

IN THE SUPREME COURT OF CALIFORNIA

MUZZY RANCH CO.,)	
)	
Plaintiff and Appellant,)	
)	S131484
v.)	
)	Ct.App. 1/5 A104955
SOLANO COUNTY AIRPORT LAND)	
USE COMMISSION,)	
)	Solano County
Defendant and Respondent.)	Super. Ct. No. FCS020127
_____)	

MODIFICATION OF OPINION

THE COURT:

The opinion herein, appearing at 41 Cal.4th 372, is modified as follows:

1. The last sentence of the text paragraph straddling pages 385 and 386 of 41 Cal.4th is modified to read: The exemption can be relied on only if a factual evaluation of the agency’s proposed activity reveals that it applies. (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 114.)

2. The second full text paragraph on page 386 of 41 Cal.4th is modified to read: In any event, in connection with its argument its adoption of the TALUP is exempt from CEQA, the Commission acknowledges that whether a particular activity qualifies for the common sense exemption presents an issue of fact, and that the agency invoking the exemption has the burden of demonstrating it applies. (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 114.) An

agency's duty to provide such factual support "is all the more important where the record shows, as it does here, that opponents of the project have raised arguments regarding possible significant environmental impacts." (*Id.* at p. 117.)

In the first text paragraph on page 387 of 41 Cal.4th, the second, quoted, sentence is modified to read: "[T]he agency's exemption determination must [rely on] evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*Davidon Homes v. City of San Jose, supra*, 54 Cal.App.4th at p. 117.)

In the first text paragraph on page 387 of 41 Cal.4th, the final sentence is modified to read: Since legitimate questions were raised about the possible environmental impacts of the Commission's adopting the TALUP, the Commission had the burden to elucidate the facts that justified its invocation of CEQA's common sense exemption. (*Davidon Homes*, at p. 117.)

The first complete text paragraph on page 388 of 41 Cal.4th, the third sentence is modified to read: Evidence appropriate to the CEQA stage in issue is all that is required.

The modification does not affect the judgment.