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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA**

HON. BENJAMIN L HANNA

Dept. 63 / acm

23CV-0203713

ANDERSON/MILLVILLE RESIDENTS

VS.

COUNTY OF SHASTA, ET AL.

**NATURE OF PROCEEDINGS: RULING ON VERIFIED PETITION FOR WRIT OF
MANDATE**

In this case, Petitioner, Anderson/Millville Residents ("Petitioner") is petitioning the Court for a writ of administrative mandate directing Respondents County of Shasta and the Shasta County Board of Supervisors ("Respondents") to vacate and set aside their approval of the Initial Study/Mitigated Negative Declaration ("IS/MND") for the subject project. Petitioner also requests that the Court set aside various county ordinances and resolutions related to the approval of the project.

Petitioners also request that the Court order preparation of an Environmental Impact Report ("EIR") rather than the currently existing IS/MND.

Petitioner alleges that it is entitled to the requested relief because Respondents' actions were taken in violation of the California Environmental Quality Act ("CEQA") as codified in section 21000 *et seq* of the California Public Resources Code.

Petitioner further alleges that this Court has jurisdiction over the allegations set forth in the petition pursuant to section 1094.5 of the California Code of Civil Procedure and section 21168 of the California Public Resources Code. The Court finds, based upon the nature of the proceedings and findings at issue in this case, that review of Respondents' decision under these sections is appropriate and will apply the legal standards applicable to matters of administrative mandamus.

Under section 21168, this Court "shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in light of the whole record." (Cal. Pub. Res. Code § 21168)¹

¹ The record in this case consists of an approximately 6500-page administrative record. This record was lodged with the Court in both physical and electronic formats. In this ruling, references to the administrative record will be designated by "AR" followed by the page number(s) to be cited.

For the reasons set forth below, a writ of mandate shall issue, as the actions of Respondents in issuing the IS/MND violated CEQA's requirements that an EIR be prepared when there exists substantial evidence supporting a fair argument that the project may have potentially significant environmental impacts.

I. Factual Background and Procedural History

The project at issue in this case is commonly referred to as the High Plains Shooting Sports Center. The proposed project consists of an approximately 151.78-acre project site located at the end of Leopard Drive, approximately a half mile from Dersch Road in the Millville area of unincorporated Shasta County. The applicant for the project is Patrick Jones, Real Party in Interest ("RPI") in this case.²

The project is a proposed outdoor shooting range. It would include ranges for handguns and rifles. It would also include various structures and improvements to support the range's use. The range would be open to the public during the week and would also periodically host intermittent events with up to several hundred people in attendance.

In March of 2023, the County released the IS/MND. A revised IS/MND was released in April of 2023. On April 7, 2023, the Shasta County Planning Commission held a public hearing on the proposed project and the associated IS/MND. The Planning Commission approved Resolution 2023-010 in which they recommended that the Shasta County Board of Supervisors approve Zone Amendment 13-007.

In May of 2023, the Shasta County Board of Supervisors held a public hearing on the project. Following significant public input, the Board took no action, instead choosing to direct County staff to address the public comments and correspondence.

A second revised IS/MND was released by the County on October 17, 2023. The Board of Supervisors held a public hearing on the project and second revised IS/MND on October 24, 2023. Following the public hearing, the Board of Supervisors approved the second revised IS/MND, adopted the recommended findings in the planning commission's Resolution 2023-010, and enacted an ordinance (378-2074) changing the zoning of the project site to allow for development of the project.

Following the County's filing of the required notice of determination, Petitioner filed their verified petition for writ of mandate.

II. CEQA's Legal Framework

In enacting CEQA, "the Legislature sought to protect the environment by the establishment of administrative procedures drafted to 'ensure that the long-term protection of the environment shall be the guiding criterion in public opinions.'" (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74, quoting Cal. Pub. Res. Code § 21001.) CEQA requires a local agency to prepare

² While Shasta County and its Board of Supervisors are the nominal Respondents in this case based on the County's status as lead agency approving the IS/MND, RPI Jones took the active role in litigating the case in support of the County's determination.

an EIR for any project which may have a significant effect on the environment. (Cal. Pub. Res. Code § 21151; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 753.)

If a project is not exempt from CEQA and there is a reasonable possibility that the project may have a significant environmental impact, the agency must conduct an initial threshold study. (*Citizen Action to Serve All Students v. Thornley*, supra at 753.) Following this study, the agency may choose to adopt a negative declaration. “The decision to adopt a negative declaration and dispense with an EIR is essentially a determination that a project will have no meaningful environmental effect...this decision has a terminal effect on the environmental review process.” (*Id.* at 754.)

A mitigated negative declaration, as was issued here, is a type of negative declaration “prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Cal. Pub. Res. Code § 21064.5.)

For purposes of CEQA and as relevant to these proceedings, both a negative declaration and a mitigated negative declaration provide approval of a project short of a full EIR.

III. Standard of Review

Petitioner alleges that the County improperly approved the project with an IS/MND, rather than requiring the completion of a full EIR. Real Party in Interest contends that the IS/MND was appropriate and that an EIR was not required. Before the merits of these positions can be addressed, it is important to review the legal standard the Court must apply in reaching its decision.

In an action challenging an agency’s decision under CEQA, the trial court reviews the agency decision for a prejudicial abuse of discretion. (Cal. Pub. Res. Code § 21168; Cal. Code of Civ. Proc. §1094.5.) “Abuse of discretion is established if the respondent has not proceeded in a manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Cal. Code of Civ. Proc. §1094.5(b).)

A. The Fair Argument Standard

As a matter of law, preparation of an EIR is required “whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact.” (*Friends of the San Mateo College Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 957.) “May” simply means reasonable possibility. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.)

Stated another way, under this standard, this Court, in reviewing the County’s decision not to prepare an EIR must set aside the decision if the administrative record contains substantial

evidence that a proposed project might have a significant environmental impact. (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

This test, which was repeatedly cited by both parties in their briefing, is what is commonly referred to as the fair argument standard. It is derived from section 21151 of the Public Resources Code and has been the standard since the implementation of CEQA in the early 1970's. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.)

The fair argument standard has a "low threshold", so an agency should not give an unreasonable definition to substantial evidence, as CEQA does not impose such a monumental burden on a party seeking to raise a fair argument. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 151.) This low threshold "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307,1316.)

Application of the fair argument standard is a question of law, rather than fact. The Court must therefore independently "review the record and determine whether there is substantial evidence in support of a fair argument [the proposed project] may have a significant environmental impact, while giving [the lead agency] the benefit of the doubt on any legitimate, disputed issues of credibility." (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1603.)

B. Substantial Evidence

CEQA itself helpfully assists our inquiry by providing a definition of what "substantial evidence" is and what it is not. It "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Cal. Pub. Res. Code § 21080(e)(1).) However, it is not "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Cal. Pub. Res. Code § 21080(e)(2).)

The CEQA Guidelines amplify this statutory definition by adding that substantial evidence includes "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions may also be reached." (14 CCR §15384.)

Substantial evidence can include observations of residents of an impacted area, even if they are not experts, provided their opinions are based upon relevant personal observations. (*Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151,173.)

Reports and opinions of experts are often relied upon by an agency making a determination whether an EIR is necessary. Similarly, opponents of a project may offer their own opinions from experts. If there is a conflict between experts, such conflict should normally trigger preparation of an EIR. (14 CCR §15064(g); See also *Sierra Club v. California Department of Forestry and Fire Protection* (2007) 150 Cal.App.4th 370- holding that opinion of qualified expert was sufficient to require an EIR.)

C. Significant Environmental Impact

For purposes of CEQA, the “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.” (Cal. Pub. Res. Code § 21060.5.) An effect is significant if it creates a substantial or potentially substantial adverse change in the physical conditions in the area of the project. (Cal. Pub. Res. Code § 21068.) Significance is not measured by the size of the project alone, “but is instead measured in light of the context where it occurs.” (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1147.)

IV. Did the County’s Approval of the Mitigated Negative Declaration Violate CEQA’s Requirements for Preparation of an Environmental Impact Report?

In its briefing and arguments, Petitioner has asserted that the County violated CEQA by approving the project without requiring preparation of an EIR. Petitioner bases its argument on its assertion that the administrative record contains substantial evidence supporting a fair argument that the project may have potentially significant environmental impacts. In making these arguments, Petitioner repeatedly cites to specific locations within the administrative record to support its position.

RPI Jones, in supporting the County’s decision, primarily argues the overall environmental benefits of the project and cites to the work that has been (and will be) done to mitigate environmental impacts. In making his arguments, RPI frequently fails to cite to specific portions of the administrative record. As Petitioner points out in its reply brief, “when a party does not support its position with citation to the record, we may treat the issue as waived or meritless and pass on it without further consideration.” (*Redevelopment Agency of City of Chula Vista v. Rados Bros.* (2001) 95 Cal.App.4th 309, 317, fn 6.) “A party on appeal has the duty to support the arguments in the briefs by appropriate reference to the record, which includes providing exact page citations. We have no duty to search the record for evidence and may disregard any factual contention not supported by proper citations to the record.” (*Air Couriers Internat. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 928.)

The strong public policy favoring decisions of cases on their merits leads this Court to make every attempt to decide the issues on the merits. However, RPI’s failure to cite to the administrative record undoubtedly undercuts the strength of his position.

Regardless of what is considered from the record, RPI’s legal arguments miss the target. The issue is not whether the project is good or bad for the environment. Nor is the Court called upon here to make a decision as to which expert opinion is correct. As set forth above, the analysis here is a purely legal one, based on an objective evaluation of the administrative record.

The Court, having reviewed the entirety of the administrative record, is left with no other logical conclusion than to find that record contains substantial evidence from which it can be fairly argued that the proposed project might have a significant environmental impact. Petitioner cited to several specific areas of environmental impact which it argued that the County failed to take into account in issuing the IS/MND. Each of these areas will be addressed below.

A. Environmental Impacts to Biological Resources

1. Biological Review of Project Site and Surrounding Area

The administrative record contained a letter from Shasta Environmental Alliance in which they attacked the sufficiency of the plant surveys of the site. (AR 3791-3793.) This letter provided evidence of deficiencies with the timing, methodology, location, and process in which the plant survey took place. As Petitioner pointed out, the processes used ran afoul of the protocols set forth by the California Department of Fish and Wildlife ("CDFW"). (AR 4049-4055.)

In this category, the Court finds that substantial evidence within the administrative record supports a fair argument that the IS/MND failed to provide meaningful review of the impacts of the project on the environment.

2. Impact on Nesting Birds

The administrative record contains ample information addressing the potential negative impacts of the project on various bird species.

Citing the elevated noise levels to be generated by the project, CDFW "strongly encourage[d]" a nesting bird assessment. (AR 3958.) Such an assessment was not done.

There was evidence provided in the administrative record by the Battle Creek Alliance Defiance Canyon Raptor Rescue that certain raptor species were present in the vicinity of the project. (AR 3628-3633.) Biological resources consultant Scott Cashen expressed the opinion that the reports of Wildland Resource Managers (or "WRM", the consultant hired by Real Party in Interest) failed to take into account the presence of these bird species and the impact that the noise from the shooting range would have on their nesting and breeding behavior.³

Mr. Cashen's opinions were based on his own expertise, as well as relevant reports and studies cited in his written opinion. Under the law cited above, such a dispute among qualified experts should trigger the preparation of an EIR.

3. Special Status and Fully Protected Species

Mr. Cashen's letter also takes issue with WRM's assertion that certain bird species (short-eared owl, northern harrier, burrowing owl, and grasshopper sparrow) would not be impacted by the project. Cashen points out contrary evidence of sightings of burrowing owls in the area. He also cites a map published by CDFW showing the grasshopper sparrow ranging into the territory covered by the project.

³ Mr. Cashen's letter and attachments containing his opinions on many of the issues to be discussed here is found at AR 3644-3671. His curriculum vitae, which establishes that he is qualified to render the opinions he offers, is found at AR 4060-4067. The supporting literature he cites as support for his conclusions is also included in the record and can be found at AR 4294-5256.

The IS/MND's failure to fully evaluate the impact of the project on these species, when confronted with Mr. Cashen's contrary comments meets the fair argument standard.

4. Noise Impacts on Wildlife

By its very nature, the project will result in increased noise in the area. As part of the review process, the project applicant commissioned a noise technical report. (AR 5462-5486.) That report was in turn relied upon by WRM in rendering the opinion that mitigation measures in the forms of earthen berms would be sufficient to mitigate the impacts of noise on wildlife. (AR 5434-5439). The County, in adopting the IS/MND, found such measures to be sufficient.

In contrast, Mr. Cashen's comments detail several reasons why, notwithstanding the mitigation measures, he believes that noise from the project will adversely impact wildlife. Among the factors he cites are the noise study's failure to specifically address the potential noise impacts on nesting birds and the lack of support for the assertion that the existence of the berms will sufficiently mitigate noise to levels tolerable to wildlife. Mr. Cashen's opinion is supported scientific literature cited by him and made part of the administrative record.

This conflict is sufficient to meet the fair argument standard.

5. Impacts to Wetlands

In approving the IS/MND, the County asserted that the project would have a "less than significant impact" on identified wetlands. (AR 76.) This assertion was based upon the belief that "the project footprint has been designed to avoid alteration of every identified wetland area. (AR 79.)

Not surprisingly, Mr. Cashen disputes the County's position. Based upon his review of the site plan, he identified seven areas of identified wetlands that would be directly impacted by the project. Mr. Cashen also argued that the alteration of the topography, construction of buildings and other features, removal of vegetation, and the installation of storm drains would all cause indirect impacts to the areas of wetlands.

This disagreement between experts satisfies the fair argument standard.

6. Impact to Vernal Pool Crustaceans

According to the biological review upon which the IS/MND was based, tadpole and fairy shrimp species "are expected to be present on the project area." (AR 5662.) The review recommends that the vernal pools and swales that are the habitat for these animals be avoided in the project design (AR 5662.)

Despite this recommended avoidance, Mr. Cashen points out that proposed firing positions for the gun range would potentially impact a large vernal swale on the property. Yet the IS/MND provides no analysis of potential impacts to the vernal pool fairy shrimp and vernal pool tadpole shrimp.

This unmitigated potential impact supports a fair argument that the project may significantly impact these vernal pool crustaceans.

7. Impacts to Western Spadefoot Toad

The IS/MND recognizes that the project site includes habitat for the western spadefoot toad. It ultimately determines that the impacts to the toad would be less than significant due to the avoidance of areas in which the toad would be likely to be found. (AR 78.)

However, as pointed out by Mr. Cashen, the western spadefoot toad may be found in terrestrial burrows quite a distance from the water sources in which it breeds. The buffers set forth in the IS/MND would therefore be insufficient to prevent potentially significant impacts to this amphibian.

The record contains substantial evidence that the project may have significant environmental impact to the western spadefoot toad.

8. Impacts to Bald Eagles and Golden Eagles

The IS/MND found no animal species of concern on or near the project site. However, according to other information in the administrative record, the manner in which WRM conducted the survey for bald and golden eagle nests was not conducted according to the protocol set forth by the U.S. Fish and Wildlife Service. (AR 3652.) WRM's opinion was based on a single survey of insufficient size at the wrong time of year. (AR 3652.)

If appropriate protocol was not followed, it necessarily follows that the resulting assertion that the project would have less-than-significant impacts to eagles is not supported by substantial evidence. This is particularly true given reported sightings of eagles in the area.

9. Impacts to Oak Woodlands

The project contemplates the removal of seven oak trees on the property in order to accommodate necessary construction. The IS/MND found the tree removal to create a less-than-significant impact.

Petitioner argues that the record shows sufficient evidence to meet the fair argument standard that the tree removal would create a significant environmental impact.

The Court disagrees with Petitioner's argument on this issue. There is not sufficient evidence in the administrative record to meet the fair argument standard. The minimal nature of the tree removal supports an MND finding.

10. Impacts to Grassland Habitat

The IS/MND states that the impact of the project on grassland habitat would be minimal, given the relatively small percentage of land impacted by construction. (AR 77.)

Mr. Cashen points out that the IS/MND calculation is incorrect, given that only about 133 of the 151 acres on the parcel are grassland habitat. He also points out that additional areas of grassland will necessarily be removed as structures and other improvements are built.

Further, the mere fact that grasslands will not be physically disturbed does not mean that there will be no impact on wildlife. This project contemplates significant human activity involving potentially hundreds of individuals on the property engaged in the use of firearms. It stands to reason that such levels of activity increased beyond what currently exists will result in what Petitioner categorizes as "functional habitat loss."

The information contained in the administrative record supports a fair argument that the project may have a significant impact to the grassland habitat.

11. Impacts to Movement Corridors and Nursery Sites

The IS/MND concluded that the project would not interfere with wildlife corridors or nursery sites because there are no such sites on or near the property. (AR 79.) However, this statement is made without any factual support, as this concern was not addressed in the biological review conducted by WRM. It is also noteworthy that RPI did not cite to any specific portion of the record to refute Petitioner's argument on this issue.

In opposition to the position set forth in the IS/MND, Mr. Cashen opines that the project could significantly impact animal movement and nursery sites. This is sufficient to support a fair argument of a significant environmental impact.

12. Sufficiency of Mitigation Measures for Biological Resources

a. Mitigation Measure IV.a.1

This mitigation measure purports to minimize impacts to nesting birds by restricting vegetation removal and ground disturbance to certain times of the year and by requiring biological surveys and other protections during the nesting season.

Petitioner argues from the administrative record that these measures do not do enough to protect species from "functional" habitat loss due to increased human activity. This is particularly so according to petitioner in the case of the grasshopper sparrow, as the project site is on the edge of its geographic range. These comments, based on scientific literature, support a fair argument that, even with the mitigation measure, there could be a significant environmental impact to nesting birds in the area.

b. Mitigation Measure IV.a.2b

This mitigation measure, related to tree removal, provides for a detailed process to protect bats. If tree removal is to take place during the maternity season, it mandates that a multi-day process to ensure that young bats are not impacted.

Petitioner points to evidence within the administrative record that suggests that the proposed mitigation measure is insufficient to appropriately protect roosting and young bats. These comments, based on scientific literature, support a fair argument that, even with the mitigation measure, there could be a significant environmental impact on biological resources.

B. Impacts to Water Quality

The IS/MND mandates that the project applicant prepare and submit a Water Quality Control Plan in the future. (AR 87-88.) The IS/MND sets forth the various requirements of the plan, none of which were required to be done prior to the approval of the IS/MND.

This lack of certainty as to how mitigation measures will be implemented is problematic. "Formulation of mitigation measures shall not be deferred until some future time." (14 CCR §15126.4(a)(1)(B).)

Further, as pointed out by Petitioner, the mitigation measure does not identify the criteria by which the County will determine whether or not the project has a significant impact on water quality.

In issuing an IS/MND, the County determined that the project will not have significant environmental impacts. However, without adequate data, benchmarks, or protocol for water quality testing it simply cannot be said that impacts will not be significant. It is simply an unknown factor not appropriately addressed by the IS/MND.

C. Noise Impacts

The IS/MND relied on a noise technical report (AR 5462-5486) to reach the conclusion that the project would result in less-than-significant impacts on the environment with certain mitigation measures employed. (AR 89-91.) These mitigation measures involve the installation of sound attenuating barriers.

However, Petitioner argues that the report on which the IS/MND is flawed in its analysis and conclusions. In response, Petitioner cites to a report by Pablo Daroux, an expert in acoustics and vibrations. (AR 4058, AR 3639-3643.) Mr. Daroux reviews the original noise technical report and opines that it is lacking in several aspects. According to him, among other issues, the report uses outdated references, ignores atmospheric effects on sound at the site and underreports the frequency of likely noise from gunfire.

The Court is therefore left with differing opinions as to whether this project will result in significant noise impacts. This disagreement among experts is precisely the type of evidence that meets the fair argument standard that mandates preparation of an EIR.

V. Conclusion

In making this ruling, this Court is not reaching a decision on the ultimate environmental merits of the project. Nor is the Court making a final determination as to whether the project should or should not be approved. By granting this petition, the Court is simply ruling, based on the law,

that the County should have ordered a full EIR before approving the project. Their failure to do so deprived Petitioner and other community members of their right to a full hearing on the environmental merits of the project.

As explained above, CEQA mandates an EIR be prepared whenever a project may have a significant impact on the environment. The administrative record here amply illustrates that this project may have such a significant impact. Based on the evidence, a mitigated negative declaration was not warranted. Accordingly, it is only appropriate that this Court set aside the IS/MND and order preparation of a full EIR.

VI. Ruling and Further Orders

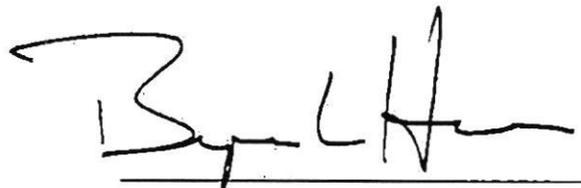
For the reasons set forth above, Petitioner's petition for writ of administrative mandate is *granted*. Respondent County is ordered to take the following actions:

1. Vacate and set aside approval of the Initial Study/Mitigated Negative Declaration
2. Vacate and set aside approval and/or adoption of Shasta County Planning Commission Resolution 2023-010.
3. Vacate and set aside the Shasta County Board of Supervisors' enactment of Ordinance 378-024.
4. Withdraw the Notice of Determination for the subject project.
5. Prepare, circulate, and consider a legally adequate environmental impact report for the subject project.
6. Suspend approval of any and all construction of the subject project until compliance with CEQA is achieved.
7. Suspend all activity that could result in any change to the physical environment regarding the subject project until compliance with CEQA is achieved.

In its prayer for relief, Petitioner also requested that it be awarded costs and attorneys' fees. The Court's ruling on those requests is deferred for the filing of an appropriately noticed motion, memorandum of costs, and any opposition to those documents.

IT IS SO ORDERED.

Dated: March 10, 2025



BENJAMIN L HANNA
Judge of the Superior Court

RULING ON VERIFIED PETITION FOR WRIT OF MANDATE

CERTIFICATE OF MAILING

State of California, County of Shasta

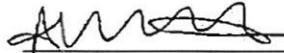
I, the undersigned, certify under penalty of perjury under the laws of the State of California that I am a deputy clerk of the above-entitled court and not a party to the within action; that I mailed a true and correct copy of the above to each person listed below, by depositing same in the United States Post Office in Redding, California, enclosed in sealed envelopes with postage prepaid.

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Dated: March 11, 2025



Deputy Clerk