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**FILED**  
Clerk of the Superior Court  
FEB 08 2021  
By: A. TAYLOR

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

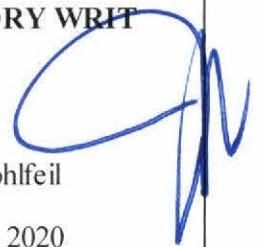
SAVE THE FIELD, a California nonprofit public  
benefit corporation,  
  
Petitioner,  
  
v.  
  
DEL MAR UNION SCHOOL DISTRICT, and  
DOES 1 through 10, inclusive,  
  
Respondent.

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

~~PROPOSED~~ JUDGMENT  
GRANTING PEREMPTORY WRIT  
OF MANDATE

Dept: C-73  
Judge: Hon. Joel R. Wohlfeil

Complaint Filed: June 12, 2020



1 This matter came on regularly for hearing on December 22, 2020, at 1:30 p.m., in  
2 Department C-73 of the above-captioned Court, before the Honorable Joel R. Wohlfeil, and the  
3 Court having confirmed its Tentative Ruling issued on December 21, 2020, a true and accurate  
4 copy of which is attached hereto as Exhibit A and incorporated herein by reference.

5 Rebecca L. Reed of Procopio, Cory, Hargreaves & Savitch LLP appeared on behalf of  
6 Petitioner SAVE THE FIELD ("Petitioner"). Wendy H. Wiles of Atkinson, Andelson, Loya, Ruud  
7 & Romo appeared on behalf of Respondent DEL MAR UNION SCHOOL DISTRICT  
8 ("Respondent").

9 The Court, having reviewed the record of Respondent's proceedings in this matter, the  
10 briefs submitted by the parties, and the arguments of counsel; the matter having been submitted for  
11 decision; and the Court having directed that judgment and a peremptory writ of mandate issue in  
12 this proceeding,

13 **IT IS HEREBY ORDERED THAT:**

14 1. Judgment shall be entered in favor of Petitioner Save the Field and against  
15 Respondent Del Mar Union School District in this proceeding.

16 2. A peremptory writ of mandate directed to Respondent Del Mar Union School  
17 District shall issue under seal of this Court, ordering Respondent to:

18 (1) Set aside and vacate Resolution No. 2020-13 approving the Del Mar  
19 Heights Rebuild Project;

20 (2) Set aside and vacate Resolution No. 2020-13 certifying the Mitigated  
21 Negative Declaration for the Del Mar Heights Rebuild Project;

22 (3) Suspend all project activities in connection with the Del Mar Heights  
23 Rebuild Project that could result in any change or alteration to the physical  
24 environment until Respondent has reconsidered its resolution and brought it  
25 into compliance with the requirements of the California Environmental  
26 Quality Act ("CEQA");

27 (4) Comply with the provisions of CEQA ~~by undertaking,~~ <sup>prior</sup> to the  
28 issuance of any such permit or approval, ~~environmental review of the entire~~

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~~Del Mar Heights Rebuild Project by means of preparation and certification  
of a legally sufficient environmental impact report regarding the entire Del  
Mar Heights Rebuild Project.~~

3. Petitioner is awarded its costs of suit.

4. Petitioner may seek, upon noticed motion, an award of attorneys' fees, and this  
Court reserves and retains jurisdiction to determine the amount of such fees, if any.

5. This Court shall reserve and retain jurisdiction over this action until such time as  
Respondent Del Mar Union School District files a return evidencing that it has complied with the  
attached Peremptory Writ of Mandate.

DATED: 7-8-21

Honorable Joel R. Wohlfeil  
Judge of the Superior Court  
State of California, County of San Diego

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 12/22/2020

TIME: 01:30:00 PM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Anthony Shirley

REPORTER/ERM: Joanne Castro CSR# 6944

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2020-00020207-CU-TT-CTL CASE INIT.DATE: 06/12/2020

CASE TITLE: **Save the Field vs Del Mar Union School District [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Toxic Tort/Environmental

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**EVENT TYPE:** Motion Hearing (Civil)

**MOVING PARTY:** Save the Field

**CAUSAL DOCUMENT/DATE FILED:** Brief - Other Opening Brief in Support of Petition, 10/07/2020

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**APPEARANCES**

Rebecca Reed, counsel, present for Petitioner(s) telephonically.

WENDY HUNTER WILES, counsel, present for Respondent(s) via remote video conference.

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The Court hears oral argument and CONFIRMS the tentative ruling as follows:

The Petition (ROA # 1, 22, 27, 43) of Petitioner Save the Field ("Petitioner") for Writ of Mandate , is GRANTED.

A writ of mandate will issue vacating the Mitigated Negative Declaration for the Del Mar Heights School Rebuild Project, vacating Respondent's approval of the Del Mar Heights School Rebuild Project, and suspending any and all activity pursuant to Respondent's approval of the Rebuild Project until Respondent has fully complied with all requirements of the California Environmental Quality Act ("CEQA"). Pub. Resources Code 21168.9.

The objections (ROA # 32) of Respondent DEL MAR UNION SCHOOL DISTRICT'S ("Respondent" or "District") to Petitioner's opening brief in support of the Petition for Writ of Mandate are OVERRULED. The contentions set forth in the opening brief are sufficiently raised, framed and set forth within the Petition, as well as within the administrative process. Also, the parties expressly stipulated (ROA # 27) that the opening brief will serve as Petitioner's statement of issues under Public Resources Code section 21167.8.

Respondent's Request (ROA # 33) for judicial notice is GRANTED.

**A. Introduction**

This Petition involves a challenge to the Respondent's plan to demolish and rebuild Del Mar Heights Elementary School, located at 13555 Boquita Drive in Del Mar ("Rebuild Project"). The reconfigured school will not have a larger student population, but will have a slightly expanded footprint and will



include a slightly reduced open space area. The School is located within the Coastal Zone and is immediately adjacent to the Torrey Pines State Reserve Extension.

On February 20, 2020, the District published a Notice of Intent to Adopt a Mitigated Negative Declaration for the Del Mar Heights School Rebuild Project. As stated, a determination was made that, with mitigation, the Rebuild Project would have no significant adverse impacts on the environment such that a Mitigated Negative Declaration ("MND") was the appropriate CEQA compliance document. The District released an Initial Study / MND ("IS / MND") for public review and comment. Petitioner argues the District's CEQA process was "flawed from the beginning, resulting in an incomplete and inaccurate environmental review." As explained below, the abbreviated process employed by Respondent District did not, in part, comply with CEQA such that the writ of mandate is granted.

**B. Applicable Standard of Review**

"Any action or proceeding to attack, review, set aside, void or annul a determination ... of a public agency, made as a result of a proceeding in which by law a hearing is required to be given ..., on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure." Pub. Resources Code 21168. In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the Court's inquiry "shall extend only to whether there was a prejudicial abuse of discretion." Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal. 4th 412, 426 (quoting Pub. Resources Code 21168.5). Such an abuse is established if the agency has not proceeded in a manner required by law, or if the determination or decision is not supported by substantial evidence. Id. Abuse of discretion is established if the agency did not proceed as required by law, if its determination was not supported by its findings, or its findings were not supported by substantial evidence. Citizens To Preserve the Ojai v. County of Ventura (1985) 176 Cal. App. 3d 421, 428.

CEQA requires that a public agency determine whether a project may have significant environmental impacts before it approves the project. Preserve Poway v. City of Poway (2016) 245 Cal. App. 4th 560, 574. Under CEQA, an agency must require an EIR for any project that "may have a significant effect on the environment," unless a categorical exemption applies. Id. (quoting Pub. Resources Code 21151(a)). An EIR is the "heart" of CEQA because it is the principal method for bringing information about the environmental impacts of a particular project to the attention of the agency and the public. Id. Where an agency determines that a project "would not have a significant effect on the environment," it must prepare a negative declaration, briefly describing the reasons for its determination. Id. (citing Pub. Resources Code 21080(c) and 14 C. C. R. 15371 ("Guidelines")). Such a determination is appropriate only if "[t]here is no substantial evidence in light of the whole record before the [public] agency" that a significant environmental impact may occur as a result of the proposed project. Id. (quoting Pub. Resources Code 21080(c)(1)). A "significant effect" is a substantial, or potentially substantial, adverse change in the environment. Id.

If there is substantial evidence that the project will have a significant environmental effect, but that effect may be reduced to a level of insignificance by implementing mitigation measures, the agency may adopt an MND allowing the project to go forward subject to those measures. Id. at 575. (citing Pub. Resources Code 21064.5 and 21080(c)(2)). In reviewing an agency's decision to adopt an MND, the Court must determine whether there is substantial evidence in the record to support a "fair argument" that a proposed project may have a significant effect on the environment. Id. at 575, 576. "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be

reached." Guidelines at § 15384(a).

CEQA requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75. "The fair argument standard creates a 'low threshold' for requiring an EIR, reflecting a legislative preference for resolving doubts in favor of environmental review." Preserve Poway v. City of Poway, supra at 576 (quoting Sierra Club v. County of Sonoma (1992) 6 Cal. App. 4th 1307, 1316, 1317). Whether the evidence establishes a fair argument that a project may result in significant environmental impacts is a question of law. Id. Evidence supporting a fair argument may consist of facts, reasonable assumptions based on fact, or expert opinions supported by fact, but 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." Id. (quoting Pub. Resources Code 21080(e)(2)). If substantial evidence exists to support a fair argument that a significant environmental effect may result from the project, the agency is required to prepare an EIR, irrespective of whether there is other substantial evidence in the record to the contrary. Id.

The lead agency's determination is largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument. Gentry v. City of Murrieta (1995) 36 Cal. App. 4th 1359, 1400. The Court's function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed "fair argument" could be made. Id. The lead agency, however, has some discretion to determine whether particular evidence is "substantial." Id. The Court should not substitute its own credibility determinations for those of the public agency. Id. It must give the agency the benefit of a doubt on any legitimate, disputed issues of credibility. Id.

### **C. Whether IS / MND adequately describes Rebuild Project?**

Following preliminary review, the lead agency must conduct an initial study to determine if the project may have a significant effect on the environment. Guidelines at § 15063(a). "An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR." Id. at (a)(3). The lead agency must prepare a negative declaration if the initial study concludes there is no substantial evidence that the project may cause a significant effect on the environment. Id. at (b)(2).

An initial study is intended to serve several important purposes: (1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration; (2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration; (3) Assist the preparation of an EIR, if one is necessary; (4) Facilitate environmental assessment early in the design of a project; (5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment; and (6) Eliminate unnecessary EIRs. Id. at (c). An initial study shall contain in brief form: (1) A description of the project including the location of the project; (2) Identification of the environmental setting; (3) Identification of environmental effects by use of a checklist, matrix, or other method; (4) A discussion of ways to mitigate the significant effects identified, if any; (5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and (6) The name of the person or persons who prepared or participated in the initial study. Id. at (d).

The failure to comply with the law subverts the purposes of CEQA if such failure results in the omission of material necessary to informed decision making and informed public participation. Lighthouse Field Beach Rescue v. City of Santa Cruz (2005) 131 Cal. App. 4th 1170, 1202. CEQA places the burden of environmental investigation on government rather than the public. Id. The negative declaration is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis. City of Redlands v. County of San Bernardino (2002) 96 Cal. App. 4th 398, 406. An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action. Id. An accurate view of the project is necessary for affected outsiders and public decision-makers to balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance. Id. However, the Guidelines merely require an initial study, in contrast to an EIR, to contain a "brief" description. Lighthouse Field Beach Rescue v. City of Santa Cruz supra at 1192. An initial study is only a preliminary analysis and the regulatory requirements regarding its contents are not as demanding as those imposed upon an EIR. Id. An initial study is neither intended nor required to include the level of detail included in an EIR. Id.

Petitioner argues the MND's project description "omits the most fundamental fact necessary to cause it comply with CEQA, which is that the Del Mar Heights School is located within the sensitive Coastal Overlay Zone" as set forth within See San Diego Municipal Code section 132.0402. Opening Brief at page 12, lines 3 - 5. This argument lacks merit.

The introductory portion of the MND contains a detailed and all-encompassing description of the Rebuild Project, including its scope, location and environmental setting. (AR00023-47) This description includes maps and photographs. Obviously, Respondent is not trying to hide the fact that the school is located 0.8 miles from the coast. The Court agrees with the assessment that the fact that the Rebuild Project is within the Coastal Overlay Zone is a location identifier, rather than a required description of the Project. The level of detail advocated by Petitioner would exceed the necessary contents of a "brief" description. To the extent this omission could render the project description deficient, it is not prejudicial. Noncompliance with CEQA's information disclosure requirements is not per se reversible; prejudice must be shown. Pub. Resources Code 21005(b) and East Sacramento Partnerships for a Livable City v. City of Sacramento (2016) 5 Cal. App. 5th 281, 290. A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process. Id. Neither the Coastal Commission nor the City submitted comments objecting to the project. The Response to Comments acknowledges the Coastal Zone overlay, and provides analysis as to project consistency and compliance.

**D. Whether there is a "fair argument" Rebuild Project may have a significant impact on the environment such that an EIR is necessary?**

*1. Noise Impacts: Methodology*

Petitioner initially contends the IS / MND fails to adequately measure noise impacts on "sensitive receptors" because of the methodology used to ascertain these impacts. Specifically, the IS / MND analyzed construction noise levels at an improper distance given the close proximity of residential homes. The study improperly calculated the increased (above "ambient") noise levels likely to result from construction activities by failing to obtain and use a "baseline" measure.

The initial threshold study is inadequate if it fails to provide sufficient evidence or analysis of the potential environmental effects. City of Redlands v. County of San Bernardino supra at 408. An agency should not be allowed to hide behind its own failure to gather relevant data. Id. The failure to evaluate a project utilizing site-specific data can be prejudicial to the extent the decision maker cannot identify environmental impacts without this information. Lighthouse Field Beach Rescue v. City of Santa Cruz, supra at 1201, 1202. Where an agency fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. Id. at 1202.

The IS / MND in this case addresses noise level impacts starting at page AR000104. This discussion does address noise impact on the nearby residences. AR000104-105. Any perceived discrepancy results from a measurement from the center of the construction site to the nearest residence, versus a measurement from the edge of the site. The study states:

"... However, overall noise emissions vary considerably, depending on the specific activity performed at any given moment. Noise attenuation due to distance, the number and type of equipment, and the load and power requirements to accomplish tasks at each construction phase would result in different noise levels from construction activities at a given receptor. Since noise from construction equipment is intermittent and diminishes at a rate of at least 6 dBA per doubling of distance (conservatively ignoring other attenuation effects from air absorption, ground effects, and shielding effects), the average noise levels at noise-sensitive receptors could vary considerably, because mobile construction equipment would move around the site with different loads and power requirements. Noise levels from project-related construction activities were calculated from the simultaneous use of all applicable construction equipment at spatially averaged distances (i.e., from the acoustical center of the general construction site) to the property line of the nearest residences and state park and trails. Although construction may occur across the entire phase area, the area around the center of construction activities best represents the potential average construction-related noise levels at the various sensitive receptors."

(AR000107)

Depending on the size and scope of a given project, this could describe an adequate and reasonable methodology for measuring construction related noise levels for nearby "sensitive receptors." The Federal Highway Administration Roadway Construction Noise Model includes baseline residential numbers. See AR000107 and AR000788. Petitioner fails to explain why the residential community surrounding the Rebuild Project is unique such that a site study needs to be undertaken in lieu of utilizing published noise modeling data.

## 2. Construction Noise Impacts

Utilizing the methodology discussed above, the IS / MND calculates construction related noise levels that will not exceed 70 decibels. "Both San Diego's Municipal Code and CEQA Significance Determination Thresholds guidance document apply a 75 dBA Leq exterior noise limit to residential and other sensitive uses affected by construction noise." (AR000108) The study concludes there is no possible significant impact because construction related noise levels will not exceed the threshold of significance.

"A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be



less than significant." Guidelines at § 15064.7(a). Public agencies are encouraged to develop and publish thresholds of significance. *Id.* at (b). Thresholds of significance "must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence." *Id.* Using environmental standards as thresholds of significance promotes consistency in significance determinations and integrates environmental review with other environmental program planning and regulation. *Id.* at (d). Petitioner cites no legal or factual reason preventing Respondent District, as the lead agency, from utilizing the significance determination thresholds guidance set forth within the IS / MND.

On the other hand, substantial evidence exists within the administrative record supporting a fair argument that a significant environmental effect may result from construction noise levels, because noise levels may exceed the threshold of significance when construction activities take place closer to nearby residences. Figure 3 (AR00029) demonstrates that, to a large extent, demolition activities will be concentrated near the residences located at the end of Boquita Drive and along Mira Montana Drive. Figure 5 (AR00043) demonstrates that the majority of road grading and classroom construction activity will take place at the end of Boquita Drive and along Mira Montana Drive, relatively close to those residences. If noise levels measured from the "acoustical center of the general construction site" will approach 70 decibels upon reaching "sensitive receptors," it is reasonable to assume construction noise levels will exceed 75 decibels (the threshold of significance) when concentrated near the property line. This conclusion is further supported by the RK Engineering comment letter, which states: "...[C]onstruction activities are expected to occur less than 25 feet from the northern residential homes and less than 85 feet from the eastern residential homes. There is a potentially significant impact to the noise levels experienced at these residential homes and RK recommends the project provide additional analysis of worst case construction noise levels at noise sensitive locations .... ¶ ... If the project is unable to meet the 75 dBA Leq standard set by both San Diego's Municipal Code and CEQA Significance Determination Thresholds guidance document, the project shall provide the necessary mitigation measures to reduce construction noise levels at the adjacent residential sensitive locations." (AR03729) Therefore, the writ of mandate is granted on this basis.

### 3. Operational Noise Impacts

Petitioner argues the expanded parking lot and new drop-off / pick-up lane create the potential for significant operational noise levels. The IS / MND states as follows:

"The proposed project would not result in staff or student population increases. The proposed project would reduce the number of classrooms from 22 existing to 21 proposed. Currently, the school has one parking lot and entrance on the north via Boquita Drive. The proposed project would expand the parking lot and add a drop-off / pick-up lane along the east and southeast portion of the school. The new drop-off / pick-up lane would be parallel to Mira Montana Drive and would range approximately between 10 feet to 25 feet below Mira Montana Drive. The elevation range, of 10 feet to 25 feet, of the slope would act as a noise barrier to car idling and other vehicle related noises by obstructing line-of-sight to residences on Mira Montana Drive. The new drop-off / pick-up lane would deter vehicles from using Mira Montana as a drop off area. Traffic noise would not significantly increase above existing conditions and impacts would be less than significant."

(AR00109)

The response to comments states:

"The commenter states that the proposed parking lot would impact homes on Mira Montana Drive. As discussed in the IS / MND, the proposed drop-off / pick-up lane parallel to Mira Montana Drive would range approximately between 10 feet to 25 feet below Mira Montana Drive. The edge of the slope would act as a noise barrier to car idling and other vehicle-related noises by obstructing line-of-sight to residences on Mira Montana Drive. In addition, there is an approximately 3-foot masonry wall at the edge of Mira Montana Drive which would provide further noise shielding. The new drop-off / pick-up lane would deter vehicles from currently using Mira Montana Drive as a drop off area, thereby moving this traffic further from residences on Mira Montana Drive."

(AR03747)

The RK Engineering comment letter speculates that the new drop-off / pick-up lane will increase operation noise levels from idling cars, car horns, etc. However, there is no evidence in the record supporting this contention. Instead, the record discloses that operational noises will not increase, and may in fact decrease. The student and staff populations will not increase such that vehicle trips should not increase. In addition, it is reasonable to assume the expanded parking lot and new drop-off / pick-up area will bring vehicles onto school grounds and away from the residential streets. Therefore, substantial evidence does not exist within the administrative record supporting a potential that operational noise levels could result in a significant environmental impact. This aspect of the writ of mandate lacks merit.

#### *4. Traffic Impacts Associated with Student Relocation During Construction*

The IS / MND explains: "During construction of the school, approximately 236 students in kindergarten through 3rd grade that would attend Del Mar Heights School would be temporarily relocated to Del Mar Hills Academy, 0.8 miles away. Approximately 203 students from 4th through 6th grade would be temporarily relocated to Ocean Air School, 5.0 miles away." (AR00072) The K - 3rd grade students reside in the same neighborhood and as a result the vehicle miles travelled is not expected to increase. (AR00119) The 4th - 6th grade students will travel by bus to Ocean Air Elementary School, and this is expected to "minimize the number of parents driving to Ocean Air." (AR00119) As planned, the buses will stage for loading and unloading at Del Mar Hills Academy. (AR00120) "To minimize traffic congestion, the buses would leave Del Mar Hills Academy 20 to 30 minutes prior to the beginning of the school day and would arrive back at Del Mar Hills Academy 20 to 30 minutes after the end of the school day. Parents would also have the option of driving the students to Ocean Air School, which would be more convenient for many of the students and parents." (AR00120) Traffic impacts associated with the temporary transfers are further analyzed at AR00120 - 139.

The IS / MND concludes that "[t]he volumes of traffic that would be generated by the proposed project do not represent new traffic on the overall roadway network because the traffic volumes represent vehicles that would be re-directed to the two interim school sites from the existing Del Mar Heights Elementary School." (AR00137) In addition, "[a]n analysis of three intersections in the vicinity of the two school campuses indicates that the additional traffic generated by the proposed temporary relocation of students would not result in a significant impact according to the City of San Diego's significance criteria. This finding is based on a level of service analysis of the projected traffic volumes during the AM and PM peak hours at the beginning and ending of each school day. The three intersections that were evaluated are Del Mar Heights Road at Mango Drive and Mango Drive at Lozana Road/School Driveway (for Del Mar Hills Academy) and Carmel Mountain Road at Canter Heights Drive (for Ocean Air School)." (AR00137 - 138)

The RK Engineering comment letter opined that traffic at additional intersections near the schools should be studied. (AR03731) Petitioner argues this omission results in a fair argument that there will be significant impacts to traffic at these intersections. A fair argument of environmental impact must be based on substantial evidence in the record, but a "mechanical application" of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 311. The agency should not be allowed to hide behind its own failure to gather relevant data. Id. CEQA places the burden of environmental investigation on government rather than the public. Id. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Id. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." Id. However, the holding in Sundstrom is narrowly applied, as stated in Gentry v. City of Murrieta (1995) 36 Cal. App. 4th 1359:

"Gentry contends that the initial study was defective because it provided no evidence for its conclusions that the Project would have no significant impacts on scenic resources, historic resources, and water resources, and no cumulative impacts.

One of the purposes of an initial study is to '[p]rovide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment.' (Guidelines, § 15063, subd. (c)(5).) A negative declaration must include not only 'a proposed finding that the project will not have a significant effect on the environment,' but also a 'copy of the Initial Study documenting reasons to support the finding.' (Guidelines, § 15071, subds. (c) and (d).) Accordingly, '[a]n initial study leading to a negative declaration should provide the basis for concluding that the project will not have a significant effect on the environment.' (Leonoff v. Monterey County Bd. of Supervisors (1990) 222 Cal. App. 3d 1337, 1347.)

In Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal. App. 3d 151, we struck down two negative declarations on grounds unrelated to the adequacy of the initial studies. We also held, however, that on remand, the evidence supporting the initial studies should be disclosed. (Id., at p. 172.) We noted that in an administrative mandamus proceeding, the court must determine whether the respondent's findings were supported by the evidence. (Id., at p. 171.) 'Therefore, although an initial study can identify environmental effects by use of a checklist [citation], it must also disclose the data or evidence upon which the person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review.' (Ibid.)

Gentry essentially contends that under Citizens, an initial study must disclose sufficient evidence to support each and every one of its findings. We disagree. In Citizens, we required an initial study to disclose the evidence upon which it is based in order to afford a basis for judicial review. However, we did not hold that the failure of an initial study to disclose the evidence supporting particular findings would necessarily be fatal to the resulting negative declaration. There is 'no authority ... that an initial study is inadequate unless it amounts to a full-blown EIR based on expert studies of all potential environmental impacts. If this were true, the Legislature would not have provided in CEQA for negative declarations.' (Leonoff v. Monterey County Bd. of Supervisors, supra, 222 Cal. App. 3d at p. 1347.)"

Id. at 1377, 1378 (footnote omitted, emphasis added).

After quoting Sundstrom, the Gentry opinion concludes:

"However, the ultimate issue is not the validity of the initial study, but rather the validity of the lead agency's adoption of a negative declaration. Even if the initial study fails to cite evidentiary support for its findings, 'it remains the appellant's burden to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact.' (Leonoff v.

Monterey County Bd. of Supervisors, *supra*, 222 Cal. App. 3d at pp. 1348-1349.) 'An absence of evidence in the record on a particular issue does not automatically invalidate a negative declaration. The lack of study is hardly evidence that there *will* be a significant impact.' " (1 Kostka & Zischke, *supra*, § 6.75, at p. 316, italics added, quoting *Leonoff v. Monterey County Bd. of Supervisors, supra*, 222 Cal. App. 3d at p. 1354.)

An agency's adoption of a negative declaration may be based on the initial study 'together with any comments received during the public review process.' (Guidelines, § 15074, subd. (b).) Thus, 'where the agency decision is based on more information than the initial study, the additional information may cure any defects in the initial study.' (*Leonoff v. Monterey County Bd. of Supervisors, supra*, 222 Cal. App. 3d at pp. 1347-1348; see also *Sundstrom v. County of Mendocino, supra*, 202 Cal. App. 3d at p. 305 ['Even if the initial study is defective, the record may be extensive enough to sustain the agency's action.'].)

EA No. 34807 does not cite any evidence supporting its conclusions that the Project would not adversely affect either scenic or historic resources. In addition, it does not appear that the County Planning Department relied on any relevant studies or reports, or consulted with any agencies or entities with expertise on these subjects. Sometimes, however, expert planning personnel may be entitled to conclude without additional evidence or consultation that a project will not have a particular environmental impact. (*Leonoff v. Monterey County Bd. of Supervisors, supra*, 222 Cal. App. 3d at p. 1354 [given project's urban setting, 'it does not seem unreasonable to conclude' that it would have no significant noise or odor impacts]; 1 Kostka & Zischke, *supra*, § 6.20, pp. 267-268.) Here, the County Planning Department could reasonably find, based on its experience and its review of the Project, that the Project would not impact scenic or historic resources. The initial study is not defective merely because it fails to disclose evidence supporting these two particular findings.

Even assuming, however, that the initial study was defective in this respect, we believe the defect was remedied in the course of public hearings on the Project. Both the County and the City had to give notice to residents in the vicinity of the Project ..., and many attended the public hearings. Residents' observations, based on personal knowledge, may constitute substantial evidence that a project will have a particular environmental effect .... Nevertheless, no substantial evidence was ever offered to support a fair argument that the Project might adversely affect scenic resources. Even Gentry, who has pointed out every remotely challengeable aspect of the Project, does not contend otherwise. This lack of comment, like Sherlock Holmes's 'dog in the night-time' which tellingly failed to bark ..., was in itself evidence. As we hold in part ... no substantial evidence was ever offered to support a fair argument that the Project might adversely affect historic resources. Under the circumstances, the City could properly conclude that the Project would not affect either scenic or historic resources."

Id. at 1379, 1380 (footnote and some citations omitted).

The IS / MND in this action in no way reflects the initial study at issue of Sundstrom, in which the conclusions (checked boxes) were made in the near complete absence of underlying data or analysis. Also, evidence acquired during the administrative hearing process contradicted the initial study and "clearly disclosed that the project would disturb existing conditions." Sundstrom v. County of Mendocino, *supra* at 305, 306. In contrast, the IS / MND is a detailed study citing reams of supporting data. The discussion of potential traffic impacts from temporary student relocation, by itself, comprises in excess of 15 pages of text, tables and figures. There is a reasonable basis for the decision to study the intersections outlined in the study: this selection was based on criteria outlined in the City's "Traffic Impact Study Manual." (AR03748 - 3749) The RK Engineering opinion that additional intersections should be studied is not evidence of a significant impact. This comment letter does not provide data or even conclude that traffic will, in fact, increase at these additional intersections at a level above the City's significance threshold. Petitioner also fails to cite comments from residents related to traffic impacts at the additional intersections. As a result, this aspect of the writ of mandate lacks merit.

Petitioner's brief also cites the RK Engineering comment letter with respect to the underlying highway data: "The last paragraph of Page 105 [of the IS / MND] indicates that the average values for vehicles on all four approaches were used in the Traffic Impact Analysis. Without having copies of the [Highway Capacity Manual] worksheets, it's not possible to determine whether appropriate PHF (Peak Hour Factor) adjustments were made as part of the analysis. This is typically required, especially in areas in the vicinity of schools where peak 15-minute traffic volumes occur within the peak hour. This needs to be verified and if PHF factors were not used they need to be used for determining the delay and Level of Service." (AR03732) This information was provided with the response to comments, but this, Petitioner argues, is too late for any meaningful review. However, as discussed in Gentry, even assuming this is a material omission, it was cured during the public hearing process. Thus, the agency decision was an informed one. There is no argument or evidence suggesting the IS / MND improperly cited or relied on this data. As a result, this aspect of the writ of mandate lacks merit.

Petitioner's brief also cites the RK Engineering comment letter in support of the argument that the IS / MND improperly fails to address any potential for a significant impact related to bus traffic. However, the IS / MND does, in fact, include busing in its discussion regarding traffic impacts. See, e.g., AR00128 - 00129 ("Based on the geographical distribution of the current students' residences, it was estimated that 26 percent of the students live at locations where it would be more convenient to commute directly to Ocean Air School instead of Del Mar Hills Academy. It was also assumed that the students who live in the immediate vicinity of Del Mar Hills Academy would ride the buses to Ocean Air School because of the geographical convenience provided, which represents 16 percent of the students. For the remaining 58 percent of the students, it was assumed that half of the students would use the buses to travel between Del Mar Hills Academy and Ocean Air School ...."); AR00129 ("These numbers represent the 236 K-3 students that would be relocated to Del Mar Hills Academy plus the grades 4 - 6 students that would use the buses to travel between the two schools."); AR00131 ("The District is proposing that the buses transporting students to Ocean Air School would depart from Del Mar Hills Academy at 7:40 AM and would return to Del Mar Hills Academy at 2:50 PM. This 20-minute interval between the bus arrival and departure times and the school's starting and ending times would ensure that the traffic surges would not coincide. This measure would minimize the potential traffic impacts associated with the bus service."); and AR00132 ("Because of the constrained conditions at the existing on-site parking lot and drop-off/pick-up area, the buses that would be used to transport students from Del Mar Hills Academy to Ocean Air School would use either the curbside parking zone along the east side of Mango Drive or a semi-circular on-site loading area located at the northeast corner of the Mango Drive/Lozana Road intersection."). As a result, this aspect of the writ of mandate lacks merit.

Petitioner's brief also cites the RK Engineering comment letter with respect to traffic distribution. Specifically, this comment letter notes that the traffic distribution model developed by the District is not "realistic." However, Respondent is correct that this comment is "nothing more than vague, unsubstantiated opinions and neither Petitioner nor RK Engineering claim what 'realistic' distributions might entail." Opposition Brief at page 15, lines 11 - 13. Although the District no doubt bears the burden of conducting preliminary environmental investigation supporting its IS / MND, Petitioner cannot create a fair argument out of speculative opinions. This aspect of the writ of mandate lacks merit.

Regarding bus staging, Petitioner refers to the following from the RK Engineering comment letter: "

"The potential bus staging at the Del Mar Hills Academy School along Mango, north of the school driveway is heavily impacted by parked vehicles. The use of this area as a bus loading and unloading zone would eliminate a substantial amount of existing on-street parking that is currently utilized by the



school and the adjacent residential neighborhood. Also, for that location, buses returning back to Del Mar Heights Road would require that buses travel through the existing residential neighborhoods in this area causing additional impacts that are not needed.

For the potential bus staging area to the south of the Del Mar Hills Academy School driveway, there is currently a red curb zone and existing major driveway to the Bella Del Mar Apartments. Bus parking in this area would cause congestion and sight distance problems at this driveway.

There may be a potentially significant impact as a result of these factors and for the safety to the students, an alternative staging area, outside of the existing impacted area around the Del Mar Hills Academy School, needs to be located for the bus traffic which won't impact the existing residential neighborhood."

(AR03733 - 3734)

The RK Engineering comment letter does not cite any specific data supporting its opinions. The IS / MND addresses parking and traffic congestion caused by a combination of bus and vehicle traffic through staggered arrival times: the busses will depart 20 minutes before class starts at the Hills Academy, and arrive back 20 minutes after school ends in order to avoid a traffic surge. (AR00131 and 03750) The RK Engineering letter does not discuss this mitigation measure. The District's response to comments also states:

"It is anticipated that there would be only two or three buses to transport students between Del Mar Hills Academy and Ocean Air School .... With regard to the staging areas for the buses, the IS / MND indicates that this would occur on the east side of Mango Drive adjacent to the school or in the semi-circular on-site loading area located at the northeast corner of the Mango Drive/Lozana Road intersection.

If the bus staging area is located south of the school access driveway, it would not be positioned in the area between the school driveway and the apartment driveway nor would it be positioned at a location that would create visibility or safety problems at the apartment driveway. The location would be subject to review and approval by the City of San Diego. The District has considered other locations for the bus staging area, as stated in the responses to comments Z-114 and Z-116. The District has determined that it would be advantageous to stage the bus loading / unloading activities adjacent to the existing school because the ongoing presence of supervisory and monitoring personnel as well as parents/guardians would maximize safety and security for the students."

(AR03750)

Mango Drive runs along the entire length of Del Mar Hills Academy, between Lozana Road and Minorca Way. A review of the map demonstrates this segment of the Mango Drive exceeds 800 feet. The driveway for the subject apartment complex lies just south of Lozana Road. There is no reason to assume that a temporary parking area for three busses could not be accommodated in this large space without blocking or interfering with the apartment driveway. This aspect of the writ of mandate also lacks merit. In summary, the initial study provides an adequate evidentiary basis for concluding that the project will not have a significant effect on the environment, as specifically related to traffic associated with student relocation during construction. Petitioner's arguments, and the RK Engineering comments, amount to unsupported speculation in this regard. Substantial evidence does not exist within the administrative record supporting a potential for a significant environmental impact, as related to relocation traffic.

##### *5. Construction Traffic Impacts*

Again citing to the RK Engineering comment letter, Petitioner argues the IS / MND fails to contain a construction traffic impact analysis, even though this is a potentially significant impact with respect to workers, deliveries, construction vehicles and other construction activities. This argument was addressed via the following comment response: "As the volumes of traffic associated with construction activities at Del Mar Heights School would be substantially lower than the volumes of traffic that are currently generated by the existing school, a traffic impact analysis for the construction phase is not required. The construction traffic, and the delivery and haul trucks, would be an inconvenience to residents along the access streets; however, the traffic impacts would not be significant according to CEQA standards." (AR03758) Petitioner does not take issue with the conclusion that traffic will be less in the absence of an operating school site. Thus, there is no potential for a significant impact related to construction traffic, and this aspect of the writ of mandate lacks merit.

### 6. Operational Traffic Impacts

The IS / MND describes the existing traffic conditions as follows:

"Existing access to the school is through the driveway on Boquita Drive, which also leads to the school parking lot. The parking lot contains 48 spaces and an approximately 317-foot student loading area adjacent to the administration building, which can accommodate 15 cars. Currently, staff and parents park their cars along the neighborhood streets, which further narrows the two-lane neighborhood street, and queuing occurs on Boquita Drive during drop-off / pick-up times, causing traffic impacts on the surrounding roadways. The long traffic queue backs up to the 4-way stop Boquita Drive / Cordero Road intersection, which makes pedestrian crossing difficult, despite the presence of a crossing guard. Additionally, the afternoon queue of cars waiting to pick students causes other drivers to drive on the wrong side of the road to access the parking lot. Due to the parked cars and the queue of cars in both lanes, riding bikes to school is challenging and the narrow sidewalks do not provide enough space for safe riding ....

During afternoon pick-up, some parents leave their cars in the travel lane to retrieve their child, and some parents complete an illegal and hazardous U-turn on Boquita Drive to avoid the time required to flow through the on-site loop. The congestion on Boquita Drive causes a large number of parents to direct their children to walk to the canyon via Mira Montana Drive, which creates safety concerns."

(AR00117)

Reconstruction of the school would result in an expanded parking lot and loading zone:

"The proposed project would not increase the student capacity at Del Mar Heights School. Therefore, there would be no additional traffic as a result of the project. Additionally, there would be no change in traffic patterns as the entrance to the extended student loading zone would remain via Boquita Drive.

The Del Mar Heights School parking lot and traffic flow would be improved through the expansion of the parking lot and student loading zone, which would allow for an improved and expanded off-street student drop-off and pick-up area. At the southeastern portion of the project site, a drop-off / pick-up zone would be centrally located, and a turnaround would allow vehicles to exit from the access driveway on Boquita Drive. The student loading zone would also extend from the access driveway to the proposed drop-off / pick-up zone, which would accommodate approximately 41 cars. With the extended queuing zone and student drop-off / pick-up area, the proposed project would improve circulation in the area, by reducing the number of vehicles on the

adjacent roadways. This would create a safer environment for students who live in the neighborhood to walk and / or bike to campus. Furthermore, the construction of the ADA-compliant ramp and stairs at the southeastern portion of the site would provide students safer access to the school, as currently, students are accessing this portion of the site must do so via a dirt path. Providing a safer path would encourage students residing nearby to walk to school.

The parking lot onsite would be expanded to include a total of 80 staff, visitor, and kindergarten parking spaces which would result in a net increase of 32 stalls, compared to existing conditions."

(AR00117 - 118)

Petitioner argues "the observations of area residents create a fair argument that the revised project design will increase traffic in the surrounding area -- not decrease it as the IS/MND claims." Opening Brief at page 19, lines 10 - 12. Petitioner also argues a traffic study was not completed such that the IS / MND "erroneously concludes" that the school's parking lot and traffic flow would be improved. Id. at page 19, lines 13 - 14. Petitioner further notes construction of an ADA-complaint ramp and stairs from the Mira Montana Drive cul-de-sac down to the southeastern end of the campus will create a de-facto drop-off and pick-up area at the end of Mira Montana Drive. Id. at 20, lines 5 - 9.

Petitioner relies on comments made by residents regarding traffic flow. (AR0571 - 3573) "Residents' observations, based on personal knowledge, may constitute substantial evidence that a project will have a particular environmental effect." Gentry v. City of Murrieta supra at 1380. However, the comments reflecting the traffic back-up along Boquita Drive and Cordero Road do not indicate that the reconfigured and expanded parking lot and drop-off / pick-up zone will increase congestion. Rather, these comments indicate, instead, that the reconfiguration will not do enough to solve an existing problem. In addition, comments reflecting the opinion that future increased parking will also increase traffic are not based on personal observation. From a practical standpoint, this opinion is also not logical: attendees of the school are children such that they must be dropped off no matter how many parking spaces are available.

On the other hand, one aspect of these comments must be explored in further detail. The commenter notes that a reduced vehicle backup onto Cordero Road will permit vehicles with unfettered access to the Mira Montana Drive Cul-de-sac. This could result in a new or expanded drop-off / pick-up area on this residential street. This is compounded by the construction of an "ADA-compliant ramp and stairs" from this cul-de-sac onto the southeastern side of campus. Presently, there is a wall at this location inhibiting school access (unless students navigate a trail to the immediate west of the cul-de-sac). (AR00043) Mira Montana Drive ends at this location (the Torrey Pines Reserve lies to the south and west), such that the ramp is unlikely to be used by students walking to school. Thus, substantial evidence exists within the administrative record supporting a fair argument that the combination of increased vehicle access with construction of a new campus entry point will increase vehicle traffic on Mira Montana Drive. This could result in a significant impact that has not been addressed or mitigated. Therefore, the writ of mandate is granted on this basis as well.

### *7. Construction Air Quality Impacts*

Again citing to the RK Engineering comment letter, Petitioner argues the IS / MND fails to adequately analyze the impacts of construction emissions and dust on sensitive receptors (residential units) located within 25 feet of the project site. (AR03728) In fact, the IS/MND analyzed impacts of the Rebuild Project on air quality, including impacts associated with sensitive receptors. (AR00069-AR00075) The IS / MND states:

"Construction activities would result in the generation of air pollutants. These emissions would primarily be 1) exhaust emissions from powered construction equipment; 2) dust generated by demolition, grading, earthmoving, and other construction activities; 3) motor vehicle emissions and 4) emissions of volatile organic compounds from the application of asphalt, paints, and coatings.

For purposes of this analysis, construction activities are anticipated to occur over an approximately 8.4-acre area. Construction would involve demolition of existing buildings, site preparation, grading, trenching, building construction, asphalt paving, and architectural coating. Construction activities are anticipated to start June of 2020 and end in July of 2021. Construction emissions were estimated using the California Emissions Estimator Model (CalEEMod), Version 2016.3.2, based on the project's preliminary construction schedule. Results of the modeling are included in Table 3, *Maximum Daily Regional Construction Emissions*. As shown in the table, air pollutant emissions from project-related construction activities would not exceed the County's regional emissions thresholds. Therefore, air quality impacts from project-related construction activities would be less than significant."

(AR00071)

It appears that the IS / MND considered the sensitive receptors on the immediately adjacent streets. In addition, the construction related emissions are below the threshold of significance regardless of the distance of each residence from the construction site. Thus, there is no potential for a significant impact related to construction related air quality, and this aspect of the writ of mandate lacks merit.

#### 8. Operational Air Quality Impacts

Petitioner argues: "... [A]dditional impacts to air quality and greenhouse gas emissions are present as a result of the significantly altered layout of the School, which greatly extends the existing parking lot down the entirety of Mira Montana Drive. Extending the parking lot in this fashion will significantly increase the vehicle emissions exposure to the sensitive receptors along Mira Montana Drive." Opening Brief at page 21, lines 7 - 11. However, Petitioner fails to cite evidence within the administrative record supporting this argument. As discussed above, the Rebuild Project will not increase the student capacity at Del Mar Heights School such that there will be no additional traffic. (AR00117) Thus, there is no demonstrated potential for a significant impact related to operational air quality, and this aspect of the writ of mandate lacks merit.

#### 9. Wildfire and Emergency / Fire Access Impacts

Petitioner argues the IS / MND fails to adequately address impacts on the emergency evacuation plans of the School and surrounding community. Opening Brief at page 22, lines 5 - 6. Petitioner cites the Sierra Club comment letter, which states: "Given the site configuration with one way in and out, more cars inside the site boundary [because of increased parking capacity], and no change in nearby roadway capacity this could result in a substantial increase in potential evacuation times." (AR03508) Petitioner also cites comments from the California Department of Parks and Recreation in which it is noted that relocation of school structures closer to native habitats may result in required vegetation management/fuel reduction. (AR03660)

The IS / MND analyzed impacts of the Rebuild Project on "wildfire." (AR00143 -144) The IS / MND states:

**"Less Than Significant Impact.** The proposed project would not conflict with adopted emergency

response or evacuation plans. The surrounding roadways would continue to provide emergency access to the project site and surrounding properties during construction and post-construction. The proposed project would improve parking and queuing onsite, thereby reducing congestion on the surrounding roadways, and would provide a 20-foot wide fire access lane around the entire campus. Additionally, both the City Fire Marshal and DSA would be required to approve fire access around the site. As part of the DSA process, a Fire and Life Safety Review would be conducted when DSA would review building construction and how occupants can safely exit the buildings in case of a fire. The proposed project would not result in inadequate emergency access, and impacts would be less than significant."

(AR00143)

As discussed above, the Rebuild Project will not result in a higher student population. It will also add and improve rescue vehicle access via the new fire access lane, as depicted at AR03444. The Rebuild Project will add four fire hydrants (there are currently none), move buildings an additional 20 feet from the canyon edge, and upgrade to more fire resistant buildings equipped with fire sprinklers. (AR03751) There is no evidence in the record that the configuration of the rebuilt campus will increase student evacuation times. In contrast, the Emergency Plan demonstrates that the school presently assembles students on the field before escorting them off campus. (AR04725) There is no evidence suggesting this will not continue to be the case. As discussed above, the IS / MND concludes that the addition of the expanded student loading area will decrease congestion on some of the surrounding streets (with the possible exception of Mira Montana Drive). This could improve emergency vehicle access to the surrounding neighborhood. Given all of these factors, there is no demonstrated potential for a significant impact related to wildfire and emergency/fire access, and this aspect of the writ of mandate lacks merit.

#### *10. Land Use Planning Conflict Related Impacts: 100-foot setback*

The CEQA Initial Study Checklist, used to determine whether a project may have significant environmental impacts, includes the question whether a project may "[c]onflict with any applicable land use plan, policy, or regulation ... adopted for the purpose of avoiding or mitigating an environmental effect." Pocket Protectors v. City of Sacramento (2004) 124 Cal. App. 4th 903, 929 (quoting Guidelines, appen. G, § IX, subd. (b)). If substantial evidence supports a fair argument that the proposed project conflicts with a city's development plan, this constitutes grounds for requiring an EIR. Id. at 930. However, upon an affirmative vote a school district "may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district." Gov. Code 53094(b). School districts are not required to comply with municipal zoning ordinances in designating school locations. San Jose Unified School Dist. v. Santa Clara County Office of Education (2017) 7 Cal. App. 5th 967, 978. The state's sovereign activities include school construction and school location such that school districts, the entities the state had empowered to carry out those sovereign activities on its behalf, are immune from local zoning regulations. Id. In enacting Government Code section 53094, the Legislature preserved the immunity from local regulation accorded to school districts. Id. at 979, 980. The Legislature intended to forestall local obstruction of state-sanctioned school construction and school location. Id. at 980.

The IS / MND addresses whether the Rebuild Project will "[c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?" (AR00103) The IS / MND states: "The project site is currently zoned RS-1-3 and the existing land use designation is Institutional and Public and Semi-Public Facilities. Implementation of the proposed project would not change the zoning or land use designations of the site. The proposed project would not change the uses on site, and impacts would be less than significant." (Id.) In response to comments, the IS / MND states: "While the plan does not provide the full



100-foot defensible space along the entire perimeter of the site, the Government Code 51182 provides for exemption or variances. In this case, the District desires to be good stewards of the environment and avoid all intrusions into the Reserve. The numerous safety features justify the current design and the District has received preapproval by the City of San Diego Fire Marshall." (AR03491)

The requirement for 100 feet of defensible space applies to any "person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure." Gov. Code 51182(a) and Pub. Resources Code 4291(a). "Person" means a private individual, organization, partnership, limited liability company, or corporation. Pub. Resources Code 4291(f). Section 4291 does not apply to the District because the District is not a "person" under the statute. As discussed above, the Rebuild Project will alleviate current fire risk conditions by increasing the setback, not make these impacts worse. As a result, there is no demonstrated potential for a significant impact related to a 100-foot setback requirement, and this aspect of the writ of mandate lacks merit.

#### *11. Land Use Planning Conflict Related Impacts: Torrey Pines Community Plan*

The "key policies" of the Torrey Pines Community Plan include: (a) The construction of public projects shall avoid impacts to residential neighborhoods; and (b) Public parks and playing fields should be provided within the planning area. (AR03275-3276) Whether the Rebuild Project results in the potential for significant impacts (noise, traffic, recreation, etc.) is discussed throughout this ruling and will not be repeated here.

#### *12. Recreation Impacts*

Petitioner argues, without citation to the record, that the Rebuild Project will reduce the amount of open space available for community recreation use after school hours by 41,000 square feet. Opening Brief at page 27, lines 9 - 10.

Appendix G of the Guidelines notes that a project may have a significant impact on the environment if it would (a) increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, or (b) the project includes recreational facilities or requires the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

"The District owns the site and allows community use of the multi-use field for activities such as baseball and soccer." (AR00037) The IS / MND also states as follows:

"Similar to existing conditions, operation of Del Mar Heights School would not require students to use existing neighborhood or regional parks. The proposed project would enhance and update the school's outdoor recreational spaces. While the ballfield used by the older little league teams (90-base paths) would be eliminated, the new flat grass field includes space for two smaller fields used by younger baseball teams. The activity level would be similar on the new fields as the existing, but a shift in use among age groups would occur. The field is also available for soccer play.

Additionally, an outdoor learning area would be created onsite, which would be used by both the school and the community. The student capacity would remain unchanged after project implementation and impacts to offsite recreational facilities as a result of the proposed project would not result in negative impacts.

....  
As discussed [above] ..., the proposed project would not require construction of offsite recreational

facilities. The proposed project includes the rebuilding and enhancing of recreational facilities at Del Mar Heights School ...."

In response to comments, the IS / MND notes that the area available for community recreation (after school hours) will be reduced from 57% of the campus area, to 44% of that same area. (AR03469) The District solicited community feedback for its determination as to how community members currently use the school recreation areas. (Id.) Based on this feedback, the District concludes: "the majority of uses remain available with the planned design .... The one exception is Little League Junior / Senior Baseball, which requires a baseball field with 90' baselines and a 300' outfield fence, which would not fit in the green space under the planned design .... ¶ ... Although all other activities remain available with the proposed plan, the amount of area available for some activities is reduced. This would reduce the number of concurrent activities that can occur within a single area." (Id.) Essentially, a comparison demonstrates that the small reduction in space will result in two smaller baseball fields, instead of one small and one larger field within the existing area. (AR00029, AR00043, AR03472) However, the space available for other activities would increase. (Id.) For example, new pathways and redesigned open space would encourage fitness walking. (Id.) The District proposes "to create a field that would accommodate Little League Junior / Senior Baseball at Torrey Hills School. The field would be placed within an existing school. The field fits within the existing grass field and development of the field would involve minimal environmental impact." (AR03476)

Given the extensive discussion within the administrative record, as set forth above, evidence exists supporting the conclusion that the impact associated with community recreational use is insignificant. In other words, although the Rebuild Project will result in changes, these changes are not significant for purposes of a CEQA analysis. Petitioner fails to cite to any evidence within the record (e.g., comments from residents) demonstrating otherwise. Therefore, this aspect of the writ of mandate lacks merit.

### 13. Biological Resources Impact

The IS / MND discusses biological resources at AR00075-83. As noted by Respondent District, the IS / MND identifies 0.8 acres of Southern Maritime Chaparral habitat within the school's property boundaries. These are sloped areas below the grade of the school. With the exception of repairing the two storm water outfalls, the Rebuild Project will not affect this habitat because the Rebuild Project is limited to the current fence line of the school. Only a small portion of the Southern Maritime Chaparral habitat will be affected by the outfall repair (less than 0.01 acres). Opposition Brief at page 28, lines 1 - 13.

A comment letter submitted by the State of California, Department of Parks and Recreation notes that the Rebuild Project is "directly adjacent to the Torrey Pines State Natural Reserve." (AR03658) This comment letter continues:

"The Biological Resources Assessment did not include a focused sensitive plant survey, despite the project study area including 0.8 acres of southern maritime chaparral. The Biological Resources Assessment asserts that no sensitive plant species were observed within the project footprint and as such, the project would not result in impacts to sensitive plant species. The MND and associated technical reports mentions the presence of but does not address potential impacts to Torrey pine (*Pinus torreyana*), wart-stemmed ceanothus (*Ceanothus verrucosus*) and Nuttall's scrub oak (*Quercus dumosa*) as occurring in the project study area. Additionally, the surveyed area contains a Federally-listed as endangered plant species, Del mar manzanita (*Arctostaphylos glandulosa* var. *crassifolia*). This species was incorrectly identified in Attachment A, Plant Species Observed as Eastwood manzanita (*Arctostaphylos glandulosa*), a species that does not occur at TPSNR. At a minimum the MND and

Biological Resources Assessment should address potential impacts to Del mar manzanita. This assessment should detail appropriate avoidance and mitigation measures associated with working in close proximity to this federally-endangered plant species."

(AR03659 – emphasis added)

In response to this comment, the District states: "As indicated in the Initial Study, the proposed project would occur almost entirely within the developed/disturbed area of the site with the exception of the outfall areas. Best Management Practices would be used to ensure that impacts to the sensitive Southern Maritime Chaparral, which would be slightly encroached on during repair of one of the outfalls, would be minimized. (AR03662)

The District has failed to gather relevant data with respect to impacts on the Southern Maritime Chaparral habitat. The extent to which this habitat will be disturbed is unclear. For example, it is not known whether the endangered plant species identified in the comment letter is even located where the storm water outfall repairs will take place. In the absence of this data, the existing substantial evidence within the administrative record establishes a fair argument that the Rebuild Project will result in a significant impact to biological resources through the disturbance of sensitive habitat, potentially including an endangered plant species. The writ of mandate is also granted on this basis.

Petitioner ordered to serve notice of the Court' ruling and to prepare a writ consistent with the Court's ruling.

To the extent the parties disagree, the parties shall each submit a proposed writ and brief not more than 10 pages supporting their view. Upon receipt of the proposed writs and briefs the Court will take under submission to evaluate, then adapt as is, or modified, one of the proposed writs.

**IT IS SO ORDERED.**

*Joel R. Wohlfeil*

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Judge Joel R. Wohlfeil