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[Fee exempt Pursuant to
Govt. Code § 6103]

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO - CENTRAL

12 SAVE THE FIELD, a California nonprofit
13 public benefit corporation,

14 Petitioner,

15 v.

16 DEL MAR UNION SCHOOL DISTRICT,
and DOES 1 through 10, inclusive,

17 Respondent.
18
19
20
21

Case No. 37-2020-00020207-CU-TT-
CTL

**RESPONDENT'S BRIEF IN OPPOSITION
TO SAVE THE FIELD'S PETITION FOR
WRIT OF MANDATE**

Judge: Hon. Joel R. Wohlfeil
Date: November 18, 2020
Time: 1:30 pm
Dept.: C-73

Complaint Filed: June 12, 2020
Trial Date: November 18, 2020

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Respondent DEL MAR UNION SCHOOL DISTRICT (“District”) respectfully submits this Brief in opposition to Petitioner SAVE THE FIELD’s (“Petitioner”) Opening Brief (“Opening Brief”) under the California Environmental Quality Act (“CEQA”)¹.

I. Introduction

The District constructed its Del Mar Heights Elementary School (“School”) in 1959 and has been operating the School for the past 60 years at its current location, on Boquita Drive in the City of San Diego (“City”). The School will be demolished and rebuilt on the same site (“Project”). The Project will not increase the capacity of the School but will correct the current traffic, parking and safety concerns. To meet the educational and safety needs of the School, the School’s field area will be reconstructed, although recreational amenities will continue to be available.

Petitioner alleges violations of CEQA because the District adopted a Mitigated Negative Declaration (“MND”) for the Project. As will be shown, the Administrative Record does not contain substantial evidence that the Project may have a significant impact on the environment.

II. Facts

A. Events leading up to the District’s adoption of the MND

The District operates eight elementary schools. (Vol. I AR00037.) The School is the District’s oldest school. (Administrative Record² Vol. I AR00176-AR00177.) Recognizing that the School and other facilities desperately need reconstruction, the District’s Governing Board of Trustees (“Board”) approved a Facilities Master Plan (“FMP”) on or about July 25, 2018. (Vol. I AR00155; Vol. VII, AR04009.) The FMP proposes a complete rebuilding of the School “due to the age of the existing facilities, cost for modernization, inefficient classroom design, and poor site layout related to safety and transportation.” (Vol. I, AR00176.) The FMP recognizes that the School has an undersized parking lot and utilities/plumbing that need complete replacement. (Vol. I AR00177.) While Petitioner claims that the Project was “pitched” as a “rehabilitation project,”

¹ CEQA is governed by PRC section 21000 *et seq.*, and regulations in Title 14, Div. 6, Ch. 3 (commencing with section 15000) of the California Code of Regulations (“Guidelines”).

² The Administrative Record will be hereafter referenced only by volume and page(s).

(Opening Brief, p. 8) the FMP provides for “a complete campus tear down and construction of a new 500-student campus site.” (Vol. I AR00177.)

On November 6, 2018, voters residing within the District’s boundaries approved Measure MM, which authorized the District to issue up to \$186,000,000 in bonds (“Measure MM”). (Vol. IX AR04818-AR04833.) Measure MM describes and highlights that the School construction will “[r]edesign and reconstruct the campus” (Vol. IX AR04828), not “rehabilitate” the School.

Petitioner incorrectly states that the District rushed its review of the Project. (Opening Brief p. 8.) Starting April 1, 2019, the District and its architect engaged in extensive community outreach, making numerous presentations regarding the possible plans for the Project. (Vol. VII AR04047-AR04618.) The District and its architect held approximately 22 meetings or presentations regarding the Project until the District approved the MND. (*Ibid.*) These presentations involved detailed discussions about improving traffic circulation and parking (Vol. VII AR04064, AR04091-AR04100, AR04128-AR04129), design aesthetics (Vol. VII AR04065, AR04117-AR04119), and preserving views of the Torrey Pines State Reserve Extension Area (“Reserve”) and the ocean (Vol. VII AR04069, AR04092.) These meetings resulted in the District considering numerous site plans and options to address the safety and educational needs for the School and accommodating community issues. (Vol. VII AR04232-AR04281, AR04282-AR04313, AR04503-AR04528, AR04530-AR04547, AR04548-AR04572.)

The District’s public outreach program culminated in a “Site Plan” that became the Project analyzed in the MND. (Vol. I AR00043.) On February 20, 2020, the District published a Notice of Intent to Adopt a Mitigated Negative Declaration along with the MND. (Vol. I AR00010-AR00011.) The public comment period was scheduled to end on March 23, 2020, but was extended to March 30, 2020. (Vol. I AR00012.)

On April 14, 2020, the District updated the Board on the MND and the public comment process. (Vol. I AR04586.) This presentation demonstrated the community’s involvement and how the District endeavored to design for educational needs, safety issues, traffic, and green environmental standards. (Vol. I AR04586-AR04600.) On May 8, 2020, the District published its Response to Comments on the MND (“Response to Comments”). (Vol. VI. AR03420-AR03953.)

1 On May 12, 2020, the District made a presentation to the Board regarding the MND. (Vol.
2 I AR04601.) The District's environmental consultant thoroughly discussed the CEQA process, the
3 comments received, and the responses to the comments. (Vol. I AR04601-AR04618.) Thereafter,
4 the District's Board adopted the MND and approved the Project. (Vol. I AR00002-AR00009.)

5 **B. The existing School**

6 The existing School can be seen at Vol. I AR00029. The Project does not involve
7 undisturbed land that will be altered by new development. The current School consists of 52,406
8 square feet of buildings on 10.85 acres. (Vol. I AR00023, AR00176-AR00177.) The School
9 contains 22 permanent classrooms and 13 relocatable classrooms, all of which are single-story,
10 with a total student capacity of 531 students³. (*Ibid.*) The School parking lot contains only 48
11 parking stalls. (*Ibid.*) The School is surrounded by Boquita Drive to the north and Mira Montana
12 Drive to the east ("Mira Montana") (*Ibid.*; Vol. I. AR00029.). Mira Montana sits approximately
13 10-25 feet higher in elevation than the School depending on where one stands along Mira
14 Montana. (Vol. I AR00035, AR00109; Vol. VII AR04070, AR04291.) The south and west of the
15 School is bordered by the Reserve. (Vol. I AR00023, AR00027, AR00029.)

16 The School includes a 317-foot loading area that holds about 15 cars. (Vol. I AR00024.)
17 Due to limited drop-off/pick-up zones and insufficient onsite parking, a hazard exists in the
18 surrounding neighborhood. (*Ibid.*) The traffic restricts emergency vehicle access to the School, has
19 resulted in cars driving on the wrong side of the road, and makes walking/biking unsafe. (*Ibid.*)
20 The School contains two stormwater outfalls that have failed. (Vol. I AR00024.) The outfalls flow
21 to the Reserve and, until repaired, cause deterioration, erosion, and loss of vegetation. (*Ibid.*)

22 **C. The proposed Project**

23 The Site Plan depicts the Project (Vol. 1 AR00043) and the full Project description is at
24 Vol. 1 AR00038-AR00041. The Project consists of demolishing and rebuilding the School. (Vol. I
25 AR00038.) The Project will eliminate one classroom, reducing student capacity by approximately
26

27 ³ During the 2018-2019 school year, the actual enrollment was 495 students. (Vol. I AR00037.) The 2019-2020 actual
28 enrollment was 459 students. (*Ibid.*) Over the past 10 years, the average enrollment was 460 students. (*Ibid.*)

24 students. (*Ibid.*) All buildings will remain one-story, and will contain low-slope roofs to preserve views. (Vol. I AR00038-AR00039.) Classrooms will move away from the homes to the north, away from the Reserve bluff on the west, and will be constructed along the east and south portions of the School. (Vol. I AR00039, AR00043.) The proposed buildings on the west will only include collaborative learning areas and a multi-use room. (*Ibid.*)

The Project will add a new 20-foot fire lane that runs along the Reserve on the west side of the School. (Vol. I AR00043, AR00114; Vol. VI AR03491.) Parking will be in two locations and expanded from 48 to 80 spaces. (Vol. I AR00040; Vol. 1 AR00043.) The parking lot will contain a lane for loading/unloading of children, allowing approximately 41 cars to enter the campus (an increase of 26 cars from existing conditions). (*Ibid.*) There will also be a lane allowing cars to circle and exit the School. (*Ibid.*) This design will reduce surrounding traffic. (*Ibid.*)

The Project will repair the damaged stormwater outfalls, backfill the erosion gullies to their original grade, and replant native vegetation. (Vol. I AR00039.) The outfalls will also be improved to avoid future erosion and add stability. (*Ibid.*) Surface runoff from the Project will be treated by bioswales to avoid untreated stormwater from draining into the Reserve. (*Ibid.*)

The multi-use field will be reconfigured, but remains in the western portion of the campus. Although one ballfield with dirt infields is being relocated to Torrey Hills School, the new flat grass field still has backstops and space for two smaller fields used by younger teams and is available for soccer. (Vol. I AR00041.)

III. Standard of Review

Petitioner must demonstrate by citation to the record whether it can be “fairly argued on the basis of substantial evidence that the [P]roject may have [a] significant environmental impact.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75 (“*No Oil*”); *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1348–1349 (“*Leonoff*”).) Petitioner points out that the “fair argument” standard poses a low threshold. (Opening Brief p. 11.) While the District acknowledges the standard, Petitioner must still show substantial evidence in the record that the Project may have a significant environmental impact. As will be shown herein, Petitioner has not met its burden. Requiring the District to prepare an Environmental Impact Report (“EIR”)

1 might be the easier ruling for this Court, but it would not be the correct ruling.

2 Petitioner appears to claim that a “fair argument” exists any time an expert or layperson
3 challenges an MND. (Opening Brief pp. 13, 19.) If that argument is accepted, the use of MNDs
4 would be destroyed and the provisions of the Public Resources Code (“PRC”) authorizing MNDs
5 would be meaningless. The analysis is not whether “any argument can be made that a project
6 might have a significant environmental impact, but rather whether such an argument can fairly be
7 made.” (*Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1003.) The Court,
8 therefore, must determine whether the alleged “fair argument” is supported by “substantial
9 evidence” demonstrating a potential “significant environmental impact.”

10 A “significant effect on the environment” means “a substantial, or potentially substantial,
11 adverse change in the environment.” (PRC § 21068; Guidelines § 15382.) “Substantial evidence”
12 includes “fact[s], a reasonable assumption predicated upon fact, or expert opinion supported by
13 fact.” (PRC § 21080, subd. (e)(1); Guidelines § 15384.) “Substantial evidence” is not “argument,
14 speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous,
15 or evidence of social or economic impacts that do not contribute to, or are not caused by, physical
16 impacts on the environment.” (PRC §§ 21080, subd. (e)(2), 21082.2, subd. (c); Guidelines §
17 15384.)

18 Lead agencies have some discretion to determine whether particular evidence is
19 “substantial” and courts should not substitute their own credibility determinations for those of the
20 public agency. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1400 (“*Gentry*”).) The
21 Court must give the District the benefit of the doubt on any legitimate, disputed issue of
22 credibility. (*Ibid.*) It is important to note that “[a]n absence of evidence in the record on a
23 particular issue does not automatically invalidate a negative declaration. The lack of study is
24 hardly evidence that there *will* be a significant impact.” (*Id* at p. 1379 [internal quotations &
25 citations omitted; italics in the original].)

26 As shown below, Petitioner’s claims are not supported by substantial evidence in the
27 record, but are based on argument, speculation, and unsubstantiated opinion. The Project does not
28 create potentially adverse impacts on the environment but rather improves the existing

1 environmental conditions. Accordingly, Petitioner has not demonstrated a fair argument based on
2 substantial evidence that the Project may have a significant environmental impact.

3 **IV. Argument**

4 **A. The RK Engineering report is speculative and based on unsubstantiated**
5 **opinion.**

6 Petitioner's Opening Brief relies heavily on a report from RK Engineering Group, Inc.
7 ("RK Engineering"). (Opening Brief pp. 13-20; Vol. VI AR03704-AR03735.) As discussed
8 above, the fact that an expert has a contrary opinion about the Project does not *automatically*
9 invalidate the MND. The expert's opinion must be based on facts, not speculation or
10 unsubstantiated opinion, that demonstrate an adverse effect on the environment. (*Leonoff* at pp.
11 1348, 1352 [uncorroborated opinion is not substantial evidence; unsubstantiated opinions,
12 concerns, and suspicions, though sincere and deeply felt, are not substantial evidence;
13 environmental decisions should be based on facts, not feelings]; *Gentry* at p. 1422.)

14 RK Engineering reviewed the noise, transportation, and air quality sections of the MND.
15 (Vol. VI AR03727.) RK Engineering does not claim it conducted any independent analysis
16 regarding the Project or visited the School. (*Ibid.*) We address RK Engineering's comments
17 regarding noise, transportation, and air quality below, but it is significant to note that RK
18 Engineering does not provide any analysis based on independent fact or reasonable assumptions
19 supported by facts. Without a showing of adverse impact, RK Engineering merely claims that the
20 District should have performed additional studies that RK Engineering suggests should be
21 completed. (Vol. VI AR03728-AR03734.) (Compare with *Gentry* at p. 1379 [Lack of study is not
22 evidence of a significant impact].)

23 **B. The MND provides an adequate Project description and Petitioner is not**
24 **prejudiced by any failure to expressly list its location within the Coastal Zone.**

25 ***1. Project Description***

26 The Guidelines require an Initial Study to provide a description of the project along with
27 an identification of the environmental setting "in brief form." (Guidelines § 15063, subd. (d).)
28 "[A]n initial study is only a 'preliminary analysis' and the regulatory requirements regarding its

1 contents are not as demanding as those imposed upon an EIR. An initial study is neither intended
2 nor required to include the level of detail included in an EIR.” (*Lighthouse Field Beach Rescue v.*
3 *City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1193; internal citations omitted.)

4 The first 10 pages of the MND (excluding intentionally blank pages) comprehensively
5 details and depicts the Project’s scope, location, and environmental setting. (Vol. I AR00023-
6 AR00041.) The first sentence of the MND provides, “Del Mar Union School District (District)
7 proposes to redesign and reconstruct [the School], an elementary school located at 13555 Boquita
8 Drive in the Del Mar Heights subdivision of the Torrey Pines community, in the City, San Diego
9 County.” (Vol. I AR00023.) The MND’s introduction includes photographs and maps depicting
10 the location of the School. (Vol. I AR00025-AR00035.) The MND states the Project is
11 “approximately 0.80 mile[s] east of the Pacific Ocean.” (Vol. I AR00038.) Moreover, the MND
12 acknowledges its proximity to the coast in numerous other places (Vol. I AR00027, AR00055,
13 AR00056, AR00076, AR00077, AR00102, AR00203, AR00375, AR00418, AR00425.)

14 Petitioner claims that the MND fails to provide an adequate project description because the
15 MND did not explicitly identify the Project within the Coastal Overlay Zone. (Opening Brief p.
16 12.) The fact that the Project is within the Coastal Overlay Zone (“Coastal Zone”), however, is a
17 location identifier, rather than a required description of the Project. (See *El Dorado County*
18 *Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1598 “[A]
19 project description describes the project; it does not analyze the project’s environmental impacts”];
20 *Silveira v. Las Gallinas Valley Sanitary District* (1997) 54 Cal.App.4th 980, 991.) The only
21 relevance of identifying the Project as within the Coastal Zone is that a coastal development
22 permit (“CDP”) will need to be obtained from the City. Petitioner has not evidenced that the lack
23 of the specific designation in the Coastal Zone equates to an inadequate project description.

24 The Response to Comments states that the California Coastal Commission received a copy
25 of the MND, the District did not receive any comments from state agencies, and the City did not
26 provide any comments related to the Coastal Zone. (Vol. VI AR03528-AR03529, AR03736; Vol.
27 VIII AR04782-AR04789.) The Response to Comments acknowledges the Coastal Zone and
28 provides a detailed analysis why the Project is consistent with the existing conditions. (Vol. VI

AR03736; AR03772-AR03774.)

There is no allegation that the Project will adversely affect the environment by its location within the California Coastal Zone. Moreover, the District considered relevant provisions of the City's Municipal Code ("Municipal Code") and its applicability to the Project. Accordingly, the claim of an inadequate Project description should be disregarded.

2. Prejudice

Even if the Court finds the Project description should have expressly listed the Coastal Zone, California law requires Petitioner to show that there was prejudice. (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App. 281, 290.)

Prejudice is absent in this instant case because the MND reviewed and analyzed the requirements for the District to obtain a CDP under the Municipal Code, section 126.0708. (Vol. I AR00055-AR00067, AR00075-AR00083, AR00303-AR00333.) Of the findings necessary for the City to issue a CDP, only two findings are relevant to the Project: (1) the proposed development will enhance and protect public views to and along the ocean and other scenic coastal areas; and (2) the proposed development will not adversely affect environmentally sensitive lands. (*Ibid.*; Respondent's Request for Judicial Notice ("RJN") Ex. 2.)

Petitioner does not challenge impacts to public views. Regarding environmentally sensitive lands, the MND incorporates the report prepared by Alden Environmental, Inc. ("Alden Report"). (Vol. II AR00844-AR00872.) The Alden Report assessed the Project for features that may be considered by the California Coastal Commission. (Vol. II AR00846.) The Alden Report also discussed the Project's less than significant impacts on biological resources. (Vol. 1 AR00075-AR00083; Vol.1 AR00303-AR00333.)

Based on the foregoing, the Project description is comprehensive and specific. Even arguing that the MND should have used the words "Coastal Overlay Zone," prejudice does not exist as the MND provides analysis regarding coastal development under the Municipal Code.

C. Substantial evidence does not exist to support a fair argument that the Project may have a significant impact on the environment

Petitioner claims there is substantial evidence supporting a fair argument the Project may

1 have a significant impact on the environment from noise, transportation, air quality, wildfire and
2 emergency/fire access, land use and planning, recreation, and biological resources. A close review
3 of these issues demonstrates that Petitioner has not identified substantial evidence in the record to
4 support a fair argument of potentially significant environmental impacts.

5 ***1. Noise***

6 a. Sensitive Receptors

7 Relying solely on RK Engineering, Petitioner claims that the MND fails to adequately
8 analyze the impacts of construction noise on sensitive receptors adjacent to the Project. (Opening
9 Brief p. 14.) Petitioner claims the District's analysis is flawed because it measured construction
10 noise from a distance of 330 feet from residential homes and 350 feet from the Reserve, when the
11 residential homes are "located less than 25 feet from the [P]roject site to the north, and
12 construction activity is expected to occur less than 85 feet from the easterly residential homes and
13 less than 100 feet from the [Reserve]." (*Ibid.*) RK Engineering does not accurately describe the
14 noise analysis performed. Noise levels from Project-related construction activities were calculated
15 from the simultaneous use of all construction equipment at spatially averaged distances (i.e., from
16 the acoustical center of the general construction site) to the property line of the nearest residences
17 and the state park and trails. (Vol. I, AR00107.) While construction will move across the entire
18 School, "the area around the center of construction activities best represents the potential average
19 construction-related noise levels at the various sensitive receptors." (*Ibid.*)

20 The MND acknowledges that sensitive receptors around the Project are "single-family
21 homes to the north and east and the Torrey Pines Extension State Park and trails to the south and
22 west." (Vol. I AR00104-AR00105.) The MND acknowledges that construction noise will be
23 created by "equipment such as concrete saws, excavators, dozers, tractors, loaders, graders, cranes,
24 lifts, rollers, pavers, and air compressors." (Vol. I AR00106.) The MND acknowledges that the
25 heaviest equipment can have "maximum, short-duration noise levels of up to 85 dBA at 50 feet."
26 (Vol. I AR00107.) Yet, the MND also provides that construction will move around the site and,
27 therefore, noise levels will fluctuate with such movement while also being absorbed by ground
28 and shielding effects. (*Ibid.*) The MND took the conservative approach of calculating the average

1 noise level from all construction equipment running at the same time from the center of the Project
2 and did not take into consideration the elevation differences from the Project to the sensitive
3 receptors. (*Ibid.*; see also Response to Comments, Vol. VI AR03746-AR03747.)

4 In conducting a worst-case analysis, the MND found that no construction work, again
5 assuming that all equipment is running at the same time, would exceed the City's CEQA
6 Significance Determination Thresholds Guidelines ("City's CEQA Thresholds") of 75 dBA Leq
7 for construction noise. (Vol. I AR00108.) Accordingly, not only are RK Engineering's criticisms
8 not based on any independent factual information showing that the District is incorrect, but RK
9 Engineering's criticisms are not credible because they misrepresent the MND's actual analysis.
10 (*Gentry* at p. 1400.)

11 Petitioner/RK Engineering claims that the MND is defective because the District did not
12 conduct noise monitoring at the residential homes to the north and east of the Project and,
13 therefore, the District did not establish a baseline regarding ambient noise. (Opening Brief p. 14-
14 15.) Petitioner further claims that the MND relies on the City's CEQA Thresholds as the baseline,
15 which Petitioner claims is inappropriate. (*Ibid.*)

16 First, the construction noise modeling for the noise analysis includes a baseline. (Vol. I
17 AR00788-AR00794.) Second, if Petitioner's claims are accepted by the Court, it would mean a
18 lead agency must effectively undertake EIR-like studies for an Initial Study/MND. That is not
19 required under the law. (*Lighthouse* at p. 1193 [initial study does not require the level of detail
20 required in an EIR].) Third, Petitioner/RK Engineering misconstrues the Project and the MND's
21 analysis. The Project is replacing the existing School with a new school. (Vol. I AR00038.) The
22 Project will not increase the number of students from the baseline, but removes a classroom and
23 will decrease the maximum number of students the School can accommodate. (*Ibid.*) Based on
24 those facts, the District reasonably concluded there will be no significant impact regarding
25 ambient noise when considering the baseline. (Vol. I AR00109-AR00110.) The District does not
26 need to perform a detailed study when it is undisputed that the Project will maintain or decrease
27 the number of staff, students, and cars.

28 All of the criticisms are not based on any independent factual analysis by RK Engineering

1 and do not constitute substantial evidence. Petitioner/RK Engineering never offers any evidence to
2 counter the MND or that shows an adverse effect to the environment. (*Gentry* at p. 1410 [expert
3 disagreed with MND but offered no substantial contradictory evidence].) Petitioner fails to
4 acknowledge that this is a like-for-like development and Petitioner's claims amount to only
5 concerns or suspicions.

6 b. Construction-related noise

7 Petitioner claims the District cannot rely solely on the City's "noise ordinances" to
8 determine whether the Project will have potentially significant construction related impacts.
9 (Opening Brief p. 15.) To support its position, Petitioner cites *Keep Our Mountains Quiet v.*
10 *County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 ("*Keep Our Mountains Quiet*"). *Keep*
11 *Our Mountains Quiet* is distinguishable from the within facts. *Keep Our Mountains Quiet*
12 involved a use permit authorizing special events like weddings (a new activity) to be held on a
13 property. (*Id.* at p. 720.) The case analyzed the anticipated permanent noise from the events, not
14 temporary construction noise. (*Id.* at p. 733.) The county in that case, relying on the county's noise
15 ordinance and general plan thresholds, declared that the proposed events would not exceed the
16 thresholds. (*Id.* at p. 721-722.)

17 The District's MND does not rely solely on the City's noise ordinance and general plan.
18 The MND relies on the City's CEQA Thresholds, a document created to assist "project
19 proponents" and "the public in determining whether, based on substantial evidence, a project may
20 have a significant effect on the environment under Section 21082.2" of the PRC. (Vol. I AR
21 AR00108; Vol. IV AR02220.) Analytical tools like the City's CEQA Thresholds are expressly
22 encouraged by Guidelines section 15064.7, subdivision (b). Under the City's CEQA Thresholds,
23 the City set the significance standard for temporary construction noise by providing, "Temporary
24 construction noise which *exceeds* 75 dB (A) Leq at a sensitive receptor would be considered
25 significant. Construction noise levels measured at or beyond the property lines of any property
26 zoned residential shall not exceed an *average* sound level greater than 75-decibels (dB)...." (Vol.
27 IV AR02273; emphasis added.)

28 ///

1 c. Operational noise

2 Petitioner claims that the MND improperly concluded that traffic noise would not
3 significantly increase above existing conditions. (Opening Brief pp. 16-17.) Petitioner bases this
4 claim on the fact that the Project will expand the parking lot and add a drop-off/pick-up lane along
5 the east side of the Project. (*Ibid.*) Petitioner claims that the MND should have recognized that the
6 single-family residences on Mira Montana currently face a garden and grass field, and the Project
7 will expand the noise related impacts (idling cars, slamming car doors, car horns/beeps, and school
8 loud speakers). (*Ibid.*) Petitioner also relies on RK Engineering who expressed concerns that the
9 new parking lot “may” create noise based on “vehicle movement and parking lot activity,” and
10 “recommends” performing a study. (Vol. VI AR03730.) RK Engineering does not identify
11 potentially significant adverse impacts from these potential activities. RK Engineering is
12 suggesting potential events based on speculation and unsubstantiated opinion, not facts or
13 independent analysis. (*Leonoff* at pp. 1348, 1352; *Gentry* at p. 1422.)

14 The MND acknowledges the field and garden on the east side of the School and Mira
15 Montana’s view/proximity to the existing School. (Vol. I AR00023, AR00035.) With that in mind,
16 the MND analyzed operational traffic along the expanded parking lot and concluded the
17 following: (i) the Project is a like-for-like development that would not result in any student
18 population increase; (ii) the expanded parking lot will be at an elevation that is approximately 10
19 to 25 feet below Mira Montana; and (iii) the slope leading up to Mira Montana will act as a noise
20 barrier to car idling and other vehicle related noises. (Vol. I AR00109.) Based on the foregoing,
21 the MND concludes that any noise impacts from the expanded parking lot would be less than
22 significant. (*Ibid.*)

23 The Response to Comments also addresses RK Engineering’s suggestions by reiterating
24 that there is a 3-foot wall at the top of the slope and edge of Mira Montana that would provide
25 further shielding. (Vol. VI AR03747.) The Response to Comments continues by providing:

26 “The new drop-off/pick-up lane would deter vehicles from currently using Mira
27 Montana Drive as a drop off area, thereby moving this traffic further from
28 residences on Mira Montana Drive. The commenter states that slamming doors and
car horns would impact homes on Mira Montana Drive. Such occurrences are

1 relatively rare at an elementary school and, even during such a rare occurrence,
2 would be extremely short-lived and would not exceed the Municipal Code noise
standards, which are based on a one-hour Leq noise level.” (*Ibid.*)

3 While RK Engineering disagrees with the MND, it did not identify substantial evidence in
4 the record based on an adequate foundation of factual information that contradicts the MND.
5 (*Gentry* at pp. 1410, 1422.)

6 **2. Transportation**

7 Petitioner claims that a fair argument exists with regard to the MND’s transportation
8 analysis based on the Project’s proposed relocation of existing students at the School and the
9 Project’s expansion of the parking lot. (Opening Brief pp. 17-20.) As detailed below, Petitioner’s
10 claims involve nothing but suspicions, suggestions, unsubstantiated opinions, and/or lay opinions
11 that impermissibly opine about the technical consequences of the Project.

12 **a. Relocation of Students**

13 Petitioner claims that a “fair argument” exists based on the District’s plan to relocate
14 students currently attending the School to two other District schools, Del Mar Hills Academy
15 (“Hills Academy”) and Ocean Air School (“Ocean Air”). (Opening Brief pp. 17-18.) Again,
16 Petitioner disagrees with the MND, notes that RK Engineering has “several issues” regarding the
17 relocation of students, and suggests “further assessment” of the issue. (*Ibid.*)

18 Petitioner and RK Engineering claim that the MND’s analysis of three intersections
19 regarding the relocation of students was insufficient and the District should have assessed
20 additional intersections. (*Id.* p. 17-18.) By itself, however, the lack of study is not substantial
21 evidence. (*Gentry* at p. 1379.) Petitioner/RK Engineering further recommend that the MND
22 consider the use of additional busses to relocate students currently attending the School (Opening
23 Brief p. 17.)

24 The MND establishes that the Hills Academy is 0.8 miles away from the School, so
25 students attending the School already live in the neighborhood near the Hills Academy (Vol. I
26 AR00072, AR00119.) Accordingly, vehicle miles traveled will not increase. (*Ibid.*) For Ocean Air,
27 the District will bus students, which will minimize the number of parents driving to Ocean Air.
28 (*Ibid.*) The MND provides a detailed analysis regarding the student relocation that spans

1 approximately 16 pages. (Vol. I AR00120-AR00139.)

2 As stated above, Petitioner and RK Engineering take issue with the intersections discussed
3 in the MND, suggest analyzing two more intersections northwest and west of Ocean Air, and the
4 suggests the use of additional busses. (Vol. VI AR03731.) Petitioner and RK Engineering do not
5 explain why additional busses are needed.

6 The MND selected the intersections it studied based on criteria outlined in the City's
7 "Traffic Impact Study Manual." (Vol. VI AR03748- AR03749.) The City's "Traffic Impact Study
8 Manual" requires the inclusion of street segments that will experience an increase in a certain
9 volume/capacity ratio. (*Ibid.*) In analyzing the data, the MND determined that the increase in the
10 volume/capacity ratios on Carmel Mountain Road west of Canter Heights Drive and Carmel
11 Mountain Road east of Canter Heights Drive fall far below the thresholds in the City's "Traffic
12 Impact Study Manual." (*Ibid.*) Accordingly, a detailed traffic study including the additional
13 intersections was unnecessary. (*Ibid.*) Even assuming that 100% of the additional traffic to Ocean
14 Air was coming from the intersections suggested by RK Engineering, the increase in the
15 volume/capacity ratio would be well below the threshold. (*Ibid.*) Accordingly, RK Engineering's
16 suggestion for additional analysis is unsubstantiated.

17 Petitioner and RK Engineering further claim that the MND omitted certain highway
18 capacity manual worksheets, which made it impossible to determine whether the MND's study of
19 existing traffic at the relevant intersections included "appropriate peak hour factor adjustments."
20 (Opening Brief p. 17-18.) Without citation to any law, Petitioner claims that the District only
21 provided this information as part of the Response to Comments, which precluded meaningful
22 review of the data. (*Ibid.*) As is discussed in Section IV(D) below, the PRC and the Guidelines
23 require the District's Board to consider public comments involving an MND and responding to
24 comments is good practice to explain why the comments do not affect the analysis and
25 conclusions in the MND.

26 Petitioner claims the MND does not address potentially significant impacts of bus traffic
27 to/from the Del Mar Hills Academy and Ocean Air, which it claims was not included in the MND,
28 and the MND did not include a construction traffic impact analysis. (Opening Brief p. 18.) First,

Petitioner is incorrect that the MND did not consider bus traffic. The MND provides a detailed analysis regarding bussing students to Ocean Air and determined that there is no significant impact on the environment. (Vol. I AR00128-AR00139.) Second, no construction traffic impact analysis is required because the amount of construction traffic will be significantly lower than existing traffic created by students/parents. (Vol. VI AR03758.)

Next, Petitioner and RK Engineering take issue with the MND's estimated distribution of relocation traffic to the Hills Academy and Ocean Air. (Opening Brief p. 18.) For the Hills Academy, RK Engineering claims that the estimated 15% distribution of traffic to the south of Del Mar Heights Road appears to be too low given the location of the students that attend the existing School. (*Ibid.*) RK Engineering also claims that the 5% traffic distribution to the north of the Hills Academy appears to be unrealistic given the attendance area of the School. (*Ibid.*) These comments are nothing more than vague, unsubstantiated opinions and neither Petitioner nor RK Engineering claim what "realistic" distributions might entail.

Regarding the Hills Academy, the MND established the traffic distribution percentages using a plot map of the existing residences for students who currently attend the School. (Vol. I AR00129; Vol. VI AR03756-AR03757.) The number of residences in each neighborhood were counted and assigned to the most efficient travel routes to the school sites to develop the distribution percentages. (Vol. VI AR03756-AR03757.) The percentages were also rounded to the nearest 5. (*Ibid.*) Based on the residential counts in the neighborhood to the immediate north and west of the Hills Academy, 15% of the current School students live in this area. (*Ibid.*) Accordingly, 10% were assigned to Lozana Road and 5% were assigned to Mango Drive north of Lozana Road, which is consistent with existing traffic patterns. (*Ibid.*) More than 15% of the residences are located in the area south of Del Mar Heights Road; however, they have the option of using Mercado Drive, Recuerdo Drive, Durango Drive, Mar Scenic Drive, and other streets that intersect with Del Mar Heights Road west of Mango Drive. (*Ibid.*) As such, 15% was assigned to Mango Drive and the remaining traffic is reflected in the 40% that is assigned to Del Mar Heights Road. (*Ibid.*) The percentages shown on the figure represent the geographical distribution of the students' residences. (*Ibid.*)

1 For Ocean Air, RK Engineering claims that the estimated 35% distribution of traffic to the
2 east of Canter (incorrectly stated as “Center”) Heights Drive along Carmel Mountain road is
3 unrealistic. (*Id.* at p. 18.) RK Engineering continues by claiming that the vast majority of traffic
4 that will be redistributed from the School including automobiles and buses would come from the
5 west of Canter Heights Drive along Carmel Mountain Road. (*Ibid.*) Without any facts or evidence,
6 RK Engineering concludes that the 35% distribution to and from the east of Canter Heights Drive
7 does not appear to be realistic. (*Ibid.*) Again, these comments are not based in fact, but are vague,
8 unsubstantiated opinions.

9 Regarding Ocean Air, the distribution percentages for Carmel Mountain Road east and
10 west of Canter Heights Drive are based on the geographical distribution of the residences of the
11 students that would not be riding the buses to the Ocean Air. (Vol. I AR00129; Vol. VI AR03757.)
12 A majority of the students live in the area west of Interstate 5. (Vol. VI AR03757.) However, the
13 MND uses the reasonable estimate that 45% of these students would ride the bus to Ocean Air.
14 (*Ibid.*) The distribution percentages referenced above represent the travel paths of the students who
15 would not ride the bus. (*Ibid.*) The plot of the students’ residences indicates that some students
16 live in the areas along State Route 56 east of Carmel Country Road and that numerous students
17 live in the area along Carmel Country Road between State Route 56 and Del Mar Heights Road.
18 (*Ibid.*) It would be quicker and more convenient for these students to travel to Ocean Air via
19 Carmel Country Road and Carmel Mountain Road east of Canter Heights Drive as opposed to
20 using El Camino Real or Interstate 5 to gain access to Carmel Mountain Road west of Canter
21 Heights Drive. (*Ibid.*) The distribution percentages are valid because they reflect the number of
22 residences in these areas versus the number of residences west of Interstate 5 with a reduction for
23 the number of students who would ride buses. (*Ibid.*)

24 Petitioner and RK Engineering further claim that the MND should have converted the
25 Project trip generation numbers regarding busses into passenger car equivalents. (Opening Brief p.
26 18.) The Response to Comments addresses this issue at length, converts the trip generation
27 numbers into passenger car equivalents, and still determines that there is no adverse impact to the
28 environment. (Vol. VI AR03749-AR03750, AR03755-AR03758.)

1 Finally, Petitioner/RK Engineering questions the District's decision to establish the bus
2 loading location at the Hills Academy, which will then transport students to Ocean Air. (Opening
3 Brief p. 18.) Without supporting facts, RK Engineering claims that (i) the loading/unloading zone
4 is heavily impacted by parked vehicles; (ii) the use of this area as a bus loading and unloading
5 zone would eliminate existing on-street parking that is currently utilized by the school and the
6 adjacent residential neighborhood; (iii) the bus staging is adjacent to a current red curb zone and
7 existing major driveway to the Bella Del Mar Apartments ("Apartments"); and (iv) bus staging in
8 this area would cause congestion and sight distance problems at the Apartments driveway. (*Ibid.*)

9 The MND contemplates placing the bus loading zone at the Hills Academy at the curbside
10 parking zone along the east side of Mango Drive or a semi-circular on-site loading area at the
11 northeast corner of the Mango Drive/Lozana Road intersection. (Vol. I AR00132.) Depending on
12 the number of busses needed, however, the District may need to utilize a combination of both
13 options. (Vol. I AR00137.) To ensure that no additional traffic or queuing will occur, the District
14 committed to have the busses depart 20 minutes before class starts at the Hills Academy and arrive
15 back 20 minutes after school ends, both of which avoid the surge in traffic around the Hills
16 Academy. (*Id.* AR00131.) The District committed that it would not place any busses in a location
17 that would create visibility or safety problems at the driveway for the Apartments. (Vol. VI
18 AR03750.) The District also determined that the busses would only temporarily displace
19 approximately 4 to 6 cars, which would not create a significant impact on parking along the east
20 side of Mango Drive. (*Id.* AR03757.) Finally, the District evaluated alternative locations for the
21 bus loading/unloading zone, but determined that the Hills Academy was the superior alternative
22 because safety and security for the students would be maximized by staging the buses at a near-by,
23 active school because of the presence of supervisory and monitoring personnel. (*Id.* AR03756.)

24 b. The Project will not increase traffic.

25 Petitioner claims: (i) that there is a fair argument the Project's expanded parking lot will
26 worsen traffic instead of alleviating traffic; and (ii) that there is fair argument that the construction
27 of an ADA-compliant ramp from the cul-de-sac on Mira Montana will cause more traffic on Mira
28 Montana. (Opening Brief pp. 19-20.) Petitioner has failed to provide substantial evidence

1 supporting a fair argument that there will be an adverse change to the environment regarding
2 traffic from the expanded parking lot.

3 Without citing to the Administrative Record, Petitioner claims that local residents
4 expressed concerns that the Project will increase traffic. (Opening Brief pp. 19-20.) As support,
5 Petitioner cites *Keep Our Mountains Quiet* and *Citizens Assn. for Sensible Development of Bishop*
6 *Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173 (“*Bishop Area*”) for the general
7 proposition that lay opinion may qualify as substantial evidence on nontechnical subjects if such
8 opinion is based on personal observations. (Opening Brief pp. 19-20.) While accurate, that is not
9 the end of the inquiry. In the absence of a factual foundation in the record, dire predictions by
10 nonexperts regarding the consequences of a project do not constitute substantial evidence. (*Gentry*
11 at p. 1417; *Leonoff* at p. 1352 [residents’ opinions that traffic near project were dangerous not
12 substantial evidence].) Moreover, the citation to *Keep Our Mountains Quiet* does not help
13 Petitioner. *Keep Our Mountains Quiet* clarifies that lay opinion is proper when the observation is
14 about existing conditions, not the consequences of a project. (*Id.* at p. 730–731 [citing *Banker’s*
15 *Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139
16 Cal.App.4th 249, 274 (local residents may testify regarding existing traffic conditions)].)
17 Petitioner’s citation to *Bishop Area* is not helpful because it does not discuss lay opinion in detail
18 other than stating, without citation, that a property owner “may testify to traffic conditions based
19 upon personal knowledge.” (*Id.* at p. 173.)

20 Petitioner cites a local resident who claims that traffic at the current School extends “far
21 beyond the intersection of Boquita and Cordero,” which is the first intersection north of the
22 existing School. (Opening Brief p. 19-20.) Even if accepted as true, this comment admits the
23 expanded parking lot will alleviate traffic. (Vol. VI AR03572 [“The queue will no doubt hold
24 extra cars – just not enough to stop the backup on Boquita”].) So, while this comment raises
25 concerns, it is not substantial evidence that the expanded parking lot will adversely impact the
26 environment. The comment merely opines that the expanded parking lot will not alleviate traffic
27 as much as the commenter might like.

28 Petitioner also relies on another local resident to claim that the increase in on-site parking

1 will encourage more people to drive to the campus as opposed to walking or carpooling, which
2 will exacerbate existing dangerous traffic conditions near the school. (Opening Brief pp. 19-20.)
3 This commenter, however, provides no factual basis for this opinion, which is a technical issue
4 resulting from the consequences of the Project. Again, dire predictions by nonexperts about the
5 consequences of a project do not constitute substantial evidence. (*Gentry* at p. 1417.) Petitioner
6 seeks to require the District to undertake a technical traffic study because a nonexpert believes the
7 Project's expanded parking lot will increase traffic. (Opening Brief p. 19.) Such relief cannot be
8 based on unsupported lay opinion.

9 Petitioner again cites lay opinion to claim that the expanded parking lot "has the potential
10 to 'trap' a car into traversing the entirety of the significantly expanded parking lot...." (Opening
11 Brief p. 20.) Again, this is unsubstantiated opinion and the commenter has no expertise to opine on
12 the consequences of the Project. (*Gentry* at p. 1417.) Moreover, this is factually incorrect as the
13 north end of the expanded parking lot will allow parents to drop off near the administration
14 building and then immediately turn left into the "staff/visitor/kinder parking" area. (Vol. I
15 AR00043.) There is also a second drop-off near the "grade 3" building that will allow parents to
16 drop-off students on the east side of the Project. (*Ibid.*)

17 Finally, Petitioner claims that the Project's proposed construction of an Americans with
18 Disabilities Act-compliant ramp and stairs from the Mira Montana cul-de-sac to the southeastern
19 end of the Project will increase traffic on Mira Montana. (Opening Brief p. 20.) Petitioner claims,
20 "there is no direct access from the [School] to the Mira Montana Drive cul-de-sac. (*Ibid.*) As
21 support for the foregoing, Petitioner cites a letter from Petitioner's legal counsel, which provides
22 no factual basis for her opinion, and a comment from a local resident, which also provide no
23 factual foundation for his opinion. (*Ibid.*)

24 First, Petitioner's allegation about access is incorrect. The School does provide direct
25 access from Mira Montana. (Vol. I AR00040 ["The plan includes construction of an ADA-
26 compliant ramp and stairs from the Mira Montana Drive cul-de-sac down to the southeastern end
27 of the campus. This will improve safety as students are now following a dirt path at this location"
28 (emphasis added)], AR00117-AR00119, AR00146.) The Project is not increasing access to the

1 campus. The record demonstrates that people already use Mira Montana to access the School. The
2 Project's ramp, therefore, is making the environment safer. (*Ibid.*) Second, neither the Petitioner's
3 legal counsel nor the local resident is an expert that is qualified to opine on the Project's traffic
4 consequences. (*Gentry* at p. 1417.) Petitioner's claims are unsubstantiated lay opinion about a
5 technical issue, not substantial evidence demonstrating a significant impact to the environment.

6 3. Air quality

7 Petitioner fails to provide any evidence that the Project will have a significant
8 environmental impact on air quality. Petitioner argues that the MND failed to "adequately consider
9 the potential significant impacts to adjacent sensitive receptors from construction emissions and
10 fugitive dust." (Opening Brief p. 21.) Petitioner argues these impacts "may" be significant thus
11 requiring the preparation of an EIR. (*Ibid.*) Petitioner provides no evidence that construction
12 emissions or fugitive dust will cause an adverse significant environmental impact.

13 The MND analyzed impacts of the Project on air quality, especially to sensitive receptors.
14 (Vol. I AR00069-AR00075.) The MND provides a detailed analysis of the potential air pollutants
15 resulting from construction activities. (*Ibid.*) For each pollutant identified, the MND shows that
16 such emissions are significantly below the City's CEQA Thresholds. (Vol. I AR00071-AR00072.)
17 Petitioner argues that impacts to air quality and greenhouse gas emissions are present because the
18 District proposes to extend its parking lot, which, Petitioner alleges, will increase vehicle
19 emissions exposure to sensitive receptors along Mira Montana. (Opening Brief p. 21.) Petitioner
20 contends, without presenting any evidence, that an extended parking lot automatically equates to
21 additional vehicle emissions at the Project. (*Ibid.*) Petitioner provides lay opinion to argue that
22 "the new design of the school will cause an increase in emissions and exposure to uphill properties
23 as the westward wind will trap emissions between the long stretch of buildings/black top and the
24 bluff, which will then move toward the sensitive receptors on Mira Montana Drive." (*Ibid.*)
25 However, "in the absence of specific factual foundation in the record, dire predictions by
26 nonexperts regarding the consequences of a project do not constitute substantial evidence."
27 (*Gentry* at p. 1418; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583 [complex
28

1 scientific issue calls for expert evaluation]; *Newberry Springs Water Assn. v. County of San*
2 *Bernardino* (1984) 150 Cal.App.3d 740, 749.)

3 The MND provides that the Project would have to increase traffic volumes at a single
4 intersection by more than 44,000 vehicles per hour—or 24,000 vehicles per hour where vertical
5 and/or horizontal air does not mix—in order to generate a significant carbon monoxide impact.
6 (Vol. I AR00073.) The MND provides that the Project does not increase student capacity and there
7 would be no change in the number of daily trips to the Project. (Vol. I AR00073; Vol. VI
8 AR03740.) Since the proposed Project would not increase the number of vehicles trips, the Project
9 would not increase emissions or expose receptors to substantial concentrations of air pollutants.
10 (*Ibid.*) There is no evidence that a significant environmental impact exists as to vehicle emissions.

11 **4. Wildfire and emergency/fire access**

12 Relying in part on comments from the Sierra Club, Petitioner claims that the expansion of
13 the parking lot, and the relocation of classrooms from the west and north to the east and south, will
14 impact emergency evacuation plans. (Opening Brief p. 22.) As with the other issues raised,
15 Petitioner provides no facts to support its position.

16 The School experiences congestion during peak pick-up and drop-off times. (Vol. I
17 AR00024.) The Project will expand the parking lot, include the addition of new parking spaces
18 and include two student loading zones. (Vol. I AR00139.) These improvements reduce congestion
19 on the surrounding roadways and increase the number of cars that can park at the School, which
20 opens up the roads for emergency vehicles. (Vol. I AR00143.) Moreover, the Project will now
21 provide a 20-foot wide fire access lane around the campus and add fire hydrants. (*Ibid.*, See also
22 Vol. VI AR03444 and AR03751.) The new fire-lane will provide emergency vehicles increased
23 access to the western side of the School near the Reserve. (Opening Brief p. 22.)

24 Petitioner cites the Sierra Club’s comments to the MND as one of its authorities. (*Id.* at p.
25 22.) The Sierra Club’s comments, however, merely mention that the County of San Diego asks for
26 “voluntary” evacuation time studies. (*Ibid.*) The County of San Diego has no jurisdiction over the
27 Project, but rather, the District establishes a School safety plan in accordance with Education §
28 32282. Petitioner contends that the Project, with only one way in and one way out, will create

1 emergency evacuation issues. (*Ibid.*) The School has always had only one vehicle entrance. While
2 there may only be one entrance for vehicles, other entrance/exit points exist for students/teachers
3 on foot. (Vol. VIII AR04725.) The School's 2019-2020 Emergency Evacuation Routes and
4 Assembly Locations plan ("Emergency Plan") demonstrates that the School assembles students on
5 the main field and then escorts the children off campus using one of the two options (or both) for
6 evacuating children on foot. (*Ibid.*) Without any facts or evidence, Petitioner implausibly claims
7 that the existing campus, with limited parking and significant traffic on neighboring streets, is less
8 dangerous than the Project, which will add a fire access lane, additional parking and installation of
9 additional fire hydrants. (Vol. VI AR03751; Vol. VIII AR04790.)

10 Petitioner claims that the MND fails to account for the increase in student capacity since
11 the school was originally constructed and how that may affect evacuation time. (Opening Brief p.
12 22.) As discussed above, the Emergency Plan addressed evacuation plans for the District's 459
13 students during the 2019-2020 school year. Accordingly, the suggestion that evacuation needs to
14 take into consideration the alleged increase in students, from the original construction of the
15 School to the present, is not accurate. (Vol. VI AR03444.) Moreover, there is no evidence in the
16 MND or the Administrative Record demonstrating that the original School had a maximum
17 capacity of 350 students. Assuming that the 350-student number is correct, which the District
18 disputes, that is not the baseline for the Project. The baseline is the physical environmental
19 condition as it exists at the time environmental analysis is commenced. (Guidelines § 15125.) For
20 the Project, the proper baseline is the School with 459 students enrolled in 2019-2020 and a total
21 student capacity of approximately 531 students. (Vol. I AR00037, AR00176.)

22 Petitioner also claims that relocation of classes to the east and south of the Project will
23 increase evacuation time. (Opening Brief p. 23.) Again, there is no basis in fact for this claim, it is
24 only an unsupported allegation. The Emergency Plan demonstrates that the School will assemble
25 students the field, which is in the middle of the School site and then escort the children off campus
26 using one of the two options. (Vol. VIII AR04725.) This will remain.

27 Petitioner claims that the Project will exacerbate existing fire hazards by moving "the
28 school buildings closer to the Reserve." (Opening Brief p. 23.) This claim is unfounded. At the

1 existing School, four classrooms (portables) are approximately 5 feet from the canyon edge on the
2 west side (Vol. I AR00029; Vol. VI AR03751; Vol. VII AR04610.) An additional permanent
3 building is also 5 feet from the canyon edge. (*Ibid.*) The Project, on the other hand, would move
4 all classrooms from the west to the east and southeast portions of the site. (Vol. I AR00043; Vol.
5 VI AR03751; Vol. VII AR04610.) The existing buildings will be moved from 5 feet to 25 feet
6 away on the west canyon edge. (*Ibid.*) Additionally, all buildings at the existing School are
7 currently made of combustible materials and none of them have interior sprinkler systems. (*Ibid.*)
8 The Project, on the other hand, will construct buildings with ignition-resistant materials, tempered
9 glass, and interior sprinkler systems. (*Ibid.*)

10 **5. Land use and planning**

11 Petitioner generally claims that the MND is deficient because it failed to consider the
12 City's General Plan. (Opening Brief pp. 23-24.) As support, Petitioner relies on *Pocket Protectors*
13 *v. City of Sacramento* (2004) 124 Cal.App.4th 903 ("*Pocket Protectors*").

14 A general plan is a comprehensive long-term plan for the physical development of a city or
15 county. (Gov. Code § 65300.) School districts, however, are exempt from all city and county
16 building ordinances (Gov. Code § 53091, subd. (b)) and zoning ordinances, if the school district
17 exempts itself from such zoning ordinances (Gov. Code § 53094, subd. (b)). Moreover, it has long
18 been the law that the State of California ("State") has occupied the field of school site locations.
19 (*Town of Atherton v. Superior Court In and For San Mateo County* (1958) 159 Cal.App.2d 417,
20 422; *San Jose Unified School Dist. v. Santa Clara County Office of Education* (2017) 7
21 Cal.App.5th 967, 978–980 [in enacting Gov. Code § 53094, Legislature intended to forestall local
22 obstruction of state-sanctioned school construction and school location].)

23 Petitioner ignores that this is the replacement of the existing School with a redesigned and
24 reconstructed School. In addition to the State's occupation of the field of school locations, the
25 like-for-like development is precisely why *Pocket Protectors* is distinguishable. *Pocket Protectors*
26 involved a home builder turning undeveloped land into single family dwelling units, which
27 required a special permit because it was inconsistent with the land use regulations. (*Id.* at pp. 908,
28 929–930.)

1 Notwithstanding the above, and contrary to Petitioner's claim, the MND and Response to
2 Comments provide that the Project is not in conflict with the City's General Plan. (Vol. I
3 AR00038, AR00103; Vol. VI AR03743.) The MND identified the City's General Plan Land Use
4 Designation for the Project as "Institutional and Public and Semi-Public Facilities." (*Ibid.*) The
5 MND also provides that the District may exempt the Project from zoning ordinances, which the
6 District did on July 22, 2020. (*Ibid.*; See RJN Ex. 1.)

7 a. Setbacks

8 Petitioner claims the MND fails because the Project will not conform to certain setbacks or
9 defensible space provisions that may be required around a structure for fire safety. (Opening Brief
10 p. 24-25.) Petitioner relies on Government Code § 51182, subdivision (a)(1), and PRC section
11 4291. PRC section 4291 does not apply to the District because the District is not a "person" under
12 the statute. "Person," means "a private individual, organization, partnership, limited liability
13 company, or corporation." (PRC § 4291, subd. (f).)

14 Government Code § 51182 requires any "person" who owns an "occupied structure"
15 adjoining a brush-covered land, and is located within a very high fire hazard severity zone, to
16 maintain defensible space of 100 feet from each side of the structure. The term "person" is not
17 defined. Government Code § 51183 authorizes an exemption when the exteriors of the structure
18 are made from nonflammable materials or based on the local agency's discretion when
19 considering the contents and composition of the structure. (Vol. VI AR03491.) All buildings in the
20 Project will be constructed with non-combustible/ignition-resistant materials, fire resistant
21 tempered glass, and will have interior sprinkler systems. (Vol. I AR00099; Vol. VI AR03491.)

22 CEQA requires the District to analyze the Project's effects on the environment, not the
23 environment's effects on the Project. (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th
24 560, 582.) Where Petitioner focuses on the setback issue, Petitioner fails to acknowledge the
25 current environmental conditions discussed above and that the Project will alleviate, not
26 exacerbate the current conditions.

27 b. Compliance with Torrey Pines Community Plan

28 Petitioner incorrectly states that the Project does not conform to the Torrey Pines

Community Plan (“Community Plan”). (Opening Brief p. 26-27.) Petitioner ignores the fact that the School was constructed and has been operating as a school since 1959. (Vol. I AR00176.) The Community Plan was first adopted by the City Council in 1995, with modifications and amendments in 1996, 2011, and 2014. (Vol. V AR03268.) The land use of the School has remained, and will remain, as an educational facility. (Vol. I AR00023.) The Community Plan recognizes the School as an elementary school within the boundaries of the community and the School is a component of the Community Plan. (Vol. V AR03364-AR03366.)

Petitioner argues that the District addresses the Project’s consistency with the Community Plan for the first time in its Response to Comments. (Opening Brief p. 26.) The Project did not necessitate a consistency analysis under the Community Plan because the Project does not make long-term land use changes. (Vol. VI AR03743.) Although a consistency analysis was not required, the District received comments regarding conformity with the Community Plan, and in light of such comments, the District included an analysis of the Project’s consistency. (Vol. VI AR03713-AR03714, AR03745.)

Notably, only four of the eleven Key Policies of the Community Plan are relevant to the Project. (Vol. VI AR03745.) The only relevant Key Policies are open space areas; safe roadways, including traffic control measures; surrounding residential neighborhoods; and useable public parks and active playing fields. (*Ibid.*) Petitioner incorrectly states that the “District’s failure to analyze these policies in the [MND] fails to adequately inform the public and its officials of the environmental consequences of the [Project] before the decision is made.” (Opening Brief p. 26.) Petitioner ignores that the MND discusses open space areas, traffic, surrounding neighborhoods, and usable public parks and active playing fields. (Vol. I AR00103, AR00115-AR00116, AR00139.) Thus, Petitioner’s allegation that the District failed to analyze the Community Plan’s Key Policies and failed to adequately inform the public is unfounded.

6. Recreation

Petitioner fails to provide evidence that the Project’s reconstruction of the field areas would lead to increased use of other recreational facilities or the need to construct or expand recreational facilities. Petitioner concludes that a one-acre reduction in park space would generate

1 a demand for park space and will cause an increase in the use of other existing park facilities
2 within the Torrey Pines community planning area. (Opening Brief p. 27.)

3 The MND demonstrates the Project will not potentially result in a significant impact on the
4 use of existing neighborhood and regional parks or other recreational facilities. (Vol. I AR00015-
5 AR00016.) While the Project decreases the square footage of green space, the School is being
6 reconfigured to offer the same type of recreational activities that previously existed. (Vol. VI
7 AR03472.) For example, the existing School allows for soccer, biking, baseball, and other similar
8 recreational activities. (Vol. VI AR03470-AR03472.) The proposed Project offers all of these
9 recreational activities, with the addition of enhanced recreational activities, such as an
10 amphitheater to be used for small group activities, fitness walking, and standalone green spaces for
11 picnics, fitness workouts, or outdoor learning. (*Ibid.*)

12 Petitioner cites to *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal. App.
13 4th 1544 to argue that an EIR is required since the Project may result in significant impacts on the
14 environment, even if the overall effect of the project is beneficial. (Opening Brief p. 27.) *County*
15 *Sanitation* is distinguishable because the District does not argue that there are both beneficial and
16 adverse significant impacts on the environment relating to recreation. The MND provides that
17 there are no impacts or less than significant impacts on recreation. The only recreational activity
18 that is being modified by the Project is a baseball field with dirt infields for older little league
19 teams, which require a 90-foot baseline and larger outfield space. (Vol. I AR00115; Vol. VI
20 AR03469-AR03470.) The Project will still provide the ability to play baseball by younger teams
21 that do not require larger baselines and outfields. (Vol. I AR00115-AR00016; Vol. VI AR03472.)
22 The MND explains a new baseball field is being constructed at the District's Torrey Hills School
23 for older little league teams. (Vol. VI AR03476.)

24 While Petitioner concedes that the Project would not require students to seek
25 construction/expansion of other recreational facilities, Petitioner argues that the fields are used by
26 the community and limiting the District's analysis to student use, as opposed to public use, is
27 flawed. (Opening Brief p. 26-27.) Notably, public access to recreational facilities is not an
28 environmental issue to be considered in a CEQA analysis; the analysis is whether the Project

1 would cause significant physical deterioration at other recreational facilities. (Guideline § 15064;
2 Vol. I AR00115; Vol. VI AR03495.) Petitioner contends that the MND fails to consider the
3 impacts of a reduction of green/open space in a community that already lacks park space.
4 (Opening Brief p. 27.) Petitioner cites to the Community Plan, providing that the “community
5 planning area is short 15.30 acres of usable park property.” (*Ibid.*) Petitioner argues that instead of
6 entering into a joint use agreement with the City, the Project “proposes to reduce the existing
7 usable park area by nearly one acre.” (*Ibid.*)

8 The District does not dispute that the Community Plan indicates a shortage of 15.30 acres
9 of usable park property. (Vol. V AR03364.) However, Petitioner fails to acknowledge that even
10 the Community Plan does not designate the Project’s fields as park space or open space. (Vol. V
11 AR03288.) The Community Plan correctly identifies the School as a school. (*Ibid.*) The
12 Community Plan does not include any of the District’s fields in its calculation of parks and open
13 space. (*Ibid.*; Vol. V AR03364.) While the Community Plan contemplates possible joint use of the
14 field, a contract between the City and the District is not a physical change contemplated by CEQA.
15 (Guidelines § 15064.) In fact, the City already determined its goals, policies, and action plan to
16 increase the amount of park space, which includes the purchase of vacant property and
17 development of pocket, neighborhood and/or community parks, or the acquisition of District sites
18 should the District deem it surplus. (Vol. VI AR03370.) Moreover, Petitioner ignores that the
19 District identifies three other areas within 1.2 miles of the Project that offer playgrounds and green
20 space to the community. (Vol. VI AR03476; *Baldwin v. City of Los Angeles* (1999) 70
21 Cal.App.4th 819, 843 [upheld mitigated negative declaration identifying recreational opportunities
22 in the immediate neighborhood].) Based on the foregoing, there is no evidence demonstrating a
23 significant environmental impact on recreational facilities.

24 **7. Biological resources**

25 Relying on comments from the California Department of Parks and Recreation (“State
26 Parks & Rec.”), Petitioner claims the MND is faulty because the MND did not include a focused
27 sensitive plant survey and because the State Parks & Rec. claims that an endangered plant species,
28 the Del Mar Manzanita, may reside in the Southern Maritime Chaparral areas near the School.

(Opening Brief p. 28.) The MND identifies approximately 0.8 acres of Southern Maritime Chaparral within the District’s property boundaries. (Vol. I AR00047, AR00076, AR00079, AR00310, AR00319.) These sloped areas are below the grade of the School. (Vol. I AR00319 [map depicting photograph points], AR00329-AR00332 [photographs 6-11]).) With the exception of repairing the two stormwater outfalls, the Project will not affect the Southern Maritime Chaparral because the Project is limited to the current fence line of the School. (Vol. I AR00076, AR00081, AR00083, AR00306.) Additionally, only a small portion of the Southern Maritime Chaparral may actually be temporarily affected by the outfall repair (less than 0.01 acres). (*Ibid.*) In its comments on the MND, State Parks & Rec. asserts that the MND misidentified the Del Mar Manzanita (*Arctostaphylos glandulosa* var. *crassifolia*) as a more common form of Manzanita plant (*Arctostaphylos glandulosa*). Even if accurate, the encroachment into the Southern Maritime Chaparral will be temporary, minimal (less than 0.01 acres), and the District committed to use Best Management Practices when performing the outfall improvements. (Vol. VI AR03662.)

D. Response to comments

Petitioner asserts the District “attempted to use the response to comments process—a procedure that is atypical for an MND, but is instead required for an EIR [Citation]—in a futile attempt to rebut the substantial evidence submitted by the public and avoid the preparation of an EIR.” (Opening Brief, p. 29.) This ignores the plain language of the law. Section 21091 of PRC provides, in pertinent part: “The lead agency shall consider comments it receives on a draft [EIR], proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.” (Emphasis added.)

Petitioner argues there was substantial evidence the proposed Project might have a significant environmental impact (i.e., comments submitted) and that evidence contrary (i.e., response to comments) is insufficient to absolve the District from preparing an EIR. (Opening Brief, p. 29.) However, the record does not provide substantial evidence of impacts. The Response to Comments clearly states:

District staff has reviewed this document and determined that none of this material constitutes the type of significant new information that requires recirculation of the

1 MND for further public comment ... None of the comments indicate that the
2 project will result in a new significant environmental impact not previously
3 disclosed in the MND. Additionally, none of this material indicates that there
4 would be a substantial increase in the severity of a previously identified
5 environmental impact that will not be mitigated, or that there would be any other
6 circumstances requiring recirculation... (Vol. VI AR03427.)

7 Moreover, it is good practice to respond to comments by providing an explanation for why
8 the comment provided does not affect the analysis and conclusions found in the MND. (Vol. VI
9 AR03426; Bass et al., CEQA Deskbook (2012) p. 85 (“In any case, the lead agency must have
10 adequate information on the record explaining why the comment does not affect the conclusion
11 that there are no potential significant environmental effects.”).) If the District did not respond to
12 the comments received, it would not be able to establish that it had in fact considered the
13 comments. (Vol. VI AR03426.)

14 Petitioner has no basis to suggest that because the District responded to comments is
15 evidence that there is a fair argument supported by substantial evidence demonstrating a
16 significant environmental impact.

17 **E. Significant impetus**

18 Petitioner claims the District gave significant impetus to the Project, which foreclosed
19 alternatives and mitigation measures, because the District expended \$1.1 million prior to the
20 certification of its MND. (Opening Brief, p. 30.) Petitioner calls out the District’s architectural
21 fees, and alleges that the District’s application for a pre-check by the Division of State Architect
22 (“DSA”) used a significant portion of the District’s budget for the Project. (*Id.*) These arguments
23 are misleading. Petitioner cites to *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*
24 (1988) 47 Cal.3d 376 (“*Laurel Heights*”), to argue the District had “strong incentives to ignore
25 environmental concerns when environmental review begins late in the approval process, especially
26 where the public agency serves as its own lead agency.” (Opening Brief, p. 30.) *Laurel Heights*
27 discussed an EIR (not a mitigated negative declaration) concerning a relocation of a university
28 biomedical research facility to a newly acquired building in a residential area. (*Lauren Heights* p.
389.) The discussion in *Laurel Heights*, however, is irrelevant.

The District valued community input during the preliminary stages of the Project. (Vol.

VIII AR04591.) To assist with understanding and gathering community input for the Project, the District hired an architect on March 27, 2019. (Vol. VIII AR04620.) The architectural services allowed the District to engage in meaningful community outreach and to perform preliminary architectural services. (Vol. VIII, AR04621.) The District, along with its architect, hosted seven community meetings during the preplanning phase of the Project. (Vol. VIII AR04591.) From these community meetings, the District and the architect analyzed the feasibility of the alternatives and mitigation measures submitted by the community. (Vol. VII AR04573-AR04575.)

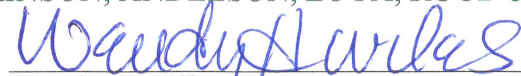
The District and the architect engaged in the DSA pre-check process to allow the District and DSA to review whether there were any issues regarding the Project. (Vol. VIII AR04585.) The District did not submit full-scale plans to DSA as an official submittal. (Vol. VI AR03446.) The District was not bound to the documents provided to DSA during the pre-check process, but rather, the District took steps to proactively plan for the Project while incorporating community input and DSA comments. (Vol. VIII AR0598.) Petitioner does not provide any evidence that the DSA pre-check process bound the District to a design or foreclosed alternative designs. It is inconsistent for Petitioner to argue that the District expended too much money in planning for its Project based on community input, while also arguing that the District ignored environmental concerns or rushed the Project. The District expended funds to address environmental issues, particularly concerns raised by the community.

V. Conclusion

Based on the foregoing, Petitioner has not provided substantial evidence demonstrating a fair argument that the Project may have a significant environmental impact. Accordingly, it is respectfully requested the Petition for Writ of Mandate be denied. If the Court determines otherwise, the District respectfully requests that the Court order a Focused EIR analyzing any deficient areas.

Dated: October 28, 2020

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Wendy H. Wiles
Attorneys for Respondent DEL MAR UNION
SCHOOL DISTRICT

PROOF OF SERVICE

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 20 Pacifica, Suite 1100, Irvine, California 92618-3371.

On October 28, 2020, I served the following document(s) described as **RESPONDENT'S BRIEF IN OPPOSITION TO SAVE THE FIELD'S PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

- ☐ **BY OVERNIGHT COURIER:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed it to the parties shown herein. I placed the envelope or package at my place of employment in accordance with regular business practices for collection and overnight delivery.
- ☒ **BY EMAIL:** My electronic service address is irene.dehart@aalrr.com. Based on an agreement of the parties pursuant to California Code of Civil Procedure § 1010.6 to accept service by electronic means, I sent such document(s) to the email address(es) listed above or on the attached Service List. Such document(s) was scanned and emailed to such recipient(s) and email confirmation(s) will be maintained with the original document in this office indicating the recipients' email address(es) and time of receipt pursuant to CCP § 1013(a).
- ☐ **BY MAIL:** I placed a true and correct copy of the document(s) in a sealed envelope for collection and mailing following the firm's ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 28, 2020, at Irvine, California.

Irene J. DeHart

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