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.)