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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

CALIFORNIA FARM BUREAU FEDERATION et al., Plaintiffs and Respondents, v. CALIFORNIA WILDLIFE CONSERVATION BOARD et al., Defendants and Appellants; LEROY V. TRAYNHAM et al., Real Parties in Interest and Respondents; RICHARD J. MORA, Intervener and Respondent.	C049919 (Super. Ct. No. CV22294)
COUNTY OF COLUSA, Plaintiff and Respondent, v. CALIFORNIA WILDLIFE CONSERVATION BOARD et al., Defendants and Appellants; LEROY V. TRAYNHAM et al., Real Parties in Interest and Respondents; CALIFORNIA FARM BUREAU FEDERATION et al., Interveners and Respondents.	C049919 (Super. Ct. No. CV22756)

* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part II.

APPEAL from a judgment of the Superior Court of Colusa County, John H. Tiernan, J. Affirmed.

Bill Lockyer, Attorney General, Mary Hackenbracht, Senior Assistant Attorney General, Deborah A. Wordham, Deputy Attorney General for Defendants and Appellants California Wildlife Conservation Board and Department of Fish and Game.

Gibson, Dunn & Crutcher and Alan N. Bick and Christeon J. Costanzo for Plaintiff, Intervener and Respondent California Farm Bureau Federation.

Brenda Washington Davis, John R. Weech, Ronda Azevedo Lucas for Plaintiffs, Interveners and Respondents California Farm Bureau Federation and Richard J. Mora.

Somach, Simmons & Dunn and Timothy M. Taylor, Kristen T. Castanos and Jacqueline L. McDonald and Henry E. Rodegerdts, County Counsel for Plaintiff and Respondent County of Colusa.

No appearance for Real Party in Interest Leroy V. Traynham.

This case addresses the California Wildlife Conservation Board's (WCB) approval of a project involving the conversion of agricultural land into wildlife habitat as categorically exempt from the California Environmental Quality Act (CEQA). The California Department of Fish and Game (DFG) and the WCB appeal the grant of a peremptory writ of mandate directing them inter alia to set aside the decision finding the Traynham Ranch project (Project) to be exempt from CEQA.[1] The DFG and WCB also

[1] CEQA is codified at Public Resources Code section 21000 et seq. All statutory references are to the Public Resources Code unless otherwise indicated. The State CEQA Guidelines are set forth in title 14, section 15000 et seq., of the California Code of Regulations. All further citations to the regulations will be referred to as the Guidelines. "[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights*

appeal the award of attorney fees to the County of Colusa (County) and to petitioners California Farm Bureau Federation, Colusa County Farm Bureau (together the Farm Bureau) and intervenor Richard Mora. We shall affirm the trial court's grant of a peremptory writ of mandate and the orders granting attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND

In 2001, the DFG through the WCB (together the State Agencies) negotiated the purchase of a conservation easement on 235 acres of farmland (the property) owned by Leroy V. Traynham III (Traynham) in the County as the first acquisition/ restoration project under the North Central Valley, Conservation Reserve Enhancement Program. WCB as the lead agency approved as part of the conservation easement a site specific Waterfowl Habitat Management Plan (Management Plan) which identified measures needed to convert the property from agriculture to habitat. The project consisted of both the conservation easement and the management plan.

The property is adjacent to an existing riparian/wetland project in the Lower Colusa Trough and would expand a nearly contiguous 2,700-acre corridor of wetlands and riparian habitat along the Ridge Cut Slough that has been restored in recent years.

The property is located in the "General Agriculture" land use designation of the County's General Plan and is zoned "Exclusive Agriculture." The property is located within the

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Improvement Ass'n. v. Regents of University of California (1988) 47 Cal.3d 376, 391, fn. 2.)

boundaries of an agricultural preserve and is designated on the Important Farmland Series maps, pursuant to Government Code section 65570, as one or more of the following: Prime farmland, farmland of statewide significance, unique farmland, and/or farmland of local importance. The property had been part of a Williamson Act Contract with the County (Gov. Code, § 51200 et seq.) and at the time of the easement purchase by the State Agencies it was covered by a Farmland Security Zone Contract (Super Williamson Act Contract) with the County. (Gov. Code, § 51296 et seq.)[2] Under this Super Williamson Act Contract

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[2] The California Land Conservation Act of 1965 (Gov. Code, § 51200 et seq.), also known as the Williamson Act, authorizes local governments to establish "agricultural preserves" consisting of lands devoted to agricultural and other compatible uses. (Gov. Code, § 51230; *Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 850, superseded by statute as stated in *Friends of East Willits Valley v. County of Mendocino* (2002) 101 Cal.App.4th 191, 204.) Once a preserve is established, the local government may enter into renewable contracts with owners of included agricultural land to restrict the use of the land for at least 10 years in exchange for favorable statutory property tax assessment standards. (Gov. Code, §§ 51240, 51242, 51244.) The Act was the Legislature's response to "the rapid and virtually irreversible loss of agricultural land to residential and other developed uses . . . and . . . the disorderly patterns of suburban development that mar the landscape, require extension of municipal services to remote residential enclaves, and interfere with agricultural activities. [Citations.]" (*Sierra Club v. City of Hayward, supra*, 28 Cal.3d at p. 850, fn. omitted.) The Legislature in 2000, in an effort "to expand options available to landowners for the preservation of agricultural land" and "to encourage the creation of longer term voluntary enforceable restrictions within agricultural preserves" (Gov. Code, § 51296), added statutory provisions allowing rescission of Williamson Act Contracts and simultaneous placement of the land in new farmland security zone contracts with an initial term of 20 years. (Gov. Code, § 51296 et seq.)

Traynham had agreed to restrict the use of the property to production of food and fiber for commercial purposes and compatible uses. The property had been planted with row crops and rice and was planted with Sudan grass at the time of the appraisal for the easement purchase by the State Agencies.[3]

The State Agencies provided a project description of the acquisition of the conservation easement as requiring "approximately 225 acres of leveled agricultural fields to be restored to a mixture of seasonal and semi-permanent wetlands, grasslands, and forested wetlands." The conservation easement specifically precluded the cultivation of agricultural crops for commercial gain on the easement lands as a use inconsistent with the easement.

The conservation easement incorporated the management plan designed for the property and made part of the easement covenants. Such management plan required the "conversion" of the property from agricultural fields to wetlands. According to the management plan this would require: "1) re-constructing existing permanent levees in a meandering fashion such that all interior and exterior levees are 3 feet high and contain at least 5:1 side slopes (except where a levee borders a ditch, in which case the slope on the ditch side shall be 2:1, 2) constructing permanent interior levees (maximum 3 feet high, minimum 5:1 side slopes) to replace small rice dikes such that permanent interior levees are present at maximum intervals of

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[3] According to the Columbia Encyclopedia (Sixth Ed. 2001-05), Sudan grass is a type of grass sorghum used for pasture and hay.

every 12” of elevational drop within each field, 3) developing or improving ditches as necessary to facilitate independent flooding and drainage of wetland units, 4) installing ‘flashboard riser’ water control structures (18-24” diameter pipe, 36-48” spill width) to allow the timely flooding/drainage of wetland units and precise control of wetland water depths, 5) constructing channels or ‘swales’ (30-80 feet wide, 12-24” of excavation) that meander from the inlet to outlet structures, utilizing the resultant spoil to restore variable pond bottom topography by constructing underwater berms and hummocks, 6) developing small linear ‘loafing bars’ (20-60 feet long, 10-30 feet wide, minimum 5:1 side slopes, 0-12” above the water level) and possibly some higher mounds for duck blinds, 7) planting isolated clumps of hardstem bulrush (tules) throughout the wetland area, [and] 8) planting native willows and cottonwoods in areas that can be irrigated for the first two years.” The cost for the project, not including the cost of the conservation easement itself, was estimated at $111,140.

The project would result in approximately 145 acres of wetlands and 80 acres of uplands. Some of the wetlands would be seasonal wetlands, but at least 15 acres would be semi-permanent wetlands brood ponds, which would be flooded continuously during the spring and summer from at least March 15 through July 15.

The California Waterfowl Association (CWA) received a grant to fund the construction work. CWA submitted a work plan for the project which listed the following specific work to be done: “1) An existing 40 hp pump will be refurbished. 2) A 1500 ft pipeline will be installed to irrigate the southern upland

field. 3) Levees will be refurbished or constructed and flashboard risers will be installed to control the application and management of water. 4) A catch basin will be constructed to take advantage of free water from the agricultural drainage ditch. 5) Approximately 15 acres of brood ponds will be constructed . . . . An irrigation swale will be cut from the pump, around the interior upland field and into the catch basin . . . . 6) Swales will be cut throughout the wetland units from inlet to outlet to facilitate water delivery and drainage. Excavated soil from the swales will be used to construct levees and diversify pond bottom topography. In addition to swales, ponds will be cut into the fields, varying in depth from 3 feet to 6 inches with an average of 12-18 inches in depth. 7) Tules, cottonwood trees and willow trees will be planted to restore native vegetation. 8) Small berms will be constructed in the southern upland field to facilitate irrigation. All uplands will be planted with a grass/vetch mix to establish dense nesting cover for locally nesting waterfowl, songbirds, and pheasants."

The DFG recommended the WCB approve the project. The DFG took the position the acquisition of the conservation easement was exempt from CEQA under Class 13 of the Guidelines' categorical exemptions for acquisitions for wildlife conservation purposes and the restoration efforts were exempt from CEQA under Class 4 of the Guidelines' categorical exemptions for minor alterations of land to benefit fish and wildlife. The WCB approved the project on February 27, 2002,

and on March 1, 2002, filed a notice of exemption asserting the project was exempt from CEQA under Class 13.

The Farm Bureau filed a petition in the trial court against the State Agencies seeking a writ of mandate and injunctive relief alleging violations of CEQA and the Williamson Act. The County, Traynham, and the CWA were named as real parties in interest. Richard Mora, an individual agricultural landowner in the County, was allowed to file a complaint in intervention similarly alleging violations of the Williamson Act and joining in the Farm Bureau's demand for relief under CEQA.[4] The County filed a cross-petition and cross-complaint against the State Agencies and Traynham alleging violations of the Williamson Act and failure to comply with County codes and ordinances. The trial court granted a preliminary injunction and stay against the State Agencies, Traynham, and the CWA. The trial court ordered the County's action bifurcated and stayed pending resolution of the Farm Bureau's petition.

After the State Agencies and Traynham amended the conservation easement to allow some commercial grazing of livestock on the property, the County dismissed its causes of action for violations of the Williamson Act, but filed a new writ petition alleging violations of CEQA by the State Agencies in approving the amendment to the easement. All parties stipulated to allow the Farm Bureau to intervene in the County's new petition alleging CEQA violations and to consolidate the two lawsuits.

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[4] Mora was represented by counsel for the Farm Bureau.

The trial court ultimately ruled the project was not exempt from CEQA and issued a peremptory writ directing the State Agencies to set aside the decision finding the project to be exempt, to refrain from any future approvals of the project unless made in compliance with CEQA, to use the condition of the property as it existed prior to the WCB's approval of the project on February 28, 2002, as the baseline for the environmental review, and in the interim to cease all activity relating to the project. The trial court granted the motions of the Farm Bureau, Mora, and the County for attorney fees on the CEQA issue.

The remaining claims of the petition, cross-petition, and complaint in intervention were settled and dismissed. Final judgment on the consolidated matters was entered and the State Agencies have appealed.

DISCUSSION

I.

State Compliance With CEQA

A. *CEQA Overview and Standards of Review*

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112 (*Mountain Lion Foundation*).) It "is to be interpreted 'to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' [Citation.]" (*Ibid.*) And the Legislature has directed the Secretary of the Resource Agency to promulgate a list of classes of projects that have no significant effect on the environment. A project falling within

such a categorical exemption is not subject to CEQA. (*Id*. at p. 124.)

To achieve this objective, the Guidelines establish a three-step process to assist a public agency in determining which document to prepare for a project subject to CEQA. (Guidelines, § 15002, subd. (k).) In the first step, the lead public agency preliminarily examines the project to determine whether the project is statutorily exempt from CEQA, falls within a Guidelines categorical exemption or if "'it can be seen with certainty' that [the] project will not have a significant effect on the environment. [Citations.]" (*Mountain Lion Foundation, supra,* 16 Cal.4th at pp. 112-113.) If so, no further agency evaluation under CEQA is required. The agency may prepare a notice of exemption. (Guidelines, §§ 15002, subd. (k)(1), 15062; see *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171, fn. omitted ["notice of exemption has no significance other than to trigger the running of the limitations period"]; Remy et al., Guide to the California Environmental Quality Act (10th ed. 1999) p. 86 (hereafter Remy, CEQA Guide) [agency may, but need not, file notice of exemption].) If, however, the project does not fall within an exemption and it cannot be seen with certainty that the project will not have a significant effect on the environment, the agency takes the second step and conducts an initial study to determine whether the project *may* have a significant effect on the environment. (Guidelines, §§ 15002, subd. (k)(2), 15063; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74 (*No Oil*).) If the initial study shows there is

no substantial evidence the project may have a significant effect on the environment or revisions to the project would avoid such an effect, the lead agency prepares a negative declaration. (§ 21080, subd. (c)(1); Guidelines, §§ 15002, subd. (k)(2), 15063, subd. (b)(2), 15070 et seq.) If the initial study shows "there is substantial evidence, in light of the whole record . . . that the project may have a significant effect on the environment," the lead agency must take the third step and prepare an environmental impact report (EIR).[5] (§§ 21080, subd. (d), 21100; Guidelines, §§ 15002, subd. (k)(3), 15080 et seq.; *No Oil, supra,* at p. 74; *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1105.)

A "'[s]ignificant effect on the environment'" is statutorily defined as "a substantial, or potentially substantial, adverse change in the environment." (§ 21068.) "'Environment' means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.) Combining these statutory definitions, a "significant effect on the environment" under CEQA is a substantial or potentially

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[5] "The EIR has been aptly described as the 'heart of CEQA.' [Citations.] Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, fn. & italics omitted.)

substantial adverse change in the physical conditions existing within the area affected by the project.

At issue here is the first step in the CEQA process, the determination of whether the project as defined by the DFG and WCB is subject to CEQA so that an initial study must be undertaken.

Judicial review of an agency's compliance with CEQA where no administrative hearing at the agency level was required is governed by section 21168.5, which limits judicial inquiry to whether there was a prejudicial abuse of discretion. (§ 21168.5; *No Oil, supra,* 13 Cal.3d at pp. 74-75, fn. 3.)[6] "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (§ 21168.5.) We apply this same standard on appeal, reviewing the agency's action, not the trial court's decision. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1183.)

Where the specific issue is whether the lead agency correctly determined a project fell within a categorical exemption, we must first determine as a matter of law the scope of the exemption and then determine if substantial evidence

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[6] Section 21168.5 is the CEQA standard of review for traditional mandamus actions. Section 21168 governs administrative mandamus proceedings. "The distinction between these two provisions 'is rarely significant. In either case, the issue before the . . . court is whether the agency abused its discretion.'" (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945 (*County of Amador*).)

supports the agency's factual finding that the project fell within the exemption. (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251 (*Fairbank*); see also *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.) The lead agency has the burden to demonstrate such substantial evidence. (*Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 475; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 114-115 (*Davidon Homes*).)

Once the agency meets this burden to establish the project is within a categorically exempt class, "the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in Guidelines section 15300.2." (*Davidon Homes, supra,* 54 Cal.App.4th at p. 115.)[7]

Where the agency fails to demonstrate the project is within a categorically exempt class, the project may nevertheless be exempt from CEQA if "'it can be seen with certainty' that [the] project will not have a significant effect on the environment. [Citations.]" (*Mountain Lion Foundation, supra,* 16 Cal.4th at p. 113.) The Guidelines cover this concept in section 15061, subdivision (b)(3), called the common-sense exemption, which provides in part: "CEQA applies only to projects which have the

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[7] We recognize there is some uncertainty regarding the nature of the challenger's burden of proof on the exception to the exemption, whether it is reviewed under the traditional substantial evidence standard or the "fair argument" standard. (*Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 796; *Fairbank, supra,* 75 Cal.App.4th at pp. 1259-1260.) We need not reach that issue in this case.

potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The discussion accompanying this Guideline explains: "Subsection (b)(3) provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act. [¶] This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA." (Remy, CEQA Guide, *supra,* Appendix V, p. 874; *Davidon Homes, supra,* 54 Cal.App.4th at pp. 112-113.)

In the case of the common sense exemption, the agency has the burden to "provide the support for its decision before the burden shifts to the challenger. Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would frustrate CEQA's fundamental purpose of ensuring that government officials 'make decisions with environmental consequences in mind.'" (*Davidon Homes, supra,* 54 Cal.App.4th at p. 116, quoting *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.) "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*Davidon Homes, supra,* at p. 117; see *East Peninsula Ed. Council, Inc. v.*

Palos Verdes Peninsula Unified School Dist. (1989) 210 Cal.App.3d 155, 171.)

Keeping these principles in mind, we turn to the issues in this case.

B. *Class 13 Categorical Exemption*

"Section 21084, subdivision (a), mandates that the Guidelines include 'a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division.' These categorical exemptions are found in article 19 (§ 15300 et seq.) of the Guidelines. 'Where a project is categorically exempt, it is not subject to CEQA requirements and "may be implemented without any CEQA compliance whatsoever."' [Citation.] [¶] In keeping with general principles of statutory construction, exemptions are construed narrowly and will not be unreasonably expanded beyond their terms. [Citations.] Strict construction allows CEQA to be interpreted in a manner affording the fullest possible environmental protections within the reasonable scope of statutory language. [Citations.] It also comports with the statutory directive that exemptions may be provided only for projects which have been determined not to have a significant environmental effect. [Citations.]" (*County of Amador, supra,* 76 Cal.App.4th at p. 966.)

In this case, the DFG took the position the acquisition of the conservation easement was exempt from CEQA under Class 13 of the Guidelines' categorical exemptions for acquisitions for wildlife conservation purposes. (Guidelines, § 15313.) The WCB

approved the project and filed a notice of exemption asserting the project was exempt from CEQA under Class 13.

At the time of the filing of the notice of exemption, section 15313 of the Guidelines provided "Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including preservation of fish and wildlife habitat, establishing ecological reserves under Fish and Game Code Section 1580, and preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition." Section 15313 was amended in 2004 to read: "Class 13 consists of the acquisition of lands for fish and wildlife conservation purposes including *(a)* preservation of fish and wildlife habitat, *(b)* establishing ecological reserves under Fish and Game Code Section 1580, and *(c)* preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition." (Changes in italics.) The Initial Statement of Reasons for Regulatory Action issued by the California Resources Agency (Resources Agency) noted the necessity for the revisions was "to avoid the misperception that the qualifying language at the end of example (c) regarding the purpose of the acquisition applies to all three examples of acquisitions for fish and wildlife conservation purposes." The "Final Statement of Reasons" issued by the Resources Agency for the amendments to this section indicate this revision was intended to "provide structure and

clarity to this section by labeling each of the three examples without changing any existing language or punctuation."[8]

Based on the amendment of section 15313 and these statements indicating the revisions did not change, but clarified, the existing language, the State Agencies argue the acquisition of the conservation easement falls within the Class 13 exemption even if the property is in other than a natural condition, i.e., it is farmland.[9] We agree the clarifying revisions and the normal "last antecedent rule" of construction[10] make clear that, even before the 2004 amendment when WCB filed the notice of exemption, land did not necessarily have to be in its natural condition to qualify for a Class 13 exemption. We disagree, however, with the State Agencies' argument that section 15313 applies to the acquisition of land for conversion

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[8] We have granted the State Agencies' motion for judicial notice of this Final Statement of Reasons, including the summary and responses to comments received on the proposed amendments, submitted to OAL on July 27, 2004, and of all the matters judicially noticed by the trial court.

[9] The State Agencies also argue several responses of the Resources Agency to comments by the California Department of Food and Agriculture and the California Farm Bureau Federation on the proposed amendments to section 15313 support its construction of section 15313. However, such responses indicate the purpose of the amendment to section 15313 was limited to clarification only and was not meant to address larger questions of CEQA's applicability to agricultural land.

[10] "'A longstanding rule of statutory construction--the "last antecedent rule"--provides that "qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote."'" (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743, quoting *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680.)

to wetlands, which conversion requires active construction and ongoing maintenance, such as the project defined by the State Agencies here.

Section 15313 provides three examples of acquisitions for conservation purposes that will qualify for categorical exemption under Class 13. The first example is an acquisition for the "*preservation* of fish and wildlife habitat." Webster's Third New International Dictionary (p. 1794) defines the verb to "preserve" variously as "to keep safe from injury, harm, or destruction[,]" "to protect, save" or "to keep alive, intact, in existence, or from decay[.]" These definitions connote, as the County suggests, "the safe keeping of an existing condition." For this first example in section 15313, that existing condition need not be land in its original "natural" condition, but it must be existing habitat. The language simply does not stretch to cover acquisitions for the purpose of physically constructing or creating and actively managing new wildlife habitat.

The State Agencies do not suggest this project falls within either of the other two listed examples of acquisitions covered by Class 13. The State Agencies do argue "the term 'including' indicates that there may be other circumstances, not specifically spelled out, when acquisition of land for fish and wildlife conservation purposes is exempt." Both the Initial and Final Statement of Reasons for the 2004 amendments to section 15313 by the Resources Agency describe the three acquisitions listed in section 15313 as "examples," suggesting the section is not intended to be limited to the three described acquisitions. However, even assuming other acquisitions for wildlife

conservation purposes could be covered by the Class 13 categorical exemption, such acquisitions would still have to be similar in kind to the listed examples.

We turn to the related maxims *noscitur a sociis* and *ejusdem generis* to divine the regulatory intent behind section 15313. *Noscitur a sociis* (literally, "it is known from its associates") means that a word may be defined by its accompanying words and phrases, since "ordinarily the coupling of words denotes an intention that they should be understood in the same general sense." (2A Sutherland, Statutory Construction (6th ed. 2000) § 47.16, pp. 268-269, fn. omitted.) *Ejusdem generis* (literally, "of the same kind") (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1160 & fn. 7; *Engelmann v. State Bd. of Education* (1991) 2 Cal.App.4th 47, 57, fn. 11), means that where general words follow specific words, or specific words follow general words in a statutory enumeration, the general words are construed to embrace only things similar in nature to those enumerated by the specific words. (2A Sutherland, Statutory Construction, *supra*, § 47.17, pp. 272-282, fns. omitted.)

Here we have already discussed the first example given in section 15313, which covers "*preservation* of fish and wildlife *habitat*." Even though the State Agencies do not claim the project falls within the purview of the two other examples, these examples are helpful to understand the scope of the section 15313 exemption. The second example is the acquisition of lands for the purpose of "establishing ecological reserves under Fish and Game Code Section 1580[.]" Fish and Game Code section 1580 provides for the protection of "threatened or

endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous nature gene pools for the future use of mankind through the establishment of ecological reserves." To establish such reserves, the statute authorizes the DFG to acquire land and nonmarine water, by a variety of methods, "suitable" for that purpose. This statute too appears to contemplate the acquisition of existing habitat or land already in a condition to provide habitat. Nothing in the language of the statute suggests land may be acquired for the purpose of *making* it suitable for an ecological reserve. The third example given in section 15313 is even more restrictive; acquisition is limited to "*preserving* access to public lands and waters where the purpose of the acquisition is to *preserve the land in its natural condition*." (Italics added.) These examples narrow the construction that should be given the language "for fish and wildlife conservation purposes" in section 15313 to the acquisition of land already in a natural condition or providing existing habitat or ready to provide habitat.

The evidence in the record regarding the Traynham Ranch shows the property has been actively farmed, growing row crops, rice and most recently Sudan grass. It is not existing wetland habitat. The purpose of the acquisition is to convert the property into a habitat, not to preserve a natural condition *or existing habitat*. There is no evidence in the record that the property will provide wildlife habitat without the construction

and active management contemplated by the management plan.[11] We do not view the evidence that waterfowl and shorebirds already occasionally feed in the winter on the thousands of acres of rice fields in the area as substantial evidence the property itself is existing habitat so as to come within the Class 13 exemption.

The State Agencies have not met their burden to show by substantial evidence the project comes within the Class 13 categorical exemption. The WCB abused its discretion in finding this project exempt under the Class 13 categorical exemption.

C. *Class 4 Categorical Exemption*

In briefing the merits of the CEQA issues before the trial court, and now again on appeal, the State Agencies assert that the improvements required by the management plan for the conservation easement on the property were exempt under the Guidelines' Class 4 categorical exemption. (Guidelines, § 15304.) Farm Bureau complains this exemption was not identified in the notice of exemption filed by the WCB after approval of the project. However, it is clear a notice of exemption is not mandatory and its only effect when filed is to start the statute of limitations running. (Guidelines, §§ 15002, subd. (k)(1), 15062; see *Apartment Assn. of Greater*

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[11] As the project defined by the State Agencies in this case includes acquisition of the conservation easement incorporating the management plan for the "conversion" of the property, we need not consider and do not express an opinion on whether a pure acquisition of agriculture land with the intent to cease commercial farming on the land to passively allow it to return to a natural condition would be covered by any existing categorical exemptions. That is not what is at issue here.

Los Angeles v. City of Los Angeles, supra, 90 Cal.App.4th at p. 1171; Remy, CEQA Guide, pp. 84-87.) Therefore, the fact the WCB listed the project as exempt only under Class 13 and not Class 4 would not necessarily preclude the WCB from defending its exemption determination by asserting other categorical exemptions, at least where there is no claim or showing of prejudice. (Compare *McQueen v. Bd. of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143-1147, [notice of exemption improperly used, incomplete and misleading] (*McQueen*), disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570, with *Centinela Hosp. Assoc. v. City of Inglewood* (1990) 225 Cal.App.3d 1586, 1600-1601 [notice of exemption with inaccurate project description upheld].)

The County complains the State Agencies' combination of two separate categorical exemptions to cover the project is an improper segmentation of the project. The CEQA Guidelines define a "'project'" to mean "the whole of an action[.]" (Guidelines, § 15378, subd. (a).) It would be improper for an agency to divide a project into separate parts to avoid CEQA review. (*McQueen, supra,* 202 Cal.App.3d at pp. 1143-1144.) However, where the agency considers the project as a whole and determines the combined effect of two exemptions places the entire project outside the scope of CEQA, no improper segmentation has occurred. (See *Surfrider Foundation v. Cal. Coastal Comm'n* (1994) 26 Cal.App.4th 151, 155-156 [combination of statutory and categorical exemption placed project outside purview of CEQA].)

The problem here is the acquisition of the land does not fall within the Class 13 categorical exemption identified by the State Agencies and the construction work identified in the management plan for this project, further identified by the work plan submitted by CWA, does not fit within the Class 4 categorical exemption for minor alternations to land.

"Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes." (Guidelines, § 15304.) Examples given by section 15304 include, but are not limited to, (a) grading on land with a slope of less than 10 percent, (b) new gardening or landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping, (c) filling of earth into previously excavated land with material compatible with the natural features of the site, (d) minor alternations in land, water, and vegetation on existing officially designated wildlife management areas or fish production facilities which result in improvement of habitat or greater fish production, (e) minor temporary use of land having negligible or no permanent effect on the environment, such as carnivals or Christmas tree sales, (f) minor trenching and backfilling where the surface is restored, (g) maintenance dredging where the spoil is deposited in an authorized spoil area, (h) the creation of bicycle lanes on existing rights-of-way, and (i) fuel management activities within a certain distance of structures to reduce the volume of flammable vegetation meeting with some limitations. (§ 15304.)

The State Agencies claim the proposed improvements to the property here "easily fall within the definition of 'minor alterations to land.'" The State Agencies suggest the alterations are consistent with the type of minor alterations to improve habitat described in subdivision (d) of section 15304. We disagree. First, subdivision (d) of section 15304 covers minor alterations to improve habitat "on existing . . . designated wildlife management areas or fish production facilities." The property here is not an existing wildlife management area or fish production facility. Second, the language of subdivision (d) reasonably suggests the kinds of activities exempted are those minor alterations which improve existing wildlife habitat, not the creation of habitat. Finally, and most fundamentally, the Class 4 exemption applies to only "minor" alterations, which this project is not. The management plan calls for, among other things, a change in both the height and slope of existing levees, the construction of new permanent interior levees to replace small rice dikes, the construction of 30- to 80-foot wide and 1- to 2-foot deep swales or channels meandering throughout the property, the digging of ponds of up to 3 feet in depth in addition to the swales, the construction of 20- to 60-foot long and 10- to 30-foot wide loafing bars, plus some higher mounds for duck blinds, the construction of a catch basin, using the excavation spoil to construct what will become underwater berms and hummocks, the installation of 1,500 feet of pipeline plus a number of flashboard risers, and the planting of new riparian vegetation including trees. The work will result in 15 acres of new semi-

permanent ponds, which will require regular management and maintenance. The work will clearly alter existing drainage patterns and elevations of the land. It will change the nature of the land from level fields to wetlands. This is not a "minor" physical alteration to the land as exemplified by the kinds of examples listed in section 15304. "Exemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*Mt. Lion Foundation, supra,* 16 Cal.4th at p. 125; see *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 842; see *Myers v. Bd. of Supervisors* (1976) 58 Cal.App.3d 413, 425.)

The State Agencies have not met their burden to show this project falls within the Class 4 categorical exemption.

D. *Class 25 Categorical Exemption*

In a footnote in their opening brief in the section discussing the Class 13 categorical exemption, the State Agencies assert, without substantive analysis or supporting citations to the record and authorities, the project is also exempt under the Class 25 categorical exemption (Guidelines, § 15325). We may disregard arguments not properly presented under appropriate headings as required under rule 14(a)(1) of the California Rules of Court (*Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1345, fn. 17) and may treat as forfeited arguments merely asserted without support. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) However, even if we were to reach this issue, we would conclude this project is not categorically exempt under Class 25.

Guidelines, section 15325 provides a categorical exemption for "Transfers of Ownership in Land to Preserve Existing Natural Conditions and Historical Resources[.]" Section 15325 states: "Class 25 consists of the *transfers of ownership interests* in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

"(a) Acquisition, sale or other transfer of areas to preserve the existing natural conditions, including plant or animal habitats.

"(b) Acquisition, sale or other transfer of areas to allow continued agricultural use of the areas.

"(c) *Acquisition*, sale, or other transfer *to allow restoration of natural conditions, including plant or animal habitats*.

"(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.

"(e) Acquisition, sale, or other transfer to preserve historical resources.

"(f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes." (Italics added.)

Section 15325 by its terms covers only acquisitions, sales or other transfers of ownership interests for particular purposes. It does not cover anything else. Therefore, *even if* we were to decide that the acquisition of the property in this case could be covered by section 15325, which we do not, the exemption would not cover the project as defined by the State Agencies with its management plan component requiring significant construction.

The State Agencies have not met their burden to show the project in this case was categorically exempt under Guidelines section 15325.

E. *The Common Sense Exemption*

Even though the State Agencies have failed to bring the project within the scope of any statutory or specific categorical exemption, the project may nevertheless be exempt from CEQA if "'it can be seen with certainty' that [the] project will not have a significant effect on the environment. [Citations.]" (*Mountain Lion Foundation, supra,* 16 Cal.4th at p. 113.) In the language of the Guidelines' common sense exemption: "Where it can be seen with certainty that there is *no possibility* that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (Guidelines, § 15061, subd. (b)(3), italics added; see *No Oil, supra,* 13 Cal.3d at p. 74 [discretionary activity having no possibility of causing significant effect not subject to CEQA].) If, however, there *is* a reasonable possibility that a proposed project will have a significant effect upon the environment, then the lead agency must conduct an initial study. (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206; *Pistoresi v. City of Madera* (1982) 138 Cal.App.3d 284, 285.)

A remote or outlandish possibility of an environmental impact will not remove a project from the common sense exemption, but if legitimate, reasonable questions can be raised about whether the project might have a significant impact, the agency cannot find with certainty the project is exempt. (*Davidon Homes, supra,* 54 Cal.App.4th at pp. 117-118.) The

common sense exemption is “reserved for those ‘obviously exempt’ projects, ‘where its absolute and precise language clearly applies.’” (*Id.* at p. 117, quoting *Myers v. Bd. of Supervisors, supra,* 58 Cal.App.3d 413, 425.) The lead agency has the burden to show the project comes within the common sense exemption. (*Davidon Homes, supra,* at p. 116.)

In this case, the State Agencies claim the project will not have adverse environmental effects. The State Agencies strenuously argue a mere change in use of land from agriculture to wildlife habitat is not of itself an adverse environmental impact under CEQA, but has only a potential socio-economic impact, which cannot be considered by itself to be a significant effect on the environment bringing the project within CEQA. The State Agencies claim appendix G to the Guidelines, which provides an optional method of considering whether impacts to agricultural resources are significant environment effects, does not require a conclusion that a change in land use from agriculture to habitat is an environmental impact, that wetlands would be an “open-space” use consistent with the Williamson Act, that any conflict with the County general plan designation or zoning ordinance is a land use issue, but not “necessarily” a CEQA issue, and that case law does not support a conclusion that a restoration of agricultural land to habitat is an adverse impact. Describing the environmental benefits of changing the use of agricultural land to habitat, the State Agencies contend this project does not cause a significant adverse effect on the environment.

These arguments are premised on an underlying factual assumption that this project involves merely a change in the use of the property from agriculture to habitat. In fact, this project is not a mere passive change in use, a cessation of farming on the property. This project involves the physical reshaping of the land to create wetlands and uplands for habitat. Preliminary work, done prior to the issuance of the preliminary injunction by the trial court, required the use of heavy earth moving equipment, including a "ripper" and "scrapers." Levees, ditches, swales, loafing bars, and other features are to be constructed under the management plan. The existing drainage pattern will be altered, raising questions of possible resulting effects on neighboring property.[12] An existing pump is to be refurbished, 1,500 feet of new pipeline is to be laid, and flashboard risers are to be installed to provide and control water necessary for the habitat, in particular the semi-permanent brood ponds. This raises legitimate questions regarding the amount and source of the water being used. New areas of standing water will be created in the form of the brood ponds, providing not only avian breeding grounds, but also new mosquito breeding habitat, raising legitimate health concerns. The increase in birdlife will also presumably attract other wildlife, including

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[12] The conservation easement includes language requiring Traynham to notify the State, take immediate remedial action, compensate any affected party, and prevent any future damage if there are any water seepage problems occurring as a result of water management on the property. This is evidence the State Agencies anticipate there is at least a possibility of seepage problems.

predators. Plus, the management plan calls for the planting of new riparian vegetation, including grasses and trees. Some of this vegetation may potentially spread to neighboring properties, potentially resulting in an increased use of herbicides or pesticides on neighboring properties.

The State Agencies dismiss these concerns as unsupported by the evidence. However, a party challenging what is essentially a claim of the common sense exemption under Guidelines section 15061, subdivision (b)(3), unlike a party asserting an exception to a categorical exemption, need only make a "slight" showing of a reasonable possibility of a significant environmental impact. (*Davidon Homes, supra,* 54 Cal.App.4th at p. 117.) It is the lead agency that has the burden of establishing the common sense exemption, i.e., that there is *no* possibility the project may cause significant environmental impacts. "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*Id.* at p. 117; see *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist., supra,* 210 Cal.App.3d at p. 171.)

Here the administrative record reflects the DFG and the WCB consistently took the position the loss of agricultural land was not itself an adverse environmental impact, but the State Agencies do not point us to any evidence in the record showing they considered the potential environmental impacts from the management plan and the construction and maintenance of this new habitat. "[I]t cannot be assumed that activities intended to

protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th 559, 570.) There may be environmental costs to an environmentally beneficial project, which must be considered and assessed. The State Agencies have not adequately shown there is "no possibility" this project, considered as a whole (Guidelines, § 15378, subd. (a)), may cause significant environmental impacts. Therefore, we do not need to reach the issue of whether a change in use of land from agriculture to habitat will itself otherwise trigger CEQA.

We conclude, despite the intended beneficial environmental purpose of this project, it is not categorically exempt from CEQA. Nor does it fall within the common sense exemption to CEQA. The WCB, as the lead agency, must conduct an initial study to determine if the project may have a significant effect on the environment. We shall affirm the trial court's grant of a peremptory writ of mandate setting aside the WCB's decision finding this project exempt from CEQA, requiring any future approvals of the project to be made in compliance with CEQA, requiring the condition of the property as it existed prior to the WCB's approval of the project on February 28, 2002, to be used as the baseline for the environmental review, and prohibiting all activity relating to the project until such time.

II.

Award Of Attorney Fees

Code of Civil Procedure section 1021.5 (section 1021.5) codifies "the 'private attorney general' attorney fee doctrine" under which attorney fees may be awarded to successful litigants. (*Woodland Hills Residents Assn. v. City Council of Los Angeles* (1979) 23 Cal.3d 917, 933 (*Woodland Hills II*).) "The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. [Citations.]" (*Ibid.*) "In short, section 1021.5 acts as an incentive for the pursuit of public interest-related litigation that might otherwise have been too costly to bring. [Citations.]" (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (2000) 79 Cal.App.4th 505, 511 (*Families Unafraid*).) Since a 1993 amendment, section 1021.5 has also allowed fees for enforcement of important rights affecting the public interest by one public entity against another public entity. (Stats. 1993, c. 645, § 2.)[13]

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[13] Section 1021.5 provides in relevant part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a

Section 1021.5 authorizes the award of attorney fees (1) to a successful party, (2) in an action that has resulted in the enforcement of an important right affecting the public interest, (3) if a significant benefit has been conferred on the general public or a large class of persons, and (4) the necessity and financial burden of enforcement of that right are such as to make the award appropriate. (§ 1021.5; *Bowman v. City of Berkeley* (2005) 131 Cal.App.4th 173, 176 (*Bowman*).)

"The trial court is to assess the litigation realistically and determine from a practical perspective whether these criteria have been met. [Citation.]" (*Families Unafraid, supra,* 79 Cal.App.4th at p. 511.) We then review the ruling under section 1021.5 for abuse of discretion. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 578.) "In reviewing the trial court's decision, we must pay '"particular attention to the trial court's stated reasons in denying or awarding fees and [see] whether it applied the proper standards of law in reaching its decision[]"'" (*Families Unafraid, supra,* at p. 512) "and, if so, whether the result was within the range of the court's discretion [citation], i.e., whether there was a reasonable basis for the decision [citation]." (*Bowman, supra,* 131 Cal.App.4th at p. 177.) Section 1021.5 states the criteria for a fee award in the conjunctive, requiring each standard to be met to justify a fee award. (*Punsly v. Ho* (2003) 105

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large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

Cal.App.4th 102, 114 (*Punsly*); see *Arnold v. California Exposition and State Fair* (2004) 125 Cal.App.4th 498, 510 [court may deny a section 1021.5 fee request if one of the criteria is not met].)

"'Although [section] 1021.5 is phrased in permissive terms (the court "may" award), the discretion to deny fees to a party that meets its terms is quite limited. The [S]upreme [C]ourt in *Serrano v. Unruh* (*Serrano IV*) (1982) 32 Cal.3d 621, 633 . . . , noted that the private attorney general theory, from which [section] 1021.5 derives, requires a full fee award "unless special circumstances would render such an award unjust."'" (*Lyons v. Chinese Hospital Assn.* (2006) 136 Cal.App.4th 1331, 1344, quoting Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 2d ed. 2005) § 4.42, p. 132.)

In this case, the County and then the Farm Bureau with intervener Mora filed motions for attorney fees under section 1021.5 following the issuance of the peremptory writ by the trial court. Over the opposition of the State Agencies, the trial court granted both motions, ruling that both the County and the Farm Bureau "obtained a preliminary injunction to stop the State Agencies from 'engaging in or performing any site preparations or earth movement, development of habitat water infrastructure, and establishment of habitat vegetation' on the subject property. Further, [the County's/Farm Bureau's] litigation of two California Environmental Quality Act ('CEQA') petitions led the Court to find that the State Agencies' decisions pertaining to the subject property violated CEQA. [The County's/Farm Bureau's] litigation of the CEQA petitions

caused the recision [*sic*] and revocation of the State Agencies' improper agreement and improper expenditure of public funds. The Court finds that the [County's/Farm Bureau's] enforcement of CEQA substantially contributed to the benefits inured to the general public."

The State Agencies appeal contending the trial court erred because (1) the County and Farm Bureau obtained only limited success, noting the peremptory writ did not, as the trial court found in its orders granting the attorney fees, vacate or rescind the Conservation Easement itself, (2) the County and Farm Bureau did not vindicate an important right affecting the public interest, (3) the County and Farm Bureau did not confer a significant benefit on the general public or a large class of persons, and (4) the County and Farm Bureau's stake in the outcome was not disproportionate to the burden assumed in pursuing the litigation. We disagree.

With respect to the State Agencies' first contention, we reject their argument that the County and the Farm Bureau somehow were not successful parties because they achieved only limited success. "In order to effectuate the purpose of section 1021.5, courts 'have taken a broad, pragmatic view of what constitutes a "successful party."' [Citation.] A 'successful' party means a 'prevailing' party]citation], and '"'plaintiffs may be considered "prevailing parties" for attorney's fees purposes if they succeed on *any* significant issue in litigation which achieves *some* of the benefit the parties sought in bringing suit.'"' [Citation.]" (*Bowman, supra,* 131 Cal.App.4th at p. 178, italics added.) Here the parties agreed to litigate

the CEQA claims ahead of the Williamson Act and County code and ordinance causes of action and both the County and the Farm Bureau successfully sought a decision that this project was not exempt from CEQA compliance. The County and the Farm Bureau successfully obtained both a preliminary injunction stopping the construction work on the project and a peremptory writ setting aside the approvals of the project until there has been full compliance with CEQA. The trial court's misstatement in its ruling that the litigation caused the rescission and revocation of the State Agencies' "improper agreement" (presumably referring to the conservation easement, which was not set aside by the terms of the peremptory writ) does not change the County and the Farm Bureau into unsuccessful parties under section 1021.5.

The argument by the State Agencies that the County and Farm Bureau did not vindicate an important right affecting the public interest borders on frivolous. The litigation did not merely champion solely "local economic values[.]" The County and the Farm Bureau successfully established this project was not exempt from the environmental review requirements of CEQA. They obtained a writ requiring the State Agencies to, at a minimum, conduct an initial study of the project under CEQA to consider the possible environmental effects the project may have. Case law has clearly found, and parties have usually conceded, important public rights are at stake in litigation to enforce CEQA. (*Bowman, supra,* 131 Cal.App.4th at p. 177; *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 754; *Friends of "B" Street v. City of*

Hayward (1980) 106 Cal.App.3d 988, 994 (*Friends of "B" Street*); *Rich v. Benicia* (1979) 98 Cal.App.3d 428, 436.)

The State Agencies next contend the County and Farm Bureau did not confer a significant benefit on the general public or a large class of persons. According to the State Agencies, "a discrete segment of the general public, at most, may have benefited." The State Agencies point out the trial court itself did not find the litigation secured a "significant benefit" to the general public, but instead found, according to its order, the "enforcement of CEQA *substantially contributed to the benefits* inured to the general public." (Italics added.) The State Agencies question the basis for even this finding, pointing out the court was mistaken in the relief obtained when the trial court stated the litigation resulted in rescission of the easement. The State Agencies assert the driving motivation behind the litigation was the economic benefit to the Farm Bureau's members and the County's residents. And this may have even backfired because, according to the State Agencies, the litigation may actually end up adversely affecting members of the Farm Bureau and the public by deterring the best economical use for marginal farmland.

We do not view the trial court's awkward phrasing of its finding to indicate it failed to find the litigation secured a significant benefit to the general public nor do we find the court misunderstood the standard of law applicable to this prong of the tests under section 1021.5. We conclude the trial court did not abuse its discretion in finding the substantial benefit requirement met. With respect to this particular project, the

litigation has ensured the State Agencies' compliance with CEQA and permits a large class of persons to contribute their input towards the ultimate decision. (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 558; Guidelines, § 15063, subd. (e) ["any person may submit any information in any form to assist a lead agency in preparing an initial study].) Moreover, the record describes this project as the first acquisition/restoration project under the North Central Valley, Conservation Reserve Enhancement Program. It is clear from the record and proceedings below that all parties, including the State Agencies, viewed this first project as a general test of the Agencies' position that projects changing agricultural land to wildlife habitat are exempt from the environmental review requirements of CEQA. This litigation has resulted in a ruling that, at least as to projects in material respects similar to this one, the DFG and WCB must undertake at a minimum an initial study under CEQA. Thus, the County's and Farm Bureau's actions did confer a significant benefit on the general public or a large class of persons.

This leaves the requirement of section 1021.5 that "the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate." (§ 1021.5.) Noting the trial court made no express findings on this point, the State Agencies claim this criterion is not met because the cost of litigation did not outweigh the County's and the Farm Bureau's personal stake in the outcome. Specifically, the State Agencies argue the Farm Bureau "has a tremendous stake in

retaining land in agriculture for the direct economic benefit of its members."[14] Similarly, according to the State Agencies, the County "is keenly interested in ensuring that as much land within its borders as possible remains in commercial agricultural production." The County and the Farm Bureau "brought these law suits for the express purpose of protecting the tax base of the County and the economic interests of some members of the Farm Bureau."

Given that this fourth prerequisite to a fee award under section 1021.5 was thoroughly briefed at the trial court level, we conclude the trial court's award of attorney fees contains an implied finding that the financial burden criteria was met in this case. The trial court did not abuse its discretion in finding the necessity and financial burden of enforcement was such as to make the award appropriate in this case.

The financial burden of enforcement criterion of section 1021.5 is met "'when the cost of the claimant's legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff "out of proportion to his individual stake in the matter."'" (*Woodland Hills II, supra,* 23 Cal.3d at p. 941, quoting *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89.) While normally the "personal interest" involved in this question

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[14] But the State Agencies also state: "The interest advanced benefits only the Farm Bureau's members who are interested in a requirement that agricultural land be restricted to commercial production." We are uncertain of the factual basis for this statement or the legal deduction we are supposed to draw from it.

is a financial interest (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321), this court has held personal interest can also include nonfinancial interests, provided the interest is "specific, concrete and significant, *and* these attributes [are] based on objective evidence." (*Families Unafraid, supra,* 79 Cal.App.4th at pp. 514, 516, original italics.) That is, "the less direct or concrete a personal interest someone has, the more likely he or she will satisfy the element and be eligible for fees under the statute. Thus, in practice, the necessity and financial burden element of section 1021.5 tends to be analyzed like golf is scored: the lower the better." (*Hammond v. Agran* (2002) 99 Cal.App.4th 115, 122 (*Hammond*).) The point is, to be entitled to fees under section 1021.5, the "claimant's objective in the litigation must go beyond--'transcend'--those things that concretely, specifically and significantly affect the litigant . . . to affect the broader world or 'general public' as the statute puts it." (*Hammond, supra,* at p. 127.)

Here the State Agencies claim the Farm Bureau has a personal stake in retaining land in agriculture for "the direct economic benefit of its members." The State Agencies contend the County was also "keenly interested" in retaining land in commercial agriculture for the protection of the County's tax base. The State Agencies claim the real concern of the Farm Bureau and the County is the "adverse (if speculative) domino effect on the agricultural industry" of conversion of commercial farmland to habitat.

It is true that in assessing the personal interest of an association claiming fees pursuant to section 1021.5, a court

may look to the personal interests of the members of that association. For example, in *California Licensed Foresters Assn. v. State Bd. of Forestry* (1994) 30 Cal.App.4th 562 (*CLFA*), this court determined the plaintiff association held a financial stake in pursuing the litigation on behalf of its membership "to the same extent as its members[]" since the association's "very existence depend[ed] upon the economic vitality of its members and any benefit or burden derived by CLFA from this lawsuit ultimately redounds to the membership." (*Id.* at p. 570.) We concluded the association did not qualify as a private attorney general under section 1021.5 because the cost of the litigation was proportionate to the association's (members') financial stake in the outcome as specifically shown by the evidence in the record. (*CLFA, supra,* at pp. 570-574.)

However, in contrast to the litigation involved in *CLFA*, any economic benefit to the membership of the Farm Bureau (or to the County's residents by analogy) from this litigation seeking to set aside the State Agencies' approval of this project as exempt from CEQA is completely speculative. This litigation sought to require the State Agencies to assess the environmental effects of the project before proceeding with the project. Indeed, as the State Agencies point out in their earlier argument against attorney fees, the trial court did not rescind the acquisition of the conservation easement. Although broadly asserted by the State Agencies, there is nothing in the record showing a specific link between this CEQA litigation and any economic benefit to the Farm Bureau or its members or the County. The State Agencies have not explained, in opposition to

the motions for fees or on appeal, how this litigation forcing them to comply with CEQA prior to approval of the project would necessarily result in the retention of this land as agricultural land or precisely how, and in what amount, such retention, if it did result, would economically benefit the Farm Bureau members or County residents. The record does not contain evidence of any specific economic cost to the Farm Bureau, its members, or the County if the State Agencies had been allowed to proceed with this project without CEQA review. The State Agencies' opening brief affirmatively admits any fear by the County and/or the Farm Bureau of an adverse domino effect on the agricultural industry from this or similar projects is speculative. And assuming this litigation was motivated by a generalized interest in the retention of farmland as presumptively beneficial to the common economic well-being of the area, such generalized policy interest is not the kind of specific, concrete personal interest, pecuniary or non-pecuniary, that has been found to disqualify a party from fees under section 1021.5. Some illustrative examples may be helpful.

In *Satrap v. Pacific Gas & Electric Co.* (1996) 42 Cal.App.4th 72 (*Satrap*), the plaintiff succeeded in his action for breach of contract, wrongful termination in violation of public policy, and invasion of privacy. (*Id.* at p. 76.) The trial court denied plaintiff his attorney fees, which he had sought pursuant to section 1021.5. (*Satrap, supra,* at p. 76.) The Court of Appeal affirmed the denial since plaintiff's personal stake, his expected monetary recovery from defendant, was at the time important litigation decisions were being made

always more than enough to warrant incurring the costs. (*Id.* at pp. 78-79.)

In *Beach Colony II v. California Coastal* Commission (1985) 166 Cal.App.3d 106, the court found Colony II, a development company, had vindicated important public rights in its challenge to certain conditions placed on its proposed development by the Coastal Commission. Nevertheless, the court denied the company its attorney fees, concluding the company had a substantial financial stake in the outcome because its "victory apparently makes it commercially feasible to build . . . 10 [condominium] units and save $300,000 in offsite improvement expenses, or to sell the restorable property to another developer." (*Id.* at p. 114.) The court stated, "Section 1021.5 was not designed as a method for rewarding litigants motivated by their own pecuniary interests who only coincidentally protect the public interest." (*Ibid.;* accord In *Planned Parenthood v. City of Santa Maria* (1993) 16 Cal.App.4th 685, 691 [Planned Parenthood denied fees in lawsuit challenging conditions placed on grant for new clinic where the interests of the clinic patients and general public were incidental to Planned Parenthood's primary objective of obtaining grant money, no evidence presented that litigation transcended Planned Parenthood's financial interest and imposed a financial burden disproportionate to its individual stake in the matter].)

In *County of Inyo v. City of Los Angeles, supra,* 78 Cal.App.3d 82, Inyo County had successfully challenged the sufficiency of an EIR the city had submitted regarding its plan to extract and export groundwater from the county. This court

denied the county's request for fees under the private attorney general theory. We stated, "Inyo County went to court as champion of local environmental values, which it sought to preserve for the benefit of its present and future inhabitants. This action is not a 'public interest' lawsuit in the sense that it is waged for values other than the petitioner's. The litigation is self-serving. The victory won by the county in 1977 bulked large enough to warrant the cost of winning it. The necessity for enforcement by Inyo County did not place on it 'a burden out of proportion to [its] individual stake in the matter.' [Citation.]" (*Id.* at p. 90; accord *City of Hawaiian Gardens v. City of Long Beach* (1998) 61 Cal.App.4th 1100, 1113 [city was not entitled to fees for suing neighboring city to prevent closure of a street bordering both cities, limited burden of brief trial court proceedings did not transcend opposing city's interest in controversy].)

In *Williams v. San Francisco Bd. of Permit Appeals* (1999) 74 Cal.App.4th 961, the court found the plaintiff's interest in protecting the "aesthetic integrity" of his neighborhood of Victorian houses and his own right to privacy and "access to light, air and views" from the construction of an architecturally incompatible four-story, three-unit, 7,000-square-foot apartment building immediately next door to plaintiff was a sufficient personal interest to disqualify him from recovery of fees under section 1021.5. (*Williams v. San Francisco Bd. of Permit Appeals, supra,* at pp. 963, 970-971; accord *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49-50 [fees denied where the plaintiff retreat's

private interest in its panoramic ocean view was the real basis for its action].)

In *Hammond, supra,* 99 Cal.App.4th 115, defendant, a political candidate, was denied attorney fees under section 1021.5 for the portion of his defense of the litigation over his candidate statement in the voter's pamphlet because he had a "pressing immediate need" to have the statement in the pamphlet and an "intense personal interest[]" in defending the accuracy of statement. (*Id.* at pp. 128-129.)

In *Punsly, supra,* 105 Cal.App.4th at pp. 115-118, a mother was denied fees incurred in a visitation dispute with her daughter's paternal grandparents as the mother's strong parental interest in pursuing what she saw as her child's best interest was paramount in her pursuing the litigation.

In this case the Farm Bureau and County obtained no monetary recovery in the litigation (*Satrap, supra,* 42 Cal.App.4th at pp. 78-79) nor did they reap any direct financial reward as a result of being successful in the litigation. (*Beach Colony II, supra,* 166 Cal.App.3d at p. 114; *Planned Parenthood v. City of Santa Maria, supra,* 16 Cal.App.4th at p. 691.) The Farm Bureau and the County were not protecting solely local environmental values, which local values "bulked large enough to warrant the cost" of the litigation. (*County of Inyo, supra,* 78 Cal.App.3d at p. 90; *City of Hawaiian Gardens v. City of Long Beach, supra,* 61 Cal.App.4th at p. 1113.) The situation in this case is not equivalent to a next-door neighbor's defense of his own immediate, significant, and concrete aesthetic interests. (*Williams, supra,* 74 Cal.App.4th

at pp. 970-971; *Christward Ministry, supra,* 13 Cal.App.4th at pp. 49-50.) Nor is it equivalent to the specific, immediate concrete personal concerns present in *Hammond, supra,* 99 Cal.App.4th at pp. 128-128, and *Punsly, supra,* 105 Cal.App.4th at pp. 115-118. The objectives of the Farm Bureau and the County in this litigation went "beyond--'transcend[ed]'--those things that concretely, specifically and significantly affect[ed] the[m] . . . to affect the broader world or 'general public' as the statute puts it." (*Hammond, supra,* at p. 127.)

The trial court did not abuse its discretion in awarding fees to the Farm Bureau and the County pursuant to section 1021.5.

DISPOSITION

The judgment granting a peremptory writ of mandate and the orders granting attorney fees are affirmed. Respondents are awarded their costs on appeal. (Cal. Rules of Court, rule 27(a).)

CANTIL-SAKAUYE, J.

We concur:

SCOTLAND, P.J.

HULL, J.