51, 15108.) These private agreements could plausibly be used as evidence to support nexus or proportionality findings with respect to a community benefit fund similar to that required by Condition 123. However, these private agreements cannot supply the administrative findings required by *Topanga* and the Mitigation Fee Act.

Board's nexus findings for Condition 123 are insufficient under *Topanga* and the Mitigation Fee Act. Board failed to make any proportionality findings for Condition 123. Nonetheless, because it appears possible that Board could make the necessary findings supported by substantial evidence for the Condition 123 fee in some amount, including from the opposition evidence summarized above (e.g. Petitioner's agreements with Val Verde and Castaic), the court will remand the case for further proceedings. (See *Ehrlich*, *supra* at 885.)

Condition 124 (Household Hazardous Waste Collection Events)

Condition 124 requires Petitioner to fund 10 household hazardous waste and electronic waste ("HHW") collection events per year in the Santa Clarita Valley, at a cost of $100,000 per event. In lieu of paying for five of the ten collection events, Petitioner may "fully fund the siting, development, operation, and staffing of a new permanent Santa Clarity Valley Environmental Collection Center ... for the collection of household hazardous/electronic waste." (AR 80.) Board found that this condition "will help protect the environment and the health and safety of residents near the landfill by providing residents with convenient, legal options for disposing of HHW and, thereby, discourage illicit disposal of HHW in the landfill." (AR 13 ¶ 41; AR 13036.)

In the opening brief, Petitioner contends that there is no nexus for Condition 124 because the Landfill, as a Class III facility, does not accept or generate hazardous waste. (OB 24.) Respondents counter that "it is common, everyday occurrence that consumer items, such as batteries, cell phones, old TVs and computers, antifreeze, latex paints, and other household waste get improperly discarded into trash bins, and ultimately, may end up buried in the Landfill." (Oppo. 27.) The Statement of Overriding Considerations ("SOC") also recognizes establishment of a permanent HHW collection facility as a project

objective. (AR 157-157.) The EIR also states that "a Household Hazardous Waste Facility (HHWF) will be constructed at [the Landfill]" and was part of Petitioner's proposed project. (AR 335-336; see also AR 275, 280, 284.)

The court finds sufficient nexus between Condition 124 and burdens created by the Landfill, including on the local community. Although the Landfill is a Class III facility, it seems reasonable for Board to infer, as it did, that "illicit disposal" of HHW is likely to occur unless "discouraged" by collection events and that such disposal can have negative impacts on the local community. (See AR 13 ¶ 41.) Petitioner cites no evidence to the contrary and concedes the point in reply. (Reply 11:21-23 and 14:5-7.)

The record also contains sufficient evidence of proportionality between the $100,000-per-event fee and the related Landfill burdens. Given the undisputed and serious concern about illicit disposal of HHW at the Landfill, Condition 124 should be roughly proportional to the cost of holding a reasonable number of HHW collection events. The cost of collection events required by Condition 124 is in line with the cost incurred by DPW to operate similar events in Santa Clarita Valley in recent years. (AR 34398-420.) Petitioner's evidence suggests that about three collection events per year have been held in recent years in the Santa Clarita area. (AR 34413.) Petitioner does not cite any evidence to suggest that the increase to ten events per year is inconsistent with Board's rationale of discouraging illicit disposal of HHW or is otherwise unreasonable for the needs of the local community. Condition 124 would fund a little less than one collection event per month. The court cannot say that such requirement is unreasonable.

In reply, Petitioner contends that "Board made no finding that the costs for such events ($100,000 each) was warranted." (Reply 14.) Although Board did not specifically discuss the costs of the collection events, County staff did and Board adopted staff's recommendation for this condition. (See AR 13036.) Staff noted that "DPW is familiar with the cost of HHW collection events and the needs of the community for these services because of its role in operating the Countywide HHW program ...." (Ibid.) Board's findings were sufficient. The petition is denied as to Condition 124.

Condition 79(B)(6) (Bridge and Major Thoroughfare Fee)

Condition 79(B)(6) requires Petitioner to pay fees "in accordance with the formulas, procedures and requirements set forth in the February 2011 Report ["2011 Report" or "Report"] for the Westside Bridge and Major Thoroughfare Construction Fee District, to defray the costs of road improvements identified in the Report, which are necessitated to accommodate the expansion of the Landfill." (AR 63.)

Board found that "the required contribution to the Westside Bridge and Major Thoroughfare Construction Fee District," along with certain traffic-related improvements, "will adequately offset the Project's traffic impacts." (AR 16 ¶ 52.) County staff reasoned that the County was not applying this fee under the state and county statutes governing Bridge and Thoroughfare fees. (AR 13031; see Gov. Code § 66484 and County Code § 21.32.200.) Rather, staff justified Condition 79(B)(6) based on County's police powers: "DPW has determined that accommodating the expansion of the Landfill will require major thoroughfare and bridge construction that is comparable to what is typically required for other industrial uses." (AR 13031.)

The 2011 Report was issued pursuant to Government Code section 66848 and County Code section 21.32.200. Section 66848 provides that "a local ordinance may require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares." (Gov. Code § 66848(a).) Section 66848(a) states that the local ordinance must satisfy various requirements, including: (1) refer to relevant parts of the general plan; (2) provide for a public hearing; and (3) provide "that at the public hearing the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established." The "[f]ees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund." (§ 66848(e).)

County Code section 21.32.200 provides that "a subdivider, as a condition of approval of a final map for property within an area of benefit, or a building permit applicant, as a condition of issuance of a building permit for property within an area of benefit, shall pay a fee as hereinafter established to defray the cost of constructing bridges over waterways, railways, freeways and canyons, and/or constructing major thoroughfares." (§ 21.32.200(A).)

In July 2011, DPW staff recommended that the Board adopt a resolution establishing the Westside Bridge and Major Thoroughfare Construction Fee District based on the 2011 Report. (AR 33667-70.) The staff report stated: "If District is established, all subdivisions and certain qualifying building permits within District would be subject to a fee at the time that the subdivision is recorded or when the building permit is issued. The amount of the fee would be proportional to the impact of the vehicle trips estimated to be generated by the development based on development type and nationally accepted trip generation rates." (AR 33668.) Board adopted the resolution and the 2011 Report on July 26, 2011. (AR 33671-74.)

The 43-page Report states, *inter alia*: The District "will provide an equitable financing mechanism by which new development within an identified area will share the costs of providing full mitigation improvements." (AR 33679.) "This report describes the concept and mechanics of the District. Information included in this report will enable subject property owners to determine the fee to be assessed against their property if and when it is developed." (Ibid.) "This new District analyzes build-out development for vacant land for which there is no previously-recorded map." (AR 33680.) "The adoption of this type of funding district does not levy any fees against existing development." (AR 33702.) After discussing statutory authority for the District (see §§ 66848, 21.32.200, supra) and the District's purpose, the Report provides a list of proposed District improvements and an analysis of estimated costs. (AR 33683-33709, 33713-33720.)

Petitioner contends that Condition 79(B)(6)'s fee is unlawful because "the Subdivision Map Act does not allow for such fees to be imposed on existing land uses" and because Petitioner's "CUP is not a

final map or building permit." (OB 25.) Respondents contend that "County does not need an enabling statute or ordinance, but may do so through its general police power." (Oppo. 28.) Thus, Respondents concede Condition 79(B)(6) was not justified based on sections 66848 and 21.32.200, which apply only to final maps or building permits.

Although bridge and thoroughfare fees presumably could be imposed pursuant to County's police powers, County must still comply with the Mitigation Fee Act. Petitioner contends that "the Report cannot be used to substantiate the findings the Board needed to make under the Mitigation Fee Act." In particular, Petitioner contends that Board did not make the nexus and proportionality findings required by the Act. (OB 25-27.) Petitioner relies, in part, on the finding from the EIR that traffic impacts would be less than significant. (OB 27, citing AR 3454.) As discussed above, that finding of non-significance under CEQA did not necessarily prevent the Board from finding a nexus between the Landfill and burdens on the community, including with respect to roads and traffic.

In opposition, Respondents contend that the Report satisfies the nexus and proportionality requirements because "the Report explains how the fee is related to the Landfill project," even though "the Report does not specifically reference the Landfill." (Oppo. 28, citing AR 33682, 33698-705, 33713-15.) Respondents' record citations suggest that the Landfill is within the "area of benefit" for the District and that new developments related to a Landfill extension could potentially contribute to "peak-hour vehicle trips" in the District. (See AR 33682, 33702.) Respondents also contend that the Board's CUP decision and the 2011 Report identify the purpose of the fee and the public infrastructure to be financed, as required by Government Code section 66001(a)(1) and (a)(2). (See AR 63 ¶ 6; see Oppo. 28, citing AR 33682, 22685-97.)

Petitioner suggests that the Landfill would not entail any "new development". (See OB 26-27; Reply 15.) However, as discussed above for Condition 121 (Road improvement fees), substantial evidence supports that the Landfill project could lead to additional wear and tear on local roads and increased traffic congestion. (See e.g. 3470-3476; 530-554; 4445; 4739; 5561; 5575; 11481; 14964;

14973; 14982; 15053; 15062; 17065.) Moreover, the record contains evidence that the CUP authorized an expansion of the Landfill in a manner that could impact local roads. For instance, Board finding 52 states: "The relocation of the entrance facility is necessary to accommodate the plan by the California Department of Transportation ('Caltrans') to widen SR 126 and accommodate the landfill's operations with the increased development and urbanization of the area." (AR 16.) County staff also stated that "DPW has determined that accommodating the expansion of the Landfill will require major thoroughfare and bridge construction that is comparable to what is typically required for other industrial uses. Some of the thoroughfares identified in the Report will be used almost exclusively by the Landfill." (AR 13031.) Finally, although the 2011 Report referred to the prior landfill site as "recorded/built" land, it also included the Landfill within the area of benefit. (AR 33682.)

Based on the foregoing, the court finds substantial evidence to show a nexus between the Landfill project and a need to finance major thoroughfare and/or bridge construction in the area, and the declaration of principal engineer Arthur Vander Vis shows how the fee was calculated. As such, Board has complied with the Mitigation Fee Act with respect to Condition 79(B)(6).

Condition 111 (Dedication of Landfill as Park; $2 Million Park Development Fee)

Condition 111 requires Petitioner "to designate the [Landfill] site as a passive park, open space or other type of publicly accessible recreational use in accordance with the covenants, conditions and restrictions on the Landfill, as indicated in the EIR at section 2.3.2.4." (AR 73-74.) The condition requires development of a park, not to exceed $2,000,000, for the Primary Canyon area of the Landfill. (Ibid.; see also AR 3487.)

Petitioner contends that the Mitigation Fee Act also regulates "exactions" and "dedications." (OB 27.) Respondents do not argue to the contrary. (Oppo. 28; see also Gov. Code §§ 66020, 66021 [protest procedure for "any party on whom a fee, tax, assessment, dedication, reservation, or other exaction has been imposed"].) In any event, Condition 111 imposes a monetary fee of up to $2 million, and a dedication of land must satisfy nexus and proportionality requirements to be imposed as a condition of

approval without compensation to the landowner. (See generally *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463.)

Petitioner contends that Board did not make nexus or proportionality findings for Condition 111. (OB 27-28.) The court agrees. In its decision, Board found that that it was "necessary" for Petitioner to dedicate the Landfill site as a park or other public recreation use. However, Board did not elaborate or make any findings that connect an impact from the Landfill to a requirement to convey hundreds of acres of private property and develop a park at a cost of up to $2 million. (AR 19 ¶ 16.) Nor did Board make any individualized determinations of the rough proportionality between Condition 111, including the $2 million fee, and Landfill impacts.

In opposition, Respondents suggest that Condition 111 is necessary "to ensure that if the operator becomes bankrupt and abandons the land without proper clean-up, the public is not left holding the bag." (Oppo. 30.) Board did not justify Condition 111 on that basis in its decision. Moreover, Respondents do not show that the statutes and regulations cited in their brief justify the dedication of land or $2 million fee required by Condition 111. (See Pub. Res. Code §§ 43500 et seq.; 27 CCR § 21090 et seq.) For instance, Public Resources Code section 43500 requires "financial assurances" related to the closure and postclosure maintenance of solid waste landfills. This statute does not require or authorize a post-closure dedication of private property from a landfill operator. Petitioner does not challenge other post-closure requirements, including a requirement for financial assurances, that apply to the Landfill. (See e.g. AR 42, 44.)

In its opening brief, Petitioner contends that "the Quimby Act, governing such park dedications in regards to subdivisions, provides useful guidance in assessing the reasonableness of any park dedication requirement, and does not sanction Condition 111 here." (OB 27.) Board did not purport to require Condition 111 pursuant to the Quimby Act. Accordingly, the court need not provide an advisory opinion

as to whether Condition 111 violates the Quimby Act, as Petitioner seeks in its fourth cause of action.[10] (See 3AC ¶ 119.)

Based on the foregoing, Board did not provide sufficient findings to justify Condition 111 under the Mitigation Fee Act. Nor does there appear to be any evidence, and Respondents have cited none, that Board could make nexus and proportionality findings for this condition. Accordingly, the court sees no grounds for remanding for further findings with respect to Condition 111.

Integrated Waste Management Act

Petitioner contends that "Conditions, 43(D), 43(G), 48, 117, and 118 are all preempted because they conflict with the Integrated Waste Management Act [IWMA]." (OB 31.)

"'Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. Local legislation is 'duplicative' of general law when it is coextensive therewith. Similarly, local legislation is 'contradictory' to general law when it is inimical thereto. *Finally, local legislation enters an area that is 'fully occupied' by general law* when the Legislature has expressly manifested its intent to 'fully occupy' the area, *or when it has impliedly done so in light of one of the following indicia of intent: '...*" (*San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 792-793.)

Courts "have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.'" (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) "'The common thread of the cases is that if there is a significant local interest to be served which may differ

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[10] Petitioner also states that Condition 111 "is plainly an unconstitutional taking." (OB 27.) The court does not reach this contention. The second cause of action under the takings clause is stayed pending resolution of the writ.

from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.' " (Ibid.)

To decide Petitioner's preemption claims, the court must construe the IWMA and associated regulations. Interpretation of a statute or regulation is a legal question that the court reviews *de novo*. "The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.)

"The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (*Big Creek Lumber Co., supra*, 38 Cal.4th at 1149.)

Brief Summary of the IWMA

"By 1988, landfills throughout the state were nearly filled.... To meet this crisis, the Legislature passed the Waste Management Act.... Local agencies such as cities which were responsible for waste disposal within their boundaries were obliged to enact comprehensive waste management plans that would eventually divert half of their trash from landfills. " (*Valley Vista Services, Inc. v. City of Monterey Park* (2004) 118 Cal.App.4th 881, 886.)

In enacting the IWMA, "[t]he Legislature declare[d] that the responsibility for solid waste management is a shared responsibility between the state and local governments. The state shall exercise its legal authority in a manner that ensures an effective and coordinated approach to the safe

management of all solid waste generated within the state and shall oversee the design and implementation of local integrated waste management plans." (Pub. Res. Code § 40001(a).)[11]

"The purpose of [the IWMA] is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs." (§ 40052.)

"This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on solid waste management facilities in order to prevent or mitigate potential nuisances, if the conditions or restrictions do not conflict with or impose lesser requirements than the policies, standards, and requirements of this division and all regulations adopted pursuant to this division." (§ 40053.)

The IWMA expressly delegates authority to local government over certain aspects of solid waste handling. For instance, section 40059(a)(1) states that local government may determine "[a]spects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location, and extent of providing solid waste handling services."

Conditions 43(D) and 48

As discussed above, Condition 43(D) prohibits the Landfill from using nine separate materials as cover for solid waste, including treated auto shredder waste (TASW). (AR 46-47; Oppo. 34-35, fn. 15.) Condition 48 prohibits Petitioner from accepting, processing, or disposing various materials, including TASW, at the Landfill.[12] (AR 49.) Board reasoned that these conditions are necessary to minimize

[11] Unless otherwise stated, statutory references in this section are to the Public Resources Code.
[12] Petitioner's preemption arguments for these conditions are limited to TASW. (OB 32-33.)

impacts to the surrounding communities, even though materials may be permitted under state and federal law. (AR 13030; 9-10 ¶¶ 24-26 and 12 ¶ 37.)

Petitioner does not contend, or show, that Conditions 43(D) and 48 duplicate state law or enter an area fully occupied by state law with respect to TASW. (OB 32-33.) Section 40053, cited by Petitioner, allows for reasonable local land use restrictions "in order to prevent or mitigate potential nuisances" and does not show an intent to preempt local government with respect to TASW or similar materials.

Petitioner contends that these conditions contradict the IWMA: "Conditions 43(D) and 48 expressly prohibit what the IWMA permits and interfere with state-mandated diversion goals." (OB 33.) Specifically, Petitioner contends that the IWMA preempts these provisions because "the IWMA requires localities and disposal facilities to divert wastes from disposal"; diversion is often accomplished by beneficial reuse of waste; and the IWMA expressly authorizes Landfills to accept and use TASW as beneficial reuse material. (OB 32-33.)

"'The 'contradictory and inimical' form of preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands.' [Citations.] '[N]o inimical conflict will be found where it is reasonably possible to comply with both the state and local laws.'" (*T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1121.) Thus, it is not sufficient for Petitioner to show that the IWMA simply "permits" landfills to use TASW for cover or beneficial reuse.

Petitioner could show a conflict if the IWMA recycling or diversion goals mandate that landfills use TASW as cover or for beneficial reuse. The IWMA requires state and local authorities to promote the following waste management practices "in order of priority: (1) Source reduction. (2) Recycling and composting. (3) Environmentally safe transformation and environmentally safe land disposal, *at the discretion of the city or county.*" (§ 40051(a) [italics added].) This italicized language suggests that local government retains some discretion with respect to landfilling (i.e. disposal of solid waste). (See also *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 278.) As noted above, other parts of the

IWMA highlight the "shared responsibility" between state and local governments over solid waste management. (§ 40001; § 40059; § 40053.) Despite this shared responsibility, the IWMA creates a *statewide* program "to reduce, recycle, and reuse solid waste" (§ 40052) and preempts local restrictions that "conflict with or impose lesser requirements than the policies, standards, and requirements." (§ 40053.)

The IWMA prioritizes recycling and reduction of solid waste through diversion. (See § 40051, § 40052, § 41780.) The IWMA defines recycling as "the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace." (§ 40180.) Diversion is defined as "activities which reduce or eliminate the amount of solid waste from solid waste disposal." (§ 40124.) State law further provides that "the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for purposes of this division." (§ 41781.3.)

However, Petitioner does not show that the IWMA *demands* that local governments prioritize recycling or reduction of waste through beneficial reuse of TASW. Diversion of waste could be accomplished through many different methods. Petitioner cites to state regulations that authorize landfills to accept and use TASW, among other materials, for beneficial reuse. (See OB 32-33, citing 27 CCR §§ 20686, 20690; 14 CCR § 18815.9.) Petitioner does not discuss the requirements of these detailed regulations, which generally concern beneficial reuse of solid wastes, procedures for alternate daily cover (ADC), and reporting methods for certain materials, including TASW. These regulations do not require the use of TASW as ADC or for beneficial reuse. (See e.g. 27 CCR § 20690(a)(1)-(3), (b)(6).) Notably, Petitioner does not argue that Conditions 43(D) and 48 are preempted by the IWMA with respect to other

materials that are permitted by state regulation, such as green waste, cement kiln dust, foam, and sludge. (See e.g. 27 CCR § 20690(b).)

Nor does Petitioner cite any authorities that *demand* that a landfill accept TASW for disposal (as opposed to beneficial reuse). Petitioner challenges both the restriction on the acceptance of TASW for cover (Condition 43(D)), and the prohibition of acceptance of TASW for any purpose (Condition 48). As argued in opposition, to the extent TASW would be buried at the Landfill after it had been used as cover, it would appear that such use of TASW would no longer be considered recycling or diversion. (Oppo. 35:15-21.)

Under the IWMA, the local agency retains authority to impose reasonable land use restrictions "to prevent or mitigate potential nuisances." (§ 40053.) An important consideration for a local agency in preventing or mitigating nuisances is the proximity of the landfill to residences or businesses. As discussed above in the section on operational conditions, in imposing Conditions 43(D) and 48, the Board could reasonably weigh the benefits of using TASW as cover against the non-speculative community comments about TASW and risks of improper processing of harmful materials. Board could also reasonably consider that proximity of existing and planned residential communities. (See e.g. AR 6-7, 3542-44, 891, 900, 10667, 33775, 4139-40, 17085-510, 4138-4140.)

In reply, Petitioner for the first time cites to section 40051(b), which states that local agencies "shall ... [m]aximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal." (Reply 18-19.) Respondents may respond to this sub-provision at the hearing. Based on the briefs, the court is not persuaded that section 40051(b) *mandates* acceptance or beneficial reuse of TASW at all landfills, or is intended to limit the discretion of local agencies to impose reasonable land use restrictions "to prevent or mitigate potential nuisances." (§ 40053.) "[N]o inimical conflict will be found where it is reasonably possible to comply with both the state and local laws." (*T-Mobile West LLC , supra,* 6 Cal.5th at 1121.) Courts "have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal

regulation when there is a significant local interest to be served that may differ from one locality to another,'" which appears to be the case for TASW. (*Big Creek Lumber Co., supra*, 38 Cal.4th at 1149.)

To the extent there could be any ambiguity in the IWMA with respect to whether it demands that landfills accept TASW for cover, including as a result of the statute's recycling and diversion goals, Petitioner has not cited any relevant legislative history or other extrinsic aids.

Petitioner does not show that Conditions 43(D) and 48 contradict the IWMA or are otherwise preempted by the IWMA.

Conditions 43(G), 117, and 118

As discussed above, Condition 43(G) directs, with exceptions, that all waste from outside of the Santa Clarita Valley be pre-processed "or undergo front-end recovery methods" before coming to the Landfill to remove all beneficial reuse materials and construction and demolition debris. (AR 47.) Condition 117 imposes on Petitioner an escalating fee on each ton of waste accepted at the Landfill originating outside of the Santa Clarita Valley Area (starting at $1.32 per ton and increasing to $5.28), and a flat fee of $6.67 per ton for waste originating outside of Los Angeles County. (AR 75-76.) Condition 118 would reduce the Condition 117 fee by 50% if Petitioner were to construct and operate a Conversion Technology facility. (AR 77.)

Petitioner contends that these conditions "frustrate the IWMA's purpose and are contrary to the IWMA's prohibition that no city or county can enact legislation to 'restrict or limit the importation of solid waste into a privately owned facility in that city or county based on the place of origin.' (Pub. Resources Code, § 40059.3.)" (OB 33-34.) The court agrees.

In 2012, the Legislature amended the IWMA to prohibit local authorities or ordinances that restrict or limit the importation of solid waste into a privately owned landfill based on place of origin. Specifically, section 40002(b) provides: "The Legislature further declares that restrictions on the disposal of solid waste that discriminate on the basis of the place of origin of the waste are an obstacle to, and conflict with, statewide and regional policies to ensure adequate and appropriate capacity for solid waste

disposal." Section 40059.3(a) similarly provides: " An ordinance adopted by a city or county or an ordinance enacted by initiative by the voters of a city or county shall not restrict or limit the importation of solid waste into a privately owned facility in that city or county based on the place of origin." Section 40059.3(b) states that this section does not, among other things, "[p]rohibit a city, county, or regional agency from requiring a privately owned solid waste facility to guarantee permitted capacity to a host jurisdiction, including a regional agency."

The parties agree that the Legislature enacted these amendments in response to litigation over a Solano County voter initiative that restricted solid waste from outside the county. As stated by Respondents, "Solano County's Measure E capped the amount of solid waste that could be imported to any landfill in the County to 95,000 tons annually, compared to 600,000 tons that were imported in the absence of Measure E. (See *Portero Hills Landfill, Inc. v. County of Solano* (9th Cir. 2011) 657 F.3d 876.)" (Oppo. 33, fn. 14; see also OB 32.)

Sections 40002 and 40059.3 do not define what it means for an ordinance to "restrict or limit the importation of solid waste." A common definition of "restrict" is "to confine or keep within limits, as of space, action, choice, intensity, or quantity." Definitions of "limit" include "to confine or keep within limits." (Dictionary.com.) As shown by section 40002(b)'s use of the word "discriminate" and also the titles of sections 40002 and 40059.3, the Legislature's intent was to prohibit "discrimination based on origin of waste." To discriminate is "to make or constitute a distinction in or between; differentiate." (Dictionary.com.)

Petitioner interprets these words to include conditions that "*effectively* restrict and limit the importation of solid waste." Petitioner highlights the Legislature's use of the word "discriminate." (OB 33-34.) Respondents interpret these words narrowly and suggest that only a cap on imported waste or a fee imposed directly on waste producers are prohibited. (Oppo. 32-33.) Respondents contend that the challenged conditions are permissible because "they charge a premium" on imported waste and that the IWMA "does not concern itself with Chiquita's expected profits." (Oppo. 33-34.) Thus, in Respondents'

view, local agencies may impose reasonable fees on waste from outside their jurisdictions as long as the landfill operator pays the fee. (See Ibid.)

Petitioner's interpretation is more sensible and achieves harmony with other parts of the IWMA. When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (*People v. Hall* (1991) 1 Cal. 4th 266, 272.) "It has been called a golden rule of statutory interpretation that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result." (*Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 615.) Although the IWMA grants authority to local agencies over certain local matters (see e.g. § 40059), the IWMA also makes clear that the actions of local agencies must be consistent with the state policies expressed in the statutory scheme. (See e.g. § 40002(a); 40053.) "As an essential part of the state's comprehensive program for solid waste management, and for the preservation of health and safety, and the well-being of the public, the Legislature declares that it is in the public interest for the state, as sovereign, to authorize and require local agencies, as subdivisions of the state, ***to make adequate provision for solid waste handling, both within their respective jurisdictions and in response to regional needs.***" (§ 40002(a) [emphasis added].) Respondents' interpretation of sections 40002(b) and 40059.3 would lead to absurd results because, while a cap on imported waste is prohibited, local agencies could achieve a similar result by imposing fees and other conditions that would effectively restrict or limit the amount of imported waste.

Here, conditions 43(G), 117, and 118 were explicitly intended by the Board to "restrict or limit the importation of solid waste into a privately owned facility in that city or county based on the place of origin." (§ 40059.3.) The Board found that Condition 117 was needed to "***to serve as a disincentive to those who bring trash originating outside of the Santa Clarita Valley.***" (AR 19 ¶ 64 [emphasis added].) Board indicated that Condition 43(G) is intended to "maximize[] the amount of Solid Waste that can be disposed of in the Landfill," which, as Respondents admit, would be accomplished by discouraging waste

from outside Santa Clarita Valley area. (AR 46; Oppo. 20:22-23 ["Consistent with Condition 117, [Condition 43(G)] also discourages waste coming from outside of the Santa Clarita Valley ...."].)

A conflict with sections 40002 and 40059.3 of the IWMA is also shown by how Conditions 43(G), 117, and 118 would impact the Landfill operations. Condition 43(G) mandates pre-processing of waste from outside the Santa Clarita Valley, as well as documentation of such pre-processing, and would presumably make it more time consuming and expensive to transfer waste from outside Santa Clarita Valley to the Landfill.[13] Conditions 117 and 118 impose a fee on waste coming from outside of the Santa Clarita Valley. Although Petitioner would pay the fee, it stands to reason that this fee would either be passed on to Petitioner's customers or would cause Petitioner to give preference to local waste. Respondents admit that these constraints would, as a practical matter, "discourage[] waste coming from outside of the Santa Clarita Valley" and "serve as a disincentive to those who bring trash originating outside of the Santa Clarita Valley." (Oppo. 20; AR 19.) Notably, the EIR suggests that a substantial percentage of waste accepted at the Landfill comes from outside the Santa Clarita Valley. (See e.g. AR 3470 [transfer truck trips]; Oppo. 21, citing AR 5845 [waste from outside Santa Clarita Valley generally comes from transfer trucks].)

In opposition, Respondents contend that Conditions 43(G), 117, and 118 are not preempted because the IWMA "allows local agencies to determine aspects of solid waste handling of local concern, including charges and fees." (Oppo. 32, citing § 40059.) Later, Respondents contend that "the legislature expressly preserved local jurisdictions' authority to site, permit, and oversee solid waste activities by allowing them to impose site-specific regulations geared towards maximizing local waste-disposal capacity." (Oppo. 34, citing § 40059.3.) These statutes must be harmonized, if possible, with the prohibition against "discrimination based on origin of waste" in sections 40002(b) and 40059.3.

[13] The limited exceptions in Condition 43(G), including for "residential areas with a three-bin curbside collection system," cannot save the rest of the condition from preemption. (AR 47.) Respondents do not argue to the contrary. Nor do Respondents dispute that Condition 43(G) would, as a practical matter, discourage waste from outside Santa Clarita Valley.

Section 40059 reserves to local agencies "[a]spects of solid waste handling which are of local concern," including "means of collection and transportation, level of services, charges and fees." (See also § 40053.) The IWMA also permits local governments to "assess special fees of a reasonable amount on the importation of waste from outside of the county."[14] (§ 41903.) Harmonizing these provisions with sections 40002(b) and 40059.3, the most reasonable interpretation is that local agencies may impose "charges and fees" on landfill operators, but must do so in a manner that does not restrict, limit, or discriminate against waste from other jurisdictions. Further, while cities and counties may impose a fee on out-of-county waste, they must do so in a manner consistent with section 41903.

This case does not present complex or fact-intensive questions about whether Conditions 43(G), 117, and 118 would "effectively" restrict or limit imported waste. Board admitted in its decision, and opposition brief, that the purpose of these conditions was to "serve as a disincentive to those who bring trash originating outside of the Santa Clarita Valley." (AR 19; Oppo. 20.) Because the discriminatory intent and conflict with the IWMA are clear, the court need not determine the outer bounds of local authority under the IWMA to impose conditions or fees on imported waste.

Other than the reference to the Solano County ordinance, the parties do not cite any relevant legislative history or extrinsic aids to support their interpretations of 40002(b) and 40059.3. Given Board's admission of discriminatory intent, the conflict with the IWMA is clear and the court need not consider legislative history. Nonetheless, counsel are encouraged to discuss any relevant legislative history or extrinsic aids at the hearing.

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[14] It is undisputed that County did not impose a "special fee" pursuant to section 41903 and also did not limit the fee to waste outside the county. In opposition, Respondents do not contend that Conditions 117 and 118 were authorized by section 41903.

Based on the foregoing, Conditions 43(G), 117, and 118 contradict sections 40002(b) and 40059.3 of the IWMA and are preempted. Accordingly, the writ petition is granted as to these conditions.[15]

Condition 9

Petitioner references Condition 9 in a footnote. (OB 17, fn. 7.) Condition 9 states: "If any material provision of this grant is held or declared to be invalid by a court of competent jurisdiction, the permit shall be void, and the privileges granted hereunder shall lapse." (AR 32.)

Respondents contend that Petitioner failed to exhaust administrative remedies with respect to Condition 9. (See Oppo. 11-12.) Petitioner has not shown, including in reply, that it objected to Condition 9 at any stage of the administrative proceedings. (See OB 17, fn. 7 and Reply 19; see also AR 10085-120, 12981, 13217-300 [Petitioner's administrative filings].) Accordingly, Petitioner did not exhaust administrative remedies with respect to Condition 9.

With respect to operational conditions, Petitioner states that "this Court determined that the County was equitably estopped from raising forfeiture as a defense and that Chiquita has a right to challenge the operational conditions in the CUP, and thus Condition 9 has no effect." (OB 17, fn. 7.) Petitioner misconstrues the court's ruling. The court found that County was equitably estopped from raising forfeiture as a defense to the writ challenge to operational conditions. However, Condition 9 does not prohibit the writ challenge. In finding that County was estopped, the court did not determine that Condition 9 "has no effect" or that Petitioner was excused from exhausting administrative remedies.

In reply, Petitioner contends that "stripping Chiquita of its approval to operate would shut down an essential piece of public infrastructure, obviously raising 'important questions of public policy' that excuse Chiquita from needing to exhaust its challenge to Condition 9. (*Lindeleaf v. Agric. Labor Relations Bd.* (1986) 41 Cal.3d 861, 870-871.)" (Reply 19.) The court agrees with this reply argument, which

[15] Petitioner also cites *City of Los Angeles v. County of Kern* (C.D. Cal. 2007) 509 F.Supp.2d 865, 898, to support its preemption claims. (OB 34.) For the reasons stated in opposition, this district court decision has no precedential value and little or no persuasive value. (Oppo. 34.) The court has not relied on or considered *City of Los Angeles.*

Respondents anticipated in opposition. (Oppo. 11.) As stated by our High Court in *Lindeleaf*, courts may decide "important questions of public policy" even if the parties did not exhaust administrative remedies. Here, the Landfill processes a substantial percentage of the solid waste management needs of Los Angeles County. (See e.g. 3AC ¶ 2; AR 13 ¶ 39, 14 ¶ 47.) Enforcement of Condition 9 could detrimentally impact Petitioner's customers, including individuals, businesses, cities, counties, and government agencies that use the Landfill and that are not parties to this action. Accordingly, exhaustion is excused. (See also *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1318.)

On the merits, Petitioner did not analyze the enforceability of Condition 9 in its written briefs and petition. Petitioner's argument based on the court's estoppel ruling is unpersuasive, as indicated above. The petition alleges that Condition 9 is "arbitrary" and violates due process, but does not develop those contentions. (3AC ¶¶ 52, 84, 185.) With respect to the challenged fees, Petitioner contends that "Condition 9 ... violates the Mitigation Fee Act's prohibition on retaliatory actions by local government aimed at silencing lawful protests, and is therefore invalid." (OB 17, fn. 17, citing Gov. Code § 66020(b).) [16] However, Petitioner provided no reasoned analysis in support of this assertion, (Oppo. 12.) and Petitioner fails to show how § 66020(b) would apply to non-fee provisions. Finally, Petitioner also does not analyze what constitutes a "material provision" of the CUP for purposes of Condition 9. Petitioner has not shown that Condition 9 should be invalidated or how it would apply in this case. (See *Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1, 14 [court does not make parties' arguments for them]; *Nelson v. Avondale HOA* (2009) 172 Cal.App.4th 857, 862-863 [legal arguments must be supported by reasoned analysis and citation to authorities].)

[16] Section 66020(b) states in part: "Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project." A fee protest may lead to various remedies, including a refund of unlawful fees. (§ 66020(e).)

The California Supreme Court briefly summarized the effect of § 66020(b) as follows: "In general, if a developer has tendered payment of the disputed fee and given written notice of the grounds for protest, local agencies cannot withhold project approval during litigation of the dispute. (Gov. Code, § 66020(a)-(b).) If the challenge is successful, the agency must refund the unlawful fees with interest. (Gov. Code, § 66020(e).)" (*Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470, 479.) One purpose of section 66020(b) is to allow a developer to pay and protest a disputed fee and then start the project, even while the developer challenges the fee. As explained by the California Supreme Court, "Before the Mitigation Fee Act, developers that wished to challenge the legality of a fee had to delay construction until mandamus proceedings ended. [Citations.] The Mitigation Fee Act authorized a simultaneous challenge...." (*Lynch*, supra at 479.)

§ 66020(b) says nothing explicitly about whether or not the local agency can impose a condition that would invalidate the project if "material provisions" are held invalid. It is also possible for an agency to comply with section 66020(b), but also impose Condition 9. As such, the Court finds that section 66020(b) does not invalidate Condition 9, and Board has the right to reconsider its CUP decision in light of the court's writ.

Scope of Writ Relief under Mitigation Fees Act

Petitioner contends that the "unlawful mitigation fees paid by Chiquita to date must be refunded with interest, and those fees for which no 'essential nexus' has been established must be deleted from the permit." (Reply 19; see also OB 5, 9 and 3AC p. 48.) In opposition, Respondents do not address the refund requirement under the MFA.

Government Code section 66020 provides in part: "(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed." (See also § 66020(f)(1).)

Given the lack of findings or evidence with respect to the nexus and proportionality requirements for Conditions 111, 116, 120, and 122, there appears to be no basis for further Board findings under *Ehrlich* with respect to those conditions. Conditions 117-118 are preempted by the IWMA. Accordingly, Respondents must refund to Petitioner any fees paid by Petitioner pursuant to Conditions 111, 116, 117-118, 120, and 122 with interest in accordance with section 66020. Neither Petitioner nor Respondents provide the court sufficient evidence about the amount of fees paid or interest calculations. Board should address this issue on remand.

As analyzed above, it appears possible that County and Board could make specific findings supported by substantial evidence for Conditions 115, 119, 121, and 123, either for the specific fee amount stated or in some other amount determined by the Board. Accordingly, the court will remand the case for further proceedings as to those conditions. (See *Ehrlich, supra* at 885.) Because Respondents violated the Mitigation Fee Act as to these conditions, it appears that Petitioner is entitled to a refund of fees already paid, along with interest, subject to payment of fees in the future if Board complies with the Act. Neither Petitioner nor Respondents provide the court with sufficient evidence about the total amount of fees paid or interest calculations. Board should address this issue on remand.

Condition 9 is valid, and Board has the right to reconsider its CUP decision in light of the court's writ.

Alternative Argument: Illegal Taxes

Petitioner contends, in the alternative, that if Conditions 79(B)(6), 111, and 115-124 are not subject to the Mitigation Fee Act, they are unconstitutional special taxes in violation of Articles XIIIC and XIIID of the California Constitution. (OB 28-31; see *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 267.) Based on the court's determinations with respect to the Mitigation Fee Act and preemption, the court will issue a writ directing Board to set aside Conditions 111, 116, 117-118, 120, and 122. Because the conditions will be set aside, the court need not decide or issue an advisory opinion as to whether the challenged fees could be illegal taxes. Furthermore, for some of the challenged fees (Conditions 115,

119, 121 and 123, the court remands for further findings with respect to nexus and/or proportionality, and such findings could impact whether or not the fees could be challenged as illegal taxes. Thus, the challenge to those conditions as illegal taxes is premature.

Declaratory Relief Causes of Action Related to Writ Petition[17]

In its opening writ brief and reply, Petitioner has not developed any separate arguments in support of its first, third, fourth, fifth, and ninth causes of action for declaratory relief. These causes of action appear entirely derivative of issues analyzed above for the writ petition. Because Petitioner does not provide any legal briefing showing that a judicial declaration should be issued in addition to a writ, the court denies the first, third, fourth, fifth, and ninth causes of action. (*Nelson v. Avondale HOA* (2009) 172 Cal.App.4th 857, 862-863 [argument waived if not raised or adequately briefed]; see also CCP § 1060 and *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 885 [issuance of declaratory relief is matter of discretion for trial court].)

Furthermore, Petitioner fails to show that declaratory relief is an appropriate remedy to challenge the CUP decision, including its conditions. "In addition to traditional mandamus, an action for declaratory relief is generally an appropriate means of *facially* challenging a legislative or quasi-legislative enactment of a public entity ...; however, the appropriate remedy for a challenge to the application of an enactment to specific property—i.e., an 'as-applied challenge'—is through administrative mandamus." (See *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259-260.) "[T]he law is well established that an action for declaratory relief is not appropriate to review an administrative decision." (Ibid.)

The first, third, fourth, fifth, and ninth causes of action for declaratory relief are denied.

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[17] The writ petition was originally assigned to Judge Mary Strobel in Department 82, a writs department. As amended for 2020, Local Rules 2.8(d) and 2.9 do not include a claim for declaratory relief as a special proceeding assigned to the writs departments. Nonetheless, Department 32, to which the writ petition is now assigned after a ruling on the estoppel issue, may rule on counts 1, 3, 4, 5, and 9 for declaratory relief, including because these counts are entirely derivative of arguments made for the writ petition.

Conclusion

The fourteenth cause of action for writ of administrative mandate is granted in part and denied in part. After entry of judgment, the court will issue a writ directing Board to set aside its CUP decision with respect to Conditions 43(G), 111, 115-123, and 126 and to reconsider the case in light of the court's ruling. (CCP § 1094.5(f).) The writ petition is denied as to all other conditions.

It appears possible that County and Board could make specific findings under the Mitigation Fee Act supported by substantial evidence for Conditions 115, 119, 121, and 123, either for the specific fee amount stated or in some other amount determined by the Board. Accordingly, the court will remand for further proceedings and for Board to make additional findings as to those conditions. (See *Ehrlich, supra* at 885.) Board is not limited to the existing administrative record on remand as to those conditions.

Condition 9 is valid, and Board has the right to reconsider its CUP decision in light of the court's writ.

For all fee conditions set aside by the court, specifically Conditions 111, and 115-123, on remand Respondents must refund to Petitioner any fees paid with interest in accordance with Government Code section 66020.

The first, third, fourth, fifth, and ninth causes of action for declaratory relief are denied.

Prior to entry of judgment, the remaining causes of action will be transferred to Department 1 for assignment to an independent calendar court. (See Local Rules 2.8(d) and 2.9.)

DATED: July 2, 2020

Honorable Daniel S. Murphy
Judge, Los Angeles Superior Court